

ATTACHMENT II

**IN THE MATTER BEFORE
ARBITRATOR BRIAN CLAUSS**

CLARK COUNTY, NEVADA)
)
Employer,)
)
And)
)
CLARK COUNTY DEFENDERS UNION)
)
Union.)

APPEARANCES

For the Employer:

Allison L. Kheel, Esq.
Elizabeth Anne Hanson, Esq.
Fisher & Phillips, LLP

For the Union:

Adam Levine, Esq.
Law Office of Daniel Marks

Hearing Date: September 8, 2025

Hearing Location: Virtual, via Zoom platform

INTRODUCTION

Clark County, Nevada (“County”), and the Clark County Defender’s Union (“Union”), have reached an impasse over an unresolved issue regarding compensation in the negotiation of the parties’ 2025 collective bargaining agreement (“CBA”).

The parties had previously engaged in a Fact-Finding before Arbitrator Hirsch on the two issues of longevity and salary. The Fact-Finder’s report rejected the Union’s longevity proposal and accepted the Union’s pay proposal.

The matter was set for Interest Arbitration pursuant to NRS §288.200.

The parties’ final proposals were:

The Union

ARTICLE 38

SALARY AND/OR SALARY SCHEDULE PARITY

Anytime the Clark County Prosecutors Association receives any salary and/or salary schedule increase(s) or decrease(s), then the salaries and/or salary schedules for all employees covered by covered by this Agreement shall be adjusted under the same terms and conditions. This is to ensure and maintain the long-standing historical parity between the Deputy District Attorneys and Deputy Public Defenders in Clark County and throughout Nevada.

The County

ARTICLE 31

Compensation

1. Effective July 1, 2024, or upon ratification by the Clark County Defenders Union, whichever is later, the salary schedules for all employees covered in Appendix a will be adjusted by the annual percentage increase to CPI-U all items in West-Size Class B/C, URBAN Consumers, not seasonally adjusted (Series ID CUURN400SA0) for the calendar year ending December 2023. The adjusted percentage increase in salary schedules shall be a minimum of 2% and a maximum of 3.0%. In the event that the annual percentage increase to CPI-U all items in West-Size Class B/C, URBAN Consumers, not seasonally adjusted (Series ID CUURN400SA0), is equal to or greater than 5%, the adjusted percentage increase in salary schedules shall be 4.5%. In the event that the annual percentage increase to CPI-U all items in West- Size

Class B/C, URBAN Consumers, not seasonally adjusted (Series ID CUURN400SA0) is equal to or less than 0%, the adjusted percentage increase in salary schedules shall be 1%.

The adjusted percentage increase is based on U.S. Bureau of Labor Statistics Data (<https://data.bls.gov/timeseries/cuurn400sa0>).

CALCULATED AS FOLLOWS:

2023 Annual CPI 188.941

Less 2022 Annual CPI 181.312

Annual Increase 7.63

Divided by 2022 CPI 181.312

Annual Percentage Increase in CPI 4.2%

Salary Schedule Adjustment 3.0%

2. Effective July 1, 2024, or upon ratification by the Clark County Defenders Union, whichever is later, salary schedules for all employees covered in Appendix A will be adjusted by an additional 1%.

Appendix A Reflects the final calculation of salary schedules for all employees effective July 1, 2024.

3. Employees covered by this agreement are eligible to participate in all rewards incentives, and bonus programs approved by the County for full-time non-management employees, and for programs established by the Public Defender Special Public Defender.

Prior to the hearing, the County sought to continue the matter and cited a pending declaratory action in the EMRB alleging that pay parity is not a mandatory subject of bargaining. The County's motion to continue was denied. The County had a standing objection, as noted during the hearing:

You have a standing objection that this is a nonmandatory subject of bargaining; therefore, the union is proceeding in bad faith, was your first point. Your second point is that the union's final offer is regressive, therefore that is a prohibited labor practice.

The parties presented evidence and testimony at the interest arbitration hearing as summarized below.

Jessica Colvin has been the Chief Financial Officer for Clark County since 2016. She was promoted from the Clark County Comptroller, a position she began in 2011. She described her position:

I report directly to the Clark County county manager. I'm responsible for finance functions, accounting functions. So that includes all of your general ledger type of accounting, payroll, the debt portfolio, the capital plan, as well as the annual budget each year.

And then I work closely with senior management and participate in collective bargaining for overall strategy for all of the units. And there are a couple of units that I actually participate in negotiations.

The County has ten bargaining units. Ms. Colvin explained a negotiating goal of "internal equity across all bargaining units." The County COLA proposals attempt to maintain equity between units. Clark County has 2.4 million residents comprising seventy-five percent of the state population, approximately 10,000 employees, and thirty-eight departments. The County receives 42 million visitors per year. Sixty percent of the budget is for salaries.

Ms. Colvin explained how the fact finding and interest arbitration process led to the prosecutors receiving 1% more than the public defenders. She also explained how the current County proposal remedied that difference by increasing the offer to the public defenders. Other bargaining units also got a 1% offer to match what the prosecutors received.

The prosecutors negotiated salary range increases for some of the top attorneys. She explained how the County final offer would remedy the difference:

[The] increase would equate to the 3 percent, which I think there was testimony -- there was a comment earlier that the defenders' union has already received the 3 percent. We're proposing to offer that additional 1 percent, so that -- . . . - so that we can get them in line with the prosecutors in total.

And then you can see on the defenders' final offer, their final offer is that for FY '25, their cost-of-living increase would be the same as the prosecutors'. The prosecutors received a 3 percent increase in FY '25. So our offer actually gets them that additional 1 percent from the previous year.

Ms. Colvin further explained the County final offer:

Q Can you turn to County Exhibit 4, page eight. Can you tell me what the County's interpretation was of the arbitrator's conclusions on page eight?

A Our interpretation was that the -- that the public defender attorneys and the prosecutor attorneys, the recommendation was for them to be paid the

same, and that is what our offer is doing. Effectively, we are paying both attorneys -- the same title -- similar titles in the same group the same salary schedules.

And we're also catching them up on the cost-of-living increase as well, rather than tying the two units in -- in the contract together, that whatever the prosecutors negotiate -- to avoid the prosecutors negotiating for the defenders. They're completely different bargaining units.

Ms. Colvin agreed that the Union's pay parity proposal would not adversely affect the health, safety, or welfare of County residents. She also agreed that the proposal would not affect workload or capital assets.

Christina Ramos is deputy director of human resources and the County chief negotiator with nearly three decades of service. She has been involved with negotiations since she was hired. Prior to any negotiations, she and Ms. Colvin discuss the equities of the agreements and factors like COLA.

Ms. Ramos explained that the prosecutors and defenders have differences in their CBAs. Sometimes negotiations included different subjects like longevity or vacation. Prior to organizing in the mid 2000s, the defenders and prosecutors had pay parity under the County management plan. The two groups did not want to be in the same bargaining unit. One of the differences between the collective bargaining agreements of two groups is performance increases in which the defenders can receive 0 to 4% and prosecutors 0 to 5%. Defenders work four ten-hour days, and prosecutors work five consecutive eight-hour days. Although the two groups accrue vacation at the same rate, the prosecutors can sell back up to 120 hours and the defenders up to 80 hours. The additional sellback was created in return for some prosecutors being on call for police guidance.

Ms. Ramos explained that salary parity between the two units would ruin the dynamics of negotiating packages. The current County proposal remedies the 1% difference created by the prior interest arbitration.

Ms. Ramos agreed that the spring 2024 negotiations did not include the 1% differential for the defenders, despite "the philosophy of the county is that the prosecutors and the public defenders do similar work and should be compensated the same." She cited the various proposals as the reason for the County not offering the 1% during negotiations.

Ms. Ramos also agreed that the County never offered the 1% either before or after the fact-finding. Ms. Ramos also agreed that the prior HR director used the phrase “two sides of the same coin” to describe the prosecutors and defenders. Despite Ms. Ramos using the term during negotiations, she never offered the 1% to the defenders. Although unclear about whether it occurred before or after the briefs for the fact-finding, the County “entered into an agreement with the prosecutors to move the salary schedules for deputy prosecutors 8 percent and for chief deputy prosecutors 6 percent.”

The County rested.

Rafael Nones is the chief department public defender and assigned to the sex assault team. He is also responsible for the internship program, recruiting, and the training program for the office of approximately 150 assistant public defenders, including the multiple defendant unit and supervisors. He was a founding member of the local, serves on the executive board, and is also treasurer for the local.

Mr. Nones testified about the recognition and recommendation that prosecutors and public defenders should be paid the same. He noted the administrative docket of the Nevada Supreme Court, the Nevada Administrative Code’s section on indigent defense, and the American Bar Association opinion. All three support pay parity. Every other Nevada county’s public defenders have pay parity with their prosecutors.

Mr. Nones explained that all the bargaining units took pay reductions during Covid that included reductions in hours. He also acknowledged that the reduction in hours was only on paper for the public defenders. Due to the nature of their defense work, the public defenders continued to provide the same level of defense, regardless of the pay structure.

Pay was restored to prosecutors and public defenders in fiscal year 2022. However, in fiscal year 2023, prosecutors received 4% and public defenders 3%. For fiscal year 2024, the COLA was 6% and the defenders thought the prosecutors would receive 5%, to return the historic pay parity. Instead, the County agreed to 6% for the prosecutors and the 1% disparity remained. Fiscal year 2025 began on July 1, 2024. Despite mentioning parity, the County never offered the 1% to maintain parity at any step prior to the interest arbitration hearing.

Mr. Nones noted that there has been a 1 1% difference between the two bargaining units for three years. Even if the 1% was restored, the public defenders would still be short money. But the public defenders should at least have the 1% and thereby restore parity. The County will not share the details of the 6% and 8% increases for the deputy and chief deputy prosecutors.

Mr. Nones described a letter of agreement dated July 1, 2025, between the County and the prosecutors. Pursuant to that agreement, any prosecutor earning less than \$100, 000 would receive a pay adjustment to achieve a \$100,000 annual income. The public defenders pay is in the low \$80,000s – and the recruiting numbers show a steep drop in recruitment of new attorneys. There is no way to know of this agreement from reading the CBA.

The Union changed the parity proposal slightly to include a pay decrease and not just a pay increase. Mr. Nones explained the rationale for the change and why it was not regressive:

So when we found out the letter of agreement with the prosecutors – and this is the first time they have ever done it since they have ever been unionized for over a decade. We have never seen any union’s salary schedule or minimum salary increase by a letter of agreement instead of just increasing the salary -- we thought it might be an effort by the county, maybe with the prosecutors, to circumvent or kind of do an end-around for the salary schedule parity clause.

So we tweaked the language just a little bit to show what the actual intent was behind this. And I will say that it has been offered to us subsequently, and there’s a potential that we would get the same letter of agreement. But in the past, we’ve had issues, so we don’t know that that is going to be the outcome. So we changed this language to ensure it.

The Union rested. The parties submitted post-hearing briefs.

POSITIONS OF THE PARTIES

The County

The County agrees with the Union on the cost of the Union’s proposal. The County is not arguing an inability to pay the Union proposal. The County reminds that having the ability to pay the Union’s proposal does not mean that the proposal is reasonable. The Union’s

pay parity proposal is not reasonable. The County maintains that the Union's proposal must be considered in light of the County obligation to provide facilities and services and guarantee the health, welfare, and safety of residents.

The County maintains that the Union's pay parity proposal is a breakthrough proposal because it changes the status quo. Pay parity has never been part of any County collective bargaining agreement. Because the Union proposal is a breakthrough, the Union must establish the status quo is unfair or that the Union has offered a *qui pro quo* for the proposal. The Union has not established that the current pay scheme is unfair nor offered a *quid pro quo* for pay parity.

Even if the Union pay parity proposal is not a breakthrough proposal, it is still an unreasonable proposal and should be rejected. The proposal is not reasonable because it removes the County's flexibility for negotiations and binds the County to wages offered to other bargaining units with no room for *quid pro quos*. The County cites other bargaining units that have negotiated a lower wage in return for other provisions from the County. Accepting the pay parity proposal will eliminate that possibility.

The Union also cannot establish that a deviation from the status quo is unreasonable. There has never been a pay parity provision in any County bargaining unit. The closest is the protective service units that have a guaranteed differentiation for supervisors, but not a pay parity guarantee. The protective service contract provisions guarantee that supervisors will maintain pay at a stated percentage above those supervised. But the pay is not subject to parity between the various units. The Union also cannot show that there is a pay disparity. The County proposal cures the 1% difference caused by the prior 3% interest arbitration.

The County cites other infirmities with the Union position. The Union's pay parity proposal is unclear because the term "salary" is undefined. The County should not be required to guess about proposal meanings. Because it is also unclear, the proposal should be rejected. The Union's comparators are also dissimilar. Washoe and Elko are small, distant counties, with sparse populations. Their public defenders and prosecutors are in the same bargaining unit and wages are therefore linked. Clark County has separate bargaining units for prosecutors and defenders.

The Union cannot show a widespread pattern of pay parity language in other bargaining units. Pay parity is an attempt to address what occurred in negotiations that did not favor the Union. The 3% recommended by Arbitrator Roose was based upon the facts and the law. It was appropriate.

The Union

The Union maintains that the fact-finder's decision is entitled to great deference. Absent erroneous conclusions, the fact-finder's recommendation should not be rejected. The fact-finder heard the testimony, weighed the evidence, and applied the law and policy. Although the County does not like the fact-finder's decision, the County cannot fault the recommendation. It was a conclusion based upon the statutory factors. Since the fact-finding, no material facts have changed, no new evidence that was unavailable at the hearing has been discovered, no material circumstances have changed, and the law is unchanged. Consequently, the County has not established any reason to ignore the fact-finder's recommendation, other than disliking it. Not liking the recommendation is not a valid reason to reject it. The fact-finder rejected the County argument against parity, and it should again be rejected as unreasonable. Adopting the fact-finder's recommendation in the interest arbitration protects the integrity of the process.

The Union continues that the fact-finder's conclusions were unquestionably reasonable. The recommendation is supported by public policy articulated by the Nevada Supreme Court, the Nevada legislature, and the American Bar Association. The offer was not regressive and was reasonable.

The Union continues that the County's offer should be rejected because it is illegal. Nevada law requires mandatory retroactivity and the County proposal conditions the retroactivity. In addition to the improper County offer, the County has also made meritless objections about pay parity not being a mandatory subject of bargaining. The County defenses should be rejected.

ANALYSIS

There is only one provision at issue -- pay. The Union seeks its parity proposal and the County its pay proposal. The matter is in interest arbitration because the County did not agree to accept the findings and recommendation of Fact-Finder Hirsch.

The statute provides for the next step of the process. That step is binding interest arbitration:

If parties to whom the provisions of NRS 288.215 and 288.217 do not apply 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.

NRS 288.200 (6)

Section 11 provides the required elements of an interest arbitration award:

11. The decision of the arbitrator must include a statement:
 - (a) Giving the arbitrator's reason for accepting the final offer that is the basis of the arbitrator's award; and
 - (b) Specifying the arbitrator's estimate of the total cost of the award.

Both parties acknowledge the significance of the parity provision versus the County provision. The County views the parity provision as unnecessary and, if awarded, a significant impediment to County bargaining. The Union views the parity provision as necessary to maintain the historic status quo of the prosecutors and public defenders.

The parties agree that the public defenders are the other side of the criminal justice system of the prosecutors. The defenders' comparable internal bargaining unit is the prosecutors. As County officials have noted, the two are "two sides of the same coin." County witnesses also testified that they want parity between the defenders and the prosecutors.

The evidence shows that the defenders have not received the same COLA adjustment as the prosecutors for more than one collective bargaining agreement. A County witness admitted that although the County professes parity between defender and prosecutor pay, the County did not offer the COLA catchup during negotiations. The County witness noted that the catchup COLA adjustment was not offered due to other provisions being negotiated.

After more than one contract without the same increase as the prosecutors, and the County not offering a COLA catchup, the defenders seek as certain of a pay parity guarantee as possible. The Union witness understandably did not believe the County would achieve COLA parity through the negotiation process. For example, the Union learned that the prosecutors also entered a side agreement with the County that was not part of the CBA. Under that side agreement, prosecutors earning less than \$100,000 would receive an increase to \$100,000. The defenders were offered no similar side letter. The County also agreed to pay increases for some senior prosecutors, but not senior defenders.

As Mr. Nones noted, public defender pay starts in the \$80,000 range and they have seen significant recent drops in hiring. Prosecutors are guaranteed are now guaranteed a \$100,000 starting salary. The disparity will continue to hurt public defender hiring. The evidence also shows that when the County had the opportunity to lower the prosecutor's COLA adjustment by 1% to return to COLA equity, the County declined and instead agreed to the same COLA for the prosecutor as the defenders, thereby leaving the public defenders 1% lower in the subsequent CBA.

Prior to the Roose fact-finding, there was COLA parity between the two units. The history of pay since at least the 1970s supports the Union pay parity provision. There had also been COLA equity prior to the Roose 3% COLA recommendation. The history of the parties supports the Union pay parity provision as the more reasonable and better way to return to the status quo.

The Nevada Supreme Court has provided guidance on prosecutor and public defender pay equity. The direction of the Nevada Supreme Court on prosecutor and public defender pay equity also supports the Union's pay parity proposal as the more reasonable proposal.

The Union's pay parity proposal would best return the public defenders to the COLA adjustment status quo.

The Nevada statutes provide guidance on compensation for attorneys providing defense for indigent clients. The direction of the Nevada statutes on public defender compensation also supports the Union's pay proposal as the more reasonable proposal.

The American Bar Association provides guidance on compensation for public defenders and others providing defense for indigent clients. The American Bar Association guidance also supports the Union's pay proposal as the more reasonable proposal.

The evidence also shows that other Nevada counties have pay parity between prosecutors and public defenders. Some other Nevada counties have their prosecutors and defenders in the same bargaining units of criminal justice system attorneys – the two sides of the same coin the County witnesses described.

Considering the history of the pay for public defenders and prosecutors, other Nevada counties, the guidance of the Nevada Supreme Court, the Nevada legislature, and the American Bar Association, the Union proposal is the more reasonable of the proposals.

The cost of the award is agreed as \$789,485. The County does not allege an inability to pay.

The County raises two defenses -- that pay parity is not a mandatory subject of bargaining and that the Union's proposal was regressive. Neither defense is persuasive. The County offered no valid reasons in support of its argument that the pay proposal was not a mandatory subject of bargaining. The County can continue the litigation already begun in the appropriate forum to determine that issue. The Union's proposal was not regressive; The only change was to provide for pay parity when pay decreased. That did not alter the nature of the proposal for pay equity.

The Union's offer is the more reasonable and appropriate provision to achieve the statutory goals of interest arbitration. The Union's Final Proposal best complies with the statutory factors.

AWARD

The Union provision is adopted and awarded.

A handwritten signature in black ink, appearing to read "Brian Clauss", written over a solid horizontal line.

Brian Clauss, Arbitrator

January 11, 2026