

FEB - 8 2017

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

TAMMY BONNER and BACHERA
WASHINGTON

Case No. 2015-027

Complainants,

ORDER

v.

ITEM NO. 820

CITY OF NORTH LAS VEGAS,

Respondent.

On January 11, 2017, this matter came before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the "Act"), NAC Chapter 288 and NRS Chapter 233B. The Board held a 3-day administrative hearing on this matter on October 3, 4, and 5, 2016 in Las Vegas, Nevada. The Board accepted post-hearing briefs in this matter as well.

In their Complaint, Bachera Washington ("Washington") and Tammy Bonner ("Bonner") (collectively "Complainants") claim that the City of North Las Vegas (the "City") discharged or otherwise discriminated against them for their previous filing of a complaint before this Board in violation of NRS 288.270(1)(d). Complainants also allege that the City personally and politically discriminated against them in connection with their separation from the City in violation of NRS 288.270(1)(f).¹ Complainants allege that the City ultimately outsourced its entire Human Resources Department, in part, due to the Complainants' investigation and reporting of alleged improper actions of Mayor John Lee.

Washington was hired as a Human Resources Support Specialist on or about October 18, 1994. Bonner was hired as a Senior Recruiter on or about April 15, 2002. In or about 2013, the City's Employee Development Specialist retired. Thereafter, Human Resources Director Austin Scaccia

¹ Complainants also raised allegations of discrimination based on race or religion in their Complaint; however, Complainants stipulated at the hearing that they were not pursuing those claims.

1 ("Scaccia") wanted to split the position's tasks between Complainants instead of hiring a replacement –
2 this action was reportedly due to the City's dismal fiscal circumstances and to save money.
3 Consequently, Scaccia promoted both Complainants to Principal Human Resource Analysts and
4 increased their salaries by 16.5%. Although both Complainants reportedly began their careers with the
5 City as members of Teamsters Union, Local 14, both withdrew their membership upon acceptance of
6 confidential positions. Washington had not been a member of the union since 2004, while Bonner
7 withdrew from the union in or about 2013.

8 Shortly thereafter, the City received an anonymous complaint about the steep increase to
9 Complainants' salaries during a time when the City was facing substantial financial constraints.
10 Accordingly, the City ultimately decided to rescind the raises in or about November 2013, but allowed
11 Complainants to retain their titles. Complainants contend that Mayor John Lee illegally and improperly
12 inserted himself into personnel decisions in this regard.

13 As such, Complainants filed a joint complaint before this Board on or about March 10, 2014,
14 alleging that the City discriminated against them on the basis of race, sex, and/or political or personal
15 reasons or affiliations. Additionally, Complainants filed charges of discrimination with the EEOC. In
16 or about December 2014, the City and Complainants agreed and settled all matters, and Complainants
17 released all known and unknown claims related to Complainants' employment up to that date in
18 exchange for annual salaries of \$100,000.00 and \$5,000 for their attorney's fees.² After Scaccia was let
19 go in or about September 2014, Complainants effectively ran the HR Department. City Manager Dr.
20 Liu ("Dr. Liu") would have bi-weekly meetings with Complainants to go over HR issues.

21 A number of companies reportedly approached the City and indicated that they believed they
22 could perform certain functions for the City more efficiently and cost-effectively. In considering
23 whether to outsource its Human Resources Department, the City sought to achieve certain goals and
24 objections, including to: (1) realize cost savings; (2) address the City employees' concerns; (3) increase
25 services and employee satisfaction; (4) standardize processes and update policies; (5) review and update
26 job descriptions; (6) revitalize the employee evaluation program; (7) develop and monitor training

27
28 ² As such, any claims of discrimination related thereto were not properly before the Board. *But see infra*
note 3 and accompanying text.

1 requirements; (8) identify best practices and implement solutions; (9) utilize on-line services and
2 automate processes; (10) provide 24 hours a day/seven days a week self-service access to employees;
3 and (11) maximize efficiency and the use of funding and resources.

4 Indeed, over the last several years, the City has experienced the crippling effects of a lengthy
5 recession. Since 2007, the City has implemented cost-saving actions. The Board heard evidence that
6 the City's financial struggles and deficits continue to this day, including comments such as the City was
7 "in a tailspin ... I think [the outsourcing] was done to save money for the City", and even as recently as
8 fiscal year 2015-2016 "that City was in a deficit situation". Complainants presented similar testimony
9 as well. Notably, financial insolvency was not the only concern of Finance Director Darren Adair
10 ("Finance Director Adair"). As he testified, some of his greatest concerns for the City were staffing
11 issues. From 2007 to 2013, the City's personnel decreased by almost 50%. Consequently, the City was
12 concerned with service level insolvency (which was described as the inability of the City to provide the
13 necessary services to its population) as well as political insolvency (which was described as the inability
14 of the City to meet its financial and service obligations).

15 In order to achieve its goals and objections, the City faced three potential alternatives: (1)
16 increase the Human Resources Department's in-house staff to bolster services, which would mean a
17 corresponding increase in the Department's budget and expenditures; (2) partner with the City of Las
18 Vegas to share services; or (3) outsource the Human Resources Department. The first option was
19 deemed necessary because of the stress on the Human Resources Department from the staff reductions
20 over the last years, and because the Complainants themselves asked for more staff during their meetings
21 with Dr. Liu. Indeed, Dr. Liu testified that at the time "we were struggling trying to keep the lights on
22 and really keep the work going." Dr. Liu further testified that she regularly met with Complainants, as
23 the Human Resources Department, and they continually indicated that "[t]hey need more people. They
24 are overworked." The second option, partnering with the City of Las Vegas, was deemed unavailing as
25 the City of Las Vegas did not believe it could properly manage the City's human resource functions. As
26 such, the options the City considered were either to return the Human Resources Department to what it
27 once was (with the corresponding necessary increase in cost) or to outsource the Department entirely.

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1 Near the end of 2014, the City tasked Ms. Kari Turkal-Barrett ("Turkal-Barrett"), then-
2 administrative Services Manager, with exploring the various options identified by the City to address
3 the Human Resources Department concerns. Turkal-Barrett, a retired Lieutenant Colonel of the United
4 States Air Force of 24 years, holds a bachelor's degree in business and health administration as well as a
5 master's degree in public administration. Initially, Turkal-Barrett followed-up with various companies
6 who believed they could save the City money in performing various HR functions and obtained an
7 evaluation from Phil Richards with AdvanStaffHR, who indicated that the City was not receiving very
8 good value. As such, the City directed her to further evaluate the City's HR department. Thereafter,
9 Turkal-Barrett conducted a business case analysis of the HR Department. Notably, when Turkal-
10 Barrett was asked to look into this, the City had already outsourced the administration of its employees'
11 health and dental plans, life insurance plans, 457 deferred comp retirement plan, and City's worker's
12 compensation benefits.

13 When considering the possibility of outsourcing its HR functions, the City's objectives were to
14 either obtain a higher level of service at the same price, the same level of services at a lower price, or a
15 higher level of service at the same price or a lower price. On or about March 12, 2015, the City
16 published a Request for Proposal ("RFP"). The original response date for any companies that wished to
17 bid on the RFP was March 19, 2015; however, this date was modified by Addendum No. 1, which
18 allowed responses up and until March 26, 2015. In response, the City received two proposals, one from
19 Elite InSource, LLC ("Elite") and one from Prism Global HR Management Group ("Prism"). Both
20 proposals were significantly lower than the City's HR Department's annual budget – reportedly roughly
21 \$1,200,000 for fiscal years 2013-2014 and 2014-2015. Specifically, both companies offered fixed-price
22 contracts, with Prism offering to do the work for \$420,000.

23 Washington testified that in March of 2011 she learned of the consideration of the option to
24 outsource in a meeting with Dr. Liu. Washington testified that Dr. Liu informed her that the City of
25 Reno had completely outsourced their HR department – information that was eventually found to be
26 inaccurate as Washington indicated she contacted their director; however, notably, Washington also
27 testified that the City of Reno's director also indicated that they had outsourced their worker's
28 compensation and perhaps even payroll. Also notably, the City (Respondent) also considered

1 outsourcing its Payroll Department; however, the City ultimately discovered that there would be no
2 savings to outsourcing the Payroll Department. On or about March 25, 2015, Washington and Bonner
3 filed complaints with the Nevada Commission on Ethics against Mayor John Lee, Chief of Staff Ryan
4 Juden, and Dr. Liu related to the alleged improper influence of the Mayor and his Chief of Staff in the
5 hiring process. Complainants claim the ultimate decision to outsource the entire HR Department was
6 due, in part, to this action of theirs. Complainants claim that as early as February 2014, the Mayor and
7 his Chief of Staff had discovered that Washington and Bonner had been compiling documents in this
8 regard.³

9 To further evaluate the two proposals of Elite and Prism, Finance Director Adair, Neighborhood
10 and Leisure Services Director Cass Palmer ("Palmer"), and Turkal-Barrett, who were relatively new to
11 the City, performed onsite visits to both Elite and Prism. Both Palmer and Turkal-Barrett, who had
12 extensive HR or administrative experience, were thus able to offer unbiased and non-conflicted
13 opinions of the proposals due to their relatively new employee status and their departments were not
14 being directly impacted by the changes. In addition, in around March 2015, both Prism and Elite were
15 asked to give presentations on their proposals.

16 At this point, the City decided that a completely virtual human resources option would not be
17 feasible or sufficient. As such, the City amended its RFP to require an on-site presence. Addendum
18 No. 2 included provisions for a full-time employee ("FTE") with 7 or more years of general human
19 resources experience to be physically on site during the City's Monday through Thursday workweek, as
20 well as another FTE at the executive, decision-making level. While Elite appears to have not responded
21 to this amendment, Prism responded with a fixed-contract price of \$740,000 per year. Importantly, as
22 this would be a fixed contract, if additional staff were needed to be hired or if additional expenditures
23 were required in order for Prism to fulfill the requirements of the RFP, those costs would be born solely
24 by Prism, rather than the City.

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26
27 ³ Respondents point to the December 2014 settlement agreement in which the City and Complainants
28 agreed and settled all matters, and Complainants released all known and unknown claims related to
Complainants' employment up to that date. The Board notes that March 2015 complaints filed by
Complainants with the Nevada Commission on Ethics are, of course, after this date.

1 Thereafter, the outsourcing option was presented to the City Council for consideration on or
2 about May 20, 2015. When presenting the outsourcing option, the City Council unanimously approved
3 the City's engagement of a third-party professional services company. When making decisions, the four
4 City Council members and the Mayor each get one vote for a total of five votes. The Mayor's vote is
5 not weighed any more than any of the other City Council members. Ultimately, the City selected Prism.
6 Prism not only would provide the City with the HR functions previously provided in-house, but also
7 would provide the enhanced series of an initial assessment/audit on current processes and practices to
8 identify areas of improvement, the streamlining and standardization of processes and procedures, a
9 review and update of all job descriptions, performance of compensation studies on all job
10 classifications, the initiation and maintenance of an employee wellness program, the review and
11 automation of processes to promote consistent up-to-date recordkeeping, and the provision of employee
12 access to human resources services 24 hours a day/seven days a week.

13 Indeed, Prism also contracted to provide those services not only for a fixed contract price to
14 provide stability to the City, but also to provide those services for significantly less than it would cost to
15 return the City's HR Department to an acceptable level.

16 The Board also heard testimony that the City's decision to outsource its entire HR Department
17 did not only affect Complainants. At the time of the City's decision to outsource its human resources
18 functions, the HR Department consisted of 8 total positions. Two of those positions were vacant.
19 Regarding the remaining 6 positions, the City either laid off or transferred those employees to a
20 different position within the City or the employees voluntarily chose to end their employment.
21 Specifically, Sherri Hoffman was working as a HR Representative II at the time of the decision. As
22 Hoffman's position was covered by a collective bargaining agreement with her union, she possessed
23 bumping rights based on her seniority and was able to continue working as an Office Assistant in a
24 different department. Similarly, Darlene Rosenberg, former Principal Benefits Analyst, had bumping
25 rights available to her, but decided instead to retire rather than bump the union liaison at the time, and
26 the position she would have been bumped to would have been for a lesser rate of pay. Juma Suedi,
27 former HR Representative II, voluntarily resigned his employment.
28

1 In addition to Complainants, the City was also unable to locate replacement or bumping
2 positions for Joanne Huston, a HR Analysis, and all those employees were similarly treated – given two
3 weeks' salary in lieu of two weeks' notice. With regard to Bonner, although she contends there was an
4 available public information specialist position in the Fire Department, the Board heard testimony from
5 Fire Chief Jeffrey Lytle for the City of Las Vegas Fire Department ("Chief Lytle") who testified that he
6 never submitted that specific position to the critical justification committee so that Bonner could be
7 transferred into that position.

8 While implementing the outsourcing function was admittedly not seamless due to the expected
9 learning curve, the feedback following the initial transition appears to have been positive. Indeed, the
10 Board heard testimony that the Prism acted as "professionals" and "took their job seriously" and the
11 lead of Prism is "exceptional" and "super responsive." Moreover, Prism was able to enhance the HR
12 Department in several ways. The Board also heard testimony that Prism's initial efforts were hampered
13 in part due to the poor condition in which Complainants left the department and because the City's
14 systems and software were not maximized for efficiency. While testimony presented demonstrated that
15 Prism indeed bore additional unanticipated expenditures, nonetheless those costs were solely born by
16 Prism due to the flat-rate contractual amount.

17 DISCUSSION

18 Complainants claim that they are victims of discrimination by the Department due to personal
19 and political reasons in violation of NRS 288.270(1)(f). Discrimination of this sort is analyzed under
20 the framework set forth in *Reno Police Protective Ass'n v. City of Reno*, 102 Nev. 98, 715 P.2d 1321
21 (1986) and later modified in *Bisch v. Las Vegas Metro Police Dep't*, 129 Nev. Adv. Op. 36, 302 P.3d
22 1108 (2013).

23 An aggrieved employee must make a *prima facie* showing sufficient to support the inference
24 that the protected conduct was a motivating factor in the employer's decision. Once this is established,
25 the burden shifts to the employer to demonstrate by a preponderance of the evidence that the same
26 action would have taken place even in the absence of the protected conduct. *Bisch*, 302 P.3d at 1116.
27 The aggrieved employee may then offer evidence that the employer's proffered legitimate explanation is
28 merely pretextual and thus conclusively restore the inference of unlawful motivation. *Id.*

1 Complainants also alleged that the City discharged or otherwise discriminated against them for
2 filing or participating in EMRB proceedings. It is a prohibited labor practice for a local government
3 employer to “[d]ischarge or otherwise discriminate against any employee because the employee has
4 signed or filed an affidavit, petition or complaint or given any information or testimony under this
5 chapter.” NRS 288.270(1)(d). The same test indicated above also applies to claims of this nature.
6 *Wilson v. City of No. Las Vegas*, Item No. 674E (2010).

7 The Board finds that Complainants presented sufficient evidence to make their *prima facie*
8 showing to support the inference that their protected conducts were at least a motivating factor in the
9 City’s decision. The Board finds that the relatively short timing between the filing of the complaint and
10 entering of the settlement agreement (in or about December 2014) with the beginning of consideration
11 of the outsourcing option as well as the initial RFP (in or about March 2015) supports the inference that
12 their protected conduct was at least a motivating factor in the City’s decision. Moreover, it is generally
13 accepted that an employment action undertaken within close temporal proximity to protected conduct is
14 sufficient in and of itself to establish a *prima facie* case. *Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268,
15 273, 121 S. Ct. 1508, 1511, 149 L. Ed. 2d 509 (2001). “Specifically, when adverse employment
16 decisions are taken within a reasonable period of time after complaints of discrimination have been
17 made, retaliatory intent may be inferred.” *Passantino v. Johnson & Johnson Consumer Prod., Inc.*, 212
18 F.3d 493, 507 (9th Cir. 2000); *Mariani-Colon v. Department of Homeland Security ex rel. Chertoff*, 511
19 F3d 216, 224 (1st Cir. 2007) (2 months from protected activity to discharge sufficient for relatively light
20 burden of establishing *prima facie* case); *DiCarlo v. Potter* 358 F3d 408, 422, (6th Cir 2004) (21 days
21 sufficient to establish *prima facie* case).

22 As Complainants met their initial burden, the burden shifted to the City to demonstrate by a
23 preponderance of the evidence that the same action would have been taken place even in the absence of
24 the protected conduct. The Board finds that sufficient evidence was produced and presented by the
25 City to satisfy its burden regarding its nondiscriminatory justification – evidence that was not shown as
26 a false pretext per *Bisch* as further detailed below.

27 While Complainants attempted to show that they were treated differently than other employees,
28 the evidence demonstrated that not to be the case. The decision made by the City affected the entire HR

1 department; indeed, employees who did not engage in Complainants' protected conduct were subject to
2 the same employment separation or were provided options based on their union membership. In
3 addition to Complainants, the City was unable to locate replacement or bumping positions for Joanne
4 Huston, a HR Analysis, and all those employees were similarly treated – given two weeks' salary in lieu
5 of two weeks' notice. With regard to Bonner, although she contends there was an available public
6 information specialist position in the Fire Department, the Board heard testimony, which it finds
7 credible, from Chief Lytle who testified that he never submitted that specific position to the critical
8 justification committee so that Bonner could be transferred into that position. Indeed, Chief Lytle
9 testified that he considered "putting people in the street to get called was a higher priority." Chief Lytle
10 further testified that he "was not at the point willing to utilize those extra funds, funds that potentially
11 could be moved over, used to hire a firefighter."

12 The City also presented sufficient evidence that at the time of the decision, it believed that
13 outsourcing the HR Department would present significant savings. Moreover, while Complainants also
14 attempted to argue that there were no real savings as a result of the City's decisions to outsource the HR
15 Department, evidence presented to the Board demonstrated the contrary.

16 Preliminarily, the Board notes that generally even though a party's belief at the time of the
17 alleged discriminatory or retaliatory action occurs may be mistaken, this mistake is not grounds for
18 inferring discrimination. *U.S. E.E.O.C. v. Republic Servs., Inc.*, 640 F. Supp. 2d 1267, 1313 (D. Nev.
19 2009), citing *McKnight v. Kimberly Clark Corp.*, 149 F.3d 1125, 1129 (10th Cir.1998) (where there was
20 no evidence of a basis for doubting sincerity at the time of an articulated motivating reason for an
21 employment action, the reason was not converted into pretext merely because, with the benefit of
22 hindsight, it turned out to be poor business judgment); *Furr v. Seagate Tech., Inc.*, 82 F.3d 980, 986
23 (10th Cir.1996) (employment laws not violated by erroneous or illogical business judgment); *Dister v.*
24 *Continental Group, Inc.*, 859 F.2d 1108, 1116 (2nd Cir.1988) ("Evidence that an employer made a poor
25 business judgment in discharging an employee generally is insufficient to establish a genuine issue of
26 fact as to the credibility of the employer's reasons."); *Nix v. WLCY Radio/Rahall Communications*, 738
27 F.2d 1181, 1187 (11th Cir.1984) ("The employer may fire an employee for a good reason, a bad reason,
28 a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory

1 reason.”); *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1063 (9th Cir. 2002) (stating “it is not
2 important whether they were *objectively* false ... [r]ather, courts ‘only require that an employer honestly
3 believed its reason for its actions, even if its reason is ‘foolish or trivial or even baseless.’”) (*emphasis*
4 in original).

5 The Board heard credible testimony from Finance Director Adair who is generally responsible
6 for preparing budgets and working with all department directors in this regard. Adair testified that in
7 regards to staffing of HR, comparing years 2007 v. 2013, they were only about 50% of the staffing that
8 they once were. Adair admitted that there was not a material savings based on existing staff – however,
9 the concern was they knew they needed more staff and more resources in order to bring back the HR
10 Department to the same level of service. Indeed, the City believed that it would be as high as
11 \$1,600,000, but at least \$1,200,000, so when one compares that with the fixed contract price of Prism,
12 the savings are obvious. The Board finds testimony from Adair, as well as from Turkal-Barrett,
13 credible that the City at least believed at the time of the decision to outsource, that the City would be
14 presented with significant savings.

15 In any event, the Board also finds the savings to the City from outsourcing the HR department
16 were substantiated. The evidence before the Board clearly demonstrated that the trend in both the HR
17 Department’s budget and its personnel had decreased over the years through layoffs, not filling vacant
18 positions, and other financial measures. While this decrease in staff lead to greater savings and assisted
19 with balancing the City’s budget, such drastic reductions in staff over the years also placed significant
20 burdens on remaining staff such that Complainants continually indicated to the City Manager that they
21 needed more staff members and causing the Finance Director to be concerned with service insolvency.
22 Ultimately, the decision to outsource the HR Department to a third-party vendor addressed both
23 financial and service insolvency issues.

24 The Complainants attempted to demonstrate that there were no real savings by showing that the
25 Adopted Budget after the decision to outsource was actually higher than before the decision. However,
26 Adair testified that the problem with the 7-year forecasts they used to determine this was that it assumed
27 there weren’t any changes in staffing. Adair testified that, in regards to Joint Exhibit 38 (which showed
28 the adopted budget for fiscal year (“FY”) 15/16), that the budget for FY 15/16 was prepared and

1 adopted before the decision was made by the City Council (in that it did not reflect the outsourcing). In
2 regards to Joint Exhibit 39 (Adopted Budget FY 16/17), Adair testified that this was after the
3 outsourcing contract was signed. While the 2016 Adopted Budget does appear to be more than that of
4 the 2015 Actual Budget, the 2017 Adopted budget is significantly less (roughly \$293,716 or 25.6%).
5 As such, Adair testified that one must look at the budget for FY 16/17, shown in Joint Exhibit 39,
6 which shows the cost savings by outsourcing. Indeed, Adair testified that bottom line, the fixed contract
7 service agreement with Prism, saves the City money.

8 Moreover, not only did the City realize the savings, the City also enjoyed the needed
9 stabilization of cost in HR due to the fixed price as well as an increased level of service and resources.
10 As such, the Board also notes, that the City obtain this fixed-price contract with Prism which provided
11 the City with an obvious dependable cost. The Board heard testimony that this was an important
12 consideration to the City and regardless of how many staff members are needed to perform HR
13 functions, Prism, rather than the City, must provide those staff members and absorb any unanticipated
14 costs.

15 Indeed, the Board finds credible that Prism CEO Mary Beth Hartleb's ("Hartleb") testimony that
16 regardless of whether Prism has to "use six people or 20 people" to fulfill its contractual obligations, the
17 price is the same. Hartleb reiterated the fixed-price contract and testified that, to date, Prism has not
18 received any additional monetary payment from the City above the flat rate contractual amount. The
19 Board also heard credible testimony of Adair and Turkal-Barrett that the fixed price contract is
20 substantially less than the cost of restoring the HR Department to its required level. Furthermore, the
21 Board also found testimony credible indicating that the City's financial struggles and deficits continue
22 to this day, including comments such as the City was "in a tailspin ... I think [the outsourcing] was
23 done to save money for the City", and even as recently as fiscal year 2015-2016 "that City was in a
24 deficit situation." Even Scaccia (who was previously let go from the City), when questioned on whether
25 the reorganization for the HR Department was based on the City's fiscal circumstances at the time,
26 testified that "[i]t was really based on the people leaving and the type of system I wanted to incorporate
27 to meet the fiscal circumstances of WHAT the City has been. It's been in the papers since 2008 that,
28 you know, there have been budget issues." Scaccia described the City as being in "dire straits."

1 The Board also finds Hartleb credible related to testimony regarding Prism's uphill battle upon
2 taking over HR functions due to the poor condition in which Complainants left the department and
3 because the City's systems and software were not maximized for efficiency. Hartleb testified that "we
4 walked into, I don't know how else to say it, but a mess. We had found file boxes of just loose
5 paperwork of all different employee records." Hartleb went on to explain that "[i]n addition to
6 paperwork not being processed properly or just kind of being left unfiled, the naming convention that
7 was agreed to by the City was not being used." They found "that the Oracle database [the City] use[s]
8 ... requires a lot of highly expert people to really program ... [b]ut some of the modules had either been
9 turned off or not ever used to automate the HR function." They also found that "[t]here's a system with
10 Equifax, for example, that we realized the City was paying for, but wasn't really using because there
11 wasn't a data feed setup." Moreover, they "found that FMLA ... time was not being tracked. We found
12 that there were several problems with the I-9s ... [a]nd we had to embark on a project which took us
13 several months to get new I-9s from basically every employee of the City, which is --- these are all risk
14 issues for the City." Hartleb testified that personnel within the HR Department (Rosenberg) indicated
15 that FMLA wasn't being tracked because "it was a mess and they had stopped tacking it because they
16 didn't have the time to deal with it." Indeed, Prism, and not the City, bore all of these unanticipated
17 substantiated expenditures.

18 Finally, sufficient evidence was not presented by Complainants (in an additional attempt to
19 show mere pretext) that the Mayor or the City Council in fact dictated or gave official orders to or about
20 any employee except for their full consideration and unanimous vote to outsource the HR department.
21 Indeed, the Board also finds Dr. Liu's and Hartleb's testimony credible that the Mayor did not
22 improperly involve himself in personnel decisions in this matter. Moreover, when making decisions,
23 the four City Council members and the Mayor each get one vote for a total of five votes. The Mayor's
24 vote is not weighed any more than any of the other City Council members.⁴

25 ⁴ The Board notes that its authority is limited to matters arising out of the interpretation of, or
26 performance under, the provisions of the Employee-Management Relations Act. NRS 288.110(2). To
27 the extent Complainants seek the interpretation of the North Las Vegas Municipal Code or the North
28 Las Vegas City Charter, that is expressly beyond this Board's jurisdiction. See NRS 288.110(2); *City of
Reno v. Reno Police Protective Ass'n*, 98 Nev. 472, 474-75, 653 P.2d 156, 158 (1982); *UMC
Physicians Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 89-90, 178 P.3d 709, 713

1 As such, we find that while Complainants meet their initial burden to support the inference that
2 any protected conduct was a motivating factor in the City's decision, the City demonstrate by a
3 preponderance of the evidence that the same action would have been taken place even in the absence of
4 the protected conducts – a reason which was not shown as merely pretextual. Finally, based on the
5 facts in this case and the issues presented, the Board declines to award costs and fees in this matter.

6 **FINDINGS OF FACT**

7 1. Washington was hired as a Human Resources Support Specialist on or about October 18,
8 1994, and Bonner was hired as a Senior Recruiter on or about April 15, 2002.

9 2. In or about 2013, the City's Employee Development Specialist retired, and Scaccia
10 wanted to split the position's tasks between Complainants instead of hiring a replacement.

11 3. Consequently, Scaccia promoted both Complainants to Principal Human Resource
12 Analysts and increased their salaries by 16.5%.

13 4. Both Complainants had not been a member of a union since 2013.

14 5. The City ultimately decided to rescind the raises in or about November 2013 but allowed
15 Complainants to retain their titles.

16 6. Complainants filed a joint complaint before this Board on or about March 10, 2014,
17 alleging that the City discriminated against them on the basis of race, sex, and/or political or personal
18 reasons or affiliations.

19 7. In or about December 2014, the City and Complainants agreed and settled all matters,
20 and Complainants released all known and unknown claims related to Complainants' employment up to
21 that date.

22 8. Since 2007, the City has implemented cost-saving actions, and the City's financial
23 struggles and deficits continue to this day.

24 9. In order to achieve its goals and objections, the City faced three potential alternatives: (1)
25 increase the Human Resources Department's in-house staff to bolster services, which would mean a
26

27 (2008); *Int'l Ass'n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item No. 811
28 (2015); *Simo v. City of Henderson*, Case No. A1-04611, Item No. 796 (2014); see e.g., *Flores v. Clark*
Cty., Case No. A1-045990, Item No. 737 (2010).

1 corresponding increase in the Department's budget and expenditures; (2) partner with the City of Las
2 Vegas to share services; or (3) outsource the Human Resources Department.

3 10. The first option was deemed necessary because of the stress on the Human Resources
4 Department from the staff reductions over the last years, and because the Complainants themselves
5 asked for more staff during their meetings with Dr. Liu.

6 11. The second option, partnering with the City of Las Vegas, was deemed unavailing as the
7 City of Las Vegas did not believe it could properly manage the City's human resource functions.

8 12. Near the end of 2014, the City tasked Turkal-Barrett, then administrative Services
9 Manager, with exploring the various options identified by the City to address the Human Resources
10 Department concerns.

11 13. On or about March 12, 2015, the City published a RFP.

12 14. The original response date for any companies that wished to bid on the RFP was March
13 19, 2015; however, this date was modified by Addendum No. 1, which allowed response up and until
14 March 26, 2015.

15 15. In March of 2011, Washington learned of the consideration of the option to outsource in
16 a meeting with Dr. Liu, and Dr. Liu informed her that the City of Reno had completely outsourced their
17 HR department – information that was eventually found to be inaccurate; however, the City of Reno's
18 director also indicated that they had outsourced their worker's compensation and perhaps even payroll.

19 16. On or about March 25, 2015, Washington and Bonner filed complaints with the Nevada
20 Commission on Ethics against Mayor John Lee, Chief of Staff Ryan Juden, and Dr. Liu related to the
21 alleged improper influence of the Mayor and his Chief of Staff in the hiring process.

22 17. To further evaluate the two proposals of Elite and Prism, Adair, Palmer, and Turkal-
23 Barrett performed an onsite visits to both Elite and Prism

24 18. In around March 2015, both Prism and Elite were asked to give presentations on their
25 proposals.

26 19. The City amended its RFP to require an on-site presence with Addendum No. 2 which
27 included provisions for a FTE with 7 or more years of general human resources experience to be
28

1 physically on site during the City's Monday through Thursday workweek, as well as another FTE at the
2 executive, decision-making level.

3 20. Prism responded with a fixed-contract price of \$740,000 per year.

4 21. As this would be a fixed contract, if additional staff were needed to be hired or if
5 additional expenditures were required in order for Prism to fulfill the requirements of the RFP, those
6 costs would be born solely by Prism, rather than the City.

7 22. The outsourcing option was presented to the City Council for consideration on or about
8 May 20, 2015.

9 23. When presented with the outsourcing option, the City Council unanimously approved the
10 City's engagement of a third-party professional services company.

11 24. When making decisions, the four City Council members and the Mayor each get one
12 vote for a total of five votes, and the Mayor's votes is not weighed any more than any of the other City
13 Council members.

14 25. Ultimately, the City selected Prism who not only would provide the City with the HR
15 functions previously provided in-house, but also would provide the enhanced series of an initial
16 assessment/audit on current processes and practices to identify areas if improvement, the streamlining
17 and standardization of processes and procedures, a review and update of all job descriptions,
18 performance of compensation studies on all job classifications, the initiation and maintenance of an
19 employee wellness program, the review and automation of processes to promote consistent up-to-date
20 recordkeeping, and the provision of employee access to human resources services 24 hours a day/seven
21 days a week.

22 26. The City's decision to outsource its entire HR Department did not only affect
23 Complainants.

24 27. At the time of the City's decision to outsource its human resources functions, the HR
25 Department consisted of 8 total positions.

26 28. Regarding the remaining 6 non-vacant positions, the City either laid off or transferred
27 those employees to a different position within the City, or the employees voluntarily chose to end their
28 employment.

1 29. Sherri Hoffman's position was covered by a collective bargaining agreement with her
2 union, so she possessed bumping rights based on her seniority and was able to continue working as an
3 Office Assistant in a different department.

4 30. Darlene Rosenberg, former Principal Benefits Analyst, had bumping rights available to
5 her, but decided instead to retire rather than bump the union liaison at the time and the position she
6 would have been bumped to would have been for a lesser rate of pay.

7 31. Juma Suedi, former HR Representative II, voluntarily resigned his employment.

8 32. In addition to Complainants, the City was also unable to locate replacement or bumping
9 positions for Joanne Huston, a HR Analysis, and all those employees were similarly treated – given two
10 weeks' salary in lieu of two weeks' notice.

11 33. With regard to Bonner, there was not an available public information specialist position
12 in the Fire Department as that specific position was not submitted to the critical justification committee
13 so that Bonner could be transferred into that position.

14 34. The feedback following the initial transition to Prism was positive, Prism was able to
15 enhance the HR Department in several ways, and Prism's initial efforts were hampered in part due to
16 the poor condition in which Complainants left the department and because the City's systems and
17 software were not maximized for efficiency.

18 35. At the time of the decision to outsource, the City believed that outsourcing the HR
19 Department would present significant savings.

20 36. The City knew they needed more staff and more resources in order to bring back the HR
21 Department to the same level of service, and the City believed that it would be as high as \$1,600,000
22 but at least \$1,200,000.

23 37. The trend in both the HR Department's budget and its personnel had decreased over the
24 years through layoffs, not filling vacant positions, and other financial measures.

25 38. Such drastic reductions in staff over the years also placed significant burdens on
26 remaining staff and caused the Finance Director to be concerned with service insolvency.

27 39. The fixed contract service agreement with Prism saves the City money.

1 40. The City also enjoyed the stabilization of cost in HR due to the fixed price as well as an
2 increased the level of service and resources.

3 41. It was an important consideration to the City that regardless of how many staff members
4 are needed to perform HR functions, Prism, rather than the City, must provide those staff members and
5 absorb any unanticipated costs.

6 42. Prism has not received any additional monetary payment from the City above the flat rate
7 contractual amount.

8 43. The fixed price contract is substantially less than the cost of restoring the HR
9 Department to its required level.

10 44. The Mayor did not improperly involve himself in personnel decisions in this matter.

11 45. If any of the foregoing findings is more appropriately construed as a conclusion of law, it
12 may be so construed.

13 **CONCLUSIONS OF LAW**

14 1. The Board is authorized to hear and determine complaints arising under the Local
15 Government Employee-Management Relations Act.

16 2. The Board has exclusive jurisdiction over the parties and the subject matters of the
17 Complaint on file herein pursuant to the provisions of NRS Chapter 288.

18 3. Discrimination due to personal and political reasons is analyzed under the framework set
19 forth in *Reno Police Protective Ass'n v. City of Reno*, 102 Nev. 98, 715 P.2d 1321 (1986) and later
20 modified in *Bisch v. Las Vegas Metro Police Dep't*, 129 Nev. Adv. Op. 36, 302 P.3d 1108 (2013).

21 4. An aggrieved employee must make a *prima facie* showing sufficient to support the
22 inference that the protected conduct was a motivating factor in the employer's decision.

23 5. Once this is established, the burden shifts to the employer to demonstrate by a
24 preponderance of the evidence that the same action would have been taken place even in the absence of
25 the protected conduct.

26 6. The aggrieved employee may then offer evidence that the employer's proffered
27 legitimate explanation is merely pretextual.

1 7. NRS 288.270(1)(d) prohibits a local government employer from discharging or
2 otherwise discriminating against any employee "because the employee has signed or filed an affidavit,
3 petition or complaint or given any information or testimony under this chapter," and the same test
4 indicated above also applies to claims of this nature. *Wilson v. City of No. Las Vegas*, Item No. 674E
5 (2010).

6 8. The Board finds that Complainants presented sufficient evidence to make their *prima*
7 *facie* showing to support the inference that their protected conducts were at least a motivating factor in
8 the City's decision.

9 9. It is generally accepted that an employment action undertaken within close temporal
10 proximity to protected conduct is sufficient in and of itself to establish a *prima facie* case.

11 10. The City satisfied its burden regarding its nondiscriminatory justification and
12 demonstrated by a preponderance of the evidence that the same action would have been taken place
13 even in the absence of the protected conducts.

14 11. Generally, even though a party's belief at the time of the alleged discriminatory or
15 retaliatory action occurs may be mistaken, this mistake is not grounds for inferring discrimination.

16 12. Complainants failed to show that the City's proffered legitimate explanation is merely
17 pretextual.

18 13. The Complaint in this matter is not well-taken.

19 14. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it
20 may be so construed.

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1 ORDER

2 Based on the foregoing, it is hereby ordered that the Board finds in favor of Respondent City of
3 North Las Vegas as set forth above. Complainants shall take nothing by way of their Complaint.

4 DATED this 8th day of February, 2017.

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6 LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

7 
8 By: _____
9 PHILIP LARSON, Chairman

10 By: 
11 SANDRA MASTERS, Board Member

12 Brent Eckersley, Esq., Vice-Chairman concurs in the judgment.

13 I join with the decision made in the opinion as well as the findings of fact and conclusions of
14 law except to the following extent: I would find that the Complainants failed to meet their initial burden
15 and establish their *prima facie* case. Under the analysis of the framework set forth in *Reno Police*
16 *Protective Ass'n v. City of Reno*, 102 Nev. 98, 715 P.2d 1321 (1986) and later modified in *Bisch v. Las*
17 *Vegas Metro Police Dep't*, 129 Nev. Adv. Op. 36, 302 P.3d 1108 (2013), our Supreme Court instructs
18 that under this revised framework, "it is not enough for the employee to simply put forth evidence that
19 is capable of being believed; rather, this evidence must actually be believed by the factfinder". *Bisch*,
20 302 P.3d at 1116. "Only upon meeting this burden of persuasion does the burden of proof shift to the
21 employer." *Id.* Based on the evidence presented, I do not believe the acts were taken for discriminatory
22 purposes.

23 DATED this 8th day of February, 2017.

24
25 LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

26 
27 By: _____
28 BRENT ECKERSLEY, ESQ., Vice-Chairman

