

IN THE SUPREME COURT OF NEVADA

LAS VEGAS POLICE PROTECTIVE
ASSOCIATION, INC.

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT,
IN AND FOR THE COUNTY OF CLARK,
STATE OF NEVADA, DEPARTMENT
XXVII, THE HONORABLE NANCY L.
ALLF,

Respondent,

and

JORDAN TRAVERS and LAS VEGAS
METROPOLITAN POLICE DEPARTMENT,

Real Parties in Interest.

Case No. Electronically Filed
Nov 17 2021 11:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**APPENDIX TO PETITION FOR
WRIT OF MANDAMUS**

VOLUME 1

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<u>DATE</u>	<u>INDEX FOR APPENDIX</u>	<u>VOL.</u>	<u>BATES</u>
04/08/2021	Appendix of Exhibits in Support of Points and Authorities re Petition for Injunctive Relief	2	APP 188 – APP 275
12/28/2020	Complaint (Case No.: A-20-827022-C)	1	APP 043 – APP 055
08/18/2021	Court Minutes; Motion to Intervene	3	APP 539
05/20/2021	Court Minutes; Petition for Injunctive Relief	2	APP 334
02/25/2021	Declaratory Order, En Banc, Item No. 870 (Case No.: 2020-033)	1	APP 154 – APP 161
01/19/2021	Defendant Las Vegas Police Protective Association's Opposition to Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time (Case No.: A-20-827022-C)	1	APP 101 – APP 153
01/13/2021	Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time (Case No.: A-20-827022-C)	1	APP 056 – APP 094
05/27/2021	Findings of Fact, Conclusions of Law and Order Granting Permanent Injunction Pursuant to NRS 289.120	2	APP 335 – APP 342
06/22/2021	Las Vegas Police Protective Association Inc.'s Motion to Intervene	3	APP 354 – APP 470
07/21/2021	Las Vegas Police Protective Association Inc.'s Reply in Support of Motion to Intervene	3	APP 531 – APP 538
01/19/2021	LVMPD's Response to Plaintiff's Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time (Case No.: A-20-827022-C)	1	APP 095 – APP 100
06/28/2021	LVMPD's Response to LVPPA's Motion to Intervene	3	APP 526 – APP 530
07/02/2020	Nevada State Law Enforcement Officers Association's and Nevada Association of Public Safety Officers' Petition for Judicial Review (Case No.: A-20-817491-P)	1	APP 020 – APP 038
05/28/2021	Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting Permanent Injunction Pursuant to NRS 289.120	2	APP 343 – APP 353

06/17/2020	Notice of Entry of Order, Declaratory Order, Item No. 865 (<i>Nevada Highway Patrol Ass'n case</i>)	1	APP 005 – APP 019
03/09/2021	Notice of Entry of Order, Order Denying Ex Parte Application for Temporary Restraining Order and Preliminary Injunction (Case No.: A-20-827022-C)	1	APP 169 – APP 173
10/20/2021	Notice of Entry of Order, Order Denying Las Vegas Police Protective Association's Motion to Intervene	3	APP 568 – APP 572
03/09/2021	Order Denying Ex Parte Application for Temporary Restraining Order and Preliminary Injunction (Case No.: A-20-827022-C)	1	APP 162 – APP 168
10/19/2021	Order Denying Las Vegas Police Protective Association's Motion to Intervene	3	APP 565 – APP 567
10/20/2016	Order on Petition for Declaratory Ruling (<i>Lyon Co. case</i>)	1	APP 001 – APP 004
04/08/2021	Petition for Injunctive Relief Pursuant to NRS 289.120	1	APP 174 – APP 177
07/22/2020	Petitioners' Notice of Dismissal Without Prejudice of Petition for Judicial Review and Notice Vacating Motion for Stay Pending Review (Case No.: A-20-817491-P)	1	APP 039 – APP 042
06/28/2021	Plaintiff's Opposition to Las Vegas Police Protective Association Inc.'s Motion to Intervene; Memorandum of Points and Authorities In Support Thereof	3	APP 471 – APP 525
04/08/2021 17:24	Points and Authorities in Support of Petition for Injunctive Relief	1	APP 178 – APP 187
05/12/2021	Reply to LVMPD's Non-Opposition to Petition for Injunctive Relief Pursuant to NRS 289.120	2	APP 330 – APP 333
05/03/2021	Respondent LVMPD's Response to Petition for Injunctive Relief Pursuant to NRS 289.120	2	APP 276 – APP 329
08/18/2021	Transcript of Proceedings re: Las Vegas Police Protective Association Inc.'s Motion to Intervene	3	APP 540 – APP 564

2016 WL 6947474 (NV LGEMRB)

Local Government Employee-Management Relations Board

State of Nevada

LYON COUNTY EDUCATION ASSOCIATION, COMPLAINANTS

v.

LYON COUNTY SCHOOL DISTRICT, RESPONDENTS

Case No. 2016-011

ITEM NO. 817

October 20, 2016

ORDER ON PETITION FOR DECLARATORY RULING

*1 On October 3, 2016, and October 4, 2016, this matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for deliberation and decision pursuant to the provisions of NRS and NAC chapters 288, NRS Chapter 233B, and was properly noticed pursuant to Nevada's open meeting laws and Administrative Procedures Act. This order is issued pursuant to NAC 288.401 and NRS 233B.120.

Petitioner Lyon County Education Association ("LCEA") is the bargaining agent for non-administrative licensed employees (referred to as "certified" staff and commonly referred to as the "teachers") employed by Respondent Lyon County School District (the "District").

On August 18, 2016, LCEA filed the subject Petition for Declaratory Ruling.¹ The Board finds that granting declaratory relief is appropriate in this case as follows. NAC 288.410(2)(c).

On or about October 26, 2015, Summer Kay (a teacher employed by the District and President of LCEA) was advised that Elizabeth Clausen (Dayton High School ("DHS") teacher) wanted to use a non-LCEA representative at a future meeting related to her employment. Ms. Clausen is not a member of LCEA. The District submitted evidence indicating that it was not aware that the person chosen by Ms. Clausen was affiliated with a different union. Ms. Kay subsequently emailed Tim Logan (the District's Director of Human Resources) and Steve Henderson (Principal at DHS) stating "that LCEA is the exclusive bargaining agent for certified staff and no other organization is allowed to provide" representation. According to the LCEA, on October 27, 2015, at the District's Board of School Trustees' meeting, Ms. Kay had a conversation with Mr. Logan where she asked Mr. Logan if she could come to the subject meeting, if it was even to take place, to represent the interests of LCEA. On or about November 11, 2015, Ms. Kay sent a follow-up email to Mr. Logan regarding the outcome of "representation notification to the teacher". On the same day, Mr. Logan responded that the teacher had used Sharon Nelson, who was subsequently identified by LCEA as the Director of Legal Services of the Association of American Educators ("AAE"). On or about November 12, 2015, Ms. Kay responded that "[b]y allowing her to provide representation in Lyon County you have violated the negotiated agreement and NRS statutes that grant LCEA exclusive bargaining rights in Lyon County."

Preliminarily, the Board notes that that the District "does not dispute that the LCEA is the exclusive bargaining unit which includes teachers." The District's Response to Petitioner's Brief in Support of Petition for Declaratory Order ("District's Response"), at 2-3. The Board also notes that "LCSD does not dispute that as the local government employer, it should not *knowingly* allow representation by a rival employee organization in a grievance proceeding (as broadly defined by the LCEA) with a non-union member employee." District's Response, at 3 (*emphasis in original*). Furthermore, the District "is also willing to notify the LCEA in the future of grievance meetings involving teachers who are not members of LCEA so that the LCEA

may have a representative present.” *Id.*, at 2-3. As such, these matters are not in dispute before the Board; however, the Board notes that LCEA is the exclusive representative of all members of the subject bargaining unit as further detailed below. See also NRS 288.027, 288.160(2).

*2 In its Petition, LCEA additionally requested the Board to determine that: (1) where a bargaining unit employee is not a member of the exclusive employee organization, said employee has “no right to a representative being present except as may be allowed by the employer after the employer makes an inquiry similar to that set forth in Item C below to determine if the representative is an agent, employee, or attorney of another employee organization in which case the representative is not to be allowed”; and (2) the employer’s obligation “to make an inquiry” regarding “(a) the status of the employee as a member or non-member of the employee organization serving as recognized bargaining agent for the unit; (b) the nature of the relationship between the employee and his representation ...; and (c) the employment or affiliation of the representative.” LCEA’s Petition, at 6-7. LCEA argues that these “determinations requested comport with the interpretations that have been previously applied to NRS 288.140(2) by the Order on Petition for Judicial Review in *Washoe Education Support Professionals vs. State of Nevada, Local Government Employee-Management Relations Board Et. Al.*, Case No. 09 OC 000861B (January 29, 2010)” LCEA’s Petition, at 6-7. As such, LCEA requests that the Board adopt the rationale and ruling as stated in that Order. LCEA’s Petition, at 8.

NAC 288.380 states that any recognized employee organization or local government employer may petition the Board for a declaratory order regarding the applicability of any statutory provision or of any regulation or decision of the Board. The following declaratory order is regarding the applicability of NRS 288.140 based on the facts of this case. NRS 288.140 states, in pertinent part:

(1) It is the right of every local government employee ... to refrain from joining any employee organization

(2) The recognition of an employee organization for negotiation ... does not preclude any local government employee who is not a member of that employee organization from acting for himself or herself with respect to any condition of his or her employment, but any action taken on a request or in adjustment of a grievance shall be consistent with the terms of an applicable negotiated agreement, if any.

The Board notes that it finds the District Court Order in the matter of *Washoe Ed. Support Professionals v. State of Nevada, Local Gov’t Employee-Mgmt. Rel. Bd.*, Case No. 09 OC 00086 1B (Jan. 29, 2010) (“District Court Order”), attached as LCEA’s Ex. “5”, as persuasive and thus follows said decision as stated in this Declaratory Ruling. However, the Board notes that by following the decision it does not agree that it is bound by the decision as LCEA claims. The District Court Order concluded: Where, as here, an employee organization has been recognized as the bargaining agent for a bargaining unit, the bargaining agent’s representative status is *exclusive* and no rival employee organization may purport to ‘represent’ any employee in the unit in any grievance proceeding or in any other aspect of collective bargaining. Any ‘representation’ of this nature is fundamentally inconsistent with the status and function of the recognized bargaining agent.

*3 A local government employer who knowingly allows ‘representation’ of this kind or knowingly participates in a grievance proceeding with an agent or employee of a rival employee organization, *acting as such*, there by fails to bargain in good faith with the recognized bargaining agent and commits a prohibit practice within the meaning of NRS 288.270(1)(e).

Id. at, 2-3 (*emphasis in original*) (internal citations omitted). The District Court Order further stated:

Where, however, a unit employee is *not a member* of the employee organization serving as recognized bargaining agent, NRS 288.140(2) provides that the employee may ‘act for himself in any grievance proceeding - i.e., on his own behalf and without a representative.

In addition, the Board has ruled that such an employee may be represented by "counsel", a term that the Board apparently interprets to include a friend, relative or co-worker, or an attorney retained by the employee. With the exception noted below, WESP likewise has not challenged this aspect of the Board's ruling.

In any matter involving a non-member employee, NRS 288.140(2) provides that "any action taken on a request or in adjustment of a grievance shall be consistent with the terms of an applicable negotiated agreement, if any." Accordingly, in any such case, the Board has ruled that the recognized bargaining agent is also entitled to be present "[f]o monitor ... compliance with the applicable [negotiated agreement] and the provisions of NRS chapter 288". Again, this aspect of the Board's ruling has not been challenged.

In any grievance proceeding, it follows from the foregoing that the representative of the local government employer have the right, and indeed the obligation, to make inquiry of the employee and any person appearing as the employee's representative concerning: (a) the status of the employee as a member or nonmember of the employee organization serving as recognized bargaining agent for the unit; (b) the nature of the relationship between the employee and his representative (e.g. whether the representative is an attorney, friend, relative or coworker of the employer); and (c) the employment or affiliation of the representative. Contrary to the decision of the Board in this matter, a local government employer does not act unlawfully in making this inquiry; the inquiry is necessary to ensure that the status of the recognized bargaining agent is respected, that the employer does not commit a prohibited practice, and that a representative of the recognized bargaining agent is present in every case where the presence of such a representative is permitted or required.

Id. at 4-5 (*emphasis in original*) (internal citations omitted). The District Court Order also held:

Accordingly, in any grievance proceeding involving an employee representative who is also an agent or employee of a rival employee organization, the representative cannot function as such - and hence cannot participate in the proceeding - where the employer knows or reasonably believes that the representative is serving *to any extent* in his 'union' capacity, on behalf of the rival organization. Where, however, the employer knows or reasonably believes that the representative is serving *entirely independently* of the rival organization as (for example) a friend, relative or co-worker of the employee, the representative's participation is permissible.

*4 *Id.* at 6 (*emphasis in original*). The Board finds the District Court's rationale above persuasive. As such, the Board expressly adopts this rationale as stated above. *See also* NRS 288.027, 288.028, 288.067, 288.140, 288.150(1) and 288.160(2); *Cone v. Nevada Serv. Employees Union*, 116 Nev. 473, 478, 998 P.2d 1178 (2000); *UMC Physicians' Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 93, 178 P.3d 709, 715.

Based on the facts in this case and the issues presented, the Board declines to award cost and fees in this matter.

DATED this 20 day of October, 2016.

By: _____

Philip Larson
Chairman

By: _____

Brent Eckersley, Esq.
Vice-Chairman

By: _____

Sandra Masters
Board Member

Footnotes

- 1 LCEA initially filed an unfair labor practices complaint with the Board; however, the parties subsequently stipulated to convert said complaint into the subject Petition.

2016 WL 6947474 (NV LGEMRB)

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FILED

JUN 17 2020

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

NEVADA HIGHWAY PATROL ASSOCIATION,

Petitioner,

v.

STATE OF NEVADA DEPARTMENT OF PUBLIC
SAFETY; STEVE SISOLAK, in his capacity as
Governor of the State of Nevada; NEVADA STATE
LAW ENFORCEMENT OFFICERS
ASSOCIATION, and NEVADA ASSOCIATION OF
PUBLIC SAFETY OFFICERS,

Respondents.

Case No. 2020-011

NOTICE OF ENTRY OF ORDER

ITEM NO. 865

- TO: Petitioner and its attorneys, Devon T. Reese, Esq., Jason D. Guinasso, Esq., and Alex R. Velto, Esq., of Hutchison & Steffen;
- TO: Respondent State of Nevada, by and through Laura Freed, Director, Department of Administration; Peter Long, Administrator of the Division of Human Resource Management, and Frank Richardson, Deputy Administrator of Labor Relations, for the State of Nevada;
- TO: Respondents Nevada State Law Enforcement Officers Association and Nevada Association of Public Safety Officers and their attorneys and representatives, Nicholas M. Wieczorek, Esq., of Clark Hill PLLC and Richard P. McCann, J.D.;
- TO: The Fraternal Order of Police, by and through their attorneys and representatives, Timothy P. Mullaney, Sr., J.D. and Michael E. Coviello, J.D.;
- TO: AFSCME, by and through their representative, Fernando R. Colon;
- TO: Peace Officers Research Association of Nevada (PORAN), by and through their attorney, Michael Langton, Esq.

1 PLEASE TAKE NOTICE that the **DECLARATORY ORDER** was entered in the above-
2 entitled matter on June 17, 2020.

3 A copy of said order is attached hereto.

4 DATED this 17th day of June 2020.

5 GOVERNMENT EMPLOYEE-
6 MANAGEMENT RELATIONS BOARD

7 BY


8 BRUCE SNYDER
9 Commissioner
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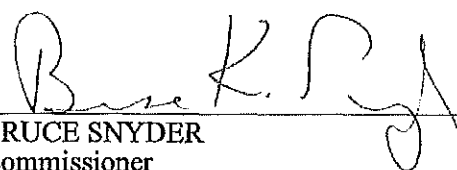
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APP 007

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BRUCE SNYDER
Commissioner

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Case No. 2020-011

DECLARATORY ORDER

EN BANC

ITEM NO. 865

On May 27, 2020, this matter came before the State of Nevada, Government Employee-Management Relations Board (“Board”) for consideration and decision pursuant to the provisions of the Employee-Management Relations Act and NAC Chapter 288. At issue was Petitioner’s, Nevada Highway Patrol Association, Petition for Declaratory Order.

Petitioner requests this board to issue a declaratory order stating that Petitioner, as the officially recognized entity, is the exclusive bargaining agent for Category 1, Unit G state employees and, as such, no rival employee organization may purport to "represent" any employee in Category 1, Unit G, including any issue covered under NRS Chapters 288 and 289. The Board requested *amicus* briefs to be filed in this matter and reviewed them in full prior to coming to a decision.

In January 2020, the Board designated Petitioner as the exclusive representative of the bargaining unit comprised of all non-supervisory, Unit G, Category 1 Peace Officers employed by the State of Nevada pursuant to Senate Bill 135. Petitioner asserted that at least two other organizations attempted to infringe on this Board's recognition of Petitioner as the exclusive representative. These organizations competed for the right to represent this unit; however, they failed to obtain sufficient signatures to obtain an election.

1 The dispute essentially surrounds the ability of other organizations not recognized as the
2 exclusive representative to represent bargaining unit members in matters not involving collective
3 bargaining, such as grievances, OPR investigations, and critical incidents. As NPHA further explained:
4 “The heart of this dispute is the scope of ‘representation’ under NRS 288.136, and whether a union that
5 failed to gain recognition can represent the members this Board already determined to be recognized by
6 NHPA.”

7 The general factual premise does not appear to be in dispute in regards to the instant Petition.¹
8 Instead, the Petition generally presents a question of the Board’s statutory interpretation of the EMRA,
9 the statute the Board is charged with enforcing. *Clark County School Dist. v. Local Govt. Employee-*
10 *Mgmt. Rel. Bd.*, 90 Nev. 442, 446, 530 P.2d 114, 117 (1974); *Folio v. Briggs*, 99 Nev. 30, 33, 656 P.2d
11 842 (1983); *Truckee Meadows Fire Prot. Dist. v. Int’l Ass’n of Fire Fighters, Local 2487*, 109 Nev. 367,
12 369, 849 P.2d 343, 345 (1993); *City of Reno v. Reno Police Protective Ass’n*, 118 Nev. 889, 900, 59
13 P.3d 1212, 1219–20 (2002); *City of Henderson v. Kilgore*, 121 Nev. 331, 337 n. 11, 131 P.3d 11, 15
14 (2006); *City of N. Las Vegas v. State Local Gov’t Employee-Mgmt. Relations Bd.*, 127 Nev. Adv. Op.
15 57, 261 P.3d 1071, 1076 (2011); *Bisch v. Las Vegas Metropolitan Police Dep’t.*, 129 Nev. Adv. Op. 36,
16 302 P.3d 1108, 1112 (2013); *Clark Cty. Deputy Marshals Ass’n v. Clark Cty.*, 425 P.3d 381, Docket
17 No. 68660, filed September 7, 2018, unpublished deposition (Nev. 2018). However, answers to more
18 specific questions could relate to the Board’s view of the facts. *Fathers & Sons & A Daughter Too v.*
19 *Transp. Services Auth. of Nevada*, 124 Nev. 254, 259, 182 P.3d 100, 104 (2008).

20 Preliminarily, Peace Officers Research Association of Nevada asserted a jurisdictional challenge
21 in ruling on the instant Petition. They assert specifically that the Legislature has limited the Board’s
22 authority to interpret a peace officers’ rights under NRS Chapter 289. The Board agrees. NAC
23 288.380 provides that any recognized employee organization “may petition the Board for a declaratory
24 order regarding the applicability or interpretation of any statutory provision or of any regulation or

25
26 ¹ On May 22, 2020, Petitioner filed a Request for Hearing. NAC 288.400 provides for the ability to
27 request a hearing if certain conditions are satisfied. The Request was not timely and did not comply
28 with the other requirements of NAC 288.400(1). As such, the Board denies the request. *See also* NAC
288.410(2) (giving the discretion to the Board on whether to hold a hearing – *i.e.*, “or”). Indeed, the
Request for Hearing appears in actuality to be a request for oral argument. The Board finds oral
argument unnecessary in this case given its ruling herein.

1 decision of the Board.” “The purpose of a declaratory statement is to address the applicability of a
2 statutory provision or order or rule of the agency in particular circumstances.” *City of Reno v. Reno*
3 *Firefighters Local 731, Int’l Ass’n of Firefighters*, Item 777A, Case No. A1-046049 (2012).

4 The Board’s authority is limited to matters arising out of the interpretation of, or performance
5 under, the provisions of the EMRA. NRS 288.110(2). The Board does not have the jurisdiction to find
6 a violation of NRS Chapter 289 or to rule that no rival employee organization may purport to represent
7 any employee surrounding issues covered under NRS Chapter 289. This is expressly beyond the
8 Board’s jurisdiction, which is well established. *See* NRS 288.110(2); *City of Reno v. Reno Police*
9 *Protective Ass’n*, 98 Nev. 472, 474–75, 653 P.2d 156, 158 (1982) (“the EMRB merely deferred to NRS
10 ch. 288, the statute under which it operates. While the EMRB did discuss the Reno City Charter in its
11 decision, our review of that decision reveals that the board only did so because the City placed its
12 Charter in issue by relying on it as justification for its refusal to bargain with the RPPA. The EMRB did
13 not interpret the Charter.”); *UMC Physicians Bargaining Unit v. Nevada Serv. Employees Union*, 124
14 Nev. 84, 89-90, 178 P.3d 709, 713 (2008); *City of Henderson v. Kilgore*, 122 Nev. 331, 333, 131 P.3d
15 11, 12 (2006); *Int’l Ass’n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item
16 No. 811 (2015) (“IAFF argues that the merit personnel system itself should have opened this
17 appointment... However, it is not within our purview to determine whether or not the appointment...
18 complied with the County’s merit personnel system. This Board authority is limited to matters arising
19 under interpretation of, or performance under, the Act”); *Simo v. City of Henderson*, Case No. A1-
20 04611, Item No. 796 (2014); *see e.g., Flores v. Clark Cty.*, Case No. A1-045990, Item No. 737 (2010);
21 *Bonner v. City of N. Las Vegas*, Case No. 2015-027 (2017); *Kerns v. LVMPD*, Case No. 2017-010
22 (2018); *Yu v. LVMPD*, Case No. 2017-025, Item No. 829 (2018). The Board simply notes that, as
23 further detailed below, NRS Chapter 289 does not appear in conflict with Chapter 288 and can be read
24 to render a harmonious result.

25 “Exclusive representative” is defined under the EMRA as follows:

26 ‘Exclusive representative’ means a labor organization that, as a result of its designation
27 by the Board, has **the exclusive right to represent all the employees within a**
28 **bargaining unit** *and* to engage in collective bargaining with the Executive Department
pursuant to NRS 288.400 to 288.630, inclusive, concerning wages, hours and other terms
and conditions of employment for those employees.

1 NRS 288.430 (*emphasis* added). *See also* NRS 288.133 (defining “Bargaining agent” as an employee
2 organization recognized “as the exclusive representative of all local government employees in the
3 bargaining unit for the purposes of collective bargaining.”); *see also* NRS 288.032 (defining “Collective
4 bargaining” as “a method of determining conditions of employment by negotiation between
5 representatives of ... an employee organization or labor organization, entailing a mutual obligation ...
6 [of] the representative of the state or local government employees to meet at reasonable times and
7 bargain in good faith with respect to: Wages, hours and other terms and conditions of employment;
8 [t]he negotiation of an agreement; [t]he resolution of any question arising under a negotiated agreement
9 [e.g., a grievance]; or [t]he execution of a written contract....”² Both NRS 288.133 and NRS 288.430
10 provide for the “exclusive representative”.³ The EMRA is plain in unambiguous in this regard. *See*
11 *also* NRS 288.160(2) (stating that an employee organization “shall be the exclusive bargaining agent of
12 the local government employees in that bargaining unit.”); NRS 288.136 (defining “Recognition”).⁴

13 In the First Judicial District Court decision of *Washoe Ed. Support Professionals v. State of*
14 *Nevada, Local Government Employee-Management Relations Board*, Case No. 09 OC 00086 1B (2010)
15 (District Court Decision), Judge James Russell addressed, in pertinent part, “the scope of a ‘non-
16

17 ² *See also infra* note 6.

18 ³ “Exclusive” is defined as “Shutting out; debarring from interference or participation; vested in one
19 person alone. An exclusive right is one which only the grantee thereof can exercise, and from which all
20 others are prohibited or shut out.” Black’s Law Dictionary (11th ed. 2019). “Excluding or having
21 power to exclude; limiting or limited to possession, control, or use by a single individual or group.”
Merriam-Webster On-Line Dictionary; *see also* SB 135, Minutes of the Senate Committee on
Government Affairs (April 4, 2019) (“The words ‘exclusive representative’ means the only one” ...
“We have exclusive representation to provide for labor peace and stability.”)

22 ⁴ *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009) (“We read statutes within a
23 statutory scheme harmoniously with one another to avoid an unreasonable or absurd result.”). *Williams*
24 *v. Clark Cty. Dist. Attorney*, 118 Nev. 473, 484-85, 50 P.3d 536, 543 (2002) (“In determining the
25 legislature’s intent, we should consider what reason and public policy indicate was intended, and we
26 should avoid reaching absurd results. We are obliged to construe statutory provisions so that they are
27 compatible, provided that in doing so, we do not violate the legislature’s intent.”); *Berkson v. LePome*,
126 Nev. 492, 497, 245 P.3d 560, 563–64 (2010) (“a statute will be construed in order to give meaning
28 to its entirety, and this court ‘will read each sentence, phrase, and word to render it meaningful within
the context of the purpose of the legislation.’”); *Zahavi v. State*, 131 Nev. Adv. Op. 7, 343 P.3d 595,
600 (2015) (“When construing various statutory provisions, which are part of a ‘scheme,’ this court
must interpret them ‘harmoniously’ and ‘in accordance with [their] general purpose.’”).

1 member' employee's right under NRS 288.140(2)⁵ to be represented by another person in a grievance
2 proceeding [the term grievance being broadly defined], and specifically whether such an employee may
3 be represented by an agent or employee of an employee organization *other than* the recognized
4 bargaining agent (a 'rival employee organization')." District Court Decision, at 2 (*emphasis in*
5 original).

6 The District Court Order concluded:

7 Where, as here, an employee organization has been recognized as the bargaining agent
8 for a bargaining unit, the bargaining agent's representative status is *exclusive* and no rival
9 employee organization may purport to 'represent' any employee in the unit in any
10 grievance proceeding or in any other aspect of collective bargaining. Any
11 'representation' of this nature is fundamentally inconsistent with the status and function
12 of the recognized bargaining agent. *See, e.g., UMC Physicians' Bargaining Unit v.*
13 *Nevada Serv. Employees Union*, 124 Nev. [84, 178 P.3d 709, 715 (2008)] ("the interests
14 of employees whose bargaining units are exclusively represented by one employee
organization cannot be simultaneously represented by another employee organization");
Operating Engineers Local Union No. 3 v. City of Reno, Item No. 7 (1972) (rejecting
contention that Chapter 288 'permits an employer to 'recognize' a minority employees
organization ..., not negotiation per se, but for purposes other than negotiation such as
grievance processing....);

15 A local government employer who knowingly allows 'representation' of this kind or
16 knowingly participates in a grievance proceeding with an agent or employee of a rival
17 employee organization, *acting as such*, thereby fails to bargain in good faith with the
18 recognized bargaining agent and commits a prohibited practice within the meaning of
NRS 288.270(1)(e). *Federal Tel. and Radio Co.*, 107 NLRB 649 (1953) (applying
corresponding provisions of the National Labor Relations Act); *Hughes Tool Co.*, 56
NLRB 981 (1944) (same).

19 In the challenged order and in at least one prior decision, the Board has ruled that if an
20 employee in a bargaining unit is a *member* of the employee organization serving as
21 recognized bargaining agent, the employee may *only* be represented in a grievance
22 proceeding by an agent or employee of that organization. *Washoe Ed. Support*
Professionals v. Washoe County Sch. Dist., Item No. 681A, Case No. A1-045930 (EMRB
2009), Finding of Fact No. 4; *United We Stand Classified Employees/AFT v. Washoe*
County Sch. Dist., Item No. 641B, Case No. A1-045888 (EMRB 2007). This ruling has
23 not been challenged. Nor does WESP dispute the right of such employee to retain the
24 services of an attorney of the employee's choice, so long as the expense of this
representation is borne by the employee.

25
26 ⁵ NRS 288.140 states, in pertinent part: "(1) It is the right of every local government employee ... to
27 refrain from joining any employee organization (2) The recognition of an employee organization ...
28 does not preclude any local government employee who is not a member of that employee organization
from acting for himself or herself with respect to any condition of his or her employment, but any
action taken on a request or in adjustment of a grievance shall be consistent with the terms of an
applicable negotiated agreement, if any."

1 *Id.* at 2-4 (*emphasis* in original). The District Court Order further opined:

2 Where, however, a unit employee is *not a member* of the employee organization serving
3 as recognized bargaining agent, NRS 288.140(2) provides that the employee may 'act for
4 himself' in any grievance proceeding – *i.e.*, on his own behalf and without a
5 representative. *Cone v. Nevada Serv. Employees Union*, 116 Nev. 473, 998 P.2d 1178
(2000) (noting that statute 'authorized a nonunion member to act on his own behalf [and]
6 forgo union representation').

7 In addition, the Board has ruled that such an employee may be represented by 'counsel',
8 a term that the Board apparently interprets to include a friend, relative or co-worker, or an
9 attorney retained by the employee. *Washoe Ed. Support Professionals v. Washoe County*
10 *Sch. Dist.*, Item No. 681A, Conclusion of Law No. 15. With the exception noted below,
11 WESP likewise has not challenged this aspect of the Board's ruling.

12 In any matter involving a non-member employee, NRS 288.140(2) provides that 'any
13 action taken on a request or in adjustment of a grievance shall be consistent with the
14 terms of an applicable negotiated agreement, if any.' Accordingly, in any such case, the
15 Board has ruled that the recognized bargaining agent is also entitled to be present '[t]o
16 monitor ... compliance with the applicable [negotiated agreement] and the provisions of
17 NRS chapter 288'. *Washoe Ed. Support Professionals v. Washoe County Sch. Dist.*, Item
18 No. 681A, Conclusion of Law No. 15. Again, this aspect of the Board's ruling has not
19 been challenged.

20 *Id.* at 4-5 (*emphasis* in original) (internal citations omitted).

21 Judge Russell further noted: "Where the representative of a non-member employee is also an
22 employee or agent of a rival employee organization, the parties have opposing views on the result that
23 should follow." *Id.* at 5. Moreover, "[b]oth parties agree, in any case, that an *attorney* who is retained
24 by the employee to act as his representative in such proceeding should be allowed to represent the
25 employee, even if the attorney also represents a rival employee organization. To the extent that the
26 Board has so held, its order is affirmed." *Id.* at 6, note 5 (*emphasis* in original). The District Court
27 further found:

28 If, as WESP agrees, a non-member employee may lawfully be represented by a friend,
relative or co-worked, the fact that the representative also happens to be an agent or
employee of a rival employee organization should not disqualify him from serving as
representative if in fact he is functionally independently of his role as an agent of the
union. On the other hand, if the representative in fact is overtly or covertly attempting to
function on behalf of both the employee and the rival employee organization (or solely on
behalf of the union), the representative's participation effectively undercuts the status of
the recognized bargaining agent and cannot knowingly be permitted by the employer.

Accordingly, in any grievance proceeding involving an employee representative who is
also an agent or employee of a rival employee organization, the representative cannot
function as such – and hence cannot participate in the proceeding Where, however,

1 the employer knows or reasonably believes that the representative is serving *entirely*
2 *independently* of the rival organization as (for example) a friend, relative or co-worker of
the employee, the representative's participation is permissible.

3 *Id.* at 6 (*emphasis* in original). The District Court denied the petition for judicial review, as requested
4 by WESP, "to hold that an agent or employee of a rival employee organization is, solely by virtue of
5 that status, precluded from representing an employee in any grievance proceeding...." *Id.* at 7.

6 In *Lyon County Ed. Ass'n v. Lyon County Sch. Dist.*, Case No. 2016-011 (2016), the Board found
7 the decision in *Washoe Ed. Support Professionals* as persuasive precedent. The District Court's order
8 was based on ample authority.⁶ As such, the Board reaffirms *Lyon County Ed. Ass'n* in finding Judge
9 Russell's decision as persuasive precedent.

10 While NRS 288.140 recognizes the right of an employee not to become a member of the
11 recognized employee organization and to "act for himself or herself" in connection with a grievance,
12 nothing in that provision, or any other provision of the EMRA, permits such an employee to be
13 "represented" by an agent or employee of a rival employee organization serving in such capacity.
14 Allowing this kind of representation would impair the efficiency and utility of the grievance and
15 collective bargaining process, undermine the position of the recognized bargaining agent, and

16
17 ⁶ Citing to then NRS 288.027 (replaced by NRS 288.133), 288.028 (replaced by NRS 288.134), 288.067
18 (replaced by NRS 288.136), NRS 288.033(3) (noting that the scope of the bargaining agent's
19 representation includes not only the negotiation of a CBA *but also* resolution of grievance and
20 participation in "investigatory interviews" involving employees in the unit), also *citing Ed. Support*
21 *Employees Ass'n v. Clark County Sch. Dist.*, Item No. 568B, Case No. A1-045782 (2005), 288.140,
22 288.150(1) and 288.160(2) as well as the Nevada Supreme Court and federal precedent cited above.
23 *See also N. Las Vegas Police Officers Ass'n v. The City of N. Las Vegas*, Item No. 717A, Case No. A1-
24 0459645 (2011); *Heitzinger v. Las Vegas-Clark County Library Dist.*, Item No. 728C, Case No. A1-
25 045977 (2012); *D'Ambrosio v. LVMPD*, Item No. 808 (2015). For example, the Nevada Supreme
26 Court in *Cone v. Nevada Serv. Employees Union/SEIU Local 1107*, 116 Nev. 473, 477, 998 P.2d 1178,
27 1181 (2000) disagreed that "the union, as the 'bargaining agent' of UMC employees, is obligated by the
28 plain language of NRS 288.027 to 'exclusively' represent all UMC employees, including nonunion
members, in all grievance matters without charging a fee", *only to the extent of not being able to*
charge a fee. The Nevada Supreme Court made clear that NRS 288.140(2) "provides an individual
with a right to forgo union representation" and thus a nonmember employee may either act of his or her
own behalf thereby electing to "forgo union representation" or use the services of the recognized agent
paying any "service fee" charged by the union for its services. *See id.* at 478. Nothing in *Cone*
suggests such an employee may be "represented" by an agent or employee of a rival employee
organization serving in such capacity with the exception noted above. *See* Judge Russell's Decision at
6, note 5. Indeed, for more than 60 years, the NLRB has held its similar provision (Section 9(a), 29
U.S.C. § 159(a)) does not allow a rival union to represent an employee in the adjustment of grievances.
See, e.g., Fed. Tel. & Radio Co., 107 NLRB 649, 652 (1953).

1 effectively destabilize employee-management relations in the public sector. This is consistent with the
2 exceptions noted above. The exclusivity of representation is a key element in ensuring labor stability in
3 the workplace (one of the important reasons for the adoption of NRS Chapter 288 in 1969) and in
4 allowing a properly recognized union to do its job. *See, e.g., In the Matter of American Federation of*
5 *Teachers, Local 1800 v. Clark County Sch. Dist.*, Item No. 2 (1970) (“the employer has an obligation to
6 treat with this representative exclusively and has a negative duty to treat with no other”), *citing NLRB*
7 *v. Jones & Laughlin Steel Corp.*, 201 US 1, 44 (1937) (where the United State Supreme Court
8 recognized that the obligation of the employer to treat with the recognized representative was exclusive
9 and hence imposed a negative duty to treat with no other); *see also supra* note 3 and *infra* note 7; *see,*
10 *e.g., Fed. Tel. & Radio Co.*, 107 NLRB 649, 652-53 (1953). Designating one union as the exclusive
11 representation of all employees allows them to speak with one voice, pooling economic strength, ensure
12 their rights are not watered down by divisiveness, respond with institutional knowledge when
13 employer’s disparately treat them, and allowing this carve out would tend to dilute that strength
14 contrary to the purposes and policies of the EMRA. *See also supra* notes 4 and 6.⁷

15 If the Legislature wishes to provide that an agent or employee of a rival labor organization
16 serving in that capacity, may purport to represent any employee in a bargaining unit with a recognized
17 representation, then that is their legislative prerogative. It is not for the Board to make the law, that is
18 for the Legislature, and the Board is required to follow the law regardless of the result. *See, e.g., Local*
19 *Gov’t Employee-Mgmt. Relations Bd. v. Educ. Support Employees Ass’n*, 134 Nev. 716, 429 P.3d 658
20 (2018).

21 As a further example, in 2018 the Board rendered its decision in *City of Elko v. Elko Police*
22 *Officers Protective Ass’n*, Case No. 2017-026, Item No. 831 (2019). In that case, the Board applied the
23 provisions of NRS 288.170 to conclude that sergeants employed by the City of Elko could not be part
24 of the same bargaining unit as the officers they supervise based on the plain language of the EMRA. In

25
26 ⁷ The EMRA had its genesis in Senate Bill 87 in 1969 sponsored by Senator Carl Dodge. SB initially
27 provided specifically for the recognition of more than one employee organization for any given
28 “negotiating unit”. *See* Sections 10, 11, 13. After it was passed in the Senate, objections were made
that the bill’s provisions for multiple bargaining agents was unworkable and would result in chaos.
Accordingly, when the bill was heard in the Assembly, such language was removed from the bill. The
amended language has not been materially changed since that time.

1 response to that case, the Legislature enacted SB 158 to exempt only (1) police officers defined in NRS
2 288.215, (2) firefighters defined in NRS 288.215, and (3) certain addition persons having the powers of
3 a peace officer pursuant to NRS 289.150, 289.170, 289.180 or 289.190. The Legislature choose to
4 leave the prohibitions of joint bargaining unit for others in place and thus only made a specific carve.
5 As such, the Legislature approved of the Board's order in certain respects and choose to amend the
6 EMRA for specific and defined purposes in other respects. This is a further showing of the legislative
7 prerogative in this case – perhaps the Legislature would create a carve out for rival union representation
8 in all manners or perhaps just in specific and defined areas for certain individuals. It is not for this
9 Board to guess what the Legislature might do on behalf of the citizens of this great state.

10 In *Clark County Teachers Assn' v. Clark County Sch. Dist.*, 91 Nev. 143, 532 P.2d 1032 (1975),
11 the Nevada Supreme Court opined that the “exclusive use” provisions of CBAs were not
12 unconstitutional, insofar as they denied the respondent (American Association of Teachers) an equal
13 opportunity for membership solicitations and to dispenses information. *Id.* at 145. Citing to the
14 Board's decision *In the Matter of American Federation of Teachers, Local 1800*, the Court “found
15 compelling Nevada's interest in allowing ... the ‘exclusive uses’ here challenged ... [and] labor peace
16 and stability in an area as vital as public education are indisputably a necessity to the attainment of that
17 goal. Inter-union strife within the school must be minimized.” *Id.*; see also *Mentele v. Inslee*, 916 F.3d
18 783, 788 (2019); *Nevada Serv. Employees Union, Service Employees Int'l Union, Local 1107 v. Clark*
19 *County*, Case No. A1-045759, Item No. 540-B (2005) (“Moreover, through NRS 288.270(1), an
20 employee organization is protected from actions which would undercut its ability to fulfill its statutory
21 role as exclusive bargaining agent and defender of the collective bargaining agreements.”).

22 Both sides reference the Nevada Supreme Court decision in *Bisch v. Las Vegas Metropolitan*
23 *Police Dep't.*, 129 Nev. 328, 302 P.3d 1108, 1112 (2013). In this matter, the employee filed a
24 complaint with this Board alleging its union had breached its duty of fair representation when it refused
25 to represent her at her internal affairs interview. The Nevada Supreme Court noted the right contained
26 289.080 to have two representatives of her choosing at the interview (her choice being private counsel
27 and a representative from the union). *Bisch*, 129 Nev. at 335, 302 P.3d at 1113. The Court held “that
28 the protection provided by NRS 289.080 is only in regard to Bisch's employer. Because nothing in NRS

1 289.080 or the rest of the Peace Officer Bill of Rights governs a PPA's responsibility toward its
2 members, the EMRB correctly concluded that NRS 289.080 did not impose an additional duty of fair
3 representation on the PPA." *Id.* at 337. The Court simply held that NRS 289 "necessarily prevent[s] the
4 employer from barring the employee from having two representatives." *Id.* at 336. The Court did not
5 discuss whether having an agent or employee representative of a rival union serving as such capacity
6 would be permissible under the EMRA or permit a rival union to offer representation. The Court also
7 indicated *Weingarten* rights were not at issue as they make "no mention of the union's duties to the
8 employee/member in such a situation." *Id.* at note 3.

9 NRS 289.080 provides that a peace officer "may upon request have two representatives of the
10 peace officer's choosing present with the peace officer during any phase of an interrogation or hearing
11 relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or
12 another peace officer." It is asserted by Respondents as well as some *amicus* briefs that this provision
13 conflicts with the EMRA's exclusive representation or provides for a carve out for certain proceedings.
14 Again, while the Board has no jurisdiction over NRS 289, these statutes can be read harmoniously.
15 *Szydel v. Markman*, 121 Nev. 453, 457, 117 P.3d 200, 202-03 (2005) ("When two statutes are clear and
16 unambiguous but conflict with each other when applied to a specific factual situation, an ambiguity is
17 created and we will attempt to reconcile the statutes. In doing so, we will attempt to read the statutory
18 provisions in harmony, provided that this interpretation does not violate legislative intent."), *citing*
19 *Bowyer v. Taack*, 107 Nev. 625, 627, 817 P.2d 1176, 1177 (1991).

20 "It is presumed that in enacting a statute the legislature acts with full knowledge of existing
21 statutes relating to the same subject." *City of Boulder City v. Gen'l Sales Drivers and Helpers, Intern.*
22 *Broth. of Teamsters, Local 14*, 101 Nev. 117, 119, 694 P.2d 498, 500 (1985). In *State Dep't of Health*
23 *& Human Servs., Div. of Pub. & Behavioral Health Med. Marijuana Establishment Program v.*
24 *Samantha Inc.*, 133 Nev. 809, 815, 407 P.3d 327, 331 (2017), the Nevada Supreme Court held: "The
25 Legislature created NRS Chapter 453A long after the APA. Because this court 'assumes that, when
26 enacting a statute, the Legislature is aware of related statutes,' and NRS Chapter 453A references
27 review under the APA, *see* NRS 453A.210, the Legislature's exclusion of judicial review for a
28 registration certificate in NRS Chapter 453A appears deliberate."

1 In the same vein, NRS 288.133, 288.134, 288.136, and 288.033 were originally added in 1975
2 via AB 572 long before NRS 289.080. The language "or other representative of his choosing" was not
3 added until 1991 via AB 583⁸ and NRS Chapter 289 specifically references exhaustion of
4 administrative remedies under NRS Chapter 288 as a prerequisite to judicial relief. NRS 289.120. As
5 such, when the Legislature used this general language ("or other representative of his choosing"), a
6 harmonious and reasonable reading reconciling the statutes indicates the Legislature did not intend to
7 infringe upon the exclusive representation contained in NRS 288. Nothing in the Legislative history
8 indicates otherwise. Judge Russell even affirmed the Board's Order holding that "an attorney who is
9 retained by the employee to act as his representative in such a proceeding should be allowed to
10 represent the employee, even if the attorney also represents a rival employee organization." District
11 Court Decision, at 6, note 5. As NHPA explained: "It's quite clear a peace officer is free to choose
12 whichever representative he or she would like under NRS Chapter 289. However, this right stops at an
13 officer's personal representation. It does not permit an officer to choose the representative of the
14 Union." Further, "[a] member can't override this Board's recognition merely because they would like
15 to have a different person represent the entity on his or her behalf." Therefore, a harmonious and
16 reasonable reading can be achieved.

17 Dated this 17th day of June 2020.

18 GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

20 By: 
21 BRENT ECKERSLEY, ESQ., Chair

22 By: 
23 SANDRA MASTERS, Vice-Chair

24 By: 
25 GARY COTTINO, Board Member

26 By: 
27 BRETT HARRIS, ESQ., Board Member

28 ⁸ It was not until 2005, via AB 259, when NRS 289.080 was amended to state "two representatives of his choosing".



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Attorney for Petitioners NSLEOA and NAPSO

CASE NO: A-20-817491-P
Department 9

DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA STATE LAW ENFORCEMENT
OFFICERS ASSOCIATION, and NEVADA
ASSOCIATION OF PUBLIC SAFETY
OFFICERS,

Petitioners,

vs.

NEVADA HIGHWAY PATROL
ASSOCIATION; STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD;
STATE OF NEVADA DEPARTMENT OF
PUBLIC SAFETY; STEVE SISOLAK, in his
capacity as Governor of the State of Nevada,

Respondents.

CASE NO.:

DEPT. NO.:

NEVADA STATE LAW
ENFORCEMENT OFFICERS
ASSOCIATION'S AND NEVADA
ASSOCIATION OF PUBLIC SAFETY
OFFICERS' PETITION FOR
JUDICIAL REVIEW
(Filed Concurrently with Motion for
Stay Pending Review)

Petitioners, NEVADA STATE LAW ENFORCEMENT OFFICERS ASSOCIATION
(hereinafter referred to as NSLEOA) and NEVADA ASSOCIATION OF PUBLIC SAFETY
OFFICERS (hereinafter referred to as NAPSO), two Local Government Employee
Organizations, by and through their counsel of record, Nicholas M. Wieczorek, Esq. of the law
firm of Clark Hill, PLLC, and pursuant to NRS 233B.010 et. seq., respectfully submit the
following Petition for Judicial Review with respect to those matters heard by the Local

1 Government Employee-Management Relations Board on May 27, 2020 in Case No. 2020-
2 011 and the Board's final decision on those matters dated June 17, 2020.

3 This Petition is made and based upon the following:

4 1. Petitioners request judicial review of the final decision of the State of Nevada
5 Local Government Employee-Management Relations Board (hereinafter "EMRB") dated
6 June 17, 2020 in Case No. 2020-011, attached hereto.

8 2. This Court has jurisdiction to determine this Petition pursuant to NRS 233B.130.

9 3. This Petition is being filed in accordance with NRS 233B.130(1) and (2).

10 4. Petitioners have been aggrieved by the final decision of the EMRB and
11 Petitioners' rights have been prejudiced because the final decision is:

- 12 a. In violation of constitutional and/or statutory provisions;
- 13 b. In excess of the statutory authority of the agency;
- 14 c. Made upon unlawful procedure;
- 15 d. Affected by other error of law;
- 16 e. Clearly erroneous in view of the reliable, probative and substantial
17 evidence on the whole record;
- 18 f. Arbitrary, capricious, and characterized by an abuse of discretion.

19 5. Petitioners will file a written Memorandum of Points and Authorities after a
20 copy of the entire record on appeal has been transmitted to the Court pursuant to NRS
21 233B.133.

22 6. Petitioners reserve their rights to request a hearing in this matter pursuant to
23 NRS 233B.133(4).

24 THEREFORE, Petitioners NSLEOA and NAPSO respectfully request as follows:

- 25 1. The record be filed with this Court in accordance with NRS 233B.131;

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2 day of July, 2020, a true and correct copy of the PETITION FOR JUDICIAL REVIEW was served in the following manner:

X By being placed into an envelope bearing First Class Postage and placed into the U.S. Mails, this same date, addressed to the following individuals; and/or

X By being placed into an envelope bearing appropriate postage and sent via Certified Mail, return receipt requested, this same date, addressed to the following individuals; and/or

_____ By being hand delivered to the following individual(s) at their last known address, this same date, as follows; and/or

_____ By being served via email to the following individuals at their last known facsimile number, this same date, as follows:

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Appointed Member of NAPSO and NSLEOA

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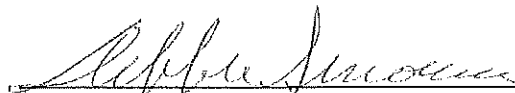
1 Timothy P. Mullaney, Sr., J.D.
2 Michael E. Coviello, J.D.
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4 Laura Free, Director
5 Department of Administration
6 State of Nevada
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8 Aaron D. Ford
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10 Attorney General Nevada Office
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Fernando R. Colon, Representative
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Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Avenue, Suite 3900
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11
12 
13 An Employee of Clark Hill PLLC

FILED

JUN 17 2020

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

NEVADA HIGHWAY PATROL ASSOCIATION,

Petitioner,

v.

STATE OF NEVADA DEPARTMENT OF PUBLIC
SAFETY; STEVE SISOLAK, in his capacity as
Governor of the State of Nevada; NEVADA STATE
LAW ENFORCEMENT OFFICERS
ASSOCIATION, and NEVADA ASSOCIATION OF
PUBLIC SAFETY OFFICERS,

Respondents.

Case No. 2020-011

NOTICE OF ENTRY OF ORDER

ITEM NO. 865

- TO: Petitioner and its attorneys, Devon T. Reese, Esq., Jason D. Guinasso, Esq., and Alex R. Velto, Esq., of Hutchison & Steffen;
- TO: Respondent State of Nevada, by and through Laura Freed, Director, Department of Administration; Peter Long, Administrator of the Division of Human Resource Management, and Frank Richardson, Deputy Administrator of Labor Relations, for the State of Nevada;
- TO: Respondents Nevada State Law Enforcement Officers Association and Nevada Association of Public Safety Officers and their attorneys and representatives, Nicholas M. Wiczorek, Esq., of Clark Hill PLLC and Richard P. McCann, J.D.;
- TO: The Fraternal Order of Police, by and through their attorneys and representatives, Timothy P. Mullaney, Sr., J.D. and Michael E. Coviello, J.D.;
- TO: AFSCME, by and through their representative, Fernando R. Colon;
- TO: Peace Officers Research Association of Nevada (PORAN), by and through their attorney, Michael Langton, Esq.

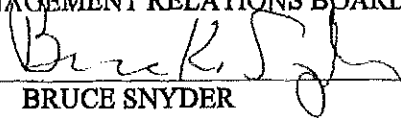
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PLEASE TAKE NOTICE that the **DECLARATORY ORDER** was entered in the above-entitled matter on June 17, 2020.

A copy of said order is attached hereto.

DATED this 17th day of June 2020.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY 
BRUCE SNYDER
Commissioner

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management Relations
3 Board, and that on the 17th day of June 2020, I served a copy of the foregoing **NOTICE OF ENTRY**
4 **OF ORDER** by mailing a copy thereof, postage prepaid to:

5 Devon T. Reese, Esq.
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6 Alex R. Velto, Esq.
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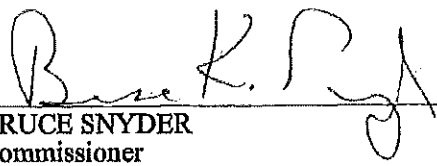
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BRUCE SNYDER
Commissioner

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

6 NEVADA HIGHWAY PATROL ASSOCIATION,

7 Petitioner,

8 v.

9 STATE OF NEVADA DEPARTMENT OF PUBLIC
10 SAFETY; STEVE SISOLAK, in his capacity as
11 Governor of the State of Nevada; NEVADA STATE
12 LAW ENFORCEMENT OFFICERS
13 ASSOCIATION, and NEVADA ASSOCIATION
14 OF PUBLIC SAFETY OFFICERS,

15 Respondents.

Case No. 2020-011

DECLARATORY ORDER

EN BANC

ITEM NO. 865

14 On May 27, 2020, this matter came before the State of Nevada, Government Employee-
15 Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the
16 Employee-Management Relations Act and NAC Chapter 288. At issue was Petitioner's, Nevada
17 Highway Patrol Association, Petition for Declaratory Order.

18 Petitioner requests this board to issue a declaratory order stating that Petitioner, as the officially
19 recognized entity, is the exclusive bargaining agent for Category 1, Unit G state employees and, as
20 such, no rival employee organization may purport to "represent" any employee in Category 1, Unit G,
21 including any issue covered under NRS Chapters 288 and 289. The Board requested *amicus* briefs to
22 be filed in this matter and reviewed them in full prior to coming to a decision.

23 In January 2020, the Board designated Petitioner as the exclusive representative of the
24 bargaining unit comprised of all non-supervisory, Unit G, Category 1 Peace Officers employed by the
25 State of Nevada pursuant to Senate Bill 135. Petitioner asserted that at least two other organizations
26 attempted to infringe on this Board's recognition of Petitioner as the exclusive representative. These
27 organizations competed for the right to represent this unit; however, they failed to obtain sufficient
28 signatures to obtain an election.

1 The dispute essentially surrounds the ability of other organizations not recognized as the
2 exclusive representative to represent bargaining unit members in matters not involving collective
3 bargaining, such as grievances, OPR investigations, and critical incidents. As NHPA further explained:
4 "The heart of this dispute is the scope of 'representation' under NRS 288.136, and whether a union that
5 failed to gain recognition can represent the members this Board already determined to be recognized by
6 NHPA."

7 The general factual premise does not appear to be in dispute in regards to the instant Petition.¹
8 Instead, the Petition generally presents a question of the Board's statutory interpretation of the EMRA,
9 the statute the Board is charged with enforcing. *Clark County School Dist. v. Local Govt. Employee-*
10 *Mgmt. Rel. Bd.*, 90 Nev. 442, 446, 530 P.2d 114, 117 (1974); *Folio v. Briggs*, 99 Nev. 30, 33, 656 P.2d
11 842 (1983); *Truckee Meadows Fire Prot. Dist. v. Int'l Ass'n of Fire Fighters, Local 2487*, 109 Nev. 367,
12 369, 849 P.2d 343, 345 (1993); *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 900, 59
13 P.3d 1212, 1219–20 (2002); *City of Henderson v. Kilgore*, 121 Nev. 331, 337 n. 11, 131 P.3d 11, 15
14 (2006); *City of N. Las Vegas v. State Local Gov't Employee-Mgmt. Relations Bd.*, 127 Nev. Adv. Op.
15 57, 261 P.3d 1071, 1076 (2011); *Bisch v. Las Vegas Metropolitan Police Dep't.*, 129 Nev. Adv. Op. 36,
16 302 P.3d 1108, 1112 (2013); *Clark Cty. Deputy Marshals Ass'n v. Clark Cty.*, 425 P.3d 381, Docket
17 No. 68660, filed September 7, 2018, unpublished deposition (Nev. 2018). However, answers to more
18 specific questions could relate to the Board's view of the facts. *Fathers & Sons & A Daughter Too v.*
19 *Transp. Services Auth. of Nevada*, 124 Nev. 254, 259, 182 P.3d 100, 104 (2008).

20 Preliminarily, Peace Officers Research Association of Nevada asserted a jurisdictional challenge
21 in ruling on the instant Petition. They assert specifically that the Legislature has limited the Board's
22 authority to interpret a peace officers' rights under NRS Chapter 289. The Board agrees. NAC
23 288.380 provides that any recognized employee organization "may petition the Board for a declaratory
24 order regarding the applicability or interpretation of any statutory provision or of any regulation or

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26 ¹ On May 22, 2020, Petitioner filed a Request for Hearing. NAC 288.400 provides for the ability to
27 request a hearing if certain conditions are satisfied. The Request was not timely and did not comply
28 with the other requirements of NAC 288.400(1). As such, the Board denies the request. See also NAC
288.410(2) (giving the discretion to the Board on whether to hold a hearing – i.e., "or"). Indeed, the
Request for Hearing appears in actuality to be a request for oral argument. The Board finds oral
argument unnecessary in this case given its ruling herein.

1 decision of the Board.” “The purpose of a declaratory statement is to address the applicability of a
2 statutory provision or order or rule of the agency in particular circumstances.” *City of Reno v. Reno*
3 *Firefighters Local 731, Int’l Ass’n of Firefighters*, Item 777A, Case No. A1-046049 (2012).

4 The Board’s authority is limited to matters arising out of the interpretation of, or performance
5 under, the provisions of the EMRA. NRS 288.110(2). The Board does not have the jurisdiction to find
6 a violation of NRS Chapter 289 or to rule that no rival employee organization may purport to represent
7 any employee surrounding issues covered under NRS Chapter 289. This is expressly beyond the
8 Board’s jurisdiction, which is well established. *See* NRS 288.110(2); *City of Reno v. Reno Police*
9 *Protective Ass’n*, 98 Nev. 472, 474–75, 653 P.2d 156, 158 (1982) (“the EMRB merely deferred to NRS
10 ch. 288, the statute under which it operates. While the EMRB did discuss the Reno City Charter in its
11 decision, our review of that decision reveals that the board only did so because the City placed its
12 Charter in issue by relying on it as justification for its refusal to bargain with the RPPA. The EMRB did
13 not interpret the Charter.”); *UMC Physicians Bargaining Unit v. Nevada Serv. Employees Union*, 124
14 Nev. 84, 89-90, 178 P.3d 709, 713 (2008); *City of Henderson v. Kilgore*, 122 Nev. 331, 333, 131 P.3d
15 11, 12 (2006); *Int’l Ass’n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item
16 No. 811 (2015) (“IAFF argues that the merit personnel system itself should have opened this
17 appointment... However, it is not within our purview to determine whether or not the appointment...
18 complied with the County’s merit personnel system. This Board authority is limited to matters arising
19 under interpretation of, or performance under, the Act”); *Simo v. City of Henderson*, Case No. A1-
20 04611, Item No. 796 (2014); *see e.g., Flores v. Clark Cty.*, Case No. A1-045990, Item No. 737 (2010);
21 *Bonner v. City of N. Las Vegas*, Case No. 2015-027 (2017); *Kerns v. LVMPD*, Case No. 2017-010
22 (2018); *Yu v. LVMPD*, Case No. 2017-025, Item No. 829 (2018). The Board simply notes that, as
23 further detailed below, NRS Chapter 289 does not appear in conflict with Chapter 288 and can be read
24 to render a harmonious result.

25 “Exclusive representative” is defined under the EMRA as follows:

26 ‘Exclusive representative’ means a labor organization that, as a result of its designation
27 by the Board, has the **exclusive right to represent all the employees within a**
28 **bargaining unit** and to engage in collective bargaining with the Executive Department
pursuant to NRS 288.400 to 288.630, inclusive, concerning wages, hours and other terms
and conditions of employment for those employees.

1 NRS 288.430 (*emphasis added*). See also NRS 288.133 (defining “Bargaining agent” as an employee
2 organization recognized “as the exclusive representative of all local government employees in the
3 bargaining unit for the purposes of collective bargaining.”); see also NRS 288.032 (defining “Collective
4 bargaining” as “a method of determining conditions of employment by negotiation between
5 representatives of ... an employee organization or labor organization, entailing a mutual obligation ...
6 [of] the representative of the state or local government employees to meet at reasonable times and
7 bargain in good faith with respect to: Wages, hours and other terms and conditions of employment;
8 [t]he negotiation of an agreement; [t]he resolution of any question arising under a negotiated agreement
9 [e.g., a grievance]; or [t]he execution of a written contract....”² Both NRS 288.133 and NRS 288.430
10 provide for the “exclusive representative”.³ The EMRA is plain in unambiguous in this regard. See,
11 also NRS 288.160(2) (stating that an employee organization “shall be the exclusive bargaining agent of
12 the local government employees in that bargaining unit.”); NRS 288.136 (defining “Recognition”).⁴

13 In the First Judicial District Court decision of *Washoe Ed. Support Professionals v. State of*
14 *Nevada, Local Government Employee-Management Relations Board*, Case No. 09 OC 00086 1B (2010)
15 (District Court Decision), Judge James Russell addressed, in pertinent part, “the scope of a ‘non-
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17 ² See also *infra* note 6.

18 ³ “Exclusive” is defined as “Shutting out; debarring from interference or participation; vested in one
19 person alone. An exclusive right is one which only the grantee thereof can exercise, and from which all
20 others are prohibited or shut out.” Black’s Law Dictionary (11th ed. 2019). “Excluding or having
21 power to exclude; limiting or limited to possession, control, or use by a single individual or group.”
Merriam-Webster On-Line Dictionary; see also SB 135, Minutes of the Senate Committee on
Government Affairs (April 4, 2019) (“The words ‘exclusive representative’ means the only one” ...
“We have exclusive representation to provide for labor peace and stability.”)

22 ⁴ *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009) (“We read statutes within a
23 statutory scheme harmoniously with one another to avoid an unreasonable or absurd result.”). *Williams*
24 *v. Clark Cty. Dist. Attorney*, 118 Nev. 473, 484-85, 50 P.3d 536, 543 (2002) (“In determining the
25 legislature’s intent, we should consider what reason and public policy indicate was intended, and we
26 should avoid reaching absurd results. We are obliged to construe statutory provisions so that they are
27 compatible, provided that in doing so, we do not violate the legislature’s intent.”); *Berkson v. LePome*,
126 Nev. 492, 497, 245 P.3d 560, 563–64 (2010) (“a statute will be construed in order to give meaning
28 to its entirety, and this court ‘will read each sentence, phrase, and word to render it meaningful within
the context of the purpose of the legislation.’”); *Zahavi v. State*, 131 Nev. Adv. Op. 7, 343 P.3d 595,
600 (2015) (“When construing various statutory provisions, which are part of a ‘scheme,’ this court
must interpret them ‘harmoniously’ and ‘in accordance with [their] general purpose.’”).

1 member' employee's right under NRS 288.140(2)⁵ to be represented by another person in a grievance
2 proceeding [the term grievance being broadly defined], and specifically whether such an employee may
3 be represented by an agent or employee of an employee organization *other than* the recognized
4 bargaining agent (a 'rival employee organization').” District Court Decision, at 2 (*emphasis in*
5 original).

6 The District Court Order concluded:

7 Where, as here, an employee organization has been recognized as the bargaining agent
8 for a bargaining unit, the bargaining agent's representative status is *exclusive* and no rival
9 employee organization may purport to 'represent' any employee in the unit in any
10 grievance proceeding or in any other aspect of collective bargaining. Any
11 'representation' of this nature is fundamentally inconsistent with the status and function
12 of the recognized bargaining agent. *See, e.g., UMC Physicians' Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. [84, 178 P.3d 709, 715 (2008)] (“the interests
13 of employees whose bargaining units are exclusively represented by one employee
14 organization cannot be simultaneously represented by another employee organization”);
15 *Operating Engineers Local Union No. 3 v. City of Reno*, Item No. 7 (1972) (rejecting
16 contention that Chapter 288 ‘permits an employer to ‘recognize’ a minority employees
17 organization ..., not negotiation per se, but for purposes other than negotiation such as
18 grievance processing....);

19 A local government employer who knowingly allows ‘representation’ of this kind or
20 knowingly participates in a grievance proceeding with an agent or employee of a rival
21 employee organization, *acting as such*, thereby fails to bargain in good faith with the
22 recognized bargaining agent and commits a prohibited practice within the meaning of
23 NRS 288.270(1)(e). *Federal Tel. and Radio Co.*, 107 NLRB 649 (1953) (applying
24 corresponding provisions of the National Labor Relations Act); *Hughes Tool Co.*, 56
25 NLRB 981 (1944) (same).

26 In the challenged order and in at least one prior decision, the Board has ruled that if an
27 employee in a bargaining unit is a *member* of the employee organization serving as
28 recognized bargaining agent, the employee may *only* be represented in a grievance
proceeding by an agent or employee of that organization. *Washoe Ed. Support Professionals v. Washoe County Sch. Dist.*, Item No. 681A, Case No. A1-045930 (EMRB 2009), Finding of Fact No. 4; *United We Stand Classified Employees/AFT v. Washoe County Sch. Dist.*, Item No. 641B, Case No. A1-045888 (EMRB 2007). This ruling has not been challenged. Nor does WESP dispute the right of such employee to retain the services of an attorney of the employee's choice, so long as the expense of this representation is borne by the employee.

⁵ NRS 288.140 states, in pertinent part: “(1) It is the right of every local government employee ... to refrain from joining any employee organization (2) The recognition of an employee organization ... does not preclude any local government employee who is not a member of that employee organization from acting for himself or herself with respect to any condition of his or her employment, but any action taken on a request or in adjustment of a grievance shall be consistent with the terms of an applicable negotiated agreement, if any.”

1 *Id.* at 2-4 (*emphasis* in original). The District Court Order further opined:

2 Where, however, a unit employee is *not a member* of the employee organization serving
3 as recognized bargaining agent, NRS 288.140(2) provides that the employee may 'act for
4 himself' in any grievance proceeding – *i.e.*, on his own behalf and without a
5 representative. *Cone v. Nevada Serv. Employees Union*, 116 Nev. 473, 998 P.2d 1178
(2000) (noting that statute 'authorized a nonunion member to act on his own behalf [and]
6 forgo union representation').

7 In addition, the Board has ruled that such an employee may be represented by 'counsel',
8 a term that the Board apparently interprets to include a friend, relative or co-worker, or an
9 attorney retained by the employee. *Washoe Ed. Support Professionals v. Washoe County*
10 *Sch. Dist.*, Item No. 681A, Conclusion of Law No. 15. With the exception noted below,
11 WESP likewise has not challenged this aspect of the Board's ruling.

12 In any matter involving a non-member employee, NRS 288.140(2) provides that 'any
13 action taken on a request or in adjustment of a grievance shall be consistent with the
14 terms of an applicable negotiated agreement, if any.' Accordingly, in any such case, the
15 Board has ruled that the recognized bargaining agent is also entitled to be present '[t]o
16 monitor ... compliance with the applicable [negotiated agreement] and the provisions of
17 NRS chapter 288'. *Washoe Ed. Support Professionals v. Washoe County Sch. Dist.*, Item
18 No. 681A, Conclusion of Law No. 15. Again, this aspect of the Board's ruling has not
19 been challenged.

20 *Id.* at 4-5 (*emphasis* in original) (internal citations omitted).

21 Judge Russell further noted: "Where the representative of a non-member employee is also an
22 employee or agent of a rival employee organization, the parties have opposing views on the result that
23 should follow." *Id.* at 5. Moreover, "[b]oth parties agree, in any case, that an *attorney* who is retained
24 by the employee to act as his representative in such proceeding should be allowed to represent the
25 employee, even if the attorney also represents a rival employee organization. To the extent that the
26 Board has so held, its order is affirmed." *Id.* at 6, note 5 (*emphasis* in original). The District Court
27 further found:

28 If, as WESP agrees, a non-member employee may lawfully be represented by a friend,
relative or co-worked, the fact that the representative also happens to be an agent or
employee of a rival employee organization should not disqualify him from serving as
representative if in fact he is functionally independently of his role as an agent of the
union. On the other hand, if the representative in fact is overtly or covertly attempting to
function on behalf of both the employee and the rival employee organization (or solely on
behalf of the union), the representative's participation effectively undercuts the status of
the recognized bargaining agent and cannot knowingly be permitted by the employer.

Accordingly, in any grievance proceeding involving an employee representative who is
also an agent or employee of a rival employee organization, the representative cannot
function as such – and hence cannot participate in the proceeding Where, however,

1 the employer knows or reasonably believes that the representative is serving *entirely*
2 *independently* of the rival organization as (for example) a friend, relative or co-worker of
the employee, the representative's participation is permissible.

3 *Id.* at 6 (*emphasis* in original). The District Court denied the petition for judicial review, as requested
4 by WESP, "to hold that an agent or employee of a rival employee organization is, solely by virtue of
5 that status, precluded from representing an employee in any grievance proceeding...." *Id.* at 7.

6 In *Lyon County Ed. Ass'n v. Lyon County Sch. Dist.*, Case No. 2016-011 (2016), the Board found
7 the decision in *Washoe Ed. Support Professionals* as persuasive precedent. The District Court's order
8 was based on ample authority.⁶ As such, the Board reaffirms *Lyon County Ed. Ass'n* in finding Judge
9 Russell's decision as persuasive precedent.

10 While NRS 288.140 recognizes the right of an employee not to become a member of the
11 recognized employee organization and to "act for himself or herself" in connection with a grievance,
12 nothing in that provision, or any other provision of the EMRA, permits such an employee to be
13 "represented" by an agent or employee of a rival employee organization serving in such capacity.
14 Allowing this kind of representation would impair the efficiency and utility of the grievance and
15 collective bargaining process, undermine the position of the recognized bargaining agent, and

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17 ⁶ Citing to then NRS 288.027 (replaced by NRS 288.133), 288.028 (replaced by NRS 288.134), 288.067
18 (replaced by NRS 288.136), NRS 288.033(3) (noting that the scope of the bargaining agent's
19 representation includes not only the negotiation of a CBA *but also* resolution of grievance and
20 participation in "investigatory interviews" involving employees in the unit), also *citing Ed. Support*
21 *Employees Ass'n v. Clark County Sch. Dist.*, Item No. 568B, Case No. A1-045782 (2005), 288.140,
22 288.150(1) and 288.160(2) as well as the Nevada Supreme Court and federal precedent cited above.
23 *See also N. Las Vegas Police Officers Ass'n v. The City of N. Las Vegas*, Item No. 717A, Case No. A1-
24 0459645 (2011); *Heltzinger v. Las Vegas-Clark County Library Dist.*, Item No. 728C, Case No. A1-
25 045977 (2012); *D'Ambrosio v. LVMPD*, Item No. 808 (2015). For example, the Nevada Supreme
26 Court in *Cone v. Nevada Serv. Employees Union/SEIU Local 1107*, 116 Nev. 473, 477, 998 P.2d 1178,
27 1181 (2000) disagreed that "the union, as the 'bargaining agent' of UMC employees, is obligated by the
28 plain language of NRS 288.027 to 'exclusively' represent all UMC employees, including nonunion
members, in all grievance matters without charging a fee", *only to the extent of not being able to*
charge a fee. The Nevada Supreme Court made clear that NRS 288.140(2) "provides an individual
with a right to forgo union representation" and thus a nonmember employee may either act of his or her
own behalf thereby electing to "forgo union representation" or use the services of the recognized agent
paying any "service fee" charged by the union for its services. *See id.* at 478. Nothing in *Cone*
suggests such an employee may be "represented" by an agent or employee of a rival employee
organization serving in such capacity with the exception noted above. *See* Judge Russell's Decision at
6, note 5. Indeed, for more than 60 years, the NLRB has held its similar provision (Section 9(a), 29
U.S.C. § 159(a)) does not allow a rival union to represent an employee in the adjustment of grievances.
See, e.g., Fed. Tel. & Radio Co., 107 NLRB 649, 652 (1953).

1 effectively destabilize employee-management relations in the public sector. This is consistent with the
2 exceptions noted above. The exclusivity of representation is a key element in ensuring labor stability in
3 the workplace (one of the important reasons for the adoption of NRS Chapter 288 in 1969) and in
4 allowing a properly recognized union to do its job. *See, e.g., In the Matter of American Federation of*
5 *Teachers, Local 1800 v. Clark County Sch. Dist.*, Item No. 2 (1970) (“the employer has an obligation to
6 treat with this representative exclusively and has a negative duty to treat with no other”), *citing NLRB*
7 *v. Jones & Laughlin Steel Corp.*, 201 US 1, 44 (1937) (where the United State Supreme Court
8 recognized that the obligation of the employer to treat with the recognized representative was exclusive
9 and hence imposed a negative duty to treat with no other); *see also supra* note 3 and *infra* note 7; *see,*
10 *e.g., Fed. Tel. & Radio Co.*, 107 NLRB 649, 652-53 (1953). Designating one union as the exclusive
11 representation of all employees allows them to speak with one voice, pooling economic strength, ensure
12 their rights are not watered down by divisiveness, respond with institutional knowledge when
13 employer’s disparately treat them, and allowing this carve out would tend to dilute that strength
14 contrary to the purposes and policies of the EMRA. *See also supra* notes 4 and 6.⁷

15 If the Legislature wishes to provide that an agent or employee of a rival labor organization
16 serving in that capacity, may purport to represent any employee in a bargaining unit with a recognized
17 representation, then that is their legislative prerogative. It is not for the Board to make the law, that is
18 for the Legislature, and the Board is required to follow the law regardless of the result. *See, e.g., Local*
19 *Gov’t Employee-Mgmt. Relations Bd. v. Educ. Support Employees Ass’n*, 134 Nev. 716, 429 P.3d 658
20 (2018).

21 As a further example, in 2018 the Board rendered its decision in *City of Elko v. Elko Police*
22 *Officers Protective Ass’n*, Case No. 2017-026, Item No. 831 (2019). In that case, the Board applied the
23 provisions of NRS 288.170 to conclude that sergeants employed by the City of Elko could not be part
24 of the same bargaining unit as the officers they supervise based on the plain language of the EMRA. In

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26 ⁷ The EMRA had its genesis in Senate Bill 87 in 1969 sponsored by Senator Carl Dodge. SB initially
27 provided specifically for the recognition of more than one employee organization for any given
28 “negotiating unit”. *See* Sections 10, 11, 13. After it was passed in the Senate, objections were made
that the bill’s provisions for multiple bargaining agents was unworkable and would result in chaos.
Accordingly, when the bill was heard in the Assembly, such language was removed from the bill. The
amended language has not been materially changed since that time.

1 response to that case, the Legislature enacted SB 158 to exempt only (1) police officers defined in NRS
2 288.215, (2) firefighters defined in NRS 288.215, and (3) certain addition persons having the powers of
3 a peace officer pursuant to NRS 289.150, 289.170, 289.180 or 289.190. The Legislature choose to
4 leave the prohibitions of joint bargaining unit for others in place and thus only made a specific carve.
5 As such, the Legislature approved of the Board's order in certain respects and choose to amend the
6 EMRA for specific and defined purposes in other respects. This is a further showing of the legislative
7 prerogative in this case – perhaps the Legislature would create a carve out for rival union representation
8 in all manners or perhaps just in specific and defined areas for certain individuals. It is not for this
9 Board to guess what the Legislature might do on behalf of the citizens of this great state.

10 In *Clark County Teachers Assn' v. Clark County Sch. Dist.*, 91 Nev. 143, 532 P.2d 1032 (1975),
11 the Nevada Supreme Court opined that the “exclusive use” provisions of CBAs were not
12 unconstitutional, insofar as they denied the respondent (American Association of Teachers) an equal
13 opportunity for membership solicitations and to dispenses information. *Id.* at 145. Citing to the
14 Board's decision *In the Matter of American Federation of Teachers, Local 1800*, the Court “found
15 compelling Nevada's interest in allowing ... the ‘exclusive uses’ here challenged ... [and] labor peace
16 and stability in an area as vital as public education are indisputably a necessity to the attainment of that
17 goal. Inter-union strife within the school must be minimized.” *Id.*; see also *Mentele v. Inslee*, 916 F.3d
18 783, 788 (2019); *Nevada Serv. Employees Union, Service Employees Int'l Union, Local 1107 v. Clark*
19 *County*, Case No. A1-045759, Item No. 540-B (2005) (“Moreover, through NRS 288.270(1), an
20 employee organization is protected from actions which would undercut its ability to fulfill its statutory
21 role as exclusive bargaining agent and defender of the collective bargaining agreements.”).

22 Both sides reference the Nevada Supreme Court decision in *Bisch v. Las Vegas Metropolitan*
23 *Police Dep't.*, 129 Nev. 328, 302 P.3d 1108, 1112 (2013). In this matter, the employee filed a
24 complaint with this Board alleging its union had breached its duty of fair representation when it refused
25 to represent her at her internal affairs interview. The Nevada Supreme Court noted the right contained
26 289.080 to have two representatives of her choosing at the interview (her choice being private counsel
27 and a representative from the union). *Bisch*, 129 Nev. at 335, 302 P.3d at 1113. The Court held “that
28 the protection provided by NRS 289.080 is only in regard to Bisch's employer. Because nothing in NRS

1 289.080 or the rest of the Peace Officer Bill of Rights governs a PPA's responsibility toward its
2 members, the EMRB correctly concluded that NRS 289.080 did not impose an additional duty of fair
3 representation on the PPA." *Id.* at 337. The Court simply held that NRS 289 "necessarily prevent[s] the
4 employer from barring the employee from having two representatives." *Id.* at 336. The Court did not
5 discuss whether having an agent or employee representative of a rival union serving as such capacity
6 would be permissible under the EMRA or permit a rival union to offer representation. The Court also
7 indicated *Weingarten* rights were not at issue as they make "no mention of the union's duties to the
8 employee/member in such a situation." *Id.* at note 3.

9 NRS 289.080 provides that a peace officer "may upon request have two representatives of the
10 peace officer's choosing present with the peace officer during any phase of an interrogation or hearing
11 relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or
12 another peace officer." It is asserted by Respondents as well as some *amicus* briefs that this provision
13 conflicts with the EMRA's exclusive representation or provides for a carve out for certain proceedings.
14 Again, while the Board has no jurisdiction over NRS 289, these statutes can be read harmoniously.
15 *Szydel v. Markman*, 121 Nev. 453, 457, 117 P.3d 200, 202-03 (2005) ("When two statutes are clear and
16 unambiguous but conflict with each other when applied to a specific factual situation, an ambiguity is
17 created and we will attempt to reconcile the statutes. In doing so, we will attempt to read the statutory
18 provisions in harmony, provided that this interpretation does not violate legislative intent."), *citing*
19 *Bowyer v. Taack*, 107 Nev. 625, 627, 817 P.2d 1176, 1177 (1991).

20 "It is presumed that in enacting a statute the legislature acts with full knowledge of existing
21 statutes relating to the same subject." *City of Boulder City v. Gen'l Sales Drivers and Helpers, Intern.*
22 *Broth. of Teamsters, Local 14*, 101 Nev. 117, 119, 694 P.2d 498, 500 (1985). In *State Dep't of Health*
23 *& Human Servs., Div. of Pub. & Behavioral Health Med. Marijuana Establishment Program v.*
24 *Samantha Inc.*, 133 Nev. 809, 815, 407 P.3d 327, 331 (2017), the Nevada Supreme Court held: "The
25 Legislature created NRS Chapter 453A long after the APA. Because this court 'assumes that, when
26 enacting a statute, the Legislature is aware of related statutes,' and NRS Chapter 453A references
27 review under the APA, *see* NRS 453A.210, the Legislature's exclusion of judicial review for a
28 registration certificate in NRS Chapter 453A appears deliberate."

1 In the same vein, NRS 288.133, 288.134, 288.136, and 288.033 were originally added in 1975
2 via AB 572 long before NRS 289.080. The language "or other representative of his choosing" was not
3 added until 1991 via AB 583⁸ and NRS Chapter 289 specifically references exhaustion of
4 administrative remedies under NRS Chapter 288 as a prerequisite to judicial relief. NRS 289.120. As
5 such, when the Legislature used this general language ("or other representative of his choosing"), a
6 harmonious and reasonable reading reconciling the statutes indicates the Legislature did not intend to
7 infringe upon the exclusive representation contained in NRS 288. Nothing in the Legislative history
8 indicates otherwise. Judge Russell even affirmed the Board's Order holding that "an attorney who is
9 retained by the employee to act as his representative in such a proceeding should be allowed to
10 represent the employee, even if the attorney also represents a rival employee organization." District
11 Court Decision, at 6, note 5. As NHPA explained: "It's quite clear a peace officer is free to choose
12 whichever representative he or she would like under NRS Chapter 289. However, this right stops at an
13 officer's personal representation. It does not permit an officer to choose the representative of the
14 Union." Further, "[a] member can't override this Board's recognition merely because they would like
15 to have a different person represent the entity on his or her behalf." Therefore, a harmonious and
16 reasonable reading can be achieved.


17 Dated this 17th day of June 2020.

18 GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

20 By: 
21 BRENT ECKERSLEY, ESQ., Chair

22 By: 
23 SANDRA MASTERS, Vice-Chair

24 By: 
25 GARY COTTINO, Board Member

26 By: 
27 BRETT HARRIS, ESQ., Board Member

28 ⁸ It was not until 2005, via AB 259, when NRS 289.080 was amended to state "two representatives of his choosing".

Steven D. Grierson

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Attorney for Petitioners NSLEOA and NAPSO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA STATE LAW ENFORCEMENT)
OFFICERS ASSOCIATION, and NEVADA)
ASSOCIATION OF PUBLIC SAFETY)
OFFICERS,)

Petitioners,)

vs.)

NEVADA HIGHWAY PATROL)
ASSOCIATION; STATE OF NEVADA)
LOCAL GOVERNMENT EMPLOYEE-)
MANAGEMENT RELATIONS BOARD;)
STATE OF NEVADA DEPARTMENT OF)
PUBLIC SAFETY; STEVE SISOLAK, in his)
capacity as Governor of the State of Nevada,)

Respondents.)

CASE NO.: A-20-817491-P

DEPT. NO.: 9

**PETITIONERS' NOTICE OF
DISMISSAL WITHOUT PREJUDICE
OF PETITION FOR JUDICIAL
REVIEW AND NOTICE VACATING
MOTION FOR STAY PENDING
REVIEW**

Petitioners Nevada State Law Enforcement Officers Association and Nevada
Association of Public Safety Officers, by and through their counsel of record, Nicholas M.
Wieczorek of Clark Hill PLLC, hereby dismiss the Petition for Judicial Review without

.....

.....

<input checked="" type="checkbox"/> Verified by Petitioner	<input type="checkbox"/> Verified by Respondent
<input type="checkbox"/> Verified by Clerk of Court	<input type="checkbox"/> Verified by Judge
<input type="checkbox"/> Verified by Notary Public	<input type="checkbox"/> Verified by Attorney
<input type="checkbox"/> Verified by Other	<input type="checkbox"/> Verified by Other

1 prejudice and vacates the hearing on the Motion for Stay Pending Review currently scheduled
2 for August 4, 2020 in the above-captioned matter.

3 DATED this 20 day of July, 2020.

4 **CLARK HILL PLLC**

6 By: /s/ Nicholas M. Wieczorek

7 NICHOLAS M. WIECZOREK

8 Nevada Bar No. 6170

9 3800 Howard Hughes Parkway, Suite 500

10 Las Vegas, Nevada 89169

11 Telephone: (702) 862-8300

12 Facsimile: (702) 862-8400

13 E-mail Address: nwieczorek@clarkhill.com

14 Attorneys for Petitioners
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 2020, a true and correct copy of the PETITIONERS' NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE OF PETITION FOR JUDICIAL REVIEW AND NOTICE VACATING MOTION FOR STAY PENDING REVIEW was served in the following manner:

 X By being placed into an envelope bearing First Class Postage and placed into the U.S. Mails, this same date, addressed to the following individuals; and/or

 By being placed into an envelope bearing appropriate postage and sent via Certified Mail, return receipt requested, this same date, addressed to the following individuals; and/or

 By being served via email to the following individuals at their last known facsimile number, this same date, as follows:

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Appointed Member of NAPSO and NSLEOA

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Peter Long
Interim Director of Administration
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/s/ Deborah J. Surowiec
An Employee of Clark Hill PLLC



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CASE NO: A-20-827022-C
Department 3

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA ASSOCIATION OF PUBLIC)	CASE NO.:
SAFETY OFFICERS, a Nevada Non-Profit)	
Corporation and Local Government)	DEPT. NO:
Employee Organization, and Their Named)	
and Unnamed Affected Members,)	COMPLAINT
)	
Plaintiffs,)	
)	
vs.)	
)	
LAS VEGAS METROPOLITAN POLICE)	
DEPARTMENT; LAS VEGAS POLICE)	
PROTECTIVE ASSOCIATION; DOE)	
INDIVIDUALS I THROUGH X; ROE)	
ENTITIES I THROUGH X,)	
)	
Defendants.)	

Plaintiffs, NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS, a Local Government Employee Organization, and its Named and Unnamed Affected Members, by and through their representatives of record, NICHOLAS M. WIECZOREK of the law firm of CLARK HILL PLLC, respectfully submit the following Complaint.

STATEMENT OF JURISDICTION AND PARTIES

1. At all relevant times herein, the Plaintiffs NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS (hereinafter "NAPSO"), was and is an employee organization

1 as that term is defined in NRS 288.040. NAPSO is a professional association with
2 approximately 1,500 members throughout the State of Nevada consisting primarily of law
3 enforcement officers and other local employees who enjoy the benefits of the provisions of
4 NRS 289 and other statutory protections. NAPSO's current mailing address is 145 Panama
5 Street, Henderson, Nevada 89015.

6
7 2. At all relevant times herein, the Defendant LAS VEGAS METROPOLITAN
8 POLICE DEPARTMENT (hereinafter "LVMPD") was and is a political subdivision as defined
9 by NRS Chapter 41 and was the local government employer of the officers of LVMPD.
10 LVMPD's current mailing address is 400 S. Martin Luther King, Jr. Boulevard, Las Vegas,
11 Nevada 89106.

12 3. At all relevant times relevant times herein, the Defendant LAS VEGAS POLICE
13 PROTECTIVE ASSOCIATION (hereinafter "PPA") was and is an employee organization as
14 that term is defined in NRS 288.040. PPA is the designated exclusive bargaining unit for the
15 law enforcement officers in the Las Vegas Metropolitan Police Department. PPA's current
16 mailing address is 9330 West Lake Mead Boulevard, Suite 200, Las Vegas, Nevada 89134.

17 4. At all relevant times herein, the Defendants, DOE INDIVIDUALS I through X,
18 inclusive, and ROE ENTITIES I through X, inclusive, were responsible in some manner for the
19 acts, omissions and violations that are more fully described hereinafter. When the true
20 identities of said parties are made known to the Plaintiffs, this Complaint will be amended to
21 insert those identities, together with proper allegations and charges.

22 5. The Local Government Employee Management Relations Act was adopted by
23 the Legislature of the State of Nevada in 1969 and is now embodied in NRS Chapter 288.

24 6. NRS 288.140 provides in relevant part as follows:

25 "1. It is the right of every local government employee, subject to
26 the limitation provided in subsection 3, to join any employee
27 organization of his choice or to refrain from joining any employee
28 organization. *A local government employer shall not discriminate
in any way among its employees on account of membership or
non-membership in an employee organization.*" (Emphasis
added).

1
2 7. NRS 288.150 provides in relevant part as follows:

3 "1. Except as provided in subsection 5 and NRS 354.6241, every
4 local government employer shall negotiate in good faith through
5 one or more representatives of its own choosing concerning the
6 mandatory subjects of bargaining set forth in subsection 2 with the
7 designated representatives of the recognized employee
8 organization, if any, for each appropriate bargaining unit among its
9 employees. If either party so requests, agreements reached must be
10 reduced to writing.

11 2. The scope of mandatory bargaining is limited to:

12 (m) Protection of employees in the bargaining unit from
13 discrimination because of participation in recognized employee
14 organizations consistent with the provisions of this chapter.

15 8. NRS 288.270.1 provides in relevant part as follows:

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

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

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

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

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

(f) *Discriminate because of race, color, religion, sex, age,*
physical or visual handicap, national origin or because of *political*
or personal reasons or affiliations." (Emphasis added).

9. NRS 288.270.2 provides in relevant part as follows:

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

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

3 (c) Discrimination because of race, color, religion, sex, sexual
4 orientation, gender identity or expression, age, physical or visual
5 handicap, national origin or because of political or personal reasons
6 or affiliations.

7 10. Jurisdiction of this Court is appropriate pursuant to Article 6, Section 6 of the
8 Nevada Constitution.

9 11. Venue is proper in the Eighth Judicial District pursuant to NRS 13.010 because
10 the rights, obligations, and activities that give rise to this action were to be performed in Clark
11 County, Nevada. Furthermore, Plaintiffs and Defendants are residents of and/or conduct
12 business in Clark County, Nevada.

13 12. For purposes of the following general allegations, the personal identities of the
14 named members of the Plaintiff's organization have been anonymized due to their sensitive
15 positions as active law enforcement officers and to avoid placing them at risk for their current
16 employment positions and personal safety.

17 GENERAL ALLEGATIONS

18 Upon information and belief, the following factual allegations are set forth:

19 13. Plaintiff NAPS0 is a professional association comprised of approximately 1,500
20 members within the State of Nevada, the vast majority of which are Category 1 law
21 enforcement officers, or other state and local employees protected by the provisions of NRS
22 289, the Law Enforcement Officers "Bill of Rights" governing statutory rights provided to
23 peace officers.

24 14. NAPS0 has as members representatives of a vast array of state and local law
25 enforcement agencies, including the City of Henderson Police Officers, City of Henderson
26 Police Supervisors Association, Nevada Highway Patrol, Nevada Parole & Probation, various
27 other Clark County law enforcement associations, City of Elko Police Officers Association,
28 City of Winnemucca Police Officers Association, Pershing County Deputy Sheriff's
Association, and others. Among its members are nearly 200 individual peace officers

1 employed by the Defendant LVMPD. The members of NAPS0 entered into an agreement with
2 the Association for it to provide legal defense representation to members as part of the benefits
3 of membership whose representation at various internal affairs, pre-disciplinary, pre-
4 termination, disciplinary arbitration hearings, critical incidents, and labor/management board
5 hearings.

6
7 15. On June 17, 2020, the Government Employee-Management Relations Board
8 (EMRB) issued an order in Item No. 865 concerning the Petition for Declaratory Order filed by
9 the Nevada Highway Patrol Association seeking clarification of the Board's position on rights
10 of representation pursuant to NRS Chapters 288 and 289. The Board's order concluded that the
11 designated exclusive bargaining representative was entitled to maintain exclusive right to
12 represent all employees within the bargaining unit, with various exceptions including an
13 individual employee's right to representation by private legal counsel. Specifically, the Board's
14 Order concluded that an attorney who is retained by the employee to act as his representative
15 must be allowed to represent the employee "even if the attorney also represents a rival
16 organization" in other matters. This was a matter under the jurisdiction and authority of the
17 EMRB.

18 16. Even before the Board issued its Order, representatives of the PPA began
19 publicizing false and negative information regarding Plaintiffs, including false and misleading
20 information as to the ability of representative of Complaint to represent non PPA LVMPD
21 officers at any disciplinary proceedings. In video presentations and other written materials,
22 PPA advised that neither NAPS0 nor any of its representatives were permitted to represent
23 LVMPD officers during administrative proceedings. Such statements were false and in
24 violation of the text of this Board's Order.

25 17. On or about July 13, 2020 LVMPD corrections officer A., contacted NAPS0
26 and requested legal representation as part of his order to appear at a subject interview regarding
27 possible violation of policy. Officer A was not a member of PPA. On July 13, 2020, legal
28 counsel who had been retained by Officer A through his membership in NAPS0 attended with

1 him to an internal affairs seating. Before the interview took place, representatives of LVMPD's
2 internal affairs unit began questioning Officer A. regarding his affiliation with "competing
3 unions" and asking him to verbally confirm that he was "not part of a rival union." The
4 questioning violated the attorney-client privilege between legal counsel and Officer A.
5 Furthermore, a representative of PPA "sat in" on the interview, thereby seeking to intimidate
6 and distress Office A while being questioned as part of an official investigation which could
7 lead to disciplinary action.
8

9 18. On or about August 5, 2020, LVMPD corrections officer B was summoned to
10 appear and give a statement to the LVMPD internal affairs unit as a witness regarding a
11 potential disciplinary matter. Officer B's retained legal counsel through his membership in
12 NAPSO, met him at internal affairs and represented his interests. Before internal affairs
13 allowed the interview to begin, Officer B was questioned regarding the nature of the
14 confidential relationship between himself and retained legal counsel, including questions as to
15 how much he was paying counsel and other matters which intruded into the attorney-client
16 relationship. Furthermore, a representative of PPA "sat in" on the interview, seeking to
17 intimidate and disturb Officer B while he was being questioned during an official investigation.

18 19. On or about September 10, 2020, LVMPD corrections correctional officer C
19 was summoned to appear and give a statement to the LVMPD internal affairs unit IA as a
20 witness regarding a potential disciplinary matter. Officer C's retained legal counsel through his
21 membership in NAPSO, met him at internal affairs and represented his interests. Before
22 internal affairs IA allowed the interview to begin, Officer C was questioned regarding the
23 nature of the confidential relationship between himself and retained legal counsel, including
24 questions as to how much he was paying counsel and other matters which intruded into the
25 attorney-client relationship. Furthermore, a representative of PPA "sat in" on the interview,
26 seeking to intimidate and disturb Officer C while he was being questioned during an official
27 investigation. Following the interview, upon information and belief, PPA filed a frivolous and
28 unfounded internal affairs complaint against Officer C due to his use of his retained legal

1 counsel. That illegitimacy of the complaint was brought to the attention of PPA, yet PPA
2 insisted on pursuing the internal affairs complaint in order to place a chilling affect upon other
3 LVMPD officers who would seek to become members of NAPSO.

4 20. On or about October 14, 2020, LVMPD corrections officer D was summoned to
5 provide a statement to the LVMPD internal affairs unit as part of a complaint she had asserted
6 against a co-worker for policy violations. Officer D's retained legal counsel through her
7 membership in NAPSO, met her at internal affairs and represented her interests during her
8 statement. Before Officer D was allowed to provide her statement, representatives of LVMPD
9 internal affairs began questioning her and her retained legal counsel regarding the nature of
10 their attorney/client relationship and whether Officer D was paying legal counsel to represent
11 her. Representative of LVMPD's human resources division involved themselves in the
12 process, and engaged in direct questioning of Officer D before she was allowed to provide her
13 statement. Representatives of PPA "sat in" on the interview and even attempted to ask Officer
14 D questions which legal counsel did not permit.

15 21. On or about November 25, 2020 corrections officers E and F were summoned to
16 an interview with the LVMPD internal affairs unit in order to respond to the allegations raised
17 by another officer. Officers E and F's retained legal counsel through their membership in
18 NAPSO and counsel was prepared to represent their interests. Prior to the interview, LVMPD
19 internal affairs modified its employee notification of internal investigation form to explicitly
20 advised Officers E and F that "while you are entitled to two (2) representatives of your
21 choosing, the representatives cannot be an agent or employee of a rival employee organization
22 serving in that capacity." Further, the notice stated that in addition to the internal affairs
23 investigators, a "PPA representative" would also be attending the interviews.

24 22. Prior to the interview date, counsel for Officers E and F spoke with Jamie Frost,
25 the Labor Relations counsel for LVMPD regarding various "preliminary" discussions that
26 would take place before the interview proceeded. Ms. Frost advised counsel that LVMPD and
27 its internal affairs unit would require that the witnesses describe the nature of the attorney/client
28

1 relationship between themselves and assigned counsel, discuss the nature of payment or
2 financial agreements between the witnesses and counsel, and perhaps delve into other issues
3 protected by the attorney-client privilege. Counsel advised Ms. Frost that he would instruct the
4 corrections officers not to answer questions that would invade the attorney client privilege, and
5 that the matter had evolved to the point where intervention through this Board would be
6 necessary. Accordingly, the interviews were cancelled pending the filing of this action.

7 **FIRST CAUSE OF ACTION**

8 **(Prohibited and Unfair Labor Practices Against LVMPD and PPA)**

9
10 23. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
11 23 above, as though fully set forth herein and hereby incorporates the same by this reference.

12 24. LVMPD and PPA are in continuing violation of Nevada statutory law regarding
13 rights afforded to peace officers pursuant to NRS 289. LVMPD and PPA are in further
14 violation of the intent of this Board's order in Item No. 865 regarding rights of representation
15 due to sworn peace officers. LVMPD's and PPA's conduct in interfering, intruding into the
16 attorney-client relationship, impeding and intimidating its employees during compelled
17 investigatory interviews with the internal affairs division and other units within LVMPD is a
18 violation of state law.

19 25. LVMPD's and PPA's conduct in engaging in a concerted pattern of conduct
20 designed to ignore contractual rights, rights imposed by state law, juridical orders and orders of
21 the EMRB for the express purpose of interfering in the contractual relationship between
22 NAPSO and its clients are in violation of state law.

23 **SECOND CAUSE OF ACTION**

24 **(Intentional interference with the contractual relations against LVMPD and PPA)**

25 26. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
26 26 above, as though fully set forth herein and hereby incorporates the same by this reference.

27 //

28 //

27. NAPSO and its approximate 1,500 members have a valid contractual relationship regarding rights of representation and advice and consulting, including assignment of legal representation through private legal counsel as required.

28. LVMPD and PPA were aware of the contractual relationship between NAPSO and its members.

29. LVMPD and PPA are engaged in intentional conduct intended to or designed to disrupt NAPSOC's contractual relationship with its members.

30. LVMPD and PPA knew, or were substantially certain, that their actions would interfere with NAPSO's contractual relationship to its members.

31. LVMPD and PPA have no privilege or justification for their action.

32. As a result of LVMPD's and PPA's actions, NAPSO's contractual relationship with its members, and accordingly, the ability of it to provide representation to its members during official and/or coerced investigatory proceedings was disrupted, and resulted in violations of the individual member's rights under NRS 289.

33. PPA's conduct of insisting in "sitting in" during official investigative proceedings, and LVMPD's acceptance of such conduct, where no representative of PPA has been invited to nor requested to represent the impacted officer, further results in damage to the contractual relationship between NAPS0 and its members, as well as engaging in conduct designed to coerce, interfere, intimidate and harass NAPS0's members.

34. NAPS0 has been required to retain the services of an attorney to pursue this action and is entitled to recover attorney's fees and costs incurred.

THIRD CAUSE OF ACTION

(Conspiracy Against All Defendants)

35. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 35 above, as though fully set forth herein and hereby incorporates the same by this reference.

36. Upon information and belief and at all times mentioned herein, Defendants LVMPD and PPA, and each of them, maliciously conspired and colluded together to commit

1 the acts set forth above, including but not limited to, coordinating efforts to harass individual
2 officers who were compelled and/or opting to utilize LVMPD's policies and procedures to
3 either respond to or initiate statements of complaint in other matters. Many of the involved
4 officers were facing significant disciplinary action based upon the results of their investigation
5 but were nonetheless put into positions of a hostile environment during the internal affairs and
6 other investigative processes as result of the concerted action of Defendants.

7
8 37. Defendants maliciously conspired together to undermine NAPSO's relationship
9 with its members, and otherwise diminish, denigrate, and defame NAPSO in the eyes of its
10 members by publishing false and misleading information, with the consent and acquiescence of
11 LVMPD and PPA, to achieve these means.

12 38. Defendants actions of conspiracy were malicious and intended to harm and
13 injure NAPSO and its individual members.

14 39. As a direct and proximate result of these actions, Plaintiffs have been damaged
15 in an amount to be more specifically determined at the time of trial.

16 **FOURTH CAUSE OF ACTION**

17 **(Injunctive Relief)**

18 40. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
19 39 above, as though fully set forth herein and hereby incorporates the same by this reference.

20 41. Defendants' conduct in summarily violating Nevada and judicial laws regarding
21 Plaintiff's members' rights of representation mandates that Plaintiff association is entitled to
22 injunctive relief to prevent the above-described irreparable harm.

23 42. Defendants' illicit conduct has caused and will continue to cause irreparable
24 harm to Plaintiff association and its membership to be provided with the rights, compensations
25 and guarantees provided under the terms of their agreement and Nevada law..

26 43. Plaintiff association enjoys a likelihood of success on the merits of its claims
27 again Defendants in accordance with NRS 33.010.

28 44. The balance of any hardships on the parties clearly favors Plaintiff association.

1 45. An injunction against Defendants is legally and factually warranted and
2 necessary to enjoin Defendants from: (a) continuing to violate Nevada statutes by refusing to
3 provide Plaintiff association with basic rights to which it is entitled such as the ability to
4 represent its members.

5 46. Plaintiff association is suffering and will continue to suffer irreparable harm and
6 injury from Defendants' actions for which there is no adequate remedy at law unless and until
7 Defendants are ordered to comply with the terms of Nevada law.

8 47. Plaintiff association has been damaged in an amount in excess of \$10,000.

9 48. It has been necessary for Plaintiff to obtain the services of Clark Hill PLLC to
10 prosecute this action, and Plaintiff is entitled to an award of its reasonable attorneys' fees and
11 costs.
12

13 FIFTH CAUSE OF ACTION

14 (Declaratory Relief)

15 49. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
16 48 above, as though fully set forth herein and hereby incorporates the same by this reference.

17 50. An actual controversy exists between Defendants and Plaintiff association as to
18 the nature and extent and corresponding obligations, duties and responsibilities one to another.

19 51. All of the rights and obligations of the parties hereto arose out of what is
20 actually one subject interpretation of Nevada law, all of which can be settled and determined in
21 a judgment in this one action.

22 52. A declaration of the rights, duties, and responsibilities and obligations between
23 Plaintiff association and Defendants regarding their legal relationship is a judiciable
24 controversy of adverse legal interests which is ripe for review and declaration by this honorable
25 Court.

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1 53. Plaintiff association requests that this honorable court declare the nature and
2 extent of the parties' legal relationship as follows: (a) that Plaintiff association and Defendants
3 are subject to Nevada state law, which requires Defendants to allow Plaintiff association to
4 effectively represent its members; (b) that Defendants unilaterally and illicitly violate Nevada
5 law on a continuous basis.

6 WHEREFORE, the Complaints respectfully prays as follows:

7 1. For an Order immediately restraining and enjoining Defendants from further
8 violation of NRS 288, 289 or other provisions of Nevada law.

9 2. An Order mandating that LVMPD cease and desist from any further efforts to
10 prohibit or interfere with the rights of LVMPD officers to appear and attend at compelled
11 investigatory proceedings with legal counsel of their choice;

12 3. For an Order mandating that representatives of PPA cease and desist from
13 further efforts to intimidate and harass NAPSOS's members, and further be ordered to refrain
14 from "sitting in" during official investigative proceedings where their representation has not
15 been requested by the involved officer;

16 4. For a finding that LVMPD and PPA have conspired and colluded with each
17 other in an effort to damage NAPSOS's reputation and standing in the community as well as
18 impact its ability to provide appropriate services under its contracts with its membership,
19 including multiple LVMPD officers;

20 5. For a declaration that the contents of the Order in Item No. 865 regarding
21 representation at disciplinary and other official investigative proceedings does not allow any
22 "exclusive bargaining representative" to interfere with, restrain or prohibit involved officers
23 from appearing with legal counsel of their choice even if legal counsel provides work or
24 services to the "competing union" among other multiple clients;

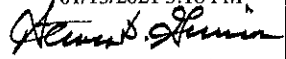
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27 //

- DATED this 28 day of December, 2020.

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CLERK OF THE COURT

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21 *Nevada Association of Public Safety Officers*

22
23 **DISTRICT COURT**
24 **CLARK COUNTY, NEVADA**

25 NEVADA ASSOCIATION OF PUBLIC
26 SAFETY OFFICERS, a Nevada Non-Profit
27 Corporation and Local Government Employee
28 Organization, and Their Named and Unnamed
Affected Members,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; LAS VEGAS POLICE
PROTECTIVE ASSOCIATION

Defendants.

Case No.: A-20-827022-C
Dept. No.: 3

**EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY
INJUNCTION ON ORDER SHORTENING
TIME**

Hearing Date:

Hearing Time:


Plaintiff NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS, a Local Government Employee Organization, and its Named and Unnamed Affected Members (hereinafter "NAPSO"), by and through its counsel of record Nicholas M. Wieczorek of the law firm of Clark Hill PLLC, hereby moves this Court for a Temporary Restraining Order and Preliminary Injunction pursuant to NRS 33.010 to enjoin Defendants Las Vegas Metropolitan Police Department

1 ("LVMPD") and Las Vegas Police Protective Association ("PPA") from violating NRS Chapters
2 288 and 289 by disallowing private counsel to be present during administrative disciplinary
3 meetings.

4 This Application is made and based upon the Memorandum of Points and Authorities set
5 forth herein, the papers and pleadings on file, the Affidavit of Nicholas M. Wieczorek and such
6 oral argument as the Court may entertain at the hearing on this matter.

7 DATED this 4 day of January, 2021.

8 **CLARK HILL PLLC**

9
10 
NICHOLAS M. WIECZOREK, ESQ.

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Attorney for Plaintiff

Nevada Association of Public Safety Officers

21 **AFFIDAVIT OF NICHOLAS M. WIECZOREK**
22 **IN SUPPORT OF ORDER SHORTENING TIME**

23 STATE OF NEVADA

24 COUNTY OF CLARK

25 NICHOLAS M. WIECZOREK, being first duly sworn deposes and states as follows:

26 1. Affiant is an attorney duly licensed to practice law in the State of Nevada and
27 maintains offices at 3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169. Affiant
28 represents NAPSO in this matter and is familiar with the papers and pleadings on file herein.

1 2. Pursuant to NRS Chapters 288 and 289.080, NAPS0 members have a right to legal
2 counsel for administrative hearings relating to official investigations and interrogations.

3 3. The Government Employee Management Relations board issued an Order
4 concluding that designated exclusive bargaining representatives are entitled to maintain exclusive
5 rights to represent all employees within the bargaining unit. Further, the Order concluded that an
6 attorney who is retained by the employee to act as his representative must be allowed to represent
7 the employee.

8 4. In particular, the order, Item No. 865 dated June 17, 2020, concluded that with
9 respect to administrative investigations conducted pursuant to NRS 289, implicating the rights of
10 peace officers, "an attorney who is retained by the employee to act as his representative in such a
11 proceeding should be allowed to represent the employee, even if the attorney also represents a rival
12 employee or organization." This statement is in deference to and reflective of the provisions of
13 NRS 289.080 which provides that a peace officer "may upon request have two representatives of
14 the peace officer's choosing present with the peace officer during any phase of an interrogation or
15 hearing relating to the investigation, including, with limitation, a lawyer, a representative of a labor
16 union or another peace officer."

17 5. Since the issuance of the EMRB Order, representatives of the Las Vegas
18 Metropolitan Police Department (LVMPD) and its employee union Police Protective Association
19 (PPA) have on multiple occasions either disrupted representation at compelled interviews with
20 LVMPD officers, or insisted upon inquiring into areas protected by the attorney-client and work
21 product privileges. As detailed in this Application and in the civil suit filed contemporaneously,
22 on multiple occasions over the past several months representatives of the union and LVMPD's
23 human resource and other administrative employees demanded that NAPS0 members answer
24 questions regarding legal representation, clearly in violation of attorney-client privileges.

25 6. On December 15, 2020, I attended an internal affairs interview with a NAPS0
26 member who was compelled to attend as a witness to an EEO-type complaint. At the
27 commencement of the interview, representatives of the Internal Affairs unit indicated that they
28 would not permit the interview to proceed unless the member answered questions regarding the

1 legal representation entered into between the member and myself, including issues regarding fee
2 payments and other communications and/or discussions between myself and the member which
3 were clearly violative of the attorney-client privilege. As I had done on previous occasions, I
4 advised Internal Affairs that for purposes of the interview, I was the member's attorney, acting in
5 that capacity, and I was neither an agent or employee of NAPSO. Nevertheless, the member of the
6 PPA who was "sitting in" on the interview objected to proceeding and IA acquiesced to PPA's
7 demand.

8 7. After the interview was cancelled, Jamie Frost, Human Resource representative for
9 LVMPD, told me that the officer member would be re-noticed to attend another interview,
10 potentially as early as the week of December 21, 2020 and would be compelled to answer questions
11 outside of my presence. I was further told that I would not be permitted to attend the interview
12 with the officer as his designated representative and he would need to find other representation. I
13 am informed and believe that multiple other NAPSO members have similarly been summoned into
14 interviews and either compelled or coerced to provide statements without legal assistance through
15 their membership in NAPSO.

16 8. The PPA and LVMPD have prohibited counsel from being present for NAPSO
17 member during investigative interviews.

18 9. On other coerced interrogations, before Internal Affairs allowed interviews to begin,
19 several individual NAPSO-member Officers were questioned as to how much they were paying
20 counsel, the nature of the retention and other matters which intruded into the attorney-client
21 relationship.

22 10. In certain matters, frivolous Complaints were filed against individual NAPSO
23 member officers due to their use of retained legal counsel.

24 11. Interviews of several individual NAPSO Officers are currently scheduled to proceed
25 without legal representation allowed to be present.

26 12. In the absence of prompt judicial intervention, Plaintiff NAPSO and its members
27 will suffer great and irreparable damage.

28 13. The relief requested might not be obtainable if this motion were heard under the

1 normal course pursuant to EDCR 2.20.

2 14. This Affiant hereby affirms under penalty of perjury that the contents of this
3 Affidavit are true and correct.

4 FURTHER SAYETH NAUGHT.

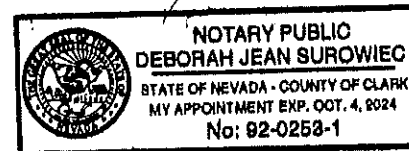
5 DATED this 4 day of January, 2021.

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NICHOLAS M. WIECZOREK

Subscribed and Sworn to before me

This 4 day of ~~December, 2020~~
January, 2021.

Deborah Jean Surowiec
Notary Public in and For Aforementioned
County and State



14 **MEMORANDUM OF POINTS AND AUTHORITIES**
15 **IN SUPPORT OF ORDER SHORTENING TIME**

16 The Rules of Practice for the Eighth Judicial District Court of the State of Nevada, Rule
17 2.26 provides in pertinent part as follows:

18 **Shortening time.** Ex parte motions to shorten time may not be granted except
19 upon an unsworn declaration under penalty of perjury or affidavit of counsel or a
20 self-represented litigant describing the circumstances claimed to constitute good
21 cause and justify shortening of time. If a motion to shorten time is granted, it must
22 be served upon all parties promptly. An order that shortens the notice of a hearing
23 to less than 14 days may not be served by mail. In no event may the notice of the
24 hearing of a motion be shortened to less than 1 day.

25 EDCR 2.26.

26 //

27 //

28 //


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1 As is demonstrated with the foregoing Affidavit of Nicholas M. Wieczorek, Esq., good
2 cause exists which justifies the shortening of time concerning the hearing of the attached
3 Application For Temporary Restraining Order And Motion for Preliminary Injunction.

4 DATED this 7 day of January, 2021.

5 **CLARK HILL PLLC**

6 
7 **NICHOLAS M. WIECZOREK, ESQ.**

8 Nevada Bar No. 6170

9 NWieczorek@ClarkHill.com

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23 Facsimile: (702) 862-8400

24 NWieczorek@ClarkHill.com

25 *Attorney for Plaintiff NAPSO*

26 **ORDER SHORTENING TIME**

27 Upon the Affidavit of Nicholas M. Wieczorek, Esq., and good cause appearing therefore:

28 **IT IS HEREBY ORDERED** that the hearing on the above APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION on Order
Shortening Time may be shortening to 3 ~~a.m.~~ ^{p.} on the 21st day of January, 2021 in
Department 3 of the above-entitled Court.

//

This Motion and OST must be served by 5:00 p.m. January 14, 2021 with
the courtesy copy e-mailed to counsel.

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1 Any opposition to this Application shall be filed and served before 5:00 p.m. on January
2 19, 2021. ~~Any reply shall be filed and served before 5:00 p.m. on January _____, 2021.~~

3 DATED this _____ day of _____, 2021. ~~Dated this 13th day of January, 2021~~

4 
5 DISTRICT COURT JUDGE

6 849 858 ACAA DF07
7 Monica Trujillo
8 ~~District Court Judge~~
9 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION**
10 **FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

11 **I. Statement of Relevant Facts**

12 NAPS0 is a professional association with approximately 1,500 members throughout the
13 State of Nevada consisting primarily of law enforcement officers and other local employees who
14 enjoy the benefits of the protection of NRS 289 and other statutory rights. NAPS0's vast majority
15 of members is comprised of Category 1 law enforcement officers along with other state and local
16 employees. As member representatives, NAPS0 assists a vast array of state and local law
17 enforcement agencies, including among many the City of Henderson Police Officers Association,
18 City of Henderson Police Supervisors Association, Nevada Highway Patrol, Nevada Parole and
19 Probation, various other Clark County law enforcement associations, City of Elko Police Officers
20 Association, City of Winnemucca Police Officers Association, and Pershing County Deputy
21 Sheriff's Association. Additionally, among its members are nearly 200 individual peace officers
22 employed by Las Vegas Metropolitan Police Department. The members of NAPS0 entered into an
23 agreement with the Association for it to provide legal defense to members as part of the benefits of
24 membership for representation at various internal affairs, pre-disciplinary, pre-termination,
25 disciplinary arbitration hearings, critical incidents, and labor/management board hearings. For at
26 least 10 years, counsel for Plaintiff has attended various meetings, hearings and investigatory
27 inquiries on behalf of, or in attendance with, NAPS0 members.

28 On or around June 17, 2020, the Government Employee Management Relations Board
("EMRB") issued an Order concerning a Petition for Declaratory Order filed by the Nevada
Highway Patrol Association seeking clarification of the Board's position on rights of representation

1 pursuant to NRS Chapters 288 and 289. The Board's Order concluded that the designated exclusive
2 bargaining representative was entitled to maintain exclusive right to represent all employees within
3 the bargaining unit with various exceptions including an individual employee's right to
4 representation by private legal counsel. *See* Order, attached hereto as **Exhibit 1**. More specifically,
5 the Board concluded that an attorney who is retained by the employee to act as his representative
6 must be allowed to represent the employee, even if the attorney also represents a rival organization
7 in other matters. *Id.*

8 Before, and more importantly after the Board issued its Order, representatives of LVMPD's
9 Internal Affairs division began questioning officers regarding matters specifically violative of the
10 attorney-client privilege between the member and its legal counsel. Additionally, representatives
11 of PPA "sit in" on the interviews seeking to intimate and distress officers while they are being
12 questioned as part of an official investigation which could lead to disciplinary action. Furthermore,
13 most recently, when counsel appeared to represent a member in an investigatory interview, after
14 asserting an objection to questions regarding how much the member pays legal counsel and other
15 questions violative of the attorney-client privilege, counsel was told to leave and that he could not
16 be there.

17 Specifically, on or about July 13, 2020, a LVMPD corrections officer¹ who was not a
18 member of the PPA requested legal representation as part of his order to appear at a subject
19 interview regarding possible violation of policy. Through his membership in NAPSO, legal counsel
20 was retained to attend an internal affairs meeting with him. Prior to the interview taking place,
21 representatives of LVMPD's internal affairs unit began questioning the officer regarding his
22 affiliation with competing unions, asked him to verbally confirm he was not part of such and
23 questioned into areas protected by attorney-client privilege.

24 On or about August 5, 2020, another LVMPD corrections officer was summoned to appear
25 and give a statement to the LVMPD Internal Affairs unit as a witness regarding a potential

26 ¹ For the purposes of the following statements of fact, the personal identities of the named
27 members of the complainant organization have been anonymized due to their sensitive positions
28 as active law enforcement officers and to avoid placing them at risk for their current employment
positions and personal safety.

1 disciplinary matter. The officer similarly retained counsel through his membership in NAPS0 and
2 counsel met him at Internal Affairs and represented his interests. Again, prior to conducting the
3 interview, the officer was questioned regarding the nature of the confidential relationship between
4 himself and retained legal counsel, including questioning him as to how much he was paying
5 counsel and other areas which intruded into the attorney-client relationship. Again, a PPA
6 representative was present to "sit in," thereby seeking to intimidate and distress the officer while
7 being questioned as part of an official investigation.

8 On or about September 10, 2020, a LVMPD corrections officer was summoned to appear
9 and give a statement to the LVMPD internal affairs unit as a witness regarding a potential
10 disciplinary matter. Similarly, while being represented by retained legal counsel through his
11 membership in NAPS0, the officer was questioned regarding the nature of the confidential
12 relationship between himself and retained counsel, including how much he was paying counsel and
13 other matters which intruded into the attorney-client relationship. Again, a PPA representative sat
14 in on the interview. Upon information and belief, following the interview, in an attempt to punish
15 and/or retaliate against the officer, the PPA filed a frivolous internal affairs lack of candor
16 complaint against the officer due to his use of retained legal counsel.

17 On or about October 14, 2020, the exact situation described above occurred regarding
18 another LVMPD corrections officer who was summoned to provide a statement as part of a
19 complaint she had asserted against a co-worker for policy violations. Furthermore, before the
20 officer was allowed to provide her statement, representatives of LVMPD Internal Affairs began
21 questioning her and her retained counsel regarding the nature of their attorney-client relationship.
22 Representative of LVMPD's human resources division involved themselves in the process and
23 engaged in direct questioning of the officer before she was even allowed to provide her statement.

24 On or about November 25, 2020, two corrections officers were summoned to an interview
25 at LVMPD Internal Affairs in order to respond to allegations raised by another officer. These
26 officers likewise engaged retained legal counsel through their membership in NAPS0. Prior to the
27 interview, LVMPD Internal Affairs modified its employee notification of internal investigation
28 form to explicitly advise the officers that, while they are entitled to two representatives of their

1 choosing, the representatives could not be an agent or employee of a rival employee organization
2 serving in that capacity. Additionally, the notice stated that in addition to the Internal Affairs
3 investigators, a PPA representative would also be attending the interviews. Prior to this interview
4 date, counsel for the two officers spoke with Jamie Frost, the Labor Relations counsel for LVMPD,
5 regarding various preliminary discussions that would take place before the interview proceeded.
6 Frost advised that LVMPD and its Internal Affairs unit would require that the witnesses describe
7 the nature of the attorney-client relationship between themselves and assigned counsel, discuss the
8 nature of the payment or financial agreements between the witnesses and counsel, and perhaps
9 delve into other issues protected by the attorney-client privilege. Counsel advised Frost that he
10 would instruct the corrections officers not to answer questions that would invade the attorney-client
11 privilege.

12 Finally, on December 15, 2020, legal counsel for a NAPS member was advised that
13 neither LVMPD nor the PPA would allow legal counsel, a privately retained attorney for the
14 member, to represent the member's interests unless the member was prepared to reveal confidential
15 communications between himself and the attorney, including issues regarding compensation, the
16 nature of the attorney-client relationship, the nature of any retainer agreements between the client
17 and the scope of the legal relationship. Counsel advised that the interview could not proceed under
18 those circumstances, and counsel was advised that LVMPD intended to begin summoning and
19 compelling officers to appear for future interviews without the assistance of legal counsel, and
20 barring legal counsel retained for the member's representation from appearing with the member
21 during coercive questioning.

22 Plaintiff has filed contemporaneously with this Application a Complaint in this Court and
23 also intends to file an administrative Complaint before the Government Employee-Management
24 Relations Board for matters within its jurisdiction regarding the above facts and Defendants'
25 deprivation of Plaintiff's and its members' rights guaranteed pursuant to Nevada Revised Statutes
26 Chapters 288 and 289. However, this temporary restraining order and injunction is necessary,
27 demonstrated as follows:
28

1 **II. LVMPD and the PPA Must Be Enjoined From Depriving NAPSO's Members of**
2 **Rights to Legal Representation Guaranteed Under NRS Chapters 288 and 289.**

3 This Honorable Court must issue a temporary restraining order to enjoin Defendants'
4 continuing blatant violations of Nevada Revised Statutes Chapters 288 and 289. A Temporary
5 Restraining Order is an order granting injunctive relief issued on an emergency basis, valid for a
6 limited period of time – until the court can hear the matter at a Motion for Preliminary Injunction.
7 *Nevada Civil Practice Manual*, Section 28.02 (5th Ed. Rev. 2006). The purpose of a Temporary
8 Restraining Order is to prevent harm temporarily until the parties can be heard on a Motion for
9 Preliminary Injunction. *Id.* The Applicant must demonstrate that irreparable injury will occur
10 before the hearing and must demonstrate a reasonable probability of success on the merits. *Id.*

11 Well-established Nevada law requires the issuance of a preliminary injunction under the
12 facts of this case. The Nevada Supreme Court has summarized the application of NRS 33.010,
13 Nevada's statute governing when injunctive relief should be granted, as follows:

14 A preliminary injunction is available if an applicant can show a
15 likelihood of success on the merits and a reasonable probability that
16 the non-moving party's conduct, if allowed to continue, will cause
17 irreparable harm for which compensatory damages is an inadequate
remedy. The decision whether to grant a preliminary injunction is
within the sound discretion of the district court, whose decision will
not be disturbed on appeal absent an abuse of discretion. (Citations
omitted.)

18 *Dangberg Holdings v. Douglas County*, 115 Nev. 129, 142, 978 P.2d 311 (1999). *See also*, NRS
19 33.010.1 and NRS 33.010.2.

20 NRS 33.010 provides as follows:

21 An injunction may be granted in the following cases:

- 22 1. When it shall appear by the complaint that the plaintiff is entitled
23 to the relief demanded, and such relief or any part thereof consists
24 in restraining the commission or continuance of the act complained
of either for a limited period or perpetually.
- 25 2. When it shall appear by the complaint or affidavit that the
26 commission or continuance of some act, during the litigation, would
produce great or irreparable injury to the plaintiff.
- 27 3. When it shall appear, during the litigation, that the defendant is
28 doing or threatens or is about to do, or is procuring or suffering to
be done, some act in violation of the plaintiff's rights respecting the

1 subject of the action, and tending to render the judgment ineffectual.

2 Nevada Rule of Civil Procedure 65 sets forth the requirements for obtaining a preliminary
3 injunction. In pertinent part, NRCP 65 states:

4 Every order granting an injunction and every restraining order shall
5 set forth the terms for its issuance, shall be specific in terms, shall
6 describe in reasonable detail and not by reference to the complaint
7 or other document the act or acts sought to be restrained and is
8 binding only upon the parties to the action, their officers, agents,
servants, employees and attorneys and upon those persons in active
concert or participation with them who receive actually notice of the
order by personal service or otherwise.

9 While no precise test exists for the determination of the propriety of a preliminary
10 injunction, the Nevada Supreme Court has articulated the following four factors as appropriate
11 considerations.

- 12 1. The threat of irreparable harm;
- 13 2. The likelihood that the party seeking a preliminary
14 injunction will be successful on the merits of the underlying
action;
- 15 3. Whether the balance of interests weighs in favor of the party
seeking the preliminary injunction; and
- 16 4. Whether the issuance of the preliminary injunction is in the
17 public's interest.

18 *Clark County School District v. Buchanan*, 112 Nev. 1146, 924 P.2d 716 (1996).

19 As demonstrated below, and in the attached Affidavit of Nicholas M. Wieczorek, the
20 Defendants' conduct is causing NAPSO's affected members irreparable injury and there is a
21 heightened probability that NAPSO will succeed on the merits of its claims against Defendant.
22 Indeed, all four of the *Buchanan* factors support the issuance of a temporary restraining order and
23 preliminary injunction in this matter.

24 **a. Defendant's Conduct Is Causing Irreparable Harm to NAPSO Members.**

25 The Defendants' are in clear violation of Nevada law by either disallowing NAPSO
26 members from utilizing private counsel to attend hearings and other judicatory matters which could
27 result in disciplinary action against the member officer, or by discriminating against member
28

1 officers on account of their membership in the employee organization. Defendants' conduct is in
2 violation of NAPSO members' individual rights under NRS Chapters 288 and 289. The Local
3 Government Employee Management Relations Act was adopted by the Legislature of the State of
4 Nevada in 1969 and is now embodied in NRS Chapter 288, the relevant sections of which provide
5 as follows:

6 NRS 288.140 provides in relevant part as follows:

7 "1. It is the right of every local government employee, subject to the
8 limitation provided in subsection 3, to join any employee organization
9 of his choice or to refrain from joining any employee organization. *A*
10 *local government employer shall not discriminate in any way among*
its employees on account of membership or non-membership in an
employee organization." (Emphasis added).

11 NRS 288.270.1 provides in relevant part as follows:

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

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

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

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

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

22 (f) *Discriminate because of race, color, religion, sex, age, physical*
23 *or visual handicap, national origin or because of political or personal*
24 *reasons or affiliations."* (Emphasis added).

25 NRS 288.270.2 provides in relevant part as follows:

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

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

1 (c) Discrimination because of race, color, religion, sex, sexual
2 orientation, gender identity or expression, age, physical or visual
3 handicap, national origin or because of political or personal reasons or
affiliations.

4 In this case, the Defendants' violation of Plaintiffs' members' rights in representation by
5 legal counsel has and will continue to result in permanent and irreparable injury to the affected
6 members of NAPSO if a temporary restraining order and preliminary injunction are not issued
7 immediately. Based on counsel's most recent attendance at an interview in which, ultimately,
8 counsel was asked to leave, illustrates a detrimental outcome to the pattern already established by
9 LVMPD Internal Affairs and the PPA. In certain circumstances, the PPA has filed complaints
10 against officers due to NAPSO members exercising their right to independent legal counsel.
11 Defendants' derogation of applicable law not only violates NAPSO members' rights to be
12 represented at adjudicatory proceedings which could result in discipline, including ultimate
13 termination, but it also constitutes discrimination against employees who choose to encourage
14 membership in any employee organization, or in other words, on account of membership or non-
15 membership in an employee organization. By contrast, Defendants will suffer no adverse
16 consequences from a Court Order which requires them to cease their illegal conduct. Based upon
17 the consistent and recent pattern by Defendants, even after the Government Employee Management
18 Relations Board issued an Order specifically concluding that an attorney who is retained by the
19 employee to act as his representative must be allowed to represent the employee, immediate action
20 is required by this Honorable Court to enjoin the Defendants from any such further conduct.

21 **b. NAPSO Is Likely to Succeed on the Merits of its Case.**

22 A preliminary injunction is available upon a showing that the party seeking the injunctive
23 relief enjoys a "reasonable probability" of success on the merits. *Christensen v. Chromalloy*
24 *American Corp.*, 99 Nev. 34, 656 P.2d 844 (1983); *Republic Entertainment, Inc. v. Clark County*
25 *Liquor & Gaming Licensing Board*, 99 Nev. 811, 672 P.2d 634 (1983); *Number One Rent-A-Car*
26 *v. Ramada Inns, Inc.*, 94 Nev. 779, 587 P.2d 1329 (1978); *Dixon vs. Thatcher*, 103 Nev. 414, 742
27 P.2d 1029 (1987).

28 //

1 NAPSO's Complaint, filed concurrently herewith is in response to the Defendants' knowing
2 and purposeful violation of Nevada law. In addition to its requests for injunctive and declaratory
3 relief, NAPSO alleges claims for prohibited and unfair labor practices, intentional interference with
4 contractual relations, and civil conspiracy. A preliminary injunction is appropriate because NAPSO
5 is likely to succeed on the merits of each of these claims.

6 The Board's order of June 17, 2020 did not sufficiently respect existing Nevada law, and
7 attempts to thread an administrative needle by purporting to harmonize competing statutes which,
8 invariably, do not lend themselves to administrative harmony. Indeed, in its very order the Board
9 essentially undermined its own authority to issue the decision which it did, by overtly
10 acknowledging that it has no ability to interpret or interpose interpretations of Nevada's Peace
11 Officers Bill of Rights:

13 "The Board's authority is limited to matters arising out of the interpretation of, or
14 performance under, the provisions of the EMRA. NRS 288.110(2). The Board does
15 not have the jurisdiction to find a violation of NRS Chapter 289 or to rule that no
16 rival employee organization may purport to represent any employee surrounding
issues covered under NRS Chapter 289. This is expressly beyond the Board's
jurisdiction, which is well established." (June 17, 2020 Order, p.3:4-8).

17 After acknowledging its lack of jurisdiction to interpret NRS 289 and its protections to law
18 enforcement officers, the Board proceeded to move forward and interpret NRS 289:

19 "The Board simply notes that, as further detailed below, NRS Chapter 289 does not
20 appear in conflict with Chapter 288 and can be read to render a harmonious result."

21 In somewhat astounding fashion, the EMRB acknowledged on multiple occasions in its
22 opinion that it had no jurisdiction to interpret NRS 289 issues (which have nothing to do with
23 collective bargaining and everything to do with law enforcement officers' disciplinary rights, civil
24 and criminal liability, and rights of representation and association), yet the Board summarily
25 concluded at the end of the opinion that there was a "harmonious" way to combine the NRS 288
26 and 289 issues together.
27
28

1 NRS 289.080 provides a comprehensive and long fought for set of "rights" provided to
2 peace officers involved in service to the public within Nevada. It is conceded and indeed obvious
3 that many if not the majority of all members of the LVMPD bargaining unit fall under the ambit
4 and protections of NRS 289. NRS 289 has undergone various revisions over time, the most recent
5 of which occurred during the 2019 legislative session when specific additional protections were
6 provided to peace officers involving, among other things, the review of and obtaining copies of
7 agency investigative files as part of underlying disciplinary proceedings (see NRS 289.080.4).

9 The salient provisions of NRS 289. 080 regarding rights of representation are set forth in
10 Subsection 1.:

11 " [A] peace officer who is the subject of an investigation conducted pursuant
12 to NRS 289.057 may upon request have two representatives of the peace officer's
13 choosing present with the peace officer during any phase of an interrogation or
14 hearing related to the investigation, including, without limitation, a lawyer, a
representative of a labor union or another peace officer." (Emphasis added.)

15 The provisions of NRS 289.080.1 are clear, explicit and mandatory. The reasons for these
16 broad and specific protections are clear and have been obvious since the original 1991 passage of
17 specific protective amendments to the statute. Peace officers occupy a unique position in society.
18 Their rights and privileges implicate both administrative jeopardy in terms of identified disciplinary
19 or performance-related investigations and inquiries, as well as potential criminal jeopardy arising
20 from their participation in on-duty "critical events" including officer involved shootings, traffic
21 accidents, confronting and detaining suspects in criminal enterprises, and exigent circumstances.
22 This is why the statute allows for up to two representatives to be present during investigative
23 proceedings, and allows that those representatives may be any person "of the peace officer's
24 choosing."
25

26 Many current NAPSO members are active LVMPD officers and have chosen to maintain
27 membership in NAPSO for purposes of non-bargaining matters. Many of these public safety
28

1 officers have ongoing and existing matters and are currently being represented by NAPSO, or they
2 specifically seek out the expertise of NAPSO and/or its preferred legal counsel to represent their
3 interests in complicated or legally fraught inquiries. Quite clearly, it was a derogation of the
4 Board's responsibilities to enforce existing Nevada law to essentially gut the provisions of NRS
5 289 without jurisdiction over that subject and allow other unions to dictate the time, place, manner
6 and sources of representation of public safety officers who are involved in official investigative or
7 grievance proceedings.
8

9 Accordingly, the Board's decision is contrary to prevailing law and factually suspect to the
10 extent that it purports to "harmonize" competing statutes which are incapable of such harmony
11 under the Board's analysis. METRO and PPA have heavy-handedly sought to exploit this conflict.
12 It is necessary and appropriate that the District Court intervene in this matter to maintain status quo
13 pending further examination by the EMRB.
14

15 **i. NAPSO Will Prevail on Its Claim for Civil Conspiracy and Prohibited**
16 **and Unfair Labor Practices**

17 To prevail on a civil conspiracy claim for relief, a plaintiff must show evidence that tends
18 to prove a combination of two or more persons who, by some concerted action, intend to accomplish
19 an unlawful objective for the purpose of harming another, with damage resulting from those acts.
20 *Collins v. Union Federal Savings and Loan*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983). "To
21 prevail in a civil conspiracy action, a plaintiff must prove an agreement between the tortfeasors,
22 whether explicit or tacit." *Eikelberger v. Tolotti*, 96 Nev. 525, 528 n.1 (1980).
23

24 In this case, NAPSO can and will adduce evidence to prove that agents and employees of
25 the Defendants maliciously conspired and colluded together to commit the acts set forth above,
26 including, but not limited to, coordinating efforts to harass individual officers who were compelled
27 and/or opting to utilize LVMPD's policies and procedures to either respond to or initiate statements
28 of complaint in other matters. Many of the involved officers were facing significant disciplinary
action based upon the results of these investigations, but were nonetheless put into positions of a

1 hostile environment during the Internal Affairs and other investigative processes as result of the
2 concerted action of Defendants. In addition, NAPSO can and will present evidence that at the time
3 Defendants engaged in depriving NAPSO members of their rights under NRS Chapters 288 and
4 289, Defendants knew or should have known that said conduct was not proper because it violated
5 Nevada law. NAPSO will prove that the Defendants' conduct has been harmful, causing extensive
6 and on-going damages to the affected members of NAPSO. Finally, NAPSO will succeed on its
7 prohibited and unfair labor practices claim in light of the blatant and purposeful violation of the
8 intent of the Board's Order regarding representation due to sworn peace officers.

9 **ii. NAPSO Will Prevail on Its Claim for Intentional Interference With**
10 **Contractual Relations**

11 "In an action for intentional interference with contractual relations, a plaintiff must
12 establish: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3)
13 intentional acts intended ... to disrupt the contractual relationship; (4) actual disruption of the
14 contract; and (5) resulting damage." *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264,
15 1267 (2003); *see also Sunridge Builders, Inc. v. Old Blue, LLC*, 129 Nev. 1155 (2013). Because
16 interference with contractual relations is an intentional tort, the plaintiff must demonstrate that the
17 defendant knew of the existing contract, or at a minimum, establish facts from which the existence
18 of the contract can reasonably be inferred. *J.J. Indus., LLC v. Bennett*, *supra*, 119 Nev. at 274.

19 Here, NAPSO and its approximate 1,500 members have a valid contractual relationship
20 regarding rights of representation and consulting, including assignment of legal representation
21 through private legal counsel as required. Not only were LVMPD and PPA aware of the contractual
22 relationship between NAPSO and its members, but they also engaged in intentional conduct
23 intended to or designed to disrupt NAPSO's relationship with its members. As a result of LVMPD's
24 and PPA's actions, NAPSO's contractual relationship with its members and the ability of it to
25 provide representation to its members during official and/or coerced investigatory proceedings has
26 been disrupted. Further, another resulting damage to the contractual relationship between NAPSO
27 and its members occurred when PPA (and thereafter LVMPD's acceptance of such) insisted on
28 "sitting in" during official investigative proceedings where no representative of PPA had been

1 invited nor requested to represent the impacted officer. This conduct was designed to coerce,
2 interfere, intimidate and harass NAPSO's members and to discourage potential future members
3 from joining. Defendants have no justification or privilege for their interfering conduct.
4 Accordingly, NAPSO is likely to succeed on the merits of this claim.

5 **c. The Balance of Interests Weigh in Favor of Granting NAPSO's Motion for**
6 **Preliminary Injunction Under the Circumstances.**

7 A consideration of the balance of the parties' relative interests favors issuance of injunctive
8 relief. NAPSO is entitled to the protection of this Honorable Court from egregious and continuing
9 deprivation of its rights under Nevada law by the Defendants. Pursuant to the recent pattern of
10 conduct in disallowing NAPSO members to utilize private legal counsel and discriminating against
11 members for engaging in employee memberships, it is clear Defendants intend to deprive NAPSO
12 and its members of their rights under Nevada law and of benefits it enjoys under contract. The
13 recent pattern also further suggest that Defendants will continue to seek to violate NAPSO
14 members' rights. In light of the Order issued by the Government Employee Management Relations
15 Board, Defendants have no grounds, legally or equitably, upon which to continue their wrongful
16 conduct. The balance of hardships unquestionably weighs in favor of NAPSO. This is especially
17 true in this case, where the issue is basic rights to legal counsel, as guaranteed by Nevada law and
18 the United States Constitution. The members of NAPSO have a right to rely on the benefits of their
19 contractual relationship for legal counsel to be appointed should the need arise, such as being
20 subject to an investigatory proceeding which could result in discipline. Quite literally, the
21 Defendants' unilateral stripping of rights and privileges under Nevada law is placing the careers
22 and financial positions of the members of NAPSO in a precarious position, literally leaving
23 members without representation that could end in immediate dismissal or even end in a retaliatory
24 complaint against them for attempting the use of representation.

25 On the other hand, Defendants will suffer no adverse consequences from a Court Order
26 which requires them to cease their wrongful conduct. Indeed, forcing Defendants to comply with
27 NRS Chapters 288 and 289 is not a legally cognizable harm. The effect of the injunction would
28 place the parties on a more even playing field as Defendants will no longer be able to unfairly take

1 advantage of and coerce and harass peace officers. Thus, the equities therefore too favor the
2 issuance of a temporary restraining order.

3 **d. The Public Interest**

4 The public interest in upholding the terms of the law where the law's terms are not vague
5 and ambiguous, a question of first impression or some other judicially recognized exception is
6 important. This case cries out for equitable and injunctive relief to hold the Defendants accountable
7 to NAPSOS members' contractual rights and rights guaranteed by Nevada law. Accordingly, these
8 public interest factors weigh heavily in favor of granting the preliminary injunction to enjoin
9 Defendants from any such further conduct to the deprivation of NAPSOS.

10 **III. A Temporary Restraining Order Should Issue Without Notice**

11 As set forth above, a plaintiff seeking a preliminary injunction must establish that he is
12 likely to succeed on the merits, he is likely to suffer irreparable harm in the absence of preliminary
13 relief, the balance of equities tips in his favor, and an injunction is in the public interest. *Winter v.*
14 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). As long as all four factors are addressed, an
15 injunction may issue where there are "serious questions going to the merits" and "a balance of
16 hardships that tips sharply towards the plaintiff." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
17 1127, 1135 (9th Cir. 2011).

18 As set forth in the Affidavit of Nicholas M. Wiczorek and the statement of relevant facts,
19 it is necessary for NAPSOS to petition this Court for a temporary restraining order ex parte as a
20 result of past retaliatory action taken by PPA and the potential future actions Defendants could
21 undertake if provided notice before the Court has the opportunity to rule on NAPSOS's motion for
22 preliminary injunction. Without the protection of injunctive relief, Defendants could further injure
23 NAPSOS and its members and representatives by effectuating undue discipline, including up to
24 termination.

25 **IV. Any Bond Required Should be De Minimis.**

26 NRCP 65(c) provides for the court to issue a "preliminary injunction or a temporary
27 restraining order only if the movant gives security in an amount that the court considers proper to
28 pay the costs and damages sustained by any party found to have been wrongfully enjoined or

1 restrained.” The express purpose of posting a security bond is to protect a party from damages
2 incurred as a result of wrongful injunction, not from damages existing before the injunction was
3 issued. *American Bonding Co. v. Roggen Enterprises*, 854 P.2d 868, 109 Nev. 588 (1993). A district
4 court, in its discretion, may provide for a bond in a lesser amount or may permit security other than
5 a bond, when unusual circumstances exist and so warrant. *McCulloch v. Jeakins*, 99 Nev. 122, 123,
6 659 P.2d 302, 202 (1983).

7 Should the Court issue a temporary restraining order, Plaintiff should only be required to
8 post a de minimis bond. First, the effectiveness of a temporary restraining order will only last until
9 a hearing can be set to determine whether a preliminary injunction should issue. During this brief
10 period of time, Defendants will not suffer any real or imaginable harm. Further, Defendants do not
11 have a judgment for damages against NAPSO; they will not lose any money or be harmed in any
12 way if the Court issues a preliminary injunction. Accordingly, Plaintiffs request that the Court allow
13 Plaintiffs to deposit a nominal bond of \$100.00 with the Clerk of the Court as security for the
14 requested injunction given that the injunction simply enjoins Defendants from unlawfully denying
15 NAPSO’s members of their right to legal representation.

16 **V. Conclusion**

17 In accordance with the foregoing, NAPSO requests an Order from this Honorable Court
18 granting NAPSO’s request for temporary restraining order to prevent Defendants from further
19 violating NAPSO’s rights pursuant to Chapters 288 and 298 of the Nevada Revised Statutes.

20 NAPSO respectfully requests that this Honorable Court act with haste and immediacy to
21 restraining Defendants from any further such deprivation of the rights of its membership, as well
22 as the alacrity necessary to bring this matter to a hearing wherein testimony can be provided and
23 evidence submitted to prevent any further deprivation of NAPSO’s and its members’ rights and
24 benefits.

25 //

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EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

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

6 NEVADA HIGHWAY PATROL ASSOCIATION,

7 Petitioner,

8 v.

9 STATE OF NEVADA DEPARTMENT OF PUBLIC
10 SAFETY; STEVE SISOLAK, in his capacity as
11 Governor of the State of Nevada; NEVADA STATE
LAW ENFORCEMENT OFFICERS
ASSOCIATION, and NEVADA ASSOCIATION OF
PUBLIC SAFETY OFFICERS,

12 Respondents.
13
14

Case No. 2020-011

NOTICE OF ENTRY OF ORDER

ITEM NO. 865

- 15 TO: Petitioner and its attorneys, Devon T. Reese, Esq., Jason D. Guinasso, Esq., and Alex R. Velto,
16 Esq., of Hutchison & Steffen;
- 17 TO: Respondent State of Nevada, by and through Laura Freed, Director, Department of
18 Administration; Peter Long, Administrator of the Division of Human Resource Management,
and Frank Richardson, Deputy Administrator of Labor Relations, for the State of Nevada;
- 19 TO: Respondents Nevada State Law Enforcement Officers Association and Nevada Association of
20 Public Safety Officers and their attorneys and representatives, Nicholas M. Wiczorek, Esq., of
Clark Hill PLLC and Richard P. McCann, J.D.;
- 21 TO: The Fraternal Order of Police, by and through their attorneys and representatives, Timothy P.
22 Mullaney, Sr., J.D. and Michael E. Coviello, J.D.;
- 23 TO: AFSCME, by and through their representative, Fernando R. Colon;
- 24 TO: Peace Officers Research Association of Nevada (PORAN), by and through their attorney,
25 Michael Langton, Esq.
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PLEASE TAKE NOTICE that the **DECLARATORY ORDER** was entered in the above-entitled matter on June 17, 2020.

A copy of said order is attached hereto.

DATED this 17th day of June 2020.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY 
BRUCE SNYDER
Commissioner

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 17th day of June 2020, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

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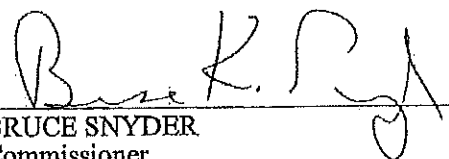
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BRUCE SNYDER
Commissioner

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

6 NEVADA HIGHWAY PATROL ASSOCIATION,

7 Petitioner,

8 v.

9 STATE OF NEVADA DEPARTMENT OF PUBLIC
10 SAFETY; STEVE SISOLAK, in his capacity as
11 Governor of the State of Nevada; NEVADA STATE
12 LAW ENFORCEMENT OFFICERS
13 ASSOCIATION, and NEVADA ASSOCIATION
14 OF PUBLIC SAFETY OFFICERS,

15 Respondents.

Case No. 2020-011

DECLARATORY ORDER

EN BANC

ITEM NO. 865

14 On May 27, 2020, this matter came before the State of Nevada, Government Employee-
15 Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the
16 Employee-Management Relations Act and NAC Chapter 288. At issue was Petitioner's, Nevada
17 Highway Patrol Association, Petition for Declaratory Order.

18 Petitioner requests this board to issue a declaratory order stating that Petitioner, as the officially
19 recognized entity, is the exclusive bargaining agent for Category 1, Unit G state employees and, as
20 such, no rival employee organization may purport to "represent" any employee in Category 1, Unit G,
21 including any issue covered under NRS Chapters 288 and 289. The Board requested *amicus* briefs to
22 be filed in this matter and reviewed them in full prior to coming to a decision.

23 In January 2020, the Board designated Petitioner as the exclusive representative of the
24 bargaining unit comprised of all non-supervisory, Unit G, Category 1 Peace Officers employed by the
25 State of Nevada pursuant to Senate Bill 135. Petitioner asserted that at least two other organizations
26 attempted to infringe on this Board's recognition of Petitioner as the exclusive representative. These
27 organizations competed for the right to represent this unit; however, they failed to obtain sufficient
28 signatures to obtain an election.

1 The dispute essentially surrounds the ability of other organizations not recognized as the
2 exclusive representative to represent bargaining unit members in matters not involving collective
3 bargaining, such as grievances, OPR investigations, and critical incidents. As NPHA further explained:
4 “The heart of this dispute is the scope of ‘representation’ under NRS 288.136, and whether a union that
5 failed to gain recognition can represent the members this Board already determined to be recognized by
6 NHPA.”

7 The general factual premise does not appear to be in dispute in regards to the instant Petition.¹
8 Instead, the Petition generally presents a question of the Board’s statutory interpretation of the EMRA,
9 the statute the Board is charged with enforcing. *Clark County School Dist. v. Local Govt. Employee-*
10 *Mgmt. Rel. Bd.*, 90 Nev. 442, 446, 530 P.2d 114, 117 (1974); *Folio v. Briggs*, 99 Nev. 30, 33, 656 P.2d
11 842 (1983); *Truckee Meadows Fire Prot. Dist. v. Int’l Ass’n of Fire Fighters, Local 2487*, 109 Nev. 367,
12 369, 849 P.2d 343, 345 (1993); *City of Reno v. Reno Police Protective Ass’n*, 118 Nev. 889, 900, 59
13 P.3d 1212, 1219–20 (2002); *City of Henderson v. Kilgore*, 121 Nev. 331, 337 n. 11, 131 P.3d 11, 15
14 (2006); *City of N. Las Vegas v. State Local Gov’t Employee-Mgmt. Relations Bd.*, 127 Nev. Adv. Op.
15 57, 261 P.3d 1071, 1076 (2011); *Bisch v. Las Vegas Metropolitan Police Dep’t.*, 129 Nev. Adv. Op. 36,
16 302 P.3d 1108, 1112 (2013); *Clark Cty. Deputy Marshals Ass’n v. Clark Cty.*, 425 P.3d 381, Docket
17 No. 68660, filed September 7, 2018, unpublished deposition (Nev. 2018). However, answers to more
18 specific questions could relate to the Board’s view of the facts. *Fathers & Sons & A Daughter Too v.*
19 *Transp. Services Auth. of Nevada*, 124 Nev. 254, 259, 182 P.3d 100, 104 (2008).

20 Preliminarily, Peace Officers Research Association of Nevada asserted a jurisdictional challenge
21 in ruling on the instant Petition. They assert specifically that the Legislature has limited the Board’s
22 authority to interpret a peace officers’ rights under NRS Chapter 289. The Board agrees. NAC
23 288.380 provides that any recognized employee organization “may petition the Board for a declaratory
24 order regarding the applicability or interpretation of any statutory provision or of any regulation or

25
26 ¹ On May 22, 2020, Petitioner filed a Request for Hearing. NAC 288.400 provides for the ability to
27 request a hearing if certain conditions are satisfied. The Request was not timely and did not comply
28 with the other requirements of NAC 288.400(1). As such, the Board denies the request. *See also* NAC
288.410(2) (giving the discretion to the Board on whether to hold a hearing – *i.e.*, “or”). Indeed, the
Request for Hearing appears in actuality to be a request for oral argument. The Board finds oral
argument unnecessary in this case given its ruling herein.

1 decision of the Board.” “The purpose of a declaratory statement is to address the applicability of a
2 statutory provision or order or rule of the agency in particular circumstances.” *City of Reno v. Reno*
3 *Firefighters Local 731, Int’l Ass’n of Firefighters*, Item 777A, Case No. A1-046049 (2012).

4 The Board’s authority is limited to matters arising out of the interpretation of, or performance
5 under, the provisions of the EMRA. NRS 288.110(2). The Board does not have the jurisdiction to find
6 a violation of NRS Chapter 289 or to rule that no rival employee organization may purport to represent
7 any employee surrounding issues covered under NRS Chapter 289. This is expressly beyond the
8 Board’s jurisdiction, which is well established. *See* NRS 288.110(2); *City of Reno v. Reno Police*
9 *Protective Ass’n*, 98 Nev. 472, 474–75, 653 P.2d 156, 158 (1982) (“the EMRB merely deferred to NRS
10 ch. 288, the statute under which it operates. While the EMRB did discuss the Reno City Charter in its
11 decision, our review of that decision reveals that the board only did so because the City placed its
12 Charter in issue by relying on it as justification for its refusal to bargain with the RPPA. The EMRB did
13 not interpret the Charter.”); *UMC Physicians Bargaining Unit v. Nevada Serv. Employees Union*, 124
14 Nev. 84, 89-90, 178 P.3d 709, 713 (2008); *City of Henderson v. Kilgore*, 122 Nev. 331, 333, 131 P.3d
15 11, 12 (2006); *Int’l Ass’n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item
16 No. 811 (2015) (“IAFF argues that the merit personnel system itself should have opened this
17 appointment... However, it is not within our purview to determine whether or not the appointment...
18 complied with the County’s merit personnel system. This Board authority is limited to matters arising
19 under interpretation of, or performance under, the Act”); *Simo v. City of Henderson*, Case No. A1-
20 04611, Item No. 796 (2014); *see e.g., Flores v. Clark Cty.*, Case No. A1-045990, Item No. 737 (2010);
21 *Bonner v. City of N. Las Vegas*, Case No. 2015-027 (2017); *Kerns v. LVMPD*, Case No. 2017-010
22 (2018); *Yu v. LVMPD*, Case No. 2017-025, Item No. 829 (2018). The Board simply notes that, as
23 further detailed below, NRS Chapter 289 does not appear in conflict with Chapter 288 and can be read
24 to render a harmonious result.

25 “Exclusive representative” is defined under the EMRA as follows:

26 ‘Exclusive representative’ means a labor organization that, as a result of its designation
27 by the Board, has the **exclusive right to represent all the employees within a**
28 **bargaining unit** *and* to engage in collective bargaining with the Executive Department
pursuant to NRS 288.400 to 288.630, inclusive, concerning wages, hours and other terms
and conditions of employment for those employees.

1 NRS 288.430 (*emphasis added*). *See also* NRS 288.133 (defining “Bargaining agent” as an employee
2 organization recognized “as the exclusive representative of all local government employees in the
3 bargaining unit for the purposes of collective bargaining.”); *see also* NRS 288.032 (defining “Collective
4 bargaining” as “a method of determining conditions of employment by negotiation between
5 representatives of ... an employee organization or labor organization, entailing a mutual obligation ...
6 [of] the representative of the state or local government employees to meet at reasonable times and
7 bargain in good faith with respect to: Wages, hours and other terms and conditions of employment;
8 [t]he negotiation of an agreement; [t]he resolution of any question arising under a negotiated agreement
9 [e.g., a grievance]; or [t]he execution of a written contract....”² Both NRS 288.133 and NRS 288.430
10 provide for the “exclusive representative”.³ The EMRA is plain in unambiguous in this regard. *See,*
11 *also* NRS 288.160(2) (stating that an employee organization “shall be the exclusive bargaining agent of
12 the local government employees in that bargaining unit.”); NRS 288.136 (defining “Recognition”).⁴

13 In the First Judicial District Court decision of *Washoe Ed. Support Professionals v. State of*
14 *Nevada, Local Government Employee-Management Relations Board*, Case No. 09 OC 00086 1B (2010)
15 (District Court Decision), Judge James Russell addressed, in pertinent part, “the scope of a ‘non-
16

17 ² *See also infra* note 6.

18 ³ “Exclusive” is defined as “Shutting out; debarring from interference or participation; vested in one
19 person alone. An exclusive right is one which only the grantee thereof can exercise, and from which all
20 others are prohibited or shut out.” Black’s Law Dictionary (11th ed. 2019). “Excluding or having
21 power to exclude; limiting or limited to possession, control, or use by a single individual or group.”
Merriam-Webster On-Line Dictionary; *see also* SB 135, Minutes of the Senate Committee on
Government Affairs (April 4, 2019) (“The words ‘exclusive representative’ means the only one” ...
“We have exclusive representation to provide for labor peace and stability.”)

22 ⁴ *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009) (“We read statutes within a
23 statutory scheme harmoniously with one another to avoid an unreasonable or absurd result.”). *Williams*
24 *v. Clark Cty. Dist. Attorney*, 118 Nev. 473, 484-85, 50 P.3d 536, 543 (2002) (“In determining the
25 legislature’s intent, we should consider what reason and public policy indicate was intended, and we
26 should avoid reaching absurd results. We are obliged to construe statutory provisions so that they are
27 compatible, provided that in doing so, we do not violate the legislature’s intent.”); *Berkson v. LePome*,
126 Nev. 492, 497, 245 P.3d 560, 563–64 (2010) (“a statute will be construed in order to give meaning
28 to its entirety, and this court ‘will read each sentence, phrase, and word to render it meaningful within
the context of the purpose of the legislation.’”); *Zahavi v. State*, 131 Nev. Adv. Op. 7, 343 P.3d 595,
600 (2015) (“When construing various statutory provisions, which are part of a ‘scheme,’ this court
must interpret them ‘harmoniously’ and ‘in accordance with [their] general purpose.’”).

1 member' employee's right under NRS 288.140(2)⁵ to be represented by another person in a grievance
2 proceeding [the term grievance being broadly defined], and specifically whether such an employee may
3 be represented by an agent or employee of an employee organization *other than* the recognized
4 bargaining agent (a 'rival employee organization')." District Court Decision, at 2 (*emphasis in*
5 original).

6 The District Court Order concluded:

7 Where, as here, an employee organization has been recognized as the bargaining agent
8 for a bargaining unit, the bargaining agent's representative status is *exclusive* and no rival
9 employee organization may purport to 'represent' any employee in the unit in any
10 grievance proceeding or in any other aspect of collective bargaining. Any
11 'representation' of this nature is fundamentally inconsistent with the status and function
12 of the recognized bargaining agent. *See, e.g., UMC Physicians' Bargaining Unit v.*
13 *Nevada Serv. Employees Union*, 124 Nev. [84, 178 P.3d 709, 715 (2008)] ("the interests
14 of employees whose bargaining units are exclusively represented by one employee
organization cannot be simultaneously represented by another employee organization");
Operating Engineers Local Union No. 3 v. City of Reno, Item No. 7 (1972) (rejecting
contention that Chapter 288 'permits an employer to 'recognize' a minority employees
organization ..., not negotiation per se, but for purposes other than negotiation such as
grievance processing....);

15 A local government employer who knowingly allows 'representation' of this kind or
16 knowingly participates in a grievance proceeding with an agent or employee of a rival
17 employee organization, *acting as such*, thereby fails to bargain in good faith with the
18 recognized bargaining agent and commits a prohibited practice within the meaning of
NRS 288.270(1)(e). *Federal Tel. and Radio Co.*, 107 NLRB 649 (1953) (applying
corresponding provisions of the National Labor Relations Act); *Hughes Tool Co.*, 56
NLRB 981 (1944) (same).

19 In the challenged order and in at least one prior decision, the Board has ruled that if an
20 employee in a bargaining unit is a *member* of the employee organization serving as
21 recognized bargaining agent, the employee may *only* be represented in a grievance
22 proceeding by an agent or employee of that organization. *Washoe Ed. Support*
Professionals v. Washoe County Sch. Dist., Item No. 681A, Case No. A1-045930 (EMRB
2009), Finding of Fact No. 4; *United We Stand Classified Employees/AFT v. Washoe*
County Sch. Dist., Item No. 641B, Case No. A1-045888 (EMRB 2007). This ruling has
23 not been challenged. Nor does WESP dispute the right of such employee to retain the
24 services of an attorney of the employee's choice, so long as the expense of this
representation is borne by the employee.

25
26 ⁵ NRS 288.140 states, in pertinent part: "(1) It is the right of every local government employee ... to
27 refrain from joining any employee organization (2) The recognition of an employee organization ...
28 does not preclude any local government employee who is not a member of that employee organization
from acting for himself or herself with respect to any condition of his or her employment, but any
action taken on a request or in adjustment of a grievance shall be consistent with the terms of an
applicable negotiated agreement, if any."

1 *Id.* at 2-4 (*emphasis in original*). The District Court Order further opined:

2 Where, however, a unit employee is *not a member* of the employee organization serving
3 as recognized bargaining agent, NRS 288.140(2) provides that the employee may 'act for
4 himself' in any grievance proceeding – *i.e.*, on his own behalf and without a
5 representative. *Cone v. Nevada Serv. Employees Union*, 116 Nev. 473, 998 P.2d 1178
(2000) (noting that statute 'authorized a nonunion member to act on his own behalf [and]
6 forgo union representation').

7 In addition, the Board has ruled that such an employee may be represented by 'counsel',
8 a term that the Board apparently interprets to include a friend, relative or co-worker, or an
9 attorney retained by the employee. *Washoe Ed. Support Professionals v. Washoe County*
10 *Sch. Dist.*, Item No. 681A, Conclusion of Law No. 15. With the exception noted below,
11 WESP likewise has not challenged this aspect of the Board's ruling.

12 In any matter involving a non-member employee, NRS 288.140(2) provides that 'any
13 action taken on a request or in adjustment of a grievance shall be consistent with the
14 terms of an applicable negotiated agreement, if any.' Accordingly, in any such case, the
15 Board has ruled that the recognized bargaining agent is also entitled to be present '[t]o
16 monitor ... compliance with the applicable [negotiated agreement] and the provisions of
17 NRS chapter 288'. *Washoe Ed. Support Professionals v. Washoe County Sch. Dist.*, Item
18 No. 681A, Conclusion of Law No. 15. Again, this aspect of the Board's ruling has not
19 been challenged.

20 *Id.* at 4-5 (*emphasis in original*) (internal citations omitted).

21 Judge Russell further noted: "Where the representative of a non-member employee is also an
22 employee or agent of a rival employee organization, the parties have opposing views on the result that
23 should follow." *Id.* at 5. Moreover, "[b]oth parties agree, in any case, that an *attorney* who is retained
24 by the employee to act as his representative in such proceeding should be allowed to represent the
25 employee, even if the attorney also represents a rival employee organization. To the extent that the
26 Board has so held, its order is affirmed." *Id.* at 6, note 5 (*emphasis in original*). The District Court
27 further found:

28 If, as WESP agrees, a non-member employee may lawfully be represented by a friend,
relative or co-worked, the fact that the representative also happens to be an agent or
employee of a rival employee organization should not disqualify him from serving as
representative if in fact he is functionally independently of his role as an agent of the
union. On the other hand, if the representative in fact is overtly or covertly attempting to
function on behalf of both the employee and the rival employee organization (or solely on
behalf of the union), the representative's participation effectively undercuts the status of
the recognized bargaining agent and cannot knowingly be permitted by the employer.

Accordingly, in any grievance proceeding involving an employee representative who is
also an agent or employee of a rival employee organization, the representative cannot
function as such – and hence cannot participate in the proceeding Where, however,

1 the employer knows or reasonably believes that the representative is serving *entirely*
2 *independently* of the rival organization as (for example) a friend, relative or co-worker of
the employee, the representative's participation is permissible.

3 *Id.* at 6 (*emphasis in original*). The District Court denied the petition for judicial review, as requested
4 by WESP, "to hold that an agent or employee of a rival employee organization is, solely by virtue of
5 that status, precluded from representing an employee in any grievance proceeding...." *Id.* at 7.

6 In *Lyon County Ed. Ass'n v. Lyon County Sch. Dist.*, Case No. 2016-011 (2016), the Board found
7 the decision in *Washoe Ed. Support Professionals* as persuasive precedent. The District Court's order
8 was based on ample authority.⁶ As such, the Board reaffirms *Lyon County Ed. Ass'n* in finding Judge
9 Russell's decision as persuasive precedent.

10 While NRS 288.140 recognizes the right of an employee not to become a member of the
11 recognized employee organization and to "act for himself or herself" in connection with a grievance,
12 nothing in that provision, or any other provision of the EMRA, permits such an employee to be
13 "represented" by an agent or employee of a rival employee organization serving in such capacity.
14 Allowing this kind of representation would impair the efficiency and utility of the grievance and
15 collective bargaining process, undermine the position of the recognized bargaining agent, and

16
17 ⁶ Citing to then NRS 288.027 (replaced by NRS 288.133), 288.028 (replaced by NRS 288.134), 288.067
18 (replaced by NRS 288.136), NRS 288.033(3) (noting that the scope of the bargaining agent's
19 representation includes not only the negotiation of a CBA *but also* resolution of grievance and
20 participation in "investigatory interviews" involving employees in the unit), also *citing Ed. Support*
21 *Employees Ass'n v. Clark County Sch. Dist.*, Item No. 568B, Case No. A1-045782 (2005), 288.140,
22 288.150(1) and 288.160(2) as well as the Nevada Supreme Court and federal precedent cited above.
23 *See also N. Las Vegas Police Officers Ass'n v. The City of N. Las Vegas*, Item No. 717A, Case No. A1-
24 0459645 (2011); *Heitzinger v. Las Vegas-Clark County Library Dist.*, Item No. 728C, Case No. A1-
25 045977 (2012); *D'Ambrosio v. LVMPD*, Item No. 808 (2015). For example, the Nevada Supreme
26 Court in *Cone v. Nevada Serv. Employees Union/SEIU Local 1107*, 116 Nev. 473, 477, 998 P.2d 1178,
27 1181 (2000) disagreed that "the union, as the 'bargaining agent' of UMC employees, is obligated by the
28 plain language of NRS 288.027 to 'exclusively' represent all UMC employees, including nonunion
members, in all grievance matters without charging a fee", *only to the extent of not being able to*
charge a fee. The Nevada Supreme Court made clear that NRS 288.140(2) "provides an individual
with a right to forgo union representation" and thus a nonmember employee may either act of his or her
own behalf thereby electing to "forgo union representation" or use the services of the recognized agent
paying any "service fee" charged by the union for its services. *See id.* at 478. Nothing in *Cone*
suggests such an employee may be "represented" by an agent or employee of a rival employee
organization serving in such capacity with the exception noted above. *See* Judge Russell's Decision at
6, note 5. Indeed, for more than 60 years, the NLRB has held its similar provision (Section 9(a), 29
U.S.C. § 159(a)) does not allow a rival union to represent an employee in the adjustment of grievances.
See, e.g., Fed. Tel. & Radio Co., 107 NLRB 649, 652 (1953).

1 effectively destabilize employee-management relations in the public sector. This is consistent with the
2 exceptions noted above. The exclusivity of representation is a key element in ensuring labor stability in
3 the workplace (one of the important reasons for the adoption of NRS Chapter 288 in 1969) and in
4 allowing a properly recognized union to do its job. *See, e.g., In the Matter of American Federation of*
5 *Teachers, Local 1800 v. Clark County Sch. Dist.*, Item No. 2 (1970) (“the employer has an obligation to
6 treat with this representative exclusively and has a negative duty to treat with no other”), *citing NLRB*
7 *v. Jones & Laughlin Steel Corp.*, 201 US 1, 44 (1937) (where the United State Supreme Court
8 recognized that the obligation of the employer to treat with the recognized representative was exclusive
9 and hence imposed a negative duty to treat with no other); *see also supra* note 3 and *infra* note 7; *see,*
10 *e.g., Fed. Tel. & Radio Co.*, 107 NLRB 649, 652-53 (1953). Designating one union as the exclusive
11 representation of all employees allows them to speak with one voice, pooling economic strength, ensure
12 their rights are not watered down by divisiveness, respond with institutional knowledge when
13 employer’s disparately treat them, and allowing this carve out would tend to dilute that strength
14 contrary to the purposes and policies of the EMRA. *See also supra* notes 4 and 6.⁷

15 If the Legislature wishes to provide that an agent or employee of a rival labor organization
16 serving in that capacity, may purport to represent any employee in a bargaining unit with a recognized
17 representation, then that is their legislative prerogative. It is not for the Board to make the law, that is
18 for the Legislature, and the Board is required to follow the law regardless of the result. *See, e.g., Local*
19 *Gov’t Employee-Mgmt. Relations Bd. v. Educ. Support Employees Ass’n*, 134 Nev. 716, 429 P.3d 658
20 (2018).

21 As a further example, in 2018 the Board rendered its decision in *City of Elko v. Elko Police*
22 *Officers Protective Ass’n*, Case No. 2017-026, Item No. 831 (2019). In that case, the Board applied the
23 provisions of NRS 288.170 to conclude that sergeants employed by the City of Elko could not be part
24 of the same bargaining unit as the officers they supervise based on the plain language of the EMRA. In

25
26 ⁷ The EMRA had its genesis in Senate Bill 87 in 1969 sponsored by Senator Carl Dodge. SB initially
27 provided specifically for the recognition of more than one employee organization for any given
28 “negotiating unit”. *See* Sections 10, 11, 13. After it was passed in the Senate, objections were made
that the bill’s provisions for multiple bargaining agents was unworkable and would result in chaos.
Accordingly, when the bill was heard in the Assembly, such language was removed from the bill. The
amended language has not been materially changed since that time.

1 response to that case, the Legislature enacted SB 158 to exempt only (1) police officers defined in NRS
2 288.215, (2) firefighters defined in NRS 288.215, and (3) certain addition persons having the powers of
3 a peace officer pursuant to NRS 289.150, 289.170, 289.180 or 289.190. The Legislature choose to
4 leave the prohibitions of joint bargaining unit for others in place and thus only made a specific carve.
5 As such, the Legislature approved of the Board's order in certain respects and choose to amend the
6 EMRA for specific and defined purposes in other respects. This is a further showing of the legislative
7 prerogative in this case – perhaps the Legislature would create a carve out for rival union representation
8 in all manners or perhaps just in specific and defined areas for certain individuals. It is not for this
9 Board to guess what the Legislature might do on behalf of the citizens of this great state.

10 In *Clark County Teachers Assn' v. Clark County Sch. Dist.*, 91 Nev. 143, 532 P.2d 1032 (1975),
11 the Nevada Supreme Court opined that the “exclusive use” provisions of CBAs were not
12 unconstitutional, insofar as they denied the respondent (American Association of Teachers) an equal
13 opportunity for membership solicitations and to dispenses information. *Id.* at 145. Citing to the
14 Board's decision *In the Matter of American Federation of Teachers, Local 1800*, the Court “found
15 compelling Nevada's interest in allowing ... the ‘exclusive uses’ here challenged ... [and] labor peace
16 and stability in an area as vital as public education are indisputably a necessity to the attainment of that
17 goal. Inter-union strife within the school must be minimized.” *Id.*; see also *Mentele v. Inslee*, 916 F.3d
18 783, 788 (2019); *Nevada Serv. Employees Union, Service Employees Int'l Union, Local 1107 v. Clark*
19 *County*, Case No. A1-045759, Item No. 540-B (2005) (“Moreover, through NRS 288.270(1), an
20 employee organization is protected from actions which would undercut its ability to fulfill its statutory
21 role as exclusive bargaining agent and defender of the collective bargaining agreements.”).

22 Both sides reference the Nevada Supreme Court decision in *Bisch v. Las Vegas Metropolitan*
23 *Police Dep't.*, 129 Nev. 328, 302 P.3d 1108, 1112 (2013). In this matter, the employee filed a
24 complaint with this Board alleging its union had breached its duty of fair representation when it refused
25 to represent her at her internal affairs interview. The Nevada Supreme Court noted the right contained
26 289.080 to have two representatives of her choosing at the interview (her choice being private counsel
27 and a representative from the union). *Bisch*, 129 Nev. at 335, 302 P.3d at 1113. The Court held “that
28 the protection provided by NRS 289.080 is only in regard to Bisch's employer. Because nothing in NRS

1 289.080 or the rest of the Peace Officer Bill of Rights governs a PPA's responsibility toward its
2 members, the EMRB correctly concluded that NRS 289.080 did not impose an additional duty of fair
3 representation on the PPA." *Id.* at 337. The Court simply held that NRS 289 "necessarily prevent[s] the
4 employer from barring the employee from having two representatives." *Id.* at 336. The Court did not
5 discuss whether having an agent or employee representative of a rival union serving as such capacity
6 would be permissible under the EMRA or permit a rival union to offer representation. The Court also
7 indicated *Weingarten* rights were not at issue as they make "no mention of the union's duties to the
8 employee/member in such a situation." *Id.* at note 3.

9 NRS 289.080 provides that a peace officer "may upon request have two representatives of the
10 peace officer's choosing present with the peace officer during any phase of an interrogation or hearing
11 relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or
12 another peace officer." It is asserted by Respondents as well as some *amicus* briefs that this provision
13 conflicts with the EMRA's exclusive representation or provides for a carve out for certain proceedings.
14 Again, while the Board has no jurisdiction over NRS 289, these statutes can be read harmoniously.
15 *Szydel v. Markman*, 121 Nev. 453, 457, 117 P.3d 200, 202-03 (2005) ("When two statutes are clear and
16 unambiguous but conflict with each other when applied to a specific factual situation, an ambiguity is
17 created and we will attempt to reconcile the statutes. In doing so, we will attempt to read the statutory
18 provisions in harmony, provided that this interpretation does not violate legislative intent."), *citing*
19 *Bowyer v. Taack*, 107 Nev. 625, 627, 817 P.2d 1176, 1177 (1991).

20 "It is presumed that in enacting a statute the legislature acts with full knowledge of existing
21 statutes relating to the same subject." *City of Boulder City v. Gen'l Sales Drivers and Helpers, Intern.*
22 *Broth. of Teamsters, Local 14*, 101 Nev. 117, 119, 694 P.2d 498, 500 (1985). In *State Dep't of Health*
23 *& Human Servs., Div. of Pub. & Behavioral Health Med. Marijuana Establishment Program v.*
24 *Samantha Inc.*, 133 Nev. 809, 815, 407 P.3d 327, 331 (2017), the Nevada Supreme Court held: "The
25 Legislature created NRS Chapter 453A long after the APA. Because this court 'assumes that, when
26 enacting a statute, the Legislature is aware of related statutes,' and NRS Chapter 453A references
27 review under the APA, *see* NRS 453A.210, the Legislature's exclusion of judicial review for a
28 registration certificate in NRS Chapter 453A appears deliberate."

1 In the same vein, NRS 288.133, 288.134, 288.136, and 288.033 were originally added in 1975
2 via AB 572 long before NRS 289.080. The language "or other representative of his choosing" was not
3 added until 1991 via AB 583⁸ and NRS Chapter 289 specifically references exhaustion of
4 administrative remedies under NRS Chapter 288 as a prerequisite to judicial relief, NRS 289.120. As
5 such, when the Legislature used this general language ("or other representative of his choosing"), a
6 harmonious and reasonable reading reconciling the statutes indicates the Legislature did not intend to
7 infringe upon the exclusive representation contained in NRS 288. Nothing in the Legislative history
8 indicates otherwise. Judge Russell even affirmed the Board's Order holding that "an attorney who is
9 retained by the employee to act as his representative in such a proceeding should be allowed to
10 represent the employee, even if the attorney also represents a rival employee organization." District
11 Court Decision, at 6, note 5. As NHPA explained: "It's quite clear a peace officer is free to choose
12 whichever representative he or she would like under NRS Chapter 289. However, this right stops at an
13 officer's personal representation. It does not permit an officer to choose the representative of the
14 Union." Further, "[a] member can't override this Board's recognition merely because they would like
15 to have a different person represent the entity on his or her behalf." Therefore, a harmonious and
16 reasonable reading can be achieved.


17 Dated this 17th day of June 2020.

18 GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

20 By: 
21 BRENT ECKERSLEY, ESQ., Chair

22 By: 
23 SANDRA MASTERS, Vice-Chair

24 By: 
25 GARY COTTINO, Board Member

26 By: 
27 BRETT HARRIS, ESQ., Board Member

28 ⁸ It was not until 2005, via AB 259, when NRS 289.080 was amended to state "two representatives of his choosing".

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Nevada Association of Public
7 Safety Officers, Plaintiff(s)

CASE NO: A-20-827022-C

8 vs.

DEPT. NO. Department 3

9 Las Vegas Metropolitan Police
10 Department, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Ex Parte Application was served via the court's electronic eFile system
to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 1/13/2021

16 Deborah Surowiec

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17 Nicholas Wieczorek

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18 Gia Marina

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 4 10001 Park Run Drive
 5 Las Vegas, Nevada 89145
 Telephone: (702) 382-0711
 Facsimile: (702) 382-5816
 ncrosby@maclaw.com
 Attorneys for LVMPD

DISTRICT COURT

CLARK COUNTY, NEVADA

8 NEVADA ASSOCIATION OF PUBLIC
 9 SAFETY OFFICERS, a Nevada Non-Profit
 Corporation and Local Government Employee
 10 Organization, and Their Named and Unnamed
 Affected Members,

Plaintiff,

vs.

13 LAS VEGAS METROPOLITAN POLICE
 14 DEPARTMENT; LAS VEGAS POLICE
 PROTECTIVE ASSOCIATION,

Defendants.

Case No.: A-20-827022-C
 Dept. No.: 3

**LVMPD'S RESPONSE TO PLAINTIFF'S EX PARTE APPLICATION FOR
 TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY
 INJUNCTION ON ORDER SHORTENING TIME**

19 The Las Vegas Metropolitan Police Department ("Department" or "LVMPD"), by and
 20 through its attorney of record, Nick D. Crosby, Esq. of Marquis Aurbach Coffing, hereby files its
 21 Response to Plaintiff's Ex Parte Application for Temporary Restraining Order and Preliminary
 22 Injunction on Order Shortening Time.

23 ///

24 ///

25 ///

26 ///

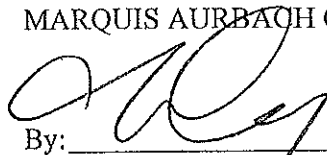
27 ///

28 ///

1 This Response is made and based upon the attached Memorandum of Points and
2 Authorities, all papers and pleadings on file herein, and any oral argument permitted by the
3 Court at a hearing on the matter.

4 Dated this 19th day of January, 2021.

MARQUIS AURBACH COFFING



By: _____

Nick D. Crosby, Esq.
Nevada Bar No. 8996
10001 Park Rim Drive
Las Vegas, Nevada 89145
Attorneys for LVMPD

MEMORANDUM OF POINTS AND AUTHORITY

I. INTRODUCTION

13 The Department does not object to the Court issuing a temporary restraining order. The
14 Employee Management Relations Board's ("EMRB") decision in *Nevada Highway Patrol*
15 *Association* put the Department in a challenging position given the varying interpretations of the
16 decision, whereby if the Department accepts the recognized bargaining unit's interpretation of
17 the decision, it runs the risk of violating rights outlined in Nevada Revised Statute chapter 289.
18 Conversely, if the Department accepts Plaintiff's (and other employee organizations')
19 interpretation of the decision, the Department runs the risk of committing a prohibit labor
20 practice under Nevada Revised Statute chapter 288. The issuance of a temporary restraining
21 order will resolve the issue created by the EMRB's decision. The Department does not take a
22 position either way on the issue and, as it stated in its recent Response to a Petition for
23 Declaratory Relief filed by the National Latino Peace Officers Association with the EMRB, the
24 Department will abide by any decision issued by the EMRB¹ (or the Court, in this matter) on the
25 issue.

27 ¹ See *Nat'l Latino Peace Officers Assoc. v. Las Vegas Police Protective Assoc. Metro, Inc., et al.*, Case
28 No. 2020-033.

1 **II. STATEMENT OF RELEVANT FACTS**

2 **A. THE EMRB'S DECISION IN NEVADA HIGHWAY PATROL**
3 **ASSOCIATION.**

4 On June 17, 2020, the EMRB issued an *en banc* Declaratory Order in Nevada Highway
5 Patrol Association v. State of Nevada Department of Public Safety, et al., Case No. 2020-011,
6 Item No. 865 (the "Declaratory Order") (Attached as Exh. 1 to Pl's Application). As the Board
7 noted in NHPA, the dispute there "essentially surround[ed] the ability of other organizations not
8 recognized as the exclusive representative to represent bargaining unit members in matters not
9 involving collective bargaining, such as grievances, OPR investigations, and critical incidents."
10 (Dec. Order, p. 2:1-3). In NHPA, the Board concluded the "exclusive representative" provisions
11 of the Employee Management Rights Act ("EMRA") and the representative rights under the
12 Peace Officers Bill of Rights, Nevada Revised Statute chapter 289, could be read together to
13 "render a harmonious result." (Id. at p. 3:22-24). In reconciling these two statutes, the Board
14 cited with approval a District Court decision in Washoe Ed. Support Professionals v. State of
15 Nev., Local Gov. Employee-Management Relations Bd., Case No. 09 OC 00086 1B (2010),
16 which stated, in part, that "[w]here...an employee organization has been recognized as the
17 bargaining agent for a bargaining unit, the bargaining agent's representative status is *exclusive*
18 and no rival employee organization may purport to 'represent' any employee in the unit in any
19 grievance proceeding...." (Id. at p. 5:7-9). The Board went on to hold, "While NRS 288.140
20 recognizes the right of an employee not to become a member of the recognized employee
21 organization and to 'act for himself or herself' in connection with a grievance, nothing in that
22 provision, or any other provision of the EMRA, permits such an employee to be 'represented' by
23 an agent or employee of a rival employee organization serving in such a capacity." (Id. at p.
24 7:11-13).

25 **B. THE APPLICATION.**

26 In the Application, Plaintiff takes issue with the NHPA decision, arguing the decision
27 "did not sufficiently respect existing Nevada law, and attempt[ed] to thread an administrative
28 needle by purporting to harmonize competing statutes which, invariably, do not lend themselves

1 to administrative harmony.” (Appl., p. 15:6-8). Plaintiff argues the EMRB “undermined its own
2 authority to issue the decision...by overtly acknowledging that it has no ability to interpret or
3 interpose interpretations of Nevada’s Peace Officers Bill of Rights.” (Id. at p. 15:8-12). Plaintiff
4 then argues that the Board then interpreted Chapter 289 of the Nevada Revised Statutes and
5 engaged in a “derogation of [its] responsibilities to enforce existing Nevada law to essentially gut
6 the provisions of NRS 289 without jurisdiction.” (Id. at p. 17:3-7).

7 In a nutshell, Plaintiff seeks a temporary restraining order that allows members of
8 Plaintiff to have outside counsel present for interviews or interrogations which trigger
9 representative rights under Chapter 289. While the Department disputes the characterization of
10 some of the events in the Application, it does not object to the issuance of a temporary
11 restraining order, as issuance of the same will resolve the confusion created by the NHPA
12 decision.

13 III. LEGAL ARGUMENT

14 The decision in NHPA, issued by the EMRB, is confusing and either interpretation of the
15 decision (i.e. Plaintiff and other employee organizations’ or recognized bargaining agents’) puts
16 the Department in a lose-lose position. The Department does not take a position on who
17 represents an officer during an administrative disciplinary proceeding and, as such, does not
18 object to the issuance of a temporary restraining order related to representation during
19 administrative disciplinary proceedings.

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1 **IV. CONCLUSION**

2 The decision in NHPA provides a Hobson's Choice for the Department. If it accepts the
3 Plaintiff's interpretation of the decision, the Department risks committing a prohibited practice
4 from the recognized bargaining agent's interpretation of the decision. If the Department accepts
5 the recognized bargaining agent's interpretation, it gets sued by employee organizations such as
6 Plaintiff. Again, the Department does not take a position one way or the other on the issue and
7 does not object to a temporary restraining order being issued.

8 Dated this 19th day of January, 2021.

9
10 MARQUIS AURBACH COFFING

11 By: 

12 Nick D. Crosby, Esq.
13 Nevada Bar No. 8996
14 10001 Park Run Drive
15 Las Vegas, Nevada 89145
16 *Attorneys for LVMPD*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **LVMPD'S RESPONSE TO PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 19th day of January, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

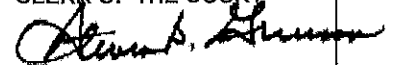
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Attorneys for Plaintiff

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

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Las Vegas, NV 89134
droger@lvppa.com
Attorneys for Defendant,
Las Vegas Police Protective Association


An employee of Marquis Aurbach Coffing

² Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



OPPS

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DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA ASSOCIATION OF PUBLIC
SAFETY OFFICERS, a Nevada Non-Profit
Corporation and Local Government Employee
Organization, and Their Named and Unnamed
Affected Members,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; LAS VEGAS POLICE
PROTECTIVE ASSOCIATION

Defendants.

Case No.: A-20-827022-C

Dept. No.: III

**DEFENDANT LAS VEGAS POLICE
PROTECTIVE ASSOCIATION'S
OPPOSITION TO EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND MOTION
FOR PRELIMINARY INJUNCTION ON
ORDER SHORTENING TIME**

DATE OF HEARING: JANUARY 21, 2020
TIME OF HEARING: 3:00 P.M.

1 Defendant, LAS VEGAS POLICE PROTECTIVE ASSOCIATION ("LVPPA"), by and
2 through its attorneys of record, Anthony P. Sgro, Esq., David Roger, Esq., and Jennifer Willis
3 Arledge, Esq., of SGRO & ROGER, hereby files this Opposition to Ex Parte Application for
4 Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time.

5 **MEMORANDUM OF POINTS & AUTHORITIES**

6 **I. PRELIMINARY STATEMENT**

7
8 With the instant Application, Plaintiff seems to seek a temporary restraining order and a
9 preliminary injunction to stop LVPPA from excluding counsel retained by Plaintiff NAPS O from
10 attending interviews, investigations, and the like as counsel for LVMPD employees. Plaintiff
11 incorrectly asserts that LVMPD employees have a right to have *any* attorney appear with them at
12 such interviews/investigations, ignoring the mandates of NRS 288, 289, and well-established
13 precedent.

14 Moreover, Plaintiff's Application should be denied because Plaintiff has not made even a
15 *prima facie* showing of irreparable harm or likelihood of success on the merits. The Application
16 is not supported by affidavits, declarations, or any documentary evidence (other than an affidavit
17 of Plaintiff's counsel), and therefore fails to meet the burden of proof required to obtain the
18 extraordinary relief of a temporary restraining order. Plaintiff's Application should be denied.

19 **II. BACKGROUND**

20 Plaintiff Nevada Association of Public Safety Officers ("NAPS O") filed a complaint on
21 December 28, 2020, against the Las Vegas Metropolitan Police Department ("LVMPD") and the
22 Las Vegas Police Protective Association ("LVPPA") alleging claims for relief for unfair labor
23 practices, intentional interference with the contractual relations, conspiracy, injunctive relief, and
24 declaratory relief. Two weeks later, on January 13, 2021, Plaintiff filed an Ex Parte Application
25 for Temporary Restraining Order and Motion for Preliminary Injunction which is set for hearing
26 on January 21, 2021, at 3:00 p.m.
27
28

1 Defendant Las Vegas Police Protective Association is an employee organization as
2 defined in NRS 288.040, and is the only recognized bargaining agent for non-supervisory peace
3 officers employed by Defendant Las Vegas Metropolitan Police Department. Defendant Las
4 Vegas Metropolitan Police Department ("LVMPD") is a local government employer in the State
5 of Nevada, Clark County. LVPPA and LVMPD have in place a Collective Bargaining
6 Agreement.

7 Plaintiff National Association of Public Safety Officers ("NAPSO") is a professional
8 association with members in Nevada consisting primarily of law enforcement officers and other
9 local employees. NAPSO is not a recognized bargaining agent for LVMPD employees.

10 NRS 288.133 defines "Bargaining agent" as, "an employee organization recognized by
11 the local government employer as the exclusive representative of all local government employees
12 in the bargaining unit for purposes of collective bargaining." As defined by NRS 288.136,
13 "recognition" is, "the formal acknowledgment by the local government employer that a particular
14 employee organization has the *right to represent* the local government employees within a
15 particular bargaining unit." (Emphasis added.).

16 In *Lyon County Education Association v. Lyon County School District*, Item No. 817,
17 EMRB Case No. 2016-011 (2016), the EMRB was asked to decide whether an unrecognized
18 teacher's association had the right to represent teachers who were represented by the recognized
19 bargaining agent. (See copy of decision, attached as Exhibit "E"). Specifically, EMRB
20 concluded, "[W]here a bargaining unit employee is not a member of the exclusive employee
21 organization, said employee has no right to a representative being present except as may be
22 allowed by the employer after the employer makes an inquiry similar to that set forth in Item C
23 below to determine if the representative is an agent, employee, or attorney of *another employee*
24 *organization* in which case the representative is not to be allowed." (Internal quotation marks
25 omitted). (Emphasis added).

26 In *Lyon County*, the EMRB adopted the reasoning of a District Court Decision which
27 held, "Where, as here, an employee organization has been recognized as the bargaining agent for
28 a bargaining unit, the bargaining agent's representative status is *exclusive* and no rival employee

1 organization may purport to 'represent' any employee in the unit in any grievance proceeding or
2 in any other aspect of collective bargaining. Any 'representation' of this nature is fundamentally
3 inconsistent with the status and function of the recognized bargaining agent."

4 The District Court decision used the term "rival association" to differentiate the other
5 association from the employee organization which is the exclusive bargaining agent. The District
6 Court defined the issue presented as:

7 "the scope of a 'non-member' employee's right under NRS 288.140(2) to be
8 represented by another person in a grievance proceeding [the term grievance being
9 broadly defined], and specifically whether such an employee may be represented by
10 an agent or employee of an employee organization *other than* the recognized
bargaining agent (a 'rival employee organization')." District Court Decision, at 2
(emphasis in original).

11 *Nevada Highway Patrol Association v. Nevada Association of Public Safety Officers*, Item No.
12 865, EMRB Case No. 2020-011 (2020) at pages 4-5 ("NHP v. NAPSO"). It is notable that
13 NAPSO was one of the respondents in that case.

14 "The term "rival association" is not found anywhere in NRS Chapter 288 nor in NRS
15 Chapter 289; the term has no legal significance. The District Court used the term "rival employee
16 organization" specifically to distinguish other associations from the recognized bargaining agent.
17 The District Court did not express, nor did it intend to create a term of art, which requires further
18 analysis as to whether the other association is averse to the exclusive bargaining agent. In other
19 words, the recognized bargaining agent is the only entity, which may represent employees who
20 are part of a collective bargaining unit.

21 Because Nevada is a "right to work" state, NRS 288.140(2) states, "The recognition of an
22 employee organization for negotiation, pursuant to this chapter, does not preclude any local
23 government employee who is not a member of that employee organization from acting for
24 himself or herself with respect to any condition of his or her employment, but any action taken
25 on a request or in adjustment of a grievance shall be consistent with the terms of an applicable
26

1 negotiated agreement, if any." Thus, an employee does not have to become a member of an
2 exclusive bargaining agent employee association.

3 Instead, the statute allows a non-member employee to represent himself or herself in any
4 administrative matter. The EMRB also ruled that a non-member may enlist the assistance of a
5 "friend, relative or co-worker, or an attorney retained by the employee."

6 With respect to the employer's obligation to make sure that an employee's representative
7 is not associated with another employee association the Board requires employers to comply
8 with the following:
9

10 "Accordingly, in any grievance proceeding involving an employee representative who
11 is also an agent or employee of a rival employee organization, the representative
12 cannot function as such - and hence cannot participate in the proceeding - where the
13 employer knows or reasonably believes that the representative is serving to any extent
14 in his 'union' capacity, on behalf of the rival organization. Where, however, the
15 employer knows or reasonably believes that the representative is serving entirely
16 independently of the rival organization as (for example) a friend, relative or co-
17 worker of the employee, the representative's participation is permissible."

18 (Emphasis in original).

19 Therefore, an employer must make certain that a non-member's representative and/or legal
20 counsel is not associated, in any way, with another association. An employer who fails to make
21 such an inquiry or deals with another association, is deemed to commit an unfair labor practice
22 by refusing, "to bargain collectively in good faith with the exclusive representative as required in
23 NRS 288.150. Bargaining collectively includes the entire bargaining process, including
24 mediation and fact-finding, provided in this chapter." NRS 288.270(1)(e).

25 Additionally, NRS 288.270(1)(b) prohibits an employer from interfering with the
26 administration of an employee organization. Arguably, an employer interferes with the
27 administration of an exclusive bargaining agent's association by dealing with another
28 association.

It is important to recognize that the EMRB found, "the District Court's rationale above
persuasive. As such, the Board expressly adopts tis rationale as stated above." By adopting the

1 court's "rationale," the EMRB did not adopt the term "rival association" used by the District
2 Judge. The sole question is whether the non-member's representative is associated with another
3 association. Neither the statute nor the EMRB's decisions require further inquiry as to whether
4 the other association is a "rival."

5 The EMRB has articulated strong policy reasons for not allowing other associations to
6 represent non-members in administrative matters by explaining, "Designating one union as the
7 exclusive representation of all employees allows them to speak with one voice, pooling
8 economic strength, ensure their rights are not watered down by divisiveness, respond with
9 institutional knowledge when employer's disparately treat them, and allowing this cave out
10 would tend to dilute that strength contrary to the purposes and policies of the EMRA." *NHP v.*
11 *NAPSO*, *supra*, p. 8.

12 With respect to NAPSO's claims in the instant matter, the analysis is simple and need go
13 no further than to state that the association is not the exclusive bargaining agent for LVMPD
14 employees. Thus, NAPSO and its attorneys are prohibited from representing any employee who
15 is a member of the bargaining unit represented by LVPPA.

16 While NAPSO is expected to argue that its attorneys have been retained by the
17 employees, the fact is that NAPSO provides these attorneys for members as part of its "Legal
18 Defense Plan." NAPSO describes its Legal Defense Plan as offering "the following benefits and
19 performs the following **UNLIMITED, UNCAPPED** services for a monthly assessment per
20 member of each Association affiliated with NAPSO..." See Exhibit "D". (Emphasis in
21 original). In fact, the law firm that filed the Complaint and Application in this matter are
22 identified as "Plan Counsel" on NAPSO's website. See Exhibit "D".

23 The *NHP v. NAPSO* Decision has led to multiple situations wherein an LVMPD
24 employee presented for interview accompanied by an attorney known to be "NAPSO Plan
25 Counsel." Prior to the official interviews taking place, representatives of LVMPD and LVPPA
26

27 ¹ On its website, NAPSO touts a Legal/Administrative Defense Plan which offers "unlimited, uncapped
28 services for a monthly assessment per member. NAPSO also lists the law firm of "Clark Hill" as "Plan
Counsel" for selected civil and administrative cases involving members and Associations...during

1 participated in a pre-interviews to determine the nature of representation to ensure that the
2 attorney was not counsel for a "rival" association. Transcripts have been made of three such
3 incidents which are attached hereto as Exhibits "A," "B," and "C."

4 In one pre-interview, the representative of LVMPD, Jamie Frost, explained that the pre-
5 interview questions were being asked "to make sure both the employee's rights are upheld and
6 the Association's [LVPPA's] rights. See Exhibit "A," p. 2. Counsel for the employee, John
7 Hunt, was present for the pre-interview and expressed his position that an attorney should be
8 allowed to represent the employee, even if the attorney also represents a rival organization. See
9 Exhibit "A," p. 3.

10 In another such pre-interview, Ms. Frost for LVMPD began to ask questions about the
11 relationship between the employee and Mr. Hunt, to which he objected and again stated his
12 position that an attorney should be allowed to represent the employee, even if the attorney also
13 represents a rival organization. See Exhibit "B," p. 2. Even after Ms. Frost explained that her
14 pre-interview questions were to determine if there were any issues with the exclusive bargaining
15 rights of LVPPA in accordance with the EMRB decision, Mr. Hunt instructed the employee not
16 to answer questions regarding his representation.

17 In another pre-interview, an employee appeared with Mr. Hunt. Ms. Frost again
18 explained her role as LVMPD representative and Mr. Hunt asked the employee a series of three
19 questions concerning his representation. See Exhibit "C." He then had the audacity to object to
20 any LVPPA representatives being present, contrary to EMRB rulings that as the exclusive
21 bargaining unit, LVPPA is permitted to sit in on every matter to ensure the terms of the
22 Collective Bargaining Agreement are being followed. See Exhibit "C."

23 ///

24 ///

25 ///

26 ///

27 IAB/OPR interviews, critical incidents, arbitrations and court appearances. John Hunt, who has appeared
28 at several employee interviews, is an attorney with Clark Hill.

1 **III. LEGAL ANALYSIS**

2 **A. PLAINTIFF WILL NOT SUFFER IRREPARABLE HARM**

3 A preliminary injunction may issue only upon a showing that irreparable injury is likely
4 in the absence of an injunction. *Dangberg Holdings Nev. v. Douglas County*, 115 Nev. 129
5 (1999). Speculative injury does not constitute irreparable injury sufficient to warrant granting a
6 preliminary injunction. *Boardman v. Pacific Seafood Group*, 822 F.3d 1011, 1022 (9th Cir.
7 2016). A plaintiff must do more than merely allege imminent harm sufficient to establish
8 standing; a plaintiff must demonstrate immediate threatened injury as a prerequisite to
9 preliminary injunctive relief. *Id.* "Irreparable harm," as required to support a preliminary
10 injunction, is traditionally defined as harm for which there is no adequate legal remedy.
11 *Dangberg*.

12 Plaintiff NAPSO asserts that not restraining Defendants from excluding NAPSO
13 attorneys and NAPSO representatives from proceedings will result in irreparable harm by
14 violating NAPSO members' rights to be represented at adjudicatory proceedings which could
15 result in discipline, including ultimate termination. NAPSO also asserts that exclusion of said
16 attorneys is discriminatory against employees who choose to encourage membership in an
17 employee organization other than LVPPA.

18 Members of NAPSO will not suffer irreparable harm because members can be
19 represented by legal counsel in all relevant administrative hearings, but that counsel cannot also
20 be an employee or agent of NAPSO. An employee in a bargaining unit has the right to retain the
21 services of an attorney of the employee's choice, *so long as the expense of this representation is*
22 *borne by the employee*. Here, NAPSO charges its members dues and provides legal
23 representation paid for with those dues.

24 Based upon these ethical rules, a lawyer who is employed by an association such as
25 NAPSO has a legal conflict of interest when representing members of the association. Because
26 of this conflict, attorneys may only represent non-member employees when they are
27 *independently retained* by the employee. In this case, NAPSO was not independently retained or
28

1 hired for a fee because it was provided to its members as a membership benefit. As a result, the
2 NAPS O attorney owed a duty of loyalty to NAPS O not the member they were assigned to
3 represent thereby creating a non-waivable conflict of interest. This is a clear violation of Nevada
4 Law, the EMRB decision, and the Nevada rules of professional conduct and an injunction against
5 Defendant LVPPA will only allow these violations to continue.

6 Alternatively, members and non-members can be represented by non-lawyers. Because
7 Nevada is a "right to work" state, NRS 288.140(2) states, "The recognition of an employee
8 organization for negotiation, pursuant to this chapter, does not preclude any local government
9 employee who is not a member of that employee organization from acting for himself or herself
10 with respect to any condition of his or her employment, but any action taken on a request or in
11 adjustment of a grievance shall be consistent with the terms of an applicable negotiated
12 agreement, if any." Thus, an employee does not have to become a member of an exclusive
13 bargaining agent employee association. Instead, the statute allows a non-member employee to
14 represent himself or herself in any administrative matter. The EMRB also ruled that a non-
15 member may enlist the assistance of a, "friend, relative or co-worker, or an attorney retained by
16 the employee."

17 Plaintiff asserts that it will suffer irreparable harm in that proceeding with administrative
18 hearings could end in termination of employment of its members. Generally, termination
19 resulting in lost income, damaged reputation, and inability to find another job is not irreparable
20 harm. See *Bedrossian v. Northwestern Memorial Hosp.*, 409 F.3d 840 (7th Cir. 2005); *Schrier v.*
21 *University of Co.*, 427 F.3d 1253 (10th Cir. 2005). Likewise, temporary loss of income which
22 may be recovered later does not usually constitute irreparable injury for purposes of determining
23 whether an injunction should issue. *Denovellis v. Shalala*, 135 F.2d 58 (1st Cir. 1998). Here, the
24 administrative hearings are independent of the relationship between the Plaintiff and Defendants.
25 The Plaintiffs have not provided evidence to show that termination has occurred or will occur by
26 the LVPPA's presence or NAPS O's absence from administrative hearings.

27 Moreover, Plaintiff had the opportunity to seek a temporary restraining order and/or
28 preliminary injunction when requesting judicial review of the NHP v. NAPS O case (EJDC case

1 no. A-20-817491-P), but instead, chose to dismiss the after just three (3) weeks. If Plaintiff were
2 so concerned about irreparable harm, it could have sought the requested relief more than six (6)
3 months ago. The tardiness of a motion for injunctive relief weighs against a plaintiff's claim of
4 irreparable harm, especially when the delay is not excused for a good reason or when the
5 defendant has relief on the inaction. *Celebration Inter., Inc. v. Chosun Inter., Inc.* 234 F. Supp.2d
6 905 (S.D. Ind. 2002). Plaintiff is now alleging that irreparable harm is imminent prior to a
7 determination on the merits. Plaintiff's own delay shows that there is no irreparable harm to its
8 members. Consequently, Plaintiffs have not and cannot meet the legal requirements of a
9 temporary restraining order or preliminary injunction based on irreparable harm.

10 **B. AGENTS OR EMPLOYEES OF NON-DESIGNATED**
11 **ASSOCIATIONS CANNOT ATTEND INTERVIEWS/**
12 **INVESTIGATIONS**

13 It is undisputed that LVPPA is the only recognized bargaining agent for non-supervisory
14 police officers employed by LVMPD and the sole representative for officers in administrative
15 investigations, hearings and related matters pursuant to NRS Chapter 288². Further, NRS
16 289.080(1) states, "Except as otherwise provided in subsection 5, a peace officer who is the
17 subject of an investigation conducted pursuant to NRS 289.057 may upon request have two
18 representatives of the peace officer's choosing present with the peace officer during any phase of
19 an interrogation or hearing relating to the investigation, including, without limitation, a lawyer, a
20 *representative of a labor union* or another peace officer." (Emphasis added). Who those two
21 representatives may be was first addressed in an EMRB decision in 2016.

22 A petition for judicial review on this issue was brought in the First Judicial District Court
23 Judge in *Washoe Ed. Support Professionals v. State of Nevada, Local Government Employees-*
24 *Management Relations Board*, Case No. 09 OC 00086 1B (2010). In *Washoe Ed.*, the Judge
25 addressed the scope of a non-member employee's right under NRS 288.140(2) to be represented

26
27 ² NRS 288.133 defines "Bargaining agent" as, "an employee organization recognized by the local
28 government employer as the exclusive representative of all local government employees in the bargaining
unit for purposes of collective bargaining."

1 by another person in a grievance, specifically, an agent or employee of an organization other
2 than the recognized bargaining unit.

3 The June 17, 2020, EMRP Decision addressed whether EMRB's decision in *Lyon County*
4 also applies to the Peace Officer's Bill of Rights set forth in NRS Chapter 289. While
5 recognizing that EMRB's authority is limited to interpreting NRS Chapter 288, the EMRB's
6 decision provides logical and persuasive reasons why another association should not be allowed
7 to represent officers during NRS 289 investigations. Arguably, NRS 289's procedural rights are
8 merely an extension of NRS 288 which addresses substantive rights of employers and
9 employees.

10 As explained in *NHP v. NAFPO* at page 11, NRS Chapter 288 was enacted long before
11 the Peace Officers Bill of Rights. In *City of Boulder City v. General Sales Drivers and Helpers*,
12 *International Brotherhood of Teamsters, Local 14*, 101 Nev. 117, 119, 694 P.2d 498, 500 (1985),
13 the Nevada Supreme Court stated, "It is presumed that in enacting a statute the legislature acts
14 with full knowledge of existing statutes relating to the same subject." Thus, the legislature must
15 be deemed to have been familiar with the exclusivity provisions and restrictions set forth in NRS
16 288. It stands to reason that the same prohibitions for excluding other associations from
17 representing employees, who are members of a bargaining unit, should apply to police officer
18 employees and other associations.

19 NRS 289 deals with procedural safeguards for peace officers to supplement the
20 protections of NRS 288. While NRS 289 addresses the formality of investigations, the ultimate
21 substantive grievance issues are controlled by EMRB's decisions and NRS Chapter 288. Thus,
22 NRS 288 and the EMRB's rulings control over the procedural rules of NRS 289. The EMRB's
23 decisions in *Lyon County* and *NHP v. NAFPO* allow employees to secure representation by any
24 other person beside a representative or lawyer from another association. An officer's right to
25 representation is not significantly restricted by EMRB's decisions.

26 A preliminary injunction is available when the moving party can demonstrate that the
27 nonmoving part's conduct, if allowed to continue, will cause irreparable harm for which
28 compensatory relief is inadequate and that the moving party has a reasonable likelihood of

1 success on the merits. *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397
2 (2009); see also NRS 33.010. Injunctive relief is extraordinary relief, and only available when
3 the irreparable harm is articulated in specific terms by the issuing order or be sufficiently
4 apparent elsewhere in the record. *Dangberg Holdings Nevada, L.L.C. v. Douglas County and its*
5 *Bd. of County Com'rs*, 978 P.2d 311, 115 Nev. 129 (Nev. 1999). The party seeking the
6 injunction must satisfy each element; however, the elements of the preliminary injunction test are
7 balanced, along with public policy interests, and a balance of hardships.

8 **C. PLAINTIFF DOES NOT HAVE A SUBSTANTIAL LIKELIHOOD**
9 **OF SUCCESS ON THE MERITS**

10 Plaintiff does not have a substantial likelihood of success on the merits because it has not
11 sufficiently asserted the elements of civil conspiracy, prohibited and unfair labor practices, or
12 intentional interference with contractual relations. Plaintiff has failed to provide relevant
13 information to support its claims and mere speculation of injury is an insufficient basis to show
14 irreparable harm and grant injunctive relief. *Boardman v. Pacific seafood group*, 822 F.3d 1011,
15 1022 (9th Cir. 2016). Plaintiff asserts that Defendants interfered with contractual relationships
16 but have not provided the contract between NAPSO and its members on which they base this
17 contention. Plaintiff alleges the LVPPA “filed a frivolous internal affairs lack of candor
18 complaint” against an officer “due to his use of retained legal counsel...in an attempt to punish
19 and/or retaliate against the officer.” This allegation is false. LVPPA has not filed any such
20 complaint and the lack of a document or declaration from the allegedly affected officer is telling.
21 Plaintiff also makes sweeping generalizations and conclusory statements to accuse LVPPA of
22 discrimination, coercion, and intimidation without providing even one declaration of a NAPSO
23 member that can attest to feeling this way.

24 **1. This Court lacks jurisdiction over Plaintiff's claim for**
25 **unfair labor practices, therefore the claim has no**
26 **likelihood of success on the merits.**

27 The EMRB has exclusive jurisdiction to hear disputes of unfair labor practice. If a
28 complaint arises from the Employee Management Relations Act (“the Act”) EMRB retains
exclusive original jurisdiction. *Rosequist v. International Ass 'n of Firefighters Local 1908*, 118

1 Nev. 444, 449-50, 49 P.3d 651, 654-55 (2002), overruled on other grounds. *See also Allstate Ins.*
2 *Co. v. Thorpe*, 123 Nev. 565, 170 P.3d 989 (2007) (approving EMRB's exclusive jurisdiction,
3 but rejecting common-law action following agency exhaustion). The Act grants EMRB broad
4 authority to hear and determine any complaint arising out of the interpretation of, or performance
5 under the Act by any employee organization. NRS 288.110(2). In order for the Act to govern a
6 complaint, two requirements must be met. First, the complaint must be against an employee
7 organization. An employee organization is defined as "an organization of any kind having as one
8 of its purposes improvement of the terms and conditions of employment of local government
9 employees." NRS 288.040. Second, the complaint must arise out of the interpretation or
10 performance by the employee organization under provision of the Act. Thus, if the complaint
11 meets these requirements, a party must file a complaint with the EMRB. Furthermore, the
12 *Thorpe* Court explicitly held when the exclusive remedy is administrative, as it is under the Act,
13 a subsequent action before a Court involving the same complaint is prohibited. 123 Nev. 565,
14 n.2. The Act permits court intervention in two instances: (1) judicial review; and (2) issuance of
15 an injunction to enforce an order issued by the EMRB.

16 Plaintiffs allegations of unfair labor practices are contained in the Act, rendering the
17 EMRB the exclusive forum to seek relief. Plaintiff argues Defendant LVPPA "violates NAPSO
18 members' individual rights under NRS chapter(s) 288." To further support its allegations, it
19 relies on other statutes of the Act specifically NRS 288.140(1), NRS 288.270(1)(a-d),(f), and
20 NRS 288.270.2(2)(a),(c) discussing the discrimination and interference in employee relationships
21 with employee organizations. These allegations are plainly subject to the Act and within the
22 exclusive jurisdiction of the EMRB. In meeting the first requirement, there is no dispute that
23 LVPPA is an employee organization. As it relates to the second requirement, Plaintiffs claim for
24 unfair labor practices arises out of LVPPA's performance under the Act- alleged discrimination
25 and interference with the administration of an employee. As a result, Plaintiffs remedy is to file a
26 complaint with the EMRB, not this Court. Pursuant to the Act, this Court has jurisdiction to
27 review decisions made by the EMRB or to issue an injunction to enforce an EMRB decision,
28 none of which have occurred here because the Plaintiff has blatantly ignored the required
statutory remedy.

1 2. **LVPPA has exercised its rights, not interfered with contractual relations**

2 To succeed on the merits in an action for intentional interference with contractual
3 relations, a plaintiff must establish: 1) a valid and existing contract; 2) the defendant's
4 knowledge of the contract; 3) intentional acts intended to disrupt the contractual relationship; 4)
5 actual disruption of the contract; and 5) resulting damage. *JJ INDUS., LLC v. Bennett*, 71 P.3d
6 1264, 119 Nev. 269 (Nev. 2003).

7 Plaintiffs cannot show Defendant LVPPA interfered with the contractual relations
8 between NAPSO and its members because LVPPA was only asserting its rights under the *Lyon*
9 *County* and *NHP v. NAPSO* decisions. Plaintiff asserts that the "sit in" by LVPPA during
10 administrative hearings was an interference because LVPPA was "not invited or requested" to be
11 at the hearing. However, as discussed previously, the LVPPA has the right to attend the meetings
12 as the exclusive bargaining agent. They did not need to be invited. Given that their presence
13 was authorized and required, there could be no disruption of the contract or intent to disrupt.

14 Moreover, Plaintiff argues the questioning of NAPSO's attorney regarding the source of
15 payment of legal counsel violated attorney-client privilege. According to the *Lyon County*
16 decision, LVPPA is entitled to know whether a representative and/or lawyer is associated with
17 another association. In addition, the *Lyon County* decision provides that an employee may bring
18 a friend, relative or co-worker, or an *attorney retained by the employee*. (Emphasis added.). The
19 employee may not bring a representative or attorney associated with another association.

20 Attorney-client privilege is applied only when necessary to achieve its limited purpose of
21 encouraging full and frank disclosure by the client to his or her attorney. *Fisher v. United States*,
22 425 U.S. 391 at 403, 96 S.Ct. 1569; *Tornay v. United States*, 840 F.2d 1424, 1426 (9th Cir.1988),
23 *Clarke v. American Commerce Nat. Bank*, 974 F.2d 127 (9th Cir. 1992). (fix citation). The
24 burden of establishing that attorney-client privileges applies rests with the party asserting the
25 privilege. *Tornay*, 840 F.2d at 1426." *Clarke v. American Commerce Nat. Bank*, 974 F.2d 127
26 (9th Cir. 1992). Plaintiff incorrectly asserts that questions regarding whether NAPSO assigned
27 its member an attorney or whether the member hired private counsel violates attorney-client
28 privilege. These questions are not subject to privilege. The attorney-client privilege does not

1 safeguard against the disclosure of either the identity of the fee-payer or the fee arrangement.
2 *See also Ralls v. U.S.*, 52 F.3d 223 (9th Cir. 1995) (*citing Goodman v. United States*, 33 F.3d
3 1060 (9th Cir. 1994)) where the court reasoned "disclosure of the fee-payer's identity does not
4 necessarily reveal a confidential communication." This line of questioning was proper with
5 respect to the employer's obligation to make sure that an employee's representative is not
6 associated with another employee association. The EMRB requires employers to comply with
7 the following:

8 "Accordingly, in any grievance proceeding involving an employee representative who
9 is also an agent or employee of a rival employee organization, the representative
10 cannot function as such - and hence cannot participate in the proceeding - where the
11 employer knows or reasonably believes that the representative is serving to any extent
12 in his 'union' capacity, on behalf of the rival organization. Where, however, the
13 employer knows or reasonably believes that the representative is serving entirely
14 independently of the rival organization as (for example) a friend, relative or co-
15 worker of the employee, the representative's participation is permissible."
16 (Emphasis in original).

17 Therefore, an employer must make certain that a non-member's representative and/or legal
18 counsel is not associated, in any way, with another association. An employer who fails to make
19 such an inquiry or deals with another association, is deemed to commit an unfair labor practice
20 by refusing, "to bargain collectively in good faith with the exclusive representative as required in
21 NRS 288.150. Bargaining collectively includes the entire bargaining process, including
22 mediation and fact-finding, provided in this chapter." NRS 288.270(1)(e).

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1 3. LVPPA has exercised its rights, not conspired for an unlawful
2 objective

3 To succeed on the merits of Civil Conspiracy the Plaintiff must show evidence that tends
4 to prove a combination of two or more persons who, by some concerted action, intend to
5 accomplish an unlawful objective for the purpose of harming another, with damage resulting
6 from those acts. *Collins v. Union Federal Sav. & Loan Ass'n*, 662 P.2d 610, 99 Nev. 284 (Nev.
7 1983).

8 Plaintiff has not shown a likelihood of success on this cause of action because it has not
9 offered any evidence to support this claim. Plaintiff's Application says it "will adduce evidence"
10 in the future to support its allegations of civil conspiracy between LVPPA and LVMPD. This
11 lack of evidence now fails to rise to the heightened standard required for injunctive relief. The
12 Plaintiff attempts to make a connection that because the LVPPA "sat in" on administrative
13 hearings that there was: 1) an agreement; 2) that intended to accomplish an unlawful objective;
14 3) for a harmful purpose. This is insufficient. Furthermore, LVPPA has a right to sit in on
15 hearings pursuant to the *Lyon County* decision.

16 LVPPA was contractually obligated and authorized to attend all hearings through the
17 Collective Bargaining Agreement between the LVPPA and the LMPD. LVPPA has the right to
18 sit in to observe all administrative hearing with members and non-members under the *Lyon*
19 *County* decision. LVPPA is the exclusive bargaining agent that represents members and non-
20 members to the exclusion of everyone else, not only the Plaintiff. The right of exclusivity
21 negates any harmful intent asserted by the Plaintiffs because it applies to all LVMPD employee
22 associations equally.

23 D. PUBLIC INTEREST AND HARDSHIP WEIGH IN FAVOR OF
24 LVPPA

25 It is in the public's interest in ensuring contracts and collective bargaining agreements are
26 enforced to the extent that they are in accord with Nevada Law. One of the reasons for
27 recognizing exclusivity with respect to union representation is to avoid disputes between unions.
28

1 Exclusivity eliminates an employer's ability to divide and conquer the positions of multiple
2 representatives from different unions.

3 The EMRB has articulated strong policy reasons for not allowing other associations, such
4 as NAPS0, to represent non-members in administrative matters by explaining, "Designating one
5 union as the exclusive representation of all employees allows them to speak with one voice,
6 pooling economic strength, ensure their rights are not watered down by divisiveness, respond
7 with institutional knowledge when employer's disparately treat them, and allowing this care out
8 would tend to dilute that strength contrary to the purposes and policies of the EMRA. If
9 multiple representatives employed by different associations simultaneously represent an
10 employee, it will invite disputes and discord between the associations regarding substantive
11 issues and tactical decisions.

12 Before issuing a preliminary injunction, courts must weigh the competing claims of
13 injury and consider the effect on each party of the granting or withholding of the requested relief.
14 *Moroccanoil, Inc. v. Zotos International, Inc.* 230 F. Supp.3d 1161 (C.D. Cal. 2017). In
15 balancing the equities, a court is required to identify the harms an injunction may cause to
16 defendants and to weigh those against Plaintiff's threatened injuries. *Firearms Policy Coalition*
17 *Second Amend. Defense Comm. V. Harris*, 192 F. Supp. 3d 1120 (E.D. Ca. 2016).

18 On balance, the harm that an injunction would cause defendant outweighs any alleged
19 threatened injury to Plaintiff. The Plaintiff provides two flawed bases for its position that the
20 threatened injury to Plaintiff outweighs the harm that an injunction would cause the defendant
21 LVPPA.. First, the Plaintiff reasons that its members are "left with no representation." As
22 previously stated, this accusation is false. NAPS0's members may hire legal counsel
23 independently so the hardships to seeking legal counsel is minimal. Second, the Plaintiffs claim
24 that there is future harm. NAPS0 members with upcoming hearings have been given a
25 temporary stay on their hearing so that they have the opportunity to hire counsel, or to bring a
26 friend, relative, or other person who is not associated with another association so there is no
27 imminent threat that a hearing will be conducted without legal counsel. Plaintiffs failed to
28 properly allege any causes of action, or show proof that NAPS0 members are being treated

1 differently than any other member or non-member employee, or that LVPPA conduct is outside
2 of the exclusivity of the bargaining agreement.

3 Plaintiff fails to support its claims with affidavits, records, contracts, transcripts or any
4 other piece of evidence that would give credence to their allegations. It is unclear if the plaintiffs
5 are asking defendant LVPPA to stop all administrative hearings or if they are asking to stop only
6 NAPSO member hearings. It is also unclear if plaintiff is requesting the court to force defendants
7 to allow NAPSO to provide legal representation in administrative hearings. Either way, a
8 preliminary injunction is improper


9 The Defendant's application should be denied.

10 **IV. CONCLUSION**

11 Based on the foregoing reasons, Plaintiff's Application for temporary restraining order
12 and preliminary injunction must be denied.

13 Dated this 19th day of January, 2021.

14 SGRO & ROGER

15 
16 ANTHONY P. SGRO, ESQ.
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1 CERTIFICATE OF SERVICE

2 I hereby certify that the foregoing DEFENDANT LAS VEGAS POLICE
3 PROTECTIVE ASSOCIATION'S OPPOSITION TO EX PARTE APPLICATION FOR
4 TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY
INJUNCTION ON ORDER SHORTENING TIME was submitted electronically for filing
and/or service with the Eighth Judicial District Court on the 19th day of January, 2021. I
further certify that I served a true and correct copy of the foregoing document as follows:

6 X Pursuant to EDCR 8.05(a), electronic service of the foregoing document shall be made
7 in accordance with Odyssey.

8 _____ By placing a copy of the original in a sealed envelope, first-class postage fully prepaid
thereon, and depositing the envelope in the U.S. mail at Las Vegas, Nevada.

9 _____ Pursuant to a filed Consent for Service by Facsimile in this matter, by sending the
10 document by facsimile transmission.

11 _____ Via hand-delivery to the addresses listed below;

12 _____ By transmitting via email the document listed above to the email address set forth below
13 on this date before 5:00 p.m.

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EXHIBIT “A”

Vanana Online Services

File Name:	[REDACTED] NAPSOQUESTIONS	
Number of Speakers:	multiple	
Length of file:	8:49	
Audio Category List volume, accent, N/N speakers.	N/A	
Any Comments (e.g. times of recording not needing transcription, etc. e.g., off the record conversation)	Verbatim: Yes	Time codes: No
	N/A	
Any Problems with Recording (e.g., background noise, static, etc.		
Unusual Words or Terms: Must be completed (e.g., abbreviations, Company Names, Names of people or places, technical jargon		
Transcriber VIN:	VVTRAS JU30 US001	
QA/QC VIN Comments		

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JAMIE: My only plan in asking you these questions here. We are not for the PPA or against the PPA or for NAPSO or against NAPSO. We are here to make sure both the employee's rights are upheld and the Association's rights as term for the ENRV accounts.

JOHN: Okay. I'll cut this to the chase. [REDACTED] do I represent you in my, have you selected me to represent you in a legal capacity today?

[REDACTED] Yes.

JOHN: There you go.

JAMIE: Okay. Hey Jake?

JAKE: Yes ma'am?

JAMIE: If you can excuse both John and the employee from the room? I'm only going to ask you to go so we can all talk.

JAKE: Okay.

JOHN: And I will put into record a copy of the EERV decision.

[pause]

JAKE: Jamie, it's Jake again. Do you want just the employee in the room?

JAMIE: No, we'll allow the rep in this place. This isn't about whether he can be there or not. So the rep can be there as well.

JAKE: Okay.

JAMIE: What's the employee's name again?

DAN COYNE: [REDACTED]

JAMIE: Thank you.

JAKE: Okay, Jamie. You have [REDACTED] and John, and [REDACTED] is the employee.

JAMIE: Okay, thank you. So I think they have some questions that they want to ask the employee. We're not going to do this on the record as part of the IEV interview. We're going to keep it as part of this pre-interview so that we have enough information to make our decision. So go ahead, begin.

DAN COYNE: Alright. [REDACTED] do you pay dues in an association, organization, group or entity related to your profession? And if so, whom do you pay the dues to?

[REDACTED] I do pay, I pay dues to Latino organizations and NAPSO.

DAN COYNE: Okay. Who did you contact to obtain your representation for today's interview?

[REDACTED] I talked to Rick.

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DAN COYNE: Rick McCann from NAPSO?

██████ Mm hm.

DAN COYNE: And did you personally retain this attorney to represent you today? And if so, are you paying money directly to him or is it coming out of your NAPSO dues?

██████ I talked to Rick and he said that he had attorneys and that I could retain one.

DAN COYNE: Okay. Did the money come...

JAKE: Hold on one second. Did you want on the record because John...

JOHN: I'm take on everything.

DAN COYNE: That's fine.

JOHN: Yeah. And for the record, I would totally object to this. You're violating my client's constitutional rights. And you have no right to make inquiry to her for something outside this particular venue. But you can go ahead because I'm going to keep a record and then if it's necessary go to the EERB myself, who again, any EERB decision, it says an attorney who is retained by the employee. ██████ already indicated that I'm her attorney to act as his or her representative in such a proceeding, should be allowed to represent the employee, even if the attorney also represents a rival organization. So please proceed.

JAMIE: I'm sorry, before you go on, John, were you saying that we're violating her constitutional rights by asking ██████ these questions?

JOHN: I think you're violating the attorney client privilege. There you go.

JAMIE: Well, I understand that you claim attorney client privilege when you were asked the question, but you didn't object to claim attorney client privilege when she was asked the question. So I think she's voluntarily answered that question.

JOHN: Okay, she's answered the question. I don't know why you would give another organization the right to question somebody in an internal affairs investigation who is not part of Metro.

JAMIE: This is not an internal affairs investigation. We're not on the record as a part of the internal affairs investigation, which is why we're doing this pre.

JOHN: Okay. Proceed.

DAN COYNE: And ██████ just the follow up of that question. Are you paying money directly to the attorney or is it through NAPSO?

██████ I pay NAPSO.

DAN COYNE: Okay. And that's all we have for you.

LAWRENCE: That's all we have, Jamie. She, hold on, Jamie she, don't interrupt me.

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JOHN: Well, I need you to be identified. It's a reasonable question.

LAWRENCE: Jamie, this is Lawrence.

JAMIE: Yes.

LAWRENCE: The statement has been made that she is paying the dues to NAPSO and she was contacted by Rick McCann, I believe he's the president of NAPSO. And that's all we have to say. So it's pretty clear that he wasn't retained, he's being paid by NAPSO.

JOHN: Okay, for the record, that's 100 percent false. As an attorney client privilege, although you may not be aware of this, anybody can establish attorney client privilege without compensation, period. So I just want that for the record also.

DAN COYNE: We're done, Jamie. We've heard enough.

JAMIE: Hold on, I'm just thinking to make sure I don't have any other questions that I want to ask. Sorry, I'm just going over my notes here. Hey, John? Is there anything that you can give me, and I'm not trying to breach attorney client privilege, I'm very familiar with that privilege, that helps me to say that she retained you? I understand that money doesn't necessarily have to be exchanged. So I'm just trying to get something so that I can go back to the right people and say that she was retained, she retained him.

JOHN: Very simple. [REDACTED] have you retained me to be your attorney?

[REDACTED] I was asked if I wanted an attorney, and yeah, attorney sounds like, yeah, I would love to.

JAMIE: Did you select him as your attorney? Were there others to select from and you selected him? Or was he given to you?

[REDACTED] There were some given to me and I selected him.

JAMIE: Okay, okay. Alright. I appreciate that. Jake, I don't know if it's easier for you guys to step out and then keep me on the phone, or if you want to have everyone else step out so that we can discuss.

JAKE: We can step out.

JAMIE: Okay.

[REDACTED] I don't understand because at one point I'm at PP and NAPSO at the same time. When I was a witness, I was asked if I wanted a representative from PTPPN and I said no, I'm going to use Rick McCann, and that was okay. But now it's not okay.

LAWRENCE: Well, see, and I apologize for all this, [REDACTED] This is not our doing. This is not something that we asked for. But they had an EMRB decision that came down and somehow the law changed where now you can't have, be part of a rival organization and stuff like that. This was a fight between NAPSO and NHP with their organization, not us. We had nothing...

EXHIBIT “B”

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File Name:	[REDACTED] JohnHuntpreinterview	
Number of Speakers:	3 or 4	
Length of file:	17:09	
Audio Category List volume, accent, N/N speakers.	N/A	
Any Comments (e.g. times of recording not needing transcription, etc. e.g., off the record conversation)	Verbatim: Yes	Time codes: No
	N/A	
Any Problems with Recording (e.g., background noise, static, etc.)		
Unusual Words or Terms: Must be completed (e.g., abbreviations, Company Names, Names of people or places, technical jargon)		
Transcriber VIN:	VVTRAS JU30 US001	
QA/QC VIN Comments		

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JAMIE FROST: Alright. So John, I think you and I met over the phone the other day. My name's Jamie Frost.

JOHN HUNT: Okay.

JAMIE FROST: Nice to officially meet you in person. We're going to go through kind of the same process we did the last time you were here. So in what capacity are you here?

JOHN HUNT: I am here, I've been retained by Officer [REDACTED]

JAMIE FROST: Okay.

JOHN HUNT: We have an attorney client relationship. He's retained me.

JAMIE FROST: Okay. How were you retained by [crosstalk 0:00:32.6]?

JOHN HUNT: I, I'm not going to answer that. That would violate the attorney client privileges, constitutional right to have representation. And again, for the record, I would place into the record a copy of the EMRB decision. Further, it states that an attorney, I'm sorry. Okay, back on the record. A question was asked how, in what capacity am I here today? I have been retained by Officer [REDACTED] to represent him in these proceedings. And according to the EERB EMRB decision which I will put into the record, an attorney who is retained by an employee to act as his representative in such a proceeding should be allowed to represent the employee, even if the attorney represents a rival employee organization. Further, it states on page 11 of the EMRB decision, Judge Ratswell even affirmed the board's order holding that an attorney who is retained by an employee to act as his representative in such a proceeding should be allowed to represent the employee. There you go.

JAMIE FROST: Are you aware whether or not that employee is a member of any kind of employee organization?

JOHN HUNT: I'm not here to answer those questions. I've stated for the record that he has retained me as his attorney. We have an attorney client privilege which is protected by the Constitution of Nevada and the Constitution of the United States of America.

JAMIE FROST: And just for your record, this is not on the record, so I understand that you're recording it, but this is being done outside the internal affairs proceedings and done by myself, who has nothing to do with the actual interview. I'll be leaving as soon as this is done. Only for the sole purpose of making sure that the Department abides by its obligation to comply with the EMRB decision to uphold the exclusive bargaining rights of the PPA and also to make sure that the employee's rights in a 289 are satisfied. So that's why I'm here, why this is not done as part of the internal affairs interview, because this has nothing to do with the internal affairs interview other than the representation part of it. So I'm going to go ahead and ask the employee a couple questions so I can get some clarification. I think, just bear with me, I think that there are some points here that would be useful for both sides. But for one, are you a member of any kind of employee organization?

[REDACTED] I'm not going to answer that.

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JAMIE FROST: Okay. So the reason I'm asking that, let me just tell you. You were here last week?

[REDACTED] Correct?

JAMIE FROST: Correct? You were here last week on behalf of an employee who happens to be a member of NAPSO.

[REDACTED] Okay.

JAMIE FROST: So I understand this employee is not a member of NAPSO. Am I correct on that?

JOHN HUNT: My client is here today based upon a notice he received from Metro. He answered every and all questions that is part of an investigation. You did not commence the investigation so he's not going to answer any of your questions.

JAMIE FROST: So let me pull the [unclear 0:03:44.3]. You're making this tough on me. The EMRB decision requires that we follow up with additional questions to the employee, we being the Department, if we have any questions as to whether or not there is an issue with the exclusive bargaining rights of the PPA. So it puts that obligation on us and we would not be in compliance with the EMRB decision if I did not do my due diligence. As you know, the last time you were here, we made the decision to allow you to be here to continue to represent the employee. We did not kick you out. So just want to make sure that I'm...

JOHN HUNT: You're going to kick me out?

JAMIE FROST: Maybe a poor choice of words, but basically doing our due diligence, I found that it complied with the EMRB decision to have you continue to represent the employee.

JOHN HUNT: Okay.

JAMIE FROST: So all I'm doing is doing that. I know that the last time it came up a little bit hostile so I was hoping this would kind of be a little bit better, but it seems it's gotten more hostile. And like I said, all I'm doing here is trying to make sure that both sides have their rights upheld, the employee's 289 rights and the PPA's 288 rights. The Department is in the middle, but we do have that obligation of the EMRB decision. So...

JOHN HUNT: And I've answered you. The EMRB decision cited it and given you the, state your name for the record.

[REDACTED] Officer [REDACTED]

JOHN HUNT: Okay. And have you retained me to represent you in, whenever it begins, the internal affairs questionnaire today?

[REDACTED] Yes.

JOHN HUNT: Okay.

JAMIE FROST: Bear with me for a second, I'm looking for the language about being able to

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follow up with additional questions.

JOHN HUNT: And also for the record, if there's, in all due respect, if the PPA has any grievance here, they can file a complaint. So I don't understand. This is more of an intimidation tactic to try to rattle the officer prior to him being able to answer, and he's here to answer every question which he's required to do pursuant to NRS 289.

JAMIE FROST: So in the EMRB decision it says, in any grievance proceeding it falls to the foregoing, that the representative of the local government employer, that is myself, has the right and indeed the obligation to make inquiry of the employee and any person appearing as the employee's representative concerning the status of the employee as a member or non-member of the employee organization serving as recognized bargaining agent for the unit, the nature of the relationship between the employee and the representative, and his representative, whether the representative is an attorney, a friend, relative, coworker, and the employment or affiliation of the representative. So we have the right and obligation per the very same EMRB decision that you are quoting. So I'll ask again to the employee, are you a member of any employee organization?

[REDACTED] I'm not going to answer that for a second time.

JAMIE FROST: Okay.

MALE: Do you want to take a break for a second?

JAMIE FROST: Yeah. Give me a second and we'll figure out how we want to handle this.

JOHN HUNT: I would love to even go call Joe and have him come down here, because this should not be shared [unclear 0:07:22.3] because I believe that he would not want you to basically intervene. The answer to all those questions is that he's answered the questions, so if you're saying, if your only question is, is he a member of NAPSO?

JAMIE FROST: Of any employee organization.

JOHN HUNT: You can answer that. So if you're a member of NAPSO, it's perfectly okay for you to say I'm a member of NAPSO.

JAMIE FROST: It is perfectly okay. Let me be clear.

JOHN HUNT: And also for the record, just if you're going to have this long discourse, for me, so I can perfect my complaint, if I bring one to the EMRB, everyone in the room needs to identify themselves.

JAMIE FROST: And you know what? Let me tell you something, and I want to tell this to the employee. Listen, this is not fun for us and I am not here on behalf of the PPA or on behalf of NAPSO or anything else. I am here because we are put in the middle, which sucks. I have no better or more professional way to put it other than it sucks. And I wish I didn't have to make this decision. And I've told NAPSO, NPLOA, FOP to file a complaint. I hope that you guys do to get clarification, because there are gaps and holes in the EMRB. I told PPA to do the same thing. So we just want to be told what to do, so I apologize, Officer, that you're here and that you're in the

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middle of this. It's an entirely uncomfortable situation already that you're here in ID and now to throw this on top of it, it's not fun and I am sorry for that. There is no issue with you being a member of any or all employee organizations. I'm simply trying to at least do what we need to do so that I can go back to the EMRB or the shift core or whatever this needs to end up and say hey, we did what we were supposed to do. I got the questions answered. We made our decision based upon the EMRB decision. So the more information you can give me the more helpful that it's going to be for us to answer that. I know you're put in an incredibly uncomfortable situation, and if you want to talk to your attorney prior to answering that question, by all means please take a break and go talk to him. But I would like to know if you're a member of any of the organizations. That's really the question that I want to know, which ones you're a member of and I can [unclear 0:09:46.3].

JOHN HUNT: Well, I think you prefaced that by it doesn't matter if he is or isn't. So why do you even need to know that?

JAMIE FROST: Okay, it doesn't matter as far as an employee, you have the right and ability and encourage, the power to encourage new members of any and all organizations, but for this proceeding it matters for our obligation to find out whether or not there's a violation of the PPA's exclusive bargaining rights. I'm not saying there is, I'm not [unclear 0:10:12.3] the PPA, but the EMRB [crosstalk 0:10:15.4]

JOHN HUNT: So you're not deciding whether or not...

JAMIE FROST: The EMRB puts that obligation on behalf of the Department to make that decision. Unfortunately, I wish it didn't. I wish it was between you guys only, but they put it on the Department. So I have to make that inquiry.

JOHN HUNT: I think they're confusing their right to be the representative in collective bargaining versus being, having the right to represent, have anybody choose anybody they want in the world as their attorney. And there's a big difference there.

JAMIE FROST: I'm not confusing that. The EMRB might be confusing that, but the case that they came out with says this exclusive bargaining right applies to grievance proceedings and internal investigations. It does. I didn't make this, I didn't have an opinion in it, we didn't do an amicus brief in this. But that's what it does.

JOHN HUNT: Okay.

JAMIE FROST: So we have to do what our obligation is and this thing you know, I don't act without authority from the Sheriff, the Sheriff is very well briefed on this issue. He's briefed on how we're handling this issue, he's given his own direction on how he would like us to handle this issue. So he's well aware of that. If there's some different direction that you've got from the Sheriff, I would love to hear that or would love to, if you have a connection to get him down here, by all means, please. So that's the only question I would like answered that I think will help for today's proceeding on whether or not this officer happens to be a member of any employee organization. So if you guys want to take a minute with the officer on whether you want to answer that question, I have no problem with you guys doing that.

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JOHN HUNT: Alright. We'll take a minute.

MALE: They can go in another room or...

JAMIE FROST: Sure, if they're going to answer.

JOHN HUNT: No.

JAMIE FROST: Can I borrow you for one second?

JOHN HUNT: Can you bother me? Or borrow me?

JAMIE FROST: For one second.

[background conversation]

JAMIE FROST: Likely filed and that is what it is outside of this specific incident, we'll cross that bridge, we'll deal with it there. But I think that, you know, it is what it is and the EMRB decision allows attorneys as long as they're retained by the employee.

MALE: Okay. We've been advised by Dave Roger to ask her questions. I don't know if you'd be willing to answer the questions?

JOHN HUNT: Before we begin, please state your name for the record.

MALE: No, I'm not going to answer.

JOHN HUNT: No, you're here now. We should have started [crosstalk 0:12:37.9]

MALE: John, did you state your name for the record?

JOHN HUNT: Yes. My name is John Hunt. My bar number is 1888, okay? Been here in Las Vegas for 44 years and I'm practicing 36 years.

MALE: I'm here being nice together and you're the only one who's just...

JOHN HUNT: No, because...

MALE: You're not reasonable.

JOHN HUNT: I'm going to be honest. When we started this thing a long, long time ago, you know, and I understand the PPA. I know a little bit about collective bargaining, just a little bit, and I understand what, you have that right for collective bargaining issues, right? You don't have the right to prevent someone from choosing their own attorney. And that's in the decision, right? I mean, some things are like, it is what it is.

MALE: Okay, we're done talking about it. Ask him the questions because we don't have all day. We're keeping these people here.

MALE: Do you belong to an association, group, or any entity related to your profession?

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JOHN HUNT: Do not answer the question. I'm instructing him not to answer.

MALE: Are you just refusing to answer all the questions?

JOHN HUNT: Well, you got to ask them before we can refuse.

MALE: Did a representative from NAPSO, FOP, Latin Police Officers Association, Black Police Officers Association or any other group contact you regarding...

JOHN HUNT: Do not answer the question. It violates the attorney client privilege.

MALE: Did you personally contact John Hunt to retain him?

JOHN HUNT: Do not answer the question. If that doesn't violate attorney client privilege [crosstalk 0:14:00.0] salt and pepper on the table.

MALE: Okay. So refuse to answer. Our objection is that clearly John Hunt's a member, an associate of a rival organization, NAPSO. He's on their website.

JOHN HUNT: Okay, you're on the record?

MALE: Please stop interrupting him while he's talking.

JOHN HUNT: No. I'm not...

MALE: Yes you are. You're interrupting.

JOHN HUNT: No, I'm not interrupting. [crosstalk 0:14:19.7]

MALE: We all come in here and remain cordial except for you. That's not how we do things here. So it's clear that he's on their website. He only represents NAPSO employees. They are not being forthcoming at all. We object to him being present.

JOHN HUNT: Okay. And I object to this entire line of questioning due to intimidating the officer because PPA, for whatever reason, wants to intimidate anybody who wants to select their own attorney. And I object to them being and asking questions. It should not even be allowed, right? And if they have a grievance they should take it. They're not taking it because they know the EMRB would turn them down so fast, quicker than you could get an order in front of the judge. But this is just an intimidation play to intimidate good officers who are trying to come here, give you, Metro, all the information that you need for your internal affairs. And I object that they're even allowed to ask any questions. They should not be allowed to do it. It's just a way to intimidate a good officer.

JAMIE FROST: And this is what's clear. We're not allowing it in the internal investigation. The internal investigation hasn't started yet. As soon as it does, I will be leaving the room. I'm not here for that. So this, you are not under compulsion, which is why you are able to answer I'm not saying this, I'm not answering the question. That is your right under advice of your attorney. So with that and with the information that I've gotten, I think it is appropriate for the EMRB decision that Mr. Hunt stay and represent the officer, and obviously we'll cross that bridge on another day. Anything

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else? Thank you guys. Sorry, Officer.

MALE: One thing I would like to add is you just mentioned the agencies that came in and introduced themselves to myself when I was a recruit.

MALE: Is this on the record?

MALE: And given there is loyalty to [crosstalk 0:16:21.6] organizations it allows a recruit [crosstalk 0:16:24.9]

MALE: Okay, go ahead and...

MALE: We're done.

MALE: I am done.

MALE: I understand that... [crosstalk 0:16:34.6]

MALE: This a representative of IAD. I understand this is extremely uncomfortable. We got the objections on the record. What I'm asking is, we're finished with the objections, so can we move forward with the interview? Because it's very uncomfortable for everybody in the room, but we do have a purpose here and I'd like to get going with it. Thank you.

JAMIE FROST: Thank you guys. Do you guys need a [crosstalk 0:16:55.5]

MALE: You guys need a break to cool down, that's no big deal, they'll give it to you.

MALE: Do you need to contact the sergeant with the...

MALE: I texted him to let him know that I'm probably not going to be on time for my shift, so.

EXHIBIT “C”

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File Name:	[REDACTED]nonmember	
Number of Speakers:	3 or 4	
Length of file:	7:24	
Audio Category List volume, accent, N/N speakers.	N/A	
Any Comments (e.g. times of recording not needing transcription, etc. e.g., off the record conversation)	Verbatim: Yes	Time codes: No
	N/A	
Any Problems with Recording (e.g., background noise, static, etc.)		
Unusual Words or Terms: Must be completed (e.g., abbreviations, Company Names, Names of people or places, technical jargon)		
Transcriber VIN:	VVTRAS JU30 US001	
QA/QC VIN Comments		

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JAMIE FROST: I was thinking that IAB has called Officer [REDACTED] and given him the notice that pursuant to the EMRB decision he's not allowed to bring a representative from a rival organization. It was made clear that even an attorney from a rival organization, and that he could not bring anybody from NAPSO. He would need to find alternate representation. His interview was scheduled a couple times but most recently last week, and he called IAB and asked for additional time in order to find a representative that was not connected to NAPSO. They postponed the interview until today, allowing him an opportunity. Today, Attorney John Hunt has shown up. John Hunt is an attorney that is obtained through a NAPSO membership, and I will let John Hunt speak if he wants to speak differently, but that is my understanding. The Department is not going to allow Attorney John Hunt to represent Officer [REDACTED] in this matter, given the EMRB decision that says a representative from a rival organization cannot participate in these proceedings.

With that said, we are going to, in the spirit of trying to make this as cordial and as helpful for the employee, because this is not the employee's dispute, it's a dispute between PPA, outside organizations and the Department. This does not concern the employee and we want the employee, we want you to have ample opportunity to find a representative. We're going to postpone it one other week. I have the notice for you here today. And allow you opportunity to find another representative. If anyone from NAPSO or another rival organization appears, we will not be permitting that person to come and represent you, and we will be proceeding on that interview next week. So that said, I know that [crosstalk 0:01:56.6]

JOHN HUNT: Just for the record, for the record, I, my name is John Hunt, my bar number is 1888. I've practiced law in the State of Nevada for over 30 years. I sit as a part time judge. I am an attorney. I've been retained by Officer [REDACTED]. I am neither an agent nor employee of NAPSO. He has retained me as his counsel pursuant to the EMRB decision. However, the District Court has said that you have a right to counsel. And this is probably the most fundamental constitutional right anyone would have, particularly since this may involve discipline which may result in criminal sanctions if the officer does not, is not forthright during his testimony. And to deprive him of his right to counsel when he has retained me is unconscionable.

I would also for the record, would object that any PPA representatives should be here. I believe that the end of the EMRB decision, the only thing that they could be here for is to look at grievances. This is not a grievance. This is discipline. They have no right to be here and I would object to their presence now and in the future. So that as you know, so I'm going to make a copy of the EMRB decision being part of the record today. Also the conclusion that was filed. Please note that currently the complaint is against not only the PPA but also the Los Vegas Metropolitan Association. I don't know if barring me from this has any kind of retribution effect on the officer, but I'm making this record so that I can present it to the judge. The judge currently has in front of him or her a temporary restraining order, but because the Department was held by Judge Hernon, Judge Hernon is now on the Supreme Court, the new judge hasn't taken place.

So with that in mind, that's what I want to put on the record. Officer, for the record, have you retained me as your counsel?

[REDACTED] Yes.

JOHN HUNT: Okay. And the payment for me regarding this is indirectly from your dues, correct?

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[REDACTED]: Yes.

JOHN HUNT: And you recognize that I've never represented to you that I'm either an agent or an employee of any rival union as referenced here now? So you understand that, correct?

[REDACTED]: Yes.

JOHN HUNT: Alright.

JAMIE FROST: And just to make two points for [unclear 0:04:43.0] to say anything that they wish. The Department has not been served on this lawsuit or the motion for temporary protective order, but are aware of it. And also to be clear and so the employee's aware, criminal sanctions cannot result as a result of this interview. Specifically it's precluded given that you are being compelled. So anything you say in here cannot result in a criminal investigation. So [unclear 0:05:07.3] a criminal investigation, just to be clear. And I'll allow PPA, is there anything that you would like to say?

MALE: Yes. I would also like to place an objection on record as to John Hunt being present here now and in the future. We believe that John Hunt's an affiliate of NAPS0. He's advertised on the NAPS0 website. He only comes to these meetings for NAPS0 members. Officer [REDACTED] is a NAPS0 member, so that's our objection.

MALE: Per our contract, we are allowed any matters involving officers, people that are covered by the collective bargaining agreement that we have negotiated, we are allowed to be here. That is the reason we're allowed to be here, not just for grievances. If you looked at the contract, people would know that. That's all we have.

JAMIE FROST: That said, do you guys have anything else? Do you want to notice him on, just on the [inaudible 0:05:56.8]?

MALE: So why don't we schedule the interview for next Tuesday, same time at 1600? [inaudible 0:06:04.3] is going to be the interview notice, it mirrors the last one we already gave you, just the date and time are different.

MALE: Just the date and time have changed. You're being compelled as a subject employee in an internal investigation to answer questions regarding the allegations that on September 29, 2020, while working in North Valley contracts NBC you and Corrections Officer [REDACTED] P number [REDACTED] counseled inmate [REDACTED] and that's ID number [REDACTED] for not wearing his mask. It was further alleged while counseling inmate [REDACTED] you and Officer [REDACTED] used harsh, coarse, profane, violent and insolent and indecent, suggestive and sarcastic language. It is also alleged Officer [REDACTED] placed inmate [REDACTED] in the program room for approximately four hours to correct his behavior. You will be asked questions related to the above listed allegations to include your actions, alterations and any related conversations. So that's the notice. It mirrors the same one as last time, just the dates have changed. And also redo the admonishment.

MALE: Can you just read the date?

MALE: Sure. The date has been rescheduled to January 12, 2020, 1600 hours, and that is a



Vanana Online Services

Tuesday.

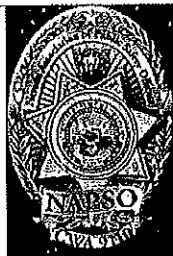
MALE: We'll send you another email confirmation for the calendar.

MALE: Okay. Anything else?

JAMIE FROST: No.

MALE: Thank you.

EXHIBIT “D”



NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS

REPRESENTING NEVADA LAW ENFORCEMENT
CWA - LOCAL 9110 AFL-CIO

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January 19, 2021

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NAPSO's Office Will Remain Open

During these emergency times involving the COVID-19 virus, the NAPSO main office will remain open under the Governor's Order No. 003, Section 8, which states that non-enumarated businesses may remain open if they do not open to the general public and if they implement social distancing safeguards. We consider the NAPSO operation as providing vital supportive services to our public safety members who are essential to the health, welfare and safety of our communities.

Therefore, while the NAPSO office is open and until further notice, the outside doors shall remain locked to the public. Access can be achieved with a key, the door codes or by having someone in the building allowing entry. Believe it or not, we do experience a small volume of the public who walk in the front doors when they are unlocked during the business day and that must be eliminated. Remember there is a door bell at the front door.

I am recommending that all functions that are scheduled in the building by outside interests (parties, gatherings, meetings of more than 10 people) be canceled or postponed.

I believe these practices will be in accordance with the Governor's Directive and that we are mandated to follow them.

Please stay healthy and safe.

Click here for video from Executive Director Rick McCann explaining NAPSO's statewide coverage:

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NAPSO Executive Director Rick McCann prepares weekly updates regarding the events of the 2019 legislative session.

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Feb 01, 2021
Carson City, Nevada

[NAPSO Board of Directors meeting](#)
Feb 22, 2021
NAPSO Conference Room

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Nevada Law Enforcement Coalition is Alive and Well !!

Many of you have been advised that the newly organized Public Safety Alliance of Nevada is replacing the Nevada Law Enforcement Coalition which NAPSO helped to create and which has lobbied successfully for all statewide law enforcement interests for the past two legislative sessions. This is not correct. [Read More...](#)

Nevada Law Enforcement Coalition postpones candidate interviews

UPDATE: Due to the current environment surrounding the COVID-19 virus, the Nevada Law Enforcement Coalition (NLEC), of which NAPSO is a founding member and leader, has postponed the live endorsement interview dates for non-judicial candidates in both Las Vegas and Reno. Arrangements are currently being made to conduct those interviews via alternate teleconferencing modes. [Read More...](#)

NAPSO names new Civil Rights & Equity Representative

NAPSO named a new representative to the CWA National Civil Rights & Equity committee. Sgt. Ken Youngblood of the Henderson Police Department has been named to replace Lt. Kirk Moore of HPD, who resigned his position due to the press of other responsibilities in his department. [Read More...](#)

NAPSO/CWA Joins Statewide Coalition on Energy Choice -- and again, WE WON !!

Download: [No on 3 Initial TV ad.mp4](#)

NAPSO'S Las Vegas Law Firm Merges with National Powerhouse

NAPSO is proud to announce that its Las Vegas backup law firm of Morris Polch & Purdy has merged with the national powerhouse firm of Clark Hill. Senior partner Nick Wleczorek will continue to be the managing partner of the firm and his staff will continue to handle selected civil and administrative cases involving NAPSO'S members and Associations. [Read More...](#)

Individual Members Welcome

The Board of Directors of NAPSO recently decided to open its legal and administrative defense services to individual peace officers who are not members of one of our affiliated Associations. [Read More...](#)

Download: [Representation Agreement.Legal Defense Only.No Costs.pdf](#), [Individual Member Enrollment Sheet.pdf](#), [Plan Summary.Legal Defense Only.pdf](#)

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[Nevada Statutes & Codes](#)

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[U.S. Dept. of Labor](#)

NAPSO'S Executive Director Addresses Tragedies in Dallas and Beyond

This is a letter sent to local, state and national media on behalf of NAPSO following the tragedies in Dallas: My name is Richard McCann and I am the Executive Director of the Nevada Association of Public Safety Officers (NAPSO), affiliated with CWA as Local 9110, AFL-CIO. [Read More...](#)

Blog Updates

- Sep 14 [NAPSO member acquitted](#)
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- Aug 18 [Contract Negotiations - Step 2](#)
By Richard P. McCann, J.D.
- Feb 10 [Contract Negotiations - Step 1](#)
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- Sep 20 [What Constitutes a "Past Practice"?](#)
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NAPSO Representation Plan

NAPSO's Representation -- the Best in the Business !!

The Nevada Association of Public Safety Officers (NAPSO) is the largest affiliation of AFL-CIO public safety Associations in Nevada. NAPSO's background and experience means that we are able to provide statewide representation that law enforcement professionals deserve in the following areas (for more details, click "Legal Defense Plan" above):

Disciplinary Representation - NAPSO's Executive Director, its staff and its plan counsel vigorously defend member peace officers and protect their rights in disciplinary proceedings throughout Nevada. NAPSO representatives appear with member officers at every level of interview and hearing. Our track record in this area is the best in Nevada. NAPSO takes seriously the need to protect our members and their families when their jobs and their careers are threatened.

Contract Negotiations - NAPSO's representatives have a track record of successful collective bargaining negotiations throughout the state, and they work tirelessly to ensure that our members are the leaders in compensation and benefits in the law enforcement industry.

Litigation - When the need arises, NAPSO and its plan counsel may aggressively represent their member officers and associations in litigation matters involving the defense of on-duty criminal charges and civil lawsuits, FLSA, Injunctions to enforce MOU's and the Peace Officer Bill of Rights, and other actions deemed necessary to protect the best interests of our members.

Political Action - NAPSO and its affiliates, the National Coalition of Public Safety Officers (NCPSO) and the Communications Workers of America (CWA), AFL-CIO Local 9110, are the most powerful voice in Nevada law enforcement. From Carson City to Washington, D.C., law enforcement concerns are being heard by legislators and NAPSO is leading those efforts.

Organizing - Through its association with NCPSO and CWA Local 9110, AFL-CIO, NAPSO may elect to assist new law enforcement groups around the state to organize themselves, obtain recognition by their employers and commence the process of representation, bargaining and obtaining a political voice in their own affairs.

NAPSO's Vision

[NAPSO Board of Directors meeting Mar 22, 2021](#)
NAPSO Conference Room

[NAPSO Board of Directors meeting Apr 26, 2021](#)
NAPSO Conference Room

<<							January 2021		>>	
S	M	T	W	T	F	S				
					1	2				
3	4	5	6	7	8	9				
10	11	12	13	14	15	16				
17	18	19	20	21	22	23				
24	25	26	27	28	29	30				
31										

More Benefits of Your NAPSO/CWA Membership

Because you're a current NAPSO/CWA Local 9110 member, you and your family are automatically eligible to start using your Union Plus benefits as described in the PDF attached to this document.

For Union Plus benefits, visit www.unionplus.org.

You may be eligible for other benefits from CWA. Click www.cwa-union.org.

Union Plus benefits from Union Privilege are the only consumer benefits endorsed by the AFL-CIO and NAPSO.

1/19/2021

Nevada Association of Public Safety Officers



To implement and preserve a sound organizational philosophy that will be used to secure fair and equitable compensation, benefits, policies and procedures for the protection of our present and future members, and to promote labor, benevolent, educational, charitable, civic, patriotic, and fraternal activities among our membership.

NAPSO's Mission

To preserve and strengthen camaraderie among our law enforcement/peace officer members, including police officers, deputies, corrections officers, state and federal law enforcement officers, special district police, probation officers and parole officers; and to improve wages and hours of work, increase job security, improve working and living conditions, and defend the rights and liberties of our members.


NAPSO's Values

Never discriminate among members
Always act in good faith
Promote labor issues
Support all interests of law enforcement
Obey all By-Laws and the CWA Constitution

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APP 143

NAPSO Plan Counsel

NAPSO Plan Counsel

I. NAPSO is proud to introduce the law firm of **Clark Hill**, which merged with our former firm of Morris Polich & Purdy on July 17, 2017 (www.clarkhill.com and www.moplaw.com) as NAPSO's backup support to our current legal defense plan by handling selected civil and administrative cases involving our members and Associations. Many of our members have already met attorneys Nick Wleczorek, John Hunt, Jeremy Thompson and Bert Wuester as their counsel during IAB/OPR interviews, critical incidents, arbitrations and court appearances.

Clark Hill offers public sector administrative and employment-related expertise throughout Nevada and the United States, employing nearly 500 attorneys in its 17 offices coast-to-coast. They maintain over 200 legal practice areas, including Labor & Employment law and Government & Public Affairs law.

NAPSO created a national legal defense plan that expanded to include nearly 2,000 Federal Air Marshals throughout the country. **Clark Hill**, through its merger with Morris Polich & Purdy and with the guidance of NAPSO, is now the national counsel for federal public safety officers, including those Federal Air Marshals.

II. NAPSO is also proud to introduce attorney Michael Becker and his associates with the **Las Vegas Defense Group** (www.702defense.com), who are handling any criminal charges that may befall our members. The Becker firm is associated with the **Shouse Law Group** in California

(www.shouselaw.com), which has a number of criminal defense lawyers who are former law enforcement officers.

Michael and his staff previously obtained a jury acquittal for one of our members who was criminally charged with on-duty offenses in Nye County and they successfully represented several members in southern Nevada regarding federal grand jury proceedings arising from their alleged excessive use of force.

III. NAPSO is honored to be represented in northern Nevada by the firm of *Ristenpart Law* (www.ristenpartlaw.com), handling cases for our members in Reno, Sparks, Carson City and other parts of northwestern Nevada. Theresa Ristenpart is an experienced trial attorney with over a decade of litigation in both civil and criminal matters. She is known for her aggressive and innovative trial strategies and winning difficult cases. In addition to her trial work, Theresa is a senior adviser to the U.S. State Department for international projects, teaching judges, lawyers, and law enforcement officials from all over the world. She is an adjunct professor at the University of Reno, Nevada where she teaches legal writing and trial advocacy. Theresa also serves as a *pro tem* judge in the Northern Nevada justice courts.

IV. In the Elko area, NAPSO works with the law firm of *Lockie & MacFarlane* to provide our members with outstanding criminal, civil and administrative defense. They are longtime members of the Elko legal community and they are widely respected by all members of the local law enforcement community. When it comes to northern and northeastern Nevada, David Lockie and Sherb MacFarlan know the legal environment better than anyone.

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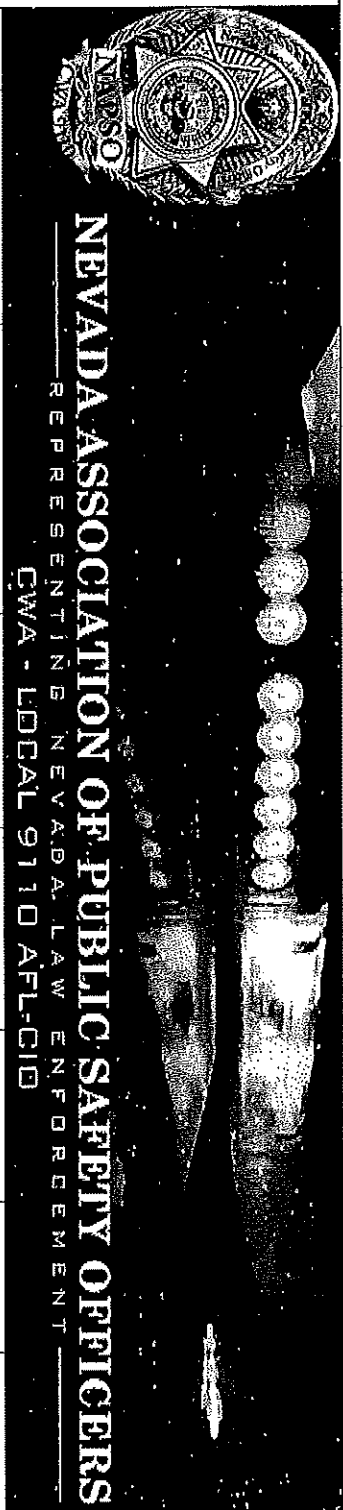
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APP 145

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- Home
- Political Endorsements
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October 15, 2020

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NAPSO'S Las Vegas Law Firm Merges with National Powerhouse

Updated On: May 26, 2018

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Nevada Association of Public Safety Officers

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NAPSO conference room
[Election Day - 2020](#)
[Nov 03, 2020](#)
[NAPSO E-Board & Directors meeting, Nov 16, 2020](#)
NAPSO conference room
[NAPSO E-Board & Directors meeting, Dec 14, 2020](#)
NAPSO conference room

<< October 2020 >>

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

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EXHIBIT “E”

2016 WL 6947474 (NV LGEMRB)

Local Government Employee-Management Relations Board

State of Nevada

LYON COUNTY EDUCATION ASSOCIATION, COMPLAINANTS

v.

LYON COUNTY SCHOOL DISTRICT, RESPONDENTS

Case No. 2016-011

ITEM NO. 817

October 20, 2016

ORDER ON PETITION FOR DECLARATORY RULING

*1 On October 3, 2016, and October 4, 2016, this matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for deliberation and decision pursuant to the provisions of NRS and NAC chapters 288, NRS Chapter 233B, and was properly noticed pursuant to Nevada's open meeting laws and Administrative Procedures Act. This order is issued pursuant to NAC 288.401 and NRS 233B.120.

Petitioner Lyon County Education Association ("LCEA") is the bargaining agent for non-administrative licensed employees (referred to as "certified" staff and commonly referred to as the "teachers") employed by Respondent Lyon County School District (the "District").

On August 18, 2016, LCEA filed the subject Petition for Declaratory Ruling.¹ The Board finds that granting declaratory relief is appropriate in this case as follows. NAC 288.410(2)(c).

On or about October 26, 2015, Summer Kay (a teacher employed by the District and President of LCEA) was advised that Elizabeth Clausen (Dayton High School ("DHS") teacher) wanted to use a non-LCEA representative at a future meeting related to her employment. Ms. Clausen is not a member of LCEA. The District submitted evidence indicating that it was not aware that the person chosen by Ms. Clausen was affiliated with a different union. Ms. Kay subsequently emailed Tim Logan (the District's Director of Human Resources) and Steve Henderson (Principal at DHS) stating "that LCEA is the exclusive bargaining agent for certified staff and no other organization is allowed to provide" representation. According to the LCEA, on October 27, 2015, at the District's Board of School Trustees' meeting, Ms. Kay had a conversation with Mr. Logan where she asked Mr. Logan if she could come to the subject meeting, if it was even to take place, to represent the interests of LCEA. On or about November 11, 2015, Ms. Kay sent a follow-up email to Mr. Logan regarding the outcome of "representation notification to the teacher". On the same day, Mr. Logan responded that the teacher had used Sharon Nelson, who was subsequently identified by LCEA as the Director of Legal Services of the Association of American Educators ("AAE"). On or about November 12, 2015, Ms. Kay responded that "[b]y allowing her to provide representation in Lyon County you have violated the negotiated agreement and NRS statutes that grant LCEA exclusive bargaining rights in Lyon County."

Preliminarily, the Board notes that the District "does not dispute that the LCEA is the exclusive bargaining unit which includes teachers." The District's Response to Petitioner's Brief in Support of Petition for Declaratory Order ("District's Response"), at 2-3. The Board also notes that "LCSD does not dispute that as the local government employer, it should not *knowingly* allow representation by a rival employee organization in a grievance proceeding (as broadly defined by the LCIA) with a non-union member employee." District's Response, at 3 (*emphasis* in original). Furthermore, the District "is also willing to notify the LCEA in the future of grievance meetings involving teachers who are not members of LCEA so that the LCEA may have a representative present." *Id.*, at 2-3. As such, these matters are not in dispute before the Board; however, the Board notes that LCEA is the exclusive representative of all members of the subject bargaining unit as further detailed below. *See also* NRS 288.027, 288.160(2).

*2 In its Petition, LCEA additionally requested the Board to determine that: (1) where a bargaining unit employee is not a

member of the exclusive employee organization, said employee has "no right to a representative being present except as may be allowed by the employer after the employer makes an inquiry similar to that set forth in Item C below to determine if the representative is an agent, employee, or attorney of another employee organization in which case the representative is not to be allowed"; and (2) the employer's obligation "to make an inquiry" regarding "(a) the status of the employee as a member or non-member of the employee organization serving as recognized bargaining agent for the unit; (b) the nature of the relationship between the employee and his representation ...; and (c) the employment or affiliation of the representative." LCEA's Petition, at 6-7. LCEA argues that these "determinations requested comport with the interpretations that have been previously applied to NRS 288.140(2) by the Order on Petition for Judicial Review in *Washoe Education Support Professionals vs. State of Nevada, Local Government Employee-Management Relations Board Et. Al.*, Case No. 09 OC 000861B (January 29, 2010)" LCEA's Petition, at 6-7. As such, LCEA requests that the Board adopt the rationale and ruling as stated in that Order. LCEA's Petition, at 8.

NAC 288.380 states that any recognized employee organization or local government employer may petition the Board for a declaratory order regarding the applicability of any statutory provision or of any regulation or decision of the Board. The following declaratory order is regarding the applicability of NRS 288.140 based on the facts of this case. NRS 288.140 states, in pertinent part:

(1) It is the right of every local government employee ... to refrain from joining any employee organization

(2) The recognition of an employee organization for negotiation ... does not preclude any local government employee who is not a member of that employee organization from acting for himself or herself with respect to any condition of his or her employment, but any action taken on a request or in adjustment of a grievance shall be consistent with the terms of an applicable negotiated agreement, if any.

The Board notes that it finds the District Court Order in the matter of *Washoe Ed. Support Professionals v. State of Nevada, Local Gov't Employee-Mgmt. Rel. Bd.*, Case No. 09 OC 00086 1B (Jan. 29, 2010) ("District Court Order"), attached as LCEA's Ex. "5", as persuasive and thus follows said decision as stated in this Declaratory Ruling. However, the Board notes that by following the decision it does not agree that it is bound by the decision as LCEA claims. The District Court Order concluded:

Where, as here, an employee organization has been recognized as the bargaining agent for a bargaining unit, the bargaining agent's representative status is *exclusive* and no rival employee organization may purport to 'represent' any employee in the unit in any grievance proceeding or in any other aspect of collective bargaining. Any 'representation' of this nature is fundamentally inconsistent with the status and function of the recognized bargaining agent.

*3 A local government employer who knowingly allows 'representation' of this kind or knowingly participates in a grievance proceeding with an agent or employee of a rival employee organization, *acting as such*, there by fails to bargain in good faith with the recognized bargaining agent and commits a prohibit practice within the meaning of NRS 288.270(1)(c).

Id. at, 2-3 (*emphasis in original*) (internal citations omitted). The District Court Order further stated:

Where, however, a unit employee is *not a member* of the employee organization serving as recognized bargaining agent, NRS 288.140(2) provides that the employee may 'act for himself in any grievance proceeding - i.e., on his own behalf and without a representative.

In addition, the Board has ruled that such an employee may be represented by "counsel", a term that the Board apparently interprets to include a friend, relative or co-worker, or an attorney retained by the employee. With the exception noted below, WESP likewise has not challenged this aspect of the Board's ruling.

In any matter involving a non-member employee, NRS 288.140(2) provides that "any action taken on a request or in adjustment of a grievance shall be consistent with the terms of an applicable negotiated agreement, if any." Accordingly, in any such case, the Board has ruled that the recognized bargaining agent is also entitled to be present "[f]o monitor ... compliance with the applicable [negotiated agreement] and the provisions of NRS chapter 288". Again, this aspect of the Board's ruling has not been challenged.

In any grievance proceeding, it follows from the foregoing that the representative of the local government employer have the right, and indeed the obligation, to make inquiry of the employee and any person appearing as the employee's representative concerning: (a) the status of the employee as a member or nonmember of the employee organization serving as recognized bargaining agent for the unit; (b) the nature of the relationship between the employee and his representative (e.g. whether the representative is an attorney, friend, relative or coworker of the employer); and (c) the employment or affiliation of the representative. Contrary to the decision of the Board in this matter, a local government employer does not act unlawfully in making this inquiry; the inquiry is necessary to ensure that the status of the recognized bargaining agent is respected, that the employer does not commit a prohibited practice, and that a representative of the recognized bargaining agent is present in every case where the presence of such a representative is permitted or required.

Id. at 4-5 (*emphasis in original*) (internal citations omitted). The District Court Order also held:

Accordingly, in any grievance proceeding involving an employee representative who is also an agent or employee of a rival employee organization, the representative cannot function as such - and hence cannot participate in the proceeding - where the employer knows or reasonably believes that the representative is serving to *any extent* in his 'union' capacity, on behalf of the rival organization. Where, however, the employer knows or reasonably believes that the representative is serving *entirely independently* of the rival organization as (for example) a friend, relative or co-worker of the employee, the representative's participation is permissible.

*4 *Id.* at 6 (*emphasis in original*). The Board finds the District Court's rationale above persuasive. As such, the Board expressly adopts this rationale as stated above. *See also* NRS 288.027, 288.028, 288.067, 288.140, 288.150(1) and 288.160(2); *Cone v. Nevada Serv. Employees Union*, 116 Nev. 473, 478, 998 P.2d 1178 (2000); *UMC Physicians' Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 93, 178 P.3d 709, 715.

Based on the facts in this case and the issues presented, the Board declines to award cost and fees in this matter.

DATED this 20 day of October, 2016.

By: _____

Philip Larson
Chairman

By: _____

Brent Eckersley, Esq.
Vice-Chairman

By: _____

Sandra Masters
Board Member

Footnotes

¹ LCEA initially filed an unfair labor practices complaint with the Board; however, the parties subsequently stipulated to convert

said complaint into the subject Petition.

2016 WL 6947474 (NV LGEMRB)

End of Document

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FILED

FEB 25 2021

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

NATIONAL LATINO PEACE OFFICERS
ASSOCIATION,

Petitioner,

v.

LAS VEGAS POLICE PROTECTIVE
ASSOCIATION METRO, INC., LAS VEGAS
METROPOLITAN POLICE DEPARTMENT,

Respondents.

Case No. 2020-033

DECLARATORY ORDER

EN BANC

ITEM NO. 870

On February 18, 2021, this matter came before the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Employee-Management Relations Act (EMRA, Chapter NRS 288) and NAC Chapter 288. At issue was Petitioner's, National Latino Peace Officers' Association, Petition for Declaratory Order.

Petitioner seeks a declaration that Petitioner, as a purported "non-rival organization" in relation to Las Vegas Police Protective Association (LVPPA), may act as a representative of the bargaining unit that has chosen LVPPA as its exclusive representative. Petitioner did not request a hearing.

In June 2020, this Board issued a declaratory order in *Nevada Highway Patrol Ass'n v. State of Nevada*, Case No. 2020-011, Item No. 865 (2020). This order is incorporated by reference as the Board reaffirms applicable portions of that order herein. The Board preliminarily noted that its jurisdiction is limited to matters arising out of the interpretation of, or performance under, the provisions of the EMRA. NRS 288.110(2). However, the Board additionally noted that while the Board does not have jurisdiction over NRS Chapter 289, since the argument was raised that there was a potential conflict between NRS Chapters 288 (EMRA) and 289, the Board was required by statutory rules of construction to examine if there was conflict. The Board concluded that NRS Chapter 289 did not appear to conflict with NRS Chapter 288 and can be read to render a harmonious result.

1 The order was based in part on Judge James Russell's decision in *Washoe Ed. Support*
2 *Professionals v. State of Nevada, Local Government Employee-Management Relations Board*, Case No.
3 09 OC 00086 1B (2010) (District Court Decision).

4 The District Court Order concluded:

5 Where, as here, an employee organization has been recognized as the bargaining agent
6 for a bargaining unit, the bargaining agent's representative status is *exclusive* and no rival
7 employee organization may purport to 'represent' any employee in the unit in any
8 grievance proceeding or in any other aspect of collective bargaining. Any
9 'representation' of this nature is fundamentally inconsistent with the status and function
10 of the recognized bargaining agent. *See, e.g., UMC Physicians' Bargaining Unit v.*
11 *Nevada Serv. Employees Union*, 124 Nev. [84, 178 P.3d 709, 715 (2008)] ("the interests
12 of employees whose bargaining units are exclusively represented by one employee
organization cannot be simultaneously represented by another employee organization");
13 *Operating Engineers Local Union No. 3 v. City of Reno*, Item No. 7 (1972) (rejecting
14 contention that Chapter 288 'permits an employer to 'recognize' a minority employees
15 organization ..., not negotiation per se, but for purposes other than negotiation such as
16 grievance processing....;).

17 A local government employer who knowingly allows 'representation' of this kind or
18 knowingly participates in a grievance proceeding with an agent or employee of a rival
19 employee organization, *acting as such*, thereby fails to bargain in good faith with the
20 recognized bargaining agent and commits a prohibit practice within the meaning of NRS
21 288.270(1)(e). *Federal Tel. and Radio Co.*, 107 NLRB 649 (1953) (applying
22 corresponding provisions of the National Labor Relations Act); *Hughes Tool Co.*, 56
23 NLRB 981 (1944) (same).

24 In the challenged order and in at least one prior decision, the Board has ruled that if an
25 employee in a bargaining unit is a *member* of the employee organization serving as
26 recognized bargaining agent, the employee may *only* be represented in a grievance
27 proceeding by an agent or employee of that organization. *Washoe Ed. Support*
28 *Professionals v. Washoe County Sch. Dist.*, Item No. 681A, Case No. A1-045930 (EMRB
2009), Finding of Fact No. 4; *United We Stand Classified Employees/AFT v. Washoe*
County Sch. Dist., Item No. 641B, Case No. A1-045888 (EMRB 2007). This ruling has
not been challenged. Nor does WESP dispute the right of such employee to retain the
services of an attorney of the employee's choice, so long as the expense of this
representation is borne by the employee.

24 *Id.* at 2-4 (*emphasis in original*). The District Court Order further opined:

25 Where, however, a unit employee is *not a member* of the employee organization serving
26 as recognized bargaining agent, NRS 288.140(2) provides that the employee may 'act for
27 himself' in any grievance proceeding - *i.e.*, on his own behalf and without a
28 representative. *Cone v. Nevada Serv. Employees Union*, 116 Nev. 473, 998 P.2d 1178
(2000) (noting that statute 'authorized a nonunion member to act on his own behalf [and]
forgo union representation').

1 In addition, the Board has ruled that such an employee may be represented by 'counsel',
2 a term that the Board apparently interprets to include a friend, relative or co-worker, or an
3 attorney retained by the employee. *Washoe Ed. Support Professionals v. Washoe County*
Sch. Dist., Item No. 681A, Conclusion of Law No. 15. With the exception noted below,
WESP likewise has not challenged this aspect of the Board's ruling.

4 In any matter involving a non-member employee, NRS 288.140(2) provides that 'any
5 action taken on a request or in adjustment of a grievance shall be consistent with the
6 terms of an applicable negotiated agreement, if any.' Accordingly, in any such case, the
7 Board has ruled that the recognized bargaining agent is also entitled to be present '[t]o
8 monitor ... compliance with the applicable [negotiated agreement] and the provisions of
NRS chapter 288'. *Washoe Ed. Support Professionals v. Washoe County Sch. Dist.*, Item
No. 681A, Conclusion of Law No. 15. Again, this aspect of the Board's ruling has not
been challenged.

9 *Id.* at 4-5 (*emphasis* in original) (internal citations omitted).

10 Judge Russell additionally noted: "Where the representative of a non-member employee is also
11 an employee or agent of a rival employee organization, the parties have opposing views on the result
12 that should follow." *Id.* at 5. Moreover, "[b]oth parties agree, in any case, that an *attorney* who is
13 retained by the employee to act as his representative in such proceeding should be allowed to represent
14 the employee, even if the attorney also represents a rival employee organization. To the extent that the
15 Board has so held, its order is affirmed." *Id.* at 6, note 5 (*emphasis* in original). The District Court
16 further found:

17 If, as WESP agrees, a non-member employee may lawfully be represented by a friend,
18 relative or co-worked, the fact that the representative also happens to be an agent or
19 employee of a rival employee organization should not disqualify him from serving as
20 representative if in fact he is functionally independently of his role as an agent of the
21 union. On the other hand, if the representative in fact is overtly or covertly attempting to
function on behalf of both the employee and the rival employee organization (or solely on
behalf of the union), the representative's participation effectively undercuts the status of
the recognized bargaining agent and cannot knowingly be permitted by the employer.

22 Accordingly, in any grievance proceeding involving an employee representative who is
23 also an agent or employee of a rival employee organization, the representative cannot
24 function as such – and hence cannot participate in the proceeding Where, however,
25 the employer knows or reasonably believes that the representative is serving *entirely*
independently of the rival organization as (for example) a friend, relative or co-worker of
the employee, the representative's participation is permissible.

26 ///

27 ///

28 ///

1 *Id.* at 6 (*emphasis* in original). The District Court denied the petition for judicial review, as requested
2 by WESP, “to hold that an agent or employee of a rival employee organization is, solely by virtue of
3 that status, precluded from representing an employee in any grievance proceeding....” *Id.* at 7.

4 In addition, the Board explained: “Allowing this kind of representation would impair the
5 efficiency and utility of the grievance and collective bargaining process, undermine the position of the
6 recognized bargaining agent, and effectively destabilize employee-management relations in the public
7 sector. This is consistent with the exceptions noted above. The exclusivity of representation is a key
8 element in ensuring labor stability in the workplace (one of the important reasons for the adoption of
9 NRS Chapter 288 in 1969) and in allowing a properly recognized union to do its job.” Board’s
10 Declaratory Order, at 7 (citations omitted). We explained: “Designating one union as the exclusive
11 representation of all employees allows them to speak with one voice, pooling economic strength, ensure
12 their rights are not watered down by divisiveness, respond with institutional knowledge when
13 employers disparately treat them, and allowing this carve out would tend to dilute that strength contrary
14 to the purposes and policies of the EMRA.” *Id.* at 8 (citations omitted). Furthermore, “[i]f the
15 Legislature wishes to provide that an agent or employee of a rival labor organization serving in that
16 capacity, may purport to represent any employee in a bargaining unit with a recognized representation,
17 then that is their legislative prerogative. It is not for the Board to make the law, that is for the
18 Legislature, and the Board is required to follow the law regardless of the result.” *Id.* (citations omitted).

19 Based on the above as well as additional mandates of statutory construction, the Board held that
20 a harmonious and reasonable reading could be achieved between NRS Chapters 288 and 289. *Id.* at 8-
21 11.

22 Petitioner claims that the purpose of the instant Petition was as follows: “The June 17, 2020
23 Declaratory Order is silent on whether a non-rival employee organization may represent a member
24 employee in a grievance proceeding as a friend, co-worker, or fellow peace officer. The June 17, 2020
25 Declaratory Order is silent on whether an exclusive representative may prohibit a non-rival employee
26 organization from representing a member employee in a grievance proceeding as a friend, co-worker, or
27 fellow peace officer.”

28 ///

1 The Board reaffirms applicable portions of our prior declaratory order including the distinctions
2 explained therein. The Board notes that Petitioner did not request a hearing to have an opportunity to
3 present evidence (nor did Petitioner file a reply in support of their Petition in order to contest LVPPA's
4 assertions). Thus, the Board can neither resolve issues as to whether the distinctions are applicable¹,
5 nor can the Board resolve all issues and fully explore the dispute. For example, LVPPA asserted that
6 Petitioner was in fact averse.

7 LVPPA states that "rival association" was simply a term of art used by Judge Russell to
8 distinguish an exclusive representative from others (in other words, minority unions lacking majority
9 support). Further, NRS 288.133 does not provide for multiple bargaining agents. NRS Chapter 289
10 additionally provides for "a representative of a labor union," and if the Legislature intended to include a
11 minority union, it would have said so.

12 As the Board cited to in our prior declaratory order, the NLRB supports these assertions as
13 related to the EMRA (in addition to the plain language and purposes and policies of the EMRA). For
14 example, in *Federal Telephone and Radio Co*, 107 NLRB 649, 651 (1953), "[t]he question of law here
15 is whether or not under Section 9(a) an employee may present an individual grievance to his employer
16 through a rival union of his choice when there exists a certified bargaining representative for the unit in
17 which he is included."² The NLRB explained: "The legislative history of the original 1935 Act shows
18 clearly that the earlier proviso was not intended to permit the defeated or minority union any rights to
19 represent employees. Thus, the proposed bills in both House and Senate originally contained, at the end
20 of the proviso, the words, 'through representatives of their own choosing.' These words were

21
22 ¹ For example, the conclusion, noted above, "Where, however, the employer knows or reasonably believes that the
23 representative is serving *entirely independently* of the rival organization as (for example) a friend, relative or co-worker of
the employee, the representative's participation is permissible."

24 ² The EMRA was modeled after the NLRA, and it is the intent of the EMRA to apply the governing principles of the NLRA
25 in implementing the EMRA. This is well established. *Truckee Meadows Fire Prot. Dist. v. Int'l Ass'n of Fire Fighters*,
26 *Local 2487*, 109 Nev. 367, 374, 849 P.2d 343, 348 (1993); *City of N. Las Vegas v. State Local Gov't Employee-Mgmt. Rel.*
27 *Bd.*, 127 Nev. 631, 639, 261 P.3d 1071, 1076 (2011). NRS 288.140, NRS 288.133, and 288.160 were modeled in part after
28 Sec. 9 (§ 159), and as they are substantially similar, a presumption arises that the Legislature intended to adopt the
construction by the NLRB. *State, Dep't of Bus. & Indus., Office of Labor Com'r v. Granite Const. Co.*, 118 Nev. 83, 88, 40
P.3d 423, 426 (2002) ("When a federal statute is adopted in a statute of this state, a presumption arises that the legislature
knew and intended to adopt the construction placed on the federal statute by federal courts. This rule of [statutory]
construction is applicable, however, only if the state and federal acts are substantially similar and the state statute does not
reflect a contrary legislative intent."). Petitioner failed to provide any authority that there was a contrary intent.

1 eliminated in order to avoid the implication that the 'individual' or 'group might select any
2 representative it wished." *Id.*³

3 The NLRB noted: "The U.S. Court of Appeals for the Fifth Circuit, enforcing in part the Board's
4 order ... commented: It was not thought good to allow grievance hearings to become clashes between
5 rival unions. We think an inexperienced or ignorant grievor can ask a more experienced friend to assist
6 him but he cannot present his grievance through any union except the [majority] representative." *Id.* at
7 652. Further, "Senator Taft stated: ... The revised language would make it clear that the employees
8 right to present grievances exists independently of the rights of the bargaining representative, if the
9 bargaining representative has been given an opportunity to be present at the adjustment, unless the
10 adjustment is contrary to the terms of the collective bargaining agreement then in effect." *Id.* "It is thus
11 clear that these changes were directed only toward assuring the individual grievor the right to confer
12 with his employer without participation of the certified bargaining agent. This conclusion is also borne
13 out by the fact that the *North American Aviation* case, cited by Senator Taft as apparently inconsistent
14 with the *Hughes* case, does not involve the **minority union** problem in issue here. Furthermore, the
15 House Conference Report, like the Senate Report, discusses only limitation of the bargaining
16 representative's role. Equally significant is the fact that the 1947 legislative history in no way refers to
17 the intent which unequivocally emerged from the 1935 legislative history. It is clear, then, that the 80th
18 Congress, with knowledge of the Board's construction of the old proviso in *Hughes Tool* and the Fifth
19 Circuit's support of that construction, gave no indication of rejecting that construction or of a different
20 intent." *Id.* at 653 (**emphasis added**). "However, as the General Counsel correctly argues, these
21 provisos could not have been intended to confer rights upon the **minority union**. Indeed, to read such a
22 broad meaning into the provisos would effectively disrupt the peaceful application of the majority rule
23 inherent in the Board's certification and would lead to instability in industrial relations not consonant
24 with the spirit and objectives of the 1947 amendments." *Id.* at 653 (**emphasis added**).

25 _____
26 ³ As is apparent, these decisions were made well before the EMRA was originally enacted. Moreover, in the same vein, we
27 previously noted: "The EMRA had its genesis in Senate Bill 87 in 1969 sponsored by Senator Carl Dodge. SB 87 initially
28 provided specifically for the recognition of more than one employee organization for any given 'negotiating unit'. See
Sections 10, 11, 13. After it was passed in the Senate, objections were made that the bill's provisions for multiple
bargaining agents was unworkable and would result in chaos. Accordingly, when the bill was heard in the Assembly, such
language was removed from the bill. The amended language has not been materially changed since that time." Board's
Declaratory Order, 8, n. 7 (citations omitted).

1 The NLRB held: "For the foregoing reasons, and on the record as a whole, we find, contrary to
2 the Trial Examiner, that the Ernst grievance was presented to the Respondent by the IUE, and that the
3 Respondent violated Section 8(a)(5) and (1) of the Act by accepting and considering a grievance
4 presented and processed in behalf of an individual employee by a union other than the certified
5 bargaining agent for the unit in which the grievor was included." *Id.*

6 Thus, the NLRB made it clear that a minority union (regardless of being a self-purported "rival
7 union" or not) may not represent an employee in a grievance proceeding (though again the Board notes
8 that LVPPA contends that NLPOA is averse). This conclusion has received ample support throughout
9 the years. *See, e.g., U.S. Postal Serv.*, 208 NLRB 145, 149 (1974) ("Yet the NLRA does not accord a
10 minority union the right to represent employees on grievances when another union enjoys exclusive
11 recognition as the representative of such employees."); *Nat'l Labor Rel. Bd. v. Kearney & Trecker*
12 *Corp.*, 237 F.2d 416, 420 (7th Cir. 1956) ("Under the statute ... a grievance under Sec. 9(a) is not
13 necessarily limited to minor matters, but may entail problems arising under a collective bargaining
14 agreement, provided the collective bargaining representative be given an opportunity to be present. This
15 is in conformity with the thought expressed in *N.L.R.B. v. North American Aviation Co.*, 9 Cir., 136 F.2d
16 898. Thus for the purposes of understanding the application of Sec. 9(a) in conjunction with Sec. 7 in
17 relation to the problem before us, we need not be concerned with the distinction between a 'grievance'
18 and a matter of 'collective bargaining.'")⁴; *Leather Goods Workers (Afl-Cio) Local 346 (Baronet of*
19 *Puerto Rico, Inc.)*, 133 NLRB 1617, 1630 (1961) ("Any other conclusion would be equivalent to
20 recognizing an uncertified union's right to adjust grievances in derogation of the certified union's
21 exclusive representative status and would run counter to the Board's interpretation of Section 9(a)
22 which defines the rights of a majority representative and the rights of employees to submit
23 grievances."); *Youngstown Cartage Co. (Local 377, Teamsters)*, 146 NLRB 305, 307 (1964) ("The
24 Board has held that the Act imposes no obligation upon, and generally precludes, an employer from

25
26 ⁴ It is easy (as it was for the NLRB) to envision scenarios in which a union could undermine the majority union's exclusive
27 representation in grievance proceedings. For example, a minority union could argue to members of the bargaining unit that
28 they have had greater success than the incumbent (and thus garner further support or undermine the incumbent). Or, in
settling grievances, agree to terms that the recognized exclusive representative would not otherwise agree to as those terms
may impair the collective bargaining process. *See also supra* note 1. Further, assuming *arguendo*, NLPOA is currently not
averse to LVPPA, there are no assurance that they will not become so in the future.

1 entertaining a grievance on behalf of an individual employed in a bargaining unit other than that
2 represented by the grieving union.”); ¶ 2210.391 ANNOTATIONS TO PROCESSING OF
3 GRIEVANCES NO. 3, Labor & Empl. L. P 2210.391 (2020) (“Individual employee has no right to
4 have his grievance presented and processed by minority union.”); *Operating Engineers Local Union*
5 *No. 3 v. City of Reno*, Item No. 7 (1972) (rejecting contention that Chapter 288 ‘permits an employer to
6 ‘recognize’ a minority employees organization ..., not negotiation per se, but for purposes other than
7 negotiation such as grievance processing...).

8 As such, based on not only the Legislative history and plain language of the EMRA, but also the
9 purposes and policies of the EMRA, NLPOA may not represent employees of the bargaining unit in
10 grievance proceedings.⁵

11 Dated this 25th day of February 2021.

12 GOVERNMENT EMPLOYEE-
13 MANAGEMENT RELATIONS BOARD

14 By: 
15 BRENT ECKERSLEY, ESQ., Chair

16 By: 
17 SANDRA MASTERS, Vice-Chair

18 By: 
19 GARY COTTINO, Board Member

20 By: 
21 BRETT HARRIS, ESQ., Board Member

22 By: 
23 MICHAEL J. SMITH, Board Member

24
25
26
27
28 ⁵ Again, due to the posture of this case, the Board could not analyze distinctions noted above. If NLPOA believes they have
been improperly denied the ability to represent members, the Board encourages NLPOA to file a complaint with the Board.

Thomas S. Hume
CLERK OF THE COURT

ORDD

ANTHONY P. SGRO, ESQ.
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JENNIFER WILLIS ARLEDGE, ESQ.
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Facsimile: (702) 384-7989
droger@lvppa.com
Attorneys for Defendant Las Vegas Police Protective Association

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA ASSOCIATION OF PUBLIC
SAFETY OFFICERS, a Nevada Non-Profit
Corporation and Local Government Employee
Organization, and Their Named and Unnamed
Affected Members,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; LAS VEGAS POLICE
PROTECTIVE ASSOCIATION

Defendants.

Case No.: A-20-827022-C

Dept. No.: III

**ORDER DENYING EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

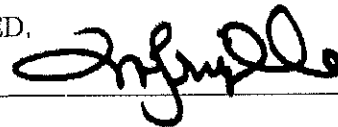
This matter came on for hearing on January 22, 2021, upon Plaintiff NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS'S Ex Parte Application for Temporary

1 Restraining Order and Motion for Preliminary Injunction. Present were Nicholas M.
2 Wieczorek, Esq. and John A. Hunt, Esq. of the law firm CLARK HILL, PLLC, counsel for
3 Plaintiff NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS, Anthony P. Sgro, Esq.,
4 David Roger, Esq. and Jennifer Willis Arledge, Esq. of SGRO & ROGER counsel for
5 Defendant LAS VEGAS POLICE PROTECTIVE ASSOCIATION, and Jamie Frost, Esq.,
6 counsel for Defendant LAS VEGAS METROPOLITAN POLICE DEPARTMENT.

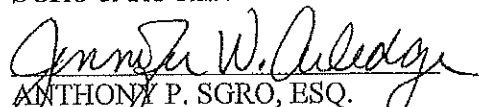
7 The Court having reviewed the pleadings and papers on file and having heard the
8 arguments of counsel finds that Plaintiff has not made a showing of irreparable harm. The
9 Court further finds that Plaintiff has not made a showing of a substantial likelihood of success
10 on the merits on the causes of action plead in the Complaint: Prohibited and Unfair Labor
11 Practices against LVMPD and PPA, Intentional Interference with Contractual Relations against
12 LVMPD and PPA, and Civil Conspiracy.

13 IT IS THEREFORE ORDERED that Plaintiff's Ex Parte Application for Temporary
14 Restraining Order and Preliminary Injunction is DENIED.

15 IT IS SO ORDERED.


mg

16 Submitted by:
17 SGRO & ROGER

18 
19 ANTHONY P. SGRO, ESQ.
20 Nevada Bar No. 3811
21 JENNIFER WILLIS ARLEDGE, ESQ.
22 Nevada Bar No. 8729
23 720 South Seventh Street, 3rd Floor
24 Las Vegas, Nevada 89101

25 DAVID ROGER, ESQ.
26 Nevada Bar No. 2781
27 LAS VEGAS POLICE
28 PROTECTIVE ASSOCIATION
9330 West Lake Mead Boulevard, Suite 200
Las Vegas, Nevada 89134
*Attorneys for Defendant Las Vegas Police
Protective Association*

Approved by: BBC 820C DECE
CLARK HILL
District Court Judge

/s/ Nicholas M. Wieczorek
NICHOLAS M. WIECZOREK, ESQ.
Nevada Bar No. 6170
JOHN A. HUNT, ESQ.
Nevada Bar No. 1888
3800 Howard Hughes Pkwy, Suite 500
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Attorneys for Plaintiff

MARQUIS AURBACH COFFING

/s/ Nick D. Crosby
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Nevada Bar No. 8996
10001 Park Run Drive
Las Vegas, NV 89145
*Attorneys for Las Vegas Metropolitan
Police Department*

Subject: RE: NAPSO v. LVMPD & LVPPA - Order

Date: Monday, January 25, 2021 at 1:42:47 PM Pacific Standard Time

From: Wieczorek, Nicholas

To: Jennifer Arledge, Nick Crosby

CC: Tony Sgro, David Roger, Suzanne Boggs

This is approved for filing under my e-signature. Thanks.

Nicholas M Wieczorek
Member

CLARK HILL PLLC
3800 Howard Hughes Parkway, Suite 500 | Las Vegas, Nevada 89169
(702) 697-7543 (direct) | (702) 862-8400 (fax)
NWieczorek@ClarkHill.com | www.clarkhill.com

From: Jennifer Arledge <jarledge@sgroandroger.com>

Sent: Monday, January 25, 2021 11:09 AM

To: Wieczorek, Nicholas <nwieczorek@clarkhill.com>; Nick Crosby <NCrosby@maclaw.com>

Cc: Tony Sgro <tsgro@sgroandroger.com>; David Roger <droger@lvppa.com>; Suzanne Boggs <sboggs@maclaw.com>

Subject: NAPSO v. LVMPD & LVPPA - Order

[External Message]

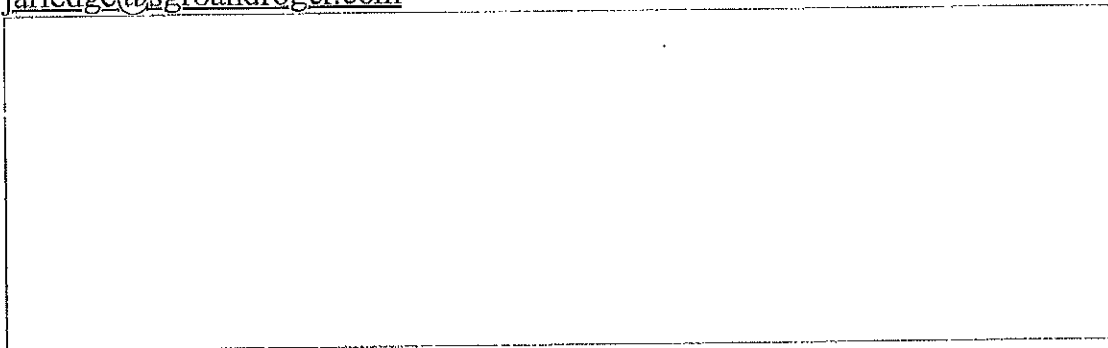
Nick and Nick,

Attached please find a proposed order following the hearing on Friday. Please advise of any proposed changes or provide authority to electronically sign on your behalf.

Thank you,

Jennifer Arledge • Attorney

jarledge@sgroandroger.com



- * Achieved the largest single person injury settlement in Nevada history
- * Achieved the largest commercial litigation verdict in Nevada history

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Subject: Re: [External] NAPSO v. LVMPD & LVPPA - Order
Date: Monday, January 25, 2021 at 11:57:08 AM Pacific Standard Time
From: Nick Crosby
To: Jennifer Arledge
CC: nwieczorek@clarkhill.com, Tony Sgro, David Roger, Suzanne Boggs

Looks good. Permission to e-sign.

Thanks

Nick D. Crosby, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145
Office: 702-942-2158

Sent from my iPhone, so please excuse any errors.

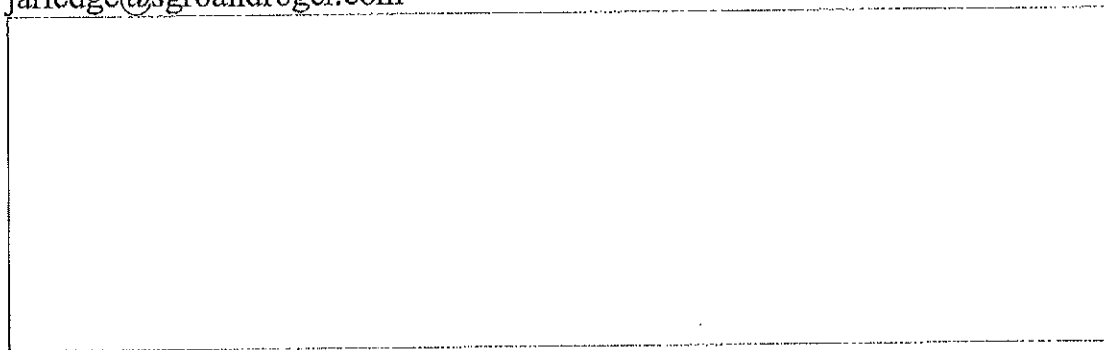
On Jan 25, 2021, at 12:13 PM, Jennifer Arledge <jarledge@sgroandroger.com> wrote:

Nick and Nick,

Attached please find a proposed order following the hearing on Friday. Please advise of any proposed changes or provide authority to electronically sign on your behalf.

Thank you,

Jennifer Arledge • Attorney
jarledge@sgroandroger.com



- * Achieved the largest single person injury settlement in Nevada history
- * Achieved the largest commercial litigation verdict in Nevada history

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<ORD Denying TRO.pdf>

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Nevada Association of Public
7 Safety Officers, Plaintiff(s)

CASE NO: A-20-827022-C

8 vs.

DEPT. NO. Department 3

9 Las Vegas Metropolitan Police
10 Department, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Denying Motion was served via the court's electronic eFile
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 3/9/2021

16 Suzanne Boggs	sboggs@maclaw.com
17 Deborah Surowiec	dsurowiec@clarkhill.com
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22 DISTRICT COURT

23 CLARK COUNTY, NEVADA

24 NEVADA ASSOCIATION OF PUBLIC
25 SAFETY OFFICERS, a Nevada Non-Profit
26 Corporation and Local Government Employee
27 Organization, and Their Named and Unnamed
28 Affected Members,

Plaintiff,

vs.

29 LAS VEGAS METROPOLITAN POLICE
30 DEPARTMENT; LAS VEGAS POLICE
31 PROTECTIVE ASSOCIATION

Defendants.

Case No.: A-20-827022-C

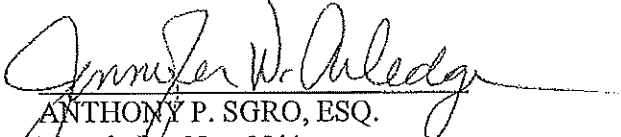
Dept. No.: III

NOTICE OF ENTRY OF ORDER

1 PLEASE TAKE NOTICE that the Order Denying Ex Parte Application for Temporary
2 Restraining Order and Preliminary Injunction was as entered in the above-entitled matter on the 9th
3 day of March, 2021, a copy of which is attached hereto.

4 Dated this 9th day of March, 2021.
5

6 SGRO & ROGER

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of March, 2021. I further certify that I served a true and correct copy of the foregoing document as follows:

X Pursuant to EDCR 8.05(a), electronic service of the foregoing document shall be made in accordance with the Odyssey filing system.

____ By placing a copy of the original in a sealed envelope, first-class postage fully prepaid thereon, and depositing the envelope in the U.S. mail at Las Vegas, Nevada.

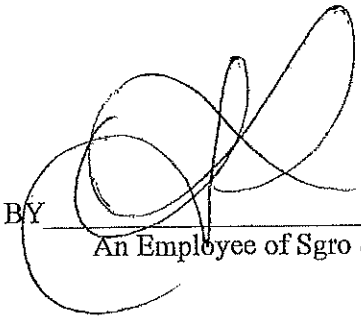
____ Pursuant to a filed Consent for Service by Facsimile in this matter, by sending the document by facsimile transmission.

____ Via hand-delivery to the addresses listed below;

____ By transmitting via email the document listed above to the email address set forth below on this date before 5:00 p.m.

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BY 
An Employee of Sgro & Roger

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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

17 NEVADA ASSOCIATION OF PUBLIC
18 SAFETY OFFICERS, a Nevada Non-Profit
19 Corporation and Local Government Employee
20 Organization, and Their Named and Unnamed
21 Affected Members,

21 Plaintiff,

22 vs.

23 LAS VEGAS METROPOLITAN POLICE
24 DEPARTMENT; LAS VEGAS POLICE
25 PROTECTIVE ASSOCIATION

25 Defendants.

Case No.: A-20-827022-C

Dept. No.: III

**ORDER DENYING EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

26 This matter came on for hearing on January 22, 2021, upon Plaintiff NEVADA
27 ASSOCIATION OF PUBLIC SAFETY OFFICERS'S Ex Parte Application for Temporary
28

1 Restraining Order and Motion for Preliminary Injunction. Present were Nicholas M.
2 Wieczorek, Esq. and John A. Hunt, Esq. of the law firm CLARK HILL, PLLC, counsel for
3 Plaintiff NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS, Anthony P. Sgro, Esq.,
4 David Roger, Esq. and Jennifer Willis Arledge, Esq. of SGRO & ROGER counsel for
5 Defendant LAS VEGAS POLICE PROTECTIVE ASSOCIATION, and Jamie Frost, Esq.,
6 counsel for Defendant LAS VEGAS METROPOLITAN POLICE DEPARTMENT.

7 The Court having reviewed the pleadings and papers on file and having heard the
8 arguments of counsel finds that Plaintiff has not made a showing of irreparable harm. The
9 Court further finds that Plaintiff has not made a showing of a substantial likelihood of success
10 on the merits on the causes of action plead in the Complaint: Prohibited and Unfair Labor
11 Practices against LVMPD and PPA, Intentional Interference with Contractual Relations against
12 LVMPD and PPA, and Civil Conspiracy.

13 IT IS THEREFORE ORDERED that Plaintiff's Ex Parte Application for Temporary
14 Restraining Order and Preliminary Injunction is DENIED. *[Signature]*
15

IT IS SO ORDERED.

mg

16 Submitted by:
17 SGRO & ROGER

18 *[Signature: Jennifer Willis Arledge]*
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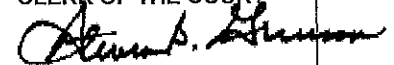
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Approved by: BBC 820C DECE
CLARK HILL
District Court Judge

/s/ Nicholas M. Wieczorek
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CASE NO: A-21-832601-P
Department 27

DISTRICT COURT

CLARK COUNTY, NEVADA

JORDAN TRAVERS,

Petitioner,

v.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT

Respondent.

Case No.:
Dept. No.:

PETITION FOR INJUNCTIVE RELIEF
PURSUANT TO NRS 289.120

[Hearing Requested]

**Arbitration Exempt –
Equitable Relief Requested**

COMES NOW Petitioner Jordan Travers by and through undersigned counsel Adam Levine,
Esq. of the Law Office of Daniel Marks and for his causes of action against the Respondent Las Vegas
Metropolitan Police Department herein alleges as follows:

1. At all times material hereto Petitioner was a resident of Clark County, Nevada.
2. At all times material hereto the Las Vegas Metropolitan Police Department ("LVMPD")
was a political subdivision State of Nevada.

1 3. The District Court has jurisdiction over this action as it is brought pursuant to NRS
2 289.120.

3 4. Petitioner has exclusive standing to bring this action pursuant to *Ruiz v. City of North*
4 *Las Vegas*, 127 Nev. 254, 255 P.3d 216 (2011).

5 5. At all times material hereto Petitioner was employed as a police officer with LVMPD
6 and is a peace officer within the meaning of NRS Chapter 289.

7 6. On March 9, 2021 Petitioner was given notice pursuant to NRS 289.060 that he would
8 be compelled to appear for an investigatory interview by LVMPD's Critical Incident Review Team
9 ("CIRT") regarding his being a witness in connection with an Officer Involved Shooting. CIRT
10 interviews are part of the Critical Incident Review Process utilized by LVMPD which may result in
11 punitive action within the meaning of NRS 289.010(4) and 289.057.

12 7. NRS 289.080(1) and (2) guarantees to all peace officers who are either subjects or
13 witnesses to investigations conducted pursuant to NRS 289.057 the right to "have two representatives
14 of the peace officer's choosing present with the peace officer during any phase of an interrogation or
15 hearing relating to the investigation, including, without limitation, a lawyer, a representative of a labor
16 union or another peace officer."

17 8. Petitioner exercised his statutory right under NRS 288.140(1) not to join the union
18 which is the recognized collective bargaining representative for police officers. Under NRS 288.140(2)
19 Petitioner is permitted to act for himself with respect to any condition of his employment.

20 9. Petitioner had secured coverage from the Fraternal Order of Police Legal Defense Plan,
21 Inc. (hereafter "FOP LDF" or the "Plan"). The FOP LDF is a self-funded benefits plan which provides
22 an attorney to covered officers in connection with Civil, Criminal or Administrative proceedings
23 depending upon the level of coverage elected.

1 10. Individual officers such as Petitioner pay \$310 per year for Administrative, Criminal and
2 Civil coverage, or alternatively \$68 per year for Criminal and Civil, but not Administrative, coverage.

3 11. The FOP LDF, as a self-funded benefits plan with its own Board of Directors, is not an
4 employee organization or union.

5 12. Attorneys provided through the FOP LDF are selected by the covered officer from a list
6 of Plan attorneys. The selected attorneys represents the individual officer and does not represent either
7 the Plan or any employee organization or union. Plan attorneys are paid through Sedgwick, an
8 insurance company, out of Cleveland, Ohio.

9 13. Prior to his CIRT Interview Petitioner was approved for FOP LDF Administrative
10 Coverage and selected FOP LDF Plan Attorney Adam Levine to represent him at his Interview.

11 14. Petitioner notified LVMPD that he would be represented by FOP LDF counsel.

12 15. On March 4, 2021 LVMPD informed Levine that he would not be permitted to represent
13 Petitioner in his CIRT Interview based upon its erroneous belief that FOP LDF plan attorneys are
14 representatives of a "rival" union to the exclusive collective bargaining representative.

15 16. Not only is LVMPD's belief that FOP LDF plan attorneys represent a rival union or
16 organization, as opposed to the individual officer, erroneous, the express provisions of NRS 289.080(1)
17 and (2) supersede any provisions relating to collective bargaining representatives.

18 17. By denying Petitioner a representative of his own choosing at his witness interview,
19 LVMPD violated NRS 289.080(2).

20 18. NRS 289.120 provides that a peace officer whose rights have been violated may bring an
21 action for extraordinary and injunctive relief to remedy the violation, prevent future violations, and
22 prevent reprisal or retaliatory action against the peace officer.

23 19. There are no contractual or administrative remedies available for Petitioner to exhaust
24 prior to seeking relief under NRS 289.120.

1 ///

2 ///

3 WHEREFORE, Petitioner Jordan Travers prays for the following relief:

4 1. For a permanent injunction to issue pursuant to NRS 289.120 to prohibit LVMPD from
5 denying any peace officer a representative of their own choosing pursuant to NRS 289.080 (1) or (2).

6 2. For an award of costs;

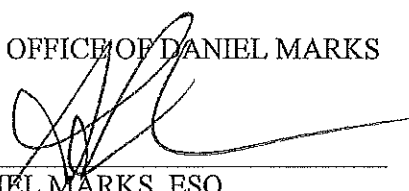
7 3. And for such other and further relief as the court deems just and proper.

8 DATED this 8th day of April, 2021.

9

LAW OFFICE OF DANIEL MARKS

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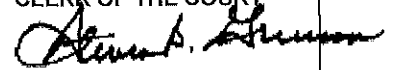
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DISTRICT COURT

CLARK COUNTY, NEVADA

JORDAN TRAVERS,

Petitioner,

Case No.: A-21-832601-P
Dept. No.: 27

v.

**POINTS AND AUTHORITIES IN SUPPORT
OF PETITION FOR INJUNCTIVE RELIEF**

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT

Respondent.

I. BACKGROUND/STATEMENT OF FACTS

Jordan Travers is a Police Officer employed by the Las Vegas Metropolitan Police Department (hereafter "LVMPD", "Metro" and/or "the Department"). On February 9, 2021 Travers was present at the scene of a critical incident which resulted in the use of deadly force by other officers.

Critical incidents at LVMPD are investigated through the Department's Critical Incident Review Process ("CIRP"). As part of that process, the Critical Incident Review Team ("CIRT") compels officers, both subject and witnesses, to appear and answer questions under penalty of insubordination. The process culminates with two Boards, a Use of Force Review Board and a Tactical Review Board.

1 (Exhibit "1"). On March 4, 2021 Officer Travers was served with his Employee Notification of
2 Administrative Interview setting his CIRT interview for March 8, 2021 at 1100 hrs. (Exhibit "2").

3 Nevada has enacted a Peace Officers Bill of Rights at NRS 289.010 through 289.120, inclusive.
4 Because the CIRT investigation and the TRB process may result in discipline, the investigatory process
5 with CIRP constitutes an investigation which may result in punitive action within the meaning of NRS
6 289.057. Because of this, Travers' CIRT Notification specifically referenced, and was accompanied
7 with a copy of NRS Chapter 289, Police Officers Bill of Rights. (Exhibit "2").

8 Under NRS 289.080(1) and (2) both subject and witness officers are entitled to "two
9 representatives of the peace officer's choosing" during any interview, interrogation, or hearing
10 "including, without limitation, a lawyer, a representative of a labor union or another peace officer."

11 Prior to the February 9, 2021 incident, Travers had obtained Fraternal Order of Police Legal
12 Defense Fund (hereafter "FOP/LDF" or "the Plan") Plan coverage. The FOP LDF is a self-funded
13 ERISA Plan utilizing the annual premiums paid by officers who signed up for coverage. The Plan is
14 operated by the Fraternal Order of Police Legal Defense, Inc. The Plan has its own Board of Directors,
15 and benefits are administered through Sedgwick Insurance in Cleveland, Ohio. (See Affidavit of Adam
16 Levine attached as Exhibit "3"; FOP/LDF Plan Document attached as Exhibit "4").

17 The Plan provides an attorney for Civil, Criminal and/or Administrative charges brought against
18 a police officer depending upon the level of coverage elected. The current premiums for individuals are
19 \$310 per year for Administrative, Criminal and Civil coverage, or alternatively \$68 per year for
20 Criminal and Civil, but not Administrative, coverage. (Exhibit "4" last page). Under the Plan, an
21 attorney is selected directly by the officers. If the selection is from a list of approved Plan attorneys,
22 benefits are unlimited. If the attorney selected is a Non-Plan attorney, the benefits are capped. (Exhibit
23 "4" at pp. 13-14). The current list of Nevada FOP/LDF Plan attorneys is attached as Exhibit "5".
24

1 Travers selected Adam Levine, Esq. as it is FOP/LDF representative for the CIRT interview and
2 notified LVMPD of this. On March 4, 2021 Levine received a telephone call from LVMPD Director of
3 Labor Relations Jamie Frost seeking confirmation that Levine intended to represent Travers through the
4 FOP/LDF. Frost stated that LVMPD would not permit Levine to represent Travers as an FOP/LDF
5 attorney. (Exhibit "3"). This oral pronouncement was followed up by a confirming e-mail that same day
6 which stated:

7 Adam –

8 As we discussed, given the fact that your representation of Officer Travers is due to his
9 membership with the FOP, the Department will not be allowing you to represent Officer
10 Travers at his CIRT interview on Monday. The recent EMRB decision prohibits any
11 representative from a rival organization.

12 (Exhibit "6"). The "EMRB decision" Frost referred to was a Declaratory Order by the State of Nevada
13 Government Employee Management Relations Board (hereafter "EMRB") in the case of *National*
14 *Latino Peace Officers Association v. Las Vegas Police Protective Association Metro, Inc. and Las*
15 *Vegas Metropolitan Police Department*, Case No. 2020-033 Item No. 870 (February 25, 2021) (Exhibit
16 "7").

17 **II. NEVADA'S PEACE OFFICERS BILL OF RIGHTS.**

18 Nevada's Peace Officers Bill of Rights, NRS 289.010 through 289.120, inclusive hereafter
19 ("POBR" or "Chapter 289") is modeled upon California's Peace Officers Bill of Procedural Rights Act
20 (POBRA), California Government Code Sections 3300- 3311.

21 The California courts have recognized that POBRA are labor relations statutes "that provides
22 procedural protections for police officers during administrative and disciplinary actions initiated by
23 their employers." *Van Winkle v. City of Ventura*, 158 Cal.App.4th 492, 497 69 Cal.Rptr.3d 809, 813
24 (2007). The purpose of such legislation "is not to deprive local governments of the right to manage and
control police departments but to secure basic rights and protections to a segment of public employees

1 who were thought unable to secure them for themselves." *Upland Police Officers Association v. City of*
2 *Upland*, 111 Cal. App. 4th 1294, 1302, 4 Cal. Rptr. 3d 629, 636 (2003). Such procedural protections
3 balance "the idea of fundamental fairness for officers against the need for efficient internal affairs
4 investigations." *Id.* As noted by the Nevada Supreme Court with regard to Nevada's POBR "Simply
5 put, the Peace Officer Bill of Rights represents the Nevada Legislature's recognition that peace officers,
6 because of the important role they play in maintaining public safety, deserve additional protections that
7 are unavailable to other public employees." *Ruiz v. City of North Las Vegas*, ___ Nev. ___, 255 P.3d
8 216, 233 (2011).¹

9 One of the key rights secured for peace officers is the right to two (2) representatives of their
10 own choosing in connection with any interview, interrogation, or hearing arising out any investigation
11 which could lead to punitive action. NRS 289.080(1) and (2) state:

12 1. Except as otherwise provided in subsection 5, a peace officer who is the subject of
13 an investigation conducted pursuant to NRS 289.057 may upon request have two
14 representatives of the peace officer's choosing present with the peace officer during any
15 phase of an interrogation or hearing relating to the investigation, including, without
16 limitation, a lawyer, a representative of a labor union or another peace officer.

17 2. Except as otherwise provided in subsection 5, a peace officer who is a witness in
18 an investigation conducted pursuant to NRS 289.057 may upon request have two
19 representatives of the peace officer's choosing present with the peace officer during an
20 interview relating to the investigation, including, without limitation, a lawyer, a
21 representative of a labor union or another peace officer. The presence of the second
22 representative must not create an undue delay in either the scheduling or conducting of
23 the interview.

24 The only exception set forth under the statute in (5) pertains to a representative who is connected to or
the subject of the same investigation.

NRS 289.120 entitled "Judicial relief available for aggrieved peace officer" authorizes an action
for extraordinary and/or injunctive relief through the district courts and states:

¹ *Ruiz* was undersigned counsel's case.

1 Any peace officer aggrieved by an action of the employer of the peace officer in
2 violation of this chapter may, after exhausting any applicable internal grievance
3 procedures, grievance procedures negotiated pursuant to chapter 288 of NRS and other
4 administrative remedies, apply to the district court for judicial relief. If the court
5 determines that the employer has violated a provision of this chapter, the court shall
6 order appropriate injunctive or other extraordinary relief to prevent the further
7 occurrence of the violation and the taking of any reprisal or retaliatory action by the
8 employer against the peace officer.

9 The reference to "extraordinary relief" has been interpreted by the California courts applying POBRA
10 to reference to extraordinary writs such as mandamus and prohibition. *Henneberque v. City of Culver*
11 *City*, 172 Cal.App.3d 837, 218 Cal.Rptr. 704 (1985). While the statute speaks in terms of prospective
12 relief only ("to prevent the further occurrence of the violation"), the Nevada Supreme Court in *Ruiz v.*
13 *City of North Las Vegas*, held that the statute further authorizes retroactive relief. Furthermore, under
14 *Ruiz*, it is the individual officer, as opposed to his union, who has standing.

15 **III. RIGHTS UNDER NRS CHAPTER 289 SUPERSEDE PRINCIPLES OF EXCLUSIVE** 16 **UNION REPRESENTATION UNDER NRS CHAPTER 288.**

17 As set forth below, LVMPD misreads the EMRB's decision in *NLVPOA v. LVPPA et al.* in
18 order to deny Travers his chosen representation. However, at the outset it is important to realize that in
19 *NLVPOA v. LVPPA et al.*, the Petitioner was seeking a Declaratory Order that it had a right to represent
20 the bargaining unit itself, as opposed to only an individual officer in an investigation falling within the
21 limited purview of NRS 289.057. (Exhibit "7" at p.1). The EMRB's decision at the outset made very
22 clear that it did not have jurisdiction over NRS Chapter 289 and that it's Order was limited only to "the
23 interpretation of, or performance under, the provisions of the EMRA."² (Exhibit "7" at p. 1 citing NRS
24 288.110(2)). The Board further observed that "NRS Chapter 289 did not appear to conflict with NRS
Chapter 288 and can be read to render a harmonious result".

² EMRA is short for the Employee Management Relations Act under NRS Chapter 288.

1 However, if there is any conflict between the provisions of NRS Chapter 289 and NRS Chapter
2 288, basic principles of statutory construction require that the provisions of NRS Chapter 289 prevail.
3 First, where statutes are in conflict a specific statute will take precedence over a general statute.
4 *Maxwell v. State Industrial Insurance System*, 109 Nev. 327, 849 P.2d 267 (1993).

5 There is no statute under NRS Chapter 288 providing for "exclusive representation". Rather, the
6 concept of exclusive representation relied upon by the EMRB is borrowed from the National Labor
7 Relations Act from which NRS Chapter 288 is modeled. See e.g. *Weiner v. Beatty*, 116 P.3d 829
8 (2005). Thus, the right of representation by "two representatives of the peace officer's choosing"
9 constitutes a specific statute which takes precedence over the general principles of exclusive
10 representation.

11 Second, where statutes are in conflict the statute more recent in time controls over the
12 provisions of an earlier statute. *Marschall v. City of Carson*, 86 Nev. 107, 115, 464 P.2d 494, 500
13 (1970); *State ex rel Nevada Douglass Gold Mines, Inc. v. District Court*, 51 Nev. 330, 333, 275 P. 1, 1
14 (1929); *Thorpe v. Schooling*, 7 Nev. 15, 17 (1871).

15 The EMRA, also known as the Dodge Act after its principal sponsor Senator Carl Dodge, was
16 enacted in 1969. (See *1969 Statutes of Nevada, Page 1376*). In contrast, the earliest iteration of POBR
17 was not enacted until 1983. In its original form it merely gave the peace officer the right to "have a
18 lawyer present during any phase of an interrogation". (*1983 Statutes of Nevada, Page 2098*). The
19 modern version of the statute containing the language two representatives of the own choosing was
20 adopted in 2005. (*2005 Statutes of Nevada, Page 623*).

21 Thus, under principles of both specificity and recency, the representation provisions of NRS
22 289.080 take precedence over any exclusive representation concerns arising under NRS Chapter 288.

23 Even the EMRB's own analysis compels this conclusion. In determining that the NLVPOA
24 could not represent bargaining unit members in the adjustment of grievances the EMRB looked to the

1 legislative history of the NLRA through National Labor Relations Board ("NLRB") proceedings. The
2 EMRB cited to that history as set forth in *Federal Telephone and Radio Co.*, 107 NLRB 649 (1953)
3 which pointed out that when the original draft of the NLRA was introduced in 1935:

4 [T]he proposed bills in both House and Senate originally contained, at the end of the
5 proviso, the words, "the representatives of their own choosing." These words were
6 eliminated in order to avoid the implication that the "individual" or "group might select
any representative it wished".

7 (Exhibit "7" at pp. 5-6).

8 In contrast to the NLRA and EMRA, when the Nevada Legislature adopted and amended POBR
9 in what are now NRS 289.080(1) and (2), it did include "representatives of the peace officer's own
10 choosing" language. This is a clear indication that a law enforcement agency may not exclude such a
11 representative in connection with any interview, interrogation, or hearing arising out of an investigation
12 which could lead to punitive action.

13 This is not to say that a peace officer has a right to be represented by a minority union in
14 connection with other types of grievances such as those involving pay, hours of work etc. etc. The
15 rights to representation arising under NRS 289.080 only apply to investigations covered by the scope of
16 NRS 289.057 which are investigations "which could result in punitive action."

17 Likewise, even if a peace officer is represented by someone other than the exclusive
18 representative in connection with an NRS 289.057 investigation, the exclusive bargaining
19 representative may still insist on being present in order to protect the collective bargaining agreement.
20 Undersigned counsel is the General Counsel for the Police Officers Association of the Clark County
21 School District ("POA") which is the exclusive bargaining representative for the police officers,
22 detectives and sergeants employed by the Clark County School District. Undersigned put the District on
23 notice years ago that it must be notified of any disciplinary grievances even if it involves nonmembers
24 who have secure their own representation. (Exhibit "8").

1 Simply put, NRS 289.080(1) and (2) do not permit LVMPD to exclude representatives chosen
2 by peace officers simply because they are (erroneously in this case) believed to be affiliated with a rival
3 employee organization.

4 **IV. FOP/LDF ATTORNEYS DO NOT REPRESENT ANY EMPLOYEE**
5 **ORGANIZATIONS, RIVAL OR OTHERWISE; THEY REPRESENT THE**
6 **INDIVIDUAL OFFICERS ONLY.**

7 In excluding undersigned counsel from the representation of Officer Travers based upon the
8 EMRB's *NLVPOA v. LVPPA et al.* decision, LVMPD fundamentally misreads that decision. That
9 decision was based upon its prior decision in *Nevada Highway Patrol Ass'n v. State of Nevada*, Case
10 No. 2020-011, Item No. 865 (2020) which in turn was based upon the order of District Judge James
11 Russell in *Washoe Ed. Support Professionals v. State of Nevada, Local Government Employee-*
12 *Management Relations Board*, Case No. 09 OC 00086 1B (2010). (Exhibit "7" at pp. 1-2). However,
13 that decision specifically created an exception "that an attorney who is retained by the employee to act
14 as his representative in such proceeding should be allowed to represent the employee, even if the
15 attorney also represents a rival employee organization." (Exhibit "7" at p. 3). Thus, even if undersigned
16 counsel as an FOP/LDF attorney did represent a rival employee organization, representation would still
17 be allowed under the EMRB's decisions.

18 However, FOP/LDF Plan attorneys *do not represent employee organizations; they represent the*
19 *individual officer only.* The term "employee organization" is defined at NRS 288.040 to mean "an
20 organization of any kind having as one of its purposes improvement of the terms and conditions of
21 employment of local government employees." The FOP LDF is not an employee organization at all. It
22 is a self-funded ERISA plan belonging to The Fraternal Order of Police-Legal Plan, Inc. and is
23 controlled by its own Board of Directors. (Exhibit "4" at pp. 1-2).

24 The fact that attorneys utilized through the FOP/LDF Plan represent the individual peace
officer, and not the Plan is made clear by Sections 20, 21 and 23 of the Plan Document which state:

1 Section 20. CHOICE OF COUNSEL. A Participant shall have the right to employ an
2 attorney of his or her choice, subject to the Plan's terms, conditions and applicable
3 coverage limits. The Plan shall have no obligation to designate or recommend attorneys
and shall not be a guarantor in any manner of the skill of any attorney, even if the
attorney is a Plan Attorney.

4 Section 21. PLAN'S LIMITED AUTHORITY OVER COUNSEL. Legal Plan, Inc.
5 acting through the Benefit Administrator shall have sole authority to approve, contract
6 with and list Plan Attorneys, and to approve Non-Plan Attorneys as meeting minimum
7 applicable Plan qualifications, to render Legal Services to Participants. Participants are
free to select counsel other than Plan Attorneys. However, the Plan is not obligated to
pay for such representation except on the terms and conditions provided in this Plan
Description.

8
9 Section 23. ATTORNEYS NOT PLAN EMPLOYEES OR AGENTS. Attorneys
10 performing Legal Services for Participants under the terms of this Plan are not agents or
11 employees of the Plan. Any attorney rendering Legal Services to Participants under the
12 Plan shall maintain the attorney-client relationship with the Participant and is solely
13 responsible to the Participant for all Legal Services provided. The Plan shall not
interfere with or have the right to control performance of the attorney's duties.
Information which the attorney receives from the Participant incidental to the attorney-
client relationship shall be confidential and, except for use incidental to the
administration of the Plan, shall not be disclosed without the Participant's consent.

14 (Exhibit "4" at pp. 17-18). Thus, while NRS Chapter 289 rights supersede any exclusive representation
15 concerns under NRS Chapter 288, LVMPD's exclusion of undersigned counsel to represent Officer
16 Travers was doubly incorrect because FOP/LDF Plan attorneys represent the individual officers and not
17 the Plan or any employee organization.

18 **V. REMEDY.**

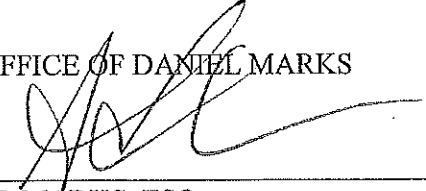
19 NRS 289.120 authorizes both extraordinary and injunctive relief. If back pay were implicated, a
20 writ of mandamus would be appropriate. *Henneberque v. City of Culver City*, supra. However, there are
21 no back pain implications by the denial of representation at the CIRT interview. Therefore, injunctive
22 relief should be sufficient.

23 NRS 289.120 mandates that the court issue an injunction to "to prevent the further occurrence of
24 the violation and the taking of any reprisal or retaliatory action by the employer against the peace

1 officer". Therefore, Officer Travers requests that the court issue a permanent injunction prohibiting
2 LVMPD from denying any officer his chosen representation in any investigation within the scope of
3 NRS 289.057, regardless as to whether or not LVMPD believes the representative is affiliated with a
4 rival labor organization, unless that representative is otherwise connected to, or the subject, of the
5 investigation pursuant to NRS 289.080(5).³

6 DATED this 8 day of April, 2021.

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24 ³ Officer Travers is not overly concerned that LVMPD will take retaliatory action against him in this particular case. However, the statute does mandate that the prohibition against such action be included in the court's Order.