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8 STATE OF NEVADA  
9 GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

10 NYE COUNTY MANAGEMENT EMPLOYEE  
11 ASSOCIATION

Case No. 2024-002

12 Complainant,  
13 v.  
14 NYE COUNTY  
15 Respondent.

**MOTION TO REQUIRE NYE COUNTY TO STRIKE NAMES TO SELECT AN INTEREST ARBITRATOR PURSUANT TO NRS 288.200 (6), OR ALTERNATIVELY TO AUTHORIZE NCMEA TO SELECT THE INTEREST ARBITRATOR FROM THE STRIKE LIST PROVIDED FROM FMCS.**

16  
17 Complainant, Nye County Management Employee Association ("NCMEA") by and through  
18 undersigned counsel Adam Levine, Esq. hereby moves the Board for an order requiring Nye County to  
19 participate statutory impasse process by selecting an interest arbitrator as required by NRS 288.200  
20 from the strike list previously provided by the Federal Mediation and Conciliation Service ("FMCS"),  
21 or alternatively to authorize NCMEA to select the interest arbitrator from that list. The grounds for  
22 NCMEA's Motion are set forth in the attached Memorandum of Points and Authorities.

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24 ///

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. BACKGROUND/PROCEDURAL HISTORY**

3 The bargaining history of the parties is well recounted in the Fact Finding and Recommendation  
4 of Fact-Finder David Gaba dated December 10, 2023. (Exhibit "1"). The short version is that the  
5 parties should have had a collective bargaining agreement in place in July 2022, but for the fact that the  
6 Nye County Board of County Commissioners ("BOCC") would not ratify the collective bargaining  
7 agreement negotiated by its own management team.

8 NCMEA certainly could have brought a bad-faith bargaining charge against Nye County in the  
9 latter half of 2022. However, a decision was made to simply settle the contract through the statutory  
10 impasse mechanism provided by NRS 288.200 as a fact finding and interest arbitration could likely be  
11 scheduled and completed before the Board could ever hear a Complaint.<sup>1</sup>

12 The parties initially selected Fact-finder Steven Briggs. Unfortunately, the hearing could not be  
13 set as quickly as NCMEA wanted due to Mr. Briggs not responding to his emails. Ultimately, the  
14 parties abandoned Briggs and mutually selected David Gaba who set the fact-finding hearing for  
15 September 5, 2023.

16 Nye County attempted to avoid the statutory process by requesting a continuance at the 11<sup>th</sup>  
17 hour to contest the composition of the bargaining unit notwithstanding the fact that it entered into a  
18 settlement agreement resolving such a dispute in 2014. (Exhibit "2"). Fact-finder Gaba denied the  
19 request to continue the hearing. (Exhibit "3").

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22 <sup>1</sup> The Board's ability to rapidly hear failure to bargain in good faith cases is simply inadequate. A recalcitrant  
23 party such as Nye County has 20 days to file an answer, and then another 21 days to file a prehearing statement.  
24 Thereafter, the parties will have to wait until the next Board meeting to have the hearing assigned, and those  
hearings are frequently 4-5 months out due to prior cases being set. As a consequence, when faced with a  
recalcitrant party such as Nye County, it is sometimes quicker to simply invoke the statutory impasse  
mechanisms of NRS 288.200.

1           Following the hearing, Nye County requested an extension of time to prepare and file with Gaba  
2 its Post-Hearing Brief. That extension until November 27, 2023 was granted. Nye County did not  
3 utilize this time to prepare its Brief. Instead, it utilized this time to prepare its Petition for Declaratory  
4 Order in Case No. 2023-033, and then on November 27, 2023 when the Brief was due, requested that  
5 the Fact-finding proceedings again be stayed. Fact-finder Gaba denied this request, and gave Nye  
6 County an additional two days to prepare and submit its Brief. (Exhibit "4").

7           On December 10, 2023 Fact-finder Gaba issued his Findings of Fact and Recommendations.  
8 (Exhibit "1"). These Findings and Recommendations were placed on the Nye County BOCC agenda  
9 for January 17, 2024. However, the Nye County BOCC did not accept the Recommendations at that  
10 meeting.

11           Accordingly, on January 18, 2024 NCMEA requested a panel of 7 interest arbitrators from  
12 FMCS under the authority of NRS 288.200(6).<sup>2</sup> That list was received the same day and sent to counsel  
13 for both Nye County and NCMEA. (Exhibit "5").

14           Thereafter, NCMEA counsel frequently contacted Nye County's counsel to select the interest  
15 arbitrator for the binding proceeding. Nye County's counsel, when she would even return the call, was  
16 noncommittal at best as to whether Nye County would cooperate. Finally, on February 1, 2024 Nye  
17 County's counsel responded by email "The County does not believe that it makes sense to proceed to  
18 binding fact finding in light of the pending EMRB case." (Exhibit "6").

## 19 **II. ARGUMENT**

20           Once impasse has been declared by either party, the other party has no discretion not to  
21 participate in the statutory process, Subsection (2) of NRS 288.200 states:

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24 <sup>2</sup> NRS 288.200 (2) provides that either party may request "a list of 7 potential fact finders" from either AAA or FMCS. Subsection (6) of the statute provides that the selection of a second fact finder to serve as an arbitrator "must be selected in the manner provided in subsection 2".

1 Within 5 days after receiving a list from the applicable arbitration service, the parties  
2 **shall** select their fact finder from this list by alternately striking one name until the name  
3 of only one fact finder remains, who will be the fact finder to hear the dispute in  
4 question. The employee organization shall strike the first name.

4 (**Emphasis added**). Nye County violated the statute when it refused to respond to NCMEA and strike  
5 names “[w]ithin 5 days after receiving a list from the applicable arbitration service” – in this case  
6 FMCS. There are no provisions for a local government, or an employee organization, to “opt out”  
7 because they have some other issue or dispute they want decided.<sup>3</sup>

8 Indeed, a reading of NRS 288.200 reveals that it is to be an expedited process. Parties must  
9 select an arbitrator within 5 days. NRS 288.200(2) Once the Fact-finder issues his report and  
10 recommendation, the local government only has 45 days to meet and consider such at an open meeting.  
11 NRS 288.200(8). If both parties do not agree to be bound, or enter into further negotiations, the interest  
12 arbitrator may only adjourn the hearing for a period of 3 weeks. NRS 288.215(8). Thereafter, the  
13 arbitrator must issue is final and binding decision “within 10 days after the final officer submitted”.  
14 NRS 288.215(10). Delays of the sort which Nye County attempted before Fact-finder Gaba, and which  
15 it now seeks to unilaterally impose by refusing to select an interest arbitrator, are entirely inconsistent  
16 with the statutory scheme.

### 17 **III. CONCLUSION/REMEDY REQUESTED**

18 While a Prohibited Practices Complaint is been filed and will require a hearing at some point in  
19 the future, this Board does have the ability to grant interim orders. See *Education Support Employees*  
20 *Association vs. Clark County School District*, Case No. A1-045765 Item No. 541 (June 4, 2003)  
21 (granting an interim order compelling CCSD to produce information). All that is required is that the  
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23

24 <sup>3</sup> For nine (9) years, 2014 until 2023, both parties understood that the composition of the bargaining unit was forever settled by virtue of the Settlement Agreement in Case No. A1-046095.

1 Board provide a "hearing" on the Motion, which it can do at its next scheduled Meeting. See NRS  
2 288.110(2).

3 If Nye County does not strike names within 24 hours of the granting of NCMEA's Motion, the  
4 Board's Order should provide that NCMEA shall be permitted unilaterally to select the arbitrator from  
5 the list provided by FMCS. (Exhibit "5").

6 DATED the 9<sup>th</sup> day of February, 2024.

7 LAW OFFICE OF DANIEL MARKS

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19 Attorneys for NCMEA  
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1 CERTIFICATE OF SERVICE

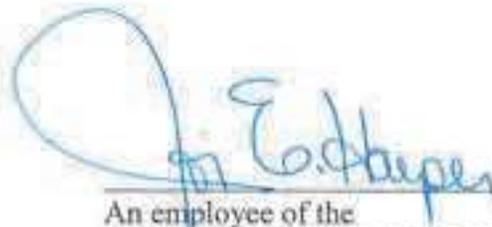
2 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS and that on  
3 the 9th day of February 2024, I filed by electronic means the foregoing MOTION TO REQUIRE  
4 NYE COUNTY TO STRIKE NAMES TO SELECT AN INTEREST ARBITRATOR PURSUANT TO  
5 NRS 288.200 (6), OR ALTERNATIVELY TO AUTHORIZE NCMEA TO SELECT THE INTEREST  
6 ARBITRATOR FROM THE STRIKE LIST PROVIDED FROM FMCS, as follows:

7 Employee-Management Relations Board  
8 3300 W. Sahara Ave., Suite 260  
9 Las Vegas, Nevada 89102  
[emrb@business.nv.gov](mailto:emrb@business.nv.gov)

10 I also did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope  
11 with first class postage fully prepaid thereon, a true and correct copy of the above and foregoing, to the  
12 address(es) as follows:

13 ALLISON L. KHEEL, ESQ.  
14 FISHER & PHILLIPS LLP  
15 300 South Fourth Street, Suite 1500  
16 Las Vegas, Nevada 89101  
17 Telephone: (702) 252-3131  
18 Facsimile: (702) 252-7411  
19 E-mail: [mricciardi@fisherphillips.com](mailto:mricciardi@fisherphillips.com)  
20 E-mail: [akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)  
21 Attorneys for Respondent Nye County

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An employee of the  
LAW OFFICE OF DANIEL MARKS

# **EXHIBIT 1**

# **EXHIBIT 1**



## INTRODUCTION

These Written Findings and Recommendations for Resolution of Impasse Issues (the “Recommendations”) arise pursuant to Nevada Revised Statute (NRS) Chapter 288, *et seq.* (the Statute), under which David Gaba was mutually selected by the Parties to serve as the Fact-finder under the specific terms of the Statute. These Recommendations involve an impasse between the Nye County Management Employees Association (the Union or the NCMEA), on behalf of “bargaining eligible civilian management employees” (who are not public safety, such as police or fire),<sup>1</sup> and Nye County, Nevada (the Employer or the County) (collectively, the Parties), over a successor Collective Bargaining Agreement covering the period of July 1, 2022, through June 30, 2025 (the Successor CBA). The previous CBA was in effect, from July 1, 2019, through June 30, 2022 (the Expired CBA).

### **The Fact-Finding Hearing**

On September 1, 2023, the County moved to postpone the fact-finding hearing (the Hearing) that had previously been scheduled by mutual agreement, for September 5, 2023, based on the County’s concerns about the proper composition of this particular bargaining unit. I denied the County’s Motion, as I found nothing in the Statute that gave me authority to grant such a motion.

On September 5, 2023, the Hearing was held in Pahrump, Nevada. The Parties had the opportunity to make opening statements, examine and cross-examine witnesses, introduce

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<sup>1</sup> See Union’s Post-Hearing Brief at page 1.



County's Petition. The Union objected to *any* order staying the County's briefing or Recommendations in these proceedings. Ultimately, I denied the County's Motion to Stay, on the ground that I lacked the authority to issue such an order. Specifically, I held:

Unfortunately, I feel that I have no choice but to deny Ms. Kheel's motion. While I fully understand the county's position, which is logical, I am not acting as an arbitrator in this matter, but as a statutory hearing officer. I think the best reading of NRS 288.200 which uses the word "*shall*" to delineate my actions is clear and absent a stipulation of the parties I don't have the power to stay this matter.<sup>3</sup>

Following my ruling, the County agreed to submit its Post-Hearing Brief on or before November 29, 2023. I received the County's Post-Hearing Brief on that same date. These Recommendations are timely issued in accordance with the Statute.

### ISSUES

The Parties did not stipulate to a statement of the issue(s) to be addressed in these Recommendations. In its Post-Hearing Brief, the County re-asserts:

*Only* the EMRB has jurisdiction to determine the appropriate composition of a bargaining unit. The County maintained a standing objection to the Factfinder's jurisdiction and renews and incorporates this objection in this Brief. Issuance of the recommendations of the Factfinder prior to a determination from the EMRB would prejudice the County and create the potential for inconsistent judicial decisions. Thus, the County renews and incorporates herein its motion for a stay of these Factfinding proceedings pending a resolution of the EMRB proceedings.<sup>4</sup>

I agree that *only* the EMRB has jurisdiction to determine the appropriate composition of this bargaining unit. Indeed, both Parties stipulated to that fact at the Hearing. However, as the Factfinder, I was *not* selected to determine "the appropriate composition of a bargaining unit." Rather,

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<sup>3</sup> Fact-finder's e-mail to the Parties on November 27, 2023, sent at 1:27 p.m. Pacific Daylight Time (emphasis added).

<sup>4</sup> County's Post-Hearing Brief at page 2, reference to transcript omitted; footnotes omitted (emphasis added).

as more fully addressed below, I was *mutually* selected by the Parties to issue Recommendations concerning the current impasse in negotiations for the Successor Collective Bargaining Agreement (Successor "CBA") between the Parties. Therefore, absent a recitation of *any* statutory or current case law that grants me the *authority* to issue an order granting a motion to stay these impasse proceedings, I have *no choice* but to issue these Recommendations as required by the Statute.

In that regard, the Union asserts:

Because there is an ability to pay, the Fact-finder is to "consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute and the Fact-finder shall consider whether the Board found that either party had bargained in bad faith."<sup>5</sup>

I adopt the Union's above statement of the issues I am required by Statute to consider and recommend.

#### APPLICABLE STATUTORY PROVISIONS

The following language from the Nevada Revised Statute (NRS) Chapter 288 (the Statute) governs this impasse proceeding:

**NRS 288.044 "Fact-finding" defined.** "Fact-finding" means the formal procedure by which an investigation of a labor dispute is conducted by a fact finder at which:

1. Evidence is presented; and
2. A written report is issued by the fact finder describing the issues involved, making findings and setting forth recommendations for settlement which may or may not be binding.

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<sup>5</sup> Union's Post-Hearing Brief at page 4.

**NRS 288.136 "Recognition" defined.** "Recognition" means the formal acknowledgment by the local government employer that a particular employee organization has the right to represent the local government employees within a particular bargaining unit.

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**NRS 288.150 Negotiations by employer with recognized employee organization; Subjects of mandatory bargaining; matters reserved to employer without negotiation; reopening of collective bargaining agreement during period of fiscal emergency; termination or reassignment of employees of certain schools.**

1. Except as otherwise provided in subsection 6 and NRS 354.6241, every local government employer shall negotiate in good faith through one or more representatives of its own choosing concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for each appropriate bargaining unit among its employees. If either party so requests, agreements reached must be reduced to writing.

2. The scope of mandatory bargaining is limited to:

- (a) Salary or wage rates or other forms of direct monetary compensation.
- (b) Sick leave.
- (c) Vacation leave.
- (d) Holidays.
- (e) Other paid or nonpaid leaves of absence.
- (f) Insurance benefits.
- (g) Total hours of work required of an employee on each workday or workweek.
- (h) Total number of days' work required of an employee in a work year.
- (i) Except as otherwise provided in subsections 8 and 11, discharge and disciplinary procedures.
- (j) Recognition clause.
- (k) The method used to classify employees in the bargaining unit.
- (l) Deduction of dues for the recognized employee organization.
- (m) Protection of employees in the bargaining unit from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter.
- (n) No-strike provisions consistent with the provisions of this chapter.
- (o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements.
- (p) General savings clauses.
- (q) Duration of collective bargaining agreements.
- (r) Safety of the employee.

- (s) Teacher preparation time.
- (t) Materials and supplies for classrooms.
- (u) Except as otherwise provided in subsections 9 and 11, the policies for the transfer and reassignment of teachers.
- (v) Procedures for reduction in workforce consistent with the provisions of this chapter.
- (w) Procedures consistent with the provisions of subsection 6 for the reopening of collective bargaining agreements for additional, further, new or supplementary negotiations during periods of fiscal emergency.

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**NRS 288.200 Submission of dispute to fact finder; Selection, compensation and duties of fac finder; submission to second fact finder in certain circumstances; effect of findings and recommendations; criteria for recommendations and awards.** Except in cases to which NRS 288.205 and 288.215, or NRS 288.217 apply:

1. If:
  - (a) The parties have failed to reach an agreement after at least six meetings of negotiations; and
  - (b) The parties have participated in mediation and by April 1, have not reached agreement,
    - ↪ either party to the dispute, at any time after April 1, may submit the dispute to an impartial Fact-finder for the findings and recommendations of the Fact-finder. The findings and recommendations of the Fact-finder are not binding on the parties except as provided in subsection 5. The mediator of a dispute may also be chosen by the parties to serve as the fact finder.
2. If the parties are unable to agree on an impartial fact finder within 5 days, either party may request from the American Arbitration Association or the Federal Mediation and Conciliation Service a list of seven potential Fact-finders. If the parties are unable to agree upon which arbitration service should be used, the Federal Mediation and Conciliation Service must be used. Within 5 days after receiving a list from the applicable arbitration service, the parties shall select their fact-finder from this list by alternately striking one name until the name of only one fact-finder remains, who will be the fact-finder to hear the dispute in question. The employee organization shall strike the first name.
3. The local government employer and employee organization each shall pay one-half of the cost of fact finding. Each party shall pay its own costs of preparation and presentation of its case in fact-finding.
4. A schedule of dates and times for the hearing must be established within 10 days after the selection of the Fact-finder pursuant to subsection 2, and the Fact-finder shall report the findings and recommendations of the

Fact-finder to the parties to the dispute within 30 days after the conclusion of the fact-finding hearing.

5. The parties to the dispute may agree, before the submission of the dispute to fact-finding, to make the findings and recommendations on all or any specified issues final and binding on the parties.

6. If parties to whom the provisions of NRS 288.215 and 288.217 do not apply [sic] do not agree on whether to make the findings and recommendations of the Fact-finder final and binding, either party may request the submission of the findings and recommendations of a Fact-finder on all or any specified issues in a particular dispute which are within the scope of subsection 11 to a second Fact-finder to serve as an arbitrator and issue a decision which is final and binding. The second Fact-finder must be selected in the manner provided in subsection 2 and has the powers provided for Fact-finders in NRS 288.210. The procedures for the arbitration of a dispute prescribed by subsections 8 to 13, inclusive, of NRS 288.215 apply to the submission of a dispute to a second Fact-finder to serve as an arbitrator pursuant to this subsection.

7. Except as otherwise provided in subsection 10, any fact finder, whether the fact finder's recommendations are to be binding or not, shall base such recommendations or award on the following criteria:

(a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision. If the local government employer is a school district, any money appropriated by the State to carry out increases in salaries or benefits for the employees of the school district must be considered by a Fact-finder in making a preliminary determination.

(b) Once the fact finder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, and subject to the provisions of paragraph (c), the fact-finder shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute and the fact-finder shall consider whether the Board found that either party had bargained in bad faith.

(c) A consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multiyear contract, the Fact-finder must consider the ability to pay over the life of the contract being negotiated or arbitrated.

→ The Fact-finder's report must contain the facts upon which the Fact-finder based the Fact-finder's determination of financial ability to grant monetary benefits and the Fact-finder's recommendations or award.

8. Within 45 days after the receipt of the report from the Fact-finder, the governing body of the local government employer shall hold a public meeting in accordance with the provisions of chapter 241 of NRS. The meeting must include a discussion of:

- (a) The issues of the parties submitted pursuant to this section;
- (b) The report of findings and recommendations of the Fact-finder; and
- (c) The overall fiscal impact of the findings and recommendations, which must not include a discussion of the details of the report.

→ The Fact-finder must not be asked to discuss the decision during the meeting.

9. The chief executive officer of the local government shall report to the local government the fiscal impact of the findings and recommendations. The report must include, without limitation, an analysis of the impact of the findings and recommendations on compensation and reimbursement, funding, benefits, hours, working conditions or other terms and conditions of employment.

10. Any sum of money which is maintained in a fund whose balance is required by law to be:

- (a) Used only for a specific purpose other than the payment of compensation to the bargaining unit affected; or
- (b) Carried forward to the succeeding fiscal year in any designated amount, to the extent of that amount,

→ must not be counted in determining the financial ability of a local government employer and must not be used to pay any monetary benefits recommended or awarded by the Fact-finder.

11. The issues which may be included in a recommendation or award by a Fact-finder are:

(a) Those enumerated in subsection 2 of NRS 288.150 as the subjects of mandatory bargaining, unless precluded for that year by an existing collective bargaining agreement between the parties; and

(b) Those which an existing collective bargaining agreement between the parties makes subject to negotiation in that year.

→ This subsection does not preclude the voluntary submission of other issues by the parties pursuant to subsection 5.

12. Except for the period prescribed by subsection 8, any time limit prescribed by this section may be extended by agreement of the parties.

**NRS 288.270 Employer or representative; employee or employee organization.**

1. It is a prohibited practice for a local government employer or its designated representative willfully to:

(a) Interfere, restrain or coerce any employee in the exercise of any right guaranteed under this chapter.

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

(c) Discriminate in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in any employee organization.

(d) Discharge or otherwise discriminate against any employee because the employee has signed or filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because the employee has formed, joined or chosen to be represented by any employee organization.

(e) Refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150. Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter.

(f) Discriminate because of race, color, religion, sex, sexual orientation, gender identity or expression, age, physical or visual handicap, national origin or because of political or personal reasons or affiliations.

(g) Fail to provide the information required by NRS 288.180.

(h) Fail to comply with the requirements of NRS 281.755.

2. It is a prohibited practice for a local government employee or for an employee organization or its designated agent willfully to:

(a) Interfere with, restrain or coerce any employee in the exercise of any right guaranteed under this chapter.

### FINDINGS OF FACT

After a thorough review and careful consideration of the testimony and documentary evidence presented by the Parties, I make the following Findings.

#### The Parties

Nye County (the County or the Employer) is Nevada's largest county by area. The County's seat is located in the City of Tonopah. Article 1 of the Expired CBA defines the "County" to mean:

...the County of Nye and its Board of Commissioners, its facilities, *and/or the County Manager* or his/her designee (emphasis added)

Article 3, Section 1, provides that the Nye County Management Employees Association (the Union or the NCMEA) is:

*...recognized by the County as the sole and exclusive collective bargaining representative of the employees assigned to the represented classifications listed in Addendum B who are eligible to be represented by the Association...* (emphasis added).

As defined in the Statute, "recognition" is to defined to mean:

[T]he formal acknowledgment by the local government employer that a particular employee organization has the right to represent the local government employees within a particular bargaining unit.

Addendum B of the Expired CBA lists the classifications covered by the CBA, and recognized by the County as represented by the Union:

<b>Grade</b>	<b>Represented Classification</b>
15	Geoscientist I Law Clerk Principal Planner Specialty Court Coordinator
16	B&G Manager Court Reporter Human Services Manager Program Supervisor
17	Community Planner Data Base Manager Geoscientist II
18	Tourism Director
19	Geoscientist III Network Engineer
20	Utilities Superintendent
21	Assistant Planning Director Director, Emergency Management Services Geosciences Manager

- Principal Engineer  
Road Superintendent
- 22 Assistant Public Works Director  
Director, Facility Operations
- Director, Information Technology  
Geotechnical Representative
- 23 Director, Health & Human Services
- 24 Director, NWRPO  
Director, Planning
- 25 ACM - Director of Community Development  
Director, Public Works

**The Original Dispute Regarding the Proper Composition of the Bargaining Unit**

On or about June 18, 2013, the Union’s counsel of record filed a Complaint and Petition for Declaratory Order with the EMRB, assigned as Case No. A1-046095 (the Union’s Complaint). The Union’s Complaint was concerning the proper composition of the bargaining unit as of the date it filed the complaint. Specifically, the Union asserted that the County violated NRS 288.150 by refusing to recognize the following classifications as part of the bargaining unit:

- Director, Emergency Management Services
- Director, Health and Human Services
- Director, Management Information Systems
- Director, Planning
- Director, Public Works
- Director, N.W.R.P.O.
- Manager, Facilities Operations
- Chief Juvenile Probation Officer
- Veterans Service Officer

On or about May 4, 2014, the County and the Union reached a Settlement Agreement concerning the Union’s Complaint. In the Settlement Agreement, the County specifically agreed

to recognize *all* the above-listed classifications that were a part of the bargaining unit as of the date of the last ratified agreement, with the *exception* of the Chief Juvenile Probation Officer position. In exchange, the Union agreed to withdraw its Complaint.

Under the “Recitals” section of the Settlement Agreement at subsection C., the Parties agreed:

Without either Party admitting liability or fault, and in a compromise of each of their positions and rights, the Parties desire to enter into this Agreement to resolve *all* disputes related to their respective rights in the Action and arising out of the claims and allegations set forth therein upon the terms and conditions stated herein. Neither the execution nor the performance of this Agreement shall be considered an admission of fault, liability or wrongdoing whatsoever by any of the Parties.<sup>6</sup>

Based on the above language, it appears that the Parties *mutually* agreed that the Settlement Agreement resolved all disputes concerning the proper composition of this bargaining unit. In any event, more importantly to these Recommendations, there simply is no *evidence* that the County raised the issue of the proper composition of the bargaining unit *at any time* during *any* of the six (6) negotiation sessions held concerning the Successor CBA.

#### **The Union Opens Negotiations for the Successor CBA**

In February 2022, the Union notified the County that it wished to negotiate a Successor CBA to the now Expired CBA, in effect from July 1, 2019, through June 30, 2022. The Parties agreed to open (3) articles for renegotiation; those included Article 11 - Probationary Period, Article - 21 Holidays, and Article 26 - Wages.

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<sup>6</sup> Union Exhibit 9 (emphasis added).

The Union's President, Darrin Tuck, a County utility superintendent, acted as Chief Negotiator for the Union, and County Manager Tim Sutton acted as Chief Negotiator for the County. County Manager Sutton has been the County Manager since October 1, 2017, and Mr. Tuck has been the President of the Union for "approximately six (6) years."

NRS 288.150 provides, at Section 1:

Except as otherwise provided in subsection 6 and NRS 354.6241, every local government employer shall negotiate in good faith *through one or more representatives of its own choosing* concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for each appropriate bargaining unit among its employees. If either party so requests, agreements reached must be reduced to writing (emphasis added).

Based on the overall record, more likely than not, the County chose County Manager Sutton to act as Chief Negotiator on its behalf. My personal observation is that both these men were imminently qualified to act as Chief Negotiators.

At the Hearing, Mr. Tuck credibly testified that he negotiated the Expired CBA on behalf of the Union; he further credibly testified that the County did *not* raise any objection to the composition of the bargaining unit during negotiations for either the Expired CBA or the Successor CBA. Moreover, County Manager Sutton credibly testified about the County's previous bargaining history with the Union:

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24 NCMEA is a group that we generally don't  
25 have a lot of issues with. We typically work

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1 together on wages. It's really short. We don't  
2 typically involve counsel. So as I recall, I think  
3 we had two or three sessions. Were able to TA a  
4 document pretty quickly.

Based on both Parties' testimony, more likely than not, the Parties had a good working relationship prior to the meeting held on July 11, 2023, addressed below.

### **The Parties Reach a Tentative Agreement**

Consistent with both Parties' testimony, the Parties initially met for successor negotiations three (3) times: on March 11, 2022, April 12, 2022, and June 13, 2022 (the Initial Meetings). The record further reflects that, as of the third (3<sup>rd</sup>) negotiation meeting held on June 13, 2022, the Parties reached a Tentative Agreement (TA) on the above three (3) articles, as well as Appendix A, which corresponds with Article 26 - Wages.

The Parties agreed to a three (3)-year Successor CBA, with the effective dates of July 1, 2022, through June 30, 2025 (Article 33 – Term of Agreement). County Manager Sutton signed the TA on behalf of the County, and Mr. Tuck signed the TA on behalf of the Union. Again, Mr. Tuck credibly testified that the County did not raise *any* concerns or issues related to the proper composition of the bargaining unit during *any* of the Initial Meetings concerning the Successor CBA.

### **The Tentative Agreement**

The relevant portions of the TA reached on June 13, 2022, provide:

#### **Article 11- Probationary Period**

1. All new full time employees shall fulfill a probationary period of twelve (12) months. During the probationary period following an original appointment and any extension of such period, employment may be terminated at will. Initial appointment shall be made at the entrance rate for the class, except as approved by the County Manager or his/her designee.

a. Upon initial appointment, an employee shall serve a probationary period of 2080- hours.

b. Probationary employees shall be provided a written performance evaluation no later than twenty (20) working days following performing 1040 hours of employment. Any employee that receives less than a fully satisfactory performance shall be continued on probation for the remainder of the probationary period.

c. If a probationary employee receives a fully satisfactory performance evaluation or in the event no written performance evaluation created as required herein the probationary employee shall be deemed to have successfully completed probation and shall become a regular employee. Employees that complete probation prior to the expiration of the 2080-hour probationary period shall not be entitled to a salary step increase until the one-year anniversary of this Agreement.

d. Probationary employees that do not receive a lessor satisfactory performance evaluation within 20 working days of the completion of the full probationary. Shall be deemed to have successfully completed probation and shall become a regular employee.

~~2. A probationary employee shall accrue benefit credit from his/her hire date.~~ When a former employee is rehired after a break in service of no more than one (1) year from the date of separation to a position in the same class held at the time of separation, s/he may be paid at or below the same hourly rate (including across the board schedule adjustment provided by this Agreement) s/he held at the time of separation.

~~b. An employee shall become eligible to use sick leave upon completion of thirty (30) days of service.~~

~~b. An employee shall become eligible to use annual leave upon completion of six (6) months of service.~~

~~e. An employee shall be eligible to use his/her group insurance benefits at such time as is provided by the insurance plan then in effect and/or chosen by the employee.~~

~~3. New probationary employees shall not constitute a part of the bargaining unit. They may, however, join the Association. When an employee is promoted, s/he shall be entitled to a salary increase to the~~

lowest step in the range for the higher class which provides at least a ten and one-half percent (10.5%) increase, provided that in no event will the new salary be less than the minimum rate of the range or greater than the top step of the range to which the employee is promoted. Any exception may be approved by the County Manager or designee upon written justification.

4-a. A promoted employee shall serve a qualifying period. The qualifying period will normally be 1040 hours - in paid status. At the discretion of the employee's direct supervisor and upon approval by the County Manager, prior to completion of the initial qualifying period, the qualifying period may be extended up to an additional 1040 hours for a maximum of 2080 hours. At the conclusion of the qualifying period, the employees shall be given a performance evaluation. Based on the performance evaluation and demonstrated qualifications, the employee will either be accepted or rejected for the position. If rejected, a reasonable effort will be made to place the employee in his/her previous position or another County position for which s/he qualifies. If no position is available, the action affecting the employee shall be subject to the provisions of Article 28, Layoff and Recall, Section 6.

b. When an employee is promoted, s/he shall retain the right during the first fifteen (15) shifts worked of the qualifying period to voluntarily demote to his/her previously held position. The employee shall have his/her salary reduced to the hourly rate (including across the board schedule adjustments provided by this Agreement) held prior to being placed on the qualifying period.

~~Probationary employees shall receive a written performance evaluation at the completion of their third, sixth, and eleventh month of their probationary period, when applicable.~~

4. A reclassification to a class with a higher grade shall be treated under the same terms and conditions as a promotion.

5. When an employee transfers to a position in the same class or at the same salary grade in another department, s/he shall be entitled to the same hourly rate held at the time of the transfer. The County Manager or designee, upon written justification by the direct supervisor, may approve a higher rate of pay. A voluntary transfer may result in the transferring employee serving a new qualifying period. The transferring employee will be notified, in writing, prior to accepting the transfer if a qualifying period will be required. Upon

successful completion of the qualifying period, the employee may, at the discretion of the direct supervisor, receive a one-step salary increase, provided that the employee is not at the top of the schedule for the class.

6. When an employee is demoted, his/her salary will not exceed the top of the new salary schedule unless the demotion was a result of a reclassification. Demotions, except for reclassifications, initiate a new anniversary date. Employees failing a qualifying period following promotion and returned to his/her previously held class shall have his/her salary reduced to the step and grade (including across the board schedule adjustments provided by this Agreement) held prior to being placed on the qualifying period.

7. For the purposes of this Article, "initial appointment" shall be defined as the first position held by an individual in the service of the County since the employee's last break in service.

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#### **Article 21 - Holidays**

1. The County and the Association agree that per NRS 236.015 the following legal holidays will be observed:

- New Year's Day: January 1
- Martin Luther King Day: Third Monday in January
- President's Day: Third Monday in February
- Memorial Day: Last Monday in May
- Juneteenth: June 19
- Independence Day: July 4
- Labor Day: First Monday in September
- Nevada Day: Last Friday of October
- Veteran's Day: November 11
- Thanksgiving Day: Fourth Thursday in November
- Family Day: Friday following the Fourth Thursday in November
- Christmas: December 25
- Any day that may be appointed by the President of the United States for public fast, thanksgiving or as a legal holiday ~~except~~except for any Presidential appointment of the fourth Friday in October as Veterans Day.

2. If any of the above holidays fall on a Sunday, the following Monday shall be considered as a legal holiday. If any of the above holidays fall on Saturday, the preceding Friday shall be considered as a legal holiday.

3. An employee, in order to be entitled to a legal holiday as provided, shall be on pay status on his/her scheduled work day immediately preceding and immediately following such holiday.

~~3.4.~~ If an employee works a four-day, forty-hour work week, s/he will only be entitled to claim eight hours of holiday pay for any holiday specified above.

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#### Article 26 – Wages

1. Effective July 1, ~~2019~~<sup>22</sup> a ~~three~~<sup>five</sup> and six tenths percent (3~~5~~<sup>6</sup>%) COLA (cost of living adjustment) shall be given to all employee's subject to this Agreement, ~~this COLA shall be retroactive to the dates the COLA's were given to the NCEA (Nye County Employee Association) employee's in years 2017-2019. This rate is the result of the December 2021 change in Consumer Price Index [sic], Urban Wage Earners and Clerical Workers West B/C 12- month period change of 7.1% less the previously granted 1.5% pursuant to the NCMEA Contract, Article 26 section 3 ratified August 16, 2019, with an effective period of July 1, 2019- June 30, 2022. December 2020 12-month average CPI was 1.5%.~~
2. ~~Immediately upon the removal of the "Me Too" clause from Article 32(1) of the NCEA bargaining agreement and within year two (2020-2021) of this agreement, a three percent (3%) COLA and/or wage increase shall be given to all employee's subject to this Agreement and shall be paid retroactive to July 1, 2020. — Effective July 1, 2023 all employees subject to this Agreement shall be given a COLA equal to the change in the Consumer Price Index, Urban Wage Earners and Clerical workers West B/C, and the rate of this COLA shall be based on the calculated average of the CPI index of the three (3) prior years, including the 12-month period ending December of 2022 and the previous two (2) years.~~
3. Effective July 1, ~~2021~~<sup>2024</sup> all employees subject to this Agreement shall be given a COLA equal to the change in the Consumer Price Index, Urban Wage Earners and Clerical Workers, West B/C, ~~as of the previous December~~

~~provided that the cola to be implemented shall not exceed 3% and the rate of this COLA shall be based on the calculated average of the CPI index of the previous three (3) prior years, including the 12-month period ending in December of 2023 and the previous two (2) years.~~

~~3. The COLA increase in paragraph 3 above should only be given if audited property tax revenues (excluding net proceeds) for the prior fiscal year is in excess of five (5%) from the preceding year.~~

4. The County recognizes employees may be under an unusually heavy workload on-call schedule. The County Manager may, from time to time, in his or her absolute discretion, designate one or more employees to be in heavy workload or heavy on-call (HWOC) status. The County Manager may also, in his or her absolute discretion remove the HWOC designation from any employee at any time. The County Manager's decision to bestow the HWOC designation or remove the HWOC designation shall not be grievable and shall not be covered by the Grievance and Arbitration Procedures of this Agreement.

For each full pay period while in HWOC status the employee shall receive a payment of \$250.

The TA also includes an Addendum A, which sets forth the new "Pay Scale" for employees.

Significantly, the TA lists the “fiscal impact” to the County:

<b>Fiscal Impact NCMEA CBA</b>	
	<b>FY Impact</b>
FY23 (Including 5.6% COLA)	\$7,562,492
FY24 (Estimating 3% COLA)	\$7,765,101
FY25 (Estimating 3% COLA)	\$7,973,303
<b>Total CBA Cost FY23-FY25</b>	<b>\$23,300,896</b>
<p><b>NRS 288,153 Agreement must be approved at a public hearing; report of fiscal impact of agreement. Any new, extended or modified collective bargaining agreement or similar agreement between a local government employer and an employee organization must be approved by the governing body of the local government employer at a public hearing. The chief executive officer of the local government shall report to the local government shall report to the local government the fiscal impact of the agreement.</b></p>	
<p>*Funds affected: 10101, 10205, 10208, 10230, 10236, 10254, 10262, 10263, 10340, 10607, 25101, 25222, 25208, 25220</p> <p>Staff will bring forward an augment at a later meeting to remedy the budget in each fund.</p>	

I find this information to be particularly useful and preponderant on the issue of the County's “ability to pay,” addressed in more detail below.

### **The Board of County Commissioners Refuse to Ratify the TA**

On July 11, 2022, the Parties presented the proposed Collective Bargaining Agreement for ratification by the Board of County Commissioners (the Board) (the Ratification Meeting). While the record does not reflect whether the Union had already ratified the TA as of that date, more

likely than not, the Union either already had, or shortly thereafter, ratified the TA. Thus, more likely than not, the Parties only needed ratification by the Board to adopt the contract.

During the Ratification Meeting, the Board communicated they were *not* willing to ratify the contract for a variety of reasons. The first reason, raised by Commissioner Leo Blundo, was because "executive management should *not* be unionized at the top." Commissioner Blundo offered his justification for this statement, when he stated, in relevant part:

So in my opinion once you hit that tier, *I don't think the Union fits*. I think unions had their place, especially in the twenties (20s) and thirties (30s) in this country<sup>8</sup>, but Nye County is not just a fair, but a very good employer. We go to bat for our employees and I think that's a testament to what the County Manager has put in place over the years from the top down (emphasis added).

While I agree with Commissioner Blundo that the County's Manager, Mr. Sutton, appears to have been doing an *outstanding* job representing the County in all negotiations he was involved with for this particular bargaining unit, I respectfully disagree that "*I don't think the Union fits*" is a good justification for failing to ratify the Parties' TA. This is because the County offered *no evidence* as to this alleged justification.

Commissioner Blundo also expressed concern that bargaining unit employees would receive subjective, rather than objective, performance evaluations under the new language in the TA. Again, I can appreciate Commissioner Blundo's comments, but, without any facts or *evidence*, I am simply *not* persuaded by Commissioner Blundo's *opinion*.

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<sup>7</sup> Disclaimer: While I used my best efforts to transcribe what I heard and understood while listening to the recording of the BOCC Meeting, since I am not a certified court reporter, I do not claim that the statements I transcribed are *exactly* what each Commissioner said. However, more likely than not, I captured the essence of what each Commissioner said during the BOCC Meeting.

<sup>8</sup> More likely than not, Commissioner Blundo was referring to the 1920's and the 1930's.

The third issue was raised by then Chairman and Commissioner, Frank Carbone.<sup>9</sup> Commissioner Carbone questioned whether the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, West B/C used in the TA to determine the cost of living adjustment (COLA) for these bargaining unit members was appropriate. Specifically, Commissioner Carbone said words to the effect of, “we are *not* an urban unit or in an urban area” (emphasis added). Commissioner Carbone expanded on his concerns about the CPI, when he stated:

As far as I can see, the calculations that we are using may be a little *out of whack* for the simple reason that as of today, the cost of living has gone out of sight and the fuel has gone out of sight (emphasis added).

I *might* have been persuaded by Commissioner Carbone’s assertion that the CPI used to establish the COLA in the TA is “out of whack”; however, in its Post-Hearing Brief, the County *concedes*:

Here, despite concerns raised by members of the BOCC regarding whether the CPI for Urban Wage Earners and Clerical Workers, West B/C was an appropriate CPI index for Nye County, the County *acknowledges* that this CPI index has been used in the NCMEA’s predecessor agreements as well as many other CBAs in Nye County, and was contained in *every* bargaining proposal made by either party in negotiations.<sup>10</sup>

Based on the County’s concession, more likely than not, I am *entitled* to rely on statistics from the United States Bureau of Labor Statistics (the BLS) concerning the CPI for Urban Wage Earners and Clerical Workers, West B/C, which applies to “areas [with a population of] 2.5 million or less.”<sup>11</sup> Thus, while I can appreciate Commissioner Carbone’s *opinion* regarding whether the CPI used in the TA was appropriate, again, his *opinion* simply does not matter, as the County conceded

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<sup>9</sup> The record is unclear whether Commissioner Carbone was still the Chairman as of the date of the Hearing.

<sup>10</sup> County’s Post-Hearing Brief at page 9 (emphasis added).

<sup>11</sup> <https://www.bls.gov/regions/west/cpi-summary/ro9xg01a.htm>

through its counsel of record that the CPI agreed to in the TA has historically been used by the County.

Next, at Commissioner Debra Strickland's request, Commissioner Bruce Jabbour addressed his concern whether the steps and grades in the TA were "misaligned" and "confusing" to bargaining unit members.<sup>13</sup> While I understood Commissioner Jabbour's comments, there is no evidence that any bargaining unit members were confused by *anything* the Parties agreed to in the TA. Again, I appreciate Commissioner Jabbour's opinion, but his opinion is not *evidence*.

Like Commissioner Carbone, Commissioner Strickland also questioned whether the CPI used in the TA was proper, when she stated:

We all know that the economics currently are *out of whack* is what I heard someone mention, and I'm gonna say *it's not a good time to be negotiating a contract*. I don't know what that means when you're dealing with unions because apparently, we have *no choice* but to have unions, because it only takes two (2) people to unionize.

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I don't think an 8 1/2 percent CPI is--I think it's ridiculous. We can't keep up like this so we need to rethink what we're doing and I cannot support this at this time, and perhaps maybe the EMRB--perhaps they will need to come in and look at what we have to offer, what the Union has to offer and come to a negotiated agreement. But *it's not a good time to do a contract* and we are out of control right now as a country (emphasis added).

Again, Commissioner Strickland's repetitive statement that the CPI is "out of whack" is factually inaccurate, based on the County's admissions in its Post-Hearing Brief. Moreover, Commissioner Strickland's statement that "it's not a good time to do a contract" simply has no bearing on the

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<sup>13</sup> Presumably, Commissioner Jabbour was referring to Addendum A – Pay Scale, which, as previously sets forth above, corresponds with the newly revised Article 26 – Wages.

statutory criteria I am required to consider. For these reasons, I cannot align my Recommendations with any of Commissioner Strickland's comments.

Lastly, Commissioner Donna Cox provided a general comment regarding her very apparent distaste for unions, when she stated:

*I don't believe we should have unions. We are a political entity out in the public sector but I have never supported them and I even know employees who don't support that because there's too many ups and downs, there are some levels making too much money, and other people not making enough money, and we can only do so much up here as a Board as far as working those out, but I know we have unhappy employees that are not in agreement with things that have been done with unions, so on top of that with all the things you people have already said, I feel the same way. I don't think this is going to go anywhere at this point (emphasis added).*

In sum, the Board expressed Union animus against this particular bargaining unit and against unions in general during the Ratification Meeting. While I can appreciate the Board's comments were made in the spirit of attempting to understand the County's statutory obligations, none of the Board's comments and opinions carry any weight when issuing these Recommendations, as these comments do not address the statutory criteria I must consider. On this point, I truly sympathize with the County's counsel, and the County's Manager, as, in my humble opinion, they probably had *no idea* the Board would refuse to ratify the TA for the reasons stated.

#### **The Board Gives Direction to the County Manager**

At the Hearing, County Manager Sutton credibly testified about the direction the Board gave him following the Ratification Meeting:

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18 A. The Board raised various issues, various  
19 concerns that they had with the proposal, with the

20 TA document.  
21 And one was the fact that we were in a  
22 strange economic climate and wanted to wait until  
23 that settled down. The other one was, as I  
24 mentioned, that the department heads could not be –  
25 should not be part of a bargaining unit. The other

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1 one was whether or not the appropriate comparables  
2 were being used. The other one was whether CPI was  
3 an appropriate index to be used, considering that  
4 we're a rural county.

Based on the overall record, the Board's direction following the Ratification Meeting was very likely *contrary* to any direction County Manager Sutton had ever received in the past.

#### **The ERMB's July 19, 2023, Decision**

At the Hearing, the County offered to supplement the record with the ERMB's decision, *Nye County v. Nye County Association of Sheriff's Supervisors (NCASS), et al*, Item No. 887, Case No. 2022-009, (July 19, 2023) (the NCASS case), in support of its proposition that:

[T]he impasse proceedings...are an extension of the bargaining process and the County cannot be forced to negotiate and bargain with an inappropriate bargaining unit, nor be compelled to enter into a CBA with an inappropriate bargaining unit.<sup>13</sup>

Both Parties stipulated that, as of the date of the Hearing, the parties in that action were still attempting to negotiate a successor agreement. In any event, I have read the decision, and do not find it persuasive in this particular circumstance, as more fully addressed below.

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<sup>13</sup> County's Post-Hearing Brief at page 1.

### The County's Text Message to the Union on August 17, 2022

On August 17, 2022, County Manager Sutton sent the following text message to the Union's Chief Negotiator:



I find County Manager Sutton's comment that the Board's "stance that department heads can't or shouldn't be unionized" is pertinent to these Recommendations, as addressed below.

### The Final Three (3) Negotiation Sessions

Following the Board's failure to ratify the TA, the Parties met for three (3) additional negotiation sessions, on July 26, 2022, September 22, 2022, and October 25 of 2022 (the Final Negotiation Sessions). During those Final Negotiation Sessions, the Union offered to reduce the

COLA from the agreed-upon rate of 5.6% to 4.5%. The Union's final offer was to reduce the COLA to 4%. The County did *not* accept any of the Union's offers.

Again, the record establishes that the County did not raise any concern about the composition of the bargaining unit during *any* of those Final Negotiation Sessions. Thus, while I totally believe that County Manager Sutton was simply communicating the Board's position to the Union as of August 18, 2022, there simply is no *evidence* that the Board *acted* on its position during the Final Negotiation Sessions.

### **The Union Declares Impasse**

Both Parties stipulated that the Union declared impasse on November 7, 2022. Again, nothing in the record suggests that the County took any *action* concerning the composition of the bargaining unit *prior* to the declaration of impasse, nor is there any evidence that the County took action *before* the Hearing held on September 5, 2023.

### **The County Files its Petition**

As addressed above, the County did not file a Petition with the EMRB until November 27, 2023. Within the Petition, the County alleged:

The crux of this matter is the Union's improper attempt to insist on the continued unlawful inclusion of the supervisory classifications of Director of Natural Resources, Director of Information Technology, Director of Human Services, Director of Planning, Director of Public Works, Director of Facility Operations, and Director of Emergency Management ("Subject Positions") in the same collective bargaining unit as those positions whom they directly supervise. Including supervisors in the same unit as those they directly supervise is expressly prohibited by Nevada law.

Both Parties stipulated, and I agree, that I do *not* have jurisdiction to determine which classifications are appropriate for this bargaining unit. As such, I am not making any findings or recommendations in that regard.

### The BLS Statistics

As set forth above, the County conceded that the CPI-U for West B/C has historically been used for this particular bargaining unit. In that regard, based on the most current information provided by the BLS, as of October 2023, the CPI-U for West B/C advanced 3.3 percent,<sup>14</sup> and food prices rose by 3.5 percent. However, energy prices declined 0.8 percent, largely as the result of a decrease in the price of gasoline.<sup>15</sup> Unfortunately, the index for all items less food and energy advanced 3.7 percent over the past year.<sup>16</sup>

### The County's Ability to Pay

The Parties included the estimated fiscal cost of the Successor CBA on page 47 of the TA:

<b>Fiscal Impact NCMEACBA</b>	
	<b>FY Impact</b>
FV23 (including 5.8% COLA)	\$7,562,492
FV24 (Estimating 3% COLA)	\$7,765,101
FV25 (Estimating 3% COLA)	\$7,973,303
<b>Total CBA Cost FY23-FY25</b>	<b>\$23,300,896</b>

<sup>14</sup> [https://www.bls.gov/regions/west/news-release/consumerpriceindex\\_west.htm](https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm)

<sup>15</sup> [https://www.bls.gov/regions/west/news-release/consumerpriceindex\\_west.htm](https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm)

<sup>16</sup> [https://www.bls.gov/regions/west/news-release/consumerpriceindex\\_west.htm](https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm)

### The County's External Comparable Jurisdictions

While County Manager Sutton credibly testified that the Board questioned whether the "traditional" comparable jurisdictions for the County were "appropriate" following the Ratification Meeting, neither Party presented *any evidence* that establishes exactly which counties the Parties have traditionally recognized as the County's external comparable jurisdictions. Having said that, County Manager Sutton did credibly testify:

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24 we have  
25 traditionally used Class III counties, which are

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1 counties that are similarly sized in terms of  
2 population as our comparative markets. And the  
3 Board, kind of surprisingly, indicated that that is  
4 not perhaps -- is not what they wanted to be limited  
5 to.  
6 They wanted to look at neighboring  
7 markets, such as Las Vegas, Boulder City, Mesquite,  
8 Henderson, and all the other ones that have been  
9 previously mentioned. They also wanted to possibly  
10 look nationally. And also, not just confined to  
11 local government, but also perhaps in looking at the  
12 private sector as well. Which was surprising to all  
13 of us, but that's what they told us to do.

Based on County Manager Sutton's credible testimony, the Parties need to dialogue concerning the Board's direction to County Manager Sutton to include "neighboring markets" such as Las Vegas, Boulder City, Mesquite, Henderson, et cetera. For purposes of these Recommendations, I will attempt to determine what the "traditional Class III counties" are, since neither Party presented any evidence concerning the County's traditional comparator jurisdictions.

County Manager Sutton also testified that the Board's direction to look at "neighboring markets" prompted the Board to determine that a County Classification and Compensation study should be commenced. However, as of the date of the Hearing, the County was still reviewing proposals from a variety of firms. Importantly, County Manager Sutton agreed at the Hearing that it is *not* the County's position that the Union should go without a Successor CBA "until such time as the County completes its Classification and Compensation study."

### **The Parties' Stipulations**

At the Hearing, the Parties entered into the following stipulations:

- Union Exhibit 5 is the TA'd agreement between the chief negotiators from the NCMEA and Nye County that was presented to the Board of County Commissioners. The Board of County Commissioners voted to reject the TA.
- Union Exhibits 1 through 5 are admitted.
- The County stipulates that Union Exhibits 8, 9, 10 and 11 are true and correct copies of the documents they purport to be. However, the County disputes any relevance to these proceedings or the arbitrator's ability to even rule on the issues that these exhibits would pertain to.
- The Parties talked about, and agreed, to waive mediation.
- The Union declared impasse on November 7, 2022.
- The County has a standing objection on the basis of jurisdiction on the grounds that this matter needs to be presented to the EMRB, and issues of waiver are not relevant.
- The Union's Exhibit 7 is the July 5, 2022 Board of County Commissioners' meeting.
- The Union's Exhibit 7 is in MP4 format.
- The Union's Exhibits 7 through 11 are admitted.
- Large parts of Exhibit 7 are simply irrelevant to today's proceedings.

- The Parties will attempt to provide a Word copy, or at least a high quality pdf of Union Exhibit 3. If the Parties are unable to do so, the Parties will provide a typed version in their Post-Hearing Briefs.
- The Union played Union Exhibit 7 during the hearing, but only played from the 0.0 minute mark to two minutes and nine seconds; and then skipped ahead to minute 30, 13 seconds, and watched it until 43:04; and then we skipped ahead to 46 minutes. And then we played it to 50:29.
- The relevant portions of Union Exhibit 7 are from the start to two (2) minutes and nine (9) seconds, and from thirty (30) minutes and thirteen (13) seconds until fifty-one (51) minutes.
- The supervisor positions at issue that the County wants out can be found in Union Exhibit 1, Bates 31, and they are the Director of Emergency Management Services, the Director of Health and Human Services, the Director of IT, the Facility Operations Manager, the Director of NWRPO, the Director of Planning and the Public Works Director.
- The Factfinder has no jurisdiction over which employees are appropriately in this bargaining unit.
- The issue of who is properly in the bargaining unit is a subject that the Board has exclusive jurisdiction over.
- Employer Exhibits A, B, and C were communicated to the County prior to impasse.
- No EMRB complaint has been filed over this bargaining unit to date.<sup>17</sup>
- The Parties selected a fact-finder from a seven (7)-member fact-finding panel provided by the FMCS pursuant to the Statute; however, the fact-finder selected did not respond to e-mails, and that's why the Parties mutually selected Mr. Gaba.
- Nye County Association of Sheriff's Supervisors (NCASS) is currently still bargaining a successor agreement.
- Briefs are due by close of business by 5:00 p.m. Pacific time on November 3<sup>rd</sup>, presuming the transcript is received more than 30 days prior to that date.<sup>18</sup>

<sup>17</sup> However, the County subsequently filed a Petition For a Declaratory Order Clarifying the Bargaining Unit with the ERMB on November 27, 2023.

<sup>18</sup> However, as set forth above, the Parties ultimately agreed to extend the deadline to November 27, 2023, and the County requested an additional extension to November 29, 2023.

- The Fact-finder's fact-finding recommendation will not be due for forty-five (45) days after receipt of the Parties' briefs.
- The court reporter is taking a full set of the exhibits for this hearing with her, and will return the exhibits to Ms. Keel. The court reporter is not transcribing the video that was admitted as the Union's Exhibit 7.
- Fisher Phillips is the official custodian of the record and will have all of the exhibits for this hearing.
- The Fact-finder will strip his file and destroy all exhibits within 48 hours of the issuance of the Recommendations.

## OPINION

### I. The Parties' Positions

The County asserts:

The County anticipates the Union will argue that "even if the EMRB had the authority or is willing to exercise the authority to carve the personnel that the county is objecting to out of the bargaining unit, [the Factfinder] would still have the ability to recommend the contract terms for those members that remain in the bargaining unit." However, such a recommendation would be inappropriate because it has the effect of forcing the County to participate in negotiations and impasse proceedings with an illegal bargaining unit. NRS Chapter 288 does not permit an employer to bargain with — and by extension reach impasse with — an illegal bargaining unit. Thus, there is no ripe dispute presently at impasse and the Factfinder should refrain from issuing any recommendations to parties who are not properly before him under NRS § 288.200.<sup>19</sup>

On the other hand, the Union asserts:

Ultimately, the Fact-finder has jurisdiction because he was *mutually selected* [sic] the parties pursuant to NRS 288.200(2). That statute provides that if the parties are unable to agree upon an impartial factfinder, they may obtain a list of FMCS and strike names until one remains. The parties did strike names, but the fact-finder selected to that process was unresponsive [sic] the emails. Therefore, the County proposed six (6) names, and the Arbitrator was

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<sup>19</sup> County's Post-Hearing Brief at page 10 (references to transcript omitted).

selected from this list proposed by the County. (See email of May 3, 2023 attached to this Brief).

The County's "jurisdictional" argument is resolved by reference to NRS 288.200 itself. In laying out the criteria to be considered under subsection (7)(b), the statute provides that "the Fact-finder *shall* consider whether the Board found that either party had bargained in bad faith."

If the County believed that NCMEA's insistence upon bargaining for the positions agreed to in the Settlement Agreement constituted bad-faith bargaining, it was incumbent upon the County to take that matter before the EMRB and obtain a finding as to whether the NCMEA was bargaining in bad faith. However, under the plain language of the statute the existence of potential prohibited practice disputes does not stop the fact-finding process from going forward; the Fact-finder is only to consider an actual Board finding on the subject in fashioning his/her recommendations. Were the rule to be otherwise, an employer could stymie impasse proceedings by raising disputes about the bargaining unit, but not actually taking any action to pursue such disputes (as Nye County has done in this case).<sup>20</sup>

I have taken each of these valid and very well-written arguments into consideration. Having said that, unfortunately, again, while I sincerely believe counsel's arguments on behalf of the County are sound and even creative, based on the Statute, I have no choice but to find that I am *not* authorized to grant the County's request to "refrain from issuing recommendations."

I also find that the Union correctly asserted that I have authority to issue these Recommendations based on the fact that I was *mutually* selected by *both* Parties to act as Fact-finder (as stipulated to at the Hearing), and that my authority to issue these Recommendations are determined by the Statute itself.

Indeed, I am *bound* to consider the criteria that directs that the Fact-finder "*shall*" consider whether either Party...bargained in good faith, and, whether the County *refused* to bargain

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<sup>20</sup> Union's Post-Hearing Brief at page 7 (emphasis in original).

collectively in good faith (which also includes actively participating in the “fact-finding” process). I realize that my Recommendations may not be binding; as such, I will make by best attempt to articulate all the reasons for issuing these Recommendations below.

## **II. Fact-Finding Under NRS 288.200**

These Recommendations are issued pursuant to the specific procedures outlined in the Statute. In the case at hand, the Fact-finder has spent a considerable amount of time reviewing the exhibits provided by the Parties and giving full and thoughtful consideration to each of the Parties’ arguments. Both Parties provided well-written Post-Hearing Briefs, and I am mindful of my function in this impasse proceeding, as stated by Elkouri and Elkouri:

The task is more nearly legislative than judicial. The answers are not to be found within the “four corners” of a pre-existing document which the parties have agreed shall govern their relationship. Lacking guidance of such a document which confines and limits the authority of arbitrators to a determination of what the parties had agreed to when they drew up their basic agreement, our task here is to search for what would be, in the light of all the relevant factors and circumstances, a fair and equitable answer to a problem which the parties have not been able to resolve by themselves.<sup>21</sup>

Typically, the standard of proof for contractual disputes is preponderance of the evidence.

Preponderance of the evidence can be defined as:

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.<sup>22</sup>

I apply the preponderance of evidence standard to these Recommendations.

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<sup>21</sup> Elkouri and Elkouri, *How Arbitration Works*, Chapter 22, page 4 (8<sup>th</sup> ed. 2020).

<sup>22</sup> *Black’s Law Dictionary* (8<sup>th</sup> ed. 2020).

### III. Analysis of the Statutory Criteria

NRS 288.200 at subsection 7. directs me to consider the following criteria:

(a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision. If the local government employer is a school district, any money appropriated by the State to carry out increases in salaries or benefits for the employees of the school district must be considered by a Fact-finder in making a preliminary determination.

(b) Once the factfinder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, and subject to the provisions of paragraph (c), the Fact-finder shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute and the Fact-finder shall consider whether the Board found that either party had bargained in bad faith.

(c) A consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multiyear contract, the Fact-finder must consider the ability to pay over the life of the contract being negotiated or arbitrated.

I first address the Statute criteria, and then I will address the reasonableness of the TA.

#### A. The County's financial ability to pay.

The Statute first requires me to make a "preliminary determination...as to the financial ability of the local government employer."<sup>22</sup> In the public sector, an employer's inability to pay can be the decisive factor in a fact-finding or interest arbitration, notwithstanding the fact that

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<sup>22</sup> See the Statute at NRS 288.200, Section 7(a): A preliminary determination must be made as to the financial ability of the local government employer."

comparable employers in the area may have agreed to higher wage scales.<sup>24</sup> Having said that, normally, a case concerning “ability to pay” is necessarily complex, and involves a presentation on governmental budgets, projected revenues and expenditures, a myriad of financial issues pertaining to the resources of the local governmental body, and an assessment of the condition of the local economy.<sup>25</sup>

During times of crisis such as the recent Global Pandemic (as declared by the World Health Organization on March 11, 2020),<sup>26</sup> or the “Great Recession,”<sup>27</sup> there can even be interest arbitrations or fact-findings over the size of pay *decreases*.<sup>28</sup> In such instances, the undersigned has previously framed the issue as:

In the instant case, there is no question that the County is experiencing a very difficult economic environment; however, the Union is not requesting any increase in wages; rather the only question is how large will the wage reductions be.<sup>29</sup>

Absent a Pandemic, a financial meltdown such as the Great Recession, or an earthquake or other natural disaster, it is normally *incumbent* on an *employer* to raise its alleged inability to pay during negotiations.<sup>30</sup> Put another way, traditionally:

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<sup>24</sup>Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 132 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

<sup>25</sup>Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 132 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

<sup>26</sup><https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7569573/>

<sup>27</sup>See, e.g., “World Economic Situation and Prospects 2013,” *Development Policy and Analysis Division of the UN secretariat*. Retrieved December 19, 2012.

<sup>28</sup>Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 132 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

<sup>29</sup>*County of Aurora*, 127 BNA 1773 (Gaba, 2010).

<sup>30</sup>Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 135 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

The employer has the burden of proof to establish an inability to pay. The burden must be met by more than mere speculation. An *unwillingness* to pay does not satisfy the burden.<sup>31</sup>

In the instant case, while the Board intimated that the CPI used to determine the COLA for bargaining unit members could impact the County's immediate and future obligations, the County failed to provide any *evidence* that would establish that the County had an inability to pay the COLA as agreed upon. Rather, the Parties agreed in the TA that the total fiscal impact over the three (3) years of the Successor CBA would be \$23,300,896. By reaching agreement on this number, more likely than not, the County obligated itself to pay the COLA as agreed upon. By implication, the County also agreed that it had the *ability* to pay this amount.

Moreover, as of October 2023, the CPI-U advanced 3.3 percent over the past twelve (12) months.<sup>32</sup> Based on the rate of inflation one can conservatively estimate that property prices will go up by at least half the rate of inflation.<sup>33</sup> It is axiomatic that as inflation increases, the County's collection of property and personal taxes (all other factors being equal) will increase.

The bottom line is, while the County may have an *unwillingness* to pay for the TA'd agreement, the County did not meet its burden to establish that it actually *lacks* the ability to pay. Thus, on this issue, the Union prevails by *default*. Accordingly, the undersigned must now address the other statutory criteria.

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<sup>31</sup> *County of Albany*, No. 1A-11-12 (Boedecker, 2013) (*emphasis added*).

<sup>32</sup> [https://www.bls.gov/regions/west/news-release/consumerpriceindex\\_west.htm](https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm)

<sup>33</sup> *See, e.g.*, <https://www.bls.gov/news.release/pdf/cpi.pdf> (Table A, "shelter").

**B. The compensation of other government employees, both in and out of the State.**

Having made the “preliminary determination” (as required by the Statute) that the County has the ability to pay, the next criteria the Statute requires me to consider is, “to the extent appropriate, compensation of other government employees, both in and out of the State.” In my opinion, next to ability to pay, the issue of comparability, in and of itself, is the *most important issue* for a fact-finder to consider. Indeed, historically, the most significant factor in public sector interest arbitration (or statutory fact-findings) has been external comparables;<sup>34</sup> those external comparables “meaning the wages, hours, and terms and conditions of employment of similar public employees in comparable units of government.”<sup>35</sup>

A major consideration regarding comparative data was expressed by Arbitrator Carlton Snow:

A concern with any comparative data in interest arbitration is whether the cities being compared accurately reflect what is being compared, such as the real price of labor. Wage rates may be similar, but the price of labor may be substantially different in cities which have been compared. Pension plans and other fringe benefits have a startling impact on the overall wage cost as well as labor market conditions which may be unique to a particular County.<sup>36</sup>

Thus, the comparability of other jurisdictions must focus on the *total compensation* of the employees, so that an apples-to-apples comparison can be made.

When most employees hear the term “compensation,” they typically only think of the money they receive in their paycheck each payday.<sup>37</sup> However, “total compensation” goes beyond

<sup>34</sup> See, e.g., Marvin F. Hill, Jr. and Emily Delacenserie, *Interest Criteria in Fact-Finding and Arbitration: Evidentiary and Substantive Considerations* (Marquette Law Rev. Vol. 74:399) (1991).

<sup>35</sup> See *State of Ill. Dep't of Cent. Mgmt. Svcs.*, Case No. S-MA-08-262 (Benn, 2009).

<sup>36</sup> *County of Renton*, 71 BNA 271 (Snow, 1978).

<sup>37</sup> *County of Aurora*, 127 BNA 1773 (Gaba, 2010).

salary; it is the complete pay package for any group of employees. This amount includes all forms of money, benefits, services, and other “perks” employees in this particular bargaining unit are eligible for at the County. Basically, “[t]otal compensation can be defined as all of the resources available to employees which are used by the employer to attract, motivate, and retain employees.”<sup>38</sup>

In some--not all--but *most* cases, “the selection of comparable jurisdictions is relatively simple if the parties have historically agreed upon or at least consistently used a certain set of comparable jurisdictions in their prior negotiations.”<sup>39</sup> Once a pattern is established, the party seeking to add or subtract jurisdictions to the traditional list bears the burden of proving the previously agreed-upon list unsuitable.<sup>40</sup> It is not uncommon to see interest arbitrator awards and fact finding decisions stating:

In order to maintain that stability, prior interest arbitration awards must be accepted at face value in subsequent proceedings unless they are glaring wrong which is not the case here... It is well-established that the party seeking to change historical comparables has the burden of clearly proving that a change is warranted.<sup>41</sup>

Here, this impasse proceeding is not a “relatively simple” case, as the Parties did not stipulate to a set of external comparable jurisdictions, nor is there any evidence concerning what the Parties have “historically” considered to be the County’s external comparable jurisdictions.

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<sup>38</sup> *County of Aurora*, 127 BNA 1773 (Gaba, 2010).

<sup>39</sup> Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 64 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022), citing *County of Lynnwood*, WA PERC Case No. 24694-1-12-588 (Beck, 2013) (held: “Arbitrators have routinely used mutually agreed upon comparators as the basis for comparability analysis”).

<sup>40</sup> Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 64 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022), citing *See County of Rockford*, Case No. S-MA-12-108 (Goldstein, 2013), and *County of Rockford*, Case No. S-MA-11-09 (Perkovich), where attempts to change historical comparables were rejected.

<sup>41</sup> Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 64 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022), citing *Village of Algonquin*, ILRB Case #S-MA-17-262 (Greco, 2019).

Having said that, generally speaking, a “comparability range” sets the extent to which another jurisdiction can vary from the jurisdiction under study (or “target” jurisdiction) and still be considered as a possible comparable jurisdiction.<sup>42</sup>

For example, a very simplistic comparability selection process in this impasse proceeding might search for all counties with populations *within fifty percent (50%)* (plus or minus) of the population of Nye County, the target jurisdiction. Given that the County’s population is approximately 54,738,<sup>43</sup> based on County Manager Sutton’s credible testimony that the County “traditionally used Class III counties,” more likely than not, the County’s comparable jurisdictions *could* include:

<b>Jurisdiction</b>	<b>Population</b>
Lyon County	61,585
Carson City <sup>44</sup>	58,130
Elko County	54,046
Douglas County	49,628
Churchill County	25,843 <sup>45</sup>

Here, unfortunately, neither Party submitted evidence of comparable *total compensation* on the outstanding economic issues for these potential external comparators. Therefore, I can only conclude that the wages and other monetary benefits offered in the TA’d agreement are more-

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<sup>42</sup>Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 65 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

<sup>43</sup>U.S. Census Bureau *QuickFacts: Nevada*. U.S. Census Bureau. Retrieved March 30, 2023.

<sup>44</sup>Carson City is an independent city. U.S. Census Bureau *QuickFacts: Nevada*. U.S. Census Bureau. Retrieved March 30, 2023.

<sup>45</sup>All statistics are derived from U.S. Census Bureau *QuickFacts: Nevada*. U.S. Census Bureau. Retrieved March 30, 2023.

likely-than-not *equivalent* to the “compensation of other government employees, both in and out of the State.”

### C. Other “normal criteria for interest disputes.”

Lastly, the Statute requires me to consider “other normal criteria for interest disputes” regarding the terms and provisions to be included in an agreement “in assessing the *reasonableness* of the position of each party as to each issue in dispute” (emphasis added). More likely than not, the “normal criteria for interest disputes” referenced in the Statute includes what has traditionally been developed over decades of interest arbitration practice; these issues include the interest and welfare of the public, comparable wages and working conditions, cost of living (including changes in the cost of living), ability of the employer to pay, ability to attract and retain personnel and/or other factors, depending on the specifics of the issues that are presented to the arbitrator or fact-finder.<sup>46</sup> Thus, having already addressed the ability of the County to pay, and the comparability of the County’s external jurisdictions, I now address these other “normal criteria” that appear to be relevant to this impasse proceeding.

#### I. Interest and welfare of the public.

As a general rule, most arbitrators and fact-finders have found it *impossible* to apply a standard such as “the interest and welfare of the public,” without considering other factors. As Arbitrator Carlton Snow observed:

In the abstract, it is impossible to find meaning in the phrase “the interest and welfare of the public.” The meaning of this criterion must be found as it is applied within the context of other criteria and the facts of a given case.<sup>47</sup>

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<sup>46</sup> See e.g., Barry Winograd, *An Introduction to the History of Interest Arbitration in the United States*, Labor Law Journal, Fall 2010, pp. 164-168.

<sup>47</sup> *State of Oregon (OSCI Security Staff)*, IA-1 1-95 (Snow, 1996).

It is my conclusion that the interest and welfare of the public is best served by Recommendations that have the least chance of increasing employee turnover, decreasing employee morale, or inserting language into the contract that is illegal or that may raise taxes. Of course, these goals are mutually incompatible. On this additional relevant consideration, the Union prevails.

## 2. The “Status Quo” Doctrine.

In addition to the above factors, I am also mindful of the *Status Quo* Doctrine, which holds that “a party proposing new contract language has the burden of proving that there should be a change in the *status quo*.”<sup>48</sup> The rationale underlying the *Status Quo* doctrine—an arbitrator-created doctrine not found in most fact-finding or interest-arbitration statutes—is that the party seeking to change *status quo* contract language must have given something up to get that language in the first place.<sup>49</sup> When its proponents give any reason for employing the doctrine, they typically argue that a party seeking to change the *status quo* should have to show either: (a) that maintenance of the *status quo* would be unfair (because it has failed or is inequitable in practice); or (b) that it has offered a sufficient “*quid pro quo*” (*i.e.*, concession) in exchange for undoing the *status quo*.<sup>50</sup> This is sometimes called the “breakthrough” test to represent the burden that must be met to break through the *status quo* and build new terms into the contract.<sup>51</sup>

Here, while some of the County’s Board members questioned whether the correct CPI was applied to determine the COLA in the TA’d agreement, the County failed to present any evidence

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<sup>48</sup> *City of Tukwila*, PERC No. 130514-1-18 (Latch, 2018).

<sup>49</sup> Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 9, page 178 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

<sup>50</sup> *Village of Dolton*, ILRB No. S-MA-11-248 (Fletcher, 2016).

<sup>51</sup> Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 9, page 178 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

that establishes that the *status quo* is unfair or that the County made any *quid pro quo* concessions in order to change the CPI historically used at the County. For this reason, the Union prevails.

**3. Other “normal” criteria.** Based on the overall record, I recommend that the County ratify the TA, based on my findings above, and for the following additional reasons.

**a. Was the County Required to Bargain in Good Faith with the Union?**

Yes. In its Post-Hearing Brief, the County asserts that it was not *required* to bargain in good faith with the Union, based on the NCASS<sup>52</sup> case. Specifically, the County asserts:

The County has objected to the Factfinder’s jurisdiction and the appropriateness of the impasse proceedings as such proceedings are an extension of the bargaining process and the County cannot be forced to negotiate and bargain with an inappropriate bargaining unit, nor be compelled to enter into a CBA with an inappropriate bargaining unit. See *Nye County v. Nye County Association of Sheriff’s Supervisors (NCASS), et al*, Item No. 887, Case No. 2022-009, (July 19, 2023) (finding no bad faith negotiations occurred in refusal to bargain). For the Union to argue that the Factfinder can impose (or recommend imposing) through factfinding, an agreement the parties could not be compelled to negotiate, defies logic.<sup>53</sup>

The problem with the County’s above argument is that the NCASS case is clearly distinguishable from this impasse proceeding.

In the NCASS case, there were two (2) issues before the ERMB; the first being whether then-bargaining unit member David Boruchowitz could continue to be a member of the NCASS after he was promoted to Administrative Captain; the second being whether the County engaged in bad faith bargaining by refusing to bargain with Mr. Boruchowitz while acting as the Union’s Chief Negotiator in negotiations. Importantly, the County filed its petition with the ERMB *before*

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<sup>52</sup> *Nye County v. Nye County Association of Sheriff’s Supervisors (NCASS), et al*, Item No. 887, Case No. 2022-009, (July 19, 2023).

<sup>53</sup> County’s Post-Hearing Brief at page 1 (references to exhibit omitted).

either party declared impasse. As to the first issue, the ERMB found:

It is clear to the Board that Respondent Boruchowitz is a senior member of the Nye County Sheriff's Office having supervisory control and management responsibilities closely related to the duties of the elected Sheriff and Undersheriff. Thus, the Board finds that given his job description, his actual duties as described in the testimony and other evidence presented, and as admitted by Boruchowitz in his November 22, 2019 e-mail, the evidence presented relative to Boruchowitz' [sic] budgetary authority, the role Boruchowitz played on behalf of Nye County relative to grievances and other factors contained in the record of this case, Boruchowitz is a supervisory employee for the purposes of NRS 288.138(b) and cannot lawfully be a member of Petitioner NCASS.<sup>54</sup>

Regarding the second issue, the ERMB determined:

It was reasonable for Petitioner to refuse to bargain with Boruchowitz given the findings herein, and as such, no bad faith bargaining occurred nor was there a unilateral change.<sup>55</sup>

Here, neither Party has asserted that the Union's Chief Negotiator cannot be a member of this bargaining unit, so obviously the ERMB's holding on that issue is simply inapplicable to this case. More importantly, unlike the NCASS case, here, the County simply *failed* to act on any of its concerns about the composition of this bargaining unit until *after* the Parties reached a TA; *after* the Union declared impasse; and *after* the Hearing was held. In fact, the record establishes that the County *never* raised the issue of the proper composition of this bargaining unit at *any* time during the six (6) negotiation meetings held concerning the Successor CBA.

Based on this record, more likely than not, the County may have inadvertently violated NRS 288.270(1)(e), which provides:

(1) It is a *prohibited practice* for a local government employer or its designated representative willfully to:

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<sup>54</sup> NCASS case at page 11.

<sup>55</sup> NCASS case at page 10.

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*(e) Refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150. Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter (emphasis added).*

Use of the word “refuse” in the above-cited section is instructive; it means:

1. indicate or show that one is not willing to do something.
  - “I refused to answer”
2. indicate that one is not willing to accept or grant (something offered or requested).
  - “she refused a cigarette”<sup>56</sup>

Synonyms for the word “refuse” include, but are not limited to:

decline; turn down; say no to; reject; spurn; scorn; rebuff; disdain; repudiate; dismiss; repulse<sup>57</sup>

Here, the County chose to select County Manager Sutton to bargain the Successor CBA on its behalf. This is appropriate, considering that the CBA defines the “County” to mean “the County of Nye and its Board of Commissioners, its facilities, *and/or the County Manager or his/her designee* (emphasis added). Moreover, again, more likely than not, the County reasonably *selected* County Manager Sutton to negotiate on its behalf as its representative of “of its own choosing.”<sup>58</sup>

As the County Manager, Mr. Sutton was able to quickly reach agreement with the Union during the third of the Initial Meetings, as he had done in the past. However, after the Ratification Meeting, while it may not have been intentional, the County “refused” to bargain in

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<sup>56</sup> *Oxford English Dictionary* (11<sup>th</sup> ed. 2022).

<sup>57</sup> *Oxford English Dictionary* (11<sup>th</sup> ed. 2022).

<sup>58</sup> NRS 288.150(1).

good faith, by repeatedly asserting that it was not required to do so because of its concerns over the proper composition of the bargaining unit. The logical conclusion is that the County could have, and should have, filed its Petition with the ERMB *before* impasse and *before* the Hearing. The facts are undisputed that the County did not file its Petition with the EMRB until a mere thirteen (13) days ago. This means that the County refused to bargain in good faith with the Union through “*the entire bargaining process, including mediation and fact-finding*” as required by the Statute.

**b. Can the County Attack these Recommendations on Traditional Common Law Grounds?**

No. It is well-established that, generally speaking, an arbitration award (or, in this case, a statutory fact-finding) can only be overturned for one (1) of the following four (4) common law reasons:

1. Fraud, misconduct, or partiality by the arbitrator, or gross unfairness in the conduct of the proceedings;
2. Fraud or misconduct by the parties affecting the result;
3. Complete want of jurisdiction in the arbitrator, or action beyond the scope of the authority conferred on the arbitrator or failure of the arbitrator to fully carry out his or her appointment (i.e., the arbitrator decides too much or too little); and
4. Violation of public policy as by ordering the commission of an unlawful act.<sup>39</sup>

I would also add that an arbitration award or fact-finding recommendation could be attacked if there is evidence that there was a “rogue” negotiator that did not act with authority on behalf of the party he or she was purportedly representing. Here, there simply is no *evidence* that any such reasons to attack these Recommendations exist.

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<sup>39</sup> Elkouri and Elkouri, *How Arbitration Works*, Chapter 2, page 22 (8<sup>th</sup> ed. 2020).

e. **Did the County Violate the Statute by Refusing to Recognize the Seven (7) Classifications Throughout the Entire Bargaining Process?**

More likely than not, yes. Article 3, Section 1 of the Expired CBA provides that the Union is:

*recognized by the County as the sole and exclusive collective bargaining representative of the employees assigned to the represented classifications listed in Addendum B who are eligible to be represented by the Association.... (emphasis added).*

Addendum B lists all of the classifications the Union represents; these classifications include the seven (7) classifications the County now asserts should not be included in the bargaining unit.

While I can understand the County's position, it is well-established that the terms and conditions of an expired CBA continues in effect under the National Labor Relations Act, until a new agreement can be reached.<sup>69</sup> Thus, unless and until the County ratifies the TA, or the ERMB rules on the proper composition of this bargaining unit, the terms and conditions of the Expired CBA remain in effect.

Second, by refusing to bargain with the Union *through the entire bargaining process*, the County likely has also inadvertently violated NRS 288.150 at Section 2.(j), which provides:

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<sup>69</sup> See *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 206, 207 (1991), which held: After a CBA expires:

...the terms and conditions [of employment] *continue in effect* by operation of the NLRA. They are no longer agreed-upon terms; *they are terms imposed by law*, at least so far as there is no unilateral right to change them.

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NLRA § 8(a)(1) and (5) demand a "*continuation of the status quo*" during negotiations over a successor CBA, absent "explicit" agreement to the contrary.

See also, *NLRB v. Nexstar Broadcasting, Inc.*, 4 F.4<sup>th</sup> 801, 811 (9<sup>th</sup> Cir. 2021) (held: a dispute may be arbitrable after the CBA's expiration when the dispute concerns "rights which accrued or vested under the [CBA].")

2. The scope of mandatory bargaining is limited to:
  - (j) *Recognition clause*,

By refusing to recognize the seven (7) classifications, the County has in essence refused to bargain over a mandatory subject of bargaining.

Lastly, although the County asserts that I lack jurisdiction to issue these Recommendations, again, the undersigned's authority comes from the Statute itself. Specifically, NRS 288.200 provides:

1. If:
  - (a) The parties have failed to reach an agreement after at least six meetings of negotiations; and
  - (b) The parties have participated in mediation and by April 1, have not reached agreement, either party to the dispute, at any time after April 1, may submit the dispute to an impartial Fact-finder for the findings and recommendations of the Fact-finder. The findings and recommendations of the Fact-finder are not binding on the parties except as provided in subsection 5. The mediator of a dispute may also be chosen by the parties to serve as the fact finder.
2. If the parties are unable to agree on an impartial fact finder within 5 days, either party may request from the American Arbitration Association or the Federal Mediation and Conciliation Service a list of seven potential Fact-finders. If the parties are unable to agree upon which arbitration service should be used, the Federal Mediation and Conciliation Service must be used. Within 5 days after receiving a list from the applicable arbitration service, the parties shall select their fact-finder from this list by alternately striking one name until the name of only one fact-finder remains, who will be the fact-finder to hear the dispute in question. The employee organization shall strike the first name.

The undisputed facts establish that all of the above criteria occurred in this impasse proceeding; that is (1) the Parties failed to reach agreement after six (6) negotiation session; (2) the Parties discussed, but mutually agreed not to participate in mediation; and (3) the Parties stipulated that

they mutually selected the undersigned as the Fact-finder for this case. Thus, again, these Recommendations are issued based on my statutory authority.

#### IV. *The Reasonableness of the TA*

Lastly, I address the Statute's requirement that I consider "the *reasonableness* of the position of each party as to each issue in dispute" (emphasis added). In that regard, the Union asserts:

Beyond the selection of the appropriate CPI index, the only remaining dispute is what the COLA should be for the fiscal year July 1, 2022 through June 30, 2023 (hereafter "FY 2023"). As set forth above, at the bargaining table the agreed-upon amount was 5.6%. That is the amount that should be recommended by the Fact-finder because the most "reasonable" proposal is that which the parties actually reached through the bargaining process.

It is anticipated that the County will argue that any recommendation for FY 2023 should be the last proposal made by the Union of a 4% COLA. (County Exhibit "B"). However, it is undisputed that this proposal was rejected by the County without any counterproposals. The NCMEA only came down from the 5.6% *mutually* agreed to by the parties for purposes of attempting to settle the contract without the delay and expense of statutory impasse proceedings. If Nye County wished the COLA to be 4%, it should have accepted the offer when made. That offer is no longer open as a result of the rejection without any counter.<sup>61</sup>

The County literally made no argument and presented no evidence that rebuts the Union's above assertions, nor is there any *evidence* that the County ever accepted the Union's latest offer of four percent (4%) COLA in the first year. Moreover:

An interest arbitrator's [and Fact-finder's] job is to determine the deal the parties should have reached during negotiations.<sup>62</sup>

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<sup>61</sup> Union's Post-Hearing Brief at page 9 (references to transcript omitted; emphasis in original).

<sup>62</sup> Elkouri and Elkouri, *How Arbitration Works*, Chapter 22, page 32 (8<sup>th</sup> ed. 2020).

What happened in this case is not unusual, although it is usually the union who cannot get an agreement ratified. In these cases arbitrators and fact-finders usually impose on the union what was TA'd at the table, much as I did in *Basin Electric Power Cooperative*.<sup>43</sup> In *Basin*, it was the union that failed to ratify an agreed to proposal and it was the union that lost.

Here, the TA is sufficiently useful in determining the agreement the Parties *should* have reached, had the Board not refused to ratify, for reasons that simply have *no bearing* on these Recommendations. In sum, I agree that the most "reasonable" proposal for the COLA FY 2023 should be what the Parties *mutually agreed* upon on June 13, 2022.

I fully understand the positions articulated by the members of the Board in this case. Unfortunately, their opinions/positions simply do not comport with Nevada law. If the Board members wish to limit collective bargaining in Nevada they can do so; however, first they must resign their positions and run for the Nevada state legislature in order to repeal or modify the provisions of NRS 288.200.

Counsel for the County did an excellent job advocating for her client in this matter; in my experience, she is an excellent attorney who works for one of the most prestigious labor-law firms in the United States. Unfortunately, while Ms. Kheel did an excellent job of *arguing* the County's positions, what transpired in this matter left her with few facts and no *evidence* to support her creative and well-thought-out arguments.

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<sup>43</sup> *Basin Electric Power Cooperative*, 120 BNA LA 210 (2004).

**FINAL WRITTEN RECOMMENDATIONS FOR SETTLEMENT OF THE IMPASSE  
ISSUES BETWEEN THE PARTIES**

Having carefully considered all evidence, authority, and argument submitted by the Parties concerning this matter, and, pursuant to the procedures outlined in the Statute, the Fact-finder issues the following written recommendations:

1. The Parties' Successor CBA shall include *all* language the Parties mutually agreed to in the TA reached on June 13, 2023.
2. Within forty-five (45) days after receipt of these Recommendations, "the governing body of the local government employer shall hold a public meeting in accordance with the provisions of chapter 241 of NRS."
3. The costs associated with the fees and expenses of the Fact-finder shall be shared equally by the Parties, as provided for in NRS 288.200, at Section 3.

*/s/ David Gaba*  
David Gaba, Fact-finder  
Irvine, California

DATED: December 10, 2023

# **EXHIBIT 2**

# **EXHIBIT 2**

## COMPROMISE AND SETTLEMENT AGREEMENT

THIS COMPROMISE AND SETTLEMENT AGREEMENT is made and entered into by and between the County of Nye, a political subdivision of the State of Nevada, (Nye County) as employer and the Nye County Management Employee Association (NCMEA), in resolution of disputes and differences that have arisen between the parties. In consideration of the mutual covenants and agreements of the Parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby warranted and agreed as follows:

### RECITALS

- A. A dispute arose between Nye County and the NCMEA regarding the application of NRS 288.140(4)(a) and NRS 288.075, which prohibits supervisory employees from being a member of an employee organization.
- B. On or about June 18, 2003, NCMEA filed an action before the State of Nevada Local Government Employee-Management Relations Board, Case No. A1-046095, for a declaratory order seeking a determination that the disputed positions did not meet all of the functions described in NRS 288.075(1)(b)(1) through (3) and other appropriate relief regarding actions alleged to be in violation of NRS 288.270.
- C. Without either Party admitting liability or fault, and in a compromise of each of their positions and rights, the Parties desire to enter into this Agreement to resolve all disputes related to their respective rights in the Action and arising out of the claims and allegations set forth therein upon the terms and conditions stated herein. Neither the execution nor the performance of this Agreement shall be considered an admission of fault, liability or wrongdoing whatsoever by any of the Parties.

### TERMS OF AGREEMENT

1. The Parties stipulate and agree any exercise of authority as set forth in NRS 288.075(b)(1) through (3) by employees in any positions in dispute does not occupy a significant portion of each of the employee's workday.
2. Nye County will continue to recognize all positions as recognized in the last ratified agreement between the Parties as properly within the NCMEA excepting the position of Chief Juvenile Probation Officer, which shall be maintained in the NCMEA until such time as a transfer to another appropriate employee organization consistent with the requirements of NRS 288.140(3) can be made.
3. The Parties recognize they continue to operate under the terms and conditions of the collective bargaining agreement negotiated and ratified on or about July 1, 2008.

4. The Parties further stipulate and agree to dismiss the action pending before the State of Nevada Local Government Employee-Management Relations Board with prejudice, each party to bear its own fees and costs.

5. The NCMEA shall file a notice of dismissal consistent with the terms and conditions of this Agreement.

6. Upon fulfillment of the Terms of this Agreement, the Parties hereby forever release and discharge each other and their past and present employees, agents, attorneys, representatives, insurance carriers and other related parties from any and all claims, demands, debts, liabilities, damages, causes of action of whatever kind or nature, whether presently known or unknown arising out of or relating to the Action, including, without limitation, any claims that have been or could have been asserted in the Action.

7. This Agreement shall be binding upon and inure to the benefit of the Parties, and each of them, their successors, assigns, personal representatives, agents, employees, directors, officers and servants.

8. This Agreement may be executed in any number of counterparts and each counterpart executed by any of the undersigned together with all other counterparts so executed shall constitute a single instrument and agreement of the undersigned. Electronic or facsimile copies hereof and electronic and facsimile signatures hereon shall have the same force and effect as originals.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates as noted below.

NYE COUNTY

  
\_\_\_\_\_  
Pamela Webster, County Manager

Dated this 2nd day of May, 2014.

NYE COUNTY MANAGEMENT  
EMPLOYEES ASSOCIATION

  
\_\_\_\_\_  
By: Adam Levine  
Title: Attorney for NCMEA

Dated this 1st day of May, 2014.

# **EXHIBIT 3**

# **EXHIBIT 3**

## Adam Levine

---

**From:** david gaba <davegaba@compasslegal.com>  
**Sent:** Friday, September 1, 2023 4:02 PM  
**To:** Adam Levine; Kheel, Allison; Timothy Sutton  
**Cc:** Darrin Tuck; Owens, Susan; Joi Harper  
**Subject:** RE: Impasse between Nye County and Nye County Management Employees Association  
– Motion to Postpone Factfinding

Allison,

Unfortunately I have to deny your Motion. First, as I wrote to you in June:

Parties should meet-and-confer prior to requesting a continuance or filing ANY Motion. All continuances that have not been mutually agreed to should state so clearly in the Motion for a Continuance and summarize the efforts that have been made resolve the issue between the parties. All other Motions should at a minimum summarize the efforts that have been made resolve the issue between the parties.

From your statements below it doesn't appear that you complied with my request (although to be fair I could be wrong).

Next, and FAR more important is that you stated to me on May 19; "I also just wanted to clarify that this will be non-binding factfinding under the statute." While I don't know what "the statute" is I'm guessing that it is NRS 288.200 (again, please let me know if I'm wrong). Of course NRS 288.200(4) states in part:

A schedule of dates and times for the hearing must be established within 10 days after the selection of the fact finder pursuant to subsection 2, and the fact finder shall report the findings and recommendations of the fact finder to the parties to the dispute within 30 days after the conclusion of the fact-finding hearing.

Simply put, I don't know that I have any authority under the statute to "postpone" the hearing especially as you have been aware of the Unit's composition since before the hearing was set. Further when you state, "[T]his was the first time that Counsel for Nye County became aware of the complaint and settlement agreement." Unfortunately, your argument doesn't resonate with me as "Nye County" and their in-house counsel (who from my experience is VERY competent) should have been aware of this issue since it arose (again, this is an assumption on my part).

To conclude, the last minute nature of this request is problematic as I clearly only have a cursory understanding of the facts/law involved. While I feel that I have to deny your request at the present, you can certainly make the Motion again on Tuesday morning when we convene. That said, do we have a start time and hearing location for this one as I requested on Thursday, August 31, 2023, at 9:11 AM?

Cheers,

**Compass Law Group** PL Inc.

David Gaba  
Direct (206) 251-5488

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NOTICE: In some states where I practice the bar association requires attorneys to notify persons to whom e-mails are sent that the security of e-mail communications cannot be guaranteed. E-mail travels on the internet through any number of computers before reaching the recipient and can be intercepted, held or copied at any of those computers. In addition, persons other than the sender and intended recipients can intercept e-mails by accessing the sender's computer, the recipients' computers, and the computers through which the e-mail passes on the internet. This e-mail was sent because we believe we have your consent to use this form of communication. Please contact us immediately if you do not want this firm to communicate with you by e-mail. Thank you.

**From:** Adam Levine <ALevine@danielmarks.net>  
**Sent:** Friday, September 1, 2023 2:48 PM  
**To:** Kheel, Allison <akheel@fisherphillips.com>; david gaba <davegaba@compasslegal.com>; Timothy Sutton <tsutton@nyecountynv.gov>  
**Cc:** Darrin Tuck <dtuck@nyecountynv.gov>; Owens, Susan <sowens@fisherphillips.com>; Joi Harper <JHarper@danielmarks.net>  
**Subject:** RE: Impasse between Nye County and Nye County Management Employees Association – Motion to Postpone Factfinding

Arbitrator Gaba:

The Nye County Management Employees Association opposes any continuance. This is nothing but a frivolous stall tactic.

The NCMEA has been attempting to get a contract since February 2022. The FMCS panel of arbitrators for impasse was requested in November 2022.

There is only one (1) Article which is a subject of the impasse which is wages (i.e. COLAs). The composition of the bargaining unit as nothing to do with the bargaining or the impasse.

Nye County doesn't like the fact that there are Directors included within the bargaining unit. However, the reason Directors are included within the bargaining unit is because Nye County agreed to place them back into the bargaining unit after unlawfully carving them out in 2013. Nye County entered into a Settlement Agreement which forever waived any further claims as it related to the composition of the bargaining unit. I have attached the EMRB Complaint giving rise to the dispute in 2013, and Nye County's 2014 Settlement Agreement (which was drafted by Nye County's Attorney in 2013).

I can't help the fact that Nye County has changed outside Counsel, and that Nye County chooses not to inform its outside counsel as to the prior Settlement Agreements it has entered into. I can't help the fact that subsequent management and subsequent counsel do not like the Agreement that their predecessors entered into. That is not our problem.

What is our problem is the fact that the members of the bargaining unit have not seen an increase to their salaries since July 2021 (before hyperinflation set in), and we have been bargaining since February 2022 to try to get an agreement. If this hearing does not go forward on Tuesday, it is likely that due to the schedules of counsel fact finding would not be able to be convened until December 2022 or January 2023 **at the earliest** (as I am booked with arbitrations, EMRB hearings, and a federal jury trial through the month of December).

I've told Ms. Kheel that the evidence needs to be presented to you as the fact finder on Tuesday, and any issues relating the composition of the bargaining unit can be addressed by the parties between themselves while we are waiting for the court reporter transcript, and preparing any necessary post-hearing briefs.

But there is absolutely no reason for you not to receive the evidence relating to the wage dispute on Tuesday.

Adam Levine, Esq.  
Law Office of Daniel Marks  
610 S. Ninth Street  
Las Vegas, NV 89101  
(702) 386-0536: Office  
(702) 386-6812: Fax  
[alevine@danielmarks.net](mailto:alevine@danielmarks.net)  
General Counsel for the NCMEA

**From:** Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>  
**Sent:** Friday, September 1, 2023 2:33 PM  
**To:** david gaba <[davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)>; Timothy Sutton <[tsutton@nyecountynv.gov](mailto:tsutton@nyecountynv.gov)>  
**Cc:** Adam Levine <[ALevine@danielmarks.net](mailto:ALevine@danielmarks.net)>; Darrin Tuck <[dtuck@nyecountynv.gov](mailto:dtuck@nyecountynv.gov)>; Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>; Owens, Susan <[sowens@fisherphillips.com](mailto:sowens@fisherphillips.com)>  
**Subject:** RE: Impasse between Nye County and Nye County Management Employees Association – Motion to Postpone Factfinding

Dear Arbitrator Gaba,

Please consider this e-mail Nye County's Motion to Postpone the Factfinding presently scheduled for Tuesday, September 5, 2023. One of the County's concerns was the composition of the bargaining unit and whether 7 Director positions could properly be included in the NCMEA unit (along with their subordinates).

Very recently, in another matter, the County received a favorable decision from the Nevada Employee Management Relations Board (EMRB) – the public sector equivalent of the NLRB -- finding that Police Captains did not belong in the supervisory bargaining unit. This prompted Nye County to re-evaluate the composition of the NCMEA bargaining unit. The composition of the bargaining unit is an issue that can only be decided by the EMRB.

Yesterday afternoon, in response to Nye County raising these concerns to the Union, Mr. Levine informed me that there was a previous EMRB complaint filed over this issue and a settlement agreement. This was the first time that Counsel for Nye County became aware of the complaint and settlement agreement.

Therefore, the County is requesting to postpone the non-binding factfinding in this matter in order to provide the County additional time to review these documents and advise the County on a course of action.

I apologize for the eleventh-hour notice before a holiday weekend and the County will bear the full cancellation fees associated with this motion.

If you require any additional information for this motion please do not hesitate to let me know.

Very truly yours,



**Allison Kheel**

**Attorney at Law**

Fisher & Phillips LLP

300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101

akheel@fisherphillips.com | O: (702) 862-3817 | C: (702) 467-1066

Website

*On the Front Lines of Workplace Law<sup>SM</sup>*

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From: david gaba <[davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)>

Sent: Thursday, August 31, 2023 9:11 AM

To: Timothy Sutton <[tsutton@nyecountynv.gov](mailto:tsutton@nyecountynv.gov)>

Cc: Adam Levine <[ALevine@danielmarks.net](mailto:ALevine@danielmarks.net)>; Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>; Darrin Tuck <[dtuck@nyecountynv.gov](mailto:dtuck@nyecountynv.gov)>

Subject: Re: Impasse between Nye County and Nye County Management Employees Association – Subpoenas for Fact finding

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LOL, thanks for the heads up! Do we have a start time a hearing location?

Cheers,

Dave Gaba

Sent from my iPad which explains my poor syntax, grammar, and the many typographical errors.

On Aug 30, 2023, at 5:01 PM, Timothy Sutton <[tsutton@nyecountynv.gov](mailto:tsutton@nyecountynv.gov)> wrote:

Maybe you're the one who stuck out like a sore thumb Adam...

From: Adam Levine <[ALevine@danielmarks.net](mailto:ALevine@danielmarks.net)>

Sent: Wednesday, August 30, 2023 3:51 PM

To: david gaba <[davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)>

Cc: Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>; Timothy Sutton <[tsutton@nyecountynv.gov](mailto:tsutton@nyecountynv.gov)>; Darrin Tuck <[dtuck@nyecountynv.gov](mailto:dtuck@nyecountynv.gov)>

Subject: RE: Impasse between Nye County and Nye County Management Employees Association – Subpoenas for Fact finding

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Arbitrator Gaba:

Just a heads-up that the standard attire for arbitrations in Nye County is business casual or plain casual (i.e. blue jeans). County Manager Tim Sutton wore a tie to an arbitration I did in Nye County two weeks ago for another bargaining unit (and he stuck out like a sore thumb).

I will be appearing in business casual and would invite you as the arbitrator to do the same.

I presume we are starting at 9:00 AM on Tuesday.

Adam Levine, Esq.  
Law Office of Daniel Marks  
610 S. Ninth Street  
Las Vegas, NV 89101  
(702) 386-0536: Office  
(702) 386-6812: Fax  
[alevine@danielmarks.net](mailto:alevine@danielmarks.net)  
General Counsel for the NCMEA

---

**From:** david gaba <[davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)>  
**Sent:** Monday, August 28, 2023 12:49 PM  
**To:** Adam Levine <[ALEvine@danielmarks.net](mailto:ALEvine@danielmarks.net)>  
**Cc:** Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>  
**Subject:** Re: Impasse between Nye County and Nye County Management Employees Association – Subpoenas for Fact finding

Adam,

You can sign them on my behalf.

Cheers,

Dave Gaba  
Sent from my iPad which explains my poor syntax, grammar, and the many typographical errors.

On Aug 28, 2023, at 12:26 PM, Adam Levine <[ALEvine@danielmarks.net](mailto:ALEvine@danielmarks.net)> wrote:

I forgot to copy Allison on this.

Adam Levine, Esq.  
Law Office of Daniel Marks  
610 S. Ninth Street

Las Vegas, NV 89101  
(702) 386-0536: Office  
(702) 386-6812: Fax  
[alevine@danielmarks.net](mailto:alevine@danielmarks.net)

---

**From:** Adam Levine  
**Sent:** Monday, August 28, 2023 12:17 PM  
**To:** 'davegaba@compasslegal.com' <[davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)>  
**Subject:** Impasse between Nye County and Nye County Management Employees Association – Subpoenas for Fact finding

Arbitrator Gaba:

Attached are two subpoenas for the hearing on September 5, 2023. Can you either sign and return, or authorize the to sign on your behalf (which is the custom and practice here).

Adam Levine, Esq.  
Law Office of Daniel Marks  
610 S. Ninth Street  
Las Vegas, NV 89101  
(702) 386-0536: Office  
(702) 386-6812: Fax  
[alevine@danielmarks.net](mailto:alevine@danielmarks.net)  
Counsel for the NCMEA

<Subpoena for Arbitration - Justin Snow.doc>  
<Subpoena for Arbitration - Harry Means.doc>

# **EXHIBIT 4**

# **EXHIBIT 4**

## Adam Levine

---

**From:** Kheel, Allison <akheel@fisherphillips.com>  
**Sent:** Monday, November 27, 2023 4:44 PM  
**To:** david gaba; Adam Levine  
**Cc:** Owens, Susan; Joi Harper; Ricciardi, Mark; Darrin Tuck; Shianne Scott; Timothy Sutton; Kheel, Allison  
**Subject:** RE: NCMEA Nye County - Nye County's Motion to Stay

Dear Arbitrator Gaba,

Nye County Manager Tim Sutton was tied up today in Mediation and is scheduled to be in negotiations tomorrow, so a deadline of Wednesday, November 29, 2023 would be preferable to allow my client time to review and give his final approval on the brief.

If not I would request a deadline of midnight tomorrow (Tuesday, November 28, 2023).

Very truly yours,



**Allison Kheel**

**Attorney at Law**

Fisher & Phillips LLP

300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101

akheel@fisherphillips.com | O: (702) 862-3817 | C: (702) 467-1066

[Website](#)

*On the Front Lines of Workplace Law<sup>SM</sup>*

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**From:** david gaba <davegaba@compasslegal.com>  
**Sent:** Monday, November 27, 2023 1:20 PM  
**To:** Adam Levine <ALevine@danielmarks.net>  
**Cc:** Kheel, Allison <akheel@fisherphillips.com>; Owens, Susan <sowens@fisherphillips.com>; Joi Harper <JHarper@danielmarks.net>; Ricciardi, Mark <mr Ricciardi@fisherphillips.com>; Darrin Tuck <dtuck@nyecountynv.gov>; Shianne Scott <shianne.scott1234@gmail.com>  
**Subject:** Re: NCMEA Nye County - Nye County's Motion to Stay

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Parties,

Unfortunately, I feel that I have no choice but to deny Ms. Kheel's motion. While I fully understand the county's position, which is logical, I am not acting as an arbitrator in this matter, but as a statutory hearing officer. I think the best reading of NRS 288.200 which uses the word "shall" to delineate my actions is clear and absent a stipulation of the parties I don't have the power to stay this matter.

Allison,

Do you think you can get me your brief by close of business tomorrow?

Cheers,

Dave Gaba

Sent from my iPad which explains my poor syntax, grammar, and the many typographical errors.

On Nov 27, 2023, at 12:53 PM, Adam Levine <[ALevine@danielmarks.net](mailto:ALevine@danielmarks.net)> wrote:

Arbitrator Gaba:

I must strenuously object.

If you will recall, on September 1, 2023 – two (2) days before the fact finding hearing – Nye County requested to postpone the fact-finding based upon *"concerns [about] the composition of the bargaining unit and whether 7 Director positions could properly be included in the NCMEA unit (along with their subordinates)."*

NCMEA opposed the requested postponement and you denied the request for the postponement. I have attached that email thread to this email.

The Briefs were due by 5:00 PM on November 3, 2023. Shortly before the Briefs were due I received a telephone call from Ms. Kheel requesting an extension of time on the Briefs. Because of my relationship with Ms. Kheel, I did not feel I could refuse any good faith request for an extension and therefore I agreed to the extension of 3 weeks up through and including today. I have attached the email thread where Ms. Kheel confirms that the extension is for the *"due date for the post hearing briefs"* and that *"the new deadline for the briefs [will] be Monday, November 27"*.

Now today, Ms. Kheel is attempting to seek the same stay of proceedings which was requested, and denied on September 1, in lieu of submitting Nye County's Brief within the extension of time previously requested and granted. This is utterly improper. If Ms. Kheel had said to me in our phone call in early November that she wanted an extension not for the briefs, but to prepare a Petition for the EMRB and to re-seek a stay of proceedings yet again, I would have rejected any request for an extension for such purposes.

To repeat, I will never deny Ms. Kheel extension of time for a *Brief* as I am often in the same boat that she is in with regard to time deadlines for the multiple Briefs I have due to arbitrators. But there is a big difference between requesting an extension of time for a *Brief*, and a request for an extension of time to seek to derail the fact finding process.

The request is further contrary to statute. The fact-finding statute, NRS 288.200 contains very short time deadlines. Subsection (4) states *"A schedule of dates and times for the hearing must be established within 10 days after the selection of the fact finder pursuant to subsection 2, and the fact finder shall report the findings and recommendations of the*

*fact finder to the parties to the dispute within 30 days after the conclusion of the fact-finding hearing.”*

The statute does not provide for stays of fact finding while one party decides to petition the EMRB, much less with regard to a matter which was the subject of a Settlement Agreement (entered into evidence) back in 2014.

Moreover, fact-finding recommendations are nonbinding. There is no reason to stay a nonbinding recommendation other than to impermissibly delay proceedings.

Accordingly, I am requesting that the Arbitrator instruct Ms. Kheel to submit her Post hearing brief by 5:00 PM today. There is no reason it should not be done unless Nye County was acting in bad faith and was using the past 3 weeks to prepare their Petition instead of the Brief as represented.

Because of my relationship with Ms. Kheel, if she needs an additional 24 hours – until 5:00 PM tomorrow to finish her Brief – that will also be acceptable.

Adam Levine, Esq.  
Law Office of Daniel Marks  
610 S. Ninth Street  
Las Vegas, NV 89101  
(702) 386-0536: Office  
(702) 386-6812: Fax  
[alevine@danielmarks.net](mailto:alevine@danielmarks.net)  
On behalf of the NCMEA

---

From: Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>  
Sent: Monday, November 27, 2023 12:13 PM  
To: david gaba <[davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)>; Adam Levine <[ALevine@danielmarks.net](mailto:ALevine@danielmarks.net)>; Owens, Susan <[sowens@fisherphillips.com](mailto:sowens@fisherphillips.com)>; Joi Harper <[JHarper@danielmarks.net](mailto:JHarper@danielmarks.net)>  
Cc: Ricciardi, Mark <[mricciardi@fisherphillips.com](mailto:mricciardi@fisherphillips.com)>; Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>  
Subject: RE: NCMEA Nye County - Nye County's Motion to Stay

Dear Arbitrator Gaba,

Nye County has just filed the attached Petition for a Declaratory Order to Clarify the Bargaining Unit of the NCMEA. The County took the position that the Bargaining Unit of the NCMEA inappropriately included statutory supervisors and the County cannot be forced to bargain with the NCMEA (including reaching impasse and participating in factfinding) where the NCMEA unit is inappropriate.

As the issue of the appropriate composition of the NCMEA bargaining unit is now pending before the EMRB; Nye County respectfully requests that you issue an order staying all briefing and your decision in the above factfinding pending resolution of the attach petition by the EMRB. A stay would also

streamline the factfinding process by avoiding any disputes over which positions would be covered by your ultimate recommendation/decision.

Thank you in advance for your consideration of Nye County's Motion to Stay.

Very truly yours,



**Allison Kheel**

**Attorney at Law**

Fisher & Phillips LLP

300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101

akheel@fisherphillips.com | O: (702) 862-3817 | C: (702) 467-1066

Website

*On the Front Lines of Workplace Law<sup>SM</sup>*

*This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.*

From: david gaba <[davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)>

Sent: Friday, November 3, 2023 8:20 AM

To: Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>; Adam Levine <[ALevine@danielmarks.net](mailto:ALevine@danielmarks.net)>; Owens,

Susan <[sowens@fisherphillips.com](mailto:sowens@fisherphillips.com)>; Joel Harper <[JHarper@danielmarks.net](mailto:JHarper@danielmarks.net)>

Subject: RE: NCMEA Nye County

**CAUTION: This email originated from outside of the Firm. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Allison,

Thank you for keeping me in the loop, it's appreciated!

Cheers,

**Compass Law Group** PS Inc.

David Gaba

Direct (206) 251-5488

This electronic message contains information belonging to Compass Law Group PS Inc. which may be privileged, confidential, attorney work product and/or protected from disclosure under applicable law. The information is intended only for the use of the individual or entity named above. If you think you have received this message in error, please notify the sender either by email or telephone. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client work product or other applicable privilege. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited.

NOTICE: In some states where I practice the bar association requires attorneys to notify persons to whom e-mails are sent that the security of e-mail communications cannot be guaranteed. E-mail travels on the internet through any number of computers before reaching the recipient and can be intercepted, held or copied at any of those computers. In addition, persons other than the sender and intended recipients can intercept e-mails by accessing the sender's computer, the recipients' computers, and the computers through which the e-mail passes on the internet. This e-mail was sent because we believe we have your consent to use this form of communication. Please contact us immediately if you do not want this firm to communicate with you by e-mail. Thank you.

From: Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>

Sent: Thursday, November 2, 2023 11:07 PM

To: david gaba <[davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)>; Adam Levine <[ALevine@danielmarks.net](mailto:ALevine@danielmarks.net)>; Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>; Owens, Susan <[sowens@fisherphillips.com](mailto:sowens@fisherphillips.com)>; Joi Harper <[JHarper@danielmarks.net](mailto:JHarper@danielmarks.net)>  
Subject: RE: NCMEA

Dear Arbitrator Gaba,

The parties have agreed to a three week extension on the due date for the post hearing briefs, which by my calculation puts the briefs as due on either Thanksgiving or Black Friday. Thus, the parties are requesting that the new deadline for the briefs be Monday, November 27<sup>th</sup>.

Please let me know if there are any problems granting this extension.

Very truly yours,



**Allison Kheel**

Attorney at Law

Fisher & Phillips LLP

300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101

[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com) | O: (702) 862-3817 | C: (702) 467-1066

Website

*On the Front Lines of Workplace Law<sup>SM</sup>*

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

From: david gaba <[davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)>  
Sent: Tuesday, September 5, 2023 6:05 PM  
To: Adam Levine <[ALevine@danielmarks.net](mailto:ALevine@danielmarks.net)>  
Cc: Timothy Sutton <[tsutton@nyecountynv.gov](mailto:tsutton@nyecountynv.gov)>; Darrin Tuck <[dtuck@nyecountynv.gov](mailto:dtuck@nyecountynv.gov)>; Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>; Shianne Scott <[shianne.scott1234@gmail.com](mailto:shianne.scott1234@gmail.com)>  
Subject: Re: NCMEA

**CAUTION: This email originated from outside of the Firm. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Adam,

Any email less than 20 MB should make a pass the chokepoint on our server. If your files are too large we should probably dropbox them.

Cheers,

Dave Gaba

Sent from my iPad which explains my poor syntax, grammar, and the many typographical errors.

On Sep 5, 2023, at 5:11 PM, Adam Levine <[ALevine@danielmarks.net](mailto:ALevine@danielmarks.net)> wrote:

I believe so other than exhibits 10, 11 and 12 introduce today. And I can certainly scanned those very easily. Would you like them by drop box or for me to simply put them on a flash drive and send the drive to you?

Adam Levine, Esq.  
Law Office of Daniel Marks  
610 S. Ninth Street  
Las Vegas, NV 89101  
(702) 386-0536: Office  
(702) 386-6812: Fax  
[alevine@danielmarks.net](mailto:alevine@danielmarks.net)

---

From: david gaba <[davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)>  
Sent: Tuesday, September 5, 2023 3:46 PM  
To: Timothy Sutton <[tsutton@nyecountynv.gov](mailto:tsutton@nyecountynv.gov)>  
Cc: Darrin Tuck <[dtuck@nyecountynv.gov](mailto:dtuck@nyecountynv.gov)>; Kheel, Allison <[akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)>;  
Adam Levine <[ALevine@danielmarks.net](mailto:ALevine@danielmarks.net)>; Shianne Scott  
<[shianne.scott1234@gmail.com](mailto:shianne.scott1234@gmail.com)>  
Subject: Re: NCMEA

Thanks Tim!

Adam,

Would you have electronic copies of all the exhibits?

Cheers,

Dave Gaba

Sent from my iPad which explains my poor syntax, grammar, and the many typographical errors.

On Sep 5, 2023, at 10:48 AM, Timothy Sutton  
<[tsutton@nyecountynv.gov](mailto:tsutton@nyecountynv.gov)> wrote:

Here is the proposed CBA in Word format which incorporates the verbiage in the TA'd documents.

---

From: Elona Goldner <[egoldner@nyecountynv.gov](mailto:egoldner@nyecountynv.gov)>  
Sent: Tuesday, September 5, 2023 10:26 AM  
To: Timothy Sutton <[tsutton@nyecountynv.gov](mailto:tsutton@nyecountynv.gov)>  
Subject: NCMEA

Here you go.

*Sincerely,*

*Elona*

**Elona M Goldner, SHRM-CP  
HR Director**

Nye County Human Resources  
2101 E. Calvada Blvd., Ste 150  
Palisades, NV 89048  
775-751-6302 Phone  
775-751-6309 fax

**NEW EMAIL:** [egoldner@nyecountynv.gov](mailto:egoldner@nyecountynv.gov)

CONFIDENTIALITY NOTICE: This email contains confidential and privileged material for the sole use of the intended recipient(s). If you are not the intended recipient or his/her authorized agent, you are hereby notified that any use, disclosure, dissemination, distribution, or copying of this email, including attachments, is strictly prohibited. If you have received this email in error, please IMMEDIATELY (1) Forward the email and all attachments to [egoldner@nyecountynv.gov](mailto:egoldner@nyecountynv.gov) AND (2) permanently delete the message and any attachments. Please direct queries to Nye County Human Resources (775) 751-6301.

# **EXHIBIT 5**

# **EXHIBIT 5**

FEDERAL MEDIATION AND CONCILIATION SERVICE  
UNITED STATES GOVERNMENT  
WASHINGTON, DC 20427  
1/18/2024

Allison Kheel, Attorney  
NYE County  
300 S. Fourth Street  
Suite 1500  
Las Vegas, NV 89101

Adam Levine, Attorney  
Nye County Management Employee Association  
810 S. Ninth Street  
Las Vegas, NV 89101

**ONCE YOU SELECT AN ARBITRATOR YOU ARE REQUIRED TO NOTIFY FMCS. DO NOT RESPOND DIRECTLY TO THIS EMAIL—[ARBSVC@FMCS.GOV](mailto:ARBSVC@FMCS.GOV) IS NOT A WORKING EMAIL.**

Send an email to [arbitration@fmcs.gov](mailto:arbitration@fmcs.gov) with the case number, the name of the arbitrator, and either the enclosed form completed accurately or a statement in the email that the selection is by mutual agreement of the parties.

Case Number: 240118-02802  
Issue: Binding Fact Finding/Interest Arbitration for New Contract (NCMEA)

In response to a request, we received from one or both of the above parties, the following panel is submitted for your consideration without regard to questions of contract compliance or arbitrability.

**Patrick J Halter; Richard D Fincher; Juan C Gonzalez; Robert M Hirsch; Andria S Knapp; Jan Stiglitz; Paul D Roose**

Once a joint selection has been made, you must notify FMCS of your selection. Please inform us of your selection at [arbitration@fmcs.gov](mailto:arbitration@fmcs.gov). Use the enclosed form, "Instructions to FMCS", to advise us of any additional action requested for this case. FMCS is responsible only for the arbitrators it formally appoints. Upon notification of your selection, FMCS will formally appoint the arbitrator, who is then required to communicate with you within 14 calendar days to arrange for preliminary matters such as hearing date. If the dispute is settled prior to a hearing, you must notify us, as well as the arbitrator.

You must refer to your collective bargaining agreement for your specific selection process. If your collective bargaining agreement is silent on the manner of selecting arbitrators, the parties may wish to consider any jointly determined method or FMCS will accept: (1) priority ranking; (2) striking; or (3) direct appointment.

If the priority method is used and we receive a priority selection from only one party, the second party will be notified that it has fourteen (14) calendar days to respond, or the first party's selection will be honored, as provided in FMCS Policies and Procedures under Section 1404.12(b).

Requests for a second or subsequent panels will not be honored unless (1) the request is agreed to by both parties, or (2) the parties' collective bargaining agreement SPECIFICALLY authorizes a unilateral request for a second panel. You must either certify that both parties agree or send a copy of the pertinent clause of the collective bargaining agreement that authorizes a unilateral request.

**YOU MUST USE THE FMCS CASE NUMBER IN ANY COMMUNICATION TO THE ARBITRATOR OR TO FMCS REGARDING THIS CASE. If you have any questions, please contact me.**

Enclosures

1. Biographical Sketches
2. "Instructions to FMCS" Form

### INSTRUCTIONS TO FMCS

Please check one of the 5 instructions below. If these are joint instructions, please certify by signing number 6.

Case Number: 240118-02802

Issue: Binding Fact Finding/Interest Arbitration for New Contract (NCMEA)

1.  The parties have mutually selected Arbitrator \_\_\_\_\_ and request FMCS to appoint this arbitrator to hear this case. No payment is required for a selection of an arbitrator.
2.  The undersigned designates its priority selections on the next page: (Please rank ALL ARBITRATORS submitted to you with NO OMISSIONS, unless permitted by the CBA or applicable law.) For this method, you MUST provide CBA language that outlines your arbitrator selection process. Failure to submit this language will delay processing your request. (See next page)
3.  We mutually request FMCS to appoint an arbitrator of its choice who was not listed on any panels associated with this case. (Certify by signing number 6 below.)
4.  This case has been SETTLED. No further action is required by FMCS.

- 
5.  This panel is unacceptable. A new panel is requested by permission of the CBA or both parties. (Certify by signing on number 6 below.)  
 Payment is enclosed (check or money order). If by credit card, provide info below.

Name and Address: \_\_\_\_\_ Amount: \$ \_\_\_\_\_ Expires: \_\_\_\_\_  
 Visa       MasterCard       Discovery       American Express

Number: \_\_\_\_\_

Name and Address: \_\_\_\_\_ Amount: \$ \_\_\_\_\_ Expires: \_\_\_\_\_  
 Visa       MasterCard       Discovery       American Express

Number: \_\_\_\_\_

Requirements: # of Arbitrators: \_\_\_\_\_  Metropolitan  Sub region  Region  
Special Requirements: (example, NAA, AAA, Attorney, exclusions) \_\_\_\_\_

\_\_\_\_\_  
Employer Representative  
Allison Kheel, Attorney  
NYE County  
300 S. Fourth Street  
Suite 1500  
Las Vegas, NV 89101  
Phone: (702)862-3817  
Email: akheel@fisherphillips.com

Date: \_\_\_\_\_

\_\_\_\_\_  
Union Representative  
Adam Levine, Attorney  
Nye County Management Employee Association  
610 S. Ninth Street  
Las Vegas, NV 89101  
Phone: (702)386-0536  
Email: jharper@danielmarks.net

Date: \_\_\_\_\_

6. I certify that both parties have agreed to the above Instructions and Appointment Statement and that I am authorized to respond for both parties.

SIGNATURE: \_\_\_\_\_ Date: \_\_\_\_\_

Shakima Wright  
Case Administrator  
Phone: (202)606-5329  
Email: swright@fmcs.gov

Please email this form to [arbitration@fmcs.gov](mailto:arbitration@fmcs.gov)

If you checked number 2 please rank ALL ARBITRATORS submitted to you with NO OMISSIONS, unless permitted by the CBA or applicable law.)

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_
11. \_\_\_\_\_
12. \_\_\_\_\_
13. \_\_\_\_\_
14. \_\_\_\_\_
15. \_\_\_\_\_

## APPOINTMENT STATEMENT

The arbitrator you select is an independent contractor whose relationship is solely with the parties to the dispute. Arbitrators on the FMCS roster are subject to certain reporting requirements and to the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor Management Disputes and FMCS Arbitration Policies and Procedures.

However, under Federal Regulations, FMCS has no power to:

- (1) Compel parties to appear before an arbitrator;
- (2) Enforce an agreement to arbitrate;
- (3) Compel parties to arbitrate any issue;
- (4) Influence, alter, or set aside decisions of arbitrators on the Roster; or
- (5) Compel, deny, or modify payment of compensation to an arbitrator.

A party who is displeased with an arbitrator or his/her decision may or may not have further avenues of redress, but FMCS is on no position to advise or assist parties who would have preferred a different result or who were not happy with the arbitrator. FMCS may note or act upon allegations of violations of the Code or its arbitration policies by arbitrators. While repeated complaints or findings of specific misconduct may result in suspension or removal of an arbitrator from the FMCS roster, FMCS is unable to take any action or provide any guidance that would alter or affect the outcome of an arbitration decision.

Your signature on the Instructions to FMCS form indicates that you understand this appointment statement.

FEDERAL MEDIATION AND CONCILIATION SERVICE  
WASHINGTON, DC 20427  
REQUEST FOR ARBITRATION PANEL

Internet Version      Tracking #:      Case #: 240118-02802      Date: 01/18/2024

1. EMPLOYER

Company Name: NYE County

Representative Name: (Last) Kheel      (First) Allison      (Initial)

Street: 300 S. Fourth Street, Suite 1500

City: Las Vegas      State: Nevada      Zip Code: 89101

Phone: (702)862-3817      Fax:

Email: akheel@fisherphillips.com

2. UNION

Union Name: Nye County Management Employee Association      Local #:

Representative Name: (Last) Levine      (First) Adam      (Initial)

Street: 610 S. Ninth Street

City: Las Vegas      State: Nevada      Zip Code: 89101

Phone: (702)386-0536      Fax:

Email: jharper@danielmarks.net

3. Site of Dispute: City: Pahrump      State: Nevada      Zip Code: \* 89048  
\*Required for Metropolitan Selection

4. Select the panel of arbitrators from below or see "Special Requirements" on page 2.  
 Regional       Sub-Regional       Metropolitan (May cross state boundaries.)

5. Type of Issue: Binding Fact Finding/Interest Arbitration for New Contract (NCMEA)

6. Panel Size 7      A panel of (7) names is usually provided. If this is a unilateral request, you must attach your relevant contract language which specifies a different number or "certify" on Page 2 that both parties have agreed to the number specified

7. Type of Industry:     Private Sector       State or Local Government       Federal Government

8. Payment Options: \$175.00 per panel      OR      \$100.00 IF FILED AT arbitration.fmes.gov

Check/Money Order Name on Account:      Type:    Personal Checking     Business Checking   

(SEE DISCLOSURE STATEMENT ON PAGE TWO IF PAYMENT IS BY CHECK.)      Personal Savings     

ABA Routing Number:      Checking Acct.#:

Check to split payment evenly      Pay.Gov Tracking#:

VISA       MASTERCARD       AMERICAN EXPRESS       DISCOVER       PREPAID ACCOUNT

Name(1):      \*\*\*\*\*      Paid by:     Union       Employer      Amount:    \$100.00

Card Number:      \*\*\*\*      Expires:    Month:      \*\*      Year:      \*\*\*\*

VISA       MASTERCARD       AMERICAN EXPRESS       DISCOVER       PREPAID ACCOUNT

Name(2):      Paid by:     Union       Employer      Amount:

Card Number:      Expires:    Month:      Year:

ALC for Federal Agencies:    ALC #:      Prepayment #:

9. Signatures: Employer:      Union: Adam Levine ((702)386-0536) 1/18/2024

PAPERWORK REDUCTION ACT NOTICE: The estimated burden associated with this collection of information is 10 minutes per respondent. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427 or the Paperwork Reduction Project 3076-0002, Office of Management and Budget, Washington, DC 20503.

## REQUEST FOR ARBITRATION PANEL

### SPECIAL REQUIREMENTS

Note: ALL requests on this page must be "CERTIFIED" as jointly agreed AND signed below.  
Requests on this page will NOT be honored without proper certification.

- Select panel from **Nationwide**
- EXPEDITED ARBITRATION** under FMCS Procedures  
(See FMCS Arbitration Policies and Procedures, Subpart D, Section 1404.17 for specific requirements for Expedited Arbitration.)

#### **ORGANIZATIONS or CERTIFICATIONS:**

- Attorney  AAA (American Arbitration Assoc.)  NAA (National Academy of Arbitrators)
- Video Arbitration  In Person Ready

#### **SPECIALIZATIONS:**

Industry Specialization:

Issue Specialization: Fact finding

**ADDITIONAL REQUIREMENTS:** (For example, geographical restrictions, exclusions of arbitrators)

---

A panel will be sent based upon the request of a single party. If "Special Requirements" are listed or "Expedited Arbitration" is requested, you **MUST** certify that all parties jointly agree to these requests. This also applies to additional panel requests. If your contract contains these "Special Requirements," including "Expedited Arbitration," submit a copy of the relevant contract language only. A submission of a panel should not be construed as anything more than compliance with a request and does not reflect on the substance or arbitrability of the issue(s) in dispute.

I certify that the above is jointly agreed.

Signature: \_\_\_\_\_ On behalf of:  Union  Employer

#### **NOTICE TO CUSTOMERS MAKING PAYMENT BY CHECK**

**Authorization to Convert Your Check:** If you send us a check to make your payment, your check will be converted into an electronic fund transfer. "Electronic fund transfer" is the term used to refer to the process in which we electronically instruct your financial institution to transfer funds from your account to our account, rather than processing your check. By sending your completed, signed check to us, you authorize us to scan your check and to use the account information from your check to make an electronic fund transfer from your account for the same amount as the check. If the electronic fund transfer cannot be processed for technical reasons, you authorize us to process your original check.

**Insufficient Funds:** The electronic fund transfer from your account will usually occur within 24 hours, which is faster than a check is normally processed. Therefore, make sure there are sufficient funds available in your checking account when you send us your check. If the electronic fund transfer cannot be completed because of insufficient funds, we will not resubmit the check information for electronic fund transfer. Your bank may charge you a fee for insufficient funds.

**Transaction Information:** The electronic fund transfer from your account will be on the account statement you received from your financial institution. However, the transfer may be in a different place on your statement than the place where your checks normally appear. For example, it may appear under "other withdrawals" or "other transactions." You will not receive your original check back from your financial institution. For security reasons, we will destroy your original check, but we will keep a copy of the check for record keeping purposes.

Email: [ANDRIAK@EARTHLINK.NET](mailto:ANDRIAK@EARTHLINK.NET) (Preferred Contact Method)

**Present Occupation** Arbitration, Mediation and Dispute Resolution

**Mailing Address**

739 35th Avenue  
San Francisco, CA 94121

(415)221-0441

**PROFESSIONAL STATEMENT**

Extensive arbitration and mediation experience of over 35 years, in a wide variety of industries and with a wide variety of issues, in both labor and employment arenas. In addition, I have extensive experience teaching and lecturing on labor and employment law, arbitration, mediation and collective bargaining negotiations.

**PROFESSIONAL AFFILIATIONS**

National Academy of Arbitrators  
American Arbitration Association

**EDUCATION**

JD Law Harvard University 1976  
BA Economics Duke University 1970

**CERTIFICATIONS**

Attorney  
Video Arbitration Capable  
In Person Ready  
Law - California 1994

**ARBITRATION/LABOR RELATIONS EXPERIENCE**

Golden Gate University Law School - Visiting Professor, Labor & Employment Law, 1990 - 1991  
George Washington University National Law Center - Visiting Professor, Labor & Employment Law, 1989 - 1990  
Hastings College of the Law - Adjunct Professor, Labor Arbitration & Negotiations, 1985 - 1988  
University of Pittsburgh Law School - Assistant Professor, Labor & Employment Law, 1978 - 1985  
Boston College Law School - Assistant Professor, Research & Writing, Negotiations, 1976 - 1978

**INDUSTRIES**

Aerospace, Agriculture, Airlines, Aluminum, Automotive, Bakery, Beverage, Brewery, Broadcasting, Cement, Chemicals, Clothing, Communications, Education, Electronics, Entertainment/arts, Food manu./proc./service, Health care, Hospital/nursing home, Hotels/motels/casinos/resorts, Iron, Lumber, Machinery, Maritime, Meat packing, Metal fabrication, Mining, Nuclear energy, Office workers/clerical, Organizations, Packaging, Paint & varnish, Petroleum/petrochemicals, Pharmaceuticals, Plastics, Plumbing, Police & fire, Printing & publishing, Prison guard, Public sector grievance, Public sector interest, Pulp & paper, Railroads, Refrigeration/HVAC, Restaurants, Retail stores, Rubber/tire, Shipbuilding/dry-dock, Steel, Transportation, Trucking & storage, Utilities, Warehousing

**ISSUES**

Absenteeism, Affirmative action, Age, Arbitrability, Bargaining unit work, Bonus fringe benefits, Conduct (off-duty/ personal), Cost-of-living pay, Demotion, Disability, Discipline (discharge), Discipline (non-

discharge), Discrimination, Drug/alcohol offenses, Fact finding, Fringe benefits, Gender, Grievance mediation, Health/hospitalization, Hiring practices, Holiday pay, Holidays, Incentive pay, Insurance, Job classification & rates, Job performance, Job posting/bidding, Jurisdictional dispute, Layoffs/bumping/recall, Leave, Management rights, Merit pay, National origin, Official time, Overtime Pay, Past practices, Pension and welfare plans, Promotion, Race, Religion, Retirement, Safety/health conditions, Seniority, Severance pay, Sexual harassment, Strikes/lockouts/work stoppages/slowdowns, Subcontracting/contracting out, Tenure/reappointment, Unilateral, Union security, Vacation, Vacation pay, Violence or threats, Wages, Work Hours/Schedules/Assignments, Working conditions/work orders

#### ARBITRATION ROSTERS

FMCS Arbitration Roster, AAA, CSMCS

#### PUBLISHED CASES

I do not submit decisions for publication.

#### RATES/POLICIES

Per Diem: \$2,400.00

Per diem is \$2400 for each day or portion thereof spent hearing a case. If a hearing day lasts more than 8 hours, a prorated per diem may be charged. Study time is charged at \$2400 per day for each day spent preparing an arbitration opinion and award. Study time will be prorated by the half day for partial days devoted to such preparation.

Cancellation: \$2,000.00

One day's per diem will be assessed for each scheduled hearing day that is changed or canceled by the parties within one calendar month of the date of the hearing. Notification in writing or by telephone or e-mail is acceptable.

Expenses: Actual expenses (such as meals, lodging, parking and tolls) are charged as incurred.

Mileage is billed at \$0.50 per mile for any travel over 50 miles round trip from my office.

There is no charge for costs of administration, docketing, or preparation and distribution of awards.

Air fare will be charged as incurred, coach class. Clients will be responsible for the entire fare, not just an airline change fee, if they postpone or cancel a hearing less than two weeks prior to the scheduled date.

Travel Time: Travel time over four hours is charged on a prorated per diem basis. Travel time is also charged if travel is required on the day before or after a hearing, or if hearing time plus travel time exceeds twelve hours in a single day.

Interest arbitration: \$3,000.00

Interest arbitration and fact-finding are charged a per diem of \$3000 for hearing and study time. The per diem for grievance mediation is \$3000, but there is no additional charge for study and preparation time to memorialize any settlements reached.

**Email:** [js@cwsf.edu](mailto:js@cwsf.edu) (Preferred Contact Method)

**Present Occupation:** Arbitrator and mediator

**Mailing Address**

14462 GARDEN TRI.  
SAN DIEGO, CA 92127

(619)807-5890

**PROFESSIONAL STATEMENT**

I view my position as an integral part of the dispute resolution process created by the parties. I recognize that my powers have been created by that relationship and governed by the collective bargaining agreement that the parties have reached. I also recognize that the parties have a continuing relationship with each other and that my decisions will have an impact on that continuing relationship. In conducting hearings, I welcome cooperation and expect civility.

**PROFESSIONAL AFFILIATIONS**

National Academy of Arbitrators  
American Arbitration Association  
LERA

**EDUCATION**

LLM Labor Law Harvard Univ 1980  
JD Law Albany Law School 1975  
BA English St Univ New York-buffalo 1970

**CERTIFICATIONS**

Attorney  
Video Arbitration Capable  
Law - California 1982  
Law - New York 1976

**ARBITRATION/LABOR RELATIONS EXPERIENCE**

California Western School Law - Professor, 1980 - 2018  
Attorney General, State of New York - Assistant Attorney General, 1977 - 1999  
Gordon, Shechtman & Gordon - Attorney, 1975 - 1977

**INDUSTRIES**

Aerospace, Agriculture, Aluminum, Automotive, Bakery, Beverage, Brewery, Broadcasting, Building products, Canning, Cement, Chemicals, Clothing, Communications, Construction, Dairy, Distillery, Education, Electrical Equipment/Appliances, Electronics, Entertainment/arts, Feed & fertilizer, Food manu/proc/service, Foundry, Furniture, Health care, Hospital/nursing home, Hotels/motels/casinos/resorts, Iron, Lumber, Machinery, Meat packing, Metal fabrication, Mining, Office workers/clerical, Organizations, Packaging, Petroleum/petrochemicals, Pharmaceuticals, Plastics, Plumbing, Police & fire, Printing & publishing, Prison guard, Public sector grievance, Public sector interest, Pulp & paper, Real estate, Refrigeration/HVAC, Restaurants, Retail stores, Shipbuilding/dry-dock, Sports, Stone/quarry, Textile, Transportation, Trucking & storage, Utilities, Warehousing

**ISSUES**

Absenteeism, Age, Arbitrability, Bargaining unit work, Bonus fringe benefits, Conduct (off-duty/

personal), Cost-of-living pay, Demotion, Disability, Discipline (discharge), Discipline (non-discharge), Discrimination, Drug/alcohol offenses, Fact finding, Fringe benefits, Gender, Grievance mediation, Health/hospitalization, Hiring practices, Holiday pay, Holidays, Incentive pay, Insurance, Job classification & rates, Job performance, Job posting/bidding, Jurisdictional dispute, Layoffs/bumping/recall, Leave, Management rights, Merit pay, National origin, Official time, Overtime Pay, Past practices, Pension and welfare plans, Pension claim (fed. statute), Promotion, Race, Religion, Retirement, Safety/health conditions, Seniority, Severance pay, Sexual harassment, Strikes/lockouts/work stoppages/slowdowns, Subcontracting/contracting out, Tenure/reappointment, Unilateral, Union security, Vacation, Vacation pay, Violence or threats, Wages, Work Hours/Schedules/Assignments, Working conditions/work orders

**PERMANENT PANELS**

Bay Area Rapid Transit and Affiliated Unions; California State University and California Teachers Association; Disney and SEIU United Service Workers West; Health and Human Services and NTEU; Internal Revenue Service and NTEU; NUHW & Keck/USC; Omnitrans and ATU Local 1704; Southern California Gas Co. and UWUA; U.S. Borax and ILWU Local 30; UPCW Local 1564 and Smiths Food and Drug; University of California and AFSCME; University of California and Teamsters Local 2010; University of California and United Auto Workers

**ARBITRATION ROSTERS**

FMCS Arbitration Roster; American Arbitration Assoc. Labor; CA Mediation and Conciliation Service; L A City Employee Relations Board

**RATES/POLICIES**

Per Diem: \$2,700.00

Per diem applies to hearings, award writing, interim rulings, and any extensive pre or post-hearing conference calls.

Cancellation: \$2,700.00

Cancellation: If 1-2 days of hearing and/or travel are scheduled, 30 days notice required. If 3 days of hearing and/or travel are scheduled, 35 days notice required. If 4 or more days of hearing and/or travel are scheduled, 45 day notice required. Cancellation fee imposed for each reserved day, whether for hearing or travel.

Other: I am not presently scheduling any in-person hearings outside of San Diego County. I am willing and able to conduct virtual hearings via Zoom and any other platform the parties might prefer.

Email: [jc@arbitratorjcgonzalez.com](mailto:jc@arbitratorjcgonzalez.com) (Preferred Contact Method)

**Present Occupation** Arbitrator and Mediator

**Mailing Address**

1014 S. Westlake Blvd.  
14-190  
Westlake Village, CA 91361

(424)333-4400

**PROFESSIONAL STATEMENT**

Work History: 2012 to Present: Labor Arbitrator and Mediator; Since 2015: Hearing Officer LAUSD; 2000 to 2012: Commissioner of Mediation for FMCS- mediated over 600 contract negotiations and grievance cases including over 40 Equal Employment Opportunity charges; 2007 to 2011: Adj Professor for Straus Institute of Dispute Resolution, Pepperdine Law School Teaching Principles and Practice of Mediation & Psychology of Conflict

**PROFESSIONAL AFFILIATIONS**

National Academy of Arbitrators  
American Arbitration Association  
2016 Orange County LERA President  
2019 to 2022 Southern CA LERA Executive Director

**EDUCATION**

LLM Tax Law Loyola Law School 2015  
JD Law Whittier Law School 1998  
MA Psychology California State 1995  
BA Psychology Loyola Marymount University 1985

**CERTIFICATIONS**

Attorney  
Video Arbitration Capable  
Law - California 1999

**INDUSTRIES**

Advertising, Aerospace, Agriculture, Aluminum, Bakery, Beverage, Broadcasting, Building products, Canning, Cement, Chemicals, Clothing, Communications, Construction, Education, Electronics, Entertainment/arts, Feed & fertilizer, Food manu/proc/service, Foundry, Furniture, Glass/pottery, Health care, Hospital/nursing home, Hotels/motels/casinos/resorts, Machinery, Maritime, Meat packing, Metal fabrication, Office workers/clerical, Organizations, Packaging, Paint & varnish, Petroleum/petrochemicals, Plastics, Plumbing, Police & fire, Printing & publishing, Public sector grievance, Pulp & paper, Real estate, Restaurants, Retail stores, Stone/quarry, Symphony orchestra, Textile, Transportation, Trucking & storage, Utilities, Warehousing

**ISSUES**

Absenteeism, Age, Arbitrability, Bargaining unit work, Bonus fringe benefits, Conduct (off-duty/personal), Cost-of-living pay, Demotion, Disability, Discipline (discharge), Discipline (non-discharge), Discrimination, Drug/alcohol offenses, Fringe benefits, Gender, Grievance mediation, Health/hospitalization, Hiring practices, Holiday pay, Holidays, Incentive pay, Insurance, Job classification & rates, Job performance, Job posting/bidding, Jurisdictional dispute, Layoffs/bumping/recall, Leave,

Management rights, Merit pay, National origin, Official time, Overtime Pay, Past practices, Pension and welfare plans, Promotion, Race, Religion, Retirement, Safety/health conditions, Seniority, Severance pay, Sexual harassment, Strikes/lockouts/work stoppages/slowdowns, Subcontracting/contracting out, Tenure/reappointment, Union security, Vacation, Vacation pay, Violence or threats, Wages, Work Hours/Schedules/Assignments, Working conditions/work orders

**PERMANENT PANELS**

AAA Compact Gaming Tribes; AMPTP and WGA Arbitration Panel; Boeing & EAST Local 1553; Kaiser Permanente & CNA/UNAC/SEIU-UHW; LAUSD Hearing Officer; San Diego UNITE HERE Local 11 Health and Retirement Pension Fund Panel; UNITE HERE Local 11; US Postal Service & APWU Panel

**ARBITRATION ROSTERS**

FMCS Arbitration Roster; American Arbitration Association (AAA)

**PUBLISHED CASES**

None.

**RATES/POLICIES**

Per Diem: \$2,800.00

Full Per Diem Fee for hearing(s), study, award preparation, and travel.

Cancellation: \$2,200.00

Cancellation Fee Waived if 30-day notice or more. A full per diem fee will be charged for each day reserved for hearing only, if the hearing is canceled or postponed by any party for any reason less than 30 calendar days prior to each such date.

Air Transportation: \$2,200.00

Main cabin airfare and airport parking expenses will be charged to parties. Meals will not be charged. Parties will also be charged for any cancellation fees or change fees charged due to changes or cancellations by the Parties.

Travel Time: \$2,200.00

Travel time will be charged at full day per diem rate for each day of travel.

Local Expenses: Mileage will not be charged in the Los Angeles County. Meals will not be charged. Parking will not be charged. Hotel, taxi (or car rental) and airport parking expenses will be charged to parties. Meals will not be charged. Parties will also be charged for any cancellation fees or change fees charged due to changes or cancellations by the Parties.

Interest on Past-due Payments: \$2,200.00

An annual interest rate of 5% (from the date of invoice) will be charged for any invoices not paid within 6 months of billing.

Other: \$4,800.00

Per Diem for Mediation of Litigation dispute or CBA negotiations. No cancellation fee.

**Email:** [PATRICK.HALTER52@GMAIL.COM](mailto:PATRICK.HALTER52@GMAIL.COM) (Preferred Contact Method)

**Present Occupation** Impartial Arbitrator

**Mailing Address**

18723 Via Princessa, Apt. 59  
Santa Clarita, CA 91387

**Additional Addresses**

Seattle, WA 98199  
Brooklyn, NY 11201  
Houston, TX 77024

(505)980-4654

**PROFESSIONAL STATEMENT**

My practice model is the NAA\FMCS\AAA Code of Professional Responsibility in Labor-Management Disputes, ABA Canons of Ethics and Professional Practice and College of Labor and Employment Lawyers' Principles of Civility and Professionalism. Each case is an opportunity to serve and advance the practice of labor relations for advocates and neutrals. My craft and trade encompass economic activities in all sectors (private, non-profit, Federal, state, local, political subdivisions with tax authority). Experienced with med-arb, grievance and interest arbitration, public safety investigations, factfinding, card check, elections, early intervention review. Case commentaries publications. Community svc. first responder search, adaptive ski patrol.

**PROFESSIONAL AFFILIATIONS**

National Academy of Arbitrators  
American Arbitration Association  
ABA  
ACR  
AHLA  
AWI  
LERA  
NAA  
NARR

**EDUCATION**

BA History and English Arizona State University  
MPA Public Finance and Labor Relations Indiana University  
Fellowship post-grad. Applied Economics Johns Hopkins University  
CPEs - due process, fair hearing, admin law, evidence, police liability, torts, contracts, motions practice  
National Judicial College U. of Nevada

**CERTIFICATIONS**

Video Arbitration Capable  
In Person Ready  
Workplace Investigator (ANSI certification in progress) - Association of Workplace Investigators 2020  
Arbitration - International Labor - Institute of Chartered Arbitrators 2015  
Law Enforcement - City of Albuquerque\State\FBI Citizens Academy 2012  
ALJ\Hearing Officer - National Association of ALJs 2010

**ARBITRATION/LABOR RELATIONS EXPERIENCE**

City of Albuquerque Labor-Management Relations Board (AFSCME, CWA, FOP, IAFF, UTU) - Chair, 2008 - 2015  
NM Pub Empl Lab Rels Bd - Director, 1999 - 2001

U S Federal Svc & Foreign Serv Impasse Disputes Panel - Staff Associate, 1993 - 1999

### INDUSTRIES

Advertising, Aerospace, Agriculture, Airlines, Aluminum, Automotive, Bakery, Banking, Beverage, Brewery, Broadcasting, Building products, Canning, Cement, Chemicals, Clothing, Coal, Communications, Construction, Dairy, Distillery, Education, Electrical Equipment/Appliances, Electronics, Entertainment/arts, Feed & fertilizer, Food manu/proc/service, Foundry, Furniture, Glass/pottery, Grain mill, Health care, Hospital/nursing home, Hotels/motels/casinos/resorts, Iron, Lumber, Machinery, Maritime, Meat packing, Metal fabrication, Mining, Nuclear energy, Office workers/clerical, Organizations, Packaging, Paint & varnish, Petroleum/petrochemicals, Pharmaceuticals, Plastics, Plumbing, Police & fire, Printing & publishing, Prison guard, Public sector grievance, Public sector interest, Pulp & paper, Railroads, Real estate, Refrigeration/HVAC, Restaurants, Retail stores, Rubber/tire, Shipbuilding/dry-dock, Sports, Steel, Stone/quarry, Symphony orchestra, Textile, Tobacco, Transportation, Trucking & storage, Upholstering, Utilities, Warehousing

### ISSUES

Absenteeism, Age, Arbitrability, Bargaining unit work, Bonus fringe benefits, Conduct (off-duty/personal), Cost-of-living pay, Demotion, Disability, Discipline (discharge), Discipline (non-discharge), Discrimination, Drug/alcohol offenses, Fact finding, Fringe benefits, Gender, Grievance mediation, Health/hospitalization, Hiring practices, Holiday pay, Holidays, Incentive pay, Insurance, Job classification & rates, Job performance, Job posting/bidding, Jurisdictional dispute, Layoffs/bumping/recall, Leave, Management rights, Merit pay, National origin, Official time, Other (please specify), Overtime Pay, Past practices, Pension and welfare plans, Pension claim (fed. statute), Promotion, Race, Religion, Retirement, Safety/health conditions, Seniority, Severance pay, Sexual harassment, Strikes/lockouts/work stoppages/slowdowns, Subcontracting/contracting out, Tenure/reappointment, Union security, Vacation, Vacation pay, Violence or threats, Wages, Work Hours/Schedules/Assignments, Working conditions/work orders

### PERMANENT PANELS

"The Strip" Las Vegas Casinos & Resorts \& Culinary Workers Union; AFTRA/Screen Actors Guild (SAG) Artist-Talent Agent Disputes; American Health Law Assn. Arbitration Panel - Employment & Labor; Bay Area California Rapid Transit \Law Enforcement; Clark County (Las Vegas NV) School District and NEA; DHS Customs and Border Protection \NTEU ; FAA/NATCA (National, NW and SW Regions); Freeport McMoran Employee Arbitration Governance Panel; Krogers, Smith's, King Soopers \UFCW; National Railroad Adjustment Board - First & Third Divisions, PLBs, SBAs; Panama Canal & IAFF \IBT \NMU \MTC \POP \OPEIU; State of Alaska \Masters, Mates & Pilots; Texas Chapter 143 Appeals Local Govt. Code; U.S. Postal Service \APWU, NALC; United Parcel Service & Teamsters; USDA Food Insp Svc - AFGE ; Washington State Law Enforcement Disciplinary Grievances

### ARBITRATION ROSTERS

FMCS Arbitration Roster; AAA Labor, Commercial, Employment, Consumer Panels; AAA National Health Care Panel; ABA Employment Disputes Panel; City of Los Angeles PERB; City of Phoenix PERB; FINRA Arbitration and Mediation Panels; National Mediation Board; Nebraska Industrial Commission Special Magistrate; Public Employee Labor Boards: AK, CA, DC, HI, ID, KS, MT, NE, NM, NV, OK, OR, WA, Virgin Islands

### PUBLISHED CASES

Cases across-the-board industries and issues (economic and non-economic) published by national reporter services CCH, LRP, Bloomberg \BNA, West Law. Cases cited in treatises such as How Arbitration Works; Principles of Federal Sector Arbitration (Dewey Publishing), BNA's Discharge and Discipline, Lexis' Labor and Employment Arbitration; Rights of Law Enforcement Officers (LRIS Publisher); Contributor Chapter, Duty of Fair Representation, How Arbitration Works; Editor, NAA Annual Proceedings (BNA); editor

Federal Service Labor Law Review

**RATES/POLICIES**

Per Diem: \$1,600.00

Applies for grievance arbitration, interest arbitration, fact-finding, med-arb is \$1,600.00 per diem. Joint and several liability applies for payment of fee. Arbitrator open to alternative compensation arrangements.

Cancellation: \$1,600.00

Applies when less than 30 calendar days notice of cancellation or change in hearing date for any reason; applies to videoconference hearings and when parties decide to proceed with briefs in lieu of hearing. Joint and several liability applies on payment of fee.

Expenses: Actual expenses invoiced to parties, this includes cancellation fees for lodging and transportation. Travel time in excess of 3 hours is pro-rated. Joint and several liability applies on payment of expenses.

Email: [PAUL\\_ROOSE@GGDR.NET](mailto:PAUL_ROOSE@GGDR.NET) (Preferred Contact Method)

**Present Occupation** Arbitrator and Mediator

**Mailing Address**  
1300 Clay Street  
Suite 600  
Oakland, CA 94612

(510)466-6323

**PROFESSIONAL STATEMENT**

Arbitrator, mediator and factfinder Paul Roose has been a leader in the field of labor relations for over thirty years. In May 2012, he left his position as the head of the California State Mediation and Conciliation Service (CSMCS) to launch a practice as a labor-management neutral. He has been a member of the National Academy of Arbitrators since May 2018.

**PROFESSIONAL AFFILIATIONS**

National Academy of Arbitrators  
American Arbitration Association  
Assoc. for Conflict Resolution  
Labor and Employment Research Assoc.

**EDUCATION**

BA History Swarthmore College 1974

**CERTIFICATIONS**

Video Arbitration Capable  
In Person Ready  
Mediator Certificate - Humboldt State University 1999

**ARBITRATION/LABOR RELATIONS EXPERIENCE**

CA State Mediation and Conciliation Service - Supervising Conciliator (Chief), 2005 - 2012  
CA State Mediation and Conciliation Service - Mediator, 1998 - 2005  
Healthcare Workers Local 250 - SEJU - Lead Field Representative, 1991 - 1997  
Nat. Assoc. of Letter Carriers Branch 1111 - President, 1983 - 1991  
US Postal Service - Letter Carrier / Shop Steward / Chief Steward, 1978 - 1983

**INDUSTRIES**

Aerospace, Agriculture, Building products, Dairy, Education, Food manu/proc/service, Health care, Hospital/nursing home, Hotels/motels/casinos/resorts, Maritime, Metal fabrication, Office workers/clerical, Organizations, Police & fire, Prison guard, Public sector grievance, Public sector interest, Restaurants, Transportation, Trucking & storage, Utilities, Warehousing

**ISSUES**

Absenteeism, Age, Arbitrability, Bargaining unit work, Bonus fringe benefits, Conduct (off-duty/personal), Cost-of-living pay, Demotion, Disability, Discipline (discharge), Discipline (non-discharge), Discrimination, Drug/alcohol offenses, Fact finding, Fringe benefits, Gender, Grievance mediation, Health/hospitalization, Hiring practices, Holiday pay, Holidays, Incentive pay, Insurance, Job classification & rates, Job performance, Job posting/bidding, Jurisdictional dispute, Layoffs/bumping/recall, Leave, Management rights, Merit pay, National origin, Official time, Overtime Pay, Past practices, Pension and

welfare plans, Promotion, Race, Religion, Retirement, Safety/health conditions, Seniority, Severance pay, Sexual harassment, Strikes/lockouts/work stoppages/slowdowns, Subcontracting/contracting out, Tenure/reappointment, Unilateral, Union security, Vacation, Vacation pay, Violence or threats, Wages, Work Hours/Schedules/Assignments, Working conditions/work orders

**PERMANENT PANELS**

Univ. of CA - AFSCME, AFT, Teamsters & UAW; ATT Northern CA - CWA; Bay Area Rapid Transit - ATU & SEIU; Brentwood Union School Dist. - CTA & CSEA; CA State University - Teamsters / SETC & CFA & CSUEU; Calif. Pacific Med. Ctr. - NUHW; City and County of San Francisco - SEIU; Santa Clara County - SEIU & County Counsel Attorneys ; Santa Clara County IHSS - SEIU; Stanford University - SEIU; UC Davis - IAFF

**ARBITRATION ROSTERS**

FMCS Arbitration Roster; American Arbitration Association - Labor Panel; CA Public Employment Relations Board MMBA Factfinder Panel; CA State Mediation and Conciliation Service; City of Los Angeles Employment Relations Board Arbitrator Panel; National Mediation Board Roster of Arbitrators; Nevada Employee-Management Mediators Roster; Oregon Employment Relations Board Panel of Arbitrators; Washington Public Employment Relations Commission Dispute Resolution Panel

**PUBLISHED CASES**

Please see my website for published awards. <https://www.goldengatedisputeresolution.com/published-decisions/>

**RATES/POLICIES**

Per Diem: \$2,400.00

For each hearing day. See cancellation policy

Cancellation: \$1200 cancellation fee unless cancelled 28 days prior to hearing. \$2400 cancellation fee unless cancelled 24 hours prior to hearing.

Expenses: Expenses charged as per FMCS policy.

Travel Time: Travel time charged at \$200 per hour for all hearing locations beyond a two hour drive from Oakland, CA. Cap is \$1200 round trip for travel within California, \$2400 for travel to other states.

Other: \$400 per hour for file review and writing time.

**Email:** [RDF@WORKPLACERESOLUTIONS.COM](mailto:RDF@WORKPLACERESOLUTIONS.COM) (Preferred Contact Method)

**Present Occupation** Labor Arbitrator, Mediator, Instructor, Institute for Conflict Resolution, Cornell University

**Mailing Address**

10308 north 49th place  
Paradise Valley, AZ 85253

(480)991-9479

**PROFESSIONAL STATEMENT**

Thirty years experience in labor-management relations, including labor law, grievance arbitration, NLRB, and collective bargaining. Twenty years as a full-time labor arbitrator, mediator, and facilitator of interest-based negotiations.

Former Chair of the Phoenix Employment Relations Board (PERB) and former Chair of the Paradise Valley Public Safety Retirement Board (PSPRB).

Former member of IBEW and Retail Clerks International Union.

**PROFESSIONAL AFFILIATIONS**

National Academy of Arbitrators

American Arbitration Association

American Bar Association

Association for Conflict Resolution (ACR)

International Scholar in Labor Law and Dispute Resolution to Asia

Labor and Employment Relations Association (LERA)

National Academy of Arbitrators (NAA)

Scheinman Institute for Conflict Resolution, Cornell University

State Bar of Arizona

**EDUCATION**

JD Law, Intern to National Labor Relations Board (NLRB), Region 13, Chicago DePaul University College of Law 1982

BS Labor Relations and Dispute Resolution Cornell University 1973

**CERTIFICATIONS**

Attorney

Video Arbitration Capable

In Person Ready

Advanced Practitioner in Workplace Mediation - Association for Conflict resolution (ACR) 2006

Advanced Practitioner in Labor Arbitration - Association for Conflict Resolution (ACR) 2005

Law - State of Arizona 2000

Law - State of California 1987

Law - State of Illinois 1982

**ARBITRATION/LABOR RELATIONS EXPERIENCE**

Honeywell Aerospace - Vice-President, Human Resources, 1994 - 1998

Baxter Healthcare Corporation - Chief Labor and Labor Law Counsel, 1983 - 1995

American Arbitration Association - Advocacy Trainer in Labor Relations, 1977 - 1982

**INDUSTRIES**

Aerospace, Agriculture, Airlines, Aluminum, Automotive, Bakery, Beverage, Brewery, Broadcasting, Canning, Cement, Chemicals, Clothing, Coal, Communications, Construction, Dairy, Distillery, Education, Electrical Equipment/Appliances, Electronics, Entertainment/arts, Feed & fertilizer, Food manu/proc/service, Foundry, Furniture, Glass/pottery, Grain mill, Health care, Hospital/nursing home, Hotels/motels/casinos/resorts, Iron, Lumber, Machinery, Maritime, Meat packing, Metal fabrication, Mining, Nuclear energy, Office workers/clerical, Organizations, Packaging, Paint & varnish, Petroleum/petrochemicals, Pharmaceuticals, Plastics, Plumbing, Police & fire, Printing & publishing, Prison guard, Public sector grievance, Public sector interest, Pulp & paper, Railroads, Real estate, Refrigeration/HVAC, Restaurants, Retail stores, Rubber/tire, Shipbuilding/dry-dock, Sports, Steel, Stone/quarry, Textile, Tobacco, Transportation, Trucking & storage, Warehousing

**ISSUES**

Absenteeism, Affirmative action, Age, Arbitrability, Bargaining unit work, Bonus fringe benefits, Conduct (off-duty/ personal), Cost-of-living pay, Demotion, Disability, Discipline (discharge), Discipline (non-discharge), Discrimination, Drug/alcohol offenses, Fact finding, Fringe benefits, Gender, Grievance mediation, Health/hospitalization, Hiring practices, Holiday pay, Holidays, Incentive pay, Insurance, Job classification & rates, Job performance, Job posting/bidding, Jurisdictional dispute, Layoffs/bumping/recall, Leave, Management rights, Merit pay, Official time, Other (please specify), Overtime Pay, Past practices, Pension and welfare plans, Pension claim (fed. statute), Promotion, Race, Religion, Retirement, Safety/health conditions, Seniority, Severance pay, Sexual harassment, Strikes/lockouts/work stoppages/slowdowns, Subcontracting/contracting out, Tenure/reappointment, Union security, Vacation, Vacation pay, Violence or threats, Wages, Work Hours/Schedules/Assignments, Working conditions/work orders

**PERMANENT PANELS**

Clark County and SEIU (Nevada); Frys Grocers and UFCWU; Internal Revenue Service and NTEU; Qwest Intl and CWA; Social Security Administration ; Union Pacific Railroad and TWU; United States Postal Service Jurisdictional Panel ; US Bureau of Prisons, DOJ ; US Customs and Border Patrol

**ARBITRATION ROSTERS**

FMCS Arbitration Roster; Az Agricultural Employment Relations Board; Civil Service Board, City of Phoenix, Arizona ; Financial Industry Regulatory Authority (FINRA); National Mediation Board (NMB); Phoenix Public Employment Relations Board (PERB); State of Arizona Academic Hearing Panel

**RATES/POLICIES**

Per Diem: \$2,000.00

Fees include research, drafting and final submission of the award. There are no docketing or administrative charges. The fee will be equally charged unless otherwise agreed to by both parties in advance. The normal hearing day is seven hours on the record. Motion practice is charged at \$200 per hour. The Arbitrator will submit an interim invoice for payment.

Cancellation: \$2,000.00

Cancellations or postponements within 21 calendar days of the scheduled day will be charged one full day, unless I am able to substitute another hearing. For hearings scheduled for two days or more, the cancellation period is 30 days. Cancellation or postponement is effective at the time a voice mail is left at 480-991-9479, or at the time I receive an email to that effect.

## ROBERT M. HIRSCH

FMCS-3943

Email: [RMHIRSCH@GMAIL.COM](mailto:RMHIRSCH@GMAIL.COM) (Preferred Contact Method)

Present Occupation: Arbitrator, Mediator, Fact-finder, Hearing Officer

### Mailing Address

Post Office Box 170428  
San Francisco, CA 94117

(415)362-9999

### PROFESSIONAL STATEMENT

I have served as a permanent neutral for more than 15 years. I am on over a 15 permanent panels and perform arbitration and/or mediation work for the Federal District Courts, California State Courts, EEOC and FINRA. Over the past 15 years I have arbitrated or mediated more than 1200 cases including matters ranging from negotiations impasse (affecting 1000's of people) - discipline and discharge, EEO disputes - contract claims, Fiduciary Breaches - Wage & Hour Claims, Law Enforcement.

### PROFESSIONAL AFFILIATIONS

National Academy of Arbitrators  
American Arbitration Association  
AAA, FINRA, CalPERB, CalSMCS, Member-San Francisco Police Commission (Mayoral Appointee)

### EDUCATION

J.D. Law U.C.Davis King Hall 1979  
A.B. English Literature Washington University 1976

### CERTIFICATIONS

Attorney  
Video Arbitration Capable  
In Person Ready  
Mediator - U.S. Dist Court (N.Dist. Ca) 2011  
Arbitrator - FINRA 2009  
Mediator - San Francisco Bar Assn. 2009

### ARBITRATION/LABOR RELATIONS EXPERIENCE

Robert M Hirsch ADR - Owner - Arbitrator/Mediator, 2006 - 2018  
McMorgan & Company - General Counsel, 1994 - 2005  
Van Bourg, Weinberg, Roger & Rosenfeld - Attorney, 1980 - 1994

### INDUSTRIES

Advertising, Aerospace, Agriculture, Aluminum, Automotive, Bakery, Banking, Beverage, Broadcasting, Building products, Canning, Cement, Chemicals, Clothing, Communications, Construction, Dairy, Education, Electrical Equipment/Appliances, Electronics, Entertainment/arts, Food manu/proc/service, Foundry, Furniture, Health care, Hospital/nursing home, Hotels/motels/casinos/resorts, Iron, Lumber, Machinery, Meat packing, Metal fabrication, Nuclear energy, Office workers/clerical, Organizations, Packaging, Paint & varnish, Petroleum/petrochemicals, Pharmaceuticals, Plastics, Plumbing, Police & fire, Printing & publishing, Prison guard, Public sector grievance, Public sector interest, Pulp & paper, Real estate, Refrigeration/HVAC, Restaurants, Retail stores, Rubber/tire, Sports, Steel, Symphony orchestra, Textile, Transportation, Trucking & storage, Upholstering, Utilities, Warehousing

**ISSUES**

Absenteeism, Affirmative action, Age, Arbitrability, Bargaining unit work, Bonus fringe benefits, Conduct (off-duty/ personal), Cost-of-living pay, Demotion, Disability, Discipline (discharge), Discipline (non-discharge), Discrimination, Drug/alcohol offenses, Fact finding, Fringe benefits, Gender, Grievance mediation, Health/hospitalization, Hiring practices, Holiday pay, Holidays, Incentive pay, Insurance, Job classification & rates, Job performance, Job posting/bidding, Jurisdictional dispute, Layoffs/bumping/recall, Leave, Management rights, Merit pay, National origin, Official time, Overtime Pay, Past practices, Pension and welfare plans, Pension claim (fed. statute), Promotion, Race, Religion, Retirement, Safety/health conditions, Seniority, Severance pay, Sexual harassment, Strikes/lockouts/work stoppages/slowdowns, Subcontracting/contracting out, Tenure/reappointment, Union security, Vacation, Vacation pay, Violence or threats, Wages, Work Hours/Schedules/Assignments, Working conditions/work orders

**PERMANENT PANELS**

Kaiser-SEUI, N. Cal Carpenters-CEA, N. Cal Laborers-CEA, N. Cal Laborers-AGC, IRS-NTEU, Customs & Border Protection-NTEU, University of Cal-Faculty Assn, Cal State University-Faculty Assn, Teamsters-ACA, N. Cal Drywall Industry, OPE 3-ACA, National Bldg Trades Jurisdictional Dispute Panel, PG&E-IBEW, FDIC-NTEU, San Francisco Labor Standards Board, University of Cal-Teamsters, NMAPC.

**ARBITRATION ROSTERS**

FMCS Arbitration Roster, AAA, FINRA, CalPERB, SF Bar Assn,

**PUBLISHED CASES**

Several with various publishers

**RATES/POLICIES**

Per Diem: \$2,800.00

Charge for 8 Hour day. Expedited Matters: \$3000

Cancellation: \$2,600.00

Cancellation Fee charged for each hearing date if cancel within 10 Business Days or less. Otherwise, \$100 Admin Fee charged if canceled more than 10 Business days.

Interest arbitration: \$2,800.00

All Interest Arbitration

Other: \$4,000.00

Complex Matters

# **EXHIBIT 6**

# **EXHIBIT 6**

## Adam Levine

---

**From:** Kheel, Allison <akheel@fisherphillips.com>  
**Sent:** Thursday, February 1, 2024 4:10 PM  
**To:** Adam Levine; Ricciardi, Mark; Kheel, Allison; Owens, Susan  
**Cc:** Joi Harper; Darrin Tuck  
**Subject:** RE: NCMEA

Adam,

The County does not believe that it makes sense to proceed to binding fact finding in light of the pending EMRB case.

Best regards,



**Allison Kheel**  
Attorney at Law

Fisher & Phillips LLP  
300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101  
akheel@fisherphillips.com | O: (702) 862-3817 | C: (702) 467-1066

[Website](#)

*On the Front Lines of Workplace Law<sup>SM</sup>*

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

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**From:** Adam Levine <ALevine@danielmarks.net>  
**Sent:** Tuesday, January 30, 2024 1:39 PM  
**To:** Kheel, Allison <akheel@fisherphillips.com>  
**Cc:** Joi Harper <JHarper@danielmarks.net>; Darrin Tuck <dtuck@nyecountynv.gov>  
**Subject:** NCMEA

**CAUTION: This email originated from outside of the Firm. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

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Here is a courtesy copy of the Panel you received on January 18. There is no reason not to strike immediately. Please be prepared to do so by tomorrow.

Adam Levine, Esq.  
Law Office of Daniel Marks  
610 S. Ninth Street  
Las Vegas, NV 89101  
(702) 386-0536: Office  
(702) 386-6812: Fax  
[alevine@danielmarks.net](mailto:alevine@danielmarks.net)

1 FISHER & PHILLIPS LLP  
 2 MARK J. RICCIARDI, ESQ.  
 3 Nevada Bar No. 3141  
 4 ALLISON L. KHEEL, ESQ.  
 5 Nevada Bar No. 12986  
 6 300 South Fourth Street, Suite 1500  
 7 Las Vegas, Nevada 89101  
 8 Telephone: (702) 252-3131  
 9 Facsimile: (702) 252-7411  
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 12 *Attorneys for Respondent, Nye County*

13 STATE OF NEVADA  
 14 EMPLOYEE-MANAGEMENT RELATIONS BOARD

15 NYE COUNTY MANAGEMENT  
 16 EMPLOYEE ASSOCIATION,

Case No.: 2024-002

Complainant,

vs.

NYE COUNTY,

Respondent.

17 **NYE COUNTY’S OPPOSITION TO MOTION TO STRIKE NAMES AND NYE**  
 18 **COUNTY’S REQUEST FOR ATTORNEY FEES AND EXPENSES**

19 Respondent Nye County (“the County”), by and through its counsel of record,  
 20 Fisher & Phillips LLP, hereby opposes Complainant’s (“NCMEA” or “Union”) Motion  
 21 to Require Nye County To Strike Names To Select An Interest Arbitrator Pursuant To  
 22 NRS 288.200(6), Or Alternatively To Authorize NCMEA To Select The Interest  
 23 Arbitrator From The Strike List Provided From FMCS (the “Motion”) based on the  
 24 records, pleadings and papers on file herein and the following Memorandum of Points  
 25 and Authorities. **The Union should not be rewarded for wasting the time and**  
 26 **resources of the EMRB and the County with this frivolous Motion. The Motion**  
 27 **should be denied, and the County should be awarded its reasonable attorney fees**  
 28 **and expenses expended in responding.**

**INTRODUCTION**

1  
2 The NCMEA filed a Complaint in this case alleging that the County committed a  
3 Prohibited Practice by refusing to participate in the binding fact finding process set out  
4 in NRS 288.200. The principal relief sought in the Complaint is for the EMRB to order  
5 the County to participate in the binding fact finding process—i.e., strike names from the  
6 list of potential fact finders. (Complaint, paragraph 17, *et. seq.*). Seemingly unhappy with  
7 the time that is necessary under the required EMRB statutory and regulatory procedure  
8 for deciding cases, the NCEA asks the EMRB to ignore its own procedures, trample the  
9 County’s due process rights and award the NCEA its requested relief by way of a  
10 summary motion without a hearing. This bizarre and frivolous Motion should be denied  
11 and the County awarded its reasonable attorney fees and expenses expended in  
12 responding.  
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15 The crux of the Union’s Complaint (and by extension the pending Motion), is the  
16 Union’s improper attempt to insist on the continued unlawful inclusion of the supervisory  
17 classifications of Director of Natural Resources, Director of Information Technology,  
18 Director of Human Services, Director of Planning, Director of Public Works, Director of  
19 Facility Operations, and Director of Emergency Management (“Subject Positions”) in the  
20 same collective bargaining unit as those positions whom they directly supervise.  
21 Including supervisors in the same unit as those they directly supervise is expressly  
22 prohibited by Nevada law. Respondent, Nye County is a local government employer as  
23 defined by NRS § 288.060, and Complainant, Nye County Management Employees  
24 Association is an employee organization as defined by NRS § 288.040. Pursuant to NRS  
25 § 288.140, it is the right of every local government employee, subject to certain  
26 limitations, to join any employee organization of the employee’s choice or to refrain from  
27 joining any employee organization.  
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**2. The Issue Raised By The Complaint And Motion Is The Subject Of  
Another Case Pending Before The Board.**

Furthermore, by filing its Complaint and instant Motion the NCMEA seeks to litigate an issue that is already before the Board. The legal issue in this case is whether the County must bargain with an unlawful bargaining unit. That issue is already the subject of Case Number 2023-033 and a Motion to Consolidate cases has been filed by the County.

**3. The EMRB Cannot Change The Language Of NRS 288**

Finally, NRS 288.200(2) requires that parties who are properly at the fact-finding stage of bargaining select a fact finder by making *alternate strikes* from a list of seven (7) potential fact finders provide by the FMCS or AAA. Even if the EMRB were to consider the NCMEA's Motion on the merits, which it cannot do without a hearing, the EMRB has no authority to amend NRS 288.200 by permitting the NCMEA to *unilaterally* select an arbitrator.

Wherefore, the Motion should be denied and the County should be awarded its reasonable attorney fees and expenses in responding.

DATED this 29<sup>th</sup> day of February, 2024.

FISHER & PHILLIPS LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 29<sup>th</sup> day of February 2024, I filed and served by electronic means the foregoing **NYE COUNTY’S OPPOSITION TO MOTION TO STRIKE NAMES AND NYE COUNTY’S REQUEST FOR ATTORNEY FEES AND EXPENSES**, as follows:

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*Attorneys for Complainant,  
Nye County Management Employees Association*

By: /s/ Sarah Griffin  
An employee of Fisher & Phillips LLP

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6 *Attorneys for NCMEA*

FILED  
March 6, 2024  
State of Nevada  
E.M.R.B.  
4:37 p.m.

8 STATE OF NEVADA  
9 GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

11 NYE COUNTY MANAGEMENT EMPLOYEE  
ASSOCIATION

Case No. 2024-002

12 Complainant,

13 v.

**REPLY TO OPPOSITION TO MOTION TO  
REQUIRE NYE COUNTY TO STRIKE AND  
NYE COUNTY'S REQUEST FOR  
ATTORNEY FEES**

14 NYE COUNTY

15 Respondent.

16 Complainant Nye County Management Employee Association ("NCMEA"), by and through  
17 undersigned counsel, Adam Levine, Esq. of the Law Office of Daniel Marks and hereby replies to  
18 Respondent Nye County's Opposition to NCMEA's Motion to Strike Names and Nye County's  
19 Request for Attorney Fees and Expenses.

20 ///

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1 **I. THE NCMEA IS NOT ASKING THE BOARD TO VIOLATE THE CLEAR**  
2 **LANGUAGE OF THE GOVERNING STATUTES.**

3 Nye County's Opposition argues that NCMEA is moving for summary relief without a  
4 hearing.<sup>1</sup> Nye County's counsel apparently did not read the Motion very carefully. The issue was  
5 addressed on pages 4 and 5 of the Motion wherein NCMEA pointed out that the "hearing" need not be  
6 a full evidentiary hearing, but rather a hearing on the Motion itself which could be scheduled at the  
7 Board's next regularly scheduled meeting.

8 **II. THE ISSUE RAISED BY THE COMPLAINT IS DIFFERENT THAN THE ISSUE**  
9 **IN CASE 2023-033.**

10 Case No. 2023-033 is a Petition for a Declaratory Order regarding whether certain Directors  
11 belong in the bargaining unit. The dispositive issue in that case is whether the Settlement Agreement  
12 entered into by Nye County, which agreed to keep such positions within the bargaining unit, and  
13 which waived any further claims to the issue, may be set aside by Nye County nearly a decade after  
14 the fact.

15 The issue in the current case is whether Nye County has failed to bargain in good faith by: (1)  
16 bargaining with Clark County to impasse, (2) mutually selecting a Fact Finder through the process set  
17 forth under NRS 288.200, and (3) after the Fact Finder issued his Recommendations refusing to  
18 proceed any further to binding interest arbitration under the statute.

19 The issue is not, as framed by Nye County, whether they are obligated to bargain with an  
20 unlawful bargaining unit. Clark County did in fact bargain to impasse, and if somehow, someday, the  
21 Board decides to disregard a binding Settlement Agreement, which the parties have mutually abided  
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<sup>1</sup> Nye County's Opposition cites NRS 288.625(2)(b). That is the statute for the Executive Branch of the State of Nevada, not local governments. The appropriate statute to cite is NRS 288.110(2).

1 by for the better part of a decade, any contract resulting from an interest arbitration would still be  
2 binding on those employees within the bargaining unit who are properly deemed to be there.

3 The issue in the Motion, as opposed to the Complaint in this case, is whether Clark County is  
4 going to be permitted to delay the statutory impasse process until after a hearing in connection with  
5 either this case or Case 2023-033. It takes time to get an interest arbitration scheduled. The longer  
6 Clark County refuses to select an interest arbitrator, the longer it will take to get a contract which  
7 should have been settled and 2022 finalized.

8 **III. THE BOARD WOULD NOT BE CHANGING THE LANGUAGE OF NRS 288 IF**  
9 **IT PROVIDES THE NCMEA THE OPTION OF SELECTING THE INTEREST**  
10 **ARBITRATOR.**

11 Nye County argues that granting the alternative remedy requested by NCMEA would somehow  
12 violate NRS 288.200 because the statute provides for alternative striking. However, such an alternative  
13 remedy would only be implicated if Nye County refuses to participate in the selection process after  
14 being directed to do so by this Board. In such an instance, Nye County would be deemed to have  
15 waived any strikes much like in the *voir dire* jury selection process whereby a party who has a right to  
16 peremptory challenges, which are also exercised in alternative order, may waive one or more such  
17 challenges.

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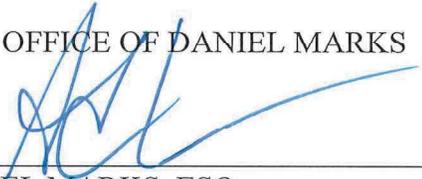
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1 **IV. NYE COUNTY'S REQUEST FOR ATTORNEY FEES SHOULD BE DENIED.**

2 Nye County's Opposition requested attorney's fees be awarded. Such a request should be  
3 denied as there is no explanation or basis in the Opposition for why such fees should be awarded.

4 DATED the 6<sup>th</sup> day of March 2024.

5 LAW OFFICE OF DANIEL MARKS



6  
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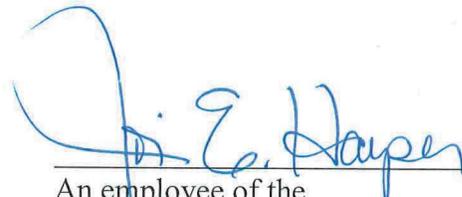
**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS and that on the 6<sup>th</sup> day of March 2024, I filed by electronic means the foregoing REPLY TO OPPOSITION TO MOTION TO REQUIRE NYE COUNTY TO STRIKE AND NYE COUNTY'S REQUEST FOR ATTORNEY FEES, as follows:

Employee-Management Relations Board  
3300 W. Sahara Ave., Suite 260  
Las Vegas, Nevada 89102  
[emrb@business.nv.gov](mailto:emrb@business.nv.gov)

I also did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the above and foregoing, to the address(es) as follows:

**FISHER & PHILLIPS LLP**  
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\_\_\_\_\_  
An employee of the  
LAW OFFICE OF DANIEL MARKS