

FILED
April 8, 2024
State of Nevada
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

ASSOCIATION OF PROFESSIONAL-
TECHNICAL ADMINISTRATORS,

Complainant,

v.

WASHOE COUNTY SCHOOL DISTRICT,

Respondent.

Case No. 2023-015
(CONSOLIDATED WITH 2023-023)

**THIRD AMENDED NOTICE OF
HEARING**

WASHOE COUNTY SCHOOL DISTRICT,

Complainant,

v.

ASSOCIATION OF PROFESSIONAL-
TECHNICAL ADMINISTRATORS,

Respondent.

TO: Complainant¹ and its attorney, Ronald J. Dreher, Esq.; and

TO: Respondent² and its attorney, Anthony L. Hall, Esq. and Jonathan A. McGuire, Esq. of Simons
Hall Johnston PC;

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE pursuant to NRS 233B.121(2),
that the Government Employee-Management Relations Board (“Board”) will conduct a hearing in the
above-captioned matter:

Panel

¹ The use of the term Complainant is based on case 2023-015.

² The use of the term Respondent is based on case 2023-015.

1 This case has been assigned to the Full Board. Pursuant to NAC 288.271(3) the presiding officer
2 shall be Vice-Chair Michael J. Smith.

3 **Dates and Times of Hearing**

4 Monday, April 22, 2024 at 8:15 a.m. or upon conclusion of the hearing for case 2024-001,
5 whichever is later; and continuing on Tuesday, April 23, 2024 at 8:15 a.m., if necessary; and continuing
6 on Wednesday, April 24, 2024 at 8:15 a.m., if necessary.

7
8 **Location of Hearing**

9 The hearing will be held in the Carl Dodge Conference Room, which is located at the EMRB
10 Office located on the fourth floor of the Nevada State Business Center, 3300 W. Sahara Avenue, Las
11 Vegas, NV 89102. The hearing will also be held virtually using a remote technology system called
12 WebEx. The attorneys of record, witnesses, court reporter, the Deputy Attorney General assigned to the
13 EMRB and one or more of the Board members will be present via WebEx. The remaining Board
14 members and Commissioner will be present in-person. Preliminary motions will be heard at the
15 beginning of the hearing. The Panel may deliberate and take possible action on this case after the
16 hearing has concluded.

17
18 **Details Regarding Events Prior to the Hearing**

19 1. The parties shall submit five (5) sets of tagged joint exhibits to be received by the
20 EMRB, 3300 W. Sahara Avenue, Suite 490, Las Vegas, Nevada 89102, no later than one week prior to
21 the start of the hearing, so as to enable the office staff to distribute the exhibits to two of the panel
22 members in time for the hearing. Please note that the number of sets of exhibits to be received by the
23 EMRB is in addition to any sets of exhibits that may be used by the attorneys of record. Each attorney
24 shall also be responsible to have a set of exhibits at the designated location for its witnesses.

25 2. The parties will also need to submit an electronic version of the exhibits, along with a
26 table of contents of the exhibits, no later than one week prior to the start of the hearing. Each electronic
27 exhibit shall be a .pdf file. Arrangements on the means of transmittal shall be made with the Board
28 Secretary.

- 1 5. Whether the District's refusal to keep scheduled meetings and to meet at regular, reasonable
2 intervals constitutes a prohibited practice under NRS 288.032, NRS 288.150, NRS 288.180, and
3 NRS 288.270.
- 4 6. Whether the District's direct negotiations with the APTA membership, outside of and without
5 the consent of the designated representatives, is direct dealing or "end-run bargaining," and is a
6 prohibited practice under NRS 288.150, NRS 288.220, and NRS 288.270.
- 7 7. Whether the District's actions of directly contacting APTA membership, outside of and without
8 the consent of the designated representatives, is direct dealing or "end-run bargaining," and is a
9 prohibited practice under NRS 288.150, NRS 288.220, and NRS 288.270.
- 10 8. Whether the District's attempt to hold itself out as the protector of APTA membership is direct
11 dealing or "end-run bargaining," and is a prohibited practice under NRS 288.032, NRS 288.150,
12 NRS 288.220, and NRS 288.270.
- 13 9. Whether the District's attempt to negotiate mandatory topics of bargaining directly with
14 APTA's membership is direct dealing or "end-run bargaining," and is a prohibited practice
15 under NRS 288.032, NRS 288.150, NRS 288.220, and NRS 288.270.
- 16 10. Whether the District's attempt to undercut APTA's status with its members and to influence
17 negotiations is direct dealing or "end-run bargaining," and is a prohibited practice under NRS
18 288.032, NRS 288.220, and NRS 288.270.

19 **Respondent's Statement of Issues of Fact**

- 20 1. Issues of Fact #1 - #60 are incorporated herein by reference.

21 **Respondent's Statement of Issues of Law**

- 22 1. Whether APTA failed to bargain in good faith in violation of NRS 288.270.
- 23 2. Whether APTA engaged in surface bargaining.
- 24 3. Whether APTA was obligated to bargain over mandatory issues of bargaining contained within
25 NRS 288.150.
- 26 4. Whether APTA's proposals at the bargaining table indicate that they failed to bargain in good
27 faith in violation of NRS 288.270.
- 28 5. Whether APTA's actions demonstrate a lack of intent to reach an agreement.

- 1 6. Whether APTA improperly declared impasse pursuant to NRS 288.217.
- 2 7. Whether APTA and WCSD engaged in three (3) sessions of negotiations.
- 3 8. Whether APTA and WCSD were truly at impasse when APTA declared impasse when WCSD
- 4 still had proposals to present.
- 5 9. Whether in the context of NRS 288.217(2) “impasse” has a specific meaning as explained by
- 6 the NLRB.
- 7 10. Whether APTA’s conduct in this case is inconsistent with the purposes of NRS Chapter 288.
- 8 11. Whether APTA is permitted to declare impasse pursuant to NRS 288.217.
- 9 12. Whether APTA’s membership all falls within the categories of teachers or education support
- 10 personnel as defined by NRS 288.217(12).
- 11 13. Whether APTA’s membership are all considered “classified employees” as defined in NRS
- 12 288.217(12)(a).
- 13 14. Whether WCSD is entitled to its requested relief of: (1) an expedited ruling on its Complaint or
- 14 a stay of the arbitration; (2) an order requiring the Parties to return to the bargaining table for a
- 15 minimum of three (3) eight (8) hour negotiation sessions.
- 16 15. Whether WCSD promptly initiated and scheduled bargaining.
- 17 16. Whether WCSD was obligated to agree to or negotiate ground rules.
- 18 17. Whether WCSD is required to communicate all details regarding logistics and scheduling of all
- 19 meetings with the entire APTA negotiations team or whether NRS 288.150 is limited to
- 20 requiring WCSD to negotiate with the entire APTA negotiation team regarding mandatory
- 21 subjects of bargaining.
- 22 18. Whether WCSD engaged in discrimination in violation of NRS 288.270(1)(f) or NRS
- 23 288.270(2)(c).
- 24 19. Whether WCSD’s responses to request for information were proper.
- 25 20. Whether WCSD has engaged in direct dealing.
- 26 21. Whether APTA’s request for an arbitration panel was premature and improper.

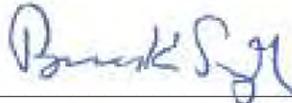
27 **Issue Pursuant to the Stipulation Dated November 8, 2023**

- 28 1. Whether NRS 288.200 or NRS 288.217 applies to impasse proceedings between the parties.

1 This Third Amended Notice of Hearing will further serve as notice to all parties herein, that
2 upon conclusion of the Hearing, or as otherwise necessary to deliberate toward a decision on the
3 complaint, the Board may move to go into closed session pursuant to NRS 288.220(5).

4 DATED this 8th day of April 2024.

5
6 GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

7
8 BY  _____
BRUCE K. SNYDER, Commissioner

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1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management Relations
3 Board, and that on the 8th day of April 2024, I served a copy of the foregoing **THIRD AMENDED**
4 **NOTICE OF HEARING** by mailing a copy thereof, postage prepaid to:

5 Anthony L. Hall, Esq.
6 Jonathan A. McGuire, Esq.
7 Simons Hall Johnston PC
8 690 Sierra Rose Dr.,
9 Reno, Nevada 89511

10 Ronald J. Dreher, Esq.
11 P.O. Box 6494
12 Reno, Nevada 89513

13 

14 _____
15 MARISU ROMUALDEZ ABELLAR
16 Executive Assistant
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1 Ronald J. Dreher
2 NV Bar No. 15726
3 P.O. Box 6494
4 Reno, NV 89513
5 Telephone: (775) 846-9804
6 ron@dreherlaw.net
7 Attorney for Complainant

FILED
December 4, 2023
State of Nevada
E.M.R.B.
1:00 p.m.

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

10 ASSOCIATION OF PROFESSIONAL-
11 TECHNICAL ADMINISTRATORS,

12 Complainant,

2023-015

Case No.: ~~2023-023~~ (Consolidated)

13 vs.

Panel:

14 WASHOE COUNTY SCHOOL
15 DISTRICT,

16 Respondents.

17 **COMPLAINANT'S PREHEARING STATEMENT**

18 **COMES NOW**, Complainant, Association of Professional Technical Administrators,
19 (“APTA” or “Association”), by and through its undersigned attorney, hereby files its Prehearing
20 Statement in accordance with NAC 288.250 and the stipulated agreement to consolidate EMRB
21 Case 2023-015 with EMRB Case 2023-023. APTA was/is the complainant in EMRB Case
22 2023-015 and where the Washoe County School District, (“District”), was/is the complainant
23 in EMRB Case 2023-023. Both cases are consolidated and renamed EMRB Case 2023-023.
24 This Prehearing Statement is submitted showing APTA as the Complainant. APTA
25 incorporates herein, by reference its Second Amended Complaint filed on August 25, 2023, and
26 the Answer filed by Respondent District on October 16, 2023, under EMRB Case No 2023-
27 015, and the First Amended Complaint filed by Complainant District on November 2, 2023,
28

1 and the Answer to the First Amended Complaint filed by Respondent APTA on November 13,
2 2023.

3 **I. ISSUES OF FACTS TO BE DECIDED BY THE BOARD**

4 1. Whether the District's failure to promptly begin negotiations constitutes a prohibited
5 practice under NRS 288.180.

6 2. Whether the District's refusal to discuss ground rules constitutes a prohibited practice
7 under NRS 288.180.

8 3. Whether District's refusal to provide all the requested information to APTA that
9 APTA deemed necessary and relevant for negotiations and to enforce the CBA constitutes
10 prohibited practices under NRS 288.180 and NRS 288.270. Whether the information requested
11 was provided without unnecessary delay.
12

13 4. Whether District's failure and refusal to communicate with all APTA's designated
14 representatives constitutes a prohibited practice under NRS 288.150 and NRS 288.270.
15

16 5. Whether District's refusal to keep scheduled meetings and to meet at regular,
17 reasonable intervals constitutes a prohibited practice under NRS 288.032, NRS 288.150, NRS
18 288.180 and NRS 288.270.
19

20 6. Whether District's direct negotiations with the APTA membership, outside of and
21 without the consent of the designated representatives, is direct dealing or "end-run bargaining,"
22 and is a prohibited practice under NRS 288.150, NRS 288.220 and NRS 288.270.
23

24 7. Whether District's actions of directly contacting APTA membership, outside of, and
25 without the consent of APTA's designated representatives, constitutes direct dealing or "end-
26 run bargaining," and an attempt to dominate, divide, interfere or assist in the formation or
27 administration of any employee organization and is a prohibited practice under NRS 288.220
28 and NRS 288.270.

1 8. Whether District's attempt to hold itself out as the protector of APTA membership is
2 direct dealing or "end-run bargaining," and is a prohibited practice under NRS 288.032, NRS
3 288.150, NRS 288.220 and NRS 288.270.

4 9. Whether District's attempt to negotiate mandatory topics of bargaining directly with
5 APTA's membership direct dealing or "end-run bargaining," and is a prohibited practice under
6 NRS 288.032, NRS 288.150, NRS 288.220 and NRS 288.270.
7

8 10. Whether District's attempt to undercut the Association's status with its members and
9 to influence negotiations direct dealing or "end-run bargaining," and is a prohibited practice
10 under NRS 288.032, NRS 288.150, NRS 288.220 and NRS 288.270.
11

12 11. Whether the District's claim that as a result of the long-standing CBA, the many
13 negotiation sessions that resulted in its current form, and revisions to statutory language, there
14 were many areas of the CBA that require revisions and updating. This is in addition to general
15 changes in circumstance, such as seen in any employment context, so as to require revisions and
16 updating of the CBA.
17

18 12. Whether on January 10, 2023, District Superintendent Dr. Susan Enfield confirmed
19 receipt of APTA's notice of intent to negotiate.

20 13. Whether on February 24, 2023, after not having received any further communication
21 from the District, APTA contacted the District's Chief Talent Officer, Dr. Kristina Mason, to
22 determine when negotiations may begin and who would be representing the District.
23

24 14. Whether on March 7, 2023, after not receiving a response, APTA emailed the District
25 and requested dates and times the District was available to commence negotiations.

26 15. Whether on March 8, 2023, APTA's representative received an email from Anthony
27 Hall, Esq., stating he would be leading the negotiations for another bargaining unit at the
28 District.

1 16. Whether on March 9, 2023, APTA emailed Mr. Hall and requested confirmation
2 that he would be the chief negotiator for the District in the APTA negotiations.

3 17. Whether on March 14, 2023, after not receiving a response, APTA again emailed
4 Mr. Hall to confirm he would be leading negotiations for the District.

5 18. Whether on March 15, 2023, Mr. Hall confirmed that he would be leading
6 negotiations with APTA, and expressed that he did not believe negotiations, due to budget
7 issues, would be productive to begin until mid to late June.

8 19. Whether on April 5, 2023, APTA contacted Mr. Hall and requested dates and times
9 the District was available to immediately begin negotiations.
10

11 20. Whether on April 11, 2023, the District provided May 30, 2023, as the first possible
12 date that it was available to commence negotiations.
13

14 21. Whether on April 12, 2023, APTA accepted this date and time.

15 22. Whether on May 25, 2023, APTA sent a copy of draft ground rules to Mr. Hall and
16 asked if Mr. Hall would like to discuss these prior to May 30, 2023. Mr. Hall never responded
17 to the email or to the draft ground rules.
18

19 23. Whether on May 30, 2023, APTA and the District commenced negotiations. When
20 asked why he had not responded to the draft ground rules, Mr. Hall stated “I didn’t think I had
21 to tell you the same thing twice.” This was in reference to Mr. Hall’s refusal to have ground
22 rules with another bargaining unit. Mr. Hall stated he did not want ground rules and refused to
23 discuss them further.
24

25 24. Whether on May 30, 2023, the District provided to APTA a copy of the entire,
26 current APTA collective bargaining agreement (“CBA”) with proposed changes throughout.
27 Mr. Hall advised that he wanted to discuss the changing of the Professional-Technical pay table,
28 but he did not provide any proposals on this subject. Mr. Hall stated that the budget was

1 unsettled, and he would not be providing a financial proposal. The District's proposed changes
2 to the CBA language in Articles 1-22 and 24-26. None of these proposed changes involved
3 compensation or financials and were mainly based in language updates and changes.

4 25. Whether on May 30, 2023, APTA provided proposals on Article 15, Article 23 and
5 Article 25. APTA's proposals contained a mixture of financial and non-financial items.
6 Additionally, APTA requested that a negotiation session be scheduled to avoid another delay of
7 several months. The parties agreed to meet on June 9, 2023, at 1 p.m.

8
9 26. Whether the District's First Amended Complaint items 13 and 14 were fabricated
10 and contained untruthful of what was proposed with the exception of presenting a "red-lined
11 proposal.

12
13 27. Whether the District, by proposing changing 19 of the 26 Articles in the current
14 CBA represented their attempts to negotiate a new master agreement.

15 28. Whether the District's First Amended Complaint regarding the negotiation session
16 discussions on May 30, 2023, contain fabricated, embellished, and untruthful statements as to
17 what occurred in that negotiation session.

18
19 29. Whether during the May 30, 2023, negotiations session, APTA was provided a
20 caucus room in a separate building from the negotiation session and none of APTA's team had
21 key card access to the building. APTA requested that a caucus room located in close proximity
22 be provided at future meetings consistent with the treatment of other bargaining groups.

23
24 30. Whether on June 2, 2023, APTA emailed Mr. Hall and the District negotiations team
25 and again requested that caucus room in close proximity to the negotiation room be provided.
26 In addition, APTA notified the District that it would require a room to use prior to negotiations
27 and that some of its members have ADA accommodations that would need to be met. APTA
28

1 expressed its desire to have a financial proposal from the District as the Nevada Legislature had
2 finalized the budget.

3 31. Whether on June 8, 2023, Mr. Hall responded and advised that a caucus room was
4 a courtesy and insinuated one may not be provided. Mr. Hall continued by saying that no
5 accommodations would be provided as, according to him, the ADA did not apply to these
6 employees during negotiations. This despite all the APTA negotiation team members being paid
7 by the District during negotiations. Mr. Hall stated that the District did not have a financial
8 proposal for June 9, 2023, and, due to this, unilaterally canceled the meeting. He stated that the
9 District would not be available to meet again until after June 19, 2023. Part of Mr. Hall's
10 justification for canceling the meeting with APTA, was that APTA's chief negotiator had
11 canceled a meeting with another bargaining unit due to a scheduling issue.
12
13

14 32. Whether on June 8, 2023, APTA responded and again requested to keep the
15 scheduled June 9, 2023, meeting. APTA expressed that there were non-financial proposals that
16 could still be discussed and that it viewed the unilateral canceling of the meeting, the seeming
17 refusal to not provide a caucus room, and the refusal to accommodate the APTA members'
18 disabilities, as not bargaining in good faith.
19

20 33. Whether APTA requested to be provided with dates, both in-person and virtually,
21 that the District would be available to meet between June 9, 2023, and July 31, 2023. Mr. Hall
22 stated he would not meet virtually, and his assistant would provide dates at some later time.
23

24 34. Whether on June 9, 2023, APTA emailed the District and requested to be provided
25 with dates and times for in-person negotiations between June 23, 2023, and July 31, 2023.

26 35. Whether on June 12, 2023, after not receiving a response, APTA sent a follow-up
27 email requesting confirmation of receipt of its June 9, 2023, email. Kelly Lee, Mr. Hall's
28 assistant confirmed receipt of the email.

1 36. Whether on June 12, 2023, pursuant to NRS 288.180, APTA filed a request for
2 information (“RFI”), requesting several items that in it deems necessary for negotiations. The
3 three relevant requests as related to this complaint are the following:

4 1. “The date and/or dates that the contract of services for Anthony Hall,
5 Esq. for 2023 negotiations with WCSD bargaining units was presented to
6 and voted on by the District Board of Trustees.”

7 2. “The number of FTE positions that are currently unfilled in the
8 District.”
9

10 37. Whether on June 13, 2023, the District requested to clarify if the APTA was
11 requesting the number of unfilled positions in the entire District or just related to APTA. APTA
12 clarified that it was requesting the number of all unfilled, open positions in the District.
13

14 38. Whether on June 16, 2023, after receiving a partial response to its RFI, the District
15 representatives unilaterally removed some of the designated APTA representatives from the
16 email chain. APTA requested the District include its designated representatives on all emails
17 moving forward pursuant to NRS 288.150(1).
18

19 39. Whether on June 20, 2023, the District provided a partial response to the June 12,
20 2023, RFI. This partial response stated that that regarding the request for the dates of Mr. Hall’s
21 contract, the District provided that “WCSD objects to this request as irrelevant to the
22 performance of the Union's role as bargaining representative of the unit employees. Further, this
23 information is available to APTA via public records and can be retrieved by APTA with the
24 same effort as would be required by WCSD. The information is available at
25 [https://www.washoeschools.net/ domain/168.](https://www.washoeschools.net/domain/168)” The link provided is not active and does not link
26 to any page on the internet. In response to APTA’s request for all unfilled, open positions in the
27 District, the RFI response provided that “WCSD objects to this request as irrelevant to the
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1 performance of the Union's role as bargaining representative of the unit employees to the extent
2 is asks for data for the entire WCSD as opposed to APTA. Without waiving said objection, and
3 limiting the response to APTA, Psychologists have 2 vacant FTE and Protechs have 18 vacant
4 FTE.” These responses did not fulfill the RFI requests from APTA, and the response to the
5 unfilled, open positions ignored the clarification provided by APTA on June 13, 2023. In
6 addition to failing to provide the required information, the District provided the following as a
7 closing to its June 20, 2023, response, “If you wish to explain or further tailor your request
8 regarding any to which WCSD has stated an objection, we will revisit this and respond
9 accordingly.”

10
11 40. Whether on June 16, 2023, the District provided August 15, 2023, and August 18,
12 2023, as the first possible dates it would be available to negotiate with APTA. This would mean
13 the second negotiation session would not be held until 68 days after the first session.
14

15 41. Whether APTA objected to these dates and demanded to meet in June and July to
16 continue negotiations. The District refused, saying it had no dates available.
17

18 42. Whether within several hours of telling APTA that it had no available dates to meet
19 before August 15, 2023, the District scheduled a negotiation meeting with the Washoe School
20 Principals’ Association (“WSPA”) for June 21, 2023.

21 43. Whether on July 7, 2023, APTA requested that the District provide the complete
22 information to the two outstanding remaining requests from the June 12, 2023, RFI. The District
23 refused to do so, saying that no authority required them to provide this information to APTA,
24 and lacking this, they would not do so. Further, the District removed the APTA designated
25 representatives from the emails and stated that it would not include them without justification
26 for doing so. Whether those actions violate NRS 288.150 and NRS 288.180.
27
28

1 44. Whether paragraphs numbered 26 through 29, in Respondent's First Amended
2 Complaint (2023-023) have any bearing on this matter as they regard the Washoe School
3 Principals' Association containing notes from negotiations that occurred on August 11, 2023.
4 **(The Washoe School Principals' Association is not a party to EMRB Complaint 2023-015**
5 **or 2023-023.)**

6
7 45. Whether on August 9, 2023, the District offered September 5, 2023, as the next
8 negotiation session date after August 15, 2023. APTA readily agreed to this date and advised
9 the District of the location and 10 a.m. start time.

10 46. Whether on August 10, 2023, the District's counsel responded and stated that, despite
11 the lack of ground rules between the parties, APTA must agree to stay at the bargaining table
12 for at least eight hours or the District would not meet.

13
14 47. Whether on August 15, 2023, the parties held a negotiation session that lasted
15 approximately three hours. Due to the District's inability and unwillingness to meet, this was
16 the first session since May 30, 2023, and only the second session since January 2023 when
17 APTA had first asked to meet.

18
19 48. Whether paragraphs 31 through 52 of the August 15, 2023, negotiation session in
20 their First Amended Complaint (2023-023) contained fabricated, embellished, and untruthful
21 descriptions by the District of what was proposed and discussed on that date.

22 49. Whether on August 16, 2023, APTA President Dr. Shannon Colon sent a confidential
23 email to APTA membership, by "blind copy," providing a brief synopsis of the negotiations
24 between the parties up to that date.

25
26 50. Whether in response to this email, on August 16, 2023, District Superintendent Dr.
27 Susan Enfield, who is not a member of the District's negotiation team and not a recognized
28 bargaining agent, sent an email letter to the APTA membership, as well as other employees and

1 administrators of the District and other bargaining groups. Whether her email included
2 information contradicting the confidential email that Dr. Colon had sent to the APTA
3 membership and provided false and inflammatory accusations towards APTA's negotiation
4 team. The Superintendent's email contained a one-sided version of what had occurred in the
5 August 15, 2023, negotiation session. Whether the only way she would have been privy to the
6 internal confidential negotiation session was to have been briefed by the District's chief
7 negotiator and/or members of the District's negotiation team. Whether Superintendent Enfield
8 was not present in the August 15, 2023, negotiation session or in any of the previous negotiation
9 sessions, and is not part of the District's negotiations team, nor is she a designated representative
10 of the bargaining team. Whether the District and Superintendent Enfield violated the
11 confidentiality aspects of the negotiations in violation of NRS 288.180 and NRS 288.270 and
12 in so doing committed direct dealing or "end-run bargaining."
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15 51. Whether on August 16, 2023, District Chief Academic Officer Dr. Troy Parks
16 directed Tamala Green, Executive Assistant to Lauren Ford, Associated Chief (Area 4) to send
17 Superintendent Enfield's factually inaccurate and inflammatory email regarding APTA
18 negotiations to all school principals and administrators in the Washoe County School District.
19 The email subject heading stated: "FWD: Important information Regarding Recent
20 Communications from APTA". Chief Academic Officer Dr. Troy Parks' statement on the email
21 is: "Dear team, This afternoon, Superintendent Enfield shared the message below with members
22 of the APTA bargaining unit. As leaders in our district, you may receive questions or hear
23 concerns from your team, and the below information from Superintendent Enfield should be
24 helpful for you in addressing those directly. Thank you for all that you do. Dr. Troy Parks
25 Chief Academic Officer.
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1 52. Whether Dr. Parks is not a member of the District’s bargaining team. Whether Ms.
2 Ford is a member of the District’s negotiation team and is a designated bargaining representative
3 for the District.

4 53. Whether the school principals and administrators who were sent Superintendent
5 Enfield’s email are not members of APTA, but they are members of WSPA which is also
6 involved in current contract negotiations with the District. Whether APTA’s counsel is the chief
7 negotiator for WSPA in those negotiations.
8

9 54. Whether on August 17, 2023, Dr. Colon sent another “blind copied” email letter to
10 the APTA membership, in an effort to clarify the confusion caused by Superintendent Enfield’s
11 email, while also correcting the misstatements and untruthful remarks made by Dr. Enfield. This
12 email clarified, in brief, what had occurred in the August 15, 2023, confidential negotiations.
13

14 55. Whether on August 17, 2023, APTA sent an email to the District’s chief negotiator
15 advising him that the actions by Superintendent Enfield in her letter to APTA membership and
16 to other administrators in the District, constitutes end-run bargaining. Whether this email
17 demanded the District cease and desist end-run bargaining. Whether no response was received
18 from the District.
19

20 56. Whether on August 17, 2023, at 2:48 p.m., Superintendent Enfield sent another
21 email to APTA members and other administrators in the District, again detailing an incorrect
22 version of what conducted in the August 15, 2023, confidential negotiations. Whether, in the
23 email Dr. Enfield included attachments in an apparent attempt to negotiate directly with the
24 APTA membership. Whether those attachments included a modified version of the District’s
25 financial written proposal to the APTA member detailing the specifics of the proposal but
26 leaving out various parts of the proposal about which Superintendent Enfield claimed Dr. Colon
27 was fabricating. Whether Superintendent Enfield was not present in the August 15, 2023,
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1 negotiation session or in any of the previous negotiation sessions, and is not part of the District's
2 negotiations team, nor is she a designated representative of the bargaining team. Whether her
3 actions violated the confidentiality aspects of the negotiations in violation of NRS 288.180 and
4 NRS 288.270 thereby committing end-run bargaining.

5 57. Whether on August 17, 2023, APTA sent a request for information to the District
6 requesting to be provided with the "email addresses and which Washoe County School District
7 personnel the email sent by Superintendent Susan Enfield on August 16, 2023, at 4:50:02 PM
8 titled "information on recent communications regarding negotiations," was sent to." Whether
9 as of the date of this Prehearing Statement, the information has not been provided.

10 58. Whether on August 18, 2023, APTA sent a second "cease and desist" letter to the
11 District's counsel regarding Superintendent Enfield's actions and end-run bargaining. Whether
12 no response was received from the District.

13 59. Whether on August 23, 2023, the District unilaterally cancelled the negotiations
14 scheduled for September 5, 2023. Whether APTA had confirmed the September 5, 2023,
15 negotiations date on August 10, 2023, by stating that APTA had "reserved the room beginning
16 at 10am; that the length of negotiations will depend on the discussions; that there is space
17 available for each side to caucus." Whether this was the second session that was unilaterally and
18 unreasonably cancelled by the District.

19 60. Whether paragraphs 52 through 59 of the September 15, 2023, negotiation session
20 in the First Amended Complaint (2023-023) contained fabricated embellished and untruthful
21 descriptions by the District of what occurred and what was discussed on that date.

22 61. Whether the District engaged in surface bargaining.

23 62. Whether APTA declaration of impasse on September 15, 2023, was implemented
24 in accordance with NRS 288.217.
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1 **II. ISSUES OF LAW TO BE DECIDED BY THE BOARD**

2 63. Whether the District’s failure to promptly begin negotiations constitutes a prohibited
3 practice under NRS 288.180.

4 64. Whether the District’s refusal to discuss ground rules constitutes a prohibited
5 practice under NRS 288.180.

6 65. Whether the District’s refusal to provide requested information to APTA that APTA
7 deems necessary and relevant for negotiations and to enforce the CBA constitutes prohibited
8 practices under NRS 288.180 and NRS 288.270.

9 66. Whether the District’s failure and refusal to communicate with all APTA’s
10 designated representatives constitutes a prohibited practice under NRS 288.150 and NRS
11 288.270.

12 67. Whether the District’s refusal to keep scheduled meetings and to meet at regular,
13 reasonable intervals constitutes a prohibited practice under NRS 288.032, NRS 288.150, NRS
14 288.180 and NRS 288.270.

15 68. Whether the District’s direct negotiations with the APTA membership, outside of
16 and without the consent of the designated representatives, is direct dealing or “end-run
17 bargaining,” and is a prohibited practice under NRS 288.150, NRS 288.220 and NRS 288.270.

18 69. Whether the District’s actions of directly contacting APTA membership, outside of,
19 and without the consent of APTA’s designated representatives, constitutes direct dealing or
20 “end-run bargaining,” and an attempt to dominate, interfere or assist in the formation or
21 administration of any employee organization and is a prohibited practice under NRS 288.220
22 and NRS 288.270.
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1 70. Whether the District's attempt to hold itself out as the protector of APTA
2 membership is direct dealing or "end-run bargaining," and is a prohibited practice under NRS
3 288.032, NRS 288.150, NRS 288.220 and NRS 288.270.

4 71. Whether the District's attempt to negotiate mandatory topics of bargaining directly
5 with APTA's membership is direct dealing or "end-run bargaining," and is a prohibited practice
6 under NRS 288.032, NRS 288.150, NRS 288.220, and NRS 288.270.

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8 72. Whether the District's attempt to undercut APTA'S status with its members and to
9 influence negotiations is direct dealing or end-run bargaining and is a prohibited practice under
10 NRS 288.032, NRS 288.220 and NRS 288.270.

11 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

12 **a. Failure to bargain in good faith.**

13
14 The obligation imposed upon both management and labor organizations to bargain
15 collectively in good faith includes a mutual obligation to meet at reasonable times, for
16 reasonable amounts of time, and to bargain in good faith in negotiations to reach an agreement.
17 As this Board has previously held, the Local Government Employee-Management Relations Act
18 (EMRA) imposes a reciprocal duty on employers and bargaining agents to "negotiate in good
19 faith" on those subjects listed in NRS 288.150, and a refusal by either party to do so is "a
20 prohibited labor practice." *City of Reno v. International Assoc. of Firefighters Local 731*, Item
21 No. 253-A, Case No. A1-045472 (1991). Additionally, "[g]ood faith bargaining requires that a
22 bargaining team have some level of authority." *Police Officers Association of the Clark County*
23 *School District v. Clark County School District*, EMRB Item No. 809, Case No. A1-046113
24 (2015).

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27 The "duty to bargain in good faith does not require that the parties actually reach an
28 agreement but does require that the parties approach negotiations with a sincere effort to do so."

1 *Id.* When determining whether the sincere negotiations have occurred, the Board will draw
2 “inferences from conduct of the parties as a whole.” *Id.* (quoting *NLRB v. Insurance Agent's*
3 *International Union*, 361 U.S. 488 (1970)). Cancelling multiple previously scheduled meetings
4 without good cause is evidence of bad faith. *Id.* Likewise, a refusal to meet with the Association
5 is “an indisputable instance of failure to bargain in good faith.” *City of Reno v. Reno Police*
6 *Protective Ass'n.* 98 Nev. 472, 653 P.2d 156 (1982). It is a “significant indicator of bad faith
7 bargaining” when a party does not designate a representative or team that has the authority to
8 negotiate the contract. *Police Officers Association of the Clark County School District v. Clark*
9 *County School District*, Item No. 809, Case No. A1-046113 (Oct. 20, 2015). Moreover, NRS
10 288.270(e) provides it is a prohibited practice for an employer to “[r]efuse to bargain
11 collectively in good faith **with the exclusive representative** as required in NRS 288.150.”
12 (Emph. added.)

13
14
15 Nevada Revised Statute 288.280 provides that “[a]ny controversy concerning prohibited
16 practices may be submitted to the board” and the Nevada Supreme Court has recognized that
17 the “EMRB has exclusive jurisdiction over unfair labor practice issues.” *City of Reno v. Reno*
18 *Police Protective Ass'n.*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002). As stated clearly and
19 concisely in the Complaint, APTA has raised multiple controversies concerning prohibited
20 practices that are within the Board’s jurisdiction and are judiciable. It is well established that
21 the “Board is permitted to hear and to determine any complaint arising out of the interpretation
22 of, or performance under, the provisions of Chapter 288.” *I.A.F.F. Local 731 v. City of Reno*,
23 EMRB Item No. 257, Case No. A1-045466 (1991). An interest arbitration, which will be held
24 between the parties, is not a grievance arbitration covered under the CBA.
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27 Furthermore, negotiation sessions are closed and confidential. *See Washoe County*
28 *Teachers Association v. Washoe County School District*, EMRB Item No. 54, Case No. A1-

1 045295 (1976) (holding that “the unilateral determination by the Washoe County school district
2 that negotiations between the District and the Washoe County Teachers Association be open
3 and public constitutes a refusal to bargain collectively in good faith and violation of the
4 provisions of NRS 288.270 (1) (e)”).

5 **b. Failure to provide the requested information as required.**

6
7 During contract negotiations, NRS 288.180(2) provides that, “the employee organization
8 or the local government employer may request reasonable information concerning any subject
9 matter included in the scope of mandatory bargaining which it deems necessary for and relevant
10 to the negotiations.” The statute continues to clarify that, “[t]he information requested must be
11 furnished without unnecessary delay. The information must be accurate, and must be presented
12 in a form responsive to the request and in the format in which the records containing it are
13 ordinarily kept.” *See also Reno Police Protective Association vs. City of Reno*, EMRB Item
14 No.175, Case No. A1-045390, (1985).

15
16 Moreover, the Board has determined that, “a local government employer and a
17 bargaining agent have a mutual obligation to bargain in good faith. This obligation is not limited
18 to negotiating the terms of a collective bargaining agreement. The parties’ duty to bargain in
19 good faith extends through the duration of a collective bargaining agreement.” *Douglas County*
20 *Professional Education Association and Douglas County Support Staff Organization vs.*
21 *Douglas County School District*, EMRB Item No. 755A, Case No. A1-046008, (2012). This
22 obligation is supported by NRS 288.270(1)(e) and NRS 288.270(2)(a) and it includes providing
23 information and responses to RFIs throughout the term of the CBA when the “information
24 necessary to enforce the terms of a collective bargaining agreement.” *Id.*

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1 **c. Direct dealing or “end-run bargaining.”**

2 Direct dealing, or “end-run bargaining,” is established by a three-part test that was set
3 forth in *Permanente Medical Group*. 332 N.L.R.B. 1143. This three-part test looks to see if the
4 complaint “shows that (1) the employer communicated with represented employees, (2) that the
5 purpose of the communication was either to establish a change to a mandatory subject of
6 bargaining or to undercut the bargaining agent’ role in negotiations; and (3) the communications
7 were made without notice or to the exclusion of the bargaining agent.” *Id.*

9 It is well established that an “employer’s statutory obligation is to deal with the
10 employees through the union, and not with the union through the employees.” *General Electric*
11 *Co.* 150 N.L.R.B. 192, 195 (1964). NRS Chapter 288, just as required by the National Labor
12 Relations Act, (“NLRA”), requires that “an employer must bargain exclusively with the
13 bargaining agent, and may not bargain directly with represented employees.” *Ormsby County*
14 *Teachers’ Assn. v. Carson City School District*, Item No. 114 EMRB Case No. A1-045339,
15 (1981). The standard established by NRS Chapter 288 and the NLRA clearly defines that an
16 employer’s direct communication with employees is allowed only if “such expression contains
17 no threat of reprisal or force or promise of benefit,” and provided that this communication is not
18 “likely to erode ‘the Union’s position a exclusive representative.’” *Las Vegas Fire Fighters Local*
19 *1285 v. City of Las Vegas*, EMRB Item No. 786, Case No. A1-046074 (2013) (citing *Dayton*
20 *Newspapers v. NLRB*, 402 F.3d 651 (6th Cir. 2005)). Employer conduct that can be reasonably
21 construed as dominating or interfering with an employee organization constitutes a violation of
22 NRS 288.270(1)(b). *Id.*

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26 In addition, as here, when the statements themselves “constitute unfair labor practices,
27 for instance because they disparage the union, hold the employer out as the employees’
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1 protector, or undermine the union by changing employment conditions treated in the collective
2 bargaining agreement, direct dealing is presumed." *Id.*

3 An employer's actions can be said to violate NRS 288.270(1)(a) if its conduct can be
4 reasonably said to interfere with the "free exercise of employee rights under the Act." *Juvenile*
5 *Justice Supervisors Ass 'n v. County of Clark*, Case No. 2017-020, Item No. 834 (2018), citing
6 *Clark Cty. Classroom Teachers Ass'n v. Clark County Sch. Dist.*, EMRB Item No. 237, Case
7 No. A1-04543 (1989). An employer's acts need not be coercive in actual fact, but rather if the
8 act or acts had a reasonable tendency, when looking at the overall circumstances, to intimidate.
9 *Billings and Brown v. Clark County*, EMRB Item No. 751 (2012).

11 **d. The declaration of impasse was not improper under NRS 288.217(2).**

12 NRS 288.217(2) states in part that, "[i]f the parties to a negotiation pursuant to this
13 section have failed to reach an agreement after at least four sessions of negotiation, either party
14 may declare the negotiations to be at an impasse and, after 5 days' written notice is given to the
15 other party, submit the issues remaining in dispute to an arbitrator." The parties in this case held
16 the required four negotiations sessions and more than five days passed prior to submitting the
17 dispute to an arbitrator. The Board has held that Administrators are considered "teachers" as it
18 is defined in NRS 288.217, and the impasse procedures in this statute control for groups such
19 as WSPA. *See Clark County Association of School Administrators v Clark County School*
20 *District*, EMRB Item No. 394, Case A1-045593 (1996). Furthermore, the 2023 Nevada
21 Legislature passed State Bill 231 which defined that, "'Education support professional' means
22 a person, other than a teacher or administrator, who is employed to work at a public school,
23 including, without limitation . . . (5) School psychologists."

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

2 APTA is not aware of any outstanding, pending or anticipated judicial or administrative
3 hearing related to this matter.

4 **V. LIST OF POTENTIAL WITNESSES**

5 A. Shannon Colon - APTA President. Ms. Colon is expected to testify to the facts
6 and circumstances surrounding the Complaints and the actions and inactions taken by the
7 District during the time periods encompassed in the Complaints.

8 B. Mary Delorme -Former APTA Board member. Negotiation Team member. Ms.
9 Delorme is expected to testify to the relevant material facts and circumstances brought forth in
10 the Complaint to which he has knowledge and the actions and inactions taken by Respondents
related to the issues in the Complaint.

11 C. Catlin Davis - APTA Negotiation Team Member and note taker. Ms. Davis is
12 expected to testify to the relevant material facts and circumstances brought forth in the
13 Complaint to which he has knowledge and the actions and inactions taken by Respondents
related to the issues in the Complaint.

14 D. Ron P. Dreher - APTA representative, negotiation team member. Mr. Dreher is
15 expected to testify to the relevant material facts and circumstances brought forth in the
16 Complaint to which he has knowledge and the actions and inactions taken by Respondents
related to the issues in the Complaint.

17 E. All witnesses identified by the District (Respondent).

18 F. Additional witnesses may be supplemented based on newly developed
19 information.

20 **VI. ESTIMATED TIME**

21 Complainant estimates that it will need ten (10) hours to present its position.

22 **VII. CONCLUSION**

23 The District, by and through their actions and inactions, has not bargained in good faith
24 with the Association by attempting to dominate and interfere with the Association, by
25 negotiating mandatory topics of bargaining directly with the Association's membership without
26 the knowledge or consent of the Associations designated representatives, by undercutting the
27 Association's designated representatives role in negotiations, by unilaterally and unreasonably
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1 cancelling negotiation sessions, by failing to meet at reasonable times and intervals, by refusing
2 to provide requested information, by failing to keep negotiations confidential, by discriminating
3 against the Association's representatives for personal and political reasons, and will continue to
4 do so absent an Order from the Board.

5 **Wherefore**, based on the foregoing and after hearing, Respondent requests the following
6 relief be granted:
7

- 8 a. An order finding the actions by the District and its representatives
9 constitute prohibited practices in accordance with NRS 288.270;
- 10 b. An order requiring the District to immediately provide the requested
11 information in accordance with NRS 288.180;
- 12 c. An order requiring the District to cease in violating NRS Chapter 288;
- 13 d. An order requiring the District to comply with all applicable NRS
14 Chapters;
- 15 e. An order requiring the District to post a notice, where notices are
16 normally posted and read by its employees and the public, whereby the District
17 promises to comply with the Nevada Revised Statutes violated in this case and
18 to cease from committing any further prohibited practices;
- 19 f. An order requiring the District to immediately cease committing direct
20 dealing or "end-run bargaining";
- 21 g. An order requiring the District to immediately cease directly contacting
22 WSPA membership in attempts to directly negotiate with them and to influence,
23 divide and intimidate the members;
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- h. An order requiring the District to pay the Association’s reasonable attorney and representatives’ fees and expenses in bringing this action due to the egregious and illegal conduct of the District and its representatives; and
- i. Any other relief that the Government Employee-Management Relations Board deems appropriate.

DATED this 4th day of December, 2023.

/s/ Ronald J. Dreher
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Telephone: (775) 846-9804
ron@dreherlaw.net
Attorney for Complainant

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

DATED this 4th day of December, 2023.

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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:

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

DATED this 4th day of December, 2023.

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7 *Washoe County School District*

FILED
December 5, 2023
State of Nevada
E.M.R.B.
4:48 p.m.

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

11 WASHOE COUNTY SCHOOL DISTRICT,
12 Complainant,

Case No.: Consolidated Case 2023-015

13 vs.

14 ASSOCIATION OF PROFESSIONAL-
TECHNICAL ADMINISTRATORS,
15 Respondent.

18 ASSOCIATION OF PROFESSIONAL-
TECHNICAL ADMINISTRATORS,
19 Complainant,

20 vs.

21 WASHOE COUNTY SCHOOL DISTRICT,
22 Respondent.

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26 **WASHOE COUNTY SCHOOL DISTRICT'S PRE-HEARING STATEMENT**

27 **COMES NOW**, Complainant/Respondent, Washoe County School District ("WCSD"), by
28 and through its undersigned counsel of record, and hereby files its Pre-Hearing Statement:

1 **I. FACTUAL AND PROCEDURAL HISTORY**

2 **A. Facts to be Determined by the Board**

3 1. Whether WCSD and APTA entered into a Negotiated Agreement (the “CBA” or
4 “Contract”) in 2013.

5 2. Whether since the establishment of the CBA, the parties have regularly met to
6 renegotiate the terms of the CBA.

7 3. Whether as a result of the long-standing CBA, the many negotiation sessions that
8 resulted in its current form, and revisions to statutory language, there are many areas of the CBA
9 that require revisions and updating. This is in addition to the changes that are required to any CBA
10 due to the continuously changing requirements and protections throughout employment law during
11 the effective dates of the prior iterations of the CBA.

12 4. Whether the current version of the CBA that WCSD and APTA are operating under
13 is effective July 1, 2021.

14 5. Whether WCSD acted in bad faith because APTA notified WCSD of its desire to
15 renegotiate in January 2023; however, negotiations did not begin until May.

16 6. Whether prior to the negotiations beginning, APTA presented WCSD with an MOU
17 indicating its desire to separate APTA into two (2) separate bargaining units.

18 7. Whether negotiations began on May 30, 2023.

19 **May 30, 2023, Negotiation Session**

20 8. Whether negotiations related to the CBA began on May 30, 2023.

21 9. Whether Anthony L. Hall, Esq. appeared on behalf of WCSD as its Chief Negotiator.

22 10. Whether Ron Dreher, Esq. appeared on behalf of APTA as its Chief Negotiator.

23 11. Whether lead negotiator for APTA, Ron Dreher, is also the lead negotiator for
24 Washoe School Principals’ Association (“WSPA”).

25 12. Whether at the onset of the May 30, 2023, negotiation session, WCSD presented a
26 red-lined proposal of the CBA to APTA and pointed out to the APTA team that many of the proposed
27 revisions were simply to clean-up the Contract, streamline its provisions, and clarify inconsistencies.

28 In addition, other proposals dealt with substantial issues of concern for WCSD and subjects of

1 mandatory bargaining.

2 13. Whether WCSD proposed a revision to Article 1 (Definitions) to change “unit
3 member,” “member,” “administrator,” “bargaining unit members,” “administrative persons,” etc. to
4 simply “employee” in order to create consistency throughout the Contract since the CBA used
5 multiple variations, inconsistently, throughout the CBA.

6 14. Whether, of the twenty-six (26) Articles that appear in the main body of the CBA,
7 WCSD proposed revisions to nineteen (19) mandatory bargaining issues, including portions of the
8 following Articles for consideration by APTA:

- 9 a. Article 1.5 (Definitions) which pertains to NRS 288.150(2)(j) and NRS
10 288.150(2)(k) regarding a recognition clause and the method used to classify
11 employees in the bargaining unit, respectively.
- 12 b. Article 1.9 (Definitions) which pertains to NRS 288.150(2)(h) regarding total
13 number of days’ work required of an employee in a work year.
- 14 c. Article 1.10 (Definitions) which pertains to NRS 288.150(2)(b) and NRS
15 288.150(2)(e) regarding definitions related to sick leave and other paid or nonpaid
16 leaves of absence, respectively.
- 17 d. Article 2.1 (Recognition) which pertains to NRS 288.150(2)(j) and NRS
18 288.150(2)(k) regarding a recognition clause and the method used to classify
19 employees in the bargaining unit, respectively.
- 20 e. Article 3.1 (Fair Practices) which pertains to NRS 288.150(2)(m) protection of
21 employees in the bargaining unit from discrimination because of participation in
22 recognized employee organizations consistent with the provisions of the chapter.
- 23 f. Article 4.1 (No Strikes/Work Stoppages) which pertains to NRS 288.150(2)(n)
24 regarding non-strike provisions consistent with the provisions of the chapter.
- 25 g. Article 8.1 (Dues Deduction) which pertains to NRS 288.150(2)(l) regarding
26 deduction of dues for the recognized employee organization.
- 27 h. Article 9.1 (Temporary Leaves of Absence) which pertains to NRS
28 288.150(2)(b), NRS 288.150(2)(c), NRS 288.150(2)(d), and NRS 288.150(2)(e)

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- regarding sick leave, vacation leave, holidays, and other paid or nonpaid leaves of absence, respectively.
- i. Article 10 (Extended Leaves of Absence) which pertains to NRS 288.150(2)(b), NRS 288.150(2)(c), NRS 288.150(2)(d), and NRS 288.150(2)(e) regarding sick leave, vacation leave, holidays, and other paid or nonpaid leaves of absence, respectively.
 - j. Article 12 (Sick Leave, Disability Benefits, and Sick Leave Bank) which pertains to NRS 288.150(2)(b), NRS 288.150(2)(c), NRS 288.150(2)(d), and NRS 288.150(2)(e) regarding sick leave, vacation leave, holidays, and other paid or nonpaid leaves of absence, respectively.
 - k. Article 15 (Required Days) which pertains to NRS 288.150(2)(h) regarding total number of days' work required of an employee in a work year.
 - l. Article 17 (Probationary Period, Dismissal and Disciplinary Procedures) which pertains to NRS 288.150(2)(i) regarding discharge and disciplinary procedures.
 - m. Article 18 (Reduction in Force) which pertains to NRS 288.150(2)(v) regarding procedures for reduction in workforce consistent with the provisions of the chapter.
 - n. Article 21 (Grievance Procedures) which pertains to NRS 288.150(2)(o) regarding grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining units.
 - o. Article 22 (Administrator Protection) which pertains to NRS 288.150(2)(r) regarding safety.
 - p. Article 23 (Professional Compensation) which pertains to NRS 288.150(2)(a) regarding salary or wage rates or other forms of direct monetary compensation.
 - q. Article 24 (Administrative Reclassification) which pertains to NRS 288.150(2)(j) and NRS 288.150(2)(k) regarding a recognition clause and the method used to classify employees in the bargaining unit, respectively.
 - r. Article 25 (Term of Agreement) which pertains to NRS 288.150(2)(q) regarding

1 duration of collective bargaining units.

2 s. Article 26 (Psychologist Materials) which pertains to NRS 288.150(2)(t)
3 regarding materials and supplies for classrooms.

4 15. Whether, in sum, WCSD's proposals undoubtedly concerned subjects of mandatory
5 bargaining and many of the proposed changes were mutually beneficial.

6 16. Whether, during the first negotiation session, Counsel for WCSD explained that
7 WCSD would like to discuss some of the big picture issues, give APTA a change to review the
8 proposals during a caucus, then reconvene to discuss the proposals in detail, and that WCSD would
9 be happy to explain the reasoning behind each of its proposals.

10 17. Whether, among the initial issues raised by WCSD related to changes necessary to
11 make to the Sick Bank provisions of Article 12. WCSD explained that in a recent third-party audit
12 of WCSD, the auditors took WCSD to task because the sick bank provisions were structured in a
13 way that allowed the union to grant more leave than was available in the sick leave bank. WCSD
14 identified that there are several possible solutions to fix this deficiency and sought APTA's input
15 into which solution it favored or if it had ideas of its own to address this issue.

16 18. Whether WCSD also raised the concerns and problems that it has encountered with
17 regard to the current overlapping and onerous grievance, problem solving and advisory council
18 provisions in the CBA (Articles 13, 19 and 21).

19 19. Whether APTA requested a caucus at 10:50 am and returned at 11:22 am.

20 20. Whether APTA presented proposals regarding Articles 15 (required workdays), 23
21 (professional compensation) and 25 (terms of agreement).

22 21. Whether WCSD reviewed APTA's proposals, asked questions and, after a caucus
23 gave initial responses to the proposals.

24 22. Whether, while APTA did not refuse (at this point) to answer questions about its
25 proposals, the answers foreshadowed APTA's bad faith approach to negotiations. When APTA was
26 asked about costs for its proposals, APTA responded that it had not costed out any of its proposals
27 reflecting bargaining in bad faith. When APTA was asked about its proposal to triple the cap on
28 vacation accrual from 50 days to 150 days, APTA responded that they "just liked the number."

1 When pressed about this being unreasonable, APTA defended by falsely claiming that Washoe
2 County caps vacation day accrual at 240 days. When pressed that the correct amount was maybe 240
3 hours, not days, APTA doubled down on the lie. This was a mystifying (but telling) tactic, since the
4 truth was easily verifiable.

5 23. Whether APTA indicated they need time to review and discuss WCSD’s proposal.
6 Thus, while there was some very limited discussion of some of WCSD’s proposals, the vast bulk of
7 WCSD’s proposals were not discussed and APTA provided no response.

8 **Events that Transpired During the Break Between**
9 **May 30, 2023, and August 15, 2023, Negotiation Sessions**

10 24. Whether on July 10, 2023, counsel for APTA filed a First Amended Complaint in
11 Case No. 2023-015.

12 25. Whether on July 28, 2023, counsel for WCSD filed the Motion to Dismiss and, in the
13 Alternative Motion to Stay in Case No. 2023-015.

14 26. Whether counsel for APTA also serves as the chief negotiator for WSPA.

15 27. Whether on August 11, 2023, in the WSPA negotiations and despite the mandatory
16 nature of most of the proposed revisions, Ron Dreher indicated that, “[he] was not even willing to
17 consider changes” other than the title change for Dr. Mason from Chief Human Resources Officer
18 to Chief Talent Officer.

19 28. Whether WCSD also warned counsel for WSPA (Dreher) that his behavior was in
20 bad faith and was a failure to bargain. WCSD offered counsel for WSPA a second chance to
21 negotiate the mandatory proposals. Counsel for WSPA’s response was, “we refuse and reject.”
22 WCSD asked if counsel for WSPA would at least entertain WCSD’s reasons and WSPA again
23 refused. WCSD then turned to another article and attempted to begin to explain the basis for WCSD’s
24 requested changes. Again, WSPA cut him off by speaking over him and stated loudly that they
25 would not discuss it. Counsel for WSPA repeatedly reiterated that the only issues he was willing to
26 discuss were “their issues,” and Dreher indicated that WSPA would not consider WCSD’s reasoning
27 behind its proposals or provide reasons for rejecting WCSD’s proposals.

28 29. Whether WCSD informed counsel for WSPA that he was acting in bad faith and

1 again offered him a chance to negotiate. Counsel for WSPA then abruptly ended the August 11,
2 2023, WSPA negotiation session at about 11:00 a.m., despite the fact that the parties had reserved
3 an entire day for negotiations. The WSPA team then dramatically staged a walk out of the
4 negotiations room.

5 **August 15, 2023, Negotiation Session**

6 30. Whether negotiations between WCSD and APTA resumed on August 15, 2023, at
7 10:10 am.

8 31. Whether at the onset of the August 15, 2023, negotiation session, WCSD inquired as
9 to whether counsel for APTA had any questions or responses related to WCSD's proposals from the
10 May 30, 2023, negotiation session and WCSD offered to open discussions.

11 32. Whether counsel for APTA, who is also counsel for WSPA adopted the same
12 unfortunate and bad faith tactics for the APTA negotiation that he perpetrated during the WSPA
13 negotiation four (4) days earlier. APTA immediately responded that they would not be negotiating
14 a "new Contract."

15 33. Whether WCSD explained that many of the proposals from WCSD were mandatory
16 bargaining issues set forth in NRS 288.150 and APTA was required to bargain over such topics.

17 34. Whether despite the mandatory nature of these proposed revisions, counsel for APTA
18 once again refused and declined to provide a reason for such refusal, except they were not going to
19 negotiate a whole new contract.

20 35. Whether thus, only 7 minutes into the negotiations, APTA had refused to negotiate
21 mandatory terms. The parties broke for a 56-minute caucus, until 11:21 a.m.

22 36. Whether WCSD then formally resubmitted its proposals to APTA and asked them to
23 consider the proposals and ask any questions they may have. At this point, without even considering
24 or reviewing the proposal, APTA stated that "we rejected it and don't need to explain." When APTA
25 was asked if they would listen to WCSD's reasoning behind its proposals, APTA again refused,
26 stating that they have rejected them and there is no reason to even listen to WCSD's reasoning and
27 APTA refused to provide any reasons for rejecting WCSD's proposals.

28 37. Whether WCSD next submitted a financial proposal to APTA along with supporting

1 documentation for its financial offer. APTA requested a caucus at 11:34 and bargaining resumed at
2 12:21 p.m.

3 38. Whether counsel for APTA then provided several new proposals to WCSD. WCSD
4 asked a few initial questions and listened to the reasons for the proposals from APTA.

5 39. Whether the parties broke for a caucus at 12:30 p.m. WCSD began the process of
6 reviewing, discussing, and gathering data related to the APTA proposals.

7 40. Whether APTA sought to revise Article 21 (Grievance Procedures) to remove the
8 selection of a mutually acceptable mediator in accordance with the CBA.

9 41. Whether, during its caucus, WCSD investigated the history of using such a mutually
10 acceptable mediator, which was not flatly rejected before the involvement of APTA Chief
11 Negotiator, Ronald J. Dreher, Esq.

12 42. Whether APTA's proposal also sought to revise the grievance language in Article 21.
13 Specifically, the current CBA has limits on the financial impact that a grievance can have on WCSD.
14 Counsel for APTA's justification for such a change was that he did not understand the provision and
15 that the tax rate had been eliminated in other CBAs.

16 43. Whether, based upon the review, discussions, and investigation performed by WCSD
17 during its caucus, WCSD was able to determine that this representation was inaccurate.

18 44. Whether APTA sought to increase the Professional Development Budget in Article
19 23 (Professional Compensation). APTA insisted that WCSD was in breach of the CBA because it
20 did not currently provide for a Professional Development Budget for APTA.

21 45. Whether after caucusing and reviewing APTA's claim and the related information,
22 WCSD once again determined APTA's representation was false. Instead, on July 1, 2022, APTA
23 agreed to an .08% cost-of-living adjustment in exchange for the elimination of the Professional
24 Development Budget outlined in Article 23 (Professional Compensation). Mr. Dreher was chief
25 negotiator for APTA during those negotiations and, on information and belief, knew or should have
26 known that his representations were false.

27 46. Whether APTA had also presented a verbal financial proposal that required additional
28 consideration by WCSD.

1 47. Whether, during the caucus, one of the WCSD team members left the caucus room
2 to use the facilities. During this break he was accosted by APTA’s Chief Negotiator Ronald J.
3 Dreher, Esq. and informed that if WCSD did not complete its caucus and return to the negotiation
4 room within ten minutes, then the APTA team would cease negotiations and leave.

5 48. Whether the parties at any time agreed to a time limit on the caucus session, during
6 which WCSD was considering APTA’s new proposals.

7 49. Whether APTA’s Chief Negotiator failed to communicate his intent to WCSD’s
8 Chief Negotiator, only expressing his demand to a WCSD team member.

9 50. Whether WCSD then continued its caucus concerning APTA’s proposals, including
10 the verbal financial proposal, for approximately fifteen minutes.

11 51. Whether when the WCSD team returned to the negotiation room, APTA was no
12 longer present and had walked out of the negotiation.

13 52. Whether the August 15, 2023, negotiation session was abruptly ended by APTA
14 without cause or justification.

15 **Events that Transpired Between the August 15, 2023, and the September 15, 2023,**
16 **Negotiation Sessions**

17 53. Whether on August 17, 2023, Dr. Enfield circulated an informational email along
18 with a Summary Report for Compensation Project to WCSD employees.

19 54. Whether in response to Dr. Enfield’s correspondence, APTA issued a response from
20 Dr. Shannon Colon inciting members that their healthcare would be taken away which was false.

21 55. Whether APTA also submitted a Request for Information dated August 17, 2023,
22 requesting “what email addresses and which Washoe County School District personnel the email
23 sent by Superintendent Susan Enfield on August 16, 2023, at 4:50:02 PM titled ‘information on
24 recent communications regarding negotiations,’ was sent to” to which WCSD issued responsive
25 documents on September 8, 2023.

26 **September 15, 2023, Negotiation Session**

27 56. Whether negotiations between WCSD and APTA resumed on September 15, 2023.

28 57. Whether the negotiation session was scheduled to take place from 10:00 a.m.-5:00

1 p.m.

2 58. Whether WCS D informed APTA four (4) times that it intended to present a financial
3 proposal after the noon hour.

4 59. Whether at approximately 11:50 a.m., APTA declared impasse under NRS
5 288.217(2). WCS D explained to APTA that the declaration was improper for numerous reasons
6 (including that APTA had no offers on the table upon which to declare impasse, that the minimum
7 bargaining sessions had not occurred, that the declaration during the 4th meeting was premature, and
8 that the prior meetings should not be counted since APTA had not engaged in them for the time
9 agreed upon nor had it done so in good faith), that impasse had not in fact been reached since both
10 parties had verbally indicated further willingness to consider some further compromise, that WCS D
11 believed that APTA had engaged in surface and bad faith bargaining, and WCS D requested that they
12 continue negotiations for the day (as agreed) and to accept and consider WCS D's latest proposal.

13 60. Whether WCS D's almost completed offer, which APTA refused to accept, made
14 further compromises.

15 **II. ISSUES OF LAW TO BE DETERMINED BY THE BOARD**

16 61. Whether APTA failed to bargain in good faith in violation of NRS 288.270.

17 62. Whether APTA engaged in surface bargaining.

18 63. Whether APTA was obligated to bargain over mandatory issues of bargaining
19 contained within NRS 288.150.

20 64. Whether APTA's proposals at the bargaining table indicate that they failed to bargain
21 in good faith in violation of NRS 288.270.

22 65. Whether APTA's actions demonstrate a lack of an intent to reach an agreement.

23 66. Whether APTA improperly declared impasse pursuant to NRS 288.217.

24 67. Whether APTA and WCS D engaged in three (3) sessions of negotiation.

25 68. Whether APTA and WCS D were truly at impasse when APTA declared impasse
26 where WCS D still had proposals to present.

27 69. Whether in the context of NRS 288.217(2) "impasse" has a specific meaning as
28 explained by the NLRB.

1 70. Whether APTA’s conduct in this case is inconsistent with the purposes of NRS
2 Chapter 288.

3 71. Whether APTA is permitted to declare impasse pursuant to NRS 288.217.

4 72. Whether APTA’s membership all falls within the categories of teachers or education
5 support personnel as defined by NRS 288.217(12).

6 73. Whether APTA’s membership are all considered “classified employees” as defined
7 in NRS 288.217(12)(a).

8 74. Whether WCSD is entitled to its requested relief of: (1) an expedited ruling on its
9 Complaint or a stay of the arbitration; (2) an order requiring the Parties to return to the bargaining
10 table for a minimum of three (3) eight (8) hour negotiation sessions.

11 75. Whether WCSD promptly initiated and scheduled bargaining.

12 76. Whether WCSD was obligated to agree to or negotiate ground rules.

13 77. Whether WCSD is required to communicate all details regarding logistics and
14 scheduling of all meetings with the entire APTA negotiation team or whether NRS 288.150 is limited
15 to requiring WCSD to negotiate with the entire APTA negotiation team regarding mandatory
16 subjects of bargaining.

17 78. Whether WCSD engaged in discrimination in violation of NRS 288.270(1)(f) or NRS
18 288.270(2)(c).

19 79. Whether WCSD’s responses to request for information were proper.

20 80. Whether WCSD has engaged in direct dealing.

21 81. Whether APTA’s request for an arbitration panel was premature and improper.

22 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

23 **A. APTA Failed to Bargain in Good Faith and Engaged in Surface Level**
24 **Bargaining**

25 NRS 288.270(2)(b) states, “[i]t is a prohibited practice for a local government employee or
26 for an employee organization or its designated agent willfully to [...] [r]efuse to bargain collectively
27 in good faith with the local government employer, if it is an exclusive representative, as required in
28

1 NRS 288.150. Bargaining collectively includes the entire bargaining process, including mediation
2 and fact-finding, provided for in this chapter.”

3 This Board has recognized “[t]he duty to bargain in good faith does not require that the
4 parties actually reach an agreement but does require that the parties approach negotiations **with a**
5 **sincere effort** to do so.” *Nevada Classified School Employees Association Chapter 5, Nevada Aft,*
6 *Complainant Churchill County School District, Respondent*, 2020 WL 12674179, at *1 (emphasis
7 added) (citing *Ed. Support Employees Ass'n v. Clark County Sch. Dist.*, Case No. A1-046113, Item
8 No. 809, 4 (2015), citing *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A,
9 Case No. A1-045472 (1991)). “The Act imposes a reciprocal duty on employers and bargaining
10 agents to negotiate in good faith concerning the mandatory subjects of bargaining listed in NRS
11 288.150.” *Ed. Support Employees Ass'n v. Clark County Sch. Dist.*, Case No. A1-046113, Item No.
12 809, 4 (2015) (citing *Las Vegas Peace Officers Association, Complainants City of Las Vegas,*
13 *Respondent*, 2017 WL 1149104, at *3).

14 In determining whether a party is engaging in hard bargaining or surface bargaining
15 unlawfully frustrating the possibility of arriving at an agreement, the NLRB¹ looks to the following
16 factors: “delaying tactics, the nature of the bargaining demands, unilateral changes in mandatory
17 subjects of bargaining, and efforts to bypass the union.” *Nexstar Broad., Inc. d/b/a Koin-TV &*
18 *Nat'l Ass'n of Broad. Emps. & Technicians, the Broad. & Cable Television Workers Sector of the*
19 *Commc'ns Workers of Am., Loc. 51, Afl-Cio*, 371 NLRB No. 118 (July 27, 2022) (citing *Atlanta*
20 *Hilton & Tower*, 271 NLRB 1600, 1603 (1984)). The NLRB has observed that “a party's proposals
21 at the bargaining table alone, can evidence a failure to bargain in good faith.” *Auburn Memorial*
22
23
24

25 ¹ This Board has routinely looked to NLRB precedent as persuasive on interpreting NRS 288. *See*
26 *Douglas County Professional Education Association and Douglas County Support Staff*
27 *Organization, Complainant Douglas County School District, Respondents*, 2012 WL 1564040, at *2
28 (citing *Rosequist v. International Ass'n of Firefighters Local 1908*, 118 Nev. 444, 449, 49 P.3d 651,
654 (2002)); *see also International Association of Fire Fighters, Local 5046, Complainant Elko*
County Fire Protection District, Respondent, 2020 WL 12602576, at *11.

1 *Medical Services*, 51 NLRB AMR 14, 03-CA-280714 (2022) (citing *A-1 King Size Sandwiches,*
2 *Inc.*, 265 NLRB 850, 858—60 (1982)).

3 The NLRB has also reasoned that a party’s “continued refusal to engage and make counter
4 proposals makes clear it was guided by bad faith in an effort to frustrate the bargaining process. . .
5 .” *Grill Concepts Servs., Inc. d/b/a the Daily Grill Respondent & Unite Here Loc. 11 Charging*
6 *Party*, No. 31-CA-276950, 2022 WL 797775 (Mar. 15, 2022). This Board has recognized that
7 where a Union’s actions demonstrate a lack of an intent to reach an agreement, the Board will find
8 a violation of NRS 288 and return the parties to the negotiating table with an instruction to bring a
9 sincere effort to reach agreement. *City of Reno, Complainant International Association of*
10 *Firefighters, Local 731, Respondent*, 1991 WL 11746841, at *6.

11 The facts of this case, when viewed in their totality, demonstrate that APTA engaged in bad
12 faith negotiating and/or surface bargaining. When WCSD had proposed revisions to the CBA, the
13 vast majority of which were regarding mandatory topics of bargaining, APTA refused to engage
14 with the WCSD on those changes. Tellingly, after only three (3) partial negotiation meetings,
15 APTA only agreed to two (2) minor title/name changes. As explained above, APTA demonstrated
16 a repeated pattern of cutting negotiations short, and refusing to schedule negotiation sessions for an
17 entire day. This was a transparent effort to skip through the negotiation process and reach
18 arbitration as quickly as possible.

19 At absolute minimum, this Board should find APTA has engaged in surface bargaining.
20 APTA has failed to substantively engage with WCSD regarding a majority of the proposals WCSD
21 has made in these negotiations. The demands being made by APTA have far exceeded those of
22 comparable bargaining units. APTA has wholesale rejected negotiations surrounding at least
23 twenty (20) topics of mandatory bargaining. APTA has made every effort to dispense with the
24 negotiations and proceed to arbitration as expeditiously as possible. In sum, it is beyond dispute
25 that the resolution of these proceedings should require APTA to return to the negotiating table and
26 negotiate with WCSD in good faith, for no fewer than three (3) additional eight (8) hour negotiation
27 sessions.
28

1 **B. APTA Improperly Declared Impasse**

2 APTA prematurely declared impasse pursuant to NRS 288.217. Upon a review of the facts
3 above, the Board cannot find that the Parties conducted “at least four sessions of negotiation” as
4 required by NRS 288.217(1).

5 The negotiation meetings APTA and WCSD have conducted should not even count towards
6 the four (4) negotiation sessions required by NRS 288.217. The May 30, 2023, negotiation meeting
7 lasted for less than three (3) hours. The August 15, 2023, negotiation meeting was abruptly halted
8 after WCSD did not return from caucus fast enough for APTA’s liking, despite the fact that the
9 parties had not agreed to any pre-established timeline for that caucus or caucuses more generally.
10 The September 15, 2023, negotiation session was, again, cut short by APTA after only two (2)
11 hours of bargaining. This was the meeting at which APTA prematurely and improperly declared
12 impasse. None of these negotiation meetings should count towards the requisite negotiation
13 sessions because APTA was not participating in good faith and repeatedly cut the negotiation
14 meetings off early and arbitrarily. It is difficult, if not impossible, to refer to a meeting as a
15 “session[] of negotiation” if APTA fails to substantively engage in the discussions, respond to
16 WCSD’s proposals, or otherwise seek to reach an agreement. During the August 15, 2023,
17 negotiation session, APTA only wanted to discuss its own proposals, not WCSD’s. This Board
18 should not consider a meeting where that is the sole conduct to be sufficient to justify a negotiation
19 session. Lastly, only one (1) of the negotiation sessions lasted longer than half of a day, despite
20 both Parties recognizing they were scheduled for full days. Accordingly, when viewed in the
21 totality, it cannot be said that APTA has engaged in the requisite four (4) sessions of negotiation.

22 Even if this Board could determine that the requisite four (4) sessions of negotiation had
23 occurred, the Parties had not reached “impasse.” NRS 288.217(2) cannot be fairly read to presume
24 that if the parties have engaged in three (3) sessions of negotiation, that one (1) party is permitted
25 to unilaterally declare impasse, despite the other party’s continuing good faith efforts to negotiate
26 an agreement and make additional proposals, some of which were compromises that conceded
27 ground based on prior positions. The Nevada Supreme Court instructs that “[t]his court has a duty
28 to construe statutes as a whole, so that all provisions are considered together . . . the court will not

1 render any part of the statute meaningless and will not read the statute's language so as to produce
2 absurd or unreasonable results.” *Orion Portfolio Servs. 2 LLC v. Cnty. of Clark ex rel. Univ. Med.*
3 *Ctr. of S. Nevada*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010) (citations omitted).

4 Indeed, NRS 288.217(2)’s use of the word “impasse” was clearly deliberate as that word
5 has a specific meaning in union negotiations. In short, “the Board defined an impasse as a situation
6 where ‘good-faith negotiations have exhausted the prospects of concluding an agreement.’” *Taft*
7 *Broadcasting*, 163 NLRB 475, 478 (1967), *enfd. sub nom. Television Artists, AFTRA v. NLRB*, 395
8 F.2d 622 (D.C. Cir. 1968). The NLRB has explained “[a] genuine impasse in negotiations is
9 synonymous with a deadlock: the parties have discussed a subject or subjects in good faith, and,
10 despite their best efforts to achieve agreement with respect to such, neither party is willing to move
11 from its respective position.” *Hi-Way Bill-boards*, 206 NLRB 22, 23 (1973). Here, at the
12 conclusion of the third meeting, APTA refused to permit WCSD to finish presenting their proposal
13 and staged a walk-out of the negotiations. WCSD continues to have proposals to submit to APTA
14 and wants to discuss the merits of these proposals. The Board should not permit APTA to declare
15 impasse and submit the disputes to an arbitrator under these circumstances. Permitting this conduct
16 is counter to the purposes of NRS 288 and would disincentivize parties from engaging in good faith
17 substantive negotiations. Such a construction would ignore the usage of “impasse” in the statute
18 and effectively render it meaningless. It would be an absurd and unreasonable result indeed if, after
19 three (3) negotiation sessions, the negotiations were proceeding smoothly and the parties were
20 working their way towards a negotiated agreement, if one (1) party could unilaterally declare
21 impasse and halt the negotiations. This is an implausible interpretation of NRS 288.217 and this
22 Board should reject it and require APTA to return to the negotiation table.

23 Furthermore, APTA should not be permitted to declare impasse under NRS 288.217 because
24 by its plain terms, it is inapplicable to APTA’s membership. It is undisputed that APTA declared
25 impasse under NRS 288.217(2). Notably, NRS 288.217(1) clarifies that NRS 288.217 only governs
26 “negotiations between school districts and employee organizations representing **teachers** and
27 **educational support personnel**.” APTA’s membership does not qualify as “educational support
28 personnel” pursuant to NRS 288.217(12)(a) because the statute itself defines that group of persons

1 as “all **classified employees**. . . .” APTA’s membership are not classified employees pursuant to
2 NRS Chapter 288. Indeed, APTA is aware of this. That’s why it attempts to mislead this Board
3 with the reference to the inapplicable SB 231, which was an appropriations bill. However, SB 231
4 did not amend NRS Chapter 288. Indeed, SB 231 defines “Education support professional” not
5 “education support personnel” as used in NRS Chapter 288. Additionally, there is no plausible
6 reading that through SB 231, an appropriations bill, the Nevada Legislature intended to amend the
7 scope of the provision of what group of employees is permitted to declare impasse pursuant to NRS
8 288.217.

9 Notably, this opinion also ignored that “Nevada follows the maxim ‘expressio unius est
10 exclusio alterius,’ the expression of one thing is the exclusion of another.” *State v. Javier C.*, 128
11 Nev. 536, 541, 289 P.3d 1194, 1197 (2012). In *Javier C.*, the Court reasoned that because juveniles
12 were deemed to be prisoners for purposes of escape statutes, that meant they were not deemed
13 prisoners for other purposes. *Id.* In this context, it is clear that this would be the only place in NRS
14 288 where employees who are not classified employees are considered education support personnel.

15 C. WCSD is Entitled to its Requested Relief

16 WCSD’s issues will go unaddressed in the event this Board does not either: (a) rule on
17 WCSD’s complaint before the arbitration occurs; or (b) stay the arbitration. As explained above,
18 WCSD believes a return to the bargaining table would be beneficial for both parties. This is
19 especially true if the order from this Board is accompanied by an instruction that APTA and its
20 representatives must engage in the continued negotiations in good faith, without surface bargaining,
21 and allow sufficient time for substantive negotiations to take place. As a result, WCSD is looking
22 for a decision from this Board to return the parties to the negotiating table at the conclusion of the
23 hearing. WCSD is expressly requesting the parties return to the negotiating table for no fewer than
24 four (4) additional eight (8) hour negotiation sessions. WCSD recognizes that a decision on the
25 merits of these issues may take more time, however, permitting APTA to proceed to arbitration
26 would frustrate the purposes of NRS 288 and permit each of the issues raised by WCSD to go
27 unaddressed.

1 **IV. ISSUES OF LAW TO BE DECIDED BY THE BOARD REGARDING APTA'S**
2 **COMPLAINT**

3 **A. WCSD Promptly Initiated and Scheduled Bargaining**

4 At no point in time has WCSD unnecessarily delayed either the initiation or the scheduling
5 of any negotiation session. While the CBA would not expire until June 30, 2023, APTA attempted
6 to initiate bargaining regarding this CBA on January 10, 2023. This, despite the fact that APTA
7 sent an MOU to WCSD asking to split the APTA bargaining unit into two (2) separate bargaining
8 units. As it pertains to the scheduling of the first negotiation, as counsel for APTA is aware, the
9 individual who had previously negotiated these agreements on behalf of WCSD had recently retired
10 from WCSD. Accordingly, WCSD had to secure outside counsel to negotiate, not just the APTA
11 CBA, but also the CBAs of three (3) other bargaining units. Understandably this took some time.

12 The thing that makes this bargaining situation unique is that the CBA was set to expire near
13 the same time the Nevada legislature was expected to release its annual budget. Without those
14 figures, WCSD lacked the necessary information to determine its budget. Without its budget,
15 WCSD would have had to go off of prior year's budgets in making offers, not just to APTA but
16 also to the other three (3) bargaining units. This would have been disadvantageous to APTA
17 because those old budgetary numbers did not reflect the increased funding that both Parties
18 anticipated from the Nevada legislature.

19 It has long been established that negotiations may be cancelled for good cause. *City of Reno*
20 *v. International Association of Firefighters, Local 731*, ERMB Item No. 253-A, Case No. A1-
21 045472 (February 1991) (citing *W.R. Hall Distributor*, 144 NLRB 1285 (1963)). It should be clear
22 that where APTA was demanding a financial proposal from WCSD, and WCSD had not had
23 adequate time to review the new budget from the Nevada Legislature, canceling the meeting to
24 ensure WCSD had the information necessary to provide APTA with the proposals it was seeking is
25 good cause. This is especially true where, as here, APTA had unilaterally cancelled a negotiation
26 session in May, which WCSD accommodated by rescheduling to May 30, 2023. Additionally, in
27 the event the Board find that WCSD's cancellation of a single meeting was improper, it should
28 similarly find that APTA's unilateral canceling of a meeting is also improper.

1 **B. There is no Obligation to Agree to or Negotiate Ground Rules**

2 APTA spends a significant amount of its Complaint discussing the WCSD and APTA’s
3 inability to agree on ground rules. However, ground rules are not mandatory subjects of bargaining
4 pursuant to NRS 288.150. *City of Reno v. International Association of Firefighters, Local 731,*
5 *ERMB Item No. 253-A, Case No. A1-045472* (February 1991) (holding that insistence on ground
6 rules and the use of a court reporter during negotiations was not conducive to good faith bargaining).
7 Indeed, “because negotiation ground rules do not relate to wages, hours or other terms and conditions
8 of employment, they are not a mandatory subject of bargaining.” *Ups Supply Chain Sols., Inc. &*
9 *Union De Tronquistas De Pr, Loc. 901, Int’l Bhd. of Teamsters*, 366 NLRB No. 111 (June 18, 2018)
10 (citing *Sheet Metal Workers’ Int’l Ass’n*, 319 NLRB 668, 670 (1995)) *see also Vanguard Fire &*
11 *Supply Co., Inc.*, 345 NLRB 1016, 1043 (2005) (explaining that “[n]either an employer nor a union
12 can wiggle out of this duty [to bargain] by insisting on preconditions”), *enfd.* 468 F.3d 952 (6th Cir.
13 2006).

14 As this Board is well aware, there is no requirement that the Parties agree to ground rules.
15 APTA never objected to the lack of ground rules. While it may have frustrated APTA’s
16 representative not to have ground rules in place, there is nothing requiring WCSD to bargain over
17 ground rules. Indeed, there is similarly a prohibition on APTA refusing to continue with the
18 negotiations until the ground rules were agreed upon. Accordingly, there can be no inference of bad
19 faith or improper negotiation tactics drawn from WCSD’s refusal to agree on ground rules. If
20 anything is to be drawn from WCSD’s stance regarding ground rules and its intent to plunge forward
21 with the substance, it is that WCSD was and is sincerely committed to reaching an agreement with
22 APTA.

23 **C. WCSD is not Required to Communicate all Details with the Entire APTA Team**

24 APTA’s position regarding the failure and refusal to communicate with all of APTA’s
25 representatives regarding logistical details is based on a flawed understanding of the requirements
26 of NRS 288.150 and NRS 288.270. NRS 288.150 is explicit that it requires WCSD to “**negotiate**
27 **in good faith . . . concerning the mandatory subjects of bargaining . . .** with the designated
28 representatives of the recognized employee organization. . . .” *See* NRS 288.150(1)(emphasis

1 added). From this language it is clear that the only obligation imposed by NRS 288.150(1) on
2 WCSD is that it must negotiate with APTA's negotiation team regarding topics of mandatory
3 subjects of bargaining. This has happened during every negotiation session that has been held
4 between APTA and WCSD. Discussion of the logistics surrounding the next meeting are not
5 negotiation of mandatory topics of bargaining. Indeed, APTA is attempting to torture that language
6 and stretch it to include a requirement that WCSD communicates with every member of APTA
7 regarding the logistical details of scheduling meetings and availability. As anyone experienced in
8 negotiations is aware, these matters are often handled through the chief negotiators and it is not
9 common for every member of both negotiating teams to be involved in every communication back
10 and forth with the other side. NRS 288.150 imposes no such requirement. The only applicable
11 provision of NRS 288.270 is NRS 288.270(1)(e), which just refers back to NRS 288.150, and fails
12 for the same reasons as explained above. Accordingly, the conduct complained of by APTA is
13 plainly not a violation of NRS 288.150 or NRS 288.270, and this Board should reject APTA's
14 Complaint on this basis.

15 **D. WCSD Did Not Engage in Discrimination Against the APTA Team**

16 Counsel for APTA has misrepresented WCSD's counsel's response to the request for an
17 accommodation to the Board. Counsel for WCSD did not outright deny the request as represented
18 by counsel for APTA, but instead responded that the APTA team was welcome to bring any items
19 needed to accommodate them and that they could take breaks at any time to accommodate the
20 physical or mental state of any member of the team. Even if the ADA did apply, this is above and
21 beyond what WCSD is required to do under the ADA.

22 By way of background, Title I of the ADA applies only to employees and applicants within
23 the course and scope of employment, while Title III applies only to places of public accommodation.
24 Neither of these titles apply to the APTA representative. The APTA representative was not acting
25 within the course and scope of her employment because she was acting in her role as a bargaining
26 unit representative and not performing any of her job duties as an employee of WCSD. The place
27 of public accommodation section of the ADA does not apply because it is only applicable to public
28

1 places and the private caucus room provided by WCSD to APTA was a private space made available
2 only for negotiations.

3 NRS 288 is silent as to any requirement to provide a reasonable accommodation to disabled
4 employees in conjunction with their participation in negotiation sessions. However, NRS
5 288.270(1)(f) and NRS 288.270(2)(c) do prohibit employers from willfully discriminating because
6 of “physical or visual handicap. . . .”

7 APTA has failed to allege any act of discrimination was committed by WCSD in
8 conjunction with these negotiations. No adverse action has been taken against any member of
9 APTA’s team because of their disability. Accordingly, this argument is nonsensical. Instead, what
10 APTA’s representative appears to be doing is trying to read into NRS 288.270 a requirement that
11 WCSD must accommodate any “physical or visual handicap. . . .” This is plainly not within the
12 text of NRS 288.270. This is also inconsistent with the majority of disability case law that holds
13 failure to accommodate is a separate and distinct claim from disparate treatment or disability
14 discrimination. *See Dunlap v. Liberty Nat. Prod., Inc.*, 878 F.3d 794, 798 (9th Cir. 2017)(referring
15 to the two claims as analytically distinct); *see also Green v. National Steel Corp.*, 197 F.3d 894,
16 898 (7th Cir. 1999).

17 Moreover, to the extent APTA is no attempting to claim an ADA violation on behalf of one
18 of its members, it is beyond this Board’s jurisdiction to consider such a challenge. The EEOC and
19 NERC have exclusive jurisdiction with regard to allegations of violations of the ADA and NRS
20 613. Furthermore, APTA and its representative failed to exhaust their administrative remedies as
21 required under the statute. In addition, because all future negotiations will be held in a neutral
22 location, there is no need to address this complaint further.

23 **E. WCSD’s Responses to Requests for Information Were Proper**

24 “In order to resolve a dispute over whether certain information must be provided, the Board
25 will balance the needs of the party requesting the information against the interests of the party
26 declining to provide the information.” *Douglas County Professional Education Association and*
27 *Douglas County Support Staff Organization, Complainant Douglas County School District,*
28

1 *Respondents*, 2012 WL 1564040, at *3. Neither in its Complaint, nor in its communications with
2 WCSD has APTA been willing to explain the relevancy for any of the requests that WCSD has
3 objected to. Indeed, instead of substantively engaging in discussions regarding why any of the
4 requested information is relevant to these negotiations, or a mandatory topic of bargaining, APTA
5 has repeatedly responded by citing more inapplicable cases and ignoring the authority provided by
6 WCSD. When the information is directly relevant to the bargaining unit and a mandatory topic of
7 bargaining, WCSD has responded appropriately. However, APTA is under the misconception that
8 if it issues an RFI, it is WCSD's burden to demonstrate why it does not have to comply with such
9 a request. However, this is not the case.

10 “Requests for information relating to persons **outside the bargaining unit** require a special
11 demonstration of relevance.” *In Re Teamsters Loc. Union No. 122, Int'l Bhd. of Teamsters*, 334
12 NLRB 1190, 1223 (2001) (emphasis added). “When requested information involves employees
13 outside of the bargaining unit, it is the union's burden to demonstrate relevance.” *Wilkes-Barre*
14 *Hosp. Co. LLC d/b/a Wilkes-Barre Gen. Hosp. & Wyoming Valley Nurses Ass'n/pennsylvania Ass'n*
15 *of Staff Nurses & Allied Pros.*, 371 NLRB No. 55 (Feb. 1, 2022) (citing *United States Testing*, 324
16 NLRB 854, 859 (1997), *enfd.* 160 F.3d 14 (D.C. Cir. 1998) and *Reiss Viking*, 312 NLRB 622, 625
17 (1993); *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994)). To be precise, “a union must
18 have ‘a **reasonable belief** supported by **objective evidence** that the requested information is
19 relevant, unless the relevance of the information should have been apparent to the Respondent under
20 the circumstances.’” *Id.* (citing *Public Service Co. of New Mexico*, at 574 and *Disneyland Park*, 350
21 NLRB 1256, 1258 (2007) and *Shoppers Food Warehouse*, 315 NLRB at 259.) (emphasis added).

22 In this case, APTA has issued repeated, in fact numerous, RFIs seeking information
23 regarding individuals, topics, and subjects that relate almost exclusively to persons outside the
24 bargaining unit. WCSD has repeatedly objected and pleaded with APTA to provide an explanation
25 for relevancy regarding any of these requests. True to form, rather than engage with WCSD
26 regarding the merits of these requests, APTA maintains a failure to respond to these requests is
27 unlawful and grounds for a charge. APTA has failed to carry its burden to demonstrate special
28 relevance for any of the requests WCSD has failed to respond to. Indeed, the Board should prevent

1 APTA from providing any post-hoc rationalizations regarding the relevance of these requests now,
2 because WCSD was deprived of that explanation even until the date of this brief. There has not
3 been a single request where APTA articulated a reasonable belief supported by objective evidence
4 that the information requested was relevant. Accordingly, this Board should reject APTA's
5 Complaint on this ground.

6 Similarly, providing a link to the requested information is just as acceptable as providing
7 the information itself. APTA misleads the Board in its Complaint to believe it was never able to
8 access the information contained in the Board link. Instead, counsel for WCSD sent a revised link
9 along with instructions to access the information APTA was seeking. Accordingly, there can be no
10 inference that WCSD improperly responded to that particular request.

11 WCSD notes that in the event this Board refers the Parties back to the negotiating table, if
12 APTA wants to have a discussion regarding the potential relevance of any of the RFI's it has made,
13 or future RFI's it intends to make, WCSD remains open to those discussions and to providing
14 relevant information. However, it is improper for APTA to issue a plethora of RFIs that seek
15 facially irrelevant material and then claim it is bad faith for WCSD to refuse to respond to those
16 RFIs when APTA refuses to explain why any of the information sought is relevant.

17 **F. WCSD has not Engaged in Direct Dealing**

18 It has long been the case that "an employer may convey to its employees its position during
19 negotiations for a CBA." *Nexstar Broad., Inc. d/b/a Koin-TV & Nat'l Ass'n of Broad. Emps. &*
20 *Technicians, the Broad. & Cable Television Workers Sector of the Commc'ns Workers of Am., Loc.*
21 *51, Afl-Cio*, No. 19-CA-248735, 2021 WL 2414030 (June 11, 2021) (citing *United Technologies*
22 *Corp.*, 274 NLRB 1069, 1074 (1985), *enfd. sub nom. NLRB v. Pratt & Whitney*, 789 F.2d 121 (2d
23 Cir. 1986); *see also Long Island College Hospital*, 327 NLRB 944, 947 (1999) (overenthusiastic
24 rhetoric is protected speech unless it is knowingly false or made with reckless disregard for the
25 truth). Indeed, preventing WCSD from engaging in these sorts of communications would be a
26 violation of its constitutional right to free speech. *Ormsby County Teachers Association vs. Carson*
27 *City School District*, Case No. A1-045339 (April 1981).

28

1 Indeed, “not every communication with an employee equates with direct dealing. . . . A
2 complainant can [only] show direct dealing by establishing that (1) the employer communicated
3 with represented employees, (2) that the purpose of the communication was either to establish a
4 change to a mandatory subject of bargaining or to undercut the bargaining agent's role in
5 negotiations; and (3) the communications were made without notice or to the exclusion of the
6 bargaining agent.” *Nicholas Eason, Complainant Clark County, Respondent*, 2014 WL 6693845,
7 at *3 (citing *Las Vegas Firefighters Local 1285 v. City of Las Vegas*, Item No. 786. EMRB Case
8 No. A1-046074 (May 21, 2013)); *see also International Association of Firefighters, Local 1285 v.*
9 *City of Las Vegas, Nevada*, Case No. A1-045529 (June 1993) (approving of communications that
10 were far more problematic than those at issue here).

11 There is no evidence that any communications from WCSD to APTA’s membership were
12 for the purpose of establishing a change to a mandatory subject of bargaining or to undercut the
13 bargaining agent’s role in the negotiations. Instead, as explained above, the substance of the
14 communications was to correct misinformation APTA’s negotiation team was sharing with WCSD
15 employees. In particular, an incorrect statement that APTA’s team members and families would
16 lose access to health care is a statement that has the potential to do irreparable harm to WCSD’s
17 workforce in the event that it went uncorrected. It is worth noting that neither NRS 288.180 nor
18 NRS 288.270 require negotiations to be confidential. In fact, it is widely accepted that absent a
19 ground rule to the contrary, negotiations are not confidential and can be shared with other
20 employees, as outlined above. Furthermore, WCSD has responded to the August 17, 2023, RFI
21 and provided the list of emails requested, making this issue moot. However, this response, and
22 WCSD’s other responses to APTA’s RFI’s should demonstrate that WCSD has and will continue
23 to respond to those requests for information that it understands are relevant and required by NRS
24 288.180.

1 WCSD’s communications² with APTA its employees were purely factual and aimed at
2 providing the employees with information regarding the status of negotiations between APTA and
3 WCSD. It would strain credulity for APTA to maintain that by sharing a publicly available
4 document (WCSD’s Complaint in this case) WCSD had somehow committed an act of direct
5 dealing. WCSD would urge this Board to review the content of WCSD’s communications that
6 APTA is isolating as being so problematic and look to see if any of her statements were not truthful
7 or informational. At no point in time do those emails contain a request for APTA to change
8 anything, especially not anything related to a mandatory topic of bargaining. Furthermore, none of
9 the information was intended to undercut the bargaining agent’s role. It is difficult to imagine how
10 factually explaining the status of the negotiations could ever be found to be done with the purpose
11 of undercutting the bargaining agent’s role. Indeed, such an interpretation would run afoul of the
12 well-established principles that employers are permitted to communicate with their employees
13 regarding their positions during the negotiations of the CBA.

14 **G. APTA’s Request for an Arbitration Panel was Premature and Improper**

15 The September 15, 2023, notice indicated APTA had declared impasse pursuant to NRS
16 288.217. Without waiving any arguments as to the improper nature of that declaration, and even
17 assuming it was permissible, pursuant to NRS 288.217, APTA cannot submit the dispute to
18 arbitration until “after 5 days’ written notice is given to the other party. . . .” After that five-day
19 notice period, the parties proceed to the selection procedures contained within NRS 288.200.
20 Starting from the end of the notice period, the parties have 5 days within which to agree on an
21 impartial fact finder. NRS 288.200(2) (stating “[i] the parties are unable to agree on an impartial
22 fact finder within 5 days. . . .” This means from September 20, 2023, to September 25, 2023, the
23 parties are supposed to work together to collaboratively select an impartial fact finder. At the
24 conclusion of that period, either party may request a list of seven (7) fact finders from either the
25

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27 _____
28 ² Notably, WCSD has requested and APTA has failed to allege any other communications other than
these two (2) emails serve as a basis for APTA’s claim for direct dealing.

1 AAA or the FMCS. Thus, the earliest date a list of arbitrators could have be requested from either
2 the FMCS or the AAA pursuant to NRS 288 was September 25, 2023.

3 Ignoring both of these periods, counsel for APTA appears to have requested a list of
4 arbitrators from FMCS before September 20, 2023, five (5) days before it was permissible to do so
5 under the rule. Accordingly, APTA's request for a panel from FMCS was improper and premature.
6 Even if APTA's request for a panel was proper, the parties would still have had 5 days, or until
7 September 30, 2023, to select the fact finder from the list by relying on the striking method. NRS
8 288.200(2). Indeed, despite counsel for WCSD dealing with a death in the family, he still offered
9 to make himself available on September 28, 2023, well within the statutory deadlines. However,
10 ultimately the Parties were able to find a time for the selection procedures. Accordingly, APTA
11 has violated NRS 288.200(2).

12 **V. RELATED PROCEEDINGS**

13 Based upon APTA's improper declaration of impasse, the above-captioned matter has been
14 scheduled for arbitration before the Federal Mediation Conciliation Service. Accordingly, and
15 consistent with the above request, WCSD is requesting this Board order the parties to return to the
16 negotiating table at the conclusion of the hearing. Alternatively, WCSD is requesting this Court
17 order the parties to vacate the arbitration, until such time as this Board can render a decision on the
18 merits of these issues.

19 **VI. WITNESSES**

20 WCSD anticipates calling the below witnesses during the presentation of its case. A summary
21 of each witnesses' qualifications and expected testimony are listed below.

22 Anthony Spotts

23 Kevin Pick, Esq.

24 Adam Searcy

25 Mark Mathers

26 Dr. Kristina Mason

27 Dr. Susan Enfield

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VII. ESTIMATED TIME NEEDED FOR PRESENTATION OF CASE

WCSD believes it will require seven (7) hours for the presentation of its case, including the cross-examination of APTA’s witnesses.

DATED: December 5, 2023

BY: /s/ Anthony L. Hall, Esq.
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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 **WASHOE COUNTY SCHOOL DISTRICT'S PRE-HEARING STATEMENT** by causing the document to be served certified-mail return receipt requested and email, addressed as follows:

Ronald J. Dreher
P.O. Box 6494
Reno, NV 89513
ron@dreherlaw.net

Attorney for Respondent/Complainant

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 December 5, 2023.

/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
October 19, 2023
State of Nevada
E.M.R.B.
11:24 a.m.

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

11 ASSOCIATION OF PROFESSIONAL-
12 TECHNICAL ADMINISTRATORS,

Case No.: 2023-015

Complainant,

Panel:

13 vs.

14 WASHOE COUNTY SCHOOL
15 DISTRICT,

SECOND AMENDED COMPLAINT

16 Respondent.
17 _____/

18 **SECOND AMENDED COMPLAINT**

19 **COMES NOW**, Complainant, ASSOCIATION OF PROFESSIONAL-TECHNICAL
20 ADMINISTRATORS, (hereinafter "APTA"), by and through its undersigned counsel, and
21 hereby charges Respondent WASHOE COUNTY SCHOOL DISTRICT (hereinafter
22 "District") with practices prohibited by NRS 288.150, NRS 288.180 and NRS 288.270. This
23 Second Amended Complaint is filed in accordance with NRS 288.270, NRS 288.280, NAC
24 288.200 and NAC 288.235. Accordingly, Complainant hereby complains and alleges as
25 follows:
26

27 ///
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1 **I. THE PARTIES**

2 1. ASSOCIATION OF PROFESSIONAL-TECHNICAL ADMINISTRATORS is an
3 employee organization as defined in N.R.S. 288.040, and maintains offices in the City of
4 Reno, with its mailing address as P.O. Box 21388, Reno, Nevada 89515. APTA is the
5 recognized bargaining unit for the school psychologists and technical administrators at the
6 District.
7

8 2. WASHOE COUNTY SCHOOL DISTRICT is a political subdivision of the State of
9 Nevada which oversees and supervises Washoe County School psychologists and technical
10 administrators and is the regulating authority with regard to policy. The District is a local
11 government employer under NRS 288.060. and its mailing address is 425 East Ninth Street,
12 PO Box 30425, Reno Nevada 89520.
13

14 **II. LEGAL AUTHORITY AND JURISDICTION**

15 3. NRS 288.150(1) states in part that “every local government employer shall
16 negotiate in good faith through one or more representatives of its own choosing concerning the
17 mandatory subjects of bargaining set forth in subsection 2 with the designated representatives
18 of the recognized employee organization, if any, for each appropriate bargaining unit among
19 its employees.”
20

21 4. NRS 288.180(3) clarifies that the “parties shall promptly commence negotiations.
22 As the first step, the parties shall discuss the procedures to be followed if they are unable to
23 agree on one or more issues.”
24

25 5. Under NRS 288.270(1)(b), it is a prohibited practice for a local government
26 employer willfully to “[d]ominate, interfere or assist in the formation or administration of any
27 employee organization.”
28

1 6. NRS 288.270(1)(e) holds in part that it is a prohibited practice for a local
2 government employer to “[r]efuse to bargain collectively in good faith with the exclusive
3 representative as required in NRS 288.150.”

4 7. NRS 288.270(1)(f) states in part that it is a prohibited practice for a local
5 government employer to discriminate against a local government employee because of
6 “physical . . . handicap.”
7

8 8. This Board has jurisdiction over this matter as Complainant’s allegations arise
9 under Nevada Revised Statute Chapter 288 - Relations between Government and Public
10 Employees.
11

12 **III. PROHIBITED PRACTICES**

13 9. On January 10, 2023, APTA’s representative pursuant to NRS 288.180(1), notified
14 the District in writing of APTA’s intent to seek a successor agreement and of its desire to
15 promptly commence negotiations.

16 10. On January 10, 2023, District Superintendent Dr. Susan Enfield confirmed receipt
17 of APTA’s notice of intent to negotiate.
18

19 11. On February 24, 2023, after not having received any further communication from
20 the District, APTA contacted the District’s Chief Talent Officer, Dr. Kristina Mason, to
21 determine when negotiations may begin and who would be representing the District.
22

23 12. On March 7, 2023, after not receiving a response, APTA emailed the District and
24 requested dates and times the District was available to commence negotiations.

25 13. On March 8, 2023, APTA’s representative received an email from Anthony Hall,
26 Esq., stating he would be leading the negotiations for another bargaining unit at the District.
27

28 14. On March 9, 2023, APTA emailed Mr. Hall and requested confirmation that he
would be the chief negotiator for the District in the APTA negotiations.

1 15. On March 14, 2023, after not receiving a response, APTA again emailed Mr. Hall
2 to confirm he would be leading negotiations for the District.

3 16. On March 15, 2023, Mr. Hall confirmed that he would be leading negotiations
4 with APTA, and expressed that he did not believe negotiations, due to budget issues, would be
5 productive to begin until mid to late June.

6 17. On April 5, 2023, APTA contacted Mr. Hall and requested dates and times the
7 District was available to immediately begin negotiations.

8 18. On April 11, 2023, the District provided May 30, 2023, as the first possible date
9 that it was available to commence negotiations.

10 19. On April 12, 2023, APTA accepted this date and time.

11 20. On May 25, 2023, APTA sent a copy of draft ground rules to Mr. Hall and asked if
12 Mr. Hall would like to discuss these prior to May 30, 2023. Mr. Hall never responded to the
13 email or to the draft ground rules.

14 21. On May 30, 2023, APTA and the District commenced negotiations. When asked
15 why he had not responded to the draft ground rules, Mr. Hall stated “I didn’t think I had to tell
16 you the same thing twice.” This was in reference to Mr. Hall’s refusal to have ground rules
17 with another bargaining unit. Mr. Hall stated he did not want ground rules and refused to
18 discuss them further.

19 22. On May 30, 2023, the District provided to APTA a copy of the entire, current
20 APTA collective bargaining agreement (“CBA”) with proposed changes throughout. Mr. Hall
21 advised that he wanted to discuss the changing of the Professional-Technical pay table, but he
22 did not provide any proposals on this subject. Mr. Hall stated that the budget was unsettled,
23 and he would not be providing a financial proposal. The District’s proposed changes to the
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1 CBA language in Articles 1-22 and 24-26. None of these proposed changes involved
2 compensation or financials and were mainly based in language updates and changes.

3 23. On May 30, 2023, APTA provided proposals on Article 15, Article 23 and Article
4 25. APTA's proposals contained a mixture of financial and non-financial items. Additionally,
5 APTA requested that a negotiation session be scheduled to avoid another delay of several
6 months. The parties agreed to meet on June 9, 2023, at 1 p.m.
7

8 24. During the May 30, 2023, negotiations session, APTA was provided a caucus
9 room in a separate building from the negotiation session and none of APTA's team had key
10 card access to the building. APTA requested that a caucus room located in close proximity be
11 provided at future meetings consistent with the treatment of other bargaining groups.
12

13 25. On June 2, 2023, APTA emailed Mr. Hall and the District negotiations team and
14 again requested that caucus room in close proximity to the negotiation room be provided. In
15 addition, APTA notified the District that it would require a room to use prior to negotiations
16 and that some of its members have ADA accommodations that would need to be met. APTA
17 expressed its desire to have a financial proposal from the District as the Nevada Legislature
18 had finalized the budget.
19

20 26. On June 8, 2023, Mr. Hall responded and advised that a caucus room was a
21 courtesy and insinuated one may not be provided. Mr. Hall continued by saying that no
22 accommodations would be provided as, according to him, the ADA did not apply to these
23 employees during negotiations. This despite all of the APTA negotiation team members being
24 paid by the District during negotiations. Mr. Hall stated that the District did not have a
25 financial proposal for June 9, 2023, and, due to this, unilaterally canceled the meeting. He
26 stated that the District would not be available to meet again until after June 19, 2023. Part of
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1 Mr. Hall's justification for canceling the meeting with APTA, was that APTA's chief
2 negotiator had canceled a meeting with another bargaining unit due to a scheduling issue.

3 27. On June 8, 2023, APTA responded and again requested to keep the scheduled June
4 9, 2023, meeting. APTA expressed that there were non-financial proposals that could still be
5 discussed and that it viewed the unilateral canceling of the meeting, the seeming refusal to not
6 provide a caucus room, and the refusal to accommodate the APTA members' disabilities, as
7 not bargaining in good faith.
8

9 28. APTA requested to be provided with dates, both in-person and virtually, that the
10 District would be available to meet between June 9, 2023, and July 31, 2023. Mr. Hall stated
11 he would not meet virtually, and his assistant would provide dates at some later time.
12

13 29. On June 9, 2023, APTA emailed the District and requested to be provided with
14 dates and times for in-person negotiations between June 23, 2023, and July 31, 2023.

15 30. On June 12, 2023, after not receiving a response, APTA sent a follow-up email
16 requesting confirmation of receipt of its June 9, 2023, email. Kelly Lee, Mr. Hall's assistant
17 confirmed receipt of the email.
18

19 31. On June 12, 2023, pursuant to NRS 288.180, APTA filed a request for information
20 ("RFI"), requesting several items that in it deems necessary for negotiations. The three
21 relevant requests as related to this complaint are the following:

22 1. "The date and/or dates that the contract of services for Anthony Hall,
23 Esq. for 2023 negotiations with WCSD bargaining units was presented
24 to and voted on by the District Board of Trustees."
25

26 2. "The number of FTE positions that are currently unfilled in the
27 District."
28

1 32. On June 13, 2023, the District requested to clarify if the APTA was requesting the
2 number of unfilled positions in the entire District or just related to APTA. APTA clarified that
3 it was requesting the number of all unfilled, open positions in the District.

4 33. On June 16, 2023, after receiving a partial response to its RFI, the District
5 representatives unilaterally removed some of the designated APTA representatives from the
6 email chain. APTA requested the District include its designated representatives on all emails
7 moving forward pursuant to NRS 288.150(1).
8

9 34. On June 20, 2023, the District provided a partial response to the June 12, 2023,
10 RFI. This partial response stated that that in regard to the request for the dates of Mr. Hall's
11 contract, the District provided that "WCSD objects to this request as irrelevant to the
12 performance of the Union's role as bargaining representative of the unit employees. Further,
13 this information is available to APTA via public records and can be retrieved by APTA with
14 the same effort as would be required by WCSD. The information is available at
15 [https://www.washoeschools.net/ domain/168.](https://www.washoeschools.net/domain/168)" The link provided is not active and does not
16 link to any page on the internet. In response to APTA's request for all unfilled, open positions
17 in the District, the RFI response provided that "WCSD objects to this request as irrelevant to
18 the performance of the Union's role as bargaining representative of the unit employees to the
19 extent is asks for data for the entire WCSD as opposed to APTA. Without waiving said
20 objection, and limiting the response to APTA, Psychologists have 2 vacant FTE and Protechs
21 have 18 vacant FTE." These responses did not fulfill the RFI requests from APTA, and the
22 response to the unfilled, open positions ignored the clarification provided by APTA on June
23 13, 2023. In addition to failing to provide the required information, the District provided the
24 following as a closing to its June 20, 2023 response, "If you wish to explain or further tailor
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1 your request regarding any to which WCSD has stated an objection, we will revisit this and
2 respond accordingly.”

3 35. On June 16, 2023, the District provided August 15, 2023, and August 18, 2023, as
4 the first possible dates it would be available to negotiate with APTA. This would mean the
5 second negotiation session would not be held until 68 days after the first session.
6

7 36. APTA objected to these dates and demanded to meet in June and July to continue
8 negotiations. The District refused, saying it had no dates available.

9 37. Within several hours of telling APTA that it had no available dates to meet before
10 August 15, 2023, the District scheduled a negotiation meeting with the Washoe School
11 Principals’ Association (“WSPA”) for June 21, 2023.
12

13 38. On July 7, 2023, APTA requested that the District provided the complete
14 information to the two outstanding remaining requests from the June 12, 2023 RFI. The
15 District refused to do so, saying that no authority required them to provide this information to
16 APTA, and lacking this, they would not do so. Further, the District removed the APTA
17 designated representatives from the emails and stated that it would not include them without
18 justification for doing so. These actions violate NRS 288.150 and NRS 288.180.
19

20 39. On August 9, 2023, the District offered September 5, 2023, as the next
21 negotiation session date after August 15, 2023. APTA readily agreed to this date and advised
22 the District of the location and 10 a.m. start time.
23

24 40. On August 10, 2023, the District’s counsel responded and stated that, despite the
25 lack of ground rules between the parties, APTA must agree to stay at the bargaining table for
26 at least eight hours or the District would not meet.

27 41. On August 15, 2023, the parties held a negotiation session that lasted
28 approximately three hours. Due to the District’s inability and unwillingness to meet, this was

1 the first session since May 30, 2023, and only the second session since January 2023 when
2 APTA had first asked to meet.

3 42. On August 16, 2023, APTA President Dr. Shannon Colon sent a confidential email
4 to APTA membership, by “blind copy,” providing a brief synopsis of the negotiations between
5 the parties up to that date.

6
7 43. In response to this email, on August 16, 2023, District Superintendent Dr. Susan
8 Enfield, who is not a member of the District’s negotiation team and not a recognized
9 bargaining agent, sent an email letter to the APTA membership, as well as other employees
10 and administrators of the District and other bargaining groups. Her email included information
11 contradicting the confidential email that Dr. Colon had sent to the APTA membership and
12 provided false and inflammatory accusations towards APTA’s negotiation team. The
13 Superintendent’s email contained a one-sided version of what had occurred in the August 15,
14 2023, negotiation session. The only way she would have been privy to the internal confidential
15 negotiation session was to have been briefed by the District’s chief negotiator and/or members
16 of the District’s negotiation team. Superintendent Enfield was not present in the August 15,
17 2023, negotiation session or in any of the previous negotiation sessions, and is not part of the
18 District’s negotiations team, nor is she a designated representative of the bargaining team,
19 Accordingly, she violated the confidentiality aspects of the negotiations in violation of NRS
20 288.180 and NRS 288.270 and in so doing committed end-run bargaining.
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24 44. On August 16, 2023, District Chief Academic Officer Dr. Troy Parks directed
25 Tamala Green, Executive Assistant to Lauren Ford, Associated Chief (Area 4) to send
26 Superintendent Enfield’s factually inaccurate and inflammatory email regarding APTA
27 negotiations to all school principals and administrators in the Washoe County School District.
28 The email subject heading stated: “FWD: Important information Regarding Recent

1 Communications from APTA”. Chief Academic Officer Dr. Troy Parks’ statement on the
2 email is: “Dear team, This afternoon, Superintendent Enfield shared the message below with
3 members of the APTA bargaining unit. As leaders in our district, you may receive questions or
4 hear concerns from your team, and the below information from Superintendent Enfield should
5 be helpful for you in addressing those directly. Thank you for all that you do. Dr. Troy Parks
6 Chief Academic Officer.
7

8 45. Dr. Parks is not a member of the District’s bargaining team. Ms. Ford is a
9 member of the District’s negotiation team and is a designated bargaining representative for the
10 District.
11

12 46. The school principals and administrators who were sent Superintendent Enfield’s
13 email are not members of APTA, but they are members of WSPA which is also involved in
14 current contract negotiations with the District. APTA’s counsel is the chief negotiator for
15 WSPA in those negotiations.
16

17 47. On August 17, 2023, Dr. Colon sent another “blind copied” email letter to the
18 APTA membership, in an effort to clarify the confusion caused by Superintendent Enfield’s
19 email, while also correcting the misstatements and untruthful remarks made by Dr. Enfield.
20 This email clarified, in brief, what had occurred in the August 15, 2023, confidential
21 negotiations.
22

23 48. On August 17, 2023, APTA sent an email to the District’s chief negotiator
24 advising him that the actions by Superintendent Enfield in her letter to APTA membership
25 and to other administrators in the District, constitutes end-run bargaining. This email
26 demanded the District cease and desist end-run bargaining. No response was received was
27 received from the District.
28

1 49. On August 17, 2023, at 2:48 p.m., Superintendent Enfield sent another email to
2 APTA members and other administrators in the District, again detailing an incorrect version
3 of what conducted in the August 15, 2023, confidential negotiations. However, in the email
4 Dr. Enfield included attachments in an apparent attempt to negotiate directly with the APTA
5 membership. These attachments included a modified version of the District's financial
6 written proposal to the APTA member detailing the specifics of the proposal but leaving out
7 various parts of the proposal about which Superintendent Enfield claimed Dr. Colon was
8 fabricating. Again, Superintendent Enfield was not present in the August 15, 2023,
9 negotiation session or in any of the previous negotiation sessions, and is not part of the
10 District's negotiations team, nor is she a designated representative of the bargaining team.
11 Accordingly, her actions violated the confidentiality aspects of the negotiations in violation of
12 NRS 288.180 and NRS 288.270 thereby committing end-run bargaining.
13

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15 50. On August 17, 2023, APTA sent a request for information to the District
16 requesting to be provided with the "email addresses and which Washoe County School
17 District personnel the email sent by Superintendent Susan Enfield on August 16, 2023, at
18 4:50:02 PM titled "information on recent communications regarding negotiations," was sent
19 to." As of the date of this filing, the information has not been provided.
20

21 51. On August 18, 2023, APTA sent a second "cease and desist" letter to the District's
22 counsel regarding Superintendent Enfield's actions and end-run bargaining. No response was
23 received from the District.
24

25 52. On August 23, 2023, the District unilaterally cancelled the negotiations scheduled
26 for September 5, 2023. APTA had confirmed the September 5, 2023, negotiations date on
27 August 10, 2023, by stating that APTA had "reserved the room beginning at 10am. The
28 length of negotiations will depend on the discussions. There is space available for each side to

1 caucus.” This is the second session that was unilaterally and unreasonably cancelled by the
2 District.

3 Wherefore, Respondent Washoe County School District’s failure to promptly begin
4 negotiations constitutes a prohibited practice under NRS 288.180.

5 Respondent Washoe County School District’s refusal to discuss ground rules
6 constitutes a prohibited practice under NRS 288.180.

7 Respondent Washoe County School District’s refusal to provide requested information
8 to APTA that APTA deems necessary for negotiations constitutes a prohibited practice under
9 NRS 288.180.

10 Respondent Washoe County School District’s failure and refusal to communicate with
11 all of APTA’s designated representatives constitutes a prohibited practice under NRS 288.150.

12 Respondent Washoe County School District’s refusal to provide reasonable
13 accommodations to APTA, constitutes a prohibited practice under NRS 288.270.

14 Respondent Washoe County School District’s refusal to keep a scheduled meetings
15 and to meet at regular, reasonable intervals constitutes a prohibited practice under NRS
16 288.150 and NRS 288.270.

17 Respondent Washoe County School District’s direct negotiations with the APTA
18 membership and not with the designated representatives is end-run bargaining and is a
19 prohibited practice under NRS 288.150(1).

20 Respondent Washoe County School District’s actions of directly contacting APTA
21 membership, outside of APTA’s designated representatives, constitutes end-run bargaining
22 and an attempt to dominate, interfere or assist in the formation or administration of any
23 employee organization and is a prohibited practice under NRS 288.270(1)(b).
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1 **THEREFORE**, Complainant prays for relief as follows:

- 2 a. A finding that the conduct of the District as referenced herein
3 constitutes prohibited practices under Chapter 288 of the Nevada Revised
4 Statutes;
- 5 b. A finding that the District failed to bargain in good faith;
- 6 c. A finding that the District discriminated against APTA based on a
7 request for a reasonable accommodation;
- 8 d. A finding that the District failed to provide required information as
9 required by NRS 288.180;
- 10 e. A finding that the District failed to communicate with APTA's
11 designated representatives as required by NRS 288.150;
- 12 f. A finding that the District has dominated and interfered in the
13 organization of APTA in violation of NRS 288.270(1)(b);
- 14 g. A finding that the District has committed end-run bargaining;
- 15 h. An order that the District bargain in good faith with APTA as required
16 by NRS 288.150(1) and 288.270(1)(e);
- 17 i. An order requiring the District to promptly begin negotiations with
18 APTA in accordance with NRS 288.180;
- 19 j. An order requiring the District to immediately provide the requested
20 information;
- 21 k. An order requiring the District to cease in violating NRS Chapter 288;
- 22 l. An order requiring the District to comply with all applicable NRS
23 Chapters;
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1 m. An order requiring the District to post a notice, where notices are
2 normally posted and read by its employees, whereby the District promises to
3 comply with the Nevada Revised Statutes violated in this case and to cease
4 from committing any further prohibited practices;

5 n. An order requiring the District to immediately cease committing end-
6 run bargaining;

7 o. An order requiring the District to immediately cease directing
8 contacting APTA membership in attempts to directly negotiate with them and
9 to influence and intimidate the members;

10 p. An order requiring the District to pay the Association's reasonable
11 attorney and representatives' fees and expenses in bringing this action; and

12 q. Any and all other relief that the Government Employee-Management
13 Relations Board deems appropriate.
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16

17 DATED this 25th day of July, 2023.
18
19

20 /s/ Ronald J. Dreher
21 Ronald J. Dreher
22 NV Bar No. 15726
23 P.O. Box 6494
24 Reno, NV 89513
25 Telephone: (775) 846-9804
26 dreherlaw@outlook.com
27 *Attorney for Complainant*
28

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

FILED
November 2, 2023
State of Nevada
E.M.R.B.
1:47 p.m.

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

12 ASSOCIATION OF PROFESSIONAL-
TECHNICAL ADMINISTRATORS,

13 Complainant,

14 vs.

15 WASHOE COUNTY SCHOOL DISTRICT,

16 Respondent.

Case No.: 2023-015

Panel:

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20 **ANSWER TO SECOND AMENDED COMPLAINT**

21 **COMES NOW**, Respondent Washoe County School District (“WCSD”), by and through
22 its undersigned counsel of record, and hereby responds to the causes of action contained in the
23 Second Amended Complaint filed by Complainant Association of Professional-Technical
24 Administrators (“APTA”) on July 25, 2023, as follows:

25 **I. THE PARTIES**

26 1. Answering paragraph 1 of the Second Amended Complaint, Respondent admits the
27 allegations set forth in this paragraph.

28 ///

1 2. Answering paragraph 2 of the Second Amended Complaint, Respondent admits that
2 Washoe County School District is a political subdivision of the State of Nevada which oversees and
3 supervises Washoe County School psychologists and technical administrators and is the regulating
4 authority with regard to policy. Respondent admits that it is a local government employer under
5 NRS 288.060. Respondent denies the remaining allegations set forth in paragraph 2 of the
6 Complaint. Respondent's mailing address is P.O. Box 30425, Reno, Nevada 89520-3425.

7 **II. LEGAL AUTHORITY AND JURISDICTION**

8 Respondent realleges and incorporates by reference each and every admission, averment or
9 denial contained in paragraphs 1 through 2 above and incorporate the same as though fully set forth
10 herein.

11 3. Answering paragraph 3 of the Second Amended Complaint, this is a legal conclusion
12 that does not require Respondent to admit or deny. However, to the extent that Respondent is
13 required to admit or deny, Respondent denies the allegations in this paragraph.

14 4. Answering paragraph 4 of the Second Amended Complaint, this is a legal conclusion
15 that does not require Respondent to admit or deny. However, to the extent that Respondent is
16 required to admit or deny, Respondent denies the allegations in this paragraph.

17 5. Answering paragraph 5 of the Second Amended Complaint, this is a legal conclusion
18 that does not require Respondent to admit or deny. However, to the extent that Respondent is
19 required to admit or deny, Respondent denies the allegations in this paragraph.

20 6. Answering paragraph 6 of the Second Amended Complaint, this is a legal conclusion
21 that does not require Respondent to admit or deny. However, to the extent that Respondent is
22 required to admit or deny, Respondent denies the allegations in this paragraph.

23 7. Answering paragraph 7 of the Second Amended Complaint, this is a legal conclusion
24 that does not require Respondent to admit or deny. However, to the extent that Respondent is
25 required to admit or deny, Respondent denies the allegations in this paragraph.

26 8. Answering paragraph 8 of the Second Amended Complaint, this is a legal conclusion
27 that does not require Respondent to admit or deny. However, to the extent that Respondent is
28 required to admit or deny, Respondent denies the allegations in this paragraph.

1 **III. PROHIBITED PRACTICES**

2 9. Answering paragraph 9 of the Second Amended Complaint, Respondent admits that
3 APTA’s representative notified the District in writing of APTA’s intent to seek a successor
4 agreement. Respondent denies the remaining allegations in paragraph 9 of the Second Amended
5 Complaint.

6 10. Answering paragraph 10 of the Second Amended Complaint, Respondent admits the
7 allegations contained in paragraph 10 of the Second Amended Complaint.

8 11. Answering paragraph 11 of the Second Amended Complaint, Respondent is without
9 knowledge or information sufficient to form a belief about the allegations in this paragraph
10 regarding whether Complainant received any further communication from the District prior to
11 February 24, 2023, and, on that basis, denies them. Respondent admits the remaining allegations
12 in paragraph 10 of the Second Amended Complaint.

13 12. Answering paragraph 12 of the Second Amended Complaint, Respondent denies the
14 allegations contained in paragraph 12 of the Second Amended Complaint.

15 13. Answering paragraph 13 of the Second Amended Complaint, Respondent admits the
16 allegations contained in paragraph 13 of the Second Amended Complaint.

17 14. Answering paragraph 14 of the Second Amended Complaint, Respondent admits the
18 allegations contained in paragraph 14 of the Second Amended Complaint.

19 15. Answering paragraph 15 of the Second Amended Complaint, Respondent is without
20 knowledge or information sufficient to form a belief about the allegations in this paragraph
21 regarding whether Complainant received a response prior to March 14, 2023, and, on that basis,
22 denies them. Respondent admits the remaining allegations in paragraph 15 of the Complaint.

23 16. Answering paragraph 16 of the Complaint, Respondent admits the allegations
24 contained in paragraph 16 of the Complaint.

25 17. Answering paragraph 17 of the Second Amended Complaint, Respondent admits
26 that APTA contacted Mr. Hall and requested dates and times that the District was available.
27 Respondent denies the remaining allegations in paragraph 17 of the Second Amended Complaint.

28 ///

1 18. Answering paragraph 18 of the Second Amended Complaint, Respondent admits
2 that the District provided May 30, 2023, as an available date. Respondent denies the remaining
3 allegations in paragraph 18 of the Second Amended Complaint.

4 19. Answering paragraph 19 of the Second Amended Complaint, Respondent admits the
5 allegations contained in paragraph 19 of the Second Amended Complaint.

6 20. Answering paragraph 20 of the Second Amended Complaint, Respondent denies the
7 allegations contained in paragraph 20 of the Second Amended Complaint.

8 21. Answering paragraph 21 of the Second Amended Complaint, Respondent denies the
9 allegations contained in paragraph 21 of the Second Amended Complaint.

10 22. Answering paragraph 22 of the Second Amended Complaint, Respondent denies the
11 allegations contained in paragraph 22 of the Second Amended Complaint.

12 23. Answering paragraph 23 of the Second Amended Complaint, Respondent denies the
13 allegations contained in paragraph 23 of the Second Amended Complaint.

14 24. Answering paragraph 24 of the Second Amended Complaint, Respondent admits
15 that during the May 30, 2023, negotiations, APTA was provided with a caucus room in a separate
16 building from the negotiation session. Respondent admits that none of APTA's team had key card
17 access to the building; however, Respondent manually granted APTA team members access to the
18 room as needed. Respondent denies the remaining allegations contained in paragraph 24 of the
19 Second Amended Complaint.

20 25. Answering paragraph 25 of the Second Amended Complaint, Respondent denies the
21 allegations set forth in paragraph 25 of the Second Amended Complaint.

22 26. Answering paragraph 26 of the Second Amended Complaint, Respondent admits
23 that Mr. Hall responded on June 8, 2023, and advised that the caucus room was a courtesy.
24 Respondent denies that Mr. Hall insinuated that a room may not be provided. Instead, Mr. Hall
25 advised that APTA would be and had been treated in the same fashion as other groups. Respondent
26 denies the allegations that Mr. Hall said no accommodations would be provided. Mr. Hall advised
27 APTA that their team was welcome to bring any items needed to accommodate them and breaks
28 could be taken at any time as needed to accommodate the physical or mental state of any member

1 of the APTA team. Respondent admits that Mr. Hall represented that the ADA did not apply to the
2 APTA team during negotiations; however, he specifically allowed for accommodations as noted
3 above. Respondent denies that the APTA team members were acting within the course and scope
4 of their employment. Respondent admits that Mr. Hall informed counsel for APTA that he would
5 not have a financial proposal for the meeting. Respondent denies the remaining allegations in
6 paragraph 26 of the Second Amended Complaint.

7 27. Answering paragraph 27 of the Second Amended Complaint, Respondent denies the
8 allegations contained in paragraph 27 of the Second Amended Complaint.

9 28. Answering paragraph 28 of the Second Amended Complaint, Respondent denies
10 that APTA requested to be provided with dates, both in-person and virtually, that the District would
11 be available to meet between June 9, 2023, and July 31, 2023. Instead, APTA requested dates to
12 meet in person between June 9, 2023, and June 21, 2023, and virtually between June 21, 2023, and
13 July 31, 2023. Respondent denies the remaining allegations in paragraph 28 of the Second Amended
14 Complaint.

15 29. Answering paragraph 29 of the Second Amended Complaint, Respondent denies the
16 allegations set forth in paragraph 29 of the Second Amended Complaint. Instead, APTA requested
17 dates for in-person negotiations between June 23, 2023, and July 30, 2023.

18 30. Answering paragraph 30 of the Second Amended Complaint, Respondent is without
19 knowledge or information sufficient to form a belief about the allegations in this paragraph
20 regarding whether Complainant received a response prior to June 12, 2023, and, on that basis,
21 denies them. Respondent admits the remaining allegations in paragraph 30 of the Second Amended
22 Complaint.

23 31. Answering paragraph 31 of the Second Amended Complaint, Respondent admits
24 that on June 12, 2023, APTA propounded a request for information (“RFI”). APTA admits that the
25 two (2)¹ relevant requests as related to the Second Amended Complaint are as follows:
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27 _____
28 ¹ Complainant erroneously states that there are three (3) relevant requests as related to the Second Amended Complaint; however, it only lists two (2) requests.

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1. “The date and/or dates that the contract of services for Anthony Hall, Esq. for 2023 negotiations with WCSD bargaining units was presented to and voted on by the District Board of Trustees.”

2. “The number of FTE positions that are currently unfilled in the District.”

The remaining allegations in this paragraph are a legal conclusion that does not require Respondent to admit or deny. However, to the extent that Respondent is required to admit or deny, Respondent denies the remaining allegations in this paragraph.

32. Answering paragraph 32 of the Second Amended Complaint, Respondent admits the allegations contained in paragraph 32 of the Second Amended Complaint.

33. Answering paragraph 33 of the Second Amended Complaint, on June 16, 2023, Defendant admits that after providing a response to its RFI, it removed everyone except Mr. Dreher from its response. Defendant denies the remaining allegations contained in paragraph 33 of the Second Amended Complaint.

34. Answering paragraph 34 of the Second Amended Complaint, on June 20, 2023, the Defendant admits that it provided a response to the June 12, 2023, RFI. Defendant admits that it stated in its response that in regard to the request for dates of Mr. Hall’s contract, the District provided that “WCSD objects to this request as irrelevant to the performance of the Union’s role as bargaining representative of the unit employees. Further, this information is available to APTA via public records and can be retrieved by APTA with the same effort as would be required by WCSD. The information is available at <https://www.washoeschools.net/domain/168>.” Respondent admits that it stated in its response to APTA’s request for unfilled positions in the District, the RFI response provided that “WCSD objects to this request as irrelevant to the performance of the Union’s role as bargaining representative of the unit employees to the extent is asks for data for the entire WCSD as opposed to APTA. Without waiving said objection, and limiting the response to APTA, Psychologists have 2 vacant FTE and Protechs have 18 vacant FTE.” Defendant also admits that following as a closing to its June 20, 2023, response, it stated “If you wish to explain or further

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1 tailor your request regarding any to which WCSD has stated an objection, we will revisit this and
2 respond accordingly.” Defendant denies the remaining allegations in paragraph 34 of the Second
3 Amended Complaint.

4 35. Respondent denies the allegations set forth in paragraph 35 of the Complaint.

5 36. Answering paragraph 36 of the Second Amended Complaint, Respondent denies the
6 allegations in paragraph 36 of the Complaint. Instead, on June 23, 2023, APTA confirmed its
7 availability for the August 15, 2023, date and requested confirmation that a pre-meeting/caucus
8 room had been reserved.

9 37. Answering paragraph 37 of the Second Amended Complaint, Respondent denies the
10 allegations contained in paragraph 37 of the Second Amended Complaint.

11 38. Answering paragraph 38 of the Second Amended Complaint, Respondent admits that
12 on July 7, 2023, APTA requested that the District provide complete responses to outstanding
13 remaining requests from the June 12, 2023 RFI. Respondent admits that it requested relevant
14 authority from APTA with respect to its RFI. As to the final allegation in paragraph 38 of the Second
15 Amended Complaint, this is a legal conclusion that does not require Respondent to admit or deny.
16 However, to the extent that Respondent is required to admit or deny, Respondent denies the final
17 allegation in this paragraph. Respondent denies the remaining allegations in paragraph 38 of the
18 Second Amended Complaint.

19 39. Answering paragraph 39 of the Second Amended Complaint, Respondent admits that
20 it offered September 5, 2023, as a potential bargaining date. Respondent denies the remaining
21 allegations set forth in paragraph 39 of the Second Amended Complaint.

22 40. Answering paragraph 40 of the Second Amended Complaint, Respondent admits the
23 allegations set forth in paragraph 40 of the Second Amended Complaint.

24 41. Answering paragraph 41 of the Second Amended Complaint, Respondent admits that
25 the parties conducted a negotiation session on August 15, 2023. Respondent denies the remaining
26 allegations set forth in paragraph 41 of the Second Amended Complaint.

27 42. Answering paragraph 42 of the Second Amended Complaint, Respondent admits that
28 APTA President Dr. Shannon Colon caused an email to be sent. Respondent denies the remaining

1 allegations set forth in paragraph 42 of the Second Amended Complaint.

2 43. Answering paragraph 43 of the Second Amended Complaint, Respondent admits that
3 District Superintendent Dr. Susan Enfield sent an email on August 16, 2023. Respondent denies the
4 remaining allegations set forth in paragraph 43 of the Second Amended Complaint, and to the extent
5 there are legal conclusions that do not require Respondent to admit or deny, Respondent denies the
6 remaining allegations in this paragraph.

7 44. Answering paragraph 44 of the Second Amended Complaint, Respondent admits that
8 District Chief Academic Officer Dr. Troy Parks caused an email to be sent. Respondent denies the
9 remaining allegations set forth in paragraph 44 of the Second Amended Complaint.

10 45. Answering paragraph 45 of the Second Amended Complaint, Respondent denies the
11 allegations set forth in paragraph 45 of the Second Amended Complaint.

12 46. Answering paragraph 46 of the Second Amended Complaint, Respondent admits that
13 APTA’s counsel is the chief negotiator for WSPA. Respondent denies the remaining allegations set
14 forth in paragraph 46 of the Second Amended Complaint.

15 47. Answering paragraph 47 of the Second Amended Complaint, Respondent admits that
16 Dr. Colon caused an email to be sent on August 17, 2023. Respondent denies the remaining
17 allegations set forth in paragraph 47 of the Second Amended Complaint.

18 48. Answering paragraph 48 of the Second Amended Complaint, Respondent denies the
19 allegations set forth in paragraph 48 of the Second Amended Complaint.

20 49. Answering paragraph 49 of the Second Amended Complaint, Respondent admits that
21 Dr. Enfield caused an email to be sent on August 17, 2023. Respondent denies the remaining
22 allegations set forth in paragraph 49 of the Second Amended Complaint.

23 50. Answering paragraph 50 of the Second Amended Complaint, Respondent admits that
24 APTA submitted a request for information requesting “email addresses and which Washoe County
25 School District personnel the email sent by Superintendent Susan Enfield on August 16, 2023, at
26 4:50:02 PM titled ‘information on recent communications regarding negotiations,’ was sent to.”
27 Respondent denies the remaining allegations set forth in paragraph 50 of the Second Amended
28 Complaint.

1 51. Answering paragraph 51 of the Second Amended Complaint, Respondent denies the
2 allegations set forth in paragraph 51 of the Second Amended Complaint.

3 52. Answering paragraph 52 of the Second Amended Complaint, Respondent denies the
4 allegations set forth in paragraph 52 of the Second Amended Complaint.

5 53. Answering paragraph 53² of the Second Amended Complaint, this is a legal
6 conclusion that does not require Respondent to admit or deny. However, to the extent that
7 Respondent is required to admit or deny, Respondent denies the allegations set forth in this
8 paragraph.

9 54. Answering paragraph 54 of the Second Amended Complaint, this is a legal
10 conclusion that does not require Respondent to admit or deny. However, to the extent that
11 Respondent is required to admit or deny, Respondent denies the allegations set forth in this
12 paragraph.

13 55. Answering paragraph 55 of the Second Amended Complaint, this is a legal
14 conclusion that does not require Respondent to admit or deny. However, to the extent that
15 Respondent is required to admit or deny, Respondent denies the allegations set forth in this
16 paragraph.

17 56. Answering paragraph 56 of the Second Amended Complaint, this is a legal
18 conclusion that does not require Respondent to admit or deny. However, to the extent that
19 Respondent is required to admit or deny, Respondent denies the allegations set forth in this
20 paragraph.

21 57. Answering paragraph 57 of the Second Amended Complaint, this is a legal
22 conclusion that does not require Respondent to admit or deny. However, to the extent that
23 Respondent is required to admit or deny, Respondent denies the allegations set forth in this
24 paragraph.

25 58. Answering paragraph 58 of the Second Amended Complaint, this is a legal
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28 ² The Second Amended Complaint stops numbering paragraphs at paragraph number 52.

1 conclusion that does not require Respondent to admit or deny. However, to the extent that
2 Respondent is required to admit or deny, Respondent denies the allegations set forth in this
3 paragraph.

4 59. Answering paragraph 59 of the Second Amended Complaint, this is a legal
5 conclusion that does not require Respondent to admit or deny. However, to the extent that
6 Respondent is required to admit or deny, Respondent denies the allegations set forth in this
7 paragraph.

8 60. Answering paragraph 60 of the Second Amended Complaint, this is a legal
9 conclusion that does not require Respondent to admit or deny. However, to the extent that
10 Respondent is required to admit or deny, Respondent denies the allegations set forth in this
11 paragraph.

12 **IV. PRAYER FOR RELIEF**

13 The rest of the Complaint constitutes Complainant's prayer for relief which contains legal
14 conclusions and questions of law to which no response is required. However, to the extent
15 Complainant's prayer asserts allegations or a response may be deemed to be required, Respondent
16 denies each and every allegation in Complainant's prayer. Respondent further denies each and
17 every allegation contained in the Complaint that is not specifically admitted above.

18 WHEREFORE, Respondent respectfully asks this Court:

- 19 1. For judgment decreeing that Complainant is entitled to recover nothing by way of
20 its Second Amended Complaint, and that the Second Amended Complaint be
21 dismissed with prejudice;
- 22 2. For an award of attorneys' fees and costs of suit incurred herein; and
- 23 3. For such other and further relief as the Board deems proper.

24 **V. AFFIRMATIVE DEFENSES**

25 1. AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND
26 AMENDED COMPLAINT, Respondent alleges that Complainant failed to exhaust its
27 administrative, statutory, arbitration and/or contractual remedies.

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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 **ANSWER TO SECOND AMENDED COMPLAINT** 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

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 November 2, 2023.

/s/ Terri Tribble
Employee of Simons Hall Johnston

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

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

FILED
October 25, 2023
State of Nevada
E.M.R.B.
8:28 a.m.

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

10 WASHOE COUNTY SCHOOL DISTRICT,

11 Complainant,

12 vs.

13 ASSOCIATION OF PROFESSIONAL-
14 TECHNICAL ADMINISTRATORS,

15 Respondent.

Case No.: 2023-023

Panel:

16 **FIRST AMENDED COMPLAINT**

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20 **COMES NOW**, Complainant, Washoe County School District (“WCSD”), by and through
21 its undersigned counsel of record, and hereby charges Respondent Association of Professional-
22 Technical Administrators (“APTA”) with practices prohibited by NRS 288.270(2)(b). Accordingly,
23 Complainant hereby complains and alleges as follows:

24 **I. THE PARTIES**

25 1. WCSD is a political subdivision of the State of Nevada which oversees and
26 supervises Washoe County School principals and is the regulating authority with regard to policy.
27 The Complainant is a local government employer under NRS 288.060. Complainant’s mailing
28 address is P.O. Box 30425, Reno, Nevada 89520-3425.

1 2. APTA is an employee organization as defined in NRS 288.040, and maintains
2 offices in the City of Reno, with its mailing address as P.O. Box 7697, Reno, Nevada 89510-7697.

3 **II. LEGAL AUTHORITY AND JURISDICTION**

4 3. NRS 288.270(2)(b) states, “[i]t is a prohibited practice for a local government
5 employee or for an employee organization or its designated agent willfully to [...] [r]efuse to bargain
6 collectively in good faith with the local government employer, if it is an exclusive representative, as
7 required in NRS 288.150. Bargaining collectively includes the entire bargaining process, including
8 mediation and fact-finding, provided for in this chapter.”

9 4. This Board has jurisdiction over this matter as the Complainant’s allegations arise
10 under Nevada Revised Statute Chapter 288 – Relations between Government and Public Employees.

11 **III. REFUSAL TO BARGAIN/BAD FAITH BARGAINING**

12 5. WCSD and APTA entered into a Negotiated Agreement (the “CBA” or “Contract”)
13 in 2013.

14 6. Since the establishment of the CBA, the parties have regularly met to renegotiate the
15 terms of the CBA.

16 7. As a result of the long-standing CBA, the many negotiation sessions that resulted in
17 its current form, and revisions to statutory language, there are many areas of the CBA that require
18 revisions and updating. This is in addition to general changes in circumstance, such as seen in any
19 employment context, so as to require revisions and updating of the CBA.

20 8. WCSD and APTA are currently involved in negotiations to update the CBA.

21 9. Negotiations related to the CBA began on May 30, 2023.

22 10. Anthony L. Hall, Esq. appeared on behalf of WCSD as its Chief Negotiator.

23 11. Ron Dreher, Esq. appeared on behalf of APTA as its Chief Negotiator.

24 **May 30, 2023, Negotiation Session**

25 12. The first negotiation meeting was on May 30, 2023. WCSD arranged for both a
26 negotiating room and a separate room for APTA to meet before the negotiations and during
27 caucuses. Despite the fact that the negotiations were set to begin at 10 am, APTA did not come to
28 the negotiation table until almost 10:40.

1 13. At the onset of the May 30, 2023, negotiation session, WCSD presented a red-lined
2 proposal to APTA and informed the team that many of the proposed revisions were simply to clean-
3 up the CBA, streamline its provisions, and clarify inconsistencies. In addition, other proposals dealt
4 with substantial issues of concern for WCSD and subjects of mandatory bargaining.

5 14. For example, Article 1.2 of the CBA defines the members of the unit as
6 “employees.” However, instead of using the defined term “employee,” various provisions
7 throughout the CBA use other undefined terms such as people “employed by the District,”
8 “Associations bargaining unit members,” “bargaining unit members,” “member”, etc.

9 15. Of the twenty-six (26) Articles that appear in the main body of the CBA, WCSD
10 proposed revisions to nineteen (19) mandatory bargaining issues, including portions of the
11 following Articles for consideration by APTA:

- 12 a. Article 1.5 (Definitions) which pertains to NRS 288.150(2)(j) and NRS
13 288.150(2)(k) regarding a recognition clause and the method used to classify
14 employees in the bargaining unit, respectively.
- 15 b. Article 1.9 (Definitions) which pertains to NRS 288.150(2)(h) regarding total
16 number of days’ work required of an employee in a work year.
- 17 c. Article 1.10 (Definitions) which pertains to NRS 288.150(2)(b) and NRS
18 288.150(2)(e) regarding definitions related to sick leave and other paid or nonpaid
19 leaves of absence, respectively.
- 20 d. Article 2.1 (Recognition) which pertains to NRS 288.150(2)(j) and NRS
21 288.150(2)(k) regarding a recognition clause and the method used to classify
22 employees in the bargaining unit, respectively.
- 23 e. Article 3.1 (Fair Practices) which pertains to NRS 288.150(2)(m) protection of
24 employees in the bargaining unit from discrimination because of participation in
25 recognized employee organizations consistent with the provisions of the chapter.
- 26 f. Article 4.1 (No Strikes/Work Stoppages) which pertains to NRS 288.150(2)(n)
27 regarding non-strike provisions consistent with the provisions of the chapter.
- 28 g. Article 8.1 (Dues Deduction) which pertains to NRS 288.150(2)(l) regarding

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- deduction of dues for the recognized employee organization.
- h. Article 9.1 (Temporary Leaves of Absence) which pertains to NRS 288.150(2)(b), NRS 288.150(2)(c), NRS 288.150(2)(d), and NRS 288.150(2)(e) regarding sick leave, vacation leave, holidays, and other paid or nonpaid leaves of absence, respectively.
 - i. Article 10 (Extended Leaves of Absence) which pertains to NRS 288.150(2)(b), NRS 288.150(2)(c), NRS 288.150(2)(d), and NRS 288.150(2)(e) regarding sick leave, vacation leave, holidays, and other paid or nonpaid leaves of absence, respectively.
 - j. Article 12 (Sick Leave, Disability Benefits, and Sick Leave Bank) which pertains to NRS 288.150(2)(b), NRS 288.150(2)(c), NRS 288.150(2)(d), and NRS 288.150(2)(e) regarding sick leave, vacation leave, holidays, and other paid or nonpaid leaves of absence, respectively.
 - k. Article 15 (Required Days) which pertains to NRS 288.150(2)(h) regarding total number of days' work required of an employee in a work year.
 - l. Article 17 (Probationary Period, Dismissal and Disciplinary Procedures) which pertains to NRS 288.150(2)(i) regarding discharge and disciplinary procedures.
 - m. Article 18 (Reduction in Force) which pertains to NRS 288.150(2)(v) regarding procedures for reduction in workforce consistent with the provisions of the chapter.
 - n. Article 21 (Grievance Procedures) which pertains to NRS 288.150(2)(o) regarding grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining units.
 - o. Article 22 (Administrator Protection) which pertains to NRS 288.150(2)(r) regarding safety.
 - p. Article 23 (Professional Compensation) which pertains to NRS 288.150(2)(a) regarding salary or wage rates or other forms of direct monetary compensation.
 - q. Article 24 (Administrative Reclassification) which pertains to NRS 288.150(2)(j)

1 and NRS 288.150(2)(k) regarding a recognition clause and the method used to
2 classify employees in the bargaining unit, respectively.

3 r. Article 25 (Term of Agreement) which pertains to NRS 288.150(2)(q) regarding
4 duration of collective bargaining units.

5 s. Article 26 (Psychologist Materials) which pertains to NRS 288.150(2)(t)
6 regarding materials and supplies for classrooms.

7 16. WCSD explained that it would like to initially discuss some of the big picture issues,
8 give APTA a chance to review the proposals during a caucus, and then reconvene to discuss the
9 proposals in detail, and to answer any questions APTA may have.

10 17. Among the initial issues raised by WCSD related to changes necessary to make to
11 the Sick Bank provisions of Article 12. WCSD explained that in a recent third-party audit of
12 WCSD, the auditors took WCSD to task because the sick bank provisions were structured in a way
13 that allowed the union to grant more leave than was available in the sick leave bank. WCSD
14 identified that there are several possible solutions to fix this deficiency and sought APTA's input
15 into which solution it favored or if it had ideas of its own to address this issue.

16 18. WCSD also raised the concerns and problems that it has encountered with regard to
17 the current overlapping and onerous grievance, problem solving and advisory council provisions in
18 the CBA (Articles 13, 19 and 21).

19 19. APTA requested a caucus at 10:50 am and returned at 11:22 am.

20 20. APTA presented proposals regarding Articles 15 (required workdays), 23
21 (professional compensation) and 25 (terms of agreement).

22 21. WCSD reviewed APTA's proposals, asked questions and, after a caucus gave initial
23 responses to the proposals.

24 22. While APTA did not refuse (at this point) to answer questions about its proposals,
25 the answers foreshadowed APTA's bad faith approach to negotiations. When APTA was asked
26 about costs for its proposals, APTA responded that it had not costed out any of its proposals. When
27 APTA was asked about its proposal to triple the cap on vacation accrual from 50 days to 150 days,
28 APTA responded that they "just liked the number." When pressed about this being unreasonable,

1 APTA defended by falsely claiming that Washoe County caps vacation day accrual at 240 days.
2 When pressed that the correct amount was maybe 240 hours, not days, APTA doubled down on the
3 lie. This was a mystifying (but telling) tactic, since the truth was easily verifiable.

4 23. APTA indicated they need time to review and discuss WCSD’s proposal. Thus,
5 while there was some very limited discussion of some of WCSD’s proposals, the vast bulk of
6 WCSD’s proposals were not discussed and APTA provided no response.

7 **Events Between the Negotiation Sessions**

8 24. On July 10, 2023, counsel for APTA filed a First Amended Complaint in Case No.
9 2023-015.

10 25. On July 28, 2023, counsel for WCSD filed the Motion to Dismiss and, in the
11 Alternative Motion to Stay in Case No. 2023-015.

12 26. Lead negotiator for APTA, Ron Dreher, is lead negotiator for Washoe School
13 Principals’ Association (“WSPA”).

14 27. On August 11, 2023, in the WSPA negotiations and despite the mandatory nature of
15 most of the proposed revisions, Ron Dreher indicated that, “[he] was not even willing to consider
16 changes” other than the title change for Dr. Mason from Chief Human Resources Officer to Chief
17 Talent Officer.

18 28. Also on August 11, 2023, WCSD warned counsel for WSPA (Dreher) that his
19 behavior was in bad faith and was a failure to bargain. WCSD offered counsel for WSPA a second
20 chance to negotiate the mandatory proposals. Counsel for WSPA’s response was, “we refuse and
21 reject.” WCSD asked if counsel for WSPA would at least entertain WCSD’s reasons and WSPA
22 again refused. WCSD then turned to another article and attempted to begin to explain the basis for
23 WCSD’s requested changes. Again, WSPA cut him off by speaking over him and stated loudly that
24 they would not discuss it. Counsel for WSPA repeatedly reiterated that the only issues he was willing
25 to discuss were “their issues,” and Dreher indicated that WSPA would not consider WCSD’s
26 reasoning behind its proposals or provide reasons for rejecting WCSD’s proposals.

27 29. WCSD informed counsel for WSPA that he was acting in bad faith and again offered
28 him a chance to negotiate. Counsel for WSPA then abruptly ended the August 11, 2023, negotiation

1 session at about 11:00 a.m., despite the fact that the parties had reserved an entire day for
2 negotiations. The WSPA team then dramatically staged a walk out of the negotiations room.

3 **August 15, 2023, Negotiation Session**

4 30. Negotiations between WCSD and APTA resumed on August 15, 2023, at 10:10 am.

5 31. At the onset of the August 15, 2023, negotiation session, WCSD inquired as to
6 whether counsel for APTA had any questions or responses related to WCSD’s proposals from the
7 May 30, 2023, negotiation session and WCSD offered to open discussions.

8 32. Counsel for APTA, who is also counsel for WSPA adopted the same unfortunate and
9 bad faith tactics for the APTA negotiation that he perpetrated during the WSPA negotiation on
10 August 11, 2023. APTA immediately responded that they would not be negotiating a “new
11 Contract.”

12 33. WCSD explained that many of the proposals from WCSD were mandatory
13 bargaining issues set forth in NRS 288.150 and APTA was required to bargain over such topics.

14 34. Despite the mandatory nature of these proposed revisions, counsel for APTA once
15 again refused and declined to provide a reason for such refusal, except they were not going to
16 negotiate a whole new contract.

17 35. Thus, only 7 minutes into the negotiations, APTA had refused to negotiate mandatory
18 terms. The parties broke for a 56-minute caucus, until 11:21 am.

19 36. WCSD then formally resubmitted its proposals to APTA and asked them to consider
20 the proposals and ask any questions they may have. At this point, without even considering or
21 reviewing the proposal, APTA stated that “we rejected it and don’t need to explain.” When APTA
22 was asked if they would listen to WCSD’s reasoning behind its proposals, APTA again refused,
23 stating that they have rejected them and there is no reason to even listen to WCSD’s reasoning and
24 APTA refused to provide any reasons for rejecting WCSD’s proposals.

25 37. WCSD next submitted a financial proposal to APTA along with supporting
26 documentation for its financial offer. APTA requested a caucus at 11:34 and bargaining resumed at
27 12:21 pm.

28 38. Counsel for APTA then provided several new proposals to WCSD. WCSD asked a

1 few initial questions and listened to the reasons for the proposals from APTA.

2 39. The parties broke for a caucus at 12:30 pm. WCSD began the process of reviewing,
3 discussing, and gathering data related to the APTA proposals.

4 40. For instance, APTA sought to revise Article 21 (Grievance Procedures) to remove
5 the selection of a mutually acceptable mediator in accordance with the CBA.

6 41. During its caucus, WCSD investigated the history of using such a mutually
7 acceptable mediator, which was not flatly rejected before the involvement of APTA Chief
8 Negotiator, Ronald J. Dreher, Esq.

9 42. APTA's proposal also sought to revise the grievance language in Article 21.
10 Specifically, the current CBA has limits on the financial impact that a grievance can have on WCSD.
11 Counsel for APTA's justification for such a change was that he did not understand the provision and
12 that the tax rate had been eliminated in other CBAs.

13 43. Based upon the review, discussions, and investigation performed by WCSD during
14 its caucus, WCSD was able to determine that this representation was inaccurate.

15 44. Moreover, APTA sought to increase the Professional Development Budget in Article
16 23 (Professional Compensation). APTA insisted that WCSD was in breach of the CBA because it
17 did not currently provide for a Professional Development Budget for APTA.

18 45. But after caucusing and reviewing APTA's claim and the related information, WCSD
19 once again determined APTA's representation was false. Instead, on July 1, 2022, APTA agreed to
20 an .08% cost-of-living adjustment in exchange for the elimination of the Professional Development
21 Budget outlined in Article 23 (Professional Compensation). Mr. Dreher was chief negotiator for
22 APTA during those negotiations and, on information and belief, knew or should have known that
23 his representations were false.

24 46. APTA had also presented a verbal financial proposal that required additional
25 consideration by WCSD.

26 47. During the caucus, one of the WCSD team members left the caucus room to use the
27 facilities. During this break he was accosted by APTA's Chief Negotiator Ronald J. Dreher, Esq.
28 and informed that if WCSD did not complete its caucus and return to the negotiation room within

1 ten minutes, then the APTA team would cease negotiations and leave.

2 48. At no time did the parties agree to a time limit on the caucus session, during which
3 WCSD was considering APTA's new proposals.

4 49. Moreover, APTA's Chief Negotiator failed to communicate his intent to WCSD's
5 Chief Negotiator, only expressing his demand to a WCSD team member.

6 50. WCSD then continued its caucus concerning APTA's proposals, including the verbal
7 financial proposal, for approximately fifteen minutes.

8 51. When the WCSD team returned to the negotiation room, APTA was no longer present
9 and had walked out of the negotiation.

10 52. Accordingly, the August 15, 2023, negotiation session was abruptly ended by APTA
11 without cause or justification.

12 **September 15, 2023, Negotiation Session**

13 53. Negotiations between WCSD and APTA resumed on September 15, 2023.

14 54. The negotiation session was scheduled to take place from 10:00 a.m.-5:00 p.m.

15 55. WCSD informed APTA four (4) times that it intended to present a financial proposal
16 after the noon hour.

17 56. At approximately 11:50 a.m., APTA declared impasse under NRS 288.217(2).
18 WCSD explained to APTA that the declaration was improper for numerous reasons (including that
19 APTA had no offers on the table upon which to declare impasse, that the minimum bargaining
20 sessions had not occurred, that the declaration during the 4th meeting was premature, and that the
21 prior meetings should not be counted since APTA had not engaged in them for the time agreed upon
22 nor had it done so in good faith), that impasse had not in fact been reached since both parties had
23 verbally indicated further willingness to consider some further compromise, that WCSD believed
24 that APTA had engaged in surface and bad faith bargaining, and WCSD requested that they continue
25 negotiations for the day (as agreed) and to accept and consider WCSD's latest proposal.

26 57. WCSD's almost completed offer, which APTA refused to accept, made further
27 compromises.

28 58. APTA engaged in surface bargaining.

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59. The impasse was improper under NRS 288.217(2).

IV. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully asks this Board:

1. For a finding that the conduct of APTA as referenced herein constitutes prohibited practices under Chapter 288 of the Nevada Revised Statutes;
2. For a finding that APTA failed to bargain in good faith;
3. For a finding that APTA engaged in surface bargaining;
4. For a finding that APTA improperly declared impasse under NRS 288.217(2);
5. For an order that the APTA bargain in good faith with WCSD as required by NRS 288.270(2)(b);
6. For an order requiring APTA to cease in violating NRS Chapter 288;
7. For an order requiring the APTA to comply with all applicable NRS Chapters;
8. For an award of attorneys' fees and costs of suit incurred herein; and
9. For such other and further relief as the Board deems proper.

DATED: September 18, 2023

BY: /s/ Anthony L. Hall, Esq.
 ANTHONY L. HALL, ESQ.
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AHall@SHJNevada.com
 JONATHAN A. MCGUIRE, ESQ.
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Attorneys for Respondent

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CERTIFICATE OF SERVICE

I, Kelly Lee, 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 **FIRST AMENDED COMPLAINT** by causing the document to be served certified-mail return receipt requested and email, addressed as follows:

Paul F. Hamilton
P.O. BOX 40638
RENO, NV, 89504

Paul F. Hamilton
577 CALIFORNIA AVENUE
RENO, NV, 89509

Ronald J. Dreher
P.O. Box 6494
Reno, NV 89513
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 September 19, 2023.

/s/ Kelly Lee
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 Respondent*

FILED
November 13, 2023
State of Nevada
E.M.R.B.
4:30 p.m.

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

12 WASHOE COUNTY SCHOOL
13 DISTRICT,

Case No.: 2023-023

14 Complainant,

Panel:

15 vs.

16 ASSOCIATION OF PROFESSIONAL/
17 TECHNICAL ADMINISTRATORS,

18 Respondent.
19 _____/

20 **ANSWER TO FIRST AMENDED COMPLAINT**

21 **COMES NOW**, Respondent, ASSOCIATION OF PROFESSIONAL/TECHNICAL
22 ADMINISTRATORS, (“APTA”), by and through its undersigned counsel, answers, avers and
23 otherwise responds to the allegations of the complaint as follows:

24 **I.**

25 **(THE PARTIES)**

26 1. Answering paragraph 1 of the Complaint, Respondents admits that WCSD is a
27 political subdivision of the State of Nevada. Respondent denies the remaining allegations
28 contained therein.

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10. Answering paragraph 10 of the Complaint, Respondent admits the allegations contained therein.

11. Answering paragraph 11 of the Complaint, Respondent admits the allegations contained therein.

12. Answering paragraph 12 of the Complaint, Respondent denies the allegations contained therein.

13. Answering paragraph 13 of the Complaint, Respondent admits that on May 30, 2023, WCSD presented a red-lined proposal to APTA. Respondent denies the remaining allegations contained therein.

14. Answering paragraph 14 of the Complaint, Respondent denies the allegations contained therein.

15. Answering paragraph 15 of the Complaint, as well as subsections of paragraph 15 labeled a,b,c,d,e,f,g,h,i,j,k,l,m,n,o p,q,r,s, Respondent admits that negotiation proposals were presented. Respondent denies the remaining allegation contained therein.

16. Answering paragraph 16 of the Complaint, Respondent denies the allegations contained therein.

17. Answering paragraph 17 of the Complaint, Respondent denies the allegations contained therein.

18. Answering paragraph 18 of the Complaint, Respondent denies the allegations contained therein.

19. Answering paragraph 19 of the Complaint, Respondent admits that APTA requested a caucus. Respondent denies the remaining allegations contained therein.

20. Answering paragraph 20 of the Complaint, Respondent admits the allegations contained therein.

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21. Answering paragraph 21 of the Complaint, Respondent denies the allegations contained therein.

22. Answering paragraph 22 of the Complaint, Respondent admits that it did not refuse to answer questions about its proposals. Respondent denies the remaining allegations contained therein.

23. Answering paragraph 23 of the Complaint, Respondent admits that it discussed WCSD proposals. Respondent denies the remaining allegations contained therein.

24. Answering paragraph 24 of the Complaint, Respondent admits the allegations contained therein.

25. Answering paragraph 25 of the Complaint, Respondent admits the allegations contained therein.

26. Answering paragraph 26 of the Complaint, Respondent admits the allegations contained therein.

27. Answering paragraph 27 of the Complaint, Respondent denies the allegations contained therein.

28. Answering paragraph 28 of the Complaint, Respondent denies the allegations contained therein.

29. Answering paragraph 29 of the Complaint, Respondent denies the allegations contained therein.

30. Answering paragraph 30 of the Complaint, Respondent admits that negotiations between WCSD and APTA resumed on August 15, 2023. Respondent denies the remaining allegations contained therein.

31. Answering paragraph 31 of the Complaint, Respondent denies the allegations contained therein.

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32. Answering paragraph 32 of the Complaint, Respondent admits that **Respondent's** counsel is also the counsel for WSPA. Respondent denies the remaining allegations contained therein.

33. Answering paragraph 33 of the Complaint, Respondent denies the allegations contained therein.

34. Answering paragraph 34 of the Complaint, Respondent denies the allegations contained therein.

35. Answering paragraph 35 of the Complaint, Respondent denies the allegations contained therein.

36. Answering paragraph 36 of the Complaint, Respondent denies the allegations contained therein.

37. Answering paragraph 37 of the Complaint, Respondent denies the allegations contained therein.

38. Answering paragraph 38 of the Complaint, Respondent admits that APTA provided several new proposals to WCSD. Respondent denies the remaining allegations contained therein.

39. Answering paragraph 39 of the Complaint, Respondent is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations contained therein.

40. Answering paragraph 40 of the Complaint, Respondent is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations contained therein.

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41. Answering paragraph 41 of the Complaint, Respondent is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations contained therein.

42. Answering paragraph 42 of the Complaint, Respondent is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations contained therein.

43. Answering paragraph 43 of the Complaint, Respondent is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations contained therein.

44. Answering paragraph 44 of the Complaint, Respondent admits the allegations contained therein.

45. Answering paragraph 45 of the Complaint, Respondent admits that Mr. Dreher was the chief negotiator for APTA. Respondent denies the remaining allegations contained therein.

46. Answering paragraph 46 of the Complaint, Respondent admits that it provided a verbal financial package to the District. Respondent denies the remaining allegation contained therein.

47. Answering paragraph 47 of the Complaint, Respondent denies the allegations contained therein.

48. Answering paragraph 48 of the Complaint, Respondent admits that the parties did not agree to a time limit on caucuses. Respondent denies the remaining allegations contained therein.

1 allege or establish facts constituting an alleged practice sufficient to raise a justiciable
2 controversy under NRS Chapter 288, as required by NAC 288.200.

3 2. The Board should dismiss the Complaint with prejudice as, in accordance with
4 NAC 288.275, no probable cause exists, and the Complaint is frivolous.

5 3. **At all times, Respondent's actions toward Complainant were made in good faith.**

6 4. All possible affirmative defenses may not have been alleged at the time of the
7 **filing of Respondent's Answer depending on the development of sufficient facts after reasonable**
8 **inquiry.** Therefore, Respondent reserves the right to amend its Answer to the Complaint to allege
9 additional affirmative defenses if so warranted by additional reasonable inquiry and
10 investigation.
11

12 WHEREFORE, based on the foregoing, Respondent requests the following relief:

- 13
- 14 1. The Board enter a Decision in favor of Respondent and against the Complainant, that
15 the Complaint and an Order that the claims on file herein be dismissed with prejudice
16 with prejudice, and that any and all relief be denied, with Complainant taking nothing
17 hereby;
 - 18 2. For Respondent's costs and reasonable attorneys' fees; and,
 - 19 3. For such other and further relief as the Court deems just and proper.
20
- 21

22 DATED this 13th day of November, 2023.
23

24 /s/ Ronald J. Dreher
25 Ronald J. Dreher
26 NV Bar No. 15726
27 P.O. Box 6494
28 Reno, NV 89513
Telephone: (775) 846-9804
dreherlaw@outlook.com
Attorney for Respondent

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

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

DATED this 13th day of November, 2023.

/s/ Ronald J. Dreher
Ronald J. Dreher
NV Bar No. 15726
P.O. Box 6494
Reno, NV 89513
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Attorney for Respondent

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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 13th day of November, 2023.

/s/ Ronald J. Dreher
Ronald J. Dreher
NV Bar No. 15726
P.O. Box 6494
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