IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

AMERICAN FEDERATION OF STATE COUNTY & MUNICIPAL EMPLOYEES, LOCAL 4041, A NOT-FOR-PROFIT VOLUNTARY MEMBERSHIP ASSOCIATION AND LABOR ORGANIZATION; AND FRATERNAL ORDER OF POLICE NEVADA C.O. LODGE 21

Appellants,

v.

JOSEPH M. LOMBARDO, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF NEVADA; NEVADA DEPARTMENT OF ADMINISTRATION, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; JACK ROBB, DIRECTOR OF THE NEVADA DEPARTMENT OF ADMINISTRATION IN HIS OFFICIAL CAPACITY; NEVADA DIVISION OF HUMAN RESOURCE MANAGEMENT, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; AND MANDEE BOWSMITH, ADMINISTRATOR OF THE NEVADA DIVISION OF HUMAN RESOURCE MANAGEMENT IN HER OFFICIAL CAPACITY,

Respondents.

Supreme Court Case No.: 87926

District Court Case No.: 21 EW 00016 1D
Dept.: I

DOCKETING STATEMENT BY FRATERNAL ORDER OF POLICE NEVADA C.O. LODGE 21

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing ~statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court May impose sanctions on counselor appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District: Nevada First District

   Department: 1

   County: Carson City Judge: James T. Russell

   1st District Ct. Case No.: 23 EW 00016 1D

2. Attorney filing this docketing statement:

Attorney: Adam Levine
Nevada State Bar No.:004673 Telephone: (702) 386-0536

Firm: Law Office of Daniel Marks
Address: 610 S. Ninth Street, Las Vegas, Nevada 89101

Client(s): Appellant, Fraternal Order of Police Nevada C.O. Lodge 21
If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

Attorney representing Appellant American Federation of State, County and Municipal Employees Local 4041

Attorney: Nathan R. Ring, Esq.
Nevada State Bar No.: 12078 Telephone: (725) 235-9750

Firm: Stranch, Jennings & Garvey, PLLC
Address: 3100 W. Charleston Blvd., Las Vegas, Nevada 89102

3. Attorney(s) representing respondents(s):

Attorney: Nathan C. Holland, Deputy Attorney General
Nevada State Bar No.: 15247 Telephone: (775) 684-1254

Firm: Nevada Office of the Attorney General
Address: 555 E. Washington Ave., #3900; Las Vegas, NV 89101

Client(s): All Respondents

Attorney: Kiel B. Ireland, Deputy Solicitor General
Nevada State Bar No.: 15368 Telephone: (775) 684-1234

Firm: Office of the Attorney General
Address: 100 N. Carson Street, Carson City, NV 89701

Client(s): All Respondents

Attorney: Gregg Ott, Deputy Attorney General
Nevada State Bar No.: 10950

Firm: Nevada Office of the Attorney General
Address: 100 N. Carson Street, Carson City, NV 89701

Client(s): All Respondents

4. Nature of disposition below (check all that apply):

□ Judgment after bench trial``

□ Judgment after jury verdict

□ Summary judgment

□ Default judgment

□ Grant/Denial of NRCP 60(b) relief

□ Grant/Denial of injunction

□ Grant/Denial of declaratory relief

□ Review of agency determination

□ Dismissal:

□ Lack of jurisdiction

□ Failure to state a claim

□ Failure to prosecute

□ Other (specify):

□ Divorce Decree:

□ Original □ Modification

X Other disposition (specify): Order Denying Writ

5. Does this appeal raise issues concerning any of the following?
N/A

□ Child Custody

□ Venue

□ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: N/A
N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal *(e.g.,* bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:
N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

A Petition for Writ of Mandamus and Motion to Confirm Arbitration Award filed by Appellant AFSCME Local 4041. Appellant Fraternal Order of Police Nevada CO Lodge 21 (hereafter "FOP Lodge 21") intervened on the side of AFSME Local 4041 to protect its interest. The Petition and Motion were denied by the district court.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the Executive Department of the State is bound by an arbitration award where the Executive Department failed to timely file a Motion to Vacate Arbitration Award within the 90 days provided by NRS 38.24(2).

2. Whether the district court erred in refusing to confirm the arbitrator's award.

3. Whether the Executive Department, upon voluntarily entering into final and binding interest arbitration under NRS 288.580 must honor the award when the legislature made appropriation for the funding of the award through Senate Bill 440 in the 2013 legislative session.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

x N/A

□ Yes

□ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

□ Reversal of unsettled Nevada precedent (identify the case(s))

□ An issue arising under the United States and/or Nevada Constitutions

X A substantial issue of first impression

X An issue of public policy

□ An issue where en banc consideration is necessary to maintain uniformity of this Court's decisions

□ A ballot question

If so, explain:

The 2019 legislative amendments to NRS Chapter 288 extended collective bargaining to the Executive Department of the State of Nevada. NRS 288.580 provides for final and binding interest arbitration between the Executive Department and the recognized labor organizations. AFSCME Local 4041 received

a binding interest arbitration award for a Cost of Living Adjustment ("COLA") for the employees in Bargaining Units A, E, F, and I. NRS 288.505(c) states that any provision of a collective bargaining agreement "which requires the Legislature to appropriate money is effective only to the extent of legislative appropriation". Following the interest arbitration award for the COLA, the Legislature appropriated funding in the 2023 legislative session pay for the COLA. The Governor be towed the appropriation notwithstanding the fact that the Governor, as the head of the Executive Branch, was a party to the interest arbitration award and had agreed to be bound by its outcome. FOP Lodge 21 was granted leave to intervene as FOP Lodge 21 became the recognized labor organization or Unit I in December 2022.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case should remain with the Supreme Court under NRAP 17(a)11 as it raises a question of statewide public importance in connection with the application of the provisions of the collective bargaining laws to the Executive Department.

14. Trial. If this action proceeded to trial, how many days did the trial last?

None

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 12/12/23

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 12/14/23

Was service by:

□ Delivery

X Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

□ NRCP 50(b) Date of filing

□ NRCP 52(b) Date of filing

□ NRCP 59 Date of filing

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. ***See*** **AA Primo Builders v. Washington, 126 Nev. ___ , 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion

(c) Date written notice of entry of order resolving tolling motion was served

Was service by:

□ Delivery

□ Mail

19. Date notice of appeal filed:

Appellant: American Federation of State, County and Municipal Employees Local 4041 Appeal filed January 12, 2024

Appellant: Fraternal Order of Police Nevada C.O. Lodge 2 Appeal filed 01/22/24

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)(2) provided FOP Lodge 21 fourteen (14) days to file a Notice of Appeal after AFSCME Local 4041 filed its Notice of Appeal.

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

X NRAP 3A(b)(1) □ NRS 38.205

□ NRAP 3A(b)(2) □ NRS 233B.150

□ NRAP 3A(b)(3) □ NRS 703.376

□ Other (specify)

(b) Explain how each authority provides a basis for appeal from the judgment or order:
Rules of Civil Procedure and Nevada Rules of Appellate Procedure ["NRAP"] relative to new trials in, and appeals from, the district court, except so far as they are inconsistent with the provisions of NRS 34.150 to 34.290, inclusive, apply to the proceedings mentioned in NRS 34.150 to 34.290, inclusive." Under NRAP 3A(b)(1), an appeal may be taken from "a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." Since the district court's order denying the petition for writ of mandamus and confirmation of the arbitration award was a final judgment, this Court has jurisdiction.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:
American Federal of State, County & Municipal Employees, Local 4041
Fraternal Order of Police Nevada C.O. Lodge 21
Joseph M. Lombardo, in his official capacity
Nevada Department of Administration
Jack Robb, in his official capacity
Nevada Division of Human Resource Management
Mandee Bowsmith, in her official capacity

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.,* formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

1. American Federal of State, County & Municipal Employees, Local 4041 claims Writ of Mandamus, confirmation of Arbitration Award. Date of formal disposition: December 12, 2023.

2. Fraternal Order of Police Nevada C.O. Lodge 21 claims Writ of Mandamus, confirmation of Arbitration Award. Date of formal disposition: December 12, 2023

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

X Yes

□ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

□ Yes

□ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

□ Yes

□ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review *(e.g.,* order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Fraternal Order of Police
Nevada C.O. Lodge 21
Name of appellant

February 13, 2024
Date

Nevada, Clark County
State and county where signed

Adam Levine, Esq.
Name of counsel of record

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the day of 13th day of February 2024, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following addressees): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Attorney General/Carson City \Nathan C. Holland
Attorney General/Carson City \Kiel B. Ireland
Attorney General/Carson City \Gregory D. Ott, Senior Deputy Attorney General
Stranch, Jennings, & Garvey, PLLC\Nathan Ring, Esq.
Margaret M. Crowley, Settlement Judge

Jon E. Harper
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EXHIBIT A

EXHIBIT A

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE

STATE OF NEVADA IN AND FOR CARSON CITY

AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, LOCAL 4041, a not-for-profit voluntary membership association and labor organization,

Plaintiff,

vs.

JOSEPH M. LOMBARDO, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF ADMINISTRATION, a political subdivision of the State of Nevada; JACK ROBB, Director of the Nevada Department of Administration in his official capacity; NEVADA DIVISION OF HUMAN RESOURCE MANAGEMENT, a political subdivision of the State of Nevada; MANDEE BOWSMITH, Administrator of the Nevada Division of Human Resource Management in her official capacity,

Defendants.

Case No.: 23 ECO 00316 1J

Dept. No. I

PETITION FOR WRIT OF MANDAMUS AND CONFIRMATION OF ARBITRATION AWARD

Arbitration Exemption under Nevada Arbitration Rule 3(A): Writ of Mandamus (Extraordinary Relief) and Matter Previously Agreed in Writing and Arbitrated

Plaintiff, American Federation of State, County & Municipal Employees, Local 4041 ("Union"), by and through its undersigned counsel, Nathan R. Ring, Esq. of Stranch, Jennings & Garvey, PLLC, and Fernando Colon and Matthew Blumin, bring this Complaint for a Writ of Mandamus and Order Confirming Arbitration Award against Jospeh M. Lombardo, in his official capacity as Governor of the State of Nevada; the Nevada Department of Administration, a political subdivision of the State of Nevada; JACK ROBB, the Director of the Nevada Department of Administration in his official capacity; the Nevada Division of Human Resource Management, a political subdivision of the State of Nevada; and Mandee Bowsmith, Administrator of the Nevada Division of Human Resource Management in her official capacity. Plaintiff Union complains and alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to issue a writ of mandamus pursuant to NRS 34.160 and has jurisdiction to confirm an arbitration award under NRS 38.239.

2. Venue is proper in this Court under NRS 13.010, NRS 13.040, and NRS 34.160.

PARTIES

3. Plaintiff AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, LOCAL 4041, is a not for profit voluntary membership association and is the certified collective bargaining representative for employees within Units A, E, and F of the Nevada Executive Department.[1]

4. Defendant, JOSEPH M. LOMBARDO, is the Governor of the State of Nevada and as such is the chief executive officer of the state and the head of the Executive Department of state government.

[1] The Union was also the certified collective bargaining representative for employees of Unit I, but the Union ceased being the certified bargaining representative for Unit I employees by a written order of the EMRB on December 29, 2022. However, the Union represented employees in Unit I through that date and represented those employees for purposes of the arbitration award at issue in this Petition, which covers Units A, E, F and I.

5. Defendant, NEVADA DEPARTMENT OF ADMINISTRATION, is a political subdivision of the State of Nevada, which administers and oversees various state agencies including Defendant, Nevada Department of Human Resource Management.

6. Defendant, JACK ROBB, currently serves as the Director of Defendant, Nevada Department of Administration, has held that role since January 2023, and is responsible for the actions and inactions of the Department of Administration.

7. Defendant, NEVADA DIVISION OF HUMAN RESOURCE MANAGEMENT, is a political subdivision of the State of Nevada, with responsibility for central payroll and employee records, compensation, classification and recruitment, employee and management services, agency human resource services, and equal employment opportunity.

8. Defendant, MANDEE BOWSMITH, serves as the Administrator of Defendant, Nevada Division of Human Resource Management, has served in that role since November 2022, and is responsible for the actions and inactions of the Division of Human Resource Management.

GENERAL FACTUAL ALLEGATIONS

9. On June 1, 2019, the Nevada State Senate passed Senate Bill 135, which granted State Executive Department employees the right, among other things, to join, form, and assist unions; bargain collectively; set mandatory and permissive subjects of bargaining; defined the parameters of such collective bargaining relationships; and protected Executive Department employees' rights to engage in such actions.

10. On June 2, 2019, the Nevada State Assembly passed Senate Bill 135 in the same format as that passed by the Nevada State Senate on June 1, 2019.

11. On June 3, 2019, the Nevada State Assembly returned Senate Bill 135 to the Nevada State Senate and the bill was engrossed.

12. On June 6, 2019, Senate Bill 135 was enrolled and delivered to the Governor of Nevada.

13. Thereafter, on June 12, 2019, the Governor of Nevada, as the state's chief executive, signed Senate Bill 135.

14. Section 55 of Senate Bill 135 made the law "effective upon passage and approval," which meant upon the Governor's signature on Senate Bill 135, the law was effective for all purposes.

15. In Case No. 2019-026, by written order filed January 22, 2020, the Nevada Government Employee Management Relations Board ("EMRB") found the Union had majority support among Executive Department employees in Unit E and certified the Union as the collective bargaining representative for employees in Unit E.

16. In Case No. 2019-021, by written order filed January 22, 2020, the EMRB found the Union had majority support among Executive Department employees in Unit F and certified the Union as the collective bargaining representative for employees in Unit F.

17. In Case No. 2019-019, by written order filed January 22, 2020, the EMRB found the Union had majority support among Executive Department employees in Unit I and certified the Union as the collective bargaining representative for employees in Unit I.

18. In Case No. 2020-006, by written order filed March 9, 2020, the EMRB found the Union had majority support among Executive Department employees in Unit A and certified the Union as the collective bargaining representative for employees in Unit A.

19. The Executive Department of Nevada is the employer of employees in Units A, E, F, and I.

20. Following certification of the four units of state employees, negotiations between the Union and the Executive Department for a collective bargaining agreement began in late October, 2020.

21. The Union and Executive Department completed their negotiations on March 4, 2021, when they tentatively agreed ("TA'd") all articles of their collective bargaining agreement.

22. Following completion of the TAs at the bargaining table, the Union and Executive Department reviewed the TAs and agreed to minor revisions.

23. The process of final review lasted about two months until the Union was able to place the full TA'd collective bargaining agreement before its members for a ratification vote.

24. The Union's members completed their ratification process on May 16, 2021 with approval of the contract.

25. The State Board of Examiners ("BOE") is a state body composed of the Governor, Attorney General and Secretary of State, which under NRS 353.010 has the statutory duty to review claims for payment pursuant to an appropriation or authorization by the Legislature.

26. Under NRS 288.555, final approval of the fully negotiated collective bargaining agreement was contingent upon an affirmative vote by the BOE.

27. The BOE affirmatively voted to approve the Union and Executive Department collective bargaining agreement on May 25, 2021.

28. As indicated in the meeting minutes, the Governor and Attorney General voted to approve the contract and the Secretary of State voted against approving the contract. *See* BOE Meeting Relevant Portions of Minutes (May 25, 2021), at 2-4 (attached hereto as **Exhibit 1**).

29. With the two-to-one vote in the affirmative, the July 1, 2021 through June 30, 2023 AFSCME and Executive Department CBA went into full force and effect.

30. During the negotiations between the Union and the Executive Department for their July 1, 2021 through June 30, 2023 collective bargaining agreement, the parties were unable to agree upon a fixed cost-of-living ("COLA") salary increase for the 2022 state fiscal year.

31. Instead, the parties agreed to Article X of their CBA, which committed the parties to a COLA determined as follows:

> If the May 2021 meeting of the Economic Forum, pursuant to NRS 353.230, projects additional State revenues, the parties agree to a limited reopener with the express purpose of negotiating a cost-of-living increase in FY 2022. Such bargaining sessions shall be limited to two (2) eight (8) hour sessions, unless otherwise agreed upon by the parties. If no agreement is reached, the parties will use the impasse procedure outlined in NRS 288.575 to resolve the issue.

32. The Economic Forum is a panel of five economic and taxation experts from the private sector that assist in determining how much revenue will be available for the biennial budget cycle.

33. The Economic Forum's forecasts are used by the Executive Department's Budget Division and state agencies as the official forecast of future state General Fund revenues.

34. The forecast provided by the State's Economic Forum on May 4, 2021 projected additional revenues for the State of more than $900 million for FY 2021 through FY 2023.

35. The Economic Forum's May 4, 2021 increased revenue projection thus triggered the narrow reopener of language within Article X of the CBA.

36. Before the Union and the Executive Department could engage in the bargaining sessions required under Article X of their CBA, the Nevada Legislature adjourned sine die on May 31, 2021.

37. The June 23, 2021 bargaining meeting led to the parties declaring that they were at impasse under Article X.

38. Accordingly, pursuant to Article X of the CBA between them, the Executive Department and the Union proceeded to engage in a binding, final offer arbitration according to the procedure set forth in NRS 288.575 because they were otherwise at impasse.

39. NRS 288.275 provides as follows:

> **NRS 288.575 Discontinuance of mediation; selection of impartial arbitrator; time for conducting arbitration; procedures; payment of costs.**
>
> 1. If a mediator selected pursuant to NRS 288.570 determines that his or her services are no longer helpful or if the parties do not reach a collective bargaining agreement through mediation within 21 days after the appointment of the mediator or on or before any later date set by agreement of the parties, the mediator shall discontinue mediation and the parties shall attempt to agree upon an impartial arbitrator. Any proposal that conflicts or is otherwise inconsistent with any provision of state law, other than the provisions of chapters 284 and 287 of NRS, shall be considered withdrawn by the proposing party when mediation is discontinued.
>
> 2. If the parties do not agree upon an impartial arbitrator within 5 days after the date on which mediation is discontinued pursuant to subsection 1 or on or before any later date set by agreement of the parties, the parties shall request from the Federal Mediation and Conciliation Service a list of seven potential arbitrators. The parties shall select an arbitrator from this list by alternately striking one name until the name of only one arbitrator remains, and that arbitrator must hear the dispute in

question. The party who will strike the first name must be determined by a coin toss.

3. The arbitrator shall begin arbitration proceedings on or before March 1 or any later date set by agreement of the parties.

4. The arbitrator and the parties shall apply and follow the procedures for arbitration that are prescribed by any rules adopted by the Board pursuant to NRS 288.110. During arbitration, the parties retain their respective duties to negotiate in good faith.

5. The arbitrator may administer oaths or affirmations, take testimony and issue and seek enforcement of a subpoena in the same manner as the Board pursuant to NRS 288.120, and, except as otherwise provided in subsection 7, the provisions of NRS 288.120 apply to any subpoena issued by the arbitrator.

6. The arbitrator shall render a decision on or before March 15 or any later date set by agreement of the parties.

7. The Executive Department and the exclusive representative shall each pay one-half of the cost of arbitration.

40. The Executive Department and Union engaged in the process of arbitration under NRS 288.575 not because it was required under the operation of law but because they voluntarily agreed to use that procedure through their voluntary agreement within Article X of their CBA.

41. Having been approved at the May 25, 2021 BOE meeting by the Governor, as the head of the state's Executive Department, and passed by a two-thirds vote of the BOE as required by statute, the CBA had by that point become a binding contract between Plaintiff Union and the State of Nevada, including the process by which the parties agreed to resolve the outstanding impasse over the COLA under Article X.

42. Pursuant to that process, the parties submitted their respective final offers to the appointed arbitrator, Jeffrey A. Belkin, on October 12, 2021.

43. The Executive Department's proposal did not contain any terms and simply stated, "The State lacks the authority at this time to consider any proposal for a Fiscal Year 2021-2022 COLA because there is no lawful mechanism under NRS 353 or NRS 288 by which to seek appropriation to fund any further direct compensation."

44. As stated by Arbitrator Belkin in his written decision, the Executive Department submitted a brief in which it argued, "The authority to grant any additional compensation 'rests

exclusively with the Legislature.'" Arbitration Decision of Arbitrator Belkin (November 20, 2021), attached hereto as **Exhibit 2**.

45. The Union submitted a proposal with a three percent (3%) cost of living increase effective July 1, 2021 for all Executive Department employees in Bargaining Units A, E, F and I.

46. The Executive Department argued during the arbitration process only that it could not pay the COLA increases to members in the certified bargaining units because payment of the COLA increases required Legislative appropriation, not that the 3% increase proposed by the Union (and ordered by the arbitrator) was somehow inappropriate.

47. On November 20, 2021, Arbitrator Jeffrey A. Belkin issued his written decision finding the Union's position more reasonable and awarded COLA increases of three-percent (3%) to Executive Department employees in Units A, E, F and I.

48. The procedures at NRS 288.580, pursuant to which the contractual arbitration was conducted, are crystal clear: "The decision of the arbitrator is final and binding on the parties."

49. The Executive Department did not move to vacate the arbitration award in favor of the Union, although it was allowed 90 days to do so under NRS 38.241.

50. Accordingly, as a matter of contract, the AFSCME and Executive Department arbitration was final, binding, and no longer subject to challenge by the Executive Department in any forum as of February 20, 2022.

51. In a similar manner, the Nevada Police Union, which is the certified bargaining representative for employees in Unit G of state Executive Department employees, entered into a 2021 CBA that ultimately determined their COLA increases effective July 1, 2021 through the same system of interest arbitration under NRS 288.575.

52. The Nevada Police Union and the Executive Department used Claude Ames as their Arbitrator, and on July 19, 2021, Arbitrator Ames issued his decision finding the Nevada Police Union's 3% COLA proposal to be the reasonable proposal. A copy of Arbitrator Ames' decision is attached hereto as **Exhibit 3**.

53. On March 8, 2022, the BOE met to approve the 3% COLA increases for workers in Units A, E, F and I. *See* NRS 288.555 (Any new, extended or *modified* collective bargaining agreement *or similar agreement* between the Executive Department and an exclusive representative must be approved by the State Board of Examiners at a public hearing." (emphasis added)).

54. The BOE voted to approve those COLA increases in the Union and Executive Department contract by a vote of two-to-one, which included the Attorney General ***and Governor*** voting in support of the COLA, with the Secretary of State voting against. Relevant portions of the March 8, 2022 BOE Minutes are attached hereto as **Exhibit 4.**

55. Thus, as of March 8, 2022, the Executive Department of the state, through the BOE—including the Governor's own vote in favor—had approved the contractual 3% COLA increase for Executive Department employees in Units A, E, F and I as entered by the arbitrator.

56. The BOE also approved the COLAs for Nevada Police Union members in Unit G on March 8, 2022 by the same two-to-one vote.

57. Nevertheless, the Executive Department continued to take the position that "[t]he Executive Department does not have the authority to disburse any direct compensation without a specific appropriation by the Legislature." *See* UNION CONTRACTS FOR AFSCME, STATE POLICE APPROVED; NO PAYMENTS LIKELY UNTIL 2023, by Riley Snyder, March 9, 2022.[2]

58. This is despite the Nevada Police Union having previously obtained, on December 6, 2021, an Order from this District Court granting their motion to confirm the arbitration award and denying the State's motion to vacate the arbitration award from Arbitrator Ames. A true and correct copy of the Court's Order is attached hereto as **Exhibit 5.**

59. Based on the position of the Executive Department, all that was left to be done for the Executive Department employees in Units A, E, F, G, and I to obtain their 3% COLA increases,

[2] This article is available at https://thenevadaindependent.com/article/union-contracts-for-afscme-state-police-approved-no-payments-likely-until-2023

as awarded by Arbitrator Belkin and Arbitrator Ames, was for the Nevada Legislature to appropriate the necessary funds.

60. Upon information and belief, and as the *Nevada Independent* news article stated at the time, the Executive Department's position was the Legislature had to first appropriate the funding during the 2023 Legislative Session before the employees could receive their COLA payments and adjustments.

61. The Nevada Legislature convened for its 82nd Regular Session on February 6, 2023.

62. The 3% COLA increases for members in bargaining units A, E, F, G, and I were funded to the amount of approximately $26 million through Senate Bill 440.

63. Senate Bill 440 from the 2023 Session included an appropriation specifically for the payment of the COLA amounts awarded by Arbitrator Belkin in his November 20, 2021, decision, and the other appropriation provision in Senate Bill 440 was to fund the COLA amounts awarded by Arbitrator Ames in his July 19, 2021, decision. A true and correct copy of the as-enrolled version of Senate Bill 440 is attached hereto as **Exhibit 6**.

64. The Nevada State Senate voted to approve Senate Bill 440 on April 10, 2023.

65. Senate Bill 440 was thereafter transmitted to the Nevada State Assembly for consideration.

66. While in the Assembly, Senate Bill 440 was amended with Amendment No. 904.

67. With Amendment No. 904 incorporated into Senate Bill 440, the Nevada State Assembly passed Senate Bill 440 on June 3, 2023.

68. On June 5, 2023, the Nevada State Senate concurred in Amendment No. 904 to Senate Bill 440, and on June 8, 2023, Senate Bill 440 was enrolled and delivered to the Governor.

69. The Legislature adjourned its 82nd Regular Session *sine die* on June 6, 2023.

70. On June 16, 2023, the Governor vetoed Senate Bill 440 even after nearly two years of the Executive Department taking the position, telling its employees, and informing the public—including through a BOE vote to approve the 3% COLA—that all that was needed for Executive

Department employees in bargaining units A, E, F, G and I to receive their COLA increases was for the Nevada Legislature to appropriate the necessary funds.

71. In the message accompanying the veto of Senate Bill 440, the Governor, as the chief executive officer of the Executive Department of the State of Nevada, stated, "[t]he State would not be well-served by setting a precedent that employees will receive retroactive non-binding arbitration awards during subsequent legislative sessions." Veto Message, Senate Bill 440 (June 16, 2023), attached hereto as **Exhibit 7**.

72. The position taken that the arbitration decision issued by Arbitrator Belkin is "non-binding" is utterly illogical and is incorrect as a matter of Nevada law.

73. NRS 288.410 defines "arbitration" for Executive Department employees as "a process of dispute resolution where the parties involved in an impasse or grievance dispute submit their dispute to a third party for *a final and binding decision.*" (emphasis added).

74. NRS 288.580(4) further states "[t]he decision of the arbitrator is final and binding upon the parties" and the arbitration of impasse under NRS 28.580(4) is specifically what the Executive Department and Union agreed to use when they agreed to arbitrate before Arbitrator Belkin.

75. Despite the Legislature appropriating the funds to pay the Executive Department employees in bargaining units A, E, F, G and I, and the BOE voting to approve the contracts containing those COLA amounts, the Executive Department, through the Governor, the State's Division of Human Resource Management and Department of Administration, and their respective Administrator and Director, refuses to pay the 3% COLA owed to employees in bargaining units A, E, F, G and I.

FIRST CAUSE OF ACTION
WRIT OF MANDAMUS

(Against All Defendants)

76. Plaintiff hereby incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though set forth fully herein.

77. This Court has the power to issue writs of mandamus, and all other writs proper and necessary to the complete exercise of their jurisdiction. *See* Nev. Const. art. VI, § 6(1).

78. NRS 34.160 states that a writ of mandate "may be issued by ... a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins a duty resulting from office, trust or station[.]" NRS 34.160.

79. Nevada law specifically authorizes this Court to issue a writ of mandamus when no plain, speedy and adequate remedy exists in the ordinary course of the law. *See* NRS 34.170.

80. The Executive Department stated NRS 288.505(5)(c) prevented it from paying an arbitration award until the Legislature appropriated money for payment of the award.

81. NRS 288.505(5)(c) reads:

> Except as otherwise provided in NRS 284.4086, a provision of chapter 284 or 287 of NRS or NRS 288.570, 288.575 or 288.580, the provision of the agreement prevails unless the Legislature is required to appropriate money to implement the provision, within the limits of legislative appropriations and any other available money.

82. The parties by mutual agreement pursuant to Article X of their CBA agreed to final and binding interest arbitration under NRS 288.580 to resolve the amount of COLA increases for Executive Department employees in Units A, E, F and I.

83. Therefore, the statutory exemption from NRS 288.505(5)(c) of arbitrations under NRS 288.580 applies, and appropriation of the COLA arbitration award by the Legislature was *not* necessary for that award to be final and binding, under the plain language of NRS 288.580(4).

84. Furthermore, whether the statute exempts arbitration decisions under NRS 288.580 from requiring appropriation by the Legislature is of no moment, because the Legislature did, in fact, appropriate by specific legislation, Senate Bill 440, that the funds for the COLA increases awarded by Arbitrator Belkin were to be paid to Executive Department employees in Units A, E, F and I.

85. From the moment the Legislature appropriated the funds and passed Senate Bill 440, it was then incumbent upon the Executive Department to pay the COLA amounts rightfully owed to its employees in Units A, E, F and I.

86. Under NRS 288.580(4), Arbitrator Belkin's decision was final and binding on the parties, which included the Executive Department of the State of Nevada and the Union, which meant the Executive Department could not take actions contrary to Arbitrator Belkin's award.

87. The only action available to the Executive Department to challenge Arbitrator Belkin's award was to make a motion in a court of competent jurisdiction to vacate the Arbitrator's award pursuant to NRS 38.241.

88. The Executive Department did not move to vacate the award and the time to do so expired under NRS 38.241(2) after ninety days passed from notice of Arbitrator Belkin's order.

89. The Executive Department, through the Governor, also ratified the contractual commitment to pay the 3% COLA arbitration award when it voted in favor of it during its passage by the Board of Examiners on March 8, 2022.

90. Even to the extent Legislative appropriation was required, that step was completed on June 5, 2023, and the Executive Department of the State of Nevada, through the Governor, and through the State's Department of Administration and Division of Human Resource Management, and their respective Director and Administrator, must pay the employees in Units A, E, F, and I the COLA amounts awarded by Arbitrator Belkin.

91. Plaintiffs respectfully request that the Court issue a writ of mandamus commanding the Executive Department through the Governor, the Department of Administration, and the Nevada Division of Human Resource Management, through their respective Director and Administrator, to exercise their non-discretionary duties to provide compensation in the form of the COLA adjustments awarded in Arbitrator Belkin's decision of November 20, 2021; ratified by the Board of Examiners, including the Governor and Executive Department, on March 8, 2022; and the funds for payment of which the Legislature appropriated through Senate Bill 440.

92. Plaintiff has no other adequate remedy at law to prevent the violation caused by Defendants, Governor Joseph Lombardo, Nevada Department of Administration, Jack Robb, Nevada Division of Human Resource Management, and Mandee Bowsmith in their refusal to pay the COLA adjustments to Executive Department employees in Units A, E, F and I.

93. The lack of an adequate remedy at law is demonstrated by the fact that the Nevada Police Union previously obtained a confirmation order of its arbitration award on the same COLA adjustments, under the same system, and against the same employer, the State of Nevada, and yet the Nevada Police Union COLA adjustments have not been paid to Unit G either.

94. The lack of an adequate remedy at law is further demonstrated by the detailed circumstances of what occurred between the Nevada Police Union and the Executive Department concerning the Nevada Police Union's Arbitration Award, which is more fully described above at Paragraphs 51, 52, 55, 56, 57, and 58 of this Complaint. The experience of the Nevada Police Union shows that even if the Union is successful here in confirming its arbitration award under the second cause of action of this complaint, the Executive Department will not pay the amounts owed to members in Units A, E, F and I.

95. Thus, this Writ of Mandamus is the only remedy available to the Union and its members to obtain the 3% COLA amounts awarded by Arbitrator Belkin, approved by the Executive Department, through an affirmative vote of the BOE (including the Governor's vote in favor), and appropriated by the Legislature (satisfying the only condition the Governor articulated subsequent to his BOE vote).

96. The Nevada Department of Administration, and its Division of Human Resource Management is the state agency under NRS Chapter 284 tasked with providing proper and correct payroll payment to Executive Department employees, which includes those in Units A, E, F and I.

97. Director Robb and or Administrator Bowsmith are the state actors directly responsible for ensuring correct payroll and payment to Executive Department employees.

98. Defendants are without legal justification or excuse for the refusal and/or failure to pay the COLA amounts described under Senate Bill 440 to the Executive Department employees within Units A, E, F, and I, and the Defendants must pay these amounts to the Executive Department employees so described.

99. It has been necessary for the Plaintiff to retain services of an attorney to bring this case forward, and they should be properly compensated therefore, to include their costs incurred in this action.

SECOND CAUSE OF ACTION
CONFIRMATION OF ARBITRATION AWARD

(Against All Defendants)

100. Plaintiff hereby incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though set forth fully herein.

101. NRS 38.239 permits a prevailing party in an arbitration proceeding to make a motion for a district court in the state to confirm the written award of the arbitrator.

102. NRS 38.243(1) permits a court to enter a judgment in favor of the prevailing party to the arbitration award when it confirms the award under NRS 38.239.

103. Furthermore, NRS 38.243(2)-(3) permit the prevailing party to move for an award of fees and costs.

104. Arbitrator Belkin's award is a final and binding arbitration award, and the Union requests that this Court confirm that award and enter a judgment in its favor accordingly.

105. There is no legal reason, justification, or excuse for Arbitrator Belkin's award to not be confirmed, and the Executive Department has no defense to its confirmation in this Court.

106. It has been necessary for the Plaintiff to retain services of an attorney to bring this case forward, and they should be properly compensated therefore, and it shall also be entitled to recover its costs in this proceeding.

///

///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this District Court enter the following relief:

1. The Court to issue a writ of mandamus commanding Governor Joseph Lombardo, the Nevada Department of Administration, Director Jack Robb, the Nevada Division of Human Resource Management, and Administrator Bowsmith to provide payment of the COLA adjustments awarded under Arbitrator Belkin's decision and as appropriated by the Legislature under Senate Bill 440 of the 2023 Nevada Legislative Session to Executive Department employees within Units A, E, F and I;

2. The Court confirm the arbitration award of Arbitrator Belkin and reduce that award to a judgment under NRS Chapter 38;

3. For entry of a collectible judgment for the amount of COLA owed to the described Executive Department employees;

4. Payment of Plaintiff's reasonable attorney's fees and costs incurred herein; and

5. For such other and further relief as may be just, equitable, and proper, to effect the necessary result required in this matter.

AFFIRMATION

Pursuant to First Judicial District Court Rule 3.6(a), Plaintiff affirms that this Document does not include the personal information of any person, as defined in NRS239B.030(4).

Date: September 1, 2023

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NV Supreme Court Rule 42 application forthcoming
MATTHEW BLUMIN

NV Supreme Court Rule 42 application forthcoming
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EXHIBIT B

EXHIBIT B

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Attorneys for Intervenor Fraternal Order Of Police Nevada C.O. Lodge 21

IN THE FIRST DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR CARSON CITY

AMERICAN FEDERATION OF STATE COUNTY & MUNICIPAL EMPLOYEES, LOCAL 4041, not-for-profit voluntary membership association and labor organization,

Plaintiff,

v.

JOSEPH M. LOMBARDO, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF ADMINISTRATION, a political subdivision of the State of Nevada; JACK ROBB, Director of the Nevada Department of Administration in his official capacity; NEVADA DIVISION OF HUMAN RESOURCE MANAGEMENT, a political subdivision of the State of Nevada; MANDEE BOWSMITH, Administrator of the Nevada Division of Human Resource Management in her official capacity,

Defendants.

Case No.: 23EW00016 1B ~~23 EW 00016 1D~~
Dept.: I

MOTION TO INTERVENE BY FRATERNAL ORDER OF POLICE NEVADA C.O. LODGE 21

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MOTION TO INTERVENE BY FRATERNAL ORDER OF POLICE

NEVADA C.O. LODGE 21

The Fraternal Order of Police Nevada C.O. Lodge 21 (hereafter "FOP Lodge 21") by and through undersigned counsel Adam Levine, Esq. of the Law Office of Daniel Marks hereby moves to intervene in this matter as an additional Plaintiff pursuant to NRCP 24(a) and/or (b). The grounds for the Motion are set forth in the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On or about September 5, 2023 the American Federation of State County & Municipal Employees, Local 4041 (hereafter "AFSCME Local 4041") filed its Petition for Writ of Mandamus and Confirmation of Arbitration Award seeking a writ of mandamus to compel Governor Joseph Lombardo and the other named Defendants to provide payment of the Cost of Living Adjustment ("COLA") awarded by Arbitrator Jeffrey Belkin and other related relief.

As set forth in the Petition, at the time of the arbitration award and related events following, AFSCME Local 4041 was the certified bargaining representative for Unit "I" which consisted of the Category III peace officers employed by the Executive Branch of the State of Nevada. That bargaining unit was one of the beneficiaries of the COLA awarded by Arbitrator Belkin in the interest arbitration between AFSCME Local 4041 and the State of Nevada.

As noted in footnote 1 to the Petition on page 2, AFSCME Local 4041 ceased being the certified bargaining representative for Unit I by order of the EMRB on December 29, 2022. Proposed Intervenor FOP Lodge 21 was the new certified bargaining representative for Unit I which replaced AFSCME Local 4041. (Exhibit "1").

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II. ARGUMENT

Intervention is governed tby NRCP 24 which states in pertinent part:

> (a) **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:
>
> (1) is given an unconditional right to intervene by a state or federal statute; or
>
> (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.
>
> (b) **Permissive Intervention.**
>
> (1) **In General.** On timely motion, the court may permit anyone to intervene who:
>
> (A) is given a conditional right to intervene by a state or federal statute; or
>
> (B) has a claim or defense that shares with the main action a common question of law or fact.

The employees of Bargaining Unit I, now represented by FOP Lodge 21, clearly have an "interest relating to the... property or transaction that is the subject of the action" as they are to receive the benefits of the COLA just as the remaining bargaining units still represented by AFSCME Local 4041. It is unclear as to whether AFSCME Local 4041 will be in a position to adequately represent the interests of Unit I employees for purposes of NRCP 24(a)(2). FOP Lodge 21 certainly has a claim that shares with the main action brought by AFSCME Local 4041 common questions of law or fact with the meaning of subsection (b)(1)(B).

III. CONCLUSION

For all of the reasons set forth above the court should grant FOP Lodge 21's Motion to Intervene in this matter. A pleading setting forth the claim of FOP Lodge 21 is attached hereto as Exhibit "2".

AFFIRMATION

Pursuant to First Judicial District Court Rule 3.6(a), FOP Nevada C.O. Lodge 21 affirms that this Document does not include the personal information of any person, as defined in NRS 239B.030(4).

DATED this 19th day of September 2023.

LAW OFFICE OF DANIEL MARKS

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(702) 386-0536: FAX (702) 386-6812
Attorneys for Intervenor

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS and that on the 19th day of September 2023, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope with first-class postage fully prepaid thereon, a true and correct copy of the above and foregoing MOTION TO INTERVENE BY FRATERNAL ORDER OF POLICE NEVADA C.O. LODGE 21, to the address as follows:

Nathan R. Ring, Esq.
STRANCH, JENNINGS & GARVEY, PLLC
3100 W. Charleston Blvd., Suite 208
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nring@stranchlaw.com
Counsel for Plaintiff

Aaron Ford, Attorney General
OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701

An employee of the
LAW OFFICE OF DANIEL MARKS

EXHIBIT 1

EXHIBIT 1

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

IN RE: CATEGORY III PEACE OFFICERS BARGAINING UNIT "I" REQUEST FOR ELECTION BY FRATERNAL ORDER OF POLICE NEVADA C.O. LODGE 21 PURSUANT TO NRS 288.525(2)(a)(1)	Case No. 2022-014 **NOTICE OF ENTRY OF ORDER** **ITEM NO. 883**

TO: Petitioner FOP Nevada C.O. Lodge 21 and its attorneys of record, by and through their counsel, Daniel Marks, Esq. and Adam Levine, Esq., and Law Office of Daniel Marks;

TO: AFSCME, LOCAL 4041, by and through its representative, Fernando R. Colon; and its counsel, Jessica Guerra, Esq., Branstetter, Stranch & Jennings, PLLC

TO: State of Nevada, Department of Administration, Human Resources Management.

PLEASE TAKE NOTICE that the **ORDER ON RESULTS OF THE ELECTION** was entered in the above-entitled matter on December 29, 2022.

A copy of said order is attached hereto.

DATED this 29th day of December 2022.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY _____
MARISU ROMUALDEZ ABELLAR
Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 29th day of December 2022, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Fernando R. Colon, Representative
AFSCME Local 4041
1107 17th Street, N.W., Suite 900
Washington, DC 20036

Jessica Guerra, Esq.
Branstetter, Stranch & Jennings, PLLC
703 S. 8th Street
Las Vegas, NV 89101

Law Office of Daniel Marks
Daniel Marks, Esq.
Adam Levine, Esq.
610 South Ninth Street
Las Vegas, NV 89101

Mandee Bowsmith
Interim Administrator, Human Resources Management
State of Nevada
Department of Administration
209 E. Musser Street
Carson City, NV 89701

MARISU ROMUALDEZ ABELLAR
Executive Assistant

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

IN RE: CATEGORY III PEACE OFFICERS BARGAINING UNIT "I" REQUEST FOR ELECTION BY FRATERNAL ORDER OF POLICE NEVADA C.O. LODGE 21 PURSUANT TO NRS 288.525(2)(a)(1)	Case No. 2022-014 **ORDER ON RESULTS OF THE ELECTION** **En Banc** **ITEM NO. 883**

On December 29, 2022, this matter came before the State of Nevada, Government Employee-Management Relations Board (Board) for consideration and decision pursuant to the provisions of the Employee-Management Relations Act (NRS Chapter 288, EMRA) and NAC 288. At issue was certification of the results of the recently held election.

History

On October 4, 2022, Complainant filed a Request for Election. After a review of the record, including the staff audit of the request, the Board deliberated on October 13, 2022, and decided to grant the request for an election and recommend an election be held pursuant to NRS 288.525(2)(a)-(c). Thereupon, on November 3, 2022, the Board ordered the holding of a representation election, including the adoption of the election plan as proposed by the Commissioner.

The election closed on December 12, 2022, and a counting of the ballots was completed on December 13, 2022. A copy of the Tally of Ballots is attached hereto. Section 5.01 of the Election Plan allowed any party to file objections as to the conduct of the election by December 23, 2022. None were filed.

NRS 288.530(4) states the standard for determining the outcome of an election, which reads as follows:

4. If a labor organization receives a majority of the votes cast at the initial election or at any runoff election, the Board shall designate the labor organization as the exclusive representative of the bargaining unit.

Thus, according to the standard used for determining the outcome of the election, it is determined that the Fraternal Order of Police Nevada C.O. Lodge 21 received a majority of the votes cast and thus is designated as the exclusive representative of the bargaining unit.

ORDER

Based on the foregoing, it is hereby DECLARED and ORDERED that the Fraternal Order of Police Nevada C.O. Lodge 21 is hereby designated as the exclusive representative of State of Nevada Bargaining Unit I (i.e., Category III Peace Officers) effective immediately and that all prior designations of exclusive representatives for this bargaining unit are hereby null and void.

Dated this 29th day of December 2022.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: _____
BRENT ECKERSLEY, ESQ., Chair

By: _____
SANDRA MASTERS, Vice-Chair

By: _____
MICHAEL J. SMITH, Board Member

EXHIBIT 2

EXHIBIT 2

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IN THE FIRST DISTRICT COURT OF

THE STATE OF NEVADA, IN AND FOR CARSON CITY

AMERICAN FEDERATION OF STATE COUNTY & MUNICIPAL EMPLOYEES, LOCAL 4041, not-for-profit voluntary membership association and labor organization,

Plaintiff,

v.

JOSEPH M. LOMBARDO, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF ADMINISTRATION, a political subdivision of the State of Nevada; JACK ROBB, Director of the Nevada Department of Administration in his official capacity; NEVADA DIVISION OF HUMAN RESOURCE MANAGEMENT, a political subdivision of the State of Nevada; MANDEE BOWSMITH, Administrator of the Nevada Division of Human Resource Management in her official capacity,

Defendants.

FRATERNAL ORDER OF POLICE NEVADA C.O. LODGE 21

Intervenor Plaintiff.

Case No.: 23 EW 00016 1D
Dept.: I

PETITION FOR WRIT OF MANDAMUS AND CONFIRMATION OF ARBITRATION AWARD

Arbitration Exemption under Nevada Arbitration Rule 3(A): Writ of Mandamus (Extraordinary Relief) and Matter Previously Agreed in Writing and Arbitrated

PETITION FOR WRIT OF MANDAMUS AND CONFIRMATION OF ARBITRATION AWARD

Intervenor, Fraternal Order Of Police Nevada C.O. Lodge 21 ("Intervenor"), by and through its undersigned counsel, Adam Levine, Esq. of the Law Office of Daniel Marks brings this Complaint for a Writ of Mandamus and Order Confirming Arbitration Award against Joseph M. Lombardo, in his official capacity as Governor of the State of Nevada; Nevada Department of Administration, a political subdivision of the State of Nevada; Jack Robb, Director of the Nevada Department of Administration in his official capacity; Nevada Division of Human Resource Management, a political subdivision of the State of Nevada; Mandee Bowsmith, Administrator of the Nevada Division of Human Resource Management in her official capacity as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to issue a writ of mandamus pursuant to NRS 34.160 and has jurisdiction to confirm an arbitration award under NRS 38.239.

2. Venue is proper in this Court under NRS 13.010, NRS 13.040, and NRS 34.160.

PARTIES

3. Intervenor Plaintiff FRATERNAL ORDER OF POLICE NEVADA CO LODGE 21 is a not-for-profit corporation organized and existing under the laws of the State of Nevada and is the certified collective bargaining representative for all employees within Unit I of the Nevada Executive Department.

4. Plaintiff AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, LOCAL 4041 (hereafter "AFSCME Local 4041"), is a not for profit voluntary membership association and is the certified collective bargaining representative for employees within Units A, E, and F of the Nevada Executive Department.

///

5. Defendant, JOSEPH M. LOMBARDO, is the Governor of the State of Nevada and as such is the chief executive officer of the state and the head of the Executive Department of state government.

6. Defendant, NEVADA DEPARTMENT OF ADMINISTRATION, is a political subdivision of the State of Nevada, which administers and oversees various state agencies including Defendant, Nevada Department of Human Resource Management.

7. Defendant, JACK ROBB, currently serves as the Director of Defendant, Nevada Department of Administration, has held that role since January 2023, and is responsible for the actions and inactions of the Department of Administration.

8. Defendant, NEVADA DIVISION OF HUMAN RESOURCE MANAGEMENT, is a political subdivision of the State of Nevada, with responsibility for central payroll and employee records, compensation, classification and recruitment, employee and management services, agency human resource services, and equal employment opportunity.

9. Defendant, MANDEE BOWSMITH, serves as the Administrator of Defendant, Nevada Division of Human Resource Management, has served in that role since November 2022, and is responsible for the actions and inactions of the Division of Human Resource Management.

GENERAL FACTUAL ALLEGATIONS

10. Intervenor Plaintiff restates the allegations set forth in of paragraphs 9 through 75 of the Petition for Writ of Mandamus and Confirmation of Arbitration Award filed by AFSCME Local 4041 on September 5, 2023 with this court, and incorporates the same herein by reference.

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FIRST CAUSE OF ACTION
WRIT OF MANDAMUS
(Against All Defendants)

11. Intervenor Plaintiff restates the allegations set forth in paragraphs 76 through 99 of the Petition for Writ of Mandamus and Confirmation of Arbitration Award filed by AFSCME Local 4041 on September 5, 2023 with this court, and incorporates the same herein by reference.

SECOND CAUSE OF ACTION
CONFIRMATION OF ARBITRATION AWARD
(Against All Defendants)

12. Intervenor Plaintiff restates the allegations set forth in paragraphs 100 through 106 of the Petition for Writ of Mandamus and Confirmation of Arbitration Award filed by AFSCME Local 4041 on September 5, 2023 with this court, and incorporates the same herein by reference.

PRAYER FOR RELIEF

WHEREFORE, Intervenor respectfully requests this District Court enter the following relief:

1. The Court to issue a writ of mandamus commanding Governor Joseph Lombardo, the Nevada Department of Administration, Director Jack Robb, the Nevada Division of Human Resource management, and Administrator Bowsmith to provide payment of the COLA adjustments awarded under Arbitrator Belkin's decision and as appropriated by the Legislature under Senate Bill 440 of the 2023 Nevada Legislative Session to Executive Department employees within Units A, E, F and I:

2. The Court confirm the arbitration award of Arbitrator Belkin and reduce that award to a judgment under NRS Chapter 38;

3. For entry of a collectible judgment for the amount of COLA owed to the described Executive Department employees;

4. Payment of Intervenor's reasonable attorney's fees and costs incurred herein; and

5. For such other and further relief as may be just, equitable, and proper, to effect the necessary result required in this matter.

AFFIRMATION

Pursuant to First Judicial District Court Rule 3.6(a), FOP Nevada C.O. Lodge 21 affirms that this Document does not include the personal information of any person, as defined in NRS 239B.030(4).

DATED this 19th day of September 2023.

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EXHIBIT C

EXHIBIT C

ORIGINAL

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WILLIAM SCOTT HOEN
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DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, LOCAL 4041, a not-for-profit voluntary membership association and labor organization,

Plaintiff,

vs.

JOSEPH M. LOMBARDO, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF ADMINISTRATION, a political subdivision of the State of Nevada; JACK ROBB, Director of the Nevada Department of Administration in his official capacity; NEVADA DIVISION OF HUMAN RESOURCE MANAGEMENT, a political subdivision of the State of Nevada; MANDEE BOWSMITH, Administrator of the Nevada Division of Human Resource Management in her official capacity,

Defendants.

Case No. 23 EW 00016 1B

Dept. No. I

ORDER DENYING PETITION FOR WRIT OF MANDAMUS AND CONFIRMATION OF ARBITRATION AWARD

This matter came before this Court on November 30, 2023. Nathan R. Ring appeared on behalf of Plaintiffs, and Nathan C. Holland appeared on behalf of Defendants.

The Court, having heard the argument of counsel and reviewed the pleadings on file, finds and concludes that Plaintiffs have not shown their entitlement to writ relief, nor have

they shown that confirmation of the arbitration award is proper. As a result, the Court denies Plaintiff's writ petition and motion for confirmation.

I. Legal Standards

A writ of mandamus is an "extraordinary remedy," and the "burden is on the petitioner to demonstrate that extraordinary relief is warranted." *Valley Health Sys., LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. 167, 170–71, 252 P.3d 676, 678 (2011). It may be issued to compel the performance of an act "already required by law." *Mineral Cty. v. State,* 117 Nev. 235, 242–43, 20 P.3d 800, 805 (2001).

When interpretating a statute, Nevada courts "look to its plain language." *Smith v. Zilverberg*, 137 Nev. 65, 72, 481 P.3d 1222, 1230 (2021). If the plain language is unambiguous, it must be enforced as written. *Id.* If it is ambiguous, courts "examine the provision's legislative history and the scheme as a whole to ascertain the Legislature's intent." *Id.*

II. Writ of Mandamus

A. NRS 288.505(5)

Plaintiffs seek a writ of mandamus commanding Defendants to "provide compensation in the form of the [cost of living adjustment] awarded in Arbitrator Belkin's decision." Pet. ¶ 91. NRS 288.505 bars Plaintiff's requested writ of mandamus. That section provides in relevant part that "[i]f there is a conflict between any provision of [a collective-bargaining agreement] and . . . NRS 288.580, the provision of the agreement prevails *unless the Legislature is required to appropriate money to implement the provision.*" NRS 288.505(5)(c) (emphasis added). In other words, if an interest-arbitration award requires an appropriation, an appropriation, by law, is required.

The 3% cost of living adjustment ("COLA") ordered by the arbitrator exceeded the amount previously appropriated, so a new appropriation was necessary. Because that money was never appropriated, there was no duty, or ability, for Defendants to pay the 3% COLA. *See* NRS 288.505(5)(c).

///

The arbitrator himself recognized that he could not award unappropriated compensation. His decision explained that funding the collective-bargaining agreement ("CBA") "is the sole function of the State Legislature" and that he lacked "the authority to order the expenditure of the funds." Pet. Ex. 2, at 13. He selected Plaintiff's proposal, but he never purported to order its funding. *Id.* Ex. 2, at 15–16. Plaintiff thus seeks relief that is contrary to both the statute and to the arbitration award itself.

Plaintiff's international affiliate testified to the same effect during the Nevada Legislature's drafting of NRS chapter 288. Its director of research and collective bargaining services testified that the "Legislature retains its discretion to disapprove of an arbitrator's award involving the appropriation of money." Minutes of Senate Committee on Government Affairs at 10–11, 80th Leg. (Nev. Apr. 4, 2019).

Plaintiff's reading of NRS 288.505 is unreasonable. It contends that NRS 288.505(5)(c)'s phrase "[e]xcept as otherwise provided in NRS 284.4086, a provision of chapter 284 or 287 of NRS or NRS 288.570, 288.575 or 288.580" means that NRS 288.580 arbitrations are excluded from NRS 288.505's rule that a CBA provision that requires an appropriation cannot be enforced without legislation. That would make the text nonsensical. Excepting everything up to "NRS 288.580" would make the statute read "[i]f there is a conflict between any provision of [a CBA] and: the provision prevails unless the Legislature is required to appropriate money to implement the provision." *See* NRS 288.505(5).

Plaintiff's reading would also violate the canon against superfluity. *See S. Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005). That is because the whole phrase is: "Except as otherwise provided in NRS 284.4086, *a provision of chapter 284* or 287 of NRS or NRS 288.570, 288.575 or 288.580." NRS 288.505(5)(c) (emphasis added). NRS 284.4086 is already a "provision of chapter 284," so the Legislature would not have specifically identified it unless it was separate from "a provision of chapter 284 or 287 of NRS or NRS 288.570, 288.575 or 288.580." It is: "a provision of chapter 284

///

or 287 of NRS, or NRS 288.570, 288.575 or 288.580" is the rule while "NRS 284.4086" is the exception.

Defendants were not contractually bound to pay the compensation in the arbitration award. The collective-bargaining agreement provided only that the parties would use the NRS 288.575 arbitration procedure, not that that arbitration would supersede NRS 288.505's appropriation requirement. Pet. ¶ 31. Even if Defendants were contractually bound to follow the arbitrator's decision, that decision itself disclaimed any ability to "order the expenditure of funds." *Id.* Ex. 2, at 13.

The Board of Examiners' approval did not satisfy NRS 288.505(5)'s requirements. The Board of Examiners approved the compensation subject to the required appropriation, as it does whenever it approves a CBA. *See* NRS 288.505(5)(c). It did not and could not appropriate the funds itself.

Vetoed legislation did not satisfy NRS 288.505(5)'s appropriation requirement. An appropriation must be "made by law." Nev. Const. art. 4, § 19. A bill does not "become[] a law" until the Governor signs it or the Legislature overrides his veto with a two-thirds vote. *Id.* art. 4, § 35. The Governor's approval is as integral to the legislative process as the Assembly and Senate's votes. *Cf. Risser v. Thompson*, 930 F.2d 549, 554 (7th Cir. 1991) (Posner, J.) ("That governors have some legislative power is the premise of any gubernatorial veto power."). The Court rejects Plaintiff's theory that the Legislature can pass an appropriation immune from the veto power if it is funding an arbitration award.

B. The Appropriations Clause and the State Budget Act

In the alternative, the Appropriations Clause and the State Budget Act bar the writ that Plaintiff seeks. The Appropriations Clause provides that "[n]o money shall be drawn from the treasury but in consequence of appropriations made by law." Nev. Const. art. 4, § 19. Plaintiff would read NRS 288.505(5) as permitting unelected arbitrators to draw money from the treasury without an appropriation in order to pay compensation. The Court declines to read the statute in a way that would violate the Nevada Constitution. *See Degraw v. The Eighth Jud. Dist. Ct.*, 134 Nev. 330, 333, 419 P.3d 136, 139 (2018).

Plaintiff's reading conflicts with the State Budget Act as well. That statute makes it unlawful to "to bind, or attempt to bind," the State "in any amount in excess of the specific amount provided by law." NRS 353.260. If an arbitrator can bind the State to pay unappropriated compensation, then any CBA with an arbitration agreement arguably violates the State Budget Act. The better reading is that an arbitration award still requires legislative action if it exceeds existing appropriations.

III. Confirmation of Arbitration Award

A. NRS Chapter 288

The Court cannot confirm the arbitration award because NRS chapter 288 does not provide authority for judicial enforcement of an interest-arbitration award. As part of its comprehensive system for collective bargaining, NRS chapter 288 details the arbitration procedure to be used when the parties bargain to impasse. NRS 288.570 to 288.580. Nothing in that procedure permits a motion to confirm an interest-arbitration award. *See* NRS 288.580. Instead, the statute provides that an arbitrator's decision is "final and binding" (though it may still be subject to appropriation requirements). NRS 288.580(4); *see* NRS 288.505(5)(c).[1]

Plaintiff contends that the Uniform Arbitration Act of 2000, NRS 38.206 to 38.259, permits confirmation of the award. Pet. ¶¶ 101–03. The problem is that that statute is inapplicable to interest arbitration. The Legislature expressly chose a different set of rules—the Government Employee Management Relations Board's regulations—to govern this type of arbitration. NRS 288.575(4). Because NRS chapter 288 is the more specific statute, it prevails over any contradictory provision in the Uniform Arbitration Act. *See State Dep't of Taxation v. Masco Builder Cabinet Grp.*, 129 Nev. 775, 778, 312 P.3d 475, 478 (2013).

The Legislature's decision to not provide a mechanism for judicial enforcement of interest arbitration decisions was of a piece with NRS chapter 288's overall design. As the

[1] NRS 288.570 to NRS 288.580 speaks only to arbitration decisions after impasse. Nothing in this Order is intended to reach other forms of labor arbitration.

Court has explained, only a legislative appropriation can draw money from the treasury to compensate public employees. The Legislature vindicated that rule by enacting NRS 288.505, which makes an interest-arbitration award that requires funding subject to appropriation. NRS 288.505(5)(c). It would not have made sense for the Legislature to carefully preserve the appropriation requirement, but then allow a party to try to circumvent it through judicial enforcement of an arbitration award.[2]

ORDER

For the reasons stated above, the Court DENIES Plaintiff's petition for a writ of mandamus and confirmation of arbitration award. Nathan C. Holland, counsel for Defendants, will serve notice of entry of this Order on all other parties and file proof of such service within seven days after the date the Court sent this order to him.

IT IS SO ORDERED this 12th of December, 2023.

DISTRICT JUDGE

Submitted by:

NATHAN C. HOLLAND (Bar No. 15247)
Deputy Attorney General
KIEL B. IRELAND (Bar No. 15368)
Deputy Solicitor General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717
T: (775) 684-1254
E: nholland@ag.nv.gov
Attorneys for Defendants

[2] The Court's confirmation of a different arbitration award in a different case does not control this case. The applicability of NRS chapter 38 was not at issue in that order.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on December 12th, 2023, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Nathan R. Ring, Esq.
Stranch, Jennings & Garvey, PLLC
3100 W Charleston Blvd., Suite 208
Las Vegas, NV 891012

Nathan C. Holland, Deputy Attorney General
Kiel B. Ireland, Esq Deputy Solicitor General
State of Nevada
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100 North Carson Street
Carson City, NV 89701-4717

Daniel Marks, Esq.
Adam Levine, Esq.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, NV 89101

Julie Harkleroad
Judicial Assistant, Dept. 1

EXHIBIT D

EXHIBIT D

AARON D. FORD
Attorney General
GREGORY OTT (Bar No. 10950)
Chief Deputy Attorney General
KIEL B. IRELAND (Bar No. 15368)
Deputy Solicitor General
NATHAN C. HOLLAND (Bar No. 15247)
Deputy Attorney General
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Attorneys for Defendant, State

ORIGINAL

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, LOCAL 4041, a not-for-profit voluntary membership association and labor organization,

Plaintiff,

vs.

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Defendants.

Case No. 23 EW 00016 1B

Dept. No. I

NOTICE OF ENTRY OF ORDER DENYING PETITION FOR WRIT OF MANDAMUS AND CONFIRMATION OF ARBITRATION AWARD

TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU, AND EACH OF YOU, please take notice that an Order Denying Petition for Writ of Mandamus and Confirmation of Arbitration Award was entered in the above-entitled matter on the 12th day of December, 2023. A copy of said Order is attached hereto as Exhibit 1.

DATED this 14th day of December, 2023.

AARON D. FORD
Attorney General

By: _____
KIEL B. IRELAND (Bar No. 15368)
Deputy Solicitor General

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 14th day of December, 2023, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER DENYING PETITION FOR WRIT OF MANDAMUS AND CONFIRMATION OF ARBITRATION AWARD, by placing said document in the U.S. Mail, postage prepaid, addressed to:

Nathan R. Ring, Esq.
STRANCH, JENNINGS & GARVEY, PLLC
3100 W. Charleston Blvd., Ste. 208
Las Vegas, NV 89102
nring@stranchlaw.com

Fernando Colon, Esq.
Matthew Blumin, Esq.
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1625 L St., N.W.
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_____
An employee of the Office of the
Attorney General

INDEX OF EXHIBITS

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1.	Order Denying Petition for Writ of Mandamus and Confirmation of Arbitration Award filed December 12, 2023	6

ORIGINAL

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I. Legal Standards

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The 3% cost of living adjustment ("COLA") ordered by the arbitrator exceeded the amount previously appropriated, so a new appropriation was necessary. Because that money was never appropriated, there was no duty, or ability, for Defendants to pay the 3% COLA. *See* NRS 288.505(5)(c).

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The arbitrator himself recognized that he could not award unappropriated compensation. His decision explained that funding the collective-bargaining agreement ("CBA") "is the sole function of the State Legislature" and that he lacked "the authority to order the expenditure of the funds." Pet. Ex. 2, at 13. He selected Plaintiff's proposal, but he never purported to order its funding. *Id.* Ex. 2, at 15–16. Plaintiff thus seeks relief that is contrary to both the statute and to the arbitration award itself.

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Plaintiff's reading of NRS 288.505 is unreasonable. It contends that NRS 288.505(5)(c)'s phrase "[e]xcept as otherwise provided in NRS 284.4086, a provision of chapter 284 or 287 of NRS or NRS 288.570, 288.575 or 288.580" means that NRS 288.580 arbitrations are excluded from NRS 288.505's rule that a CBA provision that requires an appropriation cannot be enforced without legislation. That would make the text nonsensical. Excepting everything up to "NRS 288.580" would make the statute read "[i]f there is a conflict between any provision of [a CBA] and: the provision prevails unless the Legislature is required to appropriate money to implement the provision." *See* NRS 288.505(5).

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Plaintiff's reading conflicts with the State Budget Act as well. That statute makes it unlawful to "to bind, or attempt to bind," the State "in any amount in excess of the specific amount provided by law." NRS 353.260. If an arbitrator can bind the State to pay unappropriated compensation, then any CBA with an arbitration agreement arguably violates the State Budget Act. The better reading is that an arbitration award still requires legislative action if it exceeds existing appropriations.

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Plaintiff contends that the Uniform Arbitration Act of 2000, NRS 38.206 to 38.259, permits confirmation of the award. Pet. ¶¶ 101–03. The problem is that that statute is inapplicable to interest arbitration. The Legislature expressly chose a different set of rules—the Government Employee Management Relations Board's regulations—to govern this type of arbitration. NRS 288.575(4). Because NRS chapter 288 is the more specific statute, it prevails over any contradictory provision in the Uniform Arbitration Act. *See State Dep't of Taxation v. Masco Builder Cabinet Grp.*, 129 Nev. 775, 778, 312 P.3d 475, 478 (2013).

The Legislature's decision to not provide a mechanism for judicial enforcement of interest arbitration decisions was of a piece with NRS chapter 288's overall design. As the

[1] NRS 288.570 to NRS 288.580 speaks only to arbitration decisions after impasse. Nothing in this Order is intended to reach other forms of labor arbitration.

Court has explained, only a legislative appropriation can draw money from the treasury to compensate public employees. The Legislature vindicated that rule by enacting NRS 288.505, which makes an interest-arbitration award that requires funding subject to appropriation. NRS 288.505(5)(c). It would not have made sense for the Legislature to carefully preserve the appropriation requirement, but then allow a party to try to circumvent it through judicial enforcement of an arbitration award.[2]

ORDER

For the reasons stated above, the Court DENIES Plaintiff's petition for a writ of mandamus and confirmation of arbitration award. Nathan C. Holland, counsel for Defendants, will serve notice of entry of this Order on all other parties and file proof of such service within seven days after the date the Court sent this order to him.

IT IS SO ORDERED this 12th of December, 2023.

DISTRICT JUDGE

Submitted by:

NATHAN C. HOLLAND (Bar No. 15247)
Deputy Attorney General
KIEL B. IRELAND (Bar No. 15368)
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Attorneys for Defendants

[2] The Court's confirmation of a different arbitration award in a different case does not control this case. The applicability of NRS chapter 38 was not at issue in that order.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on December 12th, 2023, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Nathan R. Ring, Esq.
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Judicial Assistant, Dept. 1