

1 Ronald J. Dreher  
2 NV Bar No. 15726  
3 P.O. Box 6494  
4 Reno, NV 89513  
5 Telephone: (775) 846-9804  
6 dreherlaw@outlook.com  
7 *Attorney for Complainant*

8  
9 **BEFORE THE STATE OF NEVADA**  
10  
11 **GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

12 ASSOCIATION OF PROFESSIONAL-  
13 TECHNICAL ADMINISTRATORS,

Case No.: 2024-001

Complainant,

Panel:

vs.

14 WASHOE COUNTY SCHOOL  
15 DISTRICT

Respondent.

\_\_\_\_\_ /

16  
17 **MOTION TO BAR RESPONDENT’S AFFIRMATIVE DEFENSES**

18 **COMES NOW**, Complainant, ASSOCIATION OF PROFESSIONAL-TECHNICAL  
19 ADMINISTRATORS, (“APTA”), by and through its undersigned counsel, and hereby files its  
20 Motion to Bar Respondent’s Affirmative Defenses. This Motion is made pursuant to NAC  
21 288.240 and is based on the following Memorandum of Points and Authorities and exhibits  
22 thereto, the pleadings and papers on file herein and any other material this Board chooses to  
23 consider.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. THE PARTIES**

APTA is an employee organization as defined in NRS 288.040. It is the recognized bargaining unit for the school psychologists and technical administrators at the Washoe County School District, (“District”).

The District is a local government employer under NRS 288.060, a political subdivision of the State of Nevada which oversees and supervises Washoe County School psychologists and technical administrators and is the regulating authority with regard to policy.

On January 9, 2024, the District unilaterally, and without APTA’s authorization, withdrew recognition of APTA as the recognized bargaining unit for all APTA members. Subsequent to this, the District recognized a rival employee organization, Washoe Professional-Technical Administrators as the recognized bargaining unit for professional-technical employees, a portion of APTA membership, and unilaterally withdrew all labor organization recognition for the remaining APTA members, the school psychologists.

The actions taken by the District on and after January 9, 2024, violated multiple statutes under NRS Chapter 288, the NRS Chapter that regulates the interactions between government and public employees and over which the EMRB has exclusive jurisdiction. *See Umc Physicians' Bargaining v. Nev. Serv. Empl. Union, Seiu Local 1107*, 494 P.3d 903 (Nev. 2021) (Unpublished); *City of Mesquite v. Eighth Judicial Dist. Court of Nev.*, 135 Nev. 240, 244, 445 P.3d 1244, 1248 (2019). In response to these violations, APTA filed a prohibited practice complaint with the EMRB on January 24, 2024, and an amended complaint, (“FAC”), and motion to expedite hearing on January 25, 2024.

1 The motion to expedite the hearing was granted on February 27, 2024, and a hearing was  
2 set for April 18, 2024, with the parties ordered to submit Prehearing Statements by March 14,  
3 2024.

4 **b. Legal Authority.**

5 NAC 288.220(1) states, “[a] respondent may file an answer in the form of a pleading  
6 and not later than 20 days after the receipt of a complaint.” This statute continues in subsection  
7 2 to clarify that, “[t]he respondent must specifically admit, deny or explain each of the  
8 allegations in the complaint unless he or she is without knowledge, in which case the respondent  
9 shall so state and the statement shall be deemed a denial. Any allegation in the complaint not  
10 specifically denied in the answer, unless it is stated in the answer that the respondent is without  
11 knowledge, shall be deemed to be admitted to be true.” NAC 288.220(3), defines that a party  
12 failing to file an answer within the prescribed time is “precluded, except with the consent of the  
13 opposing party or the Board, from asserting any affirmative defense in the proceeding.”  
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16 **c. Argument**

17 On January 25, 2024, APTA filed a Complaint with the Board alleging that the District  
18 had committed multiple prohibited practices. In accordance with NAC 288.200(2), APTA  
19 served a copy of the Complaint on the District by certified mail, and a copy of the return receipt  
20 showing receipt by the District of the Complaint on January 26, 2024, was provided to the  
21 Board. (Ex. 1.) On January 31, 2024, APTA filed and served on the District, its FAC. The  
22 District subsequently failed to file an answer by February 19, 2024, as prescribed in NAC  
23 288.220(1). The failure by Respondents to file an answer has precluded them from raising any  
24 affirmative defenses in this matter.  
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1                   **III.     CONCLUSION**

2                   Based on the foregoing, APTA respectfully requests the Board grant its Motion to Bar  
3 Defendant's Affirmative Defenses and enter an order barring all the District's affirmative  
4 defenses.

5                     
6                   DATED this 8<sup>th</sup> day of March, 2024.

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/s/ Ronald J. Dreher

Ronald J. Dreher  
NV Bar No. 15726  
P.O. Box 6494  
Reno, NV 89513  
Telephone: (775) 846-9804  
dreherlaw@outlook.com  
*Attorney for Complainant*

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**CERTIFICATE OF SERVICE**

Pursuant to NAC 288.070, the undersigned hereby certifies that I am the counsel for the Association of Professional/Technical Administrators and that on this date I served a true and correct copy of the preceding document addressed to the following:

Anthony Hall, Esq.  
Nevada Bar No. 5977  
AHall@SHJNevada.com  
Jonathan McGuire, Esq.  
Nevada Bar No. 15280  
JMcGuire@SHJNevada.com  
Simons Hall Johnston, PC  
690 Sierra Rose Dr.  
Reno, Nevada 89511  
Telephone: (775) 785-0088  
*Attorneys for Respondent - WCSD*

by electronic service by transmitting the copy electronically as an attachment to electronic mail in portable document format.

DATED this 8<sup>th</sup> day of March, 2024.

/s/ Ronald J. Dreher  
Ronald J. Dreher  
NV Bar No. 15726  
P.O. Box 6494  
Reno, NV 89513  
Telephone: (775) 846-9804  
dreherlaw@outlook.com  
*Attorney for Complainant*

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**CERTIFICATE OF SERVICE**

Pursuant to NAC 288.070, the undersigned hereby certifies that I am the counsel for the Association of Professional/Technical Administrators and that on this date I served a true and correct copy of the preceding document addressed to the following:

Bruce Snyder, Esq.  
Commissioner, EMRB  
bsnyder@business.nv.gov  
3300 W. Sahara Avenue  
Suite 260  
Las Vegas, NV 89102  
bsnyder@business.nv.gov

by electronic service by transmitting the copy electronically as an attachment to electronic mail in portable document format.

DATED this 8<sup>th</sup> day of March, 2024.

/s/ Ronald J. Dreher  
Ronald J. Dreher  
NV Bar No. 15726  
P.O. Box 6494  
Reno, NV 89513  
Telephone: (775) 846-9804  
dreherlaw@outlook.com  
*Attorney for Complainant*

## EXHIBIT INDEX

Exhibit Number	Document Name	Number of Pages
1	January 30, 2024, email to EMRB and certified mail receipt showing a date of service of January 26, 2024.	2

Exhibit 1

Exhibit 1




## EMRB 2024-001 certified mail receipt

Ronald Dreher <dreherlaw@outlook.com>

Tue 1/30/2024 13:45

To:EMRB <emrb@business.nv.gov>

Cc:Bruce Snyder <BSnyder@business.nv.gov>;Ron P Dreher <nrs289@aol.com>

 1 attachments (667 KB)

EMRB 2024-001 Certified Mail Return Receipt.pdf;

Good afternoon,

Attached is the certified mail receipt for this case showing service on January 26.

Thank you,

Ron

Ronald J. Dreher, Esq.

Dreher Law


P.O. Box 6494

Reno, NV 89513

(775) 846-9804

This email (to include any attachments), is confidential and may be legally privileged. If you have received it in error, you are on notice of its status. Please immediately notify the above sender by reply email and then delete this message from your system. Do not copy it or use it for any purposes, or disclose its contents to any other person. To copy or disclose its contents could violate state and Federal privacy laws. This email, including any attachments, is intended for the person(s) or company named and may contain confidential and/or legally privileged information. Unauthorized disclosure, copying or use of this information may be unlawful and is prohibited. Thank you for your understanding and cooperation.

Ce courriel (y compris les pièces jointes) est confidentiel et peut faire l'objet d'un privilège légal. Si vous l'avez reçu par erreur, vous êtes informé de son statut. Veuillez en informer immédiatement l'expéditeur susmentionné en lui répondant par courrier électronique, puis supprimez ce message de votre système. Ne le copiez pas, ne l'utilisez pas à d'autres fins et ne divulguez pas son contenu à d'autres personnes. La copie ou la divulgation de son contenu pourrait constituer une violation des lois nationales et fédérales sur la protection de la vie privée. Ce courriel, y compris les pièces jointes, est destiné à la (aux) personne(s) ou à la société nommée(s) et peut contenir des informations confidentielles et/ou juridiquement privilégiées. La divulgation, la copie ou l'utilisation non autorisée de ces informations peut être illégale et est interdite. Je vous remercie de votre compréhension et de votre coopération.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <input checked="" type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p>Neil Lombardo, Esq.  WCSO - OFFICE of General Counsel  P.O. Box 30425  Reno, NV 89520-3425</p>  <p>9590 9402 7391 2055 6413 71</p>	<p>B. Received by (Printed Name) <u>J. Busby</u> C. Date of Delivery <u>1-26-24</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>2. Article Number (Transfer from service label)</p> <p>9589 0710 5270 0450 1090 15</p>	<p>3. Service Type</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adult Signature</li> <li><input type="checkbox"/> Adult Signature Restricted Delivery</li> <li><input type="checkbox"/> Certified Mail®</li> <li><input type="checkbox"/> Certified Mail Restricted Delivery</li> <li><input type="checkbox"/> Collect on Delivery</li> <li><input type="checkbox"/> Collect on Delivery Restricted Delivery</li> <li><input type="checkbox"/> Registered Mail™</li> <li><input type="checkbox"/> Registered Mail Restricted Delivery</li> <li><input type="checkbox"/> Signature Confirmation™</li> <li><input type="checkbox"/> Signature Confirmation Restricted Delivery</li> <li><input type="checkbox"/> Priority Mail Express®</li> <li><input type="checkbox"/> Registered Mail™</li> <li><input type="checkbox"/> Registered Mail Restricted Delivery</li> <li><input type="checkbox"/> Signature Confirmation™</li> <li><input type="checkbox"/> Signature Confirmation Restricted Delivery</li> </ul> <p>Registered Mail Restricted Delivery (over \$500)</p>

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

1 ANTHONY L. HALL, ESQ.  
Nevada Bar No. 5977  
2 [AHall@SHJNevada.com](mailto:AHall@SHJNevada.com)  
3 JONATHAN A. MCGUIRE, ESQ.  
Nevada Bar No. 15280  
4 [JMcGuire@SHJNevada.com](mailto:JMcGuire@SHJNevada.com)  
SIMONS HALL JOHNSTON PC  
690 Sierra Rose Dr.,  
5 Reno, Nevada 89511  
Telephone: (775) 785-0088

6 *Attorneys for Respondent*  
7 *Washoe County School District*

FILED  
March 22, 2024  
State of Nevada  
E.M.R.B.  
2:28 p.m.

8 **BEFORE THE STATE OF NEVADA**

9 **GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

10 ASSOCIATION OF PROFESSIONAL-  
11 TECHNICAL ADMINISTRATORS,

12 Complainant,

13 vs.

14 WASHOE COUNTY SCHOOL DISTRICT,

15 Respondent.  
16  
17

Case No.: 2024-001

Panel:

18  
19 **OPPOSITION TO COMPLAINANT’S MOTION TO BAR AFFIRMATIVE DEFENSES**

20 COMES NOW, Respondent Washoe County School District (“WCSD”), by and through  
21 its undersigned counsel of record, and hereby files its Opposition to Motion to Bar Affirmative  
22 Defenses (the “Opposition”) requesting that the State of Nevada Government Employee-  
23 Management Relations Board (the “Board”) deny the Association of Professional-Technical  
24 Administrators’ (“APTA”) Motion to Bar Affirmative Defenses (the “Motion”).

25 **I. INTRODUCTION**

26 APTA’s Motion is a misapplication of NAC 288.220 in an attempt to prevent WCSD from  
27 being able to defend this action on the merits. The EMRB’s precedents and the circumstances of  
28 this particular case justify requiring an answer including the assertion of affirmative defenses to be

1 filed after a decision has been rendered on the pending motion to dismiss. Furthermore, even if the  
2 EMRB determines an answer should have been filed despite the pending motion to dismiss, the  
3 circumstances of this case justify permitting WCSD to file an answer and assert affirmative defenses  
4 within a reasonable period of time after a ruling on this motion has been made.

## 5 **II. RELEVANT PROCEDURAL HISTORY**

6 APTA filed its First Amended Complaint on January 31, 2024.<sup>1</sup> On February 20, 2024,  
7 WCSD filed its Motion to Dismiss the First Amended Complaint.

8 On February 29, 2024, the EMRB issued a decision granting an expedited hearing that  
9 provides, in relevant part, “any and all unresolved motions will be heard by the Board, and  
10 deliberated upon by the Board, at the beginning of the hearing.” Indeed, at the time the Order on  
11 Motion to Expedite Hearing could only have been referring to WCSD’s Motion to Dismiss as it  
12 was the only other motion pending at the time the order was filed.

13 On March 1, 2024, APTA filed its opposition to WCSD’s motion to dismiss. On March 14,  
14 2024, WCSD filed its reply in support of its motion to dismiss.

## 15 **III. THE EMRB SHOULD DENY THE MOTION**

16 From its decisions, it is clear that the EMRB has adopted the position that filing a motion to  
17 dismiss tolls the responsive pleading deadline until the party receives a ruling on its motion. Indeed,  
18 this is consistent with the approach taken in all Nevada courts.

19 It has long been the case that where a motion to dismiss is denied, the EMRB will then order  
20 a party to file its answer. Indeed, the EMRB has held that “pursuant to NAC 288.220, Respondent  
21 shall file its Answer to the above-captioned Complainant within twenty (20) days from the date of  
22 Entry of this Order.” *Sparks Police Protective Association, Complainant City of Sparks, Ex Rel*  
23 *Sparks Police Department, Respondents*, Item No. 368, 1996 WL 34446665, at \*1 (February 1996).  
24 Notably, that decision was on a motion to dismiss. Furthermore, the twenty (20) day deadline from  
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26 <sup>1</sup> If strict compliance with the Board’s rules is required, it is noteworthy that APTA never obtained  
27 the EMRB’s permission to amend its complaint. See NAC 288.235(1) stating “the Board may allow  
28 any pleading or motion to be amended” but not requiring the Board to allow amendments within a  
certain period of time as a matter of right.

1 the entry of this order is consistent with the practice across Nevada as well as with the deadline  
2 contained within NAC 288.220.

3 Indeed, reviewing the EMRB’s description of procedural histories in other cases, this is the  
4 common practice before the EMRB. *See Jeffrey M. Bott, Complainant City of Henderson;*  
5 *Henderson Police Department, Respondent, Item No. 560A, 2005 WL 6964438, at \*1 (July 21,*  
6 *2005) (observing “[o]n December 22, 2003, **following** an unsuccessful Motion to Dismiss, the City*  
7 *filed its Answer.”); (emphasis added); see also Christina Gibson, Complainant Clark County and*  
8 *Service Employees International Union, Local 1107, Respondents, Item No. 666B, 2008 WL*  
9 *9493533, at \*1 (April 2, 2008) (noting a Union filed its “motion to dismiss this action; and the*  
10 *Board entered its Order regarding the same on December 18, 2007. **Thereafter**, an answer was*  
11 *filed by the Union on January 4, 2008.”); (emphasis added); see also Timothy Frabbiele,*  
12 *Complainant City of North Las Vegas; North Las Vegas Police Department and North Las Vegas*  
13 *Police Officers Association, Respondent, Item No. 680, 2008 WL 9493557, at \*1 (June 25, 2008)*  
14 *(providing both parties with ten (10) days **from** the denial of the motions to dismiss within which*  
15 *to file an answer.) (emphasis added). Accordingly, it is clear that the EMRB has historically*  
16 *interpreted its rules in the same manner that Nevada District Courts interpret their rules by treating*  
17 *the deadline contained within NAC 288.220 as inapplicable where a motion to dismiss is pending*  
18 *that has not yet been adjudicated.*

19 This interpretation of the EMRB’s rules is consistent with other related provisions.  
20 Specifically, NAC 288.240(3) provides that “[a] motion directed at a complaint or petition must be  
21 written and filed before the answer or response is due.” This rule acknowledges, consistent with  
22 Nevada courts, that a motion to dismiss must be filed before the responsive pleading deadline.  
23 Indeed, if the motion to dismiss was a document that had no relation to the answer, it would not  
24 make sense to require it to be filed before the answer is filed. Furthermore, NAC 288.375(1)  
25 provides that the Board may dismiss a matter where the “Board determines that no probable cause  
26 exists for the complaint. . . .” Indeed, it would be inconsistent with the basis for this rule to require  
27 a party to answer and assert affirmative defenses to a claim brought in a complaint that is dismissed  
28 pursuant to a motion to dismiss for lacking probable cause.

1 It is worth noting that the EMRB granting the motion to expedite makes this case unique.  
2 Typically, prehearing statements are due “21 days after the service of the answer, unless otherwise  
3 ordered by the Board or Commissioner. . . .” In this case, they were ordered to be submitted earlier.  
4 However, at that time, neither the Board nor the Commissioner ordered the filing of an answer.  
5 Instead, the EMRB and the Parties are charging on towards the merits of the pending motion to  
6 dismiss.

7 Even in the event that the EMRB determines that filing a motion to dismiss does not adjust  
8 the answer deadline, the EMRB has acknowledged it “may allow a dilatory party to file an answer  
9 beyond the prescribed date **and present affirmative defenses.**” *Nicole D. Wilson Complainant*  
10 *North Las Vegas Police Department and the North Las Vegas Police Officers Association,*  
11 *Respondent*, Item No. 677, 2008 WL 9493550, at \*1 (April 3, 2008) (emphasis added). This case  
12 conclusively establishes that the requirements of NAC 288.220 are not mandatory and the EMRB  
13 is permitted to provide a dilatory party with reprieve from their requirements under the appropriate  
14 circumstances. APTA cannot identify any prejudice it would face by permitting WCSD to file an  
15 answer in this case and assert affirmative defenses.

16 Indeed, this is precisely such a circumstance where the EMRB should permit WCSD to file  
17 an answer, even if an answer is required prior to a ruling on the motion to dismiss. In this case, a  
18 motion to dismiss is still pending, the EMRB had not ruled upon the motion to dismiss, and instead  
19 the EMRB granted a motion to expedite the hearing and affirmatively informed the parties that no  
20 decision on the motion to dismiss would be rendered until the hearing. Indeed, the EMRB  
21 bifurcating the hearing alone is a recognition that the issues raised by WCSD in the motion to  
22 dismiss must be resolved before this case can continue. In the event the EMRB finds in WCSD’s  
23 favor regarding these threshold issues, it is possible that no answer was necessary at all. This is  
24 precisely the reason why the EMRB typically does not require answers to be filed until after it has  
25 ruled upon motions to dismiss.

26 Permitting WCSD to file an answer asserting affirmative defenses once the motion to  
27 dismiss has been ruled upon, regardless of whether it was required to be filed in the first instance  
28 or not, is consistent with the Nevada Supreme Court’s instruction that “[i]t is the policy of this state

1 that cases be heard on the merits, whenever possible.” *Schulman v. Bongberg-Whitney Elec., Inc.*,  
2 98 Nev. 226, 228, 645 P.2d 434, 435 (1982); *LHF Prods., Inc. v. Boughton*, 299 F. Supp. 3d 1104,  
3 1113 (D. Nev. 2017) (citations omitted). Indeed, the Nevada Supreme Court has long recognized  
4 that the underlying policy is to have each case decided on the merits. *Hotel Last Frontier Corp. v.*  
5 *Frontier Properties, Inc.*, 79 Nev. 150, 155, 380 P.2d 293, 295 (1963).

6 **IV. CONCLUSION**

7 The EMRB should act consistent with its precedents, and if this matter is not resolved on  
8 the motion to dismiss or otherwise resolved at the hearing, that WCSD be permitted to file an answer  
9 asserting all applicable affirmative defenses within a reasonable period of time after a ruling is made  
10 on the motion to dismiss.

11 DATED: March 22, 2024

12 BY: /s/ Anthony L. Hall  
13 ANTHONY L. HALL, ESQ.  
14 Nevada Bar No. 5977  
[AHall@SHJNevada.com](mailto:AHall@SHJNevada.com)  
15 JONATHAN A. MCGUIRE, ESQ.  
16 Nevada Bar No. 15280  
[JMcGuire@SHJNevada.com](mailto:JMcGuire@SHJNevada.com)  
17 SIMONS HALL JOHNSTON PC  
18 690 Sierra Rose Dr.  
19 Reno, Nevada 89511  
20 Telephone: (775) 785-0088  
21 *Attorneys for Respondent*  
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**CERTIFICATE OF SERVICE**

I, Terri Tribble, declare:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Simons Hall Johnston PC. My business address is 690 Sierra Rose Dr., Reno, NV 89511. I am over the age of 18 years and not a party to this action.

On the below date, I served the foregoing **OPPOSITION TO COMPLAINANT’S MOTION TO BAR AFFIRMATIVE DEFENSES** by causing the document to be served via email, addressed as follows:

Ronald J. Dreher  
P.O. Box 6494  
Reno, NV 89513  
[ron@dreherlaw.net](mailto:ron@dreherlaw.net)

Attorney for Complainant  
ASSOCIATION OF PROFESSIONAL-  
TECHNICAL ADMINISTRATORS

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on March 22, 2024.

/s/ Terri Tribble  
Employee of Simons Hall Johnston



1 Ronald J. Dreher  
2 NV Bar No. 15726  
3 P.O. Box 6494  
4 Reno, NV 89513  
5 Telephone: (775) 846-9804  
6 dreherlaw@outlook.com  
7 *Attorney for Complainant*

FILED  
March 28, 2024  
State of Nevada  
E.M.R.B.  
9:00 a.m.

8  
9  
10 **BEFORE THE STATE OF NEVADA**  
11  
12 **GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

13 ASSOCIATION OF PROFESSIONAL-  
14 TECHNICAL ADMINISTRATORS,

Case No.: 2024-001

15 Complainant,

Panel:

16 vs.

17 WASHOE COUNTY SCHOOL  
18 DISTRICT,

19 Respondent.

20 **REPLY IN SUPPORT OF MOTION TO BAR AFFIRMATIVE DEFENSES**

21 **COMES NOW** Complainant ASSOCIATION OF PROFESSIONAL-TECHNICAL  
22 ADMINISTRATORS, (“APTA”), by and through its undersigned attorney, hereby files its  
23 Reply in Support of Motion to Bar Affirmative Defenses and moves the State of Nevada  
24 Employee-Management Relations Board, (“Board”), to grant its Motion and order that  
25 Respondent Washoe County School District, (“District”), is barred from asserting any  
26 affirmative defenses in this matter.

27 ///

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1                   **I.       THE PARTIES**

2                   The APTA is an employee organization as defined in N.R.S. 288.040. It is the  
3 recognized bargaining unit for the school psychologists and technical administrators at the  
4 District.

5                   The District is a local government employer under NRS 288.060, a political  
6 subdivision of the State of Nevada which oversees and supervises Washoe County School  
7 psychologists and technical administrators and is the regulating authority with regard to  
8 policy.  
9

10   **MEMORANDUM OF POINTS AND AUTHORITIES**

11                   **II.       INTRODUCTION**

12                   On January 9, 2024, the District unilaterally, and without the permission of APTA,  
13 withdrew recognition of APTA as the recognized bargaining unit for all APTA members.  
14 Subsequent to this, the District recognized a rival employee organization, Washoe  
15 Professional-Technical Administrators, as the recognized bargaining unit for professional-  
16 technical, employees, a portion of APTA membership, and withdrew all labor organization  
17 recognition to include that for the school psychologists. In response, APTA filed a First  
18 Amended Complaint, (“FAC”), as well as a Motion to Expedite Hearing with the Board on  
19 January 31, 2024. The District failed to file an answer as it is permitted to do under NAC  
20 288.220, and instead chose to file only a motion to dismiss on February 20, 2024. On February  
21 29, 2024, the Board granted APTA’s Motion to Expedite Hearing, and ordered the parties  
22 submit prehearing statements no later than 14 days after the Order.  
23  
24  
25

26                   **II.       LEGAL AUTHORITY**

27                   NAC 288.220(1) states, “[a] respondent may file an answer in the form of a pleading  
28 and not later than 20 days after the receipt of a complaint.” This statute continues in

1 subsection 2 to clarify that, “[t]he respondent must specifically admit, deny or explain each of  
2 the allegations in the complaint unless he or she is without knowledge, in which case the  
3 respondent shall so state and the statement shall be deemed a denial. Any allegation in the  
4 complaint not specifically denied in the answer, unless it is stated in the answer that the  
5 respondent is without knowledge, shall be deemed to be admitted to be true.” NAC  
6 288.220(3), defines that a party failing to file an answer within the prescribed time is  
7 “precluded, except with the consent of the opposing party or the Board, from asserting any  
8 affirmative defense in the proceeding.”  
9

### 10 III. ARGUMENT

#### 11 a. The District has waived its affirmative defenses by failing to file a 12 responsive pleading as required.

13 The District does not dispute that it has intentionally chosen to not file an answer. To  
14 support its failure to comply with NAC 288.220, the District now attempts to justify this  
15 choice by claiming that the Board’s past practice is to follow other court rules in Nevada  
16 regarding the effects of filing a motion. On November 13, 2023, in the *Myers v. City of Reno*  
17 case, EMRB Case No. 2023-013, this Board issued an order that ruled on this exact issue that  
18 has been brought forward in the current Motion. (Ex. 1.) In the order issued in the *Myers* case,  
19 the Board stated that,  
20  
21

22 “Under NAC 288.220(1) a party may file an Answer within 20 days  
23 after receipt of a Complaint. The use of the term “may” clearly  
24 indicate that the filing of an Answer is permissive and not mandatory.  
25 However, as provided under NRS 288.220(3), there is a penalty for  
26 filing an Answer beyond the timeframe specified in subsection (1).  
The penalty is that any affirmative defenses contained in an Answer  
are barred without the consent of the opposing party or the Board.”

27 *Id.* at p. 3.  
28

1 The Board continued in *Myers* by ordering that, as here, the opposing party was not  
2 providing its consent which was evidenced by its motion to bar the affirmative defenses. *Id.*  
3 As is established by the *Myers* case, which was ruled on just four months ago, the Board has  
4 not recognized that a motion to dismiss tolls the time for a party to file its answer.

5 Further, unlike the Nevada Rules of Civil Procedure, (“NRCP”), that allow for a  
6 motion to toll the time to file a responsive pleading, NRS 288.220(3), mandates that if an  
7 answer is not filed within the prescribed time periods the party failing to file the responsive  
8 pleading is precluded from asserting affirmative defenses.

9  
10 Even if the Board were to determine that the time period to file a responsive pleading  
11 was tolled by the District’s filing of its motion, the District’s time to file a responsive pleading  
12 under NRCP expired on March 14, 2024. NRCP 12(3) defines that “Unless the court sets a  
13 different time, serving a motion under this rule alters [the period to file a responsive pleading]  
14 as follows: (A) if the court denies the motion or postpones its disposition until trial, the  
15 responsive pleading must be served within 14 days after notice of the court’s action. (emphasis  
16 added.) As noted in the Order Granting Motion to Expedite Hearing on February 29, 2024, the  
17 Board ordered that “any and all unresolved motions will be heard by the Board, and  
18 deliberated upon by the Board, at the beginning of the hearing. The parties shall be allowed  
19 oral argument at such time by the Presiding Officer.” If the Board were to find that NRCP  
20 allowed for the tolling of the time to file a responsive pleading, then in accordance with NRCP  
21 12(3)(A), the District had until March 14, 2024, to file its answer which it failed to do.

22  
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25 The District attempts to mislead the Board by citing to other cases in which the parties  
26 have been allowed to file an answer after the disposition of a motion. However, these cases,  
27 unlike the *Myers* case, do not involve the failure of a party to file a responsive pleading as  
28 required by NAC 288.220, and NRCP 12 and are not controlling here. It is clear, the District’s

1 failure to file an answer violates the provisions of NAC 288.220(3) and NRCPC 12(3)(A) and it  
2 is now barred from asserting affirmative defenses in this matter.

3 “NRCPC 8(c) requires waiver to be pleaded affirmatively in the answer. An affirmative  
4 defense not pleaded in the answer is waived.” *State v. Sutton*, 120 Nev. 972, 987, 103 P.3d 8,  
5 18 (2004). Permitting the District to now assert these affirmative defenses, despite its failure to  
6 do so on multiple occasions, would clearly and unequivocally prejudice APTA as it would be  
7 required to respond to defenses to which it has not been given reasonable notice and an  
8 opportunity to respond to. *See Second Baptist Church v. First Nat'l Bank*, 89 Nev. 217, 510  
9 P.2d 630 (1973); *Tolotti v. Eikelberger*, 90 Nev. 466, 530 P.2d 106 (1974); *Ivory Ranch v.*  
10 *Quinn River Ranch*, 101 Nev. 471, 705 P.2d 673 (1985). Moreover, the District cannot claim  
11 excusable neglect as is demonstrated by its Opposition to the Motion, it has merely chosen to  
12 ignore the prescribed timeframes to file its answer.

13  
14  
15 The District’s choice to not file an answer in the prescribed time periods of both NAC  
16 288.220(3) and NRCPC 12(3)(A), unequivocally demonstrates that it has waived its affirmative  
17 defenses and is barred from asserting these defenses in this matter. *Second Baptist Church*, 89  
18 Nev. 217, 510 P.2d 630 (1973); *Sutton*, 120 Nev. at 987, at 18 (2004).

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**IV. CONCLUSION**

Based on the foregoing, APTA hereby moves the Board to grant its Motion to Bar Affirmative Defenses and Order that the District is barred from asserting any affirmative defenses in this matter.

DATED this 28<sup>th</sup> day of March, 2024.

/s/ Ronald J. Dreher  
Ronald J. Dreher  
NV Bar No. 15726  
P.O. Box 6494  
Reno, NV 89513  
Telephone: (775) 846-9804  
dreherlaw@outlook.com  
*Attorney for Complainant*

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**CERTIFICATE OF SERVICE**

Pursuant to NAC 288.070, the undersigned hereby certifies that I am the counsel for the Association of Professional-Technical Administrators and that on this date I served a true and correct copy of the preceding document addressed to the following:

Anthony Hall, Esq.  
AHall@SHJNevada.com  
Jonathan McGuire, Esq.  
Nevada Bar No. 15280  
JMcGuire@SHJNevada.com  
Simons Hall Johnston, PC  
690 Sierra Rose Dr.  
Reno, Nevada 89511  
Telephone: (775) 785-0088

by electronic service by transmitting the copy electronically as an attachment to electronic mail in portable document format.

DATED this 28<sup>th</sup> day of March, 2024.

/s/ Ronald J. Dreher  
Ronald J. Dreher  
NV Bar No. 15726  
P.O. Box 6494  
Reno, NV 89513  
Telephone: (775) 846-9804  
dreherlaw@outlook.com  
*Attorney for Complainant*

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**CERTIFICATE OF SERVICE**

Pursuant to NAC 288.070, the undersigned hereby certifies that I am the counsel for the Association of Professional-Technical Administrators and that on this date I served a true and correct copy of the preceding document addressed to the following:

Bruce Snyder, Esq.  
Commissioner, EMRB  
3300 W. Sahara Avenue  
Suite 260  
Las Vegas, NV 89102  
bsnyder@business.nv.gov

by electronic service by transmitting the copy electronically as an attachment to electronic mail in portable document format.

DATED this 28<sup>th</sup> day of March, 2024.

/s/ Ronald J. Dreher  
Ronald J. Dreher  
NV Bar No. 15726  
P.O. Box 6494  
Reno, NV 89513  
Telephone: (775) 846-9804  
dreherlaw@outlook.com  
*Attorney for Complainant*



## EXHIBIT INDEX

Exhibit Number	Document Name	Number of Pages
1	November 13, 2023, Order issued by EMRB in <i>Myers v. City of Reno</i> , et al., EMRB Case No. 2023-013	4

EXHIBIT 1

EXHIBIT 1

STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

ROSA MYERS,

Complainant,

v.

CITY OF RENO AND RENO FIRE  
DEPARTMENT,

Respondents.

Case No. 2023-013

**NOTICE OF ENTRY OF ORDER**

**EN BANC**

TO: Complainant, by and through their attorney, Ronald J. Dreher, Esq.; and

TO: Respondents, by and through their attorneys, Karl S. Hall, Reno City Attorney and Jonathan Shipman, Assistant City Attorney.

PLEASE TAKE NOTICE that the **ORDER DENYING COMPLAINANT'S MOTION FOR A DEFAULT ORDER** was entered in the above-entitled matter on November 13, 2023.

A copy of said order is attached hereto.

DATED this 13th day of November 2023.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY Isabel Franco

ISABEL FRANCO  
Administrative Assistant II

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**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 13th day of November 2023, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Ronald J. Dreher, Esq.  
P.O. Box 6494  
Reno, NV 89513

Karl S. Hall, Reno City Attorney  
Jonathan Shipman, Assistant City Attorney  
Post Office Box 1900  
Reno, Nevada 89505



---

ISABEL FRANCO  
Administrative Assistant II

1  
2  
3 **STATE OF NEVADA**  
4 **GOVERNMENT EMPLOYEE-MANAGEMENT**  
5 **RELATIONS BOARD**

6 ROSA MYERS,

7  
8 Complainant,

9 v.

10 CITY OF RENO AND RENO FIRE  
11 DEPARTMENT,

12 Respondents.  
13

Case No. 2023-013

**ORDER DENYING COMPLAINANT'S  
MOTION FOR A DEFAULT ORDER**

**EN BANC**

14  
15 On November 8, 2023, this matter came before the State of Nevada, Government Employee-  
16 Management Relations Board (the "Board") for consideration and decision pursuant to the provision of  
17 the Employee-Management Relations Act (the Act), NRS Chapter 233B, and NAC Chapter 288. At  
18 issue was Respondent's Motion for a Default Order.

19 Under NAC 288.220(1) a party may file an Answer within 20 days after receipt of a Complaint.  
20 The use of the term "may" clearly indicate that the filing of an Answer is permissive and not  
21 mandatory. However, as provided under NRS 288.220(3), there is a penalty for filing an Answer  
22 beyond the timeframe specified in subsection (1). The penalty is that any affirmative defenses  
23 contained in an Answer are barred without the consent of the opposing party or the Board. In this case  
24 the opposing party is seeking to have a default judgment entered in their favor indicating they are not  
25 providing their consent. Moreover, the Board has decided that it will similarly not provide its consent.  
26 Thus, while the Answer is deemed filed, it must be noted that given the lack of consent from the Board  
27 and Complainant, any affirmative defenses are barred.

28 ...

1 Based on the foregoing, it is hereby **ORDERED** that Complainant's Motion to for a Default  
2 Order is hereby **DENIED**.

3 It is further **ORDERED** that the Answer may be deemed filed but all affirmative defenses are  
4 hereby **BARRED**.

5 It is further **ORDERED** that a hearing is granted for the case and that the Commissioner shall  
6 schedule this matter for a hearing.

7  
8 Dated this 13 day of November 2023.

9  
10 GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

11  
12 BY: 

13 BRENT C. ECKERSLEY, Chair  
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