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STATE OF NEVADA
E.M.B.S.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CLARK COUNTY EDUCATION
ASSOCIATION and DAVITA CARPENTER,

Case No. 2020-008

Complainants,

NOTICE OF ENTRY ORDER

v.

CLARK COUNTY SCHOOL DISTRICT,

ITEM NO. 869

Respondent.

CLARK COUNTY SCHOOL DISTRICT,

Counter-Complainant,

v.

CLARK COUNTY EDUCATION
ASSOCIATION,

Counter-Respondent.

18 TO: Complainants and Counter-Respondent and their attorneys of record Adam Levin, Esq. and Law
19 Office of Daniel Marks;

20 TO: Respondent and Counter-Complainant its attorneys of record Jon Okazaki, Esq. and the Clark
21 County School District Office of the General Counsel;

22 TO: Intervener ESEA and its attorneys of record Frank Flaherty, Esq. and Dyer Lawrence, LLP;

23 TO: Intervener CCASAPE and its attorneys of record Christopher Hume, Esq. and Brownstein Hyatt
24 Farber Schreck, LLP.

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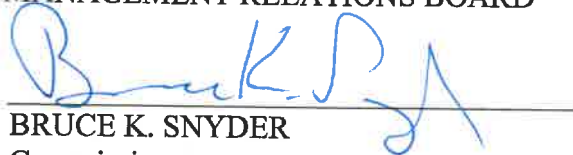
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1 PLEASE TAKE NOTICE that the **DECLARATORY ORDER** was entered on the 7th day of
2 December 2020, a copy of which is attached hereto.

3 DATED this 7th day of December 2020.

4 GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6 BY:


7 BRUCE K. SNYDER
8 Commissioner

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1 CERTIFICATE OF MAILING

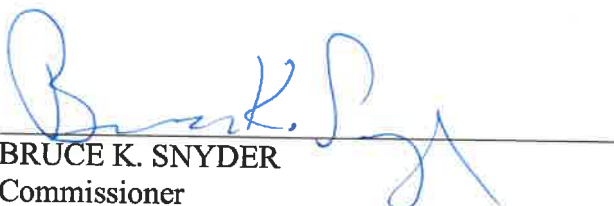
2 I hereby certify that I am an employee of the Government Employee-Management Relations
3 Board, and that on the 7th day of December 2020, I served a copy of the foregoing NOTICE OF
4 ENTRY OF ORDER by mailing a copy thereof, postage prepaid to:

5 Adam Levine, Esq.
6 Law Office of Daniel Marks
7 610 S. Ninth Street
8 Las Vegas, NV 89101

9 Jon Okazaki, Esq.
10 Crystal J. Herrera, Esq.
11 Clark County School District
12 Office of the General Counsel
13 5100 West Sahara Ave.
14 Las Vegas, NV 89101

15 Frank Flaherty, Esq.
16 Dyer Lawrence, LLP
17 2805 Mountain Street
18 Carson City, NV 89703

19 Christopher Hume, Esq.
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21 100 North City Parkway, Suite 1600
22 Las Vegas, NV 89106-4614

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BRUCE K. SNYDER
Commissioner

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CLARK COUNTY EDUCATION
ASSOCIATION and DAVITA CARPENTER,

Complainants,

v.

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

Case No. 2020-008

DECLARATORY ORDER

PANEL C

ITEM NO. 869

CLARK COUNTY SCHOOL DISTRICT,

Counter-Complainant,

v.

CLARK COUNTY EDUCATION
ASSOCIATION,

Counter-Respondent.

On November 17, 2020, this matter came before the State of Nevada, Government Employee-Management Relations Board for consideration and decision pursuant to the provisions of the Employee-Management Relations Act (EMRA, NRS Chapter 288) and NAC Chapter 288. Solely at issue was Clark County School District's (CCSD) Counterpetition for Declaratory Order.¹

CCSD asks this Board for an order regarding the applicability of NRS 388G.610 to subjects of mandatory bargaining under NRS 288.150. Specifically, CCSD questions whether NRS 288.150(2)(u) allows CCSD to assign an employee in a school without the school's consent in light of NRS 388G.610.

¹ The Notice of Vacated Hearing provides that "at the prehearing conference held [by the Commissioner without the Board on] October 22, 2020 there was agreement that the Board should first deliberate on and issue a decision with respect to the pending Petition for Declaratory Order and that once that has been done, the issue of conducting any hearing would then be addressed." In the interests of administrative economy, the Board agrees to first rule on the subject petition and leave the remaining issues for a future hearing.

1 Or, stated in another way, “[w]hether the District may limit a local school precinct’s autonomy to make
2 placement decisions for a school within the District?”

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

17 Preliminarily, NAC 288.380 (*emphasis added*) provides that any local government employer
18 “may petition the Board for a declaratory order regarding the applicability or interpretation of any
19 statutory provision or of any regulation or decision of the Board.” “The purpose of a declaratory
20 statement is to address the applicability of a statutory provision or order or rule of the agency in
21 particular circumstances.” *City of Reno v. Reno Firefighters Local 731, Int’t Ass’n of Firefighters*, Item
22 777A, Case No. A1-046049 (2012).

23 The Board’s authority is limited to matters arising out of the interpretation of, or performance
24 under, the provisions of the EMRA. NRS 288.110(2). The Board does not have the jurisdiction to find
25 a violation of NRS Chapter 388G, breach of contract/collective bargaining agreement, or determine if
26 NRS 388G.610 impacted the parties’ negotiated agreements. This is expressly beyond the Board’s
27 jurisdiction, which is well established. *See* NRS 288.110(2); *City of Reno v. Reno Police Protective*
28 *Ass’n*, 98 Nev. 472, 474–75, 653 P.2d 156, 158 (1982) (“the EMRB merely deferred to NRS ch. 288,

1 the statute under which it operates. While the EMRB did discuss the Reno City Charter in its decision,
2 our review of that decision reveals that the board only did so because the City placed its Charter in issue
3 by relying on it as justification for its refusal to bargain with the RPPA. The EMRB did not interpret the
4 Charter.”); *UMC Physicians Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 89-90,
5 178 P.3d 709, 713 (2008); *City of Henderson v. Kilgore*, 122 Nev. 331, 333, 131 P.3d 11, 12 (2006);
6 *Int’l Ass’n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item No. 811 (2015)
7 (“IAFF argues that the merit personnel system itself should have opened this appointment... However,
8 it is not within our purview to determine whether or not the appointment... complied with the County’s
9 merit personnel system. This Board authority is limited to matters arising under interpretation of, or
10 performance under, the Act”); *Simo v. City of Henderson*, Case No. A1-04611, Item No. 796 (2014);
11 *see e.g., Flores v. Clark Cty.*, Case No. A1-045990, Item No. 737 (2010); *Bonner v. City of N. Las*
12 *Vegas*, Case No. 2015-027 (2017), *aff’d Bonner v. City of North Las Vegas*, Docket No. 76408, 2020
13 WL 3571914, at 3 filed June 30, 2020, unpublished deposition (Nev. 2020); *Kerns v. LVMPD*, Case No.
14 2017-010 (2018); *Yu v. LVMPD*, Case No. 2017-025, Item No. 829 (2018).

15 The Board simply notes that, as further detailed below, NRS Chapter 388G.610 does not appear
16 to conflict with Chapter 288 and can be read to render a harmonious result.

17 NRS 288.150(2) provides for certain “mandatory subjects of bargaining” including “the policies
18 for the transfer and reassignment of teachers” “[e]xcept as otherwise provided in subsections 8 and 10”.
19 NRS 288.150(2)(u).² The EMRA is plain and unambiguous that these are mandatory subjects of
20 bargaining except as provided in those specifically detailed subsections.³ Had the Legislature intended

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22 ² Subsection 8 provides: “The board of trustees of a school district in which a school is designated as a turnaround school
23 pursuant to NRS 388G.400 or the principal of such a school, as applicable, may take any action authorized pursuant to NRS
24 388G.400, including, without limitation: (a) Reassigning any member of the staff of such a school; or (b) If the staff
25 member of another public school consents, reassigning that member of the staff of the other public school to such a school.”
26 Subsection 10 provides: “The board of trustees of a school district or the governing body of a charter school or university
27 school for profoundly gifted pupils may use a substantiated report of the abuse or neglect of a child or a violation of NRS
201.540, 201.560, 392.4633 or 394.366 obtained from the Statewide Central Registry for the Collection of Information
Concerning the Abuse or Neglect of a Child established by NRS 432.100 or an equivalent registry maintained by a
governmental agency in another jurisdiction for the purposes authorized by NRS 388A.515, 388C.200, 391.033, 391.104 or
391.281, as applicable. Such purposes may include, without limitation, making a determination concerning the assignment,
discipline or termination of an employee. Any provision of any agreement negotiated pursuant to this chapter which
conflicts with the provisions of this subsection is unenforceable and void.”

28 ³ *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009) (“We read statutes within a statutory scheme
harmoniously with one another to avoid an unreasonable or absurd result.”); *Williams v. Clark Cty. Dist. Attorney*, 118 Nev.
473, 484-85, 50 P.3d 536, 543 (2002) (“In determining the legislature’s intent, we should consider what reason and public

1 to exempt NRS 388G.610(2)(a) from the provisions of NRS 288.150, it could have stated so just as it
2 does in other provisions as further detailed herein.

3 The Board's initial concern here, which may be fully explored in a hearing in this matter, is with
4 condoning an unfettered right, one that completely extinguishes any bargaining obligations in the
5 context at issue (specifically as related to local school precincts right to selection).⁴ This was not
6 plainly provided for in statute, legislative history, or permissible aides of statutory interpretation to
7 suggest it was intended by the Legislature.⁵ Should the Legislature want to create a specific exception
8 or carve out, they are free to do so – as they did with other provisions at the same time in 2017. In

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10 policy indicate was intended, and we should avoid reaching absurd results. We are obliged to construe statutory provisions
11 so that they are compatible, provided that in doing so, we do not violate the legislature's intent.”); *Berkson v. LePome*, 126
12 Nev. 492, 497, 245 P.3d 560, 563–64 (2010) (“a statute will be construed in order to give meaning to its entirety, and this
13 court ‘will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the
14 legislation.”); *Zahavi v. State*, 131 Nev. Adv. Op. 7, 343 P.3d 595, 600 (2015) (“When construing various statutory
15 provisions, which are part of a ‘scheme,’ this court must interpret them ‘harmoniously’ and ‘in accordance with [their]
16 general purpose.”); *Double Diamond v. Second Jud. Dist. Ct.*, 131 Nev. 557, 562, 354 P.3d 641, 644 (2015) (“[t]he
17 [L]egislature is presumed to have intended a logical result, rather than an absurd or unreasonable one.”); *Union Plaza Hotel
18 v. Jackson*, 101 Nev. 733, 736, 709 P.2d 1020, 1022 (1985) (“We are not empowered to go beyond the face of a statute to
19 lend it a construction contrary to its clear meaning.”).

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21 ⁴ Simply because collective bargaining remains in other contexts does not dissuade our concern. Indeed, noticeably absent is
22 any authority for this proposition to extinguish or restrict a statutory right even in a limited context. The AGO submitted to
23 this Board indicated that many categories which are subjects of mandatory bargaining “are also subject to other state and
24 federal laws that narrow the permissible scope of negotiations” giving 3 examples. Notably, all of these categories insure to
25 the benefit of employees, not restricting or extinguishing rights (*i.e.*, setting minimum benefits). The AGO notes these
26 categories may be expanded through bargaining (*i.e.*, additional holidays) but never explains how a statute establishing
27 minimum labor standards (which an employer cannot negotiate below) could impair an upper limit or otherwise destroy a
28 benefit that an employee had previously enjoyed. Furthermore, as indicated, we are obligated to avoid reaching
unreasonable or absurd results, and the logical end to the argument is that any right may be extinguished in certain contexts
so long as it remains in others. This proposed rule could allow for only slivers of rights to remain, opening the door for
severely restricting rights (and extinguishing rights entirely in certain contexts) outside of the legislative process. It would
violate the purposes and policies of the EMRA including safeguarding employees’ rights. As explained herein, the
Legislature has the ability to restrict rights, has done so specifically as related to mandatory subjects, but choose not to here.
Indeed, the AGO provides: “Notably, the legislature has created multiple exemptions to NRS 288.150(2)(u) and may choose
to do so again in the future....” Thus, it is up for the Legislature to “do so again in the future” and not for this Board to do
so now.

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28 ⁵ To the extent that either statute is said to be ambiguous, the legislative history is seemingly clear. The Chair of the
Advisory Committee and Joint Sponsor of AB 469, Senator Michael Roberson, stated that “collective bargaining agreements
will not be affected by this and will still be handled at the central office.” Additionally, while “post-passage remarks of
legislators, however explicit, cannot serve to change the legislative intent of Congress expressed before the Act’s passage”,
CCEA provided an affidavit from Senator Roberson stating that “it was never the intent of the Nevada Legislature that
Assembly Bill 469 would curtail, limit, or eliminate any of the collective bargaining rights enumerated in NRS 288.”
Blanchette v. Connecticut Gen. Ins. Corps., 419 U.S. 102, 132, 95 S. Ct. 335, 353 (1974); *see also supra* Note 3; *N.L.R.B. v.
St. Francis Hosp. of Lynwood*, 601 F.2d 404, 415 (9th Cir. 1979) (“as our interpretation of the Remarks finds them to be
entirely consistent with our reading of the legislative history”); *Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1456
(9th Cir. 1992) (indicating these statements are relevant, though cannot “serve as reliable indicators of congressional
intent.”). The affidavit does not conflict with the Senator’s prior explanation of intent.

1 2017, via SB 287, the Legislature amended the EMRA. Specifically, the Legislature amended NRS
2 288.150(2)(u) to add an exception as well providing that any collective bargaining agreement that
3 prohibits certain actions are void. *See also infra* note 12.

4 Here, the Legislature chose not to do the same for the subject issue – the Board is not permitted
5 to presume the Legislature intended to do so and instead must follow the plain and unambiguous
6 language of the EMRA. *See, e.g., Local Gov't Employee-Mgmt. Relations Bd. v. Educ. Support*
7 *Employees Ass'n*, 134 Nev. 716, 429 P.3d 658 (2018).

8 In a recent ruling of this Board, we noted that it is up for the Legislative to create special carve
9 outs and it is not for this Board to guess what the Legislature might do on behalf of the citizens of this
10 great state. *Nevada Highway Patrol Ass'n v. State of Nevada Dep't of Public Safety*, Case No. 2020-
11 011 (2020). The Board noted its 2019 decision in *City of Elko v. Elko Police Officers Protective Ass'n*,
12 Case No. 2017-026, Item No. 831 (2019). In response to that case, the Legislature enacted SB 158 to
13 exempt only (1) police officers defined in NRS 288.215, (2) firefighters defined in NRS 288.215, and
14 (3) certain addition persons having the powers of a peace officer pursuant to NRS 289.150, 289.170,
15 289.180 or 289.190. The Legislature chose to leave the prohibitions of joint bargaining units for others
16 in place and thus only made specific exemptions. As such, the Legislature approved of the Board's
17 order in certain respects and choose to amend the EMRA for specific and defined purposes in other
18 respects. This is a further showing of the legislative prerogative in this case – perhaps the Legislature
19 would create a carve out for selection in all manners or perhaps just in specific and defined areas.

20 Next, while this Board can neither enforce nor find a violation as related to NRS 388G.610⁶,
21 NRS 388G.610(2)(a) is also plain and unambiguous. That provision provides: “The superintendent
22 shall transfer to each local school precinct the authority to carry out the following responsibilities: (a)
23 Select for the local school precinct” certain individuals. NRS 388G.610(2)(a) (emphasis added).

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26 ⁶ However, the Board may construe the parties' CBA and other provisions to resolve ambiguities as necessary to determine
27 whether or not a unilateral change has been committed. This is well established. *Jackson v. Clark County*, Case no. 2018-
28 007 (2019); *Boykin v. City of N. Las Vegas Police Dept.*, Item No. 674E, Case No. A1-045921 (2010), citing *NLRB v.*
Strong Roofing & Ins. Co., 393 U.S. 357 (1969), *NLRB v. C&C Plywood Corp.*, 385 U.S. 421 (1967); *N.L.R.B. v. Ne.*
Oklahoma City Mfg. Co., 631 F.2d 669, 675 (10th Cir. 1980); *Jim Walter Resources*, 289 NLRB 1441, 1449 (1988); *Kerns*
v. LVMPD, Case No. 2017-010 (2018); *Yu v. Las Vegas Metropolitan Dep't*, Case No. 2017-025, Item No. 829 (2018); *Int'l*
Ass'n of Fire Fighters, Local 4068 v. Town of Pahrump, Case No. 2017-009 (2018).

1 ESEA and CCEA argue that a superintendent can only transfer those management rights which
2 the superintendent possesses. They argue that if a subject, such as transfers of teachers, is a subject of
3 mandatory collective bargaining, it is outside the scope of management rights and cannot be transferred
4 by a superintendent. However, this misconstrues the EMRA. As indicated above, NRS 288.150(2) is
5 plain and unambiguous in its requirements that certain subjects require bargaining. The EMRA does
6 not provide that the employer has no ability for the transfer and reassignment of teachers. Instead, the
7 employer may take these actions so long as they are first submitted to the collective bargaining process
8 in good faith and not made unilaterally. *See, e.g., Las Vegas Police Protective Ass'n Metro, Inc. v. City*
9 *of Las Vegas*, Item No. 248, Case No. A1-045461 (1990); *Reno Police Protective Ass'n vs. Reno Police*
10 *Dep't*, Case No. A1-045626, Item No. 415B (2000), *aff'd sub nom in City of Reno v. Reno Police*
11 *Protective Ass'n*, 118 Nev. 889, 897, 59 P.3d 1212, 1217-18 (2002); *Boykin v. City of N. Las Vegas*,
12 Item. No. 674E, Case No. A1-045921 (2010); *Frabbiele v. City of N. Las Vegas*, Item No. 680I, Case
13 No. A1-045929 (2014); *Bisch v. The Las Vegas Metropolitan Police Dep't*, Item No. 705B, Case No.
14 A1-045955 (2010), *aff'd Bisch v. Las Vegas Metro Police Dep't*, 129 Nev. 328, 339, 302 P.3d 1108,
15 1116 (2013); *Barto v. City of Las Vegas*, Item No. 799, Case No. A1-046091 (2014); *O'Leary v. Las*
16 *Vegas Metropolitan Police Dep't*, Item No. 803, Case No. A1-046116 (2015); *D'Ambrosio v. Las*
17 *Vegas Metropolitan Police Dep't*, Item No. 808, Case No. A1-046119 (2015); *Brown v. Las Vegas*
18 *Metropolitan Police Dep't*, Item No. 818, Case No. 2015-013 (2016); *Krumme v. Las Vegas*
19 *Metropolitan Police Dep't*, Item No. 822, Case No. 2016-010 (2017); *Grunwald v. Las Vegas*
20 *Metropolitan Police Dep't*, Item No. 826, Case No. 2017-006 (2017); *Yu v. Las Vegas Metropolitan*
21 *Police Dep't*, Item No. 829, Case No. 2017-025 (2018); *Jackson v. Clark County*, Case No. 2018-007
22 (2019).

23 Thus, when NRS 388G.610(2)(a) indicates that the superintendent shall "transfer" to each local
24 school precinct the authority for selection, this is reasonably understood as transferring that authority in
25 all respects – including still being subject to bargaining obligations. NRS 388G does not provide
26 anything to the contrary.

27 As indicated, courts (and this Board) are required to adhere to the plain language of the statute.
28 Should the statute be ambiguous (including omissions), the task becomes to comb through the

1 legislative history as well as interpreting the statute in a manner that renders a reasonable result
2 consistent with the legislative scheme and spirit of the law as well as prohibiting interpretations that
3 would negate another provision. *See supra* note 3; *see also In re Orpheus Tr.*, 124 Nev. 170, 175, 179
4 P.3d 562, 565 (2008) (“This court must also interpret the statute ‘in light of the policy and spirit of the
5 law, and the interpretation should avoid absurd results.”); *State v. White*, 130 Nev. 533, 536, 330 P.3d
6 482, 484 (2014) (“Additionally, statutory construction should always avoid an absurd result.”); *Szydel*
7 *v. Markman*, 121 Nev. 453, 456–57, 117 P.3d 200, 202 (2005) (“Under the plain meaning rule, ‘[t]his
8 court will not look beyond the plain language of the statute, unless it is clear that this meaning was not
9 intended.”); *Webb v. Shull*, 128 Nev. 85, 89–90, 270 P.3d 1266, 1269 (2012) (prohibiting interpreting a
10 statute in a manner that would negate another provision); *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129
11 Nev. 492, 508, 306 P.3d 369, 380–81 (2013) (noting that “[w]hen two statutory provisions conflict, this
12 court employs the rules of statutory construction, and attempts to harmonize conflicting provisions so
13 that the act as a whole is given effect” and “[s]tatutes are interpreted so that each part has meaning.”);
14 *Szydel*, 121 Nev. at 457, 117 P.3d at 202-03 (2005) (“When two statutes are clear and unambiguous but
15 conflict with each other when applied to a specific factual situation, an ambiguity is created and we will
16 attempt to reconcile the statutes. In doing so, we will attempt to read the statutory provisions in
17 harmony, provided that this interpretation does not violate legislative intent.”).

18 However, 388G.610(2)(a) does not conflict with NRS 288.150(2). NRS 388G.610(2)(a) does
19 not purport to strip from employee organizations any of their rights under NRS 288; rather, the transfer
20 language under NRS 388G.610(2)(a) plainly provides that the authority of the superintendent is all that
21 a principal may acquire under the statute. *See Meriam-Webster.com* (defining “transfer” as “to cause
22 to pass from one to another”); *Black’s Law Dictionary* (2nd Ed.) (defining “transfer” as “[t]he passing
23 of a thing or of property from one person to another”).⁷ No party has provided this Board with a reason
24 or explanation why this authority cannot be transferred subject to the same obligations. The transfer of
25 authority to select teachers and other personnel for a local school precinct is thus best understood as a
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27 ⁷ NRS 288.150 does not require bargaining for the “selection” of teachers or any staff. Instead, NRS 288.150 requires
28 negotiations regarding “the policies for the transfer and reassignment of teachers”. As such, the Board’s Order is limited in
this respect. NRS 288.150(3)(a) additionally expressly reserves the right to “hire” and “assign” employees to the employer.

1 consideration in bargaining mandatory subjects – the right of selection in NRS 388G.610(2)(a), as
2 explained throughout NRS 388G, when bargaining mandatory subjects cannot be disregarded. **In**
3 **other words, NRS 388G.610(2)(a) plainly provides for the “transfer” of authority. The authority**
4 **that existed was subject to negotiation – nothing indicates rights were meant to be stripped upon**
5 **that transfer (instead the word “transfer” is plain and unambiguous).**

6 Moreover, NRS 388G.700 specifies: “The principal of the local school precinct shall select staff
7 for the local school precinct as necessary to carry out the plan of operation *from a list provided by the*
8 *superintendent.*” NRS 388G.700(2).⁸ Thus, the selection of staff by the principal is restricted. *See*
9 *also* NRS 388G.630(1)(c) (requiring local school precincts to remain in compliance with all applicable
10 federal, state and local laws). Reading NRS 388G.610 and NRS 388G.700 together, as required by
11 rules of statutory construction, it makes clear the Legislature did not provide for the local school
12 precincts to have unlimited authority and an unfettered right. The authority is subject to NRS
13 388G.610(3)(a) (indicating that CCSD is still responsible for negotiating in certain respects) and the list
14 provided by the superintendent from which the staff must be selected. If the Legislature had intended
15 to provide an unfettered right, they could have done so but instead chose not to.⁹ While CCASAPE
16 argues that NRS 388G.610 “is plain: the schools have complete autonomy to select their own staff from
17 eligible CCSD personnel”, this is not what the statute plainly provides and CCASAPE reads words into
18 the statute that plainly do not exist. *McKay v. Bd. of Cnty. Comm'rs*, 103 Nev. 490, 492, 746 P.2d 124,
19 125 (1987) (explaining that when a statute is silent, “it is not the business of this court to fill in alleged
20 legislative omissions based on conjecture as to what the [L]egislature would or should have done”);
21 *Maxwell v. State Indus. Ins. Sys.*, 109 Nev. 327, 330, 849 P.2d 267, 269 (1993) (“a court should not

22 _____
23 ⁸ NRS 388G.610(3)(a) provides in part that “a large school district shall remain responsible for paying for and carrying out
24 all other responsibilities necessary for the operation of the local school precincts and the large school district which have not
25 been transferred to the local school precincts pursuant to subsection 2...” This includes the responsibility of “[n]egotiating
26 the salaries, benefits and other conditions of employment of administrators, teachers and other staff necessary for the
operation of the local school precinct”. Subsection 2 provides: “The superintendent shall transfer to each local school
precinct the authority to carry out the following responsibilities: (a) Select for the local precinct the:” teachers,
administrators other than the principal, and other staff who work under the direct supervision of the principal. NRS
388G.610(2)(a).

27 ⁹ As ESEA provided: “Nothing in the text, let alone the legislative history, of AB 469 supports an assertion that the
28 Legislature sought to cast such procedures aside when it transferred authority” to local school precincts, and “[i]t is also
evident from the language within NRS 388G that the Legislature never intended to give local school precincts *carte blanche*
with regard to staffing decisions.”

1 'add to or alter [the language] to accomplish a purpose not on the face of the statute or apparent from
2 permissible extrinsic aids such as legislative history or committee reports.'").

3 The statute simply provides for the "transfer of authority" – the authority that already existed.
4 CCASAPE would thus have this Board disregard the plain language of the EMRA requiring that certain
5 topics are subject to negotiation despite any plain or unambiguous language for the extinguish of those
6 collective bargaining rights in the context of selection by local school precincts.¹⁰

7 In *Clark Cty. Deputy Marshals Ass'n v. Clark Cty.*, 425 P.3d 381, Docket No. 68660, filed
8 September 7, 2018, unpublished deposition (Nev. 2018), the Nevada Supreme Court agreed with the
9 Board and dismissed an untimely appeal. However, three justices in that *en banc* review dissented as
10 they would have heard the substantive portion of the appeal. The dissent went on to affirm the Board's
11 decision. The dissent held that: "NRS 288.150(2) lists the subjects of mandatory collective bargaining
12 ... **without any mention of the ability of an employer to limit the subjects of mandatory**
13 **bargaining.**" *Id.* at 6-7 (emphasis added). In the same vein, there is no mention in NRS 288 or 388G
14 of the ability to limit the subjects of mandatory bargaining. Without clear guidance, the Board will not
15 condone such a substantial elimination of rights in the context at issue.

16 CCSD, in their Reply in Support of Declaratory Order, provides: "CCEA now claims that '[i]t is
17 easy to envision a system where the principal of the local school precinct is involved in selecting the
18 teachers from an eligibility pool based upon the priorities, parameters, and criteria negotiated by CCSD
19 and CCEA.'" CCSD concurred with this assessment. Local school precincts could be included in the
20 collective bargaining process so their ability to select under NRS 388G remains intact. Indeed, their
21 exclusive representative could represent them. Perhaps this is not practical at an initial first glance;
22 however, nothing has been shown to indicate this produces an absurd or unreasonable result or is
23 inconsistent with Legislative intent or the subject statutes. Moreover, assuming *arguendo*, an
24 impractical result occurs, neither this Board nor the courts have the authority to override the plain and
25 unambiguous language of the statutes simply because it produces an impractical result. *See, e.g., Educ.*

26
27 ¹⁰ The Board would also have to disregard the "transfer" language as well as other portions of the statute as detailed herein.
28 Instead of extinguishing bargaining rights in the selection process, the reasonable reading is that the selection authority is
part of the bargaining process. It is through the legislative process to restrict rights, not by the process of this Board.

1 *Support Employees Ass'n*, 134 Nev. at 721, 429 P.3d at 663 (“This is true ‘even if the statute is
2 impractical.”). Furthermore, as explained above, it is a duty to bargain, not to acquiesce.¹¹

3 Finally, “[i]t is presumed that in enacting a statute the legislature acts with full knowledge of
4 existing statutes relating to the same subject.” *City of Boulder City v. Gen’l Sales Drivers and Helpers*,
5 *Intern. Broth. of Teamsters, Local 14*, 101 Nev. 117, 119, 694 P.2d 498, 500 (1985). In *State Dep’t of*
6 *Health & Human Servs., Div. of Pub. & Behavioral Health Med. Marijuana Establishment Program v.*
7 *Samantha Inc.*, 133 Nev. 809, 815, 407 P.3d 327, 331 (2017), the Nevada Supreme Court held: “The
8 Legislature created NRS Chapter 453A long after the APA. Because this court ‘assumes that, when
9 enacting a statute, the Legislature is aware of related statutes,’ and NRS Chapter 453A references
10 review under the APA, *see* NRS 453A.210, the Legislature’s exclusion of judicial review for a
11 registration certificate in NRS Chapter 453A appears deliberate.” In addition to the above, the
12 amendments did not reference NRS Chapter 288. Even if related, the Board cannot assume that the
13 Legislature deliberately intended to limit the mandatory subjects of bargaining at issue as it would be
14 contrary to the plain language of the statutes. *See id.*, *citing* 2A Norman J. Singer & Shambie Singer,
15 *Sutherland Statutory Construction* § 47.23 (7th ed. 2014) (under the canon of construction *expressio*
16 *unius est exclusio alterius*, courts should infer that omissions were purposeful); *see also City of Boulder*
17 *City*, 101 Nev. at 119, 694 P.2d at 500 (“In light of this history and tradition we are persuaded that

18
19 ¹¹ The Act imposes a reciprocal duty on employers and bargaining agents to negotiate in good faith concerning the
20 mandatory subjects of bargaining listed in NRS 288.150. *Int’l Ass’n of Fire Fighters, Local 5046 v. Elko County Fire*
21 *Prot. Dis’t*, Case No. 2019-011 (2020); *Juvenile Justice Supr. Ass’n v. County of Clark*, Case No. 2017-20, Item No. 834
22 (2018); *Nevada Classified Sch. Employees Ass’n Ch. 5, Nevada AFT v. Churchill County Sch. Dist.*, Case No. 2020-008,
23 Item No. 863 (2020). It is a prohibited practice for a local government employer willfully to refuse to bargain collectively in
24 good faith with the exclusive representative as required in NRS 288.150. NRS 288.270(1)(e); *O’Leary v. Las Vegas*
25 *Metropolitan Police Dep’t*, Item No. 803, EMRB Case No. A1-046116 (2015). “A party’s conduct at the bargaining table
26 must evidence a sincere desire to come to an agreement. The determination of whether there has been such sincerity is made
27 by drawing inferences from conduct of the parties as a whole.” *City of Reno v. Int’l Ass’n of Firefighters, Local 731*, Item
28 No. 253-A (1991), *quoting NLRB v. Ins. Agent’s Int’l Union*, 361 U.S. 488 (1970). The duty to bargain in good faith does
not require that the parties actually reach an agreement but does require that the parties approach negotiations with a sincere
effort to do so. *City of Reno v. Int’l Ass’n of Firefighters, Local 731*, Item No. 253-A, Case No. A1-045472 (1991). “In
order to show ‘bad faith’, a complainant must present ‘substantial evidence of fraud, deceitful action or dishonest conduct.’”
Juvenile Justice Supr. Ass’n v. County of Clark, Case No. 2017-20 (2018); *Boland v. Nevada Serv. Employees Union*, Item
No. 802, at 5 (2015), *quoting Amalgamated Ass’n of St., Elec. Ry. And Motor Coach Emp. of America v. Lockridge*, 403
U.S. 274, 301 (1971); *Las Vegas Peace Officers Ass’n v. City of Las Vegas*, Case No. 2015-034, Item Nos. 821, 821-A
(2018). Adamant insistence on a bargaining position or “hard bargaining” is not enough to show bad faith bargaining. *Reno*
Municipal Employees Ass’n v. City of Reno, Item No. 93 (1980); *City of Reno v. Reno Police Protective Ass’n*, Case No. A1-
046096, Item No. 790 (2013) (bad faith bargaining “does not turn on a single isolated incident; but rather the Board looks at
the totality of conduct throughout negotiations to determine ‘whether a party’s conduct at the bargaining table evidences a
real desire to come into agreement.’”), *citing Int’l Brotherhood of Electrical Workers, Local 1245 v. City of Fallon*, Item No.
269, Case No. A1-045485 (1991).

1 when the legislature chose to require submission of these disputes to an ‘arbitrator,’ and further
2 determined that such arbitration awards should be ‘final and binding,’ it did so with the intention that
3 the procedures set forth in NRS Chapter 38, including its limited standard of judicial review, should
4 apply.”); *Marschall v. City of Carson*, 86 Nev. 107, 115, 464 P.2d 494, 500 (1970) (**emphasis added**)
5 (“If there is an **irreconcilable conflict** between two statutes, the statute which was most recently
6 enacted controls the provisions of the earlier enactment.”). *See also City of Sparks v. Reno*
7 *Newspapers, Inc.*, 133 Nev. 398, 404, 399 P.3d 352, 358 (2017) (“the Nevada Legislature could have
8 referenced or relied on the language of the two existing confidentiality statutes under NRS Chapter
9 453A, but it chose not to do so.”).¹²

10 The EMRA provides for mandatory subjects of bargaining, and NRS 388G.610(2)(a) provides
11 for the transfer of selection authority as it previously existed without modification in the statute. NRS
12 388G.610 and 288.150 are not in conflict. The statutes can be interpreted to render a harmonious result
13 without NRS 388G.610 infringing on mandatory subjects of bargaining. The Board reserves the right
14 to alter, amend, and modify this order based on a subsequent hearing.

15 Dated this 7th day of December 2020.

16 GOVERNMENT EMPLOYEE-
17 MANAGEMENT RELATIONS BOARD

18 By: 
19 GARY COTTINO, Presiding Officer

20 By: 
21 SANDRA MASTERS, Vice-Chair

22 By: 
23 BRETT HARRIS, ESQ., Board Member

24 ¹² Interestingly, portions of NRS 388G that existed prior to the amendments in 2017 (and remained unchanged through AB 7
25 in 2017), provide that each “empowerment plan for a school must:” “Prescribe the manner by which teachers and other
26 licensed educational personnel **will be selected and hired** for the school, which must be **determined and negotiated**
27 **pursuant to chapter 288 of NRS**”; and “Prescribe the manner by which all other staff for the school **will be selected and**
28 **hired**, which must be **determined and negotiated pursuant to chapter 288 of NRS**”. NRS 388G.120(1)(e), (f) (**emphasis**
added). As indicated above, we are “obliged to construe statutory provisions so they are compatible” and “give meaning to
its entirety ... [reading] each sentence, phrase, and word to render it meaningful within the context of the purpose of the
legislation.” *See supra* note 3; *see also Bd. of County Comm’rs v. CMC of Nevada*, 99 Nev. 739, 744, 670 P.2d 102, 105
(1983) (explaining that other words or phrases used in the statute or separate subsections of the statute can be reviewed to
determine the meaning and purpose of the statute).