

Governor Steve Sisolak
Chairman

Susan Brown
Clerk of the Board



Attorney General Aaron D. Ford
Member

Secretary of State Barbara K. Cegavske
Member

STATE OF NEVADA BOARD OF EXAMINERS

209 E. Musser Street, Room 200 / Carson City, NV 89701-4298
Phone: (775) 684-0222 / Fax: (775) 684-0260
<http://budget.nv.gov/Meetings>

Date and Time: March 8, 2022, 10:00 AM

Location: Old Assembly Chambers of the Capitol Building
101 North Carson Street
Carson City, Nevada 89701

Video Conference Location: Grant Sawyer Building
555 East Washington Avenue, Suite 5100
Las Vegas, Nevada 89101

MEMBERS PRESENT:

Governor Steve Sisolak
Secretary of State Barbara Cegavske – on the phone
Attorney General Aaron Ford – on the phone

Staff Present:

Susan Brown, Clerk of the Board
Rosalie Bordelove, Board Counsel
Dale Ann Luzzi, Board Secretary

Others Present:

Matthew Kaplan, Member of the Public
Jason Jackson, Member of the Public
Will Dawson, Member of the Public
Delaney Howard, Member of the Public
Victoria Carreon, Administrator, Department of Business and Industry
Laura Freed, Director, Department of Administration
Brett Kandt, General Counsel, Board of Pharmacy
David Wuest, Executive Secretary, Board of Pharmacy
Catherine Byrne, State Controller, Office of the State Controller

MEETING MINUTES

1. Call to Order / Roll Call

Governor: I would like to call today's meeting of the State Board of Examiners for Tuesday, March 8, 2022, at 10 a.m. to order. If I could ask the Clerk to take the roll, please.

Board Secretary: Governor Sisolak?

Governor: Here.

Board Secretary: Secretary State Cegavske?

Secretary of State: I'm here.

Board Secretary: Attorney General Ford?

Attorney General: Here.

Board Secretary: Let the record reflect we have a quorum.

- 2. Public Comment** (The first public comment is limited to comments on items on the agenda. No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an action item. The Chair of the Board will impose a time limit of three minutes.)

Governor: Item number two, *Public Comment*. This is the first time set aside for public comment. Anyone wishing to address the Board on any item on today's agenda, please step forward, identify yourself for the record and comments will be limited to three minutes. I'll start in Las Vegas. Is anybody here for public comment? Nobody. Is there anybody in Carson City?

Clerk of the Board: Yes, we have somebody coming forward. I would just like to note that we did receive written public comment that has been provided to the members and it is available in both meeting locations and is also available online.

Governor: Please enter all the written public comments into the record.

Public Comment: Attachments A - D

- 3. Approval of the February 8, 2022 Meeting Minutes** (For possible action)

Governor: Item number three. *Approval of the February 8, 2022, Meeting Minutes*. Do I have a motion on the minutes?

Secretary of State: I move to approve.

Governor: We have a motion on the floor from Secretary Cegavske. Is there any discussion on that motion? Hearing and seeing none. All in favor, signify by saying aye. Are any opposed? That motion passes.

4. **State Vehicle Purchases** (For possible action)

Pursuant to NRS 334.010, no automobile may be purchased by any department, office, bureau, officer, or employee of the state without prior written consent of the State Board of Examiners.

AGENCY NAME	# OF VEHICLES	NOT TO EXCEED:
Department of Administration – State Public Works Division – Building and Grounds	4	\$136,860
Department of Public Safety – State Fire Marshal Division	1	\$26,807
Department of Public Safety – State Fire Marshal Division	1	\$46,718
Total	6	\$210,385

Governor: Item number four, *State Vehicle Purchases*.

Clerk of the Board: Good morning. There are three requests for vehicles on the agenda today. These requests were previously approved by the Board but due to price increases, they are being requested at higher amounts. The first request is from the Department of Administration, State Public Works Division to purchase four replacement vehicles for an amount up to \$136,860. The vehicles being replaced have met the age and/or mileage requirements in the State Administrative Manual (SAM). Funds for these vehicles were included in the agency budget.

The second request is from the Department of Public Safety, State Fire Marshal Division to purchase one replacement vehicle for an amount up to \$26,807. The vehicle that is being replaced has met the age and/or mileage requirements in SAM.

The final request is from the Department of Public Safety, Fire Marshall Division to purchase one replacement vehicle for an amount up to \$46,718. This vehicle has also met the age and/or replacement requirements in SAM. Funds for this purchase are available in the agency budget. Are there any questions on any of these items?

Governor: Do we have any questions for Director Brown? I've got one. Go ahead.

Secretary of State: Governor, I just wanted to thank Susan and her staff for all their responses to myself and our team that goes over everything. The only thing that I have to say about agenda item four is that I'm disappointed that the dealerships didn't keep their prices as they were quoted, I know it takes us a little bit longer to do things. So, just a little

bothered on that part but other than that, I'll vote yes for them to be able to get their vehicles. Thank you.

Governor: Thank you. I had one question related to that. Susan, did we build in a contingency so that this doesn't happen again, and you'll bring it back to the next meeting?

Clerk of the Board: We have not built in a contingency. We are asking the agencies to get updated quotes to us as close to the meeting date as possible. I will be working with the Attorney General's Office on some different options that we might be able to put forward at a future meeting to address these issues.

Governor: Thank you. Do we have a motion on this item?

Attorney General: Move approval.

Governor: We have a motion on the floor from General Ford. Is there any discussion? Hearing and seeing none. All in favor, signify by saying aye. Are any opposed? The motion passes.

5. Authorization for an Emergency Contract with a Current and/or Former State Employee (For possible action)

Department of Corrections - Prison Medical Care

Pursuant to NRS 333.705, subsection 4, the Department of Corrections seeks a favorable recommendation regarding the agency's determination to use the emergency provision to contract with former employee Brian Egerton to provide nursing services at the Lovelock Correctional Center through Master Service Agreement #23211 with Reliable Health Care Services of Southern Nevada.

Governor: Item number five, *Authorization for an Emergency Contract with a Current and/or Former State Employee*.

Clerk of the Board: Pursuant to subsection 4 of NRS 333.705, an agency may contract with a former employee without first obtaining Board of Examiners' approval if the term of the contract is for less than four months and the head of the using agency determines that an emergency exists. If the using agency contracts with an individual pursuant to this exception, they must submit a copy of the contract and a description of the emergency to the Board of Examiners who shall review the contract and description of the emergency and notify the agency whether or not they would have approved the contract, had it not been entered under the emergency provision.

This request is from the Department of Corrections, Prison Medical Care. They are seeking a favorable recommendation from the Board on their use of the emergency provisions to contract with a former employee. The department contracted with this employee through Reliable Health Care Services of Southern Nevada to provide critical

nursing services at Lovelock Correctional Center. This contract is for the period of January 26, 2022 through March 31, 2022. Are there any questions on this item?

Governor: Do we have any questions on item number 5? Do I have a motion?

Attorney General: None here. Move approval.

Governor: We have a motion from General Ford. Is there any discussion? Hearing and seeing none. All in favor, signify by saying aye. Are any opposed? That motion passes.

6. Authorization to Contract with a Current and/or Former State Employee (For possible action)

A. Department of Administration – Purchasing Division

Pursuant to NRS 333.705, subsection 1, the Department of Administration, Purchasing Division requests authority to contract with former employee Brian Egerton to provide nursing services at Lovelock Correctional Center due to a staffing shortage for the Department of Corrections through Master Service Agreement #23211 Reliable Health Care Services of Southern Nevada, Inc.

B. Department of Administration – Purchasing Division

Pursuant to NRS 333.705, subsection 1, the Department of Administration, Purchasing Division requests authority to contract with former employee Maureen Hullinger to provide front line customer support for the Department of Wildlife's call center for evening and weekend shifts during the department's big game application period through Master Service Agreement #23928 with HAT Limited Partnership, dba Manpower.

C. Department of Administration - Purchasing Division

Pursuant to NRS 333.705, subsection 1, the Department of Administration, Purchasing Division requests authority to contract with former employee Kathleen Teligades to provide front line customer support for the Department of Wildlife's call center for evening and weekend shifts during the department's big game application period through Master Service Agreement #23928 with HAT Limited Partnership, dba Manpower.

D. Department of Administration - Purchasing Division

Pursuant to NRS 333.705, subsection 1, the Department of Administration, Purchasing Division requests authority to contract with former employee Vera Lynn Walker to provide front line customer support for the Department of Wildlife's call center for evening and weekend shifts during the department's big game application period through Master Service Agreement #23928 with HAT Limited Partnership, dba Manpower.

E. Department of Transportation

Pursuant to NRS 333.705, subsection 1, the Department of Transportation requests authority to contract with former employee Richard C. Bosch, currently employed by Diversified Consulting Services, to provide professional and technical engineering services in support of the Spaghetti Bowl Xpress Design Build project – US395 / I580 and I80 in Washoe County.

Governor: Item number six, *Authorization to Contract with a Current and/or Former State Employee*.

Clerk of the Board: Agenda item six contains five requests to contract with former employees pursuant to NRS 333.705, subsection 1. Item 6-A is from the Department of Administration, Purchasing Division to contract with a former employee to provide nursing services at Lovelock Correctional Center. This individual will be employed on a full-time basis through Reliable Health Care Services of Southern Nevada from April 1, 2022 through June 30, 2022.

Items 6-B, 6-C and 6-D are all from the Department of Administration, Purchasing Division to contract with three former employees to provide customer service support for the Department of Wildlife's call center during the big game application period. These three individuals will be employed on a part-time basis through Hat Limited Partnership, also known as Manpower. The duration of this contract is expected to be from March 9, 2022 through May 31, 2022.

The final item, 6-E, is from the Department of Transportation to contract with a former employee to provide engineering services on the Spaghetti Bowl Xpress Design Build project in Washoe County. This individual will be employed on a full-time basis through Diversified Consulting Services from March 9, 2022 through December 30, 2022. Are there any questions on any of these items?

Governor: Do any of the Members have a question on these items? Do I have a motion?

Attorney General: I move approval.

Governor: We have a motion for approval from General Ford. Is there any discussion? Hearing and seeing none. All in favor, signify by saying aye. Are any opposed? The motion passes.

7. Request for Approval to Pay a Tort Claim Pursuant to NRS 41.036 (For possible action)

Pursuant to NRS 41.036, the Office of the Attorney General submits the following Tort Claim request for approval, representing payment for attorney's fees in First Judicial District Court Case No. 19-OC-00127-IB: Claimant: The Honorable James

Settelmeyer, et al. Claim No: TC20001 Settlement Amount: \$150,000 Date of Loss: July 19, 2019

Governor: Item number seven, *Request for Approval to Pay a Tort Claim Pursuant to NRS 41.036*.

Clerk of the Board: This request is from the Office of the Attorney General for approval of a tort claim in the amount of \$150,000 which represents an award for attorney fees in the case related to Senate Bill 542 and Senate Bill 551 of the 2019 Legislative Session. The balance in the tort claim account at this point is about \$4.1 million, so there are sufficient funds to pay this claim. Are there any questions on this item?

Governor: Nope. Do we have any questions on item number seven?

Attorney General: None here. Move approval.

Governor: We have a motion from General Ford. Is there any discussion? Hearing and seeing none. All in favor, signify by saying aye. Are any opposed? The motion passes.

8. Request for Designation of Bad Debt (For possible action)

Department of Business and Industry – Division of Industrial Relations

Pursuant to NRS 232.605, Subsection 2, the Advisory Council to the Division of Industrial Relations requests that the Board of Examiners designate the following debts as bad debts, as they have been determined to be uncollectible:

A. Occupational Safety and Health Administration Fines/Penalties	\$149,290.00
B. Uninsured Employer Claim Account	\$14,569,207.89
C. Worker's Compensation Administrative Fines and Premium Penalties	\$271,683.97
D. Mechanical Compliance	\$3,501.47
Total	\$14,993,683.33

Governor: Item number eight, *Request for Designation of Bad Debt*.

Clerk of the Board: Item number 8. This request is from the Department of Business and Industry, Division of Industrial Relations. Some background on this item, most state agencies turn their uncollectable debt over to the State Controller who has the authority to request the Board of Examiners write off bad debt that has become impossible or impractical to collect. Bad debt under the purview of the State Controller cannot be removed from the state's books unless the Board of Examiners designates the debt as uncollectible. Pursuant to NRS 232.065, it requires the advisory council to the Division of Industrial Relations to report the debt determined to be impossible or impractical to collect to the Board of Examiners for the designation of bad debt. Upon such designation, the Clerk shall notify the State Controller to remove the debt from the state's books. A bad

debt that is removed pursuant to this section remains a legal and binding obligation owed by the debtor to the State of Nevada.

This item includes one request to designate debts as 'bad debt' under the provision of NRS 232.605. The amount that is being requested for write-off is \$14,993,683.33 for the purpose of removing this debt from the state's books. Are there any questions on this item?

Governor: Do we have any questions from the Board Members?

Attorney General: None here. Move approval.

Governor: My only question is, obviously, \$15 million is a big number – is this a cleanup taking place or is this going to be ongoing?

Victoria Carreon: Good morning. I'm the administrator at the Division of Industrial Relations. Yes, this is a cleanup of many years of bad debts that had not been thoroughly written off. Our staff did an excellent job of cleaning up the old database and we don't anticipate amounts in this range in the future. Thank you.

Governor: Thank you. I just want to make that part of the record as it's a big number.

We have a motion on the floor from General Ford. Is there any discussion? Hearing and seeing none. All in favor, signify by saying aye. Are any opposed? The motion passes.

9. Request for Approval of Payment from the Statutory Contingency Account
(For possible action)

Pursuant to NRS 41.950 and NRS 41.970, the Governor's Finance Office requests the Board of Examiners to approve a payment of \$220,922.82 from the Statutory Contingency Account to Ignacio Dealba, Jr. representing compensation for his wrongful conviction.

Governor: Item number nine, *Request for Approval of Payment from the Statutory Contingency Account*.

Clerk of the Board: Item number nine is a request for compensation for wrongful conviction from the statutory contingency account. The 2019 Legislature approved Assembly Bill 267 which provides compensation and other properly related matters to certain persons who are wrongfully convicted. The legislation requires the court to enter a certificate of innocence and determine the proper amount of the award. A certificate of innocence, as well as an order granting monetary relief, were granted to Ignacio Dealba Jr. by the Eighth Judicial District Court pursuant to NRS 41.950. The amount of this award is \$220,922.82. The current balance in the statutory contingency account is \$12 million and if this is approved the remaining amount would be \$11.8 million. Are there any questions on this item?

Governor: No questions. Do any Board Members have a question on item number nine?

Attorney General: I have no questions. I would just like to note once again that justice oftentimes requires examination and compensation as opposed to simple conviction and incarceration. So, I'm honored to be able to vote in support of Mr. Deabla for this. And thank you so much for the briefing on it.

Governor: Are there any more questions? Do I have a motion?

Attorney General: I move approval.

Governor: General Ford moved for approval. Is there any discussion? Hearing and seeing none. All in favor, signify by saying aye. Are any opposed? The motion passes.

Again, Susan, I want to thank you for the briefing for the agenda. It was extremely helpful and eliminated a lot of questions at the meeting here. You got the answers to us, and I appreciate that, as always.

10. Approval of Payment to the Secretary of the U.S. Treasury Pursuant to the Cash Management Improvement Act (For possible action)

The State Controller requests approval of a payment to the U.S. Treasury in an amount not to exceed \$71,584 from the General Fund. This is the highest possible liability payment for 2021. The U.S. Treasury is reviewing the report and is expected to have a final liability amount by March 14, 2022. Payment to the U.S. Treasury is required by March 31, 2022.

Governor: Item number 10, *Approval of Payment to the Secretary of the U.S. Treasury Pursuant to the Cash Management Improvement Act*.

Clerk of the Board: Item number 10 is a request from the State Controller's Office pursuant to section 98 of Assembly Bill 494 from the 2021 Legislative Session. This request is to authorize a payment not to exceed \$71,584 to the U.S. Treasury for interest owed under the Cash Management Improvement Act. This act ensures efficiency and equity between the time that federal funds are drawn and expended with the state incurring an interest liability if it draws funds too early and the federal government incurring liability to the state if the state funds are used for federal program purposes. The amount shown is the highest possible state liability for 2021. The U.S. Treasury is currently reviewing the report submitted by the State Controller and should provide a final determination by March 14, 2022. If the calculations by the State Controller are accepted by the U.S. Treasury, the state will owe the federal government \$595. Are there any questions on this item?

Governor: I do not. Do any Board Members have any questions on item number 10?

Attorney General: None here.

Governor: Do we have a motion?

Attorney General: Move approval.

Governor: We have a motion for approval from General Ford. Is there any discussion? Hearing and seeing none. All in favor, signify by saying aye. Are any opposed? The motion passes.

11. Collective Bargaining (For possible action)

A. Department of Administration – Division of Human Resource Management

Pursuant to NRS 288.555, the Department of Administration, Division of Human Resource Management, acting on behalf of the Executive Branch Department of the State of Nevada, requests approval of an agreement entered into by the state and the American Federation of State, County and Municipal Employees, Local 4041 for the following Bargaining Units:

A - Labor, maintenance, custodial and institutional employees

E - Professional employees who provide health care

F - Employees, other than professional, who provide health care and personal care

I - Category III peace officers 5

B. Department of Administration – Division of Human Resource Management

Pursuant to NRS 288.555, subsection 1, the Department of Administration, Division of Human Resource Management, acting on behalf of the Executive Branch Department of the State of Nevada, requests approval of the new Collective Bargaining Agreement with the Nevada Police Union for Bargaining Unit G effective July 1, 2021.

C. Department of Administration – Division of Human Resource Management

Pursuant to NRS 288.555, the Department of Administration, Division of Human Resource Management, acting on behalf of the Executive Branch Department of the State of Nevada, requests approval to pay attorney's fees and costs in the amount of \$16,072.09 pursuant to an arbitration decision between the State and the Nevada Police Union for Bargaining Unit G.

Governor: Item number 11, *Collective Bargaining*. I'll take these separately, please.

Clerk of the Board: NRS 288 grants certain state employees the right to organize and collectively bargain, requiring the state to recognize and negotiate wages, hours and other terms and conditions of employment with labor organizations that represent state employees and to enter into written agreements evidencing the result of collective bargaining and requires that a collective bargaining agreement be approved by the Board of Examiners' at a public hearing.

The first item, agenda item 11-A. Pursuant to NRS 288.555, the Department of Administration Division of Human Resource Management acting on behalf of the executive branch Department of the State of Nevada requests approval of a revised agreement entered into by the state and the American Federation of State, County and Municipal Employees (AFSCME), Local 4041 for the Bargaining Units A, E, F, and I.

This agenda item includes a revision to *Article X - Compensation* of the previously approved Collective Bargaining Agreement (CBA) which adds a 3% cost-of-living adjustment (COLA) effective July 1, 2021. The Board is required to consider the fiscal impact of this agreement. The unappropriated fiscal impact for the 3% COLA is \$12.8 million for fiscal year 2022 and \$13.2 million for fiscal year 2023. This is a total impact of approximately \$26 million. We have here with us today representatives from the Department of Administration to provide additional information on this item.

Laura Freed: Good morning, Members of the Board. I serve as the Director of the Department of Administration. I'm joined by the Division Administrator for the Division of Human Resource Management, Frank Richardson and the Deputy Administrator of the Labor Relations Unit, Mande Bowsmith. As the Clerk of the Board indicated, this is a request that the Board consider revisions to the compensation article of the AFSCME CBA pursuant to NRS 288.555. As the Board is aware, the AFSCME CBA was originally approved by the Board at its meeting of May 25, 2021. The change to the compensation article reflects the outcome of arbitration. We are available for any questions.

Governor: Do we have any questions from the Board Members?

Attorney General: No questions here. No, sir.

Secretary of State: I have a statement.

Governor: Go ahead, Secretary.

Secretary of State: Thank you, Governor. I have a statement on agenda item 11-A relating to the \$26 million cost-of-living adjustments. I was not in support of the original Collective Bargaining Agreement for the bargaining units represented in this item and therefore, I'm not supportive of this unfunded cost-of-living adjustment. I'll be voting 'no' on this item. Thank you.

Governor: Thank you. Do we have a motion on number 11-A?

Attorney General: Move approval.

Governor: We have a motion for approval. Is there any further discussion? Hearing and seeing none. I'll take a roll call vote on this one.

Board Secretary: Governor Sisolak?

Governor: Yes.

Board Secretary: Secretary of State Cegavske?

Secretary of State: No.

Board Secretary: Attorney General Ford?

Attorney General: Yes.

Governor: The motion passes.

Next item, number 11-B.

Clerk of the Board: Pursuant to NRS 288.555, the Department of Administration, Division of Human Resource Management acting on behalf of the Executive Department of the State of Nevada, requests approval of a collective bargaining agreement with the Nevada Police Union for Bargaining Unit G, effective July 1, 2021. It should be noted that a line-of-duty death provision in this agreement was approved by the Board at its September 2021 meeting. This agreement includes a 2% COLA, a longevity bonus and reimbursement for various levels of education. The total unappropriated impact of this agreement is \$1,735,136 and is not accounted for in the unclassified pay bill. Representatives from the Department of Administration are available to answer any additional questions on this item.

Governor: Does anyone on the Board have any questions on this item?

Secretary of State: Yes, Governor, I have a statement.

Governor: Please, Secretary, go ahead.

Secretary of State: Governor, I have a statement on agenda item 11-B relating to the Collective Bargaining Agreement for Bargaining Unit G, as represented by the Nevada Police Union. I have an issue with being asked to approve this when we have only had final versions as approved by the membership of Bargaining Unit G for a few days. My understanding is that the only thing different in this agreement from state law is the fiscal items relating to the cost-of-living adjustment and the longevity pay, which has no approved funding at this time with the Legislature not in session. Additionally, we have been provided, just this morning, significant additional information from the union that we have not been able to review yet. So, if the vote is taken today, I will be voting 'no'.

Governor: Thank you.

Secretary of State: Thank you, Governor.

Governor: I will add that I was an advocate for collective bargaining for state employees and I'm proud of the fact I advocated for that but I have about two inches of supplemental material that was provided to me this morning and there was not enough time to read this

entire document in preparation for this meeting, but I did read the letter and the summation and I am very familiar with this issue and so, I will be able to vote on this one. General Ford?

Attorney General: I'll likewise indicate that I certainly have been in favor of collective bargaining at the state level. In fact, I was one of the main sponsors of the bill when I was in the Legislature. I have always fought for ensuring that we have proper funds for our police departments, including providing COLAs in my bill in 2017, as well as protecting their PERS (Public Employees' Retirement System) and PEBP (Public Employees' Benefits Program) benefits from those who would attempt to undermine those. So, my motion to approve this is entirely consistent with as I've always been, which is, supportive of our police forces at the state level but frankly, at every level.

Governor: Was that a motion?

Attorney General: If you are ready to call for a motion, I move to approve this.

Governor: We have a motion on the floor from General Ford for approval. Is there any further discussion? Hearing and seeing none. Could you do another roll call vote, please?

Board Secretary: Governor Sisolak?

Governor: Yes.

Board Secretary: Secretary of State Cegavske?

Secretary of State: No.

Board Secretary: Attorney General Ford?

Attorney General: Yes.

Governor: The motion passes.

Next item, number 11-C.

Clerk of the Board: Pursuant to NRS 288.555, the Department of Administration, Division of Human Resource Management, acting on behalf of the Executive Department of the State of Nevada requests approval to pay attorney's fees and costs in the amount of \$16,072.09 as awarded by the district court pursuant to an arbitration decision between the state and the Nevada Police Union for Bargaining Unit G. These costs are to be paid through agency funding. The Department of Administration is available if there are any additional questions on this item.

Governor: Do I have a motion on item 11-C?

Secretary of State: Can I make a statement, Governor?

Governor: Certainly, go ahead, Secretary.

Secretary of State: I have a statement on agenda item 11-C relating to the court-awarded legal fees relating to the Collective Bargaining Agreement under 11-B.

I am hesitant to vote on these fees as I am unable to support the related request for approval of the full CBA in agenda item 11-B and I'll be abstaining from the vote on 11-C if counsel feels this is allowable.

Board Counsel: I can give a clarification. Essentially because your abstention is not based on the ethics law, it does not change the number of votes required for passage. There would still need to be two affirmative votes to pass this item with your abstention.

Governor: She can abstain.

Board Counsel: It is treated as a 'no' vote but yes, she can abstain.

Governor: It's treated as a 'no' vote, got it.

Board Counsel: Yes, an abstention, in this case, would be treated as a 'no' vote because two affirmative votes are still required to pass the item.

Governor: Got it. Do you understand the explanation, Secretary?

Secretary of State: Yes, I do, Governor.

Governor: Thank you. Are there any further questions? Do I have a motion on item 11-C?

Attorney General: Move approval.

Governor: We have a motion on the floor for approval. Is there any discussion? Hearing and seeing none. We'll do a roll call vote on this one too.

Board Secretary: Governor Sisolak?

Governor: Yes.

Board Secretary: Secretary of State Cegavske?

Secretary of State: I will abstain.

Board Secretary: Attorney General Ford?

Attorney General: Yes.

Governor: The motion passes.

12. Approval of Proposed Leases (For possible action)

Governor: Item number 12, *Approval of Proposed Leases*.

Clerk of the Board: Item number 12. There are three leases under agenda item 12 today for approval by the Board. I would note that lease number three indicates it is a relocation on the agenda, however, it is an amendment to an existing lease adding space and extending the term. Are there any questions on any of these items?

Governor: I've got a question on number three. The rent increase is 3% annually for 10 years?

Clerk of the Board: That is correct.

Governor: That's a little strong, isn't it? Who do we have from the Board of Pharmacy here?

Brett Kandt: Good morning, Governor. I'm general counsel to the Board of Pharmacy. Thank you for your question. I would note that when this Board approved the original lease in 2018, it included a 3% escalator and the Board determined that the lease was still in the best interest of the state. In addition, this Board approved the first amendment to this lease in 2020 and it still had the 3% escalator; the Board determined the lease to be in the best interest at that time. So, this is simply continuing that 3% escalator with the addition of some additional space.

Governor: Well, counselor, in my time in government, I can tell you there is no better tenant than a state or municipal government because they consistently pay. Most of our leases do not have annual rent increases. I mean, every other year or every third year or something like that would be the norm. Looking at the other two that we're approving today and the annual increase percentages are zero, two, zero, two, and then the next one is three, zero, three, zero. I just think this is excessive. I mean, you're going from \$2.34 to \$3.14 per square foot within 10 years. That's a lot.

David Wuest: Governor, this is David Wuest, Executive Secretary of the Nevada State Board of Pharmacy. I see your point, obviously, but we've spent a year negotiating this contract and invested the time. I agree with you that there are no better tenants than the state, but this is the space that we need and it's located with the current property and it'll allow us to do the things we have to do related to the opioid crisis and related to all the other statutory things with fingerprints that we're doing. So, we definitely need the space. We did negotiate an arms-length transaction in good faith and we were able to get a combination of the best rate with that increase. When we went through the contract, we did everything that we needed to do with State Public Works Division for that too. So, I see your point but this is definitely in the best interest of the Board of Pharmacy in the State of Nevada.

Secretary of State: Governor, this is Barbara Cegavske.

Governor: Yes, Secretary.

Secretary of State: I have the same issues that you did along with my staff but I have to say your staff did a great job of explaining some of the issues and the problems if we don't approve it, so, therefore, I'm going to vote 'yes' even though I understand what you're saying. When I see the rent increases, I find it hard to believe they'd be able to find anything any less or equivalent to what they're doing right now. But I have the same issues that you do.

Governor: Thank you. Who negotiated this?

Brett Kandt: Governor, thanks for the question. I negotiated it with the client, together with Mr. Wuest.

Governor: Well, do I have a motion on this one?

Secretary of State: I'll move for approval.

Governor: Is there any discussion on the motion?

Attorney General: Mr. Governor, I would just say, to paraphrase a quote from a *Saturday Night Live* skit, the rent is too dang high, but I will be supporting this as well.

Governor: I appreciate it. No further discussion? All in favor, signify by saying aye. Are any opposed? The motion passes.

13. Approval of Proposed Contracts (For possible action)

Governor: Next item, number 13, *Approval of Proposed Contracts*.

Clerk of the Board: There are 32 contracts under agenda item 13 today for approval by the Board. Contract number 22 which is between the Department of Health and Human Services, Division of Public and Behavioral Health and National Jewish Health is contingent upon funding being approved by the Interim Finance Committee at their meeting on April 7, 2022. Are there any questions on any of these items?

Governor: Go ahead, Secretary Cegavske.

Secretary of State: Thank you, Governor. I ask that contract number 3 between the Controller's Office and GCR, Inc., doing business as Civix be pulled for a separate vote. I cannot support this contract due to the difficulties we're having in our own office, with our contract, with this vendor. I'll be a 'no' vote on contract number 3.

Governor: Can I take number 3 separately?

Board Counsel: Yes.

Governor: Do I have a motion on contract numbers 1 to 2 and 4 through 32?

Attorney General: I move approval.

Governor: We have a motion for approval from General Ford. Is there any discussion? Hearing and seeing none. All in favor, signify by saying aye. Are any opposed? The motion passes.

Now let's go back to contract number 3. Do we have a presentation on this, Susan, or can you give me a summation that then, the Secretary can comment on?

Secretary of State: I made my comment, Governor.

Governor: I understand your comment that your office already contracts with this vendor?

Secretary of State: We have a contract with them in one of my divisions and we are having difficulties with them.

Clerk of the Board: Representative from the Controller's Office are here in Carson City if you would like them to provide information on this contract.

Governor: Would that help, Secretary, to get more information from the Controller's Office?

Secretary of State: No, it would not, Governor. Thank you, though.

Governor: Alright, so I have a motion on item number three?

Attorney General: Mr. Governor, could we table this for maybe the next meeting? I would like to track down what some of the concerns and issues are because frankly if there are performance issues already then, I would be concerned about extending a new contract to a vendor that's already having problems here in our state. Would you be willing to table this until the next meeting?

Governor: Yes, but I'm not understanding that's what the issue is. Secretary, is that the issue?

Secretary of State: Governor, I can't go into details on this.

Governor: I'll accept that.

Secretary of State: But there is an issue with their performance, yes. I don't know if it would be the same in the new contract but I'm just telling you that we've had an issue.

Governor: Do I have a motion to table number 3? Is this time-sensitive, Director?

Clerk of the Board: I can see the Controller is indicating, yes, this is time sensitive.

Attorney General: Mr. Governor, are we able to hear from the Controller on this? Would she be willing to speak to the issue?

Governor: Sure, but I don't know if the Controller knows the issue here.

State Controller Byrne: Good morning, Governor and Members of the Board of Examiners. For the record, my name is Catherine Byrne. I'm your State Controller.

First, I would like to extend to the Secretary of State our appreciation for bringing up attention to this vendor and that this contractor has not worked for you to your satisfaction. So, we appreciate you bringing these issues to our office. I also appreciate you, Secretary Cegavske, that we realize that you're looking out in the best interest of the state and so, we certainly do value your input.

I could go into more about the reporting standards or I can go more into our continued research of Civix is – I think it would probably be more appropriate to talk about our research of Civix that we have done since the last Board of Examiners meeting.

Attorney General: Madam, so, my bottom-line question is this, are you satisfied that you're going to get the services that you are requesting by virtue of this contract?

State Controller Byrne: Yes, we do expect services to be performed. It is so we can comply with an accounting standard and we also have two references from two other states that have used this contractor and this software to implement this accounting standard. Also, we understand that through this contract, it's going to be a minimal amount of configuration to our current records and systems we use. The application is currently being used by other governmental organizations and our discussions with them have been favorable that they have been able to meet their needs through this contractor and the application we need.

Attorney General: Mr. Governor, based on those representations, in view of the fact that the Controller still has the agenda item for us to consider, I will support the contract if you want to entertain a motion at this point. Based on representations from our Controller, I move to approve it.

Governor: Yes, based on representations from the Controller that it is time-sensitive and her essentially vouching for the company, I'll accept the motion to approve.

Is there any discussion on the motion to approve contract number 3? Hearing and seeing none. We'll do a roll call vote.

Board Secretary: Governor Sisolak?

Governor: Yes.

Board Secretary: Secretary of State Cegavske?

Secretary of State: No.

Board Secretary: Attorney General Ford?

Attorney General: Yes.

Governor: The motion passes. Thank you.

14. Approval of Proposed Master Service Agreements (For possible action)

Governor: Item number 14, *Approval of Proposed Master Service Agreements*.

Clerk of the Board: There are 79 Master Service Agreements under agenda item 14 for approval by the Board. Are there any questions on any of these items?

Governor: No questions. Does anybody have any questions on the Master Service Agreements?

Attorney General: None here.

Governor: Do I have a motion?

Attorney General: Move approval.

Governor: We have a motion for approval on item number 14. Is there any discussion? Hearing and seeing none. All in favor, signify by saying aye. The motion passes.

15. Information Item – Clerk of the Board Contracts

Pursuant to NRS 333.700, the Clerk of the Board may approve all contract transactions for amounts less than \$100,000. Per direction from the September 14, 2021 meeting of the Board of Examiners, the Board wished to receive an informational item listing all approvals applicable to the new threshold (\$10,000 - \$99,999). Attached is a list of all applicable approvals for contracts and amendments approved from January 14, 2022 through February 14, 2022.

Governor: Item number 15, *Information Item – Clerk of the Board Contracts*. This is an information item. Go ahead, Director.

Clerk of the Board: There are 46 contracts over \$10,000 and under the \$100,000 threshold that were approved by the Clerk of the Board between January 14, 2022 and February 14, 2022. Do we have any questions on any of these items?

Governor: I do not. Do we have any questions on any of the Clerk of the Board contracts?

Attorney General: None here.

16. Information Item Reports

A. Department of Conservation and Natural Resources – Division of State Lands – Fiscal Year 2022, 2nd Quarter

Pursuant to NRS 321.5954, subsection 4, the State Land Registrar is required to provide the Board of Examiners quarterly reports regarding lands or interests in lands transferred, sold, exchanged, or leased under the Tahoe Basin Act program. This report covers program activities for the period of October 1, 2021 through December 31, 2021.

B. Statewide Quarterly Overtime Report – Fiscal Year 2022, 2nd Quarter

Pursuant to NRS 284.180, the Department of Administration, Division of Human Resource Management must prepare and submit quarterly to the Budget Division of the Office of Finance a report regarding all overtime worked by employees of the Executive Department during the quarter. The Budget Division shall transmit quarterly to the Board of Examiners the report and the analysis of the Budget Division regarding the report. The Budget Division submits the 2nd Quarter Overtime Report and analysis for fiscal year 2022.

C. Governor's Finance Office – Budget Division

Pursuant to NRS Chapter 353, the Governor's Finance Office, Budget Division presents a reconciled fund balance report for the Tort Claim Fund, Statutory Contingency Account, State Claims Account, Emergency Account, Disaster Relief Account, IFC Unrestricted Contingency Funds and IFC Restricted Contingency Funds as of January 31, 2022.

Below is the available balance for each account prior to any projected outstanding claims.

Tort Claim Fund	\$ 4,395,992.84
Statutory Contingency Account	\$ 12,021,904.79
State Claims Account	\$ 2,418,891.73
Emergency Account	\$ 354,763.00
Disaster Relief Account	\$ 7,505,618.81
IFC Unrestricted Contingency Fund General Fund	\$ 26,438,872.48
IFC Unrestricted Contingency Highway Fund	\$ 1,638,068.35
IFC Restricted Contingency Fund General Fund	\$ 8,792,164.00
IFC Restricted Contingency Highway Fund	\$ 334,796.00

Governor: Item number 16, *Information Item Reports*.

Clerk of the Board: There are three informational reports under this item. Under agenda item 16-A is a report from the Division of State Lands. This is regarding lands or interest in lands transferred, sold, exchanged, or leased under the Tahoe Basin Act program, as well as a quarterly report on the status of real property or interest in real property transferred under the Lake Tahoe Mitigation Program. This report is for the quarter ending December 31, 2021. There were no acquisitions of land in this quarter, however, there were four transfers of interest in real property totaling 8,224 square feet. Are there any questions on this item?

Governor: Do we have any questions on item 16-A?

Attorney General: None here.

Governor: Go ahead.

Clerk of the Board: Moving on to the second report. This is a report on overtime and accrued compensatory (comp) leave for the second quarter of fiscal year 2022. This has been summarized so, I won't go into the details, I'll go over some quick highlights. Overtime pay and accrued comp leave account for a total of approximately \$20.1 million for the second quarter of fiscal year 2022 or 6.8% of base pay. By comparison, total overtime was approximately \$20 million in the same period in fiscal year 2021. The Department of Corrections had the highest amount of overtime and accrued comp time at \$7.92 million or 17.82% of base pay compared to the first quarter of the fiscal year at \$6.6 million. This is followed by the Department of Health and Human Services at \$5.6 million or 6.5% of base pay and the Department of Public Safety at \$2.31 million or 9.84% of base pay. For the second quarter, as a percentage of base salary, the Department of Corrections had the highest overtime at 17.82% followed by the Department of Veterans Services at 15.8% and the Department of Public Safety at 9.84%. Are there any questions on this report?

Governor: No questions.

Attorney General: None here.

Clerk of the Board: Thank you. The final report is an informational item about available balances in the various contingency accounts as of January 31, 2022. These accounts are managed by either the Board of Examiners or through the Interim Finance Committee and are intended to cover various contingencies through the 2021-2023 biennium, which is through June 30, 2023. I would be happy to answer any questions on this if you have any.

Governor: No questions. Does anyone have any questions on this one?

Attorney General: No, sir.

Governor: That closes item number 16.

17. Public Comment (This public comment period is for any matter that is within the jurisdiction of the public body. No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an action item. The Chair of the Board will impose a time limit of three minutes.)

Governor: Item number 17, *Public Comment*. This is the second time set aside for public comment. Anyone wishing to address the Board on any item under our discretion, please step forward, identify yourself for the record and comments will be limited to three minutes. Do we have anybody in Las Vegas for public comment? No. Is anybody in Carson City?

Clerk of the Board: I'm not seeing anyone in Carson City.

Governor: Do we have anyone on the phone for public comment? Hearing and seeing none.

18. Adjournment

Governor: Moving to item 18. We are adjourned. Thank you, everybody.

ATTACHMENT A

Matthew Kaplan: For the record, my name is Matthew Kaplan and I'm the president of the Nevada Police Union. To the Honorable Governor, Attorney General and Madam Secretary, I'm here to be a voice for those who have been prevented from speaking for themselves. Through the height of the COVID-19 pandemic while most government and private employees were shuttered up at home, your state police were continuing to work, despite being furloughed. Unlike local agencies, the state police's function is one of proactive enforcement. This requires adequate funding. Without enough troopers, innocent people will continue to die in the highways. Without enough parole and probation officers, sex offenders will roam our neighborhoods unsupervised. Without enough university police officers, our college students will not be safe on campus. Without enough game wardens, our state's wildlife will be poached. Without enough park rangers, our natural resources will not be protected for future generations. How do I explain clearly how dire the situation is? If I liken it, the current situation, to a football game, we're in the last two minutes of the fourth quarter, you have the ball in the one-yard line and need to travel 99 yards for a touchdown to win. Today you have the opportunity to approve the NPU, CBA, thereby, moving the ball 10 yards down the field and getting the first down. However, to score a touchdown or in our case, to save state law enforcement, you need to hurry up offense. A lot needs to be done in a short amount of time to resuscitate the state law enforcement function. For the sake of Nevada's public safety, I humbly request that you approve the Nevada Police Union's Collective Bargaining Agreement. Thank you.

ATTACHMENT B

Jason Jackson: For the record, this is Jason Jackson. To the Honorable Governor, Attorney General, and Madam Secretary, I come to you today as an executive board member of the Nevada Police Union, as a state police officer that has worked in Nevada for 18 years. Even though Nevada's current standard is to have 10 steps to increase in pay until you top out, it took me, personally, 16 years to achieve that goal of 10 steps in pay. This was due to pay disparity, furloughs, pay freezes, and step freezes, as well as many other issues with state agencies. The last notable pay increase to Nevada State Police was 2007. That is 15 years ago from today. At numerous times of my past 10 years, I've seen it taken to the legislative sessions for state police officers to attempt to have increases in pay and better benefits. At multiple levels, this has always been shut down in the past and it shows its affect today. It was not until 2019 when Nevada voted to allow state police force to collectively bargain with the state and the state had considered taking or backing their police forces. State police officers in Nevada protect you guys personally, your family, your friends, your co-workers, residents and visitors of the state deserve to be treated fairly and paid accordingly. The state police officers have been given the legal right to collectively bargain but have been challenged at all levels by the state controlling boards. I pray and ask you, the board, that you pass and approve Nevada Police Union's collective bargaining agreement that will be in front of you today. Nevada state police officers can move forward with trying to rebuild strength, numbers and achieve effective staffing levels throughout the state with the approval of the collective bargaining agreement. Throughout my career, I have trained numerous officers just to watch them walk away to municipalities for greater pay. I've personally seen many officers leave my agency for better paying jobs and they specifically list this as a major reason for putting on their exit interviews, lack of pay. It is exhausting and concerning as a trainer and fellow officer to see such a high continuing turnover in most all Nevada state police forces. Vacancies and turnover rates throughout most Nevada state police agencies in your state are at an all-time high and this needs to be addressed as soon as possible for multiple reasons. The past few years in Nevada have been extremely difficult to maintain appropriate staffing levels in your state police forces throughout Nevada due to lower pay and sometimes upwards of 35% less than other officers throughout the state. Some of these officers are also required to have a four-year degree and get paid 10% less than those officers that are not required to have a degree. Your 'yes' vote on the upcoming NPU's CBA will ensure that some of these officers will get a small fraction of an increase in pay that they greatly deserve. These men and women have chosen this profession and are very proud to serve you and others. Now is the time to show your support to the men and women that sacrifice so much of their selfless lives just to ensure your safety and the safety of the others that you love. The Nevada Police Union has fought long and fought hard with the state. They have won in arbitration and even won a decision by a district court for the bargaining process to proceed forward. Please, do not defund the state police forces in Nevada, please vote 'yes' to approve the collective bargaining agreement for the Nevada State Police Union that will be in front of you here shortly. Thank you, Jason Jackson.

ATTACHMENT C

Will Dawson: Good morning esteemed members of the board. My name is Will Dawson. I'm a retired detective who served the State of Nevada from 1998 to 2020. I also volunteer with the Nevada Police Union. I am here today because it is imperative that something be done about the decades-long cycle of excessive employee turnover in our state law enforcement. Turnover which does a disservice to our clients and our citizens and has its roots in the lack of a fair market wage. This isn't just about state troopers who are the most visible potential recipients. We're also here to support our parole and probation, university and capitol police officers, fire marshals, detectives, park rangers, game wardens and other personnel. Brave members who go out and perform dangerous jobs, often alone. In return, they ask nothing more than adequate funding, a fair wage, accountability for those who cause them harm, and understanding when they make mistakes. Funding law enforcement is not always politically popular, but the minimal investment this agreement costs today will be repaid many times over if it stems the flow of employees leaving and retains competent future leaders for our agencies. I understand that some believe the moneys for this agreement could be better used in other ways or have concern what ramifications may result. These beliefs and concerns are valid but disconnected from the reality of the crisis facing our state law enforcement agencies who struggle to respond to emergencies and are having to cancel training, vacations and non-critical programs just to cover emergent incidents. Professional law enforcement, accountable to the people, is one of the cornerstones of American society, it is what protects us from the atrocities that many people in other nations suffer at the hands of their police forces. It requires disciplined, well-trained, dedicated personnel who have the capabilities and competence to handle the most dangerous among us with the same restraint as they handle the most defenseless. As a profession, it requires more personal sacrifice than most are willing to give and the demands on the individuals and their families are well-documented via the early death from stress-related illnesses and the high divorce and suicide rates they suffer. Acceptance of this contract is essential for state agencies to survive. Thank you for your time and your support. I hope that the presentations today can reinvigorate your desire to leave a positive legacy for ourselves and our posterity, along with a society that is safe enough to enjoy the freedoms guaranteed to us as citizens of this great state. Thank you for your time.

ATTACHMENT D

Delaney Howard: My name is Delaney Howard and I'm with AFSCME Local 4041. Throughout this pandemic, Nevada public workers have kept this state running in all aspects of their departments. As we continue to experience economic recovery, it is vital that the state invest in public service workers who have shown up for our communities relentlessly, especially in times where we needed them most. Item 11-A on the agenda begins the first steps to catching public employees up to private employees in terms of wages and benefits. This wage increase will greatly increase the quality of life for all Nevada workers. We ask you to respect the contract and the arbitration agreement by approving item 11-A on the agenda. Thank you.

ATTACHMENT E – WRITTEN PUBLIC COMMENT

Ms. Brown,

I am in my 14th year with Nevada Highway Patrol. I wish I could say things have been easy. But as you well know, being a police officer in today's political climate is no easy task. Add to this the frustration of constantly being turned down for better and equal pay to our local counterparts, and it's little wonder why NHP can't find willing people to fill academy's. And those that do join NHP, appear to not be staying long at all. My guess is 2-4 years, and then many move on to other agencies with better pay, better benefits, and overall better working conditions.

State public safety workers are paid approximately 50-35% below the local workers, who have been able to collectively bargain for decades. They are paid and treated a lot better than we are because of their right to organize and bargain. We are simply asking for equitable compensation and better working conditions and the contract before you helps us do that.

We have spent a lot of money and time battling the state for better pay and working conditions. The state has fought us every inch of the way and many think it's because the state wants to defund the police. Please help us in our fight for better working conditions.

The state legislature passed collective bargaining for state employees in 2019 and we've finally gotten a contract on the table in front of you for approval. It's been a long hard road to get to this place. **Please approve this contract!**

State police are experiencing record turnover and vacancy rates! The reason is that we're poorly compensated and treated. We are at **CRITICAL SHORTAGE** numbers, and members continue to leave for other agencies! Nevada roads see less and less Troopers on patrol. **This directly equates to you and your family, and everyone else traveling on Nevada roads seeing less protection, and longer and longer wait times for those in need during an emergency and/or critical incident such as a serious motor vehicle accident!** The CBA before you helps us and we desperately need your vote.

I beg of you, please approve the CBA for Category I peace officers!

Thank you for your time and consideration in this matter.

Tommy van Oeveren

ATTACHMENT F – WRITTEN PUBLIC COMMENT

Hello Ms. Luzzi,

I will not personally be making a public comment, but I am hoping that Director Brown will be enlightened as to our situation and the gross disparity between NHP and ALL other local law enforcement agencies at the pay and benefit level.

Once enlightened, I am hoping Director Brown will do two things; a) consider bringing this important topic to light publicly, and b) **support the Nevada Police Union in their efforts to address this topic by approving the CBA for State Category 1 Peace Officers.**

Thank you for your time and consideration in this matter.

Tommy van Oeveren

ATTACHMENT G – WRITTEN PUBLIC COMMENT

Quinn Hesterlee

Regarding - Please share these thoughts with the BOE

Please consider the following.

- State public safety workers are paid approximately 50-35% below the local workers, who have been able to collectively bargain for decades. They are paid and treated a lot better than we are because of their right to organize and bargain. We are simply asking for equitable compensation and better working conditions and the contract before you helps us do that.
- We have spent a lot of money and time battling the state for better pay and working conditions. The state has fought us every inch of the way and many think it's because the state wants to defund the police. Please stop fighting us for our right to a better working condition.
- The state legislature passed collective bargaining for state employees in 2019 and we've finally gotten a contract on the table in front of you for approval. It's been a long hard road to get to this place. Please approve this contract!
- State police are experiencing record turnover and vacancy rates and the reason is that we're poorly compensated and treated. The CBA before you helps us and we desperately need your vote.
- Please approve the CBA for Category I peace officers!

ATTACHMENT H – WRITTEN PUBLIC COMMENT

Richard ODowd

Please share these thoughts with the BOE

Please support NHP on there contract.
This is important to the employees (Troopers).
Thank you

ATTACHMENT I – WRITTEN PUBLIC COMMENT



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March 7, 2022

Via Electronic Mail – EMAIL

Susan Brown
Clerk, State of Nevada Board of Examiners
susanbrown@finance.nv.gov

Dale Ann Luzzi
daluzzi@finance.nv.gov

Re: Nevada Police Union Collective Bargaining, Agenda Item 11(B).

Dear Board of Examiners,

We appreciate the opportunity to inform you as to the State of negotiations. All three of you either campaigned on the promise of strengthening Unions or supporting law enforcement, most of you did both. Because of this, we are optimistic you will support the Nevada Police Union's collective bargaining agreement. We take this opportunity to explain to you the process by which it got here and expose that your negotiators were not working in-line with your vision. Thankfully, you have an opportunity to set the record straight and support the final contract.

The Board packet for the Agenda item before you contains no claims as to the "fiscal impact" of the agreement by the LRU or any other entity. See NRS 288.555(3) (limiting the BOE's scope of review). The Union never contested the State's ability to pay for the agreement, it accepted the amount of money the State offered. If this Body can vote in favor of Agenda item 11(A), it can support agenda item 11(B). In short, the only dispute remaining before the Arbitration was whether State law enforcement should be given a 3% increase in pay, the States offer, or a lesser increase with incentives for better educated and longer tenured/better trained officers. That was it. There was no difference in the amount of money either side was requesting. The only issue was how the money should be spent. The State refused the Union's final offer, refused to earmark funding, and continued fighting until a District Court sanctioned the Attorney General Office's attorneys and awarded the Union attorney fees and costs, an action that is not required by Statute.

The Union trusts you will make the right choice and vote in favor of the Contract. Pursuant to NRS 288.555, you as the State Board of Examiners ("BOE") have the authority to vote yes to the agreement as approved by the Arbitrator and ordered by the First Judicial District Court. Once a final negotiated contract is ratified and signed by the Nevada Police Union ("Union") and the Labor Relations Unit ("LRU"), it must be submitted to the BOE for independent review and approval at a public hearing. The State has attempted many arguments before the Arbitrator and District Court about the lack of funds to pay for the Agreement. The Arbitrator did not find this argument persuasive, and neither should you. There are approved methods to seek Legislative approval outside of session.

I. The Parties' Collective Bargaining History

Pursuant to NRS 288.565, the Union and the State of Nevada ("State") began official negotiations on November 6, 2020. The Parties met five (5) times between December 2020 and February 2021. On February 9, 2021, the Union declared an impasse on body cameras, seniority, and compensation. Thereafter, in accordance with NRS 288.570, the parties engaged in six (6) mediation sessions beginning March 2021 and ending in May 2021. Subsequent to the mediation attempts, the parties exchanged counteroffers through May 2021. The cumulation of these attempts, unfortunately, rendered mediation unsuccessful, and pursuant to NRS 288.575, the mediator formally discontinued mediation. The Parties then proceeded to arbitration to address the remaining issues: (1) Body Cameras; (2) Seniority; and (3) Compensation.

Prior to Arbitration, the Union requested that the Executive Department request the amount of money it had available for negotiations be earmarked for the Union's contract. Rather than having to challenge the State's ability to pay, the Union used the same amount of money the State made available and merely divided it up differently in its compensation article. However, the State refused to do this, seemingly to pressure the Union to take an offer it did not want.

At arbitration, the Arbitrator requested the parties to prepare a joint scheduling order. *See attached Appendixes.* Counsel for the State requested the Arbitrator entertain motions as to whether any offer should be considered withdrawn pursuant to NRS 288.575(1). Union's counsel objected, but the State's counsel insisted, stating:

As NRS 288.575(1) is a new provision of law not afforded [SIC] local governments, this is an important step that should be included in the Scheduling Order. If we don't have a process for this, it would prevent either Party from opposing the requested withdrawal but also prevent the Arbitrator from narrowing the issues prior to the hearing.

See Email requesting briefing on withdrawal of offers under NRS 288.575(1). See attached Appendixes.

At the insistence of the State, the Union conceded and agreed to the Arbitrator's authority to determine offers withdrawn under NRS 288.575(1). The Union and the State proceeded to submit competing motions to the Arbitrator seeking to consider the other party's final offers withdrawn. The Union requested that the Arbitrator consider the State's final offer on compensation withdrawn because it was regressive and violated the State's obligation to negotiate wages. The State's final offer *before* Arbitration was much larger than the State's final offer *during* Arbitration. Notably, the State's last offer was for a 3% salary increase, calculated at \$2,375,035. The Union only requested 2% (\$1,583,357) of the 3% offered to be allocated as a salary increase with the remaining 1% (\$791,678) to reward members who stayed at the Department longer than 10 years and who have college degrees. Whereas, the State's final offer at Arbitration was for a 1% cost of living increase. The issue was thoroughly briefed, with the Arbitrator having read dozens of pages of motion practice and considering multiple proposed orders. In the end, the Arbitrator crafted his own order and struck the State's final offer on compensation. *See Arbitrator's Final Order considering offers withdrawn attached as Appendix "K."*

The State acknowledged that the Union's final compensation offer was the prevailing offer at Arbitration and did not oppose the Union's motion to determine the Arbitrator's ruling on

compensation final. Accordingly, pursuant to NRS 288.580, the Arbitrator determined that the Union's *Compensation* Article must be incorporated into the Final Collective Bargaining agreement between the State and the Union for the 2021-2023 term. Thereafter, the State failed to abide by the Arbitrator's final and binding award by refusing to draft the final agreement.

As a result of State's failure to act in accordance with the Arbitrator's decision, on August 19, 2021, the Union brought a Petition to Confirm Arbitration Award and for Attorney Fees and Costs before the First Judicial District Court.¹ On October 11, 2021, the State filed a Reply to the Union's Motion and Motion to Vacate Arbitration Award.

II. The State has acted in bad faith and has been exceptionally difficult to work with.

The State is failing to abide by the Arbitrator's final and binding award and has admitted that the State might not submit the final agreement to the Board of Examiners, as is required under NRS 288.555. The State has also failed to produce the Agreement, which it stated it would do. *See* Email correspondence attached as *Appendix "P."*

This is the first collective bargaining agreement between the State and the Union. The State's insistence that it can delay is evidence of bad faith and the process harms the Union members. There are little due process rights outside the negotiated Agreement and there are many benefits the Union's membership needs.

This is not the first time the State has acted in bad faith throughout this process. On May 19, 2021, the State tried to extort the Union into accepting the State's offer on compensation in a last-minute fire drill. It refused to genuinely negotiate with the Union and took a take-it-or-leave-it stance that is antithetical to collective bargaining. The State's last-minute attempt to extort the Union into its offer was completely unreasonable. The Union flat-out told the State that it agreed with the amount of money available—and requested that the State earmark it—but the State failed to do that. It also failed to consider that a better educated workforce and officers with better training should be prioritized in the State's system. It's rationale? The State didn't want to make their job more difficult. It wanted a one-size fits all approach, which is adversarial to collective bargaining.

Because the State has failed to implement the agreement, the Union was forced to seek out implementation of line-of-duty death benefits it negotiated with the State. Thankfully the State was willing to implement this portion of the Agreement. But there are many more portions that the State is simply refusing to act on. The State has since not been responsive. There is no clear timeline for even getting an agreement with the State. There is no timeline for the State implementing the contract. There is, effectively, radio silence from the State's counsel. The Union needs confirmation to ensure the State stops delaying the process and kicking the can down the road.

III. The BOE is legally allowed to vote yes outside of the Legislative Session

The State's argument for failing to act on the Union's approved compensation measure is three-fold:

1. That the 2021 legislature session has ended and therefore any additional

¹ See Case No. 21-OC-00129-1B.

compensation requiring appropriation beyond the approved 1% cannot be considered until the 82nd session in 2023;

2. The State lacks the authority, on their own, to offer an increase in compensation; and
3. The Legislature had an opportunity to deviate from the 1% during the 2021 session but declined to do so.

The Union proposes these arguments fail on their face because there are two other legal avenues to consider.

1. The Governor can call a special session and include funding for the Union's Contract;
2. The Parties can seek approval through the Interim Finance Committee;
3. The State can fund the Agreement the first day of the next legislative session.

A. The Governor can call a special session and include funding for the Union's Contract.

Pursuant to Article 5, section 9 in the Nevada State Constitution, "the Governor, may, on extraordinary occasions, convene the Legislature by Proclamation and shall state to both houses, when organized, the business for which they have been specifically convened." Therefore, the Governor could appropriate money based on what is proclaimed. The Legislative Counsel Bureau (LCB) has called special sessions in the past for labor situations.

Here, during collective bargaining the State admitted that they can call a special session to rescue plan money. Moreover, in the State's Arbitration Brief, they specifically state that "[t]he Legislature granted the Governor express authority to unilaterally propose, *for the Legislature's consideration*, 'any amount of money the Governor deems appropriate for salaries, wage rates or any other form of direct monetary compensation for employees,' notwithstanding the negotiated amount. NRS 288.510."

Therefore, it is reasonable for a special session to be called for the legislature to act on the outstanding Union labor issues.

B. Seek Approval through the Interim Finance Committee

There is money in the budget finance reserve that is accessible through the Interim Finance Committee (IFC) as there is approximately 2.1 to 2.2 billion that is unaccounted for. However, the State claims the Union cannot go through interim finance committee as the State cannot appropriate new money.

The Union contends that there is no new appropriations to be made because the Union has asked the State to earmark funding for salary-based and reward-based compensation. However, the State outright refused this proposal, claiming it was impossible to do.

The Union is negotiating with the executive branch and not the legislature. Therefore, the contract does not bind the legislature and in fact is required to have a non-appropriation clause. See NRS 288.505(1)(c). The result of which allows for the Union can have an unfunded agreement. Therefore, the Union can seek IFC's approval.

C. The State can fund the agreement the first day of 2023, retroactively

Alternatively, the Union will have to wait until 2023 Legislative Session and request a vote the first day of session. the Governor can fund the agreement first thing during the next legislative session because he is able to request a bill at any time “before . . . a regular session.” NRS 218D.175(2). This reading is consistent with other portions of appropriations that deal with inter-session contracts. NRS 353.085 specifically outlines the State’s procedure for “payment of contract claims when no legislative appropriation has been made.” It requires an opinion from the Board of Examiners that a contract is valid—such as the process outlined in NRS 288.555— “shall be transmitted to the Legislature on the first day of its next legislative session.” NRS 353.085(2). This Arbitrator should read both portions of Statute in harmony, and the Union has presented the only way to do so. See *State, Div. of Ins. V. State Farm Mut. Auto. Ins. Co.*, 996 P.2d 482, 486 (2000). The Union’s Contract could, therefore, be funded the first day of the next Legislative session. If the Union has to wait until the 2023 Legislative Session, the State’s bad faith negotiating tactics are rewarded and would result in establishing bad precedent for future collective bargaining attempts. While the Union would prefer this not be the avenue, it is an avenue to fund the Agreement.

In conclusion, the Union requests the agreement be binding and the parties prohibited from re-negotiating any decrease the Arbitrator’s approved terms.

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The Union incorporates by reference, the District Court briefing and order, the Arbitration briefing and final order, the EMRB complaint filed by the Union, and an olive branch letter the Union from after the Arbitration wherein the Union attempted to move forward peacefully, and the State never responded, and other documents this Board should consider in determining the Contract should be approved. The Union has also submitted public record requests to the Nevada Attorney General's Office, the Nevada Attorney General's Office, the Department of Administration, the Board of Examiners, and the Department of Finance. All of the agencies have delayed responding unreasonably. The Union is optimistic that it will not need to pursue public record requests if the Contract passes. However, it believes the State agencies have intentionally delayed its responses so that the Union would not have an opportunity to present documents it could only acquire through public records requests.

Sincere regards,
HUTCHISON & STEFFEN, PLLC

A handwritten signature in blue ink, appearing to read 'ARV', followed by a long horizontal flourish.

Alex R. Velto, Esq.
For the Firm

ARV/tfm

APPENDIX

APPENDIX	Document Title	# of Pages
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APPENDIX PAGE ONLY



APPENDIX A

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STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

NEVADA POLICE UNION, formerly known as Nevada Highway Patrol Association, Inc.,

Case Number:

Complainant,

v.

COMPLAINT

STEVE SISOLAK, in his capacity as Governor of the State of Nevada, AARON FORD, in his capacity as Attorney General of the State of Nevada,

Respondent.

Petitioner, NEVADA POLICE UNION ("NPU" or "the Union"), by and through its undersigned counsel of record, and pursuant to NRS 288.110(2) and NAC 288.200, hereby alleges and avers against STEVE SISOLAK, in his capacity as Governor of the State of Nevada and AARON FORD, in his capacity as Attorney General of the State of Nevada as follows:

1. Pursuant to NRS 288.110(2) the Nevada Government Employee-Management Relations Board ("Board") has jurisdiction to hear complaints arising out of the interpretation of, or performance under, the provisions of NRS Chapter 288.

2. The Nevada Police Union is an employee organization as defined by NRS 288.040. Pursuant to NRS 288.160, it is recognized as the exclusive representative and bargaining agent, as defined in NRS 288.027, of a bargaining unit, as defined in NRS 288.028, consisting of

1 all Category 1, Unit G state employees. Nevada Police Union's address is 3352 Goni Road, Suite
2 162, Carson City, Nevada 89706.

3 3. STEVE SISOLAK in his capacity as Governor of Nevada, is obligated to negotiate
4 in good faith with the Nevada Police Union pursuant to NRS 288.500. The Governor of Nevada's
5 address is 101 N. Carson St., Carson City, NV 89701 and his telephone number is 775-684-5670.

6 4. AARON FORD in his capacity as Attorney General of Nevada has been selected
7 as the legal representation for the Governor of Nevada in his negotiation with the Nevada Police
8 Union. The Nevada Attorney General Office's address is 100 N. Carson St, Carson City, NV
9 89701 and its phone number is 775-684-1100.

10 5. Both will be collectively referred to throughout this Complaint as "the State,"
11 unless otherwise specified.

12 6. NPU and members of the State began negotiations for the charter collective
13 bargaining agreement pursuant to the regulations of NRS Chapter 288 in November 2020. Since
14 the beginning of negotiations, the State has not been prepared for negotiations. At times, it has
15 failed to adequately provide a basis for legal issues that arose during negotiations, at other times
16 it has failed to produce data it readily had available. The explanation and basis of this Complaint
17 follows:

18 **Count 1: FAILURE TO NEGOTIATE IN GOOD FAITH**

19 **(Bad Faith Bargaining & Violation of NRS 288.170)**

20 7. NRS Chapter 288 imposes a duty on employers and bargaining agents to negotiate
21 in good faith. *Ed. Support Employees Ass 'n v. Clark County Sch. Dist.*, Case No. AI-046113,
22 Item No. 809, 4 (2015). The duty to bargain in good faith does not required that the parties
23 actually reach an agreement, but does require that the parties approach negotiations with a sincere
24 effort to do so. *Id.* "In order to show 'bad faith', a complainant must present 'substantial evidence
25 of fraud, deceitful action or dishonest conduct.'" *Boland v. Nevada Serv. Employees Union, Item*
26 *No. 802, at 5 (2015), quoting Amalgamated Ass 'n of St., Elec. Ry. And Motor Coach Emp. of*
27 *America v. Lockridge*, 403 U.S. 274,301 (1971). The following more overcomes that standard.

1 8. The State produced “fraud[ulent], deceitful [] or dishonest” data in response to a
2 data request pursuant to NRS 288.500, in violation of NRS 288.180 (requiring that an employer’s
3 response to a request for information “be accurate”). *Boland*, No. 802 at 5.

4 9. For background, the State proposed an indemnification clause in its first counter
5 of the Union’s Union Activities article.

6 10. At the January 26, 2021 negotiation, after being questioned for 30 minutes on its
7 basis of the indemnification clause—and discussing the Union Activities Article—the State
8 articulated that it was concerned with liability related to dues deductions. It did not articulate any
9 other rationale for the indemnification clause. The State also claimed that it took the language
10 for indemnification from the LVPPA-Las Vegas CBA, which was false.

11 11. At the February 9, 2021 negotiation, when discussing the same indemnification
12 clause, the Union agreed to an indemnification clause that indemnifies the State for dues
13 deductions liability, addressing the concern the State had at the January 26, 2021 meeting.

14 12. Also, at the February 9, 2021, when NPU attempted to obtain more information
15 about the State’s basis for the indemnification clause, including the other collective bargaining
16 agreements the State relied upon for the indemnification clause and union business leave, one of
17 the State’s attorney representatives from the Attorney General’s office stated that she was “not
18 prepared to discuss” the indemnification clause language contained in the Union activities article.
19 This was now at least the third time the State and NPU had negotiated this clause and this article.

20 13. After a break, the State moved the goal post when an attorney representative from
21 the State’s negotiating team newly claimed that the State was also concerned with liability from
22 disclosing confidential information under NRS 289.025. In response, the Union agreed to
23 broaden the indemnification clause language to include confidentiality disclosure liability from
24 NRS 289.025.

25 14. Still, that was not enough, and the Union has since grown increasingly frustrated
26 at the State’s lack of preparation and candor. At every negotiation discussing the indemnification
27

1 clause, the Union has requested that the State cite to even one law enforcement collective
2 bargaining agreement that has an indemnification clause as broad as the State is proposing.

3 15. Because the State could not provide one example of a collective bargaining
4 agreement that included an indemnification clause—except for incorrectly referencing LVPPA’s
5 indemnification clause, the NPU made a formal data request seeking “[a]ll state law enforcement
6 CBA’s the State has relied upon in crafting its Indemnification clause” on February 16, 2021.

7 16. At 6pm on February 18, 2021, on the eve of a negotiation session, State
8 representatives provided a response to the Union’s February 16 data request, which was purported
9 to be a summary of all CBA agreements throughout the country that the State was relying on to
10 support their position “**Exhibit 1**”.

11 17. After reviewing the Document, it is clear the state produced deceitful data. The
12 Document provided by the State incorrectly summarized the contents of each CBA in significant
13 and blatant ways. For instance, the State Document alleged that numerous CBAs provided for no
14 paid union leave, which in fact was incorrect. The document also stated that no access to
15 equipment or facilities was granted to unions in other CBAs, again, that was not true, as was the
16 claim that there was no access to recruits. The State’s production of this document was clearly
17 deceitful and intended to support the State’s position, with no regard to actual content of the CBAs
18 the State relied on.

19 18. In response to the State’s document, NPU representatives prepared an accurate
20 document contradicting some of the most obvious lies the state perpetuated in its description of
21 other CBA agreements. *See* “**Exhibit 2**”. NPU’s document did not address every CBA included
22 within the State document simply due to time constraints as they wished to provide it prior to the
23 February 19th, 2021 meeting. The State refused to even look at the document provided by NPU
24 or check the accuracy of its own document it provided. They continued to erroneously maintain
25 that the CBA’s they examined supported their position and they would not even consider the
26 counter-produced document purposed by NPU that established the State’s document was false
27 and misleading.

1 19. The State's Document was inaccurate, and its production was unethical. NPU
2 takes this opportunity to highlight a few of the many inaccurate claims in the State's response to
3 the Union's data request. These inaccuracies are not excusable. They are attempts to deceive the
4 Union and bargain in bad faith.

5 20. For example, the State mischaracterized the California Highway Patrol Collective
6 Bargaining Agreement, indicating that it does not provide paid release time for Union Business:

	Paid Release Time for Union Business (Union- Sponsored Meetings, Training Sessions, Conferences, Conventions)
California and California Association of Highway Patrolmen (CAHP)	No

12 21. California Highway Patrol's CBA could not be clearer, it provides a leave bank of
13 4,00 hours that is paid for by the State of California:

14 (8) CAHP shall be granted the following:

- 15 (a) The State shall contribute 4,000 hours per year to the CAHP Release Time
16 Bank.
17 (b) Reasonable release time for meet and confer sessions between the CAHP
18 and CHP management for the purposes related to the administration of this
19 Agreement.
20 (c) Reasonable release time to attend meetings of established committees
 including, but not limited to, Department Occupational Safety Board, Motor
 Vehicle Advisory Board, and Department Uniform Committee.
21 (d) Continuation of the existing practice for the use of informal leave (dock time)
 for CAHP business.
22 (e) An employee using release time as specified in this Section, shall report such
 time by use of the CHP 610, Representation Reporting.

23 CAHP CBA, Article 2, Section e, subsection (8).

24 22. The State also claimed that California Highway Patrol Collective Bargaining
25 Agreement did not allow for use of state facilities for union activities:

	Paid Release Time for Union Business (Union- Sponsored Meetings, Training Sessions, Conferences, Conventions)	Indemnification	Use of Facilities
California and California Association of Highway Patrolmen (CAHP)	No	N/A	No

23. Again, this was false. The California Highway Patrol Collective Bargaining Agreement clearly allows for the use of state facilities:

h. Use of State Facilities

The Department will permit CAHP to use State facilities for membership meetings and conferences, upon reasonable advance notice to the appropriate Department representative, and subject to operating needs of the Department. CAHP shall reimburse the Department for additional expenses incurred as a result of CAHP use of such State facilities.

CAHP CBA, Section 2, subsection h.

24. The State's production of false and misleading data was not limited to the California Highway Patrol's CBA. Another misrepresentation was in its description of the Carson City Sheriff Deputies Association CBA. The State claimed that Carson City does not provide Union Business leave and that they are not allowed to use facilities:

	Paid Release Time for Union Business (Union-Sponsored Meetings, Training Sessions, Conferences, Conventions)	Indemnification	Use of Facilities
Carson City Deputy Sheriff's Association on Behalf of the Carson City Sheriff's Deputies	No	N/A	No

25. Again, the Carson City Sheriff Deputies Association CBA shows the opposite. Both union business leave and the use of facilities are guaranteed in the contract. First, business leave is guaranteed:

(L) An Employee who is a member of the Association's Executive Board (Board Member) is entitled to collectively use up to five hundred (500) hours of paid administrative leave for Association business during any calendar year. The cost of such leave shall be in compliance with NRS 288.225.

Carson City Sheriff Deputy Association CBA, Article 5, Section L.

26. Second, the Association may use the facilities:

Employee representatives of the Association may conduct Association business on City property if such work occurs outside the Employee representative's regular working hours, except when the Employee representative is authorized to perform representational duties during his or her regular working hours as provided for in sections I, J, K, and L of this Article. The City may also grant special permission to conduct certain Association business during working hours if such activity does not interfere with or disrupt normal business of the department. The Association may use City buildings for its meetings if such use does not interfere with or disrupt the City's operations. The Association must contact the appropriate department director or elected official who has control or authority over the building which the Association seeks to use for an Association meeting and request the use of the building's facilities not less than 48 hours in advance of the meeting. Unless the facility is unavailable, the department director or elected official shall not unreasonably withhold consent to use a City building or facility for an Association meeting.

1 Carson City Sheriff Deputy Association CBA, Article 5, M.

2 27. Further, the State claimed that the Las Vegas Police Protective Association
3 Collective Bargaining Agreement does not provide Union business leave:

	Paid Release Time for Union Business (Union- Sponsored Meetings, Training Sessions, Conferences, Conventions)	Indemnification	Use of Facilities
City of Las Vegas and Las Vegas Police Protective Association, Metro Inc. (Commissioned Officers Unit) ("LVPPA")	No	N/A	No

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9 28. Again, this was a lie. The CBA provides union business leave, including expressly
10 permitting Union Business leave for "conventions and seminars," which are identified in the
11 State's Document as not being allowed.

12 **5.1 Leave Hours.** The Department agrees to provide 1000 hours each fiscal year, accumulative for the
13 duration of this contract, for the use of PPA members to conduct Association business associated with the
14 administration of the collective bargaining agreement which is inclusive of representation of bargaining unit
employees and including day-to-day operations, i.e., conventions, seminars, training, and lobbying during
the legislative session. Once the maximum yearly hours are exceeded, vacation leave will be used.

15 LVPPA Collective Bargaining Agreement, Article 5, Section 1.

16 29. The State also falsely represented Union leave for the Reno Police Protective
17 Association. It claimed that there is no union business leave:

	Paid Release Time for Union Business (Union- Sponsored Meetings, Training Sessions, Conferences, Conventions)	Indemnification	Use of Facilities
City of Reno and Reno Police Protective Association	No	N/A	No

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1 30. The Reno Police Protective Association collective bargaining agreement, again,
2 could not be clearer:

3 (b) The City shall provide a release time bank at the rate of one thousand forty
4 (1,040) hours per fiscal year for the exclusive use of the RPPA President for Association
5 related matters. This shall be the sole release time that may be used by the President.
6 There shall be no additional release time provided for the President for disciplinary,
7 grievance or collective bargaining or any other Association related issues. The release
8 time used by the President shall be paid at the same level of pay and benefits otherwise
9 afforded him/her. In the event the President's release time bank is exhausted prior to
10 the end of the fiscal year additional hours for disciplinary, grievance or collective
11 bargaining related issues may be granted at the discretion of the Chief of Police and the
12 Human Resources Director. The RPPA President may transfer unused release time
13 from the President's bank to the pool specified in (a) above, if needed; however, those
14 transferred hours shall not be available to carry over to the next contract year.

15 (c) The City shall provide a release time bank at the rate of four hundred (400)
16 hours per fiscal year for use by Association board members for board meetings.

17 *Article 35.*

18 31. Another example the Union will point out the State's false and misleading claims
19 that the Washoe County Sheriff Deputies Association does not provide for Union Business Leave.

	Paid Release Time for Union Business (Union- Sponsored Meetings, Training Sessions, Conferences, Conventions)
Washoe County and the Washoe County Sheriff Deputies Association	No

22 32. Again, this was another blatant lie. There are two ways that we know this. First,
23 look to the CBA itself:

24 B. The Association President shall be allowed an additional two hundred (200) hours paid time per
25 contract year to accomplish general Association business as defined in Paragraph C.2. below. The
26 President is permitted at his/her discretion to delegate use of said time to other Association officers to
27 include board members. Additional release time may be approved by the Sheriff on a case-to-case basis.

Washoe County CBA with WSDA, Article 5, section B.

33. Second, the Nevada Court of Appeals in a 2020 order made the same finding when reviewing an administrative hearing, where the County itself admitted evidence. That order penned: “Under the WCSDA’s collective bargaining agreement (CBA), WCSO was required to allocate twenty hours of paid time per week to the WCSDA president so that he or she could perform association duties,” and the Court ruled in the deputy’s favor after he used the business leave to attend an out of state conference. *Ross v. Washoe County*, No. 78618-COA, April 24, 2020.

34. The last example the Union will explicitly identify in this complaint—allowing the EMRB to review the other fraudulent claims in the State’s Document—is the State’s characterization of the CBA between the Henderson Police Officer’s Association and the City of Henderson. Again, the State claimed the Henderson Police Officer’s Association’s CBA does not provide for Union business leave:

	Paid Release Time for Union Business (Union- Sponsored Meetings, Training Sessions, Conferences, Conventions)
City of Henderson and Henderson Police Officers’ Association	No

35. And again, the language in the CBA is clear:

Section 4: The CITY agrees to provide seven hundred twenty (720) hours per fiscal year for use of the HPOA President or designee to conduct HPOA business, i.e., conventions, seminars, training, lobbying etc.

City of Henderson and Henderson Police Officer’s Association CBA, Article 29, section 4.

36. The false representations made in the State’s data disclosure were not the result of mere mistake. Rather, the State was either grossly incompetent or intended to perpetrate deceit on the Union. The Union has identified only a few of the blatant false and misleading representations contained in the State’s Document. There are many more. The State was obligated to disclose accurate data and it did not, therefore it acted in bad faith in violation of NRS 288.170.

1 There are several other lies and misrepresentations that the Union demonstrated in its prepared
2 response. *See attached as Exhibit B.*

3 37. The State has since claimed that it was attempting to distinguish between “union
4 business leave” and other types of leave for Union related activities, such as leave for union
5 representatives to attend grievance hearings and represent members during investigations. This
6 claim holds no water. The State has made clear during negotiations that it intends all Union
7 business, including grievance representation, to fall under its offer of Union Business Leave. It
8 is also clear from the Collective Bargaining Agreements for the Las Vegas Police Protective
9 Association and the Henderson Police Officer’s Association that the activities the State claims to
10 be “Union Business Leave”—and that it claims are not permitted under those agreements—are
11 expressly permitted in those Agreements. *See Supra*, paragraphs 28 & paragraphs 35. We know
12 further the Washoe County Sheriff Deputy Association’s CBA provides Union Business Leave
13 that can be used at out of state conferences because the Nevada Court of Appeals reached this
14 conclusion in a case where Washoe County was a party and made this admission. *See Ross v.*
15 *Washoe County*, No. 78618-COA, April 24, 2020. Even more, we know that the other agencies
16 referenced in this Complaint provide this type of Union Business Leave because we have either
17 been in contact with the Unions or the Agencies who entered into those agreements.

18 38. With this evidence in mind, it is apparent the State has falsified a document to
19 mislead NPU and justify its anti-union position of providing so few hours that that NPU could
20 not effectively represent its members. This position spits in the face of the Nevada’s legislature’s
21 established purpose behind its adoption of state-wide collective bargaining: to “[p]romote orderly
22 and constructive relations between the State and its employees.” NRS 288.400(1)(b).

23 39. Worse than that, the State has strictly pushed false and misleading data to
24 undermine negotiations. At the meeting after it disclosed the inaccurate Document, the State’s
25 lead negotiator stated that the State would continue to rely upon the State’s Document, even
26 thought it was false and misleading, to defend its position on indemnification and Union hours.
27 She also informed the Union that the State did not even consider its response Document. Still

1 further, she acknowledged that she was aware of the California Highway Patrol's business leave,
2 even though the State's produced Document claimed it didn't exist, showing an intent to deceive
3 or a disregard for the State's obligation to negotiate in good faith.

4 40. The State's failure to produce accurate data, and production of deceitful data, is a
5 violation of NRS 288.180, which requires accurate data production, and amounts to bad faith
6 bargaining.

7 **Count 2: FAILURE TO NEGOTIATE IN GOOD FAITH**

8 **(Bad Faith Regressive Bargaining)**

9 41. When an employer withdraws a proposal during the bargaining process without
10 good cause, they have engaged in regressive bargaining and an unfair labor practice. *Chicago*
11 *Local No. 458-3M, Graphic Communications Intern. Union, AFL-CIO v. N.L.R.B.*, 206 F.3d 22,
12 163 L.R.R.M. (BNA) 2833 (D.C. Cir. 2000). "[I]n evaluating the legality of an instance of
13 regressive bargaining, '[w]hat is important is whether [the proffered reasons for regressive
14 bargaining] are 'so illogical' as to warrant the conclusion that the [party] by offering them
15 demonstrated an intent to frustrate the bargaining process and thereby preclude the reaching of
16 any agreement.'" *Chicago Local No. 458-3M v. Nat'l Labor Relations Bd.*, 206 F.3d 22, 33 (D.C.
17 Cir. 2000) (quoting *Barry-Wehmiller Co.*, 271 N.L.R.B. 471, 473 (1984)); *See, e.g., Trans World*
18 *Airlines*, 682 F. Supp. at 1025, 1026 (stating that "[c]hanged conditions justify a hardening of
19 bargaining posture" and that "[a] retreat . . . from more favorable offers . . . is readily explicable,
20 and does not tend to show a picador tactic simply designed to enrage the union and bring
21 confrontation rather than agreement")

22 42. At virtually every meeting where the State has sought an indemnification clause,
23 NPU has made clear that it would not agree to an indemnification clause. The Union told the
24 State this in multiple letters and emails, and during bargaining sessions.

25 43. In an attempt to coerce the Union into agreeing to the exceedingly unreasonable
26 clause, the State engaged in regressive bargaining. At the February 16 negotiation between the
27 State and NPU. The State offered the Union 1200 hours of union leave time to be used for union

1 collective bargaining leave and union grievance leave. The State characterized this as Union
2 Business leave and proclaimed that its offer to the Union was that the Union would be able to use
3 the leave as it sees fit. Just prior to this offer, the Union again made clear that it would not budge
4 on the State's proposal of an indemnification clause—outlining the reasons why it could not agree
5 to an indemnification clause multiple time.

6 44. After the February 16 meeting, and before the State formally sent over the offer,
7 the State regressed on its proposal. It sent a document that allowed for only 400 hours of union
8 leave time.

9 45. The State attempted to explain this reduction in hours by claiming that the Union's
10 failure to agree to indemnification changed the circumstances and forced it to reduce the hours it
11 offered to the state. This is a lie. The State never offered union leave for an indemnification
12 clause. The two concepts have never been discussed in unison. The State never attempted to tie
13 them together or negotiate with one or the other. And when asked when the State claims it ever
14 attempted to combine the two ideas, the State never responded.

15 46. The Union has also stood firm on its anti-indemnification clause language, having
16 aggressively denied it just before the State offered 1200 hours of Union leave—only to unilateral
17 withdrawal this offer the next day, without a change in circumstances. The State's justification
18 is “so illogical” as to warrant the conclusion that the [State] by offering [it] demonstrated an
19 intent to frustrate the bargaining process and there-by preclude the reaching of any agreement.”
20 *Chicago Local No. 458-3M*, 206 F.3d at 22.

21 47. The State's offer is also in bad faith as it is not on par with any other state-wide
22 unions, or local unions. The State's regressive offer is effectively 1/3rd of an hour per member
23 in a state that requires reps to travel upwards of 5 hours to represent its members. The State's
24 failure to offer a reasonable number of hours makes it impossible for the Union to represent its
25 members. The State's offer is particular egregious given the Governor and Attorney General's
26 commitment to labor Unions.

1 48. There was no basis for this reduction aside from regressive bargaining tactics
2 intended to frustrate and undermine the process, making the tactic bad faith bargaining.

3 **Count 3: FAILURE TO NEGOTIATE IN GOOD FAITH**

4 **(Failure to disclose data pursuant to NRS 288.500(6))**

5 49. NRS 288.500(6) reads: *The Executive Department shall furnish to an exclusive*
6 *representative data that is maintained in the ordinary course of business and which is relevant*
7 *and necessary to the discussion of the subjects of mandatory bargaining.*

8 50. NRS 0.025(d) defines “Shall.” It creates an “affirmative duty to act.” However,
9 the State failed to provide any data until February 18th, 2021, even though the Union has insisted
10 in multiple correspondence that the State is obligated to comply with NRS 288.500(6).

11 51. At the February 19 negotiation, for the first time, the State provided a counter to
12 the Union’s budget requests. However, it failed to provide any data regarding its financial
13 proposal. When the Union requested the cost of the State’s budget counter, the State failed to
14 provide any information.

15 52. After the meeting that day, the Union submitted a data request for budget
16 information so that the Union can effectively negotiate the State’s counterproposal. It took the
17 state multiple weeks to respond. On March 3, 2021, the State provided a response. In response
18 to the Union’s request for amount of money “the State has available to distribute as part of any
19 negotiation it is involved in,” the State simply disclosed the State’s budget. This is in bad faith.
20 The State had to determine how much money it could allocate for the raises, otherwise it could
21 not have offered a paltry 1% raise, that would still leave every NPU member’s compensation far
22 below what is expected for a law enforcement officer in Nevada. And more importantly, what a
23 law enforcement officer deserves for keeping Nevada safe.

24 53. In response to another request to provide the “total amount of money the State has
25 allocated for each budgetary item in its counterproposal,” the State has claimed that it is still
26 processing the request. This is also in bad faith. The State could not have offered a budget
27 proposal if it had not determined the amount of money it would cost the State.

1 54. Representatives from the State have deliberately delayed in proposals for
2 negotiation until closer to the Deadline to enter arbitration which is March of 2021 in bad faith.

3 55. The State needed to affirmatively disclose this data without request pursuant to
4 NRS 288.500(6), which it did not.

5 56. Whenever questioned as to the basis of their positions in an effort by NPU
6 representatives to understand and reach compromise, the State would avoid production of any
7 such documents or refuse to discuss specific provisions under the guise of being unprepared for
8 such discussions.

9 57. It is clear that the State's continual lack of preparedness for negotiations
10 establishes that they were attempting to frustrate the process and never intended to reach any
11 agreement with NPU. Based on the circumstances, this amounts to bad faith bargaining.

12 **Prayer for Relief**

13 Wherefore, Complainant prays for the following relief:

14 1. For a finding in favor of Complainant and against Respondent for each and every
15 claim of this complaint and that the State negotiated in bad faith.

16 2. For a determination that the State of Nevada, by way of Governor Sisolak in his
17 official capacity and Aaron Ford in his official capacity violated the portions of NRS Chapter 288
18 alleged in this complaint.

19 3. For an order directing the Governor of Nevada and the Attorney General of
20 Nevada to negotiate in good faith with representatives of NPU.

21 4. For an order reimbursing complainant for attorney fees and costs in this action
22 pursuant to NRS 288.110(6).

23 Dated this ____ day of March, 2021.

HUTCHISON & STEFFEN, PLLC

24 By:

25 Devon T. Reese, Esq. (SBN# 7496)
26 Alex R. Velto, Esq. (SBN# 14961)
27 500 Damonte Ranch Parkway, Suite 980
 Reno, Nevada 89521
 Attorneys for Complainant

CERTIFICATE OF SERVICE

Pursuant to NAC 288.200 (2), I caused a copy of the **COMPLAINT** to be served via Certified Mail on the following individuals by being placed into an envelope bearing prepaid Certified Mail Postage and placed into the U.S. Mail on this __ day of March, 2021:

Steve Sisolak
State Capitol Building
101 N. Carson Street
Carson City, NV 89701

Aaron Ford
Nevada Attorney General's Office
110 N. Carson St.
Carson City, NV 89701

Certified U.S. Mail No.

Certified U.S. Mail No.

[Insert No.]

[Insert No]

Employee of Hutchison & Steffen, PLLC

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APPENDIX PAGE ONLY



APPENDIX B

1 IN THE MATTER OF ARBITRATION
2 BETWEEN
3 STATE OF NEVADA,
4 Employer,
5 v.
6 NEVADA POLICE UNION,
7 Union.

Case Number: 210124-03033

[PROPOSED] SCHEDULING ORDER

8 Arbitrator: Claude D. Ames
9
10

11 **I. Mediation:**

12 The parties agree to continue mediation in accordance with NRS 288.575 and NRS
13 Chapter 288.

14 **A. Continuing Obligation to Negotiate:**

15 The Parties understand that through Arbitration there is a continuing
16 obligation to negotiate in good faith pursuant to NRS 28.575(4). The Parties
17 continuing duty to negotiate places an obligation to reasonably respond to requests
18 and questions.

19 **II. Submittal of Final Offers and Arguments in Support of Final Offers:**

20 Deadline to Submit Final Offers and Supporting Arguments: June 21, 2021

21 **A. Briefing Regarding Withdrawal of Offers Pursuant to NRS 288.575(1):**

22 Any party requesting the arbitrator deem any portion of a final offer
23 withdrawn in accordance with NRS 288.575(1), must file a written Motion with a
24 Proposed Order served on opposing counsel electronically not later than July 2, 2021.
25 Any Opposition must be filed by July 7 with a Proposed Order after the date of the
26 Motion to Deem Withdrawn. Any Reply must be filed not later than July 13. The
27 Arbitrator will file the decision or response by July 16.

28 ///

1 **B. Decision on Motion to Deem Withdrawn:**

2 The Arbitrator shall provide a decision on any Motion to Deem Withdrawn
3 prior to the commencement of the arbitration hearing.

4 **III. Hearing on the Merits**

5 The parties and the Arbitrator should consider scheduling all necessary hearing
6 dates at this time.

7 Dates(s): July 19, 20, 21, 2021

8 Time: 9:00 AM – 5:00 PM (PDT) each day

9 Location: Virtual Platform. The State will make arrangements and provide links to the
10 hearing by July 13, 2021.

11 Approximate number of attendees at the hearing: 10-20 total, 5-10 per side. Each party
12 will be responsible for ensuring their own witnesses have the ability to connect to the
13 hearing.

14 **A. Pre-Hearing**

15 1. **Pre-Hearing Statements:** Friday, July 12, 2021

16 2. **Joint Statement of the Issues:** Friday, July 12, 2021

17 The Parties will endeavor to submit a Joint Statement of the Issues. If
18 the Parties cannot come to agreement, then the Parties will submit their own
19 Statement of the Issues on the scheduled date. The Arbitrator will have the
20 authority to determine issues.

21 3. **Evidentiary Disclosures**

22 i. **Advanced Exchange and Joint Identification of Exhibits:**

23 *Each proposed exhibit shall be pre-marked for identification and*
24 *provided to all parties in accordance with the schedule set forth below.*

25 *It is suggested that the parties attempt to create an electronic joint*
26 *exhibit notebook.*

27 ///

28 ///

1 **ii. Date for Identification of all Witness Names:**

2 June 28, 2021. The parties will meet and confer for the purpose
3 of exchange a list of the witnesses they will be presenting and to
4 disclose the subjects on which the witnesses are expected to testify.

5 **iii. Disclosure of Exhibits:**

6 Parties will disclose all exhibits they intend to use during the
7 arbitration to each other not later than June 28, 2021. Parties will meet
8 and confer regarding evidentiary objections and to determine whether
9 a joint exhibit binder can be produced, along with the exhibits
10 contained therein. Both Parties shall work in good faith to stipulate to
11 the admissibility of as many exhibits as possible.

12 **iv. Production of Joint Exhibits Binder:**

13 By 5:00 PM (PDT) on July 12, 2021. The electronic compilation
14 of exhibits with index will be prepared by the State and produced
15 electronically and emailed to the Arbitrator and Counsel for NPU at
16 that time. Each Party will be responsible for making exhibits accessible
17 to its witnesses attending remotely.

18 **B. Court Reporter.**

19 The parties agree that the State will secure a court reporter to transcribe the
20 hearing and that the costs will be split equally between both parties. The State shall
21 make arrangements for the court reporter to attend the virtual hearing. The court
22 reporter will issue a final transcript to the arbitrator and counsel for each party.

23 **IV. Closing Argument Briefs.**

24 The parties shall have 15 business days to submit final briefs from the date the
25 transcript is issued to both Parties by the court reporter.

26 ///

27 ///

28 ///

1 **V. Arbitrator Decision.**

2 The Arbitrator shall have 30 days to make a final determination from the date the
3 Parties submit their closing argument briefs. Upon the Arbitrator's request, the Parties
4 agree to provide a reasonable extension to the Arbitrator.

5 DATED this 25th day of May 2021.

6 HUTCHISON & STEFFEN, PLLC

AARON D. FORD
Attorney General

8 By: /s/ Alex R. Velto

9 ALEX R. VELTO, ESQ. (NV Bar #14961)
500 Damonte Ranch Parkway, Suite 980
10 Reno, NV 89521
(775) 853-8746
11 avelto@hutchlegal.com

12 *Attorneys for Nevada Police Union*

By: /s/ Tori N. Sundheim

TORI N. SUNDHEIM, (NV Bar #14156)
Deputy Attorney General
State of Nevada
Office of the Attorney General
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(775) 684-1219
TSundheim@ag.nv.gov

13 *Attorneys for State of Nevada*

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Devon T. Reese, Esq.
Alex R. Velto, Esq.
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/s/ Tori Sundheim
Tori Sundheim

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APPENDIX C

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Alex R. Velto, Esq. (SBN# 14961)
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dreese@hutchlegal.com
avelto@hutchlegal.com

Attorneys for the Nevada Police Union

IN THE MATTER OF ARBITRATION

Case Number: 210124-03033

BETWEEN

NEVADA POLICE UNION,

Movant,

v.

STATE OF NEVADA,

Respondent.

**NEVADA POLICE UNION'S
LAST, BEST, AND FINAL OFFER AND
INITIAL SUPPORTING ARGUMENTS**

Movant, NEVADA POLICE UNION ("NPU" "Union"), by and through its undersigned counsel of record, hereby provides its last, best, and final offer as well as its initial supporting arguments. Given that the Nevada Police Union will be presenting at the Arbitration, and providing a pre-hearing statement, its analysis contained herein is a summary of the rational for its final offer. *See attached as Exhibit 1*, "Outstanding Articles for Arbitration."

I. The Union's Compensation Article.

The Union is seeking to distribute the money offered by the State in a different way than the State would like. The Union is not arguing there is an inability to pay. The State's last offer was for a 3% salary increase, which it calculated as \$2,375,035. The Union, instead, would like its members to have a 2% salary increase—which the State calculated at \$1,583,357—and have
///

The Employer will determine and provide all uniform pieces and gear or provide a Uniform Allowance, if applicable, for employees to purchase uniform pieces and gear from authorized vendors.

The State shall provide its existing uniform allowance which shall be paid to Union members in a check separate from their paycheck.

Uniform Replacement

The Employer will provide for the replacement of uniform items on a regular schedule as defined in Department or Division policy and procedure, or as needed due to normal wear and tear in the course and scope of the employee's duties.

Seniority (Union Final Offer)

Seniority shall be based on total continuous State service in Unit G. Seniority may shall be considered for the purposes of scheduling, equipment, mandatory overtime, or leave as a "tie-breaking" mechanism when Departments or Divisions are approving or disapproving requests

Body Cameras (Union Final Offer)

1. All regularly assigned uniformed employees shall be required to wear body cameras, while on duty, at all times.
2. No supervisor shall review any body camera footage without for the purpose of seeking policy violations without giving notice pursuant to NRS 289.057.
3. When a supervisor accesses body worn camera footage for an investigative purpose, the supervisor will document that he or she viewed the body camera footage and reason for inspection.

Equipment & Weapons

General Provisions

The Department or Division will supply a list of approved types of weapons an employee can carry while on duty. An employee may choose to carry any weapon from this list while on duty so long as they maintain the appropriate training, certifications, and qualifications for that weapon.

The Department or Division Armorer will be responsible for maintenance and repair of State-issued weapons and will stock replacement weapons and ammunition for use when weapons become unserviceable.

Employees who choose to use a personal weapon as their duty weapon are responsible for maintenance of that weapon, as well as insuring that weapon meets the appropriate standards for use and maintenance as proscribed by Department or Division policy. Additionally, employees who choose to use their personal weapon must maintain the appropriate training, certifications, and qualifications for that weapon.

A State-issued weapon that is damaged or destroyed as a result of a duty related incident will be replaced by the Department or Division. If the incident giving rise to the need for a replacement weapon is a result of negligence, the employee may be subject to disciplinary action.

An employee retiring from the State service may elect to purchase their State-issued duty firearm.

The Employer will provide body armor for employees covered under this Agreement.

Employees who wish to purchase upgraded body armor may be eligible for reimbursement up to the cost equivalent to the Employer-provided body armor, per the life of the body armor as detailed by the manufacturer.

Equipment Replacement

The Employer will replace Employer-provided equipment on a regular schedule as defined in Department or Division policy and procedure, or as determined by the Employer, as needed due to normal wear and tear in the course and scope of the employee's duties.

Reimbursement for employee personal equipment ~~may will~~ may be granted by the Department or Division if said equipment is damaged during the normal course and scope of duty.

Employees must submit a report detailing how the personal equipment was damaged to their Department or Division for approval or disapproval within three (3) working days of the date the incident occurred.

Uniforms

General Provisions

Employees covered under this Agreement are required to wear uniforms.

Delay of Merit Pay Increase

The Employer and the Union agree that if there is a delay in a merit pay increase being reflected on the employee's paycheck due to administrative delay or clerical error, the Employer will adjust the employee's paycheck appropriately to reflect retroactive payment of the merit pay increase to the proper effective date.

Callback Pay

Callback pay will be administered in accordance with NAC 284.214.

Compensatory Time

Compensatory Time will be administered in accordance with NAC 284.

The maximum amount of Compensatory Time accrual is two hundred forty (240) hours.

Dangerous Duty Pay

Dangerous Duty Pay will be administered in accordance with NAC 284.208.

Overtime

Overtime is defined in accordance with NRS 284.400 180.

Special Adjustments to Pay

The maximum Special Adjustment to Pay and/or Special Assignment Pay for any employee is ten percent (10%) of their regular hourly rate of pay.

Field Training Officer (FTO) Pay

An employee assigned to be an FTO may be eligible to receive additional pay equivalent to five percent (5%) of their regular hourly base rate of pay for a Special Adjustment to Pay (FTO Pay) for the hours spent in FTO status.

K-9 Pay

Employees assigned to K-9 duty are eligible to receive additional pay equivalent to five percent (5%) of their regular hourly base rate of pay for a Special Adjustment to Pay (K-9 Pay).

Motors Pay

An employee who is assigned to motorcycle duty may be eligible to receive a Special Adjustment to Pay (Motors Pay) equivalent to five percent (5%) of their regular hourly rate of pay.

Standby Pay

An Overtime-eligible employee is considered to be on standby status in accordance with NAC 284.218.

Salary Rate Upon Promotion

Upon promotion to a position in a higher job classification an employee will be placed at the lowest step in the higher salary grade that either is the same step held in the former grade or is at a step which is the equivalent to an increase of two (2) steps above the step held in the former grade, whichever is higher.

Salary Rate Upon Demotion

Upon involuntary demotion, the rate of pay in the lower job classification will be set by the Appointing Authority, or designee.

Upon demotion for failure to complete a Trial Service Period, the employee will be placed in their former job classification and salary grade at their previous step but will have their pay increased by any steps they would have received if they had not been serving a Trial Service Period for a promotional position.

Upon voluntary demotion, the employee's salary will be reduced to the corresponding salary grade for the lower job classification, in accordance with NAC 284.173.

Merit Pay Increase

General Provisions

An employee who successfully completes twelve (12) months of satisfactory service, excluding Overtime, after initial appointment or promotion to a position, will be eligible for a merit pay increase within their salary grade on their pay progression date, and annually thereafter.

Merit pay increases are not automatically awarded to employees. Merit pay increases will not exceed the maximum of the range of the salary grade of the employee's job classification.

To be eligible for a merit pay increase, the employee must meet a satisfactory level of performance and competence during the twelve (12) month period prior to their performance evaluation.

Denial of Merit Pay Increase

If an employee receives a performance evaluation stating that their performance and competence is substandard, the Employer may withhold the merit pay increase. If the Employer denies a merit pay increase, the employee and the Union will be noticed in writing of the specific reasons for the denial. The employee may request a review of this denial by the Department or Division head, or designee, within ten (10) calendar days of receipt of the notice of denial. A meeting to discuss the review by the Department or Division head, or designee, will be scheduled within ten (10) calendar days of receipt of the request to review. The employee may request a Union Steward be present at the review meeting. The determination of the Department or Division head, or designee, is final. Denial of step increase is not subject to grievance under Article ___, Grievance Procedure.

Outstanding Articles for Arbitration Compensation (Union Final Offer)

All employees this Agreement covers shall have all compensation protection and requirements provided by existing State and Federal law. Nothing in this Agreement shall be construed as limiting existing compensation law and policy governing employees.

Salary Payment

The compensation schedule for employees in classified State service consists of pay ranges for each salary grade. Within each salary grade are ten (10) steps. Employee pay rates are set within a salary grade at a specific step.

Appendix ____, "Salary Schedules for Bargaining Unit G" details the salary schedule for employees covered under this Agreement.

Effective the first full pay period in July 2022, the salary schedule for Bargaining Unit G will reflect an increase of two percent (2%).

Employees covered under this Agreement who have continuous State service of more than ten (10) years on July 1, 2022, will receive annual longevity bonus payments of one-thousand five hundred dollars.

Employees covered under this Agreement who have a bachelor degree will receive an annual education bonus payment of nine-hundred dollars beginning on July 1, 2022.

Employees covered under this Agreement who have an associate degree will receive an annual education bonus payment of five-hundred dollars beginning on July 1, 2022. An employee who has a bachelor's degree will not be eligible for a bonus based on their associate degree.

Any uniform allowance checks shall be paid in a separate check.

Salary Administration

The appropriate Central Pay Center is responsible for the administration of salaries in accordance with State policies and this Agreement. This Article is intended to provide general information regarding compensation. As such, the information herein shall not be construed as an exhaustive representation of the Employer's compensation plan.

Salary Rate Upon Initial Appointment

Upon initial appointment, an employee will be placed Step 1 at the appropriate salary grade for their job classification, subject to the provisions of NAC 284.204.

EXHIBIT 1

EXHIBIT 1

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of HUTCHISON
3 & STEFFEN, LLC and that on the 21st day of June, 2021, I caused service a true and correct copy
4 of the **NEVADA POLICE UNION'S LAST, BEST, AND FINAL OFFER AND INITIAL**
5 **SUPPORTING ARGUMENTS** by electronic mail to the following:

6 Tori N. Sundheim, Esq.
7 Dan P. Nubel, Esq.
8 Deputy Attorney General
9 State of Nevada
10 Office of the Attorney General
11 100 North Carson Street
12 Carson City, Nevada 89701-4717
13 TSundheim@ag.nv.gov
14 DNubel@ag.nv.gov
15 *Attorney for the State of Nevada*

Laura Freed, Director
Frank Richardson, Chief Negotiator
Department of Administration
Division of Human Resource Management
Labor Relations Unit
515 E. Musser Street
Carson City, Nevada 89701
laurafreed@admin.nv.gov
frichardson@admin.nv.gov

13 Claude Dawson Ames, Esq.,
14 Arbitrator-Mediator
15 Post Office Box 11180
16 Oakland, California 94611
17 claudames@aol.com

21 /s/Amy Otutaha
22 Employee of Hutchison & Steffen, PLLC
23
24
25
26
27

1 Article aims to protect the public, officers, and to ensure that supervisors are not infringing on an
2 officer's rights under the Peace Officer Bill of Rights in Nevada.

3 Dated this 21st day of June, 2021.

HUTCHISON & STEFFEN, PLLC

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5
6 By: /s/ Alex R. Velto
7 Devon T. Reese, Esq. (SBN# 7496)
8 Alex R. Velto, Esq. (SBN# 14961)
9 500 Damonte Ranch Parkway, Suite 980
10 Reno, Nevada 89521
11 *Attorneys for NPU*
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1 the remaining available money be used to reward members who stay in the Department longer
2 than 10 years and/or members who have college degrees.

3 The Union offered to split the remaining \$791,678 as follows: (1) All employees with
4 greater than 10 years of service will receive annual bonus payments of \$1,500; (2) all employees
5 who have associate's degrees, but not bachelor's degrees, shall receive annual bonus payments
6 of \$500; (3) all employees who have bachelor's degrees shall receive annual bonus payments of
7 \$900. This bonus structure amounts to less than the remaining \$791,678.

8 The Union would prefer this use of money because it is in the best interest of the
9 membership and policing in general. While the Union will provide a more in-depth explanation
10 in its pre-trial statement, studies on law enforcement overwhelmingly encourage better education
11 and longer serving officers. Studies show that these officers are involved in less use of force
12 incidents and make policing better.

13 The Union's offer also helps address a key factor in well-trained officers leaving the State.
14 As you will see at Arbitration, our members are paid far less than other officers in the State. They
15 are also one of the only law enforcement unions that does not provide education or longevity
16 incentives. As a result, there is immense turnover. This not only wastes the State's money, it
17 also puts our public at a higher risk.

18 **II. The Union's Seniority Article.**

19 The Union would like some element of seniority. Most law enforcement Collective
20 Bargaining Agreements in Nevada are much broader than the offer the Union has made. The
21 Union is seeking merely that seniority be a tie-breaking mechanism for scheduling, equipment,
22 overtime, and leave. This request is reasonable.

23 **III. The Union's Body Cameras Article.**

24 The Union is seeking all uniformed employees to wear body cameras while on duty, and
25 to limit supervisor fishing expeditions. The Union understands that supervisors can view body
26 cameras, however, it would like to preclude supervisors from reviewing body camera footage for
27 the sole purpose of seeking policy violations, which runs counter to NRS Chapter 289. This

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APPENDIX PAGE ONLY



APPENDIX D

1 IN THE MATTER OF ARBITRATION
2 BETWEEN
3 STATE OF NEVADA,
4 Employer,
5 v.
6 NEVADA POLICE UNION,
7 Union.

Case Number: 210124-03033

**STATE OF NEVADA'S "LAST BEST AND
FINAL" OFFER AND SUPPORTING
STATEMENTS**

I. INTRODUCTION AND SUMMARY OF OUTSTANDING ISSUES

 Despite the State's best efforts, it has reached an impasse in negotiations with the Nevada Police Union (NPU) on three issues: (1) Body Cameras; (2) Seniority; and (3) Compensation. The State's Last Best and Final Offer is reasonable and represents the only lawful path forward.

 Up to this point, NPU has insisted that law enforcement supervisors should only be able to view body camera footage based on a "reasonable suspicion" or public complaint. NPU's position is contrary to existing law that establishes body camera footage as a public record, infringes on the State's inherent management rights, and is dangerous public policy. NRS 289.830(2) provides that body camera footage is a public record that is viewable by any person subject to very limited restrictions. NPU's proposal would create an absurd (and unlawful) result where law enforcement supervisors have less ability to access body camera footage than members of the general public. Moreover, the review, management, and utilization of body camera footage is a duty that the State owes the public. As such, NPU's demanded restriction on the State's ability to review this footage unreasonably limits the State's ability to ensure employee compliance with the State's body camera policy. This situation would not only have a negative impact on public safety, by limiting supervisory review of employee conduct, but it also impacts non-negotiable management rights under NRS 288.150(3) subsections (a), (c), and (d). For these reasons, NPU's proposal on body cameras must be deemed withdrawn from this arbitration in accordance with NRS 288.575(1).

 But, even if NPU's proposal was not withdrawn, the State's offer represents the most reasonable path forward. The State proposes that body camera footage shall be administered in accordance with

1 applicable state law and department policy. This will ensure that law enforcement agencies are able to
2 utilize body camera footage in training, managing, and any other way that it can be used as a tool to
3 improve the services being offered to the public.

4 Much like its position on body cameras, NPU's position on seniority also unlawfully impedes
5 management rights and presents unacceptable dangers to the public and law enforcement officers. NPU's
6 most recent proposal requires that seniority shall be the default factor in determining every issue,
7 including scheduling, equipment and training. This proposal blatantly infringes on the State's inherent
8 management rights and is non-negotiable under NRS 288.150. Moreover, this proposal represents a peril
9 to the public and peace officers. The default consideration in all issues cannot be which officer has been
10 there the longest, but instead must be the safety of the public and law enforcement officers. Under NPU's
11 proposal, instead of the agency deploying equipment based on the type of activity the officer is engaging
12 in, or the threat level of that activity, the agency would instead be hamstrung by deciding equipment
13 issues based on years of employment. This is irrational and poses unnecessary dangers to all parties
14 involved. This is just one of a long list of potential dangers posed by making seniority the default
15 consideration on scheduling, equipment, and training (and every other issue). The State's reasonable
16 proposal allows for seniority to be considered as a "tie-breaker" in certain scheduling situations, rather
17 than making it the default consideration in all matters as requested by NPU. This allows some advantage
18 to be given to employees who have been with law enforcement longer, while also recognizing that factors
19 like safety to the public and to the officers will remain the most important considerations in all matters.

20 Lastly, on the issue of compensation, the State's position represents the only lawful path forward
21 given the recent conclusion of the 2021 Legislative Session. Although the State offered a 3% cost-of-
22 living adjustment (COLA) for fiscal year 2022-23 during the Legislative Session, NPU failed to accept
23 this offer and allowed the Legislative Session to end without coming to an agreement. The 3% COLA
24 that the State offered was on par with the amount secured by other unions that came to an agreement with
25 the State prior to the close of the Session. Now that the Legislative Session has ended, it is impossible
26 for any additional funds to be allocated in the next biennium to NPU. For that reason, NPU can only
27 receive the 1% COLA for fiscal year 2022-23 that was allocated to it by the Legislature, the same amount
28 that the vast majority of State employees will receive. The authority to grant NPU any additional direct

1 compensation rests exclusively with the Legislature, and neither the Parties nor the Arbitrator has the
2 authority to agree to any amount that has not been allocated.

3 **II. ISSUES SUBJECT TO RESOLUTION**

4 **A. BODY CAMERAS**

5 **NPU's most recent proposal on Body Cameras from February 16, 2021:** *"No supervisor shall*
6 *review any body camera footage without reasonable suspicion of improper conduct by an officer or a*
7 *complaint filed by a member of the public."*

8 **The State's Last Best and Final Offer on Body Cameras:** *"Body cameras and any footage will*
9 *be administered in accordance with applicable State law and Department or Division policies and*
10 *procedures."*

11 **B. SENIORITY**

12 **NPU's most recent proposal on Seniority from February 16, 2021:** *"1. Seniority shall be the*
13 *default determining factor in issues including, but not limited to, scheduling, equipment, leave time,*
14 *mandatory overtime, transfers, and training. 2. Seniority shall be based on total continuous State*
15 *service."*

16 **The State's Last Best and Final Offer on Seniority:** *"Seniority shall be based on total*
17 *continuous State of Nevada service in a Category I Peace Officer position. Seniority may be considered,*
18 *subject to operational needs, for the purposes of scheduling or leave as a "tie-breaking" mechanism*
19 *when Departments or Divisions are approving or disapproving requests."*

20 **C. COMPENSATION**

21 **NPU's most recent proposal on Compensation from May 19, 2021:**

22 *Effective the first full pay period in July 2022, the salary schedule for Bargaining Unit G*
23 *will reflect an increase of two percent (2 %).*

24 *Employees covered under this Agreement who have continuous State service of more than*
25 *ten (10) years on July 1, 2022. will receive annual longevity bonus payments of one-five*
26 *hundred dollars.*

27 *Employees covered under this Agreement who have a bachelor's degree will receive an*
28 *annual education bonus payment of nine-hundred dollars beginning on July 1, 2022.*

Employees covered under this Agreement who have an associate's degree will receive an
annual education bonus payment of five-hundred dollars beginning on July 1, 2022. An

1 *employee who has a bachelor's degree will not be eligible for a bonus based on their*
2 *associate's degree.*

3 *Any uniform allowance checks shall be paid in a separate check.*

4 *The State shall provide its existing uniform allowance which shall be paid to Union*
5 *members in a check separate from their paycheck.*

6 **The State's Last Best and Final Offer on Compensation:**

7 *The compensation scheduled for employees in classified State service consists of pay*
8 *ranges for each salary grade. Within each salary grade are ten (10) steps. Employee pay*
9 *rates are set within a salary grade at a specific step.*

10 *Appendix __,¹ "Salary Schedules for Bargaining Unit G" details the salary schedule for*
11 *employees covered under this Agreement.*

12 *Effective July 1, 2022, the salary schedule for Bargaining Unit G will be administered in*
13 *accordance with NRS and NAC Chapter 284 and the Legislatively Appropriated Pay Bill, as set*
14 *forth in AB 493 (2021).*

15 **III. PROCEDURAL HISTORY**

16 **A. Executive Summary of Senate Bill 135 of the 2019 Legislative Session**

17 Collective bargaining for State employees was first authorized by Senate Bill 135 of the 2019
18 Legislative Session ("SB 135").² The State's bargaining laws are codified in NRS 288.500 et seq. While
19 this new process borrowed from existing collective bargaining provisions in Nevada law, tailored to local
20 government employers, it also contained many entirely new provisions, addressing separation of powers,
21 budgetary and other issues unique to State government.³ Therefore, there are several notable differences
22 between the rules governing negotiations for local law enforcement agencies and negotiations related to
23 State law enforcement agencies.

24 State law directs the Governor to designate a representative to negotiate collective bargaining
25 agreements and work with employee organizations on behalf of the Executive Department.⁴ The

26 ¹ The salary schedule detailing pay for Bargaining Unit G employees is not yet available. This
27 schedule is completed by the Nevada Division of Human Resource Management (DHRM) in the months
28 following the completion of the Legislative Session in accordance with the Legislature's finalized Pay
Bill. DHRM generates salary schedules for all State employees, regardless of coverage under any
collective bargaining agreement.

² https://www.leg.state.nv.us/Session/80th2019/Bills/SB/SB135_EN.pdf (last seen 6/19/21)

³ For example, *See Generally* NRS 288.505(1)(c) requiring the inclusion of a non-appropriation
clause in any collectively bargained agreement and article 10 of the Constitution of Nevada vesting the
sole power to tax and raise funds in the Legislature.

⁴ NRS 288.565.

1 Governor designated the Department of Administration, Division of Human Resource Management,
2 Labor Relations Unit (“LRU”) to conduct negotiations on behalf of the many Agencies under the
3 Executive Department.

4 State law also recognizes eleven groups of employees authorized to collectively bargain with the
5 Executive Department.⁵ Unlike local government bargaining where units are formed by “communities of
6 interest,” the Legislature has designated eleven groups representing established job classes that span
7 across multiple State Agencies.⁶ To date, four different employee organizations have been appointed the
8 exclusive representatives⁷ of seven of these units, Units A, E, F, G, H, and I by the Employee
9 Management Relations Board (EMRB).

10 **1. The Bargaining Process, Mandatory Subjects, and Management Rights**
11 **reserved to the Executive Department “Without Negotiation”**

12 Fiscal Year 2022 (July 1, 2021 – June 30, 2022) is the first year NRS 288.500 could be
13 implemented. Per statute, the term of each collective bargaining agreement implemented in response to
14 SB 135 “must begin on July 1 of an odd-numbered year and must end on June 30 of the next odd-
15 numbered year.”⁸

16 Pursuant to NRS 288.500(2)(a), and NRS 288.150, “the scope of mandatory bargaining is *limited*
17 to” those subjects listed in subsection 2 of NRS 288.150⁹

18 There are also several subjects that are reserved to the Executive Department *without negotiation*,
19 termed “management rights.” This means the Union cannot lawfully take the Executive Department to
20 impasse on these management rights, and the Arbitrator cannot lawfully bind the Executive Department
21 with respect to non-mandatory items. These are codified at NRS 288.150(3).

22 In addition, SB 135 included a unique conflict of laws provision that does not apply to local
23 government employers. This provision specifies that the Executive Department is *not authorized* to
24 negotiate any provisions that would conflict with several Nevada statutes and regulations. In accordance

25 ///

26 ⁵ NRS 288.515(1).

27 ⁶ *Id.*

28 ⁷ NRS 288.520 to NRS 288.535

⁸ NRS 288.550.

⁹ “Insurance benefits” are intentionally deleted in accordance with NRS 288.500(2).

1 with the conflict of laws per NRS 288.505(5), any collective bargaining agreement cannot contain terms
2 that conflict with NRS Chapter 289 (Peace Officers and Law Enforcement Personnel).

3 **2. Submittal of the Contract to the Board of Examiners and the Legislature**

4 Once the final negotiated contract is ratified and signed by the Union and the LRU, it must be
5 submitted to the Board of Examiners for independent review and approval at a public hearing.¹⁰ The State
6 Board of Examiners “shall consider the fiscal impact of the agreement,” before approving the contract.¹¹
7 It is only after the Board of Examiners approves of the contract that it may be implemented by the
8 Executive Department.¹² If a provision of the collective bargaining agreement does not require the
9 Legislature to be given effect, then the provision becomes effective in accordance with the terms of the
10 agreement.¹³

11 However, if any provision of the contract requires an act of the Legislature to be given effect,
12 then the “Governor shall *request the drafting of a legislative measure* pursuant to NRS 218D.175 to
13 effectuate the provision,” which “becomes effective, if at all, on the date on which the act of the
14 Legislature becomes effective.”¹⁴ An Act of the Legislature is required for items of direct compensation.

15 **3. Items of Direct Monetary Compensation**

16 Unlike the funding rules that apply to local government employers during collective bargaining,
17 the Legislature expressly prohibits the State from increasing monetary benefits through the collective
18 bargaining process without the express consent of the Legislature. Traditionally, local governments,
19 funded annually and by different sources of income, have the authority to amend and/or augment their
20 budgets after they are adopted, in order to increase funding for negotiated changes to compensation
21 (including, in situations where an arbitrator directs the local government to increase compensation
22 through an interest arbitration). However, in enacting SB 135, the Legislature expressly retained its
23 “power of the purse,” placing guard rails on “items of direct compensation” that apply exclusively to the
24 Executive Department - which is biannually funded by the Legislature. The differences in the applicable
25 funding statutes demonstrate that the State’s new collective bargaining process was established around

26 ¹⁰ NRS 288.555

27 ¹¹ NRS 288.555(3)

28 ¹² *Id.*

¹³ NRS 288.560(1)

¹⁴ NRS 288.560(2)

1 the notion that any items of direct compensation must be submitted to the Legislature by the LRU for its
2 consideration prior to the conclusion of the regular biannual Legislative Session. Therefore, the rules
3 governing the funding for State collective bargaining agreements are very different from the rules that
4 apply to local government collective bargaining agreements.

5 In addition, the Legislature also granted the Governor express authority to unilaterally propose,
6 *for the Legislature's consideration*, "any amount of money the Governor deems appropriate for the
7 salaries, wage rates or any other form of direct monetary compensation for employees," notwithstanding
8 the negotiated amount. NRS 288.510. The Governor must balance the proposed Executive Budget using
9 the December, 2020, Economic Forum, which projects expected revenues and expenditures for the
10 upcoming biennium.¹⁵ Therefore, unlike the process applicable to local government contracts, the
11 Governor has been granted unilateral authority to determine and then apply what he or she believes is the
12 appropriate in terms of compensation under a CBA.

13 As such, the LRU does not have the authority to bind the State on items of direct compensation
14 during negotiations. Instead, the LRU's authority is limited to making recommendations to the Board of
15 Examiners and the Legislature on such items, and it may only make such recommendations during the
16 Legislative Session. The Legislature's Bi-Annual Sessions last for 120 days. The "120-Day Calendar"
17 begins on February 1 and ends, *sine die*, on July 1st.¹⁶ This Calendar requires Budget Bills to be
18 Introduced to the Legislature no later than the 115th day of Session.¹⁷ In this case, Budget Bills, including
19 bills related to negotiated compensation were required to be submitted on or before May 26, 2021.

20 Upon the Board of Examiners approval, if a provision of a collective bargaining agreement
21 requires an act of the Legislature to be given effect, then "[t]he Governor shall request the drafting of a
22 legislative measure pursuant to NRS 218D.175 to effectuate the provision." See NRS 288.560(2)(a).
23 Importantly, NRS 218D.175 is limited to requests "any time before or during a *regular session*." NRS
24 218D.175(2). Even after the Governor's request is made, the provision only goes into effect, "if at all, on

25
26 ¹⁵ NRS 353.230(4) ("All projections of revenue and any other information concerning future state
27 revenue contained in the document must be based upon the projections and estimates prepared by the
28 Economic Forum pursuant to NRS 353.228.").

¹⁶ *State of Nevada 2021 Legislative Session, 120-Day Calendar*, retrieved at
https://www.leg.state.nv.us/Session/81st2021/Docs/120-day_calendar.pdf (last viewed 6/20/21).

¹⁷ *Id.*

1 the date on which the act of the Legislature becomes effective.” NRS 288.560(2). Additionally, each
2 collective bargaining agreement must include a “nonappropriation clause that provides that any provision
3 of the collective bargaining agreement which requires the Legislature to appropriate money.”¹⁸ The
4 Statute again addresses appropriations in its conflict of laws section, stating “the provision of the
5 agreement prevails unless the Legislature is required to appropriate money to implement the provision,
6 within the limits of legislative appropriations and any other available money.”¹⁹

7 Notably, the Legislature contemplated the effects of the Legislative Budget timeline on collective
8 bargaining prior to passing SB 135. However, in the end, it maintained that items of direct compensation
9 must be finally established by the Legislature and, as a result, “Arbitrators cannot bind the State to the
10 expenditure of funds.”²⁰ Specifically, when discussing the impact of the timeline, the Legislature notes:

11 Section 36 speaks to a two-year term for collective bargaining agreements. Agreements
12 would be effective in odd numbered years to coincide with the budget process. The
13 exclusive representative of the employees and the State would bargain an agreement to
14 the extent it requires the appropriation of funds, which would be addressed in the biennial
budget. The collective bargaining agreement would be effective July 1 of the odd-
numbered year through June 30 of the next odd-numbered year. There would be a
replacement agreement the following July 1.

15 Section 38 creates the timeline for collective bargaining so it complies with the State's
16 budget process. We understand, as in all states, appropriation committees need to know
17 what they are expected to try to approve in advance of making those decisions. Section 38
spells that out.

18 Section 39 describes what the parties do in the event they cannot come to an agreement
19 voluntarily. The first step is a voluntary mediation process where a professional will try
to get the parties to agree through advice, prodding, etc.

20 In the absence of an agreement, sections 40 and 41 speak to a binding arbitration process.
21 Importantly, the arbitration process is not binding on the Legislature, it is binding on the
22 chief executive. That chief executive, depending upon the arbitrator's decision, then
23 offers up that decision—to the extent that it requires any expenditure funds—to the
Legislature for approval. The Legislature retains its discretion to disapprove of an
arbitrator's award involving the appropriation of money. Only the Legislature
decides when money is spent.

24 Arbitrators cannot bind the State to the expenditure of funds.²¹

26 ¹⁸ See NRS 288.505(1)(c)

27 ¹⁹ See NRS 288.505(3)(c).

28 ²⁰ See *discussion contained in Senate Committee on Government Affairs, 80th Legislature, April 4, 2019, Page 11, retrieved at <https://www.leg.state.nv.us/Session/80th2019/Minutes/Senate/GA/Final/804.pdf> (last viewed 6/20/2021).*

²¹ *Id.* at 10-11.

1 SENATOR KIECKHEFER: More broadly, the system with bargaining is trying to sync
2 up with our budgeting system. The way I read the bill, agreements would theoretically
try to be executed sometime in March of odd-numbered years. Is that correct?

3 MR. KREISBERG: Yes.²²

4 The statutes resulting from SB 135 establish a process and schedule by which negotiations coincide with
5 the Legislative Budget.²³ This schedule allows the parties to collective bargaining to begin negotiations
6 in November and presumably provides sufficient time for final recommendations related to budgetary
7 matters to be submitted to the Legislature prior to the close of the regular session.

8 Once all of the budget proposals are introduced, the Legislature has three options, it may: (1)
9 select the negotiated amount; (2) select the amount recommended by the Governor (if different than the
10 negotiated amount); or (3) select another amount entirely. Practically speaking, this Legislative scheme
11 means that the LRU's authority to offer items on direct compensation for the Legislature's consideration
12 ends at the close of the regular legislative session, on *sine die*, per NRS 218D.175(2). Past *sine die*, the
13 LRU cannot deviate from the Legislature's approved "Pay Bill."²⁴ As such, proposing any amount above
14 what the Legislature approved would be an empty promise that neither LRU nor the State could
15 implement. In short, unlike local government employers who, under the current statutory scheme related
16 to local government collective bargaining, are able to amend their budgets to provide greater financial
17 benefits after the close of their budgeting process, the State simply does not have the authority to amend
18 the Pay Bill after it is approved by the Legislature. Accordingly, the State is limited to offering and
19 applying only those benefits approved under the Pay Bill.

20 Since November 2020, the LRU negotiated to completion the initial collective bargaining
21 agreements for the majority of the State's represented employees. These contracts were ultimately ratified
22 by the membership of the respective Unions (AFSCME, NSLEOA, and BBFFA), and approved by the
23

24 ²² *Id.* at 18.

25 ²³ See NRS 288.565 (the parties shall begin "negotiations concerning a collective bargaining
26 agreement . . . on or before November 1 of each even-number year"); See also NRS 288.570 (if the parties
27 do not reach a collective bargaining agreement they may request a mediator "on or before February 1 of
an odd-numbered year"); see also NRS 288.575 (if an arbitrator is required, "the arbitrator shall begin
arbitration proceedings on or before March 1 or any later date set by agreement of the parties" and "the
arbitrator shall render a decision on or before March 15 or any later date set by agreement of the parties").

28 ²⁴ Compensation for all State Employees was addressed in Assembly Bill 493 of the 81st (2021)
Regular Legislative Session, ("The Pay Bill") which was introduced to the Legislature by the Governor
as scheduled on May 26, 2021, the 115th day of session.

1 Board of Examiners as required by 288.555; each contract was approved on or before May 25, 2021. No
2 bad faith bargaining claims were filed by or against the State during negotiations with these unions.
3 Further, each of the other contracts contains compensation provisions which were approved by the Board
4 of Examiners and the Legislature. The compensation amounts negotiated with these unions were
5 appropriated by the Legislature as introduced in the Pay Bill on May 26, 2021.²⁵ The 2021 Legislative
6 Session ended just six days later on June 1, 2021.

7 Although LRU engaged in good faith negotiations with NPU and attempted to resolve its initial
8 contract with NPU prior, the parties came to impasse over the three items discussed above: Body
9 Cameras, Seniority, and Compensation.

10 **B. Overview of the State Budget Process for Fiscal Years 2021 – 2023**

11 **i. COVID-19 Pandemic and Financial Outlook July 2020**

12 At the Governor's request, the Legislature began a Special Session on July 8, 2020, to address
13 severe budget cuts in response to the immediate need to balance the State's budget following the
14 precipitous global economic fallout of the COVID-19 pandemic.²⁶ The Legislature was confronted with
15 an economic crisis, described in the Governor's Nevada COVID-19 Fiscal Report & Fiscal Year 2021
16 budget summary, reflecting a General Fund shortfall of approximately \$1.2 billion in Fiscal Year 2020-
17 21.²⁷

18 By July of 2020, the Governor's emergency proposals included over \$500 million in reductions
19 to agency budgets, furlough days for state employees through June 2021, and a decision to postpone
20 filling more than 690 vacant state positions.²⁸ The Governor stated "[n]one of us could have predicted a
21

22 ²⁵ Assembly Bill 493 of the 81st (2021) Regular Legislative Session (introduced May 26, 2021),
23 the "Pay Bill", at 1, retrieved at <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8234/Text>
(last seen Jun. 14, 2021).

24 ²⁶ See *A Proclamation by Governor Steve Sisolak To Convene a Special Session of the Nevada*
25 *State Legislature* (July 7, 2020), available at
[http://gov.nv.gov/News/Proclamations/2020/_Proclamation_by_Governor_Steve_Sisolak_to_Convene](http://gov.nv.gov/News/Proclamations/2020/_Proclamation_by_Governor_Steve_Sisolak_to_Convene_a_Special_Session_of_the_Nevada_State_Legislature/)
26 *_a_Special_Session_of_the_Nevada_State_Legislature/* (last viewed 7/13/2021).

27 ²⁷ See *Governor Sisolak releases Nevada COVID-19 Fiscal Report & Fiscal Year 2021 budget*
28 *summary ahead of Legislative Special Session*, available at [https://nvhealthresponse.nv.gov/wp-](https://nvhealthresponse.nv.gov/wp-content/uploads/2020/07/7.06-release.pdf)
27 *content/uploads/2020/07/7.06-release.pdf* (last viewed 7/10/20).

28 ²⁸ Governor Sisolak's Fiscal Year 2020-21 Budget Summary July 6, 2020 available at
<https://nvhealthresponse.nv.gov/wp-content/uploads/2020/07/Nevada-COVID-19-Fiscal-Report.pdf>
(last viewed 6/19/21)

1 pandemic of this magnitude and the global economic crisis that has followed. The world looks incredibly
2 different since I first approved our State's biennial budget back in June 2019.”²⁹

3 In November 2020, LRU began negotiations for initial contracts with NPU, AFSCME, NSLEOA,
4 and BBFFA amidst this atmosphere of fiscal uncertainty.

5 **ii. The Governor's Proposed Executive Budget Defined the \$9 Million of**
6 **Funding Available for Negotiating Items of Direct Compensation**

7 The ending General Fund balance of the Governor's Proposed Executive Budget totaled
8 \$3,473,560 for Fiscal Year 2021-22 and \$30,265,483 for Fiscal Year 2022-23.³⁰ These total amounts
9 account for the “minimum 5% ending fund balance per NRS 353.213.”³¹ Based on this funding, the State
10 assessed it had an inability to pay for increases for Fiscal Year 2021-22. However, the end fund balance
11 for Fiscal Year 2022-23 allowed for some increases. Of the \$30,265,483, the Governor's Office dedicated
12 \$23 million to the LRU with the direction that this amount should be provide all State employees with a
13 1% Cost of Living Adjustment (COLA) for Fiscal Year 2022-23. The Governor's Finance Office
14 calculated the total cost of the 1% COLA for all State employees at \$14 million. The LRU was thus
15 authorized to offer a total of \$9 million for negotiations with 7 represented collective bargaining units.³²
16 The State explained this situation to NPU during negotiations.³³

17 **iii. The 81st Legislative Session**

18 The 81st (2021) Session of the Nevada Legislature began on February 1, 2021, and adjourned *sine*
19 *die* on June 1, 2021.³⁴ Compensation for all State Employees was addressed in Assembly Bill 493 of the
20 81st (2021) Regular Legislative Session, (“The Pay Bill”) which was introduced to the Legislature by the
21 Governor as scheduled on May 26, 2021, the 115th day of session.³⁵

22 ²⁹ *Id.*

23 ³⁰ State of Nevada, 2021-2023 Executive Budget at pg. 75, retrieved at
24 https://budget.nv.gov/uploadedFiles/budgetnvgov/content/StateBudget/2022-2023/FY2021-23_ExecutiveBudgetBook_WO.pdf (last viewed June 15, 2021).

25 ³¹ *Id.*

26 ³² *Id.*

27 ³³ In determining the amount of money the State could viably propose for submittal to the
28 Legislature for Fiscal Years 2021-22 and 2022-23, the LRU relied on the Governor's Proposed Executive
Budget, which is declared confidential by NRS 353.205 until it is transmitted to the Legislature.

29 ³⁴ Overview of the 81st (2021) Session of the Nevada Legislature, retrieved at
<https://www.leg.state.nv.us/Session/81st2021/> (last seen June 14, 2021).

30 ³⁵ See Assembly Bill 493 of the 81st (2021) Regular Legislative Session, the (Pay Bill), retrieved
at <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8234/Text> (last seen Jun. 14, 2021); see

On May 11, 19, and 25, respectively, the Board of Examiners approved the following compensation provisions for other collective bargaining groups that reached agreements with the State to submit as a “legislative measure pursuant to NRS 218D.175 to effectuate the provisions” of the contracts:³⁶

Nevada State Law Enforcement Officers’ Association (NSLEOA)/ Nevada Association of Public Safety Officers (NAPSO), CWA Local 9110: Effective the first full pay period in July 2022, the salary schedules for Bargaining Unit H will reflect a two percent (2%) increase. If a State-wide increase is granted to all employees of the State, employees covered under this Agreement will also receive that additional increase.³⁷

Battle Born Fire Fighters Association (BBFFA), Local 3895: “Effective July 2022, the salary schedules for Bargaining Unit K will reflect a three percent (3%) increase.”³⁸

American Federation of State, County, & Municipal Employees (AFSCME), Local 4041: “Effective July 1, 2022, the salary schedules for Bargaining Units A, E, F, and I will reflect an increase of three percent (3%).”³⁹

On May 26, the Governor’s Finance Office submitted the compensation provisions of the AFSCME, NSLEOA, and BBFFA Collective Bargaining Agreements as part of the Pay Bill, for the Legislature’s consideration.

On May 31, the Legislature passed the Pay Bill with the recommended 1% COLA for unrepresented State employees and State employees ineligible for union representation in Fiscal Year 2022-23, and the collectively negotiated provisions for the represented employees. No special appropriation was made for the employees of Unit G, and they were treated the same as other State

also 81st Legislative Session 120-Day Calendar, retrieved at
https://www.leg.state.nv.us/Session/81st2021/Docs/120-day_calendar.pdf (last seen June 14, 2021).

³⁶ NRS 288.560

³⁷ State of Nevada & Nevada State Law Enforcement Officers’ Association (NSLEOA)/ Nevada Association of Public Safety Officers (NAPSO), CWA Local 9110, Collective Bargaining Agreement, July 1, 2021 – June 30, 2023, retrieved at
https://budget.nv.gov/uploadedFiles/budgetnv.gov/content/Meetings/Board_of_Examiners/2021/05-11-2021_BOE_Packet.pdf. (Pages 229-333)

³⁸ State of Nevada & Battle Born Fire Fighters Association (BBFFA), Local 3895, Collective Bargaining Agreement, July 1, 2021 – June 30, 2023, retrieved at
https://budget.nv.gov/uploadedFiles/budgetnv.gov/content/Meetings/Board_of_Examiners/2021/05-19-2020_Agenda_Packet.pdf (last seen June 15, 2021) (Approved by the Board of Examiners on May 19, 2021).

³⁹ State of Nevada & American Federation of State, County, & Municipal Employees (AFSCME), Local 4041, Collective Bargaining Agreement, July 1, 2021 – June 30, 2023, retrieved at
https://budget.nv.gov/uploadedFiles/budgetnv.gov/content/Meetings/Board_of_Examiners/2021/05-25-2021_BOE_Packet.pdf (last seen June 15, 2021) (Approved by the Board of Examiners on May 25, 2021).

employees not included in a unit with a collective bargaining agreement ratified by its members and approved by the Board of Examiners.

C. Overview of 2020-2021 Negotiations Between NPU and the State

The State and NPU, collectively the “Parties,” officially began negotiations on November 6, 2020 per NRS 288.565. NPU is the designated representative for unit G, Category 1 Peace Officers, by Order of the Government Employee-Management Relations Board (EMRB) on January 14, 2020.⁴⁰ Table 1 of Order Item No. 856 reflects a total 735 employees in Unit G. After the initial meeting, the parties met five additional times: on December 14, 2020, January 12, 2021, January 22, 2021, January 26, 2021, and February 9, 2021. On February 9, 2021, NPU declared impasse on the three articles before the Arbitrator today (Body Cameras, Seniority, and Compensation).

After NPU declared impasse, the State and NPU engaged in six additional mediation sessions with a mediator assigned by the Federal Mediation and Conciliation Service (“FMCS”) in accordance with NRS 288.570; meeting on March 9, 2021, March 22, 2021, March 29, 2021, April 20, 2021, April 21, 2021, and May 10, 2021. NPU and the State also exchanged counter-offers through May 19, 2021. Several additional negotiation and mediation dates were offered by the State but were declined by NPU. Mediation was ultimately unsuccessful, and was discontinued by the FMCS Mediator pursuant to NRS 288.575 on May 20, 2021.

Negotiating sessions with the NPU proved difficult. On multiple occasions, NPU refused to offer proposals or counter proposals, which is a well-recognized indicator of bad faith bargaining.⁴¹ Also, NPU often rejected LRU’s proposals shortly after transmittal, but either refused to offer counterproposals or submitted counterproposals that were substantially the same those initially provided on December 14, 2020. Such rejections and refusals to offer meaningful counter proposals have occurred throughout the negotiation process, and have delayed the resolution of the instant agreement.⁴²

⁴⁰ *Petition for Designation as the Exclusive Representative of a Bargaining Unit Pursuant to Senate Bill 135 (2019)*, EMRB Item No. 856, retrieved at <https://emrb.nv.gov/uploadedFiles/emrbnv.gov/content/Decisions/856%202019-023%20and%20024.pdf> (last seen 6/19/21).

⁴¹ See *International Brotherhood of Electrical Workers, Local 1245 vs. City of Fallon*, Item No. 269, EMRB Case No. A1- 045485 (7/25/91).

⁴² While LRU recognizes NPU’s right to take a “hard bargaining position” on its proposals, it points out this situation to illustrate the fact that NPU refused to move from its position on a number of

1 On March 8, 2021, NPU filed a Complaint against the State before the EMRB, alleging three
2 counts of bad faith bargaining. On March 30, 2021, the State filed a Motion to Dismiss, and its Answer
3 containing Counterclaims against NPU; alleging five counts of bad faith bargaining against NPU. *Id.* On
4 May 5, 2021, the Parties reached a settlement dismissing their respective claims and reached tentative
5 agreements on all except for three articles before the Arbitrator: (1) Body Cameras, (2) Seniority, and (3)
6 Compensation.

7 The State has endeavored to find common ground with NPU on the outstanding issues, but has
8 consistently asserted that NPU's proposals on Body Cameras and Seniority are unlawful or are not
9 otherwise subject to negotiation as they violate the State's management rights per NRS 288.150(3)
10 ("subject matters which are not within the scope of mandatory bargaining and which are reserved to the
11 [executive department] without negotiation."). Additionally, the State consistently expressed concern to
12 NPU's Chief Negotiator about the impending Legislative deadlines and the need to come to agreement
13 on items of direct compensation prior to the close of Legislative Session. NPU dismissed these deadlines.
14 Additionally, NPU failed to provide information establishing the expected costs for its compensation
15 proposals or substantiate its assertions about costs by supplying its calculations and/or basis for its
16 determination of costs when this information was requested by LRU during negotiations.⁴³

17 NPU first transmitted its proposal on Compensation to the State on November 4, 2020.⁴⁴
18 However, the State and NPU did not begin discussing economic items until February 9, 2021, as the
19 Governor's Proposed Budget is confidential by law until transmitted to the Legislature.⁴⁵ Thus, the LRU
20 was unable to discuss compensation until the Governor published the Proposed Budget on January 18,
21 2021, and NPU was unavailable to meet with the State until February 9, 2021.

22 i. Ground Rules between the State and NPU

23 In the Ground Rules, the State and NPU agreed on a series of statements reflecting the State's
24 authority with respect to economic items:

25 _____
26 articles as early as December 2020, but failed to take steps to pursue resolution of its "hard" position in
time for the conclusion of the Legislative Session.

27 ⁴³ LRU requested information regarding NPU's calculations related to compensation because its
own calculations related to the cost of NPU's proposals did not align with NPU's assertions about
expected cost.

28 ⁴⁴ NPU's Full Proposed Contract, Exhibit 1.

⁴⁵ NRS 353.205.

1 The undersigned do not have the authority to supersede the special rights reserved to the
2 Governor pursuant to NRS 288.510.

3 The undersigned do not have the authority to supersede the appropriation rights reserved
4 to the Legislature pursuant to NRS 288.505 and NRS 288.560.

5 The parties understand the proposed biennial budget remains confidential pursuant to NRS
6 353.205(3) until it is released to the public by the Budget Division of the Office of
7 Finance.

8 Each team will submit its non-economic proposals and will reach tentative agreement on
9 those proposals and contract language before discussing economic proposals, per section
10 A.8. above.” Ground Rules, D.2.⁴⁶

11 **ii. The State’s December 7, 2020, Presentation**

12 On December 7, 2020, the State gave a presentation to NPU providing an overview of the
13 Legislative and Budget Process.⁴⁷ This presentation comprehensively identified the mechanics of the
14 budgetary process during Legislative session, including the Executive Budget Development process, the
15 various funds, and identified the Legislative timelines.

16 **iii. The State and NPU’s Latest Proposals and Calculations**

17 The State offered NPU a 3% COLA for submittal to the Legislature per NRS 288.560, to “request
18 the drafting of a legislative measure pursuant to NRS 218D.175 to effectuate the provision” of the
19 agreement. The agreement(s) would become effective “if at all, on the date on which the act of the
20 Legislature becomes effective.”⁴⁸ The State’s offer prior to the submission of the Pay Bill recognized the
21 need for ratification, approval by the Board of Examiners, and inclusion in Pay Bill for appropriation by
22 the Legislature. The State’s final proposal to NPU for a 3% COLA for year two of the biennium would
23 result in a fiscal impact of \$2,374,217. NPU and the State did not reach agreement on compensation, so
24 no agreement was submitted to NPU’s membership for ratification, no ratified agreement was presented
25 to the Board of Examiners for approval under NRS 288.555, and no approved agreement was included
26 in the Pay Bill.

27 ///

28 ///

⁴⁶ See a copy of the “Ground Rules” attached as Exhibit 2.

⁴⁷ “Overview of State Budget Process and 32nd Special Session Legislation for NPU” attached as
Exhibit 3.

⁴⁸ NRS 288.560(2)(b).

1 **IV. SCOPE OF ARBITRATION**

2 There are two threshold matters that define the Arbitrator's authority in this proceeding: (1) the
3 arbitrator must select one of the two final offers of the parties and may not make any revisions or
4 amendments to either offer; and (2) the final award may not supersede management rights or exceed or
5 conflict with the 2021 Legislative Appropriations granting NPU a 1% Cost of Living Adjustment
6 (COLA) in fiscal year 2022-2023.

7 **A. The Arbitrator must select the final offer that is most reasonable based on the**
8 **position of each party as to each issue and the contractual terms in each offer.**

9 NRS 288.580 clearly defines the arbitrator's task during arbitration. It says "for issues in dispute
10 after arbitration proceedings are held pursuant to NRS 288.575, the arbitrator shall incorporate either the
11 final offer of the Executive Department or the final offer of the exclusive representative into his or her
12 decision." NRS 288.580(1). "The decision of the arbitrator shall be limited to a selection of one of the
13 two final offers of the parties." *Id.* "The arbitrator shall not revise or amend the final offer of either party
14 on any issue." To determine which final offer to incorporate into his or her decision, the arbitrator shall
15 assess the reasonableness of: "(a) the position of each party as to each issue in dispute; and (2) the
16 contractual terms and provisions contained in each final offer." NRS 288.580(2).

17 In this case, the Arbitrator must select either the State's final offer or NPU's final offer - based
18 on the reasonableness of those offers. There is, however, an important step that precedes the Arbitrator's
19 evaluation of the final offers. In the event that a mediator "determines that his or her services are no
20 longer helpful . . . [a]ny proposal that conflicts or is otherwise inconsistent with any provision of state
21 law, other than the provisions of chapter 284 and 287 of NRS, shall be considered withdrawn by the
22 proposing party when mediation is discontinued." NRS 288.575(1). In this case, the FMCS Mediator
23 determined that his services were no longer helpful and terminated mediation on May 20, 2021, thereby
24 invoking NRS 288.575(1).

25 The parties agreed on a briefing schedule intended to address this procedural exception. If, after
26 this briefing schedule, any article is determined to be "considered withdrawn" by the Arbitrator, then the
27 article will be struck from the proposing party's Last Best and Final Offer. This briefing schedule ensures
28 decisions about these articles will be made prior to the hearing scheduled to begin on July 19, 2021.

1 Therefore, the Arbitrator's selection of either party's Final Offer must exclude any proposal which must
2 be considered withdrawn in accordance with NRS 288.575(1).

3 **B. The final award may not supersede management rights or exceed or conflict with**
4 **2021 Legislative appropriations.**

5 Another threshold matter is one of authority. The relevant statutes illustrate that the final award
6 may not: (1) encroach on the State's management rights under NRS 288.150; or (2) exceed or conflict
7 with Legislative appropriations.

8 First, the final award may not bind the State with respect to management rights. The scope of
9 mandatory bargaining, and thus the authority of the Arbitrator, is limited to those items listed in NRS
10 288.150, as defined by NRS 288.500(a). In contrast, neither NPU nor the Arbitrator may bind the
11 employer to rights that were reserved specifically to management without negotiation.⁴⁹ One of the main
12 reasons for impasse on both the Body Camera and Seniority Articles proposed by NPU is the proposals
13 significant and impermissible infringement on the State's inherent managerial rights. Therefore, the
14 arbitrator may not select NPU's contract if any of the articles presented by NPU contain management
15 rights, as listed in NRS 288.150(3).

16 Second, the arbitrator does not have the authority to issue a final compensation amount that
17 exceeds or conflicts with the 2021 Legislature's final appropriations. As explained above, the Legislature
18 retained the power of the purse, placing clear guardrails on items of direct compensation during collective
19 bargaining. *See* Senate Committee on Government Affairs April 4, 2019, Page 11 ("Arbitrators cannot
20 bind the State to the expenditure of funds").⁵⁰ In this respect the Executive Department, and by
21 extension, the Arbitrator, has limited authority on items of direct monetary compensation.

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27 ⁴⁹ *Id.*; *see* NRS 288.150.

28 ⁵⁰ *See* Senate Committee on Government Affairs April 4, 2019, Page 11 ("Arbitrators cannot
bind the State to the expenditure of funds"), available at
<https://www.leg.state.nv.us/Session/80th2019/Minutes/Senate/GA/Final/804.pdf>

1 V. ARGUMENT

2 A. The State's Position on body cameras is the most reasonable because it is
3 consistent with the law, most beneficial to the public, and most helpful for law
4 enforcement agencies.

5 i. NPU's proposal on body cameras violates NRS 289.830 and Nevada's Public
6 Records Law.

7 NPU's most recent proposal seeks to limit supervisors' ability to review body camera footage to
8 only instances of "reasonable suspicion of improper conduct by an officer or a complaint filed by a
9 member of the public." A person's ability to view body camera footage is already made clear in NRS
10 289.830 and Nevada's Public Record Law (codified in chapter 239 of NRS), and cannot be abrogated by
11 a collective bargaining agreement. *See also Milwaukee J. Sentinel v. Wisconsin Dep't of Admin.*, 2009
12 WI 79, ¶ 25, 319 Wis. 2d 439, 461, 768 N.W.2d 700, 711 ("If a right is given to the public by statute,
13 such as the right to seek disclosure of public records, the legislature generally may take that right away
14 through legislative action in compliance with constitutional mandates. However, since [the article
15 limiting access to a public record] of the collective bargaining agreement was not enacted by bill, it
16 remains a contractual provision. It is not 'law' . . . that is an exception to the Public Records Law").

17 NRS 289.830(2) plainly states that "any record made by a portable event recording device
18 pursuant to this section is a public record." Generally, laws relating to any person's ability to view public
19 records are found within Nevada's Public Record Law – NRS 239. Under NRS 239.010(1), "unless
20 otherwise declared by law to be confidential, all public books and public records of a governmental entity
21 must be open at all times during office hours to inspect by any person." The law provides that specific
22 statutes may place certain limitations on this general provision. NRS 289.830 provides only two
23 exceptions to any person's ability to view body camera footage: (1) the footage can only be requested on
24 a per incident basis and (2) the footage is available for inspection only at the location where the record is
25 held if the record contains confidential information that may not be otherwise redacted. *See* NRS
26 289.830(2). Any additional restrictions on a person's ability to view body camera footage must be
27 provided in law, not contractual agreement.

28 The State cannot legally agree to a contractual term that would limit any person's access to body
camera footage beyond what is already provided in NRS 289.830, and therefore any language which

1 restricts supervisor access to body cameras (including NPU's most recent proposed language) must be
2 considered withdrawn for conflicting with State law under NRS 288.575(1).

3 Additionally, NPU's most recent proposal unlawfully impedes law enforcement agencies'
4 statutory requirement to establish disciplinary measures for peace officers who "(1) fail to operate a
5 portable event recording device in accordance with any departmental policies; (2) intentionally
6 manipulate a video recorded by a portable event recording device; or (3) prematurely erase a video record
7 by a portable event recording device." NRS 289.830(1)(f). NPU's proposed language requiring
8 "reasonable suspicion" or a public complaint would foreclose law enforcement agencies from regularly
9 auditing body camera footage to ensure compliance with statutorily required policies, as well as hinder
10 law enforcement agencies' ability to develop additional policies and procedures under NRS 289.830(1).

11 For the reasons set out above, the State's Last Best and Final Offer regarding body cameras is not
12 just reasonable, it is the only offer that the State can make in accordance with existing law. NPU's
13 proposed terms would be contrary to existing statute and therefore must be withdrawn from the arbitration
14 process.

15 **ii. NPU's body camera Proposal must be withdrawn because it impermissibly**
16 **conflicts with the State's managerial rights.**

17 Upon receipt of NPU's body camera proposal, the State immediately asserted its management
18 right regarding the maintenance and review of body camera footage, and informed NPU that it would not
19 agree to waive the right. The State cannot negotiate a proposal related to body cameras which impacts its
20 right and its duty to manage body camera footage. NRS 288.150 provides that "those subject matters
21 which are not within the scope of mandatory bargaining" include the ability to set work performance
22 standards, safety of the public, the quality and quantity of services being offered to the public, and the
23 means and methods of offering those services.⁵¹ By proposing that supervisors' access to body camera
24 video be limited to instances of reasonable suspicion or public complaint, NPU appears to be considering
25 only on the disciplinary impacts of body cameras and ignoring all of the other useful managerial purposes
26 that reviewing footage provides law enforcement agencies. While body camera footage is used in
27

28 ⁵¹ These non-negotiable matters were incorporated into the current collective bargaining process
through NRS 288.500(3).

1 disciplinary investigations, this footage also provides a critical tool in training officers. This footage
2 provides agencies with invaluable information which they use to coach and train officers, preparing them
3 for real life occurrences and helping them improve their response to situations in the field.⁵² Finally, this
4 footage allows law enforcement agencies to review the quality of services being provided to the public
5 by allowing supervisors to review the contents of an employee's workday which can assist an agency in
6 implement policies ensuring more efficient utilization of officers and resources.

7 All told, there are many important, beneficial and non-disciplinary reasons for supervisors to be
8 able to freely review body camera footage, and the State is entitled to those management rights of body
9 camera footage. For this reason, and for the reasons set out above reason, NPU's proposal relates to a
10 subject matter which is not within the scope of mandatory bargaining under NRS 288.150(3) and must
11 be withdrawn.

12 **iii. Even if NPU's Proposal is not deemed withdrawn, the Arbitrator should find**
13 **the State's offer to be the most reasonable under NRS 288.580.**

14 The State's Last Best and Final Offer regarding body cameras is that: "Body cameras and any
15 footage will be administered in accordance with applicable State law and Department or Division policies
16 and procedures." This Position is the most reasonable in this case because it is consistent with the law,
17 most beneficial to the public, and most helpful to law enforcement agencies. Under NPU's most recent
18 proposal, a law enforcement agency supervisor would have less ability to review body camera footage
19 than a member of the general public. This is an absurd result. The State's proposal aligns the viewing of
20 body camera footage with existing law. This benefits the public by honoring the purpose of the recent
21 body camera laws established in the State. As noted above, review of body camera footage is not just
22 used in disciplinary situations, as NPU seems to contend with its proposal, it is about using every tool
23 available to ensure that the State can improve the services being offered to the public. Additionally,

24 ⁵² The importance of body camera footage as a training tool has been noted by the National
25 Institute of Justice – "The use of body-worn cameras also offers potential opportunities to advance
26 policing through training. Law enforcement trainers and executives can assess officer activities and
27 behavior captured by body-worn cameras — either through self-initiated investigations or those that
28 result from calls for service — to advance professionalism among officers and new recruits. Finally,
video footage can provide law enforcement executives with opportunities to implement new strategies
and assess the extent to which officers carry out their duties in a manner that is consistent with the
assigned initiatives." Brett Chapman, *Body-Worn Cameras: What the Evidence Tells Us* at 2 (2018)
(<https://www.ojp.gov/pdffiles1/nij/252035.pdf>) (last visited on June 17, 2021).

1 allowing supervisors to access body camera footage at will is the most beneficial policies for law
2 enforcement officers. Utilizing body camera footage is an important training and informational tool that
3 allows law enforcement agencies to implement policies that better protect our law enforcement officers.

4 Ultimately, the State's proposal is the only proposal that is consistent with existing law and is the
5 most reasonable proposal. Therefore, if the Arbitrator does not find that NPU's proposal is withdrawn
6 based on its contravention of existing laws and interference with the State's management rights, the
7 Arbitrator should still find the State's proposal most reasonable under NRS 288.580.

8 **B. NPU's Proposal regarding seniority is unreasonable, dangerous public policy, and**
9 **unlawfully infringes on the State's management rights.**

10 **i. NPU's Proposal must be withdrawn because it conflicts with the State's**
11 **management rights under NRS 288.150(3).**

12 NPU's most recent proposal on this subject is that "seniority shall be the default determining
13 factor in issues including, but not limited to, scheduling, equipment, leave time, mandatory overtime,
14 transfers, and training." This proposal blatantly infringes on the State's inherent managerial rights under
15 NRS 288.150. That statute provides that "those subject matters which are not within the scope of
16 mandatory bargaining and which are reserved to the . . . government employer without negotiation
17 include . . . the right to determine: (1) appropriate staffing levels and work performance standards, except
18 for safety consideration; (2) the content of the workday, including without limitation workload factors,
19 except for safety considerations; (3) the quality and quantity of services being offered to the public; and
20 (4) the means and methods of offering those services." Additionally, the statute provides that the subject
21 matter of "safety to the public" is reserved to the State without negotiation.

22 NPU's most recent proposal would require law enforcement agencies to use seniority as the
23 default determining factor in *every* issue. *See* NPU's most recent proposal ("seniority shall be the default
24 determining factor in issues including, *but not limited to* . . ."). Essentially, this provision is unlimited.
25 This overbroad proposal necessarily impact's the State's ability to manage: staffing levels, work
26 performance standards, workload, the quality and quantity of services provided to the public, and the
27 means and method of offering services to the public. But, as provided in NRS 288.150, the State cannot
28 make seniority the default consideration for every issue. Instead, the State is entitled to make managerial
decisions as it sees fit based on the safety of the public. *See* NRS 288.150(3)(d). The topics that NPU

specifically outlined in its proposal – “scheduling, equipment, leave time, mandatory overtime, transfers, and training” – all relate to the safety of the public and are therefore non-negotiable under NRS 288.150(3)(d). Additionally, the means and methods of offering law enforcement services to the public are necessarily management rights that are not the subject of negotiation pursuant to NRS 288.150(3)(c)(4). Law enforcement agencies must be able to make scheduling, equipment and personnel decisions based on what is most effective and efficient for the safety of the public and its officers. For example, law enforcement agencies might determine that it is important to have a mix of new employees on a certain shift with other senior employees. The agency might see this as most beneficial for the safety and training of the less-senior employees. It is imperative that law enforcement agencies be able to make these important scheduling decisions without regard to seniority. The default consideration in these important matters cannot be which employee has been there the longest. Instead, the default consideration can and must be the safety of the public and the officers.

NPU’s proposal conflicts with the fundamental management rights outlined in NRS 288.150(3), and must therefore be withdrawn from this arbitration as a subjected matter reserved to the State government without negotiation.

ii. The State’s Proposal is the most reasonable and should be adopted under NRS 288.580.

The State’s Last Best and Final Offer regarding seniority is that: “Seniority shall be based on total continuous State of Nevada service in a Category I Peace Officer position. Seniority may be considered, subject to operational needs, for the purposes of scheduling or leave as a ‘tie-breaking’ mechanism when Departments or Divisions are approving or disapproving requests.” The State’s Proposal rightfully allows for seniority to be considered as a “tie-breaker” in certain scheduling situations, rather than making it the default consideration in all matters as requested by NPU. This allows some advantage to be given to longer tenured employees, while also recognizing that factors like safety to the public and to the officers will remain the most important considerations in all matters.

NPU’s most recent proposal is not reasonable and could even pose additional dangers to the public and to law enforcement’s new recruits. By making seniority the “default” consideration in decisions regarding equipment, NPU’s proposal would likely result in new recruits receiving the agency’s least

desirable equipment. Instead of the agency deploying equipment based on the type of activity the officer is engaging in, or the threat level of that activity, the agency would instead be hamstrung by deciding equipment issues based on years of employment. This is irrational and poses unnecessary dangers to all parties involved. The same could be said about using seniority as the default consideration in scheduling. There might be certain shifts that the agency determines require more experienced officers based on the threat level of expected activities. Instead of being able to deploy senior and junior officers based on the needs of the public, NPU's proposal would require the law enforcement agency to schedule based primarily on seniority. For these reasons, and countless others, NPU's proposal that seniority be the default consideration in all issues is unreasonable, a danger to the public, and a peril to law enforcement officers themselves. The State's proposal, on the other hand, is reasonable in that it allows for certain perks to be given to long-tenured employees as a "tie-breaker," while not unnecessarily endangering the public or officers by blindly assigning shifts equipment and all other aspects of employment on seniority.

C. The State's Proposal on compensation represents the only lawful path forward given that the Legislative Session has concluded.

i. With the closing of the Legislative Session, the State is no longer able to offer NPU additional compensation because those funds cannot be appropriated.

As discussed above, the State is unable to deviate from the total amount budgeted in the approved Pay Bill in which the Legislature set a 1% cost-of-living adjustment (COLA) in Fiscal Year 2022-23 for NPU's Unit G employees. Therefore, the State lacks the authority to fund the compensation benefit forwarded by NPU. Furthermore, as previously noted, in an attempt to resolve this contract before it lost what authority it had to impact compensation, the State proposed a 3% COLA for Fiscal Year 2022-23. At that time, LRU had the ability and authority to recommend implementation of the 3% proposal, had the proposal been accepted by NPU. However, given the close of the Legislative Session, the State no longer has the authority to deviate from the 1% COLA approved by the Legislature's Pay Bill, "establishing the maximum allowed salaries for certain state employees" for the years 2022 and 2023.⁵³ By extension, the Arbitrator likewise does not have the authority to deviate from the Legislature's final appropriated 1% COLA amount for Fiscal Year 2022-2023.

⁵³ Assembly Bill 493 of the 81st (2021) Regular Legislative Session (introduced May 26, 2021), the "Pay Bill", at 1, retrieved at <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8234/Text> (last seen Jun. 14, 2021).

1 The State's final offer of a 3% COLA for all Category I Peace Officers prior to the applicable
2 Legislative deadlines was reasonable and would have benefitted most NPU-represented employees. This
3 offer was also in line with the COLA increases that the State negotiated with other unions. However,
4 NPU exercised its own right to reject the State's final offer of 3%.

5 The law is clear that any compensation is subject to legislative appropriation.⁵⁴ The law is also
6 clear that the Legislative sessions are of a finite duration.⁵⁵ Nonetheless, during negotiations, beginning
7 as early as December 7, 2020, the State repeatedly warned NPU about the ramifications of the
8 Legislature's final appropriations for the 2021 to 2023 fiscal years if an agreement was not reached prior
9 to May 19, 2021.⁵⁶ Despite the State's best efforts, it was unable to come to an agreement with NPU prior
10 to the May 19, 2021 deadline.

11 Because the Legislative Session has concluded without a ratified contract, the employees of Unit
12 G of NRS 288.515 join the employees of units B, C, D, and J as employees recognized for bargaining
13 without a ratified contract approved by the Board of Examiners. NPU will have its first opportunity to
14 negotiate items of direct compensation for the years 2023-2025 beginning in January 2022.

15 **ii. The State lacks the authority to offer additional increased compensation.**

16 The Legislature, through SB 135, limited the LRU's authority to negotiate items of direct
17 compensation. In particular, the LRU was given limited authority to negotiate an amount that would be
18 presented to the Legislature for consideration. Unlike local government employers, the Nevada State
19 Legislature clearly retained its authority to determine the final amount of direct compensation that would
20 be provided to all bargaining units through negotiations.⁵⁷ Thus, LRU has never had the authority to bind
21 the State to a direct compensation benefit for NPU, or any employee organization. Instead, LRU has

22 ⁵⁴ NRS 288.505(1)(c).

23 ⁵⁵ See *Generally* the Constitution of the State of Nevada Article 2, section 4, subsection 2 ("The
24 Legislature shall adjourn sine die each regular session not later than midnight Pacific time at the end of
25 the 120th consecutive calendar day of that session, inclusive of the day on which that session commences.
Any legislative action taken after midnight Pacific time at the end of the 120th consecutive calendar day
of that session is void, unless the legislative action is conducted during a special session").

26 ⁵⁶ May 19th was the last possible date any union could get their contract submitted for approval to
the Board of Examiners prior to the May 26, 2021, Legislative Pay Bill deadline. The Board of Examiners
27 met on May 25th, the last possible date prior to May 25, 2021 for this purpose. Unfortunately, the Open
Meeting Law and NRS 288.555 require the proposed agreement and any exhibits to the proposed
28 agreement be made available to the public three full business days prior to the meeting, placing the last
possible day to obtain agreement during the 2021 regular Legislative Session at May 19, 2021.

⁵⁷ See NRS 288.505(1)(c)

1 only ever had the authority to issue a recommendation to the Board of Examiners, then to the Legislature,
2 which could be approved, denied, or amended by the Legislature. Furthermore, this limited authority
3 terminated with the conclusion of the Legislative Session.

4 As discussed above, the Legislature explicitly limited the timing of collective bargaining by tying
5 the Executive Department's authority on "items of direct compensation" to the regular legislative session
6 in the biennium being negotiated. The Legislature, in enacting SB 135, retained its "power of the purse"
7 and placed guard rails on "items of direct compensation" that apply exclusively to the Executive
8 Department. Thus, unlike the statutory construction under which local governments arbitrate interest
9 proposals (where the Arbitrator can bind the local government employer to his or her chosen proposal),
10 here, the Executive Branch, the LRU, NPU and the Arbitrator are now bound by the terms of the Pay
11 Bill. By statute, the Arbitrator lacks the authority to bind the State on items of direct compensation, when
12 the benefit has not been approved by the Legislature.

13 During the 2021 Legislative Session, the Legislature again confirmed State's reading that it no
14 longer had the authority to recommend an increase of direct compensation after the conclusion of the
15 Legislative Session. Assembly Committee on Ways and Means Chair Maggie Carlton explained:

16 [A]s we were walked through yesterday all the different categories . . . those individual
17 units have gone ahead and bargained, got their process through the Board of Examiners
18 by the May 25th deadline. Moving forward there are still others in that process they just
didn't make it by the deadline so who knows you all may see some of those next year
when you have the same conversation" when the Legislature convenes again in 2023.⁵⁸

19 If you are in that [bargaining unit] you will receive those dollars . . . if you have not
20 created a bargaining unit and gone to the table and negotiated and got it through the Board
21 of Examiners, then it doesn't exist. We are waiting for Category I Police Officers to finish
their process. We look forward to that happening in the next two years. So I think you
have to encapsulate all of the collective bargaining agreement statutes.⁵⁹

22 Ultimately, the 81st Legislature had the opportunity but did not deviate from the proposed 1%
23 COLA allocation for NPU. As such, we are all bound by the Legislature's decision not to provide NPU
24 additional financial benefits related to direct compensation.

25 ///

26
27 ⁵⁸ Assembly Committee on Ways and Means, May 27, 2021, from 9:49:02 AM to 9:50 AM
(available at <http://sg001-harmony.sliq.net/00324/Harmony/en/PowerBrowser/PowerBrowserV2/20210527/-1/?fk=8860&viewmode=1>).

28 ⁵⁹ *Id.* at 9:53:45 AM to 9:54:15 AM.

1 iii. **The Legislature did not deviate from the 1% proposed pay bill allocation for**
2 **NPU.**

3 Ultimately, direct compensation is a political decision for the Legislature. The Legislature twice
4 declined to give NPU the 3% COLA it requested.

5 On April 8, 2021, NPU submitted public comment to the Senate Committee on Finance and
6 Assembly Committee on Ways and Means, Joint Subcommittee on Public Safety, Natural Resources, and
7 Transportation. NPU took the number the State had calculated for a 3% raise and specifically asked the
8 Legislature to set the amount aside, “we ask that Budget Unit 4713, Decision Unit 5100 for Salaries be
9 increased by \$2,143,643 for an equitable raise in salary for all category 1 peace officers.”⁶⁰ The
10 Legislature declined to incorporate NPU’s requests.

11 Then, on May 26 and 27, 2021, when considering the Governor’s final recommendation to the
12 Legislature via the Pay Bill, the Legislature had the opportunity to deviate from the proposal by giving
13 3% to everybody. The Legislature declined to amend the Pay Bill from its “As Introduced” version,
14 despite opposition from non-represented state employees and some Legislators.⁶¹

15 iv. **The State’s Last Best and Final Offer is reasonable and Should be Accepted**
16 **by the Arbitrator.**

17 For the reasons stated above, the State simply does not have the authority to agree to additional
18 direct compensation that has not been appropriated by the Legislature. The Parties cannot recommend a
19 new amount to the Board of Examiners because any such recommendation would be hollow given that
20 the Legislative Session has concluded. Until the next bargaining session begins prior to the next regular
21

22 ⁶⁰ Wednesday, April 7, 2021, 8:00 A.M., Assembly Committee on Ways and Means and Senate
23 Committee on Finance, Subcommittees on Public Safety, Natural Resources, and Transportation, at
24 <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Committee/6000104/Meetings>; Nevada Police
25 Union Letter to Committee (Budget 4713 - DPS - Nevada Highway Patrol Division) , retrieved at
26 [https://www.leg.state.nv.us/App/NELIS/REL/81st2021/ExhibitDocument/OpenExhibitDocument?exhi](https://www.leg.state.nv.us/App/NELIS/REL/81st2021/ExhibitDocument/OpenExhibitDocument?exhibitId=51233&fileDownloadName=Nevada_Police_Union_Public_Comment.pdf)
27 [bitId=51233&fileDownloadName=Nevada_Police_Union_Public_Comment.pdf](https://www.leg.state.nv.us/App/NELIS/REL/81st2021/ExhibitDocument/OpenExhibitDocument?exhibitId=51233&fileDownloadName=Nevada_Police_Union_Public_Comment.pdf)

28 ⁶¹ Assemblywoman Titus, Assemblyman Hafen, Assemblyman Roberts, and Assemblywoman
Tolles all voted “no” in the Assembly Committee on Ways and Means, expressing their concerns over
the disparities between the 3% obtained by represented employees who negotiated contracts by May 25,
2021(Units A, E, F, H, I, K), versus those who received 1% because they are either are not included in
bargaining units (unclassified staff, nonclassified staff, or confidential positions involved in bargaining)
or are in bargaining units per NRS 288.515 but have not yet obtained agreements (units B, C, D, G, and
J). See Assembly Committee on Ways and Means, May 27, 2021, from 9:50 AM to 9:50:45 AM (Robin
L. Titus); 9:54:30 (Jill Tolles); 9:48:20 (Gregory T. Hafen); 9:52:00 (Tom Roberts).

1 Legislative Session, NPU will be given the same 1% COLA increase as the vast majority of state
2 employees. Once the Legislative Session concluded, the State and the Arbitrator lost any ability to
3 recommend any additional direct compensation to the employees of bargaining unit G, just as it did for
4 the employees of units B, C, D, and J.

5 Ultimately, the State's Last Best and Final Offer is the only lawful route to proceed with here.
6 The communications between the Parties make clear that the State was offering a highly reasonable 3%
7 COLA increase to NPU, but despite repeated warnings about impending deadlines, NPU failed to reach
8 an agreement with the State prior to the conclusion of the Legislative Session. Since the Legislature is no
9 longer in regular session, NPU can only receive the amount that has been appropriated to it.

10 DATED this 21st day of June, 2021.

11 AARON D. FORD
12 Attorney General

13 By: /s/ Dan P. Nubel

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26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify I am an employee of the Nevada Attorney General's Office, and on this 21st day
3 of June, 2021, I served a copy of the foregoing **STATE OF NEVADA'S "LAST BEST AND FINAL"**
4 **OFFER AND SUPPORTING STATEMENTS** by email a copy thereof to:

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23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

**Collective Bargaining Agreement Between the State of Nevada and the
Nevada Police Union**

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Preamble

This Agreement is entered into on _____, 2021, between the Nevada Police Union (the “Union”) and the State of Nevada (the “State”). It is the intent and purpose of this Agreement to Ensure sound and mutually beneficial working and economic relationships between the parties hereto, to provide an orderly peaceful means of resolving misunderstandings or differences which may arise, and to set forth herein, pursuant to the provisions of NRS 288, the basic and full agreement between the parties concerning rates of pay, wages, hours of employment, and other conditions of employment.

Definitions

Article 1 – Recognition

1.1 – Recognition & Bargaining Unit

1. In accordance with the provisions of NRS 288, the state has recognized and does recognize the Union as the exclusive bargaining representative of all non-supervisory, Category I Peace Officers employed by the State of Nevada (“Unit G”).
2. The Parties recognizes that additional classifications may be established which are assigned to the unit or changes an existing bargaining unit classification.
3. In the event of merger with another Department, separation from the Union’s existing Departments, or any other change in structure of the Department of Public Safety, this Agreement shall accompany the Union and the State shall abide by its terms.

1.2 – Employees

For the purpose of this Agreement, “employee(s)” shall mean all Unit G employees. Any probationary employees shall be deemed “employee(s)” as well.

Article 2 – Strikes and Lockouts

1. The Union will not strike, rather it will use its best efforts to induce all employees covered by this Agreement to comply with this pledge.
2. The State will not lock out any employees during the term of this Agreement as a result of a labor dispute with the Union.

Article 3 – Rights of the Union

1. There shall be a full-time Union President who shall be funded by the State as a Unit G employee. The President and/or his/her representatives shall retain his/her right to work overtime.
2. The Union President shall be allocated an additional one thousand (1000) hours paid-time per contract year to accomplish general Union business as defined in this Agreement, not inclusive of paid-time that shall be allocated by the State for the purpose of collective bargaining. The President is permitted at his/her discretion to delegate the use of said time to other Union officers to include Board Members or Representatives. Additional release time may be approved by the Departments on a case-by-case basis.
3. The State shall approve bargaining leave for the purpose of negotiating a Collective Bargaining Agreement in addition to the amount allocated to the Union business.
4. The Union may accept up to one hundred (100) hours of unused vacation or sick leave that may be donated to the Union at the retirement of a Union member. This shall be deducted from sick leave or vacation time; the state will not pay the Union member for at departure as part of forfeited leave. cDonated time shall accrue and may be used at the President's discretion and shall not be deducted from the President's bank of one thousand (1000) hours that are guaranteed by the State per contract year.
5. The Union shall accumulate, in addition to the State's bank of hours guaranteed to the President and those donated by retiring Union Members, one (1) hour of leave from each Union member per quarter of each year.
6. Union leave shall be managed and maintained solely by the Union, subject to periodic and non-intrusive audit.
7. Union leave for Union business shall be approved by immediate supervisors and shall not be denied without good cause, which shall be decided within three (3) days of providing notice to the immediate supervisor and must be based on legitimate and urgent management reasons. This clause shall exclude immediate representation needs for critical incidents, Officer-Involved Shootings, and other investigations with an expedited response time, which Union Representatives shall be allowed to appear at.
8. The Union shall have one (1) bulletin board exclusively designated for Union business that shall be posted in each station in a location that is commonly accessed by employees. Each bulletin board shall not exceed five (5) feet by four (4) feet in area, unless the Departments choose to place a larger bulletin board at the specific station. The Union may post in its discretion material that it deems helpful for Union members. All posted material must bear the identity of the Union. The Union may use State telephones and computers for electronic mail in carrying out the Union duties so long as the activities do not unreasonably interfere with State employment objectives.

9. The Union shall have the right to negotiate any departmental rule, policy, or procedure if it relates to mandatory subjects to bargaining under NRS 288.150. In the event there is a dispute as to whether the rule, policy, or procedure falls within the scope of mandatory bargaining, the State agrees that the dispute will be submitted to the Local Government Employee-Management Relations Board and shall not be subject to the grievance procedure contained in this Agreement.
10. The Union shall have monthly meetings with the Heads of the Departments, if requested by either the Union President or the Departments, for the purpose of engaging in Labor Management meetings. The purpose of said meetings is to informally discuss matters of concern and/or interest to either party. Preceding the meeting, the Union President and/or the Heads of the Departments shall provide notice of the topics that shall be for discussion at the meeting and who shall be in attendance.
11. The Union shall receive notice whenever an employee covered by this Agreement is either the subject or witness to an internal investigation, including the delivery of any notice provided to the employee. Notification to the Union shall be made on the same day as the employee is notified.
12. As the only legally recognized representative of Unit G employees, the Union shall be the only permitted legal representative (other than a personal representative of a peace officer who is not a representative of a Union) who is allowed to represent any Unit G employee in any internal investigation or before any State Board, Commission, or any other group referenced in Division of Human Resource Management Memorandum HR #54-20.
13. The State shall abide by and enforce any Local Government Employee-Management Relations Board decision and ruling in which the Union is a prevailing party.
14. The State shall recognize the rights of all peace officers under NRS Chapter 289.
15. It is recognized that from time to time it will be necessary for Union activities to be carried on during the working hours of the Executive Board officer for the processing of written grievances and the representation of Union members. When the Union activities involving processing written grievances and representation of Union members occur during a Union representative's regularly scheduled duty hours, the activities will be performed on duty and with use of his/her State vehicle.
16. The Union shall have access to cadets in the academy at a time while they are on-duty to promote membership in the Union twice during their time at the Academy for one (1) hour period each time. Such visits shall be scheduled for a classroom at the Academy and shall not be held during the lunch hour. Up to three (3) Union members may remain at the Academy to further discuss the Union. Only the recognized Union may visit with Cadets.
17. The Union shall be permitted to use State Facilities, so long as the use does not interfere with State activities, for Union business. This includes, but is not limited to, Union use of State conference room(s) for the purpose of having Union meetings with pre-approval from

the district commander, provided that the Employer's business always takes priority in scheduling.

18. The Union shall have the ability to negotiate any Management right in Article 5 and submit recommendations that must be considered in good faith by the Departments.

Article 4 – Rights of Employees

1. All employees this Agreement covers shall have all rights provided by State and Federal law. Nothing in this Agreement shall be construed as limiting any existing rights for employees.
2. All employees this Agreement covers shall have the right to view the file and/or evidence preceding an internal investigation, as shall their legal and/or Union representative.
3. Types of enforcement action and decisions vests in the discretion of the officer.

Article 5 – Management Rights

It is understood and agreed that the Employer possesses the sole right, authority, and responsibility to lawfully operate the Agency and to command and direct employees in all aspects, except as specified in this Agreement. These authorities and responsibilities include, but are not limited to, the following:

1. To exclusively determine and execute its mission, policies, and all standards of service provided to the public;
2. To plan, direct, schedule, command, and control the service operations furnished by the members of the Employer;
3. To set standards of service, including quantity, so long as it is reasonable and consistent, and quality of work to be performed and the responsibility to maintain the efficiency of operations;
4. To determine the methods, means, and number of personnel needed to carry out the operations and services of the Employer;
5. To command and direct the work force;
6. To hire, commission, train, assign, test, evaluate, and transfer employees within the Agency;
7. To promote, demote, suspend, discipline, or discharge employees for cause pursuant to applicable law and the regulations of the Employer as well as the provisions of this Agreement;

8. To establish, publish, and enforce reasonable rules and regulations, which govern the routine functions of the Employer;
9. To establish and govern reasonable rules and regulations pertaining to on and off-duty employment and conduct if that conduct affects an employee's on-duty performance in, Off-Duty Employment, of this Agreement;
10. To obtain, use, assign, and consolidate facilities as well as all issued equipment;
11. To determine the technology of its work, to include equipment selection and assignment;
12. To determine whether goods and services are made or purchased; however, the Employer will not contract or subcontract work typically and historically accomplished by commissioned employees within the Agency when such actions will cause the elimination of commissioned positions.

Article 7 – Holidays

1. All employees this Agreement covers shall have all holidays protected by State and Federal law. Nothing in this Agreement shall be construed as limiting any existing holidays for employees.
2. Law Enforcement Appreciation Day shall be a recognized holiday for all employees.

Article 8 – Annual Leave

1. All employees this Agreement covers shall have all annual leave protections and benefits provided by existing State and Federal law. Nothing in this Agreement shall be construed as limiting any existing annual leave requirements.
2. A regular full-time employee will be granted vacation benefits as follows:

<u>Years of continuous service</u>	<u>Vacation Earnings Rate Bi-weekly</u>
Less than 5 years	5 hours
5 years but less than 10 years	6 hours
10 years but less than 15 years	7 hours
15 years but less than 20 years	8 hours
20 years or more	9 hours

3. An employee shall be paid at his/her base hourly rate for each hour of annual leave taken. Vacation shall be charged on the basis of one (1) hour for each full-time hour of vacation taken.

4. All employees may cash out accumulated, but unused annual leave in increments of at least twenty (20) hours. The State shall calculate the pay rate for cashing out annual leave based on the pay rate for the most recent pay period.

Article 9 – Sick Leave and Terminal Leave

1. All employees this Agreement covers shall have all existing sick leave protections and benefits provided by State and Federal law. Nothing in this Agreement shall be construed as limiting any existing annual leave requirements.
2. A full-time regular employee shall be entitled to earn sick leave benefits at the rate of four (6) hours per bi-weekly pay period and accumulate without limitation. This rate shall increase each year a member is employed with the State of Nevada at the same rate as annual leave accelerates.
3. Upon retirement or departure from the State, an employee will be compensated for accrued but unused sick leave at a rate of one hundred percent (100%) of the total accumulated hours based on their most recent hourly rate of pay.
4. An employee with a sick leave balance greater than one hundred (100) hours at the end of the calendar year shall receive an incentive payment of twenty-five dollars (\$25) for each bi-weekly pay period wherein the employee did not use sick leave.
5. An employee may use all outstanding leave to fulfill any retirement year requirements.

Article 10 – Discipline

1. All employees this Agreement covers shall have all discipline protections and due process requirements provided by existing State and Federal law. Nothing in this Agreement shall be construed as limiting any existing discipline due process requirements.
2. In addition to the rights provided under NRS Chapter 289, peace officers affected by this Agreement shall be entitled to the following:
 - a. Any investigation must occur within one (1) year of the date the Agency knew or could have known about the allegations underlying the investigation.
 - b. Before the target of an investigation is required to be interviewed by the Agency, the target of the investigation must be given the opportunity to review the investigatory file, as well as his or her representative. If requested by the employee, the file shall be emailed to the employee or his representative.
 - c. The target of an investigation shall be the last individual interviewed in an investigation.

- d. When a notice is given to the target of an investigation indicating that an investigation is beginning, the target of an investigation must be notified as to how many interviews the Agency will proceed with and the date he/she will be interviewed.
 - e. The target of investigation shall be notified immediately that he/she will be the target of an investigation, and the Union shall also be notified.
3. Consideration of discipline.
- a. The State shall not consider discipline levied greater than six (6) years before the levying of any level of discipline.
 - b. If allegations of an investigation are not sustained, the employee is still entitled access to the discipline file.

Article 11 – Union Grievances & Arbitration

- 1. All employees this Agreement covers shall have all grievance protections and due process requirements provided by existing State and Federal law. Nothing in this Agreement shall be construed as limiting existing grievance options for employees.
- 2. A grievance shall be defined in this Agreement as:
 - 1. A dispute regarding the application of a written reprimand.
 - 2. A dispute regarding the application or interpretation of any Agency rule, regulation, policy, or procedure that governs the Agency.
 - 3. A dispute as to the application of any law or regulation.
 - 4. A dispute regarding the application of a disciplinary suspension.
 - 5. A dispute regarding the application of a disciplinary transfer.
 - 6. A dispute regarding the application or interpretation of any and all provisions of the Collective Bargaining Agreement between the Agency and the Union.
 - 7. A dispute regarding the Agency's decision to follow any State Board.
 - 8. A dispute regarding a termination or discipline.
- 3. The State shall only allow the Union to represent an employee at any stage of a grievance.

4. Process: The Union shall have the right to file a grievance under this Article on behalf of an employee or the Union itself.
5. Binding Arbitration: Any grievance pursuant to this Article shall culminate in final and binding arbitration.
 1. To initiate the Arbitration process, the Union shall give notice to the specific Department of its intent to proceed to Arbitration within 30 days of the decision it is submitting to Arbitration.
 2. Preceding the Arbitration, a Union representative and a State representative shall meet and confer over the Arbitration to attempt to resolve the dispute.
 3. The parties may agree to mediate the dispute by using an agreed upon mediator, which shall toll the Union's deadline for noticing the Department of its intent to proceed to Arbitration.
 4. Both parties shall mutually or severally set forth the issue(s) to be arbitrated in advance of selecting an arbitrator. The selection of the arbitrator shall be made from the list provided by alternately striking names. The party striking first shall be determined by lot.
 5. The State, in good faith, shall make available relevant documents and witnesses the Union deems necessary in anticipation of Arbitration.
 6. The arbitrator so selected shall confer promptly with the parties, shall hold further hearings, and shall issue a report not later than thirty (30) days from the day of the hearing, unless stipulated to by the Parties or required differently by the Arbitrator, which shall set forth his findings of fact, reasoning, and decisions on the issues submitted. The arbitrator's decision shall be consistent with the law and the terms of this Agreement and shall be binding on the parties. The arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any of the provisions of this Agreement. The arbitration hearing shall be conducted in accordance with the American Arbitration Association Voluntary Arbitration Rules.
 7. The expenses of arbitration, including the arbitrator's fee/costs and the expenses and costs of the arbitrator's transcript, if any, shall be borne equally by the parties. All other expenses incurred by either party in the preparation or presentation of its case are to be borne solely by the party incurring such expense. The parties recognize that assignment of authority to proceed to arbitration to the grievant does not alter recognition of the Union as the employee's representative pursuant to NRS Chapter 288.

8. The State shall provide paid time off for any Union member who appears as a witness at an Arbitration.

Article 12 – Compensation

1. All employees this Agreement covers shall have all compensation protection and requirements provided by existing State and Federal law. Nothing in this Agreement shall be construed as limiting existing compensation law and policy governing employees.
2. A member is on-duty and entitled compensation when any one of the following occurs: (1) in uniform and in a State vehicle, (2) as soon as member checks in on the radio and is 1041, (3) when the member is subject to policies and procedures, or (4) when the member is at training.
3. Effective the first pay period after July 1, 2021, the salary index shall be increased by two and one-half percent (2.5%).
 - a. Effective upon ratification of this agreement by the parties, a one-time payment in lieu of retroactivity of one thousand two hundred and twenty dollars (\$1,220.00) shall be paid to all officers in this bargaining agreement. This payment shall be made no later than the first paycheck after July 1, 2021.
6. Effective the first full pay period in July 2022, the salary appendix shall increase by two and half percent (2.5%).
7. Employees of Clark and Washoe counties will receive an extra five percent (5.0%) annual pay for cost of living expenses.
8. There shall be a cost of living adjustment based on the cost of living in a specific city in Nevada.
9. All employees covered by this Agreement shall start at the same place on the salary schedule, which shall only serve to increase any employee's salary. All Unit G employees shall spend one (1) year at Grade 36 and then five (5) years at Grade 39, at which point they will top out at that portion of the salary scale.
 - a. There will be a salary schedule acceleration: pay shall be awarded at a rate twice as fast as is currently provided by the State. The State shall top out each position's pay in half the time it currently does, in five (5) years.
10. Longevity pay:
 - a. Employees shall receive a longevity bonus twice a year, in March and November at an amount of one thousand dollars (\$1,000) each, at the completion of year ten

(10), increasing one hundred twenty-five dollars (\$125) for each check, each year thereafter to a maximum payout amount of six thousand dollars (\$6,000). The money shall be paid in a separate paycheck than the paycheck employees receive their wages.

11. Educational incentives:

- a. Any full-time employee who has obtained an Associate's Degree from an accredited college or university shall receive five percent (5.0%) of his/her bi-weekly base hourly rate per pay period
- b. Any full-time employee who has obtained a Bachelor's Degree from an accredited college or university shall receive eight percent (8.0%) of his/her bi-weekly base hourly rate per pay period.
- c. Any full-time employee who has obtained a Nevada Intermediate POST certificate shall receive three percent (3.0%) of his/her bi-weekly base hourly rate per pay period.
- d. Any full-time employee who has obtained a Nevada Advanced POST certificate shall receive four percent (4.0%) of his/her bi-weekly base hourly rate per pay period.
- e. An employee requesting educational incentive pay shall be required to provide proof of the required degree.

12. Other incentive pay:

- a. Language pay: employees who are fluent in a language other than English shall receive an additional three percent (3.0%) of his/her bi-weekly based hourly rate per pay period.
- b. Dangerous duty pay:
 - i. Employees who are engaged in activities beyond normal duties that place the employee in additional potential of death or serious injury, including but not limited to, clandestine grow operations, search and rescue operations, fixed or rotary wing aircraft operations, scuba or skin diving, or explosive handling, shall receive an additional (10%) of his/her bi-weekly based hourly rate per pay period.
- c. Hazardous duty pay:
 - i. Employees who are in the process of doing hazardous duty shall receive an additional five (5.0%) of his/her bi-weekly based hourly rate per pay period.

d. Special training pay:

- i. Employees who receive training in crises intervention and de-escalation shall receive an additional three percent (3.0%) of his/her bi-weekly based hourly rate per pay period.
- ii. Employees who receive training in riot response/crowd control shall receive an additional three percent (3.0%) of his/her bi-weekly based hourly rate per pay period.
- iii. Employees who receive Emergency Medical Technician training shall receive an additional three percent (3.0%) of his/her bi-weekly based hourly rate per pay period. Employees who are Park Rangers must receive Emergency Medical Training.

e. Physical Fitness incentive:

- i. The State shall develop a system for annual determining an employee's level of physical fitness and shall award a badge to employees who meet the State's level of physical fitness. The State's system shall allow for at least twenty-five percent (25%) of employees to receive the badge, and, accompanying this badge shall include an additional three percent (3.0%) of his/her bi-weekly based hourly rate per pay period.

f. Special assignment/complex investigation pay:

- i. Any employee assigned to motor, commercial, government detail, as a field training officer or firearm instructor, fire marshal, complex investigations, to a special task force, as a public information officer, or to K-9 shall receive an additional ten percent (10%) of his/her bi-weekly based hourly rate per pay period.
- ii. K-9 handlers will receive ten (10) hours of paid overtime per pay period for the at-home care, grooming, transportation, and feeding of the dog.

g. Off-duty telephone calls, emails, and/or text messages:

- i. When a member receives telephone calls, emails, and/or text messages during off-duty hours that require work be completed before the start of the member's next scheduled workday, he/she shall receive a minimum of one-half hour pay, or actual time spent, whichever is greater, at an appropriate rate. The member shall report this on his or her time sheet. Multiple calls, emails, or text messages during the same one-half hour period are considered one call.

h. Recruitment bonus:

- i. Any employee who recruits a candidate that successfully completes all required academies shall have twenty (20) hours of personal leave credited to their leave account. If this candidate successfully completes their probationary period, the member shall have an additional twenty (20) hours of personal leave credited to their leave account.

- i. Rural posts:

- i. Any employee posted in a rural part of Nevada—defined as anywhere other than Carson City, Clark County, and Washoe County, shall receive an additional ten percent (10%) bump in their pay.
- ii. Nevada Department of Transportation shall make housing available to employees in rural locations.

13. All special pay and/or callback pay and/or incentive pay and/or bonus pay shall be counted towards PERS and overtime.

Article 13 – Uniform policy and Clothing/Equipment Allowance

The State will pay each employee a clothing/equipment allowance in accordance with paragraphs (1) and (2) below. Said allowance will cover the full cost of original purchase, replacement and continuing maintenance of uniforms, clothing, and equipment during the time of employment with the State.

1. Effective July 1, 2021, the uniform allowance shall be at the rate of eighteen hundred dollars (\$1,800.00) per year and shall be paid in two (2) semi-annual equal installments of nine hundred dollars (\$900) with the final payday in June and December.
2. In the event employees lose or damage equipment, watches, or eyeglasses in performance of duties, the State will reimburse the cost of item(s) lost or damaged up to a maximum of one thousand dollars (\$1,000.00). In order to receive the benefit of this Article, the employee must report any claims prior to, or at the end of the shift on which the incident occurred. Reimbursement shall be limited to those items which would ordinarily and customarily be used in the course of Employment.
3. For employees in the Governor's security detail, they shall receive, in addition to the uniform allowance outlined in Section 1 of this Article, an annual Uniform allowance of one thousand dollars (\$1,000), within one (1) week of their assignment to the detail.
4. Uniform and/or clothing allowance checks shall be paid individually, in checks separate from the employee's standard paycheck.

5. The Departments shall provide secure and free parking for employees who commute to work in their own vehicles.

Article 14 – Reduction in Force

1. In the event of layoffs or a reduction in force, regular employees will be laid off according to seniority within the classifications being reduced, starting with the least senior employee.
2. Employees shall be given the opportunity to transfer in lieu of layoff, to any positions for which he/she is qualified, and more senior than the least senior employee in that class.
3. For purposes of this Article, seniority of regular employees shall commence on the date of hire and include any break in employment with the State not exceeding twelve (12) months.
4. Employees who are temporary or probationary employees are not regular employees and shall not have seniority for purposes of bids or layoff, but shall be assigned as the Department sees fit, and shall be laid off before any regular employee.

Article 15 – Transfers

1. The Union and the State agree there are only three (3) types of transfers – administrative, disciplinary, and voluntary. At no time will employees be coerced or forced to transfer geographic duty stations.
2. Administrative transfers occur as a result of an action to enhance operations, further the Department's mission, or improve efficiency and effectiveness. These types of transfers will be approved at the Chief's level. Administrative transfers do not occur as a result of a single event or incident. A Chief may not transfer an employee unless the employee does not face a financial hardship.
3. When considering employee transfers to specialized units/assignments, the Chief must evaluate each candidate's seniority, education, experience within the specific Agency, and employee performance, as factors.
4. Disciplinary transfer is an option which may occur where it is determined that an employee's conduct or performance warrants that level of discipline. Disciplinary transfers are appealable.
5. Any employee that requests a transfer shall have his or her transfer approved within two (2) years of submission for transfer, or within a reasonable amount of time if there is no undue burden on the State, whichever is sooner.

6. If employees are applying for transfer, the State shall consider the employees level of training, education, experience in the agency, and employee performance.

Article 16 – Hours, Scheduling, and Overtime.

1. All employees working on State or Federal holidays shall receive pay at double the rate of their normal pay.
2. Management shall not be able to change an employee's schedule without an exigent circumstance that was not foreseeable once it has been released. Storms and special events are not considered exigent circumstances, unless the employee agrees to the change. The employee shall not be punished for refusing to change his or her shift.
3. Employee shifts shall be decided by bids for shifts every six (6) months unless the employee wishes otherwise.
4. Employees shall solely have the choice between overtime and comp time and shall not be influenced by management. Flextime scheduling will not be used to avoid overtime and, if a schedule is changed without more than seventy-two (72) hours prior notice, the employee shall receive time and one-half pay.
5. Schedules for employees shall have staffing minimums that are adequate to ensure employees are not overworked and ensure officer safety.
6. Each Agency shall schedule paid training each month to give employees in high liability areas training in, such as, firearms, building searches, riot control, and other similar areas. This must be actual practice, not merely informational training, and shall occur for at least four (4) hours a month with firearms occurring at least six (6) times per year. For employees in designated special assignments, they shall receive additional training, practice, and education.
7. During each full-day, employees shall have thirty (30) minutes of on-duty exercise time.
8. Special assignments personnel shall not be considered part of the normal minimum staffing and may not be used except in case of a genuine emergency. An agencies lack of planning and/or foreseeable events (storms, special events, etc.) shall not be considered emergencies.
9. Employees shall have at a minimum eight (8) hour breaks between shifts.
10. Standby pay:
 - a. If Management wants employees to remain available when off duty to call back, they will be given standby pay. Standby pay shall be at time-and-one-half the

employees normal hourly pay. All employees who are on standby when off duty shall receive pay as out.

- b. Staffing must be appropriate to farm out standby time fairly, which includes at a minimum there is an understanding that the employee will be on standby only as needed and on rotation with other employees unless the employees to otherwise. Employees shall not be on standby for back-to-back weeks.

11. Employees shall continue to receive paid on-duty lunch.

Article 17 – Seniority

1. Seniority shall be the default determining factor in issues including, but not limited to, scheduling, equipment, leave time, mandatory overtime, transfers, and training.
2. Seniority shall be based on total service time in the State system, not time since promotion.
3. State system service that was not in Unit G does not count for seniority.
4. Only employees who have at least seven (7) years of experience may be in the training division.
5. For any transfers between any division, seniority resumes after one (1) year.
6. No member shall be allowed to promote to sergeant unless they have five (5) years seniority.

Article 18 – Duty Gear, Weapons, and Equipment

1. Nothing in this Article shall be construed as limiting any other law or regulation from protecting any employees.
2. Aside from general upkeep and cleaning, the Agency will be responsible for maintenance of firearms and weapons. Any mechanical problems with weapons shall be referred to the Departments' armorer.
3. Any weapon that is damaged or destroyed as a result of a duty related incident will be replaced by the Agency.
4. The Agency will stock a sufficient number of replacement weapons, firearms, and ammunition for use when weapons become unserviceable.
5. The Agency will supply a list of types of firearms and weapons an employee can carry. Each employee has the right to choose any weapon from this list, to carry while on duty.

6. The State shall purchase the safest body armor up to eleven hundred dollars (\$1,100) for its employees. The State must also research different revenue streams and apply for federal grants so that it can best protect its employees.
7. The State must purchase rifle plates for employees.
8. The State must ensure that each Agency exhausts its duty gear and uniform budget allowance every year on equipment and uniform items for employees. This fund cannot be used for other purposes without Union approval. Each Agency must disclose annually to the Union an itemized list of how the uniform and duty gear budget has been spent.
9. Uniforms:
 - a. There shall be Department definitions of Class A, Class B, and Class C uniforms. Cadets shall be issued Class A and Class C uniforms in the Academy.
 - i. For normal everyday use, employees shall be authorized to wear Class B and Class C uniforms.
 - ii. The Union shall be given genuine input in the policy preparation regarding Class A, Class B, and Class C uniforms.
 - iii. Dress coats shall be given to every trooper and every cadet shall receive a dress jacket.
 - iv. Departments shall allow vest carriers on Class C uniforms.
10. Every employee who retires from the State shall receive his or her firearm to keep upon retirement.
11. All new cadets shall receive and use 9mm. Employees preceding this Agreement shall be able to use whatever duty weapon they would like and are grandfathered into this Agreement.
12. All Unit G employees shall receive a pistol, rifle, shotgun, taser, and a straight stick or side handle baton, at a minimum. These provisions shall be substantially similar between departments. No expandable batons for less than lethal force shall be provided.

Article 19 – Education Reimbursement

1. Employees will be reimbursed for educational training courses taken subsequent to approval of the Chief pursuant to the following:

- a. The training must be directly related to the required skill or education for the employee's current position. There will be no reimbursement merely for promotion Preparation.
- b. Only full-time regular employees who have been so employed for at least one (1) year will be eligible for reimbursement. Further, eligibility will be determined by the Chief in accordance with the departmental training program.
- c. No employees will be reimbursed for more than one thousand dollars (\$1,000.00) per fiscal year. No reimbursement will be affected if the cost is assumed by any other institution, scholarship or grant-in-aid.
- d. Employees who pay for their own training shall be given paid leave time.

Article 20 – Contract Overtime

1. All contract work for the State shall be paid overtime.
2. Contract work shall be made available based on seniority.

Article 21 – Labor-Management Committee

A Labor/Management Committee shall meet bi-annually at an agreed upon time and place made up of representatives of the Departments and the Union. The meeting will be set by the President of the Union, or his/her designee, and an appointee by the Governor.

1. The purpose of such meetings may be to:
 1. Discuss the administration of the Agreement.
 2. Notify the Union of any changes or proposed rule contemplated by the Agency that may affect the working conditions of employees represented by the Union.
 3. Disseminate general information of interest to the parties; and
 4. Give the Union representatives the opportunity to share their views and/or make suggestions on subjects of interest to its members.
2. Either party may raise an issue at a Labor/Management Committee meeting and if an issue is raised it will be discussed.
3. To facilitate the meeting and adjustment of work schedules, the Union representatives shall notify their immediate supervisors of the date and time of such meetings and the supervisors shall make the Union representatives available.

4. Union committee members shall not lose pay for the time spent in any meeting authorized by this Article.
5. Any resolutions of the parties at the meetings will be distributed to the Union and Agency members as appropriate.
6. Union representatives shall be permitted to attend these meetings on duty.

Article 22 – Amending Procedure & Evergreen Clause

1. This Agreement shall be negotiated consistent with the requirements under NRS 288.565.
2. This Agreement shall stay in effect until a new Agreement is negotiated.

Article 23 – Special Events

1. At least thirty (30) days preceding a special event, a Department head or his/her designee shall advise the Union President that a Special Event, of previously unanticipated staffing requirements, will occur.
2. Each Department shall award shifts based on seniority, however, an employee requesting time off during Special Events shall be given time off by seniority.
3. When staffing requirements for any special event require the involuntary scheduling or forced hiring of more than forty percent (40%) of officers, who are regularly assigned to patrol teams and special assignments, on their regularly scheduled days off, the Union and the State shall immediately open negotiations for the limited purpose of negotiating overtime pay and benefits for that special event.
4. Any employee scheduled to work Special Events shall receive time-and-a-half pay.

Article 24 – Promotions and Demotions

1. Nothing in this Article is intended to remove any existing protections for promotion and/or demotions for any Employee.
2. The State shall disclose the point system and ranking system it implements for promotions annually and the Union shall have the ability to submit comments that the State has to consider in good faith.

3. The State shall disclose all factors the State considers for demotions processes for supervisors annually and the Union shall have the ability to submit comments that the State has to consider in good faith.
4. The Union shall be notified of all complaints, including the general allegation of the complaint, against any supervisors.
5. When ranking candidates, the State shall only be allowed to place one member in any rank. Ties within ranking will not be allowed.
6. In addition to other requirements under Nevada law and Department policy, promotions to supervisor must take into account performance reviews and complaints filed against supervisor, and experience in the specific Agency
7. No employee may be considered for Sergeant until five (5) years after completing Field Training.
8. Human Resources shall actively monitor the promotion and demotion process.
9. There shall be a committee from an outside agency who conducts the interviews.
10. Hiring authorities shall be required to take a class on federal labor law regarding discrimination.

Article 25 – Union Use of State Buildings and Infrastructure

1. A Union representative and/or his/her designee shall be entitled to employees at briefing sessions on issues relating to the administration of this Agreement.
2. The Union shall have access to Union Buildings for Union Business so long as use of the buildings does not interfere with Management goals and the Union provides notice to a supervisor. Any such meeting held in or on State property shall be without cost to the Union.
3. Once a month, or after a significant event, the Union shall be able to send an email to all employees through the State's database. The State shall not be permitted to filter or edit the Union's message so long as the message does not contain profanities.
4. Use of State buildings includes the actual building and any audio-visual equipment, as well as other property that would not be destroyed by Union use.

Article 26 – Dues Deductions

1. There shall be a fifteen (15) day drop period from May 1 to May 15 of any given year.

2. There shall be dues deductions by the State system.

Article 27 – Line of Duty Death

1. In recognition of the constant exposure to hazardous working conditions facing employees, and the expectation employees place their own safety in jeopardy, the State agrees to pay reimbursed costs up to a maximum of twenty thousand dollars (\$20,000) per death, towards memorial services, funeral services, and internment related expenses for a deceased employee. This benefit is in addition to any benefits provided by the State.
2. In the event of a death of an employee, the designated beneficiary shall receive payment for annual and sick leave accrued at the time of death, at a rate of one hundred percent (100%) of the employees most recent hourly rate.

Article 28 – Moving Allowance

1. All employees shall be given a moving allowance if they are required to move due to relocation or transfer, or upon hiring.

Article 29 – Legislative Committee

1. A Legislative Committee shall meet at least eight (8) months before any regularly scheduled Nevada Legislative Session, or before any emergency sessions called by the Governor, at an agreed upon time and place made up of three (3) representatives of the Departments and the Union. The Meeting will be set by the President of the Union, or his/her designee, and an appointee by the Governor.
2. The purpose of such meetings will be to:
 - a. Discuss potential legislation the Departments will support.
 - b. Discuss Bill Draft Requests the Departments will submit.
 - c. Discuss Legislative objectives the Departments may pursue during the next Legislative session.
3. The Union shall have the right to provide input on any Bill Draft Request that the Departments will submit.

Article 30 – Substance Abuse and Drug Testing

1. Nothing in this Article is intended to remove any protections employees have under existing Nevada or Federal law.

2. The State shall not test any employees for marijuana.
3. The State shall only administer urine tests.
4. Before administering any drug or alcohol testing, the Departments shall give the employee an opportunity to identify him/herself as an abuser of any drug or alcohol. Such self-identification shall be kept confidential. Under these circumstances the employee will not be disciplined but will be subject to mandatory rehabilitation program paid for by the State and/or appropriate health insurance carrier.
5. The State shall not administer any substance abuse or alcohol testing without reasonable suspicion. Being involved in a motor vehicle accident is not reasonable suspicion.

Article 31 – General Provisions

1. If any provision of this Agreement is held invalid by a court, administrative agency, or other adjudicatory body of competent jurisdiction or is rendered invalid by operation of federal or state statute, local ordinance, or other applicable government regulation or rule, such provision shall be treated for all purposes as null and void/continue in effect only to the extent permitted by law, and the remainder of this Agreement shall continue in full force and effect. After receipt of written notice of either party, the parties shall promptly engage in collective bargaining for the limited purpose of negotiating a replacement for the invalid provision.
2. Canons of interpretation:
 - a. This Agreement shall be strictly construed.
 - b. Any conflict with NRS or NAC shall be read to expand the rights of the Union or the employee.
3. Purging:
 - a. This section is not intended to decrease any existing due process protections provided by Nevada or Federal law.
 - b. All disciplinary matters will be removed from the personnel file at the following times and under the following conditions:
 - i. Letter of Instructions shall be removed after an annual evaluation, within 12 months of its issuance.
 - ii. Written reprimand: shall be removed eighteen (18) months after the date the employee signs or is given the opportunity to sign the adjudication or three months after the filing of the statement of the complaint, whichever is earlier.

- iii. Minor suspension (defined as less than three (3) days): shall be removed three (3) years after the date the employee signs or is given the opportunity to sign the adjudication.
- iv. Major suspension (defined as greater than three (3) days): shall be removed five (5) years after the date the employee signs or is given the opportunity to sign the adjudication.
- v. Disciplinary transfer: shall be removed two (2) years after the date the employee signs or is given the opportunity to sign the adjudication.
- vi. In all situations where the investigation is given an extension, the purging date will begin the date the employee signs or is given the notice of investigation.
- c. Purged documents will be removed from the employee file and may not be considered for purposes of discipline, promotions, demotions, or any other adverse employment action.

4. Employee file maintenance:

- a. This section is not intended to decrease any existing due process or other protections provided by Nevada or Federal law.
- b. Each employee shall, during normal business hours, have a right to access his/her personnel file.
- c. No unfavorable comments or documents will be placed in an employee file unless:
 - i. The employee has read and initialed the comment or document; or
 - ii. If the employee refuses to initial the comment or document, a notation must be made indicating that the employee has refused; and
 - iii. The employee is allowed to produce a written response that shall be placed in the employee file.
 - iv. Notes in a file shall be removed after an annual evaluation.
- d. Any investigation that results in "exoneration," "unfounded," or "not sustained" dispositions shall not be made part of the employee's personnel file or supervisor's file. Any investigation that results in "exoneration," "unfounded," or "not sustained" shall not be used as basis for a subsequent discipline nor shall it be used as evidence in a subsequent investigation on a different matter.

5. Updating policies:
 - a. All updated policies must be specifically noticed to the Union with red-lined changes within 24 hours of their change.
6. All employees who are officers shall be able to issue citations and/or arrest persons outside of the County that they are in.

Article 32 – Body Cameras

1. All regularly assigned uniformed employees shall be required to wear body cameras, while on duty, at all times.
2. No supervisor shall review any body camera footage without either the prior consent of the employee or after the filing of a complaint and opening of an investigation.
3. No supervisor shall log on to body camera footage without probable cause.

Article 33 – Disability on the Job

1. Whenever an employee is injured while on duty with the State of Nevada, and such injury prevents said employee from performing his/her normal full time duties, the employee shall receive full salary for a period up to, but not exceeding, cumulative one hundred (100) working days, not to exceed a period of one (1) year from date of injury or knowledge of illness as indicated in the following provisions of this Article. During this period, the employee shall not forfeit any accrued sick leave. The one (1) year limitation shall be waived in the event of later surgery resulting from the original illness or injury. However, the one hundred (100) working day limitation shall continue to Apply.
2. In the event that an employee's NRS 616 or 617 Workers' Compensation System claim is denied and the denial is appealed, the State agrees to pay full salary while the NRS 616 or 617 Workers' Compensation System appeal is pending at the request of the employee for an appeal period not to exceed one (1) calendar year. If the final determination is adverse to the employee or if the appeal period exceeds one (1) calendar year, the employee must deduct from sick leave and, if sick leave is exhausted, vacation leave to compensate the State for hours paid during the appeal Period. If the employee has neither sufficient sick leave nor vacation leave to compensate for hours paid by the State during pending of claim which shall not exceed one (1) calendar year, the State may advance the employee sick leave to cover the balance of hours.
3. Upon the expiration of the accumulative one hundred (100) working days referenced in (a) above, if the employee is still unable to work, he/she may utilize his/her accumulated sick leave at the rate of one-half (1/2) the amount charged per shift or day, during which period

the employee shall retain the NRS 616 or 617 Workers' Compensation System payment, and the State shall then pay him/her the difference between his/her normal pay and NRS 616 or 617 Workers' Compensation System Payment.

4. Light duty shall not require commuting beyond an employee's regular duty station. Pay and the employee's station on light duty shall remain the same unless the employee chooses otherwise.

Article 34 – Transparency for Incoming Members

1. The Departments shall advise potential cadets the net pay, not just the gross pay, of the position he/she is seeking.
2. The State will not advise new hires that they will take compensation time instead of paid overtime.
3. Management shall not interfere with a new hire's membership with the Union.

Article 35 – Raise

1. All employees shall receive a ten percent (10%) raise that shall be effective July 1, 2021.

Article 36 – Off-Duty employment

1. All employees shall be permitted to seek out and perform off-duty employment so long as it does not conflict with his/her employment with the State.
2. Employees are expressly permitted to work as security guards and to do background research for investigators.

Article 37 – In State Travel

1. Employees are occasionally required to travel within the State as part of their official duties. Travel by air is preferred for administrative purposes. The agency will provide hotel and vehicle accommodations and reimbursement. Travel by vehicle will only be permissible when absolutely necessary. In the event the employee pays for any travel expenses out-of-pocket, the agency will reimburse the employee within a reasonable time frame. All expenses will be reimbursed in accordance with adopted U.S. General Services Administration (GSA) per diem rates.
2. Employees will not be required to stay in academy barracks. Employees traveling to any part of Nevada will stay in hotels.

Exhibit 2

Exhibit 2

RULES TO GOVERN THE NEGOTIATION PROCESS

BETWEEN

THE NEVADA POLICE UNION

(Unit G)

AND

THE STATE OF NEVADA

Recognizing our mutual interest in having a workplace that is both productive and fair, and recognizing that the Union and State have built a relationship in which problems are usually resolved through negotiation, the Nevada Police Union (Union) and the State of Nevada (State) agree to the following Ground Rules for Negotiations. We further commit to employing Interest-Based Bargaining techniques during our collective bargaining agreement negotiations.

We believe an open, honest exchange and the problem-solving techniques this process encourages will benefit both parties for the duration of the talks and beyond.

We agree that Interest-Based Bargaining is a process that believes:

- ❖ We must focus on issues, not personalities;
- ❖ We must focus on interests, not positions;
- ❖ Negotiations can enhance the relationship of union and management;
- ❖ Mutual gain is possible;
- ❖ Decisions are best made by standards;
- ❖ Positive results are more likely through collaboration;
- ❖ Negotiations occur in an environment that respects and values all employees;
- ❖ Respect and trust for all participants is paramount;
- ❖ Cooperation can occur, even though some may disagree on specific issues;
- ❖ Problems identified and solved jointly better serve our employees;
- ❖ Faith in the partnership will lead to a more effective agreement;
- ❖ Evaluation of options with standards and not posturing or power is in both parties' best interest.

For a quick and successful negotiating process, we also agree to follow the following general rules:

A. Authority

1. These negotiating sessions are governed by the current Nevada Revised Statutes (NRS Chapter 288) except where limited by these rules.
2. The undersigned Chief Negotiators are the only individuals who may sign documents in writing on behalf of the State or Union.
3. By the signatures below, both teams mutually stipulate they have the authority to act with regard to negotiation proposals put forth.
4. Good faith bargaining by both parties requires each will earnestly and strongly recommend prompt ratification of the negotiated terms of any complete contract that may be reached as a result of these negotiations. Either party may submit tentative agreements between sessions to the other party for adoption and/or revisions so as to focus the parties' attention at meetings on issues that remain in dispute.
5. Each party understands that all agreements are tentative and subject to the final approval of the Union general membership, the Nevada Legislature, and the Governor of the State.
6. The undersigned do not have the authority to supersede the special rights reserved to the Governor pursuant to NRS 288.510.
7. The undersigned do not have the authority to supersede the appropriation rights reserved to the Legislature pursuant to NRS 288.505 and NRS 288.560.
8. The parties understand the proposed biennial budget remains confidential pursuant to NRS 353.205(3) until it is released to the public by the Budget Division of the Office of Finance.
9. When complete tentative agreement is reached between both parties, it will be prepared in writing, reviewed by both parties and

submitted to the Union general membership for ratification within ten (10) working days. The State negotiation team will be advised, in writing, within two (2) working days thereafter of the results of the Union ratification vote. Ratification meetings shall be scheduled by the Union during off-duty hours.

10. The Chief Negotiator for the State will be presented with the ratified agreement for review and approval as soon as practicable.

B. Composition of the Negotiation Teams

1. The Union and State are represented by the teams of their choice, not to exceed eleven (11) members and designated by the signatures below.
2. Release time for the employee negotiating team representatives shall not exceed 400 total hours. This provision is subject to renegotiation if the parties mutually agree additional sessions are necessary to reach an agreement.
 - a. No employee shall receive overtime pay unless they were prior on "call back/overtime" status.
 - b. Employees shall not be compensated by the State or through union Leave for participating in negotiation meetings outside their regular shift. Exceptions may be made by mutual agreement in cases where employee negotiating team representatives are scheduled to work a graveyard shift the night before a scheduled session. Such situations should be discussed at least one week prior to the scheduled session.
 - c. Both parties understand that this provision is only applicable for the first negotiations and may not be used as evidence of any prior practice. The terms of release time remain subject to the collective bargaining process.
3. Only members of the undersigned negotiating teams are allowed to attend the meetings with the exception that either team may use consultants or subject matter experts, at its own expense, to be on call during any negotiating session. Such consultants and subject

matter experts are not considered a team member for the purposes of subsection (B)(1), above.

C. Meeting Decorum

1. The two Spokespeople will facilitate sessions and will work to keep the process moving and on topic as well as evaluate each teams' adherence to these Ground Rules periodically.
2. Both parties pledge to negotiate in good faith to reach an agreement on those matters subject to bargaining and will agree on a final agreement without unnecessary delay.
3. Be prompt in arriving to the meeting and in returning from breaks.
4. Sessions will start and end on time. Sessions may be postponed upon timely notification by either Spokesperson. Sessions will not be postponed or delayed unnecessarily.
5. We will do our homework when we're not in session so as to maximize our time together.
6. Caucuses will be held as needed. Upon the request of either team, negotiation meetings will be recessed to caucus, but may not to be used to delay the proceedings. The parties will endeavor to limit caucuses to 30 minutes, unless otherwise agreed upon by both parties. Such agreement may be verbal prior to or during the caucus period.
7. We will treat each other with courtesy always, and especially when reacting to other team member's comments. Voices will not be raised and discouraging remarks will not be tolerated.
8. Only one person will speak at a time.
9. Respectfully challenge the idea, not the person. Both parties agree there will be no personalizing of issues and no personal attacks.
10. We will use "time outs" to discourage inappropriate behavior.

11. Upon hearing the other party's proposals, if we disagree, we will offer reasons, suggestions and alternatives.
12. Options will be evaluated using the three-stage factor analysis, which involves asking: Is this option feasible? Is it of benefit in settling the issue? Is it acceptable to all?
13. Both parties will be tolerant of procedural errors and good faith mistakes.
14. Meetings will presumptively be held over zoom and/or a similar telecommunication platform, unless otherwise specified by mutual agreement.

D. Meeting Contents

1. Sessions will generally be held at agreed to times in a location to be mutually agreed upon until the negotiations are completed, and a new contract is ratified, or until impasse may be declared.
2. Each team will submit its non-economic proposals and will reach tentative agreement on those proposals and contract language before discussing economic proposals, per section A.8 above.
3. Each party is responsible for keeping their own notes.
4. Both Parties agree to develop an agenda at the end of a meeting for the next upcoming meeting. Both parties also agree to follow that agenda during subsequent meetings.

E. External Communications

1. Negotiation meetings and any products from those meetings, including electronic messages, documents, and any other verbal, nonverbal or written communications will be closed to the public and to the press.
2. Each party may communicate on its own with its constituents as needed, although not in such a manner as to undermine the process.

The Union shall be able to communicate with its membership its negotiation goals and whether those goals have been discussed.

3. Joint statements will be released as needed and by consensus and will be distributed to appropriate entities as agreed to by the undersigned Chief Negotiators.
4. Questions from outside media will be referred to the Public Information Officer of the Department of Administration for the State, and the Chief Negotiator for the Union.

F. Agreement/Disagreement

1. Commitments, promises, statements, or other verbal, nonverbal, or written communications are not enforceable by one party against another unless they are in writing, dated and signed by the undersigned Chief Negotiators.
2. Each team will be empowered to reach tentative agreements without having to refer each and every proposal back to its executive staff or membership.
3. Said tentative agreements are subject to finalization of contract language and agreement on a total final agreement and ratification by both parties.
4. All tentative and final agreements shall be in writing, dated and signed by the undersigned Chief Negotiators.
5. Both parties will make every effort to ensure provisions of the agreement are clearly and simply stated.
6. Proposals will be submitted in writing. New language will be **bolded** and underlined, and ~~stricken language~~ will be struck through, or by utilizing track changes in legislative format.
7. Proposals will be submitted until a tentative agreement has been reached, or until an impasse is declared by either party.

8. Tentative agreements and the date will be posted on the working contract by each team.
9. Each party agrees that economic agreements are not subject to retroactivity.

G. Mediation/Arbitration

1. We agree to the statutory minimum of six (6) meetings pursuant to NRS 288 for each agreement, even if one agreement is a master agreement that covers several units. The initial ground rules session will not count as one of the meetings.
2. The parties may meet more than six (6) times if they so choose, by mutual agreement in writing by the undersigned Chief Negotiators, to be completed prior to February 1.
3. In the event the parties cannot reach an agreement by February 1, the parties will submit their dispute to mediation as provided in NRS 288.570 and NRS 288.575 before an impasse can be declared by either side.
4. If the mediator is unable to resolve the dispute by February 28, the parties shall submit the dispute to an impartial arbitrator on March 1 pursuant to NRS 288.575 and NRS 288.580.
5. The parties agree they shall not request an impartial arbitrator prior to March 1 and without first completing the mediation process.
6. Both parties agree that fact finding pursuant to NRS 288.205 through 288.215 is not applicable to these negotiations.

H. Ground Rules

1. The foregoing represents the ground rules that will govern the entire negotiation process between the Union and the State for the year 2020-2021. These rules are intended to facilitate the complex process of negotiating a final collective bargaining contract.

2. The provisions within these ground rules may not be used as an expression or evidence of either party's legal positions, rights, or remedies.
3. These Ground Rules may be changed by mutual agreement. Any change or waiver of any ground rule must be made in writing and signed by the undersigned Chief Negotiators to be appended to the original rules document.

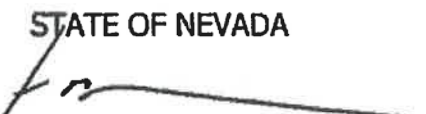
Signed this 14th day of January, 2021 for the:

UNION



Alex Velto, Chief Negotiator

STATE OF NEVADA



Frank Richardson, Chief Negotiator

Exhibit 3

Exhibit 3

Overview of State Budget Process and 32nd Special Session Legislation for NPU



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APPENDIX PAGE ONLY



APPENDIX E

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IN THE MATTER OF ARBITRATION

BETWEEN

NEVADA POLICE UNION,

Movant,

v.

STATE OF NEVADA,

Respondent.

Case Number: 210124-03033

**NEVADA POLICE UNION'S MOTION
TO CONSIDER STATE'S
COMPENSATION OFFER
WITHDRAWN¹**

The State's "final offer" for compensation is appallingly anti-union, directly contradicts the State's obligation to negotiate wages, and intellectually dishonest. The State just agreed to reopen another union's contract to negotiate compensation *on a timeline that can only occur after sine die*. That contract was approved by the Nevada Governor. It was approved by the Attorney General. And it was approved by the Secretary of State. These actions make the State's position at Arbitration particularly troubling. When the State of Nevada adopted state-wide collective bargaining, it "require[ed] the State to recognize and negotiate wages, hours, and other terms and conditions of employment with labor organizations that represent state employees." NRS

¹This Arbitrator requested that the motions to deem offers withdrawn be short and to the point. The Union agreed. But it never expected the State to remove its offer entirely and take the action it did. It never expected that it needed to allocate the resources it needed to defend its right to collectively bargain and prevent the State from make a regressive offer. This briefing is necessary to explain the bad-faith actions of the State and the severity of the State's posture at this Arbitration.

1 288.400(2)(b). This Arbitrator should consider the State's final offer withdrawn and strike it from
2 consideration because it violates NRS 288.150—obligating the State to negotiate salary and
3 wages. It's attempt to recharacterize NRS Chapter 288 in a self-serving manner that completely
4 ignores the plain language of the statute and the legislative intent behind collective bargaining for
5 State employees set forth in the law would lead to absurd results and render multiple portions of
6 the statute meaningless.

7 But this Arbitrator does not need to take the Union's characterization of its collective
8 bargaining rights under the statute at face value. The Union attaches as **Exhibit 1** a Statement
9 prepared by the presenter and sponsor of Senate Bill 135, Senator David Parks. Senate Bill 135
10 would become the portions of statute we are litigating in this Arbitration. The Senator was so
11 appalled by the State's position that he submitted a statement as to legislative intent, explaining
12 that the State's argument at this Arbitration was never contemplated and certainly not intended
13 by the Legislature. He also explains that the State should have reserved funds, and even though
14 it didn't, the Interim Finance Committee can allocate money to fund the Agreement, something
15 he would know because he served on that Committee for many years. This statement from the
16 Senator demonstrates the State representatives are either intentionally acting in bad faith or
17 strategically trying to coerce the Union into yet another last-minute deal. This Arbitrator should
18 put a stop to the State's outrageous conduct, consider the State's final offer withdrawn, and award
19 the Nevada Police Union attorney fees and costs for having to file the brief.

20 **I. Background**

21 The State's posture for this compensation article is to say their hands are tied and that the
22 Union should have known all along. This could not be further from the truth. Saying something
23 more than once doesn't make it true when the claim is diametrically opposed to statute and
24 legislative intent. And even if were true, the State has negotiated poorly throughout this process,
25
26
27

1 taking steps that show it had little intent to reach an agreement while projecting on the Union its
2 lack of preparedness and inability to negotiate in good faith.²

3 From day one, the Union insisted on police reform in Nevada. Its members are the lowest
4 paid law enforcement personnel in the State—by far. This leads to unhappy and poorly trained
5 officers. It also leads to brain drain of State law enforcement as the State wastes valuable
6 resources training officers only to have them then depart for better paying county and city jobs.
7 It's a giant waste of money and keeps Nevadans less safe because its officers are undertrained.

8 The State paid nothing but lip-service to the Union's goals. It never tried to work with
9 the Union to achieve these goals. It stood firm on keeping the State system as close to the status
10 quo prior to negotiating as possible. And at times it blatantly lied during session—claiming,
11 falsely, that union business leave is not offered in the State of Nevada. This Arbitrator knows
12 that union business leave is common and essential for unions. It only got worse. The State used
13 this false claim as leverage to coerce the Union's agreement on non-union friendly clauses. Then
14 the State produced a dishonest data request, which purported to be a summary of all CBA
15 agreements the State was relying on to support their position. After reviewing the Document, it
16 was clear the state produced deceitful data. The Union's attorneys knew this because they read
17 the agreements and represent most law enforcement unions in the State, which made the State's
18 position particularly troubling.³ These events wasted a ton of time.

19 The State's lack of preparedness and unwillingness to genuinely negotiate didn't end
20 there. On May 10, 2021, the State and Union met for negotiations with a mediator. The State
21 delivered a formal offer to the Union that the State would accept the Union's position on body
22 cameras and seniority if the Union would accept the State's offer on compensation. The Union
23 worked with its team for hours. The State and the Union were seemingly close to a deal, until the
24

25 ²The Union will not go through every single bargaining mishap by the State. It only identifies a few by reference, and
26 vehemently the State's characterization of its bargaining tactics it describes in its final offer.

27 ³The Union filed an EMRB complaint about the acts of deception. The State's final offer insinuates the Union
settled because it was incorrect. It settled because a different State attorney realized that Union leave was not
unreasonable and common, and therefore the State agreed to it removing the issue from dispute, wasting a ton of
valuable time in the process.

1 State pulled the offer at the last minute, claiming it had sent the wrong offer, effectively wasting
2 an entire day of negotiations. The State refused to meet with the Union again after this
3 negotiation.

4 The State then tried to extort the Union into accepting the State's offer on compensation
5 in a last-minute fire drill. On May 19, 2021, an attorney for the State, Greg Ott, contacted the
6 Union's attorney to discuss a resolution of the compensation article. The Union explained to Mr.
7 Ott that the Union is not interested in exceeding the amount of money the State offered, instead,
8 it was interested in reallocating the money so that it goes toward better education and longer
9 tenured officers who are more well-trained. The Union delivered an offer to the State for a 2%
10 raise, instead of a 3% raise, seeking pay for education incentives and longevity. The Union
11 explained to Mr. Ott that it had done calculations based on a survey of its members and the offer
12 would fit within the State's budget. The Union even offered to send Mr. Ott the numbers and
13 explanation. However, Mr. Ott declined, saying the State did not need it at that time and that he
14 would deliver the offer.⁴ The State ended up rejecting the offer.

15 What is particularly puzzling about the May 19 date is that it was the first time the State
16 said it needed to have a deal done by sine die or there would be no funding available. Yes, the
17 State had explained the budget process, which the Union knew very well, but there was never a
18 declaration that the State would be withdrawing an offer after sine die. The State's last-minute
19 attempt to extort the Union into its offer was completely unreasonable. The Union flat-out told
20 the State that it agreed with the amount of money available—and requested that the State earmark
21 it—but the State failed to do that. It also failed to consider that a better educated workforce and
22 officers with better training should be prioritized in the State system. Its rationale? The State
23 didn't want to make their job more difficult. It wanted a one-size fits all approach, which is
24

25 ⁴The Union believes Mr. Ott was reasonable and represented the Union's offer fairly to the State, genuinely
26 attempting to reach an agreement. The State's team, however, was less reasonable and not interested in reaching an
27 agreement. The State's lead negotiator, Ms. Barbara Bolender, told the Union's attorney that there was no interest
in anything other than a salary increase because for no reason other the State didn't want to do it or didn't have the
ability to do it—which was false. The State's claim that the Union never provided data is of no fault to the Union, it
offered and explained its offers. The State declined.

1 antithetical to collective bargaining. It was unwilling to change its pay structure for our unit even
2 though the needs of state-wide law enforcement agencies are different than the needs of other
3 employee groups.

4 We are now before this Arbitrator and the State has taken an egregious and unethical
5 position that will only harm its employees. It appears the State's vengeance and unwillingness to
6 care for its employees knows no bounds.

7 **II. Standard of Review**

8 The State and Union agreed to briefing on whether either party's final offers to the
9 Arbitrator should be considered withdrawn. "Any proposal that conflicts with or is otherwise
10 inconsistent with any provision of state law . . . shall be considered withdrawn by the proposing
11 party . . ." NRS 288.575(1).⁵ So, this Arbitrator can strike any of the party's final offers if he
12 determines that they conflict with or are otherwise inconsistent with a provision of state law.

13 **III. Argument**

- 14 a. This Arbitrator should consider the State's final offer on compensation withdrawn
15 because it directly contradicts Nevada law.

16 Nevada law is clear: the Executive Branch must negotiate "salary or wage rates or other
17 forms of direct monetary compensation" with the Union. *See* NRS 288.150(2)(a) (making
18 compensation a mandatory subject of bargaining); *see also* NRS 288.500(2)(a) (obligating the
19 Executive Branch to negotiate the mandatory subjects of bargaining contained in NRS
20 288.150(2)(a)); NRS 288.270(1)(e) (making it a prohibited practice to refuse to bargain over
21 mandatory subjects of bargaining during the "entire bargaining process, including mediation and
22 fact finding") (emphasis added).

23 The State's final offer directly conflicts with state law and is entirely inconsistent with the
24 purpose of Nevada's adoption of state-wide collective bargaining. When the Nevada Legislature
25
26

27 ⁵This portion of statute allows portions NRS Chapter 284 and 287 to conflict with final offers. Those Chapters are irrelevant, as they deal with State personnel and insurance, respectively.

1 adopted state-wide collective bargaining, its legislative findings and declaration included the
2 following:

3 It is therefore within the public interest that the Legislature enact
4 provisions:

5 ...

6 (b) Requiring the State to recognize and negotiate wages, hours and
7 other terms and conditions of employment with labor organizations
8 that represent state employees and to enter into written agreements
9 evidencing the result of collective bargaining;

10 NRS 288.400(2)(b) (emphasis added).

11 The State's "final" unilaterally regressive offer for compensation is a recognized violation
12 of NRS 288.150(2). "Unilateral changes by an employer during the course of a collective
13 bargaining relationship concerning matters which are mandatory subjects of bargaining are
14 regarded as "per se" refusals to bargain." *Las Vegas Police Protective Association Metro, Inc.,*
15 *vs. City of Las Vegas, Nevada*, Nevada Employee Management Relations Board, Case No. A1-
16 045461 (8/15/90). Further, "any attempt to unilaterally implement changes prior to the exhaustion
17 of procedures promulgated under the public bargaining statute constitutes a prohibited practice."
18 *Id.* (quoting *WASCP County v. AFSCME*, 46 Or. App. 859, 613 P.2d 1067 (1980)).

19 Neither can the State's final offer make changes that were not proposed during bargaining
20 before impasse. The Arbitration process requires that the parties "submit *their* dispute" to an
21 arbitrator for "a final and binding decision." NRS 288.410. The State has chosen not to submit
22 the parties dispute to Arbitration. Instead, it has chosen to remove any compensation offer as its
23 final offer, which is a recognized bad faith action. *See N.L.R.B. v. Crompton-Highland Mills*, 337
24 U.S. 217, 225 (1949) (holding that an NLRB order requiring an employer to cease and desist its
25 unilateral change in proposal after impasse because its position was "substantially different from,
26 or greater than, any which the employer has proposed during its negotiations with such
27 representative.").

 The executive branched its obligation to negotiate the mandatory subjects of bargaining
outlined in NRS 288.150. *See* NRS 288.500(2). The statutory scheme only excludes a few topics
from mandatory bargaining. *See* NRS 288.500(3)(expressly excluding lay off decisions, staffing

1 and work performance standards, content of the workday, and quality of service offered to the
2 public). Every other topic of mandatory bargaining must be negotiated. *See Id.* As such, this
3 Arbitrator should deem the State's offer withdrawn because it directly violates statute.

4 b. The State's claim that collective bargaining for compensation must cease by sine
5 die is not supported by Statute.

6 The State's defense for its regressive bargaining is that it can no longer negotiate budget
7 items after sine die. No portion of statute says this. When examining a statute, the reader "should
8 ascribe plain meaning to its words, unless plain meaning was not clearly intended." *In re*
9 *Contrevo*, 123 Nev. 20, 22-23, 153 P.3d 652, 653 (2007). However, "if a statute is subject to
10 more than one reasonable interpretation, then it is ambiguous, and the plain meaning rule does
11 not apply." *Id.* Furthermore, statutory interpretation must "not render any part of the statute
12 meaningless," or "produce absurd or unreasonable results." *Orion Portfolio Servs. 2, LLC v. Cty.*
13 *of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010).

14 If the Legislature intended sine die to be the cut-off date for collective bargaining for
15 compensation, it would have made that clear in statute. It did the opposite. It gave the parties the
16 ability to proceed to Arbitration past the date in statute at their discretion. *See* NRS 288.575(3)
17 (allowing the parties to "begin arbitration proceedings on or before March 1 *or any later date set*
18 *by agreement of the parties*"). Likewise, an Arbitrator has discretion to release a decision after
19 sine die. *See* NRS 288.575(6)(allowing an Arbitrator to "render a decision on or before March 5
20 *or any later date set by agreement of the parties*"). There is also no language that requires the
21 parties to submit their agreement to the Board of Examiners before a statutory deadline. In fact,
22 the Board of Examiners regularly meets year-round. The statute is not ambiguous. There is no
23 statutory deadline to negotiate compensation. The State's attempt to create ambiguity based on
24 inaccurate legislative intent is an incorrect way to read statutes. *See Milner v. Department of the*
25 *Navy*, 562 U.S. 562, 574 (2011) ("But the more fundamental point is what we said before:
26 Legislative history, for those who take it into account, is meant to clear up ambiguity, not create
27 it.").

1 c. The Statutory Scheme is plain on its face—it allows Unions to negotiate after sine
2 die.

3 The Union is negotiating with the Executive Branch, not the State. The Legislature retains
4 approval to fund the agreement. Essentially, the parties can reach an agreement that never gets
5 funded by the Legislature. That is a legislative choice preserved by statute. But it cannot be a
6 basis for refusing to negotiate or withdrawing an offer. To read the statute otherwise would allow
7 the executive branch to usurp a legislative function to negotiate in bad faith. The ability for the
8 Union and the Executive Branch to reach an agreement regardless of potential Legislative action
9 is further supported by NRS 288.560(2)(b). It contemplates a scenario where the Union and
10 Executive Branch reached an agreement, but the Legislature is unable to fund the Agreement. *Id.*
11 (“The provision becomes effective, if at all, on the date when the act of the Legislature becomes
12 effective.”). Accordingly, we can have an Agreement that is not effective and requires legislative
13 approval, which is precisely the issue before the Arbitrator. It is “final and binding upon the
14 parties,” NRS 288.580(4), but is not binding upon the Legislature.

15 The State’s argument is a red herring. It assumes that the State can only make it an offer
16 that the Legislature will approve. The statutory scheme says the opposite: the Agreement between
17 the Union and the Executive branch does not bind the Legislature, which is why the likelihood of
18 the Legislature funding the Agreement is irrelevant. NRS 288.505(c) expressly requires a non-
19 appropriation clause in the contract that forces the parties to agree that funding the agreement is
20 subject to Legislative approval. The statute further makes a distinction between the Agreement
21 reached between the executive branch and the Union and the effectiveness of that Agreement.
22 *See Id.* (“Each collective bargaining agreement . . . must include . . . a no appropriation clause
23 that provides that any provision of the collective bargaining agreement which requires the
24 Legislature to appropriate money is effective only to the extent of the legislative appropriation.”).

25 The State will likely point to NRS 288.510 in support of its position. It does not support
26 its position. NRS 288.510 allows the Governor to include any amount of money in his proposed
27 budget he deems appropriate. However, this section has two exceptions. First, the Governor’s

1 inclusion of that amount of money is “notwithstanding” a collective bargaining agreement. If
2 there is an agreement, the Governor is bound by it. But more importantly, it is irrelevant to the
3 effect of negotiations. This portion of statute intends to allow the Governor to submit his
4 proposed budget during session. The State took the position during negotiations that it was unable
5 to negotiate compensation until the Governor released his budget. This makes sense and explains
6 NRS 288.510. The Governor’s “biennial proposed executive budget” can contain any amount of
7 money. However, negotiations can alter the budget later, which is the only time the Union can
8 negotiate compensation or budget related items.⁶

9 Finally, if the Legislature intended there to be a sine-die timeline to conclude negotiations
10 it would have said so in statute. Statutory deadlines are found throughout the Nevada Revised
11 Statutes, especially in the portion of state-wide collective bargaining. For instance, A union must
12 notify the State of its “desire to negotiate on or before November 1 of each even-numbered year.”
13 NRS 288.560(2). “Had the legislature intended [a restriction], it would have specifically so
14 provided by language to that effect.” *Clark County Sports Enter. Inc. v. City of Las Vegas*, 96
15 Nev. 167, 174, 606 P.2d 171 (1980). The Legislature did not intend to have a hard cut-off for
16 negotiating compensation after sine die. This Arbitrator can look further to the statement of the
17 Bill’s presenter and sponsor, Senator David Parks:

18 As a primary sponsor of Senate Bill 135, there was no intent for
19 legislative sine die to serve as a deadline for the conclusion of
20 negotiations between bargaining units and the Governor’s
21 representative for negotiations. In fact, while there are specific
22 timelines to commence the negotiation process, there is no specific
23 deadline for the finalization of negotiations.

24 As an individual with local government labor negotiations
25 experience, I have had first-hand public-sector experience
26 negotiating collective bargaining contracts. Those negotiations
27 seldom conclude on a predetermined schedule. Consequently, no
specific deadline was placed in Senate Bill 135 for the termination
or conclusion of labor negotiations.

26 ⁶The State took the position during negotiations that it could not negotiate compensation until after the Governor
27 released his budget. This is exactly why NRS 288.510 exists. The Governor can put any amount in his budget and
it’s not bad faith. But, he can also amend it later because the State will not negotiate budget items until after the
Governor releases the budget.

1 *See Attached as Exhibit 1.*

2 d. The State's reading of the Statute would lead to absurd results.

3 Statutory interpretation should not render any part of a statute meaningless or superfluous,
4 and the interpretation should not produce absurd or unreasonable results. *S. Nev. Homebuilders*
5 *Ass'n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (Nev. 2005). In addition, a statute
6 must be construed as a whole in the light of its purpose. *Id.* (citing *Washington v. State*, 117 Nev.
7 735, 739, 30 P.3d 1134, 1136 (2001)).

8 If the State's understanding of the Statute were correct, it would result in a collective
9 bargaining process that allows an anti-union Executive Branch to merely wait a Union out. The
10 EMRB does not have the remedy available for it to force a party to accept an agreement. *See*
11 *NRS 288.1190* (limiting the remedy's available to the EMRB). As such, even if it determined a
12 party acted in bad faith, that party could prevail after sine die because there is no longer funding
13 available.

14 Further, the State's argument is, effectively, "Union, you should have known about this
15 and taken our offer." That is the antithesis of collective bargaining. The Stated initiated a last
16 second fire drill and proceeded to reject a reasonable Union offer. It then refused to request the
17 Legislature preserve the amount of money available to the Union in its final offer. This was
18 clearly in bad faith. But it also exhibits the absurdity of the State's position.

19 e. The statutory scheme should be construed liberally because it protects employees
20 right to collectively bargain with the State.

21 "[S]tatutes with a protective purpose should be liberally construed in order to effectuate
22 the benefits intended to be obtained." *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 40,
23 175 P.3d 906, 908 (2008) (internal quotation marks omitted). NRS Chapter 288 is expressly a
24 protective statute. It aims to "protect the rights of employees, the Executive Department and the
25 people of the State" by "[r]equiring the State to recognize and negotiate wages, hours and other
26 terms and conditions of employment with labor organizations that represent state employees."
27

1 NRS 288.400(2)(b)-(c) (identifying the Legislatures “findings and declarations” in adopting SB
2 135).

3 Here, it would be contrary to the protective purpose of state-wide collective bargaining to
4 allow the Executive branch to merely wait-out a union and foreclose bargaining for compensation
5 until after sine die. It would also be counter to a protective statute to infer a non-stated statutory
6 deadline for to receive that protection. The Union has complied with the statutory requirements
7 of NRS Chapter 288. The State shouldn’t be permitted to renege on its compensation article offer
8 unless it were clearly stated in NRS Chapter 288.

9 f. The State’s argument is intellectually dishonest—it agreed to compensation
10 negotiations after Sine Die with another Union.

11 The State’s argument that there is no way to negotiate compensation after the end of
12 session is intellectually dishonest. The State negotiated a reopening provision with AFSCME in
13 their agreement, which was not ratified until a few days before Sine Die. The language is:

14 If the May 2021 meeting of the Economic Forum, pursuant to NRS
15 353.230 projects additional State revenues, the parties agree to a
16 limited reopener with the express purpose of negotiating a cost-of-
17 living increase in FY 2022. Such bargaining sessions shall be
limited to two (2) eight (8) hour sessions, unless otherwise agreed
upon by the parties. If no agreement is reached, the parties will use
the impasse procedures outlined in NRS 288.474 to resolve this.

18 2021-2023, Negotiated Agreement Between State of Nevada and AFSCME, Article X –
19 compensation

20 Not only did the State attorneys agree to this clause, *but the Executive branch did as well.*
21 NRS 288.555 requires that a collective bargaining agreement be approved by the State Board of
22 Examiners. This Board consists of the Governor of Nevada, the Attorney General, and the
23 Secretary of State. On May 25, 2021, this Board approved AFSCME’s collective agreement with
24 the State that included a reopener provision. The reopening clause provides for two negotiation
25 sessions and then arbitration. It would be impossible to complete these actions until after the
26 Legislative session. The State’s position at Arbitration—that it cannot fund an agreement after
27 session—is not compatible with the terms of the Agreement it just entered with AFSCME.

1 g. The State's claim that there is no way to fund the Agreement is also incorrect is
2 irrelevant because the Union is negotiating with the State. But, it is also incorrect.

3 i. *The Agreement could be funded by the Interim Finance Committee.*

4 The Legislature can fund the contract through the Legislature's Interim Finance
5 Committee. The Interim Finance Committee can provide funds for State agencies when the
6 Legislature is in session and can "modify legislatively-approved budgets." See
7 <https://budget.nv.gov/Interim-Finance-Committee/> . This is precisely how the Legislature
8 intended to fund the contract if it didn't reach an agreement before the end of session. Senator
9 David Parks, the sponsor and presenter of Senate Bill 135 explained in his sworn statement:

10 When the Legislature is not in session, ongoing finance and
11 budgetary issues are handled by the Interim Finance Committee of
12 the Legislature. The Interim Finance Committee (composed of
13 members of the Assembly Ways & Means Committee and Senate
14 Finance Committee) administers a contingency fund for
15 unanticipated expenditures, approves and allocates gifts and grants
received between legislative sessions, and reviews state agency
requests. This is precisely the process designed to address the
current issues facing the Nevada Police Union in its negotiation with
the Governor's representatives for negotiations.

16 *See Attached as Exhibit 1.*

17 Further, NRS 288.560 was not intended to preclude the governor from using a means
18 outside of the biennial legislature to get funded. It merely requires legislative approval but was
19 not intended to limit how the Governor seeks out legislative approval. A co-presenter of the bill,
20 Steven Kreisberg (director of research and collective bargaining services for the American federal
21 of state, county, and municipal employees) explained:

22 Section 37 reiterates that if a collective bargaining agreement
23 provision needs legislative approval, the Governor requests that
approval and the agreement would be effective only to the extent
that the Legislature approves necessary funding.

24 Likewise, the purpose of the limiting language in NRS 218D.175 was not to obligate the
25 Governor to use a session bill solely to fund a collective bargaining agreement; it was to remove
26 a law that prevented him from introducing a budget amendment after the February deadline.

27 Section 49.5, Exhibit P, allows the Governor to submit budget bills
related to the funding of the collective bargaining agreement after

1 the February deadline outlined in NRS 218D.175. This provision is
2 necessary because proposed collective bargaining agreements may
3 not be finalized prior to the February deadline, especially if the
4 parties reach impasse and need to go to arbitration.

5 Mr. Michael Brown, on behalf of Governor Sisolak, explained at a May 29, 2019, Senate
6 Committee on Finance meeting. Simply, NRS 218D.175 removes a prior prohibition; it does not
7 obligate or limit the way the Executive branch may negotiate with a union.

8 *ii. The Legislature could fund the Agreement first thing next Legislative*
9 *Session.*

10 NRS 288.560(2)(a) allows the Governor request bill drafting language to effectuate the
11 agreement. That portion of Statute directs a reader to look to NRS 218D.175(2), which was added
12 because of SB 135. It reads as follows:

13 2. The Governor or the Governor's designated representative may
14 request at any time before or during a regular session, without
15 limitation, the drafting of as many legislative measures as are
16 necessary to carry out the provisions of NRS 288.400 to 288.630,
17 inclusive.

18 There is no legislative history on this portion of SB 135. But it is housed within a section
19 of Statute that outlines the bill allotments for various executive officers. The Union thinks it is
20 intended to remove a statutory preclusion on the Governor introducing a bill after 110 days into
21 the legislative session—the date which all bill drafts are due. It is not intended to require the
22 Governor to introduce a bill in this mechanism.

23 But even if it were, the language clearly gives the Governor the ability to request a bill at
24 any time “before or during a regular session.” Therefore, the Governor can fund the agreement
25 first thing during the next legislative session. This reading is consistent with other portions of
26 appropriations that deal with inter-session contracts. NRS 353.085 specifically outlines the
27 State's procedure for “payment of contract claims when no legislative appropriation has been
made.” It requires that the opinion of the Board of Examiners that a contract is valid—such as
the process outlined in NRS 288.555— “shall be transmitted to the Legislature on the first day of
its next legislative session.” NRS 353.085(2). This Arbitrator should read both portions of Statute

1 in harmony, and the Union has presented the only way to do so. *See State, Div. of Ins. V. State*
2 *Farm Mut. Auto. Ins. Co.*, 996 P.2d 482, 486 (2000).

3 *iii. The Governor can call a special session to fund the agreement.*

4 At worst, the Nevada Governor could call a special session “on extraordinary occasion”
5 to convene the legislature.⁷ Nev. Const. Article 5, Section 9. The State’s need to appropriate
6 money outside of a legislative session is a recognized “extraordinary occasion.” There are
7 multiple instances where a special session was called to appropriate money for schools, make
8 salary adjustments for state employees, and fund a football stadium.⁸ A special session has even
9 been called to address “contentions between labor unions and mine operators.”

10 Further, these special sessions supersede statutory obligations that actions occur during
11 session. NRS 218.175(3) requires the Governor to request a budget amendment before the 19th
12 day of the Legislative Session. But that doesn’t preclude the Governor from calling a special
13 session to address budget issues and amend the budget. Nevada has had special sessions to
14 address the budget at least five times. All of these would have been inconsistent with NRS
15 218.175(3)’s obligation that the Governor request a budget amendment during session, which
16 goes to show that is not how Chapter 218 is supposed to operate.

17 *h. Legislative history does not support the State’s position.*

18 In statutory construction various aids to determine legislative intent have been utilized by
19 courts since “it is a cardinal rule that statutes should be given a reasonable interpretation and in
20 accordance with the apparent purpose and intention of the law makers.” *County of Alameda v.*
21 *Kuchel*, 32 Cal.2d 193, 199, 195 P.2d 17, 20 (1948). In so doing, the court is entitled to consider
22 the affidavits of the author of the subject legislation. *Campbell v. Board of Dental Examiners*, 53
23 Cal.App.3d 283, 125 Cal.Rptr. 694 (1975); *see also Chapman v. Federal Power Comm’n*, 345
24 U.S. 153, 73 S.Ct. 609, 97 L.Ed. 918 (1953). Therefore, this Arbitrator should look first and
25 foremost to the declaration of Senator David Parks, which is attached as Exhibit 1.

26 _____
27 ⁷The State’s lead negotiator, Ms. Barbara Bolender, even mentioned a special session as an to the Union’s attorney during a phone call.

⁸<https://www.leg.state.nv.us/Division/Research/Documents/NevadaSpecialSessions.pdf>

1 In essence, the Legislature never intended to force State employees to beg for working
2 conditions by requiring the State to negotiate. The State did precisely the opposite, while
3 attempting to coerce the Union into negotiating at the last minute when the Union's offer was
4 entirely consistent with the goals of the State. Then, after the Union said no, the State retaliated
5 against it. This is inconsistent with the purpose of the law, Senator David Parks, the Bill's
6 sponsor, explained the purpose of the Bill at its first reading:

7 This bill has been a long time coming. State workers are drastically
8 underpaid compared to similar states as well as when compared to
9 city and county employees in Nevada. The reason for this disparity
10 is that they have no authority to either bargain or negotiate.
11 Currently, State employees must beg collectively for changes in
12 their working conditions or compensation.

13 Passage of S.B. 135 will be a major step forward not only for State
14 employees but also for the State of Nevada as a whole. It will go a
15 long way toward addressing the problems the State has with
16 turnover due to the fact that employees leave State employment after
17 the State has invested in hiring and training them.

18 Collective bargaining will also establish a collaborative relationship
19 between employees and management, which is designed to build
20 trust and cooperation by focusing on common interests, with both
21 parties together engaging in creative means to address these
22 common interests.

23 Senate Committee on Government Affairs, first reading, April 4, 2019.

24 Further, the State's insistence that it will only provide a salary increase—and refusal to
25 negotiate with the Union when it sought a different way to divide the available money—is the
26 opposite of what was intended. A co-presenter of the bill, Steven Kreisberg, explained that the
27 bill was intended to remove the paternalistic approach to working conditions. The State did not
budget on its strategy to compensation, even though the Union—understanding what their
employees want—requested it.

By adopting such a bill, you are expressing trust in your workforce
to make correct decisions for themselves and to exercise the rights
they believe they should exercise as opposed to policy makers
exercising those rights for them.

Senate Committee on Government Affairs, first reading, April 4, 2019.

1 1. This Arbitrator should not give weight to the State's
2 mischaracterization of Assemblywoman Carleton's recent testimony.

3 Assembly Woman Carleton testimony after the fact, as a non-sponsor, does not speak to
4 the intent of the Bill. *Friends of Mammoth v. Board of Supervisors*, 8 Cal.3d 247, 258, 104
5 Cal.Rptr. 761, 502 P.2d 1049 (1972) (determining that the testimony of an individual legislator
6 was not persuasive in capturing legislative intent). The State has mischaracterized her testimony.
7 The Union urges the Arbitrator to listen to the testimony. It is clear the Assemblywoman is talking
8 about free loaders who are not in collective bargaining agreements and is making a statement in
9 passing about funding. It was not intended to describe or opine on the potential for funding an
10 agreement with the Union or whether the Executive Branch could negotiate compensation after
11 sine die.

12 **IV. Conclusion**

13 This Arbitrator's ruling on the statutory scheme and the State's obligation to negotiate
14 after *sine die* will affect bargaining in Nevada for years to come. This is the first time an impartial
15 neutral will have the opportunity to analyze the Statute. The State's position is antithetical to
16 collective bargaining, not required by statute, counter to legislative intent, and leads to a worse
17 collective bargaining process. The Union prays the Arbitrator ensures the State's anti-union
18 position does not become the governing law going forward in Nevada.

19 Dated this 2nd day of July 2021.

HUTCHISON & STEFFEN,

20 PLLC

21 By: /s/ Alex R. Velto
22 Devon T. Reese, Esq. (SBN# 7496)
23 Alex R. Velto, Esq. (SBN# 14961)
24 500 Damonte Ranch Parkway, Suite 980
25 Reno, Nevada 89521
26 Attorneys for NPU
27

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of HUTCHISON
3 & STEFFEN, LLC and that on the 2nd day of July, 2021, I caused service a true and correct copy
4 of the **NEVADA POLICE UNION'S MOTION TO CONSIDER STATE'S**
5 **COMPENSATION OFFER WITHDRAWN** by electronic mail to the following:

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20
21
22
23
24
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27

EXHIBIT 1

EXHIBIT 1

Senate Bill 135 (2019)
Legislative History Expert Opinion
Sponsor Senator David Parks

- 1) The Nevada Police Union believes that Senate Bill 135 was not intended to require an agreement be reached before the end of session. The Nevada Police Union believes this reading of the law would allow a Governor to merely wait the union out until the end of session to avoid negotiating with a union about issues that require a financial expenditure. The State's attorneys have argued that the Nevada Police Union's failure to reach an agreement on the compensation article before the end of session now precludes the State from offering any form of compensation increase and that the State is no longer able to negotiate compensation. In sponsoring and introducing Senate Bill 135, did you intend for sine die to cut off opportunities for unions to negotiate compensation or financial expenditures? Please provide as much detail and insight as you feel appropriate:

As a primary sponsor of Senate Bill 135, there was no intent for legislative sine die to serve as a deadline for the conclusion of negotiations between bargaining units and the Governor's representative for negotiations. In fact, while there are specific timelines to commence the negotiation process, there is no specified deadline for the finalization of negotiations.

As an individual with local government labor negotiations experience, I have had first-hand public-sector experience negotiating collective bargaining contracts. Those negotiations seldom conclude on a predetermined schedule. Consequently, no specific deadline was placed in Senate Bill 135 for the termination or conclusion of labor negotiations.

- 2) The State last offer before the end of the Legislative session was for a 3% cost of living increase. The Union requested that the State preserve the amount of money equal to the 3% cost of living increase so that the Union could continue to negotiate how that money would be spent and allow the Arbitrator to determine who's offer was more reasonable. The State has now taken the position that it was unable to preserve the money, and that it was not required, to preserve the money for negotiations after the end of the Legislative session. Is this consistent with your understanding of Senate Bill 135? Please provide as much detail and insight as you feel appropriate:

The Executive Branch of the State of Nevada has authority to request appropriations from the Legislature to fund State programs and services. The Legislative Branch has authority to allocate funds for all State programs and services.

I was a member of the Nevada Legislature for 24 years (1996 - 2020) as well as a member of the two budget committees (Assembly Ways & Means and Senate Finance). It is not uncommon for these two committees to approve and close budgets with contingent appropriations that are tentative and require final approval once negotiations have concluded. The established budget closing process for such situations requires the Legislature to approve the allocation with a "Letter of Intent" which requires the affected agency to seek final approval prior to incurring any expenditure.

When the Legislature is not in session, ongoing finance and budgetary issues are handled by the Interim Finance Committee of the Legislature. The Interim Finance Committee (composed of

Senate Bill 135 (2019)
Legislative History Expert Opinion
Sponsor Senator David Parks

members of the Assembly Ways & Means Committee and Senate Finance Committee) administers a contingency fund for unanticipated expenditures, approves and allocates gifts and grants received between legislative sessions, and reviews state agency requests. This is precisely the process designed to address the current issues facing the Nevada Police Union in its negotiation with the Governor's representative for negotiations.

I attest to the truthfulness of the foregoing to the best of my knowledge and recollection,

A handwritten signature in cursive script, reading "David Parks", written over a horizontal line.

David Parks
Former Senator

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APPENDIX PAGE ONLY



APPENDIX F

1 IN THE MATTER OF ARBITRATION

2 BETWEEN

3 STATE OF NEVADA,

4 Employer,

5 v.

6 NEVADA POLICE UNION,

7 Union.

Case Number: 210124-03033

**STATE OF NEVADA'S MOTION TO DEEM
NPU'S PROPOSALS WITHDRAWN
PURSUANT TO NRS 288.575(1)**

8
9 This Motion to Deem NPU's Proposals Withdrawn Pursuant to Section 288.575(1) of the Nevada
10 Revised Statutes ("NRS") is filed herein consistent with Scheduling Order II(A).

11 **I. SUMMARY OF ARGUMENT**

12 Under NRS 288.575, any proposal that conflicts or is otherwise inconsistent with any provision
13 of state law (other than NRS 284 and 287) must be considered withdrawn from the arbitration process.
14 NPU's Last Best and Final Offer submitted proposals on three subjects: (1) Body Cameras; (2) Seniority;
15 and (3) Compensation. For reasons that will be detailed herein, all three of NPU's offers are inconsistent
16 with various statutes and therefore must be deemed withdrawn.

17 NPU's proposal on body cameras must be withdrawn because it hinders law enforcement
18 agencies' duty to enforce body camera rules under NRS 289.830 and violates Nevada's Public Record
19 Law. NRS 289.830(1)(f) requires that law enforcement agencies establish disciplinary rules for peace
20 officers who fail to operate body cameras in accordance with any departmental policies. Without the
21 ability to audit body camera footage for the purpose of identifying any potential violations, law
22 enforcement agencies would not be able to comply with their lawful duty under this statute. Further,
23 NPU's proposal is inconsistent with Nevada's Public Record Law. NRS 289.830(2) plainly states that
24 "any record made by a portable event recording device pursuant to this section is a public record." A
25 person's ability to view body camera footage is already made clear in NRS 289.830 and Nevada's Public
26 Record Law (codified in chapter 239 of NRS), and cannot be abrogated by a collective bargaining
27 agreement. NPU's proposal seeks to unlawfully infringe on a person's ability to view body camera
28 footage by placing a new restriction that supervisors must initiate a formal investigation and notice

1 process when viewing body camera footage for the purpose of seeking policy violations. This far exceeds
2 the notice requirement currently found in NRS 289.060, which only requires notice before an
3 interrogation or hearing is held relating to potential officer misconduct. Thus, NPU's proposal represents
4 an unreasonable restriction on a person's access to public records and therefore violates Nevada's Public
5 Record Law.

6 Additionally, NPU's proposals on body cameras and seniority are unlawful because they infringe
7 on the State's management rights. NRS 288.150(3) identifies subjects which are not within the scope of
8 mandatory bargaining and must be reserved to the State without negotiation.¹ In the employment law
9 context, these are termed "management rights." Under that statute, the State cannot be required to
10 negotiate regarding the content of an employee's workday, the quality and quantity of services being
11 offered to the public, the means and methods of offering those services, and the safety of the public.
12 NPU's proposals on body cameras and seniority directly implicate these fundamental management rights.
13 On body cameras, NPU seeks to limit the State's ability to freely monitor body camera footage. Under
14 NPU's proposal, a supervisor would not be permitted to watch body camera footage for the purpose of
15 ensuring compliance with the law and department policy without starting a formal investigation and
16 providing notice under NRS 289.057.² This directly impedes the State's inherent management rights of
17 determining the quality of services being offered to the public and ensuring the safety of the public.
18 NPU's proposal on seniority is similarly unlawful. By requiring the State to use seniority as a tie-breaker
19 in issues like equipment, scheduling, mandatory overtime and leave, NPU is interfering with the
20 management rights reserved to the state under NRS 288.150. On officer equipment, an issue that directly
21 implicates the safety of the public (and the officer), the State is entitled to make its decisions without
22 limitation by a collective bargaining agreement. The tenure of an officer cannot play any role in this
23
24

25 ¹ Though generally the provisions of NRS 288.150 apply to local governments, NRS 288.500(3)
26 applies to the State Government's management rights and refers back to 288.150, simply stating that
27 "The subject matters set forth in subsection 3 of NRS 288.150 are not within the scope of mandatory
28 bargaining."

27 ² Additionally, NPU's Last Best and Final Offer on body cameras remains unclear in that it
28 requires "notice pursuant to NRS 289.057." However, NRS 289.057 does not itself contain a notice
provision. For that reason, this Motion will assume that NPU is referring to notice required under the
subsequent statute, NRS 289.060.

critical public safety decision. Since NPU's proposals interfere with the State's management rights under NRS 288.150(3), they must be deemed withdrawn from this arbitration.

Lastly, NPU's Final Offer on compensation must be withdrawn because it exceeds the final amount appropriated by the Legislature for employee salaries for the 2021 – 2023 biennium. The authority to grant NPU any additional direct compensation rests exclusively with the Legislature. However, now that the 2021 Legislative Session has concluded, there is no further opportunity to submit a compensation proposal to the Legislature for its inclusion in the biannual budget. Now that the Legislature has established its final appropriations for the 2021-2023 biennium, it is impossible for any State funds to be distributed in excess of the Legislature's final appropriations. Given the legal impossibility of providing NPU what they seek, NPU's proposal on compensation must be deemed withdrawn from this arbitration in accordance with NRS 288.575(1).

II. STANDARD OF REVIEW

"Any proposal that conflicts or is otherwise inconsistent with any provision of state law, other than the provisions of chapters 284 and 287 of NRS, shall be considered withdrawn by the proposing party when mediation is discontinued."³

Accordingly, before the Arbitrator is able to entertain any evaluation of the reasonableness of proposals under NRS 288.580, he must first determine which proposals of the parties have been withdrawn based on inconsistency with existing State Law. Any proposal in conflict State Law is withdrawn from consideration prior to final Arbitration. The Arbitrator cannot revise or amend the final offer of any party, so any provision deemed withdrawn under NRS 288.575 must be struck entirely from a party's final offer. NRS 288.580(1).

III. ARGUMENT

A. NPU's Final "Body Camera" Provision Conflicts with Nevada's Public Record Law and NRS 289.830(1)(f) and Therefore Must Be Deemed Withdrawn.

NPU's final offer on body cameras is contrary to existing law that establishes body camera footage as a public record and is inconsistent with law enforcement agencies duty to enforce disciplinary

³ NRS 288.575(1).

1 rules for peace officers who fail to operate body cameras in accordance with any departmental policies
2 under NRS 289.830(1)(f).

3 **1. NPU's Final Offer on Body Cameras is Inconsistent with Nevada's Public**
4 **Record's Law.**

5 The laws establishing body camera policy plainly states that "any record made by a portable event
6 recording device pursuant to this section is a public record." NRS 289.830(2). As a public record, any
7 person's ability to view body camera footage is therefore determined by Nevada's Public Record Law
8 (codified in chapter 239 of NRS) and the limited exceptions found within NRS 289.830(2)⁴, and cannot
9 be abrogated by a collective bargaining agreement. *See Milwaukee J. Sentinel v. Wisconsin Dep't of*
10 *Admin.*, 2009 WI 79, ¶ 25, 319 Wis. 2d 439, 461, 768 N.W.2d 700, 711 ("If a right is given to the public
11 by statute, such as the right to seek disclosure of public records, the legislature generally may take that
12 right away through legislative action in compliance with constitutional mandates. However, since [the
13 article limiting access to a public record] of the collective bargaining agreement was not enacted by bill,
14 it remains a contractual provision. It is not 'law' . . . that is an exception to the Public Records Law").
15 NRS 239.010 further declares that "unless otherwise declared by law to be confidential, all public books
16 and public records of a governmental entity must be open at all times during office hours to inspection
17 by any person, and may be fully copied."

18 NPU's proposal unreasonably and unlawfully infringes a person's ability to view body camera
19 footage by placing a new restriction that supervisors must initiate a formal investigation and notice
20 process when viewing body camera footage for the purpose of seeking policy violations. This far exceeds
21 the notice requirement currently found in NRS 289.060, which only requires notice before an
22 interrogation or hearing is held relating to potential officer misconduct. Because NPU's Final Offer on
23 Body Cameras would require a formal investigation and notice just to view footage for the purpose of
24 ensuring compliance with applicable rules and statutes, its effect is an unlawful restriction on viewing a
25 public record.

27 ⁴ Pursuant to NRS 289.830(2), "[a]ny record made by a portable event recording device pursuant
28 to this section is a public record which may be: (a) requested only on a per incident basis; and (b) available
for inspection only at the location where the record is held if the record contains confidential information
that may not otherwise be redacted."

1 As a public record subject only to the minor restrictions found within NRS 289.830(2), the general
2 public is permitted to view all body camera footage, even footage that contains confidential information.
3 NPU's proposal would create an absurd result where law enforcement supervisors have less ability to
4 access body camera footage than members of the general public and the police officers they supervise.

5 Ultimately, NPU's body camera must be withdrawn because it places an additional and unlawful
6 restriction on a person's ability to view a public record. Any such restrictions on the ability to access a
7 public record must be stated within the law, not within a contractual agreement. For that reason alone,
8 NPU's proposal is unlawful and cannot be adopted.

9 **2. NPU's Final Offer on Body Cameras Conflicts with or is Otherwise**
10 **Inconsistent with NRS 289.830 Mandating that Law Enforcement Agencies**
11 **Enact Policies Regarding Body Cameras.**

12 NPU's final offer on body cameras would prevent law enforcement agencies from implementing
13 the very policies and procedures they are required to develop under NRS 289.830(1)(f), thereby
14 undermining the plain language and purpose of NRS 289.830. NPU's proposal to preclude supervisors
15 from reviewing body camera footage "for the purpose of seeking policy violations" creates a direct
16 conflict with the plain language of NRS 289.830(1) by preventing law enforcement agencies from
17 implementing the policies and procedures required under NRS 289.830(1), including disciplinary rules
18 for peace officers regarding their use of body cameras.

19 NPU's Offer on Body Cameras seeks to greatly expand the scope of NRS 289.057 and NRS
20 289.060 in a manner that would transform management's ability to regularly review body footage into a
21 formal investigation, which would require notice to the peace officer, a waiting period, and a right for
22 both the employee and a representative to be present just to review the body camera footage. Thus, this
23 provision would effectively prevent the Agency from reviewing body camera footage at all to ensure
24 compliance with Department policies and procedures as mandated by NRS 289.830(1) and (1)(f). Such
25 an expanded application of NRS 289.057 and NRS 289.060 completely undermines the Legislature's
26 mandate that the Law Enforcement Agencies review body camera footage.

27 ///

28 ///

///

1 **B. NPU’s Articles on Seniority and Body Cameras Must be “Deemed Withdrawn”**
2 **Because they Fall Outside the Lawful Scope of Collective Bargaining**

3 NRS 288.500(3) identifies subjects which are not within the scope of mandatory bargaining and
4 are reserved to the Executive Department without negotiation.⁵ In the employment law context, these are
5 termed “management rights.” Management rights under are listed as follows:

- 6 (a) Except as otherwise provided in paragraph (u) of subsection 2, the right to hire, direct, assign
7 or transfer an employee, but excluding the right to assign or transfer an employee as a form of
8 discipline.
9 (b) The right to reduce in force or lay off any employee because of lack of work or lack of
10 money, subject to paragraph (v) of subsection 2.
11 (c) The right to determine:
12 (1) Appropriate staffing levels and work performance standards, except for safety
13 considerations;
14 (2) The content of the workday, including without limitation workload factors, except for
15 safety considerations;
16 (3) The quality and quantity of services to be offered to the public; and
17 (4) The means and methods of offering those services.
18 (d) Safety of the public.⁶

13 **1. NPU’s Final Proposal on Body Cams Unlawfully Infringes on the State’s**
14 **Management Rights.**

15 NPU seeks to limit the State’s ability to freely monitor body camera footage. Under NPU’s
16 proposal, a supervisor would not be permitted to watch body camera footage for the purpose of ensuring
17 compliance with the law and department policy without starting a formal investigation and providing
18 notice under NRS 289.060. This directly impedes the State’s inherent management rights of determining
19 the quality of services being offered to the public and ensuring the safety of the public. By proposing that
20 supervisors’ access to body camera video triggers NRS 289.060 notice if “for the purpose of seeking
21 policy violations,” NPU would be impermissibly restricting management’s every decision to review body
22 camera footage.

23 By seeking to inquire into the mind of a supervisor every time he or she views body camera
24 footage, NPU’s proposal might limit supervisors use of body camera footage altogether. Body camera
25 footage can be viewed for many purposes, all at the same time. Body cameras are used by managers to
26 ensure the camera is working properly, as a tool in training officers, to assist in completing investigations

27
28 ⁵ NRS 288.500(3) (“The subject matters set forth in subsection 3 of NRS 288.150 are not within
the scope of mandatory bargaining and are reserved to the Executive Department without negotiation”).

⁶ NRS 288.150(3).

1 for anybody who appears in body camera footage, and also for discipline. This footage provides agencies
2 with invaluable information which they use to coach and train officers, preparing them for real life
3 occurrences and helping them improve their response to situations in the field.⁷ Body camera footage
4 allows law enforcement agencies to review the quality of services being provided to the public by
5 allowing supervisors to review the contents of an employee's workday which can assist an agency in
6 implement policies ensuring more efficient utilization of officers and resources. Given that NPU's
7 proposal significantly inhibits law enforcement agencies from carrying out their inherent management
8 rights, this provision must be deemed withdrawn as conflicting with reserved management rights.

9 **2. NPU's Final Offer on Seniority Unlawfully Seeks to Bind the State on**
10 **Management Rights Outside the Lawful Scope of Bargaining Under NRS**
11 **288.150(3).**

12 NPU's Final Offer is that "*Seniority shall be considered for the purposes of scheduling,*
13 *equipment, mandatory overtime, or leave as a "tie-breaking" mechanism when Departments or Divisions*
14 *are approving or disapproving requests.*" In contrast, the State's final offer, allows, but does not require,
15 supervisors to consider seniority as a tie-breaker on the issues of scheduling and leave. Similar to its
16 proposal on body cameras, NPU's final offer seeks to bind the State to non-negotiable management
17 rights. This proposal would put NPU in a position to review every law enforcement management decision
18 on issues like equipment, scheduling, mandatory overtime and leave to ensure the State applies seniority
19 as a tie-breaker. On issues like equipment and mandatory overtime, which necessarily sometimes involve
20 emergency situations, requiring a supervisor to explicitly detail all of the considerations involved would
21 obstruct their ability to make timely decisions that are critical to public safety.

22 On an issue like equipment, which directly implicates the safety of the public (and the officer)
23 and the quality and quantity of services to be offered to the public, the State is entitled to make its
24 decisions without limitation by a collective bargaining agreement. As provided in NRS 288.150(3)(d),

25 ⁷ The importance of body camera footage as a training tool has been noted by the National Institute
26 of Justice – "The use of body-worn cameras also offers potential opportunities to advance policing
27 through training. Law enforcement trainers and executives can assess officer activities and behavior
28 captured by body-worn cameras — either through self-initiated investigations or those that result from
calls for service — to advance professionalism among officers and new recruits. Finally, video footage
can provide law enforcement executives with opportunities to implement new strategies and assess the
extent to which officers carry out their duties in a manner that is consistent with the assigned initiatives." Brett
Chapman, *Body-Worn Cameras: What the Evidence Tells Us* at 2 (2018)
(<https://www.ojp.gov/pdffiles1/nij/252035.pdf>) (last visited on June 17, 2021).

1 issues relating to the safety of the public are non-negotiable and therefore must be withdrawn from
2 arbitration.

3 Given that NPU's proposals on body cameras and seniority unlawfully infringe on the State's
4 fundamental management rights, they must be deemed withdrawn from this arbitration.

5 **C. Compensation Has Been Established For the Upcoming Biennium by the "Pay Bill"**
6 **And Cannot Be Amended Now.**

7 Unlike local government employers who are largely able to amend their budgets to provide greater
8 financial benefits after the close of their budgeting process, the State, and by extension the Arbitrator,
9 simply does not have the authority to amend the Pay Bill, as set forth in Assembly Bill 493 of the 81st
10 Legislative Session after its passage and signature by the Governor. The Pay Bill established
11 compensation of State employees, and was approved by the Legislature on May 30 and the Governor on
12 June 3 of 2021.⁸ The Pay Bill specifies, at Sec. 5(2) - "For personnel not represented by a collective
13 bargaining agreement approved pursuant to NRS 288.555 on or before May 25, 2021, an increase in
14 salary of 1 percent." Thus the Pay Bill conclusively establishes compensation for Unit G, which was a
15 1% cost-of-living adjustment (COLA) for employees for fiscal year 2022 to 2023. Any amount to the
16 contrary would directly contradict the Pay Bill. Simply put, NPU's request represents a legal
17 impossibility given the conclusion of the Legislative Session.

18 **1. Because the Pay Bill specifically appropriated all monies for the**
19 **compensation of State employees, Any Funding of NPU's offer directly**
20 **conflicts with the State's Appropriation Laws, NV Const. Art. 4, Sec. 19, and**
21 **NRS Chapter 353.**

22 The Pay Bill appropriates money for employees' salaries establishing the exact amounts that
23 employees may be compensated. NPU, the Executive Branch and the Arbitrator are prevented from
24 appropriating additional money by Article 4, Section 19 of the Nevada State Constitution, and NRS
25 Chapter 353, which prohibit the expenditures of funds in excess of Legislative appropriations. Nevada
26 State Constitution, Article, Section 19 provides: "no money shall be drawn from the treasury but in
27
28

8 Assembly Bill 493, 81st Legislative Session, *retrieved at*
<https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8234/Overview> (last seen 7/1/21).

1 consequence of appropriations made by law.” NRS Chapter 353 further directs Legislative appropriations
2 and authorizations consistent with Const. Art. 4, Sec. 19.

3 NRS Chapter 353 precludes the State from spending money in excess of what the Legislature
4 appropriates, and also prohibits the State from spending money in any manner that deviates from the line
5 items approved in the Pay Bill budget.⁹ NRS Chapter 353 even makes it unlawful to “attempt to bind, the
6 State of Nevada or any fund or department thereof in any amount in excess of the specific amount
7 provided by law.” NRS 353.235 (an expenditure may not be established for the current biennium which
8 is contingent upon the attainment of future funds); NRS 353.255 (sums appropriated for expenditures
9 only authorized “to the objects for which they are respectively made, and no others.”); NRS 353.260
10 (prohibits spending in excess of amount appropriated). Given these laws, NPU’s Compensation Article
11 is unlawful because it conflicts with the Pay Bill.

12 **i. NPU’s Offer Conflicts with NRS 353.260 Because it Seeks to Bind the**
13 **State to an Amount of Money that Exceeds what the Legislature**
14 **Appropriated for Unit G Employees in the 2021 Pay Bill.**

15 NRS 353.260 makes it “unlawful for any state officer, commissioner, head of any state
16 department or other employee, whether elected or appointed, to expend more money than the sum
17 specifically appropriated by law for any such office, commission, or department.” It is further “unlawful
18 for any state officer, commissioner, head of any department or employee of this state to bind, or attempt
19 to bind, the State of Nevada or any fund or department thereof in excess of the specific amount provided
20 by law, or in any other manner than that provided by law, for any purpose whatever.” NRS 353.260. The
21 plain language of both of these statutes, render any attempt to fund NPU’s offer unlawful because it
22 attempts to bind the State provide for an amount of money that exceeds what the Legislature appropriated
23 for Unit G employees in the 2021 Pay Bill.

24 **ii. Any Argument That Additional Compensation Be Contingent On**
25 **Future Monies Violates the NRS 353.235(3) Requirement That An**
26 **Expenditure Must Not be Contingent Upon the Attainment of Future**
27 **Funds.**

28 NRS 353.235(3) directly addresses the possibility of a contingent award and states: “[a]n
appropriation of money must not be made or a level of salary or other expenditure established which is

⁹ See Generally NRS 353.260.

1 contingent upon the attainment, during the biennium in which the money is to be expended or the salary
2 or level of expenditure is to be effective, of a specified balance in the State General Fund.” NPU’s Offer
3 is relevant only to fiscal year 2021 through 2023. Thus, any argument that compensation in excess of the
4 1% given by the Legislature be contingent on future revenues or appropriations violates NRS 353.235(3)
5 because it seeks to bind the Executive Department to future funds for money “which is to be expended”
6 . . . or “to be effective,” for the 2021 to 2023 fiscal years.

7 **iii. The Legislature Specifically Limited Negotiations to Align with the**
8 **Legislative Session on Items of Direct Monetary Compensation in**
9 **Senate Bill 135 of the 80th Legislative Session**

10 Notably, the Legislature contemplated the effects of the Legislative Budget timeline on collective
11 bargaining prior to passing Senate Bill 135 of the 80th Legislative Session in 2019 (SB 135). However,
12 in the end, it maintained that items of direct compensation must be finally established by the Legislature
13 and, as a result, “Arbitrators cannot bind the State to the expenditure of funds.”¹⁰ Specifically, when
14 discussing the impact of the timeline, the Legislature notes:

15 Section 36 speaks to a two-year term for collective bargaining agreements.
16 Agreements would be effective in odd numbered years to coincide with the
17 budget process. The exclusive representative of the employees and the
18 State would bargain an agreement to the extent it requires the appropriation
19 of funds, which would be addressed in the biennial budget. The collective
20 bargaining agreement would be effective July 1 of the odd-numbered year
21 through June 30 of the next odd-numbered year. There would be a
22 replacement agreement the following July 1.

23 Section 38 creates the timeline for collective bargaining so it complies with
24 the State's budget process. We understand, as in all states, appropriation
25 committees need to know what they are expected to try to approve in
26 advance of making those decisions. Section 38 spells that out.

27 Section 39 describes what the parties do in the event they cannot come to
28 an agreement voluntarily. The first step is a voluntary mediation process
where a professional will try to get the parties to agree through advice,
prodding, etc.

In the absence of an agreement, sections 40 and 41 speak to a binding
arbitration process. Importantly, the arbitration process is not binding on
the Legislature, it is binding on the chief executive. That chief executive,
depending upon the arbitrator's decision, then offers up that
decision—to the extent that it requires any expenditure funds—to the

¹⁰ See discussion contained in Senate Committee on Government Affairs, 80th Legislature, April 4, 2019, Page 11, retrieved from <https://www.leg.state.nv.us/Session/80th2019/Minutes/Senate/GA/Final/804.pdf> (last viewed 7/2/2021).

Legislature for approval. The Legislature retains its discretion to disapprove of an arbitrator's award involving the appropriation of money. Only the Legislature decides when money is spent. **Arbitrators cannot bind the State to the expenditure of funds.**¹¹

...

SENATOR KIECKHEFER: More broadly, the system with bargaining is trying to sync up with our budgeting system. The way I read the bill, agreements would theoretically try to be executed sometime in March of odd-numbered years. Is that correct?

MR. KREISBERG: Yes.¹² [emphasis added]

The statutes resulting from SB 135 establish a process and schedule by which negotiations coincide with the Legislative Budget.¹³ This schedule allows the parties to collective bargaining to begin negotiations in November and presumably provides sufficient time for final recommendations related to budgetary matters to be submitted to the Legislature prior to the close of the regular session.

This Legislative scheme limits negotiations on direct compensation, as the Legislature's ability to consider compensation ends at the close of the regular legislative session, on *sine die*, per NRS 218D.175(2). Past *sine die*, neither an agreement, nor the arbitrator can deviate from the Legislature's approved Pay Bill. Thus any provision conflicting with the Pay Bill after its final passage and gubernatorial approval, must be deemed withdrawn.

iv. Compensation Beyond the Pay Bill Cannot Be Funded Because NRS 288.560 Prevents The Request For Drafting of a Legislative Measure Outside of the 2021 Regular Legislative Session

Upon the Board of Examiners approval, if a provision of a collective bargaining agreement requires an act of the Legislature to be given effect, then "[t]he Governor shall request the drafting of a legislative measure pursuant to NRS 218D.175 to effectuate the provision." See NRS 288.560(2)(a). NRS 218D.175 is limited to requests "any time before or during a *regular session*." NRS 218D.175(2). The doctrine of "*expressio unius est exclusio alterius*" supports the interpretation that NRS 218D only applies

¹¹ *Id.* at 11 (emphasis added).

¹² *Id.* at 18.

¹³ See NRS 288.565 (the parties shall begin "negotiations concerning a collective bargaining agreement . . . on or before November 1 of each even-number year"); See also NRS 288.570 (if the parties do not reach a collective bargaining agreement they may request a mediator "on or before February 1 of an odd-numbered year"); see also NRS 288.575 (if an arbitrator is required, "the arbitrator shall begin arbitration proceedings on or before March 1 or any later date set by agreement of the parties" and "the arbitrator shall render a decision on or before March 15 or any later date set by agreement of the parties").

1 during the regular legislative session because the statute specifies that it only applies to a “regular
2 session”.

3 Black's Law Dictionary defines “*expressio unius est exclusio alterius*” as follows:

4 . . .maxim of statutory interpretation meaning that the expression of one
5 thing is the exclusion of another. (Citations omitted.) Mention of one thing
6 implies exclusion of another. When certain persons or things are specified
7 in a law, contract, or will, an intention to exclude all others from its
operation may be inferred. Under this maxim, if a statute specifies one
exception to a general rule or assumes to specify the effects of a certain
provision, other exceptions or effects are excluded.

8 Black’s Law Dictionary, 521 (5th ed. 1989). The Nevada Supreme Court has recognized and
9 applied this maxim of statutory interpretation on numerous occasions. *See Clark County Sports Enter.,*
10 *Inc. v. City of Las Vegas*, 96 Nev. 167,174, 606 P.2d 171,176 (1980) (stating, “[h]ad the legislature
11 intended inclusion, it would have specifically so provided by language to that effect.”); *see also State v.*
12 *Boerlin*, 38 Nev. 39, 45, 144 P. 738, 740 (1914) (providing, “[i]n the construction of a statute in which
13 certain things are enumerated, other things are to be excluded.”); *Ex Parte Arascada*, 44 Nev. 30, 34-
14 35,189 P. 619, 620 (1920) (“... when the Legislature enumerates certain instances in which an act or thing
15 may be done ... it names all that it contemplates; otherwise what is the necessity of specifying any? The
16 rule invoked is so thoroughly recognized, not only by the courts generally, but by our own court....”).

17 The Legislature, in enacting SB 135, retained its "power of the purse" and placed guard rails on
18 “items of direct compensation” that apply exclusively to the Executive Department. Thus, unlike the
19 statutory construction under which local governments arbitrate interest proposals (where the Arbitrator
20 can bind the local government employer to his or her chosen proposal), here, the Executive Branch, the
21 LRU, NPU and the Arbitrator are now bound by the terms of the Pay Bill. By statute, the Arbitrator lacks
22 the authority to bind the State on items of direct compensation, when the benefit has not been approved
23 by the Legislature.

24 During the 2021 Legislative Session, the Legislature again confirmed State’s reading that it no
25 longer had the authority to recommend an increase of direct compensation after the conclusion of the
26 Legislative Session. Assembly Committee on Ways and Means Chair Carlton explained:

27 [A]s we were walked through yesterday all the different categories . . .
28 those individual units have gone ahead and bargained, got their process
through the Board of Examiners by the May 25th deadline. Moving forward

1 there are still others in that process they just didn't make it by the deadline
2 so who knows you all may see some of those next year when you have the
3 same conversation.¹⁴

4 ...

5 If you are in that [Bargaining Unit] you will receive these dollars . . . if
6 you have not created a Bargaining Unit and gone to the table and negotiated
7 and got it through the Board of Examiners, then it doesn't exist. We are
8 waiting for Cat. I Police Officers to finish their process. We look forward
9 to that happening in the next two years. So I think you have to encapsulate
10 all of the collective bargaining agreement statutes.¹⁵

11 **V. CONCLUSION**

12 For the reasons stated herein, the State respectfully requests that the Arbitrator make a
13 determination that all three of NPU's Proposals on (1) Body Cameras (2) Seniority, and (3) Compensation
14 be deemed withdrawn as outside of the scope of collective bargaining and impasse Arbitration.

15 DATED this 2nd day of July, 2021.

16 AARON D. FORD
17 Attorney General

18 By: /s/ Tori N. Sundheim

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¹⁴ Assembly Committee on Ways and Means, May 27, 2021, from 9:49:02 AM to 9:49:34 AM
(available at <https://www.leg.state.nv.us/Video/>).

¹⁵ *Id.* at 9:53:45 AM to 9:54:15 AM.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify I am an employee of the Nevada Attorney General's Office, and on this 2nd day
3 of July, 2021, I served a copy of the foregoing **STATE OF NEVADA'S MOTION TO DEEM NPU'S**
4 **PROPOSALS WITHDRAWN PER NRS 288.575(1)** by email a copy thereof to:

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21 /s/ Caitie Collins

22 Caitie Collins, An Employee of the
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APPENDIX PAGE ONLY



APPENDIX F

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IN THE MATTER OF ARBITRATION

Case Number: 210124-03033

BETWEEN

NEVADA POLICE UNION,

Movant,

v.

STATE OF NEVADA,

Respondent.

**NEVADA POLICE UNION'S
OPPOSITION TO STATE'S MOTION
TO DEEM NPU'S PROPOSALS
WITHDRAWN PURSUANT TO NRS
288.575(1)**

I. Introduction.

This Arbitrator should deny the State's attempt to use form over substance as a means of denying the Union a hearing on the merits of its offers. The statutory scheme is not intended to foreclose an arbitrator's consideration of final offers because one party disagrees with them. It is intended to foreclose unlawful offers with a clear statutory conflict. The Union's offers do not pass that high bar. Since negotiations did not go the State's way, its representatives have taken an outcome driven approach to this Arbitration—throwing arguments at the wall to see what sticks while ignoring the best interest of its employees.

The Union's offers do not conflict with statute and are not otherwise inconsistent. The Body Cameras Offer aims to ensure due process. It does not interact with Nevada's Public Records Act, and it does not preclude the State from viewing body camera footage and enforcing

1 State body camera laws. The Seniority article does not preclude the State from considering factors
2 it deems relevant. Neither does it preclude the State from establishing and maintaining a precise
3 quality of service. However, once the State has considered its employer-decided criteria, it must
4 use seniority as a tie-breaker. The Union wants to avoid favoritism, which is rampant in the
5 State's employment culture. Finally, the Union's offer on compensation, and this Arbitrator's
6 decision, does not and cannot bind the legislature to appropriate funds. Nevada's statutory
7 scheme, and case law from jurisdictions that have done state-wide collective bargaining, make
8 this clear. Neither does the Pay Bill preclude future expenditures. It provided some funding for
9 salary increases; it by no means precluded future legislative expenditures or appropriations. The
10 Union submitted an entire motion explaining why the Agreement does not need to be funded to
11 be approved and why there are avenues to fund the agreement after *sine die*.

12 **II. The Union's final offers, explained.**

13 The State has mischaracterized the Union's Offers to adapt arguments that only applied
14 to prior versions of offers to the Union's actual last, best, and final offers. The Union takes this
15 opportunity to explain them clearly.

16 *a. The Union's Body Camera's proposal*

17 The Union's offer for the Body Camera Article aims to ensure due process for officers by
18 requiring the State's adherence to the Nevada's Peace Officer Bill of Rights. As the Union
19 explained to the State's team multiple times, a supervisor may review any body footage he or she
20 would like, at any time. However, if a supervisor would like to discipline an officer after
21 reviewing the footage or views the footage for a legitimate purpose and sees policy violations,
22 the supervisor must ensure the officer's due process rights are protected by giving him or her
23 notice and initiating an investigation under NRS 289.057.

24 The Union is aware the State engages in fishing expeditions where a supervisor sits at his
25 or her desk for extended periods with a directive to find even the most minor policy violations.
26 Then, the State gives an officer discipline without ever investigating, providing a hearing, or
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1 otherwise providing due process to the officer. This is what the Union's offer attempts to avoid.
2 It seeks due process, not to preclude anyone from viewing body camera footage.

3 b. *The Union's Seniority proposal*

4 The Union's offer on seniority seeks management to use a member's length of time in the
5 department as a tie-breaker for consideration of scheduling, equipment, mandatory overtime, and
6 leave. Given that the offer is a "tie-breaker," the State can consider without limitation any factors
7 it deems relevant and any criteria it would like to, such as safety or tactical decisions. However,
8 once it has considered those criteria and all things are equal, seniority should be the tie-breaking
9 factor.

10 The Union's proposal is best shown by example. Say a fire marshal who investigates
11 arson in rural Nevada and a trooper who patrols highways in Nevada both want a new vehicle.
12 The State has one ford f-150 with fireproof windows. Obviously, the State can determine the fire
13 marshal is more deserving of the new vehicle because it fits the marshal's duties and the need for
14 the State. However, if two troopers who work the same shift have the same vehicles with the
15 same amount of mileage on them, and all other things are equal, the trooper who is more senior
16 would receive the newer patrol vehicle.

17 The State's objection to the Union's final offer is perplexing given how similar it is to the
18 State's final offer. The State's final offer maintains the same "tie-breaking" method for
19 determining seniority. Though it makes the State's consideration optional. This type of policy
20 leads to preferential treatment and unhappy employees. Virtually every collective bargaining
21 agreement in Nevada includes seniority. There is no reason the negotiated agreement between
22 the Nevada Police Union and the State of Nevada should not.

23 c. *The Union's Compensation proposal.*

24 Rather than explain the Union's compensation proposal, it incorporates by reference its
25 motion to deem the State's offer withdrawn, which explains the offer at-length. In short, the
26 Union's compensation proposal does not and cannot bind the Legislature. That is expressly
27 written into statute and supported by the legislative history. Even the Sponsor of the Bill and

1 Senator who presented the bill explained that the Legislature did not intend for the process to
2 occur as the State says it must. Senator Parks has submitted a statement explaining that the State's
3 argument at this Arbitration was never contemplated and certainly not intended by the Legislature.
4 See attached as *Exhibit "1."* He also explains that the State should have reserved funds, and
5 even though it didn't, the Interim Finance Committee can allocate money to fund the Agreement,
6 something he would know because he served on that Committee for many years. The Union and
7 the State of Nevada can enter into an agreement that is unfunded. It is up to the Legislature to
8 approve funding. But no one involved in this Arbitration can force them to—not the Union, not
9 the Executive Branch, and not this Arbitrator. Accordingly, the arguments that the Union's offer
10 conflicts with statute do not make any sense.

11 **III. Standard of Review.**

12 The State and Union agreed to briefing on whether either party's final offers to the
13 Arbitrator should be considered withdrawn. "Any proposal that conflicts with or is otherwise
14 inconsistent with any provision of state law . . . shall be considered withdrawn by the proposing
15 party . . ." NRS 288.575(1).¹ So, to strike any of the Union's offers, this Arbitrator must
16 determine the offers conflict with Statute. However, this Arbitrator should read the offers in a
17 manner that is consistent with bargaining intent. See *International Union, United Auto.,*
18 *Aerospace, and Agr. Implement Workers of America (UAW) v. Yard-Man, Inc.*, 716 F.2d 1476,
19 1479-80 (6th Cir. 1983) ("[T]he court may look to other words and phrases in the collective
20 bargaining agreement for guidance. Variations in language used in other durational provisions of
21 the agreement may, for example, provide inferences of intent useful in clarifying a provision
22 whose intended duration is ambiguous.") (Abrogated on other grounds). As such, if there is a
23 way to read the offers so that they do not conflict with Statute, that is how this Arbitrator should
24 read them.

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27 ¹ This portion of statute allows portions NRS Chapter 284 and 287 to conflict with final offers. Those Chapters are irrelevant, as they deal govern State personnel and insurance, respectively.

1 **IV. Argument.**

- 2 a. *The Union's compensation offer is not inconsistent with statute and the State's*
3 *objections show it doesn't understand how collective bargaining for state*
4 *employees works.*

5 We don't need to reinvent the wheel here. Nevada is far from the first state that allows
6 state employees to collectively bargain. As far as the Union's attorneys are aware, each state's
7 statutory scheme outlines a similar process: the union negotiates with the executive branch, they
8 reach an agreement, and the Union hopes the legislature funds that agreement. These statutory
9 schemes never remove the legislature's constitutionally delegated power of the purse. Instead,
10 they allow for an agreement without the legislature's appropriation of funds, which is valid and
11 enforceable subject to an appropriations clause. So, for the financial portions of the agreement to
12 go into effect, the legislature must appropriate money.

13 This is also how Nevada's statutory scheme works. *See* NRS 288.505 (requiring a non-
14 appropriations clause). As much as the Union would like it to, this Arbitrator's ruling cannot
15 appropriate funds. The State's offer cannot bind the Legislature. And under no circumstances
16 can the outcome of collective bargaining remove the Legislature's power of the purse. However,
17 this Arbitrator can approve the Union's offer, deny the State's, and bind the Union and the
18 Executive Branch to an agreement. If the Legislature decides not to fund the agreement, that is
19 its constitutional right. It would not affect an agreement between the parties to this
20 arbitration. All of this is to say the State's arguments in support of its regressive compensation
21 offer are a giant red herring and are not supported by statute. States across the country with
22 similar statutory schemes have already vetted and refuted the State's argument. This Arbitrator
23 should do the same.

- 24 i. Other States have long litigated the argument the State is making. In every
25 state, an agreement does not bind the Legislature.

26 It is not uncommon for agreements to be reached and for the legislature not to fund them.
27 *See United Faculty of Florida v. Board of Regents*, 365 So. 2d 1073 (Fla. 1st DCA 1979)

1 (legislature not required to fund public employees' collective bargaining agreement); *Holmes*
2 *Cnty. Teachers' Ass'n*, 9 F.P.E.R. ¶ 14207, at 401 (1983) ("The collective bargaining agreement
3 to which the petitioner is a party did not divest the [l]egislature of its constitutional powers in the
4 appropriation of public monies" pursuant to section 447.309(2)); *District 2A, Transp., Technical,*
5 *Wrhse., Indus. & Serv. Employees Union v. Government of the Virgin Islands*, 794 F.2d 915 (3d
6 Cir. 1986) (legislature not required to appropriate funds to honor impasse arbitration award
7 regarding salaries for public employees).

8 Other states have already addressed similar issues in the less-than complicated instance
9 where the legislature did not fund the agreement. Frankly, the Power of the Purse is always at
10 play when negotiating with state entities. In those cases where the legislature did not appropriate
11 the amount necessary to implement the negotiated agreements, the vast majority of courts have
12 held that the agreements were subject to appropriation clauses and were simply not funded—but
13 they were still valid. Arguments that the legislature was somehow bound by the negotiated
14 agreement have been rejected as contrary to the legislature's exclusive control over public funds.
15 See *Public Employees' Local 71 v. State*, 775 P.2d 1062 (Alaska 1989) (rejecting union's
16 challenge to legislative resolution refusing to fund negotiated pay raise; monetary terms of
17 agreement not effective until funds are appropriated by the legislature, at its discretion); *Suffolk*
18 *County v. Labor Relations Comm'n*, 15 Mass. App. Ct. 127, 444 N.E.2d 953 (funding by
19 legislature for negotiated raises and bonuses could not be compelled); *Minnesota Educ. Ass'n v.*
20 *State*, 282 N.W.2d 915 (Minn. 1979) (upholding legislative reduction of salary increase from 18%
21 to 14% as part of legislature's final control over appropriations); see also STEPHEN F. BEFORT,
22 PUBLIC SECTOR BARGAINING: FISCAL CRISIS AND UNILATERAL CHANGE, 69 Minn. L.Rev. 1221,
23 1243-45 (1985) (legislative power over appropriations combined with definition of the executive
24 as the employer results in potential for unilateral change of agreements if legislature fails to
25 appropriate all funds necessary to implement a contract; notes that "courts consistently have
26 refused to enforce the financial provisions of state employee agreements in the absence of an
27 express legislative appropriation").

1 Ironically, the State’s argument—that this Arbitrator’s decision would bind the State to
2 appropriate money—has most commonly been a union argument that has been slapped-down time
3 and time again. *See Alliance, AFSCME/SEIU, AFL-CIO v. Secretary of Admin*, 597 N.E.2d 1012
4 (1992) (“The unions misunderstand the enactment process, the constitutional powers of the
5 Governor, and the roles of the Governor and Legislature in relation to appropriations . . . the
6 agreements themselves recognize the necessity for a valid appropriation to fund the cost items of
7 the agreements.”)

8 *ii. The Pay Bill is not dispositive. It provides a pay increase for employees*
9 *covered by our unit even though there is not a bargaining agreement. It*
10 *does not preclude a bargaining agreement or subsequent funding.*

11 The Union’s compensation offer does not conflict with statute as it relates to
12 compensation. The “Pay Bill” is not dispositive of the issue. It merely says that because there is
13 not yet an agreement, employees in our bargaining unit receive a 1% salary increase. The Pay
14 Bill does not foreclose funding. The only thing to prevent subsequent funding would be a statute
15 to the contrary, which does not exist and could not exist because one legislative act cannot bind
16 future legislative acts. *See Attorney General v. Gypsum Resources*, 129 Nev. 23, 28 (2013)
17 (“[O]ne Legislature cannot bind another Legislature”).

18 Further, the Union’s own motion to consider the State’s offer withdrawn outlines multiple
19 avenues for the Agreement to be funded. The interim finance committee could fund the
20 agreement. *See Union’s Motion to consider State’s offer withdrawn*, p. 12. The Legislature could
21 fund the agreement first thing next session. *Id.* at 13. Or the Governor could call a special session.
22 *Id.* at 14. None of these actions would be inconstant with the Legislature deciding to give our
23 members a raise of 1%.

24 The Union understands that its request for funding the agreement would require future
25 legislative action. And just because there is a bill that gives employees (who’s unions do not have
26 agreements) a cost-of-living increase does not preclude future legislative action that funds an
27 agreement. Budgets are adjusted all the time. The portion of the Bill the State relies upon is,

1 generically, the Legislature providing a raise to all state employees who do not yet have collective
2 bargaining agreements. That language of this bill can be read harmoniously with the State's
3 obligation to negotiate compensation. See NRS 288.150. And this Arbitrator should read the
4 laws in harmony to achieve their purpose. See *State ex rel. Howell v. LaGrave*, 23 Nev. 373, 379,
5 48 P.193 (1897) ("The Rule that courts are bound to uphold the prior law if it and a subsequent
6 one may subsist together, or if it be possible to reconcile the two together is well established").
7 Further, if the Legislature intended there to not be subsequent negotiations of compensation, it
8 would have said so in NRS Chapter 288. *Binegar v. Eighth Judicial Dist. Court*, 112 Nev. 544,
9 549, 915 P.2d 889 (1996) ("The legislature could have put such limited language in NRS
10 174.089(1) but chose not to do so.").

11 The Contract and collective bargaining cannot bind the Legislature to expend money.
12 That is express from the statute and clear from the legislative history. Accordingly, arguments
13 that the Union's offer conflicts with statute are incorrect. All the conflicts with statute alleged by
14 the State assume the arbitrator's decision is going to bind the Legislature. It won't.

15 iii. The State's claim it cannot offer compensation because it would bind the
16 Legislature, or that this Arbitrator's decision would bind the Legislature,
17 is unsubstantiated fear mongering.

18 While uncommon, it is not unheard of for an agreement not to be funded. See, e.g.,
19 *Commissioner of Administration and Finance v. Commonwealth Employment Relations Board*,
20 74 N.E.3d 610, 613 (Mass. 2017) ("The Legislature did not appropriate funds in fiscal year 2011
21 for the cost items contained in the 2010–2013 agreements. Since that time COPS and the
22 Commonwealth have entered into two successor agreements—one of which covered the 2010–
23 2013 period—that were fully funded by the Legislature."). The Union too understands that this
24 Arbitrator's decision does not steal the power of the purse. This is all explained above, analyzing
25 how other states have handled legislative expenditures after the executive branch and union
26 negotiate an agreement.

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1 iv. NRS 288.560 does not prevent funding the agreement after sine die.

2 The State argues that the “shall” language in NRS 288.560 prevents the Governor from
3 requesting funding after session. This is not correct. As is explained in the Union’s motion to
4 consider the State’s offer withdrawn, that portion of statute is intended to remove a statutory
5 preclusion on the Governor introducing a bill after 110 days into the legislative session—the date
6 which all bill drafts are due. It is not intended to require the Governor to introduce a bill in this
7 mechanism.

8 But even if it is intended to limit the mechanism for the Governor to seek funding for an
9 agreement, the State ignores the exception outlined in NRS 218D.105. When there are
10 “exceptional circumstances” and the “Legislature is not in a regular session,” the “Legislative
11 commission . . . may grant a waiver . . . after the time limits in NRS 218D.175.” *Id.* And under
12 this exception, there is a waiver to the time limit prescribed in NRS 218D.175, which disproves
13 the *exclusion unius* analysis the State uses in its *Motion*. Under Nevada law, there is an exception
14 to the requirement that the Governor submit a bill request for funding before sine die when there
15 is an exceptional circumstance. The State’s reading of statute ignores this statutory exception.
16 Certainly, an arbitration over the Union’s first collective bargaining agreement with the State
17 constitutes an exceptional circumstance.

18 Further, the Governor can fund the agreement first thing during the next legislative session
19 because he is able to request a bill at any time “*before . . . a regular session.*” NRS 218D.175(2).
20 This reading is consistent with other portions of appropriations that deal with inter-session
21 contracts. NRS 353.085 specifically outlines the State’s procedure for “payment of contract
22 claims when no legislative appropriation has been made.” It requires an opinion from the Board
23 of Examiners that a contract is valid—such as the process outlined in NRS 288.555— “shall be
24 transmitted to the Legislature on the first day of its next legislative session.” NRS 353.085(2).
25 This Arbitrator should read both portions of Statute in harmony, and the Union has presented the
26 only way to do so. *See State, Div. of Ins. V. State Farm Mut. Auto. Ins. Co.*, 996 P.2d 482, 486
27 ///

1 (2000). The Union's Contract could, therefore, be funded the first day of the next Legislative
2 session.

3 b. *Body Cameras.*

4 i. The Union's offer is a due process proposal; it does not conflict with the
5 Public Records Act.

6 The Union is merely attempting to preserve due process and prevent supervisors from
7 fishing expeditions to discipline employees. The Union's offer does not limit the public's viewing
8 of body camera footage. Frankly, the State's argument that the Union's final offer on body
9 cameras is inconsistent with Nevada's Public Record Act is much ado about nothing. Yes, body
10 camera footage is a public record. *See* NRS 239.830(2). The Union's proposal does not do
11 anything to change that.

12 The Union's offer does not conflict with statute because it doesn't limit "members of the
13 public['s]" ability to view body camera footage. *See* NRS 239.001(outlining the purpose of the
14 Public Records Act is to provide "members of the public" with access to public records.) When
15 a supervisor sits at his or her desk reviewing body camera footage and then serves discipline on
16 a member without an investigation, that supervisor is not reviewing the body camera footage
17 under the Nevada Public Records Act; he or she is reviewing the footage as a state actor. This is
18 not a novel argument. Police officers have never been considered members of the public, neither
19 have police officer supervisors. *See State v. Broad*, 600 P.2d 1379, 1382 (Haw. 1979) ("[N]o
20 persons other than the police officers saw appellant . . . [therefore, the acts were not] observed by
21 members of the public."); *People v. Kim*, 630 N.W.2d 627 (Ct. App. Mich. 2001) ("police officers
22 are not "members of the public"); Daniel Brian Yeager, 40 Fla. L. Rev. 989, fn 239 ("police
23 officers are not members of the public").

24 The State's argument is essentially that the Public Records Act always applies to
25 everyone, and that all footage can be viewed at any time for any purpose. But this is not even
26 how the Act functions. The Act outlines specific requirements a member of the public must take
27 to review footage. *See* NRS 289.830(2) ("[a]ny record . . . may be: (a) requested only on a per

1 incident basis; and (b) available for inspection only at the location where the record is held . . .
2 “). When a supervisor reviews body camera footage he or she does not follow that process because
3 he or she is not reviewing footage under the Act. The supervisor is reviewing footage in an
4 official capacity as an agent of the State. The supervisor is not reviewing it as a member of the
5 public and, as a result, the Nevada Public Records Act does not apply.

6 The State’s reliance on *Journal Sentinel v. Wisconsin Dept. of Admin.*, 768 N.W. 2d 700,
7 (Wisc. 2009) is misguided. There, the collective bargaining agreement precluded the release of
8 public records to anyone other than the local union treasurer—which excluded the media.
9 Specifically, the Court took issue with “[t]he portion of the collective bargaining agreement that
10 provides that the State will not release employee information to the press creates an amendment
11 to the open records law.” *Id.* at 722. Clearly that is not what the Union’s proposal does.

12 In short, the Union’s proposal does not affect public records. Under its offer, any person
13 may view body camera footage at any time. Supervisors may still view body camera footage at
14 any time. But, if the supervisor is seeking a policy violation, he or she must give notice and
15 provide due process pursuant to NRS Chapter 289.

16 *ii. The Union’s proposal does not conflict with NRS 289.830’s mandate that*
17 *law enforcement agencies have body camera policies.*

18 NRS 289.830 obligates law enforcement agencies to adopt policies and procedures
19 governing the use of body cameras. It also requires that there be disciplinary rules for officers
20 who don’t abide by those policies. The Union’s offer for body cameras does not conflict with
21 this statutory obligation. The Union’s offer requires that the State’s policies and procedures
22 governing discipline arising out of a supervisor’s viewing of body camera footage provide due
23 process. A supervisor can be tasked with reviewing body camera footage for compliance with
24 NRS 289.830. But when the supervisor sees a policy violation, he or she must provide the officer
25 due process.

26 This portion of statute is housed in Nevada’s Peace Officer Bill of Rights. It requires that
27 a notice of investigation be given to officers and that the officer be provided due process. *See*

1 NRS 289.057 (obligating an investigation after a complaint); *see also* NRS 289.060 (outlining the
2 notice an investigation requirement for the investigation arising out of NRS 289.057). The State
3 is permitted to discipline an officer for violating a policy or procedure, absolutely, however, it
4 needs to provide due process in administering discipline.

5 Assuming, *arguendo*, the State is right that the offer infringes on NRS 289.830, the
6 discipline process for complying with the policies and procedures the State is required to adopt
7 are still mandatory subjects of bargaining, which is explained below.

8 *iii. The Union's proposal does not infringe on management rights.*

9 The Union's offer does not infringe on a management right; "discharge and disciplinary
10 procedures" are a mandatory subject of bargaining. *See* NRS 288.150(i). As such, the State's
11 administration of discipline after viewing body camera footage, and the way it conducts
12 investigations into discipline, are not "management rights."

13 The State argues that the "quality of service" exemption in NRS 288.150(3)(c)(3)
14 somehow precludes this due process issue from being negotiated. "Quality of service" is
15 undefined in statute. However, it refers to the quality of the service officers provide. This means
16 the State can dictate the script an officer follows when he or she approaches the vehicle. The
17 State can dictate the minimum amount of time an officer spends with a vehicle during each traffic
18 stop. And the State can dictate minimum qualifications—such as proficiency in English—so that
19 an officer can provide a certain quality of service. It does not mean that the State can refuse to
20 negotiate due process rights because unilateral discipline without due process may lead to a better
21 "quality of service." To read this portion of statute any other way would lead to absurd results
22 that conflict with the State's obligation to negotiate "discharge and disciplinary procedures." *See*
23 NRS 288.150(i); *see also Orion Portfolio Servs. 2, LLC v. Cty. of Clark ex rel. Univ. Med. Ctr.*
24 *of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010). The State is essentially arguing that the
25 effect of this offer is to lower the quality of service the State provides, which is not a reason it
26 conflicts with Statute.

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1 “Quality of service” does not mean the State can refuse to negotiate discipline because it
2 leads to better service. First, case law establishes that “quality of service” being a management
3 right doesn’t preclude negotiated due process and restrictions on discipline. *See, e.g., American*
4 *Federation of State, County and Mun. Employees, AFL-CIO v. State*, 529 N.E.2d 534, 557 (Ill.
5 1988) (“While it is not the function of an arbitrator to usurp management's right to define quality
6 of service, “the fairness of penalties imposed for faulty work may be closely scrutinized by
7 arbitrators.” . . . Thus, in a discipline case, the arbitrator is not exercising control over the
8 standards of quality of service; rather, he is simply determining whether the “punishment fits the
9 crime.”). Second, other collective bargaining agreements in the State of Nevada place limitations
10 on viewing files and seeking records. For instance, the Las Vegas Metropolitan Police
11 Department and its union negotiated a voluntary identification program in its random drug policy.
12 Now, if an employee is randomly drug tested, that employee may notify his taking illicit
13 substances and the employee will not be punished. *See Article 24, LVMPD-LVPPA Collective*
14 *Bargaining Agreement*. He or she will be sent to treatment. Under the State’s understanding of
15 “quality of service,” this would be a minatory non-negotiable management right. Further, that
16 same contract in Article 25 limits access to personnel files unless there is a specific purpose,
17 which is outlined in the contract. Like the preceding clause, this is not precluded from
18 negotiations.

19 iv. The State’s argument goes to the merits of the offer, not whether the offer
20 conflicts with Statute.

21 The State makes a few additional arguments as to why the Union’s offer is bad policy.
22 The Union is not going to get into the weeds here. It will briefly address the argument that the
23 State needs to view body camera footage to achieve its goal. The Union agrees with this premise.
24 The State just needs to provide due process if it intends to discipline its employees for violations
25 it observes. Most of the State’s arguments are better suited under the analysis the Arbitrator will
26 conduct at the Arbitration. *See NRS 288.580(3)* (requiring consideration of factors normally
27 considered in collective bargaining agreements and other factors). The State’s arguments go to

1 the merits of the offer, not its legality. Unless there is a clear conflict with Statute, this Arbitrator
2 should not strike the offer from consideration without hearing evidence in support of the offer.

3 c. *Seniority.*

4 i. The Union's proposal does not infringe on management rights.

5 Negotiating seniority in collective bargaining agreements is well recognized in Nevada.
6 Nevada's Employee Management Relations Board (EMRB) established as much in a 1989 ruling
7 in favor of an Arbitrator's award after collective bargaining. *See County of Lyon v. International*
8 *Union of Operating Engineers, Local No. 39*, Case No. A1-045449 (October 4, 1989). There, the
9 EMRB determined that seniority is a subject of bargaining under NRS Chapter 288 and dismissed
10 the employer's argument that it infringed on a management right: "NRS Chapter 288 is a specific
11 and definite enactment . . . the County has provided no convincing arguments that seniority as a
12 criteria for certain personnel actions, as awarded by the factfinder, constitutes a violation of
13 Nevada law." *Id.* at p.8.

14 Further, every bargaining agreement the Union is aware of has some element of seniority.
15 Those collective bargaining agreements are overwhelmingly more protective on seniority than
16 the Union's offer. For instance, Las Vegas Metropolitan Police Department and its union's
17 agreement gives preference to senior members for "days off, in lieu of holiday, compensatory
18 time, bonus time, professional leave, and vacation," as well as "special assignments." *See Article*
19 *19*. There is no limit on seniority in that context—such as the limit in the Union's offer that
20 seniority only be a "tie-breaker"; instead, it is a mandate. Likewise, the Reno Police Protective
21 Association's collective bargaining agreement provides for seniority for working special events,
22 *see Article 39*, shift bids, *see Article 40*, and vacation, *see article 9*. Oregon's Highway Patrol
23 Association—the Nevada Police Union's counterpart—too has pages of seniority mandates in its
24 contract. *See Article 24, Collective Bargaining Agreement between State of Oregon and Oregon*
25 *State Police Officer's Association*.

26 The Union's proposed language is industry standard and does not violate a management
27 right. *See Horn v. City of Cleveland*, 674 Fed.Appx.511, 515 (6th Cir. 2017) ("[S]eniority matters

1 under the collective bargaining agreement “[o]nly when the qualifications of the two (2) or more
2 applicants are equal. . . In other words, seniority is a “tie breaker.”); *see also State of Rhode Island*
3 *Dept. of Health v. The Nat. Ass’n of Government Employees*, 2008 WL 4176773 (“It appears to
4 provide only that seniority will be the tie-breaker if all of the factor, including seniority and
5 qualifications, are equal for two or more candidates); *Fredrich v. Independent School Dist. No.*
6 *720*, 465 N.W.2d 692 (1991).

7 The State’s claim that the Union’s offer infringes on the management right to control
8 “content of a workday” is unpersuasive. The Union’s offer does not affect the State’s ability to
9 determine the content of a workday. The State can determine requirements of an officer and job
10 duties, which its seniority offer does not affect. And to the extent it does—affecting scheduling
11 and vacation—it is a mandatory subject of bargaining under NRS 288.150.

12 Put simply, the State’s concerns are invalid. If there is a safety or tactical basis for a
13 decision, then there would be no need for a tie-breaker. The State would have a legitimate reason
14 for not using the tie-breaker. The Union’s proposed language would only be triggered if all other
15 things were equal, intending to cover officers who, all things considered, are equal. The Union’s
16 goal is to avoid preferential treatment—which has long been a problem for state employees and
17 the Union’s members.

18 *ii. The State’s argument about the emergency is incorrect.*

19 The State argues that the Union’s offer infringes on the State’s ability to act in an
20 emergency. However, NRS 288.150(5)(b) provides a remedy in case of an emergency, allowing
21 an employer to “[t]ake whatever actions may be necessary to carry out its responsibilities in
22 situations of emergency such as a riot, military action, natural disaster or civil disorder. Those
23 actions may include the suspension of any collective bargaining agreement for the duration of the
24 emergency.” Accordingly, this is not an issue.

25 **V. Conclusion.**

26 The State is attempting to read broadly a portion of statute that is intended to be read
27 strictly. *See Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 40, 175 P.3d 906, 908 (2008)

1 (internal quotation marks omitted). (“[S]tatutes with a protective purpose should be . . . construed
2 in order to effectuate the benefits intended to be obtained.”). It is attempting to preclude this
3 Arbitrator’s consideration of reasonable offers by using legal form over policy substance. The
4 Union prays this Arbitrator denies the motion to deem the Union’s offers withdrawn to allow for
5 a hearing on the merits.

6 Dated this 7th day of July 2021.

HUTCHISON & STEFFEN, PLLC

7
8 By: /s/ Alex R. Velto
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by electronic mail to the following:

Laura Freed, Director
Frank Richardson, Chief Negotiator
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EXHIBIT 1

EXHIBIT 1

Senate Bill 135 (2019)
Legislative History Expert Opinion
Sponsor Senator David Parks

- 1) The Nevada Police Union believes that Senate Bill 135 was not intended to require an agreement be reached before the end of session. The Nevada Police Union believes this reading of the law would allow a Governor to merely wait the union out until the end of session to avoid negotiating with a union about issues that require a financial expenditure. The State's attorneys have argued that the Nevada Police Union's failure to reach an agreement on the compensation article before the end of session now precludes the State from offering any form of compensation increase and that the State is no longer able to negotiate compensation. In sponsoring and introducing Senate Bill 135, did you intend for sine die to cut off opportunities for unions to negotiate compensation or financial expenditures? Please provide as much detail and insight as you feel appropriate:

As a primary sponsor of Senate Bill 135, there was no intent for legislative sine die to serve as a deadline for the conclusion of negotiations between bargaining units and the Governor's representative for negotiations. In fact, while there are specific timelines to commence the negotiation process, there is no specified deadline for the finalization of negotiations.

As an individual with local government labor negotiations experience, I have had first-hand public-sector experience negotiating collective bargaining contracts. Those negotiations seldom conclude on a predetermined schedule. Consequently, no specific deadline was placed in Senate Bill 135 for the termination or conclusion of labor negotiations.

- 2) The State last offer before the end of the Legislative session was for a 3% cost of living increase. The Union requested that the State preserve the amount of money equal to the 3% cost of living increase so that the Union could continue to negotiate how that money would be spent and allow the Arbitrator to determine who's offer was more reasonable. The State has now taken the position that it was unable to preserve the money, and that it was not required, to preserve the money for negotiations after the end of the Legislative session. Is this consistent with your understanding of Senate Bill 135? Please provide as much detail and insight as you feel appropriate:

The Executive Branch of the State of Nevada has authority to request appropriations from the Legislature to fund State programs and services. The Legislative Branch has authority to allocate funds for all State programs and services.

I was a member of the Nevada Legislature for 24 years (1996 - 2020) as well as a member of the two budget committees (Assembly Ways & Means and Senate Finance). It is not uncommon for these two committees to approve and close budgets with contingent appropriations that are tentative and require final approval once negotiations have concluded. The established budget closing process for such situations requires the Legislature to approve the allocation with a "Letter of Intent" which requires the affected agency to seek final approval prior to incurring any expenditure.

When the Legislature is not in session, ongoing finance and budgetary issues are handled by the Interim Finance Committee of the Legislature. The Interim Finance Committee (composed of

Senate Bill 135 (2019)
Legislative History Expert Opinion
Sponsor Senator David Parks

members of the Assembly Ways & Means Committee and Senate Finance Committee) administers a contingency fund for unanticipated expenditures, approves and allocates gifts and grants received between legislative sessions, and reviews state agency requests. This is precisely the process designed to address the current issues facing the Nevada Police Union in its negotiation with the Governor's representative for negotiations.

I attest to the truthfulness of the foregoing to the best of my knowledge and recollection,

A handwritten signature in cursive script, reading "David Parks", written over a horizontal line.

David Parks
Former Senator

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APPENDIX PAGE ONLY



APPENDIX H

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IN THE MATTER OF ARBITRATION

BETWEEN

NEVADA POLICE UNION,

Movant,

v.

STATE OF NEVADA,

Respondent.

Case Number: 210124-03033

**NEVADA POLICE UNION'S REPLY IN
SUPPORT OF MOTION TO CONSIDER
STATE'S COMPENSATION OFFER
WITHDRAWN**

The State's final offer conflicts with state law because it violates the State's obligation to negotiate wages. The State presented a non-offer to this Arbitrator; it says the Union can have nothing new and the State is no longer obligated to negotiate. In doing so, it revoked its prior offers. These offers were the result of months of negotiations. They gradually improved over time towards a middle ground. When the parties declared impasse and mediation failed, the parties were required by law to submit "their dispute" to an Arbitrator. The State did not do that. Instead, the State revoked its offer entirely to spite the Union for refusing to accept its offer before *Sine Die*. Its attempt to recharacterize NRS Chapter 288 in a self-serving manner completely ignores the plain language of the statute and the legislative intent behind collective bargaining for State employees.

1 This Arbitrator shouldn't allow the State to now claim that its unclear hands are tied. Even
2 if the State is correct that it cannot fund a contract; it is a self-imposed problem that should not
3 serve as punishment for the Union. The Union asked the State to preserve the money before *Sine*
4 *Die*. Nothing in law prevented the State from at least making the request. Yet, the State's
5 representatives failed to try. Instead, the State decided to punish the Union for not accepting its
6 offer. That said, the effect of the State's failure to earmark funds for the Agreement is not that
7 the parties can no longer negotiate compensation. It is merely that the Agreement will not be
8 funded until the Legislature appropriates funds, which is more difficult than before *Sine Die*.
9 Neither is the result that the Executive Branch would be acting in bad faith if it presented the
10 Arbitrator with its final negotiated offer. The Executive Branch can never guarantee funding for
11 any offer it makes. However, it must at least try to fund the agreement. And the Union has
12 presented multiple ways it can do that.

13 The flaw in the State's argument is the assumption that the agreement must be funded to
14 be effective. Nevada's statutory scheme governing bargaining is simpler than that. The Union
15 negotiates with the Executive Branch, they reach an agreement, and the Union hopes the
16 Legislature funds that agreement. In fact, Nevada requires that all agreements be subject to
17 legislative appropriation. *See* NRS 288.505 (requiring a non-appropriations clause). As much as
18 the Union would like it to, this Arbitrator's ruling cannot appropriate funds. The State's offer
19 cannot bind the Legislature. And under no circumstances can the outcome of collective
20 bargaining remove the Legislature's power of the purse. This Arbitrator does not have the ability
21 to bind the Legislature—or the Executive Branch for that matter—to spend money; he can bind
22 only the parties to the Agreement. If there is ambiguity in the statutory scheme, tie goes to the
23 Union. As a protective statute, NRS Chapter 288 should be liberally construed to achieve its goal.
24 And the State's request that an implied restriction be read into it runs counter to Nevada's canons
25 of statutory interpretation. *See Langon v. Washoe County*, 116 Nev. 115 ("If that were the intent,
26 it could have been clearly stated").
27

1 Every state that has addressed this issue has concluded that there can be an unfunded
2 agreement. The State did not address any of these arguments in its opposition. Other states have
3 already dealt with the less-than complicated instance where a legislature does not fund an
4 agreement. This Arbitrator should look to the Union's *Opposition* at pages five through seven.
5 Every state referenced allows for binding agreements that are unfunded. Nevada law is no
6 different.

7 Therefore, this Arbitrator can approve the Union's offer, deny the State's, and bind the
8 Union and the Executive Branch to an agreement. Any expenditure of funds is then subject to
9 an appropriations clause. As such, the Arbitrator does not need to decide whether the Legislature
10 will fund the agreement to grant the Union's motion to consider the State's offer withdrawn.
11 Then, at Arbitration, this Arbitrator can determine whether the Union's Offer is the best offer on
12 compensation and bind the parties.

13 While the Union does not need to establish funding to prevail on this *Motion*, there is a
14 process to fund the Agreement that is largely ignored by the State in its *Opposition*. The
15 Legislature can fund the agreement first thing during the next legislative session because the
16 Governor is able to request a bill at any time "*before . . . a regular session.*" NRS 218D.175(2).
17 This reading is consistent with other portions of appropriations that deal with inter-session
18 contracts. NRS 353.085 outlines the State's procedure for "payment of contract claims when no
19 legislative appropriation has been made." It requires the Board of Examiners determine the
20 contract is valid—such as the process outlined in NRS 288.555—and then the request for
21 appropriations is "transmitted to the Legislature on the first day of its next legislative session."
22 NRS 353.085(2). The State's only response ignores the plain language of the statute that allows
23 for funding of an agreement to occur "*before*" session in addition to during session. There is no
24 need to look to legislative history for this Arbitrator to conclude that the legislature can fund the
25 agreement. The Agreement would be valid and effective immediately; however, the funding
26 provisions would not be effective until the Legislature approves them. *See* NRS 288.505 (1)
27 ("Each Collective Bargaining Agreement must . . . include . . . a nonappropriation clause that

1 provides that any provision of the collective bargaining agreement which requires the legislature
2 to appropriate money is effective only to the extent of legislative appropriation.”).¹

3 Before responding to the specifics in the State’s *Opposition*, the State recently agreed to
4 a contract with AFSCME that allows for it to open compensation after *Sine Die*. This is explained
5 at length in the Union’s *Motion*. See p.11. The State now claims it is not taking a different
6 position with other unions. This Union finds that hard to believe. We only have AFSCME
7 contract to look at. The reopening clause provides for two negotiation sessions and then
8 arbitration. It would be impossible to complete these actions until after the Legislative session.
9 The State’s position at Arbitration—that it cannot fund an agreement after session—is not
10 compatible with the terms of the Agreement it just entered with AFSCME. This Arbitrator should
11 force the State to maintain its consistency with the Nevada Police Union even if it’s a Union that
12 has not endorsed the elected officials it represents.²

13 **I. The Nevada Legislature crafted NRS Chapter 288 to protect the rights of unions;**
14 **the State’s attempt to read in a limit that is not clearly expressed in statute runs**
15 **counter to the protective nature of the statutes and leading canons of**
16 **construction.**

17 The State ignores the protective nature of NRS Chapter 288. It aims to “protect the rights
18 of employees, the Executive Department and the people of the State” by “[r]equiring the State to
19 recognize and negotiate wages, hours and other terms and conditions of employment with labor
20 organizations that represent state employees.” NRS 288.400(2)(b)-(c) (identifying the
21 Legislatures “findings and declarations” in adopting SB 135). As such, if there is a dispute as to
22 the plain language of statute, it should be interpreted liberally “in order to effectuate the benefits
23 intended.” *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 40, 175 P.3d 906, 908 (2008)
24 (internal quotation marks omitted).

25
26 ¹The Union incorporates by reference its opposition to the State’s motion to consider the offer withdrawn, wherein it
27 references multiple other states statutory schemes and how they too allow for an unfunded agreement.

²See, e.g., Local 4041 AFSCME, “Steve Sisolak: In His Own Words,” <https://www.nvafscme.org/steve-sisolak-his-own-words>.

1 The Statutory scheme does not cast a hard deadline on negotiating compensation. Nevada
2 has long recognized the canon of statutory interpretation that limiting language for a statute, if
3 intended, would be clearly stated. *Clark County Sports Enter., Inc. v. City of Las Vegas*, 96 Nev.
4 167, 174 (1980) (“Had the legislature intended exclusion, it would have specifically so provided
5 by language to that effect. This the legislature failed to do.”). If the Legislature intended *Sine*
6 *Die* to serve as a hard cut-off for negotiations, “the legislature would have indicated as much in
7 the statutes themselves so the judicial would not be required to divine such a rule out of thin air.”
8 *State Indus. Ins. Sys. V. Woodall*, 106 Ne. 653, 657 (1990). Rather than assuming the State would
9 articulate this stance using complicated rationale, “language to that effect could easily have been
10 inserted in the statute.” *State, Dep’t of Motor Vehicles and Pub. Safety v. Brown*, 104 Nev. 524,
11 526 (1988). Further, the Nevada Supreme Court does not read into statute implied limiting
12 language. See *Seaborn v. First Judicial Dist. Court*, 55 Nev. 206 (1934) (“If the legislature had
13 intended to make the procedure [] exclusive, they could have easily included words of a restrict
14 nature.”); *State ex rel. Kendall v. Cole*, 38 Nev. 215, 237 (1915) (“They did not say so, and we
15 would be violating a fundamental rule of constitutional interpretation to hold that they said what
16 they did not say.”).

17 **II. The State’s actions continue to show the practical implications of a strict**
18 **interpretation of statute.**

19 The State continues to negotiate in bad faith. Friday, July 9, 2021, at 9am the parties were
20 scheduled to have a negotiation with the mediator present. The day before, the Union’s attorney
21 spoke with multiple attorneys from the State. The attorneys confirmed there would be a
22 negotiation that Friday. The night before the mediation, at around 8pm, the Union’s attorney
23 received notice that the State would not be appearing for the Friday morning negotiation. The
24 Union understood that the State required the Union offer the State’s last offer before Arbitration—
25 a 3% salary increase, a withdrawal of the body cameras article, a revised seniority offer—to even
26 appear for the negotiation. The State also wanted the Union to propose for the State to conduct a
27 study of longevity pay and compensation.

1 The Union tells the Arbitrator this to illustrate the effects of interpreting statute in a way
2 that forecloses Arbitration over compensation, and to illustrate the State does not even believe its
3 interpretation of the law is correct. Either way, the State has again acted in bad faith: cancelling
4 a negotiation the night before at nearly 8pm.

5 **III. This Arbitrator has statutory jurisdiction to determine that the State's**
6 **compensation offer conflicts with Statute or is otherwise inconsistent.**

7 The Parties agree that the Arbitrator can determine the State's final offer conflicts with
8 Statute. As such, it doesn't matter that the Union could have proceeded with an EMRB
9 Complaint.³ The Statutory scheme expressly permits the Arbitrator to determine whether the
10 Final Offer conflicts with Statute subject to only two inapplicable exceptions. See NRS
11 288.575(1). Unless either party's argument is that the offer conflicts with NRS Chapter 284 or
12 287, this Arbitrator has jurisdiction to determine there is a statutory conflict. Neither of those
13 exceptions apply.

14 The Union established that the State's final offer conflicts with statute for two reasons.
15 First, it is regressive and violates the State's obligation to negotiate wages. The parties negotiated
16 for months. When the outcome of negotiations did not go the State's way, the State revoked its
17 offer and proceeded to Arbitration. This violates the State's duty to negotiate wages and to
18 negotiate in good faith. See NRS 288.575(4) ("During arbitration, the parties retain their
19 respective duties to negotiate in good faith."); see also NRS 288.150(1)-(2)("[E]very . . . employer
20 shall negotiate in good faith . . . salary or wage rates or other forms of direct monetary
21 compensation."); NRS 288.270 (1)(e) ("It is a prohibited practice. . . to . . . [r]efuse to bargain
22 collectively in good faith . . . [during] the entire bargaining process.").

23 The State's final offer is a per se violation of statute and per se bad faith. See *Las Vegas*
24 *Police Protective Association Metro, Inc., vs. City of Las Vegas, Nevada*, Nevada Employee

25
26 ³It is interesting that the State is now insisting the Union should have filed an EMRB Complaint. Only a week ago it
27 insisted that the Union not file an EMRB complaint over the State's regressive offer because both parties agreed the
Arbitrator should decide the issue. This Arbitrator should consider this claim waived as it contradicts the State's
prior position. Further, the State claims that the Union's factual allegations in its motion are not supported or sworn.
That is incorrect. The Union's attorney signed the pleading attesting to its accuracy, based on his knowledge.

1 Management Relations Board, Case No. A1-045461 (8/15/90) (“Unilateral changes by an
2 employer during the course of a collective bargaining relationship concerning matters which are
3 mandatory subjects of bargaining are regarded as “per se” refusals to bargain.”). This Arbitrator
4 should determine the offer conflicts with statute because “any attempt to unilaterally implement
5 changes prior to the exhaustion of procedures promulgated under the public bargaining statute
6 constitutes a prohibited practice.” *Id.*

7 The second violation of Statute is that the State submitted an offer drastically different
8 than any offer proposed before impasse, which violates NRS 288.310. The State was obligated
9 to maintain its 3% compensation offer under both Nevada statute and recognized case law. *See*
10 NRS 288.410 (requiring the parties to “submit *their* dispute” to an arbitrator for “a final and
11 binding decision.”); *see also N.L.R.B. v. Crompton-Highland Mills*, 337 U.S. 217, 225 (1949)
12 (holding that an NLRB order requiring an employer to cease and desist its unilateral change in
13 proposal after impasse because its position was “substantially different from, or greater than, any
14 which the employer has proposed during its negotiations with such representative.”).

15 Simply, the Union entered Arbitration assuming, reasonably, that the State’s offer at
16 Arbitration would be the offer it presented to the Union before the parties moved to Arbitration.
17 The State’s only defense to its regressive offer is that it cannot negotiate compensation after *sine*
18 *die*. This is not true and is not supported by Statute. If this were intended, the Legislature would
19 have said so. The Nevada Supreme Court recognizes that if the Legislature intended something,
20 it would have said so. *See Binegar v. Eight Judicial Dist. Court*, 112 Nev. 544, 549 (“The
21 Legislature could have put such limiting language in NRS 174.089(1) but chose not to do so.”).

22 **a. This Arbitrator has jurisdiction over bad faith claims. He can and should**
23 **determine the State acted in bad faith. But, he does not need to in granting**
24 **the Union’s Motion.**

25 The Union’s position does not require the Arbitrator to determine the State acted in bad
26 faith, but the Arbitrator has the authority to do so if he chooses. NRS 288.575(4) obligates the
27 parties to continue to negotiate in good faith during the Arbitration process. This section of statute

1 outlines the process of arbitration, relying on the Arbitrator's inherent authority to regulate the
2 parties before him. *See ReliaStar Life Ins. Co. of N.Y. v. EMC Nat. Life Co.*, 564 F.3d 71 (2nd
3 Ct. App. N.Y. 2009 (An Arbitration clause "confers inherent authority on arbitrators to sanction
4 a party that participates in the arbitration in bad faith and that such a sanction may include an
5 award of attorney's or arbitrator's fees").

6 The State argues the EMRB has exclusive authority over bad faith claims. There is a
7 reason why the State does not quote a line from either statute, regulation, or case law that supports
8 this conclusion. It's not accurate and it is not supported by statute. NRS 288.625 allows for a
9 party to file a complaint with the EMRB to establish there has been bad faith. It does not require
10 a party to file that complaint with the EMRB, nor does it exclude an Arbitrator from making this
11 determination. And in no way does it exclusively obligate parties making bad faith claims to file
12 with the EMRB.

13 Again, the State's attorneys insisted that the Union not file its EMRB complaint because
14 it wanted the Arbitrator to decide the issue. The Union agreed. As such, the State's new claim
15 that this Arbitrator cannot assess whether the State's actions violate statute is itself in bad faith.

16 **b. The Arbitrator can and should award the Union fees and costs.**

17 NRS Chapter 38 governs Arbitrations in Nevada. It allows for attorney fees and costs to
18 be awarded "if such an award is authorized by law in a civil action." NRS 38.238(1). NRS 18.010
19 provides that authorization when a court determines that claim or defense "was brought or
20 maintained without reasonable ground or to harass . . ." NRS 18.010(2)(b). Therefore, Nevada's
21 Chapter 38 supersedes the generic American Rule the State relies on in opposing the Union's
22 request.

23 Likewise, the Ninth Circuit has rejected a challenge to an arbitration award of attorney's
24 fees, recognizing a bad faith exception to the general "American Rule" that each party bears its
25 own attorney's fees. *See Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1064 (9th
26 Cir.1991). The court explained: "Federal law takes an expansive view of arbitrator authority to
27 decide disputes and fashion remedies.... In light of the broad power of arbitrators to fashion

1 appropriate remedies and the accepted 'bad faith conduct' exception to the American Rule, we
2 hold that it was within the power of the arbitration panel in this case to award attorneys' fees."
3 *Id.*; see also *Marshall & Co. v. Duke*, 114 F.3d 188, 190 (11th Cir.1997) (noting that parties raised
4 no jurisdictional challenge to attorney's fee award, but observing that, "[i]n any event, the
5 arbitrators have the power to award attorney's fees pursuant to the 'bad faith' exception to the
6 American Rule that each party bears its own attorney's fees").

7 The State's reliance on Hawaii case law is misguided. There, the Court analyzed Hawaii
8 Revised Statutes that were distinct from Nevada's Revised Statutes. This Arbitrator should defer
9 to the governing law in Nevada that allows for attorney fees and costs and ignore case law
10 interpreting inapplicable statutes.

11 This Arbitrator should award attorney fees and costs. The Union entered this Arbitration
12 assuming the State would keep its last, best, and final offer before impasse on the table. As a
13 result of the State's regressive offer before this Arbitrator, the Union has had to engage in
14 extensive and unnecessary briefings while the State advances a novel argument that has been
15 denied by every Court in which it has been made. See *Public Employees' Local 71 v. State*, 775
16 P.2d 1062 (Alaska 1989) (rejecting union's challenge to legislative resolution refusing to fund
17 negotiated pay raise; monetary terms of agreement not effective until funds are appropriated by
18 the legislature, at its discretion); *Suffolk County v. Labor Relations Comm'n*, 15 Mass. App. Ct.
19 127, 444 N.E.2d 953 (funding by legislature for negotiated raises and bonuses could not be
20 compelled); *Minnesota Educ. Ass'n v. State*, 282 N.W.2d 915 (Minn. 1979) (upholding legislative
21 reduction of salary increase from 18% to 14% as part of legislature's final control over
22 appropriations); see also STEPHEN F. BEFORT, PUBLIC SECTOR BARGAINING: FISCAL CRISIS AND
23 UNILATERAL CHANGE, 69 Minn. L.Rev. 1221, 1243-45 (1985) (legislative power over
24 appropriations combined with definition of the executive as the employer results in potential for
25 unilateral change of agreements if legislature fails to appropriate all funds necessary to implement
26 a contract; notes that "courts consistently have refused to enforce the financial provisions of state
27 employee agreements in the absence of an express legislative appropriation").

1 **IV. The lack of legislative guarantee that the agreement will be funded is irrelevant.**

2 Every agreement reached between the State’s representatives and a union is an unfunded
3 agreement. This is how Nevada’s statutory scheme works. *See* NRS 288.505 (requiring a non-
4 appropriations clause). Other States who have addressed this issue overwhelmingly side with the
5 party arguing there can be an unfunded agreement. *See United Faculty of Florida v. Board of*
6 *Regents*, 365 So. 2d 1073 (Fla. 1st DCA 1979) (legislature not required to fund public employees’
7 collective bargaining agreement); *see also Holmes Cnty. Teachers’ Ass’n*, 9 F.P.E.R. ¶ 14207, at
8 401 (1983) (“The collective bargaining agreement to which the petitioner is a party did not divest
9 the [l]egislature of its constitutional powers in the appropriation of public monies” pursuant to
10 section 447.309(2)); *District 2A, Transp., Technical, Wrhse., Indus. & Serv. Employees Union v.*
11 *Government of the Virgin Islands*, 794 F.2d 915 (3d Cir. 1986) (legislature not required to
12 appropriate funds to honor impasse arbitration award regarding salaries for public employees).

13 This is consistent with legislative history. Senator Kiechefer asked one of Senator Parks
14 co-presenters at a legislative hearing whether the contract could be executed but the salary levels
15 not actually change. *See May 29, 2019 Senate Committee on Finance* p.56. The response agreed
16 with the Union’s position.

17 **a. The State’s argument that the Pay Bill precludes subsequent funding is**
18 **inaccurate.**

19 There is no conflict with the Pay Bill. The Union understands that its request for funding
20 the agreement would require future legislative action. And just because there is a bill that gives
21 employees without unions a cost-of-living increase does not preclude future legislative action that
22 funds an agreement. Budgets are adjusted all the time. The portion of the Bill the State relies
23 upon should be read harmoniously with the State’s obligation to negotiate compensation. *See*
24 *NRS 288.150*. And this Arbitrator should read the laws in harmony to achieve their purpose. *See*
25 *State ex rel. Howell v. LaGrave*, 23 Nev. 373, 379, 48 P.193 (1897) (“The Rule that courts are
26 bound to uphold the prior law if it and a subsequent one may subsist together, or if it be possible
27 to reconcile the two together is well established”). Further, if the Legislature intended there to

1 not be subsequent negotiations of compensation, it would have said so in NRS Chapter 288.
2 *Binegar v. Eighth Judicial Dist. Court*, 112 Nev. 544, 549, 915 P.2d 889 (1996) (“The legislature
3 could have put such limited language in NRS 174.089(1) but chose not to do so.”).

4 The State’s use of the phrase “maximum allowed salaries” in its opposition is a misnomer.
5 There is no portion of the Pay Bill that states the maximum allowed salaries for the Union’s
6 members is a 1% pay increase. The Pay Bill sets a floor and does not prevent a future legislature
7 from modifying pay. Further, the statutory scheme allows for the next legislature to fund the
8 Agreement, which is expressly contemplated for inter-session contracts in NRS Chapter 218D, or
9 if there is an exceptional circumstance. The Union presents its explanation contained in Page 9
10 of its *Opposition*:

11 The State ignores the exception outlined in NRS 218D.105. When there are “exceptional
12 circumstances” and the “Legislature is not in a regular session,” the “Legislative commission . . .
13 may grant a waiver . . . after the time limits in NRS 218D.175.” *Id.* And under this exception,
14 there is a waiver to the time limit prescribed in NRS 218D.175, which disproves the *exclusio*
15 *unius* analysis the State uses in its *Motion*. Under Nevada law, there is an exception to the
16 requirement that the Governor submit a bill request for funding before sine die when there is an
17 exceptional circumstance. The State’s reading of statute ignores this statutory exception.
18 Certainly, an arbitration over the Union’s first collective bargaining agreement with the State
19 constitutes an exceptional circumstance.

20 Further, the Governor can fund the agreement first thing during the next legislative session
21 because he is able to request a bill at any time “*before . . . a regular session.*” NRS 218D.175(2).
22 This reading is consistent with other portions of appropriations that deal with inter-session
23 contracts. NRS 353.085 specifically outlines the State’s procedure for “payment of contract
24 claims when no legislative appropriation has been made.” It requires an opinion from the Board
25 of Examiners that a contract is valid—such as the process outlined in NRS 288.555— “shall be
26 transmitted to the Legislature on the first day of its next legislative session.” NRS 353.085(2).
27 This Arbitrator should read both portions of Statute in harmony, and the Union has presented the

1 only way to do so. *See State, Div. of Ins. V. State Farm Mut. Auto. Ins. Co.*, 996 P.2d 482, 486
2 (2000). The Union’s Contract could, therefore, be funded the first day of the next Legislative
3 session.

4 **b. There is no conflict with NRS 353.235(3).**

5 NRS 353.235(3) prevents an appropriation of money without legislative approval. This
6 assumes there is an appropriation as a result of this Arbitrator’s ruling, which there is not.

7 **V. The legislature did not limit negotiations to align with legislative session.**

8 This Court should only look past the plain language of the Statute if there is ambiguity.
9 In applying the rules of construction, reviewing bodies first attempt to discern the legislative
10 intent from the plain meaning of the words in the statute. *Cleghorn v. Hess*, 109 Nev. 544, 548,
11 (1993). Additionally, the Court “will not look beyond the plain language of the statute, unless it
12 is clear that this meaning was not intended.” *State v. Quinn*, 117 Nev. 709, 713, (2001).

13 Here, the legislative intent is clear. We may negotiate and arbitrate after any hard
14 deadlines so long as the parties agree, which we did. The Governor may then introduce a bill to
15 fund the agreement at the beginning of the next legislative session, as is explained above.
16 Therefore, there is no reason to look to legislative history.

17 **a. If the Court looks to Legislative History, it should defer to the Bill’s sponsor**
18 **and presenter, Senator Parks.**

19 This Arbitrator should not buy the State’s attempt to exclude Senator Parks’ statement.
20 Senator Parks sponsored and presented the Bill. He has extensive experience in Government and
21 will testify to different funding mechanisms available at Arbitration. The State’s request that his
22 statement be struck from the record also ignores Nevada law governing Arbitration. “[A]n
23 arbitrator is not bound by the formal rules of evidence and enjoys wide discretion to admit or
24 exclude evidence.” *See Fong v. MGM Mirage Intern. Marketing, Inc.*, 128 Nev. 896, n. 3, 381
25 P.3d 612, n.3 (2012) (*quoting* NRS 38.231(1) (an arbitrator has the authority to “determine the
26 admissibility, relevance, materiality and weight of any evidence”)).” Senator Parks is not merely
27 an “individual legislator[] who cast [his] vote for” collective bargaining. *See A-NLV-Cab Co. v.*

1 *State, Taxicab Auth.*, 108 Nev. 92 (1992). He was the key sponsor and presenter of the Bill that
2 led to collective bargaining at every hearing. *See Legislative History.*

3 The State is well-aware that Senator Parks will be available for examination at the
4 Arbitration, as the Union already disclosed him as a witness. As such, this Arbitrator should not
5 consider their claims that the Statement is not an affidavit. But if it does, the Arbitrator is not
6 bound by the formal rules of evidence. *See Fong*, 128 Nev. at n.1. The Union clearly didn't
7 manufacture a statement and Senator Parks signed the Statement under oath, attesting to its
8 truthfulness. Senator Parks spent decades in public service. He wouldn't lie for a Union.

9 The State's argument is perplexing because it too has relied on after-the-fact testimony
10 from a legislator—though its legislator was not the bill sponsor—in relying heavily on Assembly
11 Woman Carleton's testimony in its *Motion*. The State cannot have its cake and eat it too. The
12 point of Arbitration is to ease the process in a less formal manner so that the correct conclusion
13 can be reached.

14 **VI. The Governor does not have ability to supersede provisions of the budget.**

15 The Governor's "proposed executive budget" is the budget proposal submitted to the
16 Nevada Legislature before the Legislative Session. *See Nev. Const. Art. 4 Sec. 2* ("The Governor
17 shall submit the proposed executive budget to the Legislature not later than 14 calendar days
18 before the commencement of each regular session."). Because the budget must be kept secret
19 before it is introduced, the State may not negotiate as part of collective bargaining. *See NRS*
20 *353.205* ("The proposed budget for the Executive Department of the State Government . . . [is]
21 confidential until the Governor transmits the proposed budget to the Legislature."). Consistent
22 with the confidential nature of the proposed budget, the State's team took the position it could not
23 negotiate compensation until the budget was released.

24 Because the Governor cannot negotiate compensation with a confidential budget prior to
25 transmission of his "proposed executive budget," NRS 288.510 allows the Governor to include
26 any amount of money the Governor deems appropriate for salaries and other forms of direct
27 compensation. NRS 288.510 provides a shield to prevent unfounded bad faith claims in front of

1 the EMRB, by preventing a union from arguing the Governor acted in bad faith because he or she
2 failed to negotiate before introducing his proposed biennial budget.

3 However, the “proposed executive budget” is not the budget that the Legislature passes,
4 and the statutory scheme governing collective bargaining gives the Governor an avenue to
5 propose an amendment the Legislature’s budget that is consistent with a collective bargaining
6 agreement for direct compensation. It is important to have context. The Nevada Legislative
7 Counsel Bureau, in its Executive Summary of Senate Bill 211, submitted in 2019, explained this
8 distinction between the proposed budget and the Legislative budget:

9 The State Budget Act prescribes the procedures for the proposal of
10 the budget for the Executive Department of the State Government .
11 . . . The Legislative and Judicial Departments of the State
12 Government, the Public Employees Retirement System and the
13 Tahoe Regional Planning Agency are required to submit their
14 budgets to the Legislature for approval and to the Chief of the
15 Budget Division of the Office of Finance in the Office of the
16 Governor . . . in preparing the proposed executive budget the
17 budgets which they propose to submit to the Legislature.

18 The budget that the Legislature adopts is not the “proposed executive budget,” it’s just the
19 budget. And once the Legislature has the proposed budget from the Governor, the Governor may
20 request an amendment “before or during a regular session” to fund the agreement, pursuant to
21 NRS 218D.175.

22 The Governor’s Office even deems its introduced budget as the proposed biennium
23 budget. *See Nevada Budget Overview 2019-2021*, note b, Guinn Center (“Its official name for
24 the upcoming biennium is “Governor Sisolak’s Proposed Executive Budget for the 2019-2021
25 Biennium as submitted to the Legislature.”); *see also State of Nevada Executive Budget, 2019-*
26 *2021*, p. 106 (“The Governor is required to . . . submit a proposed executive budget at each regular
27 session of the Legislature.”).

28 This is consistent with the stance the State has taken throughout negotiations and the
29 requirement that the State keep the Governor’s proposed budget private before it is transferred to

1 the Legislature. At multiple negotiations, the State claimed it could not negotiate the Governor's
2 proposed budget until it is transferred to the Legislature.

3 Dated this _13th_ day of July 2021.

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APPENDIX I

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IN THE MATTER OF ARBITRATION

NEVADA POLICE UNION,

Movant,

v.

STATE OF NEVADA,

Respondent.

Case Number: 210124-03033

**NEVADA POLICE UNION PRE-
ARBITRATION BRIEF**

Movant, NEVADA POLICE UNION ("NPU"), by and through its undersigned counsel of record, hereby provides pre-arbitration brief for its Arbitration with the State of Nevada.

I. Introduction

This Arbitration is about compensating State law enforcement officers better and treating them as they deserve. Only the Union's final offer provides an avenue for State law enforcement to be compensated fairly. Only the Union's final offer creates an incentive for tenured and well-trained officers to continue working in the State system. And only the Union's final offer takes steps to prevent favoritism, a long-rampant problem in State government. As such, this Arbitrator should consider the repercussions for state employees of the State's failure to even extend its offer from before Arbitration. This Arbitrator should presume the Union's offer is reasonable and not hold it accountable for the State's failure to advance a reasonable and good faith argument into this Arbitration.

1 Since the first day of this Arbitration, the Union has sought to make policing better in
2 Nevada. Early on, the Union made clear that it wanted higher educated and better trained officers.
3 It presented the State with several options to achieve this goal and the State shot down all of them.
4 For example, it sought to mandate training in areas like conflict de-escalation, cultural awareness,
5 and mental health so that our officers could respond to crises more effectively. The State said no.
6 Thankfully, this Arbitrator can assess some of the Union's other solutions. Its final offer seeks
7 to ensure higher educated officers are patrolling our streets by incentivizing education and
8 rewarding officers for their levels of education. Its final offer provides education incentives so
9 that educated officers can keep Nevada safe. Its final offers provide an avenue for better trained
10 officers to stay in the State system. To achieve this goal, the Union seeks to reward long-standing
11 officers with better pay, as is common with most other unions. The Union also wants to make
12 seniority mean something in the State system. The Union prays this Arbitrator finds those goals
13 reasonable and adopts the Union's final offer.

14 **II. Standard of Review**

15 NRS 288.500 outlines the process for this Arbitration. This Arbitrator should determine
16 whose final offer is more reasonable. To determine the more reasonable offer, the Arbitrator shall
17 compare the wages, hours and other terms and conditions of
18 employment for the employees within the bargaining unit with
19 wages, hours and other terms and conditions of employment for
20 other employees performing similar services and for other
21 employees generally.

22 NRS 288.589(3)(a).

23 In addition to the requirement that this Arbitrator consider wages, hours, and other
24 conditions of employment for similar employees, this Arbitrator shall consider: the financial
25 ability of the State to pay "with due regard for the primary obligation of the State to safeguard the
26 health, safety and welfare of the people" of Nevada. NRS 288.580(3)(b)(1). The Arbitrator
27 should also consider the price of consumer goods and other factors typically considered in
collective bargaining to determine wages and conditions of employment. *Id.*

1 **III. Argument**

2 *(1) The State's offer is inherently unreasonable because there is no compensation article.*

3 When the State of Nevada adopted state-wide collective bargaining, it "require[ed] the
4 State to recognize and negotiate wages, hours, and other terms and conditions of employment
5 with labor organizations that represent state employees." NRS 288.400(2)(b). This requirement
6 is again codified in later portions of statute: the Executive Branch must negotiate "salary or wage
7 rates or other forms of direct monetary compensation" with the Union. *See* NRS 288.150(2)(a)
8 (making compensation a mandatory subject of bargaining); *see also* NRS 288.500(2)(a)
9 (obligating the Executive Branch to negotiate the mandatory subjects of bargaining contained in
10 NRS 288.150(2)(a)); NRS 288.270(1)(e) (making it a prohibited practice to refuse to bargain over
11 mandatory subjects of bargaining during the "entire bargaining process, including mediation and
12 fact finding") (emphasis added).

13 The lack of a final offer that provides any form of compensation makes the State's final
14 offer inherently unreasonable. Every single other collective bargaining agreement awarded
15 members a salary increase is greater than the 1% approved for employees not represented by
16 collective bargaining agreements. For instance, AFSCME received a 3% increase in salary and
17 the ability to negotiate wages after the legislative session. The other law enforcement union
18 received a 4% increase in salary total. If this Arbitrator determines that the State's offer is more
19 reasonable, he will have to determine that the Union's members deserve only a 1% salary
20 increase, not the 3% percent or higher given to other unions in Nevada.

21 *(2) This Arbitrator should consider the Union's compensation offer reasonable.*

22 The Union's compensation article is reasonable and moves the State of Nevada towards
23 the goal of creating a better educated and more well-trained police force. The Union is seeking
24 to distribute the money offered by the State in a different way than the State would like. The
25 Union is not challenging the amount of money the State offered the Union. The State's last offer
26 was for a 3% salary increase, which it calculated as \$2,375,035. The Union, instead, would like
27 its members to have a 2% salary increase—which the State calculated at \$1,583,357—and have

1 the remaining available money be used to reward members who stay in the Department longer
2 than 10 years and/or those who have college degrees.

3 The Union offered to split the remaining \$791,678 as follows: (1) All employees with
4 greater than 10 years of service will receive annual bonus payments of \$1,500; (2) all employees
5 who have associate degrees, but not bachelor's degrees, shall receive annual bonus payments of
6 \$500; (3) all employees who have bachelor's degrees shall receive annual bonus payments \$900.
7 This amounts to less than the remaining \$791,678. This Arbitrator will hear from an expert
8 witness who will analyze the margin of error and in the Union's extrapolation from its survey
9 data. He will be able to confidentially tell this Arbitrator there is very likely to be enough money
10 available to fund the Union's request.

11 However, even if the State does not have enough money to fund the request, the State just
12 received upwards of 2.9 billion dollars. This money can be used to fund law enforcement salaries
13 and reward essential workers. This Arbitrator will see exhibits from the Union that show the State
14 will have a special session and must determine how to distribute the funds, which should include
15 a distribution of funds to pay for the Union.

16 The State claims that the Union's compensation offer is untenable because the State
17 cannot determine how many officers have bachelor's degrees or associates degrees. The State's
18 failure to keep this data should not be used against the Union.

19 This Arbitrator will also hear from the Police Union President who understands the pulse
20 of Nevada state law enforcement. The Union would prefer this use of money because it is in the
21 best interest of our membership and policing more generally. There are numerous studies on law
22 enforcement that overwhelmingly encourage better educated and longer serving officers. Studies
23 show that these officers are involved in less use of force incidents and make policing better.

24 The Union's offer also helps address a key factor in well-trained officers leaving the State.
25 As you will see at Arbitration, our members are paid far less than other officers in the State. This
26 Arbitrator will also see that the State wastes resources training law enforcement personnel who
27 leave the State system after only a few years for greener pastures. The Union's proposal will help

1 keep law enforcement personnel in the State system longer, so the State does not waste money
2 training.

3 This Arbitrator will see that both longevity and education incentives are common practice
4 in law enforcement collective bargaining agreements in Nevada. Given that NRS 288.580(3)
5 directs this Arbitrator to consider how similarly situated employees are treated, he should consider
6 that Nevada's state law enforcement personnel are falling similarly situated employees at local
7 agencies.

8 a. The Union has already extensively briefed the power of the purse arguments; they
9 are irrelevant to this Arbitrator's decision.

10 The Union expects the State to argue that the Union's position is unreasonable because it
11 forces an appropriation of money. As is explained extensively in the Union's motion practice
12 before this Arbitrator, this is not the case. This Arbitrator cannot appropriate funds. No
13 agreement with a union can appropriate funds. The parties can have an agreement that is effective
14 and subject to appropriation. In fact, that is how all agreements have to happen between the
15 executive branch and any union. As such, this argument does not bear on the scope of the
16 Arbitrator's authority in this matter.

17 This Union would refer this Arbitrator to its extensive briefing on this issue rather than
18 reiterate it here. The reality is: the State's argument has been defeated in every court the Union
19 is aware of. The Union prays this Arbitrator's decision is no different.

20 *(3) This Arbitrator should consider the Union's seniority article more reasonable than the*
21 *State's seniority article.*

22 The Union's offer on seniority seeks management to use a member's length of time in the
23 department as a tie-breaker for consideration of scheduling, equipment, mandatory overtime, and
24 leave. Given that the offer is a "tie-breaker," the State can consider without limitation any factors
25 it deems relevant and any criteria it would like to, such as safety or tactical decisions. However,
26 once it has considered those criteria and all things are equal, seniority should be the tie-breaking
27 factor.

1 The Union's proposal is best shown by example. Say a fire marshal who investigates
2 arson in rural Nevada and a trooper who patrols highways in Nevada both want a new vehicle.
3 The State has one ford f-150 with fireproof windows. Obviously, the State can determine the fire
4 marshal is more deserving of the new vehicle because it fits the marshal's duties and the need for
5 the State. However, if two troopers who work the same shift have the same vehicles with the
6 same amount of mileage on them, and all other things are equal, the trooper who is more senior
7 would receive the newer patrol vehicle.

8 The State's objection to the Union's final offer is perplexing given how similar it is to the
9 State's final offer. The State's final offer maintains the same "tie-breaking" method for
10 determining seniority. Though it makes the State's consideration optional. This type of policy
11 leads to preferential treatment and unhappy employees. Virtually every collective bargaining
12 agreement in Nevada includes seniority. There is no reason the negotiated agreement between
13 the Nevada Police Union and the State of Nevada should not.

14 This Arbitrator will hear at Arbitration that favoritism is rampant in the State system. He
15 will hear

16 Dated this _16_ day of June, 2021.

HUTCHISON & STEFFEN, PLLC

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CERTIFICATE OF SERVICE

I caused a copy of the **Nevada Police Union' Pre-Arbitration brief** to be served via Electronic Mail on the following individuals by being placed into an envelope bearing prepaid Certified Mail Postage and placed into the U.S. Mail on this __ day of April, 2021:

/s/ Alex Velto

Employee of Hutchison & Steffen, PLLC

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APPENDIX J

IN ARBITRATION PROCEEDINGS PURSUANT TO NRS 288:575(1)

BEFORE ARBITRATOR CLAUDE DAWSON AMES

IN THE MATTER OF ARBITRATION,

BETWEEN

NEVADA POLICE UNION,

UNION,

V.

STATE OF NEVADA,

EMPLOYER

Re: Withdrawal of Proposed Offers

Case No. 210124-03033

**ARBITRATOR'S
DECISION AND ORDER**

I.

DECISION AND ORDER

Pursuant to the Nevada Police Union (“NPU”, “Union” or “Representative”) and the State of Nevada (“State”, “Employer” or “Executive Department”) Scheduling Order II A. (*Briefing Regarding Withdrawal of Offer Pursuant to NRS 288:575(1)*) and II B. (*Decision on Motion to Deem Withdrawn*) the Parties timely filed their Motions as follows:

A. Briefing Regarding Withdrawal of Offers Pursuant to NRS 288.575(1):

Any party requesting the arbitrator deem any portion of a final offer withdrawn in accordance with NRS 288.575(1), must file a written Motion with a Proposed Order served on opposing counsel

electronically not later than July 2, 2021. Any Opposition must be filed by July 7 with a Proposed Order after the date of the Motion to Deem Withdrawn. Any Reply must be filed not later than July 13. The Arbitrator will file the decision or response by July 16.

B. Decision on Motion to Deem Withdrawn:

The Arbitrator shall provide a decision on any motion to Deem Withdrawn prior to the commencement of the arbitration hearing.

The Employer filed its Last, Best and Final Offer (“LBFO”) regarding unresolved impasse bargaining issues, (i) Body Cameras; (ii) Seniority; and (iii) Compensation, on June 21, 2021 and amended its LBFO on June 30, 2021. The NPU filed its LBFO on the same unresolved bargaining issues on June 21, 2021 and amended its LBFO on June 25, 2021.

II

WITHDRAWAL OF PROPOSED OFFERS

A. State’s Motion to Deem NPU’s Proposals Withdrawn

On July 2, 2021, the State filed its Motion to Deem NPU’s three (3) Proposed impasse bargaining issues withdrawn from the arbitration process pursuant to NRS 288:575(1) and, being inconsistent with various statutes, as follows:

1. **Body Cameras:** NPU’s proposal must be withdrawn because it hinders the law enforcement agencies’ duty to enforce body camera rules under NRS 289.830 and violates NRS 289.830(1) Nevada Public Record. Without the ability to audit body camera footage, agencies would not be able to comply with their lawful duty under this statute. Further, NPU’s proposal unlawfully infringes upon management right under NRS 288:150(3).

2. **Seniority:** NPU's offer that seniority will be considered for the purpose of scheduling, equipment, mandatory overtime, etc., unlawfully seeks to bind the State on management's right and is outside the lawful scope of bargaining under NRS 288:150(3)

In contrast, the State's LBFO allows, but does not require, supervisors to consider seniority as a tie breaker on issues of scheduling and leave. Similar to NPU's issue on body cameras, its final offer seeks to bind the State to non-negotiable management rights.

3. **Compensation:** NPU's Final Offer [3%] must be deemed withdrawn because it exceeds the final amount [1% cost of living] appropriated by the Legislature for employee salaries for the 2021-2023 biennium. The authority to grant NPU any additional direct compensation rests exclusively with the Legislature, but now that the 2021 Legislative session has been concluded, there is no further opportunity to submit a compensation proposal to the Legislature in excess of its final appropriation [1% cost of living]. Given the legal impossibility of providing NPU what they seek [3%], NPU's compensation proposal must be deemed withdrawn from this arbitration in accordance with NRS 288:575(1).

B. NPU's Motion to Consider State's Compensation Offer Withdrawn

On July 2, 2021, NPU filed a motion to consider the State's offer withdrawn and finds the State's "final offer" for compensation appallingly anti-union, and directly contradicts the State's required obligation to "negotiate wages, hours and other terms and conditions of employment with labor organizations that represent state employees

NRS 288:400(2)(b).” The Arbitrator should consider the State’s final offer [1% cost of living] withdrawn and strike it from consideration because it violates NRS 288:150 – obligating the State to negotiate salary and wages. Nevada law is clear: the Executive Branch must negotiate “salary or wage rates or other forms of direct monetary compensation” with the Union. NRS 288:150(2)(a) and NRS 288:270(1)(e) (making it a prohibited practice to refuse to bargain over mandatory subjects of bargaining during the “entire bargaining process, including mediation and fact finding”).

The State’s “Final” unilaterally regressive offer for compensation is a recognized violation of NRS 288:150(2). “Unilateral changes by an employer during the course of collective bargaining relationship concerning matters which are mandatory subjects of bargaining are regarded as a “per se refusal to bargain.” *Las Vegas Police Protective Association Metro, Inc., vs City of Las Vegas, Nevada – Nevada Employment Relations Board, Case No. A1-045461 (8/15/90)*. Further, the State’s final offer cannot make changes that were not proposed during bargaining before impasse. The arbitration process requires that the parties “submit their dispute” to an arbitrator for “a final and binding decision.” NRS 288:410. But the State has chosen not to submit the parties’ dispute to arbitration and instead has chosen to remove any compensation as its final offer, which is a recognized bad faith action.

Finally, The State’s claim that collective bargaining for compensation must cease by *sine die* (“without day”) is not supported by statute. If the Legislature intended *sine die* to be the cut-off date for collective bargaining for compensation, it would have made that clear in statute. It did the opposite and gave the parties the ability to proceed to arbitration past the date in statute at their discretion. See NRS 288:515(3) (allowing the parties to

“begin arbitration on or before March 1 *or any later date set by agreement of the parties,*” and giving discretion to an arbitrator to release a decision after *sine die*. NRS 288.575(6).

III

DECISION

Having carefully reviewed all relevant statutes and State provisions in considering NPU’s Motion to Consider the State’s Compensation Offer Withdrawn, and the State’s Motion to Deem NPU’s Proposals Withdrawn, the Arbitrator finds as follows:

A. **NPU’s Motion to Consider the State’s Compensation Offer Withdrawn.**

The State’s final offer on compensation is found in conflict with NRS 288:150’s obligation requiring the State to negotiate wages with the Union and NRS 288:410, which [negotiations] continues throughout the entirety of the bargaining [process] which includes arbitration as expressly stated in NRS 288:575(4).

Therefore, for the reasons stated, the Arbitrator finds that NPU’s Motion to Consider the State’s Compensation Offer Withdrawn, is hereby **Granted**.

B. **State’s Motion to Deem NPU’s Proposals Withdrawn.**

The State’s Motion to Deem NPU’s [Three] Proposals Withdrawn are:

1. ***Body Cameras:*** The Arbitrator finds that NPU’s Proposal on Body Cameras conflicts or is otherwise found inconsistent with Nevada’s Public Records law (NRS 239.010). It places a limitation, through a contractual agreement, on a person’s right to view public records; and

conflicts or is inconsistent with NRS 289.830(1), because it interferes with law enforcement agencies' duty to implement policies and procedures under NRS 289:830(1). Therefore, for the reasons stated, the State's Motion to Deem NPU's Body Camera Proposal withdrawn, is hereby **Granted**.

2. **Seniority:** The State's Motion to Deem NPU's Seniority Proposal Withdrawn is hereby **Denied**. NPU's Seniority proposal is found not in conflict or inconsistent with State provisions.
3. **Compensation:** The State's Motion to Deem NPU's Compensation Proposal Withdrawn, is hereby **Denied**. NPU's Compensation proposal is found not in conflict or inconsistent with State provisions.

IT IS SO ORDERED.

Dated: July 16, 2021



CLAUDE DAWSON AMES, Arbitrator

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC

APPENDIX K

1 IN THE MATTER OF ARBITRATION
2 BETWEEN
3 STATE OF NEVADA,
4 Employer,
5 v.
6 NEVADA POLICE UNION,
7 Union.

Case Number: 210124-03033
ARBITRATOR'S FINAL ORDER

8
9 This case comes before the Arbitrator pursuant to NRS 288.575. The State of Nevada (the "State")
10 and the Nevada Police Union ("NPU" and collectively with the State, "the Parties") unsuccessfully
11 attempted to mediate their issues in dispute prior to beginning this arbitration.

12 Under NRS 288.575(1), "any proposal that conflicts or is otherwise inconsistent with any
13 provision of state law, other than the provisions of chapters 284 and 287 of NRS, shall be considered
14 withdrawn by the proposing party when mediation is discontinued." Pursuant to the NPU and the State
15 of Nevada Scheduling Order II A. (*Briefing Regarding Withdrawal of Offer Pursuant to NRS 288.575(1)*)
16 and II B. (*Decision on Motion to Deem Withdrawn*), the Parties timely filed their Motions. Both Motions
17 were fully briefed by the Parties and submitted for consideration on July 13, 2021. On July 16, 2021, the
18 Arbitrator issued a Decision and Order. The Arbitrator's final Decision, in Section III of the Order, is
19 hereby incorporated by reference and attached hereto as Exhibit A. The Arbitrator's Order was
20 dispositive on the Parties *Compensation* and *Body Camera* Articles. On Monday, July 19, 2021, the
21 Parties entered into an agreement on the *Seniority* Article. The Union made an unopposed motion that
22 the Arbitrator issue a Final Order on all issues.

23 NRS 288.580(1) outlines the requirements and standards for the decision of
24 the Arbitrator: For issues in dispute after arbitration proceedings are held
25 pursuant to NRS 288.575, the arbitrator shall incorporate either the final
26 offer of the Executive Department or the final offer of the exclusive
27 representative into his or her decision. The decision of the arbitrator shall
28 be limited to a selection of one of the two final offers of the parties. The
 arbitrator shall not revise or amend the final offer of either party on any
 issue.

///

1 However, here, the parties' *Compensation* and *Body Camera* articles are no longer in dispute,
2 because pursuant to the Arbitrator's July 16, 2021, Order, the State does not have a *Compensation* offer
3 and the Union does not have a *Body Camera* offer. For this reason, the Arbitrator does not address the
4 factors for assessing the reasonableness of competing offers that are in dispute.

5 Because this Arbitrator finds there are no remaining issues in dispute, and having carefully
6 reviewed all relevant statutes and State provisions, the Arbitrator finds as follows:

7 **NOW, THEREFORE**, the Arbitrator finds that "the State's final offer on *Compensation* is found
8 in conflict with NRS 288.150's obligation requiring the State to negotiate wages with the Union and NRS
9 288.410, which [negotiations] continues throughout the entirety of the bargaining [process] which
10 includes arbitration as expressly stated in NRS 288.575(4)." Arbitrator's Decision and Order at 5. For
11 that reason, the Arbitrator **Granted** NPU's Motion to Consider the State's *Compensation* Offer
12 Withdrawn.

13 Given that there are no competing articles left on the issue of *Compensation*, the Union's
14 *Compensation* Article must be incorporated in the Final Collective Bargaining Agreement between the
15 State of Nevada and the Nevada Police Union for the 2021 to 2023 term.

16 **NOW, THEREFORE**, "the Arbitrator finds that NPU's Proposal on *Body Cameras* conflicts or
17 is otherwise found inconsistent with Nevada's Public Records law (NRS 239.010). It places limitation,
18 through a contractual agreement, on a person's right to view public records; and conflicts or is
19 inconsistent with NRS 289.830(1), because it interferes with law enforcement agencies' duty to
20 implement policies and procedures under NRS 289.830(1)." See Arbitrator's Decision and Order at 5-6.
21 For that reason, the Arbitrator **Granted** the State's Motion to Deem NPU's *Body Camera* Proposal
22 withdrawn. *Id.*

23 Given that there are no competing articles left on the issue of *Body Cameras*, the State's *Body*
24 *Camera* Article must be incorporated in the Final Collective Bargaining Agreement between the State of
25 Nevada and the Nevada Police Union for the 2021 to 2023 term.

26 **NOW, THEREFORE**, because both Parties came to an agreement on *Seniority*, the Parties agreed
27 upon *Seniority* Article must be incorporated in the Final Collective Bargaining Agreement between the
28 State of Nevada and the Nevada Police Union for the 2021 to 2023 term.

1 **IT IS SO ORDERED.**

2
3 DATED this 19th day of July, 2021.

4 
5 CLAUDE DAWSON AMES, ARBITRATOR
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July 21, 2021

Via Electronic Mail – tsundheim@ag.nv.gov to:

Tori Sundheim
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701
tsundheim@ag.nv.gov

Re: Nevada Police Union's Olive Branch for a Peaceful Resolution

Dear Ms. Sundheim:

The Union would like to move forward and stop the fighting. The future of relations between the Union and the State depends on our ability to reach a peaceful resolution. Our negotiations were contentious. We both defended the interests of our clients as best we could. This carried over into the motion practice preceding Arbitration, where we both vigorously advocated for our clients. But now, the circumstances have changed. We are at a cross roads. The Arbitrator's ruling can provide some finality and a path forward for us both. Or it can fracture the relationship—something we do not want. The Union wants to ensure its members believe the State supports them. It would like an agreement in place to ensure our employees working conditions improve. And it also want to ensure the State knows the Union will work with it to amicably resolve issues going forward.

To achieve these goals, it is in both of our interests to have a resolution that avoids a motion to vacate the Arbitration award. That way the Union and the State can jointly celebrate their first collective bargaining agreement. We propose a joint statement that we are proceeding forward with an agreement and language that the State and Union are working together from here on out. These actions would be a sign of good faith. More than just a symbolic showing of the State's support for its largest law enforcement union, the State and Union's cooperation on advancing an agreement would fundamentally change the parties' relationship.

The Union understands that the State would like clarity on a legal issue the Arbitrator decided. However, the Union does not think this clarity needed. It is unlikely we will find ourselves in this position again given that we will never be negotiating from scratch. The Union has also provided a path forward that does not force the State to violate its understanding of state law. A legal path to funding the agreement can include the Governor's action at the beginning of the next legislative session. Or, the Governor could include funding for the Union's contract in a special session, if he decides to call one. We understand the State has stood firm that the Union cannot force the Governor to call a special session. A discretionary action by the Governor would not contradict the State's position, nor would it violate NRS Chapter 288. The Union would graciously thank the Governor for either of these actions. These processes are explained in the Union's briefings before the Arbitrator, and I believe I have previously discussed them with you at various points. Neither of these paths infringe on the Legislative power of the purse or force the

State to agree to something it cannot do—making all commitments subject to legislative appropriation.

The Union is also skeptical that the State's motion to vacate the arbitration award will result in a Court order that answers the question the State wants answered. There are several ways the Court could respond to the motion, but few ways force the Court to decide whether there is a legislative timeline. We may disagree on this. However, our personal disagreement is less important than state employees. It is also less important than the Union-State relationship going forward.

The Union is hoping for a fresh start and a path forward that no longer involves litigation and contentious actions towards one-another. If you would like to discuss this path, please let me know your availability for a phone call.

Sincere regards,
HUTCHISON & STEFFEN, PLLC

A handwritten signature in blue ink, appearing to read 'Alex R. Velto', with a long, sweeping horizontal line extending to the right.

Alex R. Velto, Esq.
For the Firm

ARV/ao

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APPENDIX PAGE ONLY

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APPENDIX M

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Attorney for Nevada Police Union

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

NEVADA POLICE UNION,

Petitioner,

v.

STATE OF NEVADA, NEVADA
DEPARTMENT OF ADMINISTRATION,
LAURA FREED, DIRECTOR OF NEVADA
DEPARTMENT OF ADMINISTRATION,
GOVERNOR STEVE SISOLAK,

Respondents.

Case No.: 21 OC 00129 1B

Dept. No.: 1

**NEVADA POLICE UNION'S
OPPOSITION TO MOTION TO
VACATE ARBITRATION AWARD AND
REPLY IN SUPPORT OF MOTION TO
CONFIRM ARBITRATION AWARD
AND REQUEST FOR ATTORNEY FEES
AND COSTS**

I. Introduction.

The State's sole argument is that the Arbitrator exceeded his power in striking the State's compensation offer, even though both parties agree he had authority to determine whether the offer conflicted with Statute and that striking the offer was the appropriate remedy, and the State's *Motion* fails to dispute its offer violated Statute. This argument does not overcome "the burden of proving, by clear and convincing evidence, the statutory or common-law ground relied upon for challenging the award." *News+Media Capitol Group LLC v. Las Vegas Sun, Inc.*, 137 Nev. Adv. 45, 2021 WL 4235010 (Sept. 16, 2021) (quotation omitted). Mere "errors of fact or law—even arguably serious ones—do not justify vacating an award. An Arbitrator's misinterpretation of [the parties] agreement constitutes an excess of authority only if the adopted interpretation is not even minimally plausible." *Id.* (emphasis added). The State failed to meet this exceedingly

1 high bar for the following reasons. First, the State waived its ability to challenge the Arbitrator's
2 power because it never opposed the Union's motion for a final decision. The State also insisted
3 that the Arbitrator had the power to determine whether the parties' offers conflicted with statute.
4 Second, the Arbitrator did not exceed his power because the parties agreed that he could consider
5 the State's offer withdrawn if it conflicted with statute under NRS 288.575. The State disliking
6 his decision after-the-fact does not justify vacating the award. At a minimum, the Arbitrator had
7 a "colorable justification" for his ruling. And, while the Arbitrator never determined the State
8 acted in "bad faith," he had the inherent authority to do so.

9 Because the parties agreed to submit the issue to the Arbitrator, the State's disagreement
10 with the Arbitrator's ruling is no basis for vacating the award. The State's argument erroneously
11 assumes the Arbitrator determined its offer was a "prohibited practice." First, the Arbitrator never
12 made this finding. Second, assuming *arguendo* that he did and that he had no inherent authority
13 to find the State in bad faith, the State's argument illogically presumes reverse causality. Just
14 because an action can be a prohibited practice does not mean a party must submit it to the
15 EMRB. *See* NRS 288.280 ("Any controversy concerning prohibited practices *may* be submitted
16 to the Board. . .") (emphasis added). A prohibited practice determination is a claim with a specific
17 remedy only the EMRB can provide. *See* NRS 288.625(1) ("To establish that a party committed
18 a prohibited practice . . . the party aggrieved by the practice must file a complaint with the
19 Board."). When the Board finds there has been a "prohibited practice," it has exclusive EMRB
20 remedies. *See* NRS 288.625(3).

21 The Arbitrator here had concurrent jurisdiction over the action but not the remedy. He
22 had authority to determine the State's offer conflicted with statute, but he lacked authority to
23 remedy that conflict by determining the State committed a "prohibited practice." This is likely
24 why the Arbitrator did not make a "bad faith" finding. Instead, his exclusive remedy under NRS
25 288.575(1)—and the parties' agreement—was to consider the offer withdrawn, which he did.

26 Put another way, the State's argument presumes that one possible remedy forecloses
27 another, when many actions have distinct remedies that can be provided only by distinct

1 actors. For example, the act of hitting someone's car window with a bat can subject a person to
2 criminal liability, which can only be brought by the District Attorney's office. But the vehicle's
3 owner can still bring a civil action for money damages. The District Attorney's office having
4 exclusive jurisdiction to label the action criminal does remove the vehicle owner's civil
5 remedy. Likewise, the Union had two choices when the State's final offer violated its obligation
6 to negotiate compensation. It could have remedied the action by filing an EMRB complaint for
7 the Board to declare the action a "prohibited practice," or it could have remedied the action by
8 having the Arbitrator determine the offer conflicted with statute and consider it withdrawn. The
9 Union chose the latter and the Arbitrator acted within his power to issue a final ruling.

10 While the State absolutely committed a "prohibited practice" during the Arbitration, the
11 Arbitrator never made that finding. His ruling avoided the issue entirely even though the Union
12 wanted him to sanction the State and make a "bad faith" finding. The Arbitrator's final order
13 only addressed the issue both parties agreed to—whether the Arbitrator had the authority to
14 determine either parties' offer "conflict[ed]" with or was "otherwise inconsistent with any
15 provision of state law." NRS 288.575 (emphasis added). Even though the State agreed the
16 Arbitrator had authority to decide this issue,¹ it now seeks judicial review because it doesn't like
17 how the Arbitrator ruled. That is not a reason to vacate the award and fails to meet the "burden
18 of proving, by clear and convincing evidence" that the Arbitrator exceeded his power. *Health*
19 *Plan of Nev., Inc. v. Rainbow Med., LLC*, 120 Nev. 689, 695, 100 P.3d 172, 176 (2004). This
20 Court should, therefore, deny the State's motion to vacate, confirm the Arbitration award, and
21 award the Union attorney fees and costs in defending against it.

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26 ¹Both parties submitted motions to consider the other party's offers withdrawn arguing that they conflicted with
27 statute or were otherwise inconsistent. Both parties indicated there are only two portions of Statute the Arbitrator
could not rely on in finding a conflict (NRS 284 and NRS 287). Neither party made any other reservation in their
motions.

1 **II. Standard of Review**

2 A. *The standard of review for vacating an Arbitration award when a party claims the*
3 *Arbitrator exceeded his power is exceedingly high.*

4 “[T]he scope of judicial review of [an] arbitration award is limited and is nothing like the
5 scope of an appellate court’s review of a trial court’s decision.” *Health Plan*, 120 Nev. at 695,
6 100 P.3d at 176. Frankly, there are “high bars to clear.” *News+Media Capitol Group*, 137 Nev.
7 Adv. 45 (emphasis added). “The party seeking to attack the validity of an arbitration award has
8 the burden of proving, by clear and convincing evidence, the statutory or common-law ground
9 relied upon for challenging the award.” *Id.* (emphasis added). Those grounds do not include
10 “that the [Arbitrator] committed an error—or even a serious error.” *See Stolt-Nielsen*, 559 U.S.
11 at 671, 130 S.Ct. 1758. The parties to rely on an arbitrator with “specialized knowledge and
12 competence” to speed up litigation. *Clark Cty. Pub. Emps. Ass’n v. Pearson*, 106 Nev. 587, 597,
13 798 P.2d 136, 142 (1990). Therefore, “courts are properly reluctant to overturn an arbitration
14 award once rendered” in order “to preserve the efficiency and other benefits of arbitration.”
15 *News+Media Capitol Group*, 137 Nev. Adv. 45 at *4.

16 The State’s sole argument in its motion to vacate the Arbitration award is that the
17 Arbitrator exceeded his power. When reviewing whether an arbitrator exceeded his powers, this
18 Court should begin its analysis with the presumption that arbitrator acted within the scope of his
19 authority. *Health Plan*, 120 Nev. 689 at 697, 100 P.3d at 178. “Arbitrators exceed their powers
20 when they address issues or make awards outside the scope of [an agreement] . . . [B]ut arbitrators
21 do not exceed their powers if their interpretation of an agreement, even if erroneous, is rationally
22 grounded in the agreement.” *Health Plan*, 120 Nev. at 697-98, 100 P.3d at 178. The proper
23 question then is “whether the arbitrator had the authority under the agreement to decide an issue,
24 not whether the issue was correctly decided.” *Id.* at 698, 100 P.3d at 178. Therefore, this Court
25 should confirm the award “so long as the arbitrator [was] arguably construing or applying the
26 [agreement]” and the outcome had a “colorable justification.” *Id.*
27

1 **III. The State waived the arguments it is making in its Petition for Judicial Review**

2 A. *The State waived its ability to challenge the Arbitrator's final decision because it did not*
3 *oppose the Union's motion for a final order.*

4 The State waived its ability to challenge the Arbitrator's ruling that the State's offer
5 conflicted with statute because it did not oppose the Union's motion for a final order at the
6 Arbitration. If the State thought the Arbitrator's decision on the prior non-dispositive motion was
7 incorrect, it should have opposed the motion for a final order. *See Exhibit "1" of Respondent's*
8 *Motion*, p.1, Lines 21-22. As such, the State has waived this argument on appeal. *See, e.g. Old*
9 *Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding the Court does not
10 consider waived arguments raised for the first time on appeal).

11 B. *The State waived its ability to challenge the Arbitrator's authority because it agreed the*
12 *Arbitrator had authority to decide whether the State's offer conflicted with its statutory*
13 *obligation to negotiate wages.*

14 i. The State waived its ability to challenge the Arbitrator's authority to decide
15 whether its offer conflicted with its statutory obligation to negotiate wages
16 because it consented to the issue being before the Arbitrator.

17 The parties mutually agreed to have the Arbitrator decide whether the State's offer
18 conflicted with any portion of statute *at the insistence* of the State's legal counsel. While Union's
19 counsel objected to this reading of the Statute, the State's counsel wrote:

20 As NRS 288.575(1) is a new provision of law not afforded [SIC]
21 local governments, this is an important step that should be included
22 in the Scheduling Order. If we don't have a process for this, it would
23 prevent either Party from opposing the requested withdrawal but
24 also prevent the Arbitrator from narrowing the issues prior to the
25 hearing.

26 *See Email requesting briefing on withdrawal of offers under NRS 288.575(1) attached as Exhibit*
27 *"3" to the Union's Motion to Confirm the Arbitration Award.*

Because the Parties agreed to submit the issue to the Arbitrator, both parties waived their
ability to challenge the Arbitrator's authority to decide the issue. *See National Gypsum Co. v.*
Oil, Chemical & Atomic Workers Intern. Union, 1997 WL 358048 ("The scope of an arbitrator's
authority may also be defined by a submission agreement by the parties stating the issue(s) to be

1 decided by the arbitrator . . . where there is a submission agreement, that agreement . . . defines
2 the limits of the arbitrator's authority."); *see also Ales v. Anderson, Gabelmann, Lower &*
3 *Whitlow, P.C.*, 728 N.W.2d 832 (Iowa 2007) ("The agreement between the parties gave the
4 arbitrator the authority."); *Washoe County v. Seegmiller*, 477 P.3d 368 (Nev. 2020) ("[T]he
5 County . . . agreed to the arbitrator's authority to decide the issue, but we decline to consider the
6 argument further because the County failed to raise it before the arbitrator.").

- 7 ii. The Union decided not to bring an EMRB complaint was because the State
8 agreed that the Arbitrator had authority to determine whether the offer
9 conflicted with the State's statutory obligation to negotiate wages.

10 The State argues that the Union acknowledged the EMRB had exclusive jurisdiction by
11 mediating an EMRB claim. This is a dishonest assessment of what happened. The reason the
12 Union did not file with the EMRB is because the State agreed the Arbitrator could decide the
13 issue. Lead counsel for the State, Tori Sundheim, told Union attorney Alex Velto that the Union
14 should not file with the EMRB because the Arbitrator was going to decide the issue anyway and
15 it would be redundant to have competing rulings. *See attached as Exhibit "1," Alex Velto*
Affidavit. She even asked the Union not to file so that the Arbitrator could just decide.

16 The State's agreement to put the issue before the Arbitrator is not a new fact. It was
17 memorialized in a pleading before the Arbitrator. Footnote 3 of the Union's reply in support of
18 its motion to consider the State's offer withdrawn contained the following:

19 It is interesting that the State is now insisting the Union should have
20 filed an EMRB Complaint. Only a week ago it insisted that the
21 Union not file an EMRB complaint over the State's regressive offer
22 because both parties agreed the Arbitrator should decide the issue.
23 This Arbitrator should consider this claim waived as it contradicts
24 the State's prior position.

25 *See Attached as Exhibit "2," p.6*

26 This Court should not allow the State's concession of the Arbitrator's authority to go
27 unnoticed. It should not punish the Union for relying on this agreement between the State and
the Union in choosing not to file an EMRB complaint. And it should not give the State a second
bite at the apple when it made no argument the Arbitrator's decision was arbitrary, capricious, or
incorrect.

1 The State's attempt to frame the Arbitrator's ruling as encroaching on the EMRB's
2 jurisdiction is a distraction. The Arbitrator never ruled the State committed a "prohibited
3 practice" or acted in "bad faith," both of which are terms of art. The Arbitrator ruled only that
4 the State's offer conflicted with Statute.

5 **IV. The Arbitrator did not exceed his authority**

6 *A. The Arbitrator had authority under NRS 288.575 to determine whether State's offer
7 conflicted with Statute.*

8 The State and Union agreed to briefing on whether either party's final offers to the
9 Arbitrator should be considered withdrawn. *See Exhibit 1, Respondent's Motion.* No one teed
10 this issue up more clearly for the Arbitrator than the State of Nevada:

11 Under NRS 288.575, any proposal that conflicts with or is otherwise
12 inconsistent with any provision of state law (other than NRS 284
13 and 287) must be considered withdrawn from the arbitration
14 process.

15 *See State of Nevada Motion to Deem NPU's offer withdrawn, Attached as Exhibit "3."*

16 This request for a ruling from the Arbitrator was based in statute. NRS 288.575(1)
17 requires that "[a]ny proposal that conflicts with or is otherwise inconsistent with any provision of
18 state law, other than the provisions of chapters 284 and 287 of NRS shall be considered withdrawn
19 by the proposing party." Accordingly, if the Arbitrator determined any portion of State law other
20 than that found in NRS Chapters 284 and 287, the Arbitrator had authority to determine the offer
21 withdrawn.

22 The Arbitrator acted within this Authority. He determined in his final order that:

23 The Arbitrator finds that "the State's final offer on *Compensation* is
24 found in conflict with NRS 288.150's obligation requiring the State
25 to negotiate wages with the Union and NRS 288.410, which
26 [negotiations] continues throughout the entirety of the bargaining
27 [process] which includes arbitration as expressly state in NRS
28 288.575(4) . . . For that reason, the Arbitrator **Granted** NPU's
29 Motion to Consider the State's *Compensation* Offer Withdrawn.

30 *See Exhibit "1" of Respondent's Motion.*

31 The Arbitrator's award does not use the phrase "bad faith," neither does he cite to any
32 portion of NRS Chapter 288 that discusses "prohibited practices." *See generally*, NRS 288.620-

1 630. Rather, his decision is limited to the issue presented by the parties. He determined that the
2 State's final offer on compensation conflicted with its obligation to negotiate wages under NRS
3 288.150: a portion of statute that is not one of those expressly excluded from consideration by the
4 Arbitrator under NRS 288.575(1). *See Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246
5 (1967) ("[T]he expression of one thing is the exclusion of another, has been repeatedly confirmed
6 in this State.). Accordingly, the Arbitrator did not exceed his authority in deciding the State's
7 offer conflicted with Statute because he addressed an issue agreed upon by the parties. *See Health*
8 *Plan*, 120 Nev. at 697-98, 100 P.3d at 178 ("Arbitrators exceed their powers when they address
9 issues or make awards outside the scope of the [agreement] . . . [B]ut arbitrators do not exceed
10 their powers if their interpretation of an agreement, even if erroneous, is rationally grounded in
11 the agreement.") (emphasis added).

12 *B. The Arbitrator, at worst, had a "colorable justification" for his decision, which is*
13 *sufficient under Nevada law.*

14 To determine whether the arbitrator's award is "colorable," a reviewing court engages in
15 at least some of its own analysis of the parties' agreement to submit an issue to an Arbitrator. *See*
16 *White*, 133 Nev. at 304, 396 P.3d at 839. However, "the court's analysis is not plenary."
17 *News+Media Capitol Group*, 137 Nev. Adv. 45, at 4. This is because "the parties bargained for
18 the arbitrator's interpretation." *United Steelworkers*, 363 U.S. at 599, 80 S.Ct. 1358. "A court will
19 not find that the arbitrator exceeded his or her powers . . . unless there is not even a minimally
20 plausible argument to support the arbitrator's decision." *News+Media Capitol Group*, 137 Nev.
21 Adv. 45, at 4 (emphasis added).

22 There is, at a minimum, a plausible argument to support the Arbitrator's decision. The
23 Arbitrator grounded his decision in a reasonable reading of statute and the question presented to
24 him by the parties. Both parties agree that the Arbitrator had the authority to determine whether
25 either parties' offer "conflict[ed]" with or was "otherwise inconsistent with any provision of state
26 law." NRS 288.575. The State's obligation to negotiation wages is a provision of State law. *See*
27 NRS 288.150(2)(a). And the Arbitrator determined the State's unilateral withdrawal of its
compensation article before the Arbitration conflicted with its obligation to negotiate. The

1 Statutory scheme expressly permitted the Arbitrator to determine whether the final offer
2 conflicted with Statute subject to only two exceptions. *See* NRS 288.575(1). Because the State's
3 argument is not that the Arbitrator found a conflict with NRS Chapter 284 or 287, the Arbitrator
4 did not exceed his authority.

5 *C. The State's argument is a red herring; the Arbitrator never found the State in bad faith.*

6 The Union has read the Arbitrator's decision a dozen times. Nowhere does the
7 Arbitrator's decision say the State acted in "bad faith." Nowhere does the Arbitrator's decision
8 say the State committed a "prohibited practice." And nowhere does the Arbitrator rule on
9 anything other than the issue before him.

10 At best, the State's argument is that the EMRB also had jurisdiction to determine the
11 State's offer was "bad faith." However, the EMRB has no statutory authority to determine an
12 offer conflicted with statute and should be withdrawn—only the Arbitrator had that authority. It
13 can both be true that the State's offer was a prohibited practice and that it conflicted with Statute.
14 Nothing in Nevada law prevented the Arbitrator from understanding the law this way.

15 *D. Even if the Arbitrator made a "bad faith" finding, he had inherent authority to do so.*

16 Even if this Court determines the Arbitrator's ruling overlaps with the EMRB's
17 jurisdiction, the Arbitrator had authority to make his decision. NRS 288.575(4) obligates the
18 parties to continue to negotiate in good faith during the Arbitration process. This section of statute
19 outlines the process of arbitration, relying on the Arbitrator's inherent authority to regulate the
20 parties before him. *See ReliaStar Life Ins. Co. of N.Y. v. EMC Nat. Life Co.*, 564 F.3d 71 (2nd
21 Ct. App. N.Y. 2009 (An Arbitration clause "confers inherent authority on arbitrators to sanction
22 a party that participates in the arbitration in bad faith and that such a sanction may include an
award of attorney's or arbitrator's fees").

23 The State argues the EMRB has exclusive authority over bad faith claims. NRS 288.625
24 allows for a party to file a complaint with the EMRB to establish there has been bad faith. It does
25 not require a party to file that complaint with the EMRB, nor does it exclude an Arbitrator from
26
27

1 making this determination. And in no way does it exclusively obligate parties making “bad faith”
2 claims to file with the EMRB.²

3 **V. The Court should award the Union attorney fees and costs.**

4 This Court should award the Union its attorney fees and costs incurred in filing this
5 Action. While NRS 38.243(3) authorizes an award of fees to the prevailing party to a judicial
6 challenge to any type of arbitration, such a fee award is particularly appropriate in the context of
7 a labor arbitration. “Arbitration of labor disputes under collective bargaining agreements is part
8 and parcel of the collective bargaining process itself.” *United Steelworkers of America v. Warrior*
9 *& Gulf Nav. Co.*, 636 U.S. 574, 578, 80 S.Ct. 1347, 1351 (1960). Because arbitration constitutes
10 a “framework of self-government between the parties,” an attack upon the merits of an arbitration
11 award is an attack on the collective bargaining process itself. *NFL Management Council v.*
12 *National Football League Players Association*, 820 F.3d 527, 536 (2d Cir. 2016).

13 The State has no excuse for its *Motion*. It knows the standard for vacating an arbitration
14 award because it has litigated this issue. *See Knickmeyer v. State of Nevada*, 2017 WL 2616382
15 (The State of Nevada made clear in its answering brief that the Court “explicitly held there is a
16 presumption that arbitrators act within the scope of their authority. To overcome this
17 presumption, Knickmeyer must provide clear and convincing evidence to the contrary.”). This
18 Court should award attorney fees and costs to prevent the State from using the process to delay
19 the adoption of a much-needed agreement while every other Statewide union has one.

20 Dated this __ day of October 2021.

21 HUTCHISON & STEFFEN, PLLC

22
23 By: _____
24 Alex Velto, Esq. (SBN# 14961)
25 500 Damonte Ranch Parkway, Suite 980
26 Reno, Nevada 89521
27 *Attorney for Nevada Police Union*

²The State discusses legislative history in its *Motion*. There is no need to address that in this *Opposition* because the Arbitrator acted within his power. The State also argues this is a matter of first impression. It’s not. Case law is well settled as to the scope of judicial review when a party alleges the Arbitrator exceeded his authority.

LIST OF EXHIBITS

Exhibit No.	Document Title	No. of Pages (including exhibit cover page)
1	Affidavit of Alexander Velto, Esq.	4
2	Nevada Police Union's Reply in support of its motion to consider the State's Compensation offer withdrawn.	17
3	State of Nevada's Motion to deem NPU's proposals withdrawn pursuant to NRS 288.575(1).	15
4	Proposed Order	6

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of HUTCHISON
3 & STEFFEN, LLC and that on the ____ day of October, 2021, I caused service a true and correct
4 copy of the **NEVADA POLICE UNION'S OPPOSITION TO MOTION TO VACATE**
5 **ARBITRATION AWARD AND REPLY IN SUPPORT OF MOTION TO CONFIRM**
6 **ARBITRATION AWARD AND REQUEST FOR ATTORNEY FEES AND COSTS**
7 by electronic mail to the following:

8
9 Greg D. Ott
10 Deputy Attorney General
11 State of Nevada
12 Office of the Attorney General
13 100 North Carson Street
14 Carson City, Nevada 89701-4717
GOtt@ag.nv.gov
Attorney for the State of Nevada

Laura Freed, Director
Frank Richardson, Chief Negotiator
Department of Administration
Division of Human Resource Management
Labor Relations Unit
515 E. Musser Street
Carson City, Nevada 89701
laurafreed@admin.nv.gov
frichardson@admin.nv.gov

15 Claude Dawson Ames, Esq.,
16 Arbitrator-Mediator
17 Post Office Box 11180
18 Oakland, California 94611
claudames@aol.com

19
20
21 /s/

22 Employee of Hutchison & Steffen, PLLC
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APPENDIX PAGE ONLY



APPENDIX N

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Attorney for Nevada Police Union

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

NEVADA POLICE UNION,

Petitioner,

v.

STATE OF NEVADA, NEVADA
DEPARTMENT OF ADMINISTRATION,
LAURA FREED, DIRECTOR OF NEVADA
DEPARTMENT OF ADMINISTRATION,
GOVERNOR STEVE SISOLAK,

Respondents.

Case No.: 21 OC 00129 1B

Dept. No.: 1

**NOTICE OF ENTRY OF ORDER
GRANTING NEVADA POLICE
UNION'S MOTION TO CONFIRM
ARBITRATION AWARD, DENYING
STATE OF NEVADA'S MOTION TO
VACATE ARBITRATION AWARD, AND
GRANTING NEVADA POLICE
UNION'S REQUEST FOR ATTORNEY
FEES AND COSTS**

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1 NOTICE IS HEREBY GIVEN that on December 6, 2021, an *Order Granting Nevada*
2 *Police Union's Motion to Confirm Arbitration Award, Denying State of Nevada's Motion to*
3 *Vacate Arbitration Award, and Granting Nevada Police Union's Request for Attorney Fees and*
4 *Costs* was entered in the above-captioned matter, a copy of which is attached hereto as Exhibit 1.

5 **AFFIRMATION**

6 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
7 document does not contain the social security number of any person.

8
9 Dated this 13th day of December 2021.

10 HUTCHISON & STEFFEN, PLLC

11
12 By: 

13 Alex Velta, Esq. (SBN# 14961)
14 5371 Kietzke Lane
15 Reno, Nevada 89511
16 *Attorney for Nevada Police Union*
17
18
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21
22
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LIST OF EXHIBITS

Exhibit No.	Document Title	No. of Pages (including exhibit cover page)
1	December 6, 2021 Order Granting Nevada Police Union's Motion to Confirm Arbitration Award, Denying State of Nevada's Motion to Vacate Arbitration Award, and Granting Nevada Police Union's Request for Attorney Fees and Costs	8

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of HUTCHISON
3 & STEFFEN, LLC and that on the 13th day of December, 2021, I caused service a true and correct
4 copy of the **NOTICE OF ENTRY OF ORDER GRANTING NEVADA POLICE UNION'S**
5 **MOTION TO CONFIRM ARBITRATION AWARD, DENYING STATE OF NEVADA'S**
6 **MOTION TO VACATE ARBITRATION AWARD, AND GRANTING NEVADA POLICE**
7 **UNION'S REQUEST FOR ATTORNEY FEES AND COSTS**

8 by electronic mail to the following:

9
10 Greg D. Ott
11 Deputy Attorney General
12 State of Nevada
13 Office of the Attorney General
14 100 North Carson Street
15 Carson City, Nevada 89701-4717
16 GOtt@ag.nv.gov
17 *Attorney for the State of Nevada*

Laura Freed, Director
Frank Richardson, Chief Negotiator
Department of Administration
Division of Human Resource Management
Labor Relations Unit
515 E. Musser Street
Carson City, Nevada 89701
laurafreed@admin.nv.gov
frichardson@admin.nv.gov

16 Claude Dawson Ames, Esq.,
17 Arbitrator-Mediator
18 Post Office Box 11180
19 Oakland, California 94611
20 claudames@aol.com

21 
22 Employee of Hutchison & Steffen, PLLC
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EXHIBIT 1

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

NEVADA POLICE UNION,

Petitioner,

v.

STATE OF NEVADA, NEVADA
DEPARTMENT OF ADMINISTRATION,
LAURA FREED, DIRECTOR OF NEVADA
DEPARTMENT OF ADMINISTRATION,
GOVERNOR STEVE SISOLAK,

Respondents.

Case No.: 21 OC 00129 1B

Dept. No.: 1

**~~PROPOSED~~ ORDER GRANTING
NEVADA POLICE UNION'S MOTION
TO CONFIRM THE ARBITRATION
AWARD, DENYING STATE OF
NEVADA'S MOTION TO VACATE THE
ARBITRATION AWARD, AND
GRANTING NEVADA POLICE
UNION'S REQUEST FOR ATTORNEY
FEES AND COSTS**

This matter comes pursuant to the August 19, 2021, *Petition to Confirm the Arbitration Award*, filed by the Nevada Police Union, which was amended on August 27, 2021. Respondent, State of Nevada, filed a *Motion to Vacate the Arbitration Award and Opposition to Motion to Confirm the Arbitration Award* on September 15, 2021. The Nevada Police Union filed a reply in support of its *Petition/Motion* and an *Opposition* to the Respondent's *Motion to Vacate* on October 1, 2021. The State filed a *Reply to Opposition to Motion to Vacate Arbitration Award* on October 11, 2021. This Court set a hearing for December 1, 2021, at 9:00 a.m. The Parties appeared and the Court heard arguments on the matter.

The Court, having reviewed the record and considered the parties' respective pleadings, heard arguments by counsel, and with good cause appearing, hereby grants the Nevada Police Union's Petition and denies Respondent's Motion to Vacate as follows:

I. Statement of Facts

The State of Nevada Department of Administration ("State") and the Nevada Police Union ("Union") attempted to negotiate their first collective bargaining agreement. When the parties declared impasse, they chose an Arbitrator and proceeded to Arbitration. Early in the Arbitration

1 process, the State insisted that the Arbitrator should have authority to determine whether either
2 party's offer conflicted with statute and the State prepared a scheduling order expressly allowing
3 the Arbitrator to determine if an offer conflicted with any provision of state law pursuant to NRS
4 288.575(1). The Union and State ultimately agreed that if an offer conflicted with any provision
5 of state law, the parties agreed the Arbitrator had authority to consider the offer withdrawn and
6 strike it. The Union filed a motion alleging that the State's compensation article conflicted with
7 statute because it offered no compensation increase at all, even though the State's most recent
8 offer before Arbitration offered a significant increase. The Arbitrator received extensive briefing
9 from both parties on the issue. He determined in his final order:

10 The Arbitrator finds that "the State's final offer on *Compensation* is
11 found in conflict with NRS 288.150's obligation requiring the State
12 to negotiate wages with the Union and NRS 288.410, which
13 [negotiations] continues throughout the entirety of the bargaining
14 [process] which includes arbitration as expressly state in NRS
15 288.575(4) . . . For that reason, the Arbitrator **Granted** NPU's
16 Motion to Consider the State's *Compensation* Offer Withdrawn.

14 **II. Legal Discussion**

15 "[T]he scope of judicial review of [an] arbitration award is limited and is nothing like the
16 scope of an appellate court's review of a trial court's decision." *Health Plan*, 120 Nev. at 695,
17 100 P.3d at 176. A movant has "high bars to clear." *News+Media Capitol Group*, 137 Nev. Adv.
18 45. "The party seeking to attack the validity of an arbitration award has the burden of proving,
19 by clear and convincing evidence, the statutory or common-law ground relied upon for
20 challenging the award." *Id.* (emphasis added). Mere "errors of fact or law—even arguably
21 serious ones—do not justify vacating an award. An Arbitrator's misinterpretation of [the parties]
22 agreement constitutes an excess of authority only if the adopted interpretation is not even
23 minimally plausible." *News+Media Capitol Group*, 137 Nev. Adv. 45. This is in-part because
24 parties rely on an arbitrator with "specialized knowledge and competence" to speed up litigation.
25 *Clark Cty. Pub. Emps. Ass'n v. Pearson*, 106 Nev. 587, 597, 798 P.2d 136, 142 (1990). So, "courts
26 are properly reluctant to overturn an arbitration award once rendered" in order "to preserve the
27

1 efficiency and other benefits of arbitration.” *News+Media Capitol Group*, 137 Nev. Adv. 45 at
2 *4.

3 The State argues in its motion to vacate the Arbitration award that the Arbitrator exceeded
4 his power by considering the State’s compensation offer withdrawn. This Court begins its
5 analysis with the presumption that arbitrator acted within the scope of his authority. *Health Plan*,
6 120 Nev. 689 at 697, 100 P.3d at 178. However, this presumption is not absolute: “[a]rbitrators
7 exceed their powers when they address issues or make awards outside the scope of [an
8 agreement].” *Health Plan*, 120 Nev. at 697-98, 100 P.3d at 178. “[B]ut arbitrators do not exceed
9 their powers if their interpretation of an agreement, even if erroneous, is rationally grounded in
10 the agreement.” Therefore, the proper question for this Court is “whether the arbitrator had the
11 authority under the agreement to decide an issue, not whether the issue was correctly
12 decided.” *Id.* at 698, 100 P.3d at 178. If the Arbitrator had authority by the parties’ agreement to
13 decide the issue, this Court will confirm the award “so long as the arbitrator [was] arguably
14 construing or applying the [agreement]” and the outcome had a “colorable justification.” *Id.*

15 This Court finds that the State failed to overcome its burden to show the Arbitrator
16 exceeded his authority because “the parties bargained for the arbitrator’s interpretation.” *United*
17 *Steelworkers of America v. Enterprise Wheel Car Corp.*, 363 U.S. 593, 599, 80 S.Ct. 1358 (1960).
18 The parties agreed that the Arbitrator had authority to apply the following statute: “[a]ny proposal
19 that conflicts with or is otherwise inconsistent with any provision of state law, other than the
20 provisions of chapters 284 and 287 of NRS shall be considered withdrawn by the proposing
21 party.” NRS 288.575(1). The State prepared the scheduling order, and the record establishes that
22 the State insisted the Arbitrator should have the authority to make this decision. As such, the
23 State is bound by the Arbitrator’s ruling so long as the decision is rationally grounded in the
24 parties’ agreement that he decide the issue and has a colorable justification.

25 Here, the Statute the parties gave the Arbitrator authority to rule under is clear. NRS
26 288.575(1) determines offers are withdrawn if they conflict with Statute subject to only two
27 exceptions. *See* NRS 288.575(1). Because the Arbitrator’s decision did not rely on a conflict

1 with NRS Chapter 284 or 287, the Arbitrator did not exceed his authority. *See Galloway v.*
2 *Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) (“[T]he expression of one thing is the
3 exclusion of another, has been repeatedly confirmed in this State.). Therefore, this Court “will
4 not find that the arbitrator exceeded his or her powers . . . unless there is not even a minimally
5 plausible argument to support the arbitrator’s decision.” *News+Media Capitol Group*, 137 Nev.
6 Adv. 45, at 4 (emphasis added). And here, there was.

7 The State’s central claim is that the Arbitrator exceeded his power in striking the State’s
8 compensation offer because the EMRB has exclusive jurisdiction over bad “faith claims” and sole
9 ability to determine an action is a “prohibited practice.” The Union argues that the Arbitrator did
10 not find the State acted in bad faith and that the Arbitrator had authority to strike the State’s offer
11 because the parties agreed the Arbitrator could determine an offer conflicted with Statute. The
12 Union also argues that the State waived its ability to challenge the Arbitrator’s award because it
13 consented to the Arbitrator’s final ruling and authority to determine whether the offer conflicted
14 with Statute.

15 This Court finds that the State failed to overcome its burden to show the Arbitrator’s made
16 a “bad faith” or “prohibited practice” finding, even if the parties did not consent to his authority
17 to make the ruling. The record and order show that the Arbitrator never made this finding.
18 Instead, the parties mutually agreed to have the Arbitrator decide whether the State’s offer
19 conflicted with any portion of Statute at the insistence of the State’s legal counsel. The State
20 agreed that the Arbitrator had authority to strike the State’s compensation offer if he determined
21 it conflicted with Statute.

22 This Court finds further that the State waived its ability to challenge the Arbitration award
23 for three reasons. First, the parties mutually agreed to have the Arbitrator decide whether the
24 State’s offer conflicted with any portion of Statute at the insistence of the State’s legal counsel.
25 Second, the State agreed that the Arbitrator had authority to strike the State’s compensation offer
26 if he determined it conflicted with Statute to avoid the Union’s EMRB complaint, which does not
27 establish the EMRB had jurisdiction. Third, the Arbitrator determined the offer conflicted with

1 Statute. This Court finds that these actions prevent the State from now challenging the
2 Arbitrator's authority before this Court. See *National Gypsum Co. v. Oil, Chemical & Atomic*
3 *Workers Intern. Union*, 1997 WL 358048 ("The scope of an arbitrator's authority may also be
4 defined by a submission agreement by the parties stating the issue(s) to be decided by the
5 arbitrator . . . where there is a submission agreement, that agreement . . . defines the limits of the
6 arbitrator's authority."); see also *Ales v. Anderson, Gabelmann, Lower & Whitlow, P.C.*, 728
7 N.W.2d 832 (Iowa 2007) ("The agreement between the parties gave the arbitrator the authority.");
8 *Washoe County v. Seegmiller*, 477 P.3d 368 (Nev. 2020) ("[T]he County . . . agreed to the
9 arbitrator's authority to decide the issue, but we decline to consider the argument further because
10 the County failed to raise it before the arbitrator.").

11 This Court, therefore, denies the State's *Motion to Vacate* and grants the Union's *Petition*
12 *to Confirm* See NRS 38.239 ("After a party to an arbitral proceeding receives notice of an award,
13 the party may make a motion to the court for an order confirming the award at which time the
14 court shall issue a confirming order ...") (emphasis supplied); see also 9 U.S.C. §§ 9, 13. Further,
15 upon confirmation of the award "the court shall enter a judgment in conformity therewith." NRS
16 38.243(1); see also 9 U.S.C. §§ 9, 13. The judgment may then "be recorded, docketed and
17 enforced as any other judgment in a civil action." *Id.*; see also 9 U.S.C. § 13.

18 This Court orders the State to pay the Union's reasonable attorney fees and costs. NRS
19 38.243(3) authorizes an award of fees to the prevailing party to a judicial challenge to any type
20 of arbitration, such a fee award is particularly appropriate in the context of a labor arbitration.
21 "Arbitration of labor disputes under collective bargaining agreements is part and parcel of the
22 collective bargaining process itself." *United Steelworkers of America v. Warrior & Gulf Nav.*
23 *Co.*, 636 U.S. 574, 578, 80 S.Ct. 1347, 1351 (1960). Because arbitration constitutes a
24 "framework of self-government between the parties," an attack upon the merits of an arbitration
25 award is an attack on the collective bargaining process itself. *NFL Management Council v.*
26 *National Football League Players Association*, 820 F.3d 527, 536 (2d Cir. 2016). This is
27 especially relevant given that the State agreed to have the Arbitrator decide the issue. It cannot

1 now use the judicial review process to attack an agreement it made. This Court, therefore, awards
2 attorney fees and costs, that will be determined pursuant to a *Brunzell* affidavit.

3 **IT IS SO ORDERED** that Petitioner's *Motion to Confirm the Arbitration Award* is
4 GRANTED in its entirety.

5 **IT IS FURTHER ORDERED** that Respondent's *Motion to Vacate the Arbitration*
6 *Award* is DENIED in its entirety.

7 **IT IS FURTHER ORDERED** that Respondent, Nevada Department of Administration,
8 shall pay to Petitioner reasonable costs of the Petition and this proceeding, including reasonable
9 attorney's fees and other reasonable expenses of litigation pursuant to NRS 38.243(2) and (3) in
10 an amount proven by Petitioners.

11 **IT IS FURTHER ORDERED** that Respondent shall provide an affidavit for the Court
12 to properly consider under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31
13 (1969) and a statement of the fees being sought within 10 days of the entry of this Order.

14 **IT IS FURTHER ORDERED** that Respondent, through its attorney, will serve a notice
15 of entry of this order on all other parties and proof of such service within seven (7) days after the
16 date the Court sent the order to the attorney.

17 DATED this 6th day of December, 2021

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DISTRICT JUDGE

20 Respectfully Submitted by:

21 HUTCHISON & STEFFEN, PLLC

22 By:

23 Alex Velto, Esq. (SBN# 14961)

24 5371 Kietzke Lane

25 Reno, Nevada 89511

26 Attorney for Nevada Police Union


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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court,
and that on this 6th day of December, 2021, I deposited for mailing, postage paid, at Carson
City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Alex Velto, Esq.
5371 Kietzke Lane
Reno, NV 89511

Greg Ott, Esq.
100 N Carson Street
Carson City, NV 89701



Jackson J. Tann, Esq.
Law Clerk, Dept. I

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APPENDIX PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

APPENDIX O

Senate Bill 135 (2019)
Legislative History Expert Opinion
Sponsor Senator David Parks

- 1) The Nevada Police Union believes that Senate Bill 135 was not intended to require an agreement be reached before the end of session. The Nevada Police Union believes this reading of the law would allow a Governor to merely wait the union out until the end of session to avoid negotiating with a union about issues that require a financial expenditure. The State's attorneys have argued that the Nevada Police Union's failure to reach an agreement on the compensation article before the end of session now precludes the State from offering any form of compensation increase and that the State is no longer able to negotiate compensation. In sponsoring and introducing Senate Bill 135, did you intend for sine die to cut off opportunities for unions to negotiate compensation or financial expenditures? Please provide as much detail and insight as you feel appropriate:

As a primary sponsor of Senate Bill 135, there was no intent for legislative sine die to serve as a deadline for the conclusion of negotiations between bargaining units and the Governor's representative for negotiations. In fact, while there are specific timelines to commence the negotiation process, there is no specified deadline for the finalization of negotiations.

As an individual with local government labor negotiations experience, I have had first-hand public-sector experience negotiating collective bargaining contracts. Those negotiations seldom conclude on a predetermined schedule. Consequently, no specific deadline was placed in Senate Bill 135 for the termination or conclusion of labor negotiations.

- 2) The State last offer before the end of the Legislative session was for a 3% cost of living increase. The Union requested that the State preserve the amount of money equal to the 3% cost of living increase so that the Union could continue to negotiate how that money would be spent and allow the Arbitrator to determine who's offer was more reasonable. The State has now taken the position that it was unable to preserve the money, and that it was not required, to preserve the money for negotiations after the end of the Legislative session. Is this consistent with your understanding of Senate Bill 135? Please provide as much detail and insight as you feel appropriate:

The Executive Branch of the State of Nevada has authority to request appropriations from the Legislature to fund State programs and services. The Legislative Branch has authority to allocate funds for all State programs and services.

I was a member of the Nevada Legislature for 24 years (1996 - 2020) as well as a member of the two budget committees (Assembly Ways & Means and Senate Finance). It is not uncommon for these two committees to approve and close budgets with contingent appropriations that are tentative and require final approval once negotiations have concluded. The established budget closing process for such situations requires the Legislature to approve the allocation with a "Letter of Intent" which requires the affected agency to seek final approval prior to incurring any expenditure.

When the Legislature is not in session, ongoing finance and budgetary issues are handled by the Interim Finance Committee of the Legislature. The Interim Finance Committee (composed of

Senate Bill 135 (2019)
Legislative History Expert Opinion
Sponsor Senator David Parks

members of the Assembly Ways & Means Committee and Senate Finance Committee) administers a contingency fund for unanticipated expenditures, approves and allocates gifts and grants received between legislative sessions, and reviews state agency requests. This is precisely the process designed to address the current issues facing the Nevada Police Union in its negotiation with the Governor's representative for negotiations.

I attest to the truthfulness of the foregoing to the best of my knowledge and recollection,

A handwritten signature in dark ink, appearing to read "David Parks", is written over a horizontal line.

David Parks
Former Senator

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APPENDIX PAGE ONLY

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APPENDIX P

Subject: Re: Signed NPU Seniority TA

Date: Monday, August 16, 2021 at 10:26:15 AM Pacific Daylight Time

From: Alex R. Velto

To: Mande Bowsmith, Tori N. Sundheim, Frank Richardson, Charity M. Clarke

Mandee,

Can you please give an update on the status of the agreement? It's now 10 days past the State's self-imposed timeline. The State took much less time preparing the agreements for other unions. The Union has been patient. It has not filed a motion to confirm the Award because the State was acting in good faith in preparing the agreement. The Union is now questioning whether that is still the case. The Union is not going to sit patiently if the State is going to avoid taking steps to abide by the binding Arbitration award.

Please confirm the Union will have the agreement by the end of this week.

Thank you,
Alex

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From: Alex R. Velto <avelto@hutchlegal.com>

Sent: Thursday, August 12, 2021 8:30:00 AM

To: Mande Bowsmith <mbowsmith@admin.nv.gov>; Tori N. Sundheim <TSundheim@ag.nv.gov>; Frank Richardson <frichardson@admin.nv.gov>; Charity M. Clarke <cclarke@admin.nv.gov>

Subject: Re: Signed NPU Seniority TA

Mandee,

I'm following up to see when we will have an agreement compiled by the State. It's been almost a week since your office thought it would be done. Can you please provide an update. I am concerned the State is delaying because it wants to point to a deadline for submission to the Board of Examiners.

Thank you,
Alex

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From: Mande Bowsmith <mbowsmith@admin.nv.gov>

Sent: Monday, August 9, 2021 3:21:00 PM

To: Alex R. Velto <avelto@hutchlegal.com>; Tori N. Sundheim <TSundheim@ag.nv.gov>; Frank Richardson <frichardson@admin.nv.gov>; Charity M. Clarke <cclarke@admin.nv.gov>

Subject: RE: Signed NPU Seniority TA

Good Afternoon Alex,

Thank you for the follow-up email and voicemail.

We are still working on the final draft of the CBA. My Team and I are working to make sure we have the correct language from the TA's reflected in the final draft and are working to compile it as quickly as we can. I hesitate to try to give you another deadline by which it will be finished, as I was unable to get the draft to you by last Friday afternoon as I said I would try to do.

Thank you for sending the Line of Duty Death TA and ratification information. As I responded earlier, we are also working to compile the Agenda submission for the Board of Examiners, and I will let you know once it has been successfully submitted.

Thank you,
Mandee

From: Alex R. Velto <avelto@hutchlegal.com>
Sent: Monday, August 9, 2021 10:12 AM
To: Mandee Bowsmith <mbowsmith@admin.nv.gov>; Tori N. Sundheim <TSundheim@ag.nv.gov>; Frank Richardson <frichardson@admin.nv.gov>; Charity M. Clarke <ccclarke@admin.nv.gov>
Subject: Re: Signed NPU Seniority TA

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Mandee,

I'm emailing to see the status of the State's preparation of the final agreement for NPU's review. Please advise.

Further, NPU sent the TA regarding line of duty death benefits to the membership for a vote. The vote ends midday today. I will send the results when they are in.

Thank you,
Alex

From: Mandee Bowsmith <mbowsmith@admin.nv.gov>
Date: Monday, August 2, 2021 at 9:16 AM
To: Alex R. Velto <avelto@hutchlegal.com>, Tori N. Sundheim <TSundheim@ag.nv.gov>, Frank Richardson <frichardson@admin.nv.gov>, Charity M. Clarke <ccclarke@admin.nv.gov>
Subject: RE: Signed NPU Seniority TA

Good Morning Alex,

I am hoping to have a full draft ready for the NPU's review by Friday.

Thank you.
Mandee

From: Alex R. Velto <avelto@hutchlegal.com>
Sent: Monday, August 2, 2021 7:56 AM
To: Mandee Bowsmith <mbowsmith@admin.nv.gov>; Tori N. Sundheim <TSundheim@ag.nv.gov>; Frank Richardson <frichardson@admin.nv.gov>; Charity M. Clarke <ccclarke@admin.nv.gov>
Subject: Re: Signed NPU Seniority TA

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Good morning Mande,

I'm following up on the timeline for having an agreement to send to our members. When should it be prepared?

Thank you,
Alex

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From: Alex R. Velto <avelto@hutchlegal.com>
Sent: Wednesday, July 28, 2021 8:39:43 AM
To: Mande Bowsmith <mbowsmith@admin.nv.gov>; Tori N. Sundheim <TSundheim@ag.nv.gov>; Frank Richardson <frichardson@admin.nv.gov>; Charity M. Clarke <cclarke@admin.nv.gov>
Subject: Re: Signed NPU Seniority TA

Perfect. Thank you. Do you have an estimate for when that will be complete? We are agreeable to that process.

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From: Mande Bowsmith <mbowsmith@admin.nv.gov>
Sent: Wednesday, July 28, 2021 8:10:59 AM
To: Tori N. Sundheim <TSundheim@ag.nv.gov>; Frank Richardson <frichardson@admin.nv.gov>; Charity M. Clarke <cclarke@admin.nv.gov>; Alex R. Velto <avelto@hutchlegal.com>
Subject: Re: Signed NPU Seniority TA

Good Morning Alex,

Thank you for reaching out. Our practice has been to assemble the TA'd language into a full contract and then send to the Union for review. Once approved by the Union as to form and content, we move to finalize the document and agendize it for review and approval by the Board of Examiners.

If this process is satisfactory to the NPU, the LRU will put together a first final draft.

Please advise.

Thank you,
Mande

From: Alex R. Velto <avelto@hutchlegal.com>
Sent: Wednesday, July 28, 2021 7:07:59 AM
To: Tori N. Sundheim <TSundheim@ag.nv.gov>; Mande Bowsmith <mbowsmith@admin.nv.gov>; Frank Richardson <frichardson@admin.nv.gov>; Charity M. Clarke <cclarke@admin.nv.gov>
Subject: Re: Signed NPU Seniority TA

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Good morning Mande,

Tori advised you are the point person to assist in putting together an agreement for our membership. Will the State be putting this together or should the Union?

Thank you,
Alex

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From: Alex R. Velto <avelto@hutchlegal.com>
Sent: Monday, July 26, 2021 7:12:46 AM
To: Tori Sundheim <TSundheim@ag.nv.gov>; Mande Bowsmith <mbowsmith@admin.nv.gov>; Frank Richardson <frichardson@admin.nv.gov>; Charity M. Clarke <cclarke@admin.nv.gov>
Subject: FW: FW: Signed NPU Seniority TA

Good morning,

Please see the attached seniority TA. Please advise when we will have a finalized agreement to submit to our members. Or, if you would like us to put it together, that works as well.

Thank you,
Alex

Alex R. Velto
Attorney



HUTCHISON & STEFFEN, PLLC
(775) 853-8746
hutchlegal.com

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Alex R. Velto
Attorney



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Alex R. Velto
Attorney



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