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FISHER & PHILLIPS LLP
MARK J. RICCIARDI, ESQ.
Nevada Bar No. 3141
ALLISON L. KHEEL, ESQ.
Nevada Bar No. 12986
300 South Fourth Street, Suite 1500
Las Vegas, NV 89101
Telephone: (702) 252-3131
Facsimile: (702) 252-7411
E-Mail Address: mricciardi@fisherphillips.com
Attorneys for Respondent

STATE OF NEVADA

EMPLOYEE-MANAGEMENT RELATIONS BOARD

JUSTIN DARLING, a Local Government Employee,	) Case No.: 2025-005
	)
Complainant,	) RESPONDENT LAS VEGAS
	) VALLEY WATER
vs.	) DISTRICT'S MOTION TO
	) DEFER TO ARBITRATOR'S
LAS VEGAS VALLEY WATER DISTRICT, a Political Subdivision of the State of Nevada,	) AWARD AND DISMISS THE COMPLAINT
	)
Respondent.	)
	)
	)

Respondent, the Las Vegas Valley Water District (the "LVVWD" or the "Respondent"), by and through its counsel of record, Mark J. Ricciardi, Esq., and Allison L. Kheel, Esq., of the law offices of Fisher & Phillips LLP, hereby moves the Employee Management Relations Board ("EMRB" or the "Board") for an order deferring to the findings of the Arbitration Award ("Award") dated December 11, 2025, and for an order dismissing the claims in the Complaint filed February 28, 2025 ("Complaint"). A copy of the Award is attached hereto as **Exhibit 1**.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The case arises from the LVVWD's termination of Complainant, Justin Darling's (hereinafter "Darling" or "Complainant") employment. Darling filed the Complaint in this matter on February 28, 2025, alleging that the LVVWD violated the Employee Management Relations Act ("EMRA" or the "Act") by "retaliation, due process violations, discrimination, defamation, and misuse of public resources in the termination of Darling." Compl. at p. 5. While the allegations of Complainant are unclear, confusing and vague, the allegations of the Complaint make clear that all of the claims alleged in these proceedings relate in some way to Darling's termination.

Darling filed a grievance on September 5, 2024, ("Grievance") challenging his termination. That matter proceeded to Arbitration before Arbitrator Patrick Halter, with a two-day hearing on August 26 and 27, 2025.¹ Arbitrator Halter issued his Award on December 11, 2025.

Although Darling has never amended his Complaint to clarify exactly what claims he purports to bring before the EMRB in this matter, every factual allegation and every legal argument that could be raised before the Board that Darling puts forth in his Complaint was heard and rejected by Arbitrator Halter during the Arbitration. Since the Arbitration Record makes clear that the subject of the Grievance (*i.e.*, Darling's termination and procedural due process issues concerning the investigation) was factually parallel to the prohibited practices alleged here, and Arbitrator Halter was generally presented with the facts relevant to resolving such unfair labor practices, deferral to the Award is appropriate here.

Furthermore, several claims that Darling purports to bring in this matter (*e.g.*, defamation, wiretapping, whistleblower protection, COBRA violations, etc.) are

¹ The Hearing was transcribed by a certified court reporter as authenticated by the Reporter's Certificate of Sarah Safer, on page 396 of the transcript. Additionally, the Record of the arbitration contains over 1,300 pages of exhibits. Excerpts of the Transcript including the list of all admitted Exhibits is attached hereto as Exhibit 2. Due to its length, Respondent has not included the entire Arbitration Record, but would be happy to produce any portion, or all of the Record upon request of the Board.

1 outside the jurisdiction of the EMRB. To the extent Darling purports to move forward
2 with such claims,² the LVVWD hereby renews its Motion to Dismiss these claims for
3 failure to show probable cause that relief can be granted because the claims are outside
4 of the EMRB's jurisdiction.

5 Additionally, the Complaint makes reference to several events which occurred
6 more than six months prior to the date the Complaint was filed, February 28, 2025.
7 Any claims based on those events would be barred by the sixth-month statute of
8 limitations under NRS § 288.110(4). To the extent Complainant seeks to bring separate
9 claims based upon untimely events, the LVVWD hereby renews its Motion to Dismiss
10 these claims as lacking probable cause because they are outside the statute of
11 limitations.

12 When all the claims alleged are reviewed within the above framework, there are
13 no claims remaining upon which Complainant would be entitled to recovery.
14 Therefore, the Board should dismiss the Complaint with prejudice, and award the
15 LVVWD its fees and costs associated with bringing this Motion.

16 **II. FACTUAL ALLEGATION**

17 Darling filed the Grievance challenging his termination on September 5, 2024,
18 pursuant to the grievance and dispute resolution procedure set forth in Articles 5 and 6
19 of the CBA (hereinafter "Grievance Procedure").³

20 Darling filed his 11-page Complaint in this matter on February 28, 2025,
21 alleging unfair labor practices arising from his suspension with pay, the investigation,
22 and his ultimate termination. *See* Compl. at 1-11.

23
24 ² In his Opposition to the First Motion to Dismiss, Darling stated on page 17 that he "is not seeking tort
damages." Opp. at p. 17.

25 ³ The Water Supervisors Association of Nevada (the "Union") and the LVVWD are currently parties to a
26 CBA, with a term of July 1, 2021, through June 30, 2026, currently on file with the Board. A copy of the
27 CBA is attached as **Exhibit 3**. The CBA includes provisions on work rules, as well as the discipline and
28 discharge of employees within the bargaining unit. *See* Ex. 3 at pp. 12-13, Art. 7. The CBA also includes
provisions prohibiting discrimination "of any kind against any employee on account of race, color,
religion, sex, sexual orientation, sexual identity or expression, national origin, age, physical, visual or
aural handicap, or Association membership or non-membership." *See* Ex. 3 at p. 4, Art. 2. Articles 5 and
6 of the CBA thoroughly detail the grievance process, including arbitration procedures for terminations
claimed to violate the CBA. *See* Ex. 3 at pp. 8-12, Art. 5 and 6.

1 On March 26, 2025, the LVVWD filed its Partial Motion to Strike and Partial
2 Motion to Dismiss Untimely Claims Outside of the Statute of Limitations and Motion
3 for Stay and Full or Partial Deferral (“Partial Motion to Strike”) with the EMRB. On
4 May 22, 2025, the Board ordered that this matter be “stayed pending the conclusion of
5 the arbitration of the underlying grievance filed by Complainant” and that
6 “Respondent’s Partial Motion to Strike and the Partial Motion to Dismiss Untimely
7 Claims Outside of the Statute of Limitations will be deferred until such time as the
8 arbitration of the grievance is resolved and the stay on this case is lifted.” May 22,
9 2025 Order in Case No. 2025-005, EMRB Doc. No. 10 at p. 5.

10 The Grievance proceeded to Arbitration before Arbitrator Patrick Halter, with a
11 two-day hearing (“Hearing”) on August 26 and 27, 2025. Ex. 1 at p. 5 and Ex. 2. At
12 the Hearing, Darling was represented by Counsel, Matthew Durham; he called three
13 witnesses to testify (including Darling himself), was given the opportunity to cross-
14 examine the LVVWD’s witnesses, and introduced 26 exhibits without objection
15 comprising over 278 pages of documents. See Ex. 1 at p. 5; Ex. 2 at Tr. 5, 8, 235-237.
16 Darling stipulated that “the issue [the parties] have stipulated to is properly before [the
17 Arbitrator] *without any encumbrances of procedure or substance* for a decision on the
18 merits.” See Ex. 2 at Tr. 9. The parties submitted post-hearing briefs to the Arbitrator
19 on October 31, 2025. Ex. 1 at p. 5. Arbitrator Halter issued his Award on December
20 11, 2025. Ex. 1.

21 On February 4, 2026, the EMRB ordered that the Stay in this matter be lifted
22 and further ordered that Respondent may file a motion to defer to the arbitration
23 decision, a motion to dismiss, and/or renew its Partial Motion to Strike and the Partial
24 Motion to Dismiss Untimely Claims Outside of the Statute of Limitations within thirty
25 (30) days. Feb. 4, 2026 Order in Case No. 2025-005, EMRB Doc. No. 16, at p. 4.

26 Because the allegations and issues in the Complaint (that are not time-barred or
27 outside the EMRB’s jurisdiction) are substantially the same as those presented in
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1 Arbitration, the Board should defer to the Award and dismiss the Complaint in its
2 entirety.

3 **III. ARGUMENT**

4 **A. Legal Standard Of Review**

5 The EMRB has the power to dismiss, without hearing, any complaint (or claim)
6 where "no probable cause exists to support the Complainant's allegation that
7 Respondent has committed a prohibited labor practice" in violation of NRS Chapter
8 288. *Asch v. Clark County School District et al.*, Item No. 314, Case No. A1-045541
9 (May 19, 1993). The Board must assume all factual allegations in the complaint are
10 true and must dismiss a claim if no version of the facts alleged, if proven true, would
11 constitute a prohibited practice under the statute. *See, Pankopf v. Peterson*, 124 Nev.
12 43, 45 (2008). Where there are no claims remaining upon which the Board could find a
13 prohibited labor practice, the Board should dismiss the Complaint with prejudice.

14 **B. Partial Dismissal Must Be Granted As To Those Claims Which The**
15 **Board Cannot Grant Relief Because They Are Outside The**
16 **Jurisdiction Of The EMRB**

17 The EMRB is an Agency of limited jurisdiction and operates under the statutory
18 framework of NRS Chapter 288, which delineates its jurisdiction and authority. The
19 Board's authority is limited to matters arising out of the interpretation of, or
20 performance under, the provisions of the EMRA. NRS § 288.110(2). The Nevada
21 Supreme Court reiterates the Board's limited jurisdiction "(t)he board of equalization in
22 this state is a creature of the statute. It possesses only limited and special powers, and
23 in the exercise of those powers, its action must comply with the provisions of the
24 statute creating it. It can only exercise such powers as are expressly granted." *State v.*
25 *Ernst*, 26 Nev. 113, 124 (1901); *see also Dr. Ronald Glenn v. Ormsby County Teachers*
26 *Ass'n & NSEA*, Case No. A1-045277, Item No. 33 (1974) (finding the relief sought was
27 outside the Board's jurisdiction because the complaint failed to allege sufficient facts
28 regarding the Board's authority over the negotiation of a doctoral salary scale).

1 Complainant's factual allegations contain references to wiretapping and
2 defamation on the part of the LVVWD. *See* Compl. at p. 9. Factual allegations like
3 these are primary examples of issues outside the Board's jurisdiction. *See Annette*
4 *Shaw v. Nye County Employees Ass'n*, Case No. 2019-018, Item No. 860 (2019)
5 (finding that certain allegations regarding the NCEA were outside of the purview of
6 NRS Chapter 288 and, therefore, outside of the Board's jurisdiction).

7 **1. Claims For Violating Nevada Wiretapping Law (NRS §**
8 **200.620 et seq.) Must Be Dismissed**

9 The Complainant's wiretapping allegation must be dismissed due to the clear
10 jurisdictional boundaries established by Nevada law. Nevada's wiretapping statutes,
11 governed by NRS Chapter 200. Any violation of these statutes constitutes a criminal
12 offense, which is inherently outside the purview of the Board under NRS Chapter 288.

13 In this case, the Complainant alleges that the Respondent illegally recorded a
14 phone call, purportedly violating NRS § 200.650. *See* Compl. at p. 9, ¶ 3. However,
15 such claims fall squarely outside the scope of NRS Chapter 288, which is designed to
16 address labor relations and collective bargaining issues with local government
17 employees, not criminal conduct, or privacy violations. NRS § 288.110 (the Board's
18 authority is limited to resolving disputes related to labor practices and the interpretation
19 of collective bargaining agreements).

20 There is no statutory provision within NRS Chapter 288 that extends the
21 Board's jurisdiction to encompass criminal matters or violations of privacy laws.
22 Therefore, the illegal recording/wiretapping allegation must be dismissed.

23 **2. Tort Claims For Defamation Must Be Dismissed**

24 The Complainant's defamation allegation must similarly be dismissed due to the
25 jurisdictional limitations of the Board under NRS Chapter 288. *See* Compl. at p. 9, ¶ 9.
26 Defamation is a tort that involves making false statements that harm an individual's
27 reputation. NRS § 200.650.

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1 The Board's jurisdiction is limited to resolving disputes related to labor
2 practices and the interpretation of collective bargaining agreements. It does not extend
3 to adjudicating personal injury claims such as defamation, which are typically handled
4 by civil courts. Therefore, the defamation allegation must be dismissed.

5 **3. Retaliation Claims Under The Whistleblower Protection Act**
6 **Must Be Dismissed**

7 The Complaint makes reference to retaliation claims for engaging in
8 whistleblower activities: Compl. at p. 6. On page 18 of Darling's Opposition to
9 Respondent's First Motion to Dismiss, Darling claims that he was "protected from
10 retaliation for reporting misconduct or engaging in protected activity" under the
11 "Whistleblower Protection Act (29 U.S.C. § 215)." Opp. at p. 18. This claim must be
12 dismissed for several reasons. First, the Federal Whistleblower Protection Act of 1989
13 ("WPA") (codified as 5. U.S.C. § 2302) only covers federal civil service employees.
14 The EMRB only has jurisdiction over a local government employee in the State of
15 Nevada (who by definition cannot be a federal employee). Therefore, the EMRB lacks
16 jurisdiction over claims for violating the WPA, and the Board must dismiss such
17 claims.

18 Similarly, "29 U.S.C. § 215" protects an employee who engages in protected
19 activity under the Fair Labor Standards Act ("FLSA") (e.g., filing a complaint for
20 unpaid wages under the FLSA). The EMRB does not have jurisdiction to determine
21 claims alleging violations of the FLSA, therefore, any such claims must be dismissed.

22 Finally, to state a retaliation claim under NRS § 288.270(d), the basis for the
23 retaliation must have been protected activity under the EMRA (e.g., filing a petition,
24 joining an employee organization, etc.). Since Darling alleges that the "key motivation"
25 for being targeted for retaliation was his reporting Osborne for his alleged "misuse of
26 District resources," Darling admits that the "protected activity" (catalyst for the alleged
27 retaliation) was not activity protected by the EMRA. Therefore, Darling has failed to
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1 allege a violation of the EMRA (the only claims within the Board's jurisdiction), and
2 the Board must dismiss his claims of retaliation.

3 To the extent the Complaint alleges other violations of laws or statutes outside
4 the scope of the EMRA, the Board lacks jurisdiction to address such claims, and those
5 claims must similarly be dismissed.

6 **C. Partial Dismissal Must Be Granted On All Claims Barred By The**
7 **Statute Of Limitations On The Face Of The Complaint**

8 NRS § 288.110(4) sets forth the six-month statute of limitations for claims or
9 complaints filed with the EMRB. The Nevada Supreme Court has confirmed the
10 EMRB's interpretation that the statute of limitations ("SOL") for claims under NRS
11 Chapter 288 begins to run when the alleged victim receives unequivocal notice of a
12 final adverse action. *See, City of N. Las Vegas v. EMRB and Eric Spannbauer*, 127
13 Nev. 631, 639 (2011) (citing *Cone*, 116 Nev. at 477 n. 2, 998 P.2d at 1181 n. 2
14 (indicating that the six-month period is triggered when the complainant becomes aware
15 that a prohibited practice actually happened)); *see generally, Nevada State Bank v.*
16 *Jamison Family Partnership*, 106 Nev. 792, 800, 801 P.2d 1377, 1382 (1990) (stating
17 that a "statute of limitation[s] will not commence to run until the aggrieved party knew,
18 or reasonably should have known, of the facts giving rise to the breach").

19 Although the Court in *Spannbauer* held that NRS § 288.110(4)'s deadline is
20 subject to the equitable defenses of waiver, estoppel, and tolling, here, there are no
21 factual allegations suggesting a basis for equitable tolling of the statute of limitations or
22 otherwise suggesting that the dates alleged in the Complaint should not summarily bar
23 the claims on the basis of the SOL. *See, Spannbauer*, 127 Nev. at 639-640 (internal
24 citations omitted).⁴

25
26 ⁴ The Court, in *Spannbauer*, reasoned that equitable tolling "focuses on 'whether there was excusable
27 delay by the plaintiff: If a reasonable plaintiff would not have known of the existence of a possible claim
28 within the limitations period, then equitable tolling will serve to extend the statute of limitations for filing
suit until the plaintiff can gather what information he needs.'" *Id.* (citing *Lukovsky v. City and County of*
San Francisco, 535 F.3d 1044, 1051 (9th Cir. 2008) (quoting *Johnson v. Henderson*, 314 F.3d 409, 414
(9th Cir. 2002)).

1 Complainant's Complaint was filed with the EMRB on February 28, 2025. *See*
2 Compl. Any event alleged to have occurred before August 28, 2024—six months prior
3 to the filing—cannot be considered by the EMRB and must be dismissed for lacking
4 probable cause. *See* NRS § 288.110(4).

5 In Complainant's Complaint, Darling alleges that on May 15, 2024, he was
6 placed on "paid administrative leave under the pretext that it was 'not disciplinary'... a
7 deliberate effort to block DARLING from filing a grievance," purportedly in violation
8 of NRS § 288.270(1)(f). *See* Compl. at pp. 8-9. Even accepting these facts as true for
9 the purposes of this Motion, the Complainant appears to tie allegations of
10 discrimination and pretext to the administrative leave and the investigation. While
11 these allegations lack clarity, the Complainant clearly acknowledges awareness of this
12 alleged prohibited practice and violation as early as May 2024, which is four months
13 prior to his termination. The Complainant had ample opportunity to file a complaint
14 during this timeframe but chose to wait nearly nine months. Consequently, these
15 alleged violations are unequivocally barred by the SOL, and these claims must be
16 dismissed.

17 Additionally, the Complainant makes multiple other allegations against the
18 Respondent in his Complaint. However, due to the deficient format of the Complaint,
19 these allegations are not easily understood. Therefore, to the extent that any such
20 claims arise from events occurring outside the six-month SOL, they must also be
21 dismissed for lack of probable cause.

22 **D. Deferral To The Award Of The Arbitrator Is Proper And Results In**
23 **Dismissal Of All Remaining Claims In The Complaint**

24 **1. Legal Standard For Deferral To Arbitration Award**

25 When there has been a prior arbitration, the Board must consider the Award and
26 determine if deferral is appropriate and will resolve the issues (violations) alleged in the
27 complaint. The principle of deferral is akin to *res judicata* in that Respondent should
28 not be forced to defend itself against the same claims in two different forums, and risk

1 conflicting rulings. The Board has repeatedly emphasized that deferral should be
2 granted liberally to permit resolution of disputes through the negotiated grievance and
3 arbitration procedure. *See County of Clark, Nev. v. International Ass'n of Fire*
4 *Fighters, Local 1908*, Case No. 2017-033 (Feb. 22, 2018) (“[T]he Board has repeatedly
5 emphasized that the preferred method for resolving disputes is through the bargained-
6 for processes, and the Board applies NAC 288.375(2) liberally to effectuate that
7 purpose.”).

8 The EMRB has adopted a five-part test to determine if deferral to the Award is
9 appropriate in any given case. The test provides:

10 The [EMRB] defers to a prior arbitration if: (1) the arbitration
11 proceedings were fair and regular; (2) the parties agreed to be bound; (3)
12 the decision was not clearly repugnant to the purposes and policies of the
13 [EMRA]; (4) the contractual issue was factually parallel to the unfair
labor practice issue; and (5) the arbitrator was presented generally with
the facts relevant to resolving the [unfair labor practice].

14 *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217
15 (2002). “The party desiring the [EMRB] to reject an arbitration award has the burden
16 of demonstrating that these principles are not met.” *Id.*; *see also Washoe Sch.*
17 *Principals Ass'n v. Washoe Cty. Sch. Dist.*, Case No. AI-046098 (2017); *Reichold*
18 *Chemicals*, 275 NLRB 1414, 1415 (1985); *Good Samaritan Hosp. & California Nurses*
19 *Ass'n*, 31-CA-117462, 2015 WL 7223437 (Nov. 16, 2015). All five requirements for
20 deferral are present in this matter.

21 **2. The Arbitration Proceedings Were “Fair and Regular” And**
22 **The Parties “Agreed To Be Bound” By The Award**

23 The first two elements of deferral are readily apparent in this case. The first
24 requirement for deferral is that the “arbitration proceedings were fair and regular”
25 which goes hand in hand with the second requirement that the parties agreed to be
26 bound by the Award. *Id.* The Board has found an arbitration proceeding was “fair and
27 regular” where “[a]ll parties were afforded notice of the proceeding, appeared at the
28 arbitration hearing, and were given the opportunity to present witnesses, cross-examine

1 witnesses, introduce documentary exhibits, and fully brief their positions to the
2 arbitrator. Due process was thus provided to all participants.” *See Water Employees*
3 *Ass’n of Nv. V. Las Vegas Valley Water District*, EMRB Case No. 2019-002, Item No.
4 841-A at *5 (EMRB, Jan 1, 2021) (citing *Good Samaritan Hosp. & California Nurses*
5 *Ass’n*, No. 31-CA-117462, 2015 WL 7223437 (Nov. 16, 2015)).

6 Here, Arbitrator Halter was the agreed upon Arbitrator jointly selected by both
7 parties. There was a lengthy two-day Hearing transcribed by a certified Court
8 Reporter. Darling was represented by counsel (Matthew Durham) and had the
9 opportunity to fully present his case at Arbitration including calling witnesses,
10 introducing exhibits, cross-examining witnesses called by the LVVWD and submitting
11 post-hearing briefs.⁵ Ex. 1 at pp. 5 and 27. The parties agreed that the Arbitration
12 would resolve the Grievance as the last step of the Grievance Procedure. Ex. 1, at pp.
13 23-24. Most importantly, the parties stipulated on the record that “[t]he parties agree
14 no procedural or substantive encumbrances intrude on the grievance and that the
15 stipulated issues is before the Arbitrator for a decision on its merits.” Ex. 1 at p. 23.
16 The Award also noted that Article 6(G) of the CBA provides that “[t]he decision of the
17 Arbitrator within the limits herein prescribed shall be final and binding upon the parties
18 to the dispute.” Ex. 1 at p. 23. Therefore, it is undisputed⁶ that the Arbitration was fair,
19 regular and the parties agreed to be bound by the Award—and the first two
20 requirements are satisfied.

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24 ⁵ Darling called three witnesses, introduced 26 exhibits (without objection), and cross-examined
LVVWD’s witnesses. *See* Ex. 1 at pp. 5 and 27.

25 ⁶ Darling’s Opposition to the First Motion to Dismiss claimed that a complete and unbiased grievance
26 process did not exist. *Opp.* at p. 12. However, Darling’s argument misunderstands the Deferral standard.
27 The first two requirements of the test (*i.e.*, that “the arbitration proceedings were fair and regular” and the
28 parties “agreed to be bound”) focus only on the Arbitration Proceedings. Claims that the underlying
Grievance Procedure was not fair or did not follow the CBA are claims that go towards procedural due
process and the Arbitrator’s assessment of whether or not the termination was supported by “just cause.”
Claims of procedural due process violations were considered at length in the Award.

1 **3. The Award Is Not Clearly Repugnant To The Purposes And**
2 **Policies Of The EMRA**

3 The third requirement of the deferral standard is to review the Award to
4 determine if the ultimate findings of the Award are clearly repugnant to the purposes
5 and policies of the Act. *See City of Reno v. Reno Police Protective Ass'n*, 118 Nev. at
6 895, 59 P.3d at 1217. As the party seeking to reject the Award, Darling has the burden
7 of demonstrating the Award is repugnant to the Act. *Id.*; *see also Washoe Sch.*
8 *Principals Ass'n v. Washoe Cty. Sch. Dist.*, Case No. AI-046098 (2017). The EMRB
9 has long held that grievance arbitration is the preferred method for resolving disputes
10 over alleged violations of the CBA (*i.e.*, alleged termination without "just cause," etc.).
11 *See also Ed. Support Employees Ass'n v. Clark Cty. School Dist.*, Case No. AI-045509,
12 Item No. 288 (1992); *Nevada Serv. Employees Union v. Clark Cty.*, Case No.
13 AI045759, Item No. 540 (2003); *Las Vegas Metropolitan Police Dep't v. Las Vegas*
14 *Police Protective Ass'n, Inc.*, Case No. 2018-017 (2018). The main purpose of the
15 EMRA is to promote harmony in labor relations and to attempt to resolve disputes
16 through negotiated procedures. *Id.* Complainant has not met his burden to show (and
17 cannot show) how any of the findings in the Award are repugnant to the purposes or
18 policies of the EMRA. *Intern'l Assoc. of Fire Fighters, Local 4068 v. Town of*
19 *Pahrump*, EMRB Case No. 2017-009, Item 833 at *10 (EMRB, Nov. 14, 2018).

20 Complainant has made no efforts to claim that the Arbitration proceedings
21 and/or the Award are repugnant to public policy or further any kind of harm or
22 suppression of rights under the Act. In fact, the Award shows that the parties are fully
23 exercising their rights under the Act. Therefore, the third requirement of the test is
24 satisfied.

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1 **4. The Contractual Issues Were Factually Parallel To The**
2 **Unfair Labor Practice Issues And The Arbitrator Was**
3 **Presented With The Facts Relevant To Resolving The**
4 **Prohibited Practices**

5 The fourth and fifth requirements of the test require: "the contractual issue was
6 factually parallel to the unfair labor practice issue;" and "the arbitrator was presented
7 generally with the facts relevant to resolving the [unfair labor practice]." *See City of*
8 *Reno*, 118 Nev. at 895, 59 P.3d at 1217. In other words, the fourth requirement is
9 looking to see if the Grievance issue would require review of the same facts as
10 resolution of the prohibited practice issue; while the fifth requirement looks to see that
11 the Arbitrator actually reviewed those facts needed to determine the prohibited practice
12 issue. In general, the Complaint categorizes "procedural failures, retaliatory actions
13 and due process violations" as well as "systemic targeting, procedural misconduct and
14 suppression of exculpatory evidence to justify unlawful termination" as the bases of the
15 prohibited practices under the EMRA. Compl. at p. 10. The Complaint also challenges
16 the fact that the "District terminated Darling through a process involving misconduct,
17 procedural violations, misrepresentation of evidence, and denial of due process,
18 including withholding exculpatory evidence and presenting a biased investigation file."
19 *See* Compl. at p. 5. This makes clear that the prohibited practices alleged in the
20 Complaint are based on what Darling believes was an improper investigation resulting
21 in wrongful termination. Compl. at pp. 5 and 10. The ultimate issue before the
22 Arbitrator was "Did the Employer have just cause to terminate Justin Darling." Ex. 1 at
23 p. 23. Since the investigation and ultimate termination decision were the focus of the
24 Arbitration, the claims are factually parallel and there was extensive consideration of
25 the relevant facts, thus deferral is proper.

26 The Complaint in this matter has presented a significant obstacle to conducting
27 this assessment because it fails to identify what subsections of NRS § 288.270 Darling
28 believes were violated and generally fails to link particular factual allegations to a
 specific legal claim, preferring to bounce around in a haphazard stream of

consciousness. *See* Compl. at pp. 5-9. In fact, the only alleged violation that is identified in the Complaint reads: “Darling was placed on paid administrative leave under the pretext that it was ‘not disciplinary.’ This was a deliberate effort to block Darling from filing a grievance, thus violating NRS 288.270(1)(f).” Compl. at p. 9. In his Opposition to the First Motion to Dismiss, Darling identifies for the first time two additional subsections he claims were violated as “NRS 288.270(1)(a), (b) and (f).” Opp. at p. 2. While Darling does not identify any additional violations in his Opposition, it appears from the factual allegations in the Complaint that Darling may be asserting additional claims for retaliation under NRS § 288.270(1)(d) and failure to provide information in violation of NRS § 288.270(1)(g). Respondent considers each of the possible alleged violations in turn:

NRS § 288.270(1)(f)

NRS § 288.270(1)(f) makes it a prohibited practice to “Discriminate because of race, color, religion, sex, sexual orientation, gender identity or expression, age, physical or visual handicap, national origin or because of political or personal reasons or affiliations.” This claim appears to be tied to Darling’s claims that he was “targeted” and Human Resources Manager, Laura Ornelas (“Ornelas”) and Director of Operations, Buck Osborne (“Osborne”) were out to get him because he knew about Osborne’s allegedly improper use of District resources. Compl. at 6. The Arbitrator considered claims of targeting and bias and ultimately found no credible evidence of targeting or bias. Ex. 1, p. 26. The Award found that replacing Ornelas with Human Resources Director, Mary Madden (“Madden”) in the investigation “negated the bias concerns.” Ex. 1 at p. 24.

This claim of discrimination in violation of the Act, would also be factually parallel to Darling’s disparate treatment claim (raised at Arbitration) challenging the fact that Darling was terminated and Darling’s direct report, Tyler Gibson (“Gibson”) was not terminated, nor were other employees following the allegedly *de facto* policy. Compl. at pp. 8-9. The Award considered these arguments and rejected claims of

1 disparate treatment because the preponderance of the evidence shows that “Darling
2 instructed Gibson to record overtime hours” (and therefore is not similarly situated to
3 Darling) and “comparator data established [that] the District addresses this type of
4 misconduct with termination.” Ex. 1 at pp. 26-27. Ultimately this claim is factually
5 parallel to the disparate treatment claims raised in the Arbitration and the Arbitrator
6 considered the facts in detail when denying the claims in the Award. Ex. 1 at pp. 24-
7 27. Therefore, deferral to the Award is appropriate on these claims.

8 NRS § 288.270(1)(a)

9 NRS § 288.270(1)(a) makes it a violation of the Act to “[i]nterfere, restrain or
10 coerce any employee in the exercise of any right guaranteed under this chapter.” From
11 the Complaint, it appears that this claim generally relies on the allegations that the
12 investigation was conducted improperly, in violation of due process and resulted in
13 Darling’s illegal termination. These were the exact issues considered and rejected in
14 the Award. The main inquiry in the Award was whether the termination was supported
15 by “just cause.” A major part of the assessment of just cause is considering whether the
16 investigation was fair and unbiased, involved a thorough review of the facts, and
17 provided Darling a chance to tell his side of the story, explain evidence and/or rebut
18 findings. Darling alleges in the Complaint that the investigation was a forgone
19 conclusion, discounted exculpatory evidence, was targeted against Darling and the
20 investigators were biased. Compl. at p. 6. Darling made these same claims in the
21 Arbitration and these arguments were rejected by the Award.⁷ This claim is factually
22

23 ⁷ See Ex. 1 at p. 25 (finding that investigation was prompted by the complaint of another employee and
24 not inappropriate for Osborne to access GeoTab data); Ex. 1 at p. 25 (finding “HR had a duty to look at
25 GPS data when a concern is brought to HR”); Ex. 1 at pp. 24-25 (no previous history or personal animus
26 between Osborne and Darling); Ex. 1 at p. 24 (Ornelas was replaced with Mary Madden at the first
27 suggestion of bias, negating allegations of “ambush” and “bias”); Ex. 1 at p. 26 (found that the very
28 lengthy investigation was thorough, contained multiple meetings to discuss the findings and ask follow up
questions, and ultimately concluded the investigation was conducted properly); and Ex. 1 at pp. 24-25
(concerns that May 14 notice not identifying all the subjects to be discussed “were cured with subsequent
meetings between counsel and Madden over all matters in the allegations”). Darling also raised the
arguments that exculpatory evidence was ignored during the Arbitration, but the Award found no support
for such a claim, and in fact found that the evidentiary record showed there “are at least eighteen (18)
hours misappropriated with inaccurate, falsified hours reported and compensated.” Ex. 1 at p. 27.

1 parallel and the Arbitrator reviewed the facts that would be necessary to determine a
2 prohibited practice under the Act, thus deferral is appropriate here.

3 NRS § 288.270(1)(b)

4 NRS § 288.270(1)(b) makes it a prohibited practice to “Dominate, interfere
5 or assist in the formation or administration of any employee organization.” NRS §
6 288.270(1)(b). The Complaint contains no specific factual allegations suggesting that
7 the LVVWD was actively interfering with the formation or administration of any
8 employee organization. The only factual allegations that appear to be related to such a
9 claim are factual assertions that the Union was not provided notice of the investigation,
10 was “blocked from filing a grievance,” and that Darling was denied Union
11 Representative during the investigation. Compl. at p. 9. The Arbitrator considered all
12 of these allegations and found that while the Grievance contains several allegations
13 with “‘bad faith’ overtones,” most were cured by later actions in the investigation (Ex.
14 1 at p. 25), there were no specific requirements to notify the Union of the investigation
15 or instruct Darling to bring a union representative (Ex. 1 at p. 24), and ultimately most
16 of these claims were not determinative of the outcome in the Award (Ex. 1 at p. 26).
17 The Complaint challenged the lack of a union representative at the first meeting, yet the
18 Award found that there was “no rush to judgment given the ongoing discussions
19 between counsel and Madden.” Ex. 1 at p. 26. Finally, while the Complaint alleges
20 that exculpatory evidence was withheld or suppressed (Compl. at pp. 9-10) and the
21 Union raised the same argument during the Arbitration (Ex. 1 at p. 8), there was no
22 evidence introduced to show any exculpatory evidence was disregarded by the
23 LVVWD. Ex. 1 at p. 27. In fact, the evidence shows that much of what Darling
24 believes is exculpatory still showed major violations of the CBA in the form of wage
25 theft. Ex. 1 at p. 27. Overall, these allegations are factually parallel to the issues in the
26 Grievance (and presented at Arbitration) concerning the denial of procedural due
27 process (an argument that was unpersuasive to the Arbitrator). Ex. 1 at p. 26.

28

NRS § 288.270(1)(g)

It is noteworthy that Darling claims exculpatory evidence was withheld from his personnel file, yet the Complaint contains no mention of a claim under NRS § 288.270(1)(g) for "failure to provide the information" required in an information request. *See* Compl. at p. 5. However, these factual issues arose in the claims that information underlying the findings was not provided to Darling or were withheld from the file. The Award considered the factual allegations that could form the basis of such a claim and did not find any evidence of misconduct. Ex. 1 at p. 26. Moreover, the Complaint does not identify any facts concerning a specific information request being sent by the Union or the content of any response by the LVVWD. Therefore, deferral to the award is appropriate on this claim.

NRS § 288.270(1)(d)

Finally, while not explicitly mentioned, Darling repeatedly asserts various actions were retaliation, which would be akin to a discrimination or retaliation claim under NRS § 288.270(1)(d) for "Discharge or otherwise discriminate against any employee because the employee has signed or filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because the employee has formed, joined or chosen to be represented by any employee organization." *See* Compl. at pp. 6 and 10. This claim would require factual allegations that Darling engaged in a protected activity under the Act, but no such allegations appear in the Complaint. Regardless, the retaliation claims were considered in the Arbitration and found unsupported in the Award. Ex. 1 at p. 25.

E. Any Remaining Claims In The Complaint Must Be Stricken

In the present case, Paragraph 8 of the Complaint improperly incorporates a letter as an exhibit, violating NAC § 288.200(3).⁸ This issue goes beyond a mere

⁸ Under NAC § 288.200(3), a complainant is prohibited from attaching any documents, including exhibits, to a complaint. This regulation ensures clarity and uniformity in the filing process, allowing the Board to focus on the core issues without supplementary materials. Non-compliance with this rule can result in dismissal, as demonstrated in *Nevada Serv. Employees Union, Local 1107, SEIU, AFL-CIO v. Univ. Med. Ctr. & Cnty. of Clark Dep't of Human Res.*, Case No. A1-045680, Item No. 469 (2000)

1 formality or technicality and substantively impairs LVVWD's ability to fully answer or
2 otherwise respond to the Complaint. The Complaint is problematic because it fails to
3 identify specific causes of action or alleged violations. Paragraph 2 of the Prayer for
4 Relief (Compl. at p. 4) only alleges "Respondents discriminated against the
5 Complainant due to violations of NRS 288.270."⁹ However, because Darling fails to
6 identify his claims with specificity or link any factual allegations to this claim, it is
7 difficult to determine what the Complainant believes the LVVWD did wrong.
8 Respondent has done its best to parse out and address what Respondent believes are
9 Complainant's causes of action (all of which should be dismissed as set forth above).
10 However, to the extent that Complainant attempts to assert a claim which Respondent
11 has not addressed in this Motion, the Complainant should be denied leave to amend his
12 Complaint because such a claim should have been alleged in the original Complaint
13 and Complainant should not get to simply amend his Complaint repeatedly until he
14 finds something that sticks.

15 Alternatively, if the Board believes that Darling has identified a set of facts
16 which states a claim for a violation of the NLRA that the Board can hear and grant
17 relief on (which Darling has not done), Darling's current Complaint should be stricken
18 and Darling ordered to file an amended complaint setting forth any surviving claims
19 with specificity.

20 IV. CONCLUSION

21 Based upon the foregoing reasons, the LVVWD respectfully requests that the
22 Board defer the claims set forth in the Complaint to the findings in the Arbitration
23 Award, and dismiss those claims as resolved with prejudice. Additionally, the
24

25 (dismissing the complaint without prejudice for failure to comply with NAC § 288.200). There are no
26 exceptions to this rule noted in the Statute or Regulations. The Complainant's alleged *pro per* status does
not exempt him from adhering to procedural regulations.

27 ⁹ Claimant does not identify a subsection of NRS § 288.270, therefore, it is impossible to determine if the
28 alleged discrimination is meant to be (1) discrimination for purposes of discouraging union membership
under NRS § 288.270(c); (2) discrimination because the employee has filed a complaint, testified, or
joined an employee organization all under NRS § 288.270(d); or (3) discrimination because of the
employee's "race, color, religion . . . political or personal reasons or affiliations" under NRS §
288.270(f). NRS § 288.270.

1 LVVWD moves to dismiss the untimely claim in the Complaint, which, on its face, is
2 alleged to have occurred more than six months prior to the filing of the Complaint.
3 Finally, to the extent that Complainant has asserted claims beyond the Board's
4 jurisdiction, Respondent requests their dismissal in full for failure to show probable
5 cause that relief can be granted on such claims.

6 DATED this 6th day of March, 2026.

7 FISHER & PHILLIPS, LLP

8
9 /s/ Allison List Kheel

10 MARK J. RICCIARDI, ESQ.
11 ALLISON L. KHEEL, ESQ.
12 300 South 4th Street, Suite 1500
13 Las Vegas, Nevada 89101
14 *Attorneys for Respondent*
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CERTIFICATE OF ELECTRONIC SERVICE

This is to certify that on the 6th day of March, 2026, the undersigned, an employee of Fisher & Phillips LLP, electronically served the foregoing **RESPONDENT LAS VEGAS VALLEY WATER DISTRICT'S MOTION TO DEFER TO ARBITRATOR'S AWARD AND DISMISS THE COMPLAINT** to EMRB (emrb@business.nv.gov) and the following:

JUSTIN DARLING
1610 Rocking Horse Drive
Henderson, NV 89002
Jwdwj713@hotmail.com

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

JUSTIN DARLING

v.

LAS VEGAS VALLEY WATER DISTRICT

EMRB CASE NO.: 2025-005

**RESPONDENT LVVWD'S MOTION TO DEFER TO ARBITRATOR'S AWARD AND
DISMISS THE COMPLAINT**

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EXHIBIT 1

**Arbitration Award of Arbitrator
Patrick Halter Dated Dec. 11, 2025**

**BEFORE
PATRICK HALTER
ARBITRATOR**

In the Matter of Controversy Between

**Water Supervisors Association of Nevada
On Behalf of Justin Darling
(Association - Union)**

&

**Las Vegas Valley Water District
(District - Employer)**

FMCS Case No. 250228-03911

Appearances

For the Association:

Matthew L. Durham
King Scow Koch Durham LLC

For the District:

David B. Dornak
Fisher & Phillips LLP

Issue
Termination

Hearing
August 26-27, 2025

Briefs
October 31, 2025

Award
Grievance Denied

Date
December 11, 2025

INTRODUCTION

Las Vegas Valley Water District is a not-for-profit public agency providing water services to the City of Las Vegas, the metropolitan area thereof and some unincorporated areas in Clark County Nevada. Water services are carried out by approximately one thousand four hundred (1,400) employees in salaried and hourly positions. Eligible salaried positions are covered by a Collective Bargaining Agreement ("CBA") between the District and the Water Supervisors Association of Nevada effective July 1, 2021 - June 30, 2026. The Association represents a bargaining unit comprised of regular full-time and part-time employees in classifications listed in the CBA's Appendix A.

In October 2009 Justin Darling entered on duty with the Southern Nevada Water Authority ("SNWA") in the position Mechanical Systems Technician II assigned to the raw water unit. He transferred in 2014 to a technician position on the District's "booster crew" comprised of ten (10) technicians performing maintenance, repairs and upgrades at approximately fifty (50) pump stations located throughout the Valley. Effective April 2019 the District promoted Darling to the position Mechanical Supervisor with oversight duties and responsibilities of the crew.

Darling, a salaried employee, often performed his duties in the field using a District vehicle (pickup truck) and accompanied by hourly employee Tyler Gibson, the crew's scheduler/planner. Darling was Gibson's first-line supervisor and personal friend. Their positions are in different bargaining units, represented by different unions and covered by different agreements but their workday schedule and hours were the same - - ten (10) hours daily, Monday through Thursday.

Since April 2019 Maintenance Division Manager James Doubek has served as Darling's first-line supervisor. Manager Doubek reported to Buck Osborne, Director of Operations. Osborne's position encompassed oversight duties and responsibilities of four (4) divisions - - operations division, maintenance division, distribution crews and SNWA's maintenance division. Osborne reported to the District's Deputy General Manager.

CHRONOLOGY

On May 1, 2024, Director Osborne heard District employee Brittany Alas, an administrative assistant, crying and upset by a telephone discussion with Darling whether a technician accessed Alta Gate at Springs Preserve. Osborne wanted to talk with Darling; he checked the fleet tracking system GeoTab and located Darling in a District vehicle parked in front of a private residence and not parked at the nearby pump station. Osborne viewed the situation as odd; he checked the prior eight (8) days to see if this situation was repeated.

On or about May 1 Osborne contacted HR Manager Laura Ornelas; she met with Osborne on May 7 to hear his concerns about the telephone incident and vehicle use. Ornelas shared Osborne's concerns with HR Director Mary Madden whereupon Madden authorized an investigation led by Ornelas and assisted by HR staff. On the 7th Ornelas instructed HR Analyst Frank Gibase and HR Technician Brenda Perez to contact Alas; they reported to Ornelas that Alas was "over" the telephone incident and not pursuing it. No further investigative action was taken by HR.

As for use of District vehicles, HR checked vehicle use for the booster crew, Gibson and Darling for two (2) weeks leading up to May 1. The review showed vehicle use on Friday, a non-workday, with overtime hours claimed. HR determined to review vehicle use, work hours claimed, hours compensated as overtime, badge and key access records and credit card ("P-

Card”) purchases for the period January 1, 2024 up to May 7, 2024. In addition to collecting data, HR decided to interview Darling, Gibson and Manager Doubek.

On May 14, 2024, Manager Ornelas contacted Darling by e-mail stating as follows:

I have scheduled a meeting for us to meet at 2 pm tomorrow to discuss some concerns, including certifications among other things. We will meet here at HR and you can bring a WSAW representative if you choose to.

Please confirm your attendance to this meeting. We will meet in my office.

[Un. Exh. 2]

Manager Doubek requested clarification of the phrase “among other things” but received no response.

On May 15 Manager Ornelas interviewed Darling followed by a separate interview with Gibson. Darling attended the interview without a Union representative. Darling and Ornelas discussed certifications required by the Nevada Division of Environmental Protection (“NDEP”) for Darling’s position. The interview continued with Ornelas inquiring into Darling’s review and approval of hours worked and reported as overtime by Gibson as he had the most overtime hours in the maintenance division and the crew claimed 858 overtime hours. Darling explained how he reviews and approves time reports. Ornelas inquired into Darling’s review and approval of P-Card purchases with vendors Amazon and 6651 Automotive Customs and use of the District’s vehicle. At the end of the meeting the District placed Darling on administrative leave and HR continued to review GeoTab records and vehicle use, overtime, time block audit data, key entry data and vendor purchases.

On June 10, 2024, Manager Doubek, issued to Darling a pre-termination letter recommending his discharge. The letter states, in part, as follows:

In April 2024, the District conducted an investigation into multiple discrepancies that were found within your department and under your supervision. These items include, but are not limited to, approving unsanctioned District issued credit card (“P-Card”) purchases, approving overtime (“OT”) for hours not worked, misappropriation of District resources, and conducting personal business on District time. Furthermore, in April of 2023, the District updated the certification requirements for your position, as required by the Nevada Division of Environmental Protection (NDEP). Despite being provided ample notice and time to meet the certification requirements for a Maintenance Supervisor, you have failed to obtain the required certification for your position.

*

*

*

Here listed are some of the issues and concerns which have led to my decision:

- Lack of demonstrating personal and professional integrity to inspire confidence and trust within the organization.
- Allowing an employee to conduct non-work on work time.
- Theft of District work time by allowing an employee to charge non-work time as paid work time (Workday entries).
- Conducting non-work activities in a District vehicle during work time.
- Lack of you meeting continued professional development to obtain required certifications.
- Failure to demonstrate honest and ethical behavior in business transactions and management practices.

[Emp. Exh. 2]

On June 27, 2024, a pre-termination meeting convened. Attending for the District were HR Manager Ornelas, HR Analysts Frank Gibase and Steve Meyer, Director Osborne and Maintenance Manager Doubek. Present for the Union were Association President Rodney Carter, Chad Vaccarino and counsel Matthew Durham. Darling and Durham responded to issues in the pre-termination letter such as review and approval of work hours claimed and compensated as overtime, District vehicle use for non-work reasons and vendor purchases. A separate pre-termination meeting was held for Gibson. After the pre-termination meeting, the District issued written summaries of issues and findings to Darling and Gibson. [Emp. Exhs. 6, 7] With respect to Darling, the summary findings are - -

- (1) Darling conducted personal business on District time and charged the District for hours worked;
- (2) Darling approved payroll hours and P-card purchases that were inaccurate or lacked documentation;
- (3) Darling's 6651 Customs discrepancies; and
- (4) Darling's certification for position.

[Emp. Exh. 6]

On August 5, 2024, counsel for Darling met with HR Director Madden about Ornelas' bias against Darling based on her statements during the May 15 meeting that Darling was involved in a kickback scheme with 6651 Customs with criminal implications for law enforcement to investigate and Ornelas ambushed Darling with the vaguely worded notice. Madden did not agree with counsel's bias concerns but decided to remove Ornelas from the investigation and Madden presided over it.

By letter dated August 19, 2024, counsel followed up with Madden on the August 5 meeting and responded to the District's summaries of issues and findings such as Darling's use of the District vehicle. Counsel stated:

While the District appears to have abandoned all its other purported justifications for placing my clients on administrative leave and recommending that their employment be terminated, the District continues to maintain that my clients' use of a District vehicle was not in compliance with past and current practice. . . . Accordingly, you requested that my clients provide a written response to the

District's "Summary of Issues and Findings," which identifies dates when my clients are alleged to have misused the vehicle and/or improperly recorded time.

Counsel's letter stated, in essence, that (1) the summary of issues and findings is misleading because it includes drive time in the calculation of time alleged on personal errands; (2) Gibson suffers from gall bladder control and to avoid personal embarrassment took bio-breaks at his residence or parents' residence when in that vicinity; (3) included in the summary are multiple stops that were not work-related and should have been excluded; (4) stops involved meal and rest breaks consistent with current and past practice; (5) Gibson worked on May 5, 2024; and (6) the summary misrepresents Gibson's overtime work and availability such as standing by to work on certain dates. [Emp. Exh. 8]

On August 29, 2024, Maintenance Manager Doubek issued to Darling a letter terminating his employment effective August 30, 2024. The District reinstated Gibson. Darling's termination letter references his failure to review and approve accurate reporting of hours worked and claimed as overtime which "shows a severe and concerning lack of competency" as a supervisor. The letter states that on fifteen (15) occasions Darling "repeatedly entered time on your timecard inaccurately" which is "dishonest behavior and a misappropriation of company time" since "you did not work on those dates." Also, Darling "traveled with your subordinate to your home and their home which is a clear violation of AP11 - Misuse of District Vehicle and District Code of Ethics, Vision and Values Statements." The policy "clearly states this kind of personal travel is not permitted, especially with an hourly employee." Manager Doubek assessed termination as the appropriate discipline.

I do not find that the information you provided to have mitigated the egregiousness of your misconduct. As a supervisor, you are held to a higher standard of having a working knowledge of and upholding District policies, including for your subordinates. As a result of your failure as a supervisor to follow district policy, and your apparent willingness and knowing violation of those policies, I have lost confidence and trust in your ability to perform as a Mechanical Supervisor. On this basis, I uphold the recommendation to terminate your employment.

[Emp. Exh. 10]

On September 5, 2024, the Association filed a grievance on behalf of Darling. The grievance was not resolved at Steps 1 and 2 of the grievance process. [Emp. Exhs. 11-19]

On December 22, 2024, the Association invoked arbitration. [Emp. Exh. 20]

On August 26 and 27, 2025, an in-person hearing convened wherein each party presented evidence, examined and cross-examined witnesses, and argued contentions in support of its position. Aside from transcribed sworn testimony, the record includes forty (40) District exhibits and twenty-six (26) Association exhibits.

On October 31, 2025, the record in this proceeding closed with the Arbitrator's receipt of each party's post-hearing brief.

ISSUE

The parties stipulated to the following statement of the issue:

Did the Employer have just cause to terminate Justin Darling and, if not, what should be the appropriate remedy?

[Tr. 8]

CBA

Article 3 - Retained Rights
Article 5 - Grievance Procedure
Article 6 - Arbitration
Article 7 - Discharge, Discipline and Personnel Files

DISTRICT POLICIES

PCARD Program Policies & Procedures Manual
Administrative Policy - Conflict of Interest
Administrative Policy - Vehicle Use and Work Related Use
Administrative Policy - Global Positioning & Telematics Systems
for District and SNWA Mobile Assets

Summary of the Association's Position and Argument

The Association's position and argument are set forth in its opening statement, examination and cross-examination of witnesses, exhibits and post-hearing brief.

Testifying for the Association were Tyler Gibson, Scheduler/Planner, Inspections Engineering Team; David Thompson, Large Meter Services Operations Manager; and Justin Darling. Present but not testifying were Richard McCann, McCann Consulting LLC, Rodney Carter, Association President and Tim Kelleher, Law Clerk.

Association's Position

Darling's Record

During fifteen (15) years of SNWA and District employment, Darling never received any level of discipline nor counseling. He loved his job providing fresh drinking water to the communities served by the District. [Tr. 328-329]

His demonstrated pride in performing his duties was recognized in annual performance reviews where he earned overall ratings of "Exceeds Full Performance" on eight (8) occasions and "Distinguished Performance" four (4) times. For the performance review ending in 2023, Manager Doubek evaluated Darling as "an effective and high performing supervisor" who exemplified District values. Doubek stated Darling conducted "himself in a truly professional manner" and maintained "the highest ethical behavior." [Un. Exh. 1 at 112]

Investigation - May 1, 2024

Notwithstanding an unblemished and exemplary record the District initiated an aggressive investigation against Darling under questionable circumstances. Director Osborne claimed that on May 1 he heard an upset and weeping employee tell Osborne's administrative assistant that she had been verbally attacked and belittled by Darling in a telephone conversation. Osborne claims he wanted to talk with Darling about this situation but did not know Darling's whereabouts.

Instead of contacting Darling by telephone to discuss the incident or discussing it with him when Darling returned to the office from the field, Osborne accessed GeoTab to locate Darling in a District vehicle "oddly parked down the street" from the pump station. There is nothing odd about parking in proximity of a pump station. Osborne used the "oddly parked" location to examine GeoTab data on Darling's locations during prior weeks. Osborne concluded Darling used the District vehicle to stop at locations where there was no apparent District business but the long-term practice allows employees to use a District vehicle for personal stops.

Osborne reported the telephone incident and his concern about vehicle use to HR on May 1st but Manager Laura Ornelas was unavailable to meet that day. Ornelas met with Osborne on May 7; she testified he did not report the weeping employee was attacked and belittled but upset because of a disagreement with Darling. Verbally "attacked and belittled" appeared in Osborne's written statement dated November 2024 which was six (6) months after the alleged incident occurred. [Un. Exh. 12]

Osborne's accessing GeoTab violates the District's written policy - - "Requests for review of GPS-related data shall be submitted to [HR], which will determine the necessity, propriety and scope of the release of GPS-related information". [Un. Exh. 19] This led to HR's expansive and unwarranted investigation instead of Osborne directly engaging Darling by telephone or meeting with him when Darling returned to the office on May 1.

Misconduct Allegations

On May 15, 2024, Darling met with Manager Ornelas. She ambushed him with allegations of misconduct that she refused to disclose prior to their meeting despite requests by Darling and Manager Doubek. Also undisclosed by Ornelas was that Darling was subject to an investigation initiated by HR on May 7, 2024. Darling attended the meeting without Union representation as he anticipated the discussion to deal with NDEP certifications. Prior to the meeting, Maintenance Manager Doubek advised Darling to "just ride it out and see what happens" as management was extending leeway to obtain certifications. Manager Ornelas testified that no employee has been terminated for failing to obtain certifications. [Tr. 185]

Once the meeting convened, discussing certifications passed and Manager Ornelas proceeded to accuse Darling of improper use of District vehicle, alleged Darling approved excessive overtime hours for Tyler Gibson on Fridays, a non-workday, and claimed Darling was involved in a kickback scheme with 6651 Automotive Customs, allegedly an unapproved vendor. [Tr. 337-338; Un. Exh. 3] Darling pointed out that Gibson worked on Fridays on the migration of data to a new computer system, Customs was an approved vendor in the District's Coupa system and Darling's supervisor Doubek had authorized use of the P-Card for payment to Customs. [Tr. 258, 342-345; Un. Exh. 3] After the meeting District security personnel met with officials at 6651 Customs and determined there was no kickback scheme. None of HR's allegations were meritorious but HR placed Darling and Gibson on administrative leave effective May 15, 2024.

Pre-Termination Letter

On June 10, 2024, Darling and Gibson each received a pre-termination letter. The District abandoned the kickback scheme allegation but presented new allegations. Manager Doubek's recommendation to terminate was based on the following:

1. Darling allowed Gibson to use the P-Card for purchases at 6651 Customs which is not an approved District vendor;
2. The thickness of items powder-coated by 6651 Customs did not meet District guidelines of 18-25 mm for coatings thereby posing potential liability for the District;
3. Darling approved Gibson's P-Card purchases for items supposedly available in various departments within the District but had no business purpose and should have been purchased through a local vendor instead of through Amazon;
4. Darling approved overtime for Gibson allegedly working full days of overtime when Gibson did not work;
5. Darling and Gibson misused the District vehicle for non-work stops; and
6. Darling had not obtained his NDEP certifications.

[Emp. Exh. 2]

Darling Refutes Misconduct Allegations

On June 27, 2024, a pre-termination meeting convened. During that meeting - - and in subsequent meetings and correspondence between HR Director Madden and Counsel Durham in July and August - - Darling refuted allegations lodged against him about NDEP certifications and 6651 Customs. With respect to Customs and the thickness of its powder-coatings, Manager Doubek acknowledged that the District's guidelines of 18-25 mm thickness applies to paint coating and not powder coating which is less thick. [Tr. 262] Regarding P-Card purchases, the District audited three (3) years of Gibson's purchases and found no improprieties. [Un. Exh. 10] Darling stated the items purchased were not available through other departments in the District at the time of purchase; the District did not prove otherwise. [Tr. 80, 271] Darling noted all items purchased were for a business purpose and the District conceded there was no requirement to purchase items from a local vendor rather than Amazon. Darling noted Amazon is less expensive, delivers items quickly and one of the initial options appearing in Coupa for purchasing. [Tr. 81, 364]

As for Darling's use of the District vehicle, he noted it was consistent with practice and de facto policy. Darling testified that Manager Doubek acknowledged as long as the job gets done vehicles can be used for personal errands. [Tr. 343] David Thompson, Large Meter Services Supervisor and 14-year District employee testified that "on a daily basis" employees use District vehicles for personal errands. He has observed his 18-member crew engage in personal use and observed employees from other departments. When Thompson reported a violation of the policy to his supervisor and HR, Thompson's manager advised "as long as they're getting their work done, he was not going to make a big deal out of it." Thompson testified employees are disciplined for use of a District vehicle when operating it intoxicated. [Tr. 382-386]

Darling reviewed GeoTab data he obtained by filing a request for public documents. [Un. Exh. 21] The data provided covers ten (10) District vehicles during the period January 1, 2024 through March 31, 2024 which is the same period of time covered by the District's review of Darling's vehicle use. The 10 vehicles made over 120 stops for non-business reasons or made an extended lengthy stop at a variety of commercial businesses and public locations (mall, stores). Numerous stops exceeded the 30-minute lunch break and that is not including travel time.

Manager Ornelas testified that HR reviewed GeoTab data from January 1, 2024 through May 7, 2024, and the review showed there were no stops that violated vehicle use policy. The District never disclosed the records or data it reviewed, thus, its claim of proper vehicle use cannot be verified. [Tr. 152-153] The District prepared a chart covering twenty-nine (29) days allegedly showing Darling making questionable stops during the period January 1, 2024 through May 10, 2024. Darling was in the District vehicle on six (6) of the 29 days. His stops were driving to his home to pick up lunch, picking up a prescription for wife and delivering it to her since she could not drive, bathroom stops for Gibson and his gall bladder problem, retrieving a pair of pants from his home to replace his ripped pants; stopping at an auto parts store; stopping at a convenience store and stopping at Sportsman's Warehouse to buy a water bottle,

As for the allegation Darling approved time for Gibson when Gibson performed no work, the day is May 5, 2024. Gibson responded to a work order. [Un. Exh. 22] Gibson spoke with operations and advised them to send a mechanic. Once the mechanic completed the work, Gibson confirmed it and logged 4 hour for a call out. Darling never advised Gibson he could receive pay simply by being available. Darling wanted Gibson to be available to pick up parts and deliver it to the crew in the field rather than remain in the office working on the migration data project. Gibson understood Darling was not telling him he would be paid for not working. [Tr. 320-321]

Darling reviewed time entries for his booster crew. He met with the crew every morning, knew their assignments and knew who was not working on a particular day. Darling was not required to review and approve time on a daily basis as Manager Ornelas claims. Rather, he can review and approve multiple days. When Darling is not at work Gibson tracked the crew's time using his projects calendar. Darling would discuss time with any crew member should there be a question about it. During the grievance process Darling discovered that HR Director Madden follows an approach on time reporting similar to Darling's approach. [Tr. 274-275]

Gibson Reinstated and Darling Terminated

On August 29, 2024, Manager Doubek notified Gibson that he was reinstated. Doubek "found no just cause supporting the recommendation of discipline forwarded by the District, let alone the termination of your employment." [Un. Exh. 23]

The allegations of misconduct lodged against Darling were the same as lodged against Gibson and Darling, like Gibson, refuted them but Darling was terminated on August 29, 2024, and not reinstated. [Un. Exh. 11]

The bases for Darling's termination set forth in Manager Doubek's letter are two (2) allegations previously asserted by the District that Darling (i) conducted personal business during normal work hours while using a District vehicle accompanied by Gibson in the vehicle and (ii) approved inaccurate time records for Gibson. These allegations have been rebutted and exposed as without merit.

The letter of termination presented a new allegation that Darling inaccurately reported his work time on March 26, 2024. On that date Darling reported for duty but left work around 10:30 to 11:00 a.m. as he was suffering from severe allergies. He mistakenly logged his work day as regular time (10 hours) whereas an accurate log would be 6 hours work and 4 hours sick time. This error did not result in Darling receiving additional compensation. This accounting error is readily correctable in the payroll system.

Another date presented in the new allegation is January 9, 2024. The District claims Darling did not perform any work that day but recorded hours for pay. On January 9, 2024, Darling worked from home with permission to do so granted by Manager Doubek. [Emp. Exh. 14] The new allegation is without substance and meritless.

Association's Argument

Just Cause Standard

Under a just cause standard, discipline assessed must be corrective in design and not punitive with discharge occurring after exhausting prior measures and assessing mitigating factors. The District's burden of proof is to establish the rules violated and demonstrate termination is the appropriate response given the proven misconduct and surrounding circumstances. Evidence of disparate treatment can be considered when determining discipline and an investigation showing a rush to judgement is a violation of just cause. Misstating evidence shows targeting to discharge. To strictly enforce rules not previously enforced, an employer must publish notice to employees of strict enforcement prior to acting on it. Under just cause the Arbitrator can modify discipline imposed and determine a lesser penalty or no penalty is appropriate. [Br. at 15-17]

No Cause

Darling was terminated without cause which is a perquisite in Article 7 of the CBA. No discipline was warranted because Darling did not violate any rules; however, should the Arbitrator find cause to discipline a level short of discharge would be in line with progressive discipline. Darling's 15-year unblemished work record and exemplary performance warrant reinstatement and retention. Any concerns about his use of the District's vehicle and review and approval of time could be addressed with counseling.

Bad-Faith Investigation

The District's investigation shows bad faith by Osborne with a rush to judgment displayed by misstating evidence. The alleged verbal mistreatment of a co-worker by Darling was not investigated in good faith. Osborne could have contacted Darling by telephone on the day of the incident (May 1) but he did not do so. He could have instructed Darling's first-line supervisor - - Manager Doubek - - to contact Darling but that did not occur. Instead, Osborne accessed GeoTab data to determine Darling's location and asserts he did so as a means to contact him. When Darling returned to the building on the afternoon of May 1 Osborne did not initiate any contact with him. Osborne nor any other official with the District never contacted Darling to investigate or hear his version of the incident. Grievant became aware of the alleged incident only after he requested investigative documents during the grievance process in September 2024.

During the HR investigation, Osborne reviewed three (3) months of P-Card purchases approved by Darling. Osborne's e-mail shows that none of the purchases were improper; he identified purchases as "probably" available locally and "probably" could be provided by IT or other

department. [Un. Exh. 18] Osborne insisted that Darling made improper P-Card purchases even though he knew there was no District policy requiring purchases from local vendors and he could not identify or determine any support available from other departments at the time of purchase by Darling. Osborne whole-heartedly approved suspending Darling's P-Card as of May 15, 2024, when Darling was placed on administrative leave. [Un. Exh. 17] While on leave Darling contacted Osborne by telephone as he was "feeling quite vulnerable" about the investigation. Without informing Darling, Osborne recorded their telephone conversation in violation of Nevada law.

HR Manager Ornelas acted in bad-faith. She notified Darling by e-mail dated May 14, 2024 to meet with her but failed to inform him, prior to meeting on the 15th, of the allegation she labeled as a "kickback" scheme between Darling and 6651 Customs. She did not inform Darling prior to the meeting that she would focus on whether he misused the District vehicle and authorized excessive overtime for Gibson. Darling pointed out that Gibson was working on the migration of data from the Avantis computer maintenance management system to the new Maximo system on Fridays. Prior to the meeting the District had determined to place Darling on administrative leave. Manager Ornelas ambushed him at the meeting using law enforcement interrogation tactics; she rushed to judgement and directed an investigation into all aspects of his employment hoping to find wrongdoing.

Maintenance Manager Doubek acted in bad faith. At the time Darling was under investigation, the District was investigating Doubek. He signed Darling's pre-termination and termination letters prepared by HR for his signature. The pre-termination letter identifies Darling's failure to obtain additional NDEP certifications as a reason for termination. Prior to the investigation Doubek told Darling that management probably was extending leeway on certifications and Doubek, with fewer certifications than Darling, was not pursuing certifications. The termination letter states a reason for termination was using unapproved vendor 6651 Customs and the P-Card to pay that vendor. On cross-examination Doubek acknowledged he approved Darling's use of and payment to 6651 Customs. [Tr. 269] Doubek also stated in the letter that the District tested the thickness of items powder-coated by 6651 Customs and the thickness did not meet District guidelines of 18-25 mm for coatings. Doubek acknowledged at the hearing that the thickness of items powder-coated by 6651 Customs was different than thickness for painted items and the guideline of 18-25 mm applies to paint, not powdered items.

Disparate Treatment - Vehicle Use Policy

The practice and de facto policy on vehicle use is it may be used for personal errands as long as the job gets done. Nevertheless, the District strictly enforced its more restrictive written vehicle use policy against Darling. This occurred even though Manager Ornelas' testimony disclosed that HR's practice is not to strictly enforce the vehicle use policy as written. The written policy states that use of District vehicles for anything other than "official company business" is prohibited. [Un. Exh. 5] Manager Ornelas testified "there's a lot of factors involved" when interpreting the policy. For example context is considered should an employee use a District vehicle to conduct personal banking. HR considers unspecified circumstances when interpreting the policy although there is no wording in the policy authorizing it to do so. [Tr. 154, 158]

The result is disparate treatment where co-worker Gibson used a District vehicle for personal errands but is not subject to any level of discipline whereas grievant used a District vehicle for personal errands on six (6) occasions over four and a half (4-1/2) months and was terminated. Another employee used a District vehicle to drop off and pickup his motorcycle with supervisor approval without retribution. HR Analyst Gibase testified that whether use of a District vehicle

for a personal errand with a supervisor's approval violates the policy "depends on the situation." Another example is employee Payne leaving work early and using the District vehicle for a personal errand with supervisor Merriman's approval; this was not cause for any discipline for the employee or supervisor even though Analyst Gibase testified "it's not typical that it's supposed to be used for personal errands." [Tr. 219-224]

Grievant cannot be held accountable for co-worker Gibson's use of a District vehicle on those days when grievant was not at work or at work but not physically present with Gibson. The District did not discipline Gibson and it is illogical to find that grievant's similar conduct warrants termination.

Different Treatment - Review of Subordinate's Time

Darling never approved time for days Gibson did not work; Gibson never received pay for days he did not work; the District terminated grievant for allegedly approving time when Gibson did not work even though grievant did not know Gibson had not, allegedly, performed any work.

The District applied a different standard when first-line supervisor Doubek reviewed Darling's time. The District alleges that he did not perform any work on January 9, 2024, but entered time for that day. For March 26, 2024, Darling mistakenly reported ten (10) hours of regular pay when he should have recorded six (6) hours of regular time and four (4) hours as sick time since he left work early due to allergies. Doubek reviewed and approved these entries; Doubek received no discipline for doing so but Darling was terminated. [Tr. 227, 284]

Doubek testified he was in the office and Darling was in the field, thus, he does not know what is going on in the field unless Darling informs him. The same arrangement applies to Darling and Gibson; when they are not working together Darling would not know what Gibson was doing unless Gibson told him. Doubek agreed he did not know how Darling knew what Gibson was doing unless Gibson told Darling yet Doubek recommended grievant's termination for not meeting this unreasonable standard that Doubek was not held to. [Tr. 291]

Based on the foregoing the Association concludes "there was no just cause to terminate Darling's employment" and it requests "that Darling be reinstated with full back pay and benefits and for such other relief as the arbitrator deems just." [Br. at 26]

Summary of the District's Position and Argument

The District's position and argument are set forth in its opening statement, examination and cross-examination of witnesses, exhibits and post-hearing brief.

Testifying for the District were Buck Osborne, Director of Operations; Laura Ornelas, HR Manager; Frank Gibase, HR Senior Analyst; James Doubak, Maintenance Manager; and Mary Madden, HR Director. Present but not testifying were Judy Sanderlin, Counsel, Fisher & Phillips LLC and Kendelea Works, Counsel, Cogburn Davidson Injury Lawyers on behalf of Director Osborne.

District's Overview

Darling was a supervisor for six (6) years and, as such, was expected to uphold and enforce District policies. Darling ignored policies when he violated them in an egregious manner such as knowingly condoning and approving Tyler Gibson's conducting personal business on work time

and approving overtime for hours not worked by Gibson. As a salaried employee Darling is accorded some discretion and liberty regarding his time but Gibson is an hourly employee without time flexibility accorded to a salaried position. Hourly employees are paid only for hours worked. By approving pay for Gibson while conducting personal errands which is time not worked, Darling violated District policies and public trust as to use of public funds. The same truth applies to Darling when he abused accounting for his time.

After a comprehensive investigation with multiple meetings and ample information, the District terminated Darling for multiple violations of policies and procedures. Three violations are major infractions warranting discharge. The first major infraction is Darling authorizing his subordinate Gibson to record overtime hours when Gibson did not work. Prior to Gibson's reinstatement, he informed HR that Darling instructed Gibson to record such hours as overtime whether or not he worked. Darling is required to confirm Gibson actually worked claimed hours. Darling acknowledged that he often approved time submitted weeks prior to employees performing any work. Undoubtedly Darling knew his actions were inappropriate but he repeatedly engaged in them.

The second major infraction is Darling routinely performed personal errands on work time with Gibson present in the District vehicle. Darling and Gibson, personal friends, shared a District vehicle which should have been used for work purposes. Instead Darling used it to stop at Sportsman's Warehouse, a bow and arrow establishment and multiple trips to their residences which are not on the way to or near any work locations. All trips occurred when they were on the clock. This misuse of the District vehicle is egregious because an hourly employee (Gibson) is paid only for hours worked but Darling approved pay for him when Gibson performed no work when in the vehicle accompanying Darling on personal errands. Darling approved Gibson's hourly pay when driving the District's truck to Gibson's residence for the sole purpose of Gibson using the bathroom. There is zero tolerance for theft of time; the District terminates employees for that misconduct.

The third major infraction is Darling falsifying his time records. He claimed hours worked on days that District records show him not working. The District accorded Darling the benefit of the doubt on some time entries but he was unable to provide a reasonable explanation for all days.

This grievance is straightforward despite Darling's attempt to play the victim by claiming Director of Operations Osborne conspired to terminate Darling as a means to replace him with someone from SNWA. This conspiracy theory is false. Evidence shows Darling engaged in significant violations involving public funds which were expended as pay for work not performed. The grievance should be denied.

District's Position

A. Background

Managers and supervisors must act in the best interest of the District, a public agency. Darling supervised the booster crew and reported to Maintenance Manager Doubek. Darling assigned work to the crew. He was responsible for reviewing and approving the crew's time records. To perform his duties the District issued a company vehicle to Darling which he shared with Gibson. The primary work location for them was the District's operations building.

B. Darling Berates Employee Which Starts An Investigation

On May 1, 2024, Director Osborne heard employee Brittany Alas crying. She was positioned directly outside of his office. She informed Osborne that Darling belittled and abused her during a telephone conversation. Osborne used GeoTab to locate Darling in the District's vehicle; it was "oddly" parked away from the pump station in front of a private residence in an affluent neighborhood. The District receives complaints from the public when its vehicles are parked on the street. To determine whether the booster crew frequented that location Osborne reviewed the prior week and discovered no similar situations. Osborne noticed Darling parked at locations where there was no apparent District business. [Emp. Exh. 21] Alas did not want Osborne to discuss the incident with Darling. Osborne intended to report his concerns to HR Manager Ornelas on or about May 1 but she was unavailable. She returned to the office on May 7 and Osborne met with her on that date.

C. HR Investigation

Manager Ornelas disclosed Osborne's concerns to HR Director Madden on the 7th. Madden authorized Ornelas to investigate the booster crew, Darling and Gibson. Manager Doubek was also investigated. Ornelas assembled a team of HR professionals to independently evaluate Osborne's information. HR Analyst Gibase contacted Alas; she was "over" the incident with Darling and not requesting or seeking an investigation.

From May 7 up to May 14, the HR investigative team reviewed GeoTab data, badge and key access entries and purchases. The team identified potential personal errands conducted on work time and noted concerns with P-Card purchases including online purchases with Amazon and 6651 Customs. Records showed Darling in the District vehicle at Customs and, when leaving Customs, proceeding directly to Darling's residence which raised concerns about conflict-of-interest and misuse of District vehicle. Gibson reported 10 hours overtime but GeoTab data showed him not working at any District location on the claimed day. Manager Ornelas notified Darling on May 14, 2024, of a meeting on the 15th to discuss his certifications "among other things". Ornelas also advised Darling to bring Union representation should he choose to do so.

D. Darling Meets With HR

Darling did not engage Union representation and attended the meeting by himself. Topics discussed were certifications, approval of overtime for the crew, P-Card purchases, 6651 Customs and vehicle use for personal errands. Darling acknowledged using the District's vehicle when driving to his residence and Gibson's residence during the workday, stopping at Sportsman's Warehouse to purchase a cooler for his son or daughter and stopping at Bow's & Aces to pick up a crossbow for his wife. He stopped at Bass Pro Shops but did not enter. [Tr. 120-124] HR Director Madden approved Manager Ornelas placing Darling on administrative leave. The usual process was followed with security escorting Darling to his vehicle and taking his parking tag. Following a separate interview with Gibson on the 15th he was placed on administrative leave. [Tr. 115-125]

E. Pre-Termination Letter

After the May 15 meeting HR continued its investigation of Darling, Gibson, the crew and Maintenance Manager Doubek. Regarding Doubek, HR informed him of the investigation after it determined he was not involved with Darling's rules violations. [Tr. 256]

Doubek reviewed information collected by HR - - time block audit data, badge and key entry data, GeoTab records, vehicle and equipment use data, purchases at 6651 Customs and overtime reports. Doubek issued a letter to Darling recommending his termination. [Emp. Exh. 2] The recommendation was based on (1) theft of time and resources with Darling's approval of overtime hours for Gibson when Gibson performed no work; (2) use and approval of purchases at 6651 Customs using the P-Card; (3) Darling's conflict of interest with his personal purchases of services and goods at Customs; (4) Darling's lack of supervisory oversight of subordinates; (5) Darling conducted personal errands on work time accompanied by Gibson in the District's vehicle; (6) Darling allowed Gibson to conduct personal errands on work time which was theft of time and District resources; and (7) Darling failed to obtain certifications required for his position. In short, Darling abused his status as an exempt, salaried employee by engaging in excessive personal errands using a District vehicle with hourly employee Gibson in the vehicle. Also concerning was Darling having his personal items worked on at Customs at the same time District items were worked on.

F. Pre-Termination Hearing

A pre-termination hearing convened on June 27, 2024. Regarding Gibson's overtime, Darling claimed he was not trained on the timekeeping process and approved time entries without verifying hours worked and claimed. [Tr. 140-141] Darling acknowledged that on occasions he used the District vehicle for personal errands but minimized personal use as insignificant. [Emp. Exh. 4] Darling would drive the vehicle to Gibson's residence so Gibson could use the bathroom due to a gallbladder issue. Gibson acknowledged, in a separate hearing, that Darling instructed Gibson to code 10 hours of pay when on standby. [Emp. Exh. 3] Gibson provided the same explanation - - code 10 hours overtime based on availability - - for the day Gibson did not work but entered 10 hours. This is troubling because Gibson's 10 hours of claimed overtime was significantly more than Gibson would be entitled to under the CBA that applies to Gibson and covers his position. [Tr. 138-139]

G. Darling's Termination and Gibson's Reinstatement

After the pre-termination hearing, HR Director Madden presided over the investigative process to placate the Union's concerns, unsubstantiated, that Manager Ornelas was biased. HR prepared summaries of issues and findings, compiled a list of comparators with similar incidents and overtime issues. [Emp. Exhs. 6, 7, 35, 36]

On August 19, 2024, counsel for Darling and Gibson responded. [Emp. Exh. 8] Darling and Gibson claimed additional information, including personal phone records, would establish they did not violate any policies. They did not submit additional information or records until the second day of the arbitration hearing (August 27, 2025). [Tr. 389]

The District determined to terminate Darling for policies violated and reinstated Gibson as Gibson claimed Darling instructed him to code overtime. Gibson followed his supervisor's directives on coding time. [Emp. Exh. 4] Since Gibson was present in the vehicle when Darling used it for personal errands, the District determined Gibson viewed his supervisor's conduct as appropriate and followed it.

Darling was terminated. [Emp. Exh. 10] His claim that he was not trained to review and approve time reports showed a lack of competency and dereliction of duties for a supervisor. The District found Darling violated the vehicle use policy; the violation was aggravated with an hourly employee in the vehicle. Darling was untruthful and dishonest with his own time records which

constituted a theft of time. These violations constitute just cause for termination. Under the CBA, progressive discipline applies only to minor offenses whereas Darling committed major infractions of rules and policies. [Br. at 16]

H. Grievance

On September 5, 2024, the Union filed a grievance. Darling provided several shifting explanations at Steps 1 and 2. [Emp. Exhs. 11-19] Darling provided a list of days in which he stated he was off work and not in the vehicle. In response thereto the District provided GeoTab data, badge swipes, Medeco key badge entries and workday records. Counsel for Darling presented a revised list of the original claims stating Darling worked on some of the days. [Emp. Exh. 14] Regarding his initial list of dates and days off, Darling created an excuse that he did not have access to District records when he provided his dates, thus, he submitted false information. [Tr. 351-358] Prior to Darling submitting his list he had the District's evidence because the pre-termination letter contained it including a detailed vehicle report.

Another shifting explanation and false excuse is April 11, 2024, when he stopped at Sportsman's Warehouse to, as he initially alleged, purchase a cooler. He changed his story during the pre-termination meeting to picking up a water bottle for another employee. His story changes again during the grievance meeting stating he stopped at Sportsman's Warehouse because Gibson wanted to purchase a water bottle for an employee at the Bermuda pump station. [Emp. Exhs. 12, 16, 17] After leaving Sportsman's Warehouse, Darling drove the District vehicle to Hotsy of Henderson, Darling's home, Gibson's home and then to the District. No vehicles at the Bermuda pump station belonged to District employees on April 11, 2024, and Darling never presented any evidence establishing the stop at Sportsman's Warehouse as work-related.

District's Argument

The seven tests of "just cause" are applicable for Darling's termination. The following narrative is the Employer's description of each test articulated in *Enterprise Wire Co.*, 46 BNA LA 359 (Daugherty, 1966).

1. Whether the employee had notice of the possible or probable disciplinary consequences of his misconduct.
2. Whether the rule is reasonably related to the orderly, efficient, and safe operation of the Employer's business and the performance the employer might properly expect of the employee.
3. Whether there was an investigation prior to the employee being discharged.
4. Whether the investigation was fair and objective.
5. Whether the investigation yielded substantial proof of the employee's misconduct.
6. Whether the employer applied its rules evenhandedly and without discrimination.

7. Whether the degree of discipline imposed is reasonably related to the seriousness of the proven offenses and the record of the employee in his service with the employer.

The District states it has demonstrated the seven tests showing there is just cause for Darling's termination. Each test is addressed in seriatim.

1. Darling Fully Understood the Rules He Violated and the Likely Consequences of His Actions

The District's rules and policies have been in place throughout Darling's tenure with the District. He was on notice of them and, in a unionized work environment, is presumed to know the terms of the CBA. On several occasions Darling signed for receipt of the P-Card Program Policies and Procedures Manual, Conflict of Interest Policy and Vehicle Use Policy. As a result of mandatory training to obtain a P-Card, Darling knew the Policies and Procedures prohibited "purchases from a business which create a conflict of interest, including those owned by relatives or friends."

Darling confirmed his understanding of the Vehicle Use Policy as restricting its use to "company and business purposes." [Tr. 342] The Policy states District vehicles are for official company business and "shopping or performing personal errands while operating a District vehicle are prohibited." [Emp. Exh. 2 at 20] Consequences for violating policies are clear - - discipline up to and including discharge.

Theft and dishonesty exhibited by Darling are behaviors recognized by arbitrators as egregious and destructive of the employment relationship warranting discharge even in the absence of a specific rule to that effect. [Br. at 20]

The District satisfied the first test, that is, Darling was on notice of the rules and the consequences for violating them.

2. Reasonable Rules

Rules requiring an employee to act in the best interest of a public agency's mission when performing duties and not engage in actions or behavior designed to steal work time and falsify public agency records or misuse public agency property are reasonable on their face.

Since 2019 Darling occupied a supervisory position. The District reasonably holds a heightened expectation that supervisors act in the District's best interests. "Higher pay and managerial status comes with higher responsibility and reasonable expectations associated with leadership positions." [Br. at 21] Expecting Darling to ensure correct accounting for public funds by verifying time records is reasonable. A supervisor should not participate with an hourly employee's conducting personal errands during work time.

3. Thorough Investigation Prior to Termination

The District afforded Darling multiple, substantive opportunities to present his side of the story prior to any decision on termination.

Director Osborne perceived some inconsistencies in Darling's use of the District vehicle and disclosed it to HR. An investigation of the booster crew ensued when HR viewed records showing potential violations of vehicle use, time reported and overtime. HR Manager Ornelas led

the investigation assisted by five (5) HR staff. She met with Darling on May 15, 2014. Although not required to do so Ornelas advised Darling on the 14th that he could bring a Union representative to the meeting but Darling elected no representation.

After the meeting the District placed Darling on administrative leave as discrepancies remained over vendor payment, time reports and vehicle use. The investigation continued with HR collecting GeoTab data, Medeco keys and badge entries and Workday time records on potential violations of policies by Darling and his responses thereto. Documents were exchanged with Darling during the investigation; Darling's documents addressed certain dates when he reported overtime. [Emp. Exh. 14 at 19-20] Every opportunity for Darling to present his side of the story resulted in him changing his story and explanations. After considering all investigative records the District issued a pre-termination letter to Darling. The District afforded Darling a full and fair opportunity to respond and rebut the allegations and explain his actions. The through investigative process and steps were detailed in his pre-termination letter, summary of issues and findings and termination letter.

4. Fair and Objective Investigation

The investigation encompassed information from multiple sources, interviews of multiple employees and reviewing four (4) months of GeoTab data, Medeco key swipes and badge entries. Darling was on notice as of May 14 to bring a Union representative to the interview on May 15 but he determined not to engage the Association. When Darling alleged bias by HR Manager Ornelas, the District assigned the investigation to HR Director Madden.

Darling alleges Director Osborne wanted to rid the workplace of Darling such that Osborne targeted Darling as a means to fill the position with an Osborne hire. There is no support for this allegation and the alleged targeting. Darling's position remains vacant with technicians from the booster crew and SNWA rotating through the position.

Darling's *Weingarten* rights were not violated as he never requested Union representation. In this regard, when the District becomes aware of potential misconduct in its operations, it is legally authorized to investigate. Darling understood the allegations presented to him and provided responses to each one.

Osborne recording the telephone call he received from Darling is embellished by the Union and not relevant. No information or comment in that conversation was relied on by the District in its investigation and decision to terminate Darling. HR conducted a fair, objective and neutral investigation extending the benefit of the doubt to Darling. For example, rather than rely on a few GeoTab discrepancies reported by Osborne as proof of vehicle misuse, HR collected data for several months to ensure a more complete view of Darling's vehicle use.

5. Investigation Establishes Misconduct

Evidence obtained during the investigation shows Darling knowingly violated the District's Policy on Vehicle Use and Work Related Vehicle Use wherein such vehicles "are to be used for official company business only" and "personal errands while operating a District vehicle are prohibited." There is an exception for "de minimis personal use" when an employee is assigned a 24-hour vehicle which was not Darling's arrangement. Darling shared a District vehicle with Gibson. There is some leeway for brief, short stops for a restroom break or beverage, snack purchases when traveling to and from a worksite but "excessive violations are unacceptable" such

as stopping at locations which direct the employee away from the travel route to and from the worksite. [Br. at 27]

Comparator data on thirteen (13) employees dating from March 2014 to June 2024 show that when an employee abuses the limited exception, such as Darling, they are subject to discipline including termination. [Emp. Exh. 35] Between January 29, 2024 and April 11, 2024, Darling used the District vehicle on nine (9) occasions in violation of the Policy; his personal use of the District vehicle totaled 17 hours and 43 minutes. [Tr. 125-127; Emp. Exhs. 6, 26, 27, 30] Often accompanying Darling on his personal errands was hourly employee Gibson. Darling states that supervisors commonly use District vehicles for personal errands during work hours but Darling was doing it with a subordinate in his vehicle thereby transforming vehicle misuse into wage theft. That is, Darling was actively authorizing Gibson to receive wages for time not worked which included situations where Darling was on a personal errand. Darling traveled to and from locations - - his residence and Darling's residence - - which are not near or on the way to and from any District worksite. Darling's misconduct is egregious and distinguished from the employee stopping at a convenience store in route to the next worksite. As for Darling driving the District vehicle to Gibson's residence for his gall bladder complications, that situation was not identified by Darling until after his termination.

The District extended its efforts to afford Darling the benefit of the doubt on every disputed item. For example during the grievance process Darling claimed Gibson and he used their personal cellphones to conduct District business. This was offered to address Gibson's hours approved by Darling. The District requested Gibson's personal cell phone records to substantiate hours worked but no records were submitted. The evidence shows situations - - conceded by Darling in his pre-termination response letter - - where he approved Gibson's hours entered and wages received for days off duty with no work performed and that constitutes wage theft. [Tr. 302-303; Emp. Exhs. 8, 15]

During the pre-termination meeting (June 27, 2024), counsel for Darling identified fifteen (15) dates wherein Darling was, allegedly, not at work due to illness or other personal reasons, thus, the District should not rely on those dates to support Darling's termination. [Emp. Exh. 6 at 2] Upon reviewing information provided during the grievance process the District accepted Darling's explanations for two (2) dates leaving four (4) dates as violations:

January 9, 2024

Darling claims he worked a full day from home. Workday records for January 8 and January 9 show no edits or activities in the system he claims to be working on and there are no badge or key access entries to substantiate that he worked a full day. [Emp. Exh. 16, pp. 4, 23]

March 5, 2024

Darling stated he attended the Supervisor Critical Conversations meeting but training logs confirm this meeting did not occur on the 5th. Workday records show some work activity on the 5th but no evidence of working a full day that he reported. [Emp. Exh. 16, p. 4]

March 7, 2024

Darling claims that text messages and a credit card statement prove he worked 100 hours on the 7th and, after work, he went to his tattoo appointment. Workday records show he logged in at 8:47 a.m. on the 7th and logged out at 10:18 a.m. with no other activity reported or established after he logged out. The tattoo receipt lacks a date stamp. [Emp. Exhs. 14 at p. 1 and 16 at p. 4]

March 26, 2024

Darling claims he left work early on the 26th due to an allergic reaction but his supervisor (Manager Doubek) has no record of approving Darling's absence. Darling coded the entire day as regular time, instead of using sick leave, despite his not working a full day. [Emp. Exh. 16 at 25]

These four (4) days total forty (40) hours of misappropriation, that is, falsifying timekeeping records by coding regular hours worked for time off. Darling claims he took calls on various days to conduct District business but District phone records do not support his claim and Darling refused to produce his own phone records. [Emp. Exhs. 15, 16]

Darling acknowledged that he regularly approved Gibson's time without any effort to verify whether the overtime hours claimed were actually worked. Darling relied on Gibson to maintain recordkeeping for Gibson and the booster crew. Darling did not rely on Gibson to track his time or the time reported by the crew. He acknowledged not monitoring time records nor reviewing and approving time entries daily as he allowed crew members to "put their time in four weeks in advance" or "wouldn't do it until the day it was required." [Tr. 373-374]

The District presented six (6) dates where there are issues with Darling approving Gibson's time. [Tr. 198-199, 204; Emp. Exh. 16 at 5-7; Emp. Exh. 30; Br. at 30]

January 12, 2024: 10 hours overtime

For 2 of the 10 hours Gibson conducted personal travel and errands with stops at his home, convenience store and auto parts shop unrelated to District business. AVANTIS records show 20 minutes of work performed with the total documented work for the day amounting to less than 3 hours. Darling approved 10 hours of overtime as hours worked.

January 19, 2024: 10 hours overtime

Gibson's activities were a visit to his home and to a welding supply Store where no District business was transacted. AVANTIS records show one hour of work. Darling approved 10 hours of overtime without any evidence or effort to confirm the hours.

May 3, 2024: 10 hours overtime

Gibson's activities were a visit to his home, a motorcycle shop with no District connection, and a restaurant with only 30 minutes of actual District work documented. Darling approved 10 hours overtime.

May 5, 2024: 4 hours overtime

No records - - vehicle tracking, badge swipes, phone logs or AVANTIS Entries - - that Gibson performed any District work. The only documentation Was an e-mail and a call received but no work performed. Darling approved 4 hours overtime.

May 10, 2024: 10 hours overtime

Gibson's activities were personal stops, lunch, and no AVANTIS work performed. Only 5 to 6 hours worked could be accounted for. Darling approved 10 hours overtime.

AVANTIS "Catch-Up" Overtime

On days Gibson claimed overtime to "catch up" on AVANTIS work, records document only a few minutes of actual work performed in the system for January 8, 29 and 31, 2024 which was far less than the hours claimed by Gibson and approved by Darling.

Gibson reported to the District that Darling instructed him to code time as overtime for "just being available" without regard to any work performed. In other words, overtime pay for not working but available to work should there be a call to do so. [Tr. 56, 211; Emp. Exh. 5, p. 3] Darling denied this instruction. After Gibson's reinstatement, Gibson changed his story when he testified at the hearing. Gibson supported his personal friend Darling and changed his story to coincide with Darling's denial. Darling's denial and numerous shifts and variations in an attempt to justify his misconduct are not credible.

There is inappropriate P-Card use at 6651 Customs which is a clear and definite conflict of interest and violates policy. Darling acknowledged the owner is a friend and Darling uses the shop to coat his personal items. Darling's supervisor - - Manager Doubek - - informed Darling he was not permitted to use the P-Card at Customs. [Tr. 267, 337-339]

The District submitted compelling evidence of Darling's policy violations of which some were intentional violations designed to directly benefit Darling. The District reasonably concluded termination was warranted.

6. Evenhanded Response to Offenses Without Discrimination

The District responded to Darling's misconduct in a consistent, evenhanded manner. Darling was not targeted or singled out for investigation. When the District became aware of his conduct on duty time, HR followed its procedures collecting information and conducting a comprehensive investigation on Darling as well as Gibson and the booster crew. Based on investigative findings and Darling's responses, the District assessed an appropriate disciplinary measure - - discharge - - for Darling's violations of policies and rules. The District did not act in an arbitrary or capricious manner, therefore, the decision to terminate Darling should remain undisturbed and sustained.

Any argument of disparate treatment presents an affirmative defense where the burden of proof resides with the Union to show (1) Darling was treated differently than another employee and (2) the circumstances for the comparator are substantially similar to Darling's circumstances. As noted in *Howard Industries*, 126 BNA LA 409, 414 (Cohen, 2008), the Union must establish that the offenses and relevant circumstances are alike in all material aspects. Different outcomes, standing alone, do not prove disparate treatment.

The Union may claim that Gibson's reinstatement is proof of disparate treatment. The District reinstated Gibson because he was not similarly-situated to Darling. Gibson is an hourly employee and subordinate to his first-line supervisor Darling. He followed Darling's instructions when claiming overtime and use of the District vehicle. In other words, he acted in response to his supervisor's instructions and directions.

Maintenance Manager Doubek is not a comparator; he served as Darling's first-line supervisor and did not engage in the kind of misconduct leading to Darling's discharge. There is no evidence that Doubek engaged in dishonest acts or misused District resources. But for Darling, everyone in the maintenance division obtained their NDEP certifications within acceptable deadlines.

There is no comparator employee for Darling's situation. No employee in a supervisory capacity such as Darling's position has engaged in the same kind of misconduct. Darling was not treated more harshly than employees discharged for similar offenses or less serious violations involving falsification of time cards, an egregious and intolerable offense. [Emp. Exh. 35]

As for any claim of age discrimination, Darling presented no evidence in testimony or documents and, thus, fails to carry the burden of proof on that issue.

7. Discharge Reasonably Related to Seriousness of Offense and Darling's Service Record with the Employer

Darling's misconduct warrants termination. As noted in *Stockholm Pipe Fittings Co.*, 1 BNA 160 (McCoy, 1945), the primary function of management when confronted with misconduct is to determine the penalty and the penalty assessed should remain unless there has been an abuse of discretion which is not shown by the Union in this proceeding. [Br. at 35]

Darling's misconduct warranted immediate discharge. The District acted in accordance with Article 7 where the parties agreed that "the concept 'for cause' includes the principal of progressive discipline for minor offenses." Theft of time is not a minor offense. Progressive discipline does not apply in this situation. Darling knowingly diverted public funds for personal benefit at the expense of taxpayers as he submitted and approved false time records. Summary discharge is warranted for this falsification resulting in personal gain.

Darling's extended service with the District does not mitigate his wrongdoing. Length of service does not excuse egregious violations. The District expects supervisors to act with integrity for subordinates to follow. As a supervisor Darling is held to a higher standard and knowledge of policies and applying them properly and legally to subordinates.

District's Conclusion

The District established the seven tests thereby demonstrating cause for Darling's termination. Should the Arbitrator determine to reinstate Darling no backpay should be awarded.

Findings and Conclusions

The Association filed a grievance on behalf of Justin Darling, the grievant, and advanced it to arbitration. The parties agree no procedural or substantive encumbrances intrude on the grievance and that the stipulated issue is before the Arbitrator for a decision on its merits.

To refresh, the issue for arbitration is - -

Did the Employer have just cause to terminate Justin Darling and, if not, what should be the appropriate remedy?

[Tr. 8]

Findings and conclusions on the stipulated issue are rendered in accordance with the CBA where the parties defined the function, purpose and authority for an arbitrator in Article 6 - Arbitration, paragraphs E and G:

- E. The decision of the Arbitrator shall be based solely upon the evidence and arguments presented to him by the respective parties in the presence of each other. The function and purpose of the Arbitrator is to determine disputed interpretation of terms actually found in the Agreement, or to determine disputed facts upon which application of the Agreement depends. The Arbitrator shall therefore not have authority nor shall he/she consider it his/her function to decide any issue not submitted, or to interpret or apply the Agreement as to change what can fairly be said to have been the intent of the parties as determined by generally accepted rules of contract construction. The Arbitrator shall not give any decision which in practical or actual effects modifies, revises, detracts from or adds to any of the terms or provisions of this Agreement. The Arbitrator shall not render any decision or award, or fail to render any decision or award, merely because in his/her opinion such decision or award is fair or equitable.

The Arbitrator retains jurisdiction for a period of 120 calendar days from issuance of an award for the limited purpose of clarifying or interpreting the award[.]

* * *

- G. The decision of the Arbitrator within the limits herein prescribed shall be final and binding upon the parties to the dispute.

The parties agreed in Article 7 - Discharge, Discipline and Personnel Files that (1) the District "shall have the right to discharge or discipline any employee for cause" and (2) the District "must be reasonable in determining 'cause' in any particular case." The parties further agreed that the "concept of 'for cause' includes the principles of progressive discipline for minor offenses."

The District advances numerous policy violations by grievant in its decision to terminate Darling but the primary focus is what the District describes as egregious misconduct where Darling (1) instructed Gibson to record overtime hours for being available, (2) performed personal errands on

work time with Gibson in the District vehicle and (3) falsified his time records. According to the District these examples of egregious misconduct involving theft of time constitute major offenses, not minor offenses. Article 7 requires use of progressive discipline for minor offenses. The District's position is Article 7 does not require the District to include principles of progressive discipline for major offenses.

Focusing on the three (3) non-minor, major offenses, the grievance is assessed following the customary apportioning on the burden of proof. That is, the burden of proof to establish termination for cause resides with the District whereas the burden of proof to establish disparate treatment resides with the Association. In an administrative civil proceeding such as this arbitration, the burden of proof is a preponderance of the evidence - - something more than a scintilla and substantial but something less than clear and convincing and beyond a reasonable doubt. The phrase "more likely than not" captures the preponderance of evidence standard.

As stated in grievant's termination letter,

In April 2024, the [District] received an allegation that you engaged in conduct that violated District policies. Specifically, the District was informed that you: allowed a subordinate to conduct personal business on District time, were approving inaccurate timekeeping records for subordinates, were approving purchases for unauthorized vendors, and were using the District's vehicle to conduct personal business in violation of AP11 - Vehicle Use and Related Vehicle Use, violation of the P-Card policy, not completed required training for your position, and violation of District Professional Code of Ethics, Vision and Values Statements. Thereafter the, the District initiated an internal investigation into these allegations.

[Emp. Exh. 10; Un. Exh. 11]

The allegation stems from Osborne's meeting with HR Manager Ornelas on May 7 and Ornelas' meeting with HR Director Madden on that date. Director Madden authorized an investigation led by Manager Ornelas with HR staff assistance. HR determined it would access information and data that is maintained in the regular course of District operations for the period January 1, 2024 to May 7, 2024. The CBA does not address HR internal investigations. Thus, the scope, shape and duration of an investigation resides with HR when examining the allegations. In this regard, there is no CBA requirement to notify an employee that his or her name surfaced in an investigation or that he or she is the subject of an HR investigation. As pointed out by the District, it was not required to inform grievant in the May 14 email notice that he could bring a Union representative to the May 15 meeting. The District states that the May 14 notice alerted grievant that matters beyond certifications would be discussed although it did not respond to Manager Doubek's request for clarification. At that time (May 14) HR was investigating Manager Doubek's role, if any, in the allegations.

The investigation which led to this grievance is described as "dubious" by the Association with "bad faith" overtones by Ornelas and Osborne. Given Ornelas statement to grievant at the May 15 meeting that he was involved in a kickback scheme with criminal implications and law enforcement investigation, counsel for grievant met with Madden and stated Ornelas was biased. Counsel informed Madden the May 14 notice did not identify overtime and purchasing which placed grievant at a disadvantage. Without agreeing with counsel about bias, Madden took over the investigation and removed Ornelas. This negated the bias concern and concerns about the

notice were cured with subsequent meetings between counsel and Madden over all matters in the allegation.

As for Osborne, he and grievant testified they had no prior working relationship over the course of their years with the District. [Tr. 35-36, 360] There is no evidence of ill-will between them as of March 2014 when Osborne became Director of Operations with oversight responsibilities of the maintenance division which included Darling, Gibson and the booster crew. Grievant's position is subject to Osborne's oversight. Osborne informed HR of his concern about vehicle use and HR assessed the concern.

The Association's bad faith concerns follow. Bad faith number one is Osborne never contacted grievant to discuss the May 1 telephone incident and violated policy when he did not request HR approval to use GeoTab to locate grievant's District vehicle. Osborne testified the employee (Brittany Alas) wanted him to "drop it" and not talk to Darling. Osborne informed HR of the incident and Ornelas directed HR staff to contact Alas which occurred on May 7; staff reported to Ornelas that she was "over it" and did not want to pursue the incident. HR took no further action; the matter was closed.

As for GeoTab to locate Darling and AP24, administration of the GPS system resides with fleet services in consultation with HR. Ornelas testified that managers are authorized to use the system to locate vehicles within the manager's span of control. Osborne's access encompasses the maintenance division which is subject to Osborne's oversight. Osborne testified that Darling parking on a private street seemed "odd" since the pump station was nearby and there was no apparent business on May 1. Osborne testified that the District receives complaints about its vehicles parked on streets and this was an affluent neighborhood. He checked vehicle locations for 8 days prior to see if this was repeated. On May 7 he reported his vehicle use concern to HR and HR indicated it would look into it. [Tr. 42-47] HR Director Madden testified that HR has a duty to look at GPS data when a concern is brought to HR. [Tr. 389] Osborne's accessing GPS on May 1 occurred within the parameters allowed by HR's administration of AP2; HR assessed GPS data in accordance with its authority in AAP24.

A second bad-faith overtone involves Osborne's recording the telephone conversation without grievant's consent. The Association states this violates Nevada law. In this regard, grievant testified that after the May 15 meeting he contacted Ornelas by telephone on 2 occasions for the purpose of discussing his situation and she directed him to the Association and instructed him not to contact any District employee. [Tr. 358-359] Grievant's pre-termination hearing occurred on June 27, 2024, with counsel for Darling presenting grievant's case. Osborne testified that the discussion was intense. Notwithstanding Ornelas informing grievant not to contact any District employee and grievant retaining counsel to represent him, Darling contacted Osborne on June 29. Osborne testified he recorded the conversation for safety reasons stemming from the intense pre-termination hearing whereas the Association claims Osborne sought to record unguarded admissions by grievant. The Association claims a violation of Nevada law and Osborne claims District policy makes Darling's telephone call to a District-issued phone subject to public disclosure with no expectation of privacy. [Tr. 53-57] The law and the policy are not in evidence. The recording is in evidence; Ornelas testified she never listened to it and it played no role in Darling's discharge. Also, the recording is not considered in the outcome of this arbitration.

Bad-faith overtone three is Osborne's one-word email response in capital letters approving an internal auditor suspending grievant's P-Card. The response is noted but inconsequential since the internal auditing group, not part of or subject to HR oversight, was directing and controlling

reviews of P-card purchases. Whether or not grievant had approval for P-card purchases after he was placed on administrative leave is not consequential in this award.

Number four is Ornelas e-mail on May 14 using the phrase "among other things" for discussion at the May 15 meeting, number five is Ornelas interview with grievant on May 15 where she used the word "kickback" in relation to grievant's purchases and invoicing with 6651 Customs implying a criminal investigation and number six is a rush to judgement. Statements by Ornelas at the meeting were addressed by counsel with HR Director Madden which led to Ornelas removal from the investigation. Subsequent meetings over the course of months between Madden and counsel provided an ongoing exchange where grievant, assisted by counsel, presented his position with argument and documents on issues raised on May 15. There was no rush to judgement given the ongoing discussions between counsel and Madden.

As for purchasing by grievant at 6651 Customs, Customs is a vendor and its recourse is with procurement, contracting and invoicing system. Grievant used 6651 Customs for personal business and was a personal friend with the owner. He advocated for the District to do more business with Customs so it could stay afloat. Grievant actively advocating on behalf of vendor Customs to generate more business is an invitation for auditors to examine purchases and invoices.

Bad-faith overtones lodged by the Association have been assessed. They are not determinative of the outcome in this proceeding. The focus turns to the major infractions identified by the District as egregious misconduct warranting discharge: (1) instructing Gibson to record overtime hours for being available and not working, (2) performing personal errands in District vehicle on work time with Gibson present in the District vehicle and (3) falsifying his time records.

As for Darling instructing Gibson to record overtime hours for being available, a preponderance of evidence supports the District. Gibson reported to the District that Darling instructed him to code time as overtime for being available. [Tr. 56, 209-211; Emp. Exh. 5 at 3] HR Analyst Gibase' notes from Gibson's pre-termination meeting confirm Gibson's statement; the notes accurately capture Gibson's statement. Gibase is credited. His involvement with the investigation from the outset shows a measured analysis drawn from the documents and candor when testifying about the de facto vehicle use policy. Candor and thoroughness support finding his notes accurately report Gibson's comments. Gibson's testimony is not credited; his testimony contradicts what he told HR at the pre-termination hearing. Gibson is a personal friend with grievant; Gibson's testimony is not reliable. The first major infraction is sustained.

As for Darling performing personal errands on work time using the District vehicle with Gibson in tow, that did occur. Nevertheless the Association established a de facto policy on vehicle use and personal errands as long as the work "gets done". Operations Supervisor Thompson testimony confirmed the de facto policy and the lack of interest by supervisors and/or HR to enforce the policy as written. [Tr. 384-386] The rule, as written, is not enforced. The District claims it is but refused to disclose the documents it relied on for that position. This second major infraction is not sustained.

The third major infraction is whether Darling inaccurately coded his time. This is not a new allegation; Darling's time reporting has been issue throughout the investigation and was noted in the pre-termination notice. There is a preponderance of evidence that grievant inaccurately reported time worked and, in doing so, falsified his time record. Doubek approved Darling's request to work from home on January 9, 2024. Grievant maintains he worked on employee performance evaluations. Workday system shows no edits or activities by grievant on January 9.

There are no text messages, emails, telephone records or any other document to corroborate any work performed on the 9th. Grievant did not work in the field on the 9th. Grievant did not testify about any work he performed on the 9th. There are no log-in and log out times. [Exh. 16, pp. 4 and 23] Ten hours cannot be confirmed based on the evidence in the record. Drawing upon that record, more likely than not, grievant did not perform up to 10 hours work on the 9th. Ten hours are inaccurately reported.

For March 5, 2024, Workday records show some work performed on this date. Grievant asserts he attended the Supervisor Critical Conversations meeting but training records show no such meeting on the 5th. [Emp. Exh. 16, p. 4] He is credited for some hours worked but less than 10 hours.

Workday records for March 7, 2024, show grievant logged in for work at 8:47 a.m. and logged out at 10:18 a.m. with no other work activities reported on that date. The receipt from the tattoo parlor is offered by grievant to show he was there after work hours but there remains unconfirmed, undocumented work time after 10:18 a.m. Grievant is credited for 2 hours worked. [Emp. Exhs. 14, 16]

As for March 26, 2024, grievant incorrectly coded his time as 10 hours work when he left work early due to allergies. The District presented this as a time coding error only and not as no work performed. [Tr. 227-228] Manager Doubek did not approve grievant's early departure. [Tr. 228] The time coding error is correctable. This incident is credited for 10 hours - 6 work hours, 4 sick leave.

There are at least eighteen (18) hours misappropriated with inaccurate, falsified hours reported and compensated. These major offenses - - advising Gibson to report hours as overtime worked for being available and 18 hours falsely reported as work - - constitute cause for termination. Comparator data establish the District addresses this type of misconduct with termination for hourly and salaried personnel. From 2016 up to June 10, 2014, salaried and hourly employees were terminated for falsely recording 1 hour, 1.5 hours, 3.5 hours, 4 hours and 6 hours. [Emp. Exh. 35] Grievant inaccurately reported time worked of at least 18 hours.

Arbitral jurisprudence places falsifying time in the category of a capital offense recognized by discharge. Article 7 does not require progressive discipline for non-minor, major offenses but it does require the District to be "reasonable when determining cause." Based on 2 major offenses proven the District reasonably determined there was cause for discipline and such discipline is reasonably based on comparator data where discharge is assessed for inaccurate reporting of time. Grievant is not treated disparately for 2 major offenses. Assuming Article 7 allows progressive discipline for non-minor offenses, grievant's past performance does not immunize or insulate him from the consequences of his misconduct.

The District's decision to discharge grievant is based on the evidentiary record established by the parties in this proceeding where the short answer to the stipulated issue is answered in the affirmative. That is, there is cause for grievant's termination. The grievance is denied.

All arguments presented in the record have been considered in this award.

AWARD

The grievance is denied.

Patrick Halter /s/
Patrick Halter
Arbitrator

Signed on this 11th day
of December 2025

EXHIBIT 2

**Excerpts of the Transcript
of the Arbitration Hearing
Dated Aug. 26-27, 2025**

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ARBITRATION PROCEEDINGS

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IN THE MATTER BETWEEN:)

WATER SUPERVISORS)
ASSOCIATION OF NEVADA,)FMCS Case No.
250228-03911

and)

LAS VEGAS VALLEY WATER)
DISTRICT.)RE: JUSTIN DARLING,)
Grievant.)

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DAY 1

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ARBITRATION PROCEEDINGS

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Taken on Tuesday, August 26, 2025

16

By a Certified Court Reporter

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At 9:00 a.m.

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At 1001 South Valley View Boulevard

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Las Vegas, Nevada 89107

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Reported by: Sarah Safier, CCR No. 808

25

Job No. 60678, Firm No. 116F

1 APPEARANCES:

2 Arbitrator:

3 PATRICK HALTER

4 For the Water Supervisors Association of Nevada
and Justin Darling:

5 MATTHEW L. DURHAM, ESQ.
6 TIMOTHY KELLEHER, Law Clerk
King Scow Koch Durham, LLC
7 11500 South Eastern Avenue
Suite 210
8 Henderson, Nevada 89052

9 For the Las Vegas Valley Water District:

10 DAVID B. DORNAK, ESQ.
JUDY R. SANDERLIN, ESQ.
11 Fisher & Phillips, LLC
300 South Fourth Street
12 Suite 1500
Las Vegas, Nevada 89101

13 Personal Counsel for Buck Osborne:

14 KENDELEE L. WORKS, ESQ.
15 Cogburn Davidson Injury Lawyers
2580 St. Rose Parkway
16 Suite 330
Henderson, Nevada 89074

17 Also Present:

18 RICHARD P. McCANN, J.D.
19 McCann Consulting, LLC

20 RODNEY A. CARTER
Water Supervisors Association President

21 JUSTIN DARLING, Grievant

22 MARY MADDEN, Director of Human Resources
23 Las Vegas Valley Water District

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

I, Sarah Safier, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify:

That I reported the taking of the Arbitration Proceedings, Day 1, at the time and place aforesaid;

That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said proceedings is a complete, true and accurate record at said time to the best of my ability.

I further certify that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 3rd day of September, 2025.



SARAH SAFIER, CCR NO. 808

1 ARBITRATION PROCEEDINGS

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3 IN THE MATTER BETWEEN:)
4)
5 WATER SUPERVISORS)
ASSOCIATION OF NEVADA,) Case No.
6 and) 250228-03911
7)
LAS VEGAS VALLEY WATER)
8 DISTRICT.)
9 RE: JUSTIN DARLING,)
Grievant.)
10 _____)
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14 DAY 2

15 ARBITRATION PROCEEDINGS

16 Taken on Wednesday, August 27, 2025

17 By a Certified Court Reporter

18 At 9:00 a.m.

19 At 1001 South Valley View Boulevard

20 Las Vegas, Nevada 89107

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Reported by: Sarah Safier, CCR No. 808

Job No. 60679, Firm No. 116F

1 APPEARANCES:

2 Arbitrator:

3 PATRICK HALTER

4 For the Water Supervisors Association of Nevada
and Justin Darling:

5 MATTHEW L. DURHAM, ESQ.
6 TIMOTHY KELLEHER, Law Clerk
King Scow Koch Durham, LLC
7 11500 South Eastern Avenue
Suite 210
8 Henderson, Nevada 89052

9 For the Las Vegas Valley Water District:

10 DAVID B. DORNAK, ESQ.
JUDY R. SANDERLIN, ESQ.
11 Fisher & Phillips, LLC
300 South Fourth Street
12 Suite 1500
Las Vegas, Nevada 89101

13 Also Present:

14 RICHARD P. McCANN, J.D.
15 McCann Consulting, LLC

16 RODNEY A. CARTER
WSAN President

17 JUSTIN DARLING, Complainant

18 MARY MADDEN, Director of Human Resources
19 Las Vegas Valley Water District

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4	26 -	Emails Between J. Doubek and	237
5		C. Quiroz-Aguilar	

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11 LAS VEGAS VALLEY WATER DISTRICT
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14	NUMBER	DESCRIPTION	PAGE
15	39 -	Phone Record/Tyler Gibson's Work Cell	389
16		Phone	
17	40 -	Phone Record/Justin Darling's Work	390
18		Cell Phone	

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

I, Sarah Safier, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify:

That I reported the taking of the proceedings at the time and place aforesaid;

That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said proceedings is a complete, true and accurate record provided at said time to the best of my ability.

I further certify that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 8th day of September, 2025.



SARAH SAFIER, CCR NO. 808

EXHIBIT 3

Collective Bargaining Agreement between WSAN and LVVWD effective July 1, 2021 – June 30, 2026

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

WATER SUPERVISORS ASSOCIATION OF NEVADA

AND

LAS VEGAS VALLEY WATER DISTRICT



JULY 1, 2021 – JUNE 30, 2026

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PREAMBLE

This Agreement is made and entered into this 1st day of July, 2021 , by and between the LAS VEGAS VALLEY WATER DISTRICT, hereinafter referred to as the "District," and the WATER SUPERVISORS ASSOCIATION OF NEVADA, hereinafter referred to as the "Association," as a product of the good faith bargaining efforts of both parties, and for the purpose of promoting harmonious employer/employee relationships and the efficiency of the District operations.

ARTICLE 1 - RECOGNITION

The District recognizes the Association as the exclusive collective bargaining representative for all regular full-time and part-time employees in the classifications listed in Appendix A except for positions at AMS, RMTF and LVSP facilities and offices.

The parties have agreed that the above unit is the only appropriate unit, and that neither party shall seek a change to include or exclude an employee, position, or classification therein without mutual agreement; Employee-Management Relations Board decisions involving other employers and/or statutory revisions notwithstanding.

The District shall notify the Association, in writing, of its intent to establish any new position or classification, and its position on whether the new classification is a bargaining unit classification.

The Association shall notify the District within ten (10) working days of receipt of notification of any disagreement if the Association believes a classification belongs in the bargaining unit. The District and the Association shall meet and attempt to resolve the disagreement within five (5) working days of the Association's notice to the District. If the parties are unable to agree at that meeting, or at subsequent mutually agreed-upon meetings, the District may post and fill the position, and the dispute shall be resolved by the Local Government Employee-Management Relations Board as provided under NRS 288.170. If the new position is agreed to be, or determined by the Employee-Management Relations Board to be, a bargaining unit classification, the parties shall meet promptly and discussions shall be conducted pursuant to Article 15 (Classifications and Rates of Pay).

ARTICLE 2 - NON-DISCRIMINATION

- A. There shall be no unlawful discrimination by the Association or the District of any kind against any employee on account of race, color, religion, sex, sexual orientation, sexual identity or expression, national origin, age, physical, visual or aural handicap, or Association membership or non-membership.
- B. Any use of gender in this Agreement, including job classifications, shall be interpreted as referring to either male or female.

ARTICLE 3 - RETAINED RIGHTS

- A. In order to operate its business and to maintain the efficiency of its operations, the District, at its sole discretion, retains the exclusive right and power to determine, change, discontinue, alter, or modify, in whole or in part, temporarily or permanently, any of the following:
1. The number, location, or types of plants, facilities, equipment, and water conduits, and the personnel and work functions assigned thereto;
 2. The products to be produced and sold, the facilities or water conduits to be constructed, and the services to be rendered, their quality and quantity, the methods and processes of service, maintenance, production, operation and construction, and the materials to be used;
 3. The sales methods and sales price of all products and services; the purchase price of all purchases; and the legal, operational, organizational and financial structure of the District;
 4. The services, tools, equipment, and machinery, except as limited by Article 31 (Safety); the production, maintenance and service standards;
 5. The utilization of all District properties, easements, premises, equipment, and facilities;
 6. The selection and hiring of all new employees; the promotion and demotion of all employees, except as limited by Article 8 (Recruitment, Selection, Placement, Promotions and Transfers); and
 7. The number of employees; whether, when or where there is a job opening; whether to lay off employees as the result of the exercise of any rights of the District not limited by the clear and explicit language of this Agreement, and the number of employees to be laid off.
- B. Any dispute arising out of or in any way connected with either the existence of or the exercise of any of the rights of the District enumerated in section (A) above not expressly limited by the clear and explicit language of this Agreement, or arising out of or in any way connected with the effects of the exercise of any of such above-described rights, is not subject to the grievance and arbitration provisions set forth in Articles 5 (Grievance Procedure) and 6 (Arbitration).
- C. In addition to the retained rights enumerated above, the District shall also retain the right to determine, change, discontinue, alter, or modify, in all or in part, temporarily or permanently, any of the following matters except as limited by the clear and explicit language of this Agreement:

1. The subcontracting of the products to be produced, the services to be rendered, and the construction, operation, and maintenance of plants, facilities and water conduits, provided that this right shall not be exercised in any arbitrary or capricious manner;
2. The work pace, work performance levels, and standards of performance, provided that this right shall not be exercised in an arbitrary or capricious manner;
3. Whether any employee meets the established work pace, work performance levels, and standards of performance, provided that such rights shall be exercised in a reasonable manner;
4. Affirmative action plans to encourage the recruitment, training, retention, and promotion of minority group members and women, provided that this right will not be exercised in an arbitrary or capricious manner, and that the District will discuss with the Association any substantial changes in its affirmative action program prior to implementation thereof;
5. The methods of reporting and recording time worked, provided that this right shall not be exercised in an arbitrary or capricious manner;
6. The job classifications and the content, duties, and qualifications thereof, provided that this right shall not be exercised in an arbitrary or capricious manner, and that the District will discuss with the Association any substantial changes therein prior to implementation;
7. The direction and supervision of all of the employees, provided that this right shall not be exercised in an arbitrary or capricious manner;
8. The assignment and transfer of employees District-wide between job classifications, between shifts, and between reporting points, provided that this right shall not be exercised in an arbitrary or capricious manner;
9. Reasonable rules and regulations for all employees; provided that the District will discuss with the Association any new rules prior to implementation thereof, and will post and distribute copies of same to the employees and to the Association;
10. The hours of work, the workweek, and shift schedules, provided that this right shall not be exercised in an arbitrary or capricious manner;
11. The method of funding of each benefit including the identity and selection of each carrier, insurer, or trustee, provided that this right shall not be exercised in an arbitrary or capricious manner;

12. The procedures for the security of the employees, plants, premises, facilities, equipment, and properties of the District, provided that this right shall not be exercised in an arbitrary or capricious manner; and
 13. The number of employees assigned to any particular task, function, machine, equipment, operation, or shift, except as limited by Article 31 (Safety), provided that this right shall not be exercised in an arbitrary or capricious manner.
- D. The rights of the District set forth in sections (A) and (C) of this Article are listed by way of example rather than limitation. All other rights of the District are also retained.
- The exercise of any right reserved to the District herein in a particular manner, or the non-exercise of any such right, shall not be deemed a waiver of the District's right nor preclude the District from exercising the rights in a different manner.
- E. None of the rights of the District set forth in this Article may be exercised for the purpose of undermining the Association.
- F. If there is a direct conflict between any of the above-mentioned rights of the District and the terms of other Articles of this Agreement, the latter shall prevail.

ARTICLE 4 - WORK STOPPAGE

- A. Neither the Association nor its members, or agents, or representatives, or the employees, or persons acting in concert with any of them, shall incite, encourage, or participate in any strike, walkout, slowdown, or other work stoppage of any nature whatsoever or any picketing during the term of this Agreement. In the event of any strike, walkout, slowdown, work stoppage or picketing, or threat thereof, the Association and its officers will do everything within their power to end or avert the same. The District shall not cause or engage in a lockout.
- B. An employee authorizing, engaging in, encouraging, sanctioning, recognizing or assisting any strike, slowdown, picketing, work stoppage, or other concerted interference in violation of this Article, shall be subject to immediate dismissal notwithstanding NRS 288.250. The District reserves the right to selectively discipline employees hereunder.
- C. If NRS 288 is amended during the term of this Agreement to permit strikes by local government employees, the operation of this clause shall remain in full force and effect notwithstanding any statutory changes.

ARTICLE 5 - GRIEVANCE PROCEDURE

A. Grievance Defined:

1. Employee Grievance is a claim by one or more employees covered by this Agreement (or by the Association on behalf of the employee(s) covered hereby with the consent of the employee(s)) that the District has violated an express term of this Agreement.
2. Association Grievance is a claim by the Association alleging a violation of the provisions of this Agreement on matters impacting a group of employees or the bargaining unit as a whole, or when the subject matter in dispute involves a policy affecting one or more employees. Any relief afforded through an Association Grievance shall be prospective; i.e., change or cease and desist, from the date of filing such grievances.

B. Grievance Rights:

1. The grievant may, if desired, be accompanied by a representative of the Association. If the grievant has requested the presence of a representative, the person conducting the meeting shall schedule the meeting at a time and place to permit the representative to be present.
2. The person conducting the meeting may be accompanied by another member of management.
3. Any settlement of a grievance between an individual employee and the District shall be consistent with the terms and provisions of this Agreement, and an Association representative shall have the opportunity to be present at these discussions regarding a settlement.
4. Not more than two (2) Association Representatives shall meet with the General Manager or designee at the second step of the Association Grievance Procedure. The General Manager also has the right to have one additional management representative present.
5. A grievance may be withdrawn by the filing party at any time during the process through notification of such to the other party.
6. All meetings held under these Grievance Procedures shall be scheduled at a time and place to permit all representatives to be present.

- C. **Employee Grievance Procedure:** In order to facilitate problem resolution at the lowest possible level in the organization, the following procedures shall be utilized when a grievance is alleged by one or more employees.

Informal Level:

Before filing a formal written grievance, the District and the Association strongly urge the employee to make a reasonable attempt to resolve the matter informally with the appropriate supervisor. The appropriate supervisor shall be the employee's immediate supervisor and/or the supervisor who took the action or made the decision giving rise to the grievance.

If the appropriate supervisor is absent, the employee may meet with the next level of supervision to discuss the matter.

Step One:

If the grievance is not settled at the Informal Level, the grievant (or Association Representative on behalf of, and with the consent of, the employee(s)) shall submit to the appropriate department head a signed, written and dated grievance statement fully setting forth the facts surrounding the grievance and detailing the specific provisions of the Agreement alleged to have been violated and the remedy sought. The written grievance statement must be submitted within ten (10) working days after the event giving rise to the grievance. Within five (5) working days from the date the formal grievance is received, the department head or designee will hold a meeting to review and discuss the grievance. Within five (5) working days following completion of this meeting, the department head or designee shall give a written reply to the grievant and a copy of the decision to the Association and such reply shall terminate Step One.

Step Two:

If the grievance is not settled in Step One, the written grievance must be submitted to the General Manager within five (5) working days after the termination of Step One. Within five (5) working days from the date the General Manager receives the grievance, the General Manager or a designee will hold a meeting to review and discuss the grievance. Within five (5) working days following completion of this meeting, the General Manager or designee shall give a written reply to the grievant and a copy to the Association and such reply shall terminate Step Two.

D. Association Grievance Procedure

1. Step One:

- a. The President of the Association, or his/her designee, shall submit a grievance form to the Director of Human Resources advising of the occurrence of a grievable event, stating the facts surrounding the event and the alleged violations of the Collective Bargaining Agreement. If the alleged offending Department Head is the Director of Human Resources, the grievance will be filed with the appropriate Deputy General Manager.

- b. The grievance form must be submitted within ten (10) working days of the occurrence (or when the Association reasonably should have had knowledge of the event) which is the basis of the claim.
- c. Within ten (10) working days of receipt of the grievance form, the Director of Human Resources or Deputy General Manager, if applicable, will hold a meeting exclusively for discussion of the grievance. A reasonable number of bargaining unit and District representatives may attend this meeting.
- d. The meeting will be scheduled at such time and place to permit all representatives to be present.
- e. Any resolution of the matter shall be reduced to writing and signed by both parties. If there is no resolution, the Director of Human Resources or Deputy General Manager, if applicable, shall issue a Step One response within five (5) working days following the Step One meeting and such reply shall terminate Step One.

2. **Step Two:**

- a. If the matter is not settled in Step One, the written grievance must be submitted directly to the General Manager within five (5) working days after the conclusion of the Step One meeting.
- b. The written grievance shall be signed and dated fully setting forth the facts surrounding the grievance and detailing the specific provisions of the Agreement alleged to have been violated and the remedy sought.
- c. Within five (5) working days from receipt of the written grievance, the General Manager or designee will hold a meeting to review and discuss the grievance.
- d. Within five (5) working days following this meeting, the General Manager or designee shall give a written reply to the Association and such reply shall terminate Step Two.

E. **Time Limits:** In computing time limits in this Article, "working day" shall be defined as a day District main offices are open for business. If a grievance is not processed in accordance with the time limits set forth in this Article, it shall not be subject to arbitration. If the party receiving the grievance should fail to meet any time limits specified at any step herein, the grievance shall be deemed denied at that step and the grieving party may proceed to the next step within the applicable time limits.

Any time limits in this Article may be extended by mutual written consent.

- F. It is agreed that the District and the Association may utilize "trainees" to accompany their designated representatives to step meetings under this Article. The Association trainee will be provided release time to attend these meetings.

ARTICLE 6 - ARBITRATION

- A. Grievances which are not settled pursuant to Article 5 (Grievance Procedure) or Article 7 (Discharge, Discipline and Personnel Files), and which the Association desires to contest further, and which involve the interpretation or application of the express terms of this Agreement (including the interpretation or application of the terms of Article 3, Retained Rights, section B), shall be submitted to arbitration as provided in this Article, but only if the Association gives written notice to the District of its desire to arbitrate the grievance within five (5) working days after the termination of Step Two of the Grievance Procedure. It is expressly understood that the only matters which are subject to arbitration under this Article are grievances which were processed and handled in accordance with the grievance procedure of Article 5 or the Appeal of Discipline from Article 7, and which are not expressly excluded from arbitration by other provisions of this Agreement.
- B. Prior to contacting the Arbitrator, the parties shall participate in a pre-arbitration conference with a mediator from the Federal Mediation and Conciliation Service to attempt to resolve the dispute.
- C. As soon as possible, and in any event, no later than five (5) working days after the conclusion of the pre-arbitration conference, the parties shall request a list of seven (7) arbitrators from FMCS. Arbitrator selection shall be made by alternate striking of names until one name remains. The Association shall be the party to strike the first name. Both parties shall make every effort to mutually set forth the issue(s) to be arbitrated in advance of the arbitration hearing date.
- D. Employees called as witnesses shall be released from regularly scheduled duties without loss of pay for all time necessary to attend and testify. However, witnesses shall be scheduled, to the extent possible, to minimize loss of work time. In no event shall an employee be paid for time served as a witness beyond his or her normal work schedule.
- E. The decision of the Arbitrator shall be based solely upon the evidence and arguments presented to him by the respective parties in the presence of each other. The function and purpose of the Arbitrator is to determine disputed interpretation of terms actually found in the Agreement, or to determine disputed facts upon which application of the Agreement depends. The Arbitrator shall therefore not have authority nor shall he/she consider it his/her function to decide any issue not submitted, or to so interpret or apply the Agreement as to change what can fairly be said to have been the intent of the parties as determined by generally accepted rules of contract construction. The Arbitrator shall not give any decision which in practical or actual effects modifies, revises, detracts from or adds to any of the terms or provisions of this Agreement. The Arbitrator shall not render

any decision or award, or fail to render any decision or award, merely because in his/her opinion such decision or award is fair or equitable.

The Arbitrator retains jurisdiction for a period of 120 calendar days from issuance of an award for the limited purpose of clarifying or interpreting the award. Either party, after first having requested the participation of the other party for a joint request, may unilaterally request clarification or interpretation within 60 calendar days of the date the award was issued. The non-moving party then has 15 calendar days to submit any information it wishes to provide for the Arbitrator's consideration. Each party must simultaneously provide to the other party copies of any communications or information submitted to the Arbitrator.

- F. If the Arbitrator finds that the District has discharged an employee without cause and orders reinstatement with back pay, all earnings received by the employee and all wages for any comparable employment refused by the employee shall be credited against back pay. The employee will provide such evidence regarding the aforementioned terms as is required by the District.
- G. The decision of the Arbitrator within the limits herein prescribed shall be final and binding upon the parties to the dispute.
- H. All fees and expenses of the Arbitrator shall be shared equally by the Association and the District. Each party shall bear the expense of the presentation of its own case.
- I. The Arbitrator may hear and determine only one grievance at a time unless they are necessarily related or the parties expressly agree otherwise.
- J. **Time Limits:** In computing time limits in this Article, "working day" shall be defined as a day District main offices are open for business. Any time limit in this Article may be extended by mutual written consent.

ARTICLE 7 - DISCHARGE, DISCIPLINE AND PERSONNEL FILES

- A. The right to maintain discipline and efficiency of employees is vested exclusively in the District.
- B. The District shall have the right to discharge or discipline any employee for cause, but in determining discipline, the District shall not transfer, reassign, reclassify or demote any employee for disciplinary purposes.

The District must be reasonable in determining "cause" in any particular case. The concept of "for cause" includes the principle of progressive discipline for minor offenses. The District shall notify the Association within five (5) working days of the issuance of a written warning.

- C. All investigatory interviews or meetings will be conducted consistent with the intent of what is commonly referred to as the "Weingarten Rule" which provides that "An employee is entitled, upon request, to the presence of a union representative at any employer interview if the employee reasonably fears that the interview may result in discipline." An investigatory interview or meeting occurs when a supervisory or management employee questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his or her conduct. The supervisory/management representative must inform the employee as to the subject of any such interview or meeting. If the employee has a reasonable belief that discipline may result from what he or she says, the employee has the right to have a representative present during the meeting. Additionally, if the employee initially declines, or does not request representation, but later determines he/she wants representation, the meeting must be recessed and re-scheduled to allow for the presence of a representative.
- D. The District must notify the Association of the District's intent to suspend an employee. When suspension is contemplated, the last phase of the investigation process shall be a meeting, wherein the employee and the Association Representative are informed of the allegations and given the opportunity to respond. The discipline may be postponed to allow for consideration of evidence the employee produced or further investigation of the employee's response.
- E. The District may not discharge an employee for cause without first giving the employee and the Association written notice and a minimum of ten (10) working days following the final transmittal of such information prior to the action being taken. The employee shall be placed on administrative leave with pay during this period. If an extension beyond the ten (10) working days is mutually agreed upon between the District and the Association, or the employee (if not represented by the Association in this matter), the additional days may be with pay.

The written notice shall include the following:

1. A statement that discharge is proposed and the specific charges.
2. Copies of any materials or documents upon which the proposed action is based.
3. A statement that the employee has ten (10) working days to meet with the District to discuss the proposed action.

Within the ten (10) working day period following the transmittal of information, the employee and an Association Representative shall schedule a meeting with the District to review the charges and be given an opportunity to state their position as to whether there are true and reasonable grounds for the proposed action. The discipline may be postponed to allow for consideration of evidence the employee produced or further investigation of the employee's response.

At the completion of this meeting, the employee may remain in paid status pending the investigation of information and evidence provided in the meeting. The District will provide a written decision after the conclusion of their investigation with a copy to the Association.

- F. In cases of contemplated discharge or suspension concerning misconduct which presents possible harm to persons or property or pending criminal charges which adversely and directly affect the District or substantially disrupts District operations, the District may immediately suspend the employee with pay upon giving the appropriate notice in sections (D) and (E) above.
- G. The employee will have access to his or her personnel file, and the employee's representative will also have access upon prior written authorization of the employee. A written warning which given to an employee must, in order to remain effective, be placed in the employee's personnel file. An employee may insert into the personnel file a rebuttal statement which is directly in response to written warnings or other negative commentary in the file. Also, if two (2) years have passed without any further discipline, the warning or suspension record will be considered null and void, and shall be removed from the file. Written warnings for at-fault vehicle accidents will only remain in an employee's personnel file for 12 months unless another at-fault vehicle accident occurs during that 12-month period. Formal periodic evaluations are exempt from this removal requirement.

ARTICLE 8 - RECRUITMENT, SELECTION, PLACEMENT, PROMOTIONS AND TRANSFERS

- A. Notice of all bargaining unit vacancies shall be posted on Workday for not less than seven (7) calendar days prior to the position being filled. Should Workday become inaccessible for any reason, the District will increase the posting period one day for each day of inaccessibility. The District also agrees to post non-bargaining unit vacancies below the level of department head, but none of the remainder of this Article applies to such postings.
- B. The job posting notice, at a minimum, should include the following information, none of which is to be considered as a limitation of the employee's duty assignments once hired:
 - 1. Title and job description of the position.
 - 2. Salary or wage range on hiring date.
 - 3. Work location (general information, subject to change).
 - 4. Minimum qualifications and any necessary or desirable requirements for the classification or position.
 - 5. Selection criteria to be used, eligibility requirements including education, employment, training or experience, and whether equivalent factors will be recognized.
 - 6. Whether there will be competitive testing, and if so, the nature and scope of the test.
 - 7. Address and deadline for filing applications.
 - 8. Number of hours per day (general information, subject to change).

- 9. Regular assigned work times (general information, subject to change).
- 10. Statement that the District is an equal opportunity employer.

- C. When a new permanent position is created, or an existing permanent position becomes vacant, the hiring authority may, at any time during the selection process, fill the position by transfer of a permanent non-probationary employee who has the same classification as that of the vacancy. A transfer is a change in an employee's department, division or work location without any change to the employee's classification and rate of pay. Any permanent non-probationary employee having the same job classification as that of the vacancy shall be considered for transfer by having filed a request for transfer, on the prescribed form, with the District's Human Resources Department. The District will notify the Association when a vacancy is filled by transfer. Any such transfer requires the mutual consent of the involved supervisors.
- D. The District may use a single or combination of selection devices to assist in determining the qualifications of applicants. The form, content and administration of such selection devices shall be at the sole discretion of the District. All exams shall be under the supervision of the District's Human Resources Department. The District may decide whether there should be only a promotional list, or also an open competitive list established. Applications shall be accepted only during the period stated in a job posting.
- E. Applications for promotional exams will be accepted only from employees of the District who meet the minimum qualifications announced in the job posting; probationary employees in a qualifying period may not apply. Applications for open competitive exams will be accepted from the general public as well as any District employee who meets the minimum qualifications announced in the job posting. If a multi-part selection process is used, applicants must pass the preceding part in order to be admitted to the next part. In open competitive exams, where a multi-part selection process is used, District employees following the above-described process, will be admitted to the next part in the same proportions that they passed the preceding part.
- F. Eligibility lists for the posted vacancy may be established when the selection process is completed. The names of all applicants successfully completing all parts of the selection process will be placed on an eligibility list to be used for up to 12 months.

Vacancies may be filled following posting of the vacancy from the following sources: existing eligibility lists (outside applicants), transfers or promotions of bargaining unit employees from applicant pools or hiring a new employee.

- G. The most qualified applicants shall be referred to the hiring authority.

When all qualifications and factors are equal, bargaining unit vacancies shall be filled by the applicant who has the most District seniority.

H. General Provisions

1. Involuntary transfers may be made by the District at any time independent of the selection process described in this Article, but may not be made for disciplinary purposes.
2. Nothing in this Article will preclude the District's filling positions on a provisional basis pending completion of the selection process.
3. The testing and ranking procedures shall not be subject to grievance nor shall the final selection or placement. However, District employee applicants shall, upon request, be granted a feedback session with the hiring authority.

Further, such applicants, upon request, shall be granted a feedback session with the Director of Human Resources or designee to discuss the process and any post-selection review procedures which may be available. Additionally, the Association may request a meeting with the Director of Human Resources or designee for specific inquiries, concerns or issues regarding a recruitment, promotion or reclassification.

4. It is the mutual intent of the District and the Association to improve training and inter-departmental opportunities.
- I. The District will provide a list to the Association of employees who have been hired, into the bargaining unit, each month, including the employee's name, date of hire, classification and rate of pay.

ARTICLE 9 - ASSOCIATION REPRESENTATION

- A. The Association shall have the right to designate its own representatives to participate in grievances, negotiations, meetings with management, and to attend to other business and activities of the Association.

Association Representatives are to promote harmony between the employees and the District, and to advise the employees in the adjustment of their work-related problems.

The Association shall provide the District with a list of accredited employee representatives and maintain its currency.

- B. Association Representatives shall be granted release time with pay to attend meetings with the District to adjust employees' work-related problems as set forth in section (A) above; Article 5 (Grievance Procedure); meetings with management pursuant to Article 32 (Management Committee); Article 7 (Discharge, Discipline and Personnel Files), and any other meetings, including negotiations, which have a direct impact upon the Association. Association Representatives shall not leave their assigned work locations or

interrupt their own duties or another employee's duties except as provided under this section and section (C) of this Article. Such meetings shall be scheduled at a mutually convenient time.

- C. Association Representatives will also be permitted to use a reasonable amount of release time for the investigation of grievances. Release time will not be unreasonably withheld, but will be granted only upon advance approval by the supervisors involved, and will be scheduled by them so as to minimize interruption of the District's business. If at any time the District determines that release time has been abused, or has proven not to have been a productive use of District time, it shall consult with the Association. If the situation does not thereafter improve, the District may in its sole discretion limit or eliminate the privilege.
- D. Subject to compliance with District rules, an authorized representative of the Association who is not a District employee may have reasonable access to District facilities to view the premises and the operations of the bargaining unit, and to participate in any Association activities sanctioned by the terms of this Agreement, provided that such representative first notifies management of his presence and does not interfere, in any way, with work in progress.
- E. The District shall provide exclusive bulletin board space to the Association in designated break and work areas. Any posted material will be signed by an Association Officer or Board Member.
- F. The Association shall, upon written request, and subject to other scheduled events, be permitted reasonable use of meeting space at reasonable times and places. The Association shall be subject to reasonable charge for any clean-up or other extra services provided by the District.
- G. Upon the hiring (new hire or promotion) of an employee into a bargaining unit position, an Association Representative and the newly hired employee may use release time for a period not to exceed four (4) hours for the purpose of orienting the newly hired bargaining unit employee to the terms and conditions of this Agreement. Scheduling will be through the approval of the responsible manager and will be coordinated consistent with District business needs.

ARTICLE 10 - BARGAINING UNIT WORK

Although employees in this bargaining unit perform work similar in nature to that of other members of management, the District shall not engage in day-to-day work assignment practices designed solely to erode this bargaining unit, eliminate bargaining unit classifications, or deny premium pay opportunities to the employees within this unit.

ARTICLE 11 - SENIORITY

- A. 1. "District Seniority" is defined as the length of an employee's continuous service with the District from the date of hire. An employee who has prior service and is rehired may regain prior seniority subject to the provisions of section (D) in this Article. All references to "seniority" in this Agreement refer to "District Seniority" unless specifically identified otherwise.
2. In calculating District seniority for an employee in full-time status, an accumulated year of seniority shall consist of a minimum of 1250 hours in paid status (or on leave of absence because of a work-related injury) during a 12-month period.
3. "Classification Seniority" is defined as the length of an employee's cumulative service with the District in appointment to a specific classification or in the event of a term change in class title to the duties of a current or its predecessor classification. "Classification Seniority" shall be used in making shift assignments (see Article 13, Section H).
- B. 1. The probationary period for new or rehired employees shall be six (6) months of continuous employment. Probationary employees may be discharged for any reason without recourse to the grievance and arbitration process contained in Articles 5 and 6. Upon completion of the probationary period, the employees shall accrue seniority retroactively to the date of hire.
2. The qualifying period for newly promoted employees shall be six (6) months. Employees who do not meet the requirements necessary for a satisfactory completion of the qualifying period shall have their employment maintained at the rate of pay earned immediately prior to the promotion. The District shall return the employee to the same classification held prior to the promotion when possible.
- If a vacancy in the same classification is not available, the District will place the employee in a position which he/she is qualified to perform. When a vacancy occurs in the bargaining unit in the same classification the employee held immediately prior to the promotion, or a comparable classification becomes available within the unit, the employee must accept the position. The District shall offer and the employee may accept a position in the same or comparable classification outside the bargaining unit providing such becomes available. The actions resulting from a failure to successfully complete the qualifying period are not subject to the grievance and arbitration procedures of Article 5 and 6.
3. The probationary period and the qualifying period may be extended up to an additional three (3) months upon mutual agreement of the Association and the District.

- C. 1. All seniority rights accrued under this Agreement shall be terminated by:
- a. Discharge;
 - b. Retirement;
 - c. Layoff without recall to work for a continuous period equal to one-half of the seniority accumulated at the time of layoff, or one year, whichever is shorter.
 - d. Failure to report for work from layoff within five (5) working days after being notified by telephone, in person, e-mail or certified letter to the employee's last address on record, unless a reason satisfactory to the District is given.
- D. Employees who have had prior service with the District and are rehired may regain previous seniority rights subject to the following conditions:
- 1. The employee was not separated for any of the reasons enumerated in section (C) of this Article.
 - 2. The employee works in a permanent position for a period of time equal to the time separation, or a minimum of six (6) months. (An employee who is separated for six (6) months or less must work a minimum of six (6) months due to the probationary period.)
 - 3. "Bridging of Service" is defined as a recapture and reinstatement of credit for prior employment time. An employee who meets the conditions in this paragraph, and is able to recapture the prior employment credit, shall have seniority rights and benefits for all period(s) of permanent employment. The seniority rights and benefits referred to in this provision include, but are not limited to, the following:
 - a. Layoff requirements;
 - b. Shift assignments;
 - c. Annual leave accrual;
 - d. Sick leave pay off;
 - e. Service recognition;
 - f. Regaining forfeited sick leave, with the following condition: An employee who has been paid for a portion of his/her sick leave accrual balance must repay to the District the amount of the sick leave pay off in order to be credited for the entire sick leave accrual he/she had prior to separation. In other words, if an employee had 100 hours of sick leave accrual balance at the time of

separation, and was paid for 50 of those sick leave hours at \$5 per hour, that employee would have to repay the \$250 (50 hours X \$5 per hour) in order to regain the 100 hours of accrued sick leave he had at the time of separation. There is a two (2) year time limit from the date of rehire on when this may be repaid, and it must be repaid in one lump sum. The forfeited sick leave will not be credited to the employee's account until payment has been made. An employee who did not receive pay for unused sick leave at separation shall regain the sick leave balance upon satisfying the conditions of section (D) of this Article.

ARTICLE 12 - LAYOFF AND RECALL PROCEDURE

- A. **Layoffs.** If a layoff due to a lack of work or lack of money is found to be necessary, the District shall provide 30 calendar days' prior written notice, except in extraordinary emergency circumstances, to the affected employee and the Association.

When a layoff becomes necessary, employees shall be laid off by District seniority from the affected job classifications as follows:

1. Temporary employees;
 2. Initial hire probationary employees;
 3. Part-time employees;
 4. All other employees required to be removed, provided the remaining employees are capable of performing the remaining work at required performance levels and standards.
 5. The designated Association Representatives shall be the last to be laid off, provided that they are capable of performing the remaining work at required levels and standards.
- B. **Bumping.** Employees who are subject to layoff, but who have greater District seniority than other bargaining unit employees in another lower-paid classification may, if the District concludes that they are qualified, be permitted to bump the least senior employee from the lower-paid classification.

Employees may have the right to bump into another bargaining unit subject to the condition that, at the time of bumping, the other bargaining unit has a current Collective Bargaining Agreement which expressly permits such bumping from this bargaining unit.

- C. **Temporary Work.** Employees who are subject to layoff may be assigned elsewhere on the basis of District seniority to available temporary work which they are qualified to perform, or laid off if no such work is available. In the event affected employees are

assigned to other temporary work, such assignments shall be without loss of seniority or recall rights. The District shall notify the employee of the estimated duration of the temporary assignment and shall thereafter notify the employee of any changes in that estimate.

- D. **Recall.** Laid-off employees shall be recalled to the jobs from which they were laid off in the inverse order of layoff. Employees whom the District decided to recall from layoff will be notified either by telephone, in person, e-mail or certified letter to the employee's last address on record, it being the responsibility of each employee to keep the District informed of his or her current correct address. The District may fill the vacancy on a temporary basis pending the return of such employee. An employee so notified shall report for work or notify the District of his intention to report for work within five (5) working days after notification has been given to the employee to report for work. The employee shall return to work at the agreed-upon date, but not later than five (5) working days after receipt of such notice unless a reason satisfactory to the District is given. For purposes of this Article it shall be conclusively assumed that employees have received such notice to report for work three (3) working days after notice is sent by certified mail or e-mail to their last known address, unless in fact such notice was received prior thereto. If an employee fails to comply with any of the provisions of this paragraph he may be terminated.

ARTICLE 13 - HOURS AND PREMIUM PAY

- A. **Hours and Workweek** - The standard workweek is 40 hours, consisting of ten (10) consecutive hours per day (exclusive of lunch break) during four (4) consecutive days commencing with the first hour and day of the employee's regularly assigned workweek and shift.

For those employees who are assigned to other than the standard workweek, namely a 5/8 workweek, their regular workweek shall consist of eight (8) consecutive hours per day (exclusive of lunch break) during five (5) consecutive days, commencing with the first hour and day of the employee's regularly assigned workweek and shift.

All references to workday or workweek will be interpreted relative to an employee's assigned schedule.

The District may adopt a work week that does not have four consecutive work days (a non-standard work week) in Customer Care; however, prior to doing so, the District will provide 30 days' notice to the Association, during which time the District shall make full disclosure of how employees will be selected, and all other pertinent information and shall, in good faith, discuss any issues raised with respect to that change.

For employees who are changed from 4/10's to 5/8's or vice versa, if 48 hours' notice is not given, overtime shall be paid for all hours worked during the first week of such change.

- B. **Changes from One Shift to Another** - The employee's regular shift, i.e. day, swing or grave, may be changed by the employer without incurring premium rate liability only if 48 hours' notice is received by the employee prior to commencement of the employee's regularly scheduled workweek.

If the change of an employee's regular shift, i.e. day, swing or grave, is initiated without the 48 hours' notice specified above, the District shall pay the employee at the premium rate of one and one-half (1-1/2) hours of pay per each hour plus shift differential commencing on the first irregular shift and continuing through the balance of the workweek. Should the shift change result in more than ten (10) hours being worked in any 24-hour period, or more than eight (8) hours for employees on 5/8's, the shift differential (if applicable) plus the premium rate shall apply for all hours worked in the 24-hour period.

- C. **Changes to Starting Times Within the Same Shift** - Should a temporary change (1 to 7 days) in starting time within the same shift result in more than ten (10) hours being worked, or more than eight (8) hours for employees on 5/8's, in any 24-hour period, the premium rate of one and one-half (1-1/2) hours of pay shall apply for all hours worked beyond the regularly assigned hours. In the event of a permanent change in starting times within the same shift or change in days off is instituted without 48 hours' notice, the premium rate shall be paid for all hours worked in the first workweek of such change.

- D. **Seasonal Shift** - If a majority of the affected employees within a given work unit or section requests, through the Association, the District may establish a seasonal work shift for said work unit or section. This seasonal shift shall run from the first Monday in June to the second Friday in September, unless changed by the District pursuant to the Joint Committee Process of Article 32.

1. Unless mutually agreed otherwise, pursuant to the Joint Committee process of Article 32, the seasonal shift for day shift employees shall start one (1) hour prior to the regularly scheduled shift and end one hour prior to the end of the regularly scheduled shift.
2. Unless mutually agreed otherwise, pursuant to the Joint Committee process of Article 32, the seasonal shift for swing shift employees shall start one (1) hour after the beginning of the regularly scheduled shift and end one hour after the end of the regularly scheduled shift.

- E. **Additional Hours** - Additional hours worked as a result of call-out, emergencies, scheduled and pre-approval shall be paid at straight time or hour-for-hour comp time at the employee's option.

- F. **Compensatory Time** - The maximum amount of compensatory (comp) time an employee may accrue is 160 hours. In lieu of pay, comp time may be accrued at the

employee's option if the employee has a balance that will accommodate the additional time without exceeding the 160-hour maximum.

Employee use (taking time off from work) of comp time is limited to 60 hours of comp time in a payroll year.

Compensated time off will be on an hour-for-hour basis.

1. Requests for use of compensatory time off shall be administered in accordance with Article 17 (Annual Leave) of this Agreement.
2. Compensatory time may be "cashed out" up to four times during any payroll year. Requests must be made in accordance with the payroll schedule.
3. Payment upon separation of employment shall be as required by the Fair Labor Standards Act.

G. **Relief Shift Premiums** - All employees who are temporarily assigned to a shift other than their regular assigned shift (i.e. day, swing or grave), for purposes of providing relief shall be paid a premium of \$0.15 per hour (in addition to any applicable shift differentials) for all hours worked outside of their regular assigned shifts. Such employees are exempt from the workday provisions as provided in sections (A) and (E) of this Article.

H. **Shift Differential** - A shift differential shall be paid for all hours worked to all employees whose regular shift begins between the hours of 12:00 noon and 8:00 p.m. (swing shift). The dollar amount of the shift differential shall be established as four percent (4%) of the employee's hourly rate.

A shift differential shall be paid for all hours worked to all employees whose regular shift begins between the hours of 8:00 p.m. and 4:00 a.m. (graveyard shift). The amount of this differential shall be six percent (6%) of the employee's hourly rate.

The District retains the exclusive right to determine whether a swing or grave shift operation will be scheduled, but will discuss with the Association prior to implementing to determine how many and which employees will be assigned to them. However, the District will endeavor to satisfy employee shift preferences as much as business demands reasonably permit, and when all other factors are equal will rely upon classification seniority.

Only holidays and regularly scheduled hours will be considered for the purpose of computing shift differentials. Thus, no shift differential will be paid for time off such as sick leave or annual leave.

I. **Standby Status** - The District may require employees to remain on "standby status" in order to be available for emergencies.

1. Employees designated on standby status for a full week shall be paid a sum equal to 12 hours of pay at their regular hourly rate for each seven (7) calendar days of standby service, or, at the employee's option, 12 hours of annual leave shall be added to the annual leave accrual balance. If one or more paid holidays occurs during a seven (7) calendar day period of standby service, the employee who is on standby will be paid an additional sum equal to eight (8) hours of pay at the regular hourly rate for each such holiday or, at the employee's option, an additional eight (8) hours of annual leave for each such holiday shall be added to the annual leave accrual balance.
2. Employees designated on standby status for a weekend will be paid a sum equal to six (6) hours of pay at their regular hourly rate for each weekend of standby or, at the employee's option, six (6) hours of annual leave shall be added to their annual leave balance. In the event that one or more holiday(s) occur in conjunction with a weekend standby assignment, the affected employee shall be paid an additional sum equal to eight (8) hours of pay at the regular hourly rate for each holiday or, at the employee's option, an additional eight (8) hours of annual leave for each such holiday shall be added to the employee's annual leave accrual balance.

For example: An employee assigned weekend standby on Memorial Day weekend would be on standby from Friday afternoon through Tuesday morning and would receive six (6) plus eight (8) hours.

An employee assigned standby on Thanksgiving weekend would be on standby from Wednesday afternoon through Monday morning and would receive eight (8) plus eight (8) plus six (6) hours.

3. Employees designated on standby status for a holiday only will be in standby from close of business the day prior to the holiday until the morning following. Employees designated on standby status for a holiday will receive eight (8) hours of pay at the regular hourly rate. At the employee's option, eight (8) hours will be added to the employee's annual leave accrual balance.

For example: Should the Fourth of July fall on Wednesday, a designated employee would be on standby status from close of business Tuesday through Thursday morning and would receive eight (8) hours.

ARTICLE 14 - MEAL PERIODS

- A. The normal shift schedule for employees (with the exception of employees assigned to work groups on a 24-hour continuous operation) shall include an unpaid meal period of one-half hour to one hour, depending upon the needs of the department involved.

- B. An employee who works an additional four (4) hours and is required to continue to work shall receive a \$7.00 meal allowance at the end of each four (4)-hour period. This meal allowance does not apply to additional hours worked on the employee's regular days off.

ARTICLE 15 - CLASSIFICATIONS AND RATES OF PAY

- A. **General** - The wage rates and job classifications for all employees covered by this Agreement for the term hereof shall be as set forth in Appendix A, attached hereto.
- B. 1. Newly created job classifications in the bargaining unit and any changes to the job classifications as set forth in Appendix A are subject to discussion with the Association prior to implementation. The District shall notify the Association, in writing, of any proposed new or modified job classifications. The parties shall meet promptly, but no later than eight (8) working days following notification if the position is vacant, or 30 calendar days if it is not vacant before any District action is taken.

The District shall have the exclusive right to determine the duties, responsibilities, qualifications and description of new or revised job classifications.

Wage rates for newly created job classifications and for changed classifications shall be comparable, based upon job duties and responsibilities, with the wage assignments contained in this Agreement. Disputes under this Article are subject to grievance and arbitration (Articles 5 and 6).

2. **Changes in Pay Rates** - When a position with an incumbent is reclassified to a different salary range, the following shall apply:
- a. If the reclassification results in a salary increase, the employee's salary shall receive a minimum five percent (5%) increase.
 - b. If the salary range for the classification is decreased, the employee's salary rate shall remain unchanged until general pay adjustments increase the salary range to correspond with the employee's salary rate. The employee shall then be placed within the new salary range without any loss of pay.
3. **Reclassification Request** - Employees may request a reclassification study if they reasonably believe their duties and/or responsibilities of their position have changed significantly. Such request shall be submitted in writing to the Human Resources Department.

If the request is deemed appropriate by the Human Resources Department, it shall conduct a job audit of the position and shall respond in writing as to its estimate of when the audit can be completed.

The employee and the Association shall be provided with a written decision upon the audit which shall include the reasons for the District's decision. If position is reclassified the effective date of the reclassification is upon completion of discussion with the Association as required in section (B.1) of this Article.

- C. **Permanent Transfers** - A transfer is a change in an employee's department, division or work location without any change to the job classification or rate of pay.
- D. **Promotions** - Employees who are promoted to a new job classification in a higher salary range shall receive a promotional increase which is the greater of five percent (5%) or the entry level of the new range. If the new range is not sufficient to permit a five percent (5%) increase, the employee will be paid at the control point of the new range.

The Director of Human Resources may, with notification to the Association, set the promotional increase above five percent (5%), not to exceed ten percent (10%), if such is warranted taking into consideration the length of time since the last merit increase and the rates of pay of employees in the same class and work group. Promotional increases above five percent (5%) as set forth herein are not subject to the Grievance and Arbitration Procedure (Articles 5 and 6) of this Agreement.

When an employee bids upon a vacancy in a different classification, but the same salary range, the employee's regular rate of pay shall be maintained.

- E. **Demotions** - If an employee is demoted, whether voluntarily or involuntarily (including the avoidance of a layoff), the employee will maintain his/her current rate of pay prior to the demotion unless the rate exceeds the control point for the range, in which case he/she shall be paid at the control point of the lower range.

If an employee is returned, or demoted, to a former or comparable job classification after or during the qualifying period following a promotion, the employee shall be paid the rate of pay in effect immediately prior to the promotion, including any economic adjustments.

- F. **Temporary Assignments** - When the District, in its discretion, assigns an employee on a temporary basis to a higher classification, the pay increment will be a ten percent (10%) increase or the entry salary of the position, whichever is higher. The pay increment is for assignments consistent with minimum performance requirements and is paid as follows:

1. If the employee works in the higher classification for a minimum of two (2) consecutive workweeks, the increment will apply for the entire assignment.

2. If a holiday falls during the assignment, and the increment is applicable to the assignment, the employee will receive holiday pay at the higher rate.

When an assignment is made, the manager will confirm such an assignment to the employee in writing "for the record." In no event will the District reschedule employees under this provision solely to avoid the payment of the premium provided herein.

- G. **Merit Increases** - Employees covered by this Agreement are eligible for merit reviews based on an annual rating period of July 1 – June 30 with merit increases effective September 1 of each year. Employees hired or newly promoted to the Front-Line Supervisor Unit will be phased into this process through one of the following options:

OPTION A. FOR EMPLOYEES WITH LESS THAN 6 MONTHS IN POSITION AS OF JUNE 30. The first merit review will be conducted on the first anniversary of hire or promotion. At that time the employee, with the concurrence of his/her supervisor, has the option to 1) be considered for a merit increase effective at that time with a "mini-review" and eligibility for a pro rata increase (less than 12/12) effective September 1 for the interim period OR 2) extend the review period to include the time between the anniversary date and September with eligibility for a pro rata increase (greater than 12/12) effective September 1. In either case, future reviews would be with a July 1 - June 30 rating period with a September 1 effective date for increases. For example, an employee hired or promoted to Supervisor effective March 28 would have the first annual review in March one year later and 1) a merit increase effective March 28 and a 5/12 increase effective the following September 1 OR 2) a review in March extended to September with a 17/12 pro rata increase.

OPTION B. FOR EMPLOYEES WITH 6 MONTHS OR MORE IN POSITION AS OF JUNE 30. If the employee and his/her supervisor agree that there has been sufficient time to establish a fair and valid review, the review may be completed with eligibility for a pro rata increase (less than 12/12) effective September 1. If either party feels that there has been insufficient time, the first review should be conducted on the first anniversary following the process outlined in Option A.

Employees at or above the control point are eligible for a lump sum increase or a merit increase according to their performance. Merit increases and lump sum increases are based on performance reviews and the determination as to whether an increase will be granted is left solely to the District. The formula for eligibility and the increases available are found in Appendix B.

Statistical reports regarding merit increases, with organization-wide comparability, will be provided on an annual basis, on or about November 1 of each year. The Association may request a meeting to discuss this information pursuant to Article 32, Management Committee.

ARTICLE 16 - HOLIDAYS

- A. The District shall observe the following scheduled holidays:

New Year's Day (January 1)
Martin Luther King, Jr.'s Birthday (3rd Monday in January)
Presidents' Day (3rd Monday in February)
Memorial Day (Last Monday in May)
Independence Day (July 4)
Labor Day (1st Monday in September)
Nevada Day (Last Friday in October)
Veterans Day (November 11)
Thanksgiving Day (4th Thursday in November)
Day after Thanksgiving (4th Friday in November)
Christmas Day (December 25)

Any day that may be declared by the Governor as a legal holiday shall be considered as an additional scheduled holiday.

- B. Employees are eligible for pay equal to their established workday at their regular rate (including shift differential) if a scheduled holiday falls during their established workweek.

Each employee working 4/10's is eligible for a maximum of 90 hours of holiday pay per calendar year. Each employee working 5/8's is eligible for a maximum of 96 hours of holiday pay per calendar year. All holiday hours not used during the calendar year will be lost. There will be no carry-over from year to year.

During some years the scheduled holidays that fall during an employee's established workweek may not total the 90 or 96 hours for which the employee is eligible. In those instances, an employee shall be eligible to use the difference between the total scheduled holiday hours for that year and 90 or 96 hours as "floating" holiday hours.

Floating holiday hours may be used in increments of not less than two (2) hours. Each employee is responsible for ensuring that he/she does not use floating holidays hours in excess of the eligible amount. Should this happen the employee will have scheduled holiday time charged to accrued vacation or Leave Without Pay (LWOP) for any scheduled holidays for which no paid holiday hours are available. Calendars for various work schedules showing scheduled and floating holiday amounts for each year are available on the Hydroweb.

- C. Newly hired employees will be entitled to the floating holiday hours during their first year of employment according to the following schedule:

Hired between January 1 – April 30	100%

Hired between May 1 – August 31	50%
Hired between September 1 – December 31	0%

- D. An employee will be entitled to holiday pay if he/she is in pay status on the last working day before, and on his/her first working day after, the holiday.
- E. If a holiday occurs during an employee's annual leave, it will be paid as holiday and not charged against accrued annual leave.
- F. The District may, at its discretion, require employees to work on a holiday that falls on their regularly scheduled work day. An employee required to work on such a holiday shall receive, in addition to his/her holiday pay, pay at time-and-one-half for all hours worked on that day.
- G. There will be no pay-off of unused holiday hours (scheduled or floating) upon separation from employment.

ARTICLE 17 - ANNUAL PAID LEAVE (VACATION)

- A. Each employee, after completion of the probationary period, is entitled to paid annual leave.
- B. One (1) year of credited service as used in this article means the same as the term is used in Article 11 (Seniority).
- C. Annual leave will be determined pursuant to the table set forth below:

<u>RATE OF ACCRUAL</u>	<u>FOR YEARS OF SERVICE</u>
4.62 hours/pay period	0 - 12 years
6.20 hours/pay period	Over 12 years

- D. Employees working 4/10's must have at least 60 paid hours during a pay period to earn an annual leave accrual. Employees working 5/8's must have at least 64 paid hours during a pay period to earn an annual leave accrual.
- E. The maximum amount of annual leave an employee can carry over is 280 hours on the employee's service (anniversary) date. Additional hours accumulated during the service year, if not used or sold back, will be lost as of that date.

The District will continue its present practice of notification to employees when their annual leave accrual balance exceeds 200 hours.

- F. **Sell Back** – An employee is eligible to "sell back" accrued leave in excess of 280 hours prior to his/her service date if the eligibility criteria outlined in paragraph (H) has been met.

- G. **Cash Out** - An employee may "cash out" annual leave one time during any calendar year providing that a minimum balance of 80 hours will remain after the cash out and the eligibility criteria outlined in paragraph (H) has been met.

The minimum amount an employee may cash out is 20 hours and requests must be made in accordance with the payroll schedule.

The maximum amount eligible to be cashed out is one-half (1/2) of the annual accrual rate; i.e., assuming all eligibility criteria are met, an employee earning leave at an annual rate of 96 hours per year could cash out up to 48 hours; an employee earning 160 hours per year could cash out up to 80 hours.

H. **Eligibility Criteria for Sell Back or Cash Out**

An employee working 4/10's may sell back or cash out accrued leave on his/her service date if, during the preceding 12 months, the employee was permitted, after a reasonably timely request to do so, to take a minimum of 70 hours of leave, including one full week off.

An employee working 5/8's may sell back or cash out accrued leave on his/her service date if, during the preceding 12 months, the employee was permitted, after a reasonably timely request to do so, to take a minimum of 72 hours of leave, including one full week off.

A combination of leave and one (1) scheduled holiday may comprise the week as long as the employee is off a full-week.

For the purpose of qualifying for a sell back or cash out under this provision, the leave taken may include annual leave, personal leave, floating holidays and compensatory time. Sick IS NOT included.

NOTE: The "full week" may be broken by a weekend. For example, a 5/8's employee may take vacation on Thursday and Friday, a holiday on Monday and vacation on Tuesday and Wednesday. Another example, a 4/10 employee may take floating holidays on Wednesday and Thursday, a holiday on Monday, and annual leave on Tuesday.

- I. Annual leave must be scheduled in advance, whenever possible, and will be scheduled by the District so as to minimize interference with normal operations. Annual leave shall not be used for sick leave purposes unless all sick leave is exhausted.
- J. Annual leave shall be paid at the employee's regular rate of pay (excluding shift differentials) in effect on the shift immediately preceding the day the leave commences.
- K. An employee shall accumulate paid annual leave on a pay period basis and upon termination of his employment shall be paid for all accumulated time not

previously taken. Probationary employees shall not be entitled to payment for leave upon separation.

ARTICLE 18 - SICK LEAVE

- A. **Sick Leave Accrual** - Sick leave shall accrue for regular full-time employees at the rate of 3.70 hours per pay period. Employees working 4/10's must have at least 60 paid hours during a pay period to earn a sick leave accrual. Employees working 5/8's must have at least 64 paid hours during a pay period to earn a sick leave accrual. There shall be no limit to the amount of sick leave that can be accumulated.

- B. **Illness and Injuries** - Any employee is entitled to use accrued sick leave when:

1. Disabled by illness, injury, pregnancy, termination of pregnancy, or childbirth;
2. Prevented from working by public health requirements;
3. Receiving required medical or dental service or examinations; or
4. There is illness in the employee's immediate family or step-family where such illness requires the employee's attendance.

Sick leave may also be utilized in cases of industrial injury after expiration of the income maintenance provisions under Article 19.

Annual leave shall not be used for sick leave purposes unless all sick leave is exhausted.

- C. **Physical Examinations** - An employee returning to work after an absence of 30 calendar days or more due to illness or injury; shall submit certification by a licensed physician of fitness to perform his/her normal work assignments. Any physician examination costs associated with obtaining this certification of fitness shall be borne by the employee.
- D. **Abuse of Sick Leave** - Sick leave is extended to assist District employees when illness prevents them from working. [If the District reasonably suspects abuse, it may require a physician's certificate.] Abuse of sick leave by an employee may result in disciplinary action.
- E. **Additional Leave** - A leave of absence without pay up to a maximum of six (6) months may be granted by the District for purposes normally covered by sick leave when an employee's sick leave has been exhausted. During such a leave of absence, the District may require the employee to undergo examination by a District selected physician at the expense of the District. The District will compensate employees who are legitimately ill or injured at their regular rate for the time spent for such physical examinations. If, on the other hand, the examination indicates abuse on the part of the employee, he/she shall

receive no payment for time spent during the examination and will be subject to discipline or discharge.

- F. **Light Duty Work/Temporary Disability Reassignment** – Following the illness or injury of an employee, the District shall provide such employee with available light duty work for which the employee is qualified and able to perform or the employee may be assigned to work less than a full workday within the employee's regular classification. When an employee is able to return for light duty work, the employee shall notify his/her supervisor of his/her release to return to work for light duty pending his full release. The employee shall remain in available light duty assignment until he/she is fully released for work by the employee's physician.

If no light duty work is available the District may temporarily reassign the employee to another position for which he/she is qualified and able to perform if a vacancy exists, or the employee shall remain on sick leave until light duty work becomes available or the employee is fully released to work.

- G. **Permanent Disability Reassignment** – If, in the opinion of the employee's physician and a District selected physician, the employee cannot perform, and will not be able to perform, his/her regularly assigned duties due to disability and should be limited to performance of other, less physically demanding duties, the District shall make an effort to reassign the employee to a position for which he/she is qualified and able to perform, provided such an opening exists at that time. Such reassignment is in lieu of termination or sick leave, whichever is appropriate.
- H. **Payment for Unused Sick Leave Upon Termination** - An employee shall receive payment for sick leave at their current rate of pay upon separation or layoff in accordance with the following formula:

<u>COMPLETED YEARS OF SERVICE</u>	<u>PERCENTAGE OF ACCRUED LEAVE TO BE PAID</u>
Less than Three	0%
Three through 14 years	50%
15 years or more	75%
Death	100%
Permanent disability separation, certified by a District selected physician at the expense of the District.	100%

All sick leave not paid off upon termination shall be deemed forfeited.

- I. Note that certain other leaves in this Agreement are charged against accrued sick leave.

ARTICLE 19 - INDUSTRIAL INJURY

- A. For absence caused by a work-related injury or event, if an employee's net pay is not fully covered by a workers' compensation insurance program, the District shall provide a 60 calendar day period of income maintenance to insure that the employee suffers no loss of net pay.
- B. The District, under income maintenance for the 60 calendar day period, shall continue payment of employee group health plan, retirement-pension plan contributions and/or any other benefits as though he/she were still on the job. In the event the injury is for more than the 60 calendar day period of income maintenance provided by the District, the employee may use accrued sick leave and then accrued annual leave to insure he/she shall suffer no loss of net pay.
- C. During any absence due to an industrial injury or accident, when a doctor of the employee's choice and/or of the District's choice indicates the injured worker is available for light duty, the District may provide him with light duty. If no light duty is available, the employee shall continue on workers' compensation pay and income maintenance as outlined above.
- D. Payment of the difference of workers' compensation pay and regular pay will be computed on "net pay" not "gross pay." "Net pay" will be the employee's normal gross base pay less withholding taxes at each employee's rate for the preceding three (3) months and FICA at the prevailing rate.
- E. The 60-calendar day period is an upper limit per each unrelated workers' compensation claim.
- F. The District may, in exceptional cases, and at its sole discretion, continue this maintenance of income at full or partial pay for additional periods of 30 calendar days up to a maximum time limit of 12 months, including the first 60 calendar day benefit. Denial of such an extension is not grievable.
- G. When reimbursement is necessary for an overpayment, the District and the employee will devise a mutually agreeable repayment plan.

ARTICLE 20 - CHILD CARE

- A. **Child Care.** After the birth or adoption of a child, an employee (male or female) may, upon written request, be granted sick leave where appropriate, personal leave, compensatory time, annual leave to the extent accrued or be placed on an unpaid status for purposes of child care.
- B. The combined total of the above leaves may not exceed six (6) months. Persons employed to fill positions becoming vacant due to leaves under this Article shall hold such

positions subject to being reassigned to another position, if available, or terminated upon the return of the employee to the former position.

ARTICLE 21 - BEREAVEMENT LEAVE

- A. Employees who are required to absent themselves from work as a result of the death of a member of their immediate family or stepfamily shall be granted leave with pay up to a maximum of 40 hours per bereavement. Bereavement leave shall be charged to either sick or annual leave at the employee's option.
- B. Any time required by the employee in excess of the above provision, or for the death of other than the employee's immediate family or stepfamily shall be charged to either accrued sick leave or accrued annual leave at the employee's option.
- C. The immediate family or stepfamily is defined as: spouse, domestic partner, child, father, mother, brother, sister, grandparent or grandchild, or any in-law of the employee having the above specified relationships.

ARTICLE 22 - PERSONAL LEAVE

Employees who have completed their probationary period may take personal leave with pay up to 24 hours per calendar year, which shall not be charged against annual or sick leave or accrued compensatory time. Personal leave may be taken for any personal reason at any time requested by the employee with prior approval, and may be taken in hourly increments.

Total personal leave taken in any calendar year shall not exceed 24 hours.

Unused personal leave may not be carried forward to the next calendar year; however, unused personal leave is payable upon separation.

ARTICLE 23 - COURT LEAVE

- A. A leave of absence with pay shall be granted to any employee for the time required in service:
 - 1. on a jury;
 - 2. in court proceedings when the employee or the employee's spouse or child is a victim of a crime against the person (this is voluntary at the employee's option);
 - 3. in court under subpoena.

This leave will be at the employee's regular rate for the duration of such duty. Remuneration received for such duty (excluding mileage) shall be submitted to the District

for each day for which the employee received payment from the District under this provision.

- B. Employees involved in civil or administrative proceedings may utilize accrued annual leave to attend any meetings, hearings or proceedings required.

ARTICLE 24 - MILITARY LEAVE

- A. Whenever an employee, except temporary employees, enters the Armed Forces of the United States, whether by enlistment or Selective Service, he/she shall be granted military leave of absence for the duration of his/her compulsory service.
- B. During the period of military service, the employee shall retain all rights to which he/she is entitled under the provisions of this Agreement, provided that during a period of military leave in excess of 30 calendar days annual or sick leave shall not accrue. His or her salary upon his/her return shall be the same as he/she was receiving at the time he/she went on leave, plus any economic adjustment accruing during the period of such leave, and he/she shall be credited with all seniority for past services.
- C. Application for reinstatement following military leave must be made within 90 calendar days after receiving an honorable release from active duty.
- D. Persons employed to fill positions becoming vacant under this Article shall hold such position subject to being assigned to another position, if available, or terminated upon the reinstatement of the returning employee to his former position.
- E. In order that no employee shall suffer any loss of income as a result of a reserve status in any of the Branches of the Armed Forces of the United States or the Nevada National Guard, the employee shall, upon presentation of official orders for active duty for training, be granted leave for a period not to exceed three (3) workweeks (120 hours) in one (1) calendar year. In the event that the amount of the employee's military base pay is less than the amount of his/her regular District base pay, the District will make up the difference.
- F. Each employee who is draft eligible and is required to submit to a pre-induction physical examination shall, upon furnishing documentary proof of such requirement, be granted time off with pay not to exceed three (3) working days at his/her basic straight-time hourly rate for the purpose of reporting for, or submitting to, any such ordered physical examination.
- G. The intent of this Article, except for section (E), is to be consistent with federal and state law, and shall be interpreted by the parties and by any arbitrator, to provide identical rights and obligations as provided in federal and state law.

ARTICLE 25 - SPECIAL LEAVE

An employee's Department Head may, in his or her discretion, grant an employee special leave without pay. If the leave is to involve full or partial pay, final approval rests with the General Manager.

ARTICLE 26 - GROUP HEALTH INSURANCE

- A. The District shall pay 100% of the full premium cost for employee coverage for each full-time, regular employee and 50% of the premium cost for each permanent, part-time employee who works at least 20 hours per week subject to eligibility under the group insurance plan.
- B. For the duration of this Agreement, the District will contribute towards the payment of the employee's dependent coverage premium cost under the group insurance plan as follows:
 - 1. For permanent, full-time employees, the District shall contribute 85% of the dependent coverage premium.
 - 2. For permanent, part-time employees, the District shall contribute 42.5% of the dependent coverage premium.
- C. Employees retiring or going into unpaid leave status may continue coverage beyond the end of the month by arranging for personal payment of the full premiums, subject to the limitations of the group insurance plan. Employees who quit or are terminated, shall be covered by applicable federal and/or state law, i.e. COBRA.
- D. The District will pay 100% of the full premium cost for employee/retiree only coverage and contribute 85% toward the premium cost of dependent coverage for group health insurance for employees who retire during the term of this Agreement with an unreduced early retirement benefit as defined in the Las Vegas Valley Water District Retirement Plan (e.g., 30 years of service at any age or having attained age 60 with at least ten (10) years of service) until the employee first becomes eligible for Medicare, at which time the District contribution shall cease and the retiree will become responsible for 100% of the premium cost.

It is fully understood that both the premium rates and the benefit levels are subject to change from time to time. There are no guarantees, stated nor implied, as to either the levels of coverage or the premium rates. The separate vision coverage that is provided to participants in the Clark County Self-Funded Plan is not included. Retirees wishing to continue the vision plan may do so but will be responsible for 100% of the premium.

- E. It is acknowledged by both the District and the Association that District participation in the County and Local Affiliates Self-Funded Group Plan and the advantage of larger group negotiation with the current Health Maintenance Organization (HPN), has the prospect of being mutually beneficial to the employees and the District. It is also acknowledged by

the parties that benefit changes are beyond the District's sole control and subject to the majority decision of the group participants. However, when changes to benefits, premium costs or insurance carriers occur during the term of this Agreement, the District shall provide adequate notification to the Association prior to the implementation of any change and the parties shall meet promptly to discuss such changes. Unless there is negotiation between the District and the Association, no changes shall be made by the District to the employer/employee percentage contributions outlined in (A) and (B) above.

For reason of participation in Benefit Structure Review, the District agrees to release with pay, one (1) Employee Representative, designated by the Association, to attend scheduled meetings of the joint committee formed for such purpose.

In the unlikely event that the District ceases to participate in the Self-Funded Group Plan, the parties will immediately meet to negotiate any changes or adjustments necessary to continue health insurance coverage and protection, consistent with the provisions of N.R.S. 288.150.

ARTICLE 27 - SERVICE RECOGNITION

- A. The following service recognition benefit is applicable for all employees hired prior to January 1, 2011:
 - 1. All regular, full-time employees shall receive service recognition in the amount of \$200.00 per full year of service after seven (7) continuous years of service. For example, an employee would receive \$1,400.00 after his/her seventh (7TH) year of continuous service, \$1,600.00 after his/her eighth (8TH), \$1,800.00 after his/her ninth (9TH) and so on. Service recognition shall be paid in annual disbursements on each employee's anniversary date each year.
 - 2. Employees who regain service credits pursuant to Article 11 (Seniority), shall also be eligible for service recognition based on the "bridged", or reconstructed, length of service.
- B. Employees hired on or after January 1, 2011, are not eligible for service recognition.

ARTICLE 28 - PENSION-RETIREMENT

All employees covered by this Agreement shall, for the term of this Agreement, be entitled to participate in the District's Pension-Retirement Plan, as governed by the terms of the Pension Plan Trust Agreement and applicable state and federal laws. The District agrees to furnish each employee a yearly statement indicating the contributions to the pension fund made by the District in his/her behalf.

The Supervisory Bargaining Unit is entitled to one representative, either an employee from within this unit or a retained non-employee appointed by the Association, on any standing or special committee or task force, when such committee or task force is to include representatives from various identified interest groups, established for the purpose of discussing changes to and/or information regarding the District's Pension Plan.

Committee or task force meetings will be held when necessary within the 30 day period prior to Pension Subcommittee meetings for the purpose of discussing proposed changes to the District's Pension Plan. Other meetings will be convened as needed to disseminate information and discuss any problems or proposed changes to the District's Pension Plan.

Presently, the District pays 100% of the contributions to the District's Pension Plan. There will be no changes in the source of such contributions without prior negotiations with the Association.

ARTICLE 29 - PHYSICAL EXAMINATIONS

- A. The District may have any employee or applicant undergo physical or psychological examinations for any reasonable purpose by a licensed physician of the District's choice. The cost for such physical examination shall be borne by the District. An employee who has been required by the District to undergo such a physical examination shall be paid for such time spent.
- B. The District may demote, transfer, reassign or layoff any employee when it is determined the employee does not meet the physical requirements of the job. The District shall notify the Association, in writing, of any personnel actions under this provision.

ARTICLE 30 - PART-TIME AND TEMPORARY EMPLOYEES

The District retains the right to hire part-time and temporary employees. Part-time employees are those whose regular work schedule involves less than 40 hours per week. A temporary employee is one hired to fill a position of six (6) months or less which may or may not fit within the regular classification system.

Temporary employees shall not be hired in a classification in which there is a regular employee on layoff with recall rights or where a regular employee is capable of performing the duties of the classification by working out of range for training purposes; or where a regular employee is available for light duty work. Service rendered in temporary status shall not count for purposes of seniority unless the employee is placed into a full-time position with no break in continuous service.

Part-time employees shall receive one-half of the regular holiday and vacation benefits. Part-time employees shall not be entitled to seniority rating, but upon becoming full-time shall receive

seniority credit for their part-time service converted to full-time equivalent (e.g., half-time for one year equals one-half year of seniority).

ARTICLE 31 - SAFETY

- A. The District shall remain in compliance with state and federal law with respect to the health and safety of the employees during their employment. The District shall furnish, at its expense, any required standard personal safety and protective devices by employees.
- B. Employees in jobs that require safety glasses shall be eligible for an \$80 allowance per year for prescription safety glasses. This allowance will be provided through a vendor selected by the District. It is mutually agreed that all frames must be ANSI (American National Standards Institute) certified and have side shields for employee protection.
- C. The District-Association Safety Committee, comprised of both District and Association appointees, shall meet as needed to review and discuss safety conditions, reports of unsafe practices and employee complaints or suggestions regarding safety.

ARTICLE 32 - MANAGEMENT COMMITTEE

- A. A Committee of the District and the Association shall meet every other month. The meetings will be held at mutually agreed times and places and shall be for the purposes of:
 - 1. Discussing the administration of this Agreement;
 - 2. Exchanging general information of interest to the parties; and
 - 3. Giving the Association the opportunity to share the views of its members and/or make suggestions on subjects of interest to their members.
- B. The District will request a Management Committee meeting to discuss any organizational changes; i.e., department reorganizations, contracting with private interests and/or process improvements that will impact Unit employees. Such discussions will take place prior to any plan becoming finalized or implemented so a thorough discovery and disclosure of potential negative impacts as perceived by the Association can be undertaken and such concerns will be discussed and considered.
- C. Any issues to be discussed shall be advanced by the requesting party to the other at least 72 hours prior to the scheduled meeting time unless the issue is a matter of urgent nature.
- D. Any conclusions or mutual recommendations of this Committee shall be reduced to writing. It is understood that this Agreement cannot be amended except by decision of the District's Board of Directors following mutual agreement between the parties hereto.

However, matters of interpretation and clarification can be resolved by written agreement between designated representatives of the District and the Association.

- E. Any dispute arising through an allegation by the District that the Association is violating a provision of this Agreement will be handled in the following manner:
1. A written statement setting forth the facts or circumstances surrounding the allegation shall be submitted by the General Manager to the President of the Association within ten (10) working days of the occurrence or when the District reasonably should have had knowledge of the occurrence which is the basis of the allegation.
 2. Within five (5) working days of receipt of this written statement, the President of the Association, or designee, will contact the Director of Human Resources to schedule a meeting exclusively for discussion of this allegation. This meeting shall be held within ten (10) working days of receipt of the written statement.
 3. A reasonable number of bargaining unit and District representatives may attend this meeting. The meeting will be scheduled at such a time and place to permit such representatives to be present.
 4. If the dispute is not resolved at this meeting, the parties shall participate in a mediation conference with a Mediator from the Federal Mediation and Conciliation Service to attempt to resolve the dispute.
 5. Any resolution of the dispute shall be reduced to writing and signed by both parties.
 6. Any time limit of this provision may be extended by mutual consent.

ARTICLE 33 - EDUCATION ASSISTANCE

Education Assistance is available to employees who enroll in approved classes (including workshops, seminars, or training sessions for which continuing education units (CEU's) are awarded) offered by accredited institutions of higher learning or offered through recognized industry professional organizations for the purpose of either acquiring or maintaining professional certifications and which meet the criteria as established in this article.

A. **Criteria for Reimbursement:**

This program is not intended to finance degree programs or enhance an employee's personal growth and development other than as related to an employee's competencies and/or preparation for promotional opportunities within the District. Therefore, the definitions of "job-related" and "non-job-related" are relative to the opportunities and technology existing, or anticipated to exist, within the District.

1. "Job-related" is defined as increasing an employee's abilities, knowledge, and skills to directly improve performance in the present job or to enhance one's opportunity for jobs in their immediate line of progression.
2. Employees receiving a grade of C or better or, in those instances where grades are not given, the accompanying certification or certificate of successful completion will be reimbursed for 100% of the cost for an approved "job-related" class subject to the maximum allowable.
3. "Non-job-related" is defined as water-industry-related or related to a profession or career field existing at the District.
4. Employees receiving a grade of C or better, or in those instances where grades are not given, the accompanying certification or certificate of successful completion, will be reimbursed for 75% of the cost for an approved "non-job-related" class subject to the maximum allowable.
5. The maximum allowable reimbursement for tuition, class fees and lab fees is 12 semester hours, or the equivalent thereof, per calendar year.
 - a. Classes taken through institutions of higher learning (whether on-line or on-site) for which credit or semester hours are earned will be reimbursed at a rate not to exceed the resident undergraduate or graduate rate in effect at UNLV for the semester when first enrolled.
 - b. Education or training for which continuing education units (CEU's) or certificates are awarded will be reimbursed at the rate paid up to a maximum equivalent to the dollar amount established through the undergraduate rate in paragraph (a) above.
6. Only tuition, class fees and lab fee, tech fees will be reimbursed. Books, late registration fees, or any other costs associated with the course are the responsibility of the employee.

B. Process for Seeking Reimbursement:

1. Prior to taking a class, the employee must complete the "Application for Education Assistance" and receive the identified approvals. Reimbursement may be approved when applications are submitted after enrollment, but the employee is "at risk" as to meeting established criteria and receiving approval.
2. The employee shall submit the application to the department head. The department head will then forward the application to Human Resources with his/her recommendation for final approval. Human Resources will notify the employee as to whether the application has been approved/denied. Denial of approval is not grievable under the grievance resolution procedures of Articles 5

and 6 of this Agreement. However, the employee may appeal the decision to the Director of Human Resources. The decision of the Director of Human Resources will be made after discussions with all parties to the previous decision. If the decision to deny is upheld, it shall be stated in writing to the employee; if approved, the application will be processed without further delay.

3. Upon completion of the class, the employee must present a grade transcript or certificate of successful completion and a receipt for reimbursable costs to Human Resources in order to be reimbursed for each approved class.

C. **General Provisions:**

1. If the employee voluntarily separates employment for any reason within 12 months of receiving reimbursement, the amount shall be deducted from the final paycheck.
2. If an employee receives Veteran's Administration benefits applied to the cost of the approved class; the District shall not reimburse the employee for the amount paid by the Veteran's Administration. An employee who receives Veteran's Administration benefits applied to the cost of an approved class must notify their department head prior to submitting the grade transcript and receipt.
3. The employee must arrange to attend the class outside of their work hours or receive approval to use annual leave.

ARTICLE 34 - ASSOCIATION DUES DEDUCTIONS

- A. During the term of this Agreement, the District shall deduct monthly Association dues from the available wages of those employees who have individually and voluntarily authorized such deductions to be made. The form of authorization shall be approved by the District and the Association. Said deduction, which is revocable at will, is limited in amount to monthly dues, and will not cover back dues, special assessments, initiation fees or other charges. The District shall, each month, furnish to the Association a list of employees for whom the deduction was made, together with a check for the total amount of deductions.
- B. The District agrees not to honor any dues deduction authorizations executed by any employee in the bargaining unit in favor of any other labor organization, unless otherwise authorized by the Employee-Management Relations Board.
- C. The Association agrees to indemnify, defend and hold the District harmless against any and all claims or suits that may arise out of, or by reason of, action taken by the District in reliance upon any authorization cards submitted by the Association or an employee to the District. The Association agrees to refund to the District any amounts paid to it in error on account of the payroll deduction provision upon presentation of proper evidence of error or mistake.

- D. The Association will certify, to the appropriate District department as determined by the District, in writing, annually, the current rate of membership dues. The District will be notified of any change in the rate of membership dues 30 days prior to the effective date of such change.
- E. Said dues deduction will be withheld from the second pay period of each month. The District will not be required to honor for that month's deduction any authorizations or revocations that are delivered to it later than ten (10) days prior to the second day of the month.

ARTICLE 35 - MISCELLANEOUS

- A. **Mileage** - The District shall reimburse employees at the maximum rate allowed as non-taxable under the IRS regulations for the required use of personal vehicles for District business.
- B. **Copy of Contract** - The District will promptly make a copy of the contract available on the Hydroweb for employees newly hired and/or promoted into the bargaining unit to print at their convenience.
- C. **Protection from the Elements** - The District shall continue its current practices with respect to the furnishing of protection from the elements.

The District will provide District insignia jackets for those employees whose regular duties require working outside. Proper care and laundry of these jackets shall be the responsibility of the employee. Replacement jackets will be issued based on manager approval, but not more frequently than every three (3) years, except when the need is due to unusual circumstances.

- D. **Coffee and Other Hot Beverages** - The District shall continue its current practices with respect to furnishing coffee and other hot beverages.
- E. **Blood Drive** - The District shall make a reasonable effort to cooperate with the needs of employees in connection with their donations of blood during District-sponsored or authorized blood drives, including the provision of a reasonable rest/recovery period, if needed.

ARTICLE 36 - SAVINGS CLAUSE

It is understood and agreed that this Agreement is subject to all current and future applicable Federal and State laws and regulations. Should any valid federal or state law or final determination of any administrative agency or court of competent jurisdiction affect any provision of this Agreement, the provision or provisions so affected shall be made to conform to the law or determination, and otherwise this Agreement shall continue in full force and effect. It is agreed that in the event a provision of this Agreement is so judged to be invalid or unlawful, the District

and the Association shall meet immediately and commence negotiations to modify and bring the invalidated provision into compliance. The parties hereto agree to refrain from initiating any legal action or taking individual or collective action that would invalidate Articles of this Agreement, without first participating in good faith negotiations regarding the invalidated provision.

ARTICLE 37 - EFFECT OF AGREEMENT

- A. The Association and the District agree that this Agreement is intended to cover all matters affecting wages, hours, and other terms and all conditions of employment and similar or related subjects, and that during the term of this Agreement neither the District nor the Association will be required to negotiate on any further matters affecting these, except as specifically provided herein.
- B. Certain managerial decisions may legally require the District to bargain with the Association over the effects of such decisions, and the Association does not waive its right to such "effects bargaining."

ARTICLE 38 - COST-OF-LIVING WAGE ADJUSTMENT

- A. Effective with the first full pay period in July 2021, or the first pay period following Board approval of this Agreement, whichever is later. Effective the first full pay period in July 2022, 2023, 2024 and 2025, WSA employees shall receive a cost-of-living wage adjustment equal to the annual increase as of March, per the Consumer Price Index, All items, All Urban Consumers, Pacific Cities, West-A.
- B. The Front-Line pay plan will be adjusted by the same percentage defined above at the same time employees receive their cost-of-living wage adjustment.
- C. This article shall be automatically reopened if the Consumer Price Index, All Items, All Urban Consumers, Pacific Cities, West-A, as above in A, is above three percent (3%) or falls below one-and-one-half (1.5%). Additionally, should a Consumer Price Index be developed for the Las Vegas Metropolitan area, the parties may discuss its applicability.

ARTICLE 39 - LONG-TERM DISABILITY INSURANCE

The District shall provide long-term disability insurance to all regular full-time employees covered by this Agreement. The District shall pay 100% of the cost for the Long-Term Disability Plan.

This Plan will include a pre-existing condition limitation; an income benefit of not less than 60% (subject to offset from SSA, Workers' Compensation, retirement, and other such incomes); a standard qualification (elimination) period of not more than 180 days; and benefits payable at least to age 65 with certain usual exceptions (such as mental/nervous disorders).

Employees hired after the effective date of this Agreement will be eligible for coverage the first of the month coinciding with or next following 60 days of employment.

Current Benefit Level: The District has benefit level of 66.67% with an elimination/qualification period of 120 days. Should the arrangement with the County change and lessen the benefit level, coverage may revert to the previously described level.

ARTICLE 40 - EMPLOYEE ASSISTANCE PLAN

The District shall provide an Employee Assistance Program (EAP) for all regular full-time and part-time employees covered by this Agreement who work at least 20 hours per week. Newly hired employees will be eligible for coverage the first of the month following employment. This program will be available to all household and dependent family members of the employee currently covered for up to five sessions per incident. The District shall pay 100% of the cost for the program.

This program will:

1. provide confidential consultation, assessment, referral, and follow-up services, including a limited amount of counseling without charge to assist the employee and his/her family; and
2. provide assistance, either through the program itself or in conjunction with other benefit programs, to employees in seeking assistance beyond that provided through the Employee Assistance Program; and
3. include procedures for self and supervisory referrals.

This program provides assistance to help the employee, their dependents, and other household members resolve personal problems that may be interfering with the employee's work and home life. Services provided include: emotional distress, co-worker conflict, divorce or separation, custody issues, grief and loss, marital issues, relationships, alcohol and substance abuse, child and adolescent issues, aging family members, crisis situations, domestic violence, drug dependency, gambling, depression, retirement, anger, and stress.

All information developed under the program about employees, their dependents, and other members of their household shall be considered strictly confidential and shall be treated as such as the goal of the program is to help and provide guidance to any employee seeking professional and CONFIDENTIAL help to solve their problems.

Both the Association and the District recognize that family and personal problems may affect employees' attendance and/or job performance to the point that disciplinary action, up to and including discharge may result. However, the District recognizes the benefits of the EAP or similar programs and will be reasonably accommodating and understanding of the time needed for employees to participate in such programs.

When an employee refuses to seek assistance and/or resolution of his/her problems by actively participating in any program and attendance and/or job performance continues to be adversely affected, the District may administer discipline as is appropriate. However, both parties agree that this is not to be interpreted as impacting any of the rights and protections contained in the provisions of the current Collective Bargaining Agreement.

ARTICLE 41 - FAMILY CARE PROGRAM

The District currently provides a voluntary on-site day care program at the Valley View campus. Any decisions regarding elimination of the on-site daycare center will be communicated to the employees a minimum of 60 days in advance. At all times the District makes available a family care program to any of its employees, it shall also make such program available to WSAN unit members on similar terms.

ARTICLE 42 - FLEXIBLE BENEFITS PROGRAM

The District will continue providing a Flexible Benefits Program. Current core benefits (health insurance, long-term disability, life insurance, accidental death and dismemberment, and Employee Assistance Program), will not be affected by this program during the term of this Agreement.

Since the major purpose for a flexible benefits program is to provide more equality in benefit coverage and to be more responsive to the needs of a diverse workforce, the amount of the District's monthly contribution on behalf of each employee will be determined by the employee's enrollment status in the Group Health Insurance Plan: Employee Only = \$200; Employee and Spouse = \$60; Employee and Child(ren) = \$30; and Family = \$20.

The providers and specific product list may vary from year to year but will be designed, to the extent possible, to respond to employee needs and maintain a balance of service and value.

ARTICLE 43 - DURATION

- A. Except as provided in Section (D) below, this Agreement shall remain in full force and effect until June 30, 2026, unless extended by mutual written agreement.
- B. It is agreed that each party may select up to three (3) non-economic issues to reopen each year.
- C. On or before February 1 of each year, either party may give notice of its desire to negotiate under the provision in Section (B) above. Items re-opened under this provision or Section

(D) below to become effective upon agreement, but not earlier than July 1 of the year during which the notice is given, and to remain effective until the end of the Agreement.

- D. It is agreed that for the second year of this Agreement (2023), either party may select one (1) economic issue to reopen, two (2) for the third year (2024) and three (3) for the fourth year (2025). Notice of the desire to negotiate under this provision shall be given prior to February 1st of the applicable year. The opportunities provided for by this paragraph are in addition to the Wage Adjustment re-opener, included in Article 38, Paragraph (C), herein.
- E. It is agreed that any re-opener negotiations and any statutory impasse procedures will be limited solely to the items reopened for negotiation, and that all other terms and conditions of this Agreement shall remain in full force and effect for the entire duration hereof as provided in Section (A).

APPENDIX A

CLASSIFICATION

RANGE

Backflow Supervisor	6
Customer Service Supervisor	6
Distribution System Supervisor	7
Electrical Supervisor	7
Electronics Supervisor	7
Engineering Services Supervisor	7
Facilities Maintenance Supervisor	6
Facilities Services Supervisor	4
Fleet Maintenance Supervisor	5
Grounds Maintenance Supervisor	4
Inspection Supervisor	7
Mail Services Supervisor	2
Material Services Supervisor	5
Mechanical Supervisor	7
Meter Maintenance & Operations Supervisor	6
Meter Services Office Supervisor	3
Production Supervisor	7
Work Order Management Supervisor	7

APPENDIX B - MERIT INCREASE MATRIX

POSITION IN RANGE							
PERFORMANCE RATING	LOWER ZONE ENTRY TO 90% OF CONTROL POINT		MIDDLE ZONE 90 TO 100% OF CONTROL POINT		AT OR ABOVE CONTROL POINT	UPPER ZONE ABOVE CONTROL POINT TO MERIT MAXIMUM	
	Overall Rating	% Increase	Overall Rating	% Increase		Overall Rating	% Increase
	BASE RATE		BASE RATE		LUMP SUM	BASE RATE	
DISTINGUISHED PERFORMANCE (3.51 – 4.0)	3.91 – 4.00	8.00	3.91 – 4.00	6.00	Up to 4%	3.51 – 4.0	4.00
	3.81 – 3.90	7.75	3.81 – 3.90	5.75			
	3.71 – 3.80	7.50	3.71 – 3.80	5.50			
	3.61 – 3.70	7.25	3.61 – 3.70	5.25			
	3.51 – 3.60	7.00	3.51 – 3.60	5.00			
	7 – 8%		5 – 6%			4%	
EXCEEDS FULL PERFORMANCE (2.76 – 3.5)	3.41 – 3.50	6.50	3.36 – 3.50	4.50	Up to 3%	3.36 – 3.50	3.00
	3.30 – 3.40	6.25	3.21 – 3.35	4.25		3.21 – 3.35	2.75
	3.20 – 3.29	6.00	3.06 – 3.20	4.00		3.06 – 3.20	2.50
	3.09 – 3.19	5.75	2.91 – 3.05	3.75		2.91 – 3.05	2.25
	2.98 – 3.08	5.50	2.76 – 2.90	3.50		2.76 – 2.90	2.00
	2.87 – 2.97	5.25					
	2.76 – 2.86	5.00					
	5 – 6.5%		3.5 – 4.5%			2 – 3%	
FULL PERFORMANCE (2.0 – 2.75)	2.66 – 2.75	4.50	2.68 – 2.75	3.00	Up to 2%		
	2.55 – 2.65	4.25	2.59 – 2.67	2.75			
	2.44 – 2.54	4.00	2.51 – 2.58	2.50			
	2.33 – 2.43	3.75	2.42 – 2.50	2.25			
	2.22 – 2.32	3.50	2.34 – 2.41	2.00			
	2.11 – 2.21	3.25	2.25 – 2.33	1.75			
	2.00 – 2.10	3.00	2.17 – 2.24	1.50			
			2.08 – 2.16	1.25			
			2.00 – 2.07	1.00			
	3 – 4.5%		1 – 3%				
NEEDS TO IMPROVE PERFORMANCE	0		0		0	0	

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Justin Darling (Complainant)

**Opposition to Las Vegas Valley Water District's
Motion to Defer to Arbitrator's Award and
Dismiss the Complaint**

FILED
March 20, 2026
State of Nevada
E.M.R.B.
9:41 p.m.

STATE OF NEVADA

EMPLOYEE-MANAGEMENT RELATIONS BOARD

JUSTIN DARLING,

a Local Government Employee,

Complainant,

vs.

LAS VEGAS VALLEY WATER DISTRICT,

a Political Subdivision of the State of Nevada,

Respondent.

Case No. 2025-005

COMPLAINANT JUSTIN DARLING'S OPPOSITION TO RESPONDENT'S

MOTION TO DEFER TO ARBITRATOR'S AWARD AND DISMISS THE COMPLAINT

Complainant Justin Darling, appearing pro se, respectfully submits this Opposition to Respondent Las Vegas Valley Water District's Motion to Defer to Arbitrator's Award and Dismiss the Complaint and Motion to Dismiss Untimely Claims Outside the Statute of Limitations, and requests that the Board set this matter for a full evidentiary hearing with attendant discovery.

I. INTRODUCTION

Complainant Justin Darling appears pro se in this matter after exhausting the grievance and arbitration process and devoting substantial personal time and resources to challenge his termination through the available channels. He respects the arbitrator's role and does not ask this Board to overturn the Award, reinstate his employment, or

award monetary relief. This case concerns the broader unfair labor practices that were not resolved in arbitration, including retaliatory and biased investigation tactics, denial of representation through ambush meetings, selective and misleading use of internal records, and concealment of an independent review of HR conduct commissioned after Mr. Darling's termination.

Mr. Darling respectfully requests that the Board deny Respondent's Motion to Defer to the Arbitrator's Award and Dismiss the Complaint, retain jurisdiction, and set this matter for hearing on his prohibited-practice claims under NRS 288.270(1)(a), (d), and (f). Complainant does not assert independent claims under any non-EMRA statute. He seeks only prospective, non-monetary relief, including findings that the District violated NRS 288.270, cease-and-desist and training orders, and correction or expungement of false statements in his investigatory and personnel records.

This Opposition focuses on the most specific and material issues showing why dismissal or deferral should be denied. Respondent may characterize this as a new theory, but it is not. Complainant does not abandon, withdraw, or replace any allegation raised in his original Complaint or April 8, 2025 Opposition; rather, this Opposition explains why deferral is inappropriate in light of the completed arbitration and facts learned after termination that were outside the arbitration record. The arbitration addressed a narrow contractual just-cause issue under the CBA, not the full range of statutory issues now before the Board.

Due to file size and readability considerations, certain exhibits are submitted as separate PDF attachments and are labeled consistently with the exhibit designations used herein.

II. PROCEDURAL BACKGROUND

A. Termination and Grievance

Mr. Darling was terminated on August 29, 2024, effective August 30, 2024, following a prolonged investigation that began in May 2024 and expanded to include allegations of

kickback schemes, P-card abuse, vehicle misuse with and without a subordinate present, exaggerated claims of alleged time theft, allegedly misapproved overtime, and theft of tools. The Union filed a grievance on September 5, 2024, which proceeded through Steps 1 and 2, and the Union invoked arbitration on December 22, 2024.

Phone records reflect that on August 7, 2024, prior to his termination, Mr. Darling's spouse, Laura Bautista, received and spent approximately 17 minutes on the phone with Commissioner Jim Gibson regarding concerns about LVVWD's investigation and the related discipline of Justin Darling and Tyler Gibson.¹(Ex. A.) Ms. Bautista affirms that, during the call, Commissioner Gibson indicated that an external audit was in order.

B. Independent HR Investigation by Judge David T. Wall

The District commissioned an independent review by Judge Wall on September 12, 2024, approximately two weeks after Mr. Darling's termination.

Judge Wall confirmed in a February 3, 2025 email to Ms. Bautista that he was hired by the legal department at the Water District to review certain actions undertaken by the Human Resources department at LVVWD, that he reviewed many documents and interviewed a number of people both within and without the District, including Mr. Darling and his attorney Matthew Durham, and that his report would be delivered to General Counsel for the Water District. (Ex. B.)

Mr. Darling only learned that Director Osborne had secretly recorded his June 29, 2024 phone call because Judge Wall disclosed its existence during his independent review and asked Mr. Darling whether he was aware of it. Judge Wall presented himself as a neutral fact-finder reviewing whether District policies had been followed in the disciplinary and termination process, and Mr. Darling agreed to participate in the interview in reliance on that representation. Until that interview with Judge Wall on December 10, 2024, neither LVVWD nor its counsel had notified Mr. Darling, his union,

¹ phone records reflecting a 17 minute call between Laura Bautista and commissioner and vice president of the LVVWD board of directors Jim Gibson in early August 2024(Ex. A.)

or his arbitration counsel that the recording existed. It was omitted from the investigative file and grievance record.(Ex. C.)

The District's own privilege log describes the September 12, 2024 engagement as retaining Judge Wall to investigate the propriety of the disciplinary proceedings conducted by HR. The log asserts attorney work-product privilege over Judge Wall's engagement, communications, and report, but the District has refused to produce the underlying engagement letter or a multitude of documents requested by Mr. Darling and/or his spouse, stating that "ALL" are protected from disclosure.²(Ex. D.)

Judge Wall's review ran in parallel with the grievance process: he interviewed Mr. Darling on December 10, 2024. (Ex. C.) The District issued its written grievance denial on December 19, 2024. The District's privilege log later identified a "Final Investigation Report by Judge Wall" dated February 11, 2025, confirming that the report post-dated the grievance process and existed months before the August 26-27, 2025 arbitration hearing. The District did not produce the report in the grievance process or at arbitration.

The District now characterizes Judge Wall's work as privileged litigation preparation, but the review was initiated only after Commissioner Gibson told Mr. Darling's spouse that it appeared an external audit of Human Resources was needed during their August 7 phone call and after she submitted a written complaint about HR misconduct to Commissioners Gibson and Kirkpatrick.³(Ex. E.)

² Following his termination, Mr. Darling submitted multiple public records requests for administrative and factual documents concerning his discipline, termination, and the Judge Wall review. These requests did not seek private personal information, but ordinary governmental records bearing on how the process was initiated, conducted, and reviewed. The District nevertheless withheld all materials tied to the Judge Wall investigation, asserting that everything responsive was privileged and/or protected work product.

³ email confirming a complaint was sent on September 2 to commissioner Kirkpatrick and commissioner Gibson in regards to HR conduct and reiterating that she was told an audit would happen. This letter had been has been redacted just showing the important information. (Ex. E.)

Three days after Ms. Bautista's September 3, 2024 email to County Commissioners, outside counsel for the District, Holland & Hart, responded directly to her, acknowledging her allegations and stating that the District "takes such matters very seriously and would like to investigate [the] claims," while also advising her to consult counsel regarding potential defamation exposure. (Ex. F.)

This sequence demonstrates that concerns were escalated to the highest levels and immediately placed under legal control. It provides important context for the subsequent external investigation and supports Complainant's position that the issues presented extend beyond the contractual scope of arbitration.

C. Arbitration Hearing and Award

A two-day arbitration hearing was held on August 26 and 27, 2025, before Arbitrator Patrick Halter. The parties submitted post-hearing briefs on October 31, 2025, and the arbitrator issued his Award denying the grievance on December 11, 2025. The stipulated issue was narrow: "Did the Employer have just cause to terminate Justin Darling, and if not, what should be the appropriate remedy?"

In support of this Opposition, Complainant also submits the parties' post-hearing arbitration briefs (Exs. G-A and G-B). These materials are not offered to relitigate the just-cause determination, but to provide the Board with a complete understanding of the scope of issues presented and the limited contractual question the arbitrator was authorized to decide. As reflected in the Award itself, the arbitrator's authority was confined to interpreting and applying the Collective Bargaining Agreement and determining whether just cause existed for termination. The arbitrator stated that his function was limited to resolving disputes concerning the Agreement and that he lacked authority to decide issues not submitted or to expand beyond the Agreement's terms. (Ex. S, Award at 23.)

Accordingly, the Award does not resolve the broader statutory issues presented here, including claims of retaliation, interference with protected rights, selective enforcement, or bad faith in the investigation under NRS 288.270. The post-hearing briefs are

particularly relevant because they demonstrate the contrast between the District's expansive misconduct narrative and the arbitrator's narrow contractual findings. That contrast underscores why deferral is inappropriate.

D. This EMRB Complaint

Mr. Darling filed his Complaint with the EMRB on February 28, 2025, 182 days after his termination. That filing date places the Complaint within the six-month limitations period under NRS 288.110(4). The Complaint alleges prohibited practices under NRS 288.270, including retaliation for protected activity, interference with EMRA rights, discrimination for political or personal reasons, and failure to provide information.

The District moved to dismiss, strike portions of the Complaint, and defer to arbitration on March 26, 2025. The Board stayed the case pending completion of arbitration and, on February 4, 2026, lifted the stay and permitted Respondent to renew its motions. The District filed its Motion to Defer to Arbitrator's Award and Dismiss the Complaint on March 6, 2026.

Since the April 8, 2025 Opposition to Respondent's first motion, Complainant has obtained supplemental evidence that was not part of the grievance process or arbitration record, including materials bearing directly on retaliation, coercion, and the context surrounding the Judge Wall review. This evidence does not alter the nature of the claims. Rather, it further substantiates the allegations already presented and underscores why deferral based on the arbitration record alone would be inappropriate.

III. LEGAL STANDARDS

A. Deferral to Arbitration Award

Under *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002), the EMRB defers to a prior arbitration award only if: (1) the arbitration proceedings were fair and regular; (2) the parties agreed to be bound; (3) the decision was not clearly repugnant to the purposes and policies of the EMRA; (4) the contractual issue was factually parallel to the unfair labor practice issue; and (5) the arbitrator was

presented generally with the facts relevant to resolving the unfair labor practice. The party seeking deferral bears the burden of demonstrating that all five requirements are met. Failure of any one of the five City of Reno factors is sufficient to deny deferral.

B. Motion to Dismiss Standard

Under NAC 288.375(1), the Board may dismiss a complaint if no probable cause exists. Here, dismissal is not appropriate because the Complaint alleges sufficient facts to present a justiciable controversy and to invoke the Board's jurisdiction under NRS 288.270.

C. Statute of Limitations

NRS 288.110(4) provides a six-month statute of limitations for claims or complaints filed with the EMRB. The limitations period begins to run when the complainant receives unequivocal notice of a final adverse action and becomes aware that a prohibited practice may have occurred. Here, the Complaint was timely filed as to the August 2024 termination. Earlier investigative steps remain properly before the Board as factual background to the timely claims and as part of the sequence leading to termination and later concealment-related allegations.

D. EMRB Jurisdiction

The Board's authority is limited to matters arising under the Employee-Management Relations Act in NRS Chapter 288. The EMRB may not adjudicate criminal matters, common-law torts, or claims arising under statutes outside NRS Chapter 288, but it may consider such conduct as factual background for a timely unfair labor practice claim under NRS 288.270. So long as the relief requested falls within NRS 288.280 and the alleged misconduct is tethered to rights and obligations created by NRS Chapter 288, the claims lie within the Board's jurisdiction.

IV. ARGUMENT

A. Respondent's Procedural Arguments Fail

1. The Complaint Is Timely

Mr. Darling filed his Complaint on February 28, 2025, 182 days after his August 30, 2024 termination, well within NRS 288.110(4)'s six-month limitations period. The termination constitutes the operative adverse action triggering the limitations period.

Earlier investigative steps are properly before the Board as factual background to the timely claims and as part of the sequence leading to the termination and subsequent concealment-related allegations. To the extent Respondent attempts to isolate earlier events as independently time-barred, those events remain relevant to the Board's analysis of motive, context, and the overall course of conduct.

In September 2024, shortly after Mr. Darling filed his grievance, LVVWD retained retired Judge David Wall to conduct an independent external review of HR's handling of the investigation and termination. Judge Wall's written report was delivered to the District after the grievance was complete and months before arbitration, yet the District has refused to disclose it in the grievance, arbitration, or this proceeding.

2. The Statutory Claims Fall Within EMRB Jurisdiction

Respondent argues that certain conduct, including secret recording, defamation, and resource-misuse reports, falls outside EMRB jurisdiction. The Board cannot award criminal or tort damages, but the same conduct, namely covertly recording an employee, circulating false accusations, and retaliating for communications with elected officials, can constitute interference, discrimination, and retaliation under NRS 288.270(1)(a), (d), and (f). These facts are offered as part of the pattern underlying prohibited practices, not as independent tort claims. So long as the alleged misconduct is tied to EMRA-protected rights, jurisdiction exists.

B. The Five-Factor Deferral Test Is Not Satisfied

Complainant does not ask the Board to revisit or overturn the arbitration award. What remains are the statutory issues that were not addressed, and could not be fully addressed, within the arbitrator's narrow contractual authority. This case concerns

Respondent's conduct in investigating, assembling, and presenting the case against Mr. Darling, including the selective and misleading use of records and the concealment of evidence. Complainant seeks only prospective statutory relief within the Board's authority.

1. Factors One and Two Do Not Support Full Deferral Beyond the Contractual Just-Cause Issue

I acknowledge that the arbitration hearing on August 26 and 27, 2025 was transcribed, that both parties were represented by counsel, that witnesses were called and cross-examined, and that exhibits and post-hearing briefs were submitted. I also acknowledge that Article 6(G) of the Collective Bargaining Agreement ("CBA") states that the arbitrator's decision is final and binding upon the parties to the dispute.

Article 6(A) of the CBA limits arbitrable grievances to disputes involving the interpretation or application of the express terms of the Agreement, and Article 6(E) provides that the arbitrator may not modify, revise, detract from, or add to the Agreement. The parties therefore agreed to be bound only as to the contractual issue submitted: whether the District had just cause to terminate Mr. Darling under the CBA. They did not agree to arbitrate statutory unfair-practice claims under NRS 288.270 or the systemic remedies that only this Board can issue.

Accordingly, factors one and two of the City of Reno test may be satisfied only as to the contract-limited just-cause question. A procedurally regular arbitration on that narrow issue cannot extinguish separate statutory claims that were never submitted and were materially incomplete due to withheld evidence.

2. Factor Three: The Award Is Not Repugnant, But That Does Not Extinguish EMRB's Role

I do not contend that the Award is clearly repugnant to the purposes and policies of the EMRA within the meaning of *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002). The Award applied the CBA's just-cause provisions to the evidence presented and found that the District had contractual cause

to terminate, and I acknowledge that I have not sought judicial review of that outcome. But a non-repugnant just-cause award does not strip the Board of jurisdiction over separate statutory issues that were never decided in the arbitration and cannot be remedied under the CBA. The limits of the arbitrator's authority confirm this distinction. As reflected in the Award, which quotes Article 6 of the CBA, the arbitrator's role is confined to interpreting and applying the Agreement and resolving the specific issue submitted. (Ex. S, Award at 23.) The Agreement expressly provides that the arbitrator "shall not have authority... to decide any issue not submitted" and may not "add to any of the terms or provisions of this Agreement." Thus, the arbitration proceeding was limited to determining whether there was contractual just cause for termination and did not extend to adjudicating statutory claims under NRS Chapter 288.

Arbitrator Halter wrote that the secretly recorded call "played no role in Darling's discharge" and "is not considered in the outcome of this arbitration," and that "bad-faith overtones" were "assessed" but "not determinative of the outcome in this proceeding." By his own words, the arbitrator did not decide whether the recording, the investigation, or the District's litigation conduct complied with NRS 288.270. He decided only that those issues did not alter his conclusion on contractual just cause, not whether that conduct complied with NRS 288.270 or constituted prohibited labor practices.

Respondent's footnote 7 selectively quotes the Award to suggest that every aspect of the investigation, including who initiated it, why GPS data were accessed, and whether HR had a duty to review GPS, has already been conclusively adjudicated.

Respondent's own narrative identifies the May 1, 2024 crying-employee incident as the "ignition point" for the investigation⁴. (Ex. H.) But that allegation was never actually pursued as an HR complaint against Mr. Darling. HR did not investigate it as a disciplinary charge, did not present it to Mr. Darling for response, and did not rely on it as a sustained basis for discipline. Mr. Darling was never told about it and did not even learn of it until months later. Instead, the incident appears to have been used as a pretextual entry point to access GPS data and launch a broader search for other alleged

⁴ from Buck Osborne that was not received by Justin until November 4 months after termination and was supposedly the issue that ignited the entire investigation

misconduct. Respondent cannot have it both ways. If the May 1 incident was serious enough to initiate an investigation of this magnitude, it was serious enough to promptly raise with Mr. Darling. If it was not serious enough to raise with him, then its later use as the supposed origin of the investigation is difficult to credit. The Award accepted one version of that origin story for purposes of contractual just cause, but it did not and could not resolve whether that version was pretextual or whether the investigation was initiated for retaliatory or discriminatory reasons within the meaning of NRS 288.270.

Similarly, even if it were permissible in the abstract to review GPS data when a concern is raised, AP24 of the District's own Administrative Policies require that such access be requested through Human Resources and documented, not unilaterally initiated by a director who then backfills justification after the fact. (Ex. I.) In this case, Director Osborne went directly into the GeoTab system on his own, without trying to contact Justin and without first going through HR as required, and only later involved HR after he had already formed and documented conclusions about alleged misconduct. If the alleged May 1, 2024 "crying employee" incident were in fact the genuine reason for concern, one would expect Director Osborne to report that concern to Human Resources and address it through the ordinary personnel process. Instead, he did not first consult HR, did not contact Mr. Darling, did not call or text him, and did not go to his office to see whether he was present on campus. Rather, he went directly into GPS data and began constructing a broader misconduct narrative. That sequence undermines the claim that the incident was the true origin of the investigation and supports an inference that it was used as a pretextual justification for a search that had already been decided upon.

The unfair-practice issues here concern how GPS and Workday data were selected, interpreted, and used, including the disregard of badge records, longstanding field practices, and an internal P-card audit. Whether the District's changing origin stories, unilateral GPS access, selective use of Workday data, and evolving investigation file constitute retaliation, interference, or discrimination under NRS 288.270 is a separate statutory question that the arbitrator did not decide and that only this Board can resolve.

3. Factors Four and Five: The Contractual Issue Is Not Factually Parallel to the Unfair-Practice Issues, and the Arbitrator Did Not Have All the Relevant Facts

The arbitrated issue was narrow: “Did the Employer have just cause to terminate Justin Darling, and if not, what should be the appropriate remedy?” (Ex. S, Award at 6.) The issues before this Board are broader and different. They concern whether the District engaged in prohibited practices under NRS 288.270 by conducting a retaliatory, biased, and bad-faith investigation; denying and undermining representation; selectively and misleadingly using its own records; misrepresenting material facts; and concealing an independent HR-conduct investigation.

The arbitration record itself demonstrates the absence of full factual parallelism and full presentation of relevant facts. The arbitrator found that the Association established a de facto vehicle-use practice under which personal errands were tolerated “as long as the work gets done,” and that the District claimed otherwise while refusing to disclose the documents on which it relied. (Ex. S, Award at 26.) The Award therefore reflects both inconsistent enforcement and the withholding of underlying materials. Likewise, testimony reflected that HR reviewed additional GeoTab data and concluded there were no policy violations, yet the District never disclosed those records.

These undisclosed comparator and enforcement materials bear directly on selective enforcement, arbitrariness, and pretext, which are central to the prohibited-practice claims before the Board and were not fully presented or resolved in arbitration.

Complainant’s later public-records requests further confirm that key materials concerning Mr. Darling’s own investigation and discipline were not fully disclosed. Mr. Darling sought the underlying factual and administrative records relating to his own discipline, grievance, and the Judge Wall HR review so he could understand and respond to the District’s actions against him, not merely attorney strategy. (Ex. D.) The District nevertheless withheld or claimed privilege over broad categories of internal investigative and decision-forming materials. This further underscores that the arbitration did not proceed on a full or transparent factual record and that deferral would be improper.

In short, the arbitration did not involve the same issues, did not include all relevant facts, and did not resolve the statutory questions presented here. The Award reflects a contract-limited determination based on a record that excluded key evidence relating to enforcement practices, comparator treatment, and the conduct of the investigation. (Ex. S, Award at 23, 26.) Under these circumstances, deferral would improperly extend the arbitration beyond its scope and shield unresolved statutory violations from Board review.

Moreover, the arbitrator was not presented generally with the facts relevant to resolving the unfair labor practices. The District's legal department retained retired Judge David T. Wall on September 12, 2024 to review the propriety of the disciplinary proceedings conducted by HR, but his report was not delivered until after February 2025 and was never provided in the grievance process or at arbitration. The District now claims work-product protection over Judge Wall's engagement, communications, and report and has refused to produce the underlying engagement letter. Likewise, Union President Rodney Carter did not testify in arbitration, and his sworn declaration was never presented to the arbitrator or addressed in the Award⁵. (Ex. J.)

The evolving investigation file underscores the same problem. Shortly after termination, the District produced a file consisting of approximately 76 pages described as the complete HR investigation, and that version reflected what was relied on at the time of discharge. (Ex. K.) As the grievance progressed, the file expanded with new summaries, notes, and characterizations that had not existed, or had not been disclosed, at the time of termination. Because there was no meaningful discovery in the grievance and arbitration processes⁶ (Ex. L.) Mr. Darling had no ability to compel a

⁵ declaration Rodney Carter, President water supervisors Association of Nevada dated April 7, 2025. Carter state said he was not informed of any investigation or disciplinary action concerning Mr. Darling until May 29, 2024 more than two weeks after Mr. Darling had already been interviewed and escorted off District property without notice to the union that he was instructed by management to direct Mr. Darling not to speak with district personnel to communicate only three union representation the district state of basis for discipline were repeatedly narrowed, and then asserted despite prior resolution, and that he was told he could not initiate a grievance because the district characterized the action as administrative leave with pay and obstructing access to contractual and representational protections. (Ex. J.)

⁶ During the grievance process, counsel for Mr. Darling sought access to relevant documents and materials, but the District took the position that there is no formal discovery process in grievance or arbitration proceedings. As a result, Mr. Darling was unable to compel production of records underlying

complete and stable investigative record. Respondent cannot rely on arbitration to bar Board review while simultaneously limiting access to the very materials underlying its investigation.

The handling of time-reporting evidence further illustrates why the contractual and statutory issues are not factually parallel. The District treated Workday as though it were a literal time clock and used isolated login activity to suggest that Mr. Darling was not working on multiple days, but Workday does not track location, field activity, or minute-by-minute work for a salaried field supervisor. Workday is not a time clock for any employee and never has been. Medeco badge records and other evidence showed Mr. Darling badging into and out of District facilities and being present for entire days.⁷(Ex. M.)

The District's own post-hearing briefing illustrates the problem. Respondent asserted that Mr. Darling falsely claimed to have attended a "Supervisor Critical Conversations" meeting on March 5, 2024, and represented that training logs confirmed no such class occurred that day. (Ex. G-B, at 29.) Based on that assertion, the District used the March 5 entry to challenge Mr. Darling's credibility. However, training logs that were obtained after arbitration and the Medeco badge data, confirm that Mr. Darling was in fact on campus and attending a training course that day, specifically a Supervisor Compliance Refresher. (Exs. M, N.) The discrepancy was not whether Mr. Darling attended training, but that he misnamed the course. Respondent's failure to disclose the underlying training records while affirmatively representing that no class occurred demonstrates selective use of evidence and an incomplete factual record.

In short, factors four and five of the City of Reno test are not satisfied here. The unfair-practice issues Mr. Darling raises are not coextensive with the contract-limited

the District's allegations or investigation. This limitation further supports that the arbitration did not proceed on a complete factual record.(Ex. L.)

⁷ Metco badge swipe records on March 5 respondent claimed that Mr. Darling worked only a limited number of hours however, bad records reflect that he clocked in at approximately 4:49 AM and remained active on district property throughout the day, including movement between buildings and attendance at a scheduled class the records further reflect a work day extending to approximately 2:54 PM (over 10 hours)(Ex. M.)

just-cause question, and key facts and documents bearing directly on retaliation, interference, discrimination, and information-withholding were never before the arbitrator. Deferral under these circumstances would extend City of Reno beyond its terms and would insulate from EMRB review unfair-practice claims that were not fully presented or resolved in arbitration.

a. "Personal Reasons" Discrimination and Retaliatory Motive Under NRS 288.270(1)(f)

NRS 288.270(1)(f) prohibits discrimination based on "political or personal reasons or affiliations," which the EMRB has interpreted to mean discrimination based on non-merit-or-fitness factors. As explained in the EMRB's own materials summarizing Board precedent, "personal reasons" include the dislike of or bias against an individual based on characteristics, beliefs, affiliations, or activities that do not affect the employee's merit or fitness for the job. See Bruce Snyder, EMRB Discrimination Paper, Nevada Employee-Management Relations Board (explaining that "personal reasons" refers to non-merit-or-fitness factors). Under this standard, an employer violates the statute where adverse action is motivated not by job performance or legitimate operational concerns, but by bias, selective enforcement, or personal animus unrelated to the employee's actual performance.

Here, Mr. Darling alleges that LVVWD officials, particularly Director of Operations Buck Osborne, targeted him not because of any legitimate performance-based concern, but because of his age, his knowledge of and willingness to report Osborne's alleged misuse of District crews, resources, and vehicles at Lake Mead, and his communications with Commissioner Jim Gibson about those issues and broader concerns regarding HR's conduct. Those are classic non-merit-or-fitness activities. They say nothing negative about Mr. Darling's job competence as a Mechanical Supervisor, but they concerned conduct unrelated to Mr. Darling's merit or fitness for the job and threatened the interests of a newly promoted Director with personal and professional reasons to avoid scrutiny of prior conduct.

Mr. Darling did not learn until November 4, 2024, months after his August 30 termination, that Director Osborne had personally instigated the investigation by claiming he heard an unidentified employee crying and then unilaterally accessing GPS data without first going through Human Resources as required by District policy. (Ex. I.) Only after termination did it become clear that the “crying employee” story and covert GPS review were not neutral HR actions, but the beginning of a targeted campaign by a newly promoted Director who knew Mr. Darling was aware of his prior misuse of District resources at the lake. The undisputed evidence that Director Osborne secretly recorded Mr. Darling’s June 29, 2024 phone call further supports that Osborne was not a neutral observer but actively building a case. Mr. Darling learned of the recording only because Judge David Wall disclosed it during his independent HR review. Until that interview in late 2024, neither LVVWD nor its counsel had notified Mr. Darling, his union, or his arbitration counsel that the recording existed, and it was omitted from the investigative file and grievance record.

The sequence of events also supports an inference of personal-reasons discrimination. Within approximately one month of Osborne’s promotion from Lake Mead manager to Director of Operations at LVVWD, three subordinates, Mr. Darling, Tyler Gibson, and Jim Doubek, were suddenly placed under investigation, with shifting explanations and GPS-based time-theft theories. Immediately after Mr. Darling’s termination, Osborne brought in his long-time Lake Mead subordinate from SNWA, Matt Riggio (significantly younger), to “temporarily” fill Mr. Darling’s Mechanical Supervisor role. When age-discrimination concerns were raised in the EEOC charge, the District quietly reassigned Riggio back to the lake without announcement. Then, after the arbitration award was issued and the grievance denied, the District posted Mr. Darling’s position, received fourteen qualified applicants, and awarded the job permanently to Riggio.⁸(Ex. O.)

⁸ Mr. Darling is aware of only one instance in which a replacement or interim assignment was formally communicated to the crew: the introduction of Matt Riggio. No comparable announcement was made for any other individual purportedly covering Mr. Darling’s duties, including when Riggio was later reassigned and others were utilized. This distinction is relevant to the District’s shifting descriptions of how Mr. Darling’s position was filled.

Meanwhile, in its EEOC position statement, LVVWD denied hiring any younger replacement and claimed that Mr. Darling's duties were merely covered temporarily by Operations supervisors.⁹(Ex. P.) In reality, Osborne first brought Riggio in from the lake, across union lines and from SNWA, then quietly moved him back when age discrimination was raised, and then, after arbitration, gave him the job permanently. These inconsistent explanations and the succession pattern, in which a supervisor who knew about Osborne's prior conduct was removed and replaced with Osborne's trusted ally, support an inference of pretext and personal-reasons discrimination.

4. Specific Unfair-Practice Issues Requiring EMRB Determination

a. Ambush Interview and Denial of Representation

On May 14 and 15, 2024, HR Manager Laura Ornelas sent Mr. Darling an email stating that she wished to meet to "discuss some concerns, including certifications among other things," and advising only that he could bring a WSAN representative "if you choose to." The email did not disclose that the meeting would involve severe accusations of misconduct. Believing the meeting was principally about certifications, Mr. Darling attended without union counsel. Once there, Ornelas confronted him for the first time with allegations of a kickback scheme, P-card abuse, vehicle misuse, and overtime concerns, and immediately placed him on paid administrative leave for approximately 15 weeks.

Whether that conduct constitutes retaliation, coercive interference with representational rights, or denial of rights under NRS 288.270 was not and could not be decided as part of the arbitrator's narrow just-cause determination.

b. Cosmetic "Cure" of Bias and Continued Reliance on Tainted Findings

⁹ In its EEOC position statement, the District asserted that "Mr. Darling's previous position has remained vacant since his separation from employment" and that his duties were covered by other supervisors. However, the record reflects that Matt Riggio, a significantly younger supervisor from SNWA and outside Mr. Darling's bargaining unit, was brought in to perform the functions of the Mechanical Supervisor role and was the only individual formally introduced to the crew in that capacity. This distinction is relevant to evaluating the accuracy of the District's description of how the position was filled.(Ex. P.)

After concerns were raised about Ornelas' bias, the District told the arbitrator that any defect was cured when Director of HR Mary Madden took over the investigation. In reality, Ornelas conducted both the May 15, 2024 ambush meeting and the pre-termination meeting, and she did not step aside until after those critical decisions had already been made. Madden did not reopen the investigation or independently test Ornelas' assumptions.

At Mr. Darling's Step 1 grievance meeting, months after she had already authorized his termination, Mr. Darling described his timekeeping process and the Avantis-to-Maximo cleanup and parts-running work Tyler Gibson had been performing, and Madden responded that this was the first she was hearing about Avantis, even though it had been referenced multiple times in meetings and correspondence throughout the investigation and was a core concept in the investigation since the May 15 meeting. That response shows she did not independently correct Ornelas' assumptions, but instead adopted the prior conclusions while changing the name on the file.(Ex. Q.)

Whether continuing to rely on an investigation shaped by an initially biased HR manager constitutes retaliation, discrimination for political or personal reasons, or bad-faith investigation under NRS 288.270(1)(a), (d), and (f) is a statutory question that only this Board can resolve.

c. Arbitrary and Capricious Use of Workday and Time-Reporting Methods

Article 3(C)(5) of the CBA provides that, while the District may determine the methods of reporting and recording time worked, that authority may not be exercised arbitrarily or capriciously. In Mr. Darling's case, the District treated Workday, an administrative HR system, as though it were a literal time clock and relied on isolated login activity to claim that he did not work on multiple days. That approach ignored the realities of a salaried field-supervisor role, as well as badge data and other records showing that Mr. Darling was on District property and performing work for entire workdays.

The District's internal spreadsheet also labeled entire ten-hour shifts as "misappropriated time" on dates when badge records indicate Mr. Darling was on

District property.¹⁰ Whether the District's selective reliance on Workday, disregard of contrary records, and use of that spreadsheet violated Article 3(C)(5) and supports a prohibited-practice claim under NRS 288.270 are issues requiring Board determination.

d. Selective Discipline and Inconsistent Treatment

The District's treatment of the three employees, Tyler Gibson, David Thompson, and Justin Darling, connected to the HR-conduct review further supports an inference of selective enforcement and pretext. Of the three employees referenced in connection with that review, two were returned to work long before the investigation, while Mr. Darling alone remained terminated and in the grievance process. The record also reflects inconsistent handling of return-to-work conditions: one employee was required to sign an agreement before returning, while Tyler Gibson was returned to work without adopting the District's characterization that Mr. Darling had instructed him to be paid for "just being available." Mr. Darling, by contrast, was not returned to work at all.

These divergent outcomes, together with the District's shifting descriptions of Tyler Gibson's statements and its differing treatment of similarly situated employees, support an inference of selective enforcement and pretext.

This case is not an attempt to relitigate arbitration, nor does Complainant seek to disturb the arbitrator's just-cause determination under the CBA. Rather, this case concerns what the arbitration did not and could not decide: whether the District's conduct in initiating, shaping, and advancing the investigation, including its use of internal systems, its handling of representation, its shifting factual narratives, and its concealment of material information, constituted prohibited practices under NRS 288.270. The arbitration resolved a narrow contractual question based on a limited and incomplete record. The statutory issues presented here are broader, were not fully before the arbitrator, and fall squarely within the Board's exclusive jurisdiction. Under these circumstances, deferral would improperly extend the scope of the arbitration award

¹⁰ The District's internal spreadsheet labeled full ten-hour shifts, including March 5, March 7, April 9, and April 24, 2024, as "misappropriated time" based on Workday activity alone. However, badge access records and other contemporaneous evidence show that Mr. Darling was physically present on District property during those same days. The failure to reconcile these records reflects a selective use of available data in characterizing Mr. Darling's time

beyond its contractual limits and would insulate from review conduct that the EMRA was designed to address.

V. REQUESTED REMEDIES

If the Board finds that LVVWD committed the unfair labor practices alleged in this Complaint, Complainant does not seek reinstatement or back pay. Instead, Complainant respectfully requests: (1) correction, removal, or expungement of references to the challenged charges, investigation findings, and termination from Mr. Darling's personnel and investigative records, to the extent appropriate under the Board's authority; (2) an order requiring LVVWD to cease and desist from coercive and biased investigation tactics, ambush investigatory interviews, concealment of material HR reviews and post-termination evidence, and post-termination legal threats aimed at deterring employees from communicating with LVVWD's governing officials; and (3) such systemic remedies as the Board deems appropriate, including policy revisions, training, and appropriate notice-posting.

VI. CONCLUSION

For all the reasons set forth above, Complainant respectfully requests that the Board deny Respondent's Motion to Defer to the Arbitrator's Award and Dismiss the Complaint, reject Respondent's statute-of-limitations and jurisdictional arguments, and set this matter for a full evidentiary hearing with appropriate discovery. Only through such a hearing, followed by targeted systemic and record-correction remedies rather than reinstatement or back pay, can the Board fully address the statutory unfair practice issues that were not resolved in the limited just-cause arbitration.

Respondent's request for fees and costs should also be denied. This Opposition is brought in good faith to address substantial statutory violations that were neither fully litigated nor capable of resolution within the confines of arbitration. There is no basis to characterize these claims as frivolous or sanctionable.

This matter is not being pursued for monetary gain or to relitigate the arbitration award. Mr. Darling accepts that outcome. However, the consequences of the District's actions extend far beyond the arbitration process. In a small and interconnected utilities industry, the narrative advanced by the District has significantly damaged Mr. Darling's professional reputation and future employment opportunities.

For more than fifteen years, Mr. Darling maintained a strong and well-regarded career with the District, earning the respect of his peers and consistently performing at a high level. The record reflects that he was a dedicated and capable employee whose work was valued. The sudden and unsupported shift in that narrative has had a profound and lasting impact.

Mr. Darling brings this complaint to seek accountability for conduct that was never fully examined and to ensure that the processes used here are not permitted to stand unchecked. This case is about protecting not only his name, but also the integrity of the workplace for the employees he worked alongside for over fifteen years. It is, at its core, a matter of principle, fairness, and truth.

Dated this 20th day of March, 2026.

Respectfully submitted,

/s/ JUSTIN DARLING

Pro Se Complainant

1610 Rocking Horse Drive

Henderson, NV 89002

Jwdwj713@hotmail.com

702-587-2094

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on this 20th day of March, 2026, I electronically filed and served the following documents with the Nevada Employee-Management Relations Board and by electronic mail on counsel for Respondent:

1. Complainant Justin Darling's Opposition to Respondent's Motion to Defer to Arbitrator's Award and Dismiss the Complaint
2. Exhibit Index
3. Exhibits to Opposition
4. Supplemental Exhibit PDF(s), including oversized exhibits filed separately
Service was made electronically on:

Mark J. Ricciardi, Esq.

Fisher & Phillips LLP

mricciardi@fisherphillips.com

Alison L. Kheel, Esq.

Fisher & Phillips LLP

akheel@fisherphillips.com

DATED this 20th day of March, 2026.

/s/ Justin Darling

Justin Darling, Pro Se

Exhibit Divider Packet

Case No. 2025-005

Justin Darling v. Las Vegas Valley Water District

This PDF provides a clean cover page for each exhibit so the combined exhibit packet is easier to navigate when printed or viewed electronically. Insert each divider immediately before the corresponding exhibit document.

Exhibit Index

Exhibit	Description
A	Phone Records Reflecting Incoming Call from Commissioner Jim Gibson August 7, 2024
B	February 3, 2025 Email from Judge David T. Wall Confirming Scope of HR Review
C	Text Message Confirming December 10, 2024 Interview with Judge Wall
D	LVVWD Public Records Privilege Logs Judge Wall engagement and related documents
E	September 3, 2024 Email from Laura Bautista to Commissioners Gibson and Kirkpatrick Redacted
F	September 6, 2024 Email from Dora Lane (Holland & Hart) Responding to Complaint
G-A	Complainant Justin Darling's Post-Hearing Arbitration Brief
G-B	Respondent LVVWD's Post-Hearing Arbitration Brief
H	Buck Osborne Statement Regarding May 1, 2024 Incident "Ignition point" narrative
I	LVVWD Administrative Policy AP24 GPS access requirements

J	Declaration of Rodney Carter Union President
K	Initial HR Investigative File Produced Shortly After Termination Approx. 76 pages
L	Email Correspondence Between Counsel Regarding Discovery Limitations in Arbitration
M	Medeco Badge Swipe Records for March 5, 2024
N	Training Log Confirming Attendance at Supervisor Compliance Refresher March 5, 2024
O	Records Showing Placement of Matt Riggio in Complainant's Position Temporary and permanent placement
P	LVVWD EEOC Position Statement Mary Madden
Q	Step 1 Grievance Notes Reflecting Mary Madden Statement Regarding Avantis
R	LVVWD Spreadsheet Alleging "Misappropriated Time" Contradicted by badge records and other evidence

Prepared for filing convenience on March 20, 2026.

S

Arbitration Award – Arbitrator Patrick Haller
December 11, 2025

Prepared for filing convenience on March 20, 2026.

Exhibit A

Phone Records Reflecting Incoming Call from Commissioner Jim Gibson

August 7, 2024

Insert the corresponding exhibit immediately after this divider page.

COUNTY COMMISSIONER

Jim Gibson

 message

 call

 FaceTime

 mail

 pay

Today

1:50 PM Incoming Call 

17 minutes

Calls with a checkmark have been
verified by the carrier.

Andrew Gibson

Wednesday • Aug 7, 2024 • 2:26 PM

Adjust

 IMG_0493

Screenshot

No text information



Exhibit B

February 3, 2025 Email from Judge David T. Wall Confirming Scope of HR Review

Mr. [REDACTED],

As requested, your inquiry will be addressed to the District Court for the County of Orange, California. Your inquiry regarding the alleged conduct of the subject is addressed to the District Court for the County of Orange, California. The District Court for the County of Orange, California, is the court of competent jurisdiction for the subject matter of your inquiry. The District Court for the County of Orange, California, is the court of competent jurisdiction for the subject matter of your inquiry. The District Court for the County of Orange, California, is the court of competent jurisdiction for the subject matter of your inquiry.

Insert the corresponding exhibit immediately after this divider page.

Las Vegas Valley Water District Review



Inbox



David Wall Feb 9

to me



Ms. Bautista:

Thank you for your inquiry.

I was hired by the legal department at the Water District to conduct a review of certain actions undertaken by the Human Resources department at LVVWD. I have reviewed many documents and interviewed a number of people both within and without the District. I interviewed Mr. Darling and have had at least two meetings w/ Matthew Durham, his attorney.

My report, once finalized, will be delivered to General Counsel for the Water District. I think that your inquiries regarding what might happen after the report is delivered are best addressed to the District. Additionally, with regard to the information contained in your postscript, I have not been authorized to undertake any investigation regarding issues impacting water quality and safety.

--



Hon. David T. Wall, Ret.

Mediator / Arbitrator / Special Master

Exhibit C

Text Message Confirming December 10, 2024 Interview with Judge Wall

Insert the corresponding exhibit immediately after this divider page.



iMessage

10:46

< 531

3 People

Thank you.

Matt Durham

Judge Wall will check his calendar and see if Tuesday, December 10 will work for him to do all the interviews on that day.

Richard McCann

Make sure it's convenient for you, Justin and Tyler as well. I know he wants to do them all on the same day, and I don't want my personal situation to interfere.

Matt Durham

It works for me and for Tyler. Justin, does Dec. 10 work for you?

Justin

Yes sir

Matt Durham

We're all good, Rick. Assuming that works for Judge Wall too, we're happy to accommodate.

Justin

Great

Richard McCann

Okay. Thank you. Let's see what Wall has to say.

iMessage

Exhibit D

LVVWD Public Records Privilege Logs

Judge Wall engagement and related documents

Insert the corresponding exhibit immediately after this divider page.

Doc ID	Document Type	Author(s)/ Recipient(s)	Subject	Description	Privilege Asserted	Basis for Privilege
ORL-EM-00000037, Redacted	Email Thread	Jim Doubek ("Doubek"); Laura Ornelas ("Ornelas"); Frank Gibase ("Gibase"); Steven Meyer ("Meyer")	Justin Darling- Pierem Letter	Email thread discussing specific details of employee investigation. The exchange includes details pertaining to the Justin Darling ("Darling") investigation ("Investigation") and the contents to be included in correspondence to Justin Darling in anticipation of litigation.	Attorney Work Product Doctrine and Deliberative Process Privilege	This email thread was generated because of anticipated litigation with the Darling and would not exist otherwise (see Wynn Resorts, LTD. vs. DISL, CL). The email thread reveals confidential thoughts of HR staff pertaining to the investigation. The investigation and discussed correspondence were intended to provide a legal framework to support decisions relating to the investigation and in anticipation of litigation. The substantive content of the email thread focuses on matters specifically relevant to the investigation rather than routine, day-to- day business operations of LVWD.
						These emails reveal preliminary negotiation strategy, internal agency recommendations, and deliberative content reflecting candid discussion on unresolved matters. Premature disclosure would significantly impede ongoing legal disputes and negotiations by exposing strategy and tentative policy positions, chilling candid

					discussions, and adversely impacting government decision-making processes. Redaction protects internal deliberative processes and facilitates effective negotiation outcomes.
CUA,ME,000000102,0_Redacted	Internal draft of correspondence recommending termination	Ornelas, Meyer, Cibase; Brenda Perez ("Perez"); John Molchom ("Molchom")	Confidential draft correspondence recommending separation of employment	Internal, working draft of correspondence to Darling recommending separation of employment. The working draft includes edits made by HR staff, including edits included due to the imminent threat of litigation from Darling as a result of the investigation and proposed separation.	Attorney Work Product and Deliberative Process Privilege This working draft was being reviewed and edited by multiple representatives of HR. Certain edits were generated because of anticipated litigation with the Darling, and would not exist otherwise (see Wynn Resorts, LTD. vs. Dist. Ct.). The edits incorporated in the correspondence were included by HR staff and reveal thoughts relating to the investigation, which was coordinated with legal counsel for LVWD.
					This draft reveals preliminary negotiation strategy, internal recommendations, and deliberative content reflecting candid discussion on unresolved matters. Premature disclosure would significantly impede ongoing legal disputes and negotiations by exposing strategy and tentative policy positions, chilling candid discussions, and adversely impacting government decision-making processes.

CUA, ME, 00000522, 0, Redacted	Internal draft of correspondence recommending termination	Ornelas, Meyer, Gbaise, Brenda Perez ("Perez"); John Molchom ("Molchom")	Confidential draft correspondence to Justin Darling recommending separation of employment	Internal, working draft of correspondence to Darling, recommending separation of employment. The working draft includes edits made by HR staff, including edits included due to the imminent threat of litigation from Darling as a result of the investigation and proposed separation.	Attorney Work Product and Deliberative Process Privilege	Redaction protects internal deliberative processes and facilitates effective negotiation outcomes. This working draft was being reviewed and edited by multiple representatives of HR. Certain edits were generated because of anticipated litigation with the Darling, and would not exist otherwise (See Wynn Resorts, LTD, vs. Dist. Ct.). The edits incorporated in the correspondence were included by HR staff and reveal thoughts relating to the investigation, which was coordinated with legal counsel for LVVWD.
						This draft reveals preliminary negotiation strategy, internal recommendations, and deliberative content reflecting candid discussion on unresolved matters. Premature disclosure would significantly impede ongoing legal disputes and negotiations by exposing strategy and tentative policy positions, chilling candid discussions, and adversely impacting government decision-making processes. Redaction protects internal deliberative processes and

							facilitates effective negotiation outcomes. This working draft was being reviewed and edited by multiple representatives of HR. Certain edits were generated because of anticipated litigation with the Darling, and would not exist otherwise (see Wynn Resorts, LTD. vs. Dist. Ct.). The edits incorporated in the correspondence were included by HR staff and reveal thoughts relating to the investigation, which was coordinated with legal counsel for LVWWD.
GIF.EM.00000357.0_Redacted	Internal draft of correspondence recommending termination	Ornelas; Meyer; Gibase; Brenda	Confidential draft correspondence to Justin Darling recommending separation of employment	Internal, working draft of correspondence to Darling recommending separation of employment. The working draft includes edits made by HR staff, including edits included due to the imminent threat of litigation from Darling as a result of the investigation and proposed separation.	Attorney Work Product and Deliberative Process Privilege		This draft reveals preliminary negotiation strategy, internal recommendations, and deliberative content reflecting candid discussion on unresolved matters. Premature disclosure would significantly impede ongoing legal disputes and negotiations by exposing strategy and tentative policy positions, chilling candid discussions, and adversely impacting government decision-making processes. Redaction protects internal deliberative processes and
GIF.EM.00000357_Redacted	Email Thread	Ornelas; Meyer; Gibase; Brenda	Justin Darling- Preterm Letter	Email thread discussing specific details of employee	Attorney Work Product and		This email thread was generated because of anticipated litigation with

					Investigation. The exchange includes details pertaining to the Justin Darling ("Darling") investigation ("Investigation") and the contents to be included in correspondence to Justin Darling in anticipation of litigation.	Deliberative Process Privilege	the Darling and would not exist otherwise (see Wynn Resorts, LTD vs. Dist. Ct.). The email thread reveals confidential thoughts of HR staff pertaining to the investigation. The investigation and discussed correspondence were intended to provide a legal framework to support decisions relating to the investigation and in anticipation of litigation. The substantive content of the email thread focuses on matters specifically relevant to the investigation rather than routine, day-to-day business operations of CVWD.
							These emails reveal preliminary negotiation strategy, internal agency recommendations, and deliberative content reflecting candid discussion on unresolved matters. Premature disclosure would significantly impede ongoing legal disputes and negotiations by exposing strategy and tentative policy positions, chilling candid discussions, and adversely impacting government decision-making processes. Redaction protects internal deliberative processes and

GIF-EM-00000358.0_Redacted	Internal draft of correspondence to discuss proposed separation of employment	Gibase; Ornelas; Meyer	Confidential draft correspondence to Justin Darling to discuss proposed separation of employment	Internal, working draft of correspondence to Darling regarding proposed separation of employment. The working draft includes edits made by HR staff, including edits included due to the imminent threat of litigation from Darling as a result of the investigation and proposed separation.	Attorney Work Product and Deliberative Process Privilege	facilitates effective negotiation outcomes. This working draft was being reviewed and edited by multiple representatives of HR. Certain edits were generated because of anticipated litigation with the Darling, and would not exist otherwise (see Wynn Resorts, LTD. vs. Dist. Ct.). The edits incorporated in the correspondence were included by HR staff and reveal thoughts relating to the investigation, which was coordinated with legal counsel for LVWD.
GIF-EM-00000358_Redacted	Email Thread	Gibase; Ornelas; Meyer	Justin Darling-Prichard Letter	Email thread discussing specific details of employee	Attorney Work Product and	This draft reveals preliminary negotiation strategy, internal recommendations, and deliberative content reflecting candid discussion on unresolved matters. Premature disclosure would significantly impede ongoing legal disputes and negotiations by exposing strategy and tentative policy positions, chilling candid discussions, and adversely impacting government decision-making processes. Redaction protects internal deliberative processes and
GIF-EM-00000358_Redacted	Email Thread	Gibase; Ornelas; Meyer	Justin Darling-Prichard Letter	Email thread discussing specific details of employee	Attorney Work Product and	This email thread was generated because of anticipated litigation with

					Investigation. The exchange includes details pertaining to the Justin Darling ("Darling") investigation ("Investigation") and the contents to be included in correspondence to Justin Darling in anticipation of litigation.	Deliberative Process Privilege	the Darling and would not exist otherwise (see Wynn Resorts, LTD. vs. Dist. Ct.). The email thread reveals confidential thoughts of HR staff pertaining to the investigation. The investigation and discussed correspondence were intended to provide a legal framework to support decisions relating to the investigation and in anticipation of litigation. The substantive content of the email thread focuses on matters specifically relevant to the investigation rather than routine, day-to-day business operations of LVWD.
							These emails reveal preliminary negotiation strategy, internal agency recommendations, and deliberative content reflecting candid discussion on unresolved matters. Premature disclosure would significantly impede ongoing legal disputes and negotiations by exposing strategy and tentative policy positions, chilling candid discussions, and adversely impacting government decision-making processes. Redaction protects internal deliberative processes and

MES-EM.00000349_Withheld	Investigation Spreadsheet	Investigation Spreadsheet	Internal working draft of spreadsheet maintained by HR to organize evidence and facts relating to Darling investigation created due to the imminent threat of litigation from Darling as a result of the investigation and proposed separation.	Attorney Work Product	Facilitates effective negotiation outcomes. This spreadsheet was generated because of anticipated litigation with the Darling and would not exist otherwise (see Wynn Resorts, LTD. vs. Dist. Ct.). The spreadsheet reveals confidential thoughts of HR staff pertaining to the investigation. The spreadsheet was intended to provide a legal framework to support decisions relating to the investigation and in anticipation of litigation. The substantive content of the email thread focuses on matters specifically relevant to the investigation rather than routine, day-to-day business operations of LVWWD.
MES-EM.00000349.0_Redacted	Internal draft of correspondence to discuss proposed separation of employment	Doublet, Meyer, Gibase; Justin Darling- Preterm Letter	Email thread discussing specific details of employee investigation. The exchange includes details pertaining to the Justin Darling ("Darling") investigation ("Investigation") and the contents to be included in correspondence to	Attorney Work Product and Deliberative Process Privilege	This email thread was generated because of anticipated litigation with the Darling and would not exist otherwise (see Wynn Resorts, LTD. vs. Dist. Ct.). The email thread reveals confidential thoughts of HR staff pertaining to the investigation. The investigation and discussed correspondence were intended to provide a legal

				Justin Darling in anticipation of litigation.		framework to support decisions relating to the investigation and in anticipation of litigation. The substantive content of the email thread focuses on matters specifically relevant to the investigation rather than routine, day-to-day business operations of LVVWD.
						These emails reveal preliminary negotiation strategy, internal agency recommendations, and deliberative content reflecting candid discussion on unresolved matters. Premature disclosure would significantly impede ongoing legal disputes and negotiations by exposing strategy and tentative policy positions, chilling candid discussions, and adversely impacting government decision-making processes. Redaction protects internal deliberative processes and facilitates effective negotiation outcomes.
MES-EM-000003249, Redacted	Email Thread	Doubek; Meyer; Gibase;	Justin Darling's work issues	Email thread discussing specific details of employee investigation. The exchange includes details pertaining to the Justin Darling ("Darling")	Attorney Work Product and Deliberative Process Privilege	This email thread was generated because of anticipated litigation with the Darling and would not exist otherwise (see Wynn Resorts, LTD. vs. Dist. Ct.). The email thread reveals confidential thoughts of HR

					Investigation ("Investigation") and the contents to be included in correspondence to Justin Darling in anticipation of litigation.	staff pertaining to the investigation. The investigation and discussed correspondence were intended to provide a legal framework to support decisions relating to the investigation and in anticipation of litigation. The substantive content of the email thread focuses on matters specifically relevant to the investigation rather than routine, day-to-day business operations of LVWD. These emails reveal preliminary negotiation strategy, internal agency recommendations, and deliberative content reflecting candid discussion on unresolved matters. Premature disclosure would significantly impede ongoing legal disputes and negotiations by exposing strategy and tentative policy positions, chilling candid discussions, and adversely impacting government decision-making processes. Redaction protects internal deliberative processes and facilitates effective negotiation outcomes.

Doc ID	Date	Document Type	Author(s)/ Recipient(s)	Subject	Description	Privilege Asserted	Basis for Privilege
1	09/12/2024	Written correspondence	Greg Welch, General Counsel for LVVWD ("Welch"), Tabitha Simmons, Director of Legal Services for LVVWD ("Simmons"), and Judge David Wall ("Judge Wall")	Scope of Work for Independent Investigation	Written letter to Judge Wall by Welch on LVVWD letterhead for the purpose of retaining Judge Wall as representative for LVVWD to investigate allegations and threats of litigation made by three employees ("Employees") against LVVWD's Department of Human Resources ("HR") regarding the propriety of the disciplinary proceedings of the Employees as conducted by HR (the "Investigation").	Attorney/ Work Product	In anticipation of litigation, Welch and Simmons retained Judge Wall as representative for Welch and the LVVWD Department of Legal Services to investigate the Employees' allegations regarding the propriety of the disciplinary proceedings conducted by HR. This investigation was solely conducted because of the threatening statements and actions of the Employees, causing LVVWD to reasonably anticipate imminent litigation. The correspondence reveals the thoughts and impressions of Welch, including the purpose and scope of the engagement. The engagement of Judge Wall meets the two-part test described by the Nevada Supreme Court in <i>Wynn Resorts, LTD. vs. Dist. Ct.</i> , 133 Nev. 369 (2017), and therefore the Report is protected under Nevada's Attorney Work Product Doctrine, as provided by Nevada Rule of Civil Procedure (NRCP) 16(b)(3).
2	10/31/2024- 11/12/2024	Email Thread	Simmons, Judge Wall, Welch, Theresa Drevetski, Legal Secretary II ("Drevetski"), and Shelley McGinn, Executive Assistant I ("McGinn")	Interviews	Email thread discussing specific details of the Investigation. The exchange includes coordination with Judge Wall regarding scheduling details pertaining to Investigation and Report in anticipation of litigation.	Attorney Work Product	This email thread was generated because of anticipated litigation with the Employees, and would not exist otherwise (see <i>Wynn Resorts, LTD. vs. Dist. Ct.</i>). The email thread reveals thoughts of legal counsel for LVVWD shared with Judge Wall and pertaining to the Investigation. In his role as investigator, Judge Wall was functioning as representative of counsel for LVVWD to help investigate the claims of the Employees, the Investigation was intended to help evaluate Employees' claims and to develop a legal defense strategy. The substantive content of the email thread focuses on matters specifically relevant to the Investigation rather than routine, day-to-day business operations of LVVWD.
3	10/31/2024- 12/04/2024	Email Thread	Simmons, Judge Wall, Welch, Drevetski, and McGinn	Reschedule	Email thread discussing specific details of the Investigation. The exchange includes coordination with Judge Wall regarding scheduling details pertaining to Investigation and Report in anticipation of litigation.	Attorney Work Product	This email thread was generated because of anticipated litigation with the Employees, and would not exist otherwise (see <i>Wynn Resorts, LTD. vs. Dist. Ct.</i>). The email thread reveals thoughts of legal counsel for LVVWD shared with Judge Wall and pertaining to the Investigation. In his role as investigator, Judge Wall was functioning as representative of counsel for LVVWD to help investigate the claims of the Employees. The investigation was intended to help evaluate Employees' claims and to develop a legal defense strategy. The substantive content of the email thread focuses on matters specifically relevant to the Investigation rather than routine, day-to-day business operations of

LVVWD

4	02/11/2023	Email Thread	Walch, Simmons, Judge Wall, and Dravetski	Confidential Internal Review	Email thread includes communications between Judge Wall, Walch, and Simmons discussing Judge Wall's engagement with LVVWD, the investigation, and Judge Wall's investigation report ("Report"). Included in the email thread is an email from Walch to Judge Wall wherein Walch analyzes Report findings and provides legal conclusions and legal strategy pertaining to the results of investigation. The email exchange contains Walch's mental impressions of the Report, his strategic assessments, and recommendations impacting the threatened litigation by the Employees against LVVWD.	Attorney Work Product	The Report discussed in the email thread was specifically prepared at Walch's direction because threatened litigation by the Employees; the email contains Walch's mental impressions and litigation risk mitigation rather than routine business improvement; both the email exchange and Report would not have been created in substantially the same form but for the prospect of litigation with Employees.
5	02/11/2023	Investigation Report	Walch, Simmons, Judge Wall	Final Investigation Report by Judge Wall	Final report and findings of investigation by Judge Wall. Contains thoughts and impressions relating to issues involving threatened and anticipated litigation.	Attorney Work Product	In anticipation of litigation, Walch and Simmons retained Judge Wall as representative for Walch and the LVVWD Department of Legal Services to investigate the Employees' allegations regarding the propriety of the disciplinary proceedings conducted by HR. This investigation was solely conducted because of the threatening statements and actions of the Employees, causing LVVWD to reasonably anticipate imminent litigation. The Report, drafted by Judge Wall, reveals the thoughts and impressions of Judge Wall as representative for Walch, including his findings and legal analysis. The engagement of Judge Wall meets the two-part test described by the Nevada Supreme Court in Wynn Resorts, LTD. vs. Dist. Ct., and therefore the Report is protected under Nevada's Attorney Work Product Doctrine.



Exhibit E

September 3, 2024 Email from Laura Bautista to Commissioners Gibson and Kirkpatrick

Redacted

Insert the corresponding exhibit immediately after this divider page.



Laura Barnett-Bautista <lbbautista415@gmail.com>

LVVWD (Justin Darling)

Laura Bautista <lbbautista415@gmail.com>

Tue, Sep 3, 2024 at 8:08 PM

To: <marilyn.kirkpatrick@clarkcountynv.gov>

Cc: <jim.gibson@clarkcountynv.gov>

Commissioner Kirkpatrick,

I am not going to pretend that you are unaware of the following situation, I might assume that you are not aware of how it has played out, so I will skip to the meat of it. Please forgive my tone in advance. [REDACTED]

family has gone through. My Name is Laura Darling, Justin Darlings (LVVWD) wife. Not only am I his wife, I am also a concerned ratepayer.

On August 29, after nearly 16 weeks of paid administrative leave, we received a termination letter filled with twisted lies that severely damage my husband's reputation, basically insinuating he has zero integrity or intelligence. I refuse to let this egregious letter stand and become a permanent document in his impeccable personal file. I [REDACTED]

two women, Mary Meddick and [REDACTED] have even more [REDACTED] still sit at the helm of Human Resources [REDACTED]

The letter not only perpetuates falsehoods but also ignores the fact that they have been provided undeniable proof of innocence. While Tyler Gibson has been reinstated, Justin is being scapegoated and basically collateral damage so they can save face. I had hoped for justice, and I was told by someone in authority that an external audit should be conducted on the

Exhibit F

September 6, 2024 Email from Dora Lane (Holland & Hart) Responding to
Complaint

Insert the corresponding exhibit immediately after this divider page.



Laura Barnett-Bautista <lbautista415@gmail.com>

Las Vegas Valley Water District

Fri, Sep 6, 2024 at 1:51 PM

Dora Lane <DLane@hollandhart.com>

To: lbautista415@gmail.com <lbautista415@gmail.com>

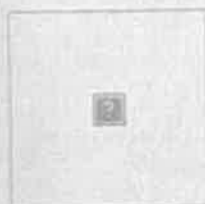
Mrs. Darling,

Holland & Hart LLP represents the Las Vegas Valley Water District. If you have an attorney, please stop reading this, forward this e-mail to your counsel, and ask her or him to contact me.

I write in response to the September 3, 2024 email you sent to Commissioner Kirkpatrick. Your e-mail makes various allegations against the District's Human Resources Department, specifically Mary Madden and Laura Ornelas. The District takes such matters very seriously and would like to investigate your claims. However, your email provides insufficient detail about the alleged "misconduct and downright criminal behavior" which you state you have uncovered. Please explain the basis for your assertions, so they can be meaningfully reviewed.

Meanwhile, you should consult an attorney regarding Nevada defamation law and the possible repercussions of your current and intended actions.

I look forward to hearing from you. Please direct all further communications related to your complaint to my attention. Thank you for your cooperation.



Dora V. Lane, P.C.

She / Her (What's this?)

Partner

HOLLAND & HART LLP

5470 Kietzke Lane, Suite 100, Reno, NV 89511

dlane@hollandhart.com | T: (775) 327-3045 | M: (775) 671-6171

www

CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this email.

1 Matthew L. Durham (NV Bar No. 10342)
mdurham@kskdllaw.com
2 KING SCOW KOCH DURHAM LLC
3 11500 S. Eastern Ave., Suite 210
Henderson, Nevada 89052
4 Telephone: (702) 833-1100
5 Facsimile: (702) 833-1107

6 Attorneys for Grievants Justin Darling and
Water Supervisors Association of Nevada
7

8 **IN ARBITRATION BEFORE THE**
9 **FEDERAL MEDIATION AND CONCILIATION SERVICE**

10 JUSTIN DARLING and WATER
11 SUPERVISORS ASSOCIATION OF
NEVADA,

12 Grievants,

13 and
14

15 LAS VEGAS VALLEY WATER DISTRICT,

16 Defendant.
17

FMCS Case No.: 250228-03911

**GRIEVANTS' POST-HEARING
BRIEF**

18 **I.**

19 **ISSUE STATEMENT**

20 The issue statement submitted by the parties is:

21 Did the Las Vegas Valley Water District have just cause to terminate Justin
22 Darling? If not, what should be the appropriate remedy?

23 **II.**

24 **RELEVANT CONTRACTUAL PROVISIONS**

25 **ARTICLE 7 - DISCHARGE, DISCIPLINE AND PERSONNEL FILES**

26 A. The right to maintain discipline and efficiency of employees is vested exclusively
27 in the District.

28 B. The District shall have the right to discharge or discipline any employee for

1 cause, but in determining discipline, the District shall not transfer, reassign,
2 reclassify or demote any employee for disciplinary purposes.

3 The District must be reasonable in determining "cause" in any particular case.

4 The concept of "for cause" includes the principle of progressive discipline for
5 minor offenses. The District shall notify the Association within five (5) working
6 days of the issuance of a written warning.

7 (District Ex. 1 at 12.)

8 III.

9 FACTUAL BACKGROUND

10 A. JUSTIN DARLING'S EXEMPLARY WORK HISTORY

11 Justin Darling was a 15-year employee of the District with a spotless and
12 exemplary work history. He began working for the District in October 2009 as a
13 Mechanical Systems Technician II. (Tr. 326:10-14.) Through hard work and dedication,
14 he was promoted in 2019 to supervisor of the booster crew, a team of mechanics who
15 maintain the District's roughly 50 pump stations throughout the Las Vegas Valley. (Tr.
16 326:18-327:5.)

17 As supervisor, Darling supervised 10 to 12 mechanics (*id.*) and spent
18 approximately 75 to 80 percent of his time in the field. (Tr. 328:25-329:4.) Darling was
19 often accompanied by scheduler/planner Tyler Gibson, whose job duties included
20 scheduling projects, ordering materials, and assigning workers. (Tr. 329:25-331-19.)

21 Over his career, Darling received 12 annual reviews: eight rated him as "Exceeds
22 Full Performance," and four rated him as "Distinguished Performance." (WSAN Ex. 1.)
23 None contained a single negative comment—all praised his professionalism, leadership,
24 and integrity. (*Id.*) For example, Darling's most recent review by his manager, Jim
25 Doubek, includes the following comments:

- 26 • "Justin is an effective and high performing supervisor." (*Id.* at 112.)
- 27 • "Justin exemplifies the District's values and conducts himself in a truly
28 professional manner." (*Id.*)

- "Justin can be relied upon to maintain the highest ethical behavior." (*Id.*)

During his 15 years at the District, Darling never received any discipline. (Tr. 328:7-14.) He was never written up. (*Id.*) He was never given a verbal warning. (*Id.*) He loved his job and took pride in providing safe, fresh drinking water to the community. (*Id.* at 328:15-24.)

Similarly, during his over 20 years at the District, Gibson never received any form of discipline. (Tr. 310:13-16.)

B. THE DISTRICT'S AGGRESSIVE AND DISPROPORTIONATE INVESTIGATION.

Notwithstanding Darling's spotless record, in May 2024, the District commenced an aggressive and disproportionate investigation of him and Gibson based on questionable motives.

1. The Questionable Origins of The District's Investigation.

The investigation of Darling began under questionable circumstances. It began after Buck Osborne was appointed Director of Operations. (Tr. 33:8-10.) In his new role, Osborne oversaw the District's maintenance division and became the direct supervisor of Jim Doubek, Darling's manager. (Tr. 33:25-34:5.)

Osborne claims that on May 1, 2024, he overheard a female employee who was "upset and crying," and telling his administrative assistant that she had been verbally "attacked and belittled" by Darling.¹ (WSAN Ex. 12.) Osborne claimed in a written statement that he wanted to speak with Darling to find out why he allegedly treated the female employee in that manner, but he had no idea where Darling was. (*Id.*) Rather

¹ Osborne reported this alleged incident to HR. However, HR Manager Laura Ornelas testified that in her conversation with Osborne, he did not say the female employee felt attacked, and he did not report that the employee felt belittled. (Tr. 162:25-163:13.) Ornelas understood that the employee was upset because she had a "disagreement" with Darling. (*Id.* at 163:13-21.) Osborne prepared his written statement claiming that the employee felt "attacked and belittled" in November 2024, six months after the alleged incident, and after Darling had been terminated. (*Id.* at 47:12-48:9.) Thus, the statement appears to have exaggerated the alleged "incident" to justify the District's actions that followed, as discussed more fully below.

1 than calling Darling, Osborne instead accessed the District's GPS vehicle-tracking
2 system, Geotab, to determine his location. (Tr. 42:5-21.)

3 District vehicles have GPS tracking devices that allow real-time monitoring of
4 vehicle movements and access to historical data. (*Id.*) The District's written policy for
5 accessing such data explicitly states: "Requests for review of GPS-related data *shall be*
6 *submitted to Human Resources*, which will determine the necessity, propriety, and
7 scope of the release of GPS-related information." (WSAN Ex. 19 § 2(B)(4) (emphasis
8 added).) In direct violation of this policy, Osborne accessed the real-time GPS data for
9 the vehicle assigned to Darling and Gibson. (Tr. 42:5-21.) The data showed that the
10 vehicle was parked across the street from a pump station located in a residential
11 community – a legitimate work location. (*Id.* 43:2-44:13.) Nevertheless, Osborne claimed
12 the vehicle was "oddly parked down the street" from the station. (WSAN Ex. 12.) There
13 was, in fact, nothing "odd" about the location of the vehicle; it was parked near a pump
14 station. (Tr. 379:3-380:13.)

15 Despite this, Osborne used his concern as a pretext to further violate the
16 District's GPS policy by reviewing several week's worth of historical GPS records for
17 the vehicle, looking for non-business-related stops. (WSAN Ex. 12.) Osborne claims to
18 have found stops at locations that had no nearby District facility and no apparent
19 business purpose. (*Id.*) Although, as established below, personal stops are a regular and
20 accepted practice at the District, Osborne turned his findings over to the District's
21 human resources department ("HR") to further investigate. (Tr. 46:10-12.) What
22 followed was an outrageously aggressive, excessive, and unjustified – an investigation
23 that never should have begun, and one that could have been avoided altogether had
24 Osborne or Doubek simply spoken with Darling directly.

25 2. Darling is Ambushed With Allegations of Misconduct.

26 Less than two weeks after Osborne provided HR with the Geotab data of
27 Darling's and Gibson's vehicle, HR Manager Laura Ornelas arranged what can only be
28 described as an ambush meeting with Darling. (She arranged a separate, similar

1 meeting with Gibson.) The pretext and circumstances of the meeting with Darling
2 demonstrate that it was designed to corner him with allegations for which he had no
3 advance notice or opportunity to prepare.

4 On May 14, 2024, Ornelas sent Darling an email, telling him that she had
5 scheduled a meeting with him for the following day to "discuss some concerns,
6 including certifications among other things," and informing him that he could bring a
7 WSAN representative if he chose to do so. (WSAN Ex. 2.) The email did not mention
8 any other topics for the meeting, made no reference to an investigation, and gave no
9 indication that the meeting would concern serious allegations of misconduct. (*Id.*)
10 Darling called Ornelas, sent her a Microsoft Teams message, and emailed her to ask
11 what "other things" the meeting would cover. (Tr. 332:11-20.) She did not reply. (*Id.*)
12 Darling's manager, Jim Doubek, also tried to find out from Ornelas what the meeting
13 would address, and he too was ignored. (Tr. 332:21-333:9.)

14 Receiving no response from Ornelas, Darling attended the meeting without
15 WSAN representation because he believed it would involve only an administrative
16 discussion of professional Nevada Division of Environmental Protection ("NDEP")
17 certifications and would not involve discipline. (Tr. 333:10-15.) Doubek, Darling's direct
18 supervisor who had fewer NDEP certifications than Darling, admitted that he had told
19 Darling that he was not going to get his own certifications. (*Id.* at 282:15-17.) Darling
20 testified that Doubek also told him that the District was probably going to give
21 management leeway on getting their certifications, so they should "just ride it out and
22 see what happens." (*Id.* 333:18-334:6.)

23 Moreover, Ornelas testified that the District had not terminated anyone for
24 failing to obtain additional certifications. (Tr. 185:19-25.) Indeed, when Doubek was
25 hired in 2022, his essential job description included as minimum qualifications an
26 NDEP D4 "or comparable certificate ... at the time of hire, or the ability to obtain both
27 within a year of date of hire." It further stated that "[f]ailure to obtain or maintain
28 required certifications will preclude continuing employment from [the District]." (Tr.

1 278:5-280:3.) Nevertheless, as of May 2024, Doubek only had a D1 certification, less than
2 Darling's D2, and he had not been terminated. (Tr. 277:2-3.)

3 When Darling arrived for the meeting, rather than simply discussing
4 certifications, he was confronted by Ornelas and other District representatives with a
5 series of accusatory topics—none of which had ever been previously raised with him.
6 Ornelas confronted Darling about his and Gibson's use of the District vehicle and asked
7 him about stops that had been made. (Tr. 342:3-11.) He answered truthfully to the best
8 of his recollection. (*See id.*)

9 Ornelas also questioned Darling about overtime work by Gibson, which she
10 suggested was excessive. (*Id.* 335:10-336:21.) Darling explained that Gibson was coming
11 in on Fridays, which is not a normal workday at the District, to work on the migration
12 of data from the District's Avantis computer maintenance management system to a new
13 Maximo system. (*Id.*)

14 The most serious and offensive accusation was that Darling and Gibson may be
15 involved in a kickback scheme with 6651 Customs, a powder coating vendor that
16 Ornelas asserted was not authorized by the District. (Tr. 337:1-341:22.) This was the first
17 time Darling had ever heard such an allegation. Ornelas offered no specific evidence of
18 the alleged scheme. The District merely thought it was suspicious that 6651 Customs'
19 invoices were for even dollar amounts (i.e., no cents), and she questioned why 6651
20 Customs was paid using Gibson's District issued credit card (known as a P-Card) rather
21 than through the usual invoicing process. (*Id.*) Ornelas also knew that Darling and
22 Gibson had used 6651 Customs for personal items, and she insinuated that they might
23 have been receiving some personal benefit in connection with District purchases. (*Id.*)

24 Darling explained that 6651 Customs was indeed an approved vendor. (*Id.*) It
25 was in the District's Coupa system, which is used for vendor purchases. (WSAN Ex. 3.)
26 Doubek, Darling's manager, had also personally authorized the use of 6651 Customs
27 and the use of the P-Card to pay 6651 Customs. (Tr. 338:19-341:9; WSAN Ex. 3.) Doubek
28 confirmed this in his testimony at the hearing. (Tr. 258:4-18.) District documents also

1 confirm that Doubek had authorized purchases from 6651 Customs in Coupa and that
2 District employees in other departments had also used 6651 Customs. (WSAN Ex. 3.)

3 The District later determined – after further investigation and after sending two
4 of its security personnel to question 6651 Customs' owner in what Ornelas described as
5 a "very police-like" manner – that there was no kickback scheme. (See Tr. 165:25-166:25;
6 171:2-6.) However, the District did not realize its mistake until after Ornelas had placed
7 Darling and Gibson (who had a similar ambush meeting) on administrative leave and
8 told Darling that if there was any criminal activity, the District was going to report the
9 matter to the Las Vegas Metropolitan Police Department. (Tr. 358:25-359:4.)

10 **3. Darling is Placed on Administrative Leave and Receives a Pre-**
11 **Termination Letter.**

12 Darling was "completely blindsided" when he was placed on administrative
13 leave at the conclusion of the May 15, 2024 meeting and was escorted off property. (Tr.
14 359:5-20.) Gibson was also placed on leave at the end of his meeting.

15 Nearly one month later, on June 10, 2024, Darling received a letter signed by
16 Doubek, recommending that he be terminated. (WSAN Ex. 4.) Gibson received a similar
17 letter. The District dropped the unfounded allegation that Darling and Gibson were
18 involved in a kickback scheme. However, it asserted new allegations to justify its
19 recommendation of termination. (See *id.*) The recommendation was based on the
20 following allegations:

- 21 • Darling had allowed members of his work group (i.e., Gibson) to use a P-Card
22 for purchases at 6651 Customs, which Doubek said "is not an approved District
23 vendor."
- 24 • The District tested the thickness of items that had been powder-coated by 6651
25 Customs, and they allegedly did not meet the District's guidelines of 18-25 mm
26 for coatings, which resulted in "potential liability to the District."
- 27 • Darling approved P-Card purchases by Gibson and his predecessor for items
28 that were allegedly available through different departments within the District,

1 had no business purpose, or should have been purchased from a local vendor
2 rather than from Amazon.

- 3 • Darling approved overtime for Gibson who reported working full days of
4 overtime, when he was not actually working.
- 5 • Darling and Gibson had made allegedly improper stops using the District
6 vehicle.
- 7 • Darling had not obtained his D3 and T2 NDEP certifications.

8 (*Id.*)

9 **4. Darling Refutes the District's Allegations of Misconduct.**

10 On June 27, 2024, Darling attended a pre-termination meeting with the District.
11 At the meeting, and in subsequent meetings and correspondences with the District, he
12 refuted the District's allegations against him. In addition to refuting the allegations
13 regarding 6651 Customs and that his lack of additional certifications warranted
14 discipline for the reasons set forth above, Darling also refuted the District's allegations
15 that (1) the powder coating thickness did not meet District guidelines, (2) he authorized
16 inappropriate P-Card purchases, (3) he misused the District vehicle, and (4) he
17 approved time for Gibson that he should not have approved.

18 **i. The required thicknesses for powder coating and paint are**
19 **different.**

20 The allegation that the powder coating thickness did not meet District guidelines
21 is false. Doubek admitted on cross-examination that the thickness needed for powder
22 coating is much different than the thickness for paint, and that the guideline of 18-25
23 mm is for paint not powder coating. (Tr. 262:25-264:1) Powder coating must be much
24 thinner.

25 **ii. Darling did not approve inappropriate P-Card purchases.**

26 In support of its allegation that Darling approved inappropriate P-Card
27 purchases, the District audited three years' worth of P-Card purchases by Gibson and
28 his predecessor and color coded them as (1) items that should not have been purchased

1 because that were allegedly available through different departments within the District,
2 (2) items that had no business purpose, or (3) items that should have been purchased
3 from a local vendor and should not have been purchased from Amazon. (WSAN Ex.
4 10.) Darling disputed that items had been available through different departments
5 within the District at the time they were purchased, and the District has not even
6 attempted to prove otherwise. (See Tr. 80:2-24 and 271:3-272:7.)

7 Darling also demonstrated that all purchased items were for a business purpose
8 and that there was no requirement that items be purchased through a local vendor as
9 opposed to Amazon, which the District conceded. (Tr. 80:24-81:6.) Indeed, even though
10 the spreadsheet stated that there was "no reason to order" certain items from Amazon,
11 Osborne admitted that there could be reasons to order from Amazon. (Tr. 81:20-82:13.)
12 Darling also explained that Amazon can be cheaper, has quick shipping, and is one of
13 the first options for purchasing in the District's Coupa system. (Tr. 364:24-365:16.) As
14 such, despite auditing several years' worth of P-Card purchases, the District was forced
15 to concede that Darling had not approved any inappropriate purchases.

16 **iii. Darling's vehicle use is consistent with the District's de facto**
17 **policy and long-standing District practice.**

18 The District's allegation that Darling misused his assigned District vehicle is
19 based on the District's written policy, which states:

20 District vehicles are to be used *for official company business*
21 *only*. Except as otherwise stated in this Policy, shopping or
22 performing personal errands while operating a District
23 vehicle are prohibited. District vehicles are not to be parked
24 in the lots of shopping, drinking or dining establishments
(such as shopping malls, grocery stores, bars, restaurants,
25 convenience stores, etc.) unless being used for official
company business, such as official lunch and dinner breaks.

26 (WSAN Ex. 5 § III(1) (emphasis added).)

27 However, the District's de facto vehicle use policy — which has been the practice
28 at the District for at least two decades — is that as long as the job gets done, vehicles can

1 be used for personal errands. Regarding this de facto policy and practice, Darling
2 testified:

3 The main -- and Doubek knew this and the main thing that
4 he told me was, look, as long as the job is getting done, as
5 long as you guys are getting everything done, you're not
6 behind, you're not falling behind -- and we never did, we
 were always ahead of the game -- as long as everything gets
 done, just -- it's okay.

7 (Tr. 343:4-10.) Even with this flexibility, however, Darling testified that on a couple of
8 occasions he spoke with members of his crew who he felt were abusing the use of the
9 District vehicle, and Darling corrected their behavior. (*Id.* 343:17-344:12.)

10 Gibson, who has worked at the District for over 20 years, similarly testified about
11 the District's de facto vehicle use policy, stating:

12 Since I have been employed here in the last 20 years, it's
13 always been under the understanding that if you need to go
14 run errands or if you have stuff to do, you were allowed to
15 as long as the work was getting done and you weren't falling
 behind on your work.

16 (Tr. 312:5-10.)

17 David Thompson, who has been employed by the District for 14 years and is a
18 large meter services operations supervisor, also testified that employees use their
19 vehicles for running errands "on a daily basis." (Tr. 384:1-5.) Thompson supervises a
20 crew of 18 employees who use District vehicles. (*Id.* 382-383.) He has seen his own
21 employees using District vehicles for personal errands and has seen employees from
22 other departments doing the same. (*Id.* 384:6-8.)

23 On one occasion, Thompson reported what he perceived to be a violation of the
24 District's written vehicle use policy to his manager. (*Id.* 384:19-386:1.) Thompson had
25 received a report that one of his work crew was staying at a 7-Eleven each morning for
26 a long period of time. (*Id.*) He confirmed that "pretty much every day this guy's been
27 sitting there for about an hour." (*Id.*) Thompson brought this to the attention of his
28 manager, who said he would bring it to the attention of HR. When Thompson's

1 manager got back to him, he told Thompson not to worry about it. He said, "[A]s long
2 as they're getting their work done, he [was] not going to make a big deal out of it." (*Id.*)
3 Thompson also testified that he has only seen employees disciplined for vehicle use
4 when "an employee has been operating a vehicle drunk." (*Id.* at 386:2-7.)

5 Moreover, Darling obtained District Geotab records through a public records
6 request. These records confirm that District vehicles are regularly used for personal
7 errands and stops that exceed the time allowed for rest and meal breaks. (*See* WSA Ex.
8 21.) The records, which are for only 10 of the District's numerous vehicles, cover the
9 three-month period from January 1 through March 31, 2024 – a period for which the
10 District reviewed Darling's vehicle use. (*See id.*) During this three-month period, the 10
11 vehicles made over 120 stops that were either personal in nature or excessively long.
12 (*Id.*) The stops included: America First Credit Union, AutoZone, Bank of America,
13 Chase Bank, Costco, CVS Pharmacy, the DMV, Galleria Mall, Harbor Freight, a church,
14 a dermatologist office, Meadows Mall, a community center for preschool and children's
15 sports events, Palo Verde High School, PetSmart, a residence, Southwest Medical
16 Center, UMC Primary Care, Walgreens, and Wells Fargo Bank. (*Id.*) There were also
17 numerous stops at convenience stores and coffee shops, and numerous stops at
18 restaurants that exceeded the 30 minutes allowed for lunch breaks – many for well over
19 an hour, not including travel time. (*Id.*)

20 Before finding out that Darling had reviewed Geotab records to demonstrate the
21 vehicle-use practice at the District, Ornelas testified that HR checked Geotab records for
22 other District vehicles from January 1 through May 7, 2024 as part of its investigation of
23 Darling. (Tr. 152:3-153:9). She claimed these records did not reveal any stops that
24 violated the District's written vehicle use policy. (*Id.*) The District did not produce the
25 records that HR supposedly reviewed, so Ornelas' claim cannot be verified. (*Id.*)
26 However, it is inconceivable that HR reviewed records of District vehicles and found no
27 stops that violated the District's written policy when the records Darling obtained from
28

1 a public records request covering three of the same months revealed over 120 such
2 stops for only 10 vehicles.

3 The overwhelming evidence is that the District's vehicle-use policy and practice
4 is that as long as the job gets done, vehicles may be used for personal errands. Darling's
5 use of the vehicle was consistent with this practice. Nevertheless, the District strictly
6 applied its written policy against Darling and, in support of its allegation that Darling
7 violated the policy, it prepared a chart identifying questionable stops on 29 days
8 between January 1 and May 10, 2024. (See WSAN 6.) However, the evidence establishes
9 that Darling was in the vehicle on only 6 of those days. (See WSAN Ex. 7.) And on those
10 six days, the personal stops were merely the following:

- 11 • January 29, 2024: Darling went home to pick up lunch.
- 12 • May 14, 2024: Darling picked up a prescription for his wife who was
13 unable to drive and took it to her.
- 14 • May 19, 2024: Bathroom stop for Gibson who was suffering from
15 gallbladder issues that required frequent bathroom breaks;
16 Darling ripped the crotch in his pants getting out of the
17 District vehicle and went home to get a different pair.
- 18 • March 21, 2024: Darling used lunch time to pick up a bow for his wife and
19 take it home.
- 20 • April 4, 2024: Darling purchased a drink at a convenience store; Darling
21 was notified by his neighbors that his pool equipment was
22 spewing water, so he went home to turn the water off;
23 stopped at an auto parts store; bathroom break for Gibson.
- 24 • April 11, 2024: Sportsman's Warehouse stop for Gibson to purchase a water
25 bottle; Darling picked up lunch at home; bathroom stop for
26 Gibson.

1 These few personal stops on 6 days over the span of four and a half months are
2 entirely consistent with the District's de facto vehicle use policy – the practice that has
3 been in place for many years.

4 **iv. Darling appropriately reviewed time records.**

5 The District's allegation that Darling approved time for Gibson on a day he did
6 not perform any work is meritless. The District claims that Gibson logged time on
7 Sunday, May 5, 2024, that was approved by Darling, but that Gibson did not work on
8 that day. However, the evidence demonstrates that Gibson did work on that day.

9 Gibson testified that on the morning of May 5, he received an email informing
10 him that a work order had been created. (Tr. 313:2-20.) The email, which was produced
11 as WSAN Exhibit 22, stated that the surge tanks at the Tropical pump station were in
12 high level alarm and asked that the issue be investigated. Gibson called and spoke with
13 operations about the work order and determined that he needed to send out a mechanic
14 to address the problem. (Tr. 313:2-20.) Gibson then called out Orlando "OJ" Jaramillo to
15 perform work. While in the field, OJ had questions about the issues he observed, so
16 Gibson spoke with him and walked him through addressing them. Once the issues
17 were completely resolved, OJ called Gibson to report that the project had been
18 completed. Gibson then called operations to verify that the issue had been resolved. (Tr.
19 313:2-20.) The District's timesheet records show that OJ logged 4 hours on May 5, 2024,
20 for a call out, which further supports Gibson's testimony. (District Ex. 25 at 15; Tr. 367:3-
21 368:9.)

22 The District has also repeatedly alleged that Darling told Gibson that he could be
23 paid simply for being available, i.e., not working but essentially being available if
24 needed. This is not true. Gibson testified that, when Darling was not working, he
25 wanted Gibson to be available to pick up parts and support the crews in the field rather
26 than simply stay in the office and work on the Avantis to Maximo migration. (Tr.
27 320:17-321:18.) Gibson understood that Darling was not telling him that he would get
28 paid to not work. (*Id.*)

1 The District has also alleged that Darling had claimed he was not trained on how
2 to review payroll hours and that he did not do so appropriately. This is false. (Tr. 371.)
3 This issue arose because in the pre-termination meeting, Ornelas suggested that Darling
4 was required to review the time entries of his crew on a day-by-day basis to verify their
5 accuracy. He disagreed. (*Id.* 372-373.) He had meetings every morning with his crew, so
6 he saw who was at work and knew the projects they were working on. (*Id.*) As such, he
7 knew who was not working on particular days and could approve time for multiple
8 days at a time.

9 When Darling was not at work, he asked Gibson to keep track of the crew
10 members' time, and Gibson tracked it using his calendar of projects. (*Id.* 373-374.) If
11 Darling ever believed that a time entry was inaccurate, he would not approve it. (*Id.*
12 374.) He would first double-check with Gibson, and if Gibson did not have accurate
13 records or a recollection, Darling would speak with the employee to verify his time. (*Id.*)
14 During the grievance process, Darling had the opportunity to explain his process for
15 reviewing time to HR Director Mary Madden, who confirmed she used a similar
16 approach. (*Id.* 374-375.)

17 **5. Gibson is Reinstated with No Discipline, But Darling is Terminated**
18 **For Two Previously Asserted Allegations and One New Allegation, All**
19 **of Which Are Meritless.**

20 On August 20, 2024, Gibson received reinstatement letter from Osborne. (WSAN
21 Ex. 23). The letter explained that the District had taken into consideration the
22 information provided by Gibson at his pretermination meeting, and Osborne
23 concluded: "I find no just cause supporting the recommendation of discipline
24 forwarded by the District, let alone the termination of your employment." (*Id.* at 2.)

25 Darling had refuted of the District's allegations against him, which were the
26 same as those asserted against Gibson. Nevertheless, on August 29, 2024—over three
27 months after he was placed on leave—Darling received a letter signed by Doubek that
28 informed him his employment would be terminated effective August 30. (WSAN Ex.

1 11.) The stated reasons for Darling's termination were: (1) conducting personal business
2 during normal working hours while using a district vehicle and traveling with Gibson,
3 (2) allegedly approving inaccurate time records for Gibson, and (2) a new allegation that
4 Darling inaccurately reported his own time. (*Id.*) The first two reasons, which were
5 discussed above, have no merit. The third reason is likewise meritless and does not
6 warrant discipline, let alone termination.

7 The District alleges that Darling inaccurately reported his time on two different
8 days. On March 26, 2024, Darling reported to work in the morning but then left early
9 around 10:30 to 11 a.m. due to a severe case of allergies. (*See* Tr. 284:7-20.) Darling
10 mistakenly logged all his time for the day as regular time, when he should have logged
11 6 hours of regular time and 4 hours of sick time. (*Id.* 227:22-228:18.) This mistake did not
12 result in Darling receiving any additional pay. (*Id.* 228:19-229:10.) It was merely an
13 accounting error that could have easily been rectified in payroll system.

14 In addition, the District contends that Darling logged time on January 9 but
15 performed no work on that day. (Tr. 229:21-230.) Darling did perform work on this day.
16 On the weekend of January 6, 2024, Darling's dog got lost while he and his wife were in
17 Utah. He let Doubek know that he would be taking off Monday, January 8 to search for
18 his dog. He was able to find her, so he returned home early on January 9 and worked
19 from home that day with permission from Doubek. (*See* District Ex. 14 at 1-2.)

20 IV.

21 ARGUMENT

22 A. JUST CAUSE STANDARD

23 The principle that discharge is normally reserved as a last resort is time honored
24 and pervasive in the labor arbitration field. As one panel stated many decades ago:

25 It is a well-established principle in arbitration ... that the
26 primary purpose of industrial punishment is not to inflict
27 punishment for wrongdoing but to correct individual faults
28 and behavior and to prevent further infractions. Both the
Company and the employee lose when the employee is
terminated. It is for this reason that discharge is normally

invoked only as a last resort, after it has become abundantly clear that corrective measures will not succeed.

Texaco Inc. and Oil, Chemical & Atomic Workers Int'l Union, Local 1-128, 42 LA 408,409 (Panel of Arbitrators, Prasow, Sederholm (dissenting) and Braughton, 1963).

The Las Vegas Valley Water District (the "District") bears the burden of establishing that just cause was present in this case, which means both that the District can demonstrate a work rule violation and that termination was the appropriate remedy given the gravity of the offense and surrounding circumstances. *Ashland Petroleum Co.*, 90 LA 681, 685 (Volz, 1988). It is well established that under a negotiated "just cause" standard, the Arbitrator has the authority to fashion a lesser penalty. *Id.* at 688.

Mitigating factors such as the employee's good work record and whether the employer has acted arbitrarily, irrationally or discriminatory in administering discipline can be considered when considering whether an employee who violated a work rule should nonetheless be reinstated by an Arbitrator. *Chicago Transit Authority*, 80 LA 663, 668 (Myers, 1983).

The Arbitrator may and should consider evidence of disparate treatment when determining the nature and extent of lesser discipline including whether the company imposed greater punishment on the grievant than that meted out to an employee engaged in a similar work rule violation. *Georgia Pacific Corp.*, 118 LA 675,680-681 (Peterson, 2002). A slipshod investigation of an employee demonstrating a rush to judgment " ... in an attempt to terminate ... " can be considered as a violation of a contractual just cause provision. *Id.*, at 681. Evidence that the employer misstated evidence in its investigation can lead to the conclusion that the employer was seeking to terminate an employee without properly considering the evidence. *Id.*

It is a well-accepted principle of labor arbitration that in evaluating discipline under a just cause provision, the penalty selected by the employer must be consistent with other penalties imposed for similar offenses under similar circumstances. *Discipline*

1 *and Discharge in Arbitration*, 3rd Edition, p. 85, Brand and Biren (2015). Furthermore,
2 parties are free to agree that certain offenses will constitute just cause for discharge, but
3 an employer cannot unilaterally fix a penalty for rule violations that is inconsistent with
4 the contractual just cause standard. *Pinwheeling Enclosure*, 121 LA 1220 (Dean 2005).
5 One arbitrator has concluded that to begin strict enforcement of rules that had not been
6 uniformly enforced previously, the employer must publish its intent to do so: "[T] this
7 publication does not take place by strictly enforcing the rules, in the first instance by
8 punitive action against the employee." *ITWCIP Stampings*, 117 LA 1777, 1780 (Richman
9 2002). When a new chief executive decides to punish workplace misconduct with
10 termination when such conduct did not uniformly lead to termination prior to that
11 executive's appointment, the employer is obligated to inform its workers that its former
12 practice of progressively disciplining employees involved in such conduct or rule
13 violations will not continue and that workers so involved will henceforth be subject to
14 discharge. See *United Auto Aerospace and Agricultural Implement Workers of America, Local*
15 *856 and Aircraft Braking Systems*, 25 LAIS, 3325, 1997 WL 34824623 (August 28, 1997).

16 It is clear that when an employer violates the rights of employee's subject to an
17 investigation for disciplinary proceedings, an Arbitrator may overturn a discharge and
18 order some lesser form of discipline. See *Goshen Rubber, Inc.*, 99 LA 770 (Briggs 1992)
19 (Just cause did not exist to discharge employee for alcohol related incident. The
20 employee was not offered Union representation).

21 **B. THE DISTRICT DID NOT HAVE JUST CAUSE TO TERMINATE DARLING.**

22 The District did not have just cause to terminate Darling. His conduct, like
23 Gibson's, did not even warrant discipline, let alone termination. Even if it had
24 warranted discipline, the District should have employed progressive discipline in
25 accordance with the WSAN contract. In his 15 years at the District, Darling had never
26 received any form of discipline, and the allegations regarding vehicle use and his
27 review of time could have easily been addressed at most with counseling.

1 Moreover, the evidence establishes that the District's investigation against
2 Darling was not conducted in good faith and that he was subjected to disparate
3 treatment. Each of these facts supports the conclusion that there was no just cause to
4 terminate him.

5 **1. The District's Investigation Was Not Conducted In Good Faith.**

6 Here, there is ample evidence that the District's investigation was conducted in
7 bad faith, that there was a rush to judgment, and that the District misstated evidence in
8 its investigation. All of this supports a finding that the District violated the just cause
9 provision of the WSAN contract.

10 **i. Buck Osborne's Bad Faith Conduct.**

11 Whether motivated by a desire to establish himself as the "new sheriff in town"
12 or to remove Darling in favor of one of his former subordinates from SNWA (which
13 occurred after Darling was terminated (Tr. 88:1-19)), Osborne's actions were not the
14 product of a legitimate concern. From the outset, his focus was not on communication
15 or resolution. Had that been the case, he would have spoken to Darling (or he would
16 have instructed Doubek to do so) to resolve the issue regarding the allegedly upset
17 female employee and regarding his questions about Darling's and Gibson's use of the
18 District vehicle. Instead, Osborne was focused on building a case against Darling and
19 Gibson, who were 15- and 20-year District employees, respectively, who had never
20 received any form in discipline.

21 Osborne's bad faith is apparent from the evidence. First, although Osborne's
22 stated reason for accessing Geotab data on May 1 was to locate Darling so he could
23 speak with him, Osborne never even attempted to speak with Darling about the alleged
24 incident. Osborne did not call Darling. (Tr. 42:18-21.) Nor did he approach Darling
25 when he returned to the District offices early that afternoon. (*Id.* 73:11-74:6) In fact,
26 Osborne never spoke with Darling about the alleged incident at any point, and neither
27 did anyone else in District management. (*Id.* 74:10-12.) Darling only found out about the
28

1 alleged incident – which he denies – months later, after he requested that the District
2 produce investigation documents during the grievance process.

3 Second, during the District’s investigation, Osborne was involved in reviewing
4 the three years’ worth of P-Card purchases that had been approved by Darling. An
5 email Osborne sent during the process reveled that he did not identify verifiably
6 improper purchases – because there were none. (*See* WSAN Ex. 18.) Instead, he
7 identified purchases that were only possibly improper. In his email, Osborne wrote that
8 he had identified purchases that (1) “probably” could have been purchased locally and
9 (2) “probably” could have been provided by IT or another support department. (*Id.*)
10 Osborne identified these purchases as improper even though he knew there is no
11 District policy requiring purchases from local vendors (Tr. 80:24-81:6.), and even though
12 the availability of the items from another department at the time they were purchased
13 was not verified. Osborne nevertheless provided his review to HR, which used it to
14 justify Darling’s employment.

15 Third, while Darling and Gibson were on administrative leave, Osborne was
16 asked via email if he approved of the District suspending their P-Cards. (WSAN Ex. 17.)
17 Osborne replied with a one-word all-caps response: “APPROVED!” (*Id.*) This response
18 is shockingly enthusiastic and reveals Osborne’s eagerness to move forward with the
19 District’s efforts to terminate.

20 Fourth, and most appallingly, when Darling was on leave, he called Osborne
21 because he was “feeling quite vulnerable.” (Tr. 360:20-362:21.) Darling thought his new
22 director might be able to shed some light on the District’s investigation into the
23 outrageous allegation that he was involved in a kickback scheme and the rest of the
24 investigation. (*Id.*) Instead, in violation of Nevada law, Osborne recorded the
25 approximately 20-minute phone call without informing Darling. (*Id.*; WSAN Ex. 9.)
26 Osborne did so because Darling had said he wanted to vent and get some things off his
27 chest. (Tr. 54:21-55:2.) Clearly, Osborne was hoping Darling would admit to some
28 wrongdoing – which he did not. After illegally recording the call, Osborne then turned it

1 over to HR. (*Id.*) Osborne's conduct was so outrageous that he attended the arbitration
2 hearing with his own personal counsel in case any issues regarding the criminality of
3 his conduct arose. (*Id.* 30:19-23.)

4 **ii. Laura Ornelas' Bad Faith Conduct.**

5 District HR Manager Laura Ornelas also acted in bad faith. She testified that
6 when she sent her May 14, 2024 email to Darling notifying him of their meeting, she
7 knew that she would be confronting him with the allegation that he and Gibson were
8 involved in a kickback scheme with 6651 Customs. (Tr. 184:6-20.) However, she did not
9 mention this in her email. (*Id.*) Ornelas also knew that she would be confronting Darling
10 about allegedly excessive overtime by Gibson and their alleged misuse of a District
11 vehicle. (*Id.*) But she did not mention these topics in her email either. (*Id.*) Instead, she
12 lured Darling to the meeting intending to blindside him. She also lured him to the
13 meeting knowing that the decision had already been made to place Darling on
14 administrative leave even though no one at the District had ever spoken to him about
15 any of the topics with which she intended to ambush him. (*See id.* at 186:23-3.)

16 Ornelas was not interested in correcting alleged individual faults and behavior
17 and preventing further alleged infractions. *See Texaco*, 42 LA 408 at 409. Instead, like
18 Osborne, she was singularly focused on building a case against Darling and Gibson.
19 This is the reason she ambushed them and engaged in law enforcement type
20 interrogation tactics. It is also the reason she sent two District security personnel to
21 question 6651 Customs' owner, which they did in a "very police-like" manner. Ornelas
22 rushed to judgment in believing that Darling and Gibson were involved in a criminal
23 kickback scheme. When it turned out they were not, she proceeded to oversee an
24 investigation of every aspect of their employment, looking for something – anything –
25 to justify their termination.

26 **iii. Jim Doubek's Bad Faith Conduct.**

27 It was revealed at the arbitration hearing that Jim Doubek was under
28 investigation by the District at the same time it was investigating Darling and Gibson,

1 and at the time he was signing Darling's pre-termination and termination letters. Given
2 this, his objectivity was clearly compromised. He had every reason to simply go along
3 with HR's investigation of Darling and not "stick his neck out."

4 Darling's pre-termination letter contains several examples of Doubek's bad faith.
5 First, in the letter, Doubek lists Darling's failure to obtain additional NDEP
6 certifications as a reason for his termination recommendation. However, Doubek (1)
7 had fewer certifications than Darling, (2) admitted to telling Darling that he was not
8 going to get his own certifications, and (3) had told Darling that the District was
9 probably going to give management leeway on getting their certifications, so they
10 should "just ride it out and see what happens."

11 Second, Doubek referred to 6651 Customs as an unapproved vendor in the pre-
12 termination letter and listed Darling's use of 6651 Customs and the payments to 6651
13 Custom's using the P-Card as additional reasons for his termination recommendation.
14 (WSAN Ex. 4.) However, on cross-examination, Doubek admitted that he had in fact
15 authorized them to use 6651 Customs, and he had authorized them to use the P-Card to
16 pay 6651 Customs. (Tr. 258:4-18.) Doubek even authorized an increase in Gibson's P-
17 Card purchase limit specifically for purchases from 6651 Customs a mere month and a
18 half before Darling was accused of using the "unapproved" vendor. (Tr. 269:15-25.)

19 Third, Doubek stated in the pre-termination letter that District tested the
20 thickness of items that had been powder-coated by 6651 Customs and claimed they did
21 not meet the District's guidelines of 18-25 mm for coatings. (WSAN Ex. 4.) However,
22 Doubek admitted on cross-examination that the thickness needed for powder coating is
23 much different than the thickness for paint, and that the guideline of 18-25 mm is for
24 paint not powder coating. (Tr. 263:20-264:1.)

25 Doubek did not write Darling's pre-termination letter. (*Id.* at 257:12-20.) HR did.
26 (*Id.* at 128:17-18.) However, he reviewed it before signing it and did not make any
27 substantive changes despite the inaccuracies listed above. (*Id.* 257:12-20.) The reason for
28 this is obvious—Doubek was also under investigation, and his job was in jeopardy. So,

1 rather than risk his own employment, he willingly sacrificed Darling's. This is the
2 definition of bad faith.

3 **2. Darling Was Subjected To Disparate Treatment.**

4 The District subjected Darling to disparate treatment relative to his use of the
5 District vehicle and his review of Gibson's time. As such, there was no just cause to
6 terminate him.

7 **i. The District strictly enforced its written vehicle use policy**
8 **against Darling, but it does not do so for others.**

9 As established above, the practice and de facto vehicle use policy at the District is
10 that vehicles may be used for personal errands as long as the job gets done. Despite this,
11 the District strictly enforced its more restrictive written policy against Darling. The
12 District did so even though Ornelas' testimony revealed that that HR's practice is to not
13 strictly enforce the vehicle use policy as written.

14 There is no wiggle room or ambiguity in the written policy. It clearly prohibits
15 the use of District vehicles for anything other than "official company business." (WSAN
16 Ex. 5 § III(1).) Nevertheless, Ornelas testified that HR takes into account other factors
17 and interprets the policy as it sees fit. For example, when asked whether using a District
18 vehicle to conduct personal banking violates the District's vehicle use policy, Ornelas
19 testified that she could not say without having more context:

20 Were they on the way from a, like, a -- leaving a facility that
21 they were working at and stopping by or were they -- you
22 know, it's very hard to go -- if you have something more
23 specific, that would be easier.

24 For example, we have crews that stop at 7-Eleven to get
25 water on their way to a work site. If someone is stopping at a
26 bank to get money to buy water, I don't know. There needs
27 to be more information with that, so that's a hypothetical I
28 wouldn't be able to answer.

(Tr. 154:6-155:3.)

1 Despite the clear language of the written policy, Ornelas testified, "there's a lot of
2 factors involved" in determining whether using a District vehicle for a personal errand
3 violates the policy. (*Id.* 12-16.) She further testified that, even though there is nothing in
4 the written vehicle use policy that suggests that other considerations should to be taken
5 into account or what those considerations are, HR takes unspecified circumstances into
6 account when interpreting the policy:

7 Q Can you show me where in the written policy it says that
8 we need to take into consideration those factors?

9 A It wouldn't be in there. I think it's an interpretation.
10 That's our responsibility in human resources to make those
11 determinations.

11 (*Id.* at 158:15-20.)

12 This approach naturally leads to disparate treatment, as it did against Darling.
13 The District determined that Gibson's use of the District vehicle for personal errands
14 did not warrant discipline, let alone termination. However, Darling's minimal use of the
15 vehicle for personal errands—on only 6 days over the course of four and a half
16 months—was somehow deemed sufficient to justify his termination when he had never
17 before been disciplined and had never before been spoken to about his vehicle use.

18 There are additional examples of this disparate treatment. After Darling was
19 placed on leave, the District received an email from an employee using the pseudonym
20 Jim Jordan. He complained that "some employees appear untouchable while others are
21 readily dismissed, as was the case with [Darling and Gibson]." (WSAN Ex. 24 at 1.) He
22 reported that on February 4, 2025, Troy Payne used a District vehicle on company time
23 to take Kapu Merriman to drop off his motorcycle for repairs, and that the following
24 week they again used a District vehicle to pick up the motorcycle. (*Id.* at 4.) Jordan also
25 reported that Payne had been leaving work early on multiple occasions. (*Id.*)

26 Frank Gibase, a senior HR analyst, testified on direct examination that he
27 investigated the allegations and was unable to substantiate any of them (Tr. 215:21-
28 218:21.) However, on cross-examination, Gibase confirmed that Payne admitted to

1 using a District vehicle to drop off and pick up Merriman and his motorcycle for
2 repairs. (Tr. 219:3-220:12.) Nevertheless, because their supervisor at the time had
3 authorized them to use the District vehicle for this purpose, they were not disciplined.
4 (Tr. 224:15-24.) When Gibase was asked if the use of the District vehicle for this purpose
5 violates the District's written policy, he responded: "I honestly couldn't tell you. I'm not
6 - I'm not sure." (Tr. 220:8-17.) Gibase was then asked whether the use of District
7 vehicles for personal reasons was allowed if approved by a supervisor. (Tr. 220:18-25.)
8 He responded: "It depends on the situation."

9 Gibase was then asked about the allegation that Payne had been leaving work
10 early. (Tr. 222:3-223:25.) Gibase testified that his investigation revealed on February 20,
11 2025, Payne used a District vehicle to stop by his house to drop off a package and that
12 Payne had notified his supervisor of his actions. (*Id.*) Gibase was asked if according to
13 the District, it is okay to run personal errands in a District vehicle if the supervisor
14 authorizes it. He responded, "It's not typical that it's supposed to be used for personal
15 errands." (Tr. 223:21-25.) However, he confirmed that Payne was not disciplined for
16 using the District vehicle to stop by his house to drop off a package. (Tr. 224:15-24.) Nor
17 is there any evidence that his supervisor was disciplined.

18 Because Darling's use of the District vehicle was in accordance with District
19 practice, the District attempts to justify his termination by taking the position that it is
20 holding him accountable, as Gibson's supervisor, for Gibson's use of the vehicle — even
21 on days when Darling was not with Gibson and on Fridays when Darling was not even
22 at work. This position is untenable. Gibson's use of the vehicle was deemed unworthy
23 of discipline for Gibson, so it is illogical to conclude that it nevertheless warrants the
24 termination of Darling's employment.

25 Moreover, it is clear from the examples above that the District has a practice of
26 allowing vehicle use for personal errands when authorized by a supervisor. Indeed,
27 there is no evidence that Payne and Merriman's supervisor was ever disciplined for
28 allowing them to use a District vehicle for personal matters. In fact, his authorization of

1 their use of the vehicle was cited as the reason they were not disciplined. Nevertheless,
2 the District terminated Darling for similar conduct. This is blatant disparate treatment.

3 **ii. The District held Darling to a different standard for reviewing a**
4 **subordinate's time.**

5 Darling has also been subjected to disparate treatment relative to his review of
6 Gibson's time. Darling disputes that he ever approved time for days Gibson did not
7 work, and Gibson disputes that he was ever paid on days that he did not work.
8 Nevertheless, the District terminated Darling for allegedly approving time when
9 Gibson did not work, even though Darling did not know that Gibson had allegedly not
10 performed any work.

11 This is a different standard than the District applied to Doubek and his review of
12 Darling's time. The District contends that Darling entered time on January 9 but did not
13 perform any work on that day. (Darling disputes this.) In addition, on March 26, 2024,
14 Darling did in fact mistakenly report 10 hours of regular pay when he should have
15 logged 6 hours of regular time and 4 hours of sick time because he left early due to
16 allergies. (Tr. 227:22-228:18.) Doubek reviewed and approved these time entries by
17 Darling, but he was not disciplined for doing so. (Tr. 283:24-286:14.) Darling, on the
18 other hand, was terminated for the same thing.

19 Doubek tried to justify this disparate treatment by testifying that because Darling
20 was often in the field and Doubek was often at the main office building, Doubek would
21 not know what Darling was doing unless he told him. (Tr. 290:15-19.) However, the
22 same is true of Darling and Gibson. When they were not working together, or when
23 Gibson was at work and Darling was not, Darling would not know exactly what Gibson
24 was doing unless he told him. Doubek was asked about this double standard, and he
25 acknowledge that he did not know how Darling could know what exactly Gibson was
26 doing if he was not with him. (Tr. 291:1-10). Doubek nevertheless recommended and
27 terminated Darling because he did not meet this unreasonable and unrealistic standard
28 that Doubek himself was not held to.

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V.

CONCLUSION

Based on the foregoing, there was no just cause to terminate Darling's employment. Accordingly, WSAN and Darling request that Darling be reinstated with full back pay and benefits and for such other relief as the arbitrator deems just.

DATED: October 31, 2025

KING SCOW KOCH DURHAM LLC

By /s/ Matthew L. Durham
Matthew L. Durham
Attorneys for Justin Darling and
Water Supervisors Association of Nevada

BEFORE ARBITRATOR PATRICK HALTER

In the Matter of the Arbitration between

WATER SUPERVISORS
ASSOCIATION OF NEVADA,

and

LAS VEGAS VALLEY WATER
DISTRICT.

Re: Termination of Justin Darling

Dates of Arbitration: August 26, 2025 and
August 27, 2025

LAS VEGAS VALLEY WATER DISTRICT'S POST-HEARING BRIEF

David B. Dornak, Esq.
Judy Sanderlin, Esq.
FISHER & PHILLIPS LLP
300 S Fourth Street, Suite 1500
Las Vegas, Nevada 89101
(702) 862-3812
ddornak@fisherphillips.com
jsanderlin@fisherphillips.com

I. INTRODUCTION

This is a discharge case arising under the collective bargaining agreement (“CBA” or “Agreement”) between the Las Vegas Valley Water District (the “District” or “Employer”) and the Water Supervisors Association of Nevada (the “Association” or “Union”) regarding the termination of Justin Darling (“Darling”). The matter was heard by Arbitrator Patrick Halter (the “Arbitrator”) on August 26 and 27, 2025, and the hearing was conducted pursuant to specific guidelines in the controlling CBA. (Ex.1 at pp. 11-12).¹

II. OVERVIEW

Darling was a supervisor for the District. As a supervisor, Darling was expected to uphold and enforce District policies—not ignore and violate them. Darling’s violations were especially egregious because he knowingly condoned and outright approved his subordinate Tyler Gibson (“Gibson”) to conduct personal business during work time and to be paid overtime for hours not worked. Gibson would not be employed at the District but for Darling—as his supervisor—directing and approving Gibson’s misconduct. As someone who held a District supervisory position for six (6) years, Darling clearly knew better. Although the District acknowledges that salaried employees like Darling have some liberty regarding their work time, such flexibility does not apply to hourly employees like Gibson. Hourly employees should only be paid for hours worked. By approving Gibson to be paid while conducting personal errands and for time not worked, Darling not only violated District policies, he also violated the public trust regarding how public funds should be utilized. The same is true when he abused accounting for his own time.

After a comprehensive investigation that included several meetings with Darling and a review of a mountain of information, the District terminated Darling for multiple violations of its

¹ The Employer’s exhibits are cited as “Ex. __” and the Unions exhibits are cited as “Ux. __”. The transcript of the hearing is cited as “Tr. __”.

policies and procedures. Three violations were so significant that they did not warrant treatment as minor infractions where progressive discipline might apply. Instead, they were serious misconduct for which termination was the only appropriate recourse.

The first egregious violation was that Darling had authorized his subordinate Gibson to record overtime hours that he did not work. According to Gibson (prior to his reinstatement), Darling expressly instructed Gibson to record such hours as overtime. Despite being required to confirm that employees actually worked the time recorded, Darling even admitted that he often approved time that was submitted weeks in advance of employees actually working. Darling unquestionably knew his actions were inappropriate, but he engaged in them anyways.

The second egregious violation was that Darling would routinely engage in personal errands with Gibson during work time. Darling and Gibson were admittedly close friends. They also shared a District vehicle, which should have been used for work related purposes. Darling and Gibson, however, would go on jaunts together during work time. It is undisputed that they went to a sports warehouse, a bow and arrow establishment, and also made several trips to their personal residences all while "on-the-clock." What elevated this violation to a terminable offense is the fact that Gibson is an hourly employee who is compensated for time actually worked. Darling and Gibson were not working when they were partaking in their personal field trips across Las Vegas, but Gibson was still paid as if he was working. In short, the District was paying Gibson his hourly rate when he and Darling went on personal errands and when they decided to go completely out of their way and nowhere near a District work location simply to use the bathroom. Their joint actions were appropriately considered "theft of time" and a terminable violation. Significantly, the District has zero tolerance for such theft of time and has terminated others for engaging in such misconduct.

The third egregious violation was that Darling falsified his own time records. He had claimed to be working on days that the District's records do not show him working. Despite giving Darling the benefit of the doubt on some of his time entries, Darling was unable to provide a reliable or reasonable explanation for all days that were of concern.

Darling's actions were serious violations. They warranted a thorough investigation, which was conducted by the District's Human Resources ("HR") Team. The impartial investigation included reviewing extensive data, collecting thousands of pages of records, and meeting with Darling, Gibson, and their team of attorneys and representatives. And, the District only terminated Darling for his misconduct after completing this thorough investigation. The Grievance is actually very straightforward despite Darling's attempt to play the victim by claiming that a District manager somehow wanted him terminated so that the manager could replace him with another District employee. Darling's conspiracy theory is absolutely false. The overwhelming evidence shows that Darling simply decided to engage in significant violations that resulted in public funds being used to pay for time not worked. Under such circumstances, the District had just cause to discharge Darling and the Grievance should be denied.

III. ISSUES FOR DECISION

At the hearing, the parties agreed to the following issues:

Did the Employer have just cause to terminate Justin Darling?

If not, what is the appropriate remedy? (Tr. 8:20-22).

IV. RELEVANT PROVISIONS OF THE CBA (Ex. 1)

ARTICLE 3 – RETAINED RIGHTS

- A. In order to operate its business and to maintain the efficiency of its operations, the District, at its sole discretion, retains the exclusive right and power to determine, change, discontinue, alter, or modify, in whole or in part, temporarily or permanently, any of the following:

....

5. The utilization of all District properties, easements, premises, equipment, and facilities.

B. In addition to the retained rights enumerated above, the District shall also retain the right to determine, change, discontinue, alter, or modify, in all or in part, temporarily or permanently, any of the following matters except as limited by the clear and explicit language of this Agreement:

....

5. Methods of reporting and recording time worked, provided that this right shall not be exercised in an arbitrary or capricious manner.

....

9. Reasonable rules and regulations for all employees....

ARTICLE 6 – ARBITRATION

A. Grievances which are not settled pursuant to Article 5 (Grievance Procedure) or Article 7 (Discharge, Discipline and Personnel Files) ... shall be submitted to arbitration as provided in this Article....

....

E. The decision of the Arbitrator shall be based solely upon the evidence and arguments presented to him by the respective parties in the presence of each other. The function and purpose of the Arbitrator is to determine disputed interpretation of terms actually found in the Agreement, or to determine disputed facts upon which application of the Agreement depends. The Arbitrator shall therefore not have authority nor shall he/she consider it his/her function to decide any issue not submitted, or to so interpret or apply the Agreement as to change what can fairly be said to have been the intent of the parties as determined by generally accepted rules of contract construction. The Arbitrator shall not give any decision which in practical or actual effects modifies, revises, detracts from or adds to any of the terms or provisions of this Agreement. The Arbitrator shall not render any decision or award, or fail to render any decision or award, merely because in his/her opinion such decision or award is fair or equitable.

F. If the Arbitrator finds that the District has discharged an employee without cause and orders reinstatement with back pay, all earnings received by the employee and all wages for any comparable employment refused by the employee shall be credited against back pay. The employee will provide such evidence regarding the aforementioned terms as is required by the District.

G. The decision of the Arbitrator within the limits herein prescribed shall be final and binding upon the parties to the dispute.

- H. All fees and expenses of the Arbitrator shall be shared equally by the Association and the District. Each party shall bear the expense of the presentation of its own case.

ARTICLE 7 – DISCHARGE, DISCIPLINE AND PERSONNEL FILES

- A. The right to maintain discipline and efficiency of employees is vested exclusively in the District.
- B. The District shall have the right to discharge or discipline any employee for cause....

The District must be reasonable in determining “cause” in any particular case. The concept of “for cause” includes the principle of progressive discipline for minor offenses....

V. RELEVANT DISTRICT POLICIES

- A. **P-CARD PROGRAM POLICIES AND PROCEDURES MANUAL (Ex. 2, pp. 4-15)**

....

VI. FRAUD / MISUSE OF THE P-CARD (Ex. 2, p. 12)

- 1. District has a zero-tolerance policy for fraud. Fraudulent use or misuse of the P-Card may result in disciplinary or other appropriate action. *Misuse and violations will result in revocation of P-Card privileges and may result in termination of employment for cause.*

....

- 2. Fraud, abuse, misuse, and violations include, but are not limited to the following:

....

- h. Purchases from a business which create a conflict of interest, including those owned by relatives or friends.

- B. **DISTRICT ADMINISTRATIVE POLICY: CONFLICT OF INTEREST (Ex. 2, pp. 15-18)**

I. PURPOSE (Ex. 2, p. 15)

The District occupies a position of trust and responsibility in the community. In meeting its obligations, the District expects all employees to carry out their responsibilities with the highest level of integrity and ethical behavior....

....

III. POLICY STATEMENT (Ex. 2, p. 15)

It is District policy that employees must discharge their duties in the best interests of the District.

....

V. EMPLOYEE RESPONSIBILITIES (Ex. 2, p. 17)

All employees shall comply with the provisions of the Board and administrative policies regarding conflict of interest and are responsible for the following:

....

3. Receiving approval from the District before engaging in any activity, including contracting, consulting, or working for an entity that currently provides, or may in the future provide, goods or services to the District.
4. Avoiding actions, situations, or circumstances that create the perception that an employee is using his or her position or information/knowledge acquired as a result of District employment for personal or financial gain, betterment or advancement (except for wages paid by, and employee benefits provided by, the District).

C. DISTRICT ADMINISTRATIVE POLICY: VEHICLE USE AND WORK-RELATED USE (Ex. 2, pp. 19-21)

....

III. GENERAL PROVISIONS FOR DISTRICT VEHICLE USE (Ex. 2, p. 20)

1. Authorized Agents And Conduct

....

District vehicles are to be used for official company business only. Except as otherwise stated in this Policy, shopping or performing personal errands while operating a District vehicle are prohibited. District vehicles are not to be parked in the lots of shopping, drinking or dining establishments (such as shopping malls, grocery stores, bars, restaurants, convenience stores, etc.) unless being used for official company business, such as official lunch and dinner breaks....

VI. SUMMARY OF FACTS

A. Background

The District is a not-for-profit public agency that delivers water to Las Vegas, North Las Vegas, City of Henderson, and some unincorporated areas of Clark County, Nevada. (Tr. 33). Like any public agency, the District must act with absolute loyalty and in the best interest of the public. District managers and supervisors, therefore, must carry out their duties free from self-dealing or personal gain. Prior to his termination, Darling worked as a mechanical supervisor for the District's maintenance and repair group called the "booster crew." (Tr. 35). The booster crew is a nickname for the field service technicians that support booster pumps for the District. (Tr. 239). They are responsible for maintaining, repairing, and upgrading pump stations and associated equipment used to move water throughout the Las Vegas Valley. (Tr. 35).

Darling supervised ten (10) to twelve (12) mechanics and reported directly to James Doubek ("Doubek"). (Tr. 326-27). Doubek is the District's Maintenance Manager. (Tr. 239). As the booster crew supervisor, Darling was responsible for assigning work and making sure that the crew completed their work assignments. (Tr. 36-37). He was also responsible for ensuring that technicians truthfully submitted their time records and for approving overtime hours worked. (Tr. 36). Darling was issued a company vehicle to be used for work purposes. (Tr. 38). Darling was assigned to share the vehicle with Gibson, who was the Senior Planner/Scheduler for the booster crew. (Tr. 39). Unlike Darling, Gibson was an hourly employee. (Tr. 298, 369). Both Darling and Gibson's primary work location was the District's operations building. (Tr. 37, 39).

B. Darling Berates An Employee Which Starts An Investigation

On May 1, 2024, the District's new Director of Operations Buck Osborne ("Osborne") overheard administrative assistant Brittany Alas ("Alas") crying outside his office. (Tr. 40-41;

Ex. 21). He appropriately investigated what was occurring. (Tr. 40-41; Ex. 21). Osborne found Alas visibly upset and she informed him that a booster crew supervisor, which was determined to be Darling, had belittled and verbally abused her after when contacted him to enforce a directive regarding vehicle access at the Springs Preserve. (Tr. 41; Ex. 21). Alas contacted Darling after being informed that a booster crew vehicle had ignored a vehicle access directive issued by the District. (Tr. 41; Ex. 21). Once Alas finally was able to reach Darling, Darling berated Alas about her calling him to address the vehicle access issue. (Tr. 41; Ex. 21).²

Feeling obligated to immediately take action due to what Alas told him, Osborne used the District's GeoTab system to determine the location of Darling's assigned District vehicle.³ (Tr. 43). While reviewing GeoTab, Osborne discovered that Darling's vehicle was not at a District facility or pump station. (Tr. 41-43; Ux. 17). Instead, the vehicle was parked in a residential neighborhood, specifically on Promontory Ridge Drive, in front of a large private home. (Tr. 41-43; Ux. 17). Because Osborne thought it was odd for Darling's vehicle not to be parked at the pump station located just down the street, Osborne decided to review historical GeoTab

² Darling claimed in the subsequent HR investigation and even during the hearing that he was never contacted by Alas. (Tr. 377 (Darling stating that he neither received a phone call from Alas nor verbally attacked her)). Phone records, however, undeniably prove that Darling and Alas had an 11-minute phone call on May 1, 2024, after Alas had attempted to reach both Darling and Gibson. (Tr. 390-391; Ex. 40). The phone records specifically show:

- A 1-minute call at 11:22 a.m. from Alas (702-258-3163) to Darling's phone as her initial unsuccessful attempt to reach Darling and when she left a voicemail message;
- A 1-minute call at 11:23 a.m. from Alas to Gibson's phone as her initial unsuccessful attempt to reach Gibson and when she left a voicemail message;
- A 3-minute call at 11:44 a.m. from Gibson to Alas as her conversation during which Gibson agreed to have Darling call Alas; and
- An 11-minute call at 11:54 a.m. from Darling to Alas as the call where Darling was disrespectful and inappropriate. (Exs. 39-40).

³ GeoTab is the District's fleet management tool that allows the District to see and track the location of its vehicles.

information to see if the booster crew had a practice of parking at that location. (Tr. 45-46; Ex. 21). Osborne was concerned about employees parking in a residential area because the District had received calls from the public in the past complaining about where District vehicles were parked. (Tr. 45-46; Ex. 21). Although Osborne did not find any other instances of District vehicles parking at the residential location in question, he did notice that Darling's vehicle visited other locations that had no apparent business purpose for visiting. (Ex. 21). Once discovering these discrepancies, Osborne brought his concerns to HR Manager Laura Ornelas ("Ornelas") on May 7, 2024. (Tr. 89; 94).

C. The HR Investigation Begins

After meeting with Osborne, Ornelas decided that a more expansive investigation of the entire booster crew was necessary. (Tr. 97). She made such a decision to ensure the investigation was comprehensive and impartial and, as an HR representative, she needed to make her own impartial determinations. (Tr. 97). Ornelas, therefore, notified the District's Director of HR Mary Madden ("Madden") about the information she received from Osborne and then assembled a team of HR professionals to begin independently obtaining and verifying the information shared by Osborne. (Tr. 98-99). The team consisted of Ornelas, HR Analyst Frank Gibase ("Gibase"), HR Analyst Steve Meyer ("Meyer"), HR Technician Brenda Perez ("Perez"), HR Technician John Molchon ("Molchon"), and HR Technician Christina Jones ("Jones"). (Tr. 99).

D. HR Finds Information That Could Warrant Termination Of Employment

Over the next week, HR reviewed GeoTab and badge and key access records of every employee in the booster crew.⁴ (Tr. 97). HR also compiled information on potential personal

⁴ Medeco key access reports show when employees use their District assigned key to open an office door while badge logs show when employees use their badge to access locations in District buildings. (Tr. 99-100).

errands being conducted on work time and questionable purchases using the District P-Card online, at vendors, and at 6651 Customs. (Exs. 3, 6 and 10; Uxs. 3 and 6). The P-Card is the District's business card that employees receive to exclusively purchase materials for business purposes. (Tr. 90). 6651 Customs is an auto shop that the booster crew was using to coat spools. (Tr. 131). GeoTab records showed that the District's vehicle assigned to Darling would visit 6651 Customs and then immediately go to Gibson's home, raising questions of what Darling and Gibson were purchasing at 6651 Customs and a potential conflict of interest. (Ux. 6). HR also reviewed overtime usage and payments due to the unusual amount of overtime being taken by the booster crew. (Tr. 100).

The initial investigation found several concerning items, including Gibson coding a full ten (10) hours of overtime, despite GeoTab data not showing him working at any District locations on the day in question. (Tr. 101). GeoTab also showed multiple instances of the vehicle assigned to Darling and Gibson potentially being used for personal errands instead of work. (Tr. 101-102; Ex. 30; Ux. 6). Given these significant discrepancies, Ornelas scheduled meetings with Darling and Gibson to obtain their accounts of the situation and to also see if Darling, as Gibson's supervisor, was aware overtime was being paid despite work apparently not being performed.⁵ (Tr. 102; Exs. 3-5).

1. Darling's Meeting With HR

On May 14, 2024, Ornelas emailed Darling to schedule a meeting to address his certifications "among other things." (Tr. 112; Ux. 2). She explicitly told him that he could bring a Union representative to the meeting, which was Ornelas' standard practice when a meeting could potentially lead to discipline. (Tr. 112-13, 184-188; Ux. 2). The Union has never objected

⁵ The investigation eventually focused on Darling and Gibson because the initial information gathered did not raise concerns about other employees in the booster crew. (Tr. 102).

to this practice. (Tr. 185). Despite clear notice, Darling chose not to bring a Union representative to the meeting. (Tr. 113). He also did not request any Union representation during the meeting. (Tr. 121).

Darling was questioned on a variety of topics including his certifications, his approval of overtime for his team, P-Card purchases, his use of 6651 Customs, and him using the District vehicle for personal use. (Tr. 114-121). Darling was given a full opportunity to explain his conduct for each instance and even admitted doing personal errands during work time with Gibson in the District vehicle. (Tr. 114-121 (Darling admitted to going to Gibson's home "to do a couple of things," his own home, Sportsman's Warehouse to get a cooler for his son, and Bow's & Aces to pick up a crossbow for his wife)). At the conclusion of the meeting, Darling was placed on paid administrative leave and escorted out by security pursuant to the District's standard practice. (Tr. 122-24).

2. Gibson's Meeting With HR

Immediately after Darling's meeting, Ornelas met with Gibson. (Tr. 124). During the meeting, Gibson was questioned about his overtime hours, personal errands on District time, improper use of the P-Card, and purchases from 6651 Customs. (Tr. 125-27). Gibson was also placed on paid administrative leave and escorted out by security at the conclusion of his meeting with Ornelas. (Tr. 126).

E. Darling Receives A Pre-Termination Letter

After interviewing Darling and Gibson, HR continued its investigation by gathering time block audit data, badge and key entry data, GeoTab records, trip reports, vehicle and equipment use data, 6651 Customs purchases, and overtime reports. (Exs. 21-34). As shown by the vast number of documents gathered and produced during the hearing, HR's investigation was

extremely comprehensive. (Exs. 22-35). HR investigated the entire booster crew, including Doubek, to ensure its investigation was both thorough and fair. (Tr. 255). Doubek was only advised of the details of the investigation after his interview and at a time it was clear he was not involved with any policy violation under investigation.⁶ (Tr. 256).

Once the investigation of the booster crew was completed and Doubek was not subject to any investigation, Gibase met multiple times with Doubek to review the information gathered by HR. (Tr. 243). After carefully considering the information, Doubek ultimately decided to issue Darling a pre-termination letter.⁷ (Tr. 243; Ex. 2). Gibson was also sent a pre-termination letter the same day. (Ex. 3). The District, through Doubek, based its recommendation for termination on the following:

1. Approving overtime hours for Gibson who was not actually working, constituting a theft of District time and resources;
2. Using or approving purchases at 6651 Customs using a District P-Card;
3. Lack of oversight of personnel supervised by Darling;
4. Making personal purchases for goods or services at 6651 Customs, which created a conflict of interest;
5. Conducting personal errands with Gibson while on District work time;
6. Allowing Gibson to conduct personal errands on District work time, constituting a theft of District time and resources; and
7. Failing to obtain the certifications required for his position, as admitted during the May 15, 2024 meeting. (Ex. 2).

The District was especially concerned that Darling was abusing his exempt status by doing excessive personal errands in District vehicle WITH an hourly employee. (Ex. 2). The District was also very concerned that Darling was having personal items worked on at 6651 Customs

⁶ Although Doubek did not have all his certifications at the time, he and everyone else in his department except Darling were able to get their certifications within their deadlines. (Tr. 247-48).

⁷ It is standard practice at the District for HR to write the pre-termination letter in consultation with the decisionmaker.

while simultaneously having District items worked at that location. (Ex. 2; Tr. 341). In the pre-termination letter to Darling, the District included the policies and procedures that Darling violated and acknowledged receiving (Tr. 129-32; Ex. 2, pp. 4-21), data regarding purchases (Tr. 132; Ex. 2, pp. 22-29), and an overview of questionable trips by Darling using a District vehicle (Tr. 133; Ex. 2, p. 30). The next step was to schedule pre-termination hearings for Darling and Gibson. (Exs. 4-5).

F. The Pre-Termination Hearings

Darling's pre-termination hearing was on June 27, 2024. (Ex. 4). In addition to two (2) Union representatives, Darling brought two (2) non-Union attorneys. (Ex. 4). During the meeting, Ornelas questioned Darling about all issues raised in his pre-termination letter. (Ex. 4). Regarding Darling approving overtime for Gibson despite Gibson not working all such hours, Darling claimed that he was not trained on the process and simply approved time entries without verifying them. (Tr. 140-41).

Ornelas also reviewed with Darling his use of a District's vehicle for personal purposes. (Tr. 143; Ex. 6). Darling admitted to several allegations but attempted to minimize the seriousness of his violations by acting as if it was no big deal. (Ex. 4).

Gibson brought three (3) non-Union attorneys to his termination meeting. (Ex. 5). During the meeting, Ornelas was told that Gibson and Darling would go to Gibson's house or his father's house during work time so that Gibson could use the restroom due to a gallbladder issue. (Tr. 137; Ex. 5, p. 3). Ornelas was further informed that Darling instructed Gibson to be available and to code 10 hours of pay due to being on standby. (Tr. 137; Ex. 5, p. 3). Gibson provided the same explanation (i.e., to code 10 hours of overtime due to being available) when confronted about the 10 hours of overtime he received but apparently did not work. (Tr. 138). This raised concerns

because 10 hours of claimed overtime was significantly more than Gibson would be entitled to under the CBA that applied to him. (Tr. 138-39).

G. Darling Is Terminated And Gibson Is Reinstated

To continue to maintain absolute fairness to both Darling and Gibson, Madden took over the investigations after the pre-termination hearings due to unsubstantiated concerns against Ornelas. (Tr. 293). Madden oversaw the preparation of detailed summaries of issues and findings, which were shared with Darling and Gibson. (Exs. 6-7). Madden also provided a list of comparators of similar incidents and an overview of the overtime and work issues to them. (Tr. 295-96; Exs. 35-36).

Darling and Gibson subsequently responded to the information provided by Madden through their attorney on August 19, 2024. (Ex. 8). In their responses, Darling and Gibson claimed that they had additional information including personal phone records to support their position that they did not violate District policies. (Ex. 8, p. 3). Despite Madden's multiple requests, Darling never produced such information until the hearing. (Tr. 389).

After reviewing all evidence, the District made the decision to reinstate Gibson. (Ex. 9). Although the District concluded that Gibson had violated numerous District policies, the District reinstated Gibson due to him claiming that he was directed and instructed by Darling to code his time in the manner he did. (Tr. 298). The District simply felt it was not appropriate to terminate a subordinate for following his supervisor's directives regarding how to code his time. (Tr. 298). This was especially true considering Darling had approved Gibson's time. (Ex. 4, pp. 2-3). Moreover, Darling was with Gibson for most incidents when they used their vehicle for personal errands, which the District recognized that Gibson would view such conduct as approval for him to engage, or at least felt obligated or pressured to participated, in the misconduct. (Ex. 4, p. 4).

Despite reinstating Gibson, the District proceeded with terminating Darling. (Ex. 10). In the District's termination letter, Doubek rejected Darling's defense that Darling was not properly trained on how to review or approve overtime hours. (Ex. 10, p. 2). Not accurately or appropriately performing payroll was found to be "a dereliction of duties" and showed a "severe and concerning lack in competency" in his position. (Ex. 10, p. 2). The District further found that Darling had violated the District's vehicle policy prohibiting personal errands on District time, a violation exacerbated by the fact that Gibson—an hourly employee—accompanied Darling on the errands. (Ex. 10, p. 2). The District additionally determined that Darling had been untruthful with his own time records, which the District viewed as theft of time and acting in a manner contrary to public interests. (Ex. 10, p. 2). As a result, the District maintained that the violations constituted just cause to terminate Darling. (Ex. 10, p. 2). The District determined that progressive discipline was not warranted due to it only applying to minor offenses and that Darling had engaged in major violations. (Tr. 299).

H. Darling Unable To Support Reinstatement After Filing A Grievance

The Union filed a grievance on September 5, 2025, challenging Darling's termination. (Ex. 11). Step 1 and Step 2 meetings were subsequently held to review the District's findings and any additional evidence that Darling might be able to provide. (Tr. 301-05). The meetings were designed to give Darling additional opportunities to respond to the allegations. This led to several shifting explanations from Darling. (Exs. 12-19). For example, when first confronted with the District's evidence, Darling provided a list of days he claimed he was off work and not in the vehicle. (Ex. 8, pp. 5-6). Yet, after reviewing GeoTab, badge swipes, Medeco, and Workday records provided by the District, Darling—through counsel—submitted a revised list that retracted several of his original claims and asserted that he was, in fact, working on some of those

days. (Ex. 14, pp. 19-20). In an attempt to justify the misinformation that he initially provided, Darling created the excuse that he did not have access to District records at the time when he provided the false information. (Tr. 351-58). The pre-termination letter, however, contained the evidence, including a detailed vehicle report, that Darling could have relied upon. (Ex. 2).

Another example is the April 11, 2024, shifting story of his stop at the Sportsman's Warehouse. Initially, Darling claimed the April 11, 2024, stop at Sportsman's Warehouse was to purchase a cooler. (Tr. 120; 375). Later, at his pre-term meeting, he stated it was to pick up a water bottle for another employee. (Tr. 375; Ex.12, pp.3-4; Ex.16, p.3). At a grievance meeting, Darling changed his explanation again, claiming the stop was at Gibson's request to purchase a water bottle for an employee at the Bermuda pump station. (Ex. 12, pp. 3-4; Ex. 16, pp. 3 and 17). Interestingly, Gibson testified the water bottle was for himself. (Tr. 318). After leaving Sportsman's Warehouse, the vehicle traveled to Hotsy of Henderson, Darling's home, Gibson's home, and then the District. (Ex. 16, pp. 3 and 17). None of the vehicles at the Bermuda pump station on the day in question belonged to the booster crew, indicating no business purpose for being there. (Ex. 16, pp. 3, 21). Darling simply never provided evidence to suggest the stop was work-related. (Ex. 16, pp. 3-4).

In the end, Darling failed to provide any new information to warrant the District reconsidering its decision to terminate him.

VII. ARGUMENT

A. The Arbitrator Should Apply The Seven Tests Of "Just Cause" Standard When Considering Darling's Termination

Article 7(b) of the CBA requires the District to demonstrate that Darling's termination was for "just cause." (Ex. 1, p. 12). Although the CBA does not define "just cause," arbitrators frequently analyze "just cause" through a seven-factor test outlined in *Enterprise Wire Co.*, 46

BNA LA 359, 363 (Daugherty, 1966). Those factors include: (1) whether the employee had notice of the possible or probable disciplinary consequences of his misconduct; (2) whether the rule is reasonably related to the orderly, efficient, and safe operation of the employer's business and the performance the employer might properly expect of the employee; (3) whether there was an investigation prior to the employee being discharged; (4) whether the investigation was fair and objective; (5) whether the investigation yielded substantial proof of the employee's misconduct; (6) whether the employer applied its rules evenhandedly and without discrimination; and (7) whether the degree of discipline imposed is reasonably related to the seriousness of the proven offenses and the record of the employee in his service with the employer. *Id.* at 362-65. All of these factors are met in this case.

B. The District Has Demonstrated That The Seven Elements Of A “Just Cause” Termination Exists Here

1. Darling Fully Understood The Rules He Violated And The Likely Consequences Of His Actions

The notice requirement of a “just cause analysis” is typically satisfied by the employer “adopting some written code of conduct or disciplinary rules.” *AFSCME Council*, 2019 BNA LA Supp. 4666748, at *5 (McNeill, Jr. 2019) (Finding that the employee had notice of the rules when the employer “promulgated written rules ... elaborating expectations for employees.”). Indeed, “the Grievant [is] responsible for knowing the controlling rules and policies, governing the manner in which employees must behave and perform their duties.” *Greyhound Lines, Inc.*, 2013 BNA LA Supp. 147492, at *12 (Nicholas, Jr. 2013).

It is also well-settled in arbitration that employees are presumed to know the terms of their collective-bargaining agreement and established work rules. *See Avis/Budget Group*, 2023 BNA LA 405, 439 (Sergent, 2023) (“[E]mployees are presumed to know the terms of their collective-

bargaining agreement.”) (citing *Discipline and Discharge in Arbitration* 2-71 (Norman Brand and Melissa H. Biren, eds., 3d ed. 2015)); *Lithonia Lighting Co.*, 85 BNA LA 627, 629 (Volz, 1985) (“Since an employee is held to know the contents of the collective bargaining agreement, which his designated bargaining agent negotiated on his behalf and on behalf of the other unit members, [the grievant] must be presumed to have known of the presence of the above provision in the contract.”); *AFSCME Council*, 2019 BNA LA Supp. 4666748, at *5 (McNeill, Jr., 2019) (“By virtue of specific provisions of the Rules and the Policy, as well as common sense, the Grievant knew or should have known that the behavior alleged here could subject him to disciplinary action.”).

Here, there is no dispute that Darling was fully aware that he was subject to the District’s established policies and procedures, including the P-Card Program Policies and Procedures Manual, the Conflict of Interest Policy, and the Vehicle Use Policy as he signed and acknowledged receipt of each policy on several occasions throughout his employment. (Tr. 129-132; Ex. 2, pp. 4-21). Darling was also required to take mandatory trainings to obtain a P-Card, and would have reviewed the P-Card Manual’s prohibition on “purchases from a business which create a conflict of interest, including those owned by relatives or friends.” (Tr. 129; Ex. 3, p. 12). Darling even confirmed his understanding of the District’s Vehicle Use Policy⁸ as limiting vehicle use to “company and business purposes.” (Tr. 342).

It also cannot be reasonably disputed that Darling was aware of the potential consequences of violating District policy. As set forth in the P-Card Program Policies and Procedures Manual and the Conflict of Interest Policy, violations of those policies may result in discipline up to and

⁸ The District’s Vehicle Use Policy provides that District vehicles are to be used for official company business only, and that “shopping or performing personal errands while operating a District vehicle are prohibited.” (Ex. 2, p. 20).

including termination. (Ex. 2, pp. 6-7, 12, 14 and 16-17). Moreover, arbitrators have long recognized that some behaviors—such as theft [of time] and deliberate falsification of records—are “so egregious and destructive of the employment relationship that the majority of arbitrators have consistently upheld disciplinary action, including summary discharge, when . . . established by sufficient evidence, even in the absence of a specific rule prohibiting such misconduct” *Southern Cal. Edison*, 89 BNA LA 1129, 1136 (Koven, 1987)); *see also Enterprise Wire*, 46 BNA LA at 363 (“[C]ertain offenses . . . are so serious that any employee in the industrial society may properly be expected to know already that such conduct is offensive and heavily punishable.”); *City of Sparta*, 138 BNA LA 1931, 1935-36 (Suardi, 2018) (recognizing that “dishonesty is among the most serious of industrial offenses” and “need not be the subject of a formal rule in order to be enforced”); *Schnuck Markets, Inc.*, 2003 BNA LA Supp. 110188 (Wilbanks, 2003) (recognizing that falsification of records is “viewed as so serious as to warrant discharge without any warning” because it is “such [an] obvious violation of the employer-employee relationship . . . that common sense indicates that special warnings are not needed before discharge.”); *Philco Corp.*, 45 BNA LA 437, 441 (Keeler, 1965) (“[A] Company does not have to establish that it had, or that it had communicated specific rules for certain well-recognized proven offenses . . .”).

There is no question that Darling had notice of the District’s rules and understood the potential consequences of violating those rules. Therefore, the District has satisfied the first element of a just cause standard test.

2. The District’s Rules Are Eminently Reasonable

When considering the second test of “just cause” the Arbitrator must consider “whether or not the rule is reasonably related to a legitimate objective of management.” *Robertshaw Controls Co.*, 55 BNA LA 283, 286 (Block, 1970). It simply cannot be denied that rules requiring

employees to act in the best interest of a public entity, and not engage in subversive behavior designed to steal time from the District, falsify District records and/or misuse District property are reasonable on their face. *See Von's Grocery Co.*, 133 BNA LA 1313, 1318 (Staudohar 2014) (“An employer has the right to honesty and truthfulness from its employees in matters pertaining to the employment relationship” (internal citations omitted)); *see also Union County Sheriff*, 123 BNA LA 1101, 1110 (Sellman, 2007) (“Honesty . . . [is] clearly related to efficient, effective, orderly and safe operations.”); *The Honolulu Advisor*, 2003 BNA LA Supp. 110578 (Nauyokas, 2003) (“[T]he Employer’s rule on dishonesty is, per se, a reasonable rule.”); *Airfoil Forging Textron*, 106 BNA LA 945, 950 (Klein, 1996) (“There is no question of the reasonableness of a work rule providing that the falsifying of a company record . . . is an offense of such a serious nature that ‘a first occurrence’ for an offense of this type ‘may warrant discharge.’”). Moreover, policies restricting personal use of company vehicles are inherently reasonable. *See In the Matter of Arbitration Between IBT Local __ and Employer*, AAA Case No. [Redacted], 2016 BNA LA Supp. 205226, at 5 (Gandel, 2016) (personal use of company vehicle policy is reasonable). Arbitrators have consistently recognized the legitimacy of such rules.

The fact that Darling was a supervisor and long-term employee only heightens the reasonableness of the District’s rules because an employer naturally places a heightened expectation on supervisors to act in the best interest of the employer. *See In re City of Stockton (Calif.) and Stockton Mid-Management B&C, No. 4 Employees Group*, 112 BNA LA 696, 698 (Riker, 1999); *see also Orange County, Fla.*, 191115-01526, 139 BNA LA 1309, 1315 (Smith, 2020) (“Higher pay and managerial status comes with higher responsibility and reasonable expectations associated with leadership positions.”).

As a public entity, the District has an obligation to ensure that public funds are utilized appropriately. Requiring a supervisor to verify appropriate time records and to not authorize overtime not worked is inherently reasonable under the circumstances. Likewise, a supervisor should not be condoning, and more egregiously participating with, an hourly employee doing personal errands during work time and while on-the-clock. Therefore, it cannot be disputed that the District's rules are inherently reasonable.

3. The District Conducted A Thorough Investigation Before Terminating Darling

Contrary to the Union's assertions, the District did not set out to cherry pick facts to support a foregone conclusion. Rather, Darling was terminated as the result of an expansive and thorough investigation, which provided Darling multiple, meaningful opportunities to be heard before making the final decision. *Shaefer's Ambulance Service*, 104 BNA LA 481, 486 (Calhoun, 1995) ("[A]n employee must be given an adequate opportunity to present [his] side of the case before the employer discharges [him].").

In this case, when Osborne noticed some initial inconsistencies regarding Darling's use of the District's vehicle, he immediately involved HR who in turn opened a full investigation into the issues. Ornelas only expanded the scope of the investigation after discovering other potential violations while reviewing records for the whole booster team. (Tr. 97). Ornelas also brought in an entire team to assist in the review of records to ensure completeness and thoroughness, which included HR Analyst Gibase, HR Analyst Meyer, HR Technician Perez, HR Technician Molchon, and HR Technician Jones. (Tr. 99). Darling was then notified of the initial investigatory meeting on May 14, 2024, and was explicitly informed that he could bring a Union representative to the meeting. (Tr. 112-113, 184-188; Ux. 2). Following that meeting, several discrepancies remained

unexplained; therefore, Darling was placed on paid administrative leave pending further investigation on May 15, 2024. (Tr. 122-123, 127).

HR's investigation continued for several weeks following Darling being placed on paid administrative leave during which time HR collected and reviewed records from GeoTab, badge swipes, Medeco, and Workday to all potential issues raised by Darling and to ensure the accuracy of the information gathered. (Exs. 22- 34). Thousands of pages of documents were reviewed and a countless number of hours were spent by HR to investigate the potential violations of policies by Darling and his responses to the violations. Indeed, HR communicated with Darling several times during the investigation, and Darling even provided documents allegedly explaining several of the dates he recorded overtime. (Ex. 8, pp. 5-6; Ex. 14, pp. 19-20). Darling was further provided his pre-termination letter on June 10, 2024, and given time to review and respond to each allegation. (Exs. 2 and 8). Darling was then scheduled for a pre-termination meeting on June 27, 2024, which he attended with his counsel, where he was able to present his version of events and to submit written rebuttals. (Tr. 134; 140; 143-145).

Throughout the investigation, every time Darling was given an opportunity to "tell his side of the story," Darling's story would change or a new explanation would be provided. Significant to this element of the just cause test, every time Darling provided additional records or explanations, HR reviewed that evidence to determine if it provided proof of work related activities. There was nothing more the District could or should have done to satisfy its obligation to conduct a fair and objective investigation. *See Kuka Toledo Production Prod. Operations, LLC*, 138 BNA LA 1241, 1247 (Belkin, 2018) ("[I]t is generally understood in arbitration that a 'full and fair' investigation is a means to an end – full disclosure of the facts – and not an end in itself. Once the facts have been developed and the grievant's version duly considered, that

element of just cause has been satisfied.”); *St. Clair County*, 80 BNA LA 516, 520 (Roumell, 1983) (“If an employer is going to discipline an employee under the just cause standard, the employer must make a thorough investigation, which includes obtaining the employee’s own version of the facts before the discipline is rendered.”).

The steps and conclusions of the investigation were thoroughly detailed in Darling’s pre-termination letter, summary of issues and findings, and termination letter. (Exs. 2, 6 and 10). Thus, the extensive investigation record establishes that Darling was offered a full opportunity to rebut the allegations and explain his actions.

4. The Investigation Was Conducted Fairly And Objectively

The District promptly and thoroughly investigated the misconduct for which Darling was discharged. Ornelas immediately gathered information from multiple sources, including interviewing multiple witnesses and compiling thousands of pages of documents. (Tr. 96-100, 243; Exs. 22-34). The gathered information included GeoTab records of Darling’s vehicle and Medeco keys and badge entries over a 4-month period. (Ex. 6; 22-36).

Darling was offered a full and fair opportunity to address the allegations and ask questions at the pre-termination meeting. (Tr. 134, 140 and 143-145). Notably, the notice of the meeting clearly stated that Darling had the right to bring a Union representative, but he elected not to do so. (Tr. 121; Ux. 2). Ornelas followed her standard practice in how she writes meeting notices, and the Union has never previously objected to her practice in the past.

Furthermore, contrary to the Union’s assertions, the investigation was free from bias. In fact, when Darling first raised potential bias on the part of Ornelas, the District promptly removed Ornelas and Madden, Director of HR, took over the lead investigator role to avoid even the

appearance of bias in the investigation. (Tr. 294). Ultimately the investigation led to extensive documentation of Darling's violations—and business records don't lie. (Ex. 6 (Summary)).

Despite the District unquestionably conducting a fair and objective investigation, the District expects Darling to continue to raise incredible and unsubstantiated claims involving Osborne and the investigation. The District expects Darling to continue to maintain that Osborne "wanted him gone" and deliberately targeted him because Osborne wanted Darling terminated to create a vacancy so he could fill the position with his own people. (Tr. 28-29). However, the undisputed evidence shows that Darling's position has remained unfilled since the time of his termination. (Tr. 146). As there is no credible evidence that Osborne has ever moved to capitalize on the vacancy created, this argument fails to carry any weight and should be disregarded.

The District also expects the Union to claim that Darling's *Weingarten* rights under Article 7(C) of the CBA were violated due to Ornelas not listing in her email scheduling his interview every item that was discussed. Darling's rights were not violated. The District has the legal right to investigate employee misconduct. *See New Jersey Bell*, 308 NLRB 277, 279 (1992) ("[I]t is within an employer's legitimate prerogative to investigate employee misconduct in its facilities without interference from union officials") (citing *Manville Forest Products*, 269 NLRB 390 (1984)). This includes compelling employees to submit to questioning. *Id.* Ultimately, it was also Darling's obligation to assert his *Weingarten* rights during his interview with Ornelas if he wished to exercise them and the District should not be punished for his failure to do so. *See Elkouri & Elkouri*, *How Arbitration Works*, Chapter 15 (Discharge and Discipline) § 15.3.F.v (BNA, Online Ed.); Koven & Koven, *Just Cause The Seven Tests*, at 206-07 (2nd Ed. 1992) ("...employee must clearly request that a union representative be present. An employer does not have an affirmative duty under *Weingarten* to offer to call a union representative on an

employee's behalf or to advise an employee that he has the right to representation in an investigatory interview."'). Moreover, Darling was given multiple opportunities to address the findings against him, which cured any alleged notice violation. Darling clearly understood the allegations against him and provided detailed responses to each of them.

Darling also has entirely overblown the fact that Osborne audio recorded a call. (Tr. 28-29). This argument is entirely irrelevant to these proceedings because no portion of that telephone call was used as either part of the investigation or considered as the basis of termination. (Tr. 103). As explained by Ornelas, HR independently verified all information brought to her by Osborne and conducted its own neutral investigation.⁹ It was HR's investigation and not anything gathered by Osborne that led to Darling's discharge. Accordingly, the District has proven that it conducted a fair and objective investigation before discharging Darling.

5. The Investigation Yielded Proof Of The Grievant's Misconduct

The evidence gathered by the District's HR team was extensive and compelling. Undisputed evidence clearly established that Darling knowingly violated the District's Vehicle Use and Work Related Vehicle Use policy. That policy undisputably states that District vehicles "are to be used for official company business only." (Ex. 2, p. 20). The policy could not be clearer that "personal errands while operating a District vehicle are prohibited." (Ex. 2, p. 20). Moreover, the "de minimis personal use" exception only applies when an employee is assigned a "24-hour vehicle," which is not applicable to Darling. (Tr. 156-57). Although employees do have some leeway to make short stops for beverages, food, to use the restroom etc. when they are traveling to and from a worksite, excessive violations are unacceptable. Importantly, employees

⁹ Ornelas even broadened the scope of the investigation to include a greater time period of GeoTab data, rather than limiting the investigation to the handful of discrepancies that were initially identified by Osborne, to ensure the investigation was fair. (Tr. 97).

should not be stopping at locations that take them away from traveling to and from a worksite. As shown by the comparators provided by the District (Ex. 35), the District will discipline including terminate employees who abuse any limited exception like Darling did in this matter. Significantly, Darling should not have forced his subordinate Gibson to violate the policy under any circumstances, and it was this egregious fact that resulted in his termination.

The District found that Darling took nine (9) trips, totaling **17 hours and 43 minutes** over a 4-month period, that violated its policy. (Tr. 125-126; Exs. 6, 26-27 and 30). Gibson—who is an hourly employee—frequently was in the vehicle with Darling for those personal errands. (Tr. 125-127). The following are trips that were found violating the District's policy:

Date	Vehicle 1679 GeoTab Locations (In order visited)	Total Time (Min)
Jan. 29, 2024	District → 2810 Marco (6651 Customs) → 1620 Rocking Horse Drive (Darling's Residence) → Costco → District	126
Jan. 31, 2024	4470 Dalzell Ct (Gibson's Residence) → Eye Doctor	127
Mar 14, 2024	District → 6038 Topaz → 1620 Rocking Horse Drive (Darling's Residence) → District	93
Mar 19, 2024	District → 4470 Dalzell Ct (Gibson's Residence) → 7470 Commercial Way (Retro Car Parts) → 1620 Rocking Horse Drive (Darling's Residence) → Lunch → District	162
Mar 20, 2024	4470 Dalzell Ct (Gibson's Residence) → 7470 Commercial Way (Retro Car Parts) → 7715 Commercial Way (Fig Speed Shop)	89
Mar 21, 2024	980 American Pacific (DNA Tactical) → 1620 Rocking Horse Drive (Darling's Residence) → District	115
April 4, 2024	District → 500 S. Decatur (Convenience Store) → 1620 Rocking Horse Drive (Darling's Residence) → 7715 Commercial Way (Fig Speed Shop) → 4470 Dalzell Ct (Gibson's Residence) → District	93
April 10, 2024	4470 Dalzell Ct (Gibson's Residence) → Tattoo Shop area Charleston	122
April 11, 2024	District → Sportsman's Warehouse → Industrial Equipment Shop → 1620 Rocking Horse Drive (Darling's Residence) → 4470 Dalzell Ct (Gibson's Residence) → District	136

Although Darling claims that it was common for supervisors to use their vehicles for personal errands during work time, the egregious issue here is that Darling was engaging in such conduct with his hourly subordinate. By including an hourly employee on his personal errands, the evidence of vehicle misuse transforms into wage theft. In short, Darling was actively authorizing Gibson to receive wages for time not worked and, in some cases, for time spent on Darling's personal errands. Furthermore, Darling was traveling to locations, including his residence and Gibson's residence, that were not near or on the way to or from any District worksite. His misconduct cannot be compared to an employee who simply stops at a convenience store for a beverage, snack, or to use the restroom.

Moreover, the District is not unsympathetic of Gibson's claimed gallbladder issue. Gibson, however, never informed the District about his issue until after his termination. (Tr. 321-22). He, therefore, did not have an approved accommodation to use the restroom only at his residence or a family residence. Such a request would also be unreasonable considering Gibson's residence is not near his primary work location or on the way to or from any District worksite. (Tr. 198). As such, Darling would have to drive Gibson completely out of the way from any business purpose to visit Gibson's or his own residence. Darling also could have easily stopped at any public restroom for Gibson.

As part of its investigation, HR also reviewed GeoTab, badge swipe audits, Medeco data, and Workday records, and compiled findings proving Darling misrepresenting his own time. (Exs. 22-34). The District went out of its way to investigate every explanation and example provided by Darling and even gave him the benefit of the doubt on every disputed instance. The evidence still showed instances, which Darling conceded in his pre-termination response letter, were hours entered and wages received for days when Darling knew he was off and no work was

being performed. (Tr. 302-303; Ex. 8). This is evidence of wage theft, plain and simple. (Tr. 123).

Indeed, on June 27, 2024, Darling's counsel produced a list of 15 dates in which Darling was allegedly off work due to illness or other personal reasons and that Darling maintained that the District should not rely upon for his termination. (Ex. 6, p. 2). In reviewing these dates, the District found that six (6) of them showed that Darling reported to have worked a 10-hour regular day, when the data suggests otherwise. (Ex. 16, pp. 4-5). After reviewing additional information provided during the grievance process, the District accepted two additional explanations, which left the following days still as violations:

- **January 9, 2024:** Darling claimed to have worked from home. However, Workday records show no edits or activity on January 8 or 9 to the system he was working on, and there are no badge or key access entries to substantiate that he was working. (Ex. 16, pp. 4 and 23).
- **March 5, 2024:** Darling stated he attended the Supervisor Critical Conversations meeting, but training logs confirm this class did not occur on March 5. While Workday shows some activity, there is no evidence he worked a full day. (Ex. 16, p. 4).
- **March 7, 2024:** Darling asserted that text messages and a credit card statement proved he worked, and that he attended a tattoo appointment after work. Workday records show he logged in at 8:47 a.m. and out at 10:18 a.m., with no other activity, and the tattoo receipt lacked a timestamp. (Exs. 14, p.1 and 16, p. 4).
- **March 26, 2024:** Darling claimed he left early due to an allergic reaction, but his supervisor, Doubek, had no record of approving this absence. Darling coded the entire day as regular time instead of using sick leave, despite not working a full day. (Ex. 16, p. 25).

These four (4) days total **40 hours** of misappropriation (falsifying timekeeping records by coding regular hours worked for time off). Although Darling claimed he took calls on various days to conduct business, the District's phone records do not support Darling's claim and Darling refused to produce his own phone records. (Ex. 15-16).

Darling also admitted that he regularly approved time for Gibson without independently verifying whether the overtime was actually worked, instead relying on Gibson to keep track of

his own time as well as the time of others on the crew. (Tr. 373-374). In fact, Darling confirmed that he was not keeping a close watch on time records, nor would he review and approve time entries daily. (Tr. 373). He noted that employees would sometimes “put their time in four weeks in advance” or “wouldn’t do it until the day it was required.” (Tr. 373). Issues with Gibson’s time that Darling approved include:

- **January 12, 2024 (10 hours overtime):** Gibson spent over two hours on personal travel and errands, including stops at his home, a convenience store, and an auto parts shop unrelated to District business. AVANTIS records show only 20 minutes of work performed. The total documented work for the day was less than three hours, yet a full 10 hours of overtime was approved by Darling. (Tr. 198-199; Ex. 16, p. 5; Ex. 30).
- **January 19, 2024 (10 hours overtime):** Gibson’s activities included a trip home and to a welding supply store where no District business was conducted. AVANTIS records reflect only about one hour of work. Again, 10 hours of overtime was approved by Darling without supporting evidence. (Tr. 199; Ex. 16; Ex. 16, p. 6).
- **May 3, 2024 (10 hours overtime):** Gibson visited his home, a motorcycle shop with no District connection, and a restaurant, with only about 30 minutes of actual District work documented. Still, 10 hours of overtime was approved by Darling. (Tr. 199; Ex. 16, p. 6; Ex. 30).
- **May 5, 2024 (4 hours overtime):** No records—vehicle tracking, badge swipes, phone logs, or AVANTIS entries—showed that Gibson performed any District work. The only documentation provided was an email and a call received, not work performed. Despite this, 4 hours of overtime was approved by Darling. (Tr. 199; Ex. 16, p. 6; Ex. 30).
- **May 10, 2024 (10 hours overtime):** Gibson’s activities included personal stops and lunch, with no AVANTIS work completed. Only five to six hours of work could be accounted for, yet 10 hours of overtime was approved by Darling. (Tr. 204 Ex. 16, p. 6; Ex. 30).
- **AVANTIS “Catch-Up” Overtime:** On days when Gibson claimed overtime to “catch up” on AVANTIS work, records show only a few minutes of actual work in the system for January 8, 29, and 31 of 2024; far less than the hours claimed and approved by Darling. (Ex. 16, p. 7).

Moreover, Gibson stated during his pre-termination meeting that Darling specifically instructed him to code his time as overtime for being on standby to assist. (Ex. 5, p. 3). Significantly, the District found that Gibson informed the District when he was attempting to be

reinstated that Darling had told him to “just be available” for time that was recorded and paid as overtime despite Gibson not actually working. (Tr. 56, 211). Knowing his instruction directly violated policy and would result in Gibson receiving overtime despite not being entitled to it, Darling denied giving such instruction. After being reinstated, Gibson—who clearly is a close friend of Darling considering they visit each other’s homes—also conveniently changed his story to support Darling. Gibson only changed his story after the District accepted his representation which then formed the basis for his reinstatement. Regarding Darling’s denial and numerous shifting and changes to his stories to justify his misconduct, the Arbitrator should not give them any credit. As explained by Arbitrator Daniel in *Brooks Foundry*:

An employee charged with misconduct leading to severe discipline or discharge has an interest in avoiding the responsibility and the blame and there is a recognized tendency on the part of such individuals to misstate the facts and circumstances.

Brooks Foundry, Inc., 75 LA 642, 643 (Daniel, 1980); see *Schnucks Markets*, 118 LA 715, 723 (King, 2003) (“As noted by Arbitrator Shulman, the incentive of any grievant to lie in a discipline arbitration case is obvious. A grievant’s job tenure and financial security are at stake, whereas no such motivation confronts the employer’s supervisory personnel or on the part of independent witnesses, especially those who are not employees of the Company.”); see also *Kraft Foods, Inc.*, 73 BNA LA 493, 495 (Rose, 1979), where the arbitrator observed that “when an employee’s job is at stake, his testimony generally is an exercise in self-absolution.”

The District’s investigation also found significant evidence of inappropriate P-Card usage, primarily at 6651 Customs creating a clear conflict of interest. During the investigation Darling admitted that the owner was a close friend, that he was using 6651 Customs to get his own personal items coated, and he had been expressly instructed by his supervisor, Doubek, that he

was not permitted to use his P-Card at 6651 Customs. (Tr. 267, 337-339). Darling's use of 6651 Customs was a clear conflict of interest because he was also using them for personal work.

- All of the above evidence was clearly outlined in the pre-termination letter, summary of issues and findings, and termination letter as support for the termination. (Exs. 2, 6 and 10). Therefore, having compelling evidence of multiple violations of District policy—often intentional violations designed to directly financially benefit Darling or Gibson—the District made the reasonable decision to terminate Darling for these serious violations.

The bottom line is that the investigation yielded definitive proof of the misconduct that led to Darling's termination, and the District has satisfied the fifth test of "just cause."

6. The District Evenhandedly Responded To The Offense Without Discrimination

The District responded to Darling's misconduct in an evenhanded and consistent manner. The District did not single out Darling, but conducted a comprehensive investigation that included not only Darling, but also Gibson, Doubek, and the entire booster crew. (Tr. 97). The District's HR team followed its own procedures to gather necessary evidence in this matter, to conduct and complete a full investigation and, from all their investigative findings, to make a determination as to appropriate discipline for the multiple violations of policies and rules. The decision to terminate Darling, founded on substantial evidence of his guilt, should not be set aside, absent a finding that the District acted in an arbitrary or capricious manner.

The Union bears the burden of proving disparate treatment, which is an affirmative defense. To meet this burden, the Union must show not only that another employee was treated differently, but also that the circumstances of the alleged comparator were substantially similar to those of Darling. *Howard Industries, Inc.*, 126 BNA LA 409, 414 (Cohen, 2008) (internal

citations omitted). It is not enough to simply point to a different outcome; the Union must establish that the offenses and relevant circumstances were alike in all material respects. *Id.*

Here, the Union is expected to argue that Gibson's reinstatement demonstrates disparate treatment. That argument fails. Gibson was an hourly employee and a subordinate who followed Darling's instructions regarding overtime and vehicle use. (Ex. 9). The record shows that Gibson was reinstated because he was not similarly situated to Darling, *i.e.*, he did not have supervisory authority, and the investigation found that he acted at Darling's direction. (Ex. 9).

The Union also attempts to compare Darling to Doubek by questioning whether Doubek was disciplined for approving overtime. (Tr. 283-287). This argument is equally unavailing. Doubek was in a higher management position, and while he was also investigated, he was not found to have engaged in any of the misconduct that led to Darling's termination. The investigation revealed no evidence that Doubek failed to exercise oversight or engaged in dishonesty or misuse of District resources. Unlike Darling, Doubek and everyone else in his department were also able to get their certifications within their deadline or extended deadline. (Tr. 247-48). The circumstances are not remotely similar.

The Union has not produced a single instance in which an employee in a supervisory role, who engaged in the same pattern of misconduct as Darling, was not terminated. In fact, the District has consistently enforced its policies and has terminated other employees for similar or even less serious violations. (Ex. 35). During the investigation, the District reviewed prior discipline to ensure that Darling was not treated more harshly than others. (Ex. 35). As Madden testified, a comparator chart was prepared and provided to the union, showing that employees who engaged in comparable or less egregious misconduct were also subject to termination or significant discipline. (Tr. 294; Ex. 35). The District created the comparator chart by reviewing

timecard issues involving other employees to ensure Darling was being treated fairly. (Ex. 35). As shown by those comparators, the District does not tolerate employees falsifying time or conducting personal business during work time. (Ex. 35). Falsifying time records is an especially egregious violation and will result in termination. (Ex. 35). Clearly a supervisor allowing a subordinate to engage in such misconduct is also a terminable offense. Despite being provided with such comparators, Darling did not attempt to dispute them until the hearing.

Finally, the Union alleges age discrimination in its grievance. (Tr. 304; Ex. 17, p. 2). Although the Union did raise age discrimination in the grievance, no evidence was offered by the Union or Darling to support any finding that other employees had been treated more favorable than Darling based upon their age. *Cf. Howard Industries, Inc.*, 126 BNA LA 409, 414 (Cohen, 2008) (The Grievant bears the burden of proof on discrimination claims, and must come forward with substantial evidence to support this affirmative defense.). Here, Darling has presented absolutely no evidence to suggest any kind of age discrimination or disparate treatment. This leaves the Union with only speculation and inuendo, both of which are insufficient to prove discrimination. Absent evidence of disparate treatment for the same types of misconduct the Arbitrator must disregard this unsupported argument. The record is clear that the District applied its rules and penalties evenhandedly and without discrimination. The Union cannot carry its burden of proving disparate treatment. Thus, the sixth test of the “just cause” is satisfied.

7. Discharge Was Reasonably Related To the Seriousness Of Darling's Offenses And His Records Of Service With The Company

The severity of Darling's misconduct warranted immediate discharge. As cited in the treatise *How Arbitration Works*, Arbitrator Whitley P. McCoy in *Stockham Pipe Fittings Co.*, 1 BNA LA 160, 162 (McCoy, 1945), laid out a standard followed for over sixty years:

Where an employee has violated a rule or engaged in conduct meriting disciplinary action, *it is primarily the function of*

management to decide upon the proper penalty. If management acts in good faith upon a fair investigation and fixes a penalty not inconsistent with that imposed in other like cases, an arbitrator should not disturb it. The mere fact that management has imposed a somewhat different penalty or somewhat more severe penalty than the arbitrator would have if he had had the decision to make originally is no justification for changing it.

Id. (emphasis added); cf. Elkouri & Elkouri, How Arbitration Works, Chapter 15 (Discharge and Discipline) § 15.3.E.iii (BNA, Online Ed., Current through 2020) (citing the same for principle that penalty should only be set aside if there has been an abuse of discretion).

It simply cannot be disputed that the District retains the right to conduct a reasonable, thorough investigation in matters such as done here and, once the facts are gathered and a grievant has been given his “chance to tell their side of the story,” to weigh the gathered evidence in order to reach a reasonable conclusion as to the degree of discipline to be meted out. *In the Matter of Voluntary Arbitration between Brown Eagle Contract Services, Inc.*, 96-19147-6, 1997 BNA LA Supp. 101576, 7-8 (Howell, 1997). As long as the District does not abuse its discretion in rendering a decision on what level of discipline to impose, the chosen penalty should not be disturbed.

The severity of Darling’s misconduct warranted immediate discharge. The CBA gives the District the right to summarily discharge an employee for “just cause.” (Ex. 1, p. 12). Article 7(B) provides that “the concept ‘for cause’ includes the principal of progressive discipline *for minor offenses*.” (Ex. 1, p. 12) (emphasis added). As Ms. Madden testified “with theft of time and also other activities that Justin [Darling] was engaged in, we never considered that minor.” (Tr. 299).

Darling deliberately took actions his own gain, knowingly approving and submitting false time records, which diverted public funds for personal benefit and at the expense of the taxpayers

who rely on the integrity of District operations. As explained by the arbitrator in *International Brotherhood of Teamsters Local 533 and Southern Wine & Spirits of Nevada*, 2002 BNA LA Supp. 109229, 109237 (Oestreich, 2001), the severity of a penalty was fully justified given the magnitude and frequency of the offenses, noting that the falsifications were intentional, frequent, and resulted in illegitimate financial gain. “[A] significant number of arbitrators have consistently upheld summary discharge where previous dishonesty or an attempt to defraud the Company is established by sufficient evidence.” *Horsehead Corp.*, 129 BNA LA 705, 706 (Felice, 2011).

The evidence collected during the investigation shows that over the course of several months, Darling repeatedly misused a District vehicle, improperly approved overtime for Gibson without verification, and misrepresented his own time in clear violation of the District policies. (Exs. 2, 16 and 22–36). Darling’s intentional approval of overtime for Gibson (without any review or oversight) and his own misrepresentations alone warrant termination. (Tr. 282:1-5).

The Union may attempt to argue that Darling’s lengthy employment record should weigh in favor of reinstatement. However, in this case Darling’s employment record actually weighs against him because as an experienced employee Darling is expected to be more familiar with the rules and should be held to a heightened standard of expectation. As arbitrators have recognized, length of service does not excuse serious violations of policy. *See Hayes-Albion Corp.*, 70 BNA LA 696, 698 (Glendon, 1978). In fact, seniority increases the responsibility to act with integrity and to set an example for others. *Id.*

Darling’s position required a high degree of trust and accountability, and his actions fundamentally breached that trust. As Doubek noted, Darling—as a supervisor—was held to a higher standard of having working knowledge of and upholding District policies, including for his subordinates. (Tr. 286-287; Ex. 1, p. 6 ¶ 2). Darling was a long-tenured supervisor who had

been trained on the District's policies, understood that his actions were wrong, and yet repeatedly violated policy regardless of his experience and position. Instead, the evidence suggests Darling capitalized on his extensive knowledge of the District's procedures in order to intentionally manipulate time records. Thus, in order to avoid rewarding this underhanded behavior, the Arbitrator should uphold the termination as the appropriate level of discipline selected by the District and deny the Grievance.

C. Even If The Arbitrator Was Inclined To Order Reinstatement (Which He Should Not Do), Darling Should Be Reinstated Without Backpay

Even if the Arbitrator were to disagree with the District and find Darling should be reinstated (which he should not do), Darling should not be reinstated with backpay due to the egregious and extensive nature of the violations involved in this matter. As the arbitrator stated in *Labor Arbitration Decision*, 4671745-AAA, 2020 BL 520621, 2020 BNA LA 1352, 166 (Falvo, 2020): "An employer is entitled to impose severe discipline for theft offenses to deter other employees. The Grievant's actions preclude his reinstatement."

VIII. CONCLUSION AND REQUEST TO DENY THE GRIEVANCE

Darling was discharged for "just cause" for his misuse of a company vehicle while his hourly subordinate was present, for his own misreporting of his time worked, and for his approval of work not performed by Gibson. The District conducted a thorough, unbiased and fair investigation which yielded substantial proof of these policy violations. Darling was not targeted or treated differently, and the received discipline commiserate with the seriousness of his violations. Darling was properly terminated for just cause.

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Accordingly, the District respectfully requests the Arbitrator deny the Grievance.

Dated this 31st day of October, 2025.

Respectfully submitted,

FISHER & PHILLIPS LLP

/s/ David B. Dornak

David B. Dornak, Esq.
300 S. Fourth Street, Ste. 1500
Las Vegas, NV 89101

Exhibit H

Buck Osborne Statement Regarding May 1, 2024 Incident

"Ignition point" narrative

Insert the corresponding exhibit immediately after this divider page.

L-A

Buck Osborne Statement

Below is my account of the circumstances that cause me to request HR to investigate the GPS data of vehicle #1679, shared by Supervisor Justin Dariin and Senior Planner/Scheduler Tyler Gibson.

On Wednesday May 1, 2024, at approximately noon, I was sitting in my office when I heard a woman outside my door speaking to my admin, I could hear in her voice she was upset and crying. I heard her say, "no one should be spoken to that way, I do not deserve to be treated like this, I am just doing what was asked by my manager". I went out to see what was wrong. She explained that she was asked yesterday afternoon by her division manager to send out an urgent email to all supervisors and planners that the Alta gate of the Springs Preserve should not be used by staff for the next few days due to the Antique Road Show being onsite. She said someone from the booster crew used the gate this morning and she received a call from the manager that the Springs called reporting the incident, so she tried to reach the supervisor of the booster crew to report the incident, see if he saw the email and passed the information along to staff but he was not answering. She went on to say that she also called the planner who did not answer. She called them both several more times and the planner answered and said he was with in the truck with the supervisor and the supervisor would call her back in a bit. When the supervisor called, she inquired where he was and if he passed the urgent email information along to staff and he snapped at her, telling her "I don't know if he saw the email", asking her "if it was so important why didn't the manager send it himself", and following that up with "if it was so important why weren't you or him downstairs in our meeting this morning telling us in person"? She stated to me she felt completely attacked and belittled.

I had no idea why this supervisor would treat another employee this way and I wanted to speak with him but had no idea where he was, so I accessed Geo-Tab to find his location. The truck with the two employees was parked in a residential neighborhood that has pump station close by, but it was oddly parked down the street from the station and not on site where it sat parked for less than 5 minutes. Because I was not very familiar with the LVVWD stations I went back in the Geo-Tab to see if that was a station that was frequented by them and if that parking location was normal. In reviewing a few weeks of previous GPS data for the truck, I did not see another time when the vehicle was in this specific location, but I noticed some other odd locations the vehicle made frequent stops at that had no LVVWD facilities in proximity and I could see no apparent business purpose for the stops. At this point I felt this was something beyond my scope as a director to investigate and turned the information over to HR to continue to investigate the vehicle locations and legitimacy of the frequent stops.

Buck Osborne
Director of Operations
LVVWD/SNWA

Exhibit I

LVVWD Administrative Policy AP24

GPS access requirements

Insert the corresponding exhibit immediately after this divider page.

LAS VEGAS VALLEY WATER DISTRICT ADMINISTRATIVE POLICY		
SUBJECT:	GLOBAL POSITIONING & TELEMATICS SYSTEMS FOR DISTRICT AND SNWA MOBILE ASSETS	NUMBER: AP24
APPROVED BY:	GENERAL MANAGER	
DATE:	MARCH 4, 2019	

I. PURPOSE

To establish guidelines governing the utilization of a Global Positioning & Telematics System (GPS) for Las Vegas Valley Water District and Southern Nevada Water Authority mobile assets.

II. PROCEDURE

A. GENERAL INFORMATION REGARDING GPS

1. GPS shall be employed by the District to provide fleet management oversight and real-time field activity knowledge for the District's mobile fleet. GPS is also expected to enhance response time to service requests, improve operator safety, and enhance the security of District property.
2. While the District is not installing GPS for the express purpose of monitoring employee performance, the GPS may create a record of possible employee misconduct such as personal use or misuse of District mobile assets, unauthorized deviations from assigned duties, unsafe driving behaviors, etc. Such data may be used for purposes of employee counseling or discipline should a behavior warrant it. Data may, however, also be used to reward safe driving and to increase employee safety by allowing the vehicle's exact location to be shared with First Responders in cases of medical emergency or needed law enforcement intervention.

Employees should be mindful that they have no expectation of privacy while driving District assets, and that their location, movements, and use of District mobile assets can be tracked, recorded, and used for various reasons.

3. All employees who drive a District asset should assume that it has a GPS device installed, and that these devices can provide data to management and supervisors on a continuous basis.

B. ADMINISTRATION

1. The GPS System will be administered by the Fleet Services Division ("Fleet Services"). Any changes/additions/deletions to the GPS System will go through Fleet Services, in consultation with the Human Resources Department ("Human Resources"). Fleet Services shall also be responsible for all installations and de-installations of the GPS monitoring equipment. Any unauthorized employee who removes, tampers with, or destroys a GPS device will be subjected to disciplinary action up to and including termination. Disabling the GPS unit or the use of a GPS jamming device will lead to disciplinary action up to and including termination.
2. The District may establish relevant GPS parameters, including but not limited to speed limits, idle time violations, out-of-zone GeoFencing, and other appropriate considerations. These GPS parameters may change from time to time and may vary by workgroup, division, or department.
3. If a vehicle has a mechanical problem, triggering activation of the "check engine light" or a similar indicator, the employee should promptly notify their supervisor and Fleet Services.
4. Requests for review of GPS-related data shall be submitted to Human Resources, which will determine the necessity, propriety, and scope of the release of GPS-related information.

C. RECORDS RETENTION

GPS information and transaction logs will be retained by Fleet Services and Human Resources in accordance with the District's Retention Schedule.

D. GPS NEW DEVICES

As new vehicles are purchased, GPS will be installed either from the unit it is replacing or, if it is an addition to the fleet, a new GPS unit will be procured and installed. This will be done during the in-processing of the vehicle through Fleet Services. Only Fleet-Services-trained technicians are authorized to remove or install GPS devices.

Exhibit J

Declaration of Rodney Carter

Union President

Insert the corresponding exhibit immediately after this divider page.

DECLARATION OF RODNEY CARTER

President, Water Supervisors Association of Nevada (WSAN)

I, Rodney Carter, declare under penalty of perjury that the following statements are true and based on my personal knowledge:

1. Delayed Notification Regarding Justin Darling

I was not informed of any investigation, disciplinary action, or administrative leave concerning Justin Darling until May 29, 2024. This was more than two weeks after Mr. Darling had been interviewed and escorted off District property. The only reason I became aware of the situation was because Mr. Darling himself contacted Laura Ornelas seeking clarification about the investigation. At that point, Ms. Ornelas informed me that she had provided Mr. Darling with my phone number and that he would be reaching out to me. No formal notification was provided by the District in accordance with standard union procedure.

2. Post-Meeting Interaction with Jim Doubek

Following the June 27, 2024 pre-termination meeting, I encountered Mr. Jim Doubek in the parking lot. During our conversation, Mr. Doubek said, "Justin is a hell of a worker, his pump stations are stellar." He then added, in a quieter tone, "I guess I must've misread his intentions."

3. Inaccuracy of Meeting Notes and Denied Opportunity for Response

I attended all meetings involving Mr. Darling after the initial May 15, 2024 interview. I can confirm that the District's official meeting notes do not accurately reflect what was said in those meetings. Specifically, during the pre-termination meeting, Mr. Darling asked Mr. Doubek whether he personally held the certification that was being cited. Before Mr. Doubek could respond, Ms. Ornelas interjected, saying, "We're not talking about Jim, we're talking about you, Justin," and prevented him from answering.

4. Lack of Engagement by Management During Pre-Termination Meeting

At the conclusion of the pre-termination meeting, when Ms. Ornelas asked if there were any questions, neither Mr. Doubek nor Mr. Buck Osborne said a word or asked a single question about the allegations or process—despite the fact that several of the most serious accusations had already been disproven, including:

- No criminal activity was found;
- No kickback scheme existed;
- No conflict of interest was substantiated;
- No inappropriate Amazon purchases occurred.

5. Statements by Laura Ornelas on May 29, 2024

During a phone call with Ms. Ornelas on May 29, 2024, she instructed me to pass along two specific messages to Mr. Darling:

- "I never ask a question I don't already know the answer to," and
- That he should not speak to anyone at the District, including Mr. Doubek, and should instead communicate only through me as his union representative. This instruction was in response to a phone call Mr. Darling had made to Mr. Doubek that same day.

6. Step One Grievance Meeting Observations

I attended the Step One grievance meeting where Ms. Mary Madden explicitly stated that the District had narrowed the concerns down to "one and a half items." These included:

- Four hours of overtime submitted by Tyler Gibson on May 5, 2024; and
- Mr. Darling's limited personal use of a District vehicle.

Despite that statement, and despite the fact that many original allegations had been disproven, by the time we reached the Step Two grievance meeting, those same previously addressed issues were reintroduced as though they had never been rebutted. This has been a pattern throughout the process—exculpatory or clarifying information is consistently ignored, and each meeting reverts back to disproven accusations as if no progress had ever been made.

7. Step Two Grievance Meeting Mischaracterization

I also attended the Step Two grievance meeting. Despite the fact that all previous concerns had already been addressed in writing and in person, the same allegations were repeated again as if they had never been resolved. The District's representatives stated that "no new information" had been presented—despite that being objectively false. They reiterated their decision to uphold the termination. I specifically recall that Mr. Mark Riccardi and Mr. Dave Johnson were present on behalf of the District during this meeting.

8. Involvement in the Judge Wall Investigation

I was personally interviewed by Judge David Wall as part of his independent investigation into the District's handling of Mr. Darling's case. During that interview, Judge Wall asked me what I believed initiated the entire situation. I answered honestly and told him, "Because they are white." That was, and remains, my personal belief regarding the motivation for the intensity and selectivity with which this investigation was pursued.

9. Denial of Grievance Filing and Obstruction of Due Process

Shortly after I became aware of Mr. Darling's situation, I attempted to file a formal grievance on his behalf. I was explicitly told by both Laura Horne and Mary Madden that I could not submit a grievance because Mr. Darling had only been placed on administrative leave with pay and that "no action had been taken." This was despite the fact that he had already been escorted off District property, had all of his access revoked, and was under active investigation. In my opinion, this was a deliberate attempt to circumvent the protections of the Collective Bargaining Agreement by labeling the action as "administrative leave with pay" rather than "suspension with pay." This semantic framing delayed the grievance timeline and obstructed Mr. Darling's ability to exercise his right to due process under the CBA.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on this 7th day of April, 2025.

Rodney Carter
President, Water Supervisors Association of Nevada

Exhibit K

Initial HR Investigative File Produced Shortly After Termination

Approx. 76 pages

Insert the corresponding exhibit immediately after this divider page.

Re: Documents from the District - Investigation and Confidential Files

MD

Matthew L.

...

To: You; Rick McCann

Fri 09/06/2024 9:46 AM



LVVWD Darling Docs (Investi...



8 MB



LVVWD Darling Docs (Confid...



5 MB

2 attachments (13 MB) Save all to OneDrive

Download all

Here are the investigation file and a confidential file containing medical records.



Matthew L. Durham

King Scow Koch Durham LLP

11500 S. Eastern Ave., Ste. 210, Henderson, NV 89052

T: (702) 833-1100 | F: (702) 833-1107

mdurham@kskdllaw.com

Exhibit L

Email Correspondence Between Counsel Regarding Discovery Limitations in Arbitration

Insert the corresponding exhibit immediately after this divider page.

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David,

I hope things went well in Boulder City.

Sorry for the confusion. I've been neck deep in discovery in a couple of non-union arbitrations and should have been more specific. I'm not referring to interrogatories, requests for admissions, or depositions, I was referring to information requests. In a case like this, I like to be proactive and discuss the scope of them before sending them off to avoid any unnecessary battles.

Below is the specific information we are requesting relating to Mr. Darling's grievance and the District's investigation that led to his termination. My understanding is that the District already pulled this information together and provided it to Judge Wall as part of his review of the District's handling of the investigation, so there should not be much, if any, leg work involved.

1. Copies of all documents relating to the investigation of Justin Darling.
2. Copies of all correspondence (including emails, memos, letters, and notes) relating to the investigation of Justin Darling sent or received by (1) Buck Osborne, (2) Jim Doubek, (3) Laura Ornelas, (4) Steve Meyer, (5) Frank Gibase, and (6) Brenda Perez.
3. Copies of all audio recordings of Justin Darling made after he was placed on administrative leave on May 15, 2024, including the recording of a phone call Justin Darling had with Buck Osborne.
4. Copies of all documents identifying, referencing, or bearing the code name the District gave to its investigation of Justin Darling and Tyler Gibson (who was investigated at the same time as Mr. Darling for the same alleged conduct).
5. Copies of notes of all interviews conducted in the investigation of Justin Darling.

Please provide these by May 30.

If you have any questions, I'd be happy to discuss.

KING SCOW
KOCH DURHAM

Matthew L. Durham
King Scow Koch Durham LLP
11500 S. Eastern Ave., Ste. 210, Henderson, NV 89052
T: (702) 833-1100 | F: (702) 833-1107
mdurham@kskdllaw.com

From: Dornak, David <ddornak@fisherphillips.com>

Date: Tuesday, April 29, 2025 at 7:28 PM

To: Matthew L. Durham <mdurham@kskdllaw.com>

Cc: April Allen <aallen@kskdllaw.com>, Kerr, Darhyl <dkerr@fisherphillips.com>

Subject: RE: Justin Darling/ Las Vegas Valley Water District - Arbitration

I was in negotiations in Boulder City today, and I am just getting to my emails.

Can you please explain what you mean by discovery? Civil litigation discovery such interrogatories, requests for admissions, and depositions are not part of labor arbitrations. See *Albertsons, Inc.*, 351 NLRB 254, 312 (2007) ("[I]t is well settled that there is no general right to pretrial discovery in arbitration proceeding"); see also *Cal. Nurses Assn.*, 326 NLRB 1362 (1998). Rather, unless stated otherwise in the CBA, the parties simply exchange information as an aid to the arbitral process. I realize that this matter falls under the jurisdiction of the EMRB and not NLRB, but the EMRB routinely looks at the NLRB for guidance on issues. I will, however, treat your request for the investigation file as an information request and work on getting you the relevant information.

Thank you.



David B. Dornak

Partner

Fisher & Phillips LLP

300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101

ddornak@fisherphillips.com | O: (702) 862-3812

[vCard](#) | [Bio](#) | [Website](#) On the Front Lines of Workplace Law™

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

From: Matthew L. Durham <mdurham@kskdjlaw.com>

Sent: Tuesday, April 29, 2025 9:26 AM

To: Dornak, David <ddornak@fisherphillips.com>

Cc: April Allen <aallen@kskdjlaw.com>; Kerr, Darhyl <dkerr@fisherphillips.com>

Subject: Re: Justin Darling/ Las Vegas Valley Water District - Arbitration

CAUTION: This email originated from outside of the Firm. Do not click links or open attachments unless you recognize the sender and know the content is safe.

David,

Exhibit M

Medeco Badge Swipe Records for March 5, 2024

Insert the corresponding exhibit immediately after this divider page.

Exhibit N

Training Log Confirming Attendance at Supervisor Compliance Refresher

March 5, 2024

Insert the corresponding exhibit immediately after this divider page.

Workplace Harassment Prevention for Managers - Version 3.0	Digital Course	Enrolled	3/13/2024
Mobile Crane Operator Safety	Digital Course	Enrolled	3/13/2024
Crucial Accountability	Course Offering	Enrolled	3/7/2024
Scaffolding Safety	Digital Course	Enrolled	3/8/2024
Supervisor Compliance Refresher LVVWD	Program	Enrolled	3/5/2024
Global Internet, Social Media, and Electronic Communication	Digital Course	Enrolled	2/28/2024
Global Internet, Social Media, and Electronic Communication	Digital Course	Enrolled	2/14/2024
Hazard Communication: An Employee's Right to Understand 2.0	Digital Course	Enrolled	2/7/2024
Trenching and Excavation Safety	Digital Course	Enrolled	1/31/2024
Confined Spaces 2.0	Digital Course	Enrolled	1/24/2024
Hazardous Waste Management	Digital Course	Enrolled	1/17/2024
NPDES Water Discharges	Digital Course	Enrolled	12/13/2023

Exhibit O

Records Showing Placement of Matt Riggio in Complainant's Position

Temporary and permanent placement

Insert the corresponding exhibit immediately after this divider page.



Jim Doubek

6:43 AM

To: &Operations Cc: Buck & 5 more... >

Booster Crew

Good morning operations department,

I am pleased to let you know that Matt Riggio has accepted a temporary assignment as Booster crew supervisor. Beginning Monday September 30, Matt will help us maintain the high level of service this dedicated team of skilled mechanics consistently provides to our internal and external customers. I look forward to Matt's collaboration with our teams. Matt can be reached on his cell phone at: 702.249.1732. Please let me know if you have any questions and as always, let us know if the booster crew can help in any way. Thank you.

Jim

7:28



2024

Announcement



Jim Doubek

Mar 4

To & Operations, & SNWS, +4



Good morning everyone!

I am very pleased to announce the selection of Matt Riggio as the new Field Booster Pump and Valve Shop Supervisor. Matt has a proven track record of success as the Out Valley Mechanical Systems Supervisor and has over 10 years of experience in industrial maintenance including significant major equipment installation, service and repair.

Matt will join the Booster crew beginning March 16. Please join me in congratulating Matt and welcoming him our team.

Jim

Exhibit P

LVVWD EEOC Position Statement

Mary Madden

Insert the corresponding exhibit immediately after this divider page.

- Failure to obtain the certifications required for his position, Mechanical Supervisor, after being advised and directed by his manager to do so by April 2024.

III. *After being discharged, I found out a younger employee was hired as my replacement.*

The District rejects Mr. Darling's assertion that a younger employee was hired as his replacement. Mr. Darling's previous position has remained vacant since his separation from employment. There have been other supervisors within the Operations department who have covered the assignment since September 2024.

IV. *I believe I was discriminated against because of my age, over 40, and retaliated against for engaging in protective activity in violation of the Age Discrimination in Employment Act of 1967, as amended.*

The District vehemently denies the charges of discrimination due to age by Mr. Darling and further denies retaliation of Mr. Darling due to engaging in protected activity. The District maintains there is no evidence to support his allegations.

As of October 30, 2025, the District has 1393 active employees, 893 of which are over the age of 40 years old. Further, 165 of the 195 management level employees, which includes supervisors, are over the age of 40.

This position statement is provided in response to the above reference claim. Please do not hesitate to contact me at (702)258-3217 if you have any questions regarding the information contained in this statement or if you require further information.

Sincerely,

Mary E. Madden
Director, Human Resources

Enclosure: Attachments

Exhibit R

Step 1 LVVWD Spreadsheet Alleging "Misappropriated Time"

Contradicted by badge records and other evidence

Insert the corresponding exhibit immediately after this divider page.

Exhibit Q

**Step 1 Grievance Notes Reflecting Mary Madden Statement Regarding
Avantis**

Insert the corresponding exhibit immediately after this divider page.

she tell you that you were being placed on paid administrative leave?

JD- yes

MM- they knew they were going to be disciplining him, which is why they put him on leave and walked him out.

MM-1 disagree

MD- let's get back to the original point of approving time. Justin knows Tyler goes out on a call. What

does the district expect Justin to do if Tyler is not going to these places?

MM- so can I get a chart then that breaks it down?

MD- that's what we intended when we provided the original list, which then turned into an issue of

him logging days and that he was trying to hinder an investigation. That list shows the days where he

was and wasn't in the vehicle. I will identify each day he was and wasn't there. After that, what's left

there is there were days you said he put he worked, but there was no records.

MM- so now I'm hearing at this point is that I shouldn't have brought Tyler back since you're claiming that Justin approved what he was told, correct?

MD- that's not what I'm saying MM- help me understand

MD- the day in question, there were 4 hours. I will send you the information.

(McCann becomes verbally argumentative with Mary, and the meeting ends) STEP 1 MEETING
- JUSTIN DARLING STATEMENT

As you are aware, before my recent termination, I spent

Justin's statement read at Grievance Meeting:

Justin Darling- Mechanical Supervisor

Union: Rodney Carter, Matt Durham, Richard McCann

HR: Mary Madden, Frank Gibase

Dept: Buck Osborne

10.09.2024

Re: Termination Grievance Step 1

MM- looking to open it upto you so we can see your thoughts on what we violated.

MD-for the sake of time, Justin put together a letter and we can send it to you

JD- (Justin reads from prepared letter. Physical copy received at end of Grievance)

MM- Just a couple of follow ups. Can we go back to the part about standby and not authorizing.

From what I'm understanding from the notes, there was a question of understanding the difference

between OT and Standby. When you would say to Tyler about being available, he would code the

whole day as OT. We couldn't find any phone calls, we couldn't find any access, any

communication to crews. We couldn't find anything that would justify the time. So when he says Justin told me to just be available...

MD- What days was that? We never got exact dates.

MM-We can get that. We did searches for teams, cell phone records, etc

MD- We were never provided the specific dates

MM-1 did, but I will send them to you again. We didn't... (cut off by Justin)

JD- It's as simple as this...

MM- Allow me to finish. He coded days as OT but it was being claimed that he was doing standby

work. He was coding for the whole days of OT where there was zero work.

JD- He was here the whole time

MM- No, we have whole says where there's nothing

JD- If Tyler agreed to work a Friday, and he says he did... Tell me what I'm supposed to do.

MM- When we asked Tyler... (cut off by Justin)

2

JD- What am I supposed to do

MM- Tyler said you told him to just be available and not to do his normal stuff

MD- That's not what was said in the meeting.

MM- Yes it was. But we will give you the dates again and you can provide me information.

MD- That's not how what he said should have been interpreted. JD- Let me clear it up, we don't have standby.

MM- So you don't have it available to you?

JD- Let me give an example. On Mon-Thurs, an employee would be assigned that Thursday night to

handle all calls from Fri-Sun. They would take the calls of any abnormality from ops. If they didn't

get a call, they were on standby. If they didn't get a call, they're still on standby. It's a 4-hour call out

even if they have to go push a button. Booster crew has never utilized it. When I said for Tyler to be

available, it was me asking him if he's going to be available that weekend if anything was needed.

For the times he would say yes, it was because I was out of town with limited to no service. At that

point, Tyler would say he would be available throughout the weekend. He would tell ops to call him

if anything is going on since Justin is going to be out of town. If anything would have happened, like

the time we're referring to with the compressor. Tyler would get the call, he's hourly, he would make

the call to a mechanic named OK. He went out, had a problem called Tyler again - OJ was a newer

employee at the time. It's as simple as pushing a reset button. That entire thing would be the

difference between standby and hourly. He would call me and ask what he should do, so I would tell

him that you answered a call, so put a 4-hour callout. There's no validity from him sitting at home. I

only remember this one time that happened.

MM- We show more times than that

JD- as a 4 hour call out?

MM- we have full days

JD- Tyler worked many Fridays

MM- So I need something from you to show he was here, and that he was working

JD- He was here every Friday

MM- I have nothing to show that. If you can show me he worked, or that he was taking calls on his

personal phone, then great. I need it.

MD- that gets to the core issue that Justin was talking about. Say Tyler was working on AVANTIS, he

has said he gets backed up working on it.

MM- This is the first time I'm hearing about him working on AVANTIS, so I'll write that down. This is

the first time I'm also hearing about overtime being for AVANTIS.

MD- I don't know about that

JD- I do. There's times where he would work a full day and then stay after for 4 hours to work on AVANTIS.

MM- Send that to me then, please

MD- I think I referred to AVANTIS on the last part of the letter I sent. With Tyler being here on Fridays...

MM- I'll tell you I disagree with the Standby and OT issue. There's a difference between the two. DT- right

JD- If he's called to respond to something...

4

MM- We don't agree to it. If this would have been only 4 hours total, and there would have been an

issue, then that's one thing. This was many times and hours.

JD-1 also want to clarify that there's many Fridays that Tyler came in and worked on AVANTIS only. I

would tell him if he needs parts ran, he would go off and run stuff to them.

MM- Was he here working on AVANTIS?

JD- He would be here. There's a guy who is a leader of the Maximo transition. There's a guy named

Mike on the asset manager crew. He was helping Tyler do a lotto transfer so they would be ready for

Maximo transfer. We've been bringing new pump stations online and we've been talking it over to

make sure everything was all there when we needed it. So Jim is aware there were many of the days

Tyler was in there working on AVANTIS.

MM- Those days should be covered then if we had him entering property

JD-1 just want you to know there's plenty of opportunities for Tyler to follow someone in so he wouldn't swipe in. It's a medeco key.

MM- and we can pull medeco key records. My next question, you said you were in the car for only 3

hours?

MD-for the stops

MM-1 misheard then. I took it as you were only in it 3 hours total

MD- only for stops. When we looked at them, the 2 emergency stops were on there. The rest were

them going to lunch or bathroom breaks.

MM- So for the list you gave us, how were you able to confirm you were able to work on those days?

5

JD- through my own texts

MM-Can you provide those to us

JD- sure

MD-it will be a lot

JD- a few of the days were me in meetings all day

M D- we'll see whatever we got

MM- so going back to the bathroom breaks and the little errands. Can you tell me about the one where you went to get a water bottle? That one didn't make sense to me.

JD- we were going to my house. I can't remember if we were dropping something off or picking something up. We had business at my house. On the way back, Tyler said we should get someone a water bottle. I said okay. We were going to Bermuda pump station. Before we got there, we got a call

to go back to the district - I believe it was Chris Pogorzelski.

MM- (to FG) Please look at the notes

(notes paused while looking up data)

(talking continued while looking up data, so there is a gap in conversation)

JD- I have a hard time finding that this all started because Buck couldn't get a hold of me

MM- As we looked into it, it expanded from there

JD- when I went to the initial meeting, she (Laura) sent me something that said she wants to talk about certification and other items

MM- and she asked if you wanted the union there?

JD- She said I could bring someone in the email. She wouldn't provide me any details

MM- That's how it's done

JD- so going from that someone couldn't find me, it wouldn't even be a courtesy to ask someone

what's going on

(6)

MM- We do before we go with admin leave

RM- This all started because of someone looking into it. Why not bring him in and just discuss with

him. An Arbitrator would say this was not done correctly. I can't believe a phone call turned into him

being termed after a 15 year stellar history.

MM- It's not as massive... (cut off my McCann)

RM- It is when you listed all the stuff in the letter. I'm not trying to get irritated.

MM- Like I said, this was potential theft of time.

RM- we only just for the GPS information and we had to go through a public information request to

get it.

JD- the list was incomplete too. There's days when the truck should have been on the road and it's

saying it wasn't.

MM- okay.

MD- we're going through the people to get the rest of the information.

MM- my next question, so you're going to get me the texts to show Tyler worked?

MD- we will send it for the 6 days

MM- Can you send me the approval from Jim to use 6651 ?

MD- It's in your own system (shows Jim approving Coupa transactions)MM- It's only that document, got it

JD- everyone knew about 6651

MM- we took it out of the final decision. There was issues with that after we looked into it. But that

issue doesn't matter at this point since it's not what we're here for.

JD- but it sparked other things even though it was completely false. It was just about 4 hours.

MM- Once again, it wasn't just 4 hours. It was more. So any information you have about the 4 hours,

and then of you working on those days.

(Received copy of opening statement from Durham)

JD- I know how to do time

MM- didn't you say you weren't trained well.

JD- No

MD- that came up from me. Laura made reference of doing payroll each day. I said if he hasn't been

trained, then let's talk about it.

RM- I'll be the same dead horse. We're here because of a phone call.

MM- Regardless if you're okay with it or not, we look into things when we get a call

RM- and I think that's wrong

MM- We'll just disagree. The last thing I'll say is we have a number of people who have had good

track records. When something is brought to our attention, we have a duty to look into it

JD- I understand

MM- so again, we have taken, and we've been consistent with those who record time they didn't

actually work very seriously. We've provided a list of people who didn't code a lot of time that were

terminated. When we talked to Tyler, he said Justin knew and approved it.

JD- Only for the time he was here

MM- that's where the data comes into play. Right now it's that Justin is just approving time.

MD- if this whole this is based off Tyler's pre-term meeting, we're talking about a time where Tyler

said Justin just asked him to be available. That's the only time it's happened.

MM- That's why we need data

(46)

MD-that's why we need to address it. What was Justin supposed to do?

MM- Tyler's back, and he's back because he said Justin approved it.

MD- We provided an explanation of underlying data.

MM-We talked about phone records. We never forthat data from him. I said get me the information,

and you said okay.MD-1 don't recall that.

MM-1 just need something to show he was on campus and wasn't home.

JD-okay

MM-1 know you don't like the process, but it is what it is. If you think it's a violation, show me. I can

say we've been consistent. If there's people you're saying it hasn't happened to, then show me.

We're not trying to terminate people, but when I have something hat says someone is potentially stealing time, then it can be theft

RM- who was the final approval

MM- It went all the way up, including going to my boss

RM- you know what I'm getting t

MM-1 know about everything that happens, but if there is someone you feel was treated differently,

please let me know.

JD- did they know I was going to be put on admin leave

MM- yes, we provide people an opportunity to explain

JD-1 wasn't given an opportunity

MM- you were in the meeting where they talked with you

JD- we only discussed a couple items

MM- there's a difference between what you think happened with the hours and what we have. Did

9

she tell you that you were being placed on paid administrative leave?

JD- yes

RM- they knew they were going to be disciplining him, which is why they put him on leave and walked him out.

MM- I disagree

MD- let's get back to the original point of approving time. Justin knows Tyler goes out on a call. What

does the district expect Justin to do if Tyler is not going to these places?

MM- so can I get a chart then that breaks I down?

MD- that's what we intended when we provided the original list, which then turned into an issue of

him logging days and that he was trying to hinder an investigation. That list shows the days where he

was and wasn't in the vehicle. I will identify each day he was and wasn't there. After that what's left

there is there were days you said he put he worked, but there was no records.

MM- so now I'm hearing at this point is that I shouldn't have brought Tyler back since you're claiming that Justin approved what he was told, correct?

MD- that's not what I'm saying MM- help me understand

MD- the day in question, there wee 4 hours. I will send you the information

(McCann becomes verbally argumentative with Mary, and the meeting ends) STEP 1 MEETING
- JUSTIN DARLING STATEMENT

As you are aware, before my recent termination, I spent 15 years of dedicated service at the District. During that time, I received 13 annual reviews. Of those, 9 rated me as Exceeds Full Performance and 4 rated me as Distinguished Performance-the highest possible evaluation rating. Not one of my 13 annual reviews contains a single negative comment about any aspect of my performance. Instead, the reviews contain nothing but praise.

10

Jury Duty									
Date	Arrested	Phone Details	Received	Time Off	Missed/Approximate Time	Judge Address	Notes		
3/1/2024	No		No						
3/4/2024	No		No						
3/13/2024	No		No						
3/15/2024	No	1 text: 1:50pm (out, 2 minutes)	No						
3/16/2024	No	4 text: 1:30pm (in, 1 minute), 2:01pm (out, 1 minute), 2:10pm (out, 2 minutes), 2:22pm (out, 2 minutes)	No						
3/18/2024	No	3 text: 8:00am (in, 1 minute)	No						
3/19/2024	No		No						
3/20/2024	No		No						
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Exhibit R

LVVWD Spreadsheet Alleging "Misappropriated Time"

Contradicted by badge records and other evidence

Insert the corresponding exhibit immediately after this divider page.

**BEFORE
PATRICK HALTER
ARBITRATOR**

In the Matter of Controversy Between

**Water Supervisors Association of Nevada
On Behalf of Justin Darling
(Association - Union)**

&

**Las Vegas Valley Water District
(District - Employer)**

FMCS Case No. 250228-03911

Appearances

For the Association:

Matthew L. Durham
King Scow Koch Durham LLC

For the District:

David B. Dornak
Fisher & Phillips LLP

Issue
Termination

Hearing
August 26-27, 2025

Briefs
October 31, 2025

Award
Grievance Denied

Date
December 11, 2025

INTRODUCTION

Las Vegas Valley Water District is a not-for-profit public agency providing water services to the City of Las Vegas, the metropolitan area thereof and some unincorporated areas in Clark County Nevada. Water services are carried out by approximately one thousand four hundred (1,400) employees in salaried and hourly positions. Eligible salaried positions are covered by a Collective Bargaining Agreement ("CBA") between the District and the Water Supervisors Association of Nevada effective July 1, 2021 - June 30, 2026. The Association represents a bargaining unit comprised of regular full-time and part-time employees in classifications listed in the CBA's Appendix A.

In October 2009 Justin Darling entered on duty with the Southern Nevada Water Authority ("SNWA") in the position Mechanical Systems Technician II assigned to the raw water unit. He transferred in 2014 to a technician position on the District's "booster crew" comprised of ten (10) technicians performing maintenance, repairs and upgrades at approximately fifty (50) pump stations located throughout the Valley. Effective April 2019 the District promoted Darling to the position Mechanical Supervisor with oversight duties and responsibilities of the crew.

Darling, a salaried employee, often performed his duties in the field using a District vehicle (pickup truck) and accompanied by hourly employee Tyler Gibson, the crew's scheduler/planner. Darling was Gibson's first-line supervisor and personal friend. Their positions are in different bargaining units, represented by different unions and covered by different agreements but their workday schedule and hours were the same - ten (10) hours daily, Monday through Thursday.

Since April 2019 Maintenance Division Manager James Doubek has served as Darling's first-line supervisor. Manager Doubek reported to Buck Osborne, Director of Operations. Osborne's position encompassed oversight duties and responsibilities of four (4) divisions - operations division, maintenance division, distribution crews and SNWA's maintenance division. Osborne reported to the District's Deputy General Manager.

CHRONOLOGY

On May 1, 2024, Director Osborne heard District employee Brittany Alas, an administrative assistant, crying and upset by a telephone discussion with Darling whether a technician accessed Alta Gate at Springs Preserve. Osborne wanted to talk with Darling; he checked the fleet tracking system GeoTab and located Darling in a District vehicle parked in front of a private residence and not parked at the nearby pump station. Osborne viewed the situation as odd; he checked the prior eight (8) days to see if this situation was repeated.

On or about May 1 Osborne contacted HR Manager Laura Ornelas; she met with Osborne on May 7 to hear his concerns about the telephone incident and vehicle use. Ornelas shared Osborne's concerns with HR Director Mary Madden whereupon Madden authorized an investigation led by Ornelas and assisted by HR staff. On the 7th Ornelas instructed HR Analyst Frank Gibase and HR Technician Brenda Perez to contact Alas; they reported to Ornelas that Alas was "over" the telephone incident and not pursuing it. No further investigative action was taken by HR.

As for use of District vehicles, HR checked vehicle use for the booster crew, Gibson and Darling for two (2) weeks leading up to May 1. The review showed vehicle use on Friday, a non-workday, with overtime hours claimed. HR determined to review vehicle use, work hours claimed, hours compensated as overtime, badge and key access records and credit card ("P-

Card”) purchases for the period January 1, 2024 up to May 7, 2024. In addition to collecting data, HR decided to interview Darling, Gibson and Manager Doubek.

On May 14, 2024, Manager Ornelas contacted Darling by e-mail stating as follows:

I have scheduled a meeting for us to meet at 2 pm tomorrow to discuss some concerns, including certifications among other things. We will meet here at HR and you can bring a WSAN representative if you choose to.

Please confirm your attendance to this meeting. We will meet in my office.

[Un. Exh. 2]

Manager Doubek requested clarification of the phrase “among other things” but received no response.

On May 15 Manager Ornelas interviewed Darling followed by a separate interview with Gibson. Darling attended the interview without a Union representative. Darling and Ornelas discussed certifications required by the Nevada Division of Environmental Protection (“NDEP”) for Darling’s position. The interview continued with Ornelas inquiring into Darling’s review and approval of hours worked and reported as overtime by Gibson as he had the most overtime hours in the maintenance division and the crew claimed 858 overtime hours. Darling explained how he reviews and approves time reports. Ornelas inquired into Darling’s review and approval of P-Card purchases with vendors Amazon and 6651 Automotive Customs and use of the District’s vehicle. At the end of the meeting the District placed Darling on administrative leave and HR continued to review GeoTab records and vehicle use, overtime, time block audit data, key entry data and vendor purchases.

On June 10, 2024, Manager Doubek, issued to Darling a pre-termination letter recommending his discharge. The letter states, in part, as follows:

In April 2024, the District conducted an investigation into multiple discrepancies that were found within your department and under your supervision. These items include, but are not limited to, approving unsanctioned District issued credit card (“P-Card”) purchases, approving overtime (“OT”) for hours not worked, misappropriation of District resources, and conducting personal business on District time. Furthermore, in April of 2023, the District updated the certification requirements for your position, as required by the Nevada Division of Environmental Protection (NDEP). Despite being provided ample notice and time to meet the certification requirements for a Maintenance Supervisor, you have failed to obtain the required certification for your position.

*

*

*

Here listed are some of the issues and concerns which have led to my decision:

- Lack of demonstrating personal and professional integrity to inspire confidence and trust within the organization.
- Allowing an employee to conduct non-work on work time.
- Theft of District work time by allowing an employee to charge non-work time as paid work time (Workday entries).
- Conducting non-work activities in a District vehicle during work time.
- Lack of you meeting continued professional development to obtain required certifications.
- Failure to demonstrate honest and ethical behavior in business transactions and management practices.

[Emp. Exh. 2]

On June 27, 2024, a pre-termination meeting convened. Attending for the District were HR Manager Ornelas, HR Analysts Frank Gibase and Steve Meyer, Director Osborne and Maintenance Manager Doubek. Present for the Union were Association President Rodney Carter, Chad Vaccarino and counsel Matthew Durham. Darling and Durham responded to issues in the pre-termination letter such as review and approval of work hours claimed and compensated as overtime, District vehicle use for non-work reasons and vendor purchases. A separate pre-termination meeting was held for Gibson. After the pre-termination meeting, the District issued written summaries of issues and findings to Darling and Gibson. [Emp. Exhs. 6, 7] With respect to Darling, the summary findings are - -

- (1) Darling conducted personal business on District time and charged the District for hours worked;
- (2) Darling approved payroll hours and P-card purchases that were inaccurate or lacked documentation;
- (3) Darling's 6651 Customs discrepancies; and
- (4) Darling's certification for position.

[Emp. Exh. 6]

On August 5, 2024, counsel for Darling met with HR Director Madden about Ornelas' bias against Darling based on her statements during the May 15 meeting that Darling was involved in a kickback scheme with 6651 Customs with criminal implications for law enforcement to investigate and Ornelas ambushed Darling with the vaguely worded notice. Madden did not agree with counsel's bias concerns but decided to remove Ornelas from the investigation and Madden presided over it.

By letter dated August 19, 2024, counsel followed up with Madden on the August 5 meeting and responded to the District's summaries of issues and findings such as Darling's use of the District vehicle. Counsel stated:

While the District appears to have abandoned all its other purported justifications for placing my clients on administrative leave and recommending that their employment be terminated, the District continues to maintain that my clients' use of a District vehicle was not in compliance with past and current practice. . . . Accordingly, you requested that my clients provide a written response to the

District's "Summary of Issues and Findings," which identifies dates when my clients are alleged to have misused the vehicle and/or improperly recorded time.

Counsel's letter stated, in essence, that (1) the summary of issues and findings is misleading because it includes drive time in the calculation of time alleged on personal errands; (2) Gibson suffers from gall bladder control and to avoid personal embarrassment took bio-breaks at his residence or parents' residence when in that vicinity; (3) included in the summary are multiple stops that were not work-related and should have been excluded; (4) stops involved meal and rest breaks consistent with current and past practice; (5) Gibson worked on May 5, 2024; and (6) the summary misrepresents Gibson's overtime work and availability such as standing by to work on certain dates. [Emp. Exh. 8]

On August 29, 2024, Maintenance Manager Doubek issued to Darling a letter terminating his employment effective August 30, 2024. The District reinstated Gibson. Darling's termination letter references his failure to review and approve accurate reporting of hours worked and claimed as overtime which "shows a severe and concerning lack of competency" as a supervisor. The letter states that on fifteen (15) occasions Darling "repeatedly entered time on your timecard inaccurately" which is "dishonest behavior and a misappropriation of company time" since "you did not work on those dates." Also, Darling "traveled with your subordinate to your home and their home which is a clear violation of AP11 - Misuse of District Vehicle and District Code of Ethics, Vision and Values Statements." The policy "clearly states this kind of personal travel is not permitted, especially with an hourly employee." Manager Doubek assessed termination as the appropriate discipline.

I do not find that the information you provided to have mitigated the egregiousness of your misconduct. As a supervisor, you are held to a higher standard of having a working knowledge of and upholding District policies, including for your subordinates. As a result of your failure as a supervisor to follow district policy, and your apparent willingness and knowing violation of those policies, I have lost confidence and trust in your ability to perform as a Mechanical Supervisor. On this basis, I uphold the recommendation to terminate your employment.

[Emp. Exh. 10]

On September 5, 2024, the Association filed a grievance on behalf of Darling. The grievance was not resolved at Steps 1 and 2 of the grievance process. [Emp. Exhs. 11-19]

On December 22, 2024, the Association invoked arbitration. [Emp. Exh. 20]

On August 26 and 27, 2025, an in-person hearing convened wherein each party presented evidence, examined and cross-examined witnesses, and argued contentions in support of its position. Aside from transcribed sworn testimony, the record includes forty (40) District exhibits and twenty-six (26) Association exhibits.

On October 31, 2025, the record in this proceeding closed with the Arbitrator's receipt of each party's post-hearing brief.

ISSUE

The parties stipulated to the following statement of the issue:

Did the Employer have just cause to terminate Justin Darling and, if not, what should be the appropriate remedy?

[Tr. 8]

CBA

Article 3 - Retained Rights
Article 5 - Grievance Procedure
Article 6 - Arbitration
Article 7 - Discharge, Discipline and Personnel Files

DISTRICT POLICIES

PCARD Program Policies & Procedures Manual
Administrative Policy - Conflict of Interest
Administrative Policy - Vehicle Use and Work Related Use
Administrative Policy - Global Positioning & Telematics Systems
for District and SNWA Mobile Assets

Summary of the Association's Position and Argument

The Association's position and argument are set forth in its opening statement, examination and cross-examination of witnesses, exhibits and post-hearing brief.

Testifying for the Association were Tyler Gibson, Scheduler/Planner, Inspections Engineering Team; David Thompson, Large Meter Services Operations Manager; and Justin Darling. Present but not testifying were Richard McCann, McCann Consulting LLC, Rodney Carter, Association President and Tim Kelleher, Law Clerk.

Association's Position

Darling's Record

During fifteen (15) years of SNWA and District employment, Darling never received any level of discipline nor counseling. He loved his job providing fresh drinking water to the communities served by the District. [Tr. 328-329]

His demonstrated pride in performing his duties was recognized in annual performance reviews where he earned overall ratings of "Exceeds Full Performance" on eight (8) occasions and "Distinguished Performance" four (4) times. For the performance review ending in 2023, Manager Doubek evaluated Darling as "an effective and high performing supervisor" who exemplified District values. Doubek stated Darling conducted "himself in a truly professional manner" and maintained "the highest ethical behavior." [Un. Exh. 1 at 112]

Investigation - May 1, 2024

Notwithstanding an unblemished and exemplary record the District initiated an aggressive investigation against Darling under questionable circumstances. Director Osborne claimed that on May 1 he heard an upset and weeping employee tell Osborne's administrative assistant that she had been verbally attacked and belittled by Darling in a telephone conversation. Osborne claims he wanted to talk with Darling about this situation but did not know Darling's whereabouts.

Instead of contacting Darling by telephone to discuss the incident or discussing it with him when Darling returned to the office from the field, Osborne accessed GeoTab to locate Darling in a District vehicle "oddly parked down the street" from the pump station. There is nothing odd about parking in proximity of a pump station. Osborne used the "oddly parked" location to examine GeoTab data on Darling's locations during prior weeks. Osborne concluded Darling used the District vehicle to stop at locations where there was no apparent District business but the long-term practice allows employees to use a District vehicle for personal stops.

Osborne reported the telephone incident and his concern about vehicle use to HR on May 1st but Manager Laura Ornelas was unavailable to meet that day. Ornelas met with Osborne on May 7; she testified he did not report the weeping employee was attacked and belittled but upset because of a disagreement with Darling. Verbally "attacked and belittled" appeared in Osborne's written statement dated November 2024 which was six (6) months after the alleged incident occurred. [Un. Exh. 12]

Osborne's accessing GeoTab violates the District's written policy - - "Requests for review of GPS-related data shall be submitted to [HR], which will determine the necessity, propriety and scope of the release of GPS-related information". [Un. Exh. 19] This led to HR's expansive and unwarranted investigation instead of Osborne directly engaging Darling by telephone or meeting with him when Darling returned to the office on May 1.

Misconduct Allegations

On May 15, 2024, Darling met with Manager Ornelas. She ambushed him with allegations of misconduct that she refused to disclose prior to their meeting despite requests by Darling and Manager Doubek. Also undisclosed by Ornelas was that Darling was subject to an investigation initiated by HR on May 7, 2024. Darling attended the meeting without Union representation as he anticipated the discussion to deal with NDEP certifications. Prior to the meeting, Maintenance Manager Doubek advised Darling to "just ride it out and see what happens" as management was extending leeway to obtain certifications. Manager Ornelas testified that no employee has been terminated for failing to obtain certifications. [Tr. 185]

Once the meeting convened, discussing certifications passed and Manager Ornelas proceeded to accuse Darling of improper use of District vehicle, alleged Darling approved excessive overtime hours for Tyler Gibson on Fridays, a non-workday, and claimed Darling was involved in a kickback scheme with 6651 Automotive Customs, allegedly an unapproved vendor. [Tr. 337-338; Un. Exh. 3] Darling pointed out that Gibson worked on Fridays on the migration of data to a new computer system, Customs was an approved vendor in the District's Coupa system and Darling's supervisor Doubek had authorized use of the P-Card for payment to Customs. [Tr. 258, 342-345; Un. Exh. 3] After the meeting District security personnel met with officials at 6651 Customs and determined there was no kickback scheme. None of HR's allegations were meritorious but HR placed Darling and Gibson on administrative leave effective May 15, 2024.

Pre-Termination Letter

On June 10, 2024, Darling and Gibson each received a pre-termination letter. The District abandoned the kickback scheme allegation but presented new allegations. Manager Doubek's recommendation to terminate was based on the following:

1. Darling allowed Gibson to use the P-Card for purchases at 6651 Customs which is not an approved District vendor;
2. The thickness of items powder-coated by 6651 Customs did not meet District guidelines of 18-25 mm for coatings thereby posing potential liability for the District;
3. Darling approved Gibson's P-Card purchases for items supposedly available in various departments within the District but had no business purpose and should have been purchased through a local vendor instead of through Amazon;
4. Darling approved overtime for Gibson allegedly working full days of overtime when Gibson did not work;
5. Darling and Gibson misused the District vehicle for non-work stops; and
6. Darling had not obtained his NDEP certifications.

[Emp. Exh. 2]

Darling Refutes Misconduct Allegations

On June 27, 2024, a pre-termination meeting convened. During that meeting - - and in subsequent meetings and correspondence between HR Director Madden and Counsel Durham in July and August - - Darling refuted allegations lodged against him about NDEP certifications and 6651 Customs. With respect to Customs and the thickness of its powder-coatings, Manager Doubek acknowledged that the District's guidelines of 18-25 mm thickness applies to paint coating and not powder coating which is less thick. [Tr. 262] Regarding P-Card purchases, the District audited three (3) years of Gibson's purchases and found no improprieties. [Un. Exh. 10] Darling stated the items purchased were not available through other departments in the District at the time of purchase; the District did not prove otherwise. [Tr. 80, 271] Darling noted all items purchased were for a business purpose and the District conceded there was no requirement to purchase items from a local vendor rather than Amazon. Darling noted Amazon is less expensive, delivers items quickly and one of the initial options appearing in Coupa for purchasing. [Tr. 81, 364]

As for Darling's use of the District vehicle, he noted it was consistent with practice and de facto policy. Darling testified that Manager Doubek acknowledged as long as the job gets done vehicles can be used for personal errands. [Tr. 343] David Thompson, Large Meter Services Supervisor and 14-year District employee testified that "on a daily basis" employees use District vehicles for personal errands. He has observed his 18-member crew engage in personal use and observed employees from other departments. When Thompson reported a violation of the policy to his supervisor and HR, Thompson's manager advised "as long as they're getting their work done, he was not going to make a big deal out of it." Thompson testified employees are disciplined for use of a District vehicle when operating it intoxicated. [Tr. 382-386]

Darling reviewed GeoTab data he obtained by filing a request for public documents. [Un. Exh. 21] The data provided covers ten (10) District vehicles during the period January 1, 2024 through March 31, 2024 which is the same period of time covered by the District's review of Darling's vehicle use. The 10 vehicles made over 120 stops for non-business reasons or made an extended lengthy stop at a variety of commercial businesses and public locations (mall, stores). Numerous stops exceeded the 30-minute lunch break and that is not including travel time.

Manager Ornelas testified that HR reviewed GeoTab data from January 1, 2024 through May 7, 2024, and the review showed there were no stops that violated vehicle use policy. The District never disclosed the records or data it reviewed, thus, its claim of proper vehicle use cannot be verified. [Tr. 152-153] The District prepared a chart covering twenty-nine (29) days allegedly showing Darling making questionable stops during the period January 1, 2024 through May 10, 2024. Darling was in the District vehicle on six (6) of the 29 days. His stops were driving to his home to pick up lunch, picking up a prescription for wife and delivering it to her since she could not drive, bathroom stops for Gibson and his gall bladder problem, retrieving a pair of pants from his home to replace his ripped pants; stopping at an auto parts store; stopping at a convenience store and stopping at Sportsman's Warehouse to buy a water bottle,

As for the allegation Darling approved time for Gibson when Gibson performed no work, the day is May 5, 2024. Gibson responded to a work order. [Un. Exh. 22] Gibson spoke with operations and advised them to send a mechanic. Once the mechanic completed the work, Gibson confirmed it and logged 4 hour for a call out. Darling never advised Gibson he could receive pay simply by being available. Darling wanted Gibson to be available to pick up parts and deliver it to the crew in the field rather than remain in the office working on the migration data project. Gibson understood Darling was not telling him he would be paid for not working. [Tr. 320-321]

Darling reviewed time entries for his booster crew. He met with the crew every morning, knew their assignments and knew who was not working on a particular day. Darling was not required to review and approve time on a daily basis as Manager Ornelas claims. Rather, he can review and approve multiple days. When Darling is not at work Gibson tracked the crew's time using his projects calendar. Darling would discuss time with any crew member should there be a question about it. During the grievance process Darling discovered that HR Director Madden follows an approach on time reporting similar to Darling's approach. [Tr. 274-275]

Gibson Reinstated and Darling Terminated

On August 29, 2024, Manager Doubek notified Gibson that he was reinstated. Doubek "found no just cause supporting the recommendation of discipline forwarded by the District, let alone the termination of your employment." [Un. Exh. 23]

The allegations of misconduct lodged against Darling were the same as lodged against Gibson and Darling, like Gibson, refuted them but Darling was terminated on August 29, 2024, and not reinstated. [Un. Exh. 11]

The bases for Darling's termination set forth in Manager Doubek's letter are two (2) allegations previously asserted by the District that Darling (i) conducted personal business during normal work hours while using a District vehicle accompanied by Gibson in the vehicle and (ii) approved inaccurate time records for Gibson. These allegations have been rebutted and exposed as without merit.

The letter of termination presented a new allegation that Darling inaccurately reported his work time on March 26, 2024. On that date Darling reported for duty but left work around 10:30 to 11:00 a.m. as he was suffering from severe allergies. He mistakenly logged his work day as regular time (10 hours) whereas an accurate log would be 6 hours work and 4 hours sick time. This error did not result in Darling receiving additional compensation. This accounting error is readily correctable in the payroll system.

Another date presented in the new allegation is January 9, 2024. The District claims Darling did not perform any work that day but recorded hours for pay. On January 9, 2024, Darling worked from home with permission to do so granted by Manager Doubek. [Emp. Exh. 14] The new allegation is without substance and meritless.

Association's Argument

Just Cause Standard

Under a just cause standard, discipline assessed must be corrective in design and not punitive with discharge occurring after exhausting prior measures and assessing mitigating factors. The District's burden of proof is to establish the rules violated and demonstrate termination is the appropriate response given the proven misconduct and surrounding circumstances. Evidence of disparate treatment can be considered when determining discipline and an investigation showing a rush to judgement is a violation of just cause. Misstating evidence shows targeting to discharge. To strictly enforce rules not previously enforced, an employer must publish notice to employees of strict enforcement prior to acting on it. Under just cause the Arbitrator can modify discipline imposed and determine a lesser penalty or no penalty is appropriate. [Br. at 15-17]

No Cause

Darling was terminated without cause which is a perquisite in Article 7 of the CBA. No discipline was warranted because Darling did not violate any rules; however, should the Arbitrator find cause to discipline a level short of discharge would be in line with progressive discipline. Darling's 15-year unblemished work record and exemplary performance warrant reinstatement and retention. Any concerns about his use of the District's vehicle and review and approval of time could be addressed with counseling.

Bad-Faith Investigation

The District's investigation shows bad faith by Osborne with a rush to judgment displayed by misstating evidence. The alleged verbal mistreatment of a co-worker by Darling was not investigated in good faith. Osborne could have contacted Darling by telephone on the day of the incident (May 1) but he did not do so. He could have instructed Darling's first-line supervisor - - Manager Doubek - - to contact Darling but that did not occur. Instead, Osborne accessed GeoTab data to determine Darling's location and asserts he did so as a means to contact him. When Darling returned to the building on the afternoon of May 1 Osborne did not initiate any contact with him. Osborne nor any other official with the District never contacted Darling to investigate or hear his version of the incident. Grievant became aware of the alleged incident only after he requested investigative documents during the grievance process in September 2024.

During the HR investigation, Osborne reviewed three (3) months of P-Card purchases approved by Darling. Osborne's e-mail shows that none of the purchases were improper; he identified purchases as "probably" available locally and "probably" could be provided by IT or other

department. [Un. Exh. 18] Osborne insisted that Darling made improper P-Card purchases even though he knew there was no District policy requiring purchases from local vendors and he could not identify or determine any support available from other departments at the time of purchase by Darling. Osborne whole-heartedly approved suspending Darling's P-Card as of May 15, 2024, when Darling was placed on administrative leave. [Un. Exh. 17] While on leave Darling contacted Osborne by telephone as he was "feeling quite vulnerable" about the investigation. Without informing Darling, Osborne recorded their telephone conversation in violation of Nevada law.

HR Manager Ornelas acted in bad-faith. She notified Darling by e-mail dated May 14, 2024 to meet with her but failed to inform him, prior to meeting on the 15th, of the allegation she labeled as a "kickback" scheme between Darling and 6651 Customs. She did not inform Darling prior to the meeting that she would focus on whether he misused the District vehicle and authorized excessive overtime for Gibson. Darling pointed out that Gibson was working on the migration of data from the Avantis computer maintenance management system to the new Maximo system on Fridays. Prior to the meeting the District had determined to place Darling on administrative leave. Manager Ornelas ambushed him at the meeting using law enforcement interrogation tactics; she rushed to judgement and directed an investigation into all aspects of his employment hoping to find wrongdoing.

Maintenance Manager Doubek acted in bad faith. At the time Darling was under investigation, the District was investigating Doubek. He signed Darling's pre-termination and termination letters prepared by HR for his signature. The pre-termination letter identifies Darling's failure to obtain additional NDEP certifications as a reason for termination. Prior to the investigation Doubek told Darling that management probably was extending leeway on certifications and Doubek, with fewer certifications than Darling, was not pursuing certifications. The termination letter states a reason for termination was using unapproved vendor 6651 Customs and the P-Card to pay that vendor. On cross-examination Doubek acknowledged he approved Darling's use of and payment to 6651 Customs. [Tr. 269] Doubek also stated in the letter that the District tested the thickness of items powder-coated by 6651 Customs and the thickness did not meet District guidelines of 18-25 mm for coatings. Doubek acknowledged at the hearing that the thickness of items powder-coated by 6651 Customs was different than thickness for painted items and the guideline of 18-25 mm applies to paint, not powdered items.

Disparate Treatment - Vehicle Use Policy

The practice and de facto policy on vehicle use is it may be used for personal errands as long as the job gets done. Nevertheless, the District strictly enforced its more restrictive written vehicle use policy against Darling. This occurred even though Manager Ornelas' testimony disclosed that HR's practice is not to strictly enforce the vehicle use policy as written. The written policy states that use of District vehicles for anything other than "official company business" is prohibited. [Un. Exh. 5] Manager Ornelas testified "there's a lot of factors involved" when interpreting the policy. For example context is considered should an employee use a District vehicle to conduct personal banking. HR considers unspecified circumstances when interpreting the policy although there is no wording in the policy authorizing it to do so. [Tr. 154, 158]

The result is disparate treatment where co-worker Gibson used a District vehicle for personal errands but is not subject to any level of discipline whereas grievant used a District vehicle for personal errands on six (6) occasions over four and a half (4-1/2) months and was terminated. Another employee used a District vehicle to drop off and pickup his motorcycle with supervisor approval without retribution. HR Analyst Gibase testified that whether use of a District vehicle

for a personal errand with a supervisor's approval violates the policy "depends on the situation." Another example is employee Payne leaving work early and using the District vehicle for a personal errand with supervisor Merriman's approval; this was not cause for any discipline for the employee or supervisor even though Analyst Gibase testified "it's not typical that it's supposed to be used for personal errands." [Tr. 219-224]

Grievant cannot be held accountable for co-worker Gibson's use of a District vehicle on those days when grievant was not at work or at work but not physically present with Gibson. The District did not discipline Gibson and it is illogical to find that grievant's similar conduct warrants termination.

Different Treatment - Review of Subordinate's Time

Darling never approved time for days Gibson did not work; Gibson never received pay for days he did not work; the District terminated grievant for allegedly approving time when Gibson did not work even though grievant did not know Gibson had not, allegedly, performed any work.

The District applied a different standard when first-line supervisor Doubek reviewed Darling's time. The District alleges that he did not perform any work on January 9, 2024, but entered time for that day. For March 26, 2024, Darling mistakenly reported ten (10) hours of regular pay when he should have recorded six (6) hours of regular time and four (4) hours as sick time since he left work early due to allergies. Doubek reviewed and approved these entries; Doubek received no discipline for doing so but Darling was terminated. [Tr. 227, 284]

Doubek testified he was in the office and Darling was in the field, thus, he does not know what is going on in the field unless Darling informs him. The same arrangement applies to Darling and Gibson; when they are not working together Darling would not know what Gibson was doing unless Gibson told him. Doubek agreed he did not know how Darling knew what Gibson was doing unless Gibson told Darling yet Doubek recommended grievant's termination for not meeting this unreasonable standard that Doubek was not held to. [Tr. 291]

Based on the foregoing the Association concludes "there was no just cause to terminate Darling's employment" and it requests "that Darling be reinstated with full back pay and benefits and for such other relief as the arbitrator deems just." [Br. at 26]

Summary of the District's Position and Argument

The District's position and argument are set forth in its opening statement, examination and cross-examination of witnesses, exhibits and post-hearing brief.

Testifying for the District were Buck Osborne, Director of Operations; Laura Ornelas, HR Manager; Frank Gibase, HR Senior Analyst; James Doubak, Maintenance Manager; and Mary Madden, HR Director. Present but not testifying were Judy Sanderlin, Counsel, Fisher & Phillips LLC and Kendelee Works, Counsel, Cogburn Davidson Injury Lawyers on behalf of Director Osborne.

District's Overview

Darling was a supervisor for six (6) years and, as such, was expected to uphold and enforce District policies. Darling ignored policies when he violated them in an egregious manner such as knowingly condoning and approving Tyler Gibson's conducting personal business on work time

and approving overtime for hours not worked by Gibson. As a salaried employee Darling is accorded some discretion and liberty regarding his time but Gibson is an hourly employee without time flexibility accorded to a salaried position. Hourly employees are paid only for hours worked. By approving pay for Gibson while conducting personal errands which is time not worked, Darling violated District policies and public trust as to use of public funds. The same truth applies to Darling when he abused accounting for his time.

After a comprehensive investigation with multiple meetings and ample information, the District terminated Darling for multiple violations of policies and procedures. Three violations are major infractions warranting discharge. The first major infraction is Darling authorizing his subordinate Gibson to record overtime hours when Gibson did not work. Prior to Gibson's reinstatement, he informed HR that Darling instructed Gibson to record such hours as overtime whether or not he worked. Darling is required to confirm Gibson actually worked claimed hours. Darling acknowledged that he often approved time submitted weeks prior to employees performing any work. Undoubtedly Darling knew his actions were inappropriate but he repeatedly engaged in them.

The second major infraction is Darling routinely performed personal errands on work time with Gibson present in the District vehicle. Darling and Gibson, personal friends, shared a District vehicle which should have been used for work purposes. Instead Darling used it to stop at Sportsman's Warehouse, a bow and arrow establishment and multiple trips to their residences which are not on the way to or near any work locations. All trips occurred when they were on the clock. This misuse of the District vehicle is egregious because an hourly employee (Gibson) is paid only for hours worked but Darling approved pay for him when Gibson performed no work when in the vehicle accompanying Darling on personal errands. Darling approved Gibson's hourly pay when driving the District's truck to Gibson's residence for the sole purpose of Gibson using the bathroom. There is zero tolerance for theft of time; the District terminates employees for that misconduct.

The third major infraction is Darling falsifying his time records. He claimed hours worked on days that District records show him not working. The District accorded Darling the benefit of the doubt on some time entries but he was unable to provide a reasonable explanation for all days.

This grievance is straightforward despite Darling's attempt to play the victim by claiming Director of Operations Osborne conspired to terminate Darling as a means to replace him with someone from SNWA. This conspiracy theory is false. Evidence shows Darling engaged in significant violations involving public funds which were expended as pay for work not performed. The grievance should be denied.

District's Position

A. Background

Managers and supervisors must act in the best interest of the District, a public agency. Darling supervised the booster crew and reported to Maintenance Manager Doubek. Darling assigned work to the crew. He was responsible for reviewing and approving the crew's time records. To perform his duties the District issued a company vehicle to Darling which he shared with Gibson. The primary work location for them was the District's operations building.

B. Darling Berates Employee Which Starts An Investigation

On May 1, 2024, Director Osborne heard employee Brittany Alas crying. She was positioned directly outside of his office. She informed Osborne that Darling belittled and abused her during a telephone conversation. Osborne used GeoTab to locate Darling in the District's vehicle; it was "oddly" parked away from the pump station in front of a private residence in an affluent neighborhood. The District receives complaints from the public when its vehicles are parked on the street. To determine whether the booster crew frequented that location Osborne reviewed the prior week and discovered no similar situations. Osborne noticed Darling parked at locations where there was no apparent District business. [Emp. Exh. 21] Alas did not want Osborne to discuss the incident with Darling. Osborne intended to report his concerns to HR Manager Ornelas on or about May 1 but she was unavailable. She returned to the office on May 7 and Osborne met with her on that date.

C. HR Investigation

Manager Ornelas disclosed Osborne's concerns to HR Director Madden on the 7th. Madden authorized Ornelas to investigate the booster crew, Darling and Gibson. Manager Doubek was also investigated. Ornelas assembled a team of HR professionals to independently evaluate Osborne's information. HR Analyst Gibase contacted Alas; she was "over" the incident with Darling and not requesting or seeking an investigation.

From May 7 up to May 14, the HR investigative team reviewed GeoTab data, badge and key access entries and purchases. The team identified potential personal errands conducted on work time and noted concerns with P-Card purchases including online purchases with Amazon and 6651 Customs. Records showed Darling in the District vehicle at Customs and, when leaving Customs, proceeding directly to Darling's residence which raised concerns about conflict-of-interest and misuse of District vehicle. Gibson reported 10 hours overtime but GeoTab data showed him not working at any District location on the claimed day. Manager Ornelas notified Darling on May 14, 2024, of a meeting on the 15th to discuss his certifications "among other things". Ornelas also advised Darling to bring Union representation should he choose to do so.

D. Darling Meets With HR

Darling did not engage Union representation and attended the meeting by himself. Topics discussed were certifications, approval of overtime for the crew, P-Card purchases, 6651 Customs and vehicle use for personal errands. Darling acknowledged using the District's vehicle when driving to his residence and Gibson's residence during the workday, stopping at Sportsman's Warehouse to purchase a cooler for his son or daughter and stopping at Bow's & Aces to pick up a crossbow for his wife. He stopped at Bass Pro Shops but did not enter. [Tr. 120-124] HR Director Madden approved Manager Ornelas placing Darling on administrative leave. The usual process was followed with security escorting Darling to his vehicle and taking his parking tag. Following a separate interview with Gibson on the 15th he was placed on administrative leave. [Tr. 115-125]

E. Pre-Termination Letter

After the May 15 meeting HR continued its investigation of Darling, Gibson, the crew and Maintenance Manager Doubek. Regarding Doubek, HR informed him of the investigation after it determined he was not involved with Darling's rules violations. [Tr. 256]

Doubek reviewed information collected by HR - - time block audit data, badge and key entry data, GeoTab records, vehicle and equipment use data, purchases at 6651 Customs and overtime reports. Doubek issued a letter to Darling recommending his termination. [Emp. Exh. 2] The recommendation was based on (1) theft of time and resources with Darling's approval of overtime hours for Gibson when Gibson performed no work; (2) use and approval of purchases at 6651 Customs using the P-Card; (3) Darling's conflict of interest with his personal purchases of services and goods at Customs; (4) Darling's lack of supervisory oversight of subordinates; (5) Darling conducted personal errands on work time accompanied by Gibson in the District's vehicle; (6) Darling allowed Gibson to conduct personal errands on work time which was theft of time and District resources; and (7) Darling failed to obtain certifications required for his position. In short, Darling abused his status as an exempt, salaried employee by engaging in excessive personal errands using a District vehicle with hourly employee Gibson in the vehicle. Also concerning was Darling having his personal items worked on at Customs at the same time District items were worked on.

F. Pre-Termination Hearing

A pre-termination hearing convened on June 27, 2024. Regarding Gibson's overtime, Darling claimed he was not trained on the timekeeping process and approved time entries without verifying hours worked and claimed. [Tr. 140-141] Darling acknowledge that on occasions he used the District vehicle for personal errands but minimized personal use as insignificant. [Emp. Exh. 4] Darling would drive the vehicle to Gibson's residence so Gibson could use the bathroom due to a gallbladder issue. Gibson acknowledged, in a separate hearing, that Darling instructed Gibson to code 10 hours of pay when on standby. [Emp. Exh. 3] Gibson provided the same explanation - - code 10 hours overtime based on availability - - for the day Gibson did not work but entered 10 hours. This is troubling because Gibson's 10 hours of claimed overtime was significantly more than Gibson would be entitled to under the CBA that applies to Gibson and covers his position. [Tr. 138-139]

G. Darling's Termination and Gibson's Reinstatement

After the pre-termination hearing, HR Director Madden presided over the investigative process to placate the Union's concerns, unsubstantiated, that Manager Ornelas was biased. HR prepared summaries of issues and findings, compiled a list of comparators with similar incidents and overtime issues. [Emp. Exhs. 6, 7, 35, 36]

On August 19, 2024, counsel for Darling and Gibson responded. [Emp. Exh. 8] Darling and Gibson claimed additional information, including personal phone records, would establish they did not violate any policies. They did not submit additional information or records until the second day of the arbitration hearing (August 27, 2025). [Tr. 389]

The District determined to terminate Darling for policies violated and reinstated Gibson as Gibson claimed Darling instructed him to code overtime. Gibson followed his supervisor's directives on coding time. [Emp. Exh. 4] Since Gibson was present in the vehicle when Darling used it for personal errands, the District determined Gibson viewed his supervisor's conduct as appropriate and followed it.

Darling was terminated. [Emp. Exh. 10] His claim that he was not trained to review and approve time reports showed a lack of competency and dereliction of duties for a supervisor. The District found Darling violated the vehicle use policy; the violation was aggravated with an hourly employee in the vehicle. Darling was untruthful and dishonest with his own time records which

constituted a theft of time. These violations constitute just cause for termination. Under the CBA, progressive discipline applies only to minor offenses whereas Darling committed major infractions of rules and policies. [Br. at 16]

H. Grievance

On September 5, 2024, the Union filed a grievance. Darling provided several shifting explanations at Steps 1 and 2. [Emp. Exhs. 11-19] Darling provided a list of days in which he stated he was off work and not in the vehicle. In response thereto the District provided GeoTab data, badge swipes, Medeco key badge entries and workday records. Counsel for Darling presented a revised list of the original claims stating Darling worked on some of the days. [Emp. Exh. 14] Regarding his initial list of dates and days off, Darling created an excuse that he did not have access to District records when he provided his dates, thus, he submitted false information. [Tr. 351-358] Prior to Darling submitting his list he had the District's evidence because the pre-termination letter contained it including a detailed vehicle report.

Another shifting explanation and false excuse is April 11, 2024, when he stopped at Sportsman's Warehouse to, as he initially alleged, purchase a cooler. He changed his story during the pre-termination meeting to picking up a water bottle for another employee. His story changes again during the grievance meeting stating he stopped at Sportsman's Warehouse because Gibson wanted to purchase a water bottle for an employee at the Bermuda pump station. [Emp. Exhs. 12, 16, 17] After leaving Sportsman's Warehouse, Darling drove the District vehicle to Hotsy of Henderson, Darling's home, Gibson's home and then to the District. No vehicles at the Bermuda pump station belonged to District employees on April 11, 2024, and Darling never presented any evidence establishing the stop at Sportsman's Warehouse as work-related.

District's Argument

The seven tests of "just cause" are applicable for Darling's termination. The following narrative is the Employer's description of each test articulated in *Enterprise Wire Co.*, 46 BNA LA 359 (Daugherty, 1966).

1. Whether the employee had notice of the possible or probable disciplinary consequences of his misconduct.
2. Whether the rule is reasonably related to the orderly, efficient, and safe operation of the Employer's business and the performance the employer might properly expect of the employee.
3. Whether there was an investigation prior to the employee being discharged.
4. Whether the investigation was fair and objective.
5. Whether the investigation yielded substantial proof of the employee's misconduct.
6. Whether the employer applied its rules evenhandedly and without discrimination.

7. Whether the degree of discipline imposed is reasonably related to the seriousness of the proven offenses and the record of the employee in his service with the employer.

The District states it has demonstrated the seven tests showing there is just cause for Darling's termination. Each test is addressed in seriatim.

1. Darling Fully Understood the Rules He Violated and the Likely Consequences of His Actions

The District's rules and policies have been in place throughout Darling's tenure with the District. He was on notice of them and, in a unionized work environment, is presumed to know the terms of the CBA. On several occasions Darling signed for receipt of the P-Card Program Policies and Procedures Manual, Conflict of Interest Policy and Vehicle Use Policy. As a result of mandatory training to obtain a P-Card, Darling knew the Policies and Procedures prohibited "purchases from a business which create a conflict of interest, including those owned by relatives or friends."

Darling confirmed his understanding of the Vehicle Use Policy as restricting its use to "company and business purposes." [Tr. 342] The Policy states District vehicles are for official company business and "shopping or performing personal errands while operating a District vehicle are prohibited." [Emp. Exh. 2 at 20] Consequences for violating policies are clear - - discipline up to and including discharge.

Theft and dishonesty exhibited by Darling are behaviors recognized by arbitrators as egregious and destructive of the employment relationship warranting discharge even in the absence of a specific rule to that effect. [Br. at 20]

The District satisfied the first test, that is, Darling was on notice of the rules and the consequences for violating them.

2. Reasonable Rules

Rules requiring an employee to act in the best interest of a public agency's mission when performing duties and not engage in actions or behavior designed to steal work time and falsify public agency records or misuse public agency property are reasonable on their face.

Since 2019 Darling occupied a supervisory position. The District reasonably holds a heightened expectation that supervisors act in the District's best interests. "Higher pay and managerial status comes with higher responsibility and reasonable expectations associated with leadership positions." [Br. at 21] Expecting Darling to ensure correct accounting for public funds by verifying time records is reasonable. A supervisor should not participate with an hourly employee's conducting personal errands during work time.

3. Thorough Investigation Prior to Termination

The District afforded Darling multiple, substantive opportunities to present his side of the story prior to any decision on termination.

Director Osborne perceived some inconsistencies in Darling's use of the District vehicle and disclosed it to HR. An investigation of the booster crew ensued when HR viewed records showing potential violations of vehicle use, time reported and overtime. HR Manager Ornelas led

the investigation assisted by five (5) HR staff. She met with Darling on May 15, 2014. Although not required to do so Ornelas advised Darling on the 14th that he could bring a Union representative to the meeting but Darling elected no representation.

After the meeting the District placed Darling on administrative leave as discrepancies remained over vendor payment, time reports and vehicle use. The investigation continued with HR collecting GeoTab data, Medeco keys and badge entries and Workday time records on potential violations of policies by Darling and his responses thereto. Documents were exchanged with Darling during the investigation; Darling's documents addressed certain dates when he reported overtime. [Emp. Exh. 14 at 19-20] Every opportunity for Darling to present his side of the story resulted in him changing his story and explanations. After considering all investigative records the District issued a pre-termination letter to Darling. The District afforded Darling a full and fair opportunity to respond and rebut the allegations and explain his actions. The through investigative process and steps were detailed in his pre-termination letter, summary of issues and findings and termination letter.

4. Fair and Objective Investigation

The investigation encompassed information from multiple sources, interviews of multiple employees and reviewing four (4) months of GeoTab data, Medeco key swipes and badge entries. Darling was on notice as of May 14 to bring a Union representative to the interview on May 15 but he determined not to engage the Association. When Darling alleged bias by HR Manager Ornelas, the District assigned the investigation to HR Director Madden.

Darling alleges Director Osborne wanted to rid the workplace of Darling such that Osborne targeted Darling as a means to fill the position with an Osborne hire. There is no support for this allegation and the alleged targeting. Darling's position remains vacant with technicians from the booster crew and SNWA rotating through the position.

Darling's *Weingarten* rights were not violated as he never requested Union representation. In this regard, when the District becomes aware of potential misconduct in its operations, it is legally authorized to investigate. Darling understood the allegations presented to him and provided responses to each one.

Osborne recording the telephone call he received from Darling is embellished by the Union and not relevant. No information or comment in that conversation was relied on by the District in its investigation and decision to terminate Darling. HR conducted a fair, objective and neutral investigation extending the benefit of the doubt to Darling. For example, rather than rely on a few GeoTab discrepancies reported by Osborne as proof of vehicle misuse, HR collected data for several months to ensure a more complete view of Darling's vehicle use.

5. Investigation Establishes Misconduct

Evidence obtained during the investigation shows Darling knowingly violated the District's Policy on Vehicle Use and Work Related Vehicle Use wherein such vehicles "are to be used for official company business only" and "personal errands while operating a District vehicle are prohibited." There is an exception for "de minimis personal use" when an employee is assigned a 24-hour vehicle which was not Darling's arrangement. Darling shared a District vehicle with Gibson. There is some leeway for brief, short stops for a restroom break or beverage, snack purchases when traveling to and from a worksite but "excessive violations are unacceptable" such

as stopping at locations which direct the employee away from the travel route to and from the worksite. [Br. at 27]

Comparator data on thirteen (13) employees dating from March 2014 to June 2024 show that when an employee abuses the limited exception, such as Darling, they are subject to discipline including termination. [Emp. Exh. 35] Between January 29, 2024 and April 11, 2024, Darling used the District vehicle on nine (9) occasions in violation of the Policy; his personal use of the District vehicle totaled 17 hours and 43 minutes. [Tr. 125-127; Emp. Exhs. 6, 26, 27, 30] Often accompanying Darling on his personal errands was hourly employee Gibson. Darling states that supervisors commonly use District vehicles for personal errands during work hours but Darling was doing it with a subordinate in his vehicle thereby transforming vehicle misuse into wage theft. That is, Darling was actively authorizing Gibson to receive wages for time not worked which included situations where Darling was on a personal errand. Darling traveled to and from locations - - his residence and Darling's residence - - which are not near or on the way to and from any District worksite. Darling's misconduct is egregious and distinguished from the employee stopping at a convenience store in route to the next worksite. As for Darling driving the District vehicle to Gibson's residence for his gall bladder complications, that situation was not identified by Darling until after his termination.

The District extended its efforts to afford Darling the benefit of the doubt on every disputed item. For example during the grievance process Darling claimed Gibson and he used their personal cellphones to conduct District business. This was offered to address Gibson's hours approved by Darling. The District requested Gibson's personal cell phone records to substantiate hours worked but no records were submitted. The evidence shows situations - - conceded by Darling in his pre-termination response letter - - where he approved Gibson's hours entered and wages received for days off duty with no work performed and that constitutes wage theft. [Tr. 302-303; Emp. Exhs. 8, 15]

During the pre-termination meeting (June 27, 2024), counsel for Darling identified fifteen (15) dates wherein Darling was, allegedly, not at work due to illness or other personal reasons, thus, the District should not rely on those dates to support Darling's termination. [Emp. Exh. 6 at 2] Upon reviewing information provided during the grievance process the District accepted Darling's explanations for two (2) dates leaving four (4) dates as violations:

January 9, 2024

Darling claims he worked a full day from home. Workday records for January 8 and January 9 show no edits or activities in the system he claims to be working on and there are no badge or key access entries to substantiate that he worked a full day. [Emp. Exh. 16, pp. 4, 23]

March 5, 2024

Darling stated he attended the Supervisor Critical Conversations meeting but training logs confirm this meeting did not occur on the 5th. Workday records show some work activity on the 5th but no evidence of working a full day that he reported. [Emp. Exh. 16, p. 4]

March 7, 2024

Darling claims that text messages and a credit card statement prove he worked 100 hours on the 7th and, after work, he went to his tattoo appointment. Workday records show he logged in at 8:47 a.m. on the 7th and logged out at 10:18 a.m. with no other activity reported or established after he logged out. The tattoo receipt lacks a date stamp. [Emp. Exhs. 14 at p. 1 and 16 at p. 4]

March 26, 2024

Darling claims he left work early on the 26th due to an allergic reaction but his supervisor (Manager Doubek) has no record of approving Darling's absence. Darling coded the entire day as regular time, instead of using sick leave, despite his not working a full day. [Emp. Exh. 16 at 25]

These four (4) days total forty (40) hours of misappropriation, that is, falsifying timekeeping records by coding regular hours worked for time off. Darling claims he took calls on various days to conduct District business but District phone records do not support his claim and Darling refused to produce his own phone records. [Emp. Exhs. 15, 16]

Darling acknowledged that he regularly approved Gibson's time without any effort to verify whether the overtime hours claimed were actually worked. Darling relied on Gibson to maintain recordkeeping for Gibson and the booster crew. Darling did not rely on Gibson to track his time or the time reported by the crew. He acknowledged not monitoring time records nor reviewing and approving time entries daily as he allowed crew members to "put their time in four weeks in advance" or "wouldn't do it until the day it was required." [Tr. 373-374]

The District presented six (6) dates where there are issues with Darling approving Gibson's time. [Tr. 198-199, 204; Emp. Exh. 16 at 5-7; Emp. Exh. 30; Br. at 30]

January 12, 2024: 10 hours overtime

For 2 of the 10 hours Gibson conducted personal travel and errands with stops at his home, convenience store and auto parts shop unrelated to District business. AVANTIS records show 20 minutes of work performed with the total documented work for the day amounting to less than 3 hours. Darling approved 10 hours of overtime as hours worked.

January 19, 2024: 10 hours overtime

Gibson's activities were a visit to his home and to a welding supply Store where no District business was transacted. AVANTIS records show one hour of work. Darling approved 10 hours of overtime without any evidence or effort to confirm the hours.

May 3, 2024: 10 hours overtime

Gibson's activities were a visit to his home, a motorcycle shop with no District connection, and a restaurant with only 30 minutes of actual District work documented. Darling approved 10 hours overtime.

May 5, 2024: 4 hours overtime

No records - - vehicle tracking, badge swipes, phone logs or AVANTIS Entries - - that Gibson performed any District work. The only documentation Was an e-mail and a call received but no work performed. Darling approved 4 hours overtime.

May 10, 2024: 10 hours overtime

Gibson's activities were personal stops, lunch, and no AVANTIS work performed. Only 5 to 6 hours worked could be accounted for. Darling approved 10 hours overtime.

AVANTIS "Catch-Up" Overtime

On days Gibson claimed overtime to "catch up" on AVANTIS work, records document only a few minutes of actual work performed in the system for January 8, 29 and 31, 2024 which was far less than the hours claimed by Gibson and approved by Darling.

Gibson reported to the District that Darling instructed him to code time as overtime for "just being available" without regard to any work performed. In other words, overtime pay for not working but available to work should there be a call to do so. [Tr. 56, 211; Emp. Exh. 5, p. 3] Darling denied this instruction. After Gibson's reinstatement, Gibson changed his story when he testified at the hearing. Gibson supported his personal friend Darling and changed his story to coincide with Darling's denial. Darling's denial and numerous shifts and variations in an attempt to justify his misconduct are not credible.

There is inappropriate P-Card use at 6651 Customs which is a clear and definite conflict of interest and violates policy. Darling acknowledged the owner is a friend and Darling uses the shop to coat his personal items. Darling's supervisor - - Manager Doubek - - informed Darling he was not permitted to use the P-Card at Customs. [Tr. 267, 337-339]

The District submitted compelling evidence of Darling's policy violations of which some were intentional violations designed to directly benefit Darling. The District reasonably concluded termination was warranted.

6. Evenhanded Response to Offenses Without Discrimination

The District responded to Darling's misconduct in a consistent, evenhanded manner. Darling was not targeted or singled out for investigation. When the District became aware of his conduct on duty time, HR followed its procedures collecting information and conducting a comprehensive investigation on Darling as well as Gibson and the booster crew. Based on investigative findings and Darling's responses, the District assessed an appropriate disciplinary measure - - discharge - - for Darling's violations of policies and rules. The District did not act in an arbitrary or capricious manner, therefore, the decision to terminate Darling should remain undisturbed and sustained.

Any argument of disparate treatment presents an affirmative defense where the burden of proof resides with the Union to show (1) Darling was treated differently than another employee and (2) the circumstances for the comparator are substantially similar to Darling's circumstances. As noted in *Howard Industries*, 126 BNA LA 409, 414 (Cohen, 2008), the Union must establish that the offenses and relevant circumstances are alike in all material aspects. Different outcomes, standing alone, do not prove disparate treatment.

The Union may claim that Gibson's reinstatement is proof of disparate treatment. The District reinstated Gibson because he was not similarly-situated to Darling. Gibson is an hourly employee and subordinate to his first-line supervisor Darling. He followed Darling's instructions when claiming overtime and use of the District vehicle. In other words, he acted in response to his supervisor's instructions and directions.

Maintenance Manager Doubek is not a comparator; he served as Darling's first-line supervisor and did not engage in the kind of misconduct leading to Darling's discharge. There is no evidence that Doubek engaged in dishonest acts or misused District resources. But for Darling, everyone in the maintenance division obtained their NDEP certifications within acceptable deadlines.

There is no comparator employee for Darling's situation. No employee in a supervisory capacity such as Darling's position has engaged in the same kind of misconduct. Darling was not treated more harshly than employees discharged for similar offenses or less serious violations involving falsification of time cards, an egregious and intolerable offense. [Emp. Exh. 35]

As for any claim of age discrimination, Darling presented no evidence in testimony or documents and, thus, fails to carry the burden of proof on that issue.

7. Discharge Reasonably Related to Seriousness of Offense and Darling's Service Record with the Employer

Darling's misconduct warrants termination. As noted in *Stockholm Pipe Fittings Co.*, 1 BNA 160 (McCoy, 1945), the primary function of management when confronted with misconduct is to determine the penalty and the penalty assessed should remain unless there has been an abuse of discretion which is not shown by the Union in this proceeding. [Br. at 35]

Darling's misconduct warranted immediate discharge. The District acted in accordance with Article 7 where the parties agreed that "the concept 'for cause' includes the principal of progressive discipline for minor offenses." Theft of time is not a minor offense. Progressive discipline does not apply in this situation. Darling knowingly diverted public funds for personal benefit at the expense of taxpayers as he submitted and approved false time records. Summary discharge is warranted for this falsification resulting in personal gain.

Darling's extended service with the District does not mitigate his wrongdoing. Length of service does not excuse egregious violations. The District expects supervisors to act with integrity for subordinates to follow. As a supervisor Darling is held to a higher standard and knowledge of policies and applying them properly and legally to subordinates.

District's Conclusion

The District established the seven tests thereby demonstrating cause for Darling's termination. Should the Arbitrator determine to reinstate Darling no backpay should be awarded.

Findings and Conclusions

The Association filed a grievance on behalf of Justin Darling, the grievant, and advanced it to arbitration. The parties agree no procedural or substantive encumbrances intrude on the grievance and that the stipulated issue is before the Arbitrator for a decision on its merits.

To refresh, the issue for arbitration is - -

Did the Employer have just cause to terminate Justin Darling and, if not, what should be the appropriate remedy?

[Tr. 8]

Findings and conclusions on the stipulated issue are rendered in accordance with the CBA where the parties defined the function, purpose and authority for an arbitrator in Article 6 - Arbitration, paragraphs E and G:

- E. The decision of the Arbitrator shall be based solely upon the evidence and arguments presented to him by the respective parties in the presence of each other. The function and purpose of the Arbitrator is to determine disputed interpretation of terms actually found in the Agreement, or to determine disputed facts upon which application of the Agreement depends. The Arbitrator shall therefore not have authority nor shall he/she consider it his/her function to decide any issue not submitted, or to interpret or apply the Agreement as to change what can fairly be said to have been the intent of the parties as determined by generally accepted rules of contract construction. The Arbitrator shall not give any decision which in practical or actual effects modifies, revises, detracts from or adds to any of the terms or provisions of this Agreement. The Arbitrator shall not render any decision or award, or fail to render any decision or award, merely because in his/her opinion such decision or award is fair or equitable.

The Arbitrator retains jurisdiction for a period of 120 calendar days from issuance of an award for the limited purpose of clarifying or interpreting the award[.]

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- G. The decision of the Arbitrator within the limits herein prescribed shall be final and binding upon the parties to the dispute.

The parties agreed in Article 7 - Discharge, Discipline and Personnel Files that (1) the District "shall have the right to discharge or discipline any employee for cause" and (2) the District "must be reasonable in determining 'cause' in any particular case." The parties further agreed that the "concept of 'for cause' includes the principles of progressive discipline for minor offenses."

The District advances numerous policy violations by grievant in its decision to terminate Darling but the primary focus is what the District describes as egregious misconduct where Darling (1) instructed Gibson to record overtime hours for being available, (2) performed personal errands on

work time with Gibson in the District vehicle and (3) falsified his time records. According to the District these examples of egregious misconduct involving theft of time constitute major offenses, not minor offenses. Article 7 requires use of progressive discipline for minor offenses. The District's position is Article 7 does not require the District to include principles of progressive discipline for major offenses.

Focusing on the three (3) non-minor, major offenses, the grievance is assessed following the customary apportioning on the burden of proof. That is, the burden of proof to establish termination for cause resides with the District whereas the burden of proof to establish disparate treatment resides with the Association. In an administrative civil proceeding such as this arbitration, the burden of proof is a preponderance of the evidence - - something more than a scintilla and substantial but something less than clear and convincing and beyond a reasonable doubt. The phrase "more likely than not" captures the preponderance of evidence standard.

As stated in grievant's termination letter,

In April 2024, the [District] received an allegation that you engaged in conduct that violated District policies. Specifically, the District was informed that you: allowed a subordinate to conduct personal business on District time, were approving inaccurate timekeeping records for subordinates, were approving purchases for unauthorized vendors, and were using the District's vehicle to conduct personal business in violation of AP11 - Vehicle Use and Related Vehicle Use, violation of the P-Card policy, not completed required training for your position, and violation of District Professional Code of Ethics, Vision and Values Statements. Thereafter the, the District initiated an internal investigation into these allegations.

[Emp. Exh. 10; Un. Exh. 11]

The allegation stems from Osborne's meeting with HR Manager Ornelas on May 7 and Ornelas' meeting with HR Director Madden on that date. Director Madden authorized an investigation led by Manager Ornelas with HR staff assistance. HR determined it would access information and data that is maintained in the regular course of District operations for the period January 1, 2024 to May 7, 2024. The CBA does not address HR internal investigations. Thus, the scope, shape and duration of an investigation resides with HR when examining the allegations. In this regard, there is no CBA requirement to notify an employee that his or her name surfaced in an investigation or that he or she is the subject of an HR investigation. As pointed out by the District, it was not required to inform grievant in the May 14 email notice that he could bring a Union representative to the May 15 meeting. The District states that the May 14 notice alerted grievant that matters beyond certifications would be discussed although it did not respond to Manager Doubek's request for clarification. At that time (May 14) HR was investigating Manager Doubek's role, if any, in the allegations.

The investigation which led to this grievance is described as "dubious" by the Association with "bad faith" overtones by Ornelas and Osborne. Given Ornelas statement to grievant at the May 15 meeting that he was involved in a kickback scheme with criminal implications and law enforcement investigation, counsel for grievant met with Madden and stated Ornelas was biased. Counsel informed Madden the May 14 notice did not identify overtime and purchasing which placed grievant at a disadvantage. Without agreeing with counsel about bias, Madden took over the investigation and removed Ornelas. This negated the bias concern and concerns about the

notice were cured with subsequent meetings between counsel and Madden over all matters in the allegation.

As for Osborne, he and grievant testified they had no prior working relationship over the course of their years with the District. [Tr. 35-36, 360] There is no evidence of ill-will between them as of March 2014 when Osborne became Director of Operations with oversight responsibilities of the maintenance division which included Darling, Gibson and the booster crew. Grievant's position is subject to Osborne's oversight. Osborne informed HR of his concern about vehicle use and HR assessed the concern.

The Association's bad faith concerns follow. Bad faith number one is Osborne never contacted grievant to discuss the May 1 telephone incident and violated policy when he did not request HR approval to use GeoTab to locate grievant's District vehicle. Osborne testified the employee (Brittany Alas) wanted him to "drop it" and not talk to Darling. Osborne informed HR of the incident and Ornelas directed HR staff to contact Alas which occurred on May 7; staff reported to Ornelas that she was "over it" and did not want to pursue the incident. HR took no further action; the matter was closed.

As for GeoTab to locate Darling and AP24, administration of the GPS system resides with fleet services in consultation with HR. Ornelas testified that managers are authorized to use the system to locate vehicles within the manager's span of control. Osborne's access encompasses the maintenance division which is subject to Osborne's oversight. Osborne testified that Darling parking on a private street seemed "odd" since the pump station was nearby and there was no apparent business on May 1. Osborne testified that the District receives complaints about its vehicles parked on streets and this was an affluent neighborhood. He checked vehicle locations for 8 days prior to see if this was repeated. On May 7 he reported his vehicle use concern to HR and HR indicated it would look into it. [Tr. 42-47] HR Director Madden testified that HR has a duty to look at GPS data when a concern is brought to HR. [Tr. 389] Osborne's accessing GPS on May 1 occurred within the parameters allowed by HR's administration of AP2; HR assessed GPS data in accordance with its authority in AAP24.

A second bad-faith overtone involves Osborne's recording the telephone conversation without grievant's consent. The Association states this violates Nevada law. In this regard, grievant testified that after the May 15 meeting he contacted Ornelas by telephone on 2 occasions for the purpose of discussing his situation and she directed him to the Association and instructed him not to contact any District employee. [Tr. 358-359] Grievant's pre-termination hearing occurred on June 27, 2024, with counsel for Darling presenting grievant's case. Osborne testified that the discussion was intense. Notwithstanding Ornelas informing grievant not to contact any District employee and grievant retaining counsel to represent him, Darling contacted Osborne on June 29. Osborne testified he recorded the conversation for safety reasons stemming from the intense pre-termination hearing whereas the Association claims Osborne sought to record unguarded admissions by grievant. The Association claims a violation of Nevada law and Osborne claims District policy makes Darling's telephone call to a District-issued phone subject to public disclosure with no expectation of privacy. [Tr. 53-57] The law and the policy are not in evidence. The recording is in evidence; Ornelas testified she never listened to it and it played no role in Darling's discharge. Also, the recording is not considered in the outcome of this arbitration.

Bad-faith overtone three is Osborne's one-word email response in capital letters approving an internal auditor suspending grievant's P-Card. The response is noted but inconsequential since the internal auditing group, not part of or subject to HR oversight, was directing and controlling

reviews of P-card purchases. Whether or not grievant had approval for P-card purchases after he was placed on administrative leave is not consequential in this award.

Number four is Ornelas e-mail on May 14 using the phrase "among other things" for discussion at the May 15 meeting, number five is Ornelas interview with grievant on May 15 where she used the word "kickback" in relation to grievant's purchases and invoicing with 6651 Customs implying a criminal investigation and number six is a rush to judgement. Statements by Ornelas at the meeting were addressed by counsel with HR Director Madden which led to Ornelas removal from the investigation. Subsequent meetings over the course of months between Madden and counsel provided an ongoing exchange where grievant, assisted by counsel, presented his position with argument and documents on issues raised on May 15. There was no rush to judgement given the ongoing discussions between counsel and Madden.

As for purchasing by grievant at 6651 Customs, Customs is a vendor and its recourse is with procurement, contracting and invoicing system. Grievant used 6651 Customs for personal business and was a personal friend with the owner. He advocated for the District to do more business with Customs so it could stay afloat. Grievant actively advocating on behalf of vendor Customs to generate more business is an invitation for auditors to examine purchases and invoices.

Bad-faith overtones lodged by the Association have been assessed. They are not determinative of the outcome in this proceeding. The focus turns to the major infractions identified by the District as egregious misconduct warranting discharge: (1) instructing Gibson to record overtime hours for being available and not working, (2) performing personal errands in District vehicle on work time with Gibson present in the District vehicle and (3) falsifying his time records.

As for Darling instructing Gibson to record overtime hours for being available, a preponderance of evidence supports the District. Gibson reported to the District that Darling instructed him to code time as overtime for being available. [Tr. 56, 209-211; Emp. Exh. 5 at 3] HR Analyst Gibase' notes from Gibson's pre-termination meeting confirm Gibson's statement; the notes accurately capture Gibson's statement. Gibase is credited. His involvement with the investigation from the outset shows a measured analysis drawn from the documents and candor when testifying about the de facto vehicle use policy. Candor and thoroughness support finding his notes accurately report Gibson's comments. Gibson's testimony is not credited; his testimony contradicts what he told HR at the pre-termination hearing. Gibson is a personal friend with grievant; Gibson's testimony is not reliable. The first major infraction is sustained.

As for Darling performing personal errands on work time using the District vehicle with Gibson in tow, that did occur. Nevertheless the Association established a de facto policy on vehicle use and personal errands as long as the work "gets done". Operations Supervisor Thompson testimony confirmed the de facto policy and the lack of interest by supervisors and/or HR to enforce the policy as written. [Tr. 384-386] The rule, as written, is not enforced. The District claims it is but refused to disclose the documents it relied on for that position. This second major infraction is not sustained.

The third major infraction is whether Darling inaccurately coded his time. This is not a new allegation; Darling's time reporting has been issue throughout the investigation and was noted in the pre-termination notice. There is a preponderance of evidence that grievant inaccurately reported time worked and, in doing so, falsified his time record. Doubek approved Darling's request to work from home on January 9, 2024. Grievant maintains he worked on employee performance evaluations. Workday system shows no edits or activities by grievant on January 9.

There are no text messages, emails, telephone records or any other document to corroborate any work performed on the 9th. Grievant did not work in the field on the 9th. Grievant did not testify about any work he performed on the 9th. There are no log-in and log out times.[Exh. 16, pp. 4 and 23] Ten hours cannot be confirmed based on the evidence in the record. Drawing upon that record, more likely than not, grievant did not perform up to 10 hours work on the 9th. Ten hours are inaccurately reported.

For March 5, 2024, Workday records show some work performed on this date. Grievant asserts he attended the Supervisor Critical Conversations meeting but training records show no such meeting on the 5th. [Emp. Exh. 16, p. 4] He is credited for some hours worked but less than 10 hours.

Workday records for March 7, 2024, show grievant logged in for work at 8:47 a.m. and logged out at 10:18 a.m. with no other work activities reported on that date. The receipt from the tattoo parlor is offered by grievant to show he was there after work hours but there remains unconfirmed, undocumented work time after 10:18 a.m. Grievant is credited for 2 hours worked. [Emp. Exhs. 14, 16]

As for March 26, 2024, grievant incorrectly coded his time as 10 hours work when he left work early due to allergies. The District presented this as a time coding error only and not as no work performed. [Tr. 227-228] Manager Doubek did not approve grievant's early departure. [Tr. 228] The time coding error is correctable. This incident is credited for 10 hours - 6 work hours, 4 sick leave.

There are at least eighteen (18) hours misappropriated with inaccurate, falsified hours reported and compensated. These major offenses - - advising Gibson to report hours as overtime worked for being available and 18 hours falsely reported as work - - constitute cause for termination. Comparator data establish the District addresses this type of misconduct with termination for hourly and salaried personnel. From 2016 up to June 10, 2014, salaried and hourly employees were terminated for falsely recording 1 hour, 1.5 hours, 3.5 hours, 4 hours and 6 hours. [Emp. Exh. 35] Grievant inaccurately reported time worked of at least 18 hours.

Arbitral jurisprudence places falsifying time in the category of a capital offense recognized by discharge. Article 7 does not require progressive discipline for non-minor, major offenses but it does require the District to be "reasonable when determining cause." Based on 2 major offenses proven the District reasonably determined there was cause for discipline and such discipline is reasonably based on comparator data where discharge is assessed for inaccurate reporting of time. Grievant is not treated disparately for 2 major offenses. Assuming Article 7 allows progressive discipline for non-minor offenses, grievant's past performance does not immunize or insulate him from the consequences of his misconduct.

The District's decision to discharge grievant is based on the evidentiary record established by the parties in this proceeding where the short answer to the stipulated issue is answered in the affirmative. That is, there is cause for grievant's termination. The grievance is denied.

All arguments presented in the record have been considered in this award.

AWARD

The grievance is denied.

Patrick Halter /s/
Patrick Halter
Arbitrator

Signed on this 11th day
of December 2025

LVVWD (Respondent)

**Reply in Support of Motion to Defer to
Arbitrator's Award and Dismiss the Complaint**

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1 FISHER & PHILLIPS LLP
2 MARK J. RICCIARDI, ESQ.
3 Nevada Bar No. 3141
4 ALLISON L. KHEEL, ESQ.
5 Nevada Bar No. 12986
6 300 South Fourth Street, Suite 1500
7 Las Vegas, NV 89101
8 Telephone: (702) 252-3131
9 Facsimile: (702) 252-7411
10 E-Mail Address: mricciardi@fisherphillips.com
11 Attorneys for Respondent

8 **STATE OF NEVADA**

9 **EMPLOYEE-MANAGEMENT RELATIONS BOARD**

10 JUSTIN DARLING, a Local Government Employee,
11 Complainant,
12 vs.
13 LAS VEGAS VALLEY WATER DISTRICT, a
14 Political Subdivision of the State of Nevada,
15 Respondent.
16) Case No.: 2025-005
17)
18) **RESPONDENT LAS VEGAS**
19) **VALLEY WATER**
20) **DISTRICT'S REPLY IN**
21) **SUPPORT OF MOTION TO**
22) **DEFER TO ARBITRATOR'S**
23) **AWARD AND DISMISS THE**
24) **COMPLAINT**
25)
26)
27)
28)

18 Respondent, the Las Vegas Valley Water District (the "LVVWD" or the
19 "District" or the "Respondent"), by and through its counsel of record, Mark J. Ricciardi,
20 Esq., and Allison L. Kheel, Esq., of the law offices of Fisher & Phillips LLP, hereby
21 files this Reply in Support of its Motion to the Employee Management Relations Board
22 ("EMRB" or the "Board") for an order deferring to the findings of the Arbitration
23 Award ("Award") dated December 11, 2025, and for an order dismissing the claims in
24 the Complaint filed February 28, 2025 ("Complaint"). A copy of the Award was
25 attached as Exhibit 1 to the Motion to Defer to the Arbitration Award ("Motion").

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1 **I. INTRODUCTION**

2 Complainant Justin Darling's (hereinafter "Darling" or "Complainant") lengthy
3 Opposition fails to identify a valid reason for the Board to refuse deferral in this case
4 and to not dismiss it. Instead, Darling's Opposition simply recycles the same evidence
5 and arguments that Darling already presented to the Arbitrator—the same evidence and
6 arguments that Arbitrator Halter already found to be unpersuasive. It is this practice of
7 relitigating the same factual issues that the deferral doctrine is designed to prevent.

8 Darling makes two arguments against deferral: (1) that the Arbitrator's authority
9 was limited to contractual matters and, therefore, the Board cannot consider the
10 Arbitrator's findings when deciding statutory violation issues; and (2) that the
11 Arbitrator did not have all the facts before him.

12 Darling's first argument misunderstands the deferral standard. The Arbitrator
13 need not have authority to decide statutory violations, the deferral doctrine only
14 requires that the issues are factually parallel. Darling has not demonstrated that deferral
15 is inappropriate, therefore the Board should defer to the findings set forth in the Award.

16 Darling's second argument similarly fails because Darling cannot point to any
17 factual evidence that was allegedly missing from the record which would have
18 impacted the investigation or termination. In this case, all of Darling's claims for
19 discrimination, retaliation, and bad faith are dependent upon Darling's termination. As
20 the termination was the subject of the Arbitration, all evidence relating to the
21 termination (including all evidence which might provide an ulterior motive) was
22 presented to the Arbitrator, who considered the record and gave the evidence the weight
23 he felt it deserved. While Darling claims to identify several facts that were absent from
24 the record, in reality, Darling is merely regurgitating arguments or factual assertions
25 that were rejected during the Arbitration. Therefore, the Board should reject Darling's
26 attempts to relitigate his claims and defer to the Award.

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1 **II. ARGUMENT**

2 **A. Darling Fails To Understand That The Deferral Doctrine Only**
3 **Requires The Issues Before The Board To Be Factually Parallel To**
4 **The Issues Before The Arbitrator**

5 Darling misunderstands the requirements of the deferral doctrine, as it does not
6 require the Arbitrator to have decided the statutory violations. The EMRB's five-part
7 deferral doctrine provides:

8 The [EMRB] defers to a prior arbitration if: (1) the arbitration
9 proceedings were fair and regular; (2) the parties agreed to be bound; (3)
10 the decision was not clearly repugnant to the purposes and policies of
11 the [EMRA]; (4) the contractual issue was factually parallel to the unfair
12 labor practice issue; and (5) the arbitrator was presented generally with
13 the facts relevant to resolving the [unfair labor practice].

14 *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217
15 (2002). "The party desiring the [EMRB] to reject an arbitration award has the burden
16 of demonstrating that these principles are not met." *Id.*; see also *Washoe Sch.*
17 *Principals Ass'n v. Washoe Cty. Sch. Dist.*, Case No. AI-046098 (2017); *Reichold*
18 *Chemicals*, 275 NLRB 1414, 1415 (1985); *Good Samaritan Hosp. & California Nurses*
19 *Ass'n*, 31-CA-117462, 2015 WL 7223437 (Nov. 16, 2015).

20 Under the deferral doctrine, the Arbitrator is not required to have been given the
21 authority to decide statutory matters (the LVVWD and the Union could not deprive the
22 Board of its exclusive jurisdiction to decide statutory violations of the Employee
23 Management Relations Act ("EMRA") even if the parties wanted to—which they do
24 not). It is practically universal for a collective bargaining agreement ("CBA") to limit
25 the Arbitrator's jurisdiction to interpretation and application of the terms of the CBA.
26 That is why the deferral standard requires the Board to consider whether the issues
27 before the Arbitrator are "factually parallel" to the issues before the EMRB. *City of*
28 *Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002).

The issues are factually parallel in this case. For example, when determining
just cause for termination, the Arbitrator considered whether the investigation of
wrongdoing was thorough and proper. The Arbitrator reviewed all the procedural steps

1 taken, and factual evidence gathered, by the District, during the investigation. Darling
2 argued to the Arbitrator (during the Arbitration and in his post-hearing brief) that the
3 investigation was biased, and evidence was improperly excluded from the Record.
4 Darling claimed that HR Manager Laura Ornelas was biased against Darling and this
5 tainted the investigation. Ex. 1 to Mot. at pp. 25-26. The Arbitrator rejected Darling's
6 version of events, found his claims of bias and disparate treatment were not credible,
7 and ultimately found that the investigation was thorough and procedurally proper. Ex.
8 1 to Mot. at pp. 26-27.

9 In these proceedings, Darling is now arguing that the District violated the
10 EMRA by "continuing to rely on an investigation shaped by an initially biased HR
11 Manager" in retaliation or "discrimination for political or personal reasons." Opp. p.
12 17. However, to *factually* support these claims, Darling is once again asserting that
13 LVVWD's investigation was biased because Ms. Ornelas conducted the initial
14 investigatory meeting and was biased against Darling. Opp. p. 17. The Arbitrator has
15 already made a credibility determination on this fact based on witness testimony and
16 found that the investigation was proper and Mary Madden's replacement of Ornelas in
17 the investigation cured any potential bias in the investigation. Ex. 1 to Mot. at pp. 25-
18 26. Darling is also seeking to show that the "crying employee" incident did not occur.
19 Opp. p. 10. However, this argument was already made to the Arbitrator and the
20 Arbitrator found the explanation of the initial impetus for the investigation into the GPS
21 records to be credible. Ex. 1 to Mot. at p. 26.

22 The purpose of the deferral doctrine is to avoid forcing parties to relitigate
23 factual matters before the Board and avoid the EMRB re-weighing evidence and
24 potentially reaching conflicting conclusions. Thus, Darling is seeking for the Board to
25 do the very thing the deferral doctrine is designed to prevent.

26 Stated more abstractly, assume a scenario where in order for the grievant to
27 prevail at arbitration, Facts A, B, and C must all have occurred; while in order to
28 prevail on a claim before the EMRB, Facts A, B and D must all have occurred. If the

1 arbitrator has already determined that Fact B did NOT occur, then the claim before the
2 EMRB must also fail. The EMRB should not hold a separate hearing to relitigate the
3 occurrence or non-occurrence of Fact B. Rather, the deferral doctrine requires the
4 EMRB to accept the Arbitrator's determination that Fact B did not occur. Therefore,
5 Darling has failed to demonstrate that the five elements of the deferral doctrine have
6 not been met in this case.

7 **B. Darling's Claims Of Missing Factual Evidence In The Record Are**
8 **Unsupported**

9 Darling repeatedly claims that parts of his discipline and grievance file and
10 "decision forming materials" were withheld. However, the only record Darling
11 identifies as withheld is the internal HR review from Judge Wall. Opp. p. 11. This was
12 an internal LVVWD matter which was initiated after Darling's termination¹ and thus
13 has no bearing on his termination or any alleged violations of the EMRA. It is not a
14 public record and had no impact on the termination, grievance or arbitration and, thus,
15 being withheld as privileged trial preparation materials is proper.

16 Darling then claims that the Arbitrator did not have all the facts before him
17 because "Union President Rodney Carter did not testify in arbitration, and his sworn
18 declaration was never presented to the arbitrator or addressed in the Award." Opp. p.
19 12. However, Darling ignores the fact that this is an issue of his own making, as it was
20 Darling's decision as to what witnesses, evidence and testimony to present to the
21 Arbitrator. Darling cannot decline to call a witness and then argue the Arbitrator did
22 not have the complete record because that witness did not spontaneously take the stand
23 to testify. If Darling felt that the information needed to be included in the record he
24 was responsible for introducing it.

25 Darling then tries to attack the investigation by claiming that as the grievance
26 progressed, there was an "evolving" investigation file that "expanded with new
27 summaries, notes and characterizations that had not existed ... at the time of

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¹ Employment is a prerequisite for the EMRA to apply.

1 termination.” Opp. p. 12. This appears to be based on Darling’s misunderstanding of
2 the grievance process. As is typical with most CBAs, the grievance process has
3 multiple steps (step 1, step 2, etc.) and each step typically results in a meeting,
4 summary of the meeting or notes of the discussion, and a written response. Since
5 Darling has not identified any “undisclosed document” that should have existed at the
6 time of the termination, Respondent can only conclude that the “expanding” file was
7 simply due to the grievance progressing through the grievance steps, which in turn
8 generated more documents at each step to be included in the grievance file. Nothing
9 about this suggests anything nefarious. Regardless, as Darling obtained the so-called
10 “expanded file” as a result of the Arbitration, all such information was part of the
11 record before the Arbitrator, confirming that the Arbitrator had all the relevant facts
12 before him when issuing the Award.

13 Darling’s claim that comparator data was not reviewed is simply false.
14 Darling’s claims that the District selectively reviewed records and ignored other
15 Workday and GPS records is also unsupported. District Arbitration Exhibit 35 contains
16 the comparator data considered during the investigation. Union Arbitration Exhibit 21
17 contains additional comparator evidence of other employee data from 10 District
18 vehicles. The evidence was admitted into the record and considered by the Arbitrator.
19 The Arbitrator did not sustain the findings regarding violation of the vehicle use policy
20 but did find that the record supported multiple instances where Darling incorrectly
21 reported his time without performing work. Ex. 1 to Mot. at pp. 28-29. The Arbitrator
22 considered all evidence proffered by Darling to purportedly explain his inaccurate time
23 reporting and ultimately concluded that the evidence showed multiple violations. Ex. 1
24 to Mot. at pp. 28-29. While Darling may be disappointed that the Arbitrator was not
25 persuaded by his proffered evidence, this is not a basis for the EMRB to avoid deferral
26 in this case.

27 Finally, as with all the other arguments made by Darling, his claim of
28 inconsistent treatment and selective discipline also fails to provide a basis to avoid

1 deferral. Darling presented his arguments regarding the discipline of Tyler Gibson at
2 the Arbitration Hearing. Ex. 1 to Mot. at pp. 10-11. Mr. Gibson even testified on the
3 record. The Arbitrator found the District's explanation that Darling was a supervisor
4 and had instructed Mr. Gibson to code his time as overtime to be credible, which in turn
5 lead to a different level of discipline for Mr. Gibson than for Darling. Ex. 1 to Mot. at
6 p. 27. Discipline of similarly situated employees is one of the 7 tests of just cause that
7 was considered by the Arbitrator in the Award. Ex. 1 to Mot. at pp. 12-13, 27-29.
8 Darling cannot now use this as a basis to avoid deferral just because he labels it
9 "selective enforcement and pretext."

10 The EMRB must not allow Darling to introduce the same evidence and factual
11 arguments he used in the Arbitration as a basis to avoid deferral and hold a hearing in
12 this case.

13 **C. Darling Makes Several Admissions Critical To Dismissal And**
14 **Deferral**

15 Darling makes several key admissions in his Opposition that have bearing on this
16 Motion. First, Darling admits that he does not seek reinstatement or monetary relief.
17 Opp. pp 1-2. Darling also admits that earlier investigation steps (occurring more than
18 six months before his claim was filed) are only used as factual background and not the
19 basis for independent claims. Opp. p. 6.

20 Several of Darling's requested remedies are not within the Board's remedial
21 authority. Opp. p. 19. For example, unlike the EEOC which has authority to initiate its
22 own investigations, the EMRB has no such authority. Therefore, the EMRB does not
23 have authority to order the District to revise its policies or force it to conduct internal
24 trainings. Darling also requests cease and desist orders for new and unexplained claims
25 (e.g., "post-termination legal threats") without providing any further factual support or
26 identifying any specific violation of the EMRA that such a remedy would relate to,

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28 ///

1 and/or be an appropriate remedy for in this case.² The Board's lack of authority to
2 award many of the remedies sought by Darling further supports deferral in this case.

3 Darling also admits that he is not bringing claims for wiretapping, defamation
4 or other claims outside of the Board's jurisdiction and/or outside the 6-month statute of
5 limitations. Opp. p. 6. Therefore, Darling is admitting that to the extent the Board
6 finds the Complaint asserts such claims, that dismissal of the same with prejudice is
7 appropriate.

8 Darling next admits that the Arbitration was fair and proper, and complied with
9 the procedures of the CBA. Opp. p. 8. Darling also confirms that he is not challenging
10 the Award through judicial review, and the award is not repugnant to the EMRA. Opp.
11 p. 8. These admissions establish that the first three elements of the five-part deferral
12 test have been satisfied.

13 Darling also clarified his claim of retaliation, arguing that the District
14 terminated Darling as a result of a call Darling's spouse allegedly received from
15 County Commissioner Jim Gibson to allegedly discuss the investigation of both
16 Darling and Tyler Gibson (Commissioner Gibson's son). First, Darling's evidence is
17 simply a screenshot of someone's phone, displaying the name that the owner of the
18 phone entered for a given contact. It does not prove a conversation with a
19 Commissioner actually occurred, nor does it prove anything about the content of the
20 call.³ Nor does Darling explain how a termination could be in retaliation for an action
21 allegedly initiated by a Commissioner of the District that has no involvement with
22 Human Resources, its investigation, or the ultimate decision to terminate Mr. Darling.
23 Darling readily admits that the investigation was already underway and he was already
24

25 ² It is also interesting that Darling purports to seek to "correction, removal or expungement of references
26 . . . from Mr. Darling's personnel and investigative records." Opp. p. 19. Such personnel and
27 investigative records are confidential, are not subject to a public records request, and are never disclosed
28 to any future employer. However, by proceeding with this case, Darling has voluntarily introduced these
documents into the public record, thereby rendering his requested remedy to be futile.

³ It is equally likely that the call was with fellow suspended employee Tyler Gibson. At best this was a
call with an interested party, where the Commissioner was acting as a parent and not a representative of
the District.

1 suspended at the time of the alleged call, therefore, the alleged retaliatory adverse
2 employment action (*i.e.*, investigation which ultimately resulted in his termination)
3 occurred before the protected activity (*i.e.*, alleged communications with a
4 Commissioner), and, therefore, the protected activity could not have been the catalyst.
5 Finally, this call allegedly occurred prior to the Arbitration and if Darling felt it was
6 relevant to his termination he was responsible for introducing it as evidence in the
7 record.

8 Darling made multiple assertions of “bad faith overtones” during the Arbitration
9 and the Arbitrator systematically considered and rejected each of these allegations in
10 the Award. Ex. 1 to Mot at pp. 25-29. Therefore, Darling’s claims of retaliation and
11 bad faith must fail.

12 **III. CONCLUSION**

13 Based upon the foregoing reasons, as well as those set forth in the Motion, the
14 LVVWD respectfully requests that the Board defer Darling’s claims to the findings in
15 the Arbitration Award, and dismiss those claims as resolved with prejudice.

16 DATED this 10th day of April, 2026.

17 FISHER & PHILLIPS, LLP

18
19 /s/ Allison List Kheel
20 MARK J. RICCIARDI, ESQ.
21 ALLISON L. KHEEL, ESQ.
22 300 South 4th Street, Suite 1500
23 Las Vegas, Nevada 89101
24 *Attorneys for Respondent*
25
26
27
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CERTIFICATE OF ELECTRONIC SERVICE

This is to certify that on the 10th day of April, 2026, the undersigned, an employee of Fisher & Phillips LLP, electronically served the foregoing **RESPONDENT LAS VEGAS VALLEY WATER DISTRICT'S REPLY IN SUPPORT OF ITS MOTION TO DEFER TO ARBITRATOR'S AWARD AND DISMISS THE COMPLAINT** to EMRB (emrb@business.nv.gov) and the following:

JUSTIN DARLING
1610 Rocking Horse Drive
Henderson, NV 89002
Jwdwj713@gmail.com

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