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E.M.R.B.
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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.

Case No. 2024-019

**SECOND AMENDED PROHIBITED
PRACTICE COMPLAINT**

18
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

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.¹

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
18 guaranteed under this chapter.

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

25
26 ¹ 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
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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
11 FOUR- AND ONE-HALF PERCENT (4.50%), WHICH WILL RESULT IN AN
12 INCREASE TO THE SALARY SCHEDULES IN APPENDIX A.
13 2. EFFECTIVE JULY 1, 2023, OR UPON APPROVAL BY THE CLARK
14 COUNTY BOARD OF COMMISSIONERS, THE SALARY SCHEDULES FOR
15 ALL EMPLOYEES COVERED IN APPENDIX A WILL BE ADJUSTED BY
16 AN ADDITIONAL 0.50%, REPRESENTING A TOTAL COST OF LIVING
17 ALLOWANCE (COLA) OF 5.00%.

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

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

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

28 27. At the February 29, 2024, 2023 Reopener Fact-Finding hearing, Clark County
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 32. During the Successor CBA negotiations, the County passed a number of regressive
2 articles concerning benefits. Several of their regressive articles have no cost to contract, including
3 the removal of (1) severance pay, which only applies to deputies hired prior to September 30,
4 2011, as it was a concession in that year, and the removal of accrual of bonus leave.

5 33. When asked for the reasoning behind the regressive proposals, the County stated
6 the proposals were because CCPA went to impasse the prior two (2) years and because the County
7 believed that only MPLAN employees deserve these benefits. This is a blatant attempt to
8 “interfere, restrain or coerce” CCPA from exercising its rights under the Act.

9 34. In other words, as the County indicated, because CCPA, whose members were
10 formerly MPLAN, decided to form a collective bargaining unit, and because CCPA has exercised
11 its rights under NRS Chapter 288, the County decided to engage in regressive bargaining -
12 including the failure to make any COLA offers for the fiscal year beginning July 1, 2024, as of
13 July of 2024.

14 35. On May 3, 2024, the County reaffirmed its unlawful intent in limiting its final offer
15 in its closing brief in connection with the 2023 Reopener by arguing as follows:

16 The CCPA seeks a proposal that would be retroactive to July 1, 2023. See Cx. 6,
17 p. 2. However, making a COLA retroactive would destroy the limited bargaining
18 power the County has in a reopener. Making a proposal effective upon the date of
19 agreement and Board of County Commissioners approval creates an incentive for
20 bargaining units to quickly settle contracts before the expiration of the prior
21 contract's term. Making a recommendation retroactive creates an incentive for the
22 Union to surface bargain and insist on extreme positions through impasse and
23 factfinding and removes any incentive to resolve the contract quickly and in a
24 timely matter, through negotiations. When a Union insists to impasse on its
25 position it does so with the knowledge that it is risking many months without salary
26 increases, if the Factfinder finds in favor of the employer.

27 36. On May 6, 2024, the parties met for their sixth (6th) bargaining session for the
28 successor CBA to begin July 1, 2024. At that session, the County refused to negotiate, claiming

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
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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

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PERCENTAGE INCREASE IN SALARY SCHEDULES SHALL BE 1%. THE ADJUSTED PERCENTAGE INCREASE IS BASED ON U.S. BUREAU OF LABOR STATISTICS DATE (<https://data.bls.gov/timeseries/cuum400sa0>).

CALCULATED AS FOLLOWS:

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

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

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

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

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

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:

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Clark County (Respondent)

Answer to Second Amended Complaint

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

15 CLARK COUNTY PROSECUTORS
16 ASSOCIATION,

Case No.: 2024-019

17 Complainant,

18 vs.

19 CLARK COUNTY,

20 Respondent.

21 **ANSWER TO SECOND AMENDED COMPLAINT**

22 Respondent, Clark County (the "County"), by and through its counsel, Fisher &
23 Phillips LLP, hereby submits its Answer to the Clark County Prosecutors Association,
24 (the "CCPA") "Second Amended Complaint For Prohibited Practices" filed August 13,
25 2025 ("SAC") and hereby admits, denies and alleges as follows:

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

2. Answering Paragraph 2 of the SAC, the County admits the allegations
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.

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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.

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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

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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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emrb@business.nv.gov
MAbellar@emrb.nv.gov

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Paul Cotsonis, Esq.
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Attorneys for Complainant,
Clark County Prosecutors Association

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

CCPA (Complainant)

Prehearing Statement

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FILED
September 12, 2024
State of Nevada
E.M.R.B.
4:04 p.m.

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

10 CLARK COUNTY PROSECUTORS
ASSOCIATION,
11
12 Complainant,
and
13 CLARK COUNTY,
14
15 Respondent

Case No. 2024-019

**CLARK COUNTY PROSECUTORS
ASSOCIATION'S PREHEARING
STATEMENT**

16
17 COMES NOW Complainant Clark County Prosecutors Association ("CCPA") by and through
18 undersigned counsel Adam Levine, Esq. of the Law Office of Daniel Marks and hereby submits
19 pursuant to NAC 288.250 its Pre-Hearing Statement.

20 **I. STATEMENT OF THE ISSUES OF FACT AND LAWS TO BE DETERMINED BY THE**
21 **BOARD.**

22 The issues of law and fact be determined by the Board is whether Clark County failed to bargain
23 in good faith in violation of NRS 288.270(1)(a) and (e).

24 ///

1 **II. POINTS AND AUTHORITIES**

2 It is a prohibited practice for a local government employer willfully to refuse to bargain
3 collectively in good faith with the exclusive representative as required in NRS 288.150. NRS
4 288.270(1)(e). "A party's conduct at the bargaining table must evidence a sincere desire to come to an
5 agreement. The determination of whether there has been such sincerity is made by drawing inferences
6 from conduct of the parties as a whole." *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No.
7 253-A (1991), quoting *NLRB v. Int'l Ass'n of Firefighters, Local 731*, 361 U.S. 488 (1970). The Act imposes a
8 reciprocal duty on employers and bargaining agents to negotiate in good faith concerning the
9 mandatory subjects of bargaining listed in NRS 288.150. NRS 288.270(1)(e) deems it a prohibited
10 labor practice for a local government employer to bargain in bad faith with a recognized employee
11 organization. *O'Leary v. Las Vegas Metropolitan Police Dep't*, Item No. 803, EMRB Case No. A1-
12 046116 (May 15, 2015); see also *Serv. Employees Int'l Union, Local 1107 v. Clark County*, Item No.
13 713A, EMRB Case No. A1-045965 (Oct. 5, 2010).

14 The duty to bargain in good faith does not require that the parties actually reach an agreement,
15 but does require that the parties approach negotiations with a sincere effort to do so. *Ed. Support*
16 *Employees Ass'n v. Clark County Sch. Dist.*, Case No. A1-046113, Item No. 809, 4 (2015), citing *City*
17 *of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A, Case No. A1-045472 (1991). Surface
18 bargaining is a strategy by which one of the parties merely goes through the motions, with no intention
19 of reaching an agreement. In this regard, it is a form of bad faith bargaining. *City of Reno v. Int'l Ass'n*
20 *of Firefighters, Local 731*, Item No. 253-A (EMRB, Feb. 8, 1991). Distinguishing surface bargaining
21 from good faith bargaining depends on the facts supporting the claim.

22 Recently, in *Washoe County School District v. Washoe School Principals' Association*,
23 Consolidated Case Nos. 2023-024 and 2023-031, Item No. 895 (March 29, 2024) this Board set forth a
24 list of "Signs of bad-faith bargaining" which include:

- 1 - Refusing to bargain on mandatory subjects of bargaining;
- 2 - Cancellation of bargaining sessions;
- 3 - Delays/Extended periods of unavailability for bargaining;
- 4 - Imposing conditions on bargaining;
- 5 - Insufficient authority to bargain;
- 6 - Refusal to provide information;
- 7 - Refusal to meet and unreasonable meeting times and sites;
- 8 - Boulwarism (take it or leave it type offers);
- 9 - Surface bargaining;
- 10 - Direct dealing;
- 11 - Regressive bargaining;
- 12 - Unilateral changes;
- 13 - Withdrawal of accepted offers; and
- 14 - Refusal to sign a written agreement.

15 A regressive bargaining proposal is defined as a change from a prior more favorable proposal.
16 *Mid-Continent Concrete*, 336 NLRB 258, 260 (2001). Such proposals include a party making an initial
17 contract proposal that is less favorable to employees than the status quo. Regressive proposals are not
18 per se unlawful; they may be justified by changes in the economy of the industry and the relative
19 strengths of the participants. *Rescar, Inc.*, 274 NLRB 1, 2 (1985). However, regressive proposals are
20 indicative of bad faith if left unexplained or if the explanation appears dubious.

21 The obligation to bargain in good faith also includes the obligation to expedite the bargaining
22 process by bargaining at reasonable times. As noted by the NLRB "The negotiation of a collective-
23 bargaining agreement is as important as any business transaction" The good faith of a party accused of
24 delay (as CCPA accuses Clark County of doing with regard to impasse proceedings) "may be tested by

1 considering whether it would have acted in a similar manner in the usual conduct of its business
2 negotiations." *Reed & Prince Mfg. Co.*, 96 NLRB 850, 852 (1951), *enfd.* 205 F.2d 131 (1st Cir. 1953).
3 The NLRB has found a violation, questioning whether the employer "would have delayed, for such a
4 may be tested by considering whether it would have acted in a similar manner in the usual conduct of
5 its business negotiations." The Board found a violation, questioning whether the employer "would have
6 delayed, for such a relatively long period of time, negotiations for a business contract or a bank loan it
7 was desirous of concluding." *Id.*

8 It is beyond dispute that statutory impasse procedures under NRS 288.200 et seq. are part and
9 parcel of the collective bargaining process itself. See e.g. *Carson City Firefighters Association v.*
10 *Carson City Board of Supervisors et. al*, Case No. A1-045285 Item No. 39 (1975) ("Bargaining
11 collectively is defined as the entire bargaining process, including factfinding"); *Stationery Engineers,*
12 *Local 39 v. City of Elko*, Case No. A1-045505 Item No. 295 (1992) (failure of City to participate in
13 fact-finding constituted a failure to bargain in good faith). Thus, Clark County is not permitted to
14 justify its failure to schedule a timely mediation (which it demanded) based upon the availability of its
15 bargaining team. The Act's obligation to bargain at reasonable times required Respondent "to provide a
16 representative who could conduct negotiations with the degree of diligence expected and required of it
17 by the statute." *Insulating Fabricators, Inc.*, 144 NLRB 1325, 1328 (1963), *enfd.* 338 F.2d 1002 (4th
18 Cir. 1964). "The Act does not permit a party to hide behind the crowded calendar of his negotiator,
19 whether he be a busy labor attorney or an overworked company officer." *Radiator Specialty Co.*, 143
20 NLRB 350, 369 (1963). Thus, it is a parties' statutory obligation to furnish negotiators who could
21 devote adequate time to attend reasonably prompt and continuous negotiating sessions. *Imperial Tile*
22 *Co.*, 227 NLRB 1751, 1754 (1977).

23 ///

24 ///

1 **III. LIST OF WITNESSES**

- 2 1. Curtis Germany is the Director of Human Relations and is knowledgeable regarding
3 Clark County's failure to make proposals and/or counterproposals, and delays in the
4 bargaining process.
- 5 2. Christina Ramos is Clark County's Chief Negotiator and is knowledgeable regarding
6 Clark County's failure to make proposals and/or counterproposals, and delays in the
7 bargaining process.
- 8 3. Les Lee Shell is a Deputy County Manager for Clark County and is knowledgeable
9 regarding Clark County's intent to retaliate against and/or punish bargaining units for
10 exercising their statutory rights under NRS 288.200.
- 11 4. Jessica Colvin is Clark County's Chief Financial Officer and is knowledgeable regarding
12 Clark County's intent to retaliate against and/or punish bargaining units for exercising
13 their statutory rights under NRS 288.200.
- 14 5. Marc DiGiacomo is the Chief Negotiator for the CCPA and is knowledgeable regarding
15 Clark County's failure to make proposals and/or counterproposals, and delays in the
16 bargaining process.
- 17 6. Pamela Weckerly is the President of the CCPA and is knowledgeable regarding Clark
18 County's failure to make proposals and/or counterproposals, and delays in the
19 bargaining process.
- 20 7. Binu Palal is part of the CCPA bargaining team and is knowledgeable regarding Clark
21 County's failure to make proposals and/or counterproposals, and delays in the
22 bargaining process.

23 CCPA reserves the right to supplement this witness list.

24 ///

1 **IV. ESTIMATION OF TIME**

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

4 **V. STATEMENT PURSUANT TO NAC 288.250(c).**

5 There are no pending grievances or other administrative proceedings relating to the subject of
6 the hearing which is Clark County's failure to bargain in good faith. While CCPA and Clark County
7 are scheduled for binding fact finding on October 21, 2024, this should not result in a delay of this
8 matter being set. Rather, the October 21, 2024 date is the product of what CCPA alleges to be Clark
9 County's bad faith delays in connection with a COLA reopener for the 2023 fiscal year. The
10 allegations contained in the Complaint go beyond the COLA reopener, and involve the negotiations
11 for a successor agreement.

12 DATED this 12th day of September 2024.

13 LAW OFFICE OF DANIEL MARKS

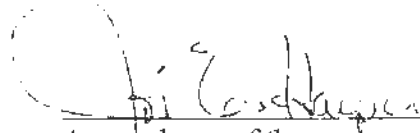
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21 Attorneys for CCPA
22
23
24

1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS and that on
3 the 12th day of September 2024, I did deposit in the United States Post Office, at Las Vegas, Nevada, in
4 a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the above and
5 foregoing CLARK COUNTY PROSECUTORS ASSOCIATION'S PREHEARING STATEMENT, to
6 the address as follows:

7 Allison Kheel, Esq.
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9 300 S. Fourth Street, Suite 1500
10 Las Vegas, NV 89101
11 Tel: (702) 862-3817
12 akheel@fisherphillips.com
13 *Attorneys for Clark County*

14 
15 _____
16 An employee of the
17 LAW OFFICE OF DANIEL MARKS
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CCPA (Complainant)

Updated Prehearing Statement

FILED
March 23, 2026
State of Nevada
E.M.R.B.
4:30 p.m.

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

11 CLARK COUNTY PROSECUTORS
12 ASSOCIATION,
13 Complainant,
14 v.
15 CLARK COUNTY,
16 Respondent.
17

Case No. 2024-019

**CLARK COUNTY PROSECUTORS
ASSOCIATION'S UPDATED PRE-
HEARING STATEMENT**

18
19
20 COMES NOW Complainant, Clark County Prosecutors Association ("CCPA") by and
21 through undersigned counsel, REESE RING VELTO, PLLC, and hereby submits pursuant to
22 NAC 288.250 its Pre-Hearing Statement.

23 **I. INTRODUCTION**

24 This case concerns Responent Clark County's ("County") pattern of bad faith bargaining,
25 interference with protected union rights, and discriminatory conduct in violation of NRS
26 288.270(1)(a), (b), (c), and (e).

1 *Reno v. Int'l Ass'n of Firefighters*, Local 731, Item No. 253-A (EMRB 1991) (quoting *NLRB v.*
2 *Ins. Agents' Int'l Union*, 361 U.S. 488 (1960)). Whether a party has satisfied this obligation is
3 determined by examining the totality of its conduct throughout negotiations. *City of Reno v. Reno*
4 *Police Protective Ass'n*, Item No. 790 (EMRB 2013).

5 The Nevada Supreme Court has expressly held that the Employee-Management Relations
6 Act should be interpreted consistently with the National Labor Relations Act, and that it is proper
7 to look to NLRB precedent for guidance in evaluating bargaining conduct. *City of Reno v. Reno*
8 *Police Protective Ass'n*, 118 Nev. 889, 892, 59 P.3d 1212 (2002); *Weiner v. Beatty*, 113 P.3d 313,
9 315 (Nev. 2005).

10 The Act imposes a reciprocal duty on employers and bargaining agents to negotiate in
11 good faith concerning the mandatory subjects of bargaining listed in NRS 288.150. NRS
12 288.270(1)(e) makes it a prohibited practice for a local government employer to bargain in bad
13 faith with a recognized employee organization. *O'Leary v. Las Vegas Metropolitan Police Dep't*,
14 Item No. 803, EMRB Case No. A1-046116 (May 15, 2015); see also *Serv. Employees Int'l Union,*
15 *Local 1107 v. Clark County*, Item No. 713A, EMRB Case No. A1-045965 (Oct. 5, 2010).

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

21 One recognized form of bad faith bargaining is surface bargaining, in which a party
22 engages in the outward form of negotiations without a genuine intent to reach an agreement. *City*
23 *of Reno v. Int'l Ass'n of Firefighters*, Local 731, Item No. 253-A (EMRB Feb. 8, 1991). Whether

1 conduct constitutes surface bargaining is determined under the totality of the circumstances,
2 including whether a party is lawfully engaging in hard bargaining or instead “endeavoring to
3 frustrate the possibility of arriving at any agreement.” *Atlanta Hilton & Tower*, 271 NLRB 1600
4 (1984). This standard focuses not only on whether agreement is ultimately reached, but also on
5 whether a party’s conduct improperly interferes with the process of reaching agreement. Conduct
6 that intentionally delays negotiations, manipulates timing, or otherwise impedes meaningful
7 progress toward agreement for strategic advantage may constitute bad faith—even where a party
8 remains willing to reach agreement at some later point.
9

10 Conduct indicative of bad faith includes delaying tactics and other actions inconsistent
11 with a serious intent to reach common ground. *See id.* Thus, surface bargaining is not limited to
12 situations in which a party intends never to reach agreement. Rather, it includes circumstances in
13 which a party goes through the motions of bargaining while structuring its negotiations and
14 negotiation strategy to delay, frustrate, or otherwise impede meaningful progress towards
15 reaching an agreement. Whether conduct rises to the level of surface bargaining depends on the
16 totality of the circumstances.
17

18 Consistent with these principles, the obligation to bargain in good faith also includes the
19 obligation to meet at reasonable times and to avoid unnecessary delay. As noted by the NLRB,
20 “[t]he good faith of a party accused of delay may be tested by considering whether it would have
21 acted in a similar manner in the usual conduct of its business negotiations.” *Reed & Prince Mfg.*
22 *Co.*, 96 NLRB 850, 852 (1951), *enfd.* 205 F.2d 131 (1st Cir. 1953). The Board has found bad faith
23 where an employer engages in delays that it would not tolerate in ordinary commercial dealings,
24 such as negotiations for a business contract or to obtain financing.
25
26

1 While “hard bargaining” or firm insistence on a position is not per se unlawful, such
2 conduct crosses into bad faith where it is accompanied by tactics designed to frustrate the
3 bargaining process, manipulate the timing of the agreement itself, or undermine protected
4 statutory rights. *Reno Municipal Employees Ass’n v. City of Reno*, Item No. 93 (EMRB 1980).

5 **B. The County’s Conduct Demonstrates Bad Faith Under the Totality of**
6 **Circumstances**

7 Applying these standards, the evidence will demonstrate that Clark County engaged in a
8 coordinated course of conduct that, taken as a whole, improperly interfered with the process of
9 reaching agreement and controlled when and under what conditions agreement could be reached.
10 Under the totality-of-conduct standard, this establishes bad faith bargaining.

11 First, the County used non-retroactivity as leverage to discourage the Union from invoking
12 statutory impasse procedures. As the evidence will show, the County characterized non-
13 retroactivity as an “incentive” to resolve negotiations without proceeding to impasse. By tying
14 economic outcomes to the relinquishment of statutory rights, the County sought to control when
15 agreement could be reached and to impose economic pressure on the Union to accept prior to
16 completion of the statutory impasse process. Such conduct interferes with the process of reaching
17 agreement and is contrary to a genuine intent to bargain in good faith.

18 Second, the County engaged in repeated delays and failed to meaningfully participate in
19 bargaining and impasse procedures. The Board recognizes that delaying tactics, failures to meet,
20 and manipulation of scheduling are indicia of bad faith. Item No. 895. Here, the County refused
21 to bargain at scheduled times, failed to follow through on commitments, delayed mediation after
22 requesting it, and failed to timely participate in factfinding. These actions did not merely slow
23 negotiations—they impeded meaningful progress toward agreement and reflect an effort to dictate
24 the timing of negotiations for strategic advantage.

25 //
26 //

1 Third, the County refused to bargain over mandatory subjects, including wages during
2 successor negotiations. The EMRB has made clear that refusal to bargain on mandatory subjects
3 violates NRS 288.270(1)(e). The County's position that it could defer wage negotiations due to
4 unresolved prior agreements does not excuse its obligation to bargain and instead demonstrates
5 surface bargaining, engaging in the form of negotiations while avoiding meaningful movement
6 toward agreement.

7 Fourth, the County's proposals were structured not to advance negotiations, but to
8 frustrate and control the conditions under which agreement could be reached. When proposals are
9 used to create leverage through delay, economic pressure, or timing manipulation, they present
10 evidence of bad faith under the totality standard.

11 Taken together, the County's conduct demonstrates not hard bargaining, but a strategy to
12 delay, frustrate, and control the process of reaching agreement in order to gain leverage. Such
13 conduct constitutes bad faith bargaining in violation of NRS 288.270(1)(e).

14 **C. Regressive Bargaining and Improper Motivation**

15 While it is true that a regressive proposal, which is a change from a prior more favorable
16 position, is not per se unlawful, *Clark County Defenders Union v. Clark County*, Case No. 2024-
17 014, Item No. 904 (EMRB 2024), regressive proposals constitute evidence of bad faith where
18 they are "so illogical" as to demonstrate an intent to frustrate the bargaining process. *Id.* (citing
19 *Hickinbotham Bros. Ltd.*, 254 NLRB 96 (1981)).

20 Furthermore, even where a justification is offered, the Board must examine whether that
21 justification is legitimate or pretextual. A justification rooted in retaliation for protected activity
22 cannot support lawful bargaining conduct.

23 Here, the County justified removal of benefits based in part on the Union's prior use of
24 impasse procedures and its status as a bargaining unit separate from MPlan. These justifications
25 directly implicate protected activity under NRS Chapter 288.

1 The evidence will show that the County's proposals were not driven by legitimate
2 economic considerations but by a desire to penalize and deter the Union's exercise of its statutory
3 rights. Under Item No. 904, such proposals are "illogical" in the relevant legal sense because they
4 are designed to frustrate bargaining rather than advance it.

5 Accordingly, the County's regressive proposals constitute evidence of bad faith bargaining
6 in violation of NRS 288.270(1)(a) and (e).

7 **D. Interference, Restraint, and Coercion Under NRS 288.270(1)(a) and (b)**

8 It is a prohibited practice for a local government employer to interfere with, restrain, or
9 coerce employees in the exercise of rights guaranteed under NRS Chapter 288. NRS
10 288.270(1)(a). It is likewise unlawful to dominate or interfere with the administration of an
11 employee organization. NRS 288.270(1)(b).

12 The EMRB recognizes that conduct which interferes with or restrains the exercise of
13 statutory rights violates NRS 288.270(1)(a). *See, e.g., City of Reno v. Reno Police Protective*
14 *Ass'n*, Item No. 790 (EMRB 2013); *Washoe County School District v. Washoe School Principals'*
15 *Ass'n*, Item No. 895 (EMRB 2024). Accordingly, conduct that pressures a union to forego the
16 exercise of those rights, including through manipulation of bargaining procedures, timing, or
17 economic leverage, constitutes unlawful interference.

18 Here, the County's conduct, including conditioning retroactivity on avoiding impasse;
19 penalizing prior use of impasse procedures; and manipulating bargaining timelines, was designed
20 to restrict the Union's ability to use statutory processes. The County's conduct goes beyond hard
21 bargaining and constitutes interference and coercion because it attempts to dictate how the Union
22 exercises its rights under NRS Chapter 288.

23 Therefore, the County's actions violated NRS 288.270(1)(a) and (b).

24 //

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1 **E. Discrimination to Discourage Union Activity Under NRS 288.270(1)(c)**

2 NRS 288.270(1)(c) prohibits discrimination that encourages or discourages membership
3 in an employee organization. Discriminatory motive may be inferred from circumstantial
4 evidence, including the timing of the conduct, the employer’s stated justifications, whether those
5 justifications are pretextual, and the totality of the surrounding circumstances. *See, e.g., Clark*
6 *County Defenders Union v. Clark County*, Item No. 904 (EMRB 2024); *City of Reno v. Reno*
7 *Police Protective Ass’n*, Item No. 790 (EMRB 2013).

8 Here, the County’s conduct demonstrates such discriminatory motive. The County
9 expressly linked its bargaining positions to the Union’s prior use of statutory impasse procedures
10 and its status as a separate bargaining unit. By structuring proposals to impose economic
11 consequences tied to the Union’s exercise of protected rights, the County sought to discourage
12 the use of those rights and to control when and under what conditions an agreement could be
13 reached.

14 This conduct is not neutral economic bargaining. Rather, it reflects a strategy to impose
15 pressure on protected union activity through timing manipulation and economic leverage. Such
16 conduct interferes with the process of reaching agreement and supports a finding that the County
17 acted with discriminatory motive.

18 As such, the evidence will establish that the County’s conduct was motivated, at least in
19 part, by a desire to interfere with protected union activity, in violation of NRS 288.270(1)(c).

20 **F. The County Weaponized Delay to Coerce the Union’s Abandonment of its**
21 **Statutory Rights**

22 The duty to bargain in good faith prohibits not only overt refusals to bargain, but also
23 conduct that manipulates the bargaining process to undermine statutory rights. As the Board has
24 recognized, delay tactics, failure to meet, and manipulation of bargaining procedures are indicia

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1 of bad faith when evaluated under the totality of conduct test. *See Washoe County School District*
2 *v. Washoe School Principals' Ass'n*, Case Nos. 2023-024 & 2023-031, Item No. 895 (EMRB
3 2024).

4 Here, the evidence will show that the County did not merely delay bargaining—it used
5 delay as a strategic tool to increase economic pressure on the Union and to coerce it into
6 abandoning statutorily protected impasse rights.

7 First, the County engaged in repeated and unjustified delays, including refusing to bargain
8 at scheduled times, failing to follow through on commitments, delaying the selection of a
9 factfinder, and requesting mediation only to postpone its scheduling. These actions occurred
10 against the backdrop of statutory bargaining timelines tied to contract expiration and wage
11 implementation, where timing has direct economic consequences. The County's delay has already
12 been found to be in bad faith in a previous matter before this Board.

13 Second, the County exploited those delays by using non-retroactivity as leverage to
14 discourage the Union from invoking statutory impasse procedures. As reflected in the record, the
15 County characterized non-retroactivity as an “incentive” to resolve negotiations without
16 proceeding to impasse. By tying economic consequences to the Union's exercise of statutory
17 rights, the County sought to control when and under what conditions an agreement could be
18 reached and to impose economic pressure on the Union to accept terms prior to completion of the
19 statutory impasse process.

20 Taken together, this sequence demonstrates a deliberate strategy: (1) delay bargaining and
21 related procedures; (2) compress the timeline relative to economically significant dates; and (3)
22 use non-retroactivity to increase the cost of exercising impasse rights. This is not neutral delay—
23 it is engineered leverage. By manipulating the timing of negotiations and impasse procedures, the

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1 County interfered with the process by which agreement could be reached, effectively dictating
2 the conditions under which agreement would occur and using delay as a tool to impose economic
3 pressure on the Union.

4 The County may attempt to argue that both delay and non-retroactivity are permissible in
5 isolation. However, the Board evaluates conduct under the totality of circumstances, and even
6 otherwise lawful tools become unlawful when used for an improper purpose. *See City of Reno v.*
7 *Reno Police Protective Ass'n*, Item No. 790 (EMRB 2013) (totality of conduct governs bad faith
8 analysis).

9 Here, the purpose and effect of the County's conduct was to make the Union's statutory
10 right to impasse economically punitive. A statutory right that can be exercised only at substantial,
11 artificially imposed cost is not a meaningful right. By manipulating timing and then leveraging
12 non-retroactivity to penalize the exercise of impasse procedures, the County interfered with,
13 restrained, and coerced the Union in violation of NRS 288.270(1)(a), and further demonstrated
14 bad faith bargaining under NRS 288.270(1)(e).

15 Accordingly, the County's delay tactics, when viewed in conjunction with its admitted use
16 of non-retroactivity as leverage, constitute compelling evidence of a coordinated effort to frustrate
17 the bargaining process and undermine protected rights.

18 **IV. CONCLUSION**

19 For the foregoing reasons, the evidence will establish that Clark County engaged in a
20 coordinated course of conduct that interfered with the bargaining process, manipulated the timing
21 and conditions under which agreement could be reached, and improperly pressured the CCPA to
22 forego its statutory rights.

23 The County's actions, including delay tactics, refusal to bargain over mandatory subjects,
24 regressive and retaliatory proposals, and the use of non-retroactivity as leverage, demonstrate bad
25

1 faith bargaining under the totality of the circumstances and constitute interference, coercion, and
2 discriminatory conduct in violation of NRS 288.270(1)(a), (b), (c), and (e).

3 Accordingly, the CCPA respectfully requests that the Board find that the County
4 committed prohibited practices and grant all appropriate relief.

5 **V. LIST OF WITNESSES**

- 6 1. Curtis Germany is the Director of Human Relations and is knowledgeable
7 regarding Clark County's failure to respond to requests for information, failure to
8 make proposals and/or counterproposals, and delays in the bargaining process.
9 2. Christina Ramos is Clark County's Chief Negotiator and is knowledgeable
10 regarding Clark County's failure to respond to requests for information, failure to
11 make proposals and/or counterproposals, and delays in the bargaining process.
12 3. Marc DiGiacomo was the Chief Negotiator for the CCPA and is knowledgeable
13 regarding Clark County's failure to make proposals and/or counterproposals, and
14 delays in the bargaining process.
15 4. Pamela Weckerly is the former President of the CCPA and is knowledgeable
16 regarding Clark County's failure to make proposals and/or counterproposals, and
17 delays in the bargaining process.
18 5. Binu Palal is part of the CCPA bargaining team and is knowledgeable regarding
19 Clark County's failure to make proposals and/or counterproposals, and delays in
20 the bargaining process.

21 CCPA reserves the right to supplement this witness list and to call any witnesses named
22 by the County in its pre-hearing statement.

23 **VI. ESTIMATE OF TIME**

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

26 //

1 **VII. NAC 288.250(c) STATEMENT**

2 There are no pending grievances or other administrative proceedings relating to the
3 subject of the hearing relating to the subject matter of this hearing, namely Clark County's failure
4 to bargain in good faith.

5 Date: March 23, 2026

6 Respectfully submitted,

7 /s/ Paul Cotsonis

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Clark County (Respondent)

Prehearing Statement

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

10 CLARK COUNTY PROSECUTORS
11 ASSOCIATION,

Case No.: 2024-019

12 Complainant,

13 vs.

14 CLARK COUNTY,

15 Respondent.
16

17 **RESPONDENT CLARK COUNTY'S PRE-HEARING STATEMENT**

18 Respondent, Clark County (the "County" and or "Respondent"), by and through
19 its counsel, Mark J. Ricciardi, Esq., and Allison L. Kheel, Esq., of the law firm of Fisher
20 Phillips LLP, hereby files its Pre-Hearing Statement pursuant to NAC § 288.250.

21 **I. INTRODUCTION**

22 The Clark County Prosecutors Association ("CCPA") and the County have been
23 parties to several successive Collective Bargaining Agreements ("CBAs"), for almost 20
24 years. On August 13, 2025, the Union filed the instant Complaint against the County,
25 alleging prohibited practices under NRS §§ 288.270(1)(a) and (e), including failure to
26 bargain in good faith and attempted interference in the administration of the CCPA in
27 violation of NRS § 288.270(1)(b), and discrimination discouraging Union membership
28 in violation of NRS § 288.270(c). These claims generally fall into one of two categories

1 of incorrect assertions—(1) claims which are based on the CCPA’s inability to understand
2 the definition of an illegal regressive proposal in bargaining (something the County never
3 made); and (2) claims which attempt to point to the County’s permissible actions and
4 adherence to the statutory impasse procedures as somehow providing evidence of bad
5 faith bargaining. These arguments are absurd.

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

14 The CCPA also appears to be operating under the misconception that every CBA
15 must result in more for the Union than it had under the previous CBA. But this Board
16 has previously held that “regressive proposals are not per se unlawful; they may be
17 justified by changes in the economy of the industry and the relative strength of the
18 participants.” *Clark County Defenders Union v. Clark County, et al.*, Case No. 2024-
19 014, EMRB Item No. 904, *4 (EMRB Dec. 12, 2024) (hereinafter “Item No. 904”).¹ To
20 prevail, the Union must demonstrate that the regressive proposal is “so illogical” that its
21 only purpose it to frustrate the bargaining process, which the Union fails to do here. *Id.*
22 at *4. Thus, the claim should be dismissed.

23 The Petition for Declaratory Order in Case 2024-016 resulted in a final order on
24 March 17, 2025. *Clark County Prosecutors Association v. Clark County*, Case No. 2024-
25 016, EMRB Item No. 907 (EMRB Mar. 15, 2025) (hereinafter “Item No. 907”). While

26 ¹ Part of this Decision was vacated by the Eighth Judicial District Court as the result of the Petition for
27 Judicial Review filed in Case No. A-24-908956-J. See *Order Granting Petitioner Clark County Defenders
28 Union’s Petition For Judicial Review In Part And Denying In Part; And Granting Respondent Clark
County’s Counter Petition In Part And Denying In Part*, No. A-24-908956-J, at *3 (8th Jud. Dist. Ct. Nv.,
Nov. 7, 2025). However, the District Court explicitly affirmed the EMRB’s finding of no bad faith
bargaining through regressive bargaining, which is relied upon here. *Id.*

1 not a prohibited practices complaint, Item No. 907 addressed most of the factual
2 allegations contained in the Complaint or otherwise indicated that the actions
3 subsequently taken by the County are permissible. *See* Item No. 907. While the CCPA
4 may not like that the County's actions have been deemed permissible under the Act by
5 this Board, such is a matter that must be fixed by the Legislature. The CCPA cannot
6 prove that the County's compliance with the law is evidence of bad faith or
7 discrimination, thus, the Complaint should be dismissed with prejudice.

8 **II. FACTUAL BACKGROUND**

9 The Complaint in this matter covers events occurring throughout three separate
10 rounds of negotiations for subsequent Collective Bargaining Agreements ("CBAs"): (1)
11 Reopener Negotiations for the contract year of July 1, 2022 – June 30, 2023 ("2022
12 Reopener") limited to Article 36 – Compensation; (2) Reopener Negotiations for the
13 contract year of July 1, 2023 – June 30, 2024 ("2023 Reopener"); and (3) Full Contract
14 negotiations for the Period of July 1, 2024 – June 30, 2025 ("2024 Contract"). Each of
15 these rounds of negotiations resulted in impasse proceedings, thus, the events of one
16 round of negotiations often overlaps with the subsequent round of negotiations.

17 The 2022 Reopener resulted in impasse and non-binding fact-finding before
18 Factfinder John Kagel. Factfinder Kagel issued his recommendations on December 27,
19 2022, recommending a Cost of Living Adjustment ("COLA") of 4.0% (1.0% more than
20 the County's proposal). The Decision was timely presented to the Board of County
21 Commissioners ("BOCC") in January of 2023. The matter was then scheduled for
22 binding fact-finding on May 25, 2023. Then on May 25, 2023², the CCPA and the
23 County settled the 2022 Reopener for a 4.0% COLA.

24 During the 2023 Reopener, the County's proposals all contained the following
25 language: "Effective July 1, 2023, or upon approval by the Clark County Board of
26 Commissioners whichever is later," meaning that every County proposal contained a
27

28 ² It is unclear at this time whether the Union is asserting claims arising from these events. However, to the extent that any claim arises from any event which occurred prior to November 23, 2023, such claim would be barred by the statute of limitations and must be dismissed.

1 limit on retroactivity. The 2023 Reopener resulted in non-binding fact-finding before
2 Factfinder Katherine Thomson, on February 29, 2024 and March 18, 2024. During the
3 Hearing, the County's witnesses testified regarding the County's position on and
4 reasoning for making a non-retroactive offer. Factfinder Thomson issued her non-
5 binding Recommendations on the 2023 Reopener on June 3, 2024, recommending a 6%
6 COLA increase. These Recommendations were presented to the BOCC on July 16, 2024,
7 in a public meeting. The Union then requested binding fact-finding. Arbitrator Nancy
8 Hutt was selected and October 21, 2024, was selected as the date for the binding fact-
9 finding Hearing. In the days prior to the Hearing, the Union and the County engaged in
10 confidential settlement negotiations and on September 23, 2024, ultimately signed a
11 settlement agreement for a 6% COLA in the 2023 Reopener. The Settlement was
12 presented to, and approved by, the BOCC on October 15, 2024.

13 In February of 2024, the County and the Union began negotiations for the 2024
14 Contract. The County's wage proposals stated: "The language proposed, even if
15 tentatively agree[d] upon, cannot be executed until the 2023 negotiations/fact-finding is
16 ratified by the Clark County Board of Commissioners." The County made each wage
17 proposal conditional upon approval of the 2023 Reopener because the 2023 Reopener
18 had not been settled and, therefore, the starting amount for negotiating wages was
19 unknown at that point in time.

20 The County's first proposals sought to eliminate certain holdover³ benefits from
21 the CBA such as severance pay and bonus leave. These proposals did not change
22 throughout the negotiations and no later proposals during the 2024 Contract negotiations
23 sought to eliminate additional benefits.

24 On May 6, 2024, the County filed a Petition for Declaratory Order in Case 2024-
25 016, which later became Item No. 907. Case No. 2024-016 was designated as a matter
26 of statewide significance and multiple amicus briefs were filed debating the legal issues
27 of retroactivity and negotiation of unsettled contract terms. The Board held a Hearing on

28 ³ These Benefits were enjoyed by the Prosecutors prior to organizing in 2010 when they were still part of
the Management Plan ("MPlan")

1 February 12, 2025, and issued its Final Decision on March 17, 2025, finding it
2 permissible for “final offers to contain limits to retroactivity.” The Board also held that
3 “a party may not simply defer negotiations on a successor agreement, even on subjects
4 derivative of unsettled terms from the prior agreement.” However, the Board did not
5 find that the County’s refusal to negotiate over wages in the 2024 Contract was evidence
6 of bad faith bargaining in those circumstances.

7 While the above was occurring, the Union declared impasse in the 2024 Contract
8 Negotiations in early May of 2024. The original Complaint in this matter was filed on
9 May 23, 2024.

10 On May 13, 2024, the Union prematurely requested to select a factfinder, going
11 so far as to request a panel from FMCS. In response, on May 29, 2024, Counsel for the
12 County sent an e-mail to Counsel for CCPA, stating:

13 I received a panel for fact finding for the prosecutors for 2025
14 which was apparently requested by your office. As you are aware, under
15 the statute negotiations that reach impasse must first proceed to mediation
16 before they can proceed to non-binding fact finding. My client is prepared
17 to participate in mediation directly with the Union. I would be happy to
18 reach out to FMCS or discuss a mediator at your convenience.”

19 The County originally contacted Herman Brown with FMCS to request dates, and
20 was provided with dates several months in the future. The Union expressed that those
21 dates were too far in the future and agreed to engage a private mediator to conduct the
22 mediation. The County immediately contacted Najeeb Khoury (the agreed upon private
23 mediator) and requested his availability. July 29, 2024 was selected as the date for
24 mediation.

25 **III. ISSUES FOR CONSIDERATION**

26 1. Whether any or all of the issues in this case have been resolved by the
27 decision in EMRB Case No. 2024-016, Item No. 907 and are, therefore, barred by the
28 Board’s prior precedent?

2. Whether the County bargained in bad faith in violation of NRS §
288.270(1)(a) and (e) by refusing to implement the non-binding Factfinder’s
recommendations (“Recommendations”) and instead presenting the Recommendations to

1 the Board of County Commissioners (“BOCC”) in a public meeting as required by the
2 statutory impasse procedures of NRS § 288.200(8)?

3 3. Whether the County’s initial proposal in bargaining to remove a benefit
4 contained in the prior CBA constitutes a regressive proposal and/or bad faith bargaining
5 in violation of NRS § 288.270(1)(a) and (e)?

6 4. Whether the County attempted to interfere with the administration of the
7 CCPA in violation of NRS § 288.270(1)(b) by engaging the Union in confidential
8 settlement negotiations and negotiating a confidential settlement agreement for the same
9 amount as the non-binding Recommendations?

10 5. Whether the County discriminated against union members for the
11 purpose of discouraging union membership in violation of NRS § 288.270(1)(c) by
12 proposing to eliminate holdover MPlan benefits?

13 **IV. MEMORANDUM OF LEGAL POINTS AND AUTHORITIES**

14 **A. Applicable Standard Of Review**

15 The EMRB has the power to dismiss any complaint (or claim) where “no probable
16 cause exists to support the Complainant’s allegation that Respondent has committed a
17 prohibited labor practice” in violation of NRS Chapter 288. *Asch v. Clark County Sch.*
18 *District et al.*, Item No. 314, Case No. A1-045541 (May 19, 1993); NAC § 288.375(1).
19 As the party alleging a prohibited practice in violation of the Act, the Union bears the
20 burden of proof on all claims. The Union fails to meet its burden of proof in this case.

21 **B. The County’s Presentation Of The Non-Binding Recommendations**
22 **To The BOCC Complied With NRS § 288.200(8) Statutory Impasse**
23 **Procedures, Is Not Evidence Of Fraud, Deceit Or Dishonesty And Is**
24 **Not Bad Faith Bargaining**

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

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

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

Moreover, "[i]n order to show 'bad faith,' a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" *Juvenile Justice Supr. Ass'n v. County of Clark*, p. 5, Case No. 2017-20, Item No. 834 (EMRB, Dec 13, 2018) (citations omitted). Adamant insistence on a bargaining position or "hard bargaining" is not enough to show bad faith bargaining. *Reno Municipal Employees Ass'n v. City of Reno*, Item No. 93 (EMRB, Jan. 11, 1980); *City of Reno v. Reno Police Protective Ass'n*, Case No. A1-046096, Item No. 790 (EMRB, 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).

Item No 904 at *2. To state a claim for bad faith bargaining in violation of the Act, the Complaint must allege facts constituting "substantial evidence of fraud, deceitful action or dishonest conduct." *Id.* The County's refusal to select a factfinder prior to mediation complied with the NRS 288.200. In fact, this Board already addressed this issue in Item No. 904, by stating "NRS 288.200 makes it clear that once mediation has been chosen as an option, that process must be concluded prior to submitting the dispute to fact-finding . . . Thus, the Board finds that there is no obligation on the part of any party to begin the fact-finding process until after mediation has concluded." *See id.* at *9. The County also timely presented the Recommendations to the BOCC within the 45 days required by NRS § 288.200(8). The County repeatedly availed itself of legal options contained in the statutory impasse procedures. The above actions do not constitute fraud, deceit or dishonesty. Therefore, the Union's claim of bad faith bargaining must fail.

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1 C. The County's Proposals To Eliminate Holdover MPlan Benefits Are
2 Not Regressive Bargaining In Violation Of NRS §§ 288.270(1)(A) And
3 (E) Or Evidence Of Discrimination To Discourage Union
4 Membership In Violation Of NRS § 288.270(1)(C)

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

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

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

Item No. 904 at *4 (emphasis added). Simply because a proposal is regressive does not
make it bad faith bargaining where the County provided sufficient justification. *Id.* Here,
the County simply sought to eliminate holdover benefits.

Proposing a change to the "status quo"⁴ in bargaining is not evidence of
discrimination on the basis of union membership. The Prosecutors have been organized

⁴ The very concept that there is a "status quo" going into negotiations is misleading. Under the law, CBAs are not perpetual (they have a defined term and an expiration date). NRS § 288.150(2)(q). Because the benefits conferred by a CBA have an expiration date, the rights do not vest beyond the expiration date in the CBA. *CNH Indus. N.V. v. Reese*, 583 U.S. 133, 136 (2018). Instead, they are benefits that must be proposed and renewed each time that a new agreement is formed. *San Bernardino Pub. Emps. Assn. v. City of Fontana*, 67 Cal. App. 4th 1215, 1223 (1998) (reasoning that collective bargaining agreements are for a fixed duration and "once ... expired under their own terms, the employees had no legitimate expectation that the [] benefits would continue unless they were renegotiated as part of a new bargaining agreement.");

1 for almost 20 years and enjoy many different benefits than the MPlan employees. Similar
2 to the facts in Item No. 904, the initial proposals were only intended to “reflect[] the
3 relative strength of the parties and were primarily meant to help establish Respondent’s
4 bargaining position,” and were not bad faith or intended to “frustrate the bargaining
5 process.” See Item No. 904 at *4.

6 Even assuming *arguendo* that the County’s reasoning behind these proposals was
7 to reserve some benefits to only MPlan employees (which it is not), this is still not
8 evidence of discrimination on the basis of union membership. Given the approximately
9 20-year gap between organizing the CCPA and leaving MPlan, bargaining unit
10 employees would have no reason to infer that the removal of these benefits was designed
11 to penalize them for joining the Union. The County is entitled to negotiate different
12 benefits for different groups, and the County has negotiated several benefits for CCPA
13 that are divergent from those enjoyed by MPlan at the time of organization.

14 The proposals in this case do not constitute regressive proposals. A regressive
15 proposal is one which offers less to the other side than a prior proposal without any other
16 offset, concession or justification. What the County cannot do is to backtrack from an
17 existing offer without offsetting⁵ the change in some way. For example, it would be
18 regressive and illegal to offer a 5% COLA in Session 1 and then later offer only a 3%
19 COLA in Session 3.⁶

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21 *United Food & Com. Workers Unions & Participating Emps. Pension Fund v. SuperValu Inc.*, 647 F. Supp.
22 3d 396, 404 (D. Md. 2022) (explaining that a new CBA is its own agreement that is not merged with the
23 prior CBA, even if the new CBA carries forward the same terms used in a prior agreement).

24 The limits that good faith puts on initial offers in a negotiation are not derived from the terms in a
25 prior agreement. “In fact, it is not an unfair labor practice or bad faith, in and of itself, for an employer,
26 during negotiations, to ask that wages be reduced.” *NLRB v. Billion Motors, Inc.*, 700 F.2d 454, 456 (8th
27 Cir. 1983); *Chevron Chem. Co.*, 261 NLRB 44, 46 (1982) (no bad faith where the parties made proposals
28 that sought to improve their position from what it had been in a prior agreement). In other words, there
does not need to be any *quid quo pro* to propose a lesser benefit, just as there need not be any *quid quo pro*
for a union to propose a greater benefit. Instead, the standard is effectively the same standard for measuring
surface bargaining—a union or an employer making a proposal so outlandish that it reflects no sincere
desire to try to reach an agreement. *Chevron Chem. Co.*, 261 NLRB at 46 and n. 10. Therefore, the Union
cannot reasonably hold an expectation that any rights have vested to form a “*status quo*.”

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

⁶ 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 Additionally, even if the Board accepts all the facts pled by Complainant in the
2 SAC as true (which they are not), the SAC still fails to state a claim for discrimination to
3 discourage union membership in violation of NRS § 288.270(1)(c). The basis for the
4 claim of discrimination is solely based on the allegedly expressed preference to reserve
5 certain benefits to MPlan employees. SAC ¶ 33. The Union argues that “because CCPA,
6 whose members were formerly MPLAN, decided to form a collective bargaining unit. .
7 .” this must be evidence of discrimination and interference. SAC ¶ 34. Perhaps if this
8 was a first contract situation where the employees had just left MPlan, this argument
9 might carry weight, but it is not. The CCPA has been bargaining with the County since
10 2006. SAC ¶ 5. This means that the Prosecutors have not been members of MPlan for
11 almost 20 years, and the County seeking to remove these grandfathered benefits from the
12 CCPA does not support an inference of discrimination to discourage union membership.
13 The CCPA has had 20 years of negotiating for benefits separate and aside from those
14 given to MPlan, and if the Board were to find this evidence sufficient to support a claim
15 of discrimination, it would mean that the County could never seek to remove a benefit no
16 matter how much time has passed.

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

20 **D. The Board Should Dismiss All Claims Resolved By The Board’s Prior**
21 **Precedent**

22 The Union is simply attempting to recycle arguments it did not prevail on in Item
23 No. 907. The County should not have to repeatedly litigate the same matters under the
24 Union’s misguided attempt to achieve a different result. The vast majority of the facts
25 alleged in the Complaint gave rise to the specific issues in the Petition for Declaratory
26 Order and were already addressed by this Board in Item No. 907. The Board expressly
27 held that the actions taken by the County were legal under the Act. There is no pending
28 Petition for Judicial Review and/or Motion for Reconsideration in Item No. 907, and the

1 Union cannot be allowed to use these proceedings to challenge the Board's prior binding
2 legal precedent.

3 Here, the Union challenges all of the same incidents that were raised in Item No.
4 907, including the non-retroactive proposals in the 2023 Reopener (SAC ¶¶ 24-29, 35);
5 the County's decision to file a Petition for Declaratory Order (SAC ¶ 43); the County's
6 decision to engage in the statutory option to mediate the matter prior to selecting a
7 factfinder (SAC ¶¶ 44-54); and the County's alleged refusal to negotiate on wages while
8 the prior CBA was unsettled and negotiations were at impasse (SAC ¶¶ 52-54).

9 For example, the Union asserts that the County failed to bargain in good faith by
10 making proposals that were not retroactive, (SAC ¶ 35); however Item No. 907 expressly
11 states that the default retroactive language only applies "in the absence of any language
12 in the offer that is selected by the arbiter that limits or prohibits retroactivity" — *i.e.*, the
13 County is permitted to make an offer containing limits on retroactivity. *See* Item No. 907
14 at *9. As the Board has already held that it was permissible to limit retroactivity in its
15 proposals, Item No. 907 bars the Union from alleging that proposing such limits is a
16 prohibited practice.

17 Moreover, many of the actions challenged in the Complaint were taken as a direct
18 result of, and in compliance with, the Board's Decision in Item No. 907. For example,
19 the Union challenges the recent County proposals made in the negotiations for the 2024
20 Contract because they are conditioned upon approval of the 2023 Reopener being
21 approved by the BOCC, thereby providing a firm numerical result. SAC ¶¶ 54-57. The
22 Union calls this a "non-proposal," but this is not true. SAC ¶ 57. The Board in Item No.
23 907 provided that the parties must continue to negotiate the terms of a contract even if
24 contingent upon unresolved terms from prior negotiations. *See* 907 at *7; *see also* SAC
25 ¶ 39. Because the fact-finding for the 2023 Reopener was still pending during
26 negotiations over the 2024 Contract, the wage proposals had to presume a set starting
27 point before the County could engage in good faith negotiations over the amount of wage
28 increases. Stated differently, in order to negotiate a 3% wage increase the parties must

1 know “3% of what?” *Id.* at *7-8. This proposal is exactly what the Board foresaw
2 occurring in Item No. 907 and is the only way to continue negotiations in situations of
3 uncertainty. Therefore, the CCPA’s alleged facts cannot state a claim for a violation of
4 the Act when the County is just doing what the Board told it to do in Item No. 907, and
5 these claims should be dismissed with prejudice.

6 **V. PENDING RELATED PROCEEDINGS**

7 There are no currently pending proceedings related to this matter. All related
8 matters were resolved by the Board in *Clark County Prosecutors Association v. Clark*
9 *County*, Case No. 2024-016, EMRB Item No. 907 (EMRB, Mar. 15, 2025).

10 **VI. THE COUNTY’S ANTICIPATED WITNESSES**

11 **Christina Ramos**, Deputy Director of Human Resources and Chief Negotiator
12 for Clark County, will testify regarding the negotiations and events that lead to the
13 Recommendations and the events surrounding the presentation of the Recommendations
14 to the BOCC, and conversations surrounding the subsequent settlement of the CBA.

15 **Les Lee Shell**, Deputy County Manager and Acting Director of Human Resources
16 for Clark County, will testify regarding the events surrounding the presentation of the
17 Recommendations to the BOCC and subsequent settlement of the CBA.

18 **VII. ESTIMATED TIME TO PRESENT THE COUNTY’S POSITION**

19 The County anticipates that presentation of its evidence and witnesses in support
20 of its position will take five hours, and collectively with the Union’s case in chief will
21 require more than a full eight-hour day. Due to the complexity of the issues in this case,
22 the County requests post-hearing briefs in lieu of oral closing arguments.

23 DATED this the 23rd day of March, 2026.

24 **FISHER & PHILLIPS LLP**

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