

ATTACHMENT I

FACTFINDING PROCEEDING PURSUANT TO NEVADA REVISED STATUTE 288.200

CLARK COUNTY DEFENDERS UNION,

And

CLARK COUNTY.

Opinion & Recommendation

Hearing Date: January 30, 2025

Award: April 16, 2025

Hirsch Case #: H24-106

FINDINGS & RECOMMENDATIONS ROBERT M. HIRSCH FACT-FINDER

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BACKGROUND

The parties in this matter, the Clark County Defenders Union (Union or CCDU) and Clark County (County or CC) are engaged in Factfinding after reaching impasse in negotiations over two Union proposals. The proposals concern Article 22 – Longevity Pay and Article 38 – Salary Schedule Parity.¹ CCDU represents the non-managerial public defenders employed in the County’s Public Defender’s Office and Special Public Defender’s Office. Clark County is by far the most populous county in the State.

Under Nevada Revised Statutes – NRS 288.200, the parties have the ability to engage in factfinding when contract negotiations reach impasse. The factfinding and recommendations are not binding upon the parties but should receive serious consideration. The statute provides for the following analysis by the factfinder:

STATUTORY CRITERIA AND PROCEDURE FOR FACT FINDING ARBITRATION IN NEVADA

Pursuant to NRS 288.200, Nevada requires consideration of the following:

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 . . .
- (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 . . .

¹ Union Exhibits (UX) 1 and 20, respectively.

. . . 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.

(Emphasis added).

LONGEVITY PAY

Discussion:

The Union proposes the following Article:

Employees appointed prior to July 1, 2002, to a full-time position within the attorney classification series shall upon completion of five (5) years creditable service receive an annual lump sum payment equal to 0.57 of one percent (.57%) of their salary for each year of service.

CCDU argues that the proposal is reasonable under the circumstances presented. First, both parties acknowledge that the County has the financial ability to pay for the contract proposal. Thus, the first criteria for a determination of reasonableness has been met. The Union contends that longevity pay is widely used in Nevada and other neighboring States. It points to the two smaller counties in the State – Washoe and Elko – which offer longevity pay to Public Defenders. Further, CCDU lists law enforcement bargaining units in the State which have secured longevity pay – the LVMPD, North Las Vegas Police Officers, and Las Vegas' Correction Officers, for examples. Others are actively seeking to bring the benefit back.

In contrast, CC maintains that it has engaged in a strong move to eliminate longevity pay for decades. Between 2002 and 2015, longevity pay was removed for all new hires. Only legacy employees now enjoy that benefit in Clark County.

The County counters the Union's arguments by pointing to its strong pattern of COLA adjustments for County employees, which is now the status quo that the Union seeks to upend. The County notes for the Factfinder that the party seeking to change the status quo has the burden of establishing that a change is warranted. Moreover, says CC, comparator bargaining

units must be in similar fields and have similar job duties. Law enforcement is a separate group of public employees with distinctly different job functions.

CCDU argues that longevity pay is needed for hiring and retention purposes. It points to the decline in the number of death penalty qualified attorneys in the Defender's office as an indication of how the loss of longevity pay has impacted the County's ability to attract and retain attorneys. There was a point in time when all the attorneys had longevity pay and there were nine qualified lawyers. Currently, there is only one remaining death penalty attorney in-house. Additionally, turnover by attorneys with more than five years has increased significantly. In 2018 experienced attorneys made up 78% of the unit. In 2024 the number was down to 68%. In 2025, the number had dropped to 63%, with the retirement of a few experienced attorneys.

The County contends that staffing remains an issue for management² not the Union, and it does not have a problem finding or retaining qualified attorneys. The average service of a CCDU member over the past seven years is 10.97 years. The attorneys only need three years of experience to become death penalty certified, while the proposed longevity pay doesn't kick in until five years. Thus, says CC, the Union can't really show that the economic proposal will address any shortage, nor is there any evidence that longevity pay provides an incentive to become death penalty certified, an option an attorney may exercise, or not. According to the County, longevity pay ranked last among benefits serving as an employee incentive in a survey conducted in or about 2014.³

² CC cites, NRS 288.150(3)(c)(1).

Conclusion:

The touchstone for this analysis and determination is the reasonableness of the Union's proposal balanced against the reasonableness of the status quo. The criteria set by the Nevada statute offer a basis for making such a determination. Here, the Union fails to establish that its proposal is the more reasonable approach. Longevity pay, by itself, has not been shown in the record for this factfinding, to have a material correlation with hiring and retention of CCDU members. Moreover, the County has clearly eliminated the benefit for all its employees over the past two decades. The comparator, at least for county employees, strongly favors the County. This is particularly clear when we look at the County prosecutors, with whom the defenders seek economic parity. The prosecutors don't have longevity pay.

Nor can we say that law enforcement personnel are a sound comparator when we consider the distinctly challenging, dangerous nature of the work involved and the shorter work tenure associated with the positions. Longevity pay may incent law enforcement personnel to remain at their positions. We can't really assess that from this record. But the law enforcement comparator is unpersuasive.

It is also apparent from this record that CC is able to subcontract out challenging death penalty work to outside counsel, if need be, undermining the Union's insistence that there is an immediate need for more death penalty qualified attorneys in house. While the Union has raised legitimate issues regarding the total compensation of the attorneys in this unit as noted below, it has not made the case for longevity pay.

Recommendation:

This Factfinder recommends the County's proposal of status quo.

³ Transcript (TR) 184-85; County Exhibit (CX) 12.

SALARY SCHEDULE PARITY

Discussion:

The Union proposes the following Article:

Anytime the Clark County Prosecutors Association receives any salary schedule increase(s), then the salary schedules for all employees covered by this Agreement shall be adjusted under the same terms and conditions.

The CCDU confirmed on the record that it seeks parity with the prosecutors, meaning that it seeks the same salary schedule whether there is an increase, no change, or decrease.⁴ Accordingly, this Factfinder gives this “parity” interpretation to the Union’s proposal. The proposed Article should be rewritten to reflect the true intent of the CCDU.

Again, it is noted that the ability to pay for the Union’s proposal is not an issue for the County.

The Union says that since the inception of the Clark County Public Defenders’ office in 1966, the unit has always enjoyed pay parity with the Deputy District Attorneys. Until last year, that is. Only then, did another factfinder decide to recommend a wage increase of 1% less than the prosecutors received. The County even sought to have the defenders and the prosecutors in a single bargaining unit after the groups unionized. The District Attorneys apparently rejected that notion.

Still, says the Union, the Nevada judiciary recognizes that it is appropriate for the two adversarial groups to be on economic par with one another. Appendix A to the Nevada Supreme Court Administrative Docket Order No. 411, issued January 4, 2008, states:

⁴ TR 82.

Attorneys employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.⁵

Section 39 of the Nevada Administrative Code for the Board of Indigent Defense

Services provides:

An attorney who receives a salary for providing Defense services is entitled to receive a reasonable salary, benefits and resources that are in parity, subject to negotiated collective-bargaining agreements if applicable, with the corresponding prosecutor's office that appears adverse to the office of the public defender in criminal proceedings.⁶ The Union also highlights the fact that the American Bar Association's Standing

Committee on Legal Aid and Indigent Defense has gone on record supporting the notion of pay parity between the two groups.

At the time of this hearing, we knew that the County's District Attorneys were receiving one percent more in pay. During the post-hearing briefing period, the prosecutors received a 3% COLA increase for all members (leaving them 1% above the Defenders after the Defenders' COLA) and an additional 8% for the bottom of the salary schedule and 6% for the top of the schedule.⁷ This moved the salary schedule of the District Attorneys substantially ahead of the Defenders, says the Union.

The County argues that the lack of parity is the result of different bargaining histories and there is no reason to deviate from the status quo. It posits that the only "me too" provision in the County is in the IAFF contracts, which are identical except for supervisors' wages. IAFF supervisors are required to be in a separate unit.⁸

⁵ UX 24.

⁶ UX 25.

⁷ CX 31, submitted with permission of the factfinder after the evidentiary hearing was closed.

⁸ NRS §288.170(3).

Conclusion:

The Union has presented a reasonable basis for establishing wage parity for the Public Defenders with the County's prosecutors. The District Attorneys and the Public Defenders are indeed the opposite sides of a coin. They are the legal voices for the parties involved in the County's criminal proceedings. Their roles are equally important under the State and Federal Constitutions in guaranteeing the people of California fair and equitable adjudication of their rights. Clearly, the State's Supreme Court, the drafters of the State's Administrative Code, and the ABA believe the two parties are on equal footing and deserve equal pay. Clark County apparently agreed when it advocated for a single bargaining unit for both the District Attorneys and the Public Defenders.

There is little basis offered to reject the CCDU's proposal. Returning to the historic position of economic parity is unquestionably reasonable.

Recommendation:

This Factfinder recommends the Union's proposal, as interpreted to require salary schedule parity between the County Public Defenders and the County District Attorneys.

Date: April 16, 2025



Robert M. Hirsch, Arbitrator