

1 Ronald J. Dreher
2 NV Bar No. 15726
3 P.O. Box 6494
4 Reno, NV 89513
5 Telephone: (775) 846-9804
6 dreherlaw@outlook.com
7 *Attorney for Complainant*

FILED
June 6, 2023
State of Nevada
E.M.R.B.
8:08 a.m.

6 **BEFORE THE STATE OF NEVADA**
7
8 **GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

9
10 ROSA MYERS,

11 Complainant,

Case No.: **2023-013**

12 vs.

Panel:

13 CITY OF RENO AND RENO
14 FIRE DEPARTMENT,

15 Respondents.
16 _____ /

17 **COMPLAINT**

18 **COMES NOW**, Complainant ROSA MYERS by and through her undersigned
19 attorney, hereby charges Respondent CITY OF RENO and Respondent RENO FIRE
20 DEPARTMENT with practices prohibited by NRS 288.270. This complaint is filed in
21 accordance with NRS 288.270, NRS 288.280 and NAC 288.200. Accordingly, Complainant
22 hereby complains and alleges as follows:

23 *///*

24 *///*

25 *///*

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1 **III. PROHIBITED PRACTICES**

2 7. At all times relevant Complainant was employed by the City and the RFD as
3 firefighter.

4 8. In September 2019, FF Myers took the Fire Equipment Operator (FEO)
5 examination.

6 9. On September 26, 2019, the Reno Civil Service Commission issued the eligibility
7 list from the September 2019 FEO examination. FF Myers was not on the eligibility list.

8 10. On October 10, 2019, all firefighters placed on the September 26, 2019, eligibility
9 list were promoted to the position of FEO.

10 11. On October 19, 2019, while acting as an FEO, FF Myers was one of the drivers of
11 a fire apparatus and that was involved in a fatal accident with a pedestrian.

12 12. On October 31, 2019, the Reno Civil Service advised FF Myers that there was a
13 scoring error and that she and Firefighter Theresa Bruno had in fact passed the September
14 2019 FEO examination. FF Myers and FF Bruno were placed on September 26, 2019,
15 promotional list. FF Myers was placed higher on the list than several of those that had been
16 promoted on October 10, 2019.

17 13. On November 6, 2019, FF Myers met with RFD Chief Dave Cochran, and he told
18 her he was going to “hold off” on her promotion until the accident investigation was
19 completed.

20 14. On November 8, 2019, FF Bruno was promoted to FEO.

21 15. On November 19, 2019, without following established disciplinary procedures,
22 RFD Chief Cochran suspended FF Myers driving privileges and prohibited her from acting in
23 the role of FEO. The second driver of the fire apparatus did not receive any discipline or suffer
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1 any adverse employment action despite being named as a driver in the investigation.

2 16. On November 20, 2019, FF Myers, through her employee organization, the
3 International Association of Fire Fighters Local 731 (IAFF), filed a grievance against the City
4 and Chief Cochran. The grievance alleged violations of the collective bargaining agreement
5 related to her suspended driving privileges and loss of pay.

6
7 17. On January 3, 2020, the grievance was resolved in favor of FF Myers. The
8 resolution placed driving restrictions on FF Myers which were to be revisited in 30 days, or at
9 the end of the criminal accident investigation, whichever occurred first. Additionally, FF
10 Myers was to be eligible to receive “bump-up pay” when she could have acted as an FEO.

11 18. The initial accident investigation was completed on January 6, 2020.

12
13 19. The restrictions placed on FF Myers are not revisited after January 6, 2020, or
14 after February 3, 2020, as required by the grievance resolution.

15 20. On September 26, 2020, the FEO promotional list expired with eight open FEO
16 positions. FF Myers was the only name on this list, and this is the first time a person on a list
17 is not promoted when there are open positions.

18
19 21. On October 20, 2020, FF Myers received her annual evaluation on which she was
20 rated at standard or above in all categories. In response to the question asking what is the most
21 possible next assignment for FF Myers, her evaluator stated that “Rosa's experience, skillset &
22 preparation have prepared her for the Fire Equipment Operator position.”

23
24 22. FF Myers contacted the Reno Civil Service Commission Chief Examiner, Barbara
25 Ackerman, on October 21, 2020, and requested to know why she was not promoted. Ms.
26 Ackerman only provided that the list had expired and nothing further. Ms. Ackerman did not
27 respond to FF Myers’ questions regarding the violations of the Civil Service Rules requiring
28

1 that FF Myers be notified if she was not promoted or if someone else lower on the list was
2 promoted over her.

3 23. On January 9, 2021, the family of the pedestrian killed in the October 19, 2019,
4 accident filed a civil lawsuit against the City.

5 24. On March 3, 2021, FF Myers met with Chief Cochran, Deputy Reno City Attorney
6 Mark Dunagan and IAFF Representative Pete Briant to discuss her promotion to FEO. At this
7 meeting, Chief Cochran told FF Myers that she will never be promoted to FEO or to any other
8 position that requires a commercial driver's license (CDL). This despite FF Myers not
9 receiving a citation or any other enforcement action related to the October 19, 2019, accident,
10 and the investigation not having been completed. Mr. Dunagan advised FF Myers that an "exit
11 plan" was available if she would like to discuss options for leaving the RFD due to the
12 October 19, 2019, accident.
13
14

15 25. In the March 3, 2021, meeting, Chief Cochran stated that the "optics" of
16 promoting FF Myers to the FEO position would be a barrier to doing so. This was based on
17 political concerns regarding the public image of the RFD and the City regarding the October
18 19, 2019, accident and not based in fact or substance.
19

20 26. On March 16, 2021, Chief Cochran, sent a letter to IAFF President Dan Tapia,
21 summarizing the meeting that took place on March 3, 2021. Chief Cochran included in the
22 letter that, although FF Myers had met the qualifications to promote to FEO, she would always
23 be disqualified, and she would never be eligible to hold any position at the RFD that requires a
24 CDL. This ban was placed due to a yet incomplete criminal investigation that was still
25 pending in court but for which Chief Cochran had determined FF Myers was at fault. Chief
26 Cochran stated that the purpose of the March 3, 2021, meeting was to advise FF Myers that
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1 any attempt to promote in the future would be futile and to explore a separation agreement if
2 that is what FF Myers preferred.

3 27. On April 15, 2021, Chief Cochran in a meeting with FF Myers, IAFF
4 Representative Briant, and Division Chief John McNamara, advised FF Myers that the driving
5 restrictions placed on January 3, 2020, would be permanent and she would no longer be
6 eligible to obtain “bump-up pay” as an FEO. This occurred more than a year after the agreed
7 upon time frame in the January 30, 2020, grievance resolution.
8

9 28. On April 27, 2021, the IAFF filed a grievance on behalf of FF Myers regarding
10 the actions taken by Chief Cochran on April 15, 2021.
11

12 29. The grievance was resolved on June 1, 2021, and was again found in favor of FF
13 Myers. The decision required the City to rescind the letter issued by Chief Cochran to IAFF
14 President Tapia on March 16, 2021, and the City was required to rescind all driving
15 restrictions and to comply with the CBA.
16

17 30. Based on the outcome of this grievance, and the statements made by Chief
18 Cochran on November 6, 2019, FF Myers believed she could still be promoted to the FEO
19 position retroactive to November 8, 2019. FF Myers believed that this would occur once the
20 criminal investigation was completed.
21

22 31. On July 8, 2021, Chief Cochran in a meeting with FF Myers, IAFF Representative
23 Briant, and Division Chief McNamara, advised FF Myers that he intended to seek discipline
24 against her for the October 19, 2019, accident. This despite 629 days having passed since the
25 accident had occurred.

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1 32. On September 8, 2021, after appearing before a Disciplinary Review Board, FF
2 Myers is once again given permanent driving restrictions, a written reprimand and, despite
3 earlier assertions to the contrary, this driving restrictions effectively established that she will
4 no longer be eligible to promote to the position of captain. Chief Cochran advised FF Myers of
5 this discipline on September 15, 2021, 698 days after the October 19, 2019, accident.
6

7 33. On September 28, 2021, the IAFF filed a grievance on behalf of FF Myers to
8 dispute the September 15, 2021, actions taken by Chief Cochran and the City.
9

10 34. On September 28, 2021, FF Myers filed a grievance for violations of the CBA
11 regarding confidential information that was disseminated during the disciplinary investigation.
12

13 35. The results of the grievance brought by the IAFF were once again in FF Myers’
14 favor. In the February 9, 2022, decision, FF Myers was required to complete eight hours of
15 remedial driver training before being allowed to drive. She was also again allowed to “bump-
16 up” to the FEO position. This is the third grievance against Chief Cochran in approximately
17 one year in which FF Myers is successful.
18

19 36. On June 1, 2022, the second grievance filed on September 28, 2021, regarding
20 confidential information is resolved in FF Myers’ favor. City Manager Doug Thornley admits
21 City policy was violated but takes no corrective or punitive action.
22

23 37. On June 2, 2022, the civil lawsuit filed by the family of the pedestrian killed in the
24 October 19, 2019, accident is dismissed.
25

26 38. On October 13, 2021, FF Myers received her annual evaluation on which she was
27 rated at standard or above in all categories. In response to the question asking what is the most
28 possible next assignment for FF Myers, her evaluator identified the positions of “Operator
assistant, Fire equipment operator, Fire suppression captain.”

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39. On November 4, 2022, the Sparks City Attorney’s office recommended the dismissal of the criminal case against FF Myers.

40. On November 9, 2022, the Reno Municipal Court dismissed all charges against FF Myers with prejudice. FF Myers is not found at fault for the accident. She does not receive any criminal or administrative punishment and her driving privileges, to include her CDL, were never affected, suspended or revoked.

41. As of November 9, 2022, the investigation is now complete. FF Myers believes she will now be promoted to FEO retroactive to November 8, 2019.

42. FF Myers is not promoted to FEO retroactive to November 8, 2019, despite Chief Cochran’s assertions that her promotion is only being delayed due to the investigation being active.

43. On December 29, 2022, after not being promoted to FEO, FF Myers emailed Chief Cochran requesting to be retroactively promoted to FEO. FF Myers, after not receiving a response, followed-up with a second email on January 6, 2023.

44. On January 9, 2023, Chief Cochran responded to FF Myers and stated that after consulting with the City’s legal department and the Civil Service Commission, he would not be promoting her to FEO.

45. On February 9, 2023, FF Myers filed a grievance regarding the City’s failure to retroactively promote her. This grievance was denied at the Chief’s level on March 3, 2023, and at the City Manager’s level on April 21, 2023.

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1 Whereas Complainant received unequivocal notice of the final adverse action within
2 the last six months, this Complaint is timely and may be heard by this Board pursuant to NRS
3 288.110.

4 Wherefore, the actions taken against FF Myers for exercising her rights under the
5 CBA, for filing complaints against the City and RFD, and for personal and political reasons
6 constitute prohibited practices under NRS Chapter 288.
7

8 Respondents City of Reno and Reno Fire Department discriminated against
9 Complainant Rosa Myers for filing multiple grievances in accordance with the collective
10 bargaining agreement, which constitutes a prohibited practice under NRS 288.270(1)(d).
11

12 Respondents City of Reno and Reno Fire Department discriminated against
13 Complainant Rosa Myers based on political reasons to avoid public scrutiny and fallout. These
14 actions constitute a prohibited practice under NRS 288.270(1)(f).

15 Respondents City of Reno and Reno Fire Department discriminated against
16 Complainant Rosa Myers for personal reasons and personal dislike. These non-merit-or-fitness
17 factors were not based in her ability or fitness to do the job of FEO. These actions constitute a
18 prohibited practice under NRS 288.270(1)(f).
19

20 THEREFORE, Complainant prays for relief as follows:

- 21 a. A finding that the conduct of Respondents as referenced herein constitutes
22 prohibited practices under Chapter 288 of the Nevada Revised Statutes;
23 b. A finding that Respondents discriminated against Complainant for having filed
24 multiple grievances;
25 c. A finding that Respondents discriminated against Complainant for political
26 reasons;
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- 1 d. A finding that Respondents discriminated against Complainant for personal
2 reasons;
- 3 e. An order requiring Respondents to cease in violating NRS 288.270;
- 4 f. An order requiring Respondents to promote Complainant to the position of Fire
5 Equipment Operator, retroactive to November 8, 2019;
- 6 g. An order requiring Respondents to pay Complainant all back wages, benefits
7 and Nevada Public Employee Retirement System contributions at the Fire
8 Equipment Operator rate retroactive to November 8, 2019;
- 9 h. An order requiring Respondents to pay the **Complainant's** reasonable attorney
10 **and representatives' fees and expenses in bringing this action;** and
11
- 12 j. Any and all other relief that the Employee Management Relations Board deems
13 appropriate.
14

15
16 DATED this 6th day of June, 2023.

17
18 /s/ Ronald J. Dreher
19 Ronald J. Dreher
20 NV Bar No. 15726
21 P.O. Box 6494
22 Reno, NV 89513
23 Telephone: (775) 846-9804
24 dreherlaw@outlook.com
25 *Attorney for Complainant*
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NAC 288.070, the undersigned hereby certifies that I am the counsel for the Rosa Myers and that on this date I served a true and correct copy of the preceding document addressed to the following:

KARL S. HALL
Reno City Attorney
Post Office Box 1900
Reno, Nevada 89505
(775) 334-2050
hallk@reno.gov
*Attorney for City of Reno,
and the Reno Fire Department*

by electronic service by transmitting the copy electronically as an attachment to electronic mail in portable document format.

DATED this 6th day of June, 2023.

/s/ Ronald J. Dreher
Ronald J. Dreher
NV Bar No. 15726
P.O. Box 6494
Reno, NV 89513
Telephone: (775) 846-9804
dreherlaw@outlook.com
Attorney for Complainant

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NAC 288.070, the undersigned hereby certifies that I am the counsel for
3 the Rosa Myers and that on this date I served a true and correct copy of the preceding
4 document addressed to the following:
5

6 Bruce Snyder, Esq.
7 Commissioner, EMRB
8 bsnyder@business.nv.gov
9 3300 W. Sahara Avenue
10 Suite 260
11 Las Vegas, NV 89102
12 bsnyder@business.nv.gov

13
14 by electronic service by transmitting the copy electronically as an attachment to electronic
15 mail in portable document format.
16

17 DATED this 6th day of June, 2023.

18 /s/ Ronald J. Dreher
19 Ronald J. Dreher
20 NV Bar No. 15726
21 P.O. Box 6494
22 Reno, NV 89513
23 Telephone: (775) 846-9804
24 dreherlaw@outlook.com
25 *Attorney for Complainant*
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NAC 288.200, the undersigned hereby certifies that I am the counsel for the Rosa Myers and that on this date I served a true and correct copy of the preceding document **by certified mail** addressed to the following:

KARL S. HALL
Reno City Attorney
Post Office Box 1900
Reno, Nevada 89505
(775) 334-2050
hallk@reno.gov
*Attorney for City of Reno,
and the Reno Fire Department*

DATED this 6th day of June, 2023.

/s/ Ronald J. Dreher
Ronald J. Dreher
NV Bar No. 15726
P.O. Box 6494
Reno, NV 89513
Telephone: (775) 846-9804
dreherlaw@outlook.com
Attorney for Complainant

1 JONATHAN D. SHIPMAN
2 Assistant City Attorney
3 Nevada Bar #5778
4 Post Office Box 1900
5 Reno, NV 89505
6 (775) 334-2050
7 Email: shipmanj@reno.gov
8 Attorney for Respondents

FILED
November 8, 2023
State of Nevada
E.M.R.B.
1:02 p.m.

9 STATE OF NEVADA
10 GOVERNMENT EMPLOYEE-MANAGEMENT
11 RELATIONS BOARD

12 ROSA MYERS,

Case No.: 2023-013

13 Complainant,

14 vs.

15 CITY OF RENO and RENO FIRE
16 DEPARTMENT,

17 Respondents,
18 _____ /

19
20 **ANSWER TO PROHIBITED PRACTICES COMPLAINT**

21 Respondents CITY OF RENO and RENO FIRE DEPARTMENT (collectively, the
22 “City”¹), by and through their undersigned counsel, hereby respond to the Prohibited Practices
23 Complaint filed June 6, 2023 (the “Complaint”) by admitting, denying and averring as follows.

24 **GENERAL ALLEGATIONS**

25 1. The City admits the allegations in Paragraphs 1, 3, 7, 8, 9, 10, 13, 14, 16, 18, 21,
26 23, 28, 31, 33, 34, 36, 38, 43, 44, and 45 of the Complaint.

27
28 _____
¹ The City of Reno, not the Reno Fire Department, is technically the employer of the Complainant. A department of a municipal government may not be sued. *Wayment v. Holmes*, 112 Nev. 232, 238, 912 P.2d 816, 819 (1996)

1 2. The City denies the allegations of Paragraphs 17, and 25 of the Complaint.

2 3. The City is without knowledge or information sufficient to form a belief as to the
3 truth or falsity of the allegations of Paragraphs 12, 20, 22, 30, 32, 39, and 42 of the Complaint
4 and therefore deny the same.

5 4. With regard to the allegations contained in Paragraph 2 of the Complaint, the City
6 admits that it is a local government employer, and the Employer of Complainant Rosa Myers
7 (“Complainant”) but denies that the Reno Fire Department, as a department of the City, has its
8 own employees.

9 5. With regard to the allegations contained in Paragraph 11 of the Complaint, the
10 City admits that Complainant was the driver of a fire apparatus involved in a fatal accident with
11 a pedestrian, but denies that there was any other driver of the apparatus.

12 6. With regard to the allegations contained in Paragraph 15 of the Complaint, the
13 City admits that restrictions on Complainant were not lifted, but denies that the grievance
14 resolution required the restrictions to be revisited

15 7. With regard to the allegations contained in Paragraph 19 of the Complaint, the
16 City admits that the restrictions on Complainant were not lifted, but denies that the grievance
17 resolution required the restrictions to be revisited.

18 8. With regard to the allegations contained in Paragraph 24 of the Complaint, the
19 City admits this meeting happened and the general message conveyed to Complainant, but
20 denies that this action was premature.

21 9. With regard to the allegations contained in Paragraph 26 of the Complaint, the
22 City admits that Chief Cochran sent a letter of this nature, and that the case against Complainant
23 was pending in court, but denies that the criminal investigation was incomplete at the time.

24 10. With regard to the allegations contained in Paragraph 27 of the Complaint, the
25 City admits that this meeting occurred, but denies the implication that this outcome was
26 untimely.

27 11. With regard to the allegations contained in Paragraph 29 of the Complaint, the
28 City admits that the grievance was resolved, but denies that it was in favor of Complainant, as

1 the driving restrictions remained until further notice.

2 12. With regard to the allegations contained in Paragraph 35 of the Complaint, the
3 City admits that the parties reached agreement to resolve the September 28, 2021 grievance, but
4 denies the characterization that Complainant was “successful” in three grievances.

5 13. With regard to the allegations contained in Paragraph 37 of the Complaint, the
6 City admits that the lawsuit ended in the sense that it was settled, but denies that the civil lawsuit
7 was dismissed in anything but a technical sense.

8 14. With regard to the allegations contained in Paragraph 40 of the Complaint, the
9 City admits that Complainant was not prosecuted, and that her CDL was not affected, but denies
10 that Complainant was not found at fault for the accident.

11 15. With regard to the allegations contained in Paragraph 42 of the Complaint, the
12 City admits that Complainant was not retroactively promoted to FEO, and admits that Chief
13 Cochran did not intend to promote Complainant when criminal charges were pending, but denies
14 that Chief Cochran ever asserted that a retroactive promotion was even possible, let alone
15 imminent.

16 16. With regard to all allegations containing citations to statutory or case
17 law, assertions regarding the interpretation, meaning or applications of such law, or general
18 assertions about any law or a body of law, such allegations are not factual allegations to which a
19 response is required. Except where otherwise clearly indicated, the City does not adopt, admit or
20 deny Complainant’s allegations concerning any law or its interpretations. This paragraph is the
21 response to the allegations of Paragraphs 4, 5, and 6 of the Complaint.

22 **STATEMENT OF FACTS IN CITY’S DEFENSE**

23 1. Complainant was determined to be at fault for the fatal accident by the
24 investigative report issued January, 2020, which was conducted by the Washoe County Sheriff’s
25 Office. That report states: “After a thorough investigation, I have determined Rosa Myers
26 violated NRS 484B.657; Vehicular Manslaughter... She caused the death of Charlene McMaster
27 by her act of negligence due to disobeying the traffic control device.”

28

1 2. The report also states: "I am recommending Rosa be arrested for the above
2 charges. A warrant request will be submitted to the City of Sparks Attorney for the above
3 misdemeanor offenses."

4 3. The other employee on the apparatus during the accident, a tiller, was not found to
5 be at fault by the investigation. "He had no mechanical control of the ladder truck besides
6 steering the rear independent axle. He would be unable to stop the truck or have any control of
7 the front steering."

8 4. Tiller is a different job classification than driver, with different pay scales than
9 driver, and identified separately from driver in the collective bargaining agreement.

10 5. The restrictions placed on Complainant were not originally as discipline for being
11 involved in the accident; they were imposed due to the uncertainty of whether Complainant was
12 going to be held criminally liable in connection with the performance of her job duties.

13 6. There is no requirement that an employee be found criminally liable in order to
14 have driving restrictions imposed upon them.

15 7. Complainant was in violation of department policy when she fatally struck a
16 pedestrian in a crosswalk.

17 8. If Complainant had not gone through the intersection illegally and in a manner
18 that was against policy, the pedestrian would not have been killed.

19 9. Upon information and belief, Complainant is the only Reno Fire Department
20 employee to ever kill a pedestrian by running them over with a RFD apparatus.

21 10. Complainant's driving that led to the fatal accident cost the City \$1,200,000 in
22 settlement money.

23 11. None of the grievance resolutions contemplated retroactive promotion.

24 12. No one in the Reno Fire Department, to include Chief Cochran, ever at any point
25 indicated or implied to Complainant that she would be retroactively promoted in the event she
26 was not found criminally liable for the fatal accident.

27 13. The promotional list that Complainant was on, established September 26, 2019
28 (and to which Complainant was added on October 31, 2019), expired during the time that

1 Complainant was restricted from driving due to the pending investigation and criminal case.

2 14. Complainant knew that the list she was on had expired.

3 15. There is no mechanism in the Reno Civil Service System to promote
4 (retroactively or otherwise) an employee from an expired list.

5 16. From the point that Complainant knew the list she was on had expired, she never
6 could have had a reasonable belief that she could be promoted without testing again and being
7 placed on another eligibility list.

8 17. Complainant participated in the FEO recruitment two more times, in 2022 and
9 2023, and failed to successfully complete the practical examination portion of the assessment in
10 both instances.

11 18. Complainant was never placed on another eligibility list for the FEO position.

12 19. City employees are not promoted based on emailing requests to their department
13 heads. The Chief's denial of such a request by Complainant cannot be legitimately considered an
14 adverse employment action.

15 20. Complainant's February 9, 2023 grievance was nonetheless untimely.

16 21. Complainant's grievance was denied at both levels due to being untimely, and
17 neither Complainant nor her collective bargaining unit pursued arbitration under the collective
18 bargaining agreement.

19 22. There is no evidence of any political differences between Complainant and
20 Management.

21 23. There is no evidence of personal animus between Complainant and Management.

22 24. The Evidence all reflects that the driving restrictions were actually based on
23 Complainant's fatal accident and was therefore legitimate, non-discriminatory, and non-
24 retaliatory.

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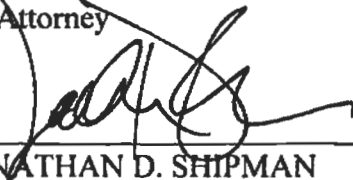
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25. Complainant has no driving restrictions on her, and has not had any restrictions since completing the remedial process outlined in the grievance resolution dated February 9, 2022. She remains eligible to promote to FEO by completing the necessary Civil Service recruitment. She has not done so.

DATED this 8th day of November, 2023.

KARL S. HALL
Reno City Attorney

By: 

JONATHAN D. SHIPMAN
Assistant City Attorney
Nevada Bar #5778
Post Office Box 1900
Reno, NV 89505

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NAC 288.070, I certify that I am an employee of the RENO CITY
3 ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the
4 party(s) set forth below by:

5 _____ Placing an original or true copy thereof in a sealed envelope placed for collection
6 and mailing in the United States Mail, at Reno, Nevada, postage prepaid,
7 following ordinary business practices or;

8 _____ Personal hand delivery.

9 _____ EFlex electronic service.

10 X _____ Email

11 _____ Facsimile (FAX).

12 _____ Federal Express or other overnight delivery.

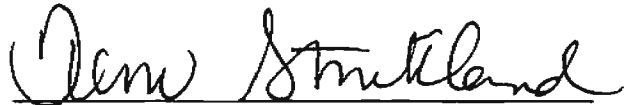
13 _____ Reno/Carson Messenger Service.

14 _____
15 addressed as follows:

16 Ronald J. Dreher, Esq.
17 P.O. Box 6494
18 Reno, NV 89513
19 dreherlaw@outlook.com

Bruce Snyder, Esq.
Commissioner, EMRB
3300 W. Sahara Avenue
Suite 260
Las Vegas, NV 89102
bsnyder@business.nv.gov

20
21 DATED this 8th day of November, 2023.

22 

23 Terri Strickland
24 Legal Assistant

1 Ronald J. Dreher
2 NV Bar No. 15726
3 P.O. Box 6494
4 Reno, NV 89513
5 Telephone: (775) 846-9804
6 dreherlaw@outlook.com
7 *Attorney for Complainant*

FILED
October 13, 2023
State of Nevada
E.M.R.B.
4:00 p.m.

8 **BEFORE THE STATE OF NEVADA**
9 **GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

10 ROSA MYERS,
11 Complainant, Case No.: 2023-013
12 vs. Panel:
13 CITY OF RENO AND RENO
14 FIRE DEPARTMENT,
15 Respondents.
16 _____ /

17 **COMPLAINANT'S PREHEARING STATEMENT**

18 **COMES NOW**, Complainant ROSA MYERS, by and through her undersigned
19 attorney, hereby files her Prehearing Statement in accordance with NAC 288.250. The
20 Complainant incorporates by reference the Complaint filed on June 6, 2023.

21 **I. ISSUES OF FACT AND LAW TO BE DETERMINED**

22 Pursuant to NAC 288.220, and the joint stipulation filed by the parties, Respondents'
23 answer was due no later than July 10, 2023. To date, Respondents have failed to file an
24 answer and waived all affirmative defenses. Moreover, Respondents' failure to deny the
25 allegations in the Complaint signify that all Complainant's allegations and statements of fact
26 are deemed to be true. Therefore, there are no issues of fact or law to be determined.
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1 In the alternative, if the Board were to determine that the Respondents failure to file an
2 answer is not deemed to have made all allegations in the Complaint to be true, then the issues
3 of facts and law to be determined would include all issues of fact and law raised in the
4 Complaint filed with this Board on June 6, 2023, to include whether Respondents have
5 violated NRS 288.270(a) and (f).
6

7 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

8 **A. FACTS**

9 Given that Respondents, (hereinafter sometimes referred to as “City” and “RFD”),
10 did not file an answer, the following facts, and the incorporated facts in ¶¶ 1-45 and page 9:1-
11 19 of the June 6, 2023, Complaint, are undisputed and do not require a determination by the
12 Board.
13

14 Firefighter Rosa Myers (“FF Myers”), at all times relevant has been employed by the
15 City in the RFD. (Compl. at ¶ 7.) On October 19, 2019, while acting in the role of the Fire
16 Equipment Operator (“FEO”), Myers was one of the drivers of a fire apparatus that struck a
17 pedestrian. *Id.* at ¶ 11. The other driver, Firefighter Collin Cavanaugh, (“FF Cavanaugh”), was
18 named as a driver in the accident, submitted to an evidentiary test of his blood and was named
19 as a driver in the civil lawsuit filed against the City. FF Cavanaugh was never given driving
20 restrictions, nor was he ever disciplined for the accident. *Id.* at ¶ 15. FF Myers successfully
21 passed the FEO examination and on October 31, 2019, she and Firefighter Theresa Bruno,
22 (“FF Bruno”) were placed on the September 26, 2019, promotional list following a scoring
23 mistake by the Civil Service Commission. *Id.* at ¶ 12. On November 6, 2019, Fire Chief David
24 Cochran (“Chief Cochran”), advised FF Myers that he would “hold off” on her promotion
25 until the results of the investigation were known, leading FF Myers to believe that once the
26 investigations were completed, she would be promoted to FEO, no matter the results of the
27
28

1 investigation. *Id.* at ¶ 13. On November 8, 2019, FF Bruno was promoted to FEO. *Id.* at ¶ 14.
2 On November 19, 2019, FF Bruno was the driver in an on-duty accident involving a
3 pedestrian. There is no indication that FF Bruno was ever given driving restrictions or
4 discipline for the accident, and FF Bruno was allowed to remain as an FEO despite being in a
5 probationary status at the time of the accident.
6

7 At the expiration of the promotional list, FF Myers was the only employee not
8 promoted, despite eight open FEO positions and the past practice of the Respondents to
9 promote all employees on a list when open positions are available *Id.* at ¶ 20.

10 On March 3, 2021, Chief Cochran told FF Myers she would not be promoted to FEO
11 due to the “optics” of doing so. *Id.* at ¶ 25. At no point prior to March 3, 2021, did Chief
12 Cochran advise FF Myers that she would not be promoted to FEO, and the March 3, 2021,
13 notice was later rescinded due to a successful grievance by FF Myers. *Id.* at ¶¶ 24, 26, 29.
14

15 Due to the negative media attention, FF Myers requested to not wear a name tag during
16 her shifts out of fear of being recognized and mistreated by the public. This request was
17 granted by Chief Cochran. On February 9, 2022, FF Myers was allowed to return to driving
18 and acting in the capacity of FEO, this despite the ongoing civil lawsuit and criminal
19 investigation. *Id.* at ¶¶ 25, 37, 40.
20

21 Between October 31, 2019, and January 9, 2023, FF Myers successfully brought four
22 grievances against Cochran, the RFD and the City. *Id.* at ¶¶ 16-17, 28-29, 33-36.
23

24 The initial criminal investigation was completed on January 6, 2020, but the final
25 results of the investigation were not known until November 9, 2022. *Id.* at ¶¶ 18, 40. On
26 December 29, 2022, FF Myers emailed Chief Cochran to determine when she would be
27 promoted as the investigation was now complete. *Id.* at ¶ 43. Chief Cochran responded on
28 January 9, 2023, stating that he, on advice from legal counsel and Civil Service, would not be

1 promoting FF Myers to FEO. This was the first time that FF Myers received unequivocal
2 notice from Chief Cochran that she would not be promoted, despite his earlier assertions that
3 he was only “holding off” on her promotion until the investigation was completed. *Id.* at ¶¶ 13,
4 44. The Prohibited Practices Complaint and subsequent Motion to Dismiss followed. On
5 September 22, 2023, this Board denied the Motion to Dismiss and ordered the parties to
6 submit Prehearing Statements within 21 days.
7

8 **B. ISSUES OF LAW**

9 The following issues of law were raised in the Complaint filed on June 6, 2023.

10 Whether the actions taken against FF Myers for exercising her rights under the CBA,
11 for filing complaints against the City and RFD, and for personal and political reasons
12 constitute prohibited practices under NRS Chapter 288.
13

14 Whether Respondents City of Reno and Reno Fire Department discriminated against
15 Complainant Rosa Myers for filing multiple grievances in accordance with the collective
16 bargaining agreement constitutes prohibited practices in violation of NRS 288.270(1)(d).
17

18 Whether Respondents City of Reno and Reno Fire Department discrimination against
19 Complainant Rosa Myers based on political reasons to avoid public scrutiny and fallout
20 constitutes prohibited practices and is a violation of NRS 288.270(1)(f).
21

22 Whether Respondents City of Reno and Reno Fire Department discrimination against
23 Complainant Rosa Myers for personal reasons and personal dislike constitutes prohibited
24 practices and is a violation of NRS 288.270(1)(f).
25

26 Whether Respondents City of Reno and Reno Fire Department actions taken against
27 Complainant Rosa Myers were for non-merit-or-fitness factors which were not based in her
28 ability or fitness to do the job of FEO, but rather to discriminate for personal and/or political
reasons violates NRS 288.270(1)(f).

1 Given that Respondents did not file an answer, the aforementioned issues of law are
2 undisputed and do not require a determination by the Board.

3 **III. NAC 288.250(1)(c) STATEMENT**

4 Complainant is not aware of any pending or anticipated administrative judicial or other
5 proceedings related to the subject of this hearing.
6

7 **IV. COMPLAINANT’S WITNESSES**

8 A. Rosa Myers – Firefighter, City of Reno. Ms. Myers is expected to testify to the
9 facts and circumstances surrounding the Complaint and the actions and inactions taken by
10 Respondents during the time periods encompassed in the Complaint.

11 B. Collin Cavanaugh – Firefighter, City of Reno. Mr. Cavanaugh is expected to
12 testify to the relevant material facts and circumstances brought forth in the Complaint to
13 which he has knowledge and the actions and inactions taken by Respondents related to the
14 issues in the Complaint.

15 **V. ESTIMATED TIME**

16 Complainant estimates that she will need five hours to present her position.

17 **VI. CONCLUSION**

18 Based on the foregoing, and that the facts and issues of law are undisputed by the
19 Respondents, Complainant respectfully requests the Board find and order the following relief:

- 20 a. A finding that the conduct of Respondents as referenced in the Complaint
21 constitutes prohibited practices under Chapter 288 of the Nevada Revised
22 Statutes;
- 23 b. A finding that Respondents discriminated against Complainant for having filed
24 multiple grievances;
- 25 c. A finding that Respondents discriminated against Complainant for political
26 reasons;
27
- 28

- 1 d. A finding that Respondents discriminated against Complainant for personal
2 reasons;
- 3 e. An order requiring Respondents to cease in violating NRS 288.270;
- 4 f. An order requiring Respondents to promote Complainant to the position of Fire
5 Equipment Operator, retroactive to November 8, 2019;
- 6 g. An order requiring Respondents to pay Complainant all back wages, benefits
7 and Nevada Public Employee Retirement System contributions at the Fire
8 Equipment Operator rate retroactive to November 8, 2019;
- 9 h. An order requiring Respondents to pay the **Complainant's** reasonable attorney
10 **and representatives' fees** and expenses in bringing this action; and
11
- 12 j. Any and all other relief that the Employee Management Relations Board deems
13 appropriate.
14

15
16 DATED this 13th day of October, 2023.
17

18 /s/ Ronald J. Dreher
19 Ronald J. Dreher
20 NV Bar No. 15726
21 P.O. Box 6494
22 Reno, NV 89513
23 Telephone: (775) 846-9804
24 dreherlaw@outlook.com
25 *Attorney for Complainant*
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NAC 288.070, the undersigned hereby certifies that I am the counsel for the Rosa Myers and that on this date I served a true and correct copy of the preceding document addressed to the following:

KARL S. HALL, Esq.
Reno City Attorney
hallk@reno.gov
Jonathan D. Shipman, Esq.
Assistant City Attorney
shipmanj@reno.gov
Post Office Box 1900
Reno, Nevada 89505
(775) 334-2050
*Attorneys for City of Reno,
and the Reno Fire Department*

by electronic service by transmitting the copy electronically as an attachment to electronic mail in portable document format.

DATED this 13th day of October, 2023.

/s/ Ronald J. Dreher
Ronald J. Dreher
NV Bar No. 15726
P.O. Box 6494
Reno, NV 89513
Telephone: (775) 846-9804
dreherlaw@outlook.com
Attorney for Complainant

CERTIFICATE OF SERVICE

Pursuant to NAC 288.070, the undersigned hereby certifies that I am the counsel for the Rosa Myers and that on this date I served a true and correct copy of the preceding document addressed to the following:

Bruce Snyder, Esq.
Commissioner, EMRB
bsnyder@business.nv.gov
3300 W. Sahara Avenue
Suite 260
Las Vegas, NV 89102
bsnyder@business.nv.gov

by electronic service by transmitting the copy electronically as an attachment to electronic mail in portable document format.

DATED this 13th day of October, 2023.

/s/ Ronald J. Dreher
Ronald J. Dreher
NV Bar No. 15726
P.O. Box 6494
Reno, NV 89513
Telephone: (775) 846-9804
dreherlaw@outlook.com
Attorney for Complainant

1 JONATHAN D. SHIPMAN
2 Assistant City Attorney
3 Nevada Bar #5778
4 Post Office Box 1900
5 Reno, NV 89505
6 (775) 334-2050
7 Email: shipmanj@reno.gov
8 *Attorney for Respondents*

FILED
October 13, 2023
State of Nevada
E.M.R.B.
4:36 p.m.

9 STATE OF NEVADA
10 GOVERNMENT EMPLOYEE-MANAGEMENT
11 RELATIONS BOARD

12 ROSA MYERS,

Case No.: 2023-013

13 Complainant,

14 vs.

15 CITY OF RENO and RENO FIRE
16 DEPARTMENT,

17 Respondents,
18 _____ /

19 **RESPONDENT CITY OF RENO’S PRE-HEARING STATEMENT**

20 The City of Reno submits the following pre-hearing statement.

21 **I. FACTUAL BACKGROUND**

22 Respondent City of Reno (the “City”) employs Complainant Rosa Myers (“Complainant”
23 or “Myers”) in the position of Firefighter. In September, 2019, Myers participated in a Civil
24 Service recruitment test for promotion to the position of Fire Equipment Operator (“FEO”). She
25 was initially not placed on the eligibility list established on September 26, 2019. On October 31,
26 2019, after the Civil Service Department realized there was an error in scoring the test, the
27 correction of which was in Myers’s favor, the Department placed Myers on the September 26,
28 2019 promotion eligibility list for FEO.

1 However, in the interim, on October 10, 2019, Myers was operating a fire apparatus as a
2 driver, and ran over and killed a pedestrian in a crosswalk. Myers was driving the truck out of the
3 front bay door of Station 1 in downtown Reno, to turn left on the street and make another
4 immediate left (essentially a wide u-turn) to pull back around the fire station to wash the truck. A
5 criminal investigation into the accident ensued. Due to the pendency of this investigation, Fire
6 Chief David Cochran decided to hold off on any promotion of Myers to FEO (the role of which
7 would put her behind the wheel of a fire engine or truck). In November, 20, Cochran decided to
8 suspend Myers's driving privileges. Myers grieved this action, and the grievance was resolved by
9 an agreement that temporarily disallowed Myers from driving any apparatus, in anticipation of the
10 outcome of the criminal investigation.

11 The investigation of the accident, performed by the Washoe County Sheriff's Office, was
12 concluded in January, 2020, with findings that included:

13 After a thorough investigation, I have determined Rosa Myers violated **NRS**
14 **484B.657; Vehicular Manslaughter**. Rosa was in physical control of the ladder
15 truck as she operated it out of the fire station. She caused the death of Charlene
16 McMaster by her act of negligence due to disobeying the traffic control device
17 displaying a red signal (**NRS 484B.307**) as she continued to proceed through the
18 intersection to complete her turn. (Emph. in original.)

19 The investigator also recommended that Myers be arrested, and submitted a warrant request
20 to the Sparks City Attorney's Office.

21 The other employee on the fire truck during the accident was a tiller, who steers the
22 independent rear axle of the truck and has no control of braking or steering the front of the
23 apparatus. He was absolved of any liability by the investigation, and did not face any driving
24 restrictions like Myers did.

25 Upon information and belief, this is the first time that a Reno firefighter had run over and
26 killed a pedestrian while driving an apparatus on duty. It is also the first time that a RFD driver
27 was investigated for manslaughter and found to be at fault by a law enforcement investigator. In
28 other words, this incident was utterly unprecedented, and Management had no prior precedent
upon which to base its response. In addition to the duties that Management owes to employees, the
Fire Chief has public safety and civil liability to bear in mind.

1 The family of the deceased pedestrian filed civil suit against the City in January, 2021.
2 Accordingly, in March, 2021, with the criminal prosecution of Myers yet to be resolved,
3 Chief Cochran and the City's legal counsel met with Myers and a union representative. The
4 purpose of this meeting was to inform Myers that she would no longer be eligible to drive based
5 on the fatal accident for which she had been found at fault by the investigator. Realizing that such
6 a restriction might make Myers want to leave the organization, legal counsel offered to explore an
7 exit plan if that was the case. Myers wanted to stay at RFD and declined. That subject was never
8 revisited.

9 The permanent driving restrictions were memorialized in a letter to Myers's union. Myers
10 grieved the decision. The grievance was resolved via rescission of that letter. The agreement also
11 reinstated the prior grievance resolution, which specifically disallowed Myers from driving duties.
12 The earlier agreement, now in force again, also stated "This agreement will be renewed, or
13 Firefighter Myers will be placed on Leave with Pay, 30 days from the date of this resolution or
14 will be revisited at the conclusion of her accident investigation, whichever is sooner."

15 Myers remained unallowed to drive. In July, 2022, Cochran proceeded with discipline
16 resulting from the fatal accident. When the disciplinary process reached the discipline review
17 board, Myers received a reprimand and permanent driving restrictions. Myers grieved the
18 restrictions. At step 2 of the grievance process, the City Manager and the union agreed to a
19 resolution. There would be no permanent restrictions, and Myers would instead receive some
20 remedial driving training. At completion of that, there were no more driving restrictions on Myers,
21 and she was free to promote to FEO.

22 In June, 2022, the City settled the civil suit with the deceased pedestrian's family by paying
23 them \$1.2 million.

24 Myers's eligibility to promote based on the 2019 Civil Service Recruitment for FEO
25 expired when the 2019 promotional list expired, which occurred in September, 2020. Myers was
26 informed when that list expired, per Civil Service procedures. She was not on the 2020 list, and at
27 that time was still on driving restrictions. Myers knew she was not ever on another promotional
28 eligibility list for FEO. She did not test for the 2021 list. Myers knew she would not be promoted

1 retroactively. Not only had no one at RFD, to include Chief Cochran, ever told her she could be
2 promoted retroactively, no grievance resolution ever referenced retroactive promotion.
3 Additionally, Myers took the driver test through Civil Service Recruitments in 2022 and 2023,
4 failing the practical examination portion of the exam both times.

5 In December, 2022, Myers emailed Chief Cochran to ask for a promotion. This is not how
6 promotions are awarded at the City of Reno, of which Myers is aware. In January, 2023, Chief
7 Cochran denied the request, reasoning that the temporary restrictions had been justified, and also
8 expressly allowed by grievance resolution between the parties. A retroactive promotion was
9 tantamount to challenging a grievance result that Myers had already agreed to. Myers did not
10 perform any driving duties after the 2019 accident. She is not entitled to receive backpay for a job
11 she did not do and never became qualified to do again.

12 Myers filed a grievance a month after the denial of her email request. The grievance was
13 denied at the first two steps for untimeliness. Neither Myers nor her collective bargaining unit
14 pursued grievance arbitration. This EMRB action followed, framing the Chief's "failure" to
15 promote her consisted of unlawful discrimination under NRS 288, based on political or personal
16 reasons.

17 Cochran could not have granted the promotion request even if he wanted to. The Civil
18 Service Department is a neutral, independent arm of City government that is not under the control
19 of the City Manager as is every other department of the City (other than the City Clerk's Office).
20 Positions within the Civil Service are recruited and ranked independently by the Chief Examiner
21 and her staff. Any hiring and promotion into the classified service is done according to Civil
22 Service Rules. The Civil Service Department is overseen by an independent Commission made up
23 of individuals appointed by the City Council. (Reno City Charter, Article IX.)

24 Having had her promotional eligibility expire in 2020, and having taken the FEO test two
25 additional times and failed, Myers is simply not eligible to be promoted to FEO. However, nothing
26 prevents her from participating in future recruitments for FEO.

27 **II. ISSUES OF FACT**

28 The City is not aware of any *disputed* issues of fact. The City intends to show the following

1 facts at hearing:

- 2 1. Myers was found at fault by the criminal investigation into the accident that caused
3 the death of Charlene McMaster, with a conclusion of manslaughter and
4 recommendation of arrest.
- 5 2. The other employee on the apparatus during the accident, a tiller, was not found to be
6 at fault by the investigation. "He had no mechanical control of the ladder truck besides
7 steering the rear independent axle. He would be unable to stop the truck or have any
8 control of the front steering."
- 9 3. Myers violated department policy when she fatally struck a pedestrian in a
10 crosswalk.
- 11 4. Upon information and belief, Complainant is the only Reno Fire Department
12 employee to ever kill a pedestrian by running them over with a RFD apparatus.
- 13 5. Complainant's driving that caused the fatal accident cost the City \$1,200,000 in
14 settlement money.
- 15 6. None of the grievance resolutions contemplated retroactive promotion.
- 16 7. Chief Cochran, never at any point indicated or implied to Complainant that she
17 would be retroactively promoted in the event she was not criminally convicted for
18 the fatal accident.
- 19 8. The promotional list that Complainant was on, established September 26, 2019 (and
20 to which Complainant was added on October 31, 2019), expired during the time that
21 Complainant was restricted from driving due to the pending investigation and criminal
22 case.
- 23 9. There is no mechanism in the Reno Civil Service System to promote (retroactively or
24 otherwise) an employee from an expired list.
- 25 10. Complainant participated in the FEO recruitment two more times, in 2022 and 2023,
26 and failed to successfully complete the practical examination portion of the assessment
27 in both instances.
- 28 11. Complainant was never placed on another eligibility list for the FEO position.

- 1 12. There is no mechanism in the Reno Civil Service System to promote (retroactively or
2 otherwise) an employee who failed two subsequent tests and has not passed since.
- 3 13. City employees are not promoted based on emailing requests to their department
4 heads. The Chief's denial of such a request by Complainant cannot be legitimately
5 considered an adverse employment action.
- 6 14. Complainant's February 9, 2023 grievance was nonetheless untimely.
- 7 15. Complainant's grievance was denied at both levels due to being untimely, and neither
8 Complainant nor her collective bargaining unit pursued arbitration under the collective
9 bargaining agreement.
- 10 16. There is no evidence of any political differences between Complainant and
11 Management.
- 12 17. There is no evidence of personal animus between Complainant and Management.
- 13 18. The Evidence all reflects that the driving restrictions were actually based on
14 Complainant's fatal accident and was therefore legitimate, non-discriminatory, and
15 non-retaliatory.
- 16 19. Complainant has no driving restrictions on her, and has not had any restrictions since
17 completing the remedial process outlined in the grievance resolution dated February
18 9, 2022. She remains eligible to promote to FEO by completing the necessary Civil
19 Service recruitment. She has not done so.

20 **III. ISSUE OF LAW**

21 Did the Fire Chief's decision to deny Complainant's email request for a promotion
22 retroactive to 2019 consist of a prohibited practice by being motivated by political or personal
23 reasons or affiliations, in violation of NRS 288.270?

24 **IV. POINTS AND AUTHORITIES**

25 **1. Legal and Precedential Standards.**

26 A claim of discrimination for political or personal reasons under NRS 288.170(1)(f) is
27 analyzed under the framework set forth in *Reno Police Protective Ass'n v. City of Reno*, 102 Nev.
28 98 (1986) and later modified in *Bisch v. Las Vegas Metro Police Dep't.*, 302 P.3d 1108 (2013).

1 *Bonner v. City of N. Las Vegas*, EMRB Item 820, Case No. 2015-027 (2017). An aggrieved
2 employee must make a *prima facie* showing sufficient to support the inference that the protected
3 conduct was a motivating factor in the employer’s decision. *Id.* at 7. If this is established, the
4 burden shifts to the employer to demonstrate by a preponderance of the evidence that the same
5 action would have taken place even in the absence of the protected conduct. *Id.*; *Bisch*, 302 P .3d
6 at 1116. The aggrieved employee could then offer evidence that the employer’s proffered
7 legitimate explanation is merely pretextual and thus conclusively restore the inference of unlawful
8 motivation. *Id.*

9 The same framework applies to claims under NRS 288.270(1)(d), which are based on the
10 theory that the employer has discriminated against an employee because the employee has signed
11 or filed an affidavit, petition or complaint or given any information or testimony under NRS
12 Chapter 288. *Id.* (citing *Wilson v. City of No. Las Vegas*, EMRB Item 677E, Case No. AI-045925
13 (2010)).

14 **2. Argument.**

15 **A. There Are No Political Reasons.**

16 Myers offers no examples of political differences with superiors at the City which could
17 have motivated the City’s actions. *See Ducas v. LVMPD*, EMRB Item 812, Case No. 2015-003
18 (2016) (where complainant offered no evidence of political differences and never discussed
19 political beliefs with his employer, complainant failed to make *prima facie* case under NRS
20 288.270(1)(f).) The Complaint’s allegations do not support a reasonable inference that the City’s
21 actions were motivated by political or personal bias. The allegations point to a fatal accident for
22 which Myers was criminally investigated because she had been driving, and a subsequent
23 restriction of driving privileges pending both disciplinary and investigative processes. This is not
24 a political difference.

25 Additionally, on a protected-conduct theory of political discrimination, Myers cannot
26 support an inference that any protected conduct was a motivating factor in the City’s actions as
27 required by the Board. (*See Brown v. LVMPD*, EMRB Item 818, Case No. 2015-013 (2016). This
28 is because Myers did not allege protected conduct. The only reasonable inference to be drawn—

1 both logically and temporally—is that the driving restrictions were motivated specifically by
2 Myers’s fatal accident and no other factors. The attempt to bring the case under the ambit of NRS
3 288.270(1)(f) is unavailing. There is no evidence of protected activity or expressed or observed
4 political differences with anyone.

5 **B. There Are No Personal Reasons.**

6 Myers also cannot demonstrate that any prohibited personal reasons were a motivating
7 factor in the City’s actions. This claim is unsupported by any evidence.

8 The EMRB case *Kilgore v. City of Henderson*, Item 550H, Case No. A1-045763 (2005)
9 sets forth the Board’s construction of the term “personal reasons” as used in NRS 288. There, the
10 Board noted that the term “political or personal reasons or affiliations” is preceded in NRS
11 288.270(1)(f) by a list of factors, “race, color, religion, sex, age, physical or visual handicap,
12 national origin,” that are “non-merit-or-fitness” factors, *i.e.*, “factors that are unrelated to any job
13 requirement” and not otherwise a permissible basis for discrimination. *Kilgore* at 550H-9:7-12.

14 Under Board precedent, the phrase “personal reasons or affiliations” includes “non-merit-
15 or-fitness” factors, and “would include the dislike of or bias against a person which is based on
16 individual’s characteristics, beliefs, affiliations, or activities *that do not affect the individual’s*
17 *merit or fitness for any particular job.*” *Id.* at 550H-9:15-19. Put another way, “[p]ersonal reasons,
18 as used in NRS 288.270(1)(f), do not include reasons that are directly related to core functions of the
19 employee’s job.” *D’Ambrosio v. LVMPD*, EMRB Item 808, Case Nos. A1-046119 and A1-046121
20 (2015).

21 Under this construction, restricting an employee’s driving when the employee is under
22 criminal investigation and disciplinary process for a death caused by one’s driving is not based on
23 a “personal reason.” It is patently a business reason; It is directly related to the employee’s fitness
24 for a job that involves driving.

25 In this case, Myers all was involved and criminally investigated for a fatal accident
26 involving an apparatus she was driving. She was found by the investigation to have negligently
27 violated Nevada’s manslaughter statute. Each action taken by Management that Myers claims is a
28 prohibited practices was actually connected to her *driving privileges*. She does not allege any

1 disciplinary or administrative efforts that were not directly concerned with driving. There is no
2 support for a the theory of a pretextual basis for the City’s actions. Myers also has no evidence of
3 any personal history or animus between herself and anyone else at the Fire Department, and
4 therefore the only reasonable inference that may plausibly be drawn is that the driving restrictions
5 she alleges were all based on the driving problem she alleges. Myers’s own Complaint alleged
6 that Chief Cochran had determined she was at fault for the accident (Compl. at ¶ 26) and alleged
7 no other motivation. This is fatal to her claim of discrimination based on personal reasons. (*See*
8 *Williams v. LVMPD*, EMRB Item 619, Case No. A1-045866 (dismissing for lack of probable cause
9 a claim of personal-reasons discrimination where the only “personal reason” alleged was actually
10 a reason related to job fitness—specifically, fitness for driving).

11 Myers’s Complaint lacks any evidence for the Board to find unlawful discrimination based
12 thereon. *See, e.g., Wilson v. North Las Vegas Police Department*, EMRB Item 677E, Case No. A1-
13 045925 (burden only shifted to employer to show legitimate non-discriminatory reasons under
14 *RPPA/Bisch* framework where complainant made “substantial” showing to support inference of
15 personal-reasons discrimination; *see also Vos v. City of Las Vegas*, EMRB Item 749, Case No.
16 A1-046000; *Cf., Arredondo v. Clark Cty. School Dist.*, EMRB Item 102A, Case No. A1-045337
17 (1981) (complainant alleged, and respondent admitted, that personality differences were
18 motivating factor in unfavorable transfer); *Clark County Public Employees Ass’n v. Clark County*,
19 EMRB Item 215, Case No. A1-045425 (1988) (detailed history of personal animus tied to specific
20 event that couched employee as disloyal).

21 Myers attempts to position herself as being treated differently from the other “driver” of
22 the apparatus, but the other employee was not driving. He was a tiller who steered the rear axle
23 and could not brake or steer the front. The investigation concluded he had no fault in the accident.

24 **C. There is no Retaliation.**

25 Myers fails to allege anything that supports a reasonable inference that the City’s driving
26 restrictions on her were in response to her filing grievances. Myers has no evidence to show that
27 the basis for these restrictions was not the fatal accident that occurred while she driving, but rather
28 animus toward her due to multiple grievances.

1 The initial pass-over for promotion that Myers alleges with respect to the promotional list
2 established in October, 2019 took place almost immediately after the fatal accident. The decision
3 not to immediately promote was obviously motivated by Chief Cochran's concern with the
4 accident and ensuing investigation. Every following adverse employment action specifically
5 concerned her driving privileges and were specifically connected to this accident.

6 **D. The Failure to Promote Does not Form a Basis for a Prohibited Practice**
7 **Complaint.**

8 To tie this Complaint to the January, 2023 email from Chief Cochran declining to provide
9 her a retroactive promotion. However, this "decision" is illusory. City employees do not get
10 promoted by emailing the department head and asking for a promotion. This process would run
11 afoul of Civil Service Rules. The Fire Chief does not have the authority to promote in the absence
12 of an eligibility list, or outside of one.

13 Myers cannot show that her mere belief that she would be promoted retroactively was
14 reasonable. There is no evidence that the Fire Chief indicated that she would be. Her Grievance
15 resolutions do not contemplate retroactive promotion. To the contrary, grievance resolutions (that
16 would not have been reached if she had not agreed to them) expressly included driving restrictions.

17 Moreover, it defies reason and logic that anyone who thought they were going to be
18 promoted retroactively would go to the trouble of taking a promotional test again and risk failing.
19 The fact that she failed the test both times she retook it underscores the denial to promote her
20 retroactively. Myers is using this EMRB case to attempt to get a promotion that she cannot
21 otherwise get because she cannot pass the test. Additionally, Myers did not perform any driving
22 duties after the 2019 accident. She is not entitled to receive backpay for a job she did not do and
23 never became qualified to do again.

24 Even assuming that the driving restrictions were improper in the first instance, or that
25 Cochran's process was in violation of the CBA, that issue was remedied fully by the grievance
26 that lifted the permanent driving restrictions in favor of remedial driving training, and has no place
27 before this Board.

28

1 **V. LIST OF POTENTIAL WITNESSES.**

2 The following persons may be called by the City to testify regarding the allegations of the
3 complaint:

- 4 1. David Cochran – Fire Chief.
5 2. Barbara Ackermann – Chief Examiner of Civil Service.

6 The foregoing witnesses are expected to testify regarding the facts and principles set forth
7 above.

- 8 3. All witnesses identified by Complainant.

9 **VI. TIME ESTIMATE.**

10 The City estimates that it will take approximately 2 hours to present its case.

11 **VII. RELATED PENDING PROCEEDINGS.**

12 There are no pending or anticipated administrative, judicial or other proceedings related
13 to the subject of the hearing.

14
15 DATED this 13th day of October, 2023.

16
17 KARL S. HALL
18 Reno City Attorney

19
20 By: /s/ Jonathan D. Shipman
21 JONATHAN D. SHIPMAN
22 Assistant City Attorney
23 Nevada Bar #5778
24 Post Office Box 1900
25 Reno, NV 89505

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NAC 288.070, I certify that I am an employee of the RENO CITY
3 ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the
4 party(s) set forth below by:

5 _____ Placing an original or true copy thereof in a sealed envelope placed for collection
6 and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following
7 ordinary business practices or;

8 _____ Personal hand delivery.

9 _____ EFlex electronic service.

10 X _____ Email

11 _____ Facsimile (FAX).

12 _____ Federal Express or other overnight delivery.

13 _____ Reno/Carson Messenger Service.

14 addressed as follows:
15

16 Ronald J. Dreher, Esq.
17 P.O. Box 6494
18 Reno, NV 89513
19 dreherlaw@outlook.com

Bruce Snyder, Esq.
Commissioner, EMRB
3300 W. Sahara Avenue
Suite 260
Las Vegas, NV 89102
bsnyder@business.nv.gov

20
21 DATED this 13th day of October, 2023.

22
23 /s/ Terri Strickland _____

24 Terri Strickland
25 Legal Assistant
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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

ROSA MYERS,

Complainant,
v.
CITY OF RENO AND RENO FIRE
DEPARTMENT,

Respondent.

Case No. 2023-013

**FOURTH AMENDED NOTICE OF
HEARING**

TO: Complainant, by and through her attorney, Ronald J. Dreher, Esq.; and
TO: Respondents, by and through their attorneys, Jonathan Shipman, Esq., Assistant City Attorney,
and Chandeni K. Sendall, Esq., Deputy City Attorney.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE pursuant to NRS 233B.121(2),
that the Government Employee-Management Relations Board (“Board”) will conduct a hearing in the
above-captioned matter:

Panel

This case has been assigned to Panel C. Pursuant to NAC 288.271(3) the presiding officer shall
be Vice Chair Michael J. Smith. Pursuant to NAC 288.271 (2)(c) Board Member Tammara M.
Williams will be substituting for Board Member Michael A. Urban, who is unavailable.

Dates and Times of Hearing

Tuesday, March 19, 2024 at 9:00 a.m. and Wednesday, March 20, 2024 at 9:00 a.m., if
necessary.

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1 **Location of Hearing**

2 The hearing will be held in the Carl Dodge Conference Room, which is located at the EMRB
3 Office located on the fourth floor of the Nevada State Business Center, 3300 W. Sahara Avenue, Las
4 Vegas, NV 89102. On March 19th, the hearing will also be held on the first floor of the Reno City Hall
5 in Council Chambers, which is located at 1 E. First Street, Reno, NV 89501. Attendees in Reno will
6 need to check in at the front desk at the entrance located on the corner of Virginia Street and First
7 Street. There is a parking garage on University Way and parking tickets can be validated at City Hall.

8 The hearing will also be held virtually using a remote technology system called WebEx. The
9 attorneys of record, witnesses, court reporter, one or more of the panel members and the Deputy
10 Attorney General assigned to the EMRB will be present in Reno. The Commissioner and the remaining
11 panel members will be present in Las Vegas. Preliminary motions will be heard at the beginning of the
12 hearing. The Panel may deliberate and take possible action on this case after the hearing has concluded.

13
14 **Details Regarding Events Prior to the Hearing**

15 1. The parties shall submit one (1) set of tagged joint exhibits to be received by the EMRB,
16 3300 W. Sahara Avenue, Suite 490, Las Vegas, Nevada 89102, no later than March 18, 2024. The
17 parties shall also bring two (2) sets of tagged joint exhibits to the hearing. Please note that the number
18 of sets of exhibits to be received by the EMRB is in addition to any sets of exhibits that may be used by
19 the attorneys of record. Each attorney shall also be responsible to have a set of exhibits at the
20 designated location for its witnesses.

21 2. The parties will also need to submit an electronic version of the exhibits, along with a
22 table of contents of the exhibits, no later than one week prior to the start of the hearing. Each electronic
23 exhibit shall be a .pdf file. Arrangements on the means of transmittal shall be made with the Board
24 Secretary.

25 3. Unless otherwise excused by the Chair for good cause, all subpoena requests must be
26 submitted to the EMRB no later than one week prior to the hearing.

27 //

28 //

1 **Details of Hearing**

2 1. The legal authority and jurisdiction for this hearing are based upon NRS 288.110, NRS
3 288.280 and the Nevada Administrative Code, Chapter 288.

4 2. The time allotted for the hearing shall be five (5) hours for the Complainant and five (5)
5 hours for the Respondent, including cross-examination.

6 3. The Complainant shall be responsible for retaining a certified court reporter to take
7 verbatim notes of the proceedings. Pursuant to NAC 288.370, the cost of reporting shall be shared
8 equally by the parties and the Board shall be furnished the original of the transcript so taken.
9 Complainant shall work with the court reporter to ensure that the court reporter will also be able to
10 attend online using the afore-mentioned software product.

11
12 **Statement of Issues Involved**

13 Based upon the prehearing statements filed in this matter, and pursuant to NRS 233B.121(2)(d),
14 the issues to be addressed at the hearing are identified as follows:

15
16 **Complainant's Statement of Issues**

17 1. Whether Respondents have violated NRS 288.270(d) and (f) through their actions as alleged in
18 the complaint.

19
20 **Respondent's Statement of Issues**

21 1. Did the Fire Chief's decision to deny Complainant's email request for a promotion retroactive to
22 2019 consist of a prohibited practice by being motivated by political or personal reasons or
23 affiliations, in violation of NRS 288.270?

24 The Respondent's Issues of Fact are incorporated herein by reference.

25 //

26 //

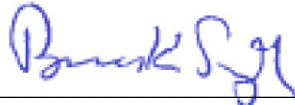
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1 This Fourth Amended Notice of Hearing will further serve as notice to all parties herein, that
2 upon conclusion of the Hearing, or as otherwise necessary to deliberate toward a decision on the
3 complaint, the Board may move to go into closed session pursuant to NRS 288.220(5).

4 DATED this 8th day of March 2024.

5
6 GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

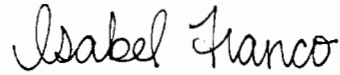
7
8 BY 
9 _____
10 BRUCE K. SNYDER, Commissioner
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1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management Relations
3 Board, and that on the 8th day of March 2024, I served a copy of the foregoing **FOURTH AMENDED**
4 **NOTICE OF HEARING** by mailing a copy thereof, postage prepaid to:

5 Ronald J. Dreher, Esq.
6 P.O. Box 6494
7 Reno, NV 89513

8 Jonathan Shipman, Assistant City Attorney
9 Chandeni K. Sendall, Deputy City Attorney
10 Post Office Box 1900
11 Reno, Nevada 89505

12 

13 _____
14 ISABEL FRANCO
15 Administrative Assistant II
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