

STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

JASON WOODARD,  
Complainant,  
v.  
SPARKS POLICE PROTECTIVE  
ASSOCIATION,  
Respondent.

Case No. 2018-026

**NOTICE OF ENTRY OF ORDER**  
**ITEM NO. 853-A**

To: Complainant Jason Woodard and his attorneys Francis Flaherty, Esq. and Dyer Lawrence, LLP;  
To: Respondent Sparks Police Protective Association and their attorney Michael E. Langton, Esq.;

PLEASE TAKE NOTICE that the **ORDER** was entered in the above-entitled matter on  
December 17, 2020.

A copy of said order is attached hereto.

DATED this 17th day of December 2020.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY


  
MARISU ROMUALDEZ ABELLAR  
Executive Assistant

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 17th day of December 2020, I served a copy of the foregoing **NOTICE OF**  
4 **ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

5  
6 Francis Flaherty, Esq.  
7 Dyer Lawrence, LLP  
8 2805 Mountain Street  
9 Carson City, NV 89703

10 Michael E. Langton, Esq.  
11 801 Riverside Drive  
12 Reno, NV 89503

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14 \_\_\_\_\_  
15 MARISU ROMUALDEZ ABELLAR  
16 Executive Assistant  
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**ORDER**

**PANEL E**

**ITEM 853-A**

On November 17, 2020, this matter came before the State of Nevada, Government Employee-Management Relations Board for consideration and decision pursuant to the provisions of the Employee-Management Relations Act (EMRA, NRS Chapter 288), NAC Chapter 288, and the Administrative Procedures Act (APA, NRS Chapter 233B).

On March 11, 2016, Sparks Police Department ("SPD") notified Complainant that he was the subject of an Internal Affairs investigation based upon allegations constituting a violation of four SPD regulations: (1) Neglect of Duty; (2) Promote Integrity: Order and Discipline; (3) Minor Crimes Prohibited; and (4) Major Crimes Prohibited. The gravamen of the allegations was that Complainant exchanged a defective coffee maker at Costco utilizing a receipt from a different coffee maker that was an identical model.

On May 4, 2016, SPD notified Complainant of the results of the investigation indicating that he had violated two of the four allegations – Neglect of Duty and Promote Integrity: Order and Discipline. Regarding the minor and major crimes allegations, the investigation exonerated Complainant.

On June 1, 2016, SPD notified Complainant of a pre-disciplinary hearing regarding his proposed demotion from sergeant to patrol officer. SPPA provided representation to Complainant at the pre-disciplinary hearing and at a subsequent grievance appeal hearing before the Sparks City Manager.

1 Following the City Manager appeal hearing, SPPA ceased providing representation to  
2 Complainant in his demotion grievance. Complainant petitioned SPPA for assistance with attorney's  
3 fees and costs for his demotion grievance arbitration on two separate occasions, including an  
4 appearance before the SPPA membership on November 21, 2016. However, Complainant was denied  
5 assistance. Complainant's demotion grievance was arbitrated in April 2017 with an award in  
6 September 2017, reducing Complainant's discipline from a permanent demotion to a temporary, 120-  
7 day demotion.

8 In early November 2017, Complainant had a discussion with SPPA Vice President, Sergeant  
9 Danny James, about SPPA providing financial support to defend his success at arbitration (Sparks City  
10 Council voted to file a motion to vacate the arbitrator's award with the City of Sparks filing said motion  
11 in December 2017). Sgt. James informed Complainant that he did not think we would get sufficient  
12 votes from the SPPA membership. SPPA did not provide representation. In April 2018, the District  
13 Court entered an order denying the City's Motion to Vacate while confirming the award.

14 In a different and subsequent matter, SPD conducted an investigation into conduct of then  
15 probationary Lieutenant Mike McCreary. Complainant alleges that his violations were similar to that of  
16 Lt. McCreary's. As with Complainant, SPPA provided representation for Lt. McCreary at the pre-  
17 disciplinary hearing. In June 2018, SPPA held a general meeting wherein it allowed Lt. McCreary's  
18 personal attorney to address the membership. SPPA membership voted to pay Lt. McCreary's  
19 attorney's fees for arbitration.

20 Shortly thereafter, Complainant met with SPPA President Brian Sullivan and informed him he  
21 thought the treatment between Lt. McCreary and himself was disparate and the circumstances between  
22 their cases were very similar. Complainant asked if the SPPA would consider reimbursing  
23 Complainant for his arbitration expenses or some portion thereof. President Sullivan stated that they  
24 would not and that the time Complainant had to file against them had expired. Complainant contends  
25 that there are numerous reasons why it would make Lt. McCreary's case more difficult than  
26 Complainant's at arbitration.

27 ///

28 ///



1           **DISCUSSION**

2           Complainant alleges that the SPPA violated the duty of fair representation and NRS  
3 288.270(2)(c).

4           The Nevada Supreme Court has recognized that employee organizations are subject to the duty  
5 of fair representation. *Weiner v. Beatty*, 121 Nev. 243, 249, 116 P.3d 829, 832 (2005); *Cone v. Nevada*  
6 *Serv. Employees Union/SEIU Local 1107*, 116 Nev. 473, 478–79, 998 P.2d 1178, 1182 (2000). “The  
7 duty of fair representation requires that when the union represents or negotiates on behalf of a union  
8 member, it must conduct itself in a manner that is not ‘arbitrary, discriminatory, or in bad faith.’”  
9 *Weiner*, 121 Nev. 243, 249, 11 P.3d 829, 832-33. “Union agents should not be held to a negligence  
10 standard of care, when the union for whom they work is liable only if its representation is ‘arbitrary,  
11 discriminatory, or in bad faith.’” *Id.* at 250; *Peterson v. Kennedy*, 771 F.2d 1244, 1253 (9th Cir. 1985);  
12 *Vaca v. Sipes*, 386 U.S. 171(1967). It stands “as a bulwark to prevent arbitrary union conduct against  
13 individuals stripped of traditional forms of redress by the provisions of federal labor law.” *Id.* at 182,  
14 87 S.Ct. at 912.

15           “Whether in a particular case a union’s conduct is ‘negligent’, and therefore non-actionable, or  
16 so egregious as to be ‘arbitrary’, and hence sufficient to give rise to a breach of duty claim, is a question  
17 that is not always easily answered.” *Peterson*, 771 F.2d at 1253-54. “We have said that a union’s  
18 conduct is ‘arbitrary’ if it is ‘without rational basis,’ or is ‘egregious, unfair and unrelated to legitimate  
19 union interests.’” *Id.* (internal citation omitted), citing *Johnson v. United States Postal Service*, 756  
20 F.2d 1461, 1465 (9th Cir.1985); *Demetris v. Transp. Workers Union of Am., AFL-CIO*, 862 F.3d 799,  
21 805 (9th Cir. 2017) (will be “deemed arbitrary if it is ‘so far outside [the] ‘wide range of  
22 reasonableness,’ that it is wholly ‘irrational.’”).

23           “A union acts ‘arbitrarily’ when it simply ignores a meritorious grievance or handles it in a  
24 perfunctory manner, for example, by failing to conduct a ‘minimal investigation’ of a grievance that is  
25 brought to its attention.” *Peterson*, 771 F.2d at 1254 (internal citation omitted), citing *Tenorio v.*  
26 *National Labor Relations Board*, 680 F.2d 598, 601 (9th Cir.1982) (“Union officials must be cautious  
27 not to succumb to the influence of personal preferences.”). A union acted arbitrarily where it failed to  
28 “consider individually the grievances of particular employees where the factual and legal differences

1 among them were significant” or “permit employees to explain the events which led to their discharge  
2 before deciding not to submit their grievances to arbitration.” *Peterson*, 771 F.2d at 1254; *see also*  
3 *Gregg v. Chauffeurs, Teamsters & Helpers Union Local 150*, 699 F.2d 1015, 1016 (9th Cir. 1983)  
4 (“The union’s reasons may be ‘simply too insubstantial’ to justify its conduct.”); *Tenorio*, 680 F.2d at  
5 601 (“Although we afford unions a reasonable range of discretion in deciding how best to handle  
6 grievances, union conduct that shows an egregious disregard for the rights of union members  
7 constitutes a breach of the duty of fair representation.”); *Peters v. Burlington N. R. Co.*, 931 F.2d 534,  
8 540 (9th Cir. 1990), *as amended on denial of reh’g* (Apr. 23, 1991) (“it makes little sense to allow a  
9 union to hide behind the mantle of ‘judgment’ and ‘discretion’ when the evidence suggests that it  
10 actually exercised neither.”).

11 “In order to show ‘bad faith’, a complainant must present substantial evidence of fraud,  
12 deceitful action or dishonest conduct.” *Bybee & Gingell v. While Pine County Sch. Dist.*, Item No.  
13 724B (2011), *citing Amalgamated Ass’n of St., Elec. Ry. & Motor Coach Emp. of Am. v. Lockridge*, 403  
14 U.S. 274, 299, 91 S. Ct. 1909, 1924, 29 L. Ed. 2d 473 (1971); *Crom v. Las Vegas-Clark County Library*  
15 *Dist.*, Item No. 752E (2013). *See also Demetris v. Transp. Workers Union of Am.*, 857 F.3d 803, 812  
16 (2017).

17 “In order to prove discriminatory action, a complainant must ‘adduce substantial evidence of  
18 discrimination that is intentional, severe, and unrelated to legitimate union objections.’” *Bybee &*  
19 *Gingell v. While Pine County Sch. Dist.*, Item No. 724B (2011), *citing Amalgamated Ass’n of St., Elec.*  
20 *Ry. & Motor Coach Emp. of Am. v. Lockridge*, 403 U.S. 274, 299, 91 S. Ct. 1909, 1924, 29 L. Ed. 2d  
21 473 (1971); *see also Demetris v. Transp. Workers Union of Am.*, AFL-CIO, 862 F.3d 799, 806 (9th Cir.  
22 2017) (“unions cannot make decisions solely ‘to advance one group of employees over another.’”). *See*  
23 *also Heitzinger v. Las Vegas-Clark County Library Dist.*, Item No. 728C, Case No. A1-045977 (2012);  
24 *Vos v. City of Las Vegas*, Item No. 749, Case No. A1-046000 (2014).<sup>1</sup>

25 <sup>1</sup> In *Kilgore v. City of Henderson*, Item No. 550H, Case No. A1-045763 (2005), the Board stated that “personal reasons”  
26 “can be best described as ‘non-merit-or-fitness’ facts, i.e., factors that are unrelated to any job requirement and not otherwise  
27 made by law a permissible basis for discrimination.” The Board went on to conclude: “Thus, the proper construction of the  
28 phrase ‘personal reasons or affiliations’ include ‘non-merit-or-fitness’ factors, and would include the dislike of or bias  
against a person which is based on an individual’s characteristics, beliefs, or activities that do not affect the individual’s  
merit or fitness of any particular job.” This is an intense factual inquiry. *Jackson v. Clark County*, Case No. 2018-007  
(2019). The Nevada Supreme Court holds, in regards to discrimination based on differential treatment, that the “focus of  
our inquiry is whether” Complainant was treated less favorably because of the protected class. *City of N. Las Vegas v. State*

1       There are multiple periods in time in this case where Complainant alleges the union breached its  
2 duty of fair representation (DFR) to Complainant. The Board will address each in turn.

3       **Complainant denied assistance for his arbitration**

4       As indicated, SPPA provided representation to Complainant at the pre-disciplinary hearing and  
5 at a subsequent grievance appeal hearing before the Sparks City Manager. Initially, Complainant was  
6 assisted by then SPPA President James and then turned over to SPPA's attorney, Mike Langton. The  
7 outcome of both hearings was a determination that Complainant would be demoted. Complainant  
8 moved his demotion grievance to arbitration. Following the City Manager appeal hearing, SPPA  
9 ceased providing representation for Complainant in his demotion grievance.

10       Complainant was provided the ability to petition SPPA for assistance for his demotion grievance  
11 arbitration on two separate occasions, including the appearances before the general membership in June  
12 and November 2016. Complainant was denied assistance.

13       Preliminarily, Complainant alleges that the violation of the DFR did not occur at this time.  
14 Indeed, in explaining the breach of the DFR in his Complaint, Complainant details breaches as related  
15 to the periods described further herein. We are bound by the violations as alleged in the Complaint.<sup>2</sup>  
16 *See also* Opposition to Motion to Dismiss, at 15 ("There was no DFR cause of action for Sgt. Woodard  
17 in 2016 and 2017 when SPPA denied legal funding for his arbitration or to defend the arbitrator's award  
18 in district court."); Complainant's Post-Hearing Brief, at 18 ("Regarding the question of whether or not  
19 it would have made a difference if the decision to fund Lt. McCreary's arbitration case had come  
20 before, as opposed to after Sgt. Woodard's request, ... the breach of the DFR would have plainly  
21 occurred at that point in time, and Sgt. Woodard's six-month period in which to file his claims would  
22 have commenced at that point in time, rather than being tolled as the Board has found in this case.");  
23 *see also infra* note 7. Regardless, the Board would not have found that SPPA breached its duty during

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24 *Local Gov't Employee-Mgmt. Relations Bd.*, 127 Nev. 631, 642, 261 P.3d 1071, 1078 (2011). "There must be 'a reasonably  
25 close resemblance of the facts and circumstances of the plaintiff's and comparator's cases, rather than a showing that both  
cases are identical.'" *Id.* at 643. "Moreover, common sense dictates that employees do not always have to engage in the  
exact same offense as a prerequisite for finding them similarly situated." *Id.*

26 <sup>2</sup> *See, e.g., Int'l Ass'n of Fire Fighters, Local 5046 v. Elko County Fire Prot. Dist.*, Case No. 2019-011, Item No. 847-A  
27 (2020), *citing Bonner v. City of North Las Vegas*, Docket No. 76408, 2020 WL 3571914, at 3, n. 2, filed June 30, 2020,  
unpublished deposition (Nev. 2020); *Nye County Management Employees Ass'n v. Nye County*, Case No. 2018-012 (2019),  
NRS 233B.121(1) and (2); *Coury v. Whittlesea-Bell Luxury Limousine*, 102 Nev. 302, 308, 721 P.2d 378 (1986); NRS  
28 233B.121(9); *Laabs v. City of Victorville*, 163 Cal. App. 4th 1242, 1253, 78 Cal. Rptr. 3d 372, 381-82 (2008); *Hutton v. Fid.*  
*Nat'l Title Co.*, 213 Cal. App. 4th 486, 493, 152 Cal. Rptr. 3d 584, 590 (2013).

1 this time period.

2 Complainant acted on his counsel's advice (his counsel provided by the union, Langton) at the  
3 SPPA membership meeting to be "careful about what [he] said or the information [he] disclosed so as  
4 not to create an issue" for his arbitration. Transcript (Tr.), at 137-38:11-5. As such, Complainant did  
5 not answer all the questions asked by the membership and was relegated to use his own judgment  
6 regarding which questions he should answer. The evidence was clear that this issue, of not answering  
7 all the membership's questions, was a substantial reason that some SPPA members voted no on  
8 Complainant's request for arbitration funding after he appeared before the SPPA membership  
9 November of 2016 for the second vote.

10 The advice given to Complainant to essentially withhold information as well as the allegation  
11 that Langton failed to inform at this time that Complainant had been exonerated of the crime, is at most  
12 negligent as no credible evidence was presented to demonstrate that Langton or SPPA leadership did so  
13 arbitrarily, in bad faith, or discriminatorily. Moreover, credible evidence was not presented that SPPA  
14 failed to consider the merits of Complainant's case at the membership meetings. Instead, credible  
15 testimony indicated that it was conveyed in multiple forms that decisions should not be made based on  
16 personality and it was not a popularity contest.

17 While Complainant contends he was not provided an option of a personal counsel, as in Lt.  
18 McCreary's case, no credible evidence was presented that he was *prevented* from obtaining his own  
19 counsel. *See, e.g., Castelli v. Douglas Aircraft Co.*, 752 F.2d 1480, 1484 (9th Cir. 1985) ("Nor did the  
20 Union attempt to prevent Castelli from consultation with counsel of his choice."). Regardless, the  
21 circumstances of the McCreary case had yet to occur when SPPA made its decision at this time – in  
22 other words (as Complainant concedes), this case would have been much simpler if the McCreary case  
23 had come before or at the same time as Complainant's. While Lt. McCreary's case could provide  
24 evidence of the breach in theory, Lt. McCreary's case did not provide this Board with sufficient  
25 evidence that SPPA acted in a manner that breached its DFR *during this time period*.<sup>3</sup>

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27 <sup>3</sup> In the Spannbauer matter, it was noted that: "Spannbauer learned that, *around the same time that he had faced disciplinary*  
28 *charges*, a female probationary employee of the Department also had been charged with unprofessional misconduct...."  
*City of N. Las Vegas v. State Local Gov't Employee-Mgmt. Relations Bd.*, 127 Nev. 631, 636, 261 P.3d 1071, 1074 (2011)  
(*emphasis added*); *Spannbauer v. City of N. Las Vegas*, Case No. A1-045885, Item No. 636C (2005).

1 The "Supreme Court has long recognized that unions must retain wide discretion to act in what  
2 they perceive to be their members' best interests." *Peterson v. Kennedy*, 771 F.2d 1244, 1253 (9th Cir.  
3 1985). "To that end, we have 'stressed the importance of preserving union discretion by narrowly  
4 construing the unfair representation doctrine.'" *Id.* "We have emphasized that, because a union  
5 balances many collective and individual interests in deciding whether and to what extent it will pursue a  
6 particular grievance, courts should 'accord substantial deference' to a union's decisions regarding such  
7 matters." *Id.* As indicated, "[w]hether in a particular case a union's conduct is 'negligent', and  
8 therefore non-actionable, or so egregious as to be 'arbitrary', and hence sufficient to give rise to a  
9 breach of duty claim, is a question that is not always easily answered." *Id.*

10 Here, the union's conduct *at this time* is best viewed at most as negligent and not a breach of the  
11 duty of fair representation, taking into account the totality of the circumstances. *Weiner*, 121 Nev. 243,  
12 249, 11 P.3d 829, 832-33. "Union agents should not be held to a negligence standard of care, when the  
13 union for whom they work is liable only if its representation is 'arbitrary, discriminatory, or in bad  
14 faith.'" *Id.* at 250

15 Finally, Complainant conceded these requests were "at least handled in a manner consistent  
16 with 'the letter' of the Bylaws." The entire SPPA Board discussed the allegations against Complainant  
17 when it voted on his request. Tr., at 68-69, 77. Complainant conceded that "an SPPA membership vote  
18 in these circumstances is best understood as an 'appellate' procedure, wherein a member whose legal  
19 funding request had been denied by the SPPA Board of Directors, such as Sgt. Woodard, can 'appeal'  
20 to the membership." Closing Brief, at 20.

#### 21 **Defend Success at Arbitration/Motion to Vacate**

22 Complainant's demotion grievance was arbitrated on April 17th and 18th in 2017, and in an  
23 award date September 30, 2017, the arbitrator reduced his discipline from a permanent demotion to a  
24 temporary, 120-day demotion. Complainant retained an attorney at his own expense for the arbitration,  
25 initially Langton and then his current counsel.

26 In early November 2017, the Sparks City Council voted to file a motion to vacate the  
27 arbitrator's award. Around that same time, Complainant had a discussion with then SPPA Vice  
28 President Danny James about SPPA providing financial support to defend his success at arbitration.

1 However, VP James informed Complainant that he did not think he would get sufficient votes from  
2 SPPA membership.

3 VP James told him that considering the two preceding “no” votes on his arbitration funding  
4 request, he likely would not get the votes on this request. Tr., at 139-41. Sgt. James could not recall  
5 the exact conversation but indicated that he “pretty much assumed” the request would be “voted down”.  
6 Tr., at 91-92.

7 By the time Complainant approached SPPA President James about financial support to defend  
8 the arbitrator’s award, the question regarding “the merits” of Complainant’s grievance had been  
9 definitely answered by the arbitrator, who reduced his demotion to a temporary one. Thus,  
10 Complainant argues that the protection afforded by the court for a good faith error in judgment  
11 regarding the merits of a grievance was not available to SPPA at that point in time (despite the pending  
12 motion to vacate).

13 However, Respondent contends that there is no evidence that Complainant again petitioned the  
14 SPPA membership for financial support. While this does not absolve Respondent, based on the above  
15 and below, the Board finds that Sgt. James’ comments were at most negligent and credible evidence  
16 was not presented that SPPA acted arbitrarily, in bad faith, or discriminatory at this time.

17 Complainant testified: “I had a conversation with one of the board members, Sergeant James... I  
18 wouldn’t classify it as approaching them, asking them, but essentially information was now out within  
19 the department that the arbitrator had ruled in my favor, and so we had a conversation about what had  
20 occurred after I had learned that the City planned on filing a motion to vacate it, so I spoke with  
21 Sergeant James.” Tr., at 140. Complainant “asked him if he thought the opinion or perspective of the  
22 membership had changed and if it would be worth approaching them and asking them for help.” *Id.*, at  
23 141. Sgt. James told him “that I hadn’t gotten the vote on two previous occasions and he didn’t think  
24 that it would be fruitful because I probably wouldn’t get the vote on this occasion.” *Id.*

25 As such, Sgt. James was clear that he was only giving his opinion (*i.e.*, “probably”, “didn’t  
26 think”) while Complainant made it clear that he “wouldn’t classify it as approaching them” (also asking  
27 if he “thought the opinion or perspective” had changed and whether “it would be worth approaching  
28 them”). The evidence was not credible that Sgt. James’s comments rise to the level of arbitrary as



1 detailed above. Moreover, the evidence was not credible that Sgt. James did so in bad faith or  
2 discriminatory. Indeed, Sgt. James, as explained below, felt both Complainant and Lt. McCreary  
3 should be treated the same. Further, it wasn't until after, in June 2018, that SPPA sent out secret ballots  
4 to the membership asking them to vote on McCreary's case to pay for the possible arbitration, which  
5 the membership voted to approve. Complainant learned that SPD was investigating Lt. McCreary  
6 while the City's motion to vacate was pending before the court. Tr., at 142.

7 As such, the Board does not find a violation for this time period.<sup>4</sup>

#### 8 **Request to reimburse**

9 In early 2018, SPD Internal Affairs (IA) conducted an investigation into the conduct of Lt.  
10 McCreary (who was a probationary lieutenant at the time) based on allegations constituting violations  
11 of four SPD regulations: (1) Conduct Unbecoming a Member; (2) Minor Crimes Prohibited; (3) Major  
12 Crimes Prohibited; and (4) Neglect of Duty. Three of the allegations, including violation of SPD  
13 regulation prohibiting commission of minor crimes, were sustained in the SPD IA investigation. Chief  
14 Allen suspended Lt. McCreary for 16 days and terminated his position as a probationary lieutenant,  
15 returning to the rank of sergeant. Lt. McCreary appealed and SPPA provided representation at the pre-  
16 disciplinary hearing. Chief Allen's discipline was sustained at the lower levels of the grievance and  
17 appeal process. Thereafter, Lt. McCreary appealed his case to the City Manager.

18 On June 18, 2018, SPPA held a general meeting wherein it allowed Lt. McCreary's personal  
19 attorney to address the membership regarding the merits of his case and seek SPPA's financial support  
20 for representation at the City Manager appeal hearing and arbitration. SPPA membership voted to pay  
21 Lt. McCreary's attorney's fees for those proceedings.

22 As indicated, "[t]he duty of fair representation requires that when the union represents or  
23 negotiates on behalf of a union member, it must conduct itself in a manner that is not 'arbitrary,  
24 discriminatory, or in bad faith.'" *Weiner*, 121 Nev. 243, 249, 11 P.3d 829, 832-33 (*emphasis added*).

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26  
27 <sup>4</sup> Complainant opposed the City's motion with counsel retained at his own expense and, on April 4, 2018, the court entered  
28 an order denying the City's motion and granted Complainant's countermotion to confirm the award. The court also awarded  
Complainant attorney's fees and costs as related to the court proceedings. Even if the Board had found a violation here, the  
Board would not have ordered a remedy other than a finding that SPPA breached its DFR. *See infra* Section on Remedy.

1 SPPA's breach of the DFR was clear at this point in time – the evidence credibly showed that  
2 SPPA thought it could evade responsibility based on the six-month limitation period in the EMRA. In  
3 contrast to Complainant's conversation with Sgt. James above, Complainant, after the vote came back  
4 for Lt. McCreary, asked to meet with SPPA President Brian Sullivan. Tr., at 147. This occurred a  
5 couple weeks after the SPPA membership voted to support Lt. McCreary in arbitration. Complainant  
6 conveyed the new information including that the cases were very similar. As such, Complainant  
7 requested SPPA to consider reimbursing him for the legal costs stemming from the arbitration, stating  
8 that "he was asking to be considered fairly as a paying member of the union like ... Lieutenant  
9 McCreary." Tr., at 147.<sup>5</sup>

10 Yet, in response, President Sullivan unequivocally told Complainant that "first and foremost" he  
11 did not "have a case because the period in which [he] was allowed to file an appeal had passed". Tr., at  
12 149-50. Secondly, President Sullivan admitted that the SPPA had "spoke to SPPA representation prior  
13 to putting the vote out for Lieutenant ... McCreary to ensure that [he] didn't have a case, and then  
14 [President Sullivan] told [him] [he] didn't have a case." *Id.* 150, 137-76. As explained further,  
15 "Officer Sullivan stated to [him] that prior to holding the votes for Lieutenant ... McCreary, he  
16 confirmed with [Langton] that [Complainant] had no ground to [file the DFR] should they vote to  
17 support Sergeant McCreary." *Id.* 175-76. President Sullivan's determination was made arbitrarily, in  
18 bad faith, and discriminatory as further detailed below.<sup>6</sup>

19 At most, credible evidence showed that SPPA, through President Sullivan, denied  
20 Complainant's request based on time expiring under the original initial DFR claim. No credible  
21 evidence was presented that SPPA gave any real consideration on Complainant's new request to be  
22 reimbursed based on the merits, including his success at arbitration, from the court, and the differential  
23 treatment of Lt. McCreary (indeed, Complainant's credible testimony confirms that SPPA made this

24 <sup>5</sup> It is undisputed that President Sullivan was aware of Lt. McCreary's grievance, including the pre-disciplinary hearing,  
25 grievance response hearing, and City Manager Appeal hearing.

26 <sup>6</sup> Interestingly, the Nevada Supreme Court has found in regard to a defense of voluntary action that: "The record reveals that  
27 the City and Department discouraged Spannbauer from proceeding with a hearing...." *City of N. Las Vegas v. State Local*  
28 *Gov't Employee-Mgmt. Relations Bd.*, 127 Nev. 631, 641, 261 P.3d 1071, 1078 (2011). Moreover, accepting a general rule  
that "reliance on the advice of counsel satisfi[es] [a union's] duty of fair representation" "would virtually eliminate a remedy  
for arbitrary, discriminatory, or bad faith union actions, as long as an attorney recommended such action". *Gregg*, 699 F.2d  
at 1017 (holding that reliance on an attorney's advice does not insulate the union from liability for its breach of its DFR).



1 determination prior to Complainant even making the request for reimbursement to President Sullivan).

2       Instead, the evidence credibly established that SPPA President made this determination based on  
3 the time to file a DFR regarding the original decision, not taking into account that SPPA had a duty to  
4 consider Complainant's new request in a manner that was not arbitrary, discriminatory, or in bad faith.  
5 This resulted in a new violation as stated herein.<sup>7</sup> Unlike the situation with the motion to vacate, there  
6 was no further action for Complainant to take – he was affirmatively told no by the President of the  
7 SPPA. *See Gregg v. Chauffeurs, Teamsters & Helpers Union Local 150*, 699 F.2d 1015, 1016 (9th Cir.  
8 1983) (“The union's reasons may be ‘simply too insubstantial’ to justify its conduct.”); *Tenorio*, 680  
9 F.2d at 601 (“union conduct that shows an egregious disregard for the rights of union members  
10 constitutes a breach of the duty of fair representation.”).

11       Even Sgt. James explained that he had “several conversations” with President Sullivan giving  
12 him advice (shortly after Sgt. James stepped down as president), and “the crux of the conversation[s] ...  
13 was that if [SPPA was] going to pay Lieutenant McCreary's legal bills, then we had to pay Sergeant  
14 Woodard's legal bills as well.” Tr., at 72-23. “Well, in my mind, the allegations [and] the policy  
15 violations being the same, if you were going to pay for one, you had to pay for the other.” *Id.*<sup>8</sup>

16 ///

17  
18 <sup>7</sup> In the Board's ruling on the motion to dismiss in this matter (February 2019), we held: “The Board preliminarily disagrees  
19 with Complainant that his claim arose in 2018. Based on the pleadings, the Board is initially inclined to find that his claim  
20 arose prior thereto, but the knowledge gained in 2018 may provide the basis for applying the doctrine of equitable tolling.  
21 However, the Board reserves judgment at this point in time and makes no final determination thereto.” As such, the Board  
22 rescinds and withdraws this Order to the extent inconsistent herein. *Bybee v. The White Pine County Sch. Dist.*, Item No.  
23 724E, Case No. A1-045972 (2012); *Ebarb v. Clark County*, Case No. 2018-006, Item No. 843-C (2020). The Board agrees  
24 that a new violation occurred as indicated herein – as the violation occurred in July 2018, the Complaint filed in October  
25 2018 was timely as to this violation. *See Ebarb v. Clark County*, Case No. 2018-006, Item No. 843-C (2020). The Board  
also notes that we requested both parties to brief the various time periods at issue in this case and whether the Board can find  
violations for certain time periods and not others. *See Complainant's Closing Brief*, at 17. It is telling Respondent  
disregarded this and indeed solely focused on the initial decision not to fund Complainant prior to the McCreary vote. *See*  
*generally Respondent's Closing Brief*; *Respondent's Closing Brief*, at 19-35. In the same vein, Respondent did not provide  
any authority that SPPA did not breach the DFR when Complainant requested to be reimbursed after the McCreary decision.  
As Complainant explained: “I understood that the Association had the right to tell me no at that time [in 2016] ... It wasn't  
until Lieutenant McCreary's case and the similarities between the two cases that I then felt the treatment between the two of  
us was disparate.” Tr., at 159.

26 <sup>8</sup> Further Deputy Chief Chris Crowth, testified regarding a conversation with SPPA board members on funding Lt.  
27 McCreary: “I told them my belief was they needed to tell Mike McCreary you would support him to the point that you did  
28 Sergeant Woodard financially, then he would be on his own, and if you chose to support Mike McCreary throughout the  
entire process, arbitration and beyond, where he took that, that the union should consider going back and discussing with  
Sergeant Woodard what his legal fees were for his continued issue and start paying for that so there would be comparable  
treatment amongst the members.” Tr., at 43-44.

1 Sgt. James explained that President Sullivan “was going to do what he wanted to do anyway.”  
2 Tr., at 74. President Sullivan’s determination was without rational basis as well as egregious, unfair,  
3 and unrelated to legitimate union interests as further indicated herein.

4 Instead of considering the merits of his request in a manner that was not in bad faith, arbitrary or  
5 discriminatory, SPPA sought out a reason to justify funding Lt. McCreary.<sup>9</sup> President Sullivan’s  
6 determination was based on “non-merit-or-fitness facts”, ones that included dislike of or bias against  
7 Complainant, and instead favoritism of Lt. McCreary. *Tenorio*, 680 F.2d at 602 (“Union officials must  
8 be cautious not to succumb to the influence of personal preferences.”), *citing N.L.R.B. v. Am. Postal*  
9 *Workers Union, St. Louis, Mo. Local AFL-CIO*, 618 F.2d 1249, 1255 (8th Cir. 1980) (“a union may not  
10 impair individual employee interests on the basis of personal preferences.”); *citing Griffin v. Int’l*  
11 *Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW*, 469 F.2d 181, 185 (4th Cir.  
12 1972) (“In my opinion those officers who were in a position to help Mr. Griffin, were trying to find as  
13 many reasons as they could not to help him.”); *Banks v. Bethlehem Steel Corp.*, 870 F.2d 1438, 1443  
14 (9th Cir. 1989) (“it placed the union in a situation where it either could not or would not make an  
15 informed judgment regarding the merits of individual claims.”). Complainant presented substantial  
16 evidence of discrimination that was intentional, severe, and unrelated to legitimated union objections as  
17 indicated herein. Respondent failed to show otherwise.

18 In regard to the minor and major crimes violations, it was undisputed that Complainant was  
19 exonerated. As such, these violations would not be the subject of arbitration regardless of whether  
20 others found he committed a crime. In other words, whether or not Complainant actually committed a  
21 crime is not relevant to his claims in this case – instead, the findings of the IA investigation and the  
22 policy violations alleged against each of the officers (Complainant no crime and McCreary minor  
23 crime) by the SPD and the impact of those findings and policy violations on the merits (*i.e.*, the chances  
24 of success for the grievances at arbitration). *Compare* JX 3 (Woodard disciplinary decision) *with* JX 21  
25 (McCreary disciplinary decision). Lt. Thomas concluded that “there [was] no evidence to show Costco  
26 had suffered injury or damages so Woodard[‘s] actions did not violate the misdemeanor criminal statute  
27 NRS 205.380.” JX 2 (also explaining that Complainant had not violated the burglary statute). Deputy  
28

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<sup>9</sup> The evidence was clear that it was known that Lt. McCreary was generally liked, and Complainant was not.

1 Chief Green closed the case as there was “no chance that the victim [was] going to proceed with  
2 prosecution”. Tr., at 188.

3 Notably, assuming, *arguendo*, Complainant had committed a crime, it is undisputed that a crime  
4 had been sustained in Lt. McCreary’s case, as such the cases would at least be on par in terms of merits.  
5 See, e.g., Sgt. James testimony, at 74 (“Well, in my mind, the allegations [and] the policy violations  
6 being the same, if you were going to pay for one, you had to pay for the other.”). Deputy Chief Chris  
7 Crawford testified that Complainant’s case had better merits than Lt. McCreary’s. Tr., at 62.  
8 Moreover, by the time Complainant made this request, the results of the arbitration and motion to  
9 vacate were known.

10 In regards to learning of Complainant’s conduct, President Sullivan said he was “incredibly  
11 disappointed.” Tr., at 264. President Sullivan voted no because based on his “knowledge of the law,  
12 Jason committed a burglary”. Tr., at 266. In supporting Lt. McCreary, he believed there had been no  
13 crime committed. Tr., at 270. Yet, President Sullivan acknowledged that both Deputy Chief Crawford  
14 and Chief concluded Lt. McCreary had committed a crime. Tr., at 290. Officer Sullivan disagreed with  
15 their assessments but agreed “that was their case against” Lt. McCreary. Tr., at 290. President Sullivan  
16 further conceded he was at Lt. McCreary’s pre-disciplinary hearing, and Chief Allen confirmed that  
17 minor crimes prohibited had been sustained. Tr., at 295.<sup>10</sup> SPPA’s conduct was so far outside the wide  
18 range of reasonableness as to be considered wholly irrational. *Air Line Pilots Ass’n, Int’l v. O’Neill*, 499  
19 U.S. 65, 75, 111 S. Ct. 1127, 1134, 113 L. Ed. 2d 51 (1991) (“Just as [other] fiduciaries owe their  
20 beneficiaries a duty of care as well as a duty of loyalty, a union owes employees a duty to represent

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21 <sup>10</sup> Deputy Chief Krall said, “The methodology used in obtaining the smog permit is deliberate and deceitful conduct and  
22 behavior.” Tr., at 297. President Sullivan agreed that both were in trouble for involving subordinates. Tr., at 298. Further,  
23 Deputy Chief Krall’s recommendation to the Chief was that Lt. McCreary be demoted all the way to rank of patrol officer.  
24 Tr., at 299. President Sullivan also somewhat conceded that Lt. McCreary’s case would be more difficult for arbitration.  
25 See Tr., at 302. President Sullivan agreed that Lt. McCreary’s comment regarding the Chief’s “ridiculous ... leadership”  
26 would not be helpful at arbitration. Tr., at 309-10. Further, as another unhelpful act, after Lt. McCreary received a demand  
27 letter from the DMV to present his vehicle for inspection, rather than complying with said demand, Lt. McCreary traded in  
28 his vehicle. Tr., at 313-14. Lt. McCreary also continued to use the subordinate employee by showing him the demand letter,  
who in turn inappropriately contacted the DMV. Tr., at 314-15. Finally, the Chief stated, as related to Complainant’s case:  
“I considered the recent investigation and discipline regarding a sergeant who committed acts of dishonesty and  
deceitfulness while on duty and there were several mitigating and several” aggravating circumstances of these two cases.  
Tr., at 316. While there were no other incidents with Complainant, Lt. McCreary had a previous suspension. Lt.  
McCreary’s actions were for his sole personal gain, while Complainant did so for the benefit of the union. Tr. At 316.-17.  
At the very least, Complainant and Lt. McCreary’s were similarly situated including in engaging in comparable conduct and  
being subject to the same disciplinary standards.

1 them adequately as well as honestly and in good faith.”).

2 President Sullivan conceded that “it was important for the membership and the executive board  
3 to have all of the relevant information about the [Woodard and McCreary] cases when they make  
4 decisions,” and that he has a “fiduciary duty to the union” and that the SPPA “membership had a right  
5 to the truth” before it votes. Tr., at 280:14-17; 318:2-9. He also acknowledged that he has “a  
6 responsibility to protect [SPPA] members ... to the best degree possibly can.” Tr., at 326:2-6.

7 As another distinguishing difference, while Complainant was apologetic and accepted full  
8 responsibility for his misconduct, Lt. McCreary stated that his conduct (unlawfully obtaining a smog  
9 certificate) was not “a big issue.” JX 19, at 7. In the grievance process, Lt. McCreary repeated that  
10 assertion and added that it was “a common business practice.” JX 20, at 13; JX 22, at 15. Lt.  
11 McCreary also told SPD Police Chief Brian Allen that “his leadership was ridiculous.” Tr., at  
12 309:10:15-5; JX 22, at 3, 18. Lt. McCreary’s misconduct was for purely his own personal benefit,  
13 while Complainant’s misconduct involved him taking it back to the unit for everyone to use. *See also*  
14 Tr., at 307 (When asked if Lt. McCreary believed he had “any culpability in leaving \$100 on a seat to  
15 have someone fraudulently provide [him] a smog certificate” on two separate occasions, Lt. McCreary  
16 responded “that it was a common business practice.”). *See also George v. Las Vegas Police Prot. Ass’n*  
17 *Metro, Inc.*, Case No. A1-045693, Item No. 485B (2001) (finding a breach of the DFR as the union  
18 made its decision based on impressible considerations). Lt. McCreary also had serious prior discipline  
19 for the purposes of progressive discipline within “the reckoning period” but Complainant did not.

20 In the absence of a reasoned basis or any rational explanation, President Sullivan felt compelled  
21 to help, or favored, Lt. McCreary and discriminated against Complainant for personal reasons.<sup>11</sup> As

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22  
23 <sup>11</sup> Current VP Shawn Congdon testified: “So they’re similar to me ... the policy violations... However I weighed the merits  
24 of the case on both of them, and I felt that Jason’s case was definitely different than Mike’s case because we were told there  
25 was no – it was an administrative violation and really the [DMV] would be addressing that or going after the smog shop.  
26 We never told that there was a crime or cited an NRS that was violated with McCreary.” Tr., at 221. VP Congdon stated  
27 that there was “disappointment” in both Complainant’s and Lt. McCreary’s cases. Tr., at 237. On Lt. McCreary’s case, VP  
28 Congdon’s “sole” sources of information was from Lt. McCreary’s attorney, Campbell, and President Sullivan – the  
information conveyed was that Complainant had committed a crime and Lt. McCreary had not. Tr., at 238-39. VP Congdon  
was not aware that the charge of minor crimes had been sustained against Lt. McCreary at the time he voted in favor of  
funding his arbitration. Tr., at 240. *See also Castelli v. Douglas Aircraft Co.*, 752 F.2d 1480, 1482 (9th Cir. 1985) (“an act  
of omission by a union may be so egregious and unfair as to be arbitrary, thus constituting a breach of the duty of fair  
representation.”). Interestingly, SPPA By Laws provided that: “Under no circumstances, however, will the Association  
become involve in any way with the processing or handling of any grievance which” “[i]s known to be the result of any  
illegal activity or action.”

1 discussed, President Sullivan was apparently so eager to help Lt. McCreary that he sought confirmation  
2 from SPPA's attorney that Complainant would have no recourse by way of a DFR action if SPPA  
3 funded Lt. McCreary's arbitration. President Sullivan went so far to say that he "wouldn't necessarily  
4 call [Lt. McCreary's conduct] serious". Tr., at 304-05. In other words, in his quest to provide  
5 assistance to Lt. McCreary, President Sullivan disregarding the DFR, attempting to hide behind a vote  
6 of the SPPA membership as a shield against liability for the breach of the DFR. Complainant presented  
7 substantial evidence of deceitful action and dishonest conduct. Respondent did not present credible  
8 evidence to establish otherwise.

9 Respondent argues that Complainant "wants this Board to adopt a standard that says  
10 Associations must always be correct in their evaluation of a grievance and/or cannot learn from tis prior  
11 decisions and must be able to predict the merits of a future grievance involving another members."  
12 Closing Brief, at 33; *see also supra* note 7. The Board does not hold so as our Order herein makes  
13 clear. Instead, SPPA was required to abide by its DFR when Complainant made his request for  
14 reimbursement as further detailed in the Remedy Section below. In other words, SPPA was required to  
15 consider this request (not necessarily grant) in a manner that was not arbitrary, in bad faith, or  
16 discriminatory.<sup>12</sup>

17 SPPA had the duty to *fairly* represent Complainant – it is clear that they did not do so at this  
18 time. SPPA engaged in conduct that was arbitrary, discriminatory and in bad faith.

19 \* \* \*

## 20 **Remedy**

21 The Board "may order ... to restore to the party aggrieved any benefit of which the party has  
22 been deprived by that action." NRS 288.110(2). *Nevada Serv. Employees Union/SEIU Local 1107 v.*  
23 *Orr*, 121 Nev. 675, 681, 119 P.3d 1259, 1263 (2005) (holding that "[u]nder NRS 288.110(2) the Board  
24 only had the authority to restore [Complainant] to her previous status" before the violation); *see also*  
25 *Franks v. Bowman Transp. Co.*, 424 U.S. 747, 769, 96 S.Ct. 1251, 47 L.Ed.2d 444 (1976) ("The task of  
26

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27 <sup>12</sup> As such, equally unavailing is Respondent's contention that "a ruling in Woodard's favor would subject all Associations,  
28 not just SPPA, to future potential damages when the Association makes a merit based decision to not pursue a grievance to  
arbitration, and then years later makes a merits based decision to pursue a similarly situated, but not identical grievance, to  
arbitration." Closing Brief, at 34. The Board's Order herein makes clear that this is not the case.



1 the Board in devising a final remedy is to take measures designed to recreate the conditions and  
2 relationships that would have been had there been no unfair labor practice.”); *Frank v. HTH Corp.*, 650  
3 F.3d 1334, 1366 (9th Cir. 2011) (“Very often, the most effective way to protect the Board’s ability to  
4 recreate such relationships and restore the status quo will be for the [Board] itself to order a return to  
5 the status quo.”); *Yu v. Las Vegas Metropolitan Dep’t*, Case No. 2017-025, Item No. 829 (2018) (Board  
6 ordered the Department to accept Sgt. Yu’s grievance and process it in compliance with the parties’  
7 contractually agreed upon terms and bargained-for procedures as set forth in Article 12 of the CBA  
8 (Grievance Procedures)).

9       Regarding the decision to not represent Complainant in the court proceedings, Complainant  
10 conceded that the court awarded Complainant his attorney’s fees and costs for opposing the City’s  
11 motion to vacate the ward and filing his countermotion to confirm. As Complainant states: “And  
12 regarding the effect of all this on Sgt. Woodard’s damages, the Board might hold that SPPA’s refusal to  
13 financially assist Sgt. Woodard in defending the arbitrator’s decision was a breach of the DFR, but  
14 either reduce or entirely decline to award him attorney fees and costs for that particular legal  
15 proceeding because the district court already made him whole therefore.” Even if the Board had found  
16 a violation, the Board would have found no remedy should be awarded besides a finding that a breach  
17 had occurred.

18       In regards to the actual violation found, Complainant was deprived the benefit of having his  
19 request to be reimbursed considered in a manner that was not arbitrary, in bad faith, or discriminatory.  
20 This restores Complainant to his previous status before the violation. *See also Simo v. City of*  
21 *Henderson*, Item No. 801 (2015); *George v. Las Vegas Police Prot. Ass’n Metro, Inc.*, Case No. A1-  
22 045693, Item No. 485B (2001). Perhaps, the decision would still be to not reimburse (perhaps giving  
23 rise to a breach of the duty of fair representation). Or, perhaps SPPA would have a basis to deny  
24 reimbursement in a manner that does not violate the DFR. Or, perhaps SPPA would decide to  
25 reimburse Complainant for some or all of his attorney’s fees. The Board is not permitted to speculate.

26       Finally, based on the facts in this case and the issues presented, the Board declines to award  
27 costs and fees in this matter.

28       ///

**FINDINGS OF FACT**

1. On March 11, 2016, SPD notified Complainant that he was the subject of an Internal Affairs investigation based upon allegations constituting a violation of four SPD regulations: (1) Neglect of Duty; (2) Promote Integrity: Order and Discipline; (3) Minor Crimes Prohibited; and (4) Major Crimes Prohibited.

2. The gravamen of the allegations was that Complainant exchanged a defective coffee maker at Costco utilizing a receipt from a different coffee maker that was an identical model.

3. On May 4, 2016, SPD notified Complainant of the results of the investigation indicating that he had violated two of the four allegations – Neglect of Duty and Promote Integrity: Order and Discipline.

4. Regarding the minor and major crimes allegations, the investigation exonerated Complainant.

5. On June 1, 2016, SPD notified Complainant of a pre-disciplinary hearing regarding his proposed demotion from sergeant to patrol officer.

6. SPPA provided representation to Complainant at the pre-disciplinary hearing and at a subsequent grievance appeal hearing before the Sparks City Manager.

7. Initially, Complainant was assisted by then SPPA President James and then turned over to SPPA's attorney, Mike Langton.

8. The outcome of both hearings was a determination that Complainant would be demoted.

9. Following the City Manager appeal hearing, SPPA ceased providing representation to Complainant in his demotion grievance.

10. Complainant petitioned SPPA for assistance with attorney's fees and costs for his demotion grievance arbitration on two separate occasions, including an appearance before the SPPA membership on November 21, 2016.

11. However, Complainant was denied assistance.

12. The Board finds credible that Complainant acted on his counsel's advice (his counsel provided by the union, Langton) at the SPPA membership meeting to be "careful about what [he] said or the information [he] disclosed so as not to create an issue" for his arbitration.

1           13. Complainant did not answer all the questions asked by the membership and was  
2 relegated to use his own judgment regarding which questions he should answer.

3           14. The evidence was clear that this issue, of not answering all the membership's questions,  
4 was a substantial reason that SPPA members voted no on Complainant's request for arbitration funding  
5 after he appeared before the SPPA membership November of 2016 for the second vote.

6           15. Credible evidence was not presented that SPPA failed to consider the merits of  
7 Complainant's case at the membership meetings.

8           16. Instead, credible testimony indicated that it was conveyed in multiple forms that  
9 decisions should not be made based on personality and it was not a popularity contest.

10           17. While Complainant contends he was not provided an option of a personal counsel, as in  
11 Lt. McCreary's case, no credible evidence was presented that he was *prevented* from obtaining his own  
12 counsel.

13           18. Regardless, the circumstances of the McCreary case had yet to occur when SPPA made  
14 its decision at this time – in other words (as Complainant concedes), this case would have been much  
15 simpler if the McCreary case had come before or at the same time as Complainant's.

16           19. Lt. McCreary's case did not provide this Board with sufficient evidence that SPPA acted  
17 in a manner that breached its DFR *during this time period*.

18           20. Complainant conceded these requests were "at least handled in a manner consistent with  
19 'the letter' of the Bylaws."

20           21. The entire SPPA Board discussed the allegations against Complainant when it voted on  
21 his request.

22           22. Complainant conceded that "an SPPA membership vote in these circumstances is best  
23 understood as an 'appellate' procedure, wherein a member whose legal funding request had been denied  
24 by the SPPA Board of Directors, such as Sgt. Woodard, can 'appeal' to the membership."

25           23. Complainant's demotion grievance was arbitrated on April 17th and 18th in 2017, and in  
26 an award date September 30, 2017, the arbitrator reduced his discipline from a permanent demotion to a  
27 temporary, 120-day demotion.



1           24.     In early November 2017, the Sparks City Council voted to file a motion to vacate the  
2 arbitrator's award.

3           25.     Around that same time, Complainant had a discussion with then SPPA Vice President  
4 Danny James about SPPA providing financial support to defend his success at arbitration.

5           26.     SPPA did not provide representation.

6           27.     Sgt. James informed Complainant that he did not think we would get sufficient votes  
7 from the SPPA membership.

8           28.     VP James told him that considering the two preceding "no" votes on his arbitration  
9 funding request, he likely would not get the votes on this request.

10          29.     Sgt. James could not recall the exact conversation but indicated that he "pretty much  
11 assumed" the request would be "voted down".

12          30.     Complainant testified: "I had a conversation with one of the board members, Sergeant  
13 James... I wouldn't classify it as approaching them, asking them, but essentially information was now  
14 out within the department that the arbitrator had ruled in my favor, and so we had a conversation about  
15 what had occurred after I had learned that the City planned on filing a motion to vacate it, so I spoke  
16 with Sergeant James."

17          31.     Complainant "asked him if he thought the opinion or perspective of the membership had  
18 changed and if it would be worth approaching them and asking them for help."

19          32.     Sgt. James told him "that I hadn't gotten the vote on two previous occasions and he  
20 didn't think that it would be fruitful because I probably wouldn't get the vote on this occasion."

21          33.     Sgt. James was clear that he was only giving his opinion while Complainant made it  
22 clear that he "wouldn't classify it as approaching them".

23          34.     Sgt. James felt both Complainant and Lt. McCreary should be treated the same.

24          35.     Further, it wasn't until after, in June 2018, that SPPA sent out secret ballots to the  
25 membership asking them to vote on McCreary's case to pay for the possible arbitration, which the  
26 membership voted to approve.

27          36.     Complainant learned that SPD was investigating Lt. McCreary while the City's motion  
28 to vacate was pending before the court.

1           37. Complainant opposed the City's motion with counsel retained at his own expense and,  
2 on April 4, 2018, the court entered an order denying the City's motion and granted Complainant's  
3 countermotion to confirm the award.

4           38. The court also awarded Complainant attorney's fees and costs as related to the court  
5 proceedings.

6           39. In a different and subsequent matter, SPD conducted an investigation into conduct of  
7 then probationary Lieutenant Mike McCreary.

8           40. In early 2018, SPD IA conducted an investigation into the conduct of Lt. McCreary  
9 (who was a probationary lieutenant at the time) based on allegations constituting violations of four SPD  
10 regulations: (1) Conduct Unbecoming a Member; (2) Minor Crimes Prohibited; (3) Major Crimes  
11 Prohibited; and (4) Neglect of Duty.

12           41. Three of the allegations, including violation of a SPD regulation prohibiting commission  
13 of minor crimes, were sustained in the SPD IA investigation.

14           42. Chief Allen suspended Lt. McCreary for 16 days and terminated his position as a  
15 probationary lieutenant, returning to the rank of sergeant.

16           43. Lt. McCreary appealed and SPPA provided representation at the pre-disciplinary  
17 hearing.

18           44. Chief Allen's discipline was sustained at the lower levels of the grievance and appeal  
19 process.

20           45. Thereafter, Lt. McCreary appealed his case to the City Manager.

21           46. On June 18, 2018, SPPA held a general meeting wherein it allowed Lt. McCreary's  
22 personal attorney to address the membership regarding the merits of his case and seek SPPA's financial  
23 support for representation at the City Manager appeal hearing and arbitration.

24           47. SPPA membership voted to pay Lt. McCreary's attorney's fees for those proceedings.

25           48. The evidence credibly showed that SPPA leadership thought it could evade  
26 responsibility based on the six-month limitation period in the EMRA.

27           49. In contrast to Complainant's conversation with Sgt. James above, Complainant, after the  
28 vote came back for Lt. McCreary, asked to meet with SPPA President Brian Sullivan.

1           50. This occurred a couple weeks after the SPPA membership voted to support Lt.  
2 McCreary in arbitration.

3           51. Complainant conveyed the new information including that the cases were very similar.

4           52. Complainant requested SPPA to consider reimbursing him for the legal costs stemming  
5 from the arbitration, stating that “he was asking to be considered fairly as a paying member of the union  
6 like ... Lieutenant McCreary.”

7           53. Yet, in response, President Sullivan unequivocally told Complainant that “first and  
8 foremost” he did not “have a case because the period in which [he] was allowed to file an appeal had  
9 passed”.

10          54. Secondly, President Sullivan admitted that the SPPA had “spoke to SPPA representation  
11 prior to putting the vote out for Lieutenant ... McCreary to ensure that [he] didn’t have a case, and then  
12 [President Sullivan] told [him] [he] didn’t have a case.”

13          55. “Officer Sullivan stated to [him] that prior to holding the votes for Lieutenant ...  
14 McCreary, he confirmed with [Langton] that [Complainant] had no ground to [file the DFR] should  
15 they vote to support Sergeant McCreary.”

16          56. At most, credible evidence showed that SPPA, through President Sullivan, denied  
17 Complainant’s request based on time expiring under the original initial DFR claim.

18          57. No credible evidence was presented that SPPA gave any real consideration on  
19 Complainant’s new request to be reimbursed based on the merits including his success at arbitration,  
20 from the court, and the differential treatment of Lt. McCreary (indeed, Complainant’s credible  
21 testimony confirms that SPPA made this determination prior to Complainant even making the request  
22 for reimbursement to President Sullivan).

23          58. Instead, the evidence credibly established that SPPA President made this determination  
24 based on the time to file a DFR regarding the original decision, not taking into account that SPPA had a  
25 duty to consider Complainant’s new request in a manner that was not arbitrary, discriminatory, or in  
26 bad faith.

27          59. Unlike the situation with the motion to vacate, there was no further action for  
28 Complainant to take – he was affirmatively told no by the President of the SPPA.

1           60.     Even Sgt. James explained that he had “several conversations” with President Sullivan  
2 giving him advice (shortly after Sgt. James stepped down as president), and “the crux of the  
3 conversation[s] ... was that if [SPPA was] going to pay Lieutenant McCreary’s legal bills, then we had  
4 to pay Sergeant Woodard’s legal bills as well.”

5           61.     “Well, in my mind, the allegations [and] the policy violations being the same, if you  
6 were going to pay for one, you had to pay for the other.”

7           62.     Sgt. James explained that President Sullivan “was going to do what he wanted to do  
8 anyway.”

9           63.     Deputy Chief Chris Crawforth testified regarding a conversation with SPPA board  
10 members on funding Lt. McCreary: “I told them my belief was they needed to tell Mike McCreary you  
11 would support him to the point that you did Sergeant Woodard financially, then he would be on his  
12 own, and if you chose to support Mike McCreary throughout the entire process, arbitration and beyond,  
13 where he took that, that the union should consider going back and discussing with Sergeant Woodard  
14 what his legal fees were for his continued issue and start paying for that so there would be comparable  
15 treatment amongst the members.”

16          64.     Instead of considering the merits of his request in a manner that was not in bad faith,  
17 arbitrary or discriminatory, SPPA sought out a reason to justify funding Lt. McCreary.

18          65.     The evidence was clear that it was known that Lt. McCreary was generally liked, and  
19 Complainant was not.

20          66.     President James’ determination was based in part on favoritism of Lt. McCreary.

21          67.     In regard to the minor and major crimes violations, it was undisputed that Complainant  
22 was exonerated.

23          68.     As such, these violations would not be the subject of arbitration regardless of whether  
24 others found he committed a crime.

25          69.     In other words, whether or not Complainant actually committed a crime is not relevant to  
26 his claims in this case – instead, the findings of the IA investigation and the policy violations alleged  
27 against each of the officers (Complainant no crime and McCreary minor crime) by the SPD and the  
28

1 impact of those findings and policy violations on the merits (*i.e.*, the chances of success for the  
2 grievances at arbitration).

3 70. Lt. Thomas concluded that “there [was] no evidence to show Costco had suffered injury  
4 or damages so Woodard[‘s] actions did not violate the misdemeanor criminal statute NRS 205.380.”  
5 JX 2 (also explaining that Complainant had not violated the burglary statute).

6 71. Deputy Chief Green closed the case as there was “no chance that the victim [was] going  
7 to proceed with prosecution”.

8 72. Deputy Chief Chris Crawforth testified that Complainant’s case had better merits than  
9 Lt. McCreary’s.

10 73. By the time Complainant made this request, the results of the arbitration and motion to  
11 vacate were known.

12 74. In regard to learning of Complainant’s conduct, President Sullivan said he was  
13 “incredibly disappointed.”

14 75. President Sullivan voted no because based on his “knowledge of the law, Jason  
15 committed a burglary”.

16 76. In supporting Lt. McCreary, he believed there had been no crime committed.

17 77. Yet, President Sullivan acknowledged that both Deputy Chief Crawforth and Chief  
18 concluded Lt. McCreary had committed a crime.

19 78. Officer Sullivan disagreed with their assessments but agreed “that was their case  
20 against” Lt. McCreary.

21 79. President Sullivan further conceded he was at Lt. McCreary’s pre-disciplinary hearing,  
22 and Chief Allen confirmed that minor crimes prohibited had been sustained.

23 80. Deputy Chief Krall said, “The methodology used in obtaining the smog permit is  
24 deliberate and deceitful conduct and behavior.”

25 81. President Sullivan agreed that both were in trouble for involving subordinates.

26 82. Further, Deputy Chief Krall’s recommendation to the Chief was that Lt. McCreary be  
27 demoted all the way to rank of patrol officer  
28

1           83.     President Sullivan also somewhat conceded that Lt. McCreary's case would be more  
2 difficult for arbitration.

3           84.     President Sullivan agreed that Lt. McCreary's comment regarding the Chief's  
4 "ridiculous ... leadership" would not be helpful at arbitration.

5           85.     Further, as another unhelpful act, after Lt. McCreary received a demand letter from the  
6 DMV to present his vehicle for inspection, rather than complying with said demand, Lt. McCreary  
7 traded in his vehicle.

8           86.     Lt. McCreary also continued to use the subordinate employee by showing him the  
9 demand letter, who in turn inappropriately contacted the DMV.

10          87.     Finally, the Chief stated, as related to Complainant's case: "I considered the recent  
11 investigation and discipline regarding a sergeant who committed acts of dishonesty and deceitfulness  
12 while on duty and there were several mitigating and several" aggravating circumstances of these two  
13 cases.

14          88.     While there were no other incidents with Complainant, Lt. McCreary had a previous  
15 suspension.

16          89.     Lt. McCreary's actions were for his sole personal gain, while Complainant did so for the  
17 benefit of the union.

18          90.     At the very least, Complainant and Lt. McCreary's were similarly situated including in  
19 engaging in comparable conduct and being subject to the same disciplinary standards.

20          91.     President Sullivan conceded that "it was important for the membership and the executive  
21 board to have all of the relevant information about the [Woodard and McCreary] cases when they make  
22 decisions," and that he has a "fiduciary duty to the union" and that the SPPA "membership had a right  
23 to the truth" before it votes.

24          92.     He also acknowledged that he has "a responsibility to protect [SPPA] members ... to the  
25 best degree possibly can."

26          93.     As another distinguishing difference, while Complainant was apologetic and accepted  
27 full responsibility for his misconduct, Lt. McCreary stated that his conduct (unlawfully obtaining a  
28 smog certificate) was not "a big issue."

94. In the grievance process, Lt. McCreary repeated that assertion and added that it was “a common business practice.”

95. Lt. McCreary also told SPD Police Chief Brian Allen that “his leadership was ridiculous.”

96. Lt. McCreary's misconduct was for purely his own personal benefit, while Complainant's misconduct involved him taking it back to the unit for everyone to use.

97. Lt. McCreary also had serious prior discipline for the purposes of progressive discipline within "the reckoning period" but Complainant did not.

98. President Sullivan was apparently so eager to help Lt. McCreary that he sought confirmation from SPPA's attorney that Complainant would have no recourse by way of a DFR action if SPPA funded Lt. McCreary's arbitration.

99. In the absence of a reasoned basis or any rational explanation, President Sullivan felt compelled to help, or favored, Lt. McCreary.

100. President Sullivan went so far to say that he “wouldn’t necessarily call [Lt. McCreary’s conduct] serious”.

101. In other words, in his quest to provide assistance to Lt. McCreary, President Sullivan disregarding the DFR, attempting to hide behind a vote of the SPPA membership as a shield against liability for the breach of the DFR.

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

## CONCLUSIONS OF LAW

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

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

3. The Nevada Supreme Court has recognized that employee organizations are subject to the duty of fair representation.

1           4.     The duty of fair representation requires that when the union represents or negotiates on  
2 behalf of a union member, it must conduct itself in a manner that is not arbitrary, discriminatory, or in  
3 bad faith.

4           5.     Union agents should not be held to a negligence standard of care, when the union for  
5 whom they work is liable only if its representation is arbitrary, discriminatory, or in bad faith.

6           6.     Whether in a particular case a union's conduct is negligent, and therefore non-  
7 actionable, or so egregious as to be arbitrary, and hence sufficient to give rise to a breach of duty claim,  
8 is a question that is not always easily answered.

9           7.     We have said that a union's conduct is arbitrary if it is without rational basis,' or is  
10 egregious, unfair and unrelated to legitimate union interests.

11          8.     Union officials must be cautious not to succumb to the influence of personal preferences.

12          9.     Although we afford unions a reasonable range of discretion in deciding how best to  
13 handle grievances, union conduct that shows an egregious disregard for the rights of union members  
14 constitutes a breach of the duty of fair representation.

15          10.    In order to show bad faith, a complainant must present substantial evidence of fraud,  
16 deceitful action or dishonest conduct.

17          11.    In order to prove discriminatory actions, a complainant must adduce substantial evidence  
18 of discrimination that is intentional, severe, and unrelated to legitimate union objections.

19          12.    Personal reasons can be best described as non-merit-or-fitness facts, i.e., factors that are  
20 unrelated to any job requirement and not otherwise made by law a permissible basis for discrimination.

21          13.    Thus, the proper construction of the phrase personal reasons or affiliations include non-  
22 merit-or-fitness factors, and would include the dislike of or bias against a person which is based on an  
23 individual's characteristics, beliefs, or activities that do not affect the individual's merit or fitness of  
24 any particular job.

25          14.    We are bound by the violations as alleged in the Complaint.

26          15.    The Board would not have found that SPPA breached its duty during the time period of  
27 initial decisions to not fund Complainant's case.  
28



1           16.     The advice given to Complainant to essentially withhold information as well as the  
2 allegation that Langton failed to inform at this time that Complainant had been exonerated of the crime,  
3 is at most negligent – no credible evidence was presented to demonstrate that Langton or SPPA  
4 leadership did so arbitrarily, in bad faith, or discriminatorily.

5           17.     The Supreme Court has long recognized that unions must retain wide discretion to act in  
6 what they perceive to be their members' best interests.

7           18.     To that end, we have stressed the importance of preserving union discretion by narrowly  
8 construing the unfair representation doctrine.

9           19.     We have emphasized that, because a union balances many collective and individual  
10 interests in deciding whether and to what extent it will pursue a particular grievance, courts should  
11 accord substantial deference to a union's decisions regarding such matters.

12           20.     Here, the union's conduct *at this time* is best viewed at most as negligent and not a  
13 breach of the duty of fair representation, taking into account the totality of the circumstances.

14           21.     The Board finds that Sgt. James' comments were at most negligent and credible  
15 evidence was not presented that SPPA acted arbitrarily, in bad faith, or discriminatory at this time.

16           22.     The evidence was not credible that Sgt. James's comments rise to the level of arbitrary  
17 as detailed above.

18           23.     The evidence was not credible that Sgt. James did so in bad faith or discriminatory.

19           24.     President Sullivan's determination was made arbitrarily, in bad faith, and discriminatory.

20           25.     This resulted in a new violation as stated herein.

21           26.     The Board rescinds and withdraws its prior order in this case to the extent inconsistent  
22 herein.

23           27.     The Board agrees that a new violation occurred as indicated herein – as the violation  
24 occurred in July 2018, the Complaint filed in October 2018 was timely as to this violation.

25           28.     President Sullivan's determination was without rational basis as well as egregious,  
26 unfair, and unrelated to legitimate union interests as further indicated herein.

27           29.     President Sullivan's determination was based on non-merit-or-fitness facts, ones that  
28 included dislike of or bias against Complainant.

1           30.     Complainant presented substantial evidence of discrimination that was intentional,  
2 severe, and unrelated to legitimate union objections as indicated herein.

3           31.     Respondent failed to show otherwise.

4           32.     SPPA's conduct was so far outside the wide range of reasonableness as to be considered  
5 wholly irrational.

6           33.     SPPA discriminated against Complainant for personal reasons.

7           34.     Complainant presented substantial evidence of deceitful action and dishonest conduct.

8           35.     Respondent did not present credible evidence to establish otherwise.

9           36.     The Board may order to restore to the party aggrieved any benefit of which the party has  
10 been deprived by that action.

11          37.     Under NRS 288.110(2) the Board only has the authority to restore Complainant to  
12 Complainant's previous status before the violation.

13          38.     The task of the Board in devising a final remedy is to take measures designed to recreate  
14 the conditions and relationships that would have been had there been no unfair labor practice.

15          39.     Complainant was deprived the benefit of having his request to be reimbursed considered  
16 in a manner that was not arbitrary, in bad faith, or discriminatory.

17          40.     This restores Complainant to his previous status before the violation.

18          41.     The Board is not permitted to speculate what SPPA may do if it considers Complainant's  
19 request in a manner that is not in bad faith, arbitrary, or discriminatory.

20          42.     Based on the facts in this case and the issues presented, the Board declines to award  
21 costs and fees in this matter.

22          43.     If any of the foregoing conclusions of law is more appropriately construed as a finding  
23 of fact, it may be so construed.

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26     ///

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**ORDER**

Based on the foregoing, IT IS HEREBY ORDERED that the Board finds in favor of Complainant in part as set forth above.

Dated this 17th day of December 2020.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

By:   
BRENT ECKERSLEY, ESQ., Chair

By:   
SANDRA MASTERS, Vice-Chair

By:   
GARY COTTINO, Board Member