

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 11:40 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**APPENDIX TO PETITION FOR
WRIT OF MANDAMUS**

VOLUME 3

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22 *Las Vegas Police Protective Association*

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

25 JORDON TRAVERS,

26 Plaintiff,

27 v.

28 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

LAS VEGAS POLICE PROTECTIVE
ASSOCIATION, INC.,

Intervenor.

Case No.: A-21-832601-P

Dept. No.: XXVII

LAS VEGAS POLICE PROTECTIVE
ASSOCIATION INC.'S
MOTION TO INTERVENE

(HEARING REQUESTED)

COMES NOW, proposed intervenor LAS VEGAS POLICE PROTECTIVE ASSOCIATION, by and through its attorneys, ANTHONY P. SGRO, ESQ., DAVID ROGER, ESQ., and JENNIFER WILLIS ARLEDGE, ESQ., of the law firm of SGRO & ROGER. and hereby moves to intervene in the above-captioned case pursuant to NRCP 19, NRCP 21, NRCP 24 and NRS 12.130. This motion is based on the pleadings and papers on file herein, the attached Memorandum of Points and Authorities, and any oral argument adduced by counsel at the hearing hereof.

Dated this 22nd day of June, 2021.

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*Attorneys for Intervenor Las Vegas Police
Protective Association*

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELIEF REQUESTED

LAS VEGAS POLICE PROTECTIVE ASSOCIATION ("LVPPA") seeks to intervene and be joined in this action because LVPPA is a necessary and indispensable party under NRCP 19. There are related proceedings involving LVPPA that deal with the same issue in other Departments in this Court which has led to inconsistent rulings. The filing of this separate action appears to be nothing more than forum shopping. LVPPA has an interest relating to the

1 property or transaction that is the subject of the action. Disposing of the action in LVPPA's
2 absence will, as a practical matter, impair or impede LVPPA's ability to protect its interest.
3 Granting the instant motion to intervene will not unduly delay or prejudice the adjudication of
4 the original parties' rights.

5 **II. BACKGROUND**

6 At the outset, it must be noted that the parties in the instant action have direct and/or
7 constructive knowledge that the identical issue is the subject of pending litigation in case
8 number A-20-827022-C before Judge Trujillo. It is troubling, at best, as discussed *infra*, that
9 these parties failed to alert this Court about those other proceedings. At the hearing of those
10 proceedings, Judge Trujillo denied a temporary restraining order. Her findings included that the
11 plaintiff in that case did not make a showing of irreparable harm or a likelihood of success on
12 the merits.
13

14 LAS VEGAS POLICE PROTECTIVE ASSOCIATION, INC. ("LVPPA") is the
15 exclusive bargaining agent for non-supervisory peace officers employed by LAS VEGAS
16 METROPOLITAN POLICE DEPARTMENT ("LVMPD"). Respondent LVMPD and LVPPA
17 have entered into and are bound by the terms of the Collective Bargaining Agreement ("CBA").
18 In addition, by statute, LVPPA as the exclusive bargaining agent, has enforceable rights.
19

20 The issue of who may appear with peace officers at interviews and investigations has
21 been the subject of ongoing litigation for more than a year. After the EMRB issued its decision
22 in *NEVADA HIGHWAY PATROL ASSOCIATION V. STATE OF NEVADA, et al.*, on June 17,
23 2020, the NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS ("NAPSO") filed an
24 action seeking judicial review of the EMRB decision. That case was assigned to Department 9
25 and given case number A-20-817491-P. On July 22, 2020, NAPSO filed a notice of dismissal
26 of that case.
27
28

1 On December 28, 2020, NAPSO filed another complaint, this time against LVMPD and
2 LVPPA claiming that LVMPD and LVPPA have interfered with NAPSO's ability to represent
3 its members at disciplinary and investigatory proceedings by excluding NAPSO attorneys from
4 the proceedings. That case was assigned to Judge Trujillo and given case number A-20-827022-
5 C. Two weeks later, on January 13, 2021, NAPSO filed an Ex Parte Application for Temporary
6 Restraining Order and Motion for Preliminary Injunction. The Temporary Restraining Order
7 ("TRO") sought to enjoin Defendants from disallowing NAPSO members from utilizing private
8 counsel to attend hearings and other judicatory matters which could result in disciplinary action
9 against the member officer. A hearing on the TRO was held on January 22, 2021. At the
10 conclusion of the hearing, Judge Trujillo orally denied NAPSO'S motion for a Temporary
11 Restraining Order and the written order was filed on March 9, 2021. A copy of the Application
12 for a Temporary Restraining Order, LVMPD's response, LVPPA's Opposition, and the Court's
13 Order are attached hereto as Exhibits "1," "2," "3," & "4," respectively.
14

15
16 It has now come to LVPPA's attention that Petitioner in this matter, Jordan Travers,
17 filed a Petition for Injunctive Relief seeking a permanent injunction "to prohibit LVMPD from
18 denying any peace officer a representative of their own choosing pursuant to NRS 289.080(1)
19 and (2)." On May 27, 2021, this Court entered Findings of Fact, Conclusions of Law and Order
20 Granting Permanent Injunction Pursuant to NRS 289.120, permanently enjoining LVMPD
21 "from denying any peace officer in its employ during any phase of any interview, interrogation,
22 or hearing the right to be represented by two representatives of the peace officer's own choosing
23 including, without limitation, a lawyer, a representative of a labor union or another peace
24 officer." This Order is in conflict with Judge Trujillo's prior order.
25

26 It is troublesome that the parties in this action were fully aware of LVPPA's rights as
27 exclusive bargaining agent as well as the prior EMRB decisions as both were discussed in their
28

1 briefing. Moreover, LVMPD is a party to the NAPS case before Judge Trujillo and has no
2 excuse for concealing the existence of that case from this Court. Yet, rather than attempt to
3 intervene in the existing NAPS case which was first-filed, or advise this Court of Judge
4 Trujillo's denial of the temporary restraining order in that case, Petitioner filed a new case and
5 LVMPD remained silent. These actions can be seen as nothing more than forum shopping.
6 Now, the parties are left with inconsistent decisions on the same issue and the rights of LVPPA
7 and its members are effected.

9 **III. LEGAL ANALYSIS**

10 NRCP 19 requires joinder of necessary and indispensable parties when feasible.

11 **(a) Persons Required to Be Joined if Feasible.**

12 (1) **Required Party.** A person who is subject to service of process and
13 whose joinder will not deprive the court of subject-matter jurisdiction
14 must be joined as a party if:

15 (A) in that person's absence, the court cannot accord complete relief
16 among existing parties; or

17 (B) that person claims an interest relating to the subject of the action and
18 is so situated that disposing of the action in the person's absence may:

19 (i) as a practical matter impair or impede the person's ability to
20 protect the interest; or

21 (ii) leave an existing party subject to a substantial risk of incurring
22 double, multiple, or otherwise inconsistent obligations because of
23 the interest.

24 (2) **Joinder by Court Order.** If a person has not been joined as
25 required, the court must order that the person be made a party. A person who
26 refuses to join as a plaintiff may be made either a defendant or, in a proper case,
27 an involuntary plaintiff.

28 In the instant matter, LVPPA is a necessary and indispensable party because LVPPA has
an interest in the issues in this case, i.e., who is allowed to represent officers at administrative
hearings and investigations. It is undisputed that LVPPA is the exclusive bargaining agent of

1 members of the Collective Bargaining Unit and is a party with LVMPD to the CBA. As such,
2 LVPPA has statutory and contractual rights and obligations concerning representation of
3 members of the Collective Bargaining Unit. LVPPA also has "associational standing" to bring
4 suit on behalf one or more of its members. A case that could interfere with those rights,
5 especially in the form of a permanent injunction, mandates that LVPPA be made a party and
6 afforded the opportunity to be heard.
7

8 NRCP 21 provides additional authority for this Court to join LVPPA as a party to this
9 case. NRCP 21 provides:

10 **Rule 21. Misjoinder and Nonjoinder of Parties**

11 Misjoinder of parties is not a ground for dismissing an action. On motion or on its
12 own, the court may at any time, on just terms, add or drop a party. The court may
13 also sever any claim against a party.

14 Intervention is also appropriate as LVPPA claims an interest in this matter and disposing
15 of the action would impair or impede its ability to protect its interest.

16 **Rule 24. Intervention**

17 (a) **Intervention of Right.** On timely motion, the court must permit anyone
18 to intervene who:

19 (1) is given an unconditional right to intervene by a state or federal
20 statute; or

21 (2) claims an interest relating to the property or transaction that is the
22 subject of the action, and is so situated that disposing of the action may as
23 a practical matter impair or impede the movant's ability to protect its
24 interest, unless existing parties adequately represent that interest.

25 (b) **Permissive Intervention.**

26 (1) **In General.** On timely motion, the court may permit anyone to
27 intervene who:

28 (A) is given a conditional right to intervene by a state or federal
statute; or


1 (B) has a claim or defense that shares with the main action a common
2 question of law or fact.

3 IV. CONCLUSION

4 For the foregoing reasons, LVPPA must be permitted to intervene in this matter because
5 the issues and relief sought by the parties in this case affect the rights of LVPPA.

6 Dated this 22nd day of June, 2021.

SGRO & ROGER

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20 *Protective Association*
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing LAS VEGAS POLICE PROTECTIVE ASSOCIATION INC.'S MOTION TO INTERVENE was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 22 day of June, 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 Odyssey.

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.

Daniel Marks, Esq.
Adam Levine, Esq.
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Attorneys for Petitioner Jordan Travers

Nick D. Crosby, Esq.
Marquis Aurbach Coffing
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Attorneys for LVMPD

BY 
An Employee of Sgro & Roger

Exhibit “1”

1 **APP**
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20 *Attorneys for Plaintiff*
21 *Nevada Association of Public Safety Officers*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 vs.

20 LAS VEGAS METROPOLITAN POLICE
21 DEPARTMENT; LAS VEGAS POLICE
22 PROTECTIVE ASSOCIATION

21 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:


23
24 Plaintiff NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS, a Local
25 Government Employee Organization, and its Named and Unnamed Affected Members (hereinafter
26 "NAPSO"), by and through its counsel of record Nicholas M. Wieczorek of the law firm of Clark
27 Hill PLLC, hereby moves this Court for a Temporary Restraining Order and Preliminary Injunction
28 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**

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16 *Attorney for Plaintiff*

17 *Nevada Association of Public Safety Officers*

18 **AFFIDAVIT OF NICHOLAS M. WIECZOREK**
19 **IN SUPPORT OF ORDER SHORTENING TIME**

20 STATE OF NEVADA

21 COUNTY OF CLARK

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

23 1. Affiant is an attorney duly licensed to practice law in the State of Nevada and
24 maintains offices at 3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169. Affiant
25 represents NAPS0 in this matter and is familiar with the papers and pleadings on file herein.
26
27
28

1 2. Pursuant to NRS Chapters 288 and 289.080, NAPSO 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 NAPSO 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 NAPSO
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.

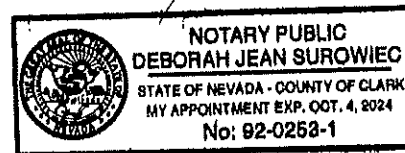
5 DATED this 4 day of January, 2021.

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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



MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF ORDER SHORTENING TIME

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

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

EDCR 2.26.

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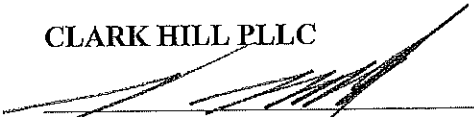
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1 As is demonstrated with the foregoing Affidavit of Nicholas M. Wieczorek, Esq., good
2 cause exists which justifies the shortening of time concerning the hearing of the attached
3 Application For Temporary Restraining Order And Motion for Preliminary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

4 DATED this 3 day of January, 2021.

5 **CLARK HILL PLLC**

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25 *Attorney for Plaintiff NAPSO*

16 **ORDER SHORTENING TIME**

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

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

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

24 //

25 //

26 //

27 //

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 NAPSO 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. NAPSO'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, NAPSO 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 NAPSO 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, NAPSO 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 NAPSO 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 NAPSO, 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 NAPSO. 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 NAPSOS's affected members irreparable injury and there is a
21 heightened probability that NAPSOS 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 NAPSOS Members.**

25 The Defendants' are in clear violation of Nevada law by either disallowing NAPSOS
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 NAFSA 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*
11 *its employees on account of membership or non-membership in an*
12 *employee organization."* (Emphasis added).

13 NRS 288.270.1 provides in relevant part as follows:

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

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

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

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

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

28 (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).

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:

(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 NAPS0 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 NAPS0 members exercising their right to independent legal counsel.
11 Defendants' derogation of applicable law not only violates NAPS0 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. NAPS0 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 NAPS0 members are active LVMPD officers and have chosen to maintain
27 membership in NAPS0 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 In this case, NAPSO can and will adduce evidence to prove that agents and employees of
24 the Defendants maliciously conspired and colluded together to commit the acts set forth above,
25 including, but not limited to, coordinating efforts to harass individual officers who were compelled
26 and/or opting to utilize LVMPD's policies and procedures to either respond to or initiate statements
27 of complaint in other matters. Many of the involved officers were facing significant disciplinary
28 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 NAPS0 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 NAPS0.

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. Wieczorek and the statement of relevant facts,
19 it is necessary for NAPS0 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 NAPS0's motion for
22 preliminary injunction. Without the protection of injunctive relief, Defendants could further injure
23 NAPS0 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. Jenkins*, 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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NAPSO further requests that this honorable court set a nominal bond amount for the preliminary injunction in the amount of \$100.00.

RESPECTFULLY SUBMITTED this 4 day of January, 2021.

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*Attorney for Plaintiff Nevada Association
of Public Safety Officers*

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,

Case No. 2020-011

7 Petitioner,

NOTICE OF ENTRY OF ORDER

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,

ITEM NO. 865

12 Respondents.
13
14

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.
26
27
28

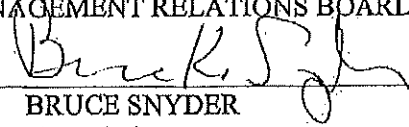
1 PLEASE TAKE NOTICE that the **DECLARATORY ORDER** was entered in the above-
2 entitled matter on June 17, 2020.

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

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:

Devon T. Reese, Esq.
Jason D. Guinasso, Esq.
Alex R. Velto, Esq.
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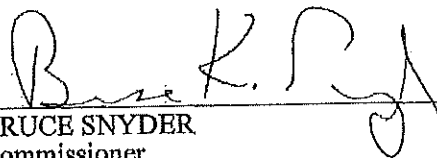
Michael E. Langton, Esq.
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Director, Department of Administration
State of Nevada
515 East Musser St.
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1 Peter Long
2 Division Administrator, Human Resources Management
3 State of Nevada
4 209 East Musser St.
5 Carson City, Nevada 89701

6 Frank Richardson
7 Deputy Administrator of Labor Relations
8 State of Nevada
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BRUCE SNYDER
Commissioner

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

6
7 NEVADA HIGHWAY PATROL ASSOCIATION,

8 Petitioner,

9 v.

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

16 Respondents.

Case No. 2020-011

DECLARATORY ORDER

EN BANC

ITEM NO. 865

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

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

26 In January 2020, the Board designated Petitioner as the exclusive representative of the
27 bargaining unit comprised of all non-supervisory, Unit G, Category 1 Peace Officers employed by the
28 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); *Follo 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. 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

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
Safety Officers, Plaintiff(s)

CASE NO: A-20-827022-C

DEPT. NO. Department 3

7 vs.

8
9 Las Vegas Metropolitan Police
Department, Defendant(s)
10

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

dsurowiec@clarkhill.com

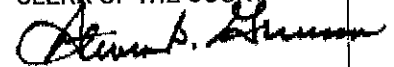
17 Nicholas Wieczorek

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18 Gia Marina

gmarina@clarkhill.com
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20
21
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23
24
25
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Exhibit “2”



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 2 Nick D. Crosby, Esq.
 3 Nevada Bar No. 8996
 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,

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

Plaintiff,

vs.

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

Defendants.

**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.

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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 Run 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.

26
27 ¹ See *Nat'l Latino Peace Officers Assoc. v. Las Vegas Police Protective Assoc. Metro, Inc., et al.*, Case
28 No. 2020-033.

II. STATEMENT OF RELEVANT FACTS

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

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

B. THE APPLICATION.

In the Application, Plaintiff takes issue with the NHPA decision, arguing the decision "did not sufficiently respect existing Nevada law, and attempt[ed] to thread an administrative 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 MARQUIS AURBACH COFFING
10 

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
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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

Nicholas W. Wieczorek, Esq.
John A. Hunt, Esq.
Dominic P. Gentile, Esq.
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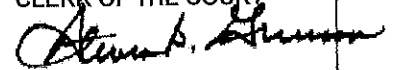
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

David Roger, Esq.
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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).

Exhibit “3”



1 **OPPS**

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21 *Attorneys for Defendant Las Vegas Police Protective Association*

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.

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

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

18 **II. BACKGROUND**

19 Plaintiff Nevada Association of Public Safety Officers ("NAPSO") filed a complaint on
20 December 28, 2020, against the Las Vegas Metropolitan Police Department ("LVMPD") and the
21 Las Vegas Police Protective Association ("LVPPA") alleging claims for relief for unfair labor
22 practices, intentional interference with the contractual relations, conspiracy, injunctive relief, and
23 declaratory relief. Two weeks later, on January 13, 2021, Plaintiff filed an Ex Parte Application
24 for Temporary Restraining Order and Motion for Preliminary Injunction which is set for hearing
25 on January 21, 2021, at 3:00 p.m.
26
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."¹ 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."

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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 NAPS0 attorney owed a duty of loyalty to NAPS0 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 NAPS0'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. NAPS0 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/**
INVESTIGATIONS

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

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

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
an injunction to enforce an order issued by the EMRB.

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

I hereby certify that the foregoing 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 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:

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

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 Jennifer W. Auldge
An Employee of Sgro & Roger

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		

Vanana Online Services

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.

Vanan Online Services

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.

Vanana Online Services

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
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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



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Tuesday.

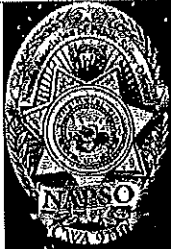
MALE: We'll send you another email confirmation for the calendar.

MALE: Okay. Anything else?

JAMIE FROST: No.

MALE: Thank you.

EXHIBIT “D”



NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS

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Important Links

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 Polich & 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](#)

A Message from the Executive Director

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-enumerated 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:](#)

[/Docs/NAPSO%20Video_draft%201.mov](#)

2019 Legislative Session

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

[Click here for Newsletter #21 -- June 4, 2019](#)

<https://conta.cc/2QLCDtS>

Upcoming Events

[NAPSO Board of Directors meeting](#)

Jan 25, 2021

NAPSO Conference Room

[Legislative Session Starts](#)

Feb 01, 2021

Carson City, Nevada

[NAPSO Board of Directors meeting](#)

Feb 22, 2021

NAPSO Conference Room

1/19/2021

Nevada Association of Public Safety Officers

[Clark County Juvenile Justice Probation Officers Assoc. \(JJPOA\)](#)

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[Employee-Management Relations Board \(EMRB\)](#)

[Henderson Police Officers Assoc. \(HPQA\)](#)

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[Parshing County Law Enforcement Association \(PCLEA\)](#)

[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](#)
By Richard P. McCann, J.D.
- Aug 18 [Contract Negotiations - Step 2](#)
By Richard P. McCann, J.D.
- Feb 10 [Contract Negotiations - Step 1](#)
By Richard P. McCann, J.D.
- Dec 07 [Supervisors in our Union ??](#)
By Richard P. McCann, J.D.
- Sep 20 [What Constitutes a "Past Practice?"](#)
By Richard P. McCann, J.D.

NAPSO Representation Plan

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

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 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
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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.

NAPSO's Vision

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.

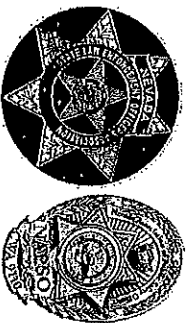
NAPSO's Values

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

NAPSO / CWA Local 9110
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APP 452

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.mplaw.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 Wiecezorek, 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

10/15/2020

NSLEOA | Membership

(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 & MacFarlan** 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.

Retrieved from: http://napso.net/index.cfm?zone=/unionactive/view_page.cfm&page=NAPSO20Plan20Counsel?



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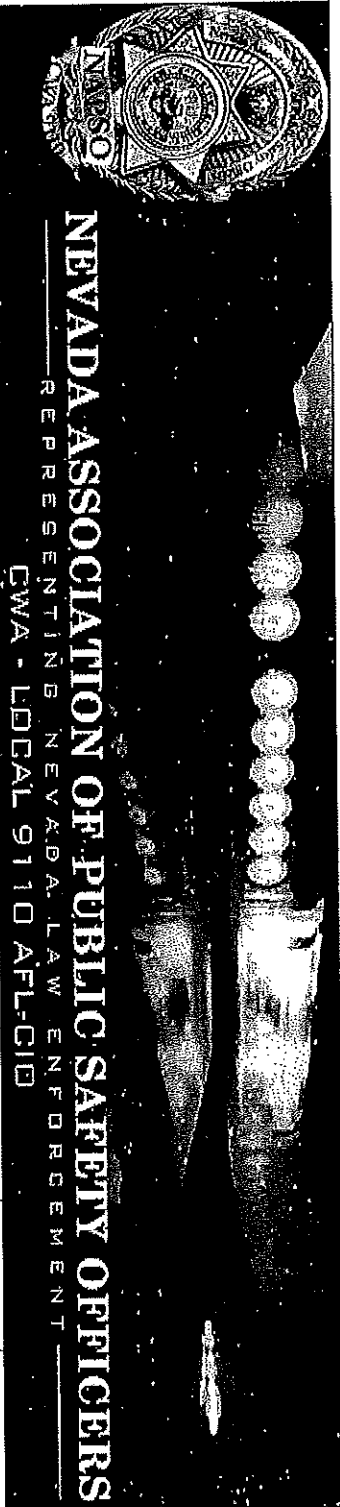
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APP 454

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October 15, 2020

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Member Resources

- Member Home
- Blogs
- Member Directory
- Officers & Staff
- Events Calendar
- Meeting Minutes

NAPSO's Las Vegas Law Firm Merges with National Powerhouse

Updated On: May 26, 2018

NAPSO is proud to announce that its Las Vegas backup law firm of Morris Polich & Purdy has merged with the national powerhouse firm of *Clark Hill*. Senior partner Nick Wiczorek 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. Many of our members have already met Nick and attorneys 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 650 attorneys in its 25 offices coast-to-coast.

Clark Hill, through its merger with Morris Polich & Purdy and with the guidance of NAPSO, will also act as the national counsel for federal public safety officers, including more than 2,000 Federal Air Marshals.

A Message from the Executive Director 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-enumerated 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.

10/15/2020

Message Board
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General

President's Blog

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Legal Corner

People Are Saying...

Important Links

Clark County Juvenile Justice Probation Officers Assoc. (JJPOA)

Communications Workers of America (CWA)

Employee-Management Relations Board (EMRB)

Henderson Police Officers Assoc. (HPOA)

Henderson Police Supervisors Association (HPSA)

Injured Police Officers Fund (IPOF)

Nevada Association of Public Safety Officers

Click here for video from Executive Director Rick McCann explaining NAPSOS statewide coverage:

[/Docs/NAPSO%20Video_draft%201.mov](#)

2019 Legislative Session

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

Click here for Newsletter #21 -- June 4, 2019

<https://conta.cc/2QLCDtS>

Upcoming Events

NAPSO E-Board & Directors meeting

Oct 26, 2020

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 >>

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More Benefits of Your NAPSO/CWA Membership

10/15/2020

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[Nevada PERS](#)

[Nevada State AFL-CIO](#)

[Nevada State Law Enforcement Officers Assoc. \(NSLEOA\)](#)

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Nevada Association of Public Safety Officers

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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.



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 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)(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

LYON COUNTY EDUCATION ASSOCIATION, ..., 2016 WL 6947474...

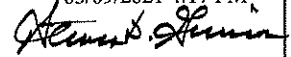
said complaint into the subject Petition.

2016 WL 6947474 (NV LGEMRB)

End of Document

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Exhibit “4”


CLERK OF THE COURT

ORDD

ANTHONY P. SGRO, ESQ.
Nevada Bar No. 3811
JENNIFER WILLIS ARLEDGE, ESQ.
Nevada Bar No. 8729
SGRO & ROGER
720 South Seventh Street, 3rd Floor
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DAVID ROGER, ESQ.
Nevada Bar No. 2781
LAS VEGAS POLICE PROTECTIVE ASSOCIATION
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Las Vegas, Nevada 89134
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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**

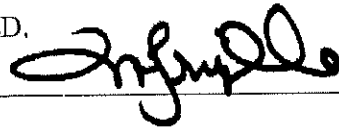
This matter came on for hearing on January 22, 2021, upon Plaintiff NEVADA
ASSOCIATION OF PUBLIC SAFETY OFFICERS'S Ex Parte Application for Temporary

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. Dated this 9th day of March, 2021

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: **CLARK HILL**
Marquis Aurbach Coffing
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
Las Vegas, NV 89169
Attorneys for Plaintiff

MARQUIS AURBACH COFFING

/s/ Nick D. Crosby
Nick D. Crosby
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) 882-8400 (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]

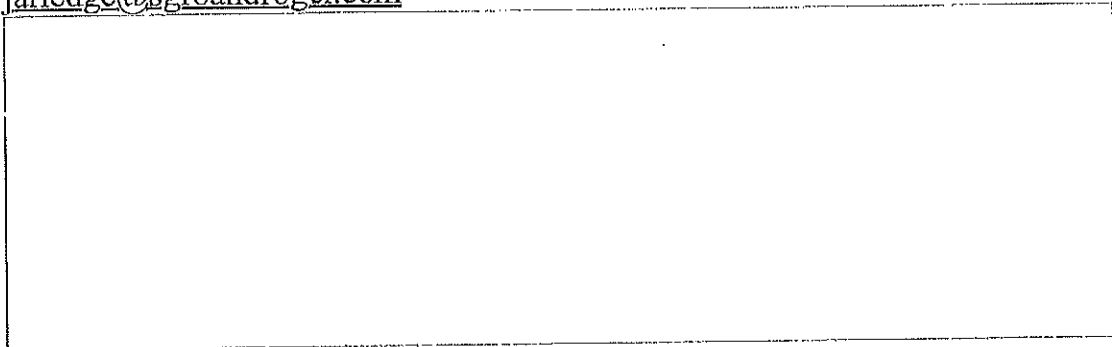
Nick and Nick,

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.

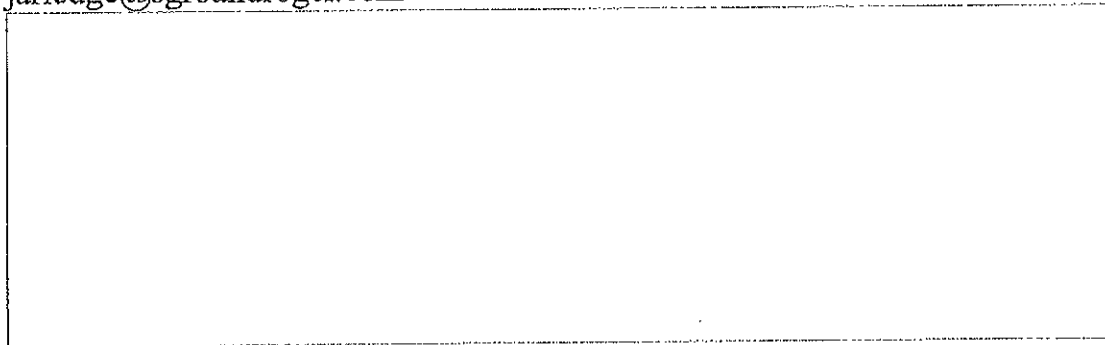
On Jan 25, 2021, at 12:13 PM, Jennifer Arledge <jarledge@sgroandroger.com> wrote:

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
Safety Officers, Plaintiff(s)

CASE NO: A-20-827022-C

7 vs.

DEPT. NO. Department 3

8
9 Las Vegas Metropolitan Police
Department, Defendant(s)

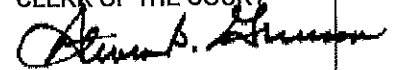
10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Denying Motion 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: 3/9/2021

16 Suzanne Boggs	sboggs@maclaw.com
17 Deborah Surowiec	dsurowiec@clarkhill.com
18 Nicholas Wieczorek	nwieczorek@clarkhill.com
19 Nicholas Crosby	ncrosby@maclaw.com
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21 Jennifer Arledge	jarledge@sgroandroger.com
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25
26
27
28



1 OPPM
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9 610 South Ninth Street
10 Las Vegas, Nevada 89101
11 (702) 386-0536; FAX (702) 386-6812
12 *Attorneys for Petitioner*

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 JORDAN TRAVERS,
11
12 Petitioner,

Case No.: A-21-832601-P
Dept. No.: 27

12 v.

13 LAS VEGAS METROPOLITAN
14 POLICE DEPARTMENT

15 Respondent,

16 LAS VEGAS POLICE PROTECTIVE
17 ASSOCIATION, INC.,

18 Intervenor.

**PLAINTIFF'S OPPOSITION TO LAS
VEGAS POLICE PROTECTIVE
ASSOCIATION INC.'S MOTION TO
INTERVENE; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

20 COMES NOW Plaintiff, Jordan Travers, by and through his attorney, Adam Levine, Esq. of the
21 Law Office of Daniel Marks, and hereby opposes Intervenor's Motion to Intervene. The grounds for
22 Plaintiff's Opposition are set forth in the Memorandum of Points and Authorities set forth below.

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1 The PPA's claims relating to representation under NRS 289.080 have previously been litigated
2 with undersigned counsel and determined by the Nevada Supreme Court in *Bisch v. Las Vegas*
3 *Metropolitan Police Department*, 129 Nev. 328, 302 P.3d 1108 (2013) – a case to which the PPA was a
4 party.¹ In that case, LVMPD Officer Laurie Bisch, who was running against Douglas Gillespie for the
5 elected office of the Clark County Sheriff, was placed under investigation for off-duty conduct to assist
6 a neglected child. Bysshe was a PPA member. Prior to her interview with Internal Affairs, she informed
7 the PPA that she wanted PPA representation, but that she would also be bringing a second
8 representative, attorney John Moran. When PPA Executive Director Chris Collins also showed up at
9 the interview to represent Bisch he saw that Bisch had brought Moran he turned around and walked
10 out.²

11 Bisch filed an action against both LVMPD and the PPA before the State of Nevada Local
12 Government Employee Management Relations Board ("EMRB"). With regard to the PPA, Bisch
13 asserted that it violated its duty of fair representation because NRS 289.080 gives a peace officer the
14 right to two (2) representatives of the peace officers' "own choosing" and that Bisch had chosen Moran
15 as her second in addition to the PPA.

16 After the EMRB and the District Court ruled against Bisch, she appealed to the Nevada
17 Supreme Court. Before the Supreme Court the PPA expressly recognized the rights of peace officers to
18
19

20 ¹ Undersigned counsel represented both Lazario Ruiz and Laurie Bisch and has the distinction of being counsel
21 of record for the only published opinions of the Nevada Supreme Court addressing the Peace Officers Bill of
22 Rights. While there is a published decision from the Court of Appeals addressing the Bill of Rights, *Knickmeyer*
23 *v. State ex rel. Eighth Judicial Dist. Court*, 133 Nev. 675, 408 P.3d 161 (2017), former Deputy Marshal Thomas
24 Knickmeyer discharged undersigned, who is the General Counsel for the Clark County Deputy Marshals
Association, and selected his own counsel as was his right under NRS 289.080, prior to the arbitration that he
lost. It is said that "bad cases make for bad law". Fortunately, *Knickmeyer* was legislatively overruled in the 2019
legislative session when the Legislature defined "law enforcement agency" for purposes of the Bill of Rights.

² While not reflected in the Supreme Court's decision, the evidence before the EMRB was that Collins told the
PPA that he would not "piss on Bisch if she were on fire".

1 have two (2) representatives of their own choosing, but that nothing within that right compelled to the
2 PPA to serve as one of those two representatives. As noted by the Supreme Court:

3 The PPA argues that the District Court correctly concluded that the plain language of the
4 statute does not create any affirmative duty on the union to provide a second
5 representative at the interview, rather, it only provides a right of two representatives.
6 The District Court then looked at the broader statutory scheme to determine that the
7 statute only provides a right of representation in regards to the employer, and does not
8 impose any duties on the police union.

9 129 Nev. at 335-336, 302 P.3d at 1113-1114.

10 In siding with the PPA the Supreme Court determined:

11 Here, the statute does not expressly impose any affirmative duties, **but only provides**
12 **the employee the right to have two representatives of his or her choosing present at**
13 **an interrogation**, which would necessarily prevent the employer from barring the
14 employee from having two representatives. Because the statute does not impose any
15 duty for any entity to provide a representative, we are unable, therefore, to conclude
16 from the plain language of the statute that NRS 289.080 supports Bisch's arguments.

17 (Emphasis added). The Supreme Court further stated "Because nothing in NRS 289.080 or the rest of
18 the Peace Officer Bill of Rights governs a PPA's responsibility toward its members, the EMRB
19 correctly concluded that NRS 289.080 did not impose an additional duty of fair representation on the
20 PPA." 129 Nev. at 337, 303 P.3d at 1114.

21 Now, the PPA wishes to repudiate and reverse the position it took before the Nevada Supreme
22 Court in *Bisch*. Whereas the PPA had previously prevailed in its argument that it has no obligation to
23 represent peace officers who elect under NRS 289.080 to select their own representative(s), now wishes
24 to assert that peace officers cannot select their own representatives and must use the PPA. However, the
25 *Bisch* decision is binding on the PPA as a party to that case, and the *Bisch* decision clearly and
26 unambiguously holds that peace officers have the right to choose their own representatives.

27 As recently re-emphasized mere days ago by the United States Supreme Court in *TransUnion*
28 *LLC v. Ramirez*, ___ U.S. ___, 2021 U.S. LEXIS 3401 (June 25, 2021) "plaintiffs must demonstrate,

1 among other things, that they suffered a concrete harm. No concrete harm, no standing." The PPA can
2 demonstrate no concrete harm from the Court's permanent injunction under NRS 289.120 in favor of
3 Travers, and against LVMPD, because it does not prevent the PPA from representing any employee.
4 Per *Bisch*, NRS 289.080 only imposes an obligation on LVMPD to permit two representatives and does
5 not affect the PPA. Nothing within the Court's permanent injunction *prevents* the PPA from
6 representing non-members such as Travers.

7 As pointed out by Travers' Points and Authorities in support of his Petition, the exclusive
8 recognized bargaining representative always has a right to be at any interrogation, interview or hearing
9 regardless as to the representatives chosen by the peace officer.³ In fact, the PPA's own collective
10 bargaining agreement with LVMPD specifically states that Article 4.4 "Notice of Investigatory
11 Interviews":

12 Whenever an employee covered by the collective bargaining agreement is party to an
13 internal investigation as a subject or witness and so notified per Department Procedure
5/101.26, such notice shall be e-mailed to the Association Office.

14 (Exhibit "1"). In Travers's case, the PPA received Notice of Travers' investigatory interview on March
15 4, 2021 through its e-mail address: iab@lvppa.com. (Exhibit "2").

16 A party which lacks standing is not an "indispensable party" and cannot compel intervention.
17 Courts have repeatedly used the phrase "standing to intervene" is conceptually equivalent to "standing".
18 See e.g. *New Jersey Department of Environmental Protection v. Exxon Mobile Corp.*, 453 N.J. Supr.
19 272, 181 A. 3d 257 (2017). As noted by the Nevada Supreme Court "Before a party may be joined
20 under Rule 19, it "must have its own cause of action against another party or a cause of action against
21 it." *Rose, LLC v. Treasure Island, LLC*, 135 Nev. ___, 445 P.3d 860, 867 (2019). Because the PPA can

22 _____
23 ³ Attached to the Points and Authorities as an Exhibit, undersigned counsel as General Counsel for the Police
24 Officers Association of the Clark County School District, which is the exclusive recognized bargaining
representative for police officers, detectives and sergeants employed by the Clark County School District, put the
District on notice that it must be notified of any grievances or hearings even where the peace officer has elected
to be represented by somebody other than the Association.

1 show no "concrete harm" from the Court's Injunction, as nothing within that Injunction imposes any
2 obligations or burdens on the PPA, and only enjoins LVMPD, the PPA lacks standing and is not
3 permitted to intervene.

4 **II. INTERVENTION IS PROHIBITED AFTER ENTRY OF A FINAL JUDGMENT.**

5 While the PPA's lack of standing is fatal to its Motion to Intervene, it should further be pointed
6 out that its Motion is procedurally improper. Under *Olsen Family Trust v. Olson*, 109 Nev. 838, 858
7 P.2d 385 (1993), intervention is prohibited after entry of a final judgment.

8 In *Olsen*, on June 2, 1993 the District Court entered an order in the divorce proceedings
9 between Betty L. Olsen and Alfred G. Olsen which "substantially and adversely affected the rights and
10 interests of the non-party, the Gladys Baker Olson Family Trust ("the Trust)". 109 Nev. at 839, 858
11 P.2d at 385. Nine (9) days later, on June 11, 1993, entered another order "granting the Trust's petition to
12 intervene in the action". *Id.*

13 Following an appeal filed by the Trust, the Nevada Supreme Court directed that the appeal be
14 dismissed because a non-party is not permitted to "intervene in an action subsequent to the entry of a
15 final judgment". 109 Nev. at 841, 858 P.2d at 386. See also *Lopez v. Merit Ins. Co.*, 109 Nev. 553, 853
16 P.2d 1266 (1993).

17 The Court's injunction entered pursuant to NRS 289.120 in favor of Officer Travers is a final
18 judgment as it disposes of all claims and leaves nothing left for the court to consider. Accordingly,
19 intervention by the PPA is prohibited pursuant to *Olsen*.

20 While *Olsen* is dispositive on the issue, it should further be pointed out that the Motion to
21 Intervene does not purport to set forth any arguments suggesting that the Court's legal rationale behind
22 its Injunction was erroneous. Rather, the Motion simply scolds the parties claiming that they knew the
23 EMRB had addressed this issue in *Nevada Highway Patrol Association v. State of Nevada*, and was the
24

1 subject of the lawsuit before Judge Trujillo in Dept. III in Case No. A-20-827022-C. (Motion at pp. 3-
2 4).⁴

3 First, the EMRB's decisions in both *Nevada Highway Patrol Association v. State of Nevada*, and
4 *National Latino Police Officers Association* were both extensively briefed in connection with the
5 Court's decision in this case. Indeed, it was the observation by the EMRB in the *National Latino Police*
6 *Officers Association* case that the National Labor Relations Act removed from the initial drafts of the
7 legislation the language "representatives of the employees "own choosing" which was central to this
8 Court's rationale. In issuing its injunction the Court expressly noted that in enacting NRS 289.080 the
9 Nevada Legislature included this language which had been rejected by Congress. (Injunction at p. 4
10 Conclusions of Law 15 and 16).

11 While LVMPD may have been familiar with the litigation in Department III as it was a party,
12 Jordan Travers was not. A review of the pleadings in that case reveals that it is a lawsuit between to
13 employee organizations asserting tort claims against the other, and does not involve an individual
14 officer attempting to assert his statutory rights under NRS 289120. (Exhibits "3" and "4"). Because the
15 Court has already issued a final judgment in this case, under *Olsen Family Trust v. Olson* intervention
16 cannot be granted.

17 **III. WHILE IRRELEVANT TO THE INTERVENTION ISSUE, THE COURT'S**
18 **PERMANENT INJUNCTION DOES NOT CONFLICT WITH JUDGE**
TRUJILLO'S ORDER.

19 The PPA's Motion to Intervene erroneously claims that the Permanent Injunction issued by this
20 Court is in conflict with the Order of Judge Trujillo in Case No. A-20-827022-C. While Judge Trujillo's

21 ⁴ It is remarkable that nobody in Case No. A-20-827022-C has raised the contract waiver doctrine. The National
22 Labor Relations Board, which Nevada follows through its EMRB, held in *MV Transportation, Inc. and*
23 *Amalgamated Transit Union Local #1637, AFL-CIO*, 368 NLRB 66 (2019) that a union may through the
24 collective bargaining agreement waive rights which it would otherwise possess as the exclusive bargaining
representative. Article 4.4(A) of the bargaining agreement states "The parties recognize the rights of all police
officers under NRS 289". (Exhibit "1" at p. 2). Thus, PPA has contractually agreed that any peace officer may
have "two representatives of their own choosing".

1 decision is absolutely irrelevant to the issue of intervention in this case as issue preclusion would not
2 apply under any circumstances, undersigned counsel would be remiss if he did not point out that the
3 PPA's argument is actually erroneous.

4 This Court's Injunction is a final decision on the merits. Judge Trujillo's Order dated March 9,
5 2021 (Exhibit "4" to PPA's Motion) is not. Rather, it is simply an order denying an ex-parte application
6 for a Temporary Restraining Order.

7 Judge Trujillo's Order decided nothing other than the fact that the moving party, the Nevada
8 Association of Public Safety Officers (hereafter "NAPSO") failed to demonstrate the high threshold
9 necessary for a Temporary Restraining Order under NRCP 65(b). Judge Trujillo determined that
10 NAPSO did not demonstrate irreparable harm which is a requirement for a TRO. This was undoubtedly
11 correct as the failure to prevent a NAPSO representative from being present at an investigatory
12 interview does not harm any peace officer, and if discipline were to issue based upon information
13 obtained in violation of an officer's right's under Chapter 289, any prejudicial information obtained
14 must be excluded by a court or arbitrator pursuant to NRS 289.085 which states:

15 If an arbitrator or court determines that evidence was obtained during an investigation
16 of a peace officer concerning conduct that could result in punitive action in a manner
17 which violates any provision of NRS 289.010 to 289.120, inclusive, and that such
18 evidence may be prejudicial to the peace officer, such evidence is inadmissible and the
19 arbitrator or court shall exclude such evidence during any administrative proceeding
20 commenced or civil action filed against the peace officer. If the arbitrator or court
21 further determines that such evidence was obtained by a law enforcement agency in bad
22 faith, the arbitrator or court must dismiss the administrative proceeding or civil action
23 with prejudice.

24 Judge Trujillo further determined that NAPSO failed to demonstrate a likelihood of success on
the merits. A simple review of NAPSO's Complaint filed in Case No. A-20-827022-C reveals this
conclusion to be undoubtedly correct. (Exhibit "3").

NAPSO's Complaint alleges that LVMPD and PPA engaged in prohibited labor practices.
However, prohibited labor practices by local government employers and employee organizations are set

1 forth at NRS 288.270(1) (for local government employers) and 288.270(2) (for employee
2 organizations). These are claims for which the EMRB has exclusive jurisdiction. See *City of Reno v.*
3 *Reno Police Protective Association*, 118 Nev. 889, 59 P.3d 1212 (2002); *Rosequist v. International*
4 *Association of Firefighters Local 1908*, 118 Nev. 444, 49 P.3d 651 (2002). The *Garmon* doctrine holds
5 that common law tort claims encompassing such labor relations issues are preempted by labor relations
6 statutes such as the National Labor Relations Act ("NLRA"), or Nevada's Employee Management
7 Relations Act, NRS Chapter 288, which mirrors the NLRA. See *San Diego Building Trades Council v.*
8 *Garmon*, 359 U.S. 236, 79 S.Ct. 773 (1959); *San Diego Teachers Association v. Superior Court*, 24
9 Cal. 3rd 1, 154 Cal. Rptr. 893, 593 P.2d 838 (1979); *El Rancho Unified School Dist. v. National*
10 *Education Association*, 33 Cal. 4th 946, 192 Cal. Rptr. 123, 663 P.2d 893 (1983) (holding that *Garmon*
11 preemption principles apply state labor relations statutes).

12 NAPSO likewise sought a Declaratory Judgment and Injunction pursuant to Nevada's
13 Declaratory Judgments Act against LVMPD and PPA interfering with NAPSO's rights under NRS
14 Chapter 289. The action is brought in the name of NAPSO and not any individual peace officer. This
15 cause of action suffers from the same standing problem as PPA – NRS 289.120 requires the action be
16 brought by any peace officer against his employer.

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1 **IV. CONCLUSION**

2 Police Officer Jordan Travers has no interest in becoming embroiled in a dispute between two
3 employee organizations (NAPSO and PPA) as he is a member of neither organization. Travers' interest
4 is in vindicating his statutory right to be represented by someone of his own choosing as opposed to a
5 representative chosen by either NAPSO or the PPA.

6 For all the reasons set forth above, the PPA's Motion to Intervene must be denied.

7 DATED this 28th day of June 2021.

8 LAW OFFICE OF DANIEL MARKS

9 
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13 ADAM LEVINE, ESQ.
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18 (702) 386-0536; FAX (702) 386-6812
19 Attorneys for Petitioner
20
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24

CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 28th day of June 2021, I did serve the above and forgoing PLAINTIFF'S OPPOSITION TO LAS VEGAS POLICE PROTECTIVE ASSOCIATION INC.'S MOTION TO INTERVENE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF, by way of Notice of Electronic Filing provided by the court mandated E-file & Serve service, upon the Plaintiffs at the following:

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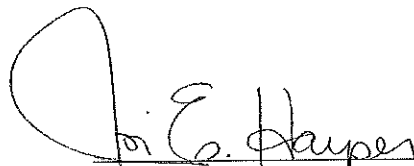

An employee of the
LAW OFFICE OF DANIEL MARKS

EXHIBIT 1

EXHIBIT 1

COLLECTIVE BARGAINING AGREEMENT

between

**Las Vegas Metropolitan
Police Department**

&

**LAS VEGAS POLICE PROTECTIVE
ASSOCIATION**

July 1, 2019 – June 30, 2023

ARTICLE 3 - DEFINITIONS

This Agreement is made pursuant to and in conjunction with the Local Government Employee-Management Relations Act of the State of Nevada, and all terms used herein which are terms used in the Local Government Employee-Management Relations Act shall have definitions ascribed to them by said Act.

ARTICLE 4 - ASSOCIATION SECURITY

4.1 Check Off. The Department agrees to deduct from the paycheck of each employee within the bargaining unit who has signed an authorized payroll deduction card such amount as has been designated by the Association as Association dues and is so certified by the Treasurer of the Association. The Association will certify to the Department, in writing, the current rate of membership dues. The Department will be notified of any change in the rate of membership dues 30 days prior to the effective date of such change.

Such funds shall be remitted by the Department to the Treasurer of the Association within one (1) month after such deductions. Dues deduction authorization shall be irrevocable for a period of one (1) year and automatically renewed each year thereafter commencing October 1, except that authorization may be withdrawn by an employee during a period of 20 days each year ending October 20. Members of the bargaining unit who are promoted to sergeant may withdraw their payroll deduction authorization during the first 30 days following their promotion, regardless of the date, but thereafter are limited to the same withdraw period set forth above.

The Department will not be required to honor any pay period deduction authorizations that are delivered to the Payroll Section after the beginning of the pay period during which the deductions should start.

4.2 Hold Harmless. The Association agrees to indemnify and hold the Department harmless against any and all claims, suits, orders, or judgments brought or issued against the Department as a result of any action taken or not taken by the Department in conformance with the provisions of this Article.

4.3 Errors. The Association agrees to refund to the Department any monies paid to it in error on account of the payroll deduction provisions herein upon presentation of proper evidence thereof.

4.4 Notice of Investigatory Interviews. Whenever an employee covered by the collective bargaining agreement is a party to an internal investigation as a subject or witness and is so notified as per Department Procedure 5/101.26, such notice shall be e-mailed to the Association office.

Notification to the Association and employee shall be completed the same business day. If the notice is e-mailed to the Association any time after 3:00 p.m. on the last business day of the week, the Association shall also receive telephonic notification. If no telephonic notification is provided, there shall be at least one intervening business day between the e-mailing of the notice and the interview.

- A. The parties recognize the rights of all police officers under NRS 289 (Attachment B). The Association will receive a copy of all notices and summaries of any internal investigation of an employee at the time the notice and summary are sent to the employee via e-mail or 1000 miler.
- B. Employees called for a witness interview in an investigation will have the same rights as subject employees and will be entitled to representation during any interview.
- C. The parties agree that on any investigation conducted pursuant to NRS 289, a summary of facts will be provided to the subject employee who is to be interviewed. For purposes of this section, "summary" means a description of the allegation, with the locations, time, and date. If the location, time, or date are unknown, the notice will so state. If there are multiple allegations, then the summary of facts must address all of the allegations and include a description of the misconduct or performance problem.

The Association may raise issue with the named investigator as required by NRS 289 if it is believed there is a conflict of interest. In such instance, the matter shall be presented to the Bureau Commander of Professional Standards and his/her decision regarding the matter shall not be appealable.

EXHIBIT 2

EXHIBIT 2

Adam Levine

Subject: Fwd: CIRT2021-008 WE Travers Interview
Location: CIRT Interview Room #1

Start: Mon 3/8/2021 11:00 AM
End: Mon 3/8/2021 12:00 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: CIRT Admin

Sent from my Verizon, Samsung Galaxy smartphone
[Get Outlook for Android](#)

From: Roberto Henderson <R4556H@LVMPD.COM> on behalf of CIRT Admin <CIRTAdmin@LVMPD.COM>
Sent: Thursday, March 4, 2021 2:29:30 PM
To: Alexandria Redditt <A13556R@LVMPD.COM>; Clayborne Howell <C9634H@LVMPD.COM>; Denise MacDonald <D8076M@LVMPD.COM>; Gregory Watkins <G5471W@LVMPD.COM>; Guy Turner <g13518t@LVMPD.COM>; Jason Jennings <j6178J@LVMPD.COM>; Justin Roth <j13913R@LVMPD.COM>; Kelly Sullivan <K15150S@LVMPD.COM>; Kurt McKenzie <K6746M@LVMPD.COM>; Matthew Eschker <M12952E@LVMPD.COM>; Roberto Henderson <R4556H@LVMPD.COM>; Scott Keiser <S6392K@LVMPD.COM>; Shawn Smaka <S6098S@LVMPD.COM>; Annette Mullin <A5485M@LVMPD.COM>; Brian Kroening <B9660K@LVMPD.COM>; Cynthia Williams <C8466W@LVMPD.COM>; Darryl McDonald <d14031m@LVMPD.COM>; Meghan Brunner <m14791b@LVMPD.COM>; Michael Springer PEAP <M6278S@LVMPD.COM>; Olga Clark <O6332C@LVMPD.COM>; William Gibbs <W7553G@LVMPD.COM>; Jordan Travers <j9349T@LVMPD.COM>; 'iab@lvppa.com' <iab@lvppa.com>
Subject: CIRT2021-008 WE Travers Interview
When: Monday, March 8, 2021 11:00 AM-12:00 PM.
Where: CIRT Interview Room #1

Officer Travers,

Per our conversation earlier, your CIRT interview has been scheduled for **Monday, March 8, 2021 at 1100 hours**. The interview will be held at the CIRT Office located at **400 S. Martin Luther King Blvd, Building B, Suite 533 Las Vegas, NV 89106**. Attached are the documents we discussed during our conversation. If you have any questions, please call me anytime at 702-533-7329.

Thank you,

Detective R. Henderson P#4556
IOCP/Critical Incident Review Team(CIRT)
Las Vegas Metropolitan Police Dept.
Cell: (702) 533-7329
Desk: (702) 828-7287

FAX: (702) 828-4372
R4556H@lvmpd.com



Employee
Obligations and ...

****CONFIDENTIALITY NOTICE****

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CIRT Policy 2020
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CRIP Process 2020
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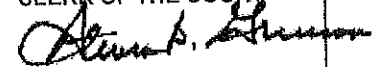
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EXHIBIT 3

EXHIBIT 3



ACOMP
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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,

Plaintiffs,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, LAS VEGAS POLICE
PROTECTIVE ASSOCIATION, DOE
INDIVIDUALS, I through X, inclusive, and
ROE BUSINESS ENTITIES, I through X,
inclusive,

Defendants.

Case No.: A-20-827022-C

Dept. No. 3

FIRST AMENDED COMPLAINT

Plaintiffs NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS, a Local
Government Employee Organization, and its Named and Unnamed Affected Members, by and
through their undersigned counsel of record, Nicholas M. Wieczorek, Esq. of the law firm
CLARK HILL PLC, hereby files this First (1st) Amended Complaint against LAS VEGAS
METROPOLITAN POLICE DEPARTMENT, LAS VEGAS POLICE PROTECTIVE

1 ASSOCIATION, DOE INDIVIDUALS, I through X, inclusive, and ROE BUSINESS
2 ENTITIES, I through X, inclusive, alleging and complaining as follows:

3 **STATEMENT OF JURISDICTION AND PARTIES**

4 1. At all relevant times herein, Plaintiffs NEVADA ASSOCIATION OF PUBLIC
5 SAFETY OFFICERS (hereinafter "NAPSO" and "Association", interchangeably), and its
6 Named and Unnamed Affected Members (hereinafter "NAPSO Members"), were and are an
7 employee organization as that term is defined in NRS 288.040. NAPSO is a professional
8 association with approximately 1,500 members throughout the State of Nevada consisting
9 primarily of law enforcement officers and other local employees who enjoy the benefits of the
10 provisions of NRS 289 and other statutory protections. NAPSO's current mailing address is
11 145 Panama Street, Henderson, Nevada 89015.
12

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

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

23 4. At all relevant times herein, Defendants, DOE INDIVIDUALS I through X,
24 inclusive, and ROE BUSINESS ENTITIES I through X, inclusive, were responsible in some
25 manner for the acts, omissions and violations that are more fully described hereinafter. When
26 the true identities of said parties are made known to the Plaintiffs, this Complaint will be
27 amended to insert those identities, together with proper allegations and charges.
28

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

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

4 "1. It is the right of every local government employee, subject to
5 the limitation provided in subsections 3 and 4, to join any
6 employee organization of the employee's choice or to refrain from
7 joining any employee organization. *A local government employer*
8 *shall not discriminate in any way among its employees on*
9 *account of membership or nonmembership in an employee*
10 *organization."* (emphasis added).

11 7. NRS 288.150 provides in relevant part as follows:

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

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

21 (m) Protection of employees in the bargaining unit from
22 discrimination because of participation in recognized employee
23 organizations consistent with the provisions of this chapter."

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

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

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

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

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

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

6 (f) *Discriminate* because of race, color, religion, sex, sexual
7 orientation, gender identity or expression, age, physical or visual
8 handicap, national origin or because of *political or personal*
9 *reasons or affiliations.*" (emphasis added).

10 9. NRS 288.270.2 provides in relevant part as follows:

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

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

15 (c) *Discriminate* because of race, color, religion, sex, sexual
16 orientation, gender identity or expression, age, physical or visual
17 handicap, national origin or because of *political or personal reasons*
18 *or affiliations.*" (Emphasis added).

19 10. NRS 289.020.3 provides in relevant part as follows:

20 "3. If a peace officer requests representation while being
21 questioned by a superior officer on any matter that the peace officer
22 reasonably believes could result in punitive action, the questioning
23 must cease immediately and the peace officer must be allowed a
24 reasonable opportunity to arrange for the presence and assistance of
25 a representative before the questioning may resume."

26 11. NRS 289.060.1 provides in relevant part as follows:

27 "1. []Any peace officer who serves as a witness during an interview
28 must be allowed a reasonable opportunity to arrange for the
presence and assistance of a representative authorized by NRS
289.080."

12. NRS 289.080 provides as follows:

"NRS 289.080 Right to presence and assistance of representatives
at interview, interrogation or hearing relating to investigation;
confidential information; disclosure; record of interview,
interrogation or hearing; right of subject of investigation to notice of
intent to recommend punitive action, to submit response to such

1 recommendation and to review and copy investigation file upon
2 appeal.

3 1. Except as otherwise provided in subsection 5, a peace
4 officer who is the subject of an investigation conducted pursuant to
5 NRS 289.057 may upon request have two representatives of the
6 peace officer's choosing present with the peace officer during any
7 phase of an interrogation or hearing relating to the investigation,
8 including, without limitation, a lawyer, a representative of a labor
9 union or another peace officer.

10 2. Except as otherwise provided in subsection 5, a peace
11 officer who is a witness in an investigation conducted pursuant to
12 NRS 289.057 may upon request have two representatives of the
13 peace officer's choosing present with the peace officer during an
14 interview relating to the investigation, including, without limitation,
15 a lawyer, a representative of a labor union or another peace officer.
16 The presence of the second representative must not create an undue
17 delay in either the scheduling or conducting of the interview.

18 3. A representative of a peace officer must assist the peace
19 officer during the interview, interrogation or hearing.

20 4. The law enforcement agency conducting the interview,
21 interrogation or hearing shall allow a representative of the peace
22 officer to explain an answer provided by the peace officer or refute a
23 negative implication which results from questioning of the peace
24 officer but may require such explanation to be provided after the
25 agency has concluded its initial questioning of the peace officer.

26 5. A representative must not otherwise be connected to, or the
27 subject of, the same investigation.

28 6. Any information that a representative obtains from the peace
officer who is a witness concerning the investigation is confidential
and must not be disclosed.

7. Any information that a representative obtains from the peace
officer who is the subject of the investigation is confidential and
must not be disclosed except upon the:

(a) Request of the peace officer; or

(b) Lawful order of a court of competent jurisdiction.

A law enforcement agency shall not take punitive action against a
representative for the representative's failure or refusal to disclose
such information.

1
2 8. The peace officer, any representative of the peace officer or
3 the law enforcement agency may make a stenographic, digital or
4 magnetic record of the interview, interrogation or hearing. If the
5 agency records the proceedings, the agency shall at the peace
6 officer's request and expense provide a copy of the;

7 (a) Stenographic transcript of the proceedings; or

8 (b) Recording on the digital or magnetic tape.

9 9. After the conclusion of the investigation, if a law
10 enforcement agency intends to recommend that punitive action be
11 imposed against the peace officer who was the subject of the
12 investigation, the law enforcement agency must notify the peace
13 officer of such fact and give the peace officer or any representative
14 of the peace officer a reasonable opportunity to inspect any evidence
15 in the possession of the law enforcement agency and submit a
16 response. The law enforcement agency must consider any such
17 response before making a recommendation to impose punitive
18 action against the peace officer. If the law enforcement agency
19 recommends punitive action be imposed against the peace officer
20 and the peace officer appeals the recommendation to impose
21 punitive action, the peace officer or any representative of the peace
22 officer may review and copy the entire file concerning the internal
23 investigation, including, without limitation, any evidence,
24 recordings, notes, transcripts of interviews and documents contained
25 in the file (Added to NRS by 1983, 2098; A 1991, 647; 1993, 2380;
26 2005, 623; 2011, 1752; 2019, 2662; 2020, 32nd Special Session,
27 77)."

19
20 13. Jurisdiction of this Court is appropriate pursuant to Article 6, Section 6 of the
21 Nevada Constitution.

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

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

3 GENERAL ALLEGATIONS

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

5 16. Plaintiff NAPS O is a professional association comprised of approximately 1,500
6 members within the State of Nevada, the vast majority of which are Category 1 law
7 enforcement officers, or other state and local employees protected by the provisions of NRS
8 289, the Law Enforcement Officers "Bill of Rights" governing statutory rights provided to
9 peace officers.
10

11 17. NAPS O has, as members, representatives of a vast array of state and local law
12 enforcement agencies, including the City of Henderson Police Officers, City of Henderson
13 Police Supervisors Association, Nevada Highway Patrol, Nevada Parole & Probation, various
14 other Clark County law enforcement associations, City of Elko Police Officers Association,
15 City of Winnemucca Police Officers Association, Pershing County Deputy Sheriff's
16 Association, and others. Among its members are nearly 200 individual peace officers
17 employed by Defendant LVMPD. The members of NAPS O entered into an agreement with the
18 Association for it to provide legal defense representation to members as part of the benefits of
19 membership. Forums where members receive legal defense representation include, but are not
20 limited to, LVMPD Internal Affairs Bureau proceedings, pre-disciplinary, pre-termination, and
21 disciplinary arbitration hearings, critical incidents, and labor/management board hearings.

22 18. On June 17, 2020, the Government Employee-Management Relations Board
23 (hereinafter "EMRB" and "Board", interchangeably) issued an order in Item No. 865
24 concerning the Petition for Declaratory Order filed by the Nevada Highway Patrol Association
25 seeking clarification of the Board's position on rights of representation pursuant to NRS
26 Chapters 288 and 289. The Board's order concluded that the designated exclusive bargaining
27 representative was entitled to maintain exclusive right to represent all employees within the
28 bargaining unit, including an individual employee's right to representation by private legal

1 counsel, with various exceptions. Specifically, the Board's Order concluded that an attorney
2 who is retained by the employee to act as his representative must be allowed to represent the
3 employee "even if the attorney also represents a rival organization" in other matters. This was
4 a matter under the jurisdiction and authority of the EMRB.

5 19. Even before the Board issued its Order, representatives of the PPA began
6 publicizing false and negative information regarding Plaintiffs, including false and misleading
7 information as to the ability of representatives of Complainant to represent non-PPA LVMPD
8 officers at any disciplinary proceedings. In video presentations and other written materials,
9 PPA advised that neither NAPS0 nor any of its representatives were permitted to represent
10 LVMPD officers during administrative proceedings. Such statements were false and in
11 violation of this Board's Order.

12 20. On or about July 13, 2020, LVMPD Corrections Officer A (hereinafter "Officer
13 A") contacted NAPS0 and requested legal representation as part of his order to appear at a
14 subject interview regarding possible violation of policy. Officer A was not a member of PPA.
15 On July 13, 2020, legal counsel who had been retained by Officer A through his membership in
16 NAPS0 attended an LVMPD Internal Affairs Bureau seating with him. Before this interview
17 took place, representatives of LVMPD's Internal Affairs Bureau began questioning Officer A
18 on his affiliation with "competing unions" and asked him to verbally confirm that he was "not
19 part of a rival union." This questioning violated the attorney-client privilege between Officer A
20 and his legal counsel. Furthermore, a representative of PPA "sat in" on the interview, thereby
21 seeking to intimidate and distress Officer A, while he was being questioned as part of an
22 official investigation which could lead to disciplinary action.

23 24 21. On or about August 5, 2020, LVMPD Corrections Officer B (hereinafter
25 "Officer B") was summoned to appear and give a statement to the LVMPD Internal Affairs
26 Bureau as a witness regarding a potential disciplinary matter. Officer B retained legal counsel
27 through his membership in NAPS0, who met Officer B at the Internal Affairs Bureau and
28 represented his interests at the hearing. Before Internal Affairs allowed the interview to begin,

1 Officer B was questioned regarding the nature of his confidential relationship with retained
2 legal counsel, including questions as to how much he was paying counsel and other matters
3 which intruded into this attorney-client relationship. Furthermore, a representative of PPA "sat
4 in" on the interview, seeking to intimidate and disturb Officer B while he was being questioned
5 during an official investigation.

6 22. On or about September 10, 2020, LVMPD Corrections Officer C (hereinafter
7 "Officer C") was summoned to appear and give a statement to the LVMPD Internal Affairs
8 Bureau. As he served as a witness in a potential disciplinary matter, Officer C retained legal
9 counsel through his membership in NAPS0, who met Officer C at Internal Affairs and
10 represented his interests there. Before Internal Affairs allowed the interview to begin, Officer C
11 was questioned on the nature of his confidential relationship with retained legal counsel,
12 including questions as to how much he was paying counsel and other matters which intruded
13 into this attorney-client relationship. Furthermore, a representative of PPA "sat in" on the
14 interview, seeking to intimidate and disturb Officer C while he was being questioned during an
15 official investigation. Following the interview, PPA filed a frivolous and unfounded Internal
16 Affairs complaint against Officer C, due to his retention of legal counsel. The illegitimacy of
17 this complaint was brought to the attention of PPA. Nonetheless, PPA insisted on pursuing this
18 frivolous and unfounded Internal Affairs complaint in order to place a "chilling effect" on
19 other LVMPD officers who would seek to become members of NAPS0.
20

21 23. On or about October 14, 2020, LVMPD Corrections Officer D (hereinafter
22 "Officer D") was summoned to provide a statement to the LVMPD Internal Affairs Bureau as
23 part of a complaint she had asserted against a co-worker for policy violations. Officer D
24 retained legal counsel through her membership in NAPS0, who met Officer D at Internal
25 Affairs and represented her interests during her statement. Before Officer D was allowed to
26 provide her statement, representatives of LVMPD Internal Affairs began questioning her and
27 her retained legal counsel regarding the nature of their confidential attorney-client relationship
28 and whether Officer D was paying legal counsel to represent her. A representative of

1 LVMPD's Office of Human Resources interfered in this process, and engaged in direct
2 questioning of Officer D before she was allowed to provide her statement. Representatives of
3 PPA "sat in" on the interview and even attempted to improperly ask Officer D questions, which
4 legal counsel did not permit.

5 24. On or about November 25, 2020, LVMPD Correction Officers E and F
6 (hereinafter, "Officers E and F", collectively) were summoned to an interview with the
7 LVMPD Internal Affairs Bureau for responding to allegations raised by another officer.
8 Officers E and F retained legal counsel through their membership in NAPS0, who was
9 prepared to represent their interests at the interview. Prior to the interview, LVMPD Internal
10 Affairs modified its "Employee Notification of Internal Investigation Form" to explicitly advise
11 Officers E and F that "while you are entitled to two (2) representatives of your choosing, the
12 representatives cannot be an agent or employee of a *rival employee organization* serving in that
13 capacity" (emphasis added). Furthermore, the notice stated that in addition to the Internal
14 Affairs Bureau's investigators, a "PPA representative" would also be attending the interviews.

15 25. Prior to the interview date, legal counsel for Officers E and F spoke with Jamie
16 Frost (hereinafter, "Ms. Frost"), the Labor Relations counsel for LVMPD regarding various
17 "preliminary" discussions that would take place before the interview proceeded. Ms. Frost
18 advised Officers E and F's counsel that LVMPD and its Internal Affairs Bureau would require
19 the witnesses to describe the nature of their confidential attorney-client relationship between
20 themselves and their assigned counsel, discuss the nature of payment or financial agreements
21 between the witnesses and their assigned counsel, and perhaps delve into other issues protected
22 by attorney-client privilege. Counsel advised Ms. Frost that he would instruct Officers E and F
23 to not answer questions that would violate their attorney-client privilege, and that this matter
24 has escalated to the point where intervention through the EMRB would be necessary.
25 Accordingly, the interviews were cancelled pending filing of this action.

26 26. On December 15, 2020, legal counsel for NAPS0 Officer G was advised that
27 neither LVMPD nor the PPA would allow legal counsel, a privately retained attorney for the
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1 member, to represent the member's interests unless the member was prepared to reveal
2 confidential communications between himself and the attorney, including information
3 regarding the attorney's compensation, the nature of the confidential attorney-client
4 relationship, the nature of any retainer agreements between the client and attorney, and the
5 scope of their legal relationship. Officer G's Counsel said that the interview could not proceed
6 under those circumstances, and counsel was advised that LVMPD intended to begin
7 summoning and compelling officers to appear for future interviews without the assistance of
8 legal counsel, and would bar legal counsel retained for a member's representation from
9 appearing with the member during coercive questioning.
10

11 27. On January 12, 2021, Officer G was ordered to attend an Internal Affairs Bureau
12 interview. After again requesting the right to representation under the NRS 289, Officer G was
13 ordered to provide the interview without representation under threat of termination. At the
14 interview, Officer G objected, on the record, to being compelled to attend the interview without
15 retained counsel. Officer G was coerced to complete the interview under threat of termination.

16 28. In December or January of 2020, Officer H was involved in an off-duty incident
17 which led to a potential criminal investigation regarding his conduct. Officer H retained
18 criminal defense counsel associated with the Plaintiff. Criminal defense counsel represented
19 Officer H through all facets of the criminal investigation, which was closed with no findings on
20 or about February 17, 2021. As part of a subsequent investigation of policy violations arising
21 from the same incident, Officer H was compelled to attend a February 23, 2021 interview with
22 LVMPD's Internal Affairs Bureau. Officer H brought the same criminal defense attorney with
23 him to the interview, who had represented him in the underlying criminal investigation. Due to
24 counsel's affiliation with Plaintiff, Officer H was advised that his criminal defense attorney,
25 who was representing Officer H pro bono (without compensation) for the policy investigation,
26 could not attend the interview and was ordered to leave the interview room. Officer H's
27 interview with Internal Affairs was subsequently rescheduled.
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FIRST CAUSE OF ACTION

(Violation of NRS 289 against LVMPD and PPA)

29. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 28 above, as though fully set forth herein and hereby incorporates the same by this reference.

30. LVMPD and PPA are in continuing violation of Nevada statutory law regarding rights afforded to peace officers pursuant to NRS 289. LVMPD and PPA are in further violation of the intent of this Board's order in Item No. 865 regarding rights of representation due to sworn peace officers. LVMPD's and PPA's conduct in invading the confidential attorney-client relationship between officers and their retained legal counsel, and impeding and intimidating its employees during compelled investigatory interviews with the Internal Affairs Bureau and other units within the LVMPD, is a violation of state law.

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

32. NRS 289.120 provides as follows:

"NRS 289.120 Judicial relief available for aggrieved peace officer. Any peace officer aggrieved by an action of the employer of the peace officer in violation of this chapter may, after exhausting any applicable internal grievance procedures, grievance procedures negotiated pursuant to chapter 288 of NRS and other administrative remedies, apply to the district court for judicial relief. If the court determines that the employer has violated a provision of this chapter, the court shall order appropriate injunctive or other extraordinary relief to prevent the further occurrence of the violation and the taking of any reprisal or retaliatory action by the employer against the peace officer. (Added to NRS by 1991, 2213)".

33. In addition to other relief, the court should enter orders for judicial relief pursuant to NRS 289.120, including but not necessarily limited to, appropriate injunctive or other extraordinary relief.

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SECOND CAUSE OF ACTION

(Prohibited and Unfair Labor Practices Against LVMPD and PPA)

34. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 33 above, as though fully set forth herein and hereby incorporates the same by this reference.

35. LVMPD and PPA are in continuing violation of Nevada statutory law regarding rights afforded to peace officers pursuant to NRS 289. LVMPD and PPA are in further violation of the intent of the EMRB's order in Item No. 865 regarding rights of representation due to sworn peace officers. LVMPD's and PPA's conduct in invading the confidential attorney-client relationship between officers and their retained legal counsel, and impeding and intimidating its employees during compelled investigatory interviews with the Internal Affairs Bureau and other units within the LVMPD, is a violation of state law.

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

37. Pursuant to NRS 289.120, this Court is the appropriate venue for relief pursuant to the violations committed by the Defendants inasmuch as the EMRB is without jurisdiction to impose injunction or other extraordinary relief to prevent violations of peace officers' rights pursuant to NRS Chapter 289.

THIRD CAUSE OF ACTION

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

38. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 37 above, as though fully set forth herein and hereby incorporates the same by this reference.

39. 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.

1 40. LVMPD and PPA were aware of the contractual relationship between NAPSO
2 and its members.

3 41. LVMPD and PPA are engaged in intentional conduct intended to or designed to
4 disrupt NAPSO's contractual relationship with its members.

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

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

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

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

17 46. NAPSO has been required to retain the services of an attorney to pursue this
18 action and is entitled to recover attorney's fees and costs incurred.

19
20 **FOURTH CAUSE OF ACTION**

21 **(Conspiracy Against All Defendants)**

22 47. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
23 46 above, as though fully set forth herein and hereby incorporates the same by this reference.

24 48. Upon information and belief and at all times mentioned herein, Defendants
25 LVMPD and PPA, individually and collectively, maliciously conspired and colluded together
26 to commit the acts set forth above, including but not limited to, coordinating efforts to harass
27 individual officers who were compelled and/or opting to utilize LVMPD's policies and
28 procedures to either respond to or initiate statements of complaint in other matters. Many of

1 the involved officers were facing significant disciplinary action based upon the results of their
2 investigation but were nonetheless put into positions of a hostile environment during LVMPD
3 Internal Affairs Bureau proceedings and other investigative processes as result of the concerted
4 action of Defendants.

5
6 49. Defendants maliciously conspired together to undermine NAPSO's relationship
7 with its members, and otherwise diminish, denigrate, and defame NAPSO in the eyes of its
8 members by publishing false and misleading information, with the consent and acquiescence of
9 LVMPD and PPA.

10 50. Defendants' actions of conspiracy were malicious and intended to harm and
11 injure NAPSO and its individual members.

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

14 **FIFTH CAUSE OF ACTION**

15 **(Injunctive Relief)**

16 52. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through
17 51 above, as though fully set forth herein and hereby incorporates the same by this reference.

18 53. Defendants' conduct in summarily violating Nevada laws regarding the
19 Plaintiff's members' rights of representation mandates that the Plaintiff is entitled to injunctive
20 relief to prevent the above-described irreparable harm.

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

24 55. Plaintiff enjoys a likelihood of success on the merits of its claims against
25 Defendants in accordance with NRS 33.010.

26 56. The balance of any hardship between the parties clearly favors Plaintiff.
27
28

57. An injunction against Defendants is legally and factually warranted and necessary to enjoin Defendants from continuing to violate Nevada law by refusing to provide the Plaintiff with basic rights to which it is entitled, such as the right to represent its members.

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

59. Plaintiff has been damaged in an amount in excess of \$10,000.

60. It has been necessary for Plaintiff to obtain the services of Clark Hill PLC to prosecute this action, and Plaintiff is entitled to an award of its reasonable attorneys' fees and costs.

SIXTH CAUSE OF ACTION

(Declaratory Relief)

61. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 60 above, as though fully set forth herein and hereby incorporates the same by this reference.

62. An actual controversy exists between Defendants and Plaintiff as to the nature and extent of their corresponding obligations, and duties and responsibilities to one another.

63. All of the rights and obligations of the parties hereto arose out of one subjective interpretation of Nevada law, all of which can be settled and determined in a judgment in this one action.

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

65. Plaintiff requests that this honorable court declares the nature and extent of the parties' legal relationship as follows: (a) that Plaintiff and Defendants are subject to Nevada state law, which requires Defendants to allow Plaintiff to effectively represent its members; and (b) that Defendants unilaterally and illicitly violated, and continues to violate, Nevada law.

WHEREFORE, the Plaintiffs respectfully pray as follows:

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

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

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

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

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

6. For an award of reasonable attorney's fees and costs;

7. For such other relief that may be just and proper.

DATED this 12 day of March, 2021.

CLARK HILL PLLC

By:

NICHOLAS M. WIECZOREK,

Nevada Bar No. 6170

3800 Howard Hughes Parkway, #500

Las Vegas, NV 89169

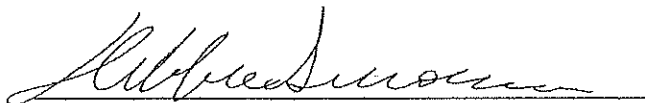
Office: (702) 862-8300

E-mail: nwieczorek@clarkhill.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

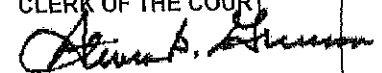
I HEREBY CERTIFY that on this 12 day of March, 2021, a true and correct copy of the FIRST AMENDED COMPLAINT was served on all parties in this matter via the Court's electronic filing system.



An Employee of Clark Hill PLC

EXHIBIT 4

EXHIBIT 4



1 ANSC
2 ANTHONY P. SGRO, ESQ.
3 Nevada Bar No. 3811
4 JENNIFER WILLIS ARLEDGE, ESQ.
5 Nevada Bar No. 8729
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14 Nevada Bar No. 2781
15 LAS VEGAS POLICE PROTECTIVE ASSOCIATION
16 9330 West Lake Mead Boulevard, Suite 200
17 Las Vegas, Nevada 89134
18 Telephone: (702) 384-8692
19 Facsimile: (702) 384-7989
20 droger@lvppa.com
21 *Attorneys for Defendant Las Vegas Police Protective Association*

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,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; LAS VEGAS POLICE
PROTECTIVE ASSOCIATION

Defendants.

AND

Case No.: A-20-827022-C

Dept. No.: III

**DEFENDANT LAS VEGAS POLICE
PROTECTIVE ASSOCIATION'S
ANSWER TO FIRST AMENDED
COMPLAINT AND COUNTERCLAIM**

1 LAS VEGAS POLICE PROTECTIVE
2 ASSOCIATION,

3 Counterclaimant,

4 v.

5 NEVADA ASSOCIATION OF PUBLIC
6 SAFETY OFFICERS, a Nevada Non-Profit
7 Corporation, DOES 1-10, and ROE
8 CORPORATIONS 1-10,

9 Counter Defendants.

10 COMES NOW Defendant, LAS VEGAS POLICE PROTECTIVE ASSOCIATION
11 (hereinafter referred to as "Answering Defendant"), by and through its attorneys of record,
12 ANTHONY P. SGRO, ESQ., DAVID ROGER, ESQ., and JENNIFER WILLIS ARLEDGE,
13 ESQ., of the law firm SGRO & ROGER and hereby answers Plaintiff's First Amended
14 Complaint ("Amended Complaint") as follows:

15 Answering Defendant denies each and every allegations not specifically admitted herein
16 to be true.

17 **STATEMENT OF JURISDICTION AND PARTIES**

18 1. Answering Paragraphs 1, 4, 13, and 15, of the Amended Complaint on file herein,
19 Answering Defendant states that it is without knowledge or information sufficient to form a belief
20 as to the truth of the allegations contained therein and on that basis denies same.

21 2. Answering Paragraphs 2, 3, and 14 of the Amended Complaint on file herein,
22 Answering Defendant admits the allegations contained therein.

23 3. Answering Paragraphs 5, 6, 7, 8, 9, 10, 11, and 12, of the Amended Complaint on
24 file herein, said Paragraphs purport to contain portions of statements of the law to which no
25 response is required.

26 **GENERAL ALLEGATIONS**

27 4. Answering Paragraphs 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, and 28, of the
28 Amended Complaint on file herein, Answering Defendant denies for lack of information the
allegations contained therein.

1 5. Answering Paragraph 18, of the Amended Complaint on file herein, Answering
2 Defendant admits that the Government Employee-Management Relations Board issued an order
3 on June 17, 2020, but denies the interpretation of the order asserted by NAPSO, and denies the
4 remaining allegations in said Paragraph.

5 6. Answering Paragraph 19, of the Amended Complaint on file herein, Answering
6 Defendant denies the allegations contained therein.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of NRS 289 against LVMPD and PPA)**

9 7. Answering Paragraph 29, of the Amended Complaint on file herein, Answering
10 Defendant repeats and realleges its answers to the allegations contained in the preceding
11 Paragraphs and incorporates same herein by this reference.

12 8. Answering Paragraphs 30, 31, and 33, of the Amended Complaint on file herein,
13 Answering Defendant denies the allegations contained therein.

14 9. Answering Paragraph 32, of the Amended Complaint of file herein, said Paragraph
15 purports to contain portions of statements of the law to which no response is required.

16 **SECOND CAUSE OF ACTION**

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

18 10. Answering Paragraph 34, of the Amended Complaint on file herein, Answering
19 Defendant repeats and realleges its answers to the allegations contained in the preceding
20 Paragraphs and incorporates same herein by this reference.

21 11. Answering Paragraphs 35, 36, and 37, of the Amended Complaint on file herein,
22 Answering Defendant denies the allegations contained therein.

23 **THIRD CAUSE OF ACTION**

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

25 12. Answering Paragraph 38, of the Amended Complaint on file herein, Answering
26 Defendant repeats and realleges its answers to the allegations contained in the preceding
27 Paragraphs and incorporates same herein by this reference.

28

1 13. Answering Paragraph 39, 40, 41, 42, 43, 44, 45, and 46, of the Amended
2 Complaint on file herein, Answering Defendant denies the allegations contained therein.

3 **FOURTH CAUSE OF ACTION**

4 **(Conspiracy Against All Defendants)**

5 14. Answering Paragraph 47, of the Amended Complaint on file herein, Answering
6 Defendant repeats and realleges its answers to the allegations contained in the preceding
7 Paragraphs and incorporates same herein by this reference.

8 15. Answering Paragraph 48, 49, 50, and 51, of the Amended Complaint on file herein,
9 Answering Defendant denies the allegations contained therein.

10 **FIFTH CAUSE OF ACTION**

11 **(Injunctive Relief)**

12 16. Answering Paragraph 52, of the Amended Complaint on file herein, Answering
13 Defendant repeats and realleges its answers to the allegations contained in the preceding
14 Paragraphs and incorporates same herein by this reference.

15 17. Answering Paragraphs 53, 54, 55, 56, 57, 58, 59, and 60, of the Amended
16 Complaint on file herein, Answering Defendant denies the allegations contained therein.

17 **SIXTH CAUSE OF ACTION**

18 **(Declaratory Relief)**

19 18. Answering Paragraph 61, of the Amended Complaint on file herein, Answering
20 Defendant repeats and realleges its answers to the allegations contained in the preceding
21 Paragraphs and incorporates same herein by this reference.

22 19. Answering Paragraph 62, of the Amended Complaint on file herein, Answering
23 Defendant admits the allegations contained therein.

24 20. Answering Paragraphs 63, 64, and 65, of the Amended Complaint on file herein,
25 Answering Defendant denies the allegations contained therein.

26 **AFFIRMATIVE DEFENSES**

27 **FIRST AFFIRMATIVE DEFENSE**

28 Plaintiff's Complaint fails to state a claim upon which relief can be granted.

1 **SECOND AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred by the doctrines of waiver, release, laches, unclean hands,
3 and equitable estoppel.

4 **THIRD AFFIRMATIVE DEFENSE**

5 Plaintiff failed to demonstrate it suffered or is likely to suffer irreparable harm.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 Plaintiff does not enjoy a likelihood of success on the merits sufficient to warrant
8 injunctive relief.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 Plaintiff lacks standing to assert the claims identified in the Complaint.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 Plaintiff has suffered no damage and therefore is not entitled to any relief.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 Answering Defendant has properly asserted, exercised, and legally fulfilled its rights,
15 duties and obligations under Nevada law.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 The preliminary injunction sought by Plaintiff has already been heard by the court and
18 denied. Therefore, the issue is precluded by *res judicata* and/or collateral estoppel.

19 **NINETH AFFIRMATIVE DEFENSE**

20 Answering Defendant's actions are protected by privilege and statutory rights.

21 **TENTH AFFIRMATIVE DEFENSE**

22 Answering Defendant hereby incorporates by reference those affirmative defenses
23 enumerated in NRCP 8 as though fully set forth herein. Such defenses are herein incorporated
24 by reference for the specific purpose of not waiving same.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 It has been necessary for Answering Defendant to retain the services of an attorney to
27 defend this action and they are entitled to reasonable sums as and for attorney fees.

TWELFTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defense may not have been alleged herein, in so far as sufficient facts were not available after reasonable inquiry upon the filing of Answering Defendant's Answer to the Complaint. Therefore, Answering Defendant reserves the right to amend its answer to allege additional affirmative defenses if subsequent investigations so warrant.

WHEREFORE, Answering Defendant prays for the following relief:

1. An order denying Plaintiff's request for an order restraining and enjoining Defendants;
2. An order confirming Answering Defendant's right to exclude attorneys from or affiliated with other organizations from attending investigatory proceedings;
3. An order confirming Answering Defendant's right to attend and "sit in" during official investigative proceedings involving members of the Collective Bargaining Unit;
4. For a finding that LVMPD and LVPPA have not conspired and colluded with each other as alleged in the Complaint;
5. For a declaration consistent with the EMRB's order that LVPPA
6. That Plaintiff take nothing by way of the Complaint and that the same be dismissed with prejudice;
7. That Answering Defendant be awarded all costs and expenses, including reasonable attorneys' fees, incurred by Answering Defendant in connection with this action; and
8. For such other and further relief as the Court deems just and proper.

COUNTERCLAIM

Counter-claimant, LAS VEGAS POLICE PROTECTIVE ASSOCIATION METRO, INC. ("LVPPA"), by and through its attorneys of record, ANTHONY P. SGRO, ESQ., DAVID ROGER, ESQ., and JENNIFER WILLIS ARLEDGE, ESQ., of the law firm SGRO & ROGER hereby alleges and complains against Counter-Defendants Nevada Association of Public Safety Officers ("NAPSO") and DOES and ROE CORPORATIONS as follows:

JURISDICTION AND VENUE

1
2 1. At all times relevant herein, LVPPA is and was a non-profit corporation duly
3 organized under the laws of the State of Nevada and doing business in Clark County, Nevada.
4 LVPPA is an employee organization as defined in NRS 288.040, and the only recognized
5 bargaining agent for non-supervisory peace officers employed by Las Vegas Metropolitan
6 Police Department ("LVMPD").
7

8 2. Upon information and belief, NAPSO is a Nevada Non-Profit Corporation with
9 members in Nevada consisting primarily of law enforcement officers and other local employees.
10 NAPSO is not a recognized bargaining agent for LVMPD employees.

11 3. The true names or capacities, whether individual, corporate, associate, or
12 otherwise of Defendants DOES 1 through 10 or ROE CORPORATIONS 1 through 10 are
13 unknown to LVPPA, who therefore sues said Defendants by such fictitious names.
14

15 4. LVPPA is informed and believes, and therefore alleges that each of the Counter-
16 defendants designated herein as DOE or ROE is responsible in some manner for the events and
17 happenings referred to herein and caused damages to LVPPA as alleged herein. LVPPA will
18 seek leave of this Court to amend this Counterclaim to insert the true names and capacities of
19 DOES 1 through 10, as well as ROE CORPORATIONS 1 through 10, when the same have been
20 ascertained and to join such Counter-defendants in this action.
21

22 5. LVPPA is informed and believes, and therefore alleges that DOES 1 through 10
23 are individuals who are principals, employees, agents, assigns, lessees, and/or predecessors or
24 successors in interest who are in some manner responsible for the actions and/or omissions
25 alleged herein.

26 6. LVPPA is informed and believes, and therefore alleges that ROE
27 CORPORATIONS 1 through 10 are corporations, partnerships, limited liability companies, or
28

1 other legal business entities and are in some manner responsible for the actions and/or omissions
2 of their principals, employees, agents, assigns, lessees, and/or predecessors or successors in
3 interest related hereto.

4 7. Jurisdiction is proper in this Court under Article 6 Section 6 of the Nevada
5 Constitution.

6 8. Venue is proper in this Court because the rights, obligations, and activities that
7 give rise to this action occurred in Clark County, Nevada.
8

9 **STATEMENT OF PERTINENT FACTS**

10 9. LVPPA and Las Vegas Metropolitan Police Department ("LVMPD") have a
11 Collective Bargaining Agreement ("CBA") in place.

12 10. LVPPA is the exclusive bargaining agent for LVMPD and other members of the
13 Collective Bargaining Unit covered by the CBA, NRS 288 and 289.
14

15 11. The State of Nevada Government Employee-Management Relations Board
16 ("EMRB") is an administrative board created to handle and resolve matters arising out of
17 interpretation of the provisions of the Employee-Management Relations Act ("EMRA").

18 12. On or about June 17, 2020, the EMRB issued a "Declaratory Opinion" in the
19 case *Nevada Highway Patrol Association v. State of Nevada Department of Public Safety, et al.*,
20 case no. 2020-011.
21

22 13. On or about July 2, 2020, NAPSO filed a Petition for Judicial Review of the
23 EMRB's decision in *Nevada Highway Patrol Association* in the Eighth Judicial District Court,
24 Case No. A-20-817491-P. Simultaneously with that Petition, NAPSO filed a motion for stay
25 pending review on order shortening time. On July 22, 2020, NAPSO filed a notice of dismissal
26 without prejudice prior to the court conducting a hearing on the motion for stay or taking any
27 other action on the case.
28

1 14. Upon information and belief, on or about October 14, 2020, Officer "1" appeared
2 for an interview with the Internal Affairs Bureau ("IAB") of the Las Vegas Metropolitan Police
3 Department. Officer 1 appeared for interview with John Hunt, Esq., known to be an attorney
4 frequently retained by NAPSO to represent its members. When asked his status with NAPSO,
5 Mr. Hunt refused to answer questions, claiming to do so would be a violation of the attorney-
6 client privilege. Officer 1 stated that she did not retain Mr. Hunt personally, that he was
7 appointed to her by NAPSO.
8

9 15. Upon information and belief, on or about October 20, 2020, Mr. Hunt appeared
10 with Officer "2" for an interview. Mr. Hunt instructed Officer 2 not to answer questions
11 regarding his representation and refused to answer questions himself. Mr. Hunt denied working
12 for a "rival" organization.
13

14 16. Upon information and belief, on or about December 15, 2020, approximately
15 twenty-five (25) corrections officers from Clark County Detention Center were scheduled to be
16 interviewed. Nicholas Wieczorek, Esq. appeared at the interviews stating that LVPPA could not
17 prevent him from representing his clients regardless of whether they were NAPSO members.
18

19 17. Upon information and belief, on or about March 3, 2021, Officer "3" appeared
20 for an interview with Michael Becker, Esq. When Officer 3 was asked if he retained Mr.
21 Becker or if Mr. Becker was being paid with NAPSO dues, Mr. Becker interjected and stated
22 that he was contracted by NAPSO to represent their members and that he receives a monthly
23 stipend from NAPSO. Mr. Becker went on to state that his appearance at the interview was not
24 part of the NAPSO agreement and that he was appearing on behalf of Officer 3 outside of the
25 NAPSO membership. Mr. Becker refused to provide a copy of the payment agreement with
26 Officer 3, claiming attorney-client privilege. The hearing was cancelled for that day.
27
28

1 18. Upon information and belief, on March 9, 2021, the hearing for Officer 3
2 continued. Mr. Becker again claimed to represent Officer 3 and produced a payment agreement
3 with the amount redacted and was allowed to participate in the hearing.

4 19. Upon information and belief, on or about March 4, 2021, Officer "4" presented
5 for an interview by the Internal Affairs Bureau of LVMPD. Officer 4 was known at the time to
6 be a member of NAPSO. Prior to entering the building where the interview was to take place,
7 Officer 4 was seen having a conversation and exchanging papers with John Hunt, Esq., known
8 to be an attorney frequently retained by NAPSO to represent its members and who has appeared
9 at interviews, investigations, and/or hearings with NAPSO members purporting to represent
10 them in contravention of Nevada law and the Collective Bargaining Agreement between
11 LVPPA and LVMPD.

12 20. Upon information and belief, a LVMPD representative asked Officer 4 and Mr.
13 Hunt a series of questions to determine the relationship between Officer 4 and Mr. Hunt.
14 Officer 4 denied being a member of NAPSO. Mr. Hunt claimed to have a signed agreement to
15 represent Officer 4 in his possession but refused to produce it to Frost when asked. When
16 challenged about the appropriateness of his involvement in the process, Mr. Hunt asked for the
17 LVPPA representative to be excluded from the interview, which request was declined. When
18 Mr. Hunt was asked to provide the signed representation agreement a second time, he claimed
19 he did not have it.

20 21. Upon information and belief, on or about January 6, 2021, Officer "5" presented
21 for an IAB interview with John Hunt, Esq. Attorney Hunt made representations at the pre-
22 interview that he was not an agent or employee of NAPSO and that Officer 5 retained him as
23 counsel.

22. Attorney Hunt objected to the presence of LVPPA representatives at the interview in contravention of NRS 289.

23. Officer 5 admitted that the payment for Attorney Hunt's representation came from the dues he/she paid to NAPSO.

24. Upon information and belief, on or about March 16, 2021, Officer "6" appeared for an interview with Michael Becker, Esq. Officer 6 stated that Attorney Becker was representing him *pro bono*. Officer 6 also stated that he has remained a member of NAPS0.

25. Upon information and belief, on or about March 10, 2021, Officer "7" appeared for an interview with Nicholas Wieczorek, Esq. Officer 7 stated that he was not "currently" a NAPS member at that time.

26. Attorney Wiecezorek stated that his law firm provides representation to federal and state law enforcement officers for similar proceedings under a "legal defense plan" and that the participants in that plan pay a monthly membership fee of \$40.00.

27. Officer 7 stated that he was not a NAPS member because NAPS was "transitioning" and dropped him.

28. Officer 7 stated that he had been paying dues to Attorney Wieczorek's defense plan since February 2021, and that the amount is "automatically deducted."

29. Officer 7 stated that he contacted NAPS0 for the same matter previously in December 2020, and was provided with Attorney Wieczorek at that time.

GENERAL ALLEGATIONS

FIRST CLAIM FOR RELIEF

(DECLARATORY RELIEF – NRS 30.030)

30. Counter-claimant repeats, restates, and realleges the allegations contained in the preceding paragraphs of this Counterclaim as if fully set forth herein.

1 31. Nevada has adopted the Uniform Declaratory Judgments Act (the "Act").

2 32. The Act permits persons interested under a deed, written contract or other
3 writings constituting a contract, or whose rights, status or other legal relations are affected by a
4 statute, municipal ordinance, contract or franchise, may have determined any question of
5 construction or validity arising under the instrument, statute, ordinance, contract or franchise
6 and obtain a declaration of rights, status or other legal relations thereunder.
7

8 33. Counter-claimant is both interested under a written contract (the CBA) as well as
9 by statute (NRS 289) to obtain a declaration of rights, status or other legal relations.

10 34. A controversy exists between LVPPA and NAPSO as to the nature and extent of
11 their respective rights to represent members of the Collective Bargaining Unit related to
12 interviews, investigations, and grievances.

13 35. All of the rights and obligations of the parties hereto arose out of what is
14 essentially one series of transactions, happenings, or events, all of which can be settle and
15 determined in a judgment in this one action.
16

17 36. A declaration of rights, duties, and responsibilities, and obligations of LVPPA
18 and NAPSO regarding whether NAPSO can participate in and/or otherwise represent members
19 of the Collective Bargaining Unit in investigations and interviews is a justiciable controversy of
20 adverse legal interest which is ripe for review and declaration by this Court.
21

22 37. LVPPA requests that the Court declare that NAPSO be prohibited from
23 attempting to participate in and/or otherwise represent members of the Collective Bargaining
24 Unit in investigations and interviews, or otherwise interfere with LVPPA's rights and
25 responsibilities under Nevada law and the Collective Bargaining Agreement.

26 38. LVPPA has been forced to retain legal counsel to prosecute these claims and is
27 therefore entitled to an award reasonable attorneys' fees and costs associated with this matter.
28

SECOND CLAIM FOR RELIEF

(INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS)

39. Counter-claimant repeats, restates, and realleges the allegations contained in the preceding paragraphs of this Counterclaim as if fully set forth herein.

40. The Collective Bargaining Agreement is a contract between LVPPA and LVMPD.

41. LVPPA and its members have a valid and existing contractual relationship regarding rights of representation and advice and consulting.

42. NAPSO and other Defendants are and were aware of the contractual relationship between LVPPA and LVMPD as well as the contractual relationship between LVPPA and LVMPD and its members.

43. NAPSO and other Defendants are and were engaged in intentional conduct intended to or designed to disrupt LVPPA's contractual relationship with its members.

44. NAPSO knew or was substantially certain, that its actions would interfere with LVPPA's contractual relationship with its members.

45. NAPSO and other Defendants had no privilege or justification for its actions.

46. As a direct and proximate result of NAPSO's and other Defendants' actions, LVPPA's statutory and contractual relationship with its members, as well as its ability to provide representation of its members during official investigatory proceedings was disrupted, and resulted in violations of the individual member's rights under NRS 289.

47. As a direct and proximate result of NAPSO's and other Defendants' actions of appearing at and attempting to represent members of the Collective Bargaining Agreement during official investigative proceedings resulted in damage to the statutory and contractual

1 relationship between LVPPA and its members, as well as engaging in conduct designed to
2 coerce, interfere, intimidate, and harass LVPPA members and representatives.

3 48. LVPPA has been forced to retain the services of an attorney to pursue this action
4 and is entitled to recover attorneys' fees and costs in connection therewith.

5 **THIRD CLAIM FOR RELIEF**

6 **(FRAUD IN THE INDUCEMENT)**

7
8 49. Counter-claimant repeats, restates, and realleges the allegations contained in the
9 preceding paragraphs of this Counterclaim as if fully set forth herein.

10 50. NAPSO and other Defendants, by and through their employees, agents, and/or
11 representatives made false representations to members of the Collective Bargaining Unit by
12 representing to them that NAPSO could legally provide representation to them in administrative
13 interviews and investigations.

14
15 51. NAPSO and other Defendants, by and through their employees, agents, and/or
16 representatives made false representations to LVPPA and LVMPD, to wit:

17 a. On or about October 14, 2020, John Hunt, Esq., acting on behalf of and at
18 the direction of NAPSO and other Defendants, appeared with Officer 1 for an interview with the
19 Internal Affairs Bureau of LVMPD and misrepresented his affiliation with NAPSO in an
20 attempt to represent Officer 1 at the interview.

21
22 b. On or about October 20, 2020, John Hunt, Esq. acting on behalf of and at
23 the direction of NAPSO and other Defendants, appeared with Officer 2 for an interview and
24 denied working for a "rival" organization. On that same day, Mr. Hunt interfered with the
25 interview process by instructing Officer 2 not to answer questions regarding his representation
26 in an effort to conceal Mr. Hunt's real affiliation with NAPSO.
27
28

1 c. On or about December 15, 2020, Nicolas Wieczorek, Esq., acting on
2 behalf of and at the direction of NAPSO and other Defendants, appeared at interviews of several
3 corrections officers from Clark County Detention Center and made false assertions that LVPPA
4 could not prevent him from attending those interviews regardless of whether there were NAPSO
5 members in contravention of Nevada law and the Collective Bargaining agreement in an effort
6 to represent employees at the interviews.
7

8 d. On or about March 3, 2021, Michael Becker, Esq., acting on behalf of
9 and at the direction of NAPSO and other Defendants, stated that his appearance at the interview
10 of Officer 3 was not part of the NAPSO agreement and that he was appearance outside of the
11 NAPSO membership, in an effort to represent Officer 3 at the interview.
12

13 e. On or about March 9, 2021, Mr. Becker again appeared with Officer 3 for
14 an interview. Mr. Becker provided a copy of the payment agreement with Officer 3 with the fee
15 amount redacted in an effort to gain access to the interview.

16 f. On or about March 4, 2021, John Hunt, Esq. appearance with Officer 4
17 for an interview. Prior to entering the building for the interview, Mr. Hunt was observed having
18 a conversation and exchanging papers with Officer 4. Prior to the interview, Mr. Hunt, acting
19 on behalf of and at the direction of NAPSO and other Defendants, claimed to have a signed
20 agreement to represent Officer 4 in his possession with the intent to gain access to the interview.
21 When questioned further, Mr. Hunt denied having a copy of the agreement to represent Officer
22 4. In addition, Officer 4 falsely represented that he/she was not a member of NAPSO in an
23 effort to circumvent the terms of the Collective Bargaining Unit and Nevada law so that Mr.
24 Hunt could appear with him/her.
25

26 52. NAPSO and other Defendants, by and through their agents, knew or believed the
27 representations referenced in paragraphs 50 and 51(a-f), above, to be false.
28

53. NAPSO and other Defendants, by and through their agents, made the false representations with the intent to induce members of the Collective Bargaining Unit to become members of NAPSO and further to induce LVPPA to consent or agree to the attendance and/or representation of attorneys for members of the Collective Bargaining Unit.

54. Some members of the Collective Bargaining Unit justifiably relied on NAPSO'S and other Defendants' misrepresentations and became members of NAPSO, believing that NAPSO could provide the services and benefits it represented it legally could.

55. LVMPD justifiably relied on NAPSO'S and other Defendants' misrepresentations and allowed certain representatives to appear and attend interviews and investigations with members of the Collective Bargaining Unit in contravention of Nevada law and the Collective Bargaining Agreement.

56. LVPPA has been damaged by NAPS0's and other Defendants' fraudulent representations in that members of the Collective Bargaining Unit became members of NAPS0 and further by being deprived of the right to be the exclusive representative of members of the Collective Bargaining Unit.

FOURTH CLAIM FOR RELIEF

(CIVIL CONSPIRACY)

57. Counter-claimant repeats, restates, and realleges the allegations contained in the preceding paragraphs of this Counterclaim as if fully set forth herein.

58. NAPS0 had an explicit or tacit agreement with one or more persons to engage in conduct for the purpose of harming LVPPA.

59. NAPSO and one or persons engaged in conduct that amounted to a concerted action for the purpose of harming LVPPA.

1 60. NAPSO and one or more persons intended to accomplish an unlawful objective
2 for the purpose of harming LVPPA.
3

4 WHEREFORE, LVPPA prays for the following relief:

5 1. For an Order mandating that NAPSO cease and desist from any further efforts to
6 prohibit or interfere with the rights of LVPPA members and representatives as well as members
7 of the Collective Bargaining Unit at investigatory proceedings;
8

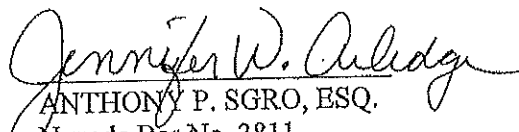
9 2. For a finding that NAPSO has intentionally interfered with LVPPA's statutory
10 and contractual responsibilities to members of the Collective Bargaining Unit.

11 3. For an award of reasonable attorneys' fees and costs;

12 4. For such other and further relief as the Court deems just.

13 Dated this 30th day of March, 2021.
14

15 SGRO & ROGER

16 
17 ANTHONY P. SGRO, ESQ.
18 Nevada Bar No. 3811
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23 DAVID ROGER, ESQ.
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25 LAS VEGAS POLICE
26 PROTECTIVE ASSOCIATION
27 9330 West Lake Mead Boulevard, Suite 200
28 Las Vegas, Nevada 89134
 Attorneys for Defendant Las Vegas Police
 Protective Association

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT LAS VEGAS POLICE PROTECTIVE ASSOCIATION'S ANSWER TO FIRST AMENDED COMPLAINT AND COUNTERCLAIM** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 30th 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 Odyssey.

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.

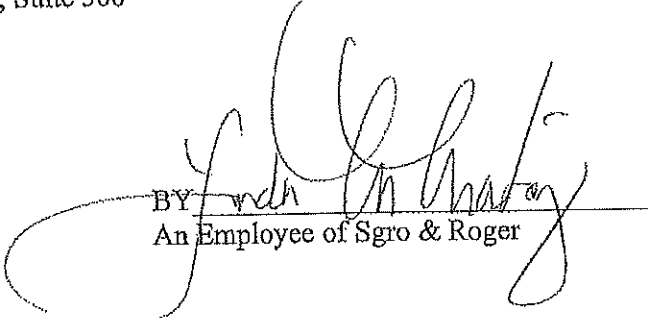
Pursuant to a filed Consent for Service by Facsimile in this matter, by sending the document by facsimile transmission.

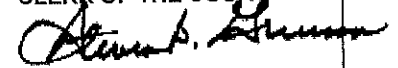
Via hand-delivery to the addresses listed below;

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

Nicholas M. Wleczorek, Esq.
John A. Hunt, Esq.
Dominic P. Gentile, Esq.
Paola M. Armeni
Clark Hill PLLC
3800 Howard Hughes Pkwy, Suite 500
Las Vegas, NV 89169
Attorneys for Plaintiff

Nick D. Crosby, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145
Attorneys for LVMPD

BY 
An Employee of Sgro & Roger



1 **Marquis Aurbach Coffing**
 2 Nick D. Crosby, Esq.
 3 Nevada Bar No. 8996
 4 10001 Park Run Drive
 5 Las Vegas, Nevada 89145
 Telephone: (702) 382-0711
 Facsimile: (702) 382-5816
 ncrosby@maclaw.com
 Attorneys for Respondent, LVMPD

DISTRICT COURT**CLARK COUNTY, NEVADA**

JORDAN TRAVERS,

Petitioner,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

LAS VEGAS POLICE PROTECTIVE
ASSOCIATION, INC.,

Intervenor.

Case No.: A-21-832601-P
 Dept. No.: 27

LVMPD'S RESPONSE TO LVPPA'S MOTION TO INTERVENE

Respondent, the Las Vegas Metropolitan Police Department (hereinafter "Department" or
 "LVMPD"), by and through its attorney of record, Nick D. Crosby, Esq., with the law firm of
 Marquis Aurbach Coffing, hereby files its Response to Las Vegas Police Protective Association,
 Inc.'s ("LVPPA") Motion to Intervene.

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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 during a hearing on this matter.

4 Dated this 26th day of June, 2021.

5 MARQUIS AURBACH COFFING

6
7 By: 

8 Nick D. Crosby, Esq.
9 Nevada Bar No. 8996
10 10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Respondent, LVMPD

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13 The Department does not take a position on LVPPA's Motion to Intervene. Consistent
14 with its position in this case, as well as other related matters addressing similar issues, the
15 Department does not take a position one way or the other on its employees' right to
16 representation under the Peace Officers Bill of Rights, nor does it deny LVPPA's recognition as
17 the exclusive bargaining agent for the bargaining unit.

18 **II. STATEMENT OF RELEVANT FACTS**

19 Petitioner Jordan Travers ("Petitioner") filed his Petition for Injunctive Relief on April 8,
20 2021 pursuant to Nevada Revised Statute 289.120. In the Petition, Petitioner alleged that he was
21 denied a representative of his choosing during an interview/interrogation recognized under
22 Nevada's Peace Officers Bill of Rights, Nevada Revised Statute chapter 289. Specifically,
23 Petitioner alleged that he was provided a mandatory notice of interview pursuant to Nevada
24 Revised Statute 289.060 on March 9, 2021 for an interview with the Department's Critical
25 Incident Review Team ("CIRT"). (Pet., ¶ 6). Petitioner is not a member of the LVPPA, which is
26 the recognized, exclusive bargaining agent for rank-and-file police and corrections officers
27 employed by the Department. (See *id.* at ¶ 8).

1 Petitioner alleged that he secured coverage from the Fraternal Order of Police Legal
2 Defense Plan (the "Plan") which, according to the Petition, is a "self-funded benefits plan which
3 provides an attorney to covered officers in connection with Civil, Criminal or Administrative
4 proceedings...." (Id. at ¶ 9). Petitioner alleged the Plan is not an employee organization or
5 union. (Id. at ¶ 11). Prior to his interview with CIRT, Petitioner was approved for Plan-covered
6 counsel for his interview and he selected Adam Levine as his counsel. (Id. at ¶ 13).

7 The Department was notified that Petitioner would be represented by Plan counsel and,
8 on March 4, 2020, LVMPD Labor Counsel Jamie Frost ("Frost") advised Mr. Levine of the
9 following:

10 As we discussed, given the fact that your representation of Officer Travers is due
11 to his membership with the [Fraternal Order of Police], the Department will not
12 be allowing you to represent Officer Travers at his CIRT interview on Monday.
13 The recent EMRB decision prohibits any representative from a rival organization.

14 (Pet., Exh. 6). The Department's decision was based upon an order issued by the Employee
15 Management Relations Board ("EMRB") in the case of Nevada Highway Patrol Ass'n v. St. of
16 Nev. Dep't of Pub. Safety, Case No. 2020-011, Item No. 865 and a subsequent EMRB decision
17 issued in Case No. 2020-033 involving the National Latino Peace Officers Association
18 ("NLPOA").

19 On March 27, 2021, the Court issued its Findings of Fact and Conclusions of Law in the
20 instant matter, with Notice of Entry of the same being filed May 28, 2021. In the Findings of
21 Fact and Conclusions of Law, the Court granted Petitioner's Petition, finding *inter alia* the
22 Department violated Petitioner's rights under Nevada Revised Statute 289.080 to select
23 representatives of his choosing and permanently enjoined the Department from "denying any
24 peace officer in its employ during any phase of any interview, interrogation, or hearing the right
25 to be represented by two representatives of the peace officer's own choosing including, without
26 limitation, a lawyer, a representative of a labor union or another peace officer." (FFCL, p. 4:19-
27 23). The Court placed "great deference on a party's selection of counsel" but limited the scope
28 of the injunction to "investigations within the meaning of NRS 289.057[.]" leaving all other
areas of representation to the decisions issued by the EMRB. (Id. at pp. 4:24; 5:1-4).

The Department takes no position on the LVPPA's Motion to Intervene. As this Court is aware from the Department's prior filings and representations, it takes no position on its employees' rights to representation, nor does it dispute LVPPA's recognition as the exclusive bargaining agent for members in the bargaining unit. The Department has, and will continue, to abide by any orders issued by this Court, the EMRB, or any other court with jurisdiction over the Department on these matters.

The Department does not take a position on LVPPA's Motion to Intervene.

Dated this 2nd day of June, 2021.

~~MARQUIS AURBACH COFFING~~

By:

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **LYMPD'S RESPONSE TO LVPPA'S MOTION TO INTERVENE** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 28th day of June, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Daniel Marks, Esq.
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Attorneys for Petitioner,
Jordan Travers

Anthony P. Sgro, Esq.
Jennifer Willis Arledge, Esq.
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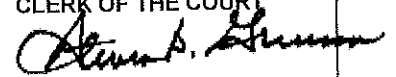
Attorneys for Intervenor.
Las Vegas Police Protective Association

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

N/A


An employee of Marquis Aurbach Coffing

¹ 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).



1 **RIS**
2 ANTHONY P. SGRO, ESQ.
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20 droger@lvppa.com
21 *Attorneys for Intervenor*
22 *Las Vegas Police Protective Association*

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

25 JORDON TRAVERS,

26 Plaintiff,

27 v.

28 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

LAS VEGAS POLICE PROTECTIVE
ASSOCIATION, INC.,

Intervenor.

Case No.: A-21-832601-P

Dept. No.: XXVII

**LAS VEGAS POLICE PROTECTIVE
ASSOCIATION INC.'S REPLY IN
SUPPORT OF MOTION TO INTERVENE**

HEARING DATE: 7/28/2021

HEARING TIME: 9:00 A.M.

COMES NOW, proposed intervenor LAS VEGAS POLICE PROTECTIVE ASSOCIATION, by and through its attorneys, ANTHONY P. SGRO, ESQ., DAVID ROGER, ESQ., and JENNIFER WILLIS ARLEDGE, ESQ., of the law firm of SGRO & ROGER. and hereby submits its Reply in Support of Motion to Intervene.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LVPPA HAS STANDING TO INTERVENE

LVPPA is a necessary and indispensable party under NRCP 19. There are related proceedings involving LVPPA that deal with the same issue in other Departments in this Court which has led to inconsistent rulings. LVPPA has an interest relating to the property or transaction that is the subject of the action. Disposing of the action in LVPPA's absence will, as a practical matter, impair or impede LVPPA's ability to protect its interest. Granting the instant motion to intervene will not unduly delay or prejudice the adjudication of the original parties' rights.

Plaintiff's Opposition to LVPPA's Motion relies heavily on NRS 289.120 and inapplicable and/or distinguishable case law. Plaintiff has taken liberty with his citation of precedent, omitting facts critical to understanding the true holdings of the cited decisions. The addition of facts and analysis below provides the Court with a fuller and more balanced view of what the cited cases held and how they apply, or do not apply, to the case at hand.

First, while Plaintiff may have initially brought this action for judicial relief pursuant to NRS 289.120, as a police officer aggrieved by his employer (LVMPD), LVPPA seeks to intervene as a necessary and indispensable party under NRCP 19. LVPPA is not asserting in this action that it is acting on behalf of Plaintiff as an "aggrieved" police officer which could implicate NRS 289.120. Moreover, LVPPA is not itself "applying for judicial relief."

1 Plaintiff cites *Ruiz v. City of North Las Vegas*, 127 Nev. 254 (2011), for the proposition
2 that standing under NRS 289.120 belongs to the individual officer. The *Ruiz* case involved an
3 officer who was terminated from his employment as a result of an internal investigation. The
4 Nevada Supreme Court held that Mr. Ruiz had standing to challenge an arbitration award
5 because his termination was based on information that was obtained in violation of the Peace
6 Officer Bill of Rights (NRS 289). The Nevada Supreme Court based its decision, in part, on
7 NRS 288.140(2), which provides that non-union members may act on their own behalf. The
8 issues in this case do not involve whether Plaintiff has standing to challenge an arbitration
9 decision. They do not implicate NRS 288.140(2).
10

11 Second, Plaintiff cites *Bisch v. Las Vegas Metropolitan Police Department*, 129 Nev.
12 328 (2013), for the proposition that LVPPA's position in this case conflicts with the position it
13 took in the *Bisch* case. Plaintiff incorrectly asserts that LVPPA "wishes to repudiate and reverse
14 the position it took before the Nevada Supreme Court." (Opp. 4:17-18). However, LVPPA's
15 position in the *Bisch* case was that it was not *required* to provide a representative at an
16 interrogation. The *Bisch* case arose from a 2008 incident where Ms. Bisch was investigated for
17 alleged misconduct. Ms. Bisch retained her own attorney to represent her in the investigation
18 and LVPPA did not provide a second representative. Ms. Bisch argued that LVPPA breached
19 the duty of fair representation by not providing a second representative. In determining whether
20 NRS 289.080, required LVPPA to provide a second representative, the Nevada Supreme Court
21 held that NRS 289.080 permits an officer to have two representatives present at an interrogation
22 and LVMPD cannot bar the employee from having two representatives. It further held that NRS
23 289.080 does not expressly impose any affirmative duties, including no duties of LVPPA. *Id.* at
24 336.
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1 The circumstances in this case are in no way similar to the *Bisch* case. LVPPA did not
2 deny Plaintiff a second representative and Plaintiff is not claiming that LVPPA breached the
3 duty of fair representation. Not only are the facts of the cases different, the legal reasoning in
4 *Bisch* is inapposite as discussed above.

5 Plaintiff goes on to argue that “[n]othing within the Court’s permanent injunction
6 prevents the PPA from representing non-members such as Travers.” (Opp. at 5:5-6). While the
7 injunction does not directly enjoin LVPPA itself, the practical impact of the injunction is that it
8 does affect LVPPA’s right to be the exclusive representative of officers at investigations and
9 interviews. This is because the injunction prevents LVMPD (the employer) from excluding
10 representatives of other associations from representing members of the Collective Bargaining
11 Unit for which LVPPA is the exclusive bargaining agent.

12 II. INTERVENTION IS APPROPRIATE

13 Plaintiff cites *Olsen Family Trust v. Olsen*, 109 Nev. 838 (1993), for the proposition that
14 LVPPA’s motion is procedurally improper and should not be granted. The *Olsen* case was
15 brought by an ex-wife against her ex-husband in an effort to enforce his obligation to pay
16 spousal support. The district court had awarded Ms. Olsen assets held by the Trust, among
17 other things. *Id.* at 839. The Trust attempted to appeal the decision, but the Nevada Supreme
18 Court held that since the Trust was not a party to the underlying action, it did not have standing
19 to appeal. *Id.* The Court further held that an extraordinary writ would be the appropriate way
20 for the Trust to challenge the order at issue.

21 The *Olsen* case is distinguishable from the case at hand. First, before this Court is
22 LVPPA’s Motion to Intervene, not an appeal. LVPPA’s right to intervene and participate in this
23 case comes from the Collective Bargaining Agreement, Nevada Statutory law, and decisions of

1 the EMRB (*Lyon County* case). Further, the case at hand does not involve the private matter of
2 division of marital property or enforcement of support obligations using assets of a family trust.

3 Perhaps the most important reason to allow intervention derives from public policy. The
4 original parties to this case, Plaintiff Travers (through counsel) and LVMPD were undeniably
5 aware of LVPPA's rights as the exclusive bargaining agent for members of the Collective
6 Bargaining Unit. Plaintiff, through counsel, was aware of these issues as noted in his multiple
7 footnotes and comments that he represents several associations and has "the only" published
8 opinions. (Opposition fn 1, fn 3, Exhibit "1"). LVMPD knew of the case currently before
9 Judge Trujillo because it is a party to that case. LVMPD, which also had been conducting pre-
10 interview questioning of officers and their representatives, knew of the continuing issue of
11 exclusive representation and not allowing representatives of other associations to represent
12 officers at interviews and investigations. Despite their undeniable knowledge of LVPPA's
13 interest in this case, both Plaintiff and LVMPD remained silent and did not even suggest that
14 LVPPA should be made a party to this case. Not allowing LVPPA to intervene in this case
15 rewards this clandestine behavior and sends a message that litigants can seek and obtain orders
16 that affect the rights of non-parties by purposefully excluding those non-parties from the case.
17 Then, the only remedy for the affected non-party would be to file an extraordinary writ with the
18 Nevada Supreme Court. If permitted, this could lead to other similar situations and create a
19 morass of court orders and appeals to undo what was inappropriately done.

20 In the instant matter, LVPPA is a necessary and indispensable party because LVPPA has
21 an interest in the issues in this case, i.e., who is allowed to represent officers at administrative
22 hearings and investigations. It is undisputed that LVPPA is the exclusive bargaining agent of
23 members of the Collective Bargaining Unit and is a party with LVMPD to the CBA. LVPPA
24 also has "associational standing" to bring suit on behalf one or more of its members. A case that
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1 could interfere with those rights, especially in the form of a permanent injunction, mandates that
2 LVPPA be made a party and afforded the opportunity to be heard.

3 **III. THE PRE-EXISTING CASE BEFORE JUDGE TRUJILLO CREATES A**
4 **CONFLICT WITH THE PERMANENT INJUNCTION**

5 Plaintiff's argument that Judge Trujillo's denial of NAPSO's request for a temporary
6 restraining order does not conflict with this Court's Order misses the point. LVPPA is not
7 offering Judge Trujillo's ruling for the purpose of issue preclusion. Rather, the case before
8 Judge Trujillo demonstrates inconsistent rulings from two different Judges of the same court on
9 substantially similar issues. In the case before Judge Trujillo, the parties are NAPSO, LVMPD,
10 and LVPPA. LVPPA was made a party to that case by NAPSO because NAPSO recognized
11 LVPPA's right to be involved. NAPSO recognized that in order to have a full adjudication of
12 the issues that could be binding on LVPPA, LVPPA had to be notified and permitted to
13 participate in the proceedings.

14 In this case, Plaintiff and LVMPD ignored LVPPA's rights and pushed through a
15 permanent injunction that has significant consequences to LVPPA's rights and ability to
16 represent members of the Collective Bargaining Unit. Plaintiff and LVMPD used the
17 permanent injunction and this Court for their own purposes, to impair LVPPA's exclusive
18 representation rights.

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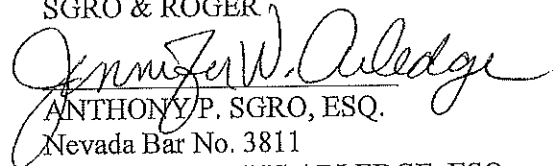
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1 **IV. CONCLUSION**

2 For the foregoing reasons, LVPPA must be permitted to intervene in this matter because
3 the issues and relief sought by the parties in this case affect the rights of LVPPA.

4 Dated this 21st day of July, 2021.

SGRO & ROGER


ANTHONY P. SGRO, ESQ.
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JENNIFER WILLIS ARLEDGE, ESQ.
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720 South Seventh Street, 3rd Floor
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Nevada Bar No. 2781
LAS VEGAS POLICE
PROTECTIVE ASSOCIATION
9330 West Lake Mead Boulevard, Suite 200
Las Vegas, Nevada 89134
*Attorneys for Intervenor Las Vegas Police
Protective Association*

1 CERTIFICATE OF SERVICE

2 I hereby certify that the foregoing LAS VEGAS POLICE PROTECTIVE
3 ASSOCIATION INC.'S REPLY IN SUPPORT OF MOTION TO INTERVENE was submitted
4 electronically for filing and/or service with the Eighth Judicial District Court on the ___ day of
5 July, 2021. I further certify that I served a true and correct copy of the foregoing document as
6 follows:

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

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

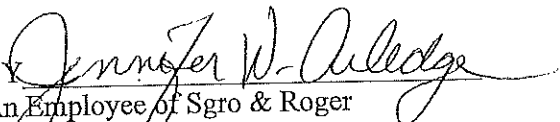
11 ___ Pursuant to a filed Consent for Service by Facsimile in this matter, by sending the
12 document by facsimile transmission.

13 ___ Via hand-delivery to the addresses listed below;

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

16 Daniel Marks, Esq.
17 Adam Levine, Esq.
18 Law Office of Daniel Marks
19 610 S. Ninth St.
20 Las Vegas, NV 89101
21 Attorneys for Petitioner Jordan Travers

Nick D. Crosby, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145
Attorneys for LVMPD

22 BY 
23 An Employee of Sgro & Roger
24
25
26
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28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filings (Petition)

COURT MINUTES

August 18, 2021

A-21-832601-P In the Matter of the Petition of
Jordan Travers

August 18, 2021 9:00 AM Motion to Intervene

HEARD BY: Allf, Nancy COURTROOM: RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Angelica Michaux

REPORTER:

PARTIES

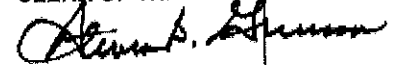
PRESENT: Arledge, Jennifer Willis Attorney
 Crosby, Nick D Attorney
 Levine, Adam Attorney
 Roger, David Attorney
 Sgro, Anthony P. Attorney

JOURNAL ENTRIES

- All appearances made via the BlueJeans Videoconferencing Application.

Arguments by counsel regarding the merits of and opposition to the motion. Court stated its findings and ORDERED, Las Vegas Police Protective Association Inc.'s Motion to Intervene DENIED.

Response made by Mr. Sgro. Court stated it has made its ruling. Mr. Levine to prepare the order and submit it to all counsel for approval.



1 TRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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7 IN THE MATTER OF THE PETITION OF
8 JORDAN TRAVERS.

} Case No. A-21-832601-P
} DEPT. XXVII

9
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11 BEFORE THE HONORABLE NANCY ALLF,
12 DISTRICT COURT JUDGE

13
14
15 WEDNESDAY, AUGUST 18, 2021

16
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18 **TRANSCRIPT OF PROCEEDINGS RE:**
19 **LAS VEGAS POLICE PROTECTIVE ASSOCIATION INC.'S**
20 **MOTION TO INTERVENE**

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22 (Appearances on page 2.)

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25 RECORDED BY: ANGELICA MICHAUX, COURT RECORDER

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APPEARANCES:

For the Intervenor(s):	JENNIFER WILLIS ARLEDGE, ESQ. ANTHONY P. SGRO, ESQ. DAVID ROGER, ESQ.
For the Respondent(s):	NICK D. CROSBY, ESQ. (Via BlueJeans)
For the Petitioner(s):	ADAM LEVINE, ESQ. (Via BlueJeans)

1 **LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 18, 2021**

2 [Proceeding commenced at 9:37 a.m.]

3
4 MS. ARLEDGE: Your Honor, Jennifer Arledge, Anthony
5 Sgro, and David Roger all on behalf of Las Vegas Police Protective
6 Association.

7 THE COURT: Thank you. And I see you have
8 representative clients with you today. Welcome to everyone.

9 And for the plaintiff, please. The appearance for the
10 plaintiff, please.

11 MR. LEVINE: Oh, I'm sorry. Adam Levine for Jordan
12 Travers.

13 THE COURT: Thank you.

14 MR. CROSBY: Good morning, Your Honor. Nick Crosby
15 on behalf of the Las Vegas Metropolitan Police Department.

16 THE COURT: Thank you.

17 Does that exhaust all of the appearances? All right.

18 Ms. Arledge.

19 MS. ARLEDGE: Thank you, Your Honor.

20 As you know, we're here today on Police Protective
21 Association's Motion to Intervene in this proceeding. The Motion to
22 Intervene is based on Rule 24, which gives the Court authority to
23 allow intervention when there's a claim or interest relating to this
24 transaction. And our party is so situated that disposing of the
25 action may impair or impede their ability to protect their interests.

1 PPA was a necessary and indispensable party to this
2 litigation from the very beginning. And under Rule 19, PPA should
3 have been joined from the outset. Because PPA was a necessary
4 and indispensable party, the Court should grant the motion and
5 allow the PPA to intervene. In addition, the Court should rescind
6 the order granted in the permanent injunction against the Las
7 Vegas Metropolitan Police Department.

8 The reason the Court should take these actions, Your
9 Honor, and I know you're short on time, but I think it's important to
10 put a little bit of background on the record and for Your Honor
11 when you're considering this very important motion. Police
12 Protective Association is the exclusive bargaining agent for
13 nonsupervisory police officers who are employed by Las Vegas
14 Metropolitan Police Department. As the exclusive bargaining
15 agent, Police Protective Association has certain rights that are
16 enforceable.

17 With respect to why we're here today, under NRS 289.080,
18 if a police officer is called in to be either a witness or the subject of
19 an investigation, that officer is allowed to have up to two members
20 present to assist them. PPA is allowed to attend all of those,
21 whether the officer is a member of the union or not, to make sure
22 that the collective bargaining agreement is followed, the
23 procedures are followed, and to make sure everything is done
24 properly.

25 Where our dispute has arisen is the language in that

1 section says that because they can have two members, but that the
2 other member can be, without limitation, a lawyer, a representative
3 of a labor union, or another police officer.

4 Now, there are other associations that have police officers
5 as members whose members are not also members of PPA. But
6 again, PPA is the exclusive bargaining unit. What has been
7 happening is these other associations have been showing up at
8 these investigations and purporting to represent the non-PPA
9 member employee, and try to participate in the proceedings. And,
10 over time, that has led to issues in other cases.

11 So the history of that, Your Honor, is back in 2010, the
12 First Judicial District Court heard the *Washoe Education Support*
13 *Professionals versus State of Nevada* case. And at issue was
14 whether representatives of other associations could appear on
15 behalf of members of a collective bargaining unit. And that case,
16 well, again, it's not a Supreme Court case, it's not a recorded
17 decision, and has been relied upon the Employee Management
18 Relations Board, the administrative board that oversees disciplinary
19 actions involving police officers.

20 What's important about this *Washoe Ed* case is the Court
21 wrote:

22 In any grievance proceeding involving a 4D representative
23 who is also an agent or employee of a rival employee
24 organization, the representative cannot function as such, and
25 hence cannot participate in the proceedings where the employer

1 knows or reasonably believes the representative is serving, to
2 any extent, in his union capacity on behalf of the rival
3 organization.

4 Clearly, representatives of other associations cannot
5 purport to act on behalf of members of the collective bargaining
6 agreement during these investigations. That is clear. That ruling
7 has been followed by *MRD* decision, *Lyon County*, which was cited
8 and attached to the briefs, as well as the *Nevada Highway Patrol*
9 *Association EMRB* declaratory order, which was also cited and
10 attached to the briefs.

11 Where we have a problem is the *Washoe Ed* case has an
12 additional sentence of being misinterpreted by these outside
13 organizations. The second sentence says:

14 Where, however, the employer --

15 And in this situation the employer is Metro Police
16 Department.

17 -- where the employer knows or reasonably believes that
18 the representative serving entirely independently other rival
19 organization, as, for example, a friend, relative, or co-worker of
20 the employee, the representative's participation is permissible.

21 These outside associations have taken the position that
22 they are acting solely in the interest of the employee officer and not
23 in the interest of the organization.

24 There's a companion case which brought us here
25 involving what we call it a *NAPSO* for short, in front of Judge

1 Trujillo --

2 THE COURT: I've read that, because you referenced it, so I
3 read the case.

4 MS. ARLEDGE: Thank you, Your Honor. So I will not
5 belabor that point other than to say that NAPS0 started to send
6 representatives of NAPS0 with the employees when an issue was
7 raised by both Metro and Police Protective Association. There were
8 these outside arrangements and retainer agreements and
9 representation shifting to try to get around that. And so this has
10 been an ongoing issue. It's happened with NAPS0. In this instant,
11 FOP was involved, et cetera.

12 So what happened as a result of the *Lyon County* case,
13 which was reinforced by the *Nevada Highway Patrol Association*
14 case in May of 2020, which was last year, Metro started to conduct
15 a pre-interview of the officers who were coming in for either as a
16 witness or investigation, to say who was with you, what's their
17 relationship, are they involved with any outside organizations?
18 That was done off the record, outside, before they would go into
19 the room. And that's when this issue started to arise and some of
20 the representatives that showed up with the employees were
21 starting to balk at what was attorney/client privilege and what was
22 appropriate questioning and whatnot.

23 Also, after May of last year and those interviews started,
24 NAPS0, the other party in the other case, filed case and dismissed
25 it very quickly, seeking declaratory relief, waited, filed again last

1 year, the end of the year, and got Judge Trujillo, and now we have
2 your case that was filed in 2021.

3 It's important to note, when analyzing whether a party is
4 necessary and indisposable, what their rights are that could be
5 affected. And this situation, under Rule 19(a)(1)(B) is directly on
6 point. A person or a party should be joined if they claim an interest
7 relating to the subject or the action, and is so situated discussing
8 the action in the person's absence may one or two. It's one or two.

9 And in this case, we have both. The first would be if it's a
10 practical matter, the ruling would impair or impede the person's
11 ability to protect the interest. A PPA's interest would be impaired
12 and impeded if this order remains and it's not overturned and PPA
13 is not allowed to intervene and participate in this proceeding,
14 because the order from this Court that granted a permanent
15 injunction against Metro is in conflict with Judge Trujillo's denial of
16 the request for a transfer -- a temporary restraining order in the
17 *NAPSO* case.

18 The effect of the permanent injunction for this case is that
19 representatives or persons involved with outside organizations are
20 now going to be allowed in to represent employees in violation of
21 this precedent, the EMRB rulings, and the decision by Judge Trujillo
22 in the related matter.

23 The second prong that is met is that intervention should
24 be granted and party as necessary if denying them would leave an
25 existing party subject to substantial risk of incurring double,

1 multiple, or otherwise inconsistent obligations because of that
2 interest.

3 And this is interesting, Your Honor, because Metro should
4 be bringing this issue. It is Las Vegas Metropolitan Police
5 Department that has a problem. They have an order from Judge
6 Trujillo that refused to grant an injunction; they have an order from
7 this Court that has granted a permanent injunction on the exact
8 same circumstances, the exact same situation.

9 Why Metro hasn't raised this is anybody's guess. Why
10 Metro did not tell this Court about the *NAPSO* case and about these
11 other issues is, again, a question that needs to be answered, Your
12 Honor. Very clearly they knew about it, they participated in the
13 *NAPSO* case.

14 There was the preliminary injunction hearing on
15 January -- sorry, January 23rd, 2021, whereas Judge Trujillo denied
16 the temporary restraining order. The order was signed off on by all
17 attorneys the next Monday and submitted to Judge Trujillo's
18 department.

19 So as of January 23rd at the earliest, January 25th, when
20 everybody agreed to the order, Metro, through their counsel, was
21 aware of that ruling, yet did not bring it to this Court's attention.

22 Further, Metro knew they should have brought it to this
23 Court's attention, Your Honor, and that's evidenced by a
24 June 1st, 2021, e-mail from Jamie Frost, who was a labor and
25 relations counsel at Metro, to the president of PPA and to

1 Mr. Roger, in-house counsel advising them of the permanent
2 injunction. So, clearly, that's an acknowledgement of the necessity
3 and the requirement to include PPA in this decision.

4 So, Your Honor, based on Rule 24, Rule 19, necessary and
5 indispensable party, and Rule 21 that allows the Court to make any
6 order with respect to this matter, we submit that PPA should be
7 joined as a party, that the Court should rescind its order granting
8 the permanent injunction, and allow this case to go forward with
9 PPA participating. Thank you.

10 THE COURT: And Mr. Levine, before I hear your
11 opposition, I have a couple of short matters I can take, and that way
12 I have a lot of people in the courtroom who have been waiting for
13 their hearings very patiently. So thank you for your courtesy.

14 [Matter trailed at 9:49 a.m., until 9:54 a.m.]

15 THE COURT: And, Mr. Levine, your opposition, please, to
16 the Motion to Intervene?

17 MR. LEVINE: Do you want to hear from me first or the
18 Department first, Your Honor?

19 THE COURT: From you and then the Department.

20 MR. LEVINE: Thank you.

21 The motion should be denied for multiple reasons. First,
22 they are not -- neither a necessary nor an indispensable party,
23 because they do not have standing. The statute -- this is a statutory
24 cause of action. It says an aggrieved peace officer, not an
25 aggrieved union or employee organization, and I'm the person who

1 litigated who has standing under 289 in the *Ruiz versus City of*
2 *North Las Vegas* case. And the Supreme Court said it is the
3 individual officer who has standing.

4 So in the *Transunion LLC versus Ramirez* case just a
5 couple of months ago, the United States Supreme Court made very
6 clear: No concrete harm equals no standing. There is no concrete
7 harm to the PPA. That was litigated years ago in the *Laurie Bisch*
8 *versus PPA* and *LVMPD* case, which I would – nostalgically note the
9 first time I actually ever met Mr. Crosby was the first time in that
10 case.

11 In that case, we argued the PPA, if a member says, Hey, I
12 want a PPA rep and an outside rep, PPA said no, if you hire an
13 outside rep, we're not representing you. And the Supreme Court
14 made very clear that the statute puts no burdens or obligations on
15 the PPA. But it made very clear that it provides the employee the
16 right to have two representatives of his or her own choosing.

17 What the PPA is arguing in this case is for this Court to
18 just overrule and disregard the *Bisch* case, which the Court can't do.
19 They don't have standing, and if you don't have standing, you're
20 not an indispensable party.

21 Second, in the *Gladys Baker Olsen versus Family Trust*
22 case, the Supreme Court said you cannot have intervention after a
23 final judgment. This Court's injunction was a final judgment on the
24 merits. There was nothing else left to decide and the Supreme
25 Court said intervention under such circumstances is inappropriate.

1 So they're not allowed to intervene under *Gladys Baker Olsen*
2 *Family Trust*.

3 There are no conflicting orders. A denial of a TRO is
4 simply that, it is a determination and the expression of a trial court
5 not to grant, you know, interim relief prior to hearing a matter on
6 the merits.

7 Judge Trujillo found that there was no irreparable harm.
8 Also found that *NAPSO*, who was seeking the TRO, was unlikely to
9 succeed on the merits. And as I sort of analyzed, even though it's
10 irrelevant to the intervention issue, she was actually right. *NAPSO*
11 is not an aggrieved peace officer, and the action under 289 has to
12 be brought by the aggrieved peace officer and the other sort of torts
13 that are flying back and forth in the sandbox fight between *NAPSO*
14 and the PPA, which Jordan Travers has no interest in being part of.
15 You know, our claims for conspiracy, fraud, tortious interference
16 with contract, none of that is remotely germane to this case.

17 As the record made very clear prior to the Court granting
18 its permanent injunction, as a Fraternal Order of Police Legal
19 Defense Fund counsel, I don't represent Fraternal Order of Police, I
20 don't represent the plan. We put in the plan documents themselves
21 show I represent the individual officer.

22 The Petition to Intervene doesn't even identify how the
23 Court purportedly got the decision wrong. The Court didn't get the
24 decision wrong. The *EMRB* cases were extensively briefed and
25 analyzed and the Court's decision turned in large part on the *EMRB*

1 pointing out that when the National Labor Relations Act was passed
2 in 1935, originally Congress put in the language representatives of
3 their own choosing. And later that was taken out of the legislation
4 when it was passed.

5 The Court said it was pointed out in NRS 289.080, the
6 Nevada legislature expressly put in and left the language:
7 representatives of his or her own choosing.

8 In short, the statute -- the legislature has determined that
9 that PPA does not have the right of exclusive representation in a
10 proceeding that is subject to 289.057. And as I conceded before the
11 Court issued the injunction, the PPA does have exclusive
12 representation in all other circumstances. It's only a limited
13 carveout under 289 that the employee has the right to
14 representatives of their own choosing. The PPA conceded in its
15 oral argument they have the right to be there to protect the
16 contract, but they don't have the right, under *Bisch* and under the
17 plain language of the statute, to prevent a representative of their --
18 peace officers' own choosing.

19 And one of the things the PPA doesn't point out is that
20 when they cite to *Washoe Education Professionals* or *Lyon County*
21 *Education Association*, those are teachers. Those are school
22 administrators. They're not subject to 289. Those cases are
23 absolutely irrelevant.

24 The petition, in short, should be denied, Your Honor.

25 THE COURT: Thank you.

1 Mr. Crosby.

2 MR. LEVINE: Nick, you're muted.

3 MR. CROSBY: Year and a half and I still haven't figured
4 out how to unmute it on time. Thank you, Your Honor.

5 As I stated in my papers in this case, consistent with the
6 Department's position in the *NAPSO* case and the *National Latino*
7 *Peace Officers Association* case, is every single case the
8 Department has been thrown in on this issue, the Department does
9 not take a position. It recognizes the rights of its employees
10 under 289. It recognizes the exclusive representation rights of the
11 PPA as well as its other associations. And the Department, quite
12 frankly, does not take a position, it just wants a clear direction on
13 what it can and cannot do or must do, because we've been thrown
14 in the middle of this, as Mr. Levine characterized, a sandbox fight.

15 And the Department just doesn't take a position. It wants
16 everybody to have whatever rights they're entitled to.
17 Unfortunately, the Department finds itself in the middle of these
18 fights.

19 THE COURT: Thank you, Mr. Crosby.

20 Ms. Arledge or --

21 MR. SGRO: If it's okay with the Court, I'd like to respond,
22 Your Honor.

23 THE COURT: You may.

24 THE CLERK: Counsel, can I get your name?

25 MR. SGRO: Anthony Sgro.

1 Your Honor, here's the difficulty as I see it. Despite
2 Mr. Levine's self-reported skill set relative to the ins and outs of
3 this, I would submit to the Court the following.

4 I want the Court to consider what if we had learned of this
5 prior to the ruling that the Court made, would the Court have
6 allowed us to intervene? I think, resoundingly, the answer is yes.
7 That's my speculation, but I think that's what would have occurred.

8 Mr. Crosby probably would not have taken a position as to
9 the intervenor, and we would have contended with Mr. Levine. But
10 I think reasonable minds would have prevailed and we would have
11 been in the case.

12 If you look at the dates of this case, Your Honor --

13 THE COURT: I have it up.

14 MR. SGRO: -- it's interesting --

15 THE COURT: I have it up on the screen, so.

16 MR. SGRO: I'm sorry?

17 THE COURT: I have it up on my screen.

18 MR. SGRO: So on January 13th, we filed the motion. We
19 got through the -- or NAPS0 filed this motion, my apologies. We
20 go through the back-and-forth --

21 THE COURT: You're talking about the *NAPS0* case?

22 MR. SGRO: Yes, ma'am.

23 THE COURT: I don't have that up on my screen. If you
24 want me to, I will.

25 MR. SGRO: No, no. I'll make representations, Your

1 Honor. I'm sure my colleagues will correct me if I'm misstating any
2 of the dates.

3 But the timing of this is, from our position, very critical,
4 because it affords the opportunity to speculate whether there was
5 an effort do this intentionally given the state of the record that
6 existed in the *NAPSO* case. And that cannot be tolerated, not even
7 for a second.

8 And here's what I mean by that, Your Honor. We started
9 the *NAPSO* journey on January 13th, when they filed their motion.
10 That's when they filed it and didn't withdraw, as Ms. Arledge
11 pointed out earlier.

12 We get the order signed on March 9th. Now, what
13 happened after the hearing is the order was approved by all the
14 parties on January 25th. So then you look at this e-mail from Jamie
15 Frost, the labor relations counsel. And it's interesting, because it's
16 dated and -- on June 1st, but it references what she did on
17 March 4th. And here's the salient sentence I want the Court to
18 consider:

19 On March 4th, 2021, I informed Mr. Levine that he would
20 not be permitted to represent Travers at the hearing.

21 Okay. On March 4th. Now, she says:

22 Due to the NEMRV decision regarding exclusive
23 representation.

24 That can't be true. That cannot be true. Because what
25 was going on on March 4th, Your Honor? March 4th is five days

1 before Judge Trujillo would ultimately sign the order that everyone
2 agreed to, including Ms. Frost. Ms. Frost was at the NAPS0 hearing
3 arguing, making representations, because there was an issue that
4 NAPS0 brought up about whether or not a police officer had been
5 disciplined and what the outcome was, et cetera, et cetera.
6 Ms. Frost was on the record making representations. It was far
7 more than a nonopposition. So she knew.

8 So in my cynical mind, I read this to suggest she's telling
9 Mr. Levine, You can't come, because we just had another case in
10 front of Judge Trujillo where Judge Trujillo said no, no one else can
11 go, because PPA's exclusive bargaining agent. And that really is
12 the unsettling part about this case.

13 Mr. Crosby and I have done many cases against each
14 other, because we've been representing PPA for a long time, he's
15 been representing Metro for a long time. We have had
16 conversations not only about the dynamics of the case we're
17 involved in, but also peripheral conversations, because he knows a
18 lot that's going on externally and we get information about what's
19 going on externally, et cetera.

20 So to suggest that parties came to this court with clean
21 hands, and at the same time, did not alert this Court to what was
22 going on at NAPS0 when they were happening, essentially, the
23 same time is disingenuous at best.

24 And why, if we weren't relevant, what prompted Ms. Frost
25 to send David Roger and PPA leadership the e-mail? You know,

1 you know me from doing a lot of criminal things. And you know
2 the jury instruction, you know, that I always hate, because I'm on
3 the wrong side, is that consciousness of guilt instruction. Right?
4 And this, to me, when I first read it, for whatever reason, that jury
5 instruction jumped off the page.

6 Why would Ms. Frost alert us that that was going on if we
7 were not relevant to the proceedings? Why was there an
8 intentional decision made to delay alerting us to what was going
9 on?

10 Now I harken back to what I asked in the beginning. If we
11 had come before any decisions had been made, would this Court
12 have allowed us to intervene? With the knowledge that Judge
13 Trujillo had just granted an order on the same or similar issue,
14 because the PPA's position as exclusive bargaining agent, I think
15 you'd have let us in.

16 And I will suggest, Your Honor, Mr. Levine's comments
17 skip over all the statutory framework relative to what it means to be
18 an exclusive bargaining agent. The *Bisch* case is in opposite, it's
19 not a rival organization. I know the Court knows that. The *Olsen*
20 case comes 10 years before a case we cited called *Rose LLC versus*
21 *Treasure Island*.

22 Your Honor, I know I'm preaching to the choir here, when
23 no one wants piecemeal litigation, this needs to be something
24 where we can rely on the consistency in rulings. And again, to
25 underscore this point, does NAPSO now get precluded from

1 bringing representatives while FOP gets to bring in representatives?
2 I mean, it's absurd.

3 So unless the Court has any inquiry, Your Honor, I'm
4 prepared to submit it.

5 THE COURT: Good enough.

6 You know, this is a difficult case, because I granted the
7 injunction simply because I felt that the officer was entitled to the
8 counsel of his choosing. I have to deny the Request to Intervene
9 only because the case is over now. After the entry of the injunction,
10 there's nothing further to litigate.

11 It was a petition brought for one form of relief only. I
12 found that while the PPA is the exclusive bargaining agent, I also
13 found that it wasn't the exclusive representative of every non-PPA
14 member. So I wish you had been involved in the case from the
15 beginning. I certainly would have allowed intervention if it had
16 been sought before the final judgment was entered.

17 MR. SGRO: So I understand the Court's ruling, Your
18 Honor. I guess from our perspective now, it appears that there is
19 taken to its logical conclusion. I'm not quarreling with the Court,
20 but just for perfecting the record --

21 THE COURT: Oh, I don't take it that way.

22 MR. SGRO: -- it appears, then, that there is a reward for
23 behavior that could be construed to be somewhat disingenuous or
24 deceptive by not alerting certain parties that are relevant and then
25 having that -- he gave your manifested rulings that get granted and

1 then decisions made that we can't come in just because we didn't
2 know.

3 Now, we didn't know. And, obviously, if we would have
4 known, we would have done the same thing we did here. I guess,
5 from our position, Your Honor, the case is over, but it -- being over
6 stems from the legal infirmity of the denial of our ability to
7 participate, not denial in the sense that a motion was filed before
8 decisions were made, and then we were denied. Right? That we
9 could have dealt with.

10 But the inability to participate, coming from the
11 standpoint of us never being invited to the table, and then that
12 conduct being rewarded is the difficulty.

13 And, you know, we talk about Article 1, Section 8 of the
14 Nevada Constitution all the time. That's the part that empowers
15 courts as courts of equity to do whatever it is they deem
16 appropriate so that the administration of justice can occur. Right?
17 And I know I'm saying it exactly right, but that's -- it comes from
18 Article 1, Section 8 of the Nevada Constitution.

19 You, Your Honor, as the Court, like everyone else in this
20 building that's a judge, have inherent powers of equity. It seems to
21 me somewhat conflicting to recognize that, had this occurred at a
22 time prior to the final entry of order in the case, we would have
23 been allowed to enter it. By that measure, then, the failure of us to
24 be alerted somehow now is being construed against us. Not
25 against us like in an adversarial ruling, because we participated, but

1 against us because we now no longer have anything we can do.
2 And this is the sort of thing that absolutely creates problems with
3 inconsistencies in decisions and inconsistencies in rulings.

4 Now what, then, of Judge Trullijo's case? By the way,
5 which predates this case. It cannot be the measured, thoughtful
6 response in any court where we reward the opportunistic scenarios
7 that may present themselves by failing to alert us until after the
8 fact. Jamie Frost is a living, breathing example of an intentional
9 decision that she made to alert us after the fact. And now, the
10 conduct is -- really, it's being rewarded, for lack of a better term,
11 because nothing will occur. And that just strikes me -- I've been
12 doing this for a while, as you know, Judge; that just strikes me as
13 not how it's supposed to work.

14 So I would encourage the Court to -- with its inherent
15 powers as a court of equity and under Article 1, Section 8 of the
16 Constitution, to determine that perhaps there is room for the notion
17 that we should have been alerted. And perhaps because we should
18 have been alerted, the lawyers should not benefit from any decision
19 that was made because we were not alerted.

20 And understand, in the *FOP* that you have, Your Honor,
21 there was really no opposition. Right? You had *FOP versus Metro*
22 who -- Metro didn't take any position. So who was there to let the
23 Court know that there may be a legal infirmity because, yes, can
24 someone get their own private attorney? Yes, they can. Can
25 someone get their own private attorney from a rival organization

1 when PPA used the exclusive bargaining agent? No, they cannot.
2 And therein lies the rub.

3 And so, you know, the thing that Mr. Levine said about
4 how he says, oh, I only represent the client. That's the thing that
5 State Farm does when their carrier -- when you get a car accident
6 and, you know, the lawyer gets hired by State Farm; the lawyer
7 takes direction from State Farm; the lawyer authorizes monies from
8 State Farm. But, technically, they represent the client. Right? And
9 so that tripartite relationship, we know it exists and we handle it
10 accordingly.

11 In this case, Your Honor, that language in the *FOP*
12 agreement that Mr. Levine references is just the work around. We
13 all know that. And so there is a divided loyalty at best between *FOP*
14 and what he's got to do for *FOP* and to the client. So there is an
15 infirmity in this case, because it stems from a deliberate or
16 negligent omission that occurred, because the parties didn't alert
17 this Court that it was about to embark on a decision with no
18 opposition, when there was a simultaneous proceeding occurring in
19 a different courtroom, where there was opposition, which then
20 sharpens the -- and crystallizes the arguments as to what to do.

21 And so the infirmity in this case is based on not the
22 Court's fault, the Court decided based on what it had in front of it.
23 But I would submit, Your Honor, if you had everything in front of
24 you, the decision probably doesn't go the same way. And maybe
25 that's too bold. But we should have at least had the opportunity to

1 be here.

2 So the denial, then, rewards the misconduct or the
3 negligence or however, you know, whatever palatable word
4 everyone can stomach, of the other counsel.

5 So Mr. Crosby definitely knew, because he was at the
6 other hearing. Ms. Frost definitely knew, because she was -- she
7 made comments at the other hearing. And if Mr. Levine is as
8 inextricably intertwined and all that is labor-relations in the law
9 enforcement world, likely he knew as well. The fact that no one told
10 you, Judge, just doesn't sit well. Doesn't pass the smell test.

11 And so I apologize for my long-winded response, but this
12 is the kind of things that causes a level of distrust in the outcome of
13 certain proceedings when judges are asked to render decisions
14 when the attorneys asking for the decision has -- have failed to alert
15 the Court as to everything that was occurring.

16 And, understand, we have no quarrel with this Court
17 whatsoever. Our position is the lawyers had an affirmative
18 responsibility, ethical obligations to tell you what was happening in
19 front of Judge Trujillo. No one did. PPA gets the short end of the
20 stick. And now, because the -- of the timing, because Jamie Frost
21 elected to send an e-mail after it was all over, now PPA has to suffer
22 through the consequence of whatever that is. Metro now is
23 emboldened potentially to allow -- what are going to do with
24 *NAPSO*? And so we have the --

25 THE COURT: Well, I understand this is going to have to

1 get resolved at an appellate level.

2 MR. SGRO: Yes.

3 THE COURT: And I didn't want to cut you off, because I
4 know your clients are here. But -- and your words are eloquent.
5 But I've made the decision.

6 MR. SGRO: Okay. I'm sorry, Your Honor. I just --

7 THE COURT: And I take no offense. I take no offense,
8 ever, if you seek appellate review. I realize I can make mistakes.
9 So -- and Mr. Levine --

10 MR. LEVINE: Your Honor, I would like to clarify a couple
11 of points of the record, since I have been --

12 THE COURT: No, Mr. Levine, I -- it's time to.

13 MR. LEVINE: -- improperly characterized --

14 THE COURT: Mr. Levine, it's time to conclude the hearing.
15 Whatever issues the two of you may have, we're not going to hash
16 out on the record today.

17 ///

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25 ///

1 MR. LEVINE: Okay. So I'm going to prepare -- am I to
2 prepare the order, Your Honor?

3 THE COURT: You will. And the -- all counsel have to
4 approve the form of it or file an objection; no competing orders.

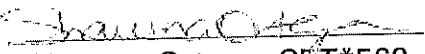
5 MR. SGRO: Okay. Thank you, Your Honor.

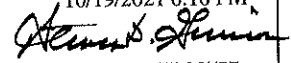
6 THE COURT: Thank you both.

7 [Court recessed at 10:16 a.m.]

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17 ATTEST: I do hereby certify that I have truly and correctly
18 transcribed the audio/video proceedings in the above-entitled case
19 to the best of my ability. Please note: Technical glitches in the
20 BlueJeans audio/video which resulted in audio distortion and/or
21 audio cutting out completely were experienced and are reflected in
22 the transcript.

23
24
25

Shawna Ortega, CET*562


CLERK OF THE COURT

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7 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 JORDAN TRAVERS,

11 Petitioner,

12 v.

13 LAS VEGAS METROPOLITAN
14 POLICE DEPARTMENT

15 Respondent.

Case No.: A-21-832601-P
Dept. No.: 27

ORDER DENYING LAS VEGAS POLICE
PROTECTIVE ASSOCIATION'S MOTION
TO INTERVENE

16 This matter came on for hearing on the Las Vegas Police Protective Association, Inc.'s
17 ("LVPPA") Motion To Intervene. Present in court were Anthony P. Sgro, Esq. and Jennifer Willis
18 Arledge, Esq. of Sgro & Roger for LVPPA, Nicholas D. Crosby, Esq. of Marquis Aurbach Coffing for
19 the Las Vegas Metropolitan Police Department ("LVMPD"), and Adam Levine, Esq. of the Law Office
20 of Daniel Marks for Jordan Travers. The Court having read and considered the papers and pleadings on
21 file, and having heard the arguments of counsel, hereby ORDERS that the Motion to Intervene is
22 denied because after the entry of the injunction there is nothing further to litigate. The Court wishes
23 that LVPPA had been involved in the case from the beginning, and certainly would have allowed
24 intervention if it had been sought before the final judgment was entered. In light of the Court's

1 disposition, it is not necessary for the Court to address whether LVPPA was a necessary and
2 indispensable party or any other arguments raised by the LVPPA or Travers.

3 IT IS SO ORDERED.

4 October 19, 2021

Dated this 19th day of October, 2021

Nancy L Allf

TW

438 50D 8FB6 A9D9
Nancy Allf
District Court Judge

7 Submitted by:

8 SGRO & ROGER

9 *Jennifer W. Arledge*

10 Anthony P. Sgro, Esq.
Nevada Bar No. 3811

11 Jennifer Willis Arledge, Esq.
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15 Attorneys for Las Vegas Police Protective Association, Inc.

16 Approved as to form and content:

17 LAW OFFICE OF DANIEL MARKS

MARQUIS AURBACH COFFING

18 *Submitted - no response - JWA*

19 Adam Levine, Esq.

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21 alevine@danielmarks.net

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23 Las Vegas, Nevada 89101

24 Attorneys for Plaintiff

Submitted - no response - JWA

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Attorneys for Respondent, Las Vegas Metropolitan
Police Department

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

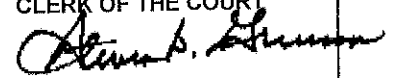
4
5
6 In the Matter of the Petition of CASE NO: A-21-832601-P
7 Jordan Travers DEPT. NO. Department 27
8

9 **AUTOMATED CERTIFICATE OF SERVICE**

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

13 Service Date: 10/19/2021

14 Suzanne Boggs	sboggs@maclaw.com
15 Nicholas Crosby	ncrosby@maclaw.com
16 Anthony Sgro	tsgro@sgroandroger.com
17 Daniel Marks	Office@danielmarks.net
18 Jennifer Arledge	jarledge@sgroandroger.com
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12 jarledge@sgroandroger.com
13 Attorneys for Las Vegas Police
14 Protective Association, Inc.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

9 JORDAN TRAVERS,
10
11 Petitioner,

Case No.: A-21-832601-P
Dept. No.: 27

11 v.

NOTICE OF ENTRY OF ORDER

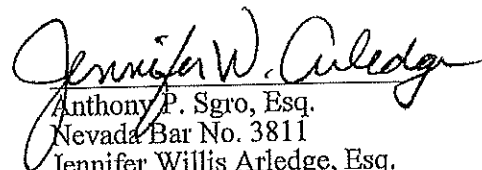
12 LAS VEGAS METROPOLITAN
13 POLICE DEPARTMENT

14 Respondent.

15
16 PLEASE TAKE NOTICE that the *Order Denying Las Vegas Police Protective Association's*
17 *Motion to Intervene* was entered in the above-captioned case on October 19, 2021. A true and correct
18 copy of said Order is attached hereto.

19 DATED this 20th day of October, 2021.

20 **SGRO & ROGER**

21 

22 Anthony P. Sgro, Esq.
23 Nevada Bar No. 3811
24 Jennifer Willis Arledge, Esq.
Nevada Bar No. 8729
720 S. Seventh Street, 3rd Floor
Las Vegas, Nevada 89101
Attorneys for Las Vegas Police Protective
Association, Inc.

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 20th day of October, 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 CM/ECF E-Service List.

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.

Daniel Marks, Esq.
Adam Levine, Esq.
LAW OFFICES OF DANIEL MARKS
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Petitioner Jordan Travers

Nick D. Crosby, Esq.
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney for LVMPD

BY *Sanena Woods*
An Employee of Sgro & Roger

1 **ORD**

2 Anthony P. Sgro, Esq.
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10 jarledge@sgroandroger.com
11 Attorneys for Las Vegas Police
12 Protective Association, Inc.

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 JORDAN TRAVERS,

10
11 Petitioner,

12 v.

13 LAS VEGAS METROPOLITAN
14 POLICE DEPARTMENT

15 Respondent.

Case No.: A-21-832601-P
Dept. No.: 27

**ORDER DENYING LAS VEGAS POLICE
PROTECTIVE ASSOCIATION'S MOTION
TO INTERVENE**

16 This matter came on for hearing on the Las Vegas Police Protective Association, Inc.'s
17 ("LVPPA") Motion To Intervene. Present in court were Anthony P. Sgro, Esq. and Jennifer Willis
18 Arledge, Esq. of Sgro & Roger for LVPPA, Nicholas D. Crosby, Esq. of Marquis Aurbach Coffing for
19 the Las Vegas Metropolitan Police Department ("LVMPD"), and Adam Levine, Esq. of the Law Office
20 of Daniel Marks for Jordan Travers. The Court having read and considered the papers and pleadings on
21 file, and having heard the arguments of counsel, hereby ORDERS that the Motion to Intervene is
22 denied because after the entry of the injunction there is nothing further to litigate. The Court wishes
23 that LVPPA had been involved in the case from the beginning, and certainly would have allowed
24 intervention if it had been sought before the final judgment was entered. In light of the Court's

1 disposition, it is not necessary for the Court to address whether LVPPA was a necessary and
2 indispensable party or any other arguments raised by the LVPPA or Travers.

3 IT IS SO ORDERED.

4 October 19, 2021

Dated this 19th day of October, 2021

Nancy L. Alf

TW

438 50D 8FB6 A9D9
Nancy Alf
District Court Judge

7 Submitted by:

8 SGRO & ROGER

9 *Jennifer W. Arledge*

10 Anthony F. Sgro, Esq.
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tsgro@sgroandroger.com
13 jarledge@sgroandroger.com
Attorneys for Las Vegas Police Protective Association, Inc.

15 Approved as to form and content:

16 LAW OFFICE OF DANIEL MARKS

MARQUIS AURBACH COFFING

17 *Submitted - no response - JWA*

18 Adam Levine, Esq.
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19 alevine@danielmarks.net
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20 Las Vegas, Nevada 89101
21 *Attorneys for Plaintiff*

Submitted - no response - JWA

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*Attorneys for Respondent, Las Vegas Metropolitan
Police Department*

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 In the Matter of the Petition of
7 Jordan Travers

CASE NO: A-21-832601-P
DEPT. NO. Department 27

8
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22 Sarena Woods	swoods@sgroandroger.com

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26
27
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