

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

FILED
December 29, 2023
State of Nevada
E.M.R.B.
10:30 a.m.

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BEFORE THE STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

EDWIN MARTIN,

Complainant,

Case No.: 2023-036

vs.

Panel:

TRUCKEE MEADOWS FIRE
PROTECTION DISTRICT,

Respondent.

FIRST AMENDED COMPLAINT

COMES NOW, Complainant EDWIN MARTIN by and through his undersigned attorney, hereby charges Respondent TRUCKEE MEADOWS FIRE PROTECTION DISTRICT with practices prohibited by NRS 288.270. This complaint is filed in accordance with NRS 288.270, NRS 288.280 and NAC 288.200. Accordingly, Complainant hereby complains and alleges as follows:

I. THE PARTIES

1. Complainant Edwin Martin, (hereinafter “Complainant” or “Engineer Martin”), is a firefighter employed by the Truckee Meadows Fire Protection District. He is a local government employee as defined in NRS 288.050.

1 2. Respondent Truckee Meadows Fire Protection District (hereinafter “TMFPD”), is a
2 local government employer as defined in NRS 288.060 and is comprised of local fire
3 departments charged with providing fire protection and emergency medical services in the
4 unincorporated areas of Washoe County. TMFPD is made up of approximately 190 personnel
5 to include firefighters.

6 **II. LEGAL AUTHORITY AND JURISDICTION**

7
8 3. NRS 288.270(1)(f) defines that it is a prohibited practice for a local government
9 employer to “[d]iscriminate because of race . . . or personal reasons or affiliations.”

10 4. This Board has jurisdiction over this matter as Complainant’s allegations arise
11 under Nevada Revised Statute Chapter 288 - Relations between Government and Public
12 Employees.

13 **III. PROHIBITED PRACTICES**

14 5. At all times relevant Engineer Martin was employed at the TMFPD as a firefighter.

15 6. On July 18, 2022, Engineer Martin was promoted to the rank of Captain and
16 required to serve a one-year probationary period.

17 7. On October 15, 2022, Engineer Martin received a “3-month Captain Probationary”
18 review in which he received meets or exceeds standards in every category evaluated. A
19 comment in this evaluation stated that, “Captain Martin completes required duties in the
20 station and follows district policies.” Additionally, this evaluation rated Engineer Martin as
21 meeting requirements for his communication and establishing and maintaining effective
22 relationships with departmental personnel, public safety agencies, the public, and others
23 contacted in the course of work.

24 8. On January 20, 2023, Engineer Martin received a “6-month Captain Probationary”
25 review in which he received meets or exceeds standards in every category evaluated. A
26

1 comment in this evaluation stated that, “Captain Martin reaches out with questions as needed
2 but requires little direction for day-to-day operations such as dail (sic) checks, training and
3 projects assigned.” Again, this evaluation rated Engineer Martin as meeting requirements for
4 his communication and establishing and maintaining effective relationships with departmental
5 personnel, public safety agencies, the public, and others contacted in the course of work.
6

7 9. On January 29, 2023, Engineer Martin was involved in an off-duty incident that led
8 to him being arrested, but this charge was later dismissed. This incident did not involve his
9 employment at the TMFPD; however, he followed current policy and reported the incident to
10 the on-duty Battalion Chief, Marty Johnson. Chief Johnson notified Deputy Chief Ketring of
11 the incident. In a subsequent meeting, Deputy Chief Ketring stated to Engineer Martin that this
12 incident would not affect his job as it was outside of the scope of his employment. Further,
13 Deputy Chief Ketring advised Engineer Martin that the incident would remain confidential
14 and not be shared within the department. Despite Deputy Chief Ketring’s assurances that it
15 would remain confidential, it is believed that this incident was openly discussed in many
16 upper-level management meetings involving Deputy Chiefs, Battalion Chiefs and Division
17 Chiefs.
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20 10. On April 12, 2023, Engineer Martin received a “9-month Captain Probationary”
21 review in which he received meets or exceeds standards in every category evaluated. A
22 comment in this evaluation stated that, “Captain Martin has in our time together
23 communicated well with me” and “[t]his communication has helped build our relationship as
24 new supervisor/employee.” While it was noted in this evaluation that Engineer Martin was
25 expected to improve his verbal and written communication skills, the criteria was to have no
26 further reports of communication issues during the probationary period. For the third time, this
27 evaluation rated Engineer Martin as meeting requirements for his communication and
28

1 establishing and maintaining effective relationships with departmental personnel, public safety
2 agencies, the public, and others contacted in the course of work.

3 11. Between April 12, 2023, and July 12, 2023, the end of Engineer Martin's
4 probationary period, he did not have any reports of communication issues. During this period,
5 Engineer Martin was evaluated by Battalion Chiefs Christopher Black and James Solaro.
6

7 12. It is believed that between April and June 2023, Chief James Solaro who,
8 according to Deputy Chief Ketring, should not have had any knowledge of the January 29,
9 2023, arrest, conducted an unauthorized investigation into the January 29, 2023, incident.
10 Chief Solaro, who has always demonstrated a personal dislike for Engineer Martin, used his
11 position as a Battalion Chief to obtain confidential information about Engineer Martin and to
12 order other firefighters to illegally obtain information about Engineer Martin.
13

14 13. The "investigation" by Chief Solaro into Engineer Martin was apparently not
15 authorized by the TMFPD or the County and was seemingly undertaken due to Chief Solaro's
16 personal dislike for Engineer Martin.
17

18 14. As part of the probationary period, Engineer Martin was required to complete a
19 reflection assignment in which he outlined the positive and negative experiences he had while
20 on probation. Engineer Martin completed this on June 22, 2023, and included his
21 dissatisfaction with the manner in which he was coached and counseled, and how this was
22 done in contradiction with his experiences throughout his career to that point. He specifically
23 noted that employees are afraid to have conversations regarding conflict resolution for fear of
24 being punished.
25

26 15. On July 11, 2023, Engineer Martin met with Chief Black and Chief Solaro to
27 complete his final evaluation regarding his promotion to the rank of captain. Inexplicably, and
28 in direct contradiction with the three previous evaluations, Chief Black, with Chief Solaro's

1 input, rated Engineer Martin as not meeting requirements for the captain position. Despite
2 there having been no issues since the April 12, 2023, evaluation, Engineer Martin was rated
3 as not meeting expectations in the categories of Accountability, Continuous Learning,
4 Communication Skills, Customer Service, Personal Relationships, Ethics and Integrity,
5 Organizational Knowledge, Decision Making, Developing Organizational Talent, Leading and
6 Inspiring Others, and Values and Leverages Diversity. Chiefs Black and Solaro advised
7 Engineer Martin that he would not be promoted to captain on a permanent basis as he did not
8 successfully pass the probation period.
9

10 16. All the above noted below standard ratings contradict the three previous
11 evaluations and are not based on merit and fitness standards. As noted in the “Ethics and
12 Integrity” section of the final evaluation, the personal dislike for Engineer Martin is apparent
13 in that it states, “Ed has demonstrated through this probationary period that his values and
14 personnel ethics may not be in alignment with the District.” This finding is not based on any
15 documentation or performance outlined in the three previous evaluations. In fact, the final
16 evaluation clearly states that, “Ed meets expectations regarding job specific requirements.”
17 Thus, it is apparent that the failure to promote Engineer Martin and the ratings in the final
18 evaluation were based on personal reasons only and in retaliation for expressing his views of
19 what occurred during his probationary period.
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22 17. At the July 11, 2023, meeting, Engineer Martin, whose children are half Hispanic,
23 advised Chief Solaro that he found it offensive that Chief Solaro deliberately used a dark
24 brown emoji when making a hang loose sign to Engineer Martin via text message. This emoji
25 is in obvious reference to Engineer Martin’s mixed-race children and would be offensive to
26 any reasonable person. The use of the dark brown hand emoji is racial in nature and clearly
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1 indicates that Chief Solaro discriminated against Engineer Martin based at least in part on his
2 mixed-race family.

3 18. At the conclusion of this meeting, Chief Solaro followed Engineer Martin into the
4 hallway and whispered threateningly to Engineer Martin that he looked forward to another
5 conversation with him. Engineer Martin, as would any reasonable person, took this comment
6 as threatening, intimidating, and as more evidence of Chief Solaro's obvious personal dislike
7 for Engineer Martin.
8

9 19. Prior to his probationary year, and during his entire 18-year career in the fire
10 service, Engineer Martin had never received any discipline or any below standard evaluation.
11

12 20. On July 11, 2023, Engineer Martin sent an email to Chief Black recounting the
13 conversation they had during and after the above noted meeting.

14 21. On July 12, 2023, Engineer Martin sent the record of the conversation with Chief
15 Black to Human Resources, ("HR"), representative Carla Arribillaga.

16 22. On July 12, 2023, Engineer Martin received a letter from Fire Chief Charles
17 Moore officially notifying him that he was not confirmed to the position of captain.
18

19 23. On July 17, 2023, Engineer Martin filed a formal complaint with HR detailing the
20 actions taken by Chief Solaro regarding the unauthorized investigation, intimidation,
21 retaliation and personal dislike.

22 24. On September 27, 2023, Engineer Martin received a "summary and conclusion" of
23 the investigation completed into his complaints. This investigation substantiated that Chief
24 Solaro had indeed conducted an unauthorized investigation into Engineer Martin and that
25 Chief Solaro had violated Policy P201.0, Conduct and Expectations. It is believed that Chief
26 Solaro received discipline for these actions.
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1 25. Due to Chief Solaro conducting this “investigation,” multiple members of the
2 TMFPD have contacted Engineer Martin regarding the January 29, 2023, incident and have
3 made unfounded and false conclusions against Engineer Martin resulting in a negative work
4 environment for Engineer Martin.

5 26. On November 20, 2023, Engineer Martin received unequivocal notice of the
6 refusal to promote him retroactively to July 14, 2023, to the position of captain in the form of
7 a letter from Deputy Chief Ketring.
8

9 **IV. CONCLUSION**

10 **Wherefore**, the actions taken against Engineer Martin based on race and personal
11 reasons constitute prohibited practices under NRS Chapter 288.
12

13 Respondent Truckee Meadows Fire Protection District has discriminated against
14 Complainant Edwin Martin for personal reasons and personal dislike. These non-merit-or-
15 fitness factors were not based in his ability or fitness to perform his duties. These actions
16 constitute a prohibited practice under NRS 288.270(1)(f).
17

18 Respondent Truckee Meadows Fire Protection District has discriminated against
19 Complainant Edwin Martin based on his family’s racial composition which constitute a
20 prohibited practice under NRS 288.270(1)(f).
21

22 THEREFORE, Complainant prays for relief as follows:

- 23 a. A finding that the conduct of Respondent as referenced herein constitutes
24 prohibited practices under Chapter 288 of the Nevada Revised Statutes;
- 25 b. A finding that Respondent discriminated against Complainant for personal
26 reasons;
- 27 c. A finding that Respondent discriminated against Complainant based on
28 family’s racial composition;

- 1 d. An order requiring Respondent to cease in violating NRS 288.270;
- 2 e. An order requiring Respondent to promote Complainant to the rank of captain,
- 3 to include all pay and benefits, retroactive to July 14, 2023;
- 4 f. An order requiring Respondent to pay the Complainant's reasonable attorney
- 5 and representatives' fees and expenses in bringing this action; and
- 6
- 7 g. Any and all other relief that the Employee Management Relations Board deems
- 8 appropriate.
- 9

10 Dated this 29th day of December, 2023.

11

12 /s/ Ronald J. Dreher

13 Ronald J. Dreher

14 NV Bar No. 15726

15 P.O. Box 6494

16 Reno, NV 89513

17 Telephone: (775) 846-9804

18 ron@dreherlaw.net

19 *Attorney for Complainant*

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CERTIFICATE OF SERVICE

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

Chris Ketring
Deputy Chief of Operations
Truckee Meadows Fire Protection District
3663 Barron Way
Reno, NV 89511
775-326-6000

by certified mail to the above listed address.

Dated this 29th day of December, 2023.

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

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CERTIFICATE OF SERVICE

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

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

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

DATED this 29th day of December, 2023.

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

1 **BEFORE THE EMPLOYEE MANAGEMENT RELATIONS BOARD**

2 **STATE OF NEVADA**

3 ***

4 EDWIN MARTIN,
5 Complainant,

Case No. 2023-036

6 v.

7 TRUCKEE MEADOWS FIRE
8 PROTECTION DISTRICT

9 Respondent.

FILED
January 17, 2024
State of Nevada
E.M.R.B.
4:18 p.m.

10 **RESPONDENT’S ANSWER TO FIRST AMENDED COMPLAINT**

11 Respondent, Truckee Meadows Fire Protection District (“TMFPD”), a local government
12 employer as defined in NRS 288.060 and NRS 286.070, has filed a motion to dismiss the First
13 Amended Complaint. Without waiving the arguments set forth in the motion to dismiss,
14 TMFPD answers the First Amended Complaint (“Complaint”) filed by Complainant, Edwin
15 Martin, on December 29, 2023, by admitting, denying, and alleging as follows. Any allegations
16 contained in Complainant’s Complaint not specifically admitted by TMFPD are denied.

17 **I. THE PARTIES**

18 1. TMFPD admits the allegations in paragraph 1 and 2 of the Complaint.

19 **II. LEGAL AUTHORITY AND JURISDICTION**

20 2. In answering paragraph 3 of the Complaint, TMFPD admits that NRS
21 288.270(1)(f) states it is a prohibited practice for a local government employer or its designated
22 representative willfully to discriminate because of race, color, religion, sex, sexual orientation,
23 gender identity or expression, age, physical or visual handicap, national origin or because of
24 political or personal reasons or affiliations.

25 3. TMFPD denies each and every allegations set forth in paragraph 4 of the
26 Complaint.

1 **III. PROHIBITED PRACTICES**

2 4. TMFPD admits the allegations set forth in paragraphs 5, 6, 22, and 23 of the
3 Complaint.

4 5. TMFPD is without sufficient knowledge or information to either admit or deny
5 the allegations set forth in paragraphs 7, 8, 10, 11, 14, 19, 20, 21, and 24 of the Complaint, and
6 therefore denies the same.

7 6. TMFPD denies the allegations contained in paragraphs 9, 12, 13, 15, 16, 17, 18,
8 25, and 26 of the Complaint.

9 **AFFIRMATIVE DEFENSES**

10 1. Complainant has failed to state a claim upon which relief can be granted.

11 2. No probable cause exists for the Complaint pursuant to NAC 288.375(1).

12 3. Complainant has not alleged that he exhausted his contractual remedies,
13 including rights to arbitration as required by NRS 288.375(2).

14 4. Complainant failed to exhaust his contractual remedies prior to filing this action,
15 and therefore his claims are barred pursuant to NAC 288.375(2).

16 5. Complainant has failed to exhaust all administrative remedies, and is therefore
17 barred from bringing this action.

18 6. There are insufficient facts in the Complaint to demonstrate that TMFPD
19 willfully discriminated against Complainant because of his race, personal reasons, or
20 affiliations.

21 7. The Complaint is barred by the applicable period of limitations set forth in the
22 collective bargaining agreement between the parties and/or laches.

23 8. TMFPD acted in good faith and did not directly or indirectly perform any act
24 whatsoever which would constitute a breach of any duty owed to Complainant.

25 9. TMFPD at all times herein alleged therefore acted in good faith and did not
26 directly or indirectly perform any act whatsoever which would constitute a Prohibited Practice.

1 10. Declaratory relief sought by Complainant pursuant to his Complaint should be
2 denied, in that an adequate remedy exists at law.

3 11. Any damages sustained by Complainant are the result of his own acts or conduct;
4 and therefore, Plaintiff is precluded from relief because of his own actions and/or unclean
5 hands.

6 12. At all times relevant to this action, TMFPD properly exercised their management
7 rights described in NRS 288.150(3), the collective bargaining agreement between the parties,
8 and the Washoe County Code.

9 13. It has been necessary for TMFPD to employ the services of an attorney to defend
10 this action, and a reasonable sum should be awarded to TMFPD for their attorneys' fees and
11 costs expended in defending this action.

12 14. TMFPD alleges pursuant to NRCP 11, at the time of the filing of this Answer, all
13 possible affirmative defenses may not have been alleged pending the development of sufficient
14 facts after reasonable inquiry; therefore, TMFPD reserves the right to amend this Answer to
15 allege additional affirmative defenses if warranted.

16 **IV. CONCLUSION**

17 15. TMFPD denies each and ever allegation contained in the section of the
18 Complaint titled, "Conclusion."

19 WHEREFORE, TMFPD pray as follows:

20 1. That Complainant takes nothing by their Complaint.

21 2. That judgment be entered against Complainant and in favor of TMFPD.

22 3. That the Board allow Respondents costs and reasonable attorney's fees pursuant
23 to NAC 288.373, NAC 288.375, NRS 18.005, NRS 18.010 or any other applicable authority.

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4. That the Board grant TMFPD such additional or alternate relief as it deems just and proper.

DATED January 17, 2024.

CHRISTOHPER J. HICKS
Washoe County District Attorney

By /s/ Brandon Price
Wade Carner, Esq.
Deputy District Attorney
Brandon Price, Esq
Deputy District Attorney
One South Sierra St.
Reno, NV 89501
ATTORNEYS FOR TRUCKEE MEADOWS
FIRE PROTECTION DISTRICT

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, a true and correct copy of the foregoing document was emailed to the following electronic mail address:

Employee Management Relations Board
emrb@business.nv.gov

Ronald J. Dreher, Esq.
ron@dreherlaw.net

Dated this 17th day of January, 2024.

/s/ N. Stapledon
N. Stapledon

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

EDWIN MARTIN,

Complainant,

v.

TRUCKEE MEADOWS FIRE PROTECTION
DISTRICT,

Respondent.

Case No. 2023-036

**ORDER ON RESPONDENT’S MOTION
TO DISMISS COMPLAINT**

EN BANC

On February 27, 2024, this matter came before the State of Nevada, Government Employee-Management Relations Board (the “Board”) for consideration and decision on Respondent’s Motion to Dismiss pursuant to the provision of the Employee-Management Relations Act (the Act), NRS Chapter 233B, and NAC Chapter 288.

Respondent’s Motion to Dismiss was based on two arguments: (1) Complainant failed to exhaust his administrative remedies; and (2) Complainant failed to state a viable claim for the prohibited practice. The Board will address each issue below.

A. Failure to Exhaust Administrative Remedies.

Under NAC 288.375(2) absent a clear showing of special circumstances or extreme prejudice, a matter may be dismissed if the parties have not exhausted their contractual remedies, including arbitration. *Las Vegas City Employees’ Association and Julie Terry v. The City of Las Vegas, et al.*, Consolidated Case Nos. 2021-008, 2021-012, 2021-013 and 2021-015, Item No. 884 (EMRB, April 26, 2023); *Operating Engineers Local Union No. 3 v. Incline Village General Improvement District*, Case No. 2020-012, Item No. 864-C (EMRB, Sept 21, 2021).

Respondent asserts that this matter should be dismissed because Complainant failed to comply

1 with Article 48 of the existing Collective Bargaining Agreement (“CBA”) between the parties which
2 requires submission of grievances to arbitration. Article 48 is not applicable in this case for two
3 reasons. First, the Complaint in this case is not based on a grievance, rather it is a discrimination claim
4 brought under NRS 288.270(1)(f). Complaint at 1. Second, Article 8(D) of the CBA specifically
5 excludes discrimination complaints submitted to entities such as this Board from the grievance process
6 set out under Article 48 of the CBA. Respondent’s Motion to Dismiss at Exhibit 1. Specifically,
7 Section 8(D) of the CBA states:

8 D. Any complaint alleging a violation of this Article shall be submitted to the appropriate
9 administrative agency(ies) having responsibility for enforcing State and Federal laws
10 governing non-discrimination in employment and shall not be subject to the Article 48
(Grievance Procedure).

11 *Id.*

12 NRS 288.270(1)(f) is a statute relating to non-discrimination, and this Board is the entity
13 responsible for interpreting and enforcing this provision. Thus, Article 8 of the CBA clearly applies to
14 this matter. Based on the foregoing, this Board finds that NAC 288.375(2) is not applicable to this
15 point.

16 **B. Failure to State a Viable Claim for Prohibited Practices.**

17 Respondent also urges this Board to dismiss the Complaint on the grounds that there is
18 insufficient probable cause to sustain the claims set forth in the Complaint. The Board may dismiss a
19 matter for lack of probable cause under NAC 288.375(1). *Thomas D. Richards v. Police Managers and*
20 *Supervisors Association*, Case No. A1-046094, Item No. 788 (2013). NAC 288.200 requires that a
21 Complaint contain a “clear and concise statement of the facts constituting the alleged practice sufficient
22 to raise a justiciable controversy under Chapter 288.” If there is a lack of sufficient facts to give rise to
23 a justiciable controversy, there is also a lack of probable cause. *Adonis Valentin v. Clark Co. Public*
24 *Works*, Case No. A1-046010, Item # 762 (2011); *Teresa Daniel, Ida Sierra, Marguis Lewis, Aaron Lee,*
25 *Andrew D. Gasca, Kevin Cervantes, Luther J. Soto, Beverly Abram, Latrice Banks, Denise Mayfield,*
26 *Linda Korschinowski, Charleen Davis-Shaw, David M. Shaw, Argretta O. Hutson, et Al v. Education*

1 *Support Employees Association*, Case No. A1-046028, Item # 767 (2011); *Sherman Willoughby v.*
2 *Clark County; Human Resources/Real Property Management*, Case No. A1-046030, Item # 769 (2011).

3 There are two claims of discrimination present in this case: (1) a claim of discrimination based
4 on race; and (2) a claim of discrimination based on personal reasons. NRS 288.270(1)(f) states:

5 1. It is a prohibited practice for a local government employer or its designated
6 representative willfully to:

7 * * *

8 (f) Discriminate because of race, color, religion, sex, sexual orientation, gender identity
9 or expression, age, physical or visual handicap, national origin or because of political or
10 personal reasons or affiliations.

11 In *Reno Police Protective Ass'n v. City of Reno*, 102 Nev. 98 (1986), the Nevada Supreme Court
12 adopted a framework to resolve state prohibited labor practice claims against employers that are
13 brought under NRS 288.270. *Bisch v. Las Vegas Metropolitan Police Department*, 129 Nev. 328, 339
14 (2013). Specifically, the Nevada Supreme Court concluded that:

15 [a]n aggrieved employee must make a prima facie showing sufficient to support the
16 inference that protected conduct was a motivating factor in the employer's decision.
17 Once this is established, the burden shifts to the employee to demonstrate by a
18 preponderance of the evidence that the same action would have taken place even in the
19 absence of the protected conduct. The aggrieved employee may then offer evidence that
20 the employer's proffered "legitimate" explanation is pretextual and thereby conclusively
21 restore the inference of unlawful motivation.

22 *Id.*

23 In this case, the Board finds that the Complaint lacks sufficient facts to sustain the racial
24 discrimination claim. For example, the use of a brown emoji alone is meaningless without more proof
25 that it was used with discriminatory intent or otherwise related to the employer's decision.
26 Furthermore, the September 27, 2023, letter from Carla Arribillaga, the Human Resource Manager of
27 the Truckee Meadows Fire Protection District, stated that following an investigation conducted by an
28 independent third party, there was no evidence of racial discrimination related to Complainant's
promotion. See Exhibit 2 of Complainant's Opposition to Respondent's Motion to Dismiss. There is
similarly no evidence that the race of Complainant's children had any bearing on the employer's

1 decision. Vague accusations without sufficient detail will not sustain a Complaint. *Sherman*
2 *Willoughby v. Clark County; Human Resources/Real Property Management*, Case No. A1-046030,
3 Item # 769 (2011). However, the Board finds that there are sufficient facts pled that justify having a
4 hearing on the personal discrimination claim.

5
6 Based on the foregoing, it is hereby **ORDERED** that Respondent's Motion to Dismiss is
7 **GRANTED IN PART and DENIED IN PART**.

- 8 a. The Complainant's Racial Discrimination Claims are hereby **DISMISSED WITHOUT**
9 **PREJUDICE** due to a lack of probable cause. Since the racial discrimination claim was
10 dismissed without prejudice, a new Complaint may be filed that contains sufficient facts to
11 support the inference that the alleged discriminatory conduct was a motivating factor in the
12 employer's decision. *Bisch v. Las Vegas Metropolitan Police Department*, 129 Nev. 328,
13 339 (2013).
- 14 b. The remainder of Respondent's Motion to Dismiss is hereby **DENIED** on the grounds set
15 forth herein.

16
17 Dated this 1st day of March 2024.

18
19 GOVERNMENT EMPLOYEE-
20 MANAGEMENT RELATIONS BOARD

21
22 BY: 
23 BRENT C. ECKERSLEY, Chair

FILED
March 1, 2024
State of Nevada
E.M.R.B.

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

EDWIN MARTIN,

Complainant,

v.

TRUCKEE MEADOWS FIRE PROTECTION
DISTRICT,

Respondent.

Case No. 2023-036

NOTICE OF ENTRY OF ORDER

TO: Complainant and their attorney, Ronald J. Dreher, Esq.; and
TO: Respondent and its attorneys, Christopher J. Hicks, Esq., Wade Carner, Esq., and Brandon Price, Esq. of the Washoe County Deputy District Attorney’s Office.

PLEASE TAKE NOTICE that the **ORDER ON RESPONDENT’S MOTION TO DISMISS COMPLAINT** was entered in the above-entitled matter on March 1, 2024.

A copy of said order is attached hereto.

DATED this 1st day of March 2024.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY 

BRUCE K. SNYDER, Commissioner

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 1st day of March 2024, I served a copy of the foregoing **NOTICE OF ENTRY**
4 **OF ORDER** by mailing a copy thereof, postage prepaid to:

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

8 Christopher J. Hicks, Esq.
9 Wade Carner, Esq.
10 Brandon Price, Esq.
11 Washoe County District Attorney's Office
12 One South Sierra St.
13 Reno, NV 89501

14 GOVERNMENT EMPLOYEE-MANAGEMENT
15 RELATIONS BOARD

16 BY Isabel Franco
17 ISABEL FRANCO
18 Administrative Assistant II
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1 Ronald J. Dreher
2 NV Bar No. 15726
3 P.O. Box 6494
4 Reno, NV 89513
5 Telephone: (775) 846-9804
6 ron@dreherlaw.net
7 *Attorney for Complainant*

8 **BEFORE THE STATE OF NEVADA**

9 **GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

10 EDWIN MARTIN,

11 Complainant,

Case No.: 2023-036

12 vs.

Panel:

13 TRUCKEE MEADOWS FIRE
14 PROTECTION DISTRICT,

15 Respondent.
16 _____/

17 **NOTICE**

18 Complainant, Edwin Martin, by and through his undersigned counsel, hereby notifies all
19 parties and counsel, that pursuant to the Board's Order on Respondent's Motion to Dismiss issued
20 on March 1, 2024, he does not intend on refile, amending or modifying his Complaint to include
21 the allegations related to racial discrimination. Mr. Martin will pursue his allegations of
22 discrimination based on personal reasons in violation of NRS 288.270(1)(f) as outlined in the
23 Complaint.

24 Complainant Edwin Martin hereby respectfully requests entry of an order requiring the
25 parties to file Prehearing Statements in accordance with NAC 288.250.
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Dated this 4th day of March, 2024.

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

CERTIFICATE OF SERVICE

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

Christopher Hicks
Washoe County District Attorney
Wade Carner, Esq.
Deputy District Attorney
Brandon Price, Esq.
Deputy District Attorney
One South Sierra St.
Reno, NV 89501
Attorneys for Respondent

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

Dated this 4th day of March, 2024.

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

CERTIFICATE OF SERVICE

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

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

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

Dated this 4th day of March, 2024.

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

1 CHRISTOPHER J. HICKS
Washoe County District Attorney
2 WADE CARNER
Bar Number 11530
3 BRANDON R. PRICE
Deputy District Attorney
4 Bar Number 11686
One South Sierra Street
5 Reno, NV 89501
wcarner@da.washoecounty.gov
6 brprice@da.washoecounty.gov
(775) 337-5700
7 ATTORNEYS FOR RESPONDENT
TRUCKEE MEADOWS FIRE PROTECTION DISTRICT

FILED
April 4, 2024
State of Nevada
E.M.R.B.
4:29 p.m.

8
9 **BEFORE THE EMPLOYEE MANAGEMENT RELATIONS BOARD**

10 **STATE OF NEVADA**

11 ***

12 EDWIN MARTIN,
Complainant,

Case No. 2023-036

13
14 v.

15 TRUCKEE MEADOWS FIRE
PROTECTION DISTRICT

16 Respondent.
17 _____/

18 **RESPONDENT’S PRE-HEARING STATEMENT**

19 Respondent Truckee Meadows Fire Protection District (“TMFPD”), by and through
20 their counsel, Deputy District Attorney, Wade Carner, and Deputy District Attorney, Brandon
21 Price, submits its Pre-Hearing Statement pursuant to NAC 288.250(1) and the Commissioner’s
22 Order filed on March 7, 2024.

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1 **I. STATEMENT OF FACTS**

2 Edwin Martin (“Martin”) is employed by Truckee Meadows Fire Protection District
3 (“TMFPD”) as an Engineer. On July 18, 2022, Martin was promoted to the rank of Captain,
4 pending successful completion of a one-year probationary period.

5 Martin failed to successfully complete his probationary period for various reasons.
6 During his probationary period, Martin received four performance evaluations dated October
7 15, 2022, January 20, 2023, April 12, 2023, and July 18, 2023. During Martin’s probationary
8 period he was able to complete the day-to-day tasks and operational aspects of the Captain
9 position, but he did not demonstrate qualities of a Captain. During the probationary period
10 Martin had interpersonal issues, communication problems, he demonstrated an inability to take
11 accountability for his mistakes, he lacked leadership qualities, and he lacked good judgment.

12 For the first evaluation after his promotion (October 15, 2022) Martin received an
13 overall rating of “meets expectations.” The evaluation noted that Martin “performs well and
14 applies common sense to most situations, displays good mechanical knowledge, and can fix
15 many small items around the station.” However, the evaluation did point out that Martin has an
16 asserted nature and commanding presence which can be viewed as offensive. Martin was
17 encouraged to soften his approach in selected situations when dealing with internal employees
18 and external customers. During the review period on September 16, 2022, Division Chief
19 Joseph Schum coached Martin about his communication skills after a citizen’s complaint that
20 Martin did not speak to the citizen in a professional and respectful manner. On October 15,
21 2022, Battalion Chief Ryan Rizzuto counseled Martin about an overly aggressive email that he
22 wrote that was not well received by the recipients.

23 Martin received an overall rating of “meets expectations” on his second performance
24 evaluation on January 20, 2023. At the time Martin was performing in a satisfactory manner
25 with respect to his job duties. However, the evaluation did point out that Martin’s interpersonal
26 skills needed to be improved on and he had issues dealing with emergency response situations

1 and external customers who call for service. In December of 2022 and January of 2023, Martin
2 had a personal conflict with Captain Noekeef Henry. Captain Henry tried to give Martin some
3 tips that were not well received by Martin. Martin was also abrupt in the way he communicated
4 with Captain Henry to the point where it negatively impacted their relationship. A conflict
5 developed between the two and Battalion Chiefs had to intervene. Captain Henry attempted to
6 discuss their relationship and patch things up, but Martin showed no interest in doing so.
7 Martin told Captain Henry he was moving stations in a few weeks, indicating there was no need
8 to address the situation. Nevertheless, Captain Henry reached out to Martin by email stating he
9 would like to build their relationship. Martin never responded.

10 Martin received an overall rating of “meets expectations” on his third performance
11 evaluation on April 12, 2023. The evaluation did point out that Martin needed to improve his
12 communication skills as he did continue to have issues communicating with external and
13 internal customers. On February 16, 2023, Martin made a comment on the radio during training
14 that could be interpreted as describing patients by their skin color. On March 7, 2023, Martin
15 received a written warning from Battalion Chief Chris Black regarding Martin’s use of language
16 that could be perceived as unprofessional and harassing/discriminatory in nature.

17 On his final evaluation on July 18, 2023, Martin received an overall evaluation of “does
18 not meet expectations” and received a score of 5.5 out of 10. The evaluation noted Martin
19 successfully completed day-to-day tasks and had a good understanding of operations and job
20 specific skills, but he was lacking in leadership skills, interpersonal skills, judgment, and the
21 desire to improve. Martin demonstrated a lack of judgment at times throughout the
22 probationary period. The evaluation pointed out that during the probationary period Martin had
23 been coached/counseled three times regarding problems communicating with people in a
24 professional manner in both written and verbal form. Martin showed an inability to take
25 responsibility for his actions or accept feedback or coaching during the probationary period.
26 Martin demonstrated an un-willingness to improve his inter-personal skills and to work

1 successfully with Captains at other stations, which is contrary to the values and mission of the
2 TMFPD. Martin was asked by supervisors what they could do to assist him in improving his
3 communications skills and he stated there was nothing they could do, and he would just keep
4 his mouth shut. The evaluation noted that Martin showed in inability to learn from his mistakes.
5 At times Martin told his supervisors there was nothing he could improve on. The evaluation
6 also noted that throughout the probationary period Martin placed his own needs before the
7 needs of internal and external customers. The evaluation noted that Martin had difficulty with
8 relationships with other officers and at one had a serious conflict with a Captain. It was also
9 noted that Martin's values and ethical standard did not align with the TMFPD.

10 During Martin's probationary period he was arrested for an off-duty incident. On
11 January 29, 2023, Martin was arrested and charged with domestic battery after he was involved
12 with a domestic dispute with his wife. Martin notified Deputy Chief Chris Ketring that he had
13 been arrested. Ultimately, the domestic violence charges against Martin were dismissed. In
14 May of 2023, Battalion Chief James Solaro heard a rumor that Martin had been arrested for
15 domestic violence. Concerned about Martin's welfare and the fact that the arrest could be
16 detrimental to TMFPD, he felt compelled to look into the matter. Chief Solaro contacted a
17 Captain who was affiliated with the Lyon County Sheriff's Office regarding the rumor, and he
18 was told that he was aware of the arrest, that Deputy Chief Ketring knew about it, and that it
19 was done. At that point, Chief Solaro dropped the matter and did not look into in any further.

20 On July 12, 2023, Fire Chief Charles Moore made the decision to not confirm Martin to
21 the position of Captain because Martin failed to successfully complete his probationary. Fire
22 Chief Moore's decision was based on Martin's interpersonal issues, his inability to take
23 accountability for his mistakes, his lack of leadership qualities, and his lack of judgment. Fire
24 Chief Moore's decision to not confirm Martin as a Captain was not based on Martin's arrest, or
25 for any personal reasons. Martin's failure to successfully complete his probationary period was
26 also not based on any personal dislike of him by Fire Chief Moore or Battalion Chief Solaro.

1 Contrary to the unsupported allegations in Martin’s Complaint, there is no evidence that
2 Martin’s rejection from probation was based on any personal animus against him. Instead, the
3 decision was based on legitimate non-discriminatory reasons.

4 On July 17, 2023, Martin made a complaint to Human Resources, alleging that the
5 decision to not confirm him to the position of Captain was based on discrimination and personal
6 reasons. He also alleged that Chief Solaro conducted an unauthorized investigation into his
7 arrest. TMFPD, through its Human Resources Department, retained the law firm of Simons
8 Hall Johnson PC to conduct an independent, fair, and impartial investigation into Martin’s
9 allegations. After completely a thorough investigation by interviewing several witnesses and
10 reviewing several documents, the firm concluded that Martin’s communication problems and
11 his failure to accept ownership and accountability were the reasons that he was not confirmed as
12 a Captain. The firm also concluded that Martin’s arrest and Solaro’s actions had no impact on
13 the decision to not confirm Martin as a Captain.

14 **II. STATEMENT OF ISSUES**

15 The sole issue for this hearing is whether the decision to not confirm Martin to the
16 position of Captain was based on personal discrimination in violation of NRS 288(1)(f). *See*
17 *Order on Respondent’s Motion to Dismiss Complaint*, pp. 2-4. Martin’s racial discrimination
18 claim has been dismissed by the Board. *Id.* at 3. The evidence presented at the hearing will
19 demonstrate at the decision at issue was based on legitimate non-discriminatory reasons.

20 **III. LEGAL ARGUMENT**

21 Martin has asserted a prohibited practice claim against TMFPD pursuant to NRS
22 288.270(1)(f) under the theory that he was subjected to discrimination because the decision to
23 not confirm him to the position of Captain was based on personal reasons.

24 Under NRS 288.270(1)(f) it is a prohibited labor practice for a local government
25 employer to willfully discriminate against an employee because of race or personal reasons.
26 Discrimination based on personal reasons occurs where an employer takes adverse action

1 against an employee for “non-merit-or-fitness factors” such the dislike of or bias against a
2 person which is based upon an individual's characteristics, beliefs, affiliations, or activities that
3 do not affect the individual’s merit or fitness for a particular job.” *Kilgore v. City of Henderson*,
4 Case No. A1-045763, Item No. 550H, 2015 WL 5638189, at *5-6 (2005). The clause
5 prohibiting discrimination for personal reasons in NRS 288.270(1)(f) “was not intended to
6 prohibit an employer from taking adverse action against an employee for issues that are related
7 to an employee’s fitness for a job or ability to perform a job.” *Shannon D'Ambrosio v. Las*
8 *Vegas Metropolitan Police Department*, Case Nos. A1-046119 and A1-046121 (Consolidated),
9 Item No. 808, 2015 WL 6168157, at *3 (2015).

10 Discrimination claims brought under NRS 288.270(1)(f) are generally analyzed under
11 the framework set forth in *Reno Police Protective Ass'n v. City of Reno*, 102 Nev. 98, 715 P.2d
12 1321 (1986) and later modified in *Bisch v. Las Vegas Metro Police Dep't*, 129 Nev. 328, 302
13 P.3d 1108 (2013). To establish a discrimination claim, the complainant must make prima facie
14 showing that the protected conduct or personal dislike was a motivating factor in the employer's
15 decision. *Nye County Law Enforcement Association, Complainant v. Nye County*, Case No.
16 2020-025, Item No. 872, 2021 WL 5493960, at *22 (2021) (emphasis added); *Bisch*, 129 Nev.
17 at 340, 302 F.3d at 116. Once this is established, the burden shifts to the employer to
18 demonstrate by a preponderance of the evidence that the same action would have taken place in
19 the absence of the protected conduct or personal dislike. *Id.* The employee may then present
20 evidence that the employer’s legitimate explanation is pretextual, thereby restoring the inference
21 of unlawful motivation. *Id.* Under the revised framework, “it is not enough for the employee to
22 simply put forth evidence that is capable of being believed; rather, this evidence must actually
23 be believed” *Id.* (emphasis added). Only upon meeting this burden of persuasion does the
24 burden of proof shift to the employer. *Id.*

25 Martin’s belief that the decision not to confirm him to the position of Captain was
26 motivated by personal reasons is nothing but a figment of his imagination. During the hearing,

1 TMFPD will present evidence establishing that the decision to not confirm Martin to the
2 position of Captain was based on legitimate non-discriminatory reasons. TMFPD will present
3 evidence demonstrating that Fire Chief Moore was the person who made the decision at issue
4 and that his decision was based on Martin's lack of interpersonal skills, his inability to take
5 accountability for his mistakes, his lack of leadership qualities, and his lack of judgment.
6 Martin will not be able to present any evidence that Fire Chief Moore or Battalion Chief Solaro
7 harbored a personal dislike for Martin. Martin's allegation that Fire Chief Moore and Battalion
8 Chief Solaro personally disliked him is meritless. Martin also will not be able to prove that the
9 promotional decision at issue was based on non-merit or fitness factors such as a dislike of or
10 bias against Martin based on his characteristics, beliefs, affiliations, or other activities that do
11 not affect Martin's ability to perform the duties as a Captain.

12 Even if Martin could produce evidence that Battalion Chief Solaro had a personal dislike
13 of Martin, any such evidence is insufficient to demonstrate the promotional decision was based
14 on discriminatory reasons because Battalion Chief's actions had no impact on the decision that
15 was made by Fire Chief Moore.

16 Additionally, a fair and impartial third party conducted an investigation into Martin's
17 allegations that the promotional decision was based on discriminatory and/or personal reasons
18 and the Investigator determined that there was no evidence to support the allegations. It was
19 further determined that Martin's arrest and Battalion Chief Solaro's actions had no impact on
20 the decision whatsoever. The Board has routinely rejected discrimination claims like Martin's
21 where the complainant cannot demonstrate that personal reasons were a motivating factor in the
22 employer's actions. *See Elko County Employees Association, Nevada Classified School*
23 *Employees and Public Workers Association Local 6181 v. Elko County*, Item No. 807, Case No.
24 A1-046068, 2015 WL 5638189, at *5 (2015) (finding that the association did not state a *prima*
25 *facie* case of discrimination based on personal reasons because personal reasons were not a
26 motivating factor in the employer's actions). Because Martin cannot prove that he was willfully

1 discriminated against because of personal reasons, his prohibited practice claim asserted under
2 288.270(1)(f) is without merit and fails as matter of law.

3 **IV. OTHER PROCEEDINGS**

4 To the undersigned's knowledge, there are no other pending or anticipated
5 administrative, judicial, or other proceedings related to the subject hearing.

6 **V. LIST OF POTENTIAL WITNESSES**

7 **1. Fire Chief Charles Moore.** Fire Chief Moore has been the Fire Chief for TMFPD since
8 2012. Fire Chief Moore made the decision to not confirm Martin to the position of
9 Captain. It is anticipated that Fire Chief Moore will testify regarding the reasons he
10 made the promotional decision at issue in this matter.

11 **2. Sandra Ketner, Esq.** Ms. Ketner is Of Counsel at the law firm of Simons Hall
12 Johnston P.C. Ms. Ketner has been a practicing attorney in Nevada since 2003. Ms.
13 Ketner practices employment law and represents clients in a wide variety of employment
14 matters including, personnel issues, harassment and discrimination, medical leave,
15 accommodations, wrongful termination, breach of contract, and workers safety.
16 Ms. Ketner was retained as an independent investigator to investigate the allegations of
17 discrimination by Edwin Martin. It is anticipated that Ms. Ketner will testify about her
18 investigation, her investigative conclusions, and the lack of evidence in support Martin's
19 allegations of discrimination.

20 **3. Deputy Chief Chris Ketring.** Deputy Chief Ketring is the Chief of Operations at
21 TMFPD. Deputy Chief Ketring has over 24 years of public service and has been the
22 Deputy Chief of TMFPD since 2022. It is anticipated that Deputy Chief Ketring will
23 testify about Martin's performance issues during his probationary period, the reporting
24 of Martin's arrest, the reasons why Martin was not confirmed to the position of captain,
25 and how Martin's arrest had nothing to do with the decision at issue in this matter.

26 ///

- 1 **4. Division Chief Joseph Schum.** Mr. Schum is employed as a Division Chief at TMFPD
2 and is the supervisor of Battalion Chief James Solaro. It is anticipated that Division
3 Chief Schum will testify about Martin’s performance issues during his probationary
4 period, about Martin’s arrest, about Martin’s complaint against Battalion Chief Solaro
5 and how the arrest had no impact on the promotional decision.
- 6 **5. Battalion Chief Ryan Rizzuto.** Chief Rizzuto is employed as a Battalion Chief for
7 TMFPD. Chief Rizzuto conducted Martin’s performance evaluation during his
8 probationary period. Chief Rizzuto also counseled Martin during his probationary
9 period regarding issues with his communication. It is anticipated Chief Rizzuto will
10 testify about Martin’s performance issues during his probationary period and attempts to
11 correct those performance issues.
- 12 **6. Battalion Chief Chris Black.** Chief Black is employed as a Battalion Chief for
13 TMFPD. Chief Black conducted Martin’s final performance evaluation during his
14 probationary period. It is anticipated Chief Rizzuto will testify about Martin’s
15 performance issues during his probationary period and attempts to correct those
16 performance issues.
- 17 **7. Battalion Chief James Solaro.** Chief Solaro is employed as a Battalion Chief for
18 TMFPD. Chief Solaro conducted Martin’s final performance evaluation during his
19 probationary period. It is anticipated Chief Solaro will testify about Martin’s
20 performance issues during his probationary period and attempts to correct those
21 performance issues, as well as him looking into Martin’s arrest.
- 22 **8. Carla Arribillaga.** Ms. Arribillaga is employed as the Human Resources Manager for
23 TMFPD. It is anticipated that Ms. Arribillaga will testify about Martin’s Complaint
24 about Chief Solaro, the steps TMFPD took to hire an independent investigator to
25 investigate his complaint, and the outcome of that investigation.

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9. Captain Noekeef Henry. Captain Henry is employed as a Captain of TMFPD. It is anticipated Captain Henry will testify about Martin’s performance issues during his probationary period, as well as how he was treated by Martin while he was on probation.

10. Engineer Edwin Martin. Martin is the Complainant in this matter and is anticipated to testify about the allegations in his Complaint and the facts and circumstances surrounding Fire Chief Moore’s decision to not confirm him to the position of Captain.

11. Any witnesses identified by Complainant, Edwin Martin.

VI. TIME NEEDED FOR PRESENTATION OF RESPONDENT’S CASE

It is anticipated that Respondent will need a total of three (3) hours to present their case.

DATED this 4th day of April, 2024.

CHRISTOHPER J. HICKS
Washoe County District Attorney

By /s/ Brandon Price
Wade Carner, Esq.
Deputy District Attorney
Brandon Price, Esq
ATTORNEYS FOR TRUCKEE MEADOWS
FIRE PROTECTION DISTRICT

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, a true and correct copy of the foregoing document was emailed to the following electronic mail address:

Employee Management Relations Board
emrb@business.nv.gov

Ronald J. Dreher, Esq.
ron@dreherlaw.net

Dated this 4th day of April, 2024.

/s/ N. Stapledon
N. Stapledon

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

FILED
April 4, 2024
State of Nevada
E.M.R.B.
4:48 p.m.

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BEFORE THE STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

EDWIN MARTIN,

Complainant,

Case No.: 2023-036

vs.

Panel:

TRUCKEE MEADOWS FIRE
PROTECTION DISTRICT,

Respondent.
_____/

COMPLAINT'S PREHEARING STATEMENT

COMES NOW, Complainant EDWIN MARTIN by and through his undersigned attorney, hereby files his Prehearing Statement in accordance with NRS 288.110 and NAC 288.250 as follows:

I. THE PARTIES

1. Complainant Edwin Martin, (hereinafter "Complainant" or "Engineer Martin"), is a firefighter employed by the Truckee Meadows Fire Protection District. He is a local government employee as defined in NRS 288.050.

2. Respondent Truckee Meadows Fire Protection District (hereinafter "Respondent" or "TMFPD"), is a local government employer as defined in NRS 288.060 and is comprised of local fire departments charged with providing fire protection and emergency medical services

1 in the unincorporated areas of Washoe County. TMFPD is made up of approximately 190
2 personnel to include firefighters.

3 **I. ISSUES OF FACTS TO BE DECIDED BY THE BOARD**

4 3. Whether on October 15, 2022, Engineer Martin received a “3-month Captain
5 Probationary” review in which he received meets or exceeds standards in every category
6 evaluated. Whether a comment in this evaluation stated that, “Captain Martin completes
7 required duties in the station and follows district policies.” Whether this evaluation rated
8 Engineer Martin as meeting requirements for his communication and establishing and
9 maintaining effective relationships with departmental personnel, public safety agencies, the
10 public, and others contacted in the course of work.

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13 4. Whether on January 20, 2023, Engineer Martin received a “6-month Captain
14 Probationary” review in which he received meets or exceeds standards in every category
15 evaluated. Whether a comment in this evaluation stated that, “Captain Martin reaches out with
16 questions as needed but requires little direction for day-to-day operations such as dail (sic)
17 checks, training and projects assigned.” Whether this evaluation rated Engineer Martin as
18 meeting requirements for his communication and establishing and maintaining effective
19 relationships with departmental personnel, public safety agencies, the public, and others
20 contacted in the course of work.

21
22 5. Whether on January 29, 2023, Engineer Martin was involved in an off-duty incident
23 that led to him being arrested, but this charge was later dismissed. Whether this incident
24 involved his employment at the TMFPD. Whether he followed current policy and reported the
25 incident to the on-duty Battalion Chief, Marty Johnson. Chief Johnson notified Deputy Chief
26 Ketring of the incident. Whether in a subsequent meeting, Deputy Chief Ketring stated to
27 Engineer Martin that this incident would not affect his job as it was outside of the scope of his
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1 employment. Further, Deputy Chief Ketring advised Engineer Martin that the incident would
2 remain confidential and not be shared within the department. Whether, despite Deputy Chief
3 Ketring's assurances that it would remain confidential, this incident was openly discussed in
4 many upper-level management meetings involving Deputy Chiefs, Battalion Chiefs and
5 Division Chiefs.

6
7 6. Whether on April 12, 2023, Engineer Martin received a "9-month Captain
8 Probationary" review in which he received meets or exceeds standards in every category
9 evaluated. Whether a comment in this evaluation stated that, "Captain Martin has in our time
10 together communicated well with me" and "[t]his communication has helped build our
11 relationship as new supervisor/employee." Whether, while it was noted in this evaluation that
12 Engineer Martin was expected to improve his verbal and written communication skills, the
13 criteria was to have no further reports of communication issues during the probationary period.
14 Whether, for the third time, this evaluation rated Engineer Martin as meeting requirements for
15 his communication and establishing and maintaining effective relationships with departmental
16 personnel, public safety agencies, the public, and others contacted in the course of work.
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19 7. Whether between April 12, 2023, and July 12, 2023, the end of Engineer Martin's
20 probationary period, he did not have any reports of communication issues. Whether during this
21 period, Engineer Martin was evaluated by Battalion Chiefs Christopher Black and James
22 Solaro.
23

24 8. Whether between April and June 2023, Chief James Solaro who, according to
25 Deputy Chief Ketring, should not have had any knowledge of the January 29, 2023, arrest,
26 conducted an unauthorized investigation into the January 29, 2023, incident. Whether Chief
27 Solaro, who has always demonstrated a personal dislike for Engineer Martin, used his position
28

1 as a Battalion Chief to obtain confidential information about Engineer Martin and to order
2 other firefighters to illegally obtain information about Engineer Martin.

3 9. Whether the “investigation” by Chief Solaro into Engineer Martin was authorized
4 by the TMFPD or the County and was undertaken due to Chief Solaro’s personal dislike for
5 Engineer Martin.

6
7 10. Whether, as part of the probationary period, Engineer Martin was required to
8 complete a reflection assignment in which he outlined the positive and negative experiences
9 he had while on probation. Whether Engineer Martin completed this on June 22, 2023, and
10 included his dissatisfaction with the manner in which he was coached and counseled, and how
11 this was done in contradiction with his experiences throughout his career to that point.
12 Whether he specifically noted that employees are afraid to have conversations regarding
13 conflict resolution for fear of being punished.

14
15 11. Whether on July 11, 2023, Engineer Martin met with Chief Black and Chief
16 Solaro to complete his final evaluation regarding his promotion to the rank of captain.
17 Whether inexplicably, and in direct contradiction with the three previous evaluations, Chief
18 Black, with Chief Solaro’s input, rated Engineer Martin as not meeting requirements for the
19 captain position. Whether, despite there having been no issues since the April 12, 2023,
20 evaluation, Engineer Martin was rated as not meeting expectations in the categories of
21 Accountability, Continuous Learning, Communication Skills, Customer Service, Personal
22 Relationships, Ethics and Integrity, Organizational Knowledge, Decision Making, Developing
23 Organizational Talent, Leading and Inspiring Others, and Values and Leverages Diversity.
24 Whether Chiefs Black and Solaro advised Engineer Martin that he would not be promoted to
25 captain on a permanent basis as he did not successfully pass the probation period.
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1 12. Whether all the above noted below standard ratings contradict the three previous
2 evaluations and are not based on merit and fitness standards. Whether, as noted in the “Ethics
3 and Integrity” section of the final evaluation, the personal dislike for Engineer Martin is
4 apparent in that it states, “Ed has demonstrated through this probationary period that his values
5 and personnel ethics may not be in alignment with the District.” Whether this finding is based
6 on any documentation or performance outlined in the three previous evaluations. Whether the
7 final evaluation clearly states that, “Ed meets expectations regarding job specific
8 requirements.” Whether the failure to promote Engineer Martin and the ratings in the final
9 evaluation were based on personal reasons only and in retaliation for expressing his views of
10 what occurred during his probationary period.
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13 13. Whether, at the conclusion of this meeting, Chief Solaro followed Engineer Martin
14 into the hallway and whispered threateningly to Engineer Martin that he looked forward to
15 another conversation with him. Whether this comment was threatening, intimidating, and more
16 evidence of Chief Solaro’s obvious personal dislike for Engineer Martin.
17

18 14. Whether, prior to his probationary year, and during his entire 18-year career in the
19 fire service, Engineer Martin had ever received any discipline or any below standard
20 evaluation.
21

22 15. Whether, on July 11, 2023, Engineer Martin sent an email to Chief Black
23 recounting the conversation they had during and after the above noted meeting.
24

25 16. Whether on July 12, 2023, Engineer Martin sent the record of the conversation
26 with Chief Black to Human Resources, (“HR”), representative Carla Arribillaga.
27

28 17. Whether, on September 27, 2023, Engineer Martin received a “summary and
conclusion” of the investigation completed into his complaints. Whether this investigation
substantiated that Chief Solaro had indeed conducted an unauthorized investigation into

1 Engineer Martin and that Chief Solaro had violated Policy P201.0, Conduct and Expectations.

2 Whether Chief Solaro received discipline for these actions.

3 18. Whether, due to Chief Solaro conducting this “investigation,” multiple members
4 of the TMFPD have contacted Engineer Martin regarding the January 29, 2023, incident and
5 have made unfounded and false conclusions against Engineer Martin resulting in a negative
6 work environment for Engineer Martin.

7
8 19. Whether, on November 20, 2023, Engineer Martin received unequivocal notice of
9 the refusal to promote him retroactively to July 14, 2023, to the position of captain in the form
10 of a letter from Deputy Chief Ketring.

11 20. Whether Respondent discriminated against Complainant for personal reasons.

12
13 **II. ISSUES OF LAW TO BE DECIDED BY THE BOARD**

14 21. Whether this Board has jurisdiction over this matter as Complainant’s allegations
15 arise under Nevada Revised Statute Chapter 288 - Relations between Government and Public
16 Employees.

17
18 22. Whether Respondent’s actions and inactions in this matter constitutes prohibited
19 practices under Chapter 288 of the Nevada Revised Statutes.

20 23. Whether Respondent’s actions and inactions in this matter violated NRS
21 288.270(1)(f) and constitutes discrimination for personal and/or political reasons.

22
23 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

24 **a. Legal Authority**

25 A claim of discrimination based on personal and/or political reasons that is brought
26 under NRS 288.270(1)(f) is examined applying the burden shifting framework set forth in
27 *Reno Police Protective Ass'n v. City of Reno*, 102 Nev. 98, 715 P.2d 1321 (1986). This burden
28 shifting framework was later modified in *Bisch v. Las Vegas Metro Police Dep't*, 129 Nev.

1 Adv. Op. 36,302 P.3d 1108 (2013) and reiterated in *Bonner v. City of N. Las Vegas*, EMRB
2 Item 820, Case No. 2015-027 (2017). An employee making a claim under this statute must
3 make “a *prima facie* showing sufficient to support the inference case that the protected
4 conduct was a motivating factor in the employer's decision.” *Bisch*, 302 P .3d at 1116. Once
5 the employee has established this showing, the “burden then shifts to the employer to
6 demonstrate by a preponderance of the evidence that the same action would have taken place
7 even in the absence of the protected conduct.” *Id.* The employee making the claims “may then
8 offer evidence that the employer's proffered legitimate explanation is merely pretextual and
9 thus conclusively restore the inference of unlawful motivation.” *Id.* As noted, this same
10 framework applies to claims brought under NRS 288.270(1)(d), which includes claims of
11 discrimination for having chosen to be represented by an employee organization.
12
13

14 **b. Claims under NRS 288.270(1)(f).**

15 Applying the *RPPA/Bisch* burden shifting framework to the claims brought forth by
16 Engineer Martin it is obvious that he has established a *prima facie* case for discrimination
17 based on personal and/or political reasons.
18

19 The Board has previously defined discrimination for personal reasons and/or political
20 reasons as including "non-merit-or-fitness factors and would include the dislike of or bias
21 against a person which is based upon an individual's characteristics, beliefs, affiliations, or
22 activities that do not affect the individual's merit or fitness for a particular job." *Kilgore v.*
23 *City of Henderson*, Item No. 550H, EMRB Case No. A1-045763 (2005).
24

25 As detailed in the Complaint, Engineer Martin received standard or above ratings in
26 the three evaluations he received during the probationary period. (Compl. at ¶¶ 7-8, 10.) For
27 the final quarter of his probationary period, the evaluators changed to Chief James Solaro and
28 Chief Christopher Black. *Id.* at ¶ 11. Upon information and belief, Chief Solaro's personal

1 animus toward Engineer Martin was determining factor in Engineer Martin not being
2 confirmed to the position of captain. *Id.* at ¶¶ 12-18. This was verified by the fact that Chief
3 Solaro was found to have violated policy by conducting an unauthorized investigation into
4 Engineer Martin’s non-work related arrest for which all charges were dismissed. *Id.* at ¶ 24. In
5 fact, the reasons offered for Engineer Martin’s “failure” to pass his probationary period were
6 never documented in the previous evaluations. These reasons, focusing on communication, are
7 extremely subjective and are seemingly based on the personal feelings of the evaluators and
8 are not based in fact. This is clearly demonstrated in the three previous evaluations where
9 Engineer Martin is given meets expectations in his ability to “[c]ommunicate in a clear,
10 concise manner both orally and in writing, tailoring the message the intended audience;”
11 Engineer Martin did not have any communication issues between his third evaluation and the
12 final evaluation, and the only thing that changed was the individuals conducting the
13 evaluation. Thus, the evidence clearly supports Engineer Martin’s promotion to captain was
14 not confirmed for non-merit or fitness factors. *Kilgore*, Item No. 550H.

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18 Having established a *prima facie* case, the burden now shifts to Respondents to show
19 they would have taken the same actions despite the protected class and activities. *Bisch*, 302 P
20 .3d at 1116. Respondent cannot show that they would have taken the same action against
21 Engineer Martin if it were not for the personal animus against him. This is clearly illustrated in
22 the evaluations throughout Engineer Martin’s probationary period. Rather, the claims in the
23 final evaluation were based on non-merit or fitness factors as Engineer Martin demonstrated
24 he had met all merit and fitness factors necessary to obtain, and remain, in the position of
25 Captain. Thus, the reasons given for not confirming Engineer Martin into the position of
26 Captain were pretextual.
27
28

1 **IV. NAC 288.250(1)(c) STATEMENT**

2 Complainant is not aware of any other outstanding, pending or anticipated judicial or
3 administrative hearings related to this matter except as noted herein.

4 **V. LIST OF POTENTIAL WITNESSES**

5 A. Edwin Martin - Complainant. Engineer Martin is expected to testify to his
6 knowledge of the facts and circumstances surrounding the FAC and the actions and inactions
7 taken by the Respondent during the time periods encompassed in the FAC.

8 B. All witnesses identified by the Respondent.

9 C. Additional witnesses may be supplemented based on newly developed
10 information.

11 **VI. ESTIMATED TIME**

12 Complainant estimates that it will need ten (6) hours to present its position.

13 **VII. CONCLUSION**

14 The Complaint was made under NRS Chapter 288, alleging violation of this Chapter,
15 and the Board is the only available remedy for these claims and these claims are in the Board's
16 exclusive jurisdiction. Engineer Martin has met his burden under the *RPPA/Bisch* burden
17 shifting frameworks and has demonstrated why the Respondents' reasons for its decisions
18 were pretextual, discriminatory, and motivated by non-merit or fitness factors.
19

20 THEREFORE, Complainant prays for relief as follows:

- 21 a. A finding that the conduct of Respondent as referenced herein constitutes
22 prohibited practices under Chapter 288 of the Nevada Revised Statutes;
23
24 b. A finding that Respondent discriminated against Complainant for personal
25 reasons;
26
27 c. An order requiring Respondent to cease in violating NRS 288.270;
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- d. An order requiring Respondent to promote Complainant to the rank of captain, to include all pay and benefits, retroactive to July 14, 2023;
- e. An order requiring Respondent to pay the Complainant’s reasonable attorney and representatives’ fees and expenses in bringing this action; and
- f. Any and all other relief that the Employee Management Relations Board deems appropriate.

Dated this 4th day of April, 2024.

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

CERTIFICATE OF SERVICE

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

Christopher J. Hicks
Washoe County District Attorney
Wade Camer, Esq.
Deputy District Attorney
Brandon Price, Esq
Deputy District Attorney
One South Sierra St.
Reno, NV 89501
Attorneys for Respondent

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

Dated this 4th day of April, 2023.

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

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CERTIFICATE OF SERVICE

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

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

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

DATED this 4th day of April, 2024.

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