

# ATTACHMENT I

**KATHERINE J. THOMSON**  
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El Cerrito, California  
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Factfinder's Case No. 631-FLI  
FMCS Case No. 241013-00340

## IN FACTFINDING PROCEEDINGS PURSUANT TO NRS 288.200

**CLARK COUNTY PROSECUTORS ASSOCIATION,**  
**Employee Organization,**

**and**

**CLARK COUNTY,**  
**Employer,**

**FACTFINDER'S  
FINDINGS AND  
RECOMMENDATION**

June 3, 2024

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### APPEARANCES:

On behalf of the Employee Organization:

Adam Levine, Esq.  
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(702) 386-0536

On behalf of the Employer:

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This matter is a factfinding proceeding after a bargaining impasse between Clark County, hereinafter the Employer, and the Clark County Prosecutors Association, hereinafter the CCPA. KATHERINE J. THOMSON was selected as Factfinder pursuant to Section NRS 288.200 and the procedures of the Federal Mediation and Conciliation Service, under which this report is advisory to the parties. The parties stipulated the matter is properly before the Factfinder.

The parties had full opportunity to call witnesses and present evidence and argument during an evidentiary hearing, which was held by videoconference on February 29, and March 18, 2024. Witnesses were sworn. A verbatim record of the hearing was prepared, and a transcript was made available. The record was closed on May 3, 2024, when the Arbitrator received post-hearing briefs.

## **RELEVANT STATUTE SECTIONS**

### **NRS 288.200**

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....

## STATEMENT OF THE ISSUE

Whether there should be a Cost-of-Living Adjustment (“COLA”) made to the wage schedules, and if so, how much?

## BARGAINING AGREEMENT AND PROPOSALS

The parties’ collective bargaining agreement, effective July 1, 2021 through June 30, 2024, (Association Exhibit 1) provides for a reopener as follows:

### Article 36 -- Compensation

Both parties agree that prior to July 1, 2022, this article may be reopened, at the written request of either party, to determine if a cost-of-living adjustment will be awarded. Such request shall be provided to the other party no later than February 1, 2022.

Both parties agree that prior to July 1, 2023, this article may be reopened, at the written request of either party, to determine if a cost-of-living adjustment will be awarded. Such request shall be provided to the other party no later than February 1, 2023.

### County’s Proposal

1. EFFECTIVE JULY 1, 2023, OR UPON APPROVAL BY THE CLARK COUNTY OF COMMISSIONERS WHICHEVER IS LATER, THE SALARY SCHEDULES FOR ALL EMPLOYEES COVERED IN APPENDIX A WILL BE ADJUSTED BY THE ANNUAL PERCENTAGE INCREASE OF FOUR-AND-ONE-HALF PERCENT (4.50% ), WHICH WILL RESULT IN AN INCREASE TO THE SALARY SCHEDULES IN APPENDIX A.
2. EFFECTIVE JULY 1, 2023, OR UPON APPROVAL BY THE CLARK COUNTY BOARD OF COMMISSIONERS, THE SALARY SCHEDULES FOR ALL EMPLOYEES COVERED IN APPENDIX A WILL BE ADJUSTED BY AN ADDITIONAL 0.50%, REPRESENTING A TOTAL COST-OF-LIVING ALLOWANCE (COLA) OF 5.00%.

### CCPA’s Proposal

EFFECTIVE JULY 1, 2023, THE SALARIES FOR ALL EMPLOYEES COVERED IN APPENDIX [A]<sup>1</sup> WILL BE ADJUSTED BY THE ANNUAL PERCENTAGE INCREASE OF NINE AND TWO-TENTHS PERCENT (9.2%) AND THE SALARY SCHEDULES IN APPENDIX [A] WILL BE ADJUSTED BY AN INCREASE OF NINE AND TWO-TENTHS PERCENT(9.2%).

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<sup>1</sup> There appears to be a typographical error in CCPA Ex. 24, since Appendix B relates to a substance abuse program.

Clark County is home to over 2.3 million residents and had 40.8 million visitors in 2023. Its population is nearly 75 percent of Nevada’s residents; the next largest county, Washoe County, has only 508,759 residents. It is responsible for providing municipal services to 1 million residents in unincorporated areas of the County in addition to funding County services like district attorney’s and public defender’s offices, the courts, assessor, and social services.

### **Bargaining Background**

The County bargained contracts for most of the bargaining units in 2021, reaching agreements for a three-year term, July 2021, through June 2024. In several of those contracts, the unions agreed to a formula for determining the COLAs in mid-term years based on the CPI-U All Items In West - Size Class B/C, All Urban consumers, Not Seasonally Adjusted, but limited to a minimum of 2% and a maximum of 3%. However, CCPA refused to agree to the “collar” language, and instead bargained to reopen the contract for COLAs each year.

In FY 22, the bargaining units whose representatives had agreed with the collar language received 3% raises even though the CPI increase was 4.94%.

The County and CCPA bargained to impasse during the first reopener negotiations on wages in 2022-23. The County’s final proposal was for an increase tied to the “annual percentage increase to CPI-U All Items In West-Size Class B/C, All Urban consumers, Not Seasonally Adjusted ... for the calendar year ending December 2021. The adjusted percentage increase in salary schedules shall be a minimum of 2.0% and a maximum of 3.0%.”

The Union’s final proposal was for a 4.94% wage hike, which matched the annual percentage increase to the agreed-upon CPI for the calendar year ending December 2021.

After Factfinder John Kagel recommended a 4 percent COLA in December 2022, CCPA accepted the recommendation, but the County did not, until May 2023. (Co. Ex. 3) By that time, negotiations had begun on the CCPA 2023-24 COLA reopener.

The Clark County Defenders Association’s collective bargaining agreement was a two-year contract ending in June 2022. The parties were unable to reach agreement in bargaining or mediation and went to non-binding factfinding. In April 2023, the factfinder recommended that the parties agree to the County’s proposal of a 3% salary increase effective retroactively to July 1, 2022. (CX 19) The parties agreed. Another union that had an open contract, Juvenile Justice Supervisors Association, agreed to 3% raise for FY 23. The DA Investigator’s Association agreed in January 2023, to a two-year contract with a 3.5% COLA in each of FY 23 and FY 24.

Going into COLA reopener negotiations for FY 2024, the parties were faced with an 8.2% annual increase to the CPI. CCPA’s initial demand in early May, before the parties settled on the FY 23 salary increase, was an 11% salary hike. The County initially countered in mid-May with modified “collar” language: “The adjusted percentage increase in salary schedules shall be a minimum of 2% and a maximum of 3% unless the annual CPI ... is less than 0%, then the adjusted percentage increase in salary schedules shall be 1%...” (CX 5) As a Union witness testified, this offer was worse than the original collar language since it guaranteed a floor of only 1% rather than 2%.

Despite the fact that many contracts were closed and were set to provide a 3% raise on July 1, 2023, the County agreed with those unions in June 2023, to amend the language in the Compensation sections of the contracts to call for a 4.5 % increase if the CPI increased above 5 percent.<sup>2</sup> In addition, it adjusted the salary schedules 1.5%. The effect was a 6% increase for employees in several bargaining units. (UXs 15-17)

At the same time, it was offering CCPA only the formula that would call for a 4.5% increase if the CPI increased above 5%, but not the extra 1.5% it agreed to pay employees in the other units. (CX 7) CCPA continued to demand 11%. No further movement in the parties’ positions occurred until the week before the factfinding, when the Factfinder urged the parties to have further discussions.

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<sup>2</sup> The County recently began to negotiate with the other bargaining units COLA increases with a “collared” approach using CPI language, that restricted raises to between 2% and 3% for FY 23. However, for FY 24 the other unions signed agreements for an upper and lower “arm” to the collar providing that their bargaining units received 4.5% COLA when CPI increase exceeded 5% and a floor of 1% if the CPI decreased.

## POSITION OF THE UNION

It is unreasonable to depart downward from the CPI. Inflation turned out to be anything but transitory. Arbitrator John Kagel gave a .94% downward deviation from the agreed-upon December-to-December CPI increase with the caveat that if inflation was not in fact transitory, it could quickly be corrected in the FY 24 negotiations. Inflation in FY 2022 turned out to be anything but transitory. Annual 2023 inflation was 4.2%. But the County is still offering only 5%, even though topped-out prosecutors—a third of the unit—lost 9.2% of purchasing power in two years.

The County's fear of a leap-frogging phenomenon where each union attempts to obtain more than previous agreements with other unions is overblown because the CPI is an objective factor that will constrain the parties. CCPA struck a different bargain than those that agreed to the collar language.

Offering CCPA only a 5% increase instead of the 6% hike it voluntarily opened contracts to offer to other units penalizes CCPA. The County has been "fair" only to the larger units that accepted collar language.

The County's General Fund budget alone is \$1.95 billion. A one percent (1%) increase to CCPA costs approximately \$280,000. The difference between the two proposals is less than \$1.175 million which is approximately .06% of County's General Fund budget.

The Office of the District Attorney is facing recruitment and retention problems. That is why the County moved the ranges of the civil district attorneys upward after its management classification and compensation study. Currently, the bottom of the salary range for Attorneys in the Civil Division in Clark County is approximately 16% higher than the bottom of the range for Attorneys represented by the CCPA. (UX 26)

Washoe County has also determined that its attorneys were underpaid and shifted their ranges upward. As a result of a class and compensation study by Washoe County (CXs 28, 29), a Deputy District Attorney I now starts at \$107,723 per year; the Deputy District Attorney III range tops out at \$196,289. (CX 29, p. 7) Although the County

argues that Washoe County is not a valid comparator, its MPlan classification and compensation study used Washoe County as a comparator.

Annual merit increases are not a substitute for COLAs and should not be considered. A third of the unit does not receive merit increases because they are at the top of the range.

The recommended salary increase should be retroactive to July 1, 2023. The County wants to disincentivize utilization of impasse proceedings and put the union in the position that if it does not accept the County's offer (however inadequate), it will not receive the benefit until after the completion of the impasse proceedings. It incentivizes Clark County to hold firm to its initial offer in the hopes that non-retroactivity will convince a union to take an otherwise unreasonable offer. Members of the bargaining unit will still have to struggle with the effects of inflation during the impasse proceedings. The County's approach to non-retroactivity is contrary to Nevada's statutory impasse provisions. If the parties do not agree, the impasse dispute proceeds to a second and binding fact-finding under NRS 288.200(6). NRS 288.215, to which that section refers, makes the award "retroactive to the expiration date of the last contract." For the last 16 years all the agreements between the CCPA and the County have been retroactive.

### **POSITION OF THE EMPLOYER**

Internal equity and an examination of the employer's treatment of its other employees is the most important factor to consider when evaluating the reasonableness of the parties' proposals. Every other bargaining unit (except the DAIA which negotiated a 2-year contract) received a total of 9.0% over the two years (FY 23 & FY 24 ). (See CX 9) Under the County's proposal, CCPA would have the same total percentage increase from 2016 through 2024 (23.75% total COLA increases), as all other bargaining units in the County.

If the Union's proposal was implemented, prosecutors could make nearly \$8,000 more than defenders in Clark County. Consideration of external bargaining units would be inappropriate. Washoe County is not a reasonable comparator because it is a fraction

of the size of Clark County and 500 miles away, closer to the California labor market. Civil attorneys who receive the benefits of the MPlan should not be considered since they are not represented and move through the salary ranges only with merit increases.

Maintaining a consistent pattern across all County bargaining units is also essential to the County because it promotes timely resolution of negotiations and prevents competition and unrest among County employees, with each unit attempting to get more than the other.

The County was forced to cut 20% of its positions during the recession. County FTEs per 1,000 County residents in all positions declined 13.7% from 2009 to 2023: from 2.26 to 1.95. (CX 11, p.13.) At the same time, workload has increased. Funding for additional FTE positions is a priority. The District Attorney's Office requested 84 positions over a three-year period beginning in FY 23, with 36 positions requested in one year, but the County was only able to approve funding for 42 positions over two years, 18 of which are attorney positions. (CX 11, p.14)

The County needs to prioritize the allocation of surplus general fund to funding competing priorities, like hiring new employees and decreasing the capital deficit, among many other important programs, and services. The difference between the County's proposed 5% COLA and the Union's proposed 9.2% COLA would equate to a difference of close to \$14.7 million in increase salary and benefit costs over 10 years, enough to fund 54 much needed additional positions. (CX12, p.10) If all 10 bargaining units bargained and received the additional 4.2%, it would result in an additional \$420 million in total compensation over 10 years, \$420 million the County could not use for capital improvements, community outreach projects or to fund the much needed 2,689 new positions. (CX 12, p. 11)

The prosecutors who are not topped out are not suffering from a decrease in purchasing power, since they receive merit increases of 3-5% on top of COLAs, as long as they meet standards of performance.

The County's history of the wage growth for salary schedules has kept pace with CPI. A 5% COLA, along with merit increases, adequately accounts for any recent spike in CPI.

Any recommended raises should not be retroactive. Making a proposal effective upon the date of agreement and Board of County Commissioners approval creates an incentive for bargaining units to quickly settle contracts before expiration of the prior contract's term. A retroactive recommendation rewards the Union for its refusal to meaningfully engage in the bargaining process.

## **DISCUSSION**

### **Financial Ability**

The compensation of prosecuting attorneys is about \$27 million paid from the general fund. (CX 11, p.11) The cost of raising their compensation 1% would be approximately \$270,000.

Under NRS 288.200, section 7 (a), the first determination the Factfinder must make is whether the County has the financial ability to grant monetary benefits. The County does not dispute that it has the ability to grant monetary benefits. If retroactive, the County's proposal totaling 5% would cost the County \$1.35 million for FY 24.

### **Consideration of Funding for the Current Year**

The statute also requires the Factfinder to consider "funding for the current year being negotiated." The evidence in the record concerning this issue was not well-developed. Property tax revenue was over 34% of the FY 24 general fund revenue, approximately \$663 million, but there was no information how that amount compared to prior years, and no projection for FY 25.

The other major component of general fund revenue, Consolidated Tax revenue,<sup>3</sup> accounted for 44% of the FY 24 general fund revenue. (CX 11, p. 8) That would amount to about \$858 million of the budgeted revenues of \$1.95 billion. (CX 11, p. 9) The County asserted the rolling 12-month average growth in Consolidated Tax revenue slowed to about 4% as of May 2023 and 2.44% by November 2023. This relatively low growth followed a V-shaped negative 13.47 % (decrease in revenue) in May 2021, after hotels and casinos closed during the pandemic, and a quick spike to 38.9 % growth by May 2022, including short-term government stimulus funding. (CX 11, p.10) The record contains no projections for FY 25.

### **Other Obligations**

The County has 6,051 employees in 10 bargaining units, as well as unrepresented employees. What one bargaining unit negotiates is often what all eventually receive.

Public safety costs constitute 48.7 % of general fund budgeted expenditures. (CX 11, p.11) General government expenses are the second largest category of expenditures, at 26.1%, and judicial system costs—including prosecuting attorneys expenditures—comprise 12.2%. Other categories of expenditures such as public works, health, parks and welfare are a small portion of the budget.

The County noted that it has been subject to unfunded mandates of \$19 million and \$15 million in the prior two legislative sessions (which occur every two years.) It needs approximately \$120 million to maintain equipment and facilities, but has \$395 million in deferred maintenance costs over the past 10 years. (CX 11, p. 15) It is difficult to place these facts in context since the record contains little specific information about growth in total general fund revenue.

### **Consumer Price Index**

The primary impetus behind the CCPA’s proposal is the 8.2% spike in the annual CPI measured in December 2022. Prices did not drop. They continue to climb, although

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<sup>3</sup> Consolidated tax revenue is made up of sales tax, motor vehicle privilege tax, cigarette tax, liquor tax and real property transfer tax.

they increased only 4.1% in 2023. (CX 12, p. 3) The Federal Reserve, in December 2023, projected the CPI will soon show inflation leveling off under 3 percent. (CX 12, p.2)

The County recognizes this problem for its employees. It opened closed contracts to provide additional raises, modifying “collar” language for inflation over 5%. In addition, it adjusted the salary schedules 1.5%. The effect was a 6% increase for employees in many bargaining units. (UXs 15-17)

At the same time, it was offering CCPA only the formula that would call for a 4.5% increase if the CPI increased above 5%, but not the extra 1.5% it agreed to pay employees in the other units. (CX 7) Months later, in preparation for factfinding, the County added an additional .5% increase to its offer.

Looking back at the annual CPI increases in relation to salary increases in FY 2016 through FY 23, the past COLAs plus the County’s FY 24 offer of 5% would leave the prosecutors approximately 1.5% behind inflation as of January 2023. (CXs 9, 10) Costs have not fallen. The annual CPI increase for 2023 was 4.1%, which continues to add a substantial cost to living expenses.

The County prefers to maintain consistent wage growth rather than hewing to spikes and ebbs in the CPI. Steady growth allows the County to meet growing vendor costs and meet unexpected or cyclical slowing of revenues. Salary increases are permanent, compound into the future, and are hard to unwind. As a County witness testified, limited, moderate increases could stave off the necessity to lay off employees. Even when viewed over the past eight years, however, the County’s proposal is insufficient to meet the goal of keeping up with the CPI “over time” (Tr. 123).

The County argues that the prosecutors’ salaries have grown far faster than inflation because they receive merit increases in addition to the COLAs. However, prosecutors do not receive step increases as many other County employees do; they must earn merit boosts, which range from 3% to 5%. And long-term employees who have “topped out” on their range are not eligible to receive them at all.

## Internal Comparators

The County contends that its pattern of uniform raises across bargaining units also supports its 5% offer. It has shown that it strives to be consistent in its agreements for cost-of-living increases unless a unit wants another form of compensation instead. (*See* CX 9)<sup>4</sup> Several factfinders over the year have reinforced the pattern. (*See, e.g.*, CX 16)

While this internal parity in annual increases is very important, it is also important to examine the salary ranges of other attorneys within County employment, which are different.

The most comparable employees within the County are the public defenders who are working on the same cases in the same courtrooms as the prosecutors. For FY 24, the public defender top salary is \$187,907, very close to what the top of the range would be for chief deputy DAs under the County's proposal. By contrast, under the CCPA's proposal, the top prosecutor salary would rise to \$195,474 from its current \$178,004.

Also comparable are the civil deputy DAs, who work under the same DA, but are not represented due to a legislative prohibition. The County extends to them the same benefits as it provides the MPlan employees, although they are not management employees. After a Management Classification and Compensation study, the salary range of the attorneys on the civil side rose 3% in July 2022 (as it did for most bargaining units), and after another 6% hike in July 2023, is \$90,022 - \$162,676 annually. (UX 12, CX 30) The range for the civil Senior Attorney is \$122,470 - \$189,800. (UX 13) The ranges of the comparable criminal deputy DAs are \$78,665 to \$179,004.<sup>5</sup> (UX 20)

This disparity is relevant to the parties' concern about recruitment and retention. The District Attorney wrote a memorandum in August 2023 (UX 20) calling attention to

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<sup>4</sup> The one bargaining unit with a higher cumulative COLA increase since FY 2019 is the Las Vegas metropolitan Police Department, for which the County pays two-thirds of the costs and sits at the negotiating table. That unit has received 1% more in raises. (CX 13)

<sup>5</sup> The County repeatedly pointed to the recommendation of Arbitrator Roose, who found the County's position more reasonable than the CCDU's demand in a proceeding wherein he chose to use a "baseball arbitration" approach. There is no indication that Arbitrator Roose was aware of the internal inconsistency between civil DA pay and public defender salary ranges at the time.

the fact that his “office faces severe challenges with both recruitment and retention of **deputy district attorneys.**” (UX 20, 0367) CCPA describes a crushing workload. A CCPA witness serving on the hiring committee for criminal district attorney positions described the change in applicants interested in criminal DA jobs. He finds the overall applicant pool more limited geographically and less impressive than before.

While the County asserts that there are many differences in total compensation between the MPlan and the CCPA MOU, it did not provide any calculation of total compensation for either group. It is unlikely that the County provides lesser benefits to its managers than to its rank and file employees. Les Lee Shell testified MPlan benefits were as good or better than those of comparators. In any case, salaries are a primary consideration for recruitment purposes, particularly for new attorneys who need to pay off student loans.

The Factfinder’s consideration of internal equity within the DA’s office, the pattern of generally equivalent County-wide COLAs established over the past nine years, and the need to balance the availability for funding new DA positions while attracting and retaining attorneys leads to the recommendation of a 6% COLA retroactive to July 1, 2023. That would boost the bottom of the current salary range of the deputy DAs to approximately \$83,300. It would raise the top salary of the chief deputy DA to approximately \$189,700, almost in line with the civil senior attorney range maximum.

Although the bottom of the Washoe County DDA I and top of the DDA III ranges are higher, from \$94,577 to \$196,289, CCPA has not shown that the County has lost more than one attorney to Washoe County since January 2023.

### **RECOMMENDATION**

**Effective July 1, 2023, the salary schedules for all employees covered in Appendix A should be adjusted by six (6) percent.**

DATE: June 3, 2024.

  
Katherine J. Thomson, Factfinder