

**BEFORE DAVID GABA, FACT FINDER  
IN THE MATTER OF THE IMPASSE FACT FINDING BETWEEN**

DOUGLAS COUNTY SHERIFF'S )	
PROTECTIVE ASSOCIATION, on behalf of all )	
bargaining unit employees in the Deputies and )	<b>FACT FINDER'S WRITTEN FINDINGS</b>
Investigators Unit, )	<b>AND RECOMMENDATIONS FOR</b>
Union, )	<b>RESOLUTION OF IMPASSE ISSUES</b>
and )	<b>FMCS Case No. 220714-07652</b>
DOUGLAS COUNTY, NEVADA, )	<b>Date Issued: March 9, 2023</b>
Employer )	
_____ )	

**APPEARANCES:**

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## **INTRODUCTION**

This Written Findings and Recommendations for Resolution of Impasse Issues (the Recommendation) arises pursuant to Nevada Revised Statute (NRS) 288.200 (the Statute), under which David Gaba was selected by the Parties to serve as the Fact Finder under the specific terms of the Statute. This Recommendation involves an impasse between the Douglas County Sheriff's Protective Association (the Union or the DCSPA), on behalf of bargaining unit employees in the Deputies and Investigators Unit, also known as the "SPA" unit, and Douglas County, Nevada (the Employer or the County) (collectively, the Parties), over a successor Collective Bargaining Agreement (the Successor CBA) to the CBA that was in effect, from July 1, 2017, until it expired on June 30, 2022 (the Expired CBA). "The primary open issues are compensation and the contract term."<sup>1</sup>

### **The Fact Finding Hearing**

On November 11, 2022, and December 16, 2022, a fact finding hearing over all open bargaining issues (the Fact Finding Hearing) was held in Minden, Nevada. The Parties had the opportunity to make opening statements, examine and cross-examine witnesses, introduce exhibits, and fully argue all of the issues in dispute. A transcript of the proceedings was provided on January 11, 2023. At the hearing, the Parties stipulated to submit Post-Hearing Briefs within thirty (30) days from the date of receipt of the transcript. On February 8, 2023, the Parties notified the Fact Finder that they agreed that Post-Hearing Briefs would be submitted on or before February 20, 2023.

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<sup>1</sup> County's Post-Hearing Brief at page 1.

On February 20, 2023, the Union’s counsel notified the undersigned that the Parties had agreed to an extension to February 24, 2023, to file their Post-Hearing Briefs. I received both Parties’ Post-Hearing Briefs by e-mail on February 24, 2023, as agreed upon by the Parties. The record was then closed. This Recommendation is timely issued in accordance with the Statute.

### **The County’s Motion to Supplement the Record**

On February 10, 2023, the County e-mailed me, to request to supplement the record with its proposed Exhibit 21, the CPI-U,<sup>2</sup> for the West Region, which includes the State of Nevada,<sup>3</sup> for 2018-2022, from the United States Bureau of Labor Statistics (BLS),<sup>4</sup> and the County’s proposed Exhibit 22, which are the Union’s written proposals for the Sergeant’s Unit, which is *separate* from the Deputies and Investigator Unit, the bargaining unit at issue for this Recommendation. I interpret the County’s February 10, 2023 e-mail to constitute a Motion to Supplement the Record (the County’s Motion to Supplement the Record).<sup>5</sup>

The County’s Motion to Supplement the Record was based on the Arbitrator’s holding in *Georgia Power Co.*, 118 BNA LA 1491 (Nolan 2003), which specified the following factors to consider in determining whether a motion to supplement the record is warranted:

1. The request to reopen [was] made before the arbitrator issue[d] the award.
2. The proffered evidence ‘must not have been available with due diligence at the time of the hearing.’
3. The proffered evidence must be pertinent.

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<sup>2</sup> CPI-U simply stands for “Consumer Price Index for All Urban Consumers.” *See, e.g.*, <https://www.bls.gov/news.release/cpi.t01.htm>

<sup>3</sup> *See, e.g.*, <https://www.bls.gov/regions/west/nevada.htm>

<sup>4</sup> “The Bureau of Labor Statistics measures labor market activity, working conditions, price changes, and productivity in the U.S. economy to support public and private decision making.” <https://www.bls.gov/bls/faqs.htm>

<sup>5</sup> Hereafter, the e-mail string related to the County’s Motion to Supplement the Record is included as the Fact Finder’s Exhibit 1-A, is attached hereto, and is incorporated herein by this record.

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4. The proffered evidence must be likely to affect the outcome of the case. The costs of reopening the case would outweigh any benefit if the evidence [was] insubstantial or duplicative, or related only to minor issues.
5. Admission of the new evidence must not improperly prejudice the other party. ‘Improperly,’ in this context, means more than some delay or expenses. In the normal case, if the other party has time to respond to the evidence, the harm it would suffer would not be “improper”<sup>6</sup>

On February 11, 2023, I notified the Parties by e-mail:

I will be taking official notice [sic] ALL of the BLS data up until the time that briefs are received.<sup>7</sup>

On the same date (February 11, 2023), I asked the Union whether it had any objections to the County’s Motion to Supplement the Record.<sup>8</sup> On February 18, 2023, the Union filed a written objection to the County’s Motion to Supplement the Record, on the following grounds:

First, the survey mentioned by Mr. Ricciardi during the hearing (November 11, 2022 Hearing Transcript page 25) included both the rank of Deputy and Sergeant because at the time it was created, the parties were bargaining together. Mr. Ricciardi asked “so we should not worry about what’s in here because it could be different.” I confirmed and indicated that the information had been updated. After the County severed the bargaining process and the matter proceeded to fact-finding, the Union prepared a new Salary Survey which the Union introduced into evidence Union Exhibit G. This document contains no reference or information regarding the classification of Sergeant. The only document introduced by the Union which has any reference to the rank of Sergeants or the Sergeant classification is Union Exhibit L is simply a list of Sheriff’s Office personnel in classifications represented by the Douglas County Sheriff’s Protective Association. The Union’s witness, Union President Justin Fricke testified that the document identifies vacancies in the Deputy Bargaining Unit. Exhibit L contains no information regarding the wages of Douglas County Sergeants. There is no basis to assert that this document makes any proposal made in the Sergeant Bargaining Unit relevant or probative.

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<sup>6</sup> Fact Finder’s Exhibit 1-A, pages 2 and 3.

<sup>7</sup> Fact Finder’s Exhibit 1-A at page 1 (emphasis in original).

<sup>8</sup> Fact Finder’s Exhibit 1-A at page 1.

Mr. Ricciardi's position that the Sergeant Bargaining Unit proposal is relevant is premised on his assertion that: "Despite the fact that the two units bargained jointly and are similarly situated when it comes to the compensation issues..." The assertion that the bargaining units are "similarly situated when it comes to the compensation issues" is not supported by any evidence in the record and the County has not pointed to any evidence which would support this conclusion. A number of factors go into each bargaining units' proposals and the reasonableness of the respective proposals. To introduce the proposal from the Sergeant Bargaining Unit with no other evidence leaves out important context for that proposal, specifically the compensation data for sergeants in comparable agencies. To provide that context would necessitate additional testimony and evidence and cause unnecessary delay to these proceedings with no probative value. This delay will prejudice the Union as the County is resolute in its refusal to pay bargaining unit members retro pay from the date of expiration of the prior MOU for any wage increases. In addition, the County has frozen employee wages causing further prejudice if this process is further extended. The County separated the bargaining for the different bargaining units. The parties have proceeded to fact-finding separately and the Union is separately attempting to come an agreement for each of its bargaining units. The County now wants to use the Sergeant Bargaining Unit concessions in an attempt to resolve their negotiations against the Deputy bargaining unit. The County's request to supplement the record should be denied.<sup>9</sup>

On February 18, 2023, I asked both Parties:

Do either of you have any Nevada law on this subject as this matter isn't taking place under the FAA and isn't an "arbitration?" In any event I'm fine supplementing the record, although I see no reason to rely on this evidence as it's simply a "proposal" rather than an actual comparable. Your thoughts?<sup>10</sup>

On February 19, 2023, the Union's counsel of record replied:

I am unaware of any Nevada Law on the issue. Though I will note that even under the authority cited by Mr. Ricciardi, if you see no reason to rely on the new proposal, that negates several of the factors necessary to warrant supplementing the record.<sup>11</sup>

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<sup>9</sup> Fact Finder's Exhibit 1-A at pages 6 and 7 (references to the transcript omitted).

<sup>10</sup> Fact Finder's Exhibit 1-A at page 6.

<sup>11</sup> Fact Finder's Exhibit 1-A at page 8.

On February 20, 2023, I responded to the Parties, as follows:

Thanks for keeping my [sic] in the loop.... It's appreciated. That said, I have no problem supplementing the record, and allowing you to argue the issue in your briefs. However, I just don't see how a "proposal" from another bargaining unit will affect the Award.<sup>12</sup>

Simply put, I did not find the Union's written objections persuasive, as the Union was unable to cite any rebuttable evidence, case law, or legislation that would allow me to deny the County's Motion to Supplement the Record. Thus, for purposes of this Recommendation, the County's Motion to Supplement the Record is granted, as any BLS data is truly welcomed, and appreciated. Further, as stated in my February 20, 2023, e-mail, while I am allowing the County's Supplemental Exhibit 22 to be admitted, the County's Supplemental Exhibit 22 is a *proposal* (and not a Tentative Agreement) for a *separate* bargaining unit, and I just don't see how that proposal affects this Recommendation. In sum, the County failed to present evidence that would allow me to conclude that, more likely than not, a proposal for a separate bargaining unit is relevant to this impasse proceeding.

### ISSUES

The Parties stipulated that the remaining items in dispute and to be addressed in this impasse matter are summarized on the first page of the County's Exhibit 19, as follows:

Summary of Combined Proposals	DCSPA offer dated 11-9-22	County offer dated 12-16-22
Article 2(A)- Term	2 Year	3 Year
Article 2(B) - Term Conditions	Retain existing paragraph 2(B) language. Maintain the existing language the agreement will remain in full force and effect during subsequent labor negotiations.	Delete paragraph 2(B). Remove language the agreement will remain [sic] in full force and effect during subsequent labor negotiations.

<sup>12</sup> Fact Finder's Exhibit 1-A at page 8

<b>Article 2(C) - Term, Public Employees' Retirement System (PERS)</b>	Proposed language [sic] to clarify step movement and longevity will continue to increase beyond the expiration of the agreement.	1) Proposed clarifying language that, "no increases in salaries and wages," includes step movement and longevity.  2) Proposed clarifying language, consistent with NRS 286.421 implementation [sic] of PERS may result in reductions to employee salaries.
<b>Article 7(A) - Salaries, Retro Pay</b>	Propose any new salary schedule be retroactive to July 1, 2022.	Propose the new salary schedule become effective the first full pay period following approval and each employee will receive a lump sum of \$3,000. See Article 32(D).
<b>Appendix A: Article 7 - Salaries, Number of Steps &amp; Value Between Steps</b>	9 Total Steps for Deputies & Investigators Difference between steps is 4%	11 Total Steps for Deputies and 12 Total Steps for Investigators Difference between steps is 3%
<b>Article 7(B) - Salaries, COLA Range</b>	FY22-23: COLA incorporated into Union's proposed salary range  FY23-24: 0-6%	FY22-23: COLA incorporated into County's proposed salary range FY23-24: COLA incorporated into County's proposed salary range FY24-25 0-4%
<b>Article 7(C)- Salaries, Market Adjustment</b>	Additional step move (4%) on July 1, 2023	Additional step move on (3%) July 1, 2023
<b>Article 8 - Incentive Pay</b>	Increased Incentive pays to become effective January 1, 2023. Beginning FY23-24, Incentive Pays will again increase by the COLA (0-6%) amount.	Increased Incentive pays to become effective the first pay period of July or January (whichever occurs first) following approval of the Board. See Article 32(A). Reject COLA applying to incentive pays.
<b>Article 8 (H)- Incentives, Technology</b>	Has not agreed to the addition of Information Technology Assignment Pay.	Proposing to add subsection (H) Information Technology Assignment Pay.
<b>Article 8 - Incentives, Longevity</b>	Proposing it is effective beginning in July 2023: Longevity payable at percent of base wages: 5-9 years = 3%, 10-14 years = 4%, 15-19 years = 5%, 20 or more years = 6%	Proposing [sic] it is effective beginning in July 2024: Longevity payable at flat dollar amounts: 5-9 years = \$780, 10-14 years = \$1,560, 15-19 years = \$2,340, 20 or more years = \$2,600
<b>Article 9(B) - Medical and Dental Insurance, Effective Date</b>	Proposing new rate structure effective January 2023.	Proposing new rate structure to become effective the year following contract approval (January [sic] 2024). Open enrollment for January 2023 has already closed. See Article 32(B)

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<b>Article 9(B)- Medical and Dental Insurance, Contribution Cap</b>	Objecting to County proposed cap on County's monthly contributions to premiums.	Proposing new percentage based month contributions to premiums and capping the monthly contribution to not exceed \$1,700 per month.
<b>Appendix A: Salary Range per hour YR. 1- Deputy I</b>	\$26.36-\$36.08	\$26.76-\$36.29
<b>Salary Range per hour YR. 1- Deputy II</b>	\$27.75-\$37.98	\$28.17-\$38.20
<b>Salary Range per hour YR. 1- Investigator</b>	\$32.50-\$44.48	\$32.07-\$44.83

### APPLICABLE STATUTORY PROVISIONS

The following language from NRS 288.200 (the Statute) governs this impasse proceeding:

**NRS 288.200 Submission of dispute to fact finder: Selection, compensation and duties of fact finder; submission to second fact finder in certain circumstances; effect of findings and recommendations; criteria for recommendations and awards.** Except in cases to which NRS 288.205 and 288.215, or NRS 288.217 apply:

1. If:

(a) The parties have failed to reach an agreement after at least six meetings of negotiations; and

(b) The parties have participated in mediation and by April 1, have not reached agreement, ➤ either party to the dispute, at any time after April 1, may submit the dispute to an impartial fact finder for the findings and recommendations of the fact finder. The findings and recommendations of the fact finder are not binding on the parties except as provided in subsection 5. The mediator of a dispute may also be chosen by the parties to serve as the fact finder.

2. If the parties are unable to agree on an impartial fact finder within 5 days, either party may request from the American Arbitration Association or the Federal Mediation and Conciliation Service a list of seven potential fact finders. If the parties are unable to agree upon which arbitration service should be used, the Federal Mediation and Conciliation Service must be used. Within 5 days after receiving a list from the applicable arbitration service, the parties shall select their fact finder from this list by alternately striking one name until the name of only one fact finder remains, who will be the fact finder to hear the dispute in question. The employee organization shall strike the first name.

3. The local government employer and employee organization each shall pay one-half of the cost of fact-finding. Each party shall pay its own costs of preparation and presentation of its case in fact-finding.

4. A schedule of dates and times for the hearing must be established within 10 days after the selection of the fact finder pursuant to subsection 2, and the fact finder shall report the findings and recommendations of the fact finder to the parties to the dispute within 30 days after the conclusion of the fact-finding hearing.



5. The parties to the dispute may agree, before the submission of the dispute to fact-finding, to make the findings and recommendations on all or any specified issues final and binding on the parties.

6. If parties to whom the provisions of NRS 288.215 and 288.217 do not apply [sic] do not agree on whether to make the findings and recommendations of the fact finder final and binding, either party may request the submission of the findings and recommendations of a fact finder on all or any specified issues in a particular dispute which are within the scope of subsection 11 to a second fact finder to serve as an arbitrator and issue a decision which is final and binding. The second fact finder must be selected in the manner provided in subsection 2 and has the powers provided for fact finders in NRS 288.210. The procedures for the arbitration of a dispute prescribed by subsections 8 to 13, inclusive, of NRS 288.215 apply to the submission of a dispute to a second fact finder to serve as an arbitrator pursuant to this subsection.

7. Except as otherwise provided in subsection 10, any fact finder, whether the fact finder's recommendations are to be binding or not, shall base such recommendations or award on the following criteria:

(a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision. If the local government employer is a school district, any money appropriated by the State to carry out increases in salaries or benefits for the employees of the school district must be considered by a fact finder in making a preliminary determination.

(b) Once the fact finder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, and subject to the provisions of paragraph (c), the fact finder shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute and the fact finder shall consider whether the Board found that either party had bargained in bad faith.

(c) A consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multiyear contract, the fact finder must consider the ability to pay over the life of the contract being negotiated or arbitrated.

↳ The fact finder's report must contain the facts upon which the fact finder based the fact finder's determination of financial ability to grant monetary benefits and the fact finder's recommendations or award.

8. Within 45 days after the receipt of the report from the fact finder, the governing body of the local government employer shall hold a public meeting in accordance with the provisions of chapter 241 of NRS. The meeting must include a discussion of:

(a) The issues of the parties submitted pursuant to this section;

(b) The report of findings and recommendations of the fact finder; and

(c) The overall fiscal impact of the findings and recommendations, which must not include a discussion of the details of the report.

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↪ The fact finder must not be asked to discuss the decision during the meeting.

9. The chief executive officer of the local government shall report to the local government the fiscal impact of the findings and recommendations. The report must include, without limitation, an analysis of the impact of the findings and recommendations on compensation and reimbursement, funding, benefits, hours, working conditions or other terms and conditions of employment.

10. Any sum of money which is maintained in a fund whose balance is required by law to be:

(a) Used only for a specific purpose other than the payment of compensation to the bargaining unit affected; or

(b) Carried forward to the succeeding fiscal year in any designated amount, to the extent of that amount,

↪ must not be counted in determining the financial ability of a local government employer and must not be used to pay any monetary benefits recommended or awarded by the fact finder.

11. The issues which may be included in a recommendation or award by a fact finder are:

(a) Those enumerated in subsection 2 of NRS 288.150 as the subjects of mandatory bargaining, unless precluded for that year by an existing collective bargaining agreement between the parties; and

(b) Those which an existing collective bargaining agreement between the parties makes subject to negotiation in that year.

↪ This subsection does not preclude the voluntary submission of other issues by the parties pursuant to subsection 5.

12. Except for the period prescribed by subsection 8, any time limit prescribed by this section may be extended by agreement of the parties.

## **FINDINGS OF FACT**

After a thorough review and careful consideration of the testimony and documentary evidence presented by the parties, I make the following Findings.

### **The Parties**

The County of Douglas, Nevada (the Employer or the County) has a population of “approximately 49,000,” according to the Employer.<sup>13</sup> The County seat is in Minden, Nevada, where the Fact Finding Hearing was held. The Douglas County Sheriff’s Protective Association

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<sup>13</sup> County’s Post-Hearing Brief at page 1.

(the Union or the DCSPA), is the sole collective bargaining agent on behalf of all regularly budgeted employees of the County within job classifications covered by the Agreement. The Union has been in existence “for more than thirty (30) years.”<sup>14</sup> The Parties stipulated that there are ninety-one (91) budgeted positions in the bargaining unit. As set forth above, this Recommendation is limited to bargaining unit employees in the Deputies and Investigator bargaining unit, also known as the “SPA” unit. As specified by the Union:

The “SPA” unit, is comprised of employees in Douglas County in the ranks of Deputy Sheriff I (or “Deputy 1”); Deputy Sheriff II (or “Deputy II), and Investigator. The rank of Deputy I is a custodial jail deputy. Employees in the classification of Deputy I must hold a certificate obtained through the jail training program. The Deputy II classification is generally a patrol deputy, though may serve as a bailiff or task force officer. A Deputy II in Douglas County must possess a Category 1 POST certificate obtained through a Nevada POST certified academy. An employee can promote from the rank of Deputy I to Deputy II and receive the corresponding increase in pay after obtaining the Category 1 POST certificate and upon completion of the field training program. The Investigator classification is tasked with investigating crimes, generally higher crimes than those that can be handled by a patrol deputy. The Investigator classification has similar job duties to a detective.<sup>15</sup>

### **Bargaining and Procedural History**

In or about February 2022, the Parties entered into successor negotiations concerning the Expired CBA (the Successor Negotiations). The Parties stipulated that Douglas V. Ritchie, who is with the District Attorney’s office, was the Chief Negotiator on behalf of the County, during the Successor Negotiations. Vance G. Piggot, the Union’s attorney of record, was the Chief Negotiator for the Union. The Parties met for a minimum of six (6) Successor Negotiations sessions, as required by the Statute.

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<sup>14</sup> County’s Post-Hearing Brief at page 1.

<sup>15</sup> Union’s Post-Hearing Brief at page 2 (references to the transcript omitted).

The Union's top three (3) priorities during Successor Negotiations were:

- 1) Moving from a performance-based wage system to a step-based wage system;
- 2) Increasing the amount of compensation; and
- 3) Adding longevity pay.

The County conceded in its Post-Hearing Brief:

The parties recognize that wage rates for this bargaining unit have lost pace with the market. The parties, during this negotiation, made substantial progress towards bringing wage rates closer to the market.<sup>16</sup>

During Successor Negotiations, the Parties mutually agreed to move to a step-based wage increase system, from the County's longstanding performance-based increase system, which has been in place "for at least twenty (20) years."<sup>17</sup> However, the Parties could not agree on the number of steps for wage increases. The County proposed eleven (11) steps, whereas the Union proposed nine (9) steps. Under the County's current performance-based system of annual increases, an employee rated as "meeting expectations" receives a two percent (2.0%) wage increase. Under the County's final proposal, dated December 16, 2022, bargaining unit members will receive a three percent (3.0%) increase between steps, resulting in an automatic three percent (3.0%) annual wage increase. The Union proposes a full four percent (4.0%) between annual step increases. The County estimates a difference of approximately \$4,400,000.00 (4.4 million) between the County's proposal, and the Union's proposal regarding Article 7 – Salary.<sup>18</sup>

The Union also proposes full retroactivity of the new step wage rate system based on hours worked from the first day following the expiration date of the Expired CBA, July 1, 2022. On the other hand, the County proposes a three thousand (\$3,000.00) lump-sum payment under a new

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<sup>16</sup> County's Post-Hearing Brief at page 1.

<sup>17</sup> County's Post-Hearing Brief at page 23.

<sup>18</sup> County's Post-Hearing Brief at page 26.

article, Article 32. The Union objects to the inclusion of a new Article 32, because the County did not propose its inclusion by the third (3<sup>rd</sup>) day of Successor Negotiations, as provided for in the Ground Rules.<sup>19</sup>

At the hearing, Jenifer Davidson, the County’s Assistant Manager, credibly testified as to why the County proposed a lump-sum payment in place of a retroactive payment:

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18 A. That is a complex logistical problem  
19 for the County. What it means for us is we have 92 bargaining  
20 Union employees that will be impacted by this, and so we have  
21 92 different permutations or variables, independent variables  
22 that we have to deal with, 92 different calculations to run  
23 which, because these are manual calculations, are time  
24 consuming and cumbersome and are very likely prone to error,

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and so our solution was to offer a lump sum payment.

Ms. Davidson further testified that the County’s wage proposal was structured in the way it is because the County wanted to spend funds “at the exact spots where we saw the problem versus spreading those dollars like peanut butter across all of the Union membership.” The Union offered no evidence that rebuts Ms. Davidson’s testimony.

On or about May 27, 2022, the Parties jointly declared they were at an impasse. The County and the Union had never before reached impasse under the Statute.<sup>20</sup> As provided for by the Statute, both Parties entered into meditation. Unfortunately, the Parties were not able to reach agreement during mediation.

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<sup>19</sup> Union’s Post-Hearing Brief at page 3.

<sup>20</sup> County’s Post-Hearing Brief at page 1.

On November 11, 2022, the County made an additional proposal, admitted as the County's Exhibit 2. The County's November 11, 2022, proposal, included an offer for a four (4)-year agreement. The Union did not accept the County's November 11, 2022, proposal, and did not make a counterproposal as to the term of the Successor Agreement.

On December 16, 2022, the County made a second proposal, this time offering a three (3)-year Successor Agreement (the County's Final Proposal). The County's Final Proposal is set forth in the County's Exhibit 16. In its December 16, 2022, Final Proposal, the County:

....enhanced its wage proposal significantly and presented this revised wage proposal at day two of the Factfinding hearing. Most notably, the County modified its prior proposal (which included a scale of 13 steps in year one reducing to 11 steps in year two) and proposed 11 steps for both year one and year two. This change produced a 20.7% increase at the bottom of the scale, 12.5% at the mid-point of the scale and 9.1 % at the top of the scale, as opposed to 13.6%, 9.2% and 9.2% under the previous proposal, respectively.<sup>21</sup>

The Union did not accept the County's Final Proposal, and did not make a counteroffer to the County's Final Proposal.

The Union's final proposal, dated November 9, 2022, is set forth in the Union's Exhibit A (the Union's Final Proposal). The Union's Final Proposal includes an offer for a two (2)-year Successor Agreement. As of the second day of the Fact Finding Hearing, the following articles remained open:

1. Article 2 - Term of Agreement
2. Article 7 - Salaries
3. Article 8 - Incentives
4. Article 9 - Medical and Dental Insurance
5. Article 11 - Overtime

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<sup>21</sup> County's Post-Hearing Brief at pages 11-12.

The Union notified the Fact Finder in its Post-Hearing Brief that it accepts the Employer’s proposal for Article 11 “as written” in County Exhibit 16 at page 14.<sup>22</sup> Thus, Article 11 – Overtime is no longer an open issue to be resolved.

### **The Cost of the Parties’ Proposals**

The County provided its estimated cost for each of the Parties’ final proposals on the second day of the hearing. The County’s estimated cost for its Final Proposal on salaries in Year 1 is \$466,941.00. The County’s estimated cost for payment of the lump sum payment in Year 1 is \$398,444.00. The estimated overall cost of the County’s Final Proposal (including incentives, overtime, life insurance, and ballistic vests, in Year 1, is nine hundred seventy-eight thousand \$978,014.52. The County’s estimated overall cost for the County’s Final Proposal in Year 2, is \$1,090,918.04.

The County’s estimated cost for the Union’s Final Proposal for wages, including retroactivity from July 1, 2022, in Year 1, is \$891,481.00. The estimated overall cost of the Union’s Final Proposal (including incentives, overtime, life insurance and ballistic vests) is \$1,020,590.58. The County’s estimated overall cost of the Union’s Final Proposal for Year 2 is \$1,600,412.12.

### **The County’s Ability to Pay**

The Union presented a copy of the County’s Annual Comprehensive Financial Report (the County’s ACFR) for fiscal year (FY) ending June 30, 2021. The ACFR establishes that the County’s Ending General Fund Balance was in excess of \$24 million, and that the County’s

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<sup>22</sup> Union’s Post-Hearing Brief at page 3.

General Fund Revenue was approximately \$55.2 million. The Parties stipulated that wages and salary for the “SPA” bargaining unit comes from the County’s General Fund.

The Union also presented a report prepared by Certified Public Accountant Timothy Reilley, who performed an analysis of the County’s financial health after reviewing the ACFR for fiscal year ending June 30, 2021. Mr. Reilley’s report provides, in pertinent part:

My overall conclusion from analyzing Douglas County’s CAFRs and other information is that Douglas County’s financial health, is healthy and grew stronger over the five-year period ending June 30, 2021.

The County’s revenues experienced healthy growth through 2020 growing \$19.3 million from \$80 million in 2011 to \$99.3 million in 2020, then spiked \$16.9 million in 2021 to \$116.2 million. The growth is due to two factors, strong tax revenue growth due to growing assessed values and growing intergovernmental shared revenues.

2021’s intergovernmental growth is due to the receipt of the Coronavirus Aid, Relief, and Economic Security (CARES) Act moneys in 2021. The County did not receive the first 50% payment of the \$9.5 million allocated to it by the American Rescue Plan Act (ARPA), but it will in 2022 and the final payment in 2023. The receipt of these COVID-19 moneys substantially improved the County’s financial health and will continue to do so in 2022 and 2023. ARPA moneys can be used to respond to the public health and economic impacts of COVID-19, provide premium pay to essential workers, **replace lost revenues due to the pandemic**, and/or provide funding for sewer, water and broadband construction.<sup>23</sup> How the County spends these moneys is a political decision, and will have a positive effect on the County no matter how it is spent.

The County’s tax revenues are improving. The County’s property taxes declined during the recession due to the collapse of housing values and the loss property taxes when the East Fork Fire District separated from the county in 2017 and 2018.

Assessed property values recovered from the declines caused by 2008’s real estate collapse that continued through 2014. Since 2014, the County’s assessed values grew from \$2.691 billion to \$3.643 billion substantially

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<sup>23</sup> Emphasis in original.



increasing the property tax base. Property tax revenues should continue to grow.

The County's room tax also experienced significant growth, from \$5.4 million in 2014 to \$20.1 million in 2021.

The General Fund's budget process is conservative. The adopted budget planned four deficits and one small surplus of \$456,031, but actually had a significantly smaller deficit in 2016 than planned and four surpluses three exceeding \$2.9 million and 2021 totaling \$8.8 million. The final budget planned five larger deficits. Budgets are only a spending plan based on revenue and spending assumptions and are not indicative of a government's financial health.

The General Fund's cash and investments improved significantly more than doubling from \$15 million in 2017 to a very strong \$30.6 million in 2021. This growth is entirely due to four surpluses. The total cumulative General Fund's net surplus since July 1, 2016 is \$13.3 million. The cumulative surplus plus a small restatement in 2021 increased the General Fund's fund balance from \$11.3 million at July 1, 2015 to \$24.7 million at June 30, 2021. Since 2016, the unrestricted fund balance grew from \$7 million to \$16.3 million.

While neither Party presented evidence regarding exactly what the "pandemic" referenced in Mr. Reilley's excerpted report above was, more likely than not, when Mr. Reilley referred to the "pandemic," he was referring to the fact that the World Health Organization (the WHO) declared the virus COVID-19 to be a "pandemic," on March 11, 2020, due to the outbreak of the COVID-19, also known as the coronavirus pandemic (the Pandemic).<sup>24</sup>

The County submitted a report prepared by Chief Financial Officer Terri Willoughby in response to Mr. Reilly's financial analysis. Ms. Willoughby's report states, in relevant part:

Although the County's revenues did indeed experience healthy growth in 2021, only a portion of the revenues would be available to fund ongoing

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<sup>24</sup>See <https://www.cdc.gov/globalhealth/resources/reports/annual/2021/global-resources-pivot.html#:~:text=On%20January%2030%2C%202020%2C%20following,COVID%2D19%20a%20global%20pandemic>

operational expenditures, such as salaries and benefits. Of the \$116.2 million in revenues for the Fiscal Year 2021, only \$55.2 million, or 48% of the total revenues reported for the County's General Fund. The balance of the revenue is in funds external to the General Fund and is restricted for various purposes. For example, \$20.9 million, or 18% of the Fiscal Year 2021 revenues, are reported in the County's Room Tax funds and are restricted for use by both Nevada Revised Statutes and Douglas County Code sections 3.12 and 3.14. None of the areas identified as authorized include funding of public safety salaries or benefits. While total County revenues have increased 24% from Fiscal Year 2018 to the Fiscal Year 2021, General Fund revenues have only increased 18% during this same period.

The County offered evidence that future considerations for the General Fund could include, but are not limited to, the following:

- Need to build capacity for a new judicial building financing in the amount of \$40 million funded by a twenty (20)-year bond with payments of \$2.3 million annually, increasing over time.
- Obligation to construct Muller Parkway by 2025, approximately \$4 million unfunded of the total \$14 million.
- The cost of construction continues to rise.
- The current average rate of turnover in all other employee groups was 22% in 2021. DCPA was 7% in the same time period.
- Compensation and Classification Study, anticipate a substantial increase will be needed across the remaining employee groups.
- DCEA labor negotiations – contract expires in June 2024. A substantial increase is likely necessary.

### **The United States Bureau of Labor Statistics**

The Parties stipulated at the Fact Finding Hearing that the appropriate Consumer Price Index for All Urban Consumers (CPI-U) for this impasse matter to consider is the “Western Region.” As of January 2023, the CPI-U for the Western Region increased by 6.3 percent over the last twelve (12) months.<sup>25</sup> The index for all items less food and energy rose 5.6 percent over

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<sup>25</sup> [https://www.bls.gov/regions/west/news-release/consumerpriceindex\\_west.htm](https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm)

the year.<sup>26</sup> Energy prices advanced 8.3 percent, mainly due to higher prices for natural gas service.<sup>27</sup> Food prices increased 10.5 percent since a year ago.<sup>28</sup>

### **The County’s External Comparable Jurisdictions**

During the Fact Finding Hearing, the Parties stipulated that the external comparable jurisdictions to the County are:

- Carson City
- Washoe County
- City of Sparks
- City of Reno
- Lyon County

Unfortunately, neither Party submitted evidence of comparable contract language on the outstanding issues for these external comparators.

At the Fact Finding Hearing and in its Post-hearing Brief, the County asserted that Storey County should also be considered its external comparator, “[b]ecause Storey has traditionally been recognized as an external comparator by both [P]arties and because of its geographic proximity to the County.”<sup>29</sup> The Union disagrees that Storey County should be included as an external comparator, asserting that the County has not historically used Storey County as an external comparator, “at least since 2015 when it completed the Pontifex Classification and Compensation Study and began a phased-in implementation of a new pay plan over two years.”<sup>30</sup> The County conceded in its Post-Hearing Brief that Storey County’s population is relatively small, at 4,193.<sup>31</sup>

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<sup>26</sup> [https://www.bls.gov/regions/west/news-release/consumerpriceindex\\_west.htm](https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm)

<sup>27</sup> [https://www.bls.gov/regions/west/news-release/consumerpriceindex\\_west.htm](https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm)

<sup>28</sup> [https://www.bls.gov/regions/west/news-release/consumerpriceindex\\_west.htm](https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm)

<sup>29</sup> County’s Post-Hearing Brief at page 18.

<sup>30</sup> Union’s Post-Hearing Brief at page 9, referencing Union Exhibit E, the Office of the County Manager’s Staff Report dated March 15, 2022.

<sup>31</sup> County’s Post-Hearing Brief at page 18.

At the hearing, the Union presented a survey performed by the County dated March 15, 2022, wherein the County only relied on the Parties’ stipulated external comparators, and did not include Storey County. The County’s March 15, 2022, survey establishes that the attrition rate of the SPA bargaining unit members was seven percent (7%) as of 2021, up from three percent (3%) in 2019. The Parties stipulated that the current vacancy rate is 7.7%.

The Union presented ample evidence at the hearing that establishes that its external comparator evidence concerning total compensation should be considered for this Recommendation. As an example, the Union presented the following unrebutted comparator evidence concerning the total compensation of a Deputy Sheriff II with zero (0) to three (3) years’ experience, as of September 2022:

<b>Jurisdiction</b>	<b>Total Compensation Per Month</b>	<b>Total Compensation Per Year</b>
Carson City	\$6,502.00	\$78,027.00
Churchill County	\$5,667.00	\$68,006.00
Lyon County	\$5,862.00	\$70,348.00
City of Reno	\$6,833.00	\$82,001.00
City of Sparks	\$7,631.00	\$91,573.00
Washoe County	\$6,107.00	\$73,287.00
<b>Average</b>	<b>\$6,434.00</b>	<b>\$77,207.00</b>
<b>Median</b>	<b>\$6,305.00</b>	<b>\$75,657.00</b>
<b>Douglas County</b>	<b>\$5,466.00</b>	<b>\$65,590.00</b>
\$ to reach average	\$968.00	\$11,617.00
\$ to reach median	\$839.00	\$10,067.00

% to reach average	17.7%	\$17.7%
% to reach median	15.3%	15.3%

The record reflects that the disparity is even greater as a bargaining unit member gains more experience.

The assumptions the Union used included factoring in medical insurance at the family rate, longevity pay, education and uniform allowances, as part of each comparator jurisdiction’s total compensation. The Parties stipulated that the County purchases insurance for bargaining unit members, and that the most expensive medical insurance plan is \$1,985 per month. The County’s contribution is \$1,280 of that amount.

**The County’s Internal Comparators**

In its Post-Hearing Brief, the County asserted that the two (2) other bargaining units at the County, the Sergeant’s Bargaining unit, which has sixteen (16) bargaining members, and the Douglas County Employee Association, which has one hundred eighty (180) members, must be considered in making the undersigned’s Recommendations, quoting Fact Finder Kagel’s opinion that under the Statute, “the factfinding recommendations must be cognizant of the internal relationships within the Employer’s bargaining units.”<sup>32</sup> The Union offered no argument or evidence that rebuts the County’s assertion, and the undersigned has taken the County’s argument concerning internal comparators into consideration. Having said that, the County did not specify exactly how these other bargaining units may be impacted by this Recommendation. While I allowed the County to supplement the record with a proposal submitted by the Union on behalf of

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<sup>32</sup> County’s Post-Hearing Brief at pages 16-17.

the Sheriff's Bargaining Unit, the County did not establish that the proposal had been agreed upon, or how it impacted the SPA bargaining unit.

### **The Parties' Positions**

In its Post-Hearing Brief, the County asserts:

The County is agreeable to making progress in closing relative disparities created by prior contracts between the parties. The County has agreed to two significant and fundamental changes to its compensation system, including the introduction of a step system and longevity pay. Under the County's proposal, the proposed wage increases will match the market in the first year of the contract and the other large changes the Union desires will be implemented in a reasonable manner and in a reasonable time frame. In contrast, the Union's proposal is to immediately implement new and expensive contract provisions which should be gradually implemented through negotiations between the parties. Therefore, the Factfinder should recommend the County's reasonable proposal.<sup>33</sup>

Whereas, the Union asserts:

The County is not disputing that it has an ability to pay for the Union's proposals. The County is clearly in a very strong economic position and can cover the cost of the Union's proposals without any impact on other County services.

Therefore, the remaining issue is to the reasonableness of each proposal. The County's proposals on the remaining disputed items will no doubt help to move employees closer to the market average. However, the County's approach is merely a half-measure which does not address core issues with the County's prior approach in how it compensates Union employees. The County's proposals will continue to result in below-market wages and an inability to recruit and retain employees in classifications represented by the Union. The Union's proposals are reasonable given the market and will help to bring employees at all experience levels closer to the market average and are likely to help address the recruitment and retention issues faced by the Sheriff's Office.<sup>34</sup>

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<sup>33</sup> County's Post-Hearing Brief at page 4.

<sup>34</sup> Union's Post-Hearing Brief at page 1.

I have taken each of these valid and very well-written arguments into consideration.

### **The Parties' Stipulations**

At the Fact Finding Hearing, the Parties entered into the following stipulations:

- The remaining items in dispute and to be addressed in this impasse matter are summarized on the first page of the County's Exhibit 19.
- The CPI-U Western Region is the appropriate CPI for the Fact Finder to consider in this matter.
- The Fact Finder will be looking at base wages, steps, and longevity.
- There are 91 budgeted positions in the bargaining unit.
- There is a vacancy rate of 7.7 percent in the bargaining unit.
- Article 2 is not listed in the signed and initialed Tentative Agreements.
- The parties will meet-and-confer and provide the Fact Finder one document which both agree will show only the outstanding language differences between their individual proposals.<sup>35</sup>
- The County purchases insurance for bargaining unit members.
- Currently, the full cost of the most expensive medical insurance plan is \$1,985. The County's contribution is \$1,280.
- Douglas V. Ritchie, who is with the District Attorney's office was the Chief Negotiator on behalf of the County during Successor Negotiations.
- Carson City, Washoe County, City of Sparks, City of Reno, Lyon County and Churchill County are comparable jurisdictions to Douglas County.
- Carson City is a Nevada county by statute.
- County Exhibits 1 through 20 are admitted.
- Substitute County Exhibit 3 is admitted.

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<sup>35</sup> However, neither Party submitted such a document to the Fact Finder.

- The wages and salary for this bargaining unit comes from the County’s General Fund.
- The Union wants what the City of Sparks has.
- Page 1 of County’s Exhibit 19 lists every item the Fact Finder must address.
- Union Exhibits A through S, with the exception of Exhibits P, Q, and R, are admitted.
- The Parties will file their briefs within thirty (30) days of the date they receive the hearing transcript. If the thirtieth (30<sup>th</sup>) day falls on a weekend or a holiday, the Parties will file their briefs on the next day.<sup>36</sup>
- The Parties will serve the briefs amongst themselves.

## OPINION

### I. Fact Finding Under NRS 288.200

This Recommendation is issued pursuant to the specific procedures outlined in the Statute, NRS 288.200. In the case at hand, the Fact Finder has spent a considerable amount of time reviewing the exhibits provided by the Parties and giving full and thoughtful consideration to the Parties’ arguments. Both Parties provided lengthy and well-written Post-Hearing Briefs, and I am mindful of my function in this impasse proceeding, as stated by Elkouri and Elkouri:

The task is more nearly legislative than judicial. The answers are not to be found within the “four corners” of a pre-existing document which the parties have agreed shall govern their relationship. Lacking guidance of such a document which confines and limits the authority of arbitrators to a determination of what the parties had agreed to when they drew up their basic agreement, our task here is to search for what would be, in the light of all the relevant factors and circumstances, a fair and equitable answer to a problem which the parties have not been able to resolve by themselves.<sup>37</sup>

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<sup>36</sup> However, as set forth above, the Parties agreed to extend the deadline to February 24, 2023.

<sup>37</sup> Elkouri and Elkouri, *How Arbitration Works*, Chapter 22, page 4 (8<sup>th</sup> ed. 2020).



Typically, the standard of proof for contractual disputes is preponderance of the evidence.

Preponderance of the evidence can be defined as:

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.<sup>38</sup>

I apply the preponderance of evidence standard to this Recommendation.

## **II. Analysis of the Statute Criteria**

The Statute at subsection 7. directs me to consider the following criteria:

(a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision. If the local government employer is a school district, any money appropriated by the State to carry out increases in salaries or benefits for the employees of the school district must be considered by a fact finder in making a preliminary determination.

(b) Once the fact finder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, and subject to the provisions of paragraph (c), the fact finder shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute and the fact finder shall consider whether the Board found that either party had bargained in bad faith.

(c) A consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multiyear contract, the fact finder must consider the ability to pay over the life of the contract being negotiated or arbitrated.

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<sup>38</sup> *Black's Law Dictionary* (8<sup>th</sup> ed. 2020).

I first address the Statute criteria, and then I will address the reasonableness of each Party's proposals, on an issue-by-issue basis.

**A. The County's financial ability to pay.**

The Statute first requires me to make a "preliminary determination...as to the financial ability of the local government employer." In the public sector, an employer's inability to pay can be the decisive factor in a Fact Finding or interest arbitration, notwithstanding the fact that comparable employers in the area have agreed to higher wage scales.<sup>39</sup> On the issue of its financial ability to pay, the County argues:

The Factfinder must consider the County's obligation to exercise fiscal responsibility. The County is required to balance its available funds between competing priorities, including the need to provide wage increases for other units, such as the DCEA (contract expiration 2024) and multiple County construction commitments. Moreover, the impact of the 1.0% difference in the distance between the step increases proposed by the County (3.0%) and the Union (4.0%) if projected over ten (10) years is an additional cost to the County of \$4.4 million. This projection would be further amplified if these increases were accelerated under the Union's proposal of only nine (9) steps as opposed to the County's more reasonable proposal of eleven (11) steps.<sup>40</sup>

Normally, a case concerning "ability to pay" is necessarily complex, and involves a presentation on governmental budgets, projected revenues and expenditures, a myriad of financial issues pertaining to the resources of the local governmental body, and an assessment of the condition of the local economy.<sup>41</sup> During times of crisis such as the recent Global Pandemic,<sup>42</sup> or

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<sup>39</sup>Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 132 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

<sup>40</sup>County's Post-Hearing Brief at page 26 (reference to exhibits and the transcript omitted).

<sup>41</sup>Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 132 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

<sup>42</sup>As defined in footnote 22 above.

the “Great Recession,” there can even be interest arbitrations over the size of pay *decreases*.<sup>43</sup> In such instances, the undersigned has previously framed the issue as:

In the instant case, there is no question that the County is experiencing a very difficult economic environment; however, the Union is not requesting any increase in wages; rather the only question is how large will the wage reductions be.<sup>44</sup>

Absent a pandemic, a financial meltdown, or earthquake, it is normally incumbent on an *employer* to raise its alleged inability to pay during negotiations.<sup>45</sup> Put another way, traditionally:

The employer has the burden of proof to establish an inability to pay. The burden must be met by more than mere speculation. An *unwillingness* to pay does not satisfy the burden.<sup>46</sup>

In the instant case, while it is evident that the County *did* have a loss in revenue due to the COVID-19 Pandemic, it is also evident that:

The receipt of...COVID-19 moneys substantially improved the County’s financial health and will continue to do so in 2022 and 2023.” Indeed, the County did not offer any evidence that, “ARPA moneys can be used to respond to the public health and economic impacts of COVID-19, provide premium pay to essential workers, **replace lost revenues due to the pandemic**, and/or provide funding for sewer, water and broadband construction.<sup>47</sup>

The County did not provide any evidence that rebuts this evidence; thus; unfortunately, I cannot find that the County provided preponderant evidence to support a finding that it does *not* have the ability to pay for any of the Union’s proposals. While the County intimated that the Union’s proposals would impact the County’s future obligations, and the County reasonably

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<sup>43</sup>Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 132 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

<sup>44</sup> *County of Aurora*, 127 BNA 1773 (Gaba, 2010).

<sup>45</sup>Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 7, page 135 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

<sup>46</sup> *County of Albany*, No. IA-11-12 (Boedecker, 2013) (emphasis added).

<sup>47</sup> Emphasis in original.

asserted that the Fact Finder must consider the County’s obligation to exercise fiscal responsibility, the County failed to provide any *evidence* that would establish that any of the Union’s proposals actually would impact the County’s ability to meet its future obligations.

Further, as of January 2023, the CPI-U for the Western Region increased by 6.3 percent over the last twelve (12) months.<sup>48</sup> Based on the rate of inflation, even without going outside the record, one can conservatively estimate that property prices will go up by at least half the rate of inflation.<sup>49</sup> Given the overall record (and BLS statistics) the County either has, or will have, the revenue to pay for all of the Union’s proposals.

It is axiomatic that as inflation increases, the County’s collection of sales and property taxes (all other factors being equal) will increase. The bottom line is that while the County may have an *unwillingness* to pay for the Union’s proposals, the County did not meet its burden to establish that it actually lacks the ability to pay. Thus, on the issue of the County’s ability to pay, the Union prevails. Accordingly, the undersigned must now address the other statutory criteria set forth in the Statute.

**B. The compensation of other government employees, both in and out of the State.**

Having made the “preliminary determination” (as required by the Statute) that the County has the ability to pay for each of the Union’s proposals, the next criteria the Statute requires me to consider is, “to the extent appropriate, compensation of other government employees, both in and out of the State.” In my opinion, next to ability to pay, the issue of comparability, in and of itself,

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<sup>48</sup> [https://www.bls.gov/regions/west/news-release/consumerpriceindex\\_west.htm](https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm)

<sup>49</sup> See, e.g., <https://www.bls.gov/news.release/pdf/cpi.pdf> (Table A, “shelter”).

is the *most important issue* for a Fact Finder to consider. Indeed, historically, the most significant factor in public sector interest arbitration has been external comparables;<sup>50</sup> those external comparables “meaning the wages, hours, and terms and conditions of employment of similar public employees in comparable units of government.”<sup>51</sup> A major consideration regarding comparative data was expressed by Arbitrator Carlton Snow:

A concern with any comparative data in interest arbitration is whether the cities being compared accurately reflect what is being compared, such as the real price of labor. Wage rates may be similar, but the price of labor may be substantially different in cities which have been compared. Pension plans and other fringe benefits have a startling impact on the overall wage cost as well as labor market conditions which may be unique to a particular County.<sup>52</sup>

Thus, the comparability of other jurisdictions must focus on the *total compensation* of the employees, so that an apples-to-apples comparison can be made.

When most employees hear the term “compensation,” they typically only think of the money they receive in their paycheck each payday.<sup>53</sup> However, “total compensation” goes beyond salary; it is the complete pay package for any group of employees. This amount includes all forms of money, benefits, services, and other “perks” employees in the “SPA” unit are eligible for at the County. Basically, “[t]otal compensation can be defined as all of the resources available to employees which are used by the employer to attract, motivate, and retain employees.”<sup>54</sup>

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<sup>50</sup> See, e.g., Marvin F. Hill, Jr. and Emily Delacenserie, *Interest Criteria in Fact-Finding and Arbitration: Evidentiary and Substantive Considerations* (Marquette Law Rev. Vol. 74:399) (1991).

<sup>51</sup> See *State of Ill. Dep’t of Cent. Mgmt. Svcs*, Case No. S-MA-08-262 (Benn, 2009).

<sup>52</sup> *County of Renton*, 71 BNA 271 (Snow, 1978).

<sup>53</sup> *County of Aurora*, 127 BNA 1773 (Gaba, 2010).

<sup>54</sup> *County of Aurora*, 127 BNA 1773 (Gaba, 2010).

In some--not all--but *most* cases, “the selection of comparable jurisdictions is relatively simple if the parties have historically agreed upon or at least consistently used a certain set of comparable jurisdictions in their prior negotiations.”<sup>55</sup> Once a pattern is established, the party seeking to add or subtract jurisdictions to the traditional list bears the burden of proving the previously agreed-upon list unsuitable.<sup>56</sup> It is not uncommon to see interest arbitrator awards and fact finding decisions stating:

In order to maintain that stability, prior interest arbitration awards must be accepted at face value in subsequent proceedings unless they are glaring wrong which is not the case here... It is well-established that the party seeking to change historical comparables has the burden of clearly proving that a change is warranted.<sup>57</sup>

Here, this impasse proceeding is a “relatively simple” case, as the Parties stipulated to a set of external comparable jurisdictions, as follows:

- Carson City
- Washoe County
- City of Sparks
- City of Reno
- Lyon County

A “comparability range” sets the extent to which another jurisdiction can vary from the jurisdiction under study (or “target” jurisdiction) and still be considered as a possible comparable

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<sup>55</sup> Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 64 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022), citing *County of Lynnwood*, WA PERC Case No. 24694-1-12-588 (Beck, 2013) (held: “Arbitrators have routinely used mutually agreed upon comparators as the basis for comparability analysis”).

<sup>56</sup> Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 64 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022), citing *See County of Rockford*, Case No. S-MA-12-108 (Goldstein, 2013), and *County of Rockford*, Case No. S-MA-11-09 (Perkovich), where attempts to change historical comparables were rejected.

<sup>57</sup> Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 64 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022), citing *Village of Algonquin*, ILRB Case #S-MA-17-262 (Greco, 2019).

jurisdiction.<sup>58</sup> For example, a very simplistic comparability selection process in this impasse proceeding might search for all cities with populations within fifty percent (50%) (plus or minus) of the population of Douglas County, the target jurisdiction.

Here, the County asserts that Storey County should also be included as its external comparator jurisdiction. However, given the County's concession that Storey County's population is relatively small, at 4,193, compared to the County's population of "approximately 49,000," I do not find that Storey County is a proper external comparator jurisdiction.

Further, the Union presented credible *unrebutted* evidence that, as an example, the average annual "total compensation" for a Sheriff II with zero (0) to three (3) years' experience, is \$77,207.00 amongst the stipulated comparator jurisdictions to the County, compared to the County's average annual total compensation of \$65,590.00. The record also reflects that the wage disparity becomes even greater as a bargaining unit employee gains more experience. Clearly, as conceded to by the County, "wage rates for this bargaining unit have lost pace with the market."<sup>59</sup> Thus, on the issue of external comparability of total compensation, the Union prevails.

### **C. Other "normal criteria for interest disputes."**

Lastly, the Statute requires me to consider "other normal criteria for interest disputes" regarding the terms and provisions to be included in an agreement "in assessing the *reasonableness* of the position of each party as to each issue in dispute" (emphasis added). More likely than not, the "normal criteria for interest disputes" referenced in the Statute includes what has traditionally

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<sup>58</sup>Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 3, page 65 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

<sup>59</sup>County's Post-Hearing Brief at page 1.

been developed over decades of interest arbitration practice; these issues include the interest and welfare of the public, comparable wages and working conditions, cost of living (including changes in the cost of living), ability of the employer to pay, ability to attract and retain personnel and/or other factors, depending on the specifics of the issues that are presented to the arbitrator or factfinder.<sup>60</sup>

Having already addressed the ability of the County to pay, and the comparability of the County's external jurisdictions in terms of total compensation, I now address these other "normal criteria," in accordance with what appears to be relevant to this impasse proceeding.

### **1. Interest and welfare of the public.**

As a general rule, most arbitrators and fact finders have found it *impossible* to apply a standard such as "the interest and welfare of the public," without considering other factors. As Arbitrator Carlton Snow observed:

In the abstract, it is impossible to find meaning in the phrase "the interest and welfare of the public." The meaning of this criterion must be found as it is applied within the context of other criteria and the facts of a given case.<sup>61</sup>

It is my conclusion that the interest and welfare of the public is best served by a Recommendation that has the least chance of increasing employee turnover, decreasing employee morale, or inserting language into the contract that is illegal or that may raise taxes. Of course, these goals are mutually incompatible.

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<sup>60</sup> See e.g., Barry Winograd, *An Introduction to the History of Interest Arbitration in the United States*, Labor Law Journal, Fall 2010, pp. 164-168.

<sup>61</sup> *State of Oregon (OSCI Security Staff)*, IA-1 1-95 (Snow, 1996).



In the instant case, given that the wage rates in this bargaining unit are not comparable to the external market, addressing the “SPA” bargaining unit employees’ need to be fairly compensated for their work is *clearly* an important goal, and is definitely in the interest and welfare of the public. On this additional relevant consideration, the Union prevails.

## **2. The County’s internal comparator argument.**

In its Post-Hearing Brief, the County raised a concern about internal equity at the County. Specifically, the County asserts:

The County has two other collective bargaining agreements – the sixteen (16) member sergeant’s bargaining unit (“SBU”) represented by the same association as this Unit, and the one hundred and eighty (180) member Douglas County Employee Association (“DCEA”). The SBU is currently engaged in the factfinding process. The DCEA collective bargaining agreement expires in 2024. The County must consider the impact of any agreement it reaches with the Union on these other bargaining units (DCEA and SBU) as well as non-represented employees (over 300 employees).<sup>62</sup>

While I have no doubt that the County has concerns about internal equity amongst its employees, the County simply did not present sufficient evidence that would allow me to conclude that any of the Union’s proposals would be internally inconsistent with its other bargaining units. As has been asserted by Christine D. Ploeg, Professor of Law, William Mitchell College of Law, and Member of the National Academy of Arbitrators:

“Internal comparison” evidence is used to determine whether a public employer's overall pay scale appears internally consistent (e.g., comparing the wages or wage increases of a community's fire fighters with those of its social workers).<sup>63</sup>

On this additional statutory criteria, regrettably, the Union prevails.

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<sup>62</sup> County’s Post-Hearing Brief at pages 16-17.

<sup>63</sup> Ver Ploeg, Christine D. (2000) *Pay Equity in Interest Arbitration*, William Mitchell Law Review: Vol. 27: Iss. 2, Article 34, p. 813.

### 3. The “Status Quo” Doctrine.

In addition to the above factors that I have carefully considered, I am also mindful of the *Status Quo* Doctrine, which holds that “a party proposing new contract language has the burden of proving that there should be a change in the *status quo*.”<sup>64</sup>

The rationale underlying the *Status Quo* doctrine—an arbitrator-created doctrine not found in most fact finding or interest-arbitration statutes—is that the party seeking to change *status quo* contract language must have given something up to get that language in the first place.<sup>65</sup> When its proponents give any reason for employing the doctrine, they typically argue that a party seeking to change the *status quo* should have to show either: (a) that maintenance of the *status quo* would be unfair (because it has failed or is inequitable in practice); or (b) that it has offered a sufficient “*quid pro quo*” (*i.e.*, concession) in exchange for undoing the *status quo*.<sup>66</sup> This is sometimes called the “breakthrough” test to represent the burden that must be met to break through the *status quo* and build new terms into the contract.<sup>67</sup>

Here, there are certain of the County’s proposals where the County failed to present any evidence to establish that the *status quo* is unfair or that the County made any *quid pro quo* concessions in order to receive the benefit of the language it insists should be added to the Successor Agreement.

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<sup>64</sup> *City of Tukwila*, PERC No. 130514-I-18 (Latch, 2018)

<sup>65</sup> Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 9, page 178 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

<sup>66</sup> *Village of Dolton*, ILRB No. S-MA-11-248 (Fletcher, 2016).

<sup>67</sup> Will Aitchison, Jonathan Downes and David Gaba, *Interest Arbitration*, Chapter 9, page 178 (LRIS, 3<sup>rd</sup> ed., Scott, et al. eds. 2022).

### **III. The Reasonableness of Each Parties' Proposals**

Lastly, I address each Parties' proposals for each article that remains outstanding, based on the Statute's requirement that I consider "the *reasonableness* of the position of each party as to each issue in dispute." Ultimately, I am finding that neither Party "wins" on each of their overall Final Proposals, as I find that certain of the Union's proposals, and certain of the County's proposals, are the best total fit for the "reasonableness" criteria under the Statute. I offer the following multi-point analysis on an issue-by-issue basis to explain the reasoning by which I arrived at my conclusions.

#### **A. Article 2 – Term of Agreement**

##### **1. Article 2, Subsection A**

The County has offered a three (3)-year term for the successor CBA, from July 1, 2022, through July 1, 2025, while the Union has offered a two (2)-year term, from July 1, 2022, through July 1, 2024. In this regard, the Union asserts:

The County has raised concerns about the potential long-term fiscal impact of the Union's proposals. Of course, a shorter-term contract will provide an opportunity for a new agreement to be in place for some time, for the County to see the actual fiscal impact, for the Sheriff to assess the recruitment and retention with the new MOU and pay structure in place, and for each side to reevaluate the market and come back to the table and make tweaks as necessary starting in 2024. The County's three-year contract only acts to extend the uncertainty of what will happen over the term of the MOU.<sup>68</sup>

I agree with the Union's rationale. Ultimately, it is "*reasonable*" for the Parties to agree to a two (2)-year term, to allow both Parties to determine the *actual* fiscal impact of the new wage scale

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<sup>68</sup> Union's Post-Hearing Brief at pages 11-12, reference to exhibits omitted.

that has been agreed upon in principle. For this reason, I am recommending that the Union's proposal for Article 2 A be adopted.

## **2. Article 2, Subsection B**

The Union proposes that the Successor CBA retain the following language at Article 2, Section B:

This Agreement will remain in full force and effect during any subsequent labor negotiations between the Association and the County.

The County proposes to delete the above language, arguing:

If the current language remains in place, there would be no compelling reason for either party to accept a reasonable proposal from the other. This language creates a never-ending agreement which does not promote contract settlement. Therefore, the Factfinder should recommend the County's proposal to strike Article 2B from the Agreement.<sup>69</sup>

I agree with the Union that removing the language in Article 2 B "would only act to harm the employer-employee relationship by leaving significant uncertainty as to the terms and conditions of employment in place in the event that the MOU expires."<sup>70</sup> More importantly, the County has the burden of proof to support removal of this language from the CBA and has not provided evidence as to how the comparable jurisdictions address this issue. Based on the Status Quo doctrine, and a lack of comparability data, I find that the Union's proposal is more reasonable, and recommend that the Union's proposal for Article 2 B be adopted.

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<sup>69</sup> County's Post-Hearing Brief at page 21.

<sup>70</sup> Union's Post-Hearing Brief at page 12.

### 3. Article 2, Subsection C

For Article 2, Subsection C, the Union proposes language to clarify that “step movement” and “longevity” will continue past the expiration date of the successor CBA. On the other hand the County:

- 1) Proposed clarifying language that, “no increases in salaries and wages, includes step movement and longevity.”
- 2) Proposed clarifying language, consistent with NRS 286.421 implementation [sic] of PERS may result in reductions to employee salaries.

Here, I agree with the Union in part, and with the County in part. For the same reasons set forth above with regard to Article 2 B, the Union’s proposal clarifying that step movement and longevity will increase beyond the expiration date of the Successor CBA would remove any significant uncertainty as to the terms and conditions of employment for bargaining unit employees, in the event the Successor CBA expires before a new agreement is reached.

I also agree with part two (2) of the County’s proposal for Article 2, subsection C, where the County proposes:

However, the County, as an employer paying on behalf of an employee, is required by Nevada’s Public Employees’ Retirement System (“PERS”) to pay contribution rates per NRS 286.421 which may result in reductions in employees’ salaries—may elect to pay any increase in the employer’s portion of the matching contribution rate required by the Public Employee’s Retirement System of Nevada pursuant to NRS 286.450.

I agree with the County that it is *reasonable* to include language that clarifies the County’s obligations under the PERS statutory provisions, as this language provides clear notice to bargaining unit employees. For these reasons, while I recommend that the Union’s proposal that clarifies that “step movement” and “longevity” will continue past the expiration date of the

successor CBA should be adopted, I am also recommending that the above listed-language from the County's proposal should also be adopted.

**B. Article 7 – Salaries**

**1. Article 7, Subsection A**

The Union proposes that its salary schedule should be implemented effective July 1, 2022; thus providing for retroactive pay, while the County has proposed that each bargaining unit employee will receive a three thousand (\$3,000) lump sum payment, payable the first full pay period following approval of the Successor CBA. The Union offered no probative evidence that rebuts Ms. Davidson's credible testimony that providing for retroactive pay would be "consuming and cumbersome," and thus, "very likely prone to error." While I truly sympathize with the Union, I agree with the County that its proposal of a lump sum payment to each bargaining unit employee is more *reasonable*, and recommend that the County's proposal be adopted.

**2. Article 7, Subsection B - COLA Range**

The Union proposes that FY 2022-2023, a Cost of Living Adjustment (COLA) range will be incorporated into the Union's proposed salary range, whereas, the County proposes that its proposed COLA range will be incorporated into the County's proposed salary range FY 2022-2023 and 2023-2024. The Union's proposed COLA range is zero (0) to six percent (6%), while the County's proposed COLA range is zero (0) to four percent (4%). I agree that the Union's proposed COLA range should be adopted, as the Union correctly pointed out:

By capping the COLA at 4% for July 2023 and 2024, as proposed by the County, we know that Union wages will continue to fall to keep pace with the cost of living. Specifically, the County's proposed July 2023 increase of 4% is 2.2% behind the increase in CPI of 6.2% in calendar year 2022. The Union's proposal will better help to keep Union wages in line with the CPI

increase in calendar year 2022 by increasing wages by 6% for the COLA to go into effect July 2023.

Furthermore, while the parties have no indication as to what the CPI will do for the remainder of calendar year 2023, the intent of the COLA is to, as the name suggests, adjust wages in order to keep up with the cost of living. The County has provided no explanation with respect to why a maximum of 4% is reasonable other than it being “an important financial consideration.” A true “cost of living adjustment” would not be limited at all, though a range of 0% to 6% is more reasonable, especially given the elevated CPI in recent years.<sup>71</sup>

### **3. Article 7, Subsection C – Salaries, Market Adjustment**

The Union proposes an additional step move of four percent (4%) on July 1, 2023, while the County proposes an additional step move of three percent (3%) on July 1, 2023. The County offered no explanation as to why the Union’s proposal should not be accepted, and the SPA bargaining unit is clearly behind the County’s external comparators. For this reason, I recommend that the Union’s proposal be adopted.

#### **C. Appendix A – Salary Schedule**

##### **1. Appendix A – Steps and Values Between Steps**

With regard to Appendix A - Salary Schedule, effective July 1, 2022, the Union proposes nine (9) steps for Deputies and Investigators covered by the successor CBA, with four percent (4%) difference between each step, while the County proposes eleven (11) steps, with a difference of three percent (3%) between each step. I agree with the County’s proposal, under the following rationale:

The County’s proposal for a 3.0% distance between step increases represents a significant increase to employees when compared to wage increases that

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<sup>71</sup> Union’s Post-Hearing Brief at pages 19-20.

employees currently receive under the County’s merit-based system. The County’s proposal is also reasonable relative to comparators and recognizes the County’s fiscal responsibilities.<sup>72</sup>

For this reason, I recommend that the County’s proposal be adopted.

## **2. Appendix A – Range Per Hour**

For the same reason set forth above, I recommend that the County’s proposal for range per hour for Deputy I, Deputy II, and Investigator, should be adopted.

### **D. Article 8 – Incentive Pay**

The Union proposes that incentive pay should be increased effective January 1, 2023, and that beginning in FY 2023-2024, incentive pay will again be increased by the COLA amount. On the other hand, the County proposes that incentive pay should be increased effective the first pay period of July or January (whichever occurs first) following approval of the Board. The County rejects the Union’s proposal that COLA applies to incentive pay.

I recommend a hybrid of both proposals. I agree with the Union that COLA should apply to incentive pay, because inflation tends to go up every year. Just as inflation applies to the bargaining unit’s base wages, it is imminently reasonable that COLA should also be applied to incentive pay which is part of the employee’s total compensation. However, I agree with the County as to *when* the increase in incentive pay should begin, as that portion of the County’s proposal is more reasonable. As the County correctly pointed out:

The County’s proposal provides for a smoother transition and avoids an unnecessary administrative burden by coordinating the timing for the transition with the current semi-annual and annual payment schedule.<sup>73</sup>

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<sup>72</sup> County’s Post-Hearing Brief at page 27.

<sup>73</sup> County’s Post-Hearing Brief at page 14.



## **1. Article 8, New paragraph H**

The County has proposed to add a new paragraph H, Information Technology Assignment. As of the second day of the hearing, the Union had not agreed to the County's proposal. However, the Union states in its Post-Hearing Brief:

The Union is in agreement to add County proposed Article 8, Section H assuming that the County does not raise an inability to pay argument. In the event that ability to pay is dispute, the Union asserts wages directed to this incentive should go to pay for other proposals.<sup>74</sup>

For this reason, I recommend that the County's proposal to add Information Technology Assignment incentive pay should be adopted.

## **2. Article 8 – Longevity Pay**

While both Parties' proposals for longevity pay appear to be reasonable, I recommend that the County's proposal for longevity pay be adopted, for the following reasons:

- i. Longevity pay is another dramatic change to the County's long-standing compensation structure and should be introduced conservatively;
- ii. A fixed dollar amount is consistent with the other incentives reflected in the Union's proposed Article 8; and
- iii. Longevity pay is not universally provided by the County's external comparators and where it is provided it is not always provided using a percentage of base wages.<sup>75</sup>

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<sup>74</sup> Union's Post-Hearing Brief at page 23.

<sup>75</sup> County's Post-Hearing Brief at page 35.

## **E. Article 9 – Medical and Dental Insurance**

### **1. Article 9, Subsection B - Effective Date**

The Union and County appear to be in agreement on a new rate structure. However, the Union proposes that the new rate structure should be effective January 2023, while the County proposes that the new rate structure becomes effective the year following the approval of the Successor CBA, since open enrollment for January 2023 has already closed. I agree with the County, as it is reasonable that the effective date should be implemented next year when there is another open enrollment. I am very cognizant that this is a small county with limited payroll and administrative staff and that the many dramatic changes being made by the Successor CBA will cause a hardship on the clerical staff. For this reason, I recommend that the County’s proposal for the effective date in Article 9, Subsection B be adopted.

### **2. Article 9, Subsection B - Contribution Cap**

The County proposes a new contribution cap of \$1,700.00 per month per employee, and the Union rejects the County’s proposed cap. I agree with the Union’s assertion: “To include a limit which only benefits the County is unreasonable.”<sup>76</sup> This is also new language, and the County has not provided evidence whether any of its external comparators have similar language. For this reason, I recommend that the County’s proposal of a contribution cap should *not* be adopted.

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<sup>76</sup> Union’s Post-Hearing Brief at page 23.

**FINAL WRITTEN RECOMMENDATION FOR SETTLEMENT OF THE IMPASSE  
ISSUES BETWEEN THE PARTIES**

Having carefully considered all evidence, authority, and argument submitted by the parties concerning this matter, pursuant to the procedures outlined in the statute the Fact Finder issues the following written recommendations:

1. The Parties’ Successor CBA should include the language recommended by the undersigned, set forth with specificity above.
2. Within forty-five (45) days after the receipt of this Recommendation, “the governing body of the local government employer shall hold a public meeting in accordance with the provisions of chapter 241 of NRS,” as provided for in Section 8 of the Statute.
3. The costs associated with the fees and expenses of the Fact Finder shall be shared equally by the parties, as provided for in Section 3 of the Statute.

                  /s/ David Gaba                    
David Gaba, Fact Finder  
Irvine, California

DATED: March 9, 2023

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**Re: Gardnerville, Nevada; FMCS #220714-07652; SPA Factfinding--Request to Supplement the Record**

5 messages

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david gaba <davegaba@compasslegal.com>  
To: "Ricciardi, Mark" <mricciardi@fisherphillips.com>  
Cc: Vance Piggott <vpiggott@rslawyers.com>, "Hanson, Anne" <ehanson@fisherphillips.com>

Sat, Feb 11, 2023 at 7:50 AM

Mark,

I will be taking official notice ALL of the BLS data up until the time that briefs are received. Am I correct that when you reference "BLM" below you are simply being tormented by your autocorrect?

Vance,

Do you want an opportunity to respond to the argument below?

Cheers,

Dave Gaba

Sent from my iPad which explains my poor syntax, grammar, and the many typographical errors.

On Feb 10, 2023, at 8:37 PM, Ricciardi, Mark <mricciardi@fisherphillips.com> wrote:

Mr. Gaba:

I writing to request permission from you to supplement the record in this case. The hearing took place on November 11, 2022 and December 16, 2022. The post-hearing briefs are due to you on February 20, 2023.

There are two documents that the County believes are relevant, extremely probative and would be important for the Fact Finder to Consider when deliberating on his recommendation.

**Final 2022 CPI Published by the BLM**

-

During the hearing in this matter the Union offered into evidence the 2022 CPI numbers through September 2022 as Union Exhibit M. After the hearing was concluded the final 2022 CPI number was published by the BLM and it is attached hereto as proposed Exhibit 20. This document comes as no surprise to the Union as it was introduced into evidence by the County without objection by the Union in the Sergeant's Bargaining Unit Fact Finding which took place on January 17, 2023. The parties have proposed drastically different annual COLA increases and the current economic environment is an issue, thereby making this new evidence extremely probative.

**Proposal Made by the Union in the Sergeant's Bargaining Unit Fact Finding**

-

The Union in this case also represents a unit of sergeants at the County. The two units are closely aligned and have made the same demand to move from a merit pay system to step system. The two units engaged in joint bargaining with Douglas County beginning on March 29, 2022 and bargained jointly until May 25, 2022. Douglas County and the Deputies and Investigators Unit declared impasse effective May 27, 2022, only two days after they ceased bargaining jointly with the Sergeants Unit.

In addition, the Union produced and provided to the County during bargaining a joint Total Compensation Survey in July 2022 through an organization known as RLS. This survey included data for both the Deputies and Investigators Unit and the Sergeants Unit. The RLS Total Compensation Survey was admitted as Union Exhibit F (see Transcript 11/11/2022, P. 90:23-24). It was also discussed on the Factfinding Record as the Total Compensation Report (see Transcript 11/11/2022 p. 25:13-15). Finally, at least one of the Union's exhibits at the hearing included the names of both Deputies and Sergeants—see Union Exhibit L.

One of the sharply contested issues in this case whether the distance between the proposed new salary steps should be 3% or 4%. In this Deputies case the Union has proposed 4% as the appropriate distance between steps. The County believes that 3% is reasonable and appropriate. Despite the fact that the two units bargained jointly and are similarly situated when it comes to the compensation issues, the Sergeants unit proposed 3% between steps. The Sergeant's unit proposal was not made until the Sergeants Fact Finding hearing on January 17, 2023. The Sergeant's unit proposal is attached hereto as County Proposed Exhibit 21. Here, a related County bargaining unit aligned with the Deputies Unit believes that 3% between steps is reasonable. This fact is also extremely probative and should be considered by the Fact Finder.

It is well established that this is an appropriate situation for the record to be reopened. Arbitrator Nolan has stated, there is a "narrow exception to a strong policy against reopening [arbitration] hearings". Georgia Power Co., 118 BNA LA 1491 (Nolan 2003). Arbitrator Nolan applied the following factors to determine if the reopening was proper:

- “...1. The request to reopen [was] made before the arbitrator issue[d] the award.
2. The proffered evidence ‘must not have been available with due diligence at the time of the hearing.’
3. The proffered evidence must be pertinent.
4. The proffered evidence must be likely to affect the outcome of the case. The costs of reopening the case would outweigh any benefit if the evidence [was] insubstantial or duplicative, or related only to minor issues.
5. Admission of the new evidence must not improperly prejudice the other party.

‘Improperly,’ in this context, means more than some delay or expenses. In the normal

case, if the other party has time to respond to the evidence, the harm it would suffer would not be “improper....” Id.

(Emphasis added).

Here, all of the factors set out by Arbitrator Nolan have been satisfied as to the two attached proposed exhibits.

Thank you for your consideration.



**Mark J. Ricciardi**  
Attorney at Law

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mricciardi@fisherphillips.com | O: (702) 862-3804

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LEADERSHIP FOR GREATER PURPOSE

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**2 attachments**

**20 EXHIBIT 20 PROPOSED - CPI 2018-2022.pdf**  
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**21 EXHIBIT 21 PROPOSED - SERGEANTS PROPOSAL WITH 3% BETWEEN STEPS.pdf**  
578K

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**2 attachments**

**20 EXHIBIT 20 PROPOSED - CPI 2018-2022.pdf**  
129K

Tue, Feb 14, 2023 at 1:24 PM

david gaba <davegaba@compasslegal.com>  
To: Vance Piggott <vpiggott@rslawyers.com>  
Cc: "Ricciardi, Mark" <mricciardi@fisherphillips.com>, "Hanson, Anne" <ehanson@fisherphillips.com>

Vance,

Tomorrow would be great but I won't have an opportunity to look at your Response until Sunday if you need more time.

Cheers,

Dave Gaba

Sent from my iPad which explains my poor syntax, grammar, and the many typographical errors.

On Feb 14, 2023, at 3:12 PM, Vance Piggott <vpiggott@rslawyers.com> wrote:

Mr. Gaba,

Yes. I would like an opportunity to respond. I can provide a substantive response tomorrow.

Thanks,

Vance Piggott

Attorney at Law

RAINS LUCIA STERN

ST. PHALLE & SILVER, PC

One Capitol Mall, Suite 345

Sacramento, CA 95814

916.646.2860 Phone

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\*\*\*\*\*

**From:** Ricciardi, Mark <mricciardi@fisherphillips.com>  
**Sent:** Saturday, February 11, 2023 8:06 AM  
**To:** david gaba <davegaba@compasslegal.com>  
**Cc:** Vance Piggott <vpiggott@rslawyers.com>; Hanson, Anne <ehanson@fisherphillips.com>; Ricciardi, Mark <mricciardi@fisherphillips.com>  
**Subject:** Re: Gardnerville, Nevada; FMCS #220714-07652; SPA Factfinding--Request to Supplement the Record

Thank you—auto correct is my nemesis

**Mark J. Ricciardi**  
Attorney at Law

Fisher & Phillips LLP  
300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101  
mricciardi@fisherphillips.com | O: (702) 862-3804

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On Feb 11, 2023, at 7:51 AM, david gaba <[davegaba@compasslegal.com](mailto:davegaba@compasslegal.com)> wrote:

**CAUTION: This email originated from outside of the Firm. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

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[Quoted text hidden]

**Mark J. Ricciardi**  
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300 S. Fourth Street | Suite 1500 | Las Vegas, NV 89101  
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**3 attachments**

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david gaba <davegaba@compasslegal.com>  
To: Vance Piggott <vpiggott@rslawyers.com>  
Cc: "Ricciardi, Mark" <mricciardi@fisherphillips.com>, "Hanson, Anne" <ehanson@fisherphillips.com>

Sat, Feb 18, 2023 at 3:54 PM

Gentlemen,

Do either of you have any Nevada law on this subject as this matter isn't taking place under the FAA and isn't an "arbitration?" In any event I'm fine supplementing the record, although I see no reason to rely on this evidence as it's simply a "proposal" rather than an actual comparable. Your thoughts?

Cheers,

Dave Gaba  
Sent from my iPad which explains my poor syntax, grammar, and the many typographical errors.

On Feb 18, 2023, at 1:04 PM, Vance Piggott <vpiggott@rslawyers.com> wrote:

Mr. Gaba,

Thank you. I do object to the County's request to supplement the record with the Sergeant Proposal for a number of reasons.

First, the survey mentioned by Mr. Ricciardi during the hearing (November 11, 2022 Hearing Transcript page 25) included both the rank of Deputy and Sergeant because at the time it was created, the parties were bargaining together. Mr. Ricciardi asked "so we should not worry about what's in here because it could be different." I confirmed and indicated that the information had been updated. (November 11, 2022 Hearing Transcript 25:12-19.) After the County severed the bargaining process and the matter proceeded to fact-finding, the Union prepared a new Salary Survey which the Union introduced into evidence Union Exhibit G. This document contains no reference or information regarding the classification of Sergeant. The only document introduced by the Union which has any reference to the rank of Sergeants or the Sergeant classification is Union Exhibit L is simply a list of Sheriff's Office personnel in classifications represented by the Douglas County Sheriff's Protective Association. (November 11, 2022 Hearing Transcript at pg 99:8-12) The Union's witness, Union President Justin Fricke testified that the document identifies vacancies in the Deputy Bargaining Unit. (November 11, 2022 Hearing Transcript at pg 100:2-14) Exhibit L contains no information regarding the wages of Douglas County Sergeants. There is no basis to assert that this document makes any proposal made in the Sergeant Bargaining Unit relevant or probative.

Mr. Ricciardi's position that the Sergeant Bargaining Unit proposal is relevant is premised on his assertion that: "Despite the fact that the two units bargained jointly and are similarly situated when it comes to the compensation issues..." The assertion that the bargaining units are "similarly situated when it comes to the compensation issues" is not supported by any evidence in the record and the County has not pointed to any evidence which would support this conclusion. A number of factors go into each bargaining units' proposals and the reasonableness of the respective proposals. To introduce the proposal from the Sergeant Bargaining Unit with no other evidence leaves out important context for that proposal, specifically the compensation data for sergeants in comparable agencies. To provide that context would necessitate additional testimony and evidence and cause unnecessary delay to these proceedings with no probative value. This delay will prejudice the Union as the County is resolute in its refusal to pay bargaining unit members retro pay from the date of expiration of the prior MOU for any wage increases. In addition, the County has frozen employee wages causing further prejudice is this process is further extended.

The County separated the bargaining for the different bargaining units. The parties have proceeded to fact-finding separately and the Union is separately attempting to come an agreement for each of its bargaining units. The County now wants to use the Sergeant Bargaining Unit concessions in an attempt to resolve their negotiations against the Deputy bargaining unit. The County's request to supplement the record should be denied.

Thank you,

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

**Mark J. Ricciardi**  
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**Mark J. Ricciardi**  
Attorney at Law

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**3 attachments**

**image001.jpg**  
1K

**image001.jpg**  
1K

**image002.jpg**  
1K

To: Vance Piggott <vpiggott@rlslawyers.com>  
Cc: "Ricciardi, Mark" <mricciardi@fisherphillips.com>, "Hanson, Anne" <ehanson@fisherphillips.com>

Vance,

Thanks for keeping my in the loop.... It's appreciated. That said, I have no problem supplementing the record, and allowing you to argue the issue in your briefs. However, I just don't see how a "proposal" from another bargaining unit will affect the Award.

Cheers,

Dave Gaba

Sent from my iPad which explains my poor syntax, grammar, and the many typographical errors.

On Feb 20, 2023, at 10:17 AM, Vance Piggott <vpiggott@rlslawyers.com> wrote:

Mr. Gaba,

Mr. Ricciardi and I have agreed to postpone the deadline for briefs to Friday, February 24 in order to allow time to get this issue resolved.

Thanks,

Vance Piggott

Attorney at Law

**RAINS LUCIA STERN**

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**From:** Vance Piggott

**Sent:** Sunday, February 19, 2023 9:50 AM

**To:** 'david gaba' <davegaba@compasslegal.com>

**Cc:** Ricciardi, Mark <mricciardi@fisherphillips.com>; Hanson, Anne <ehanson@fisherphillips.com>

**Subject:** RE: Gardnerville, Nevada; FMCS #220714-07652; SPA Factfinding--Request to Supplement the Record

Mr. Gaba,

I am unaware of any Nevada Law on the issue. Though I will note that even under the authority cited by Mr. Ricciardi, if you see no reason to rely on the new proposal, that negates several of the factors necessary to warrant supplementing the record.

[Quoted text hidden]

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3 attachments