

BEFORE THE STATE OF NEVADA GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

LYON COUNTY EDUCATION
ASSOCIATION,

Complainant,

vs.

LYON COUNTY SCHOOL DISTRICT,

Respondent.

Case No. 2024-006

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

COMPLAINT

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

I. JURISDICTION

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

II. BACKGROUND

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

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

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

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

5 WHEREFORE Complainant prays for relief as follows:

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

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CERTIFICATE OF SERVICE

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

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

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


Kelly Gilbert

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

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

FILED
April 1, 2024
State of Nevada
E.M.R.B.
4:14 p.m.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

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

14 ANSWER

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

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

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

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

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

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

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

13 **FIRST CAUSE OF ACTION**

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

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

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

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

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SECOND CAUSE OF ACTION

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

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

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

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

THIRD CAUSE OF ACTION

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

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

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

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

FOURTH CAUSE OF ACTION

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

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

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

1 allegations contained therein.

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

3 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

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

19 Dated this 13th day of April, 2024.

20 MAUPIN, COX & LEGOY

21
22 By: 

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

1 **CERTIFICATE OF SERVICE**

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

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

10 Dated this 1st day of April, 2024.

11 
12 Employee

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

FILED
April 1, 2024
State of Nevada
E.M.R.B.
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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

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


MOTION TO DISMISS

15 Respondent LYON COUNTY SCHOOL DISTRICT (the “District”) hereby moves to
16 dismiss the Complaint filed by Complainant LYON COUNTY EDUCATION ASSOCIATION
17 (“LCEA”) based on the allegations contained therein.

18 This Motion is made pursuant to NAC 288.240. The grounds for this Motion are that
19 LCEA fails to state a claim against the District for which relief can be granted, and the District is
20 entitled to dismissal with prejudice.

21 Dated this 1st day of April, 2024.

22 MAUPIN, COX & LEGOY

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

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

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

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

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

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

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

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

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

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

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

(Emphasis added).

III. ARGUMENT

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

In contract coverage analysis,

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

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

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

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

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

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

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


8 In accordance with the analysis above, the Complaint asserted by LCEA against the
9 District must be dismissed.

10 **IV. CONCLUSION**

11 In accordance with relevant NLRB decisions and the express terms of the Agreement, the
12 District had no obligation to reopen negotiations on a topic already addressed, bargained for and
13 set forth in the Agreement. The Complaint filed by LCEA on this issue should be dismissed.

14 Dated this 5th day of April, 2024.

15 MAUPIN, COX & LEGOY

16
17 By: 
18 Donald A. Lattin, NV Bar No. 693
19 4785 Caughlin Parkway
20 Reno, Nevada 89519
21 *Attorneys for Respondent*
22 *Lyon County School District*
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26

1 BEFORE THE STATE OF NEVADA GOVERNMENT
2 EMPLOYEE-MANAGEMENT RELATIONS BOARD
3
4

5 LYON COUNTY EDUCATION
ASSOCIATION,)

Case No. 2024-006

6 Complainant,)

7 vs.)

8 LYON COUNTY SCHOOL DISTRICT,)

9 Respondent.)
10

FILED
April 15, 2024
State of Nevada
E.M.R.B.
5:05 p.m.

11 **COMPLAINANT'S OPPOSITION TO MOTION TO DISMISS**

12 COMES NOW, Complainant LYON COUNTY EDUCATION ASSOCIATION
13 ("Association" or "LCEA"), by and through its attorneys, Dyer Lawrence, LLP, and Thomas J.
14 Donaldson, Esq., and hereby opposes the Motion to Dismiss ("Motion") filed on April 1, 2024, by
15 Respondent, LYON COUNTY SCHOOL DISTRICT ("District" or "LCSD"). The instant
16 Opposition is made pursuant to NRS 288.110(2), NRS 288.270(1) and NAC 288.240(4) and based
17 upon the following memorandum of points and authorities.

18 DATED this 15th day of April, 2024.

19 DYER LAWRENCE, LLP

20 *Thomas J. Donaldson*
By: _____

21 Thomas J. Donaldson, Esq.
22 Nevada State Bar No. 5283
23 2805 Mountain Street
24 Carson District, Nevada 89703
Telephone: (775) 885-1896
Facsimile: (775) 885-8728
Attorneys for Complainant

25 **Memorandum of Points and Authorities**

26 Given the filing date of the Motion, it may just be a poor April Fool's joke. However, if the
27 Nevada Government Employee-Management Relations Board ("EMRB" or "Board") is inclined to
28 consider the Motion, there is no persuasive legal argument to grant the Motion.

1 Initially, the only legal basis for the Motion is NAC 288.240. Motion, p. 1 at line
2 approximately 19. Of course, NAC 288.240 is the general regulation setting forth the Board's
3 motion procedure. That regulation allows the District to file a motion, but does not give the Board
4 any reason to grant the Motion under the circumstances.

5 Next, LCSD contends in the Motion, "[i]n its Complaint, the LCEA asserts the the District
6 has violated NRS 288.270(1)(e) by refusing to bargain in good faith." Motion, p. 2 at lines 3-4.
7 Clearly, a simple review of LCEA's Complaint rebuts LCSD's allegation since the Complaint
8 actually three (3) other causes of action based NRS 288.270(1)(a), NRS 288.270(1)(b) and
9 NRS 288.270(1)(d).. Complaint, pp. 3-4.

10 Indeed, Article 21-3-2 of the parties' 2023-2025 Professional Negotiated Agreement
11 ("Agreement") concerns the "Additional Salary" provided for in Senate Bill 231 ("SB 231") from
12 the 2023 Nevada Legislative Session and specifically provides:

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

18 (Emphasis supplied.)

19 Section 2(b) of SB 231 requires the LCSD to submit to Interim Finance Committee ("IFC"
20 or "Committee") "a statement of the amount and **percentage** of the budgeted **increase in salary** for
21 teachers and education support professionals . . . and the total cost to the school district to provide
22 the budgeted **increase in salary**." (Emphasis added). Thus, "the law," SB 231, only "permit[s]" a
23 **percentage increase in salary** by the District, not a "fixed allocation," -which equates to a
24 unilaterally imposed, flat, one-size-fits-all stipend amount to all LCSD employees. The District
25 cannot produce any evidence that the Association ever agreed to that.

26 Further, the District cannot deny that "[s]alary or wage rates or other forms of direct
27 monetary compensation" are specifically included within the scope of mandatory bargaining pursuant
28 to NRS 288.150(2)(a). LCEA never agreed in the parties' Agreement that LCSD was authorized to
deviate from the plain requirement of SB 231 and to convert the required **percentage salary**
increase to a one-size-fits-all lump sum that disadvantages LCEA's bargaining unit

1 Finally, the District resorts to citing a distinguishable case from the National Labor Relations
2 Board ("NLRB"), which the LCSD concedes is "**not binding on the [Board].**" Motion, p. 4 at
3 lines 10-16 (emphasis supplied). However, the NLRB held:

4 On the other hand, if the agreement does not cover the employer's disputed act, and
5 that act has materially, substantially and significantly changed a term or condition of
6 employment constituting a mandatory subject of bargaining, the employer will have
7 violated Section 8(a)(5) and (1) unless it demonstrates that **the union clearly and**
8 **un-mistakably waived its right to bargain** over the change or that its unilateral
9 action was privileged for some other reason. Thus, under the contract coverage test
we adopt today, the [NLRB] will first review the plain language of the parties'
collective-bargaining agreement, applying ordinary principles of contract
interpretation, and then, if it is determined that the disputed act does not come within
the compass or scope of a contract provision that grants the employer the right to act
unilaterally, the analysis is one of **waiver**.

10 368 NLRB No. 66 at 2 (emphasis added).

11 The EMRB has indicated that a party may waive its right to bargain over changes to a
12 mandatory subject of bargaining during the term of a contract. See *International Ass'n of*
13 *Firefighters, Local 731, v. City of Reno*, EMRB Case No. A1-045466, Item No. 257, p. 5 (1991).
14 Waiver may be implied through conduct evidencing an intent to waive a right. It may also be shown
15 if the conduct is inconsistent with any other intention than waiver. To establish a valid waiver, the
16 party asserting the defense must show that there has been an intentional relinquishment of a known
17 right, which can be implied from conduct evidencing an intention to waive a right, or by conduct
18 which is inconsistent with any other intention than to waive a right. See *Gramanz v. T-Shirt and*
19 *Souvenirs, Inc.*, 111 Nev. 478, 483 (1995). Certainly, the District is not asserting any clear and
20 convincing waiver by the Association in this case.

21 Conclusion

22 As addressed about, the District's Motion contains no credible legal basis upon which the
23 Board may grant the Motion. Thus, LCEA respectfully requests an order from the Board denying

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1 the Motion, awarding the Association reasonable attorney's fees and costs for needlessly responding
2 to the Motion, and directing the parties to file pre-hearing statements to proceed with this matter.

3 DATED this 15th day of April, 2024.

4 \ DYER LAWRENCE, LLP

5 

6 By: _____

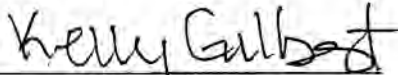
7 Thomas J. Donaldson, Esq.
8 Nevada State Bar No. 5283
9 2805 Mountain Street
10 Carson District, Nevada 89703
11 Telephone: (775) 885-1896
12 Facsimile: (775) 885-8728
13 Attorneys for Complainant

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

CERTIFICATE OF SERVICE

Pursuant to NAC 288.200(2), I certify that I am an employee of DYER LAWRENCE, LLP, and that on the 15th day of April, 2024, I sent via electronic mail a true and correct copy of the within COMPLAINANT’S OPPOSITION TO MOTION TO DISMISS addressed to:

Donald Lattin
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89520
dlattin@mclrenolaw.com



Kelly Gilbert

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

FILED
April 26, 2024
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6 STATE OF NEVADA
7 GOVERNMENT EMPLOYEE-MANAGEMENT
8 RELATIONS BOARD

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

14 **REPLY IN SUPPORT OF MOTION TO DISMISS**

15 Respondent LYON COUNTY SCHOOL DISTRICT (the "District") hereby files its Reply
16 in Support of Motion to Dismiss the Complaint filed by Complainant LYON COUNTY
17 EDUCATION ASSOCIATION ("LCEA").

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 I. **The District provided an adequate legal basis for the Board to grant its Motion.**

20 In its Motion, the District clearly set forth that the Motion was "made pursuant to NAC
21 288.240" and that the grounds for the Motion are that the "LCEA fails to state a claim against the
22 District for which relief can be granted." *See* Mot. at 1:18-21. The regulation allows the District
23 to file the Motion and the Motion clearly states that it is based upon the LCEA's failure to state a
24 claim against the District for which relief can be granted. The Motion then sets forth clear legal
25 authority to grant the Motion.
26

1 **II. Issues not disputed by LCEA in its Opposition**

2 The LCEA has presented its entire argument in its Opposition to the District's Motion.
3 Notably, the LCEA did not articulate an opposition to the Statement of Facts as presented by the
4 District. Additionally, the LCEA did not articulate an opposition to the District's position that
5 should the EMRB find that the District did not violate NRS 288.270(1)(e), then the remaining
6 allegations are moot, specifically, alleged violations of NRS 288.270(1)(a), NRS 288.270(1)(b),
7 and NRS 288.270(1)(d). Thus, should the EMRB find that the District did not violate
8 NRS288.270(1)(e), then it should also find that the remaining allegations asserted by the LCEA
9 are moot.

10 **III. The District's "Fixed Allocation" distribution of SB 231 monies was clearly**
11 **"permitted by law".**

12 The LCEA does not and cannot deny that SB 231 was a topic of negotiation between the
13 parties. Nor does the LCEA deny that the result of the bargaining related to SB 231 was
14 memorialized in the Agreement. Indeed, LCEA admits that the parties negotiated changes to
15 Article XXI – Salary Schedule of the Agreement *based on SB 231*. See Compl. at ¶ 9 (“*In light*
16 *of SB 231, the parties negotiated changes to Article XXI – Salary Schedule of the Agreement.*”)
17 (emphasis added). The bargained for agreement related to SB 231 was memorialized in the
18 Agreement, and the LCEA does not and cannot offer any evidence to the contrary. Thus, it is
19 clear that the LCEA had “unlimited rights and opportunity to make demands and proposals”
20 related to this subject. See Article XXIII Terms of Agreement, section 23-1-2 of the Negotiated
21 Agreement. Note that the LCEA does not deny that Article XXIII, section 23-1-2 of the
22 Negotiated Agreement specifically states that it had unlimited rights and opportunity to make
23 demands and proposals related to the Agreement. The bargained for terms were memorialized in
24 the Agreement and “there is no continuous duty to bargain during the term of an agreement with
25 respect to a matter covered by the contract.” *Mv Transportation, Inc.*, 368 NLRB No. 66 (Sept.
26

1 10, 2019) (internal citations omitted). The SB 231 funds were indisputably included in the
2 bargained for terms of the agreement and covered under the contract.

3 As a result of the LCEA's inability to deny that the SB 231 funds were discussed and the
4 bargained for terms agreed upon, the LCEA resorts to an argument that the distribution presented
5 by the District to the Interim Finance Committee of the State Legislature was somehow not
6 "permitted by law." The LCEA does not even attempt to explain why the Interim Finance
7 Committed would approve the District's proposed distribution if it were not "permitted by law."
8 Indeed, these are the very people who wrote the law. It is not the position of the LCEA to state
9 that what the Interim Finance Committee approved is not in accordance with the law. Even if
10 that were the LCEA's position, it is the EMRB has no authority to make that determination
11 following approval of the District's proposal by the Interim Finance Committee of the State
12 Legislature.

13 The LCEA also attempts to argue that the LCEA would never have agreed to a "fixed
14 allocation" distribution. By making this argument, the LCEA ignores that it had its opportunity
15 to bargain on this issue, indeed it had "unlimited rights and opportunities to make demands and
16 proposals" related to this subject. As a result, the District carried out a plan for distribution of the
17 SB 231 monies in accordance with the negotiated Agreement, that is, it followed the requirements
18 of the law to obtain approval and did obtain approval from the Interim Finance Committee of the
19 State Legislature. There is no continuous obligation of the District to bargain during the term of
20 the Agreement because the subject matter was covered by the contract. There is no violation of
21 NRS288.270(1)(e). It follows then that there is no violation of NRS 288.270(1)(a), NRS
22 288.270(1)(b), and NRS 288.270(1)(d).

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1 IV. The LCEA had full opportunity and did in fact bargain on the issue of SB 231
2 funds.

3 In its Opposition, the LCEA seems to take the position that the District must show that the
4 LCEA waived its right to bargain on the issue of SB 231. In support of this argument, the LCEA
5 cites to the very case relied upon by the District, which in fact does not support its position.

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

13 V. Conclusion

14 The LCEA provides no legal basis for its request for attorneys’ fees and such request
15 should be denied.

16 In accordance with relevant NLRB decisions and the express terms of the Negotiated
17 Agreement, the District had no obligation to reopen negotiations on a topic already addressed,
18 bargained for and set forth in the Agreement and as such the District did not violate NRS
19 288.270(1)(e). As a result, any allegation that the District violated NRS 288.270(1)(a), NRS
20 288.270(1)(b), or NRS 288.270(1)(d) is moot and the Complaint filed by LCEA should be
21 dismissed in its entirety.

22 Dated this 26th day of April, 2024.

23 MAUPIN, COX & LEGOY

24 By: Candyn K. Reuner #9164
25 Donald A. Lattin, NV Bar No. 693
26 4785 Caughlin Parkway
Reno, Nevada 89519
Attorneys for Lyon County School District

