

Case No. 2025-013

Hector Villa v. HPOA

FILED  
July 11, 2025  
State of Nevada  
E.M.R.B.  
7:43 p.m.

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**STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD**

HECTOR VILLA,

Case No.: **2025-013**

Complainant

**PROHIBITED LABOR  
PRACTICES COMPLAINT**

vs.

HENDERSON POLICE OFFICER'S  
ASSOCIATION (HPOA)

[Expedited Hearing Requested Pursuant  
to NRS 288.280]

Respondent

HECTOR VILLA, by and through the undersigned counsel, hereby files this  
Complaint pursuant to Chapter 288 of the Nevada Revised Statutes and NAC 288.200.

**I. FACTS**

1. Complainant, Officer Hector Villa ("Officer Villa"), is a Latino Police Officer  
with the Henderson Police Department, where he has been employed for almost 16 years.

2. Officer Villa is a member of the Henderson Police Officers' Association  
("HPOA").

**Officer Villa Speaks Out Against and Reports a Racist Officer**

3. Officer Villa repeatedly observed fellow HPD Officer Kevin LaPeer ("Officer  
LaPeer") break department policies, and in turn reported this misconduct to HPD Internal  
Affairs.

4. Officer Villa reported to HPD Internal Affairs that Officer LaPeer used the "N  
word" during a June, 2021, crime scene investigation.

1        5. Officer Villa reported to HPD Internal Affairs that Officer LaPeer verbally  
2 expressed his desire to have all the “fucking Mexicans” killed in front of multiple witnesses  
3 in Fall 2021.

4        6. Officer Villa reported to HPD Internal Affairs that Officer LaPeer urinated on a  
5 suspect’s personal property during the execution of a search warrant after Officer LaPeer  
6 told him on multiple occasions that he did so.

7        7. HPD investigated LaPeer and in a memo about the case, HPD found that Officer  
8 LaPeer broke department policies a dozen times, including those that ban workplace  
9 harassment or discrimination, untruthfulness, and prejudice.

10       8. After pressure from members of the HPOA, Officer LaPeer was reinstated.

11       9. On March 2, 2023, Officer Villa sent emails to fellow HPD officers and Henderson  
12 City officials regarding minority officers’ hesitance to speak out, and further instances of  
13 Officer LaPeer using demeaning language toward an Asian-American colleague.

14       10. On April 18, 2023, Officer Villa filed an Employee Complaint Form after he was  
15 removed from his specialized assignment and demoted, which referenced Officer LaPeer’s  
16 discriminatory and racist conduct.

17       11. On December 11, 2023, the Las Vegas Review-Journal published a news article  
18 about the HPD Internal Affairs investigation into Officer LaPeer’s conduct.

19       12. HPOA leadership and members are aware of Officer Villa’s decisions to speak out  
20 against Officer LaPeer, which is a matter of public record, and have expressed (and  
21 continued to express) hostility towards Officer Villa for speaking out.

22       **Officer Villa’s Recent Grievance**

23       13. In January 2024, Officer Villa, along with approximately 20 other officers, applied  
24 for the specialized position of Backgrounds Investigator.

25       14. After participating in the oral board interviews, the position was awarded to  
26 Officer Meyers.

27       15. It was common knowledge through news articles that officer Meyers had recently  
28 been involved in the coverup of a DUI accident involving her friend and fellow officer, and

1 she had subsequently been placed on probation until May 2024. Three level 2 or higher  
2 policy violations were sustained against Officer Meyers.

3 16. Per HPD specialized assignment policy, as well as the job posting requirements,  
4 being on probation and being sustained on two or more level 2 or higher policy violations  
5 disqualifies officers for applying for a specialized assignment.

6 17. Officer Villa complained to the union and to supervisors about the specialized  
7 assignment being awarded to an officer on probation in violation of policy.

8 18. Initially, union leadership and supervisors advised him that Officer Meyers was  
9 not on probation, which was contrary to the news stories and released public records  
10 showing she was in fact placed on probation.

11 19. In March 2024, Officer Villa submitted a grievance with the HPD for the policy  
12 violations in the awarding of the specialized assignment to the disqualified Officer Meyers.

13 20. The grievance was denied with the union leadership again stating that Officer Villa  
14 was unable to provide evidence of Officer Meyers being on probation.

15 21. In August 2024, Officer Villa obtained a copy of a memo that showed Officer  
16 Meyers was placed on 1 year probation and was sustained on three level 2 or higher policy  
17 violations and provided the memo the union grievance committee.

18 22. This memo was a public record which had also been released to the media.

19 23. At this stage, the HPOA approved Officer Villa's grievance.

20 24. However, Officer Villa started receiving pushback from HPOA union leadership  
21 stating they did not want to pursue the grievance further because he had complained about  
22 Officer LaPeer and because the HPOA did not believe his complaints.

23 25. The HPOA told Officer Villa that it "owned" the grievance and decided what  
24 happened.

25 26. Via the HPOA email listserv, Officer Villa raised concerns about the HPOA's  
26 refusal to proceed to arbitration and shared information with other HPOA members to  
27 promote transparency about the promotion process as well as the union's handling of the  
28 grievance.

### HPOA Termination

27. Ever since Officer Villa spoke out against a racist fellow officer, the HPOA has engaged in a campaign of harassment against him.

28. Specifically, Andrew Regenbaum, HPOA's Executive Director and Chief Negotiator, publicly criticized Officer Villa by questioning his credibility without any proof.

29. Regenbaum also told Officer Villa that Regenbaum refused to help Officer Villa with his grievances because of what Officer Villa said about Officer LaPeer.

30. Eventually, leadership initiated a pretextual investigation against Officer Villa.

31. Officer Villa was not personally notified of this investigation and allegations and only found out after the investigation was complete at the time everyone found out when it was emailed to the membership.

32. On January 11, 2025, the HPOA revoked Officer Villa's membership.

## **II. ARGUMENT**

### **A. Applicable Law**

33. As the exclusive bargaining agent for officers working at the Henderson Police Department, the HPOA has a duty to fairly represent its members. *See Rosequist v. Int'l Ass'n of Firefighters Local 1908*, 118 Nev. 444, 449, 49 P.3d 651, 654 (2002), overruled on other grounds by *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 170 P.3d 989 (2007).

34. Under the doctrine of the duty of fair representation, the law requires that when a union represents or negotiates on behalf of the employees in its bargaining unit, it must conduct itself in a manner that is not "arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 191 (1967).

35. For instance, in *George v. Las Vegas Police Protective Association Metro, Inc.*, Item No. 485A, EMRB Case No. A1-045693 (2001), the union refused to proceed on a grievance filed by one of its members, Ginger L. George, a Las Vegas City Corrections Officer who was denied reasonable accommodations for her workplace injuries. The EMRB concluded that the LVPPA violated its duty of fair representation and awarded her back pay and attorney's fees and costs.

1 36. Pursuant to NRS 288.270(2), as an employee organization<sup>1</sup>, the HPOA cannot:

2 (a) Interfere with, restrain or coerce any employee in the exercise of  
3 any right guaranteed under this chapter

4 (b) Refuse to bargain collectively in good faith with the local  
5 government employer, if it is an exclusive representative, as  
6 required in NRS 288.150

7 (c) Discriminate because of race, color, religion, sex, age, physical  
8 or visual handicap, national origin or because of political or personal  
9 reasons or affiliations.

10 37. Thus, the HPOA is required by law to apply its policies and procedures in a fair  
11 and consistent manner towards all members within the bargaining unit—and cannot  
12 discriminate against a Latino officer for speaking out against racism within the HPD or  
13 because of his political actions, including his advocacy within the union.

14 38. The HPOA is prohibited by law to engage in impermissible disparate treatment  
15 towards employees within the same bargaining unit. *Spannbauer v. City of North Las Vegas*,  
16 Item No. 636C, EMRB Case No. A1-045885 at 17 (2008).<sup>2</sup>

17 39. The HPOA is also prohibited from punishing members from speaking out on  
18 matters of public concern. *See* NRS 288.270(2)(c); *see also* *Madison School Dist. v. WERC*,  
19 429 U.S. 167 (1976).<sup>3</sup>

20 40. Union members' free speech rights extend to criticizing the HPOA, its leadership,  
21 and actions.

22 41. The HPOA is also prohibited from acting in bad faith and from acting dishonestly.  
23 For example, in *Humphrey v. Moore*, 375 U.S. 335, 347-348 (1964), the Supreme Court of

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24 <sup>1</sup> *See* NRS 288.040.

25 <sup>2</sup> Further, discrimination that is intentional, severe, and unrelated to  
26 legitimate union objectives is impermissible *Amalgamated Association of Street, Electric  
27 Railway and Motor Coach Employees of America, etc. v. Lockridge*, 403 U.S. 274, 301  
(1971).

28 <sup>3</sup> *Cf.* 29 U.S.C.A. § 411 (providing in part: "Every member of any labor organization shall  
have the right to meet and assemble freely with other members; and to express any views,  
arguments, or opinions; and to express at meetings of the labor organization his views, upon  
candidates in an election of the labor organization or upon any business properly before the  
meeting, subject to the organization's established and reasonable rules pertaining to the  
conduct of meeting.") The EMRB often looks to federal law and NLRB precedent.

1 the United States established that a union's actions are in bad faith if the complainant  
2 presents "substantial evidence of fraud, deceitful action or dishonest conduct by the union."

3 42. Moreover, the HPOA does not have authority to eject members: the HPOA  
4 Collective Bargaining Agreement provides that "HPOA membership shall be at the sole  
5 discretion of the employee." Article 4, Section 1.<sup>4</sup>

6 43. Moreover, union members have due process rights that preclude being  
7 impermissibly ejected and, again, unions cannot interfere with union members' rights to  
8 engage in free debate. *See, e.g., Mitchell v. International Association of Machinists*, 196  
9 Cal. App. 2d 903, 16 Cal. Rptr. 813 (1961), petition for hearing denied, No. 24913, Cal.  
10 Sup. Ct. (1962).

11 **B. Application of the Law to this Matter.**

12 44. The HPOA failed to assist Officer Villa with arbitration without a permissible  
13 reason and thus breached its duty of fair representation.

14 45. The HPOA also ejected Officer Villa from the HPOA in violation of the law.

15 46. The HPOA did not have legitimate reasons to refuse to assist Officer Villa with  
16 his grievance and proceed to arbitration.

17 47. Likewise, the HPOA did not have legitimate reasons to eject Officer Villa from  
18 membership.

19 48. Instead—as the facts above illustrate—the HPOA (and its leadership) not only  
20 breached its duty of fair representation to Officer Villa, it has engaged in impermissible  
21 discriminatory and retaliatory conduct—and dishonest conduct.

22 49. The HPOA has also violated Officer Villa's due process rights through its  
23 investigation of him and by ejecting him from the union.

24 50. Indeed, the HPOA has been hostile to and retaliated against Officer Villa because  
25 he raised legitimate concerns by reporting Officer LaPeer's racist and inappropriate  
26 conduct.

27  
28 <sup>4</sup> [https://emrb.nv.gov/uploadedFiles/emrbnv.gov/content/Resources/police/HPOA%20-  
%20Collective%20Bargaining%20Agreement%20\(Exp.%2006-30-20\).pdf](https://emrb.nv.gov/uploadedFiles/emrbnv.gov/content/Resources/police/HPOA%20-%20Collective%20Bargaining%20Agreement%20(Exp.%2006-30-20).pdf)

1        51. The HPOA has also retaliated against Officer Villa for advocating that HPOA not  
2 take further action (*i.e.*, pursue arbitration on his behalf) on his grievance regarding the  
3 promotion of Officer Meyers over Officer Villa (and other officers), even though she was  
4 on probation and had three level 2 violations sustained against her, in violation of HPD  
5 Policy (DP100).

6        52. The facts of this case are more drastic than those of *Fraley v. City of Henderson*,  
7 Item No. 547 at 25, EMRB Case No. A1-045756 (2004), where the union engaged in  
8 discriminatory conduct by refusing to proceed on an officer's grievances solely based on  
9 political reasons and affiliations.

10       53. Here, the HPOA not only refused to assist Officer Villa because of, *inter alia*, its  
11 dislike of the actions he took to speak out against racism within HPOA, it then ejected him  
12 for that reason and as punishment for Officer Villa's speaking out when it do so, *i.e.* on  
13 matters of public interest and for criticizing the HPOA.

### 14       **III. RELIEF REQUESTED**

15       Officer Villa requests that the EMRB issue an order and provide all appropriate  
16 relief, including but not limited to:

- 17           1)       Requiring the HPOA to reinstate Officer Villa;
- 18           2)       Directing the HPOA to cease and desist its breach of the duty of fair  
19 representation to Officer Villa;
- 20           3)       Compelling the HPOA post a notice on its breach of the duty of fair  
21 representation in conspicuous places; and
- 22           4)       Requiring the HPOA to reimburse Officer Villa's reasonable attorney's  
23 fees and costs.

24       DATED this the 11<sup>th</sup> day of July, 2025.

25  
26           /s/ Margaret A. McLetchie

27           MARGARET A. MCLETSCHIE, Nevada Bar No. 10931

28           MCLETSCHIE LAW

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HPOA (Respondent)

Answer to Complaint

FILED  
August 8, 2025  
State of Nevada  
E.M.R.B.  
2:28 p.m.

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**GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**  
**STATE OF NEVADA**

HECTOR VILLA

Complainants

vs

HENDERSON POLICE OFFICER'S  
ASSOCIATION (HPOA)

Respondents

CASE NO: 2025-013

ANSWER TO PROHIBITED  
LABOR PRACTICE COMPLAINT

COMES NOW, Complainants, HENDERSON POLICE OFFICER'S ASSOCIATION  
(hereby "THE ASSOCIATION"), a local government employee organization, and the  
Associations' named and unnamed affected members, by and through their undersigned counsel,  
CHRISTOPHER CANNON, ESQ., of the NEVADA ASSOCIATION OF PUBLIC SAFETY  
OFFICERS (hereby "NAPSO"), and hereby answer to Complaint filed by HECTOR VILLA. The  
Association answers as follows:

1  
2 1. Answering paragraph 1, the Association is without the necessary information and  
3 beliefs to determine the truth and falsity of the claim made by the Complainant.

4 2. Answering paragraph 2, the Association denies any and all allegation contained  
5 within it.

6 3. Answering paragraph 2, the Association denies having knowledge that Officer  
7 LaPeer "broke" Department policies but admits that the Complainant reported the alleged  
8 misconduct to the Henderson Police Internal Affairs Bureau.

9 4. .Answering paragraph 4, the Association is without the necessary information and  
10 beliefs to determine the truth and falsity of the claim made by the Complainant.

11 5. Answering paragraph 5, the Association is without the necessary information and  
12 beliefs to determine the truth and falsity of the claim made by the Complainant.

13 6. Answering paragraph 6, the Association is without the necessary information and  
14 beliefs to determine the truth and falsity of the claim made by the Complainant.

15 7. Answering paragraph 7, the Association is without the necessary information and  
16 beliefs to determine the truth and falsity of the claim made by the Complainant.

17 8. Answering paragraph 8, the Association denies any and all allegation contained  
18 within it.

19 9. Answering paragraph 9, the Association admits that the Complainant wrote e-  
20 mails to other officers of the Henderson Police Department and officials of the City, but the  
21 Association is without the necessary information and beliefs to determine the truth and falsity of  
22 the remainder of the claim made by the Complainant.

23 10. Answering paragraph 10, the Association is without the necessary information and  
24 beliefs to determine the truth and falsity of the claim made by the Complainant.

25 11. Answering paragraph 11, the Association admits that the Review Journal  
26 published an article about the internal investigation into Officer LaPeer.

27 12. Answering paragraph 12, the Association denies any and all allegation contained  
28 within it.

1           13.     Answering paragraph 13, the Association is without the necessary information and  
2 beliefs to determine the truth and falsity of the claim made by the Complainant.

3           14.     Answering paragraph 14, the Association admits to the allegations contained  
4 within it.

5           15.     Answering paragraph 15, the Association denies any and all allegation contained  
6 within it.

7           16.     Answering paragraph 16, the Association denies any and all allegation contained  
8 within it, due to the form of the allegation presented.

9           17.     Answering paragraph 17, the Association is without the necessary information and  
10 beliefs to determine the truth and falsity of the claim made by the Complainant.

11          18.     Answering paragraph 18, the Association denies any and all allegation contained  
12 within it.

13          19.     Answering paragraph 19, the Association admits to the allegations contained  
14 within it.

15          20.     Answering paragraph 20, the Association denies any and all allegation contained  
16 within it.

17          21.     Answering paragraph 21, the Association is without the necessary information and  
18 beliefs to determine the truth and falsity of the claim made by the Complainant.

19          22.     Answering paragraph 22, the Association is without the necessary information and  
20 beliefs to determine the truth and falsity of the claim made by the Complainant.

21          23.     Answering paragraph 23, the Association denies any and all allegation contained  
22 within it, due to the form of the allegation presented.

23          24.     Answering paragraph 24, the Association denies any and all allegation contained  
24 within it.

25          25.     Answering paragraph 25, the Association denies any and all allegation contained  
26 within it, due to the form of the allegation presented.

27          26.     Answering paragraph 26, the Association is without the necessary information and  
28 beliefs to determine the truth and falsity of the claim made by the Complainant.

1           27.     Answering paragraph 27, the Association denies any and all allegation contained  
2 within it.

3           28.     Answering paragraph 28, the Association denies any and all allegation contained  
4 within it.

5           29.     Answering paragraph 29, the Association denies any and all allegation contained  
6 within it.

7           30.     Answering paragraph 30, the Association denies any and all allegation contained  
8 within it.

9           31.     Answering paragraph 31, the Association denies any and all allegation contained  
10 within it.

11           32.     Answering paragraph 32, the Association admits the allegation.

12           33.     Answering paragraph 33, the Association recognizes that this is a matter of law,  
13 and prior legal precedent.

14           34.     Answering paragraph 34, the Association recognizes that this is a matter of law,  
15 and prior legal precedent.

16           35.     Answering paragraph 35, the Association recognizes that this is a matter of law,  
17 and prior legal precedent.

18           36.     Answering paragraph 36, the Association recognizes that this is a matter of law,  
19 and prior legal precedent.

20           37.     Answering paragraph 37, the Association denies any and all allegation contained  
21 within it.

22           38.     Answering paragraph 38, the Association recognizes that this is a matter of law,  
23 and prior legal precedent.

24           39.     Answering paragraph 39, the Association recognizes that this is a matter of law,  
25 and prior legal precedent.

26           40.     Answering paragraph 40, the Association is without the necessary information and  
27 beliefs to determine the truth and falsity of the claim made by the Complainant.

28

1           41.     Answering paragraph 41, the Association denies any and all allegation contained  
2 within it.

3           42.     Answering paragraph 42, the Association denies any and all allegation contained  
4 within it.

5           43.     Answering paragraph 43, the Association denies any and all allegation contained  
6 within it.

7           44.     Answering paragraph 44, the Association denies any and all allegation contained  
8 within it.

9           45.     Answering paragraph 45, the Association denies any and all allegation contained  
10 within it.

11          46.     Answering paragraph 46, the Association denies any and all allegation contained  
12 within it.

13          47.     Answering paragraph 47, the Association denies any and all allegation contained  
14 within it.

15          48.     Answering paragraph 48, the Association denies any and all allegation contained  
16 within it.

17          49.     Answering paragraph 49, the Association denies any and all allegation contained  
18 within it.

19          50.     Answering paragraph 50, the Association denies any and all allegation contained  
20 within it.

21          51.     Answering paragraph 51, the Association denies any and all allegation contained  
22 within it.

23          52.     Answering paragraph 52, the Association denies any and all allegation contained  
24 within it.

25          53.     Answering paragraph 53, the Association denies any and all allegation contained  
26 within it.

27

28

1 **AFFIRMATIVE DEFENSES**

2 This answering Defendant affirmatively alleges that they have not had a reasonable  
3 opportunity to complete discovery and facts hereinafter may be discovered which may  
4 substantiate other affirmative defenses not listed below. By this Answer, this answering  
5 Defendant waives no affirmative defense and reserves its right to amend its Answer to insert  
6 any subsequently discovered affirmative defenses.

7  
8 **FIRST AFFIRMATIVE DEFENSE**

9 Plaintiff's Complaint fails to state a claim upon which relief can be granted.  
10

11 **SECOND AFFIRMATIVE DEFENSE**

12 The incident or incidences alleged in Plaintiff's Complaint, the resulting damages, if any,  
13 to Plaintiff, were proximately caused or contributed to by the Plaintiff's own comparative  
14 negligence, and such comparative negligence, was greater than the comparative negligence, if  
15 any of this answering Defendant.  
16

17 **THIRD AFFIRMATIVE DEFENSE**

18 Plaintiff has, through his own actions and/or omissions, failed to mitigate his  
19 alleged damages.  
20

21 **FOURTH AFFIRMATIVE DEFENSE**

22 All of the alleged conditions on the premises of this answering Defendant as described  
23 in Plaintiff's Complaint were open and obvious, and Plaintiff, who knew or should have known  
24 of their existence, assumed and voluntarily consented to such risk and dangers incident thereto.  
25  
26  
27  
28



1 FIFTH AFFIRMATIVE DEFENSE

2 The occurrence referred to in Plaintiff's Complaint, and all injuries and  
3 damages, if any, resulting therefrom were caused by the acts or omissions of a third party over  
4 whom this answering Defendant had no control.  
5

6 SIXTH AFFIRMATIVE DEFENSE

7 That the damage sustained by Plaintiff, if any, were caused by the acts of third persons  
8 who were not acting as agents, servants, or employees of this answering Defendant and who  
9 were not acting on behalf of this answering Defendant in any manner or form and as such, this  
10 Defendant is not liable in any manner to Plaintiff.  
11

12 SEVENTH AFFIRMATIVE DEFENSE

13 Any damage which Plaintiff have alleged in the instant matter are speculative in nature  
14 and therefore, not recoverable.  
15

16 EIGHTH AFFIRMATIVE DEFENSE

17 Any negligence by this answering Defendant, if any exists at all, was not the proximate  
18 cause of injury or damages to Plaintiff.  
19

20 NINTH AFFIRMATIVE DEFENSE

21 At all relevant times mentioned in Plaintiff's Complaint, this answering  
22 Defendant was acting in the good faith belief their actions were legally justified.  
23

24 ELEVENTH AFFIRMATIVE DEFENSE

25 That it has been necessary for this answering Defendant to employ the services of an  
26 attorney to defend this action and a reasonable sum should be allowed the Defendant as and  
27 for attorney's fees, together with costs extended in this action.  
28

1 TWELFTH AFFIRMATIVE DEFENSE

2 The claims are barred by the expiration of the limitation period.

3  
4 THIRTEENTH AFFIRMATIVE DEFENSE

5 Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged  
6 herein insofar as insufficient facts were not available after reasonable inquiry upon the filing  
7 of Plaintiff's Complaint, and therefore, this answering Defendant reserves the  
8 right to amend its Answer to the Complaint to allege additional affirmative  
9 defenses, if subsequent investigation so warrants.

10  
11 FOURTEENTH AFFIRMATIVE DEFENSE

12 The alleged actions or inactions of these answering Defendants were not the proximate  
13 cause of Plaintiff's damages.

14  
15 FIFTEENTH AFFIRMATIVE DEFENSE

16 The alleged actions or inactions of these answering Defendants were not the legal cause  
17 of Plaintiff's damages.

18  
19 SIXTEENTH AFFIRMATIVE DEFENSE

20 Plaintiff is barred from asserting any claim against the answering Defendants because  
21 the alleged damages were the result of intervening, superseding conduct of others.

22  
23 SEVENTEENTH AFFIRMATIVE DEFENSE

24 The answering Defendants fully satisfied and discharged any and all duties they may  
25 have owed to Plaintiff under the circumstances alleged in the Complaint.

1 EIGHTEENTH AFFIRMATIVE DEFENSE

2 The duty that the Plaintiff intends to propose and/or the standard of care that the Plaintiff  
3 is alleging towards the Defendant would be contrary to public policy.  
4

5 NINETEENTH AFFIRMATIVE DEFENSE

6 The Defendant acquiesced to the actions and behavior of the Defendant, and thus should  
7 be barred from any recovery or claims of negligence by the Defendant in pursuing the grievance.  
8

9 Based on the foregoing, the Respondent - the Henderson Police Officers Association -  
10 requests that the EMRB award the following:

- 11 (1) DENY any and all claims made by the Complainant  
12 (2) DENY any and all relief requested by the Complainant  
13 (3) GRANT any and all defenses alleged by the Respondent  
14 (4) GRANT reasonable attorney's fees and costs for defending this action  
15 (5) GRANT any and all other reasonable relief to the Respondent  
16

17 DATED this 7<sup>th</sup> of August, 2025

18 /Christopher Cannon/  
19 CHRISTOPHER M. CANNON, ESQ.  
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23 Attorneys for the RESPONDENTS  
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HPOA (Respondent)

Motion to Dismiss

FILED  
August 8, 2025  
State of Nevada  
E.M.R.B.  
2:27 p.m.

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**GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**  
**STATE OF NEVADA**

HECTOR VILLA

Complainants

vs

HENDERSON POLICE OFFICER'S  
ASSOCIATION (HPOA)

Respondents

CASE NO: 2025-013

MOTION TO DISMISS

DATE OF HEARING:  
TIME OF HEARING:  
ORAL ARGUMENT: YES

COMES NOW, Complainants, HENDERSON POLICE OFFICER'S ASSOCIATION (hereby "THE ASSOCIATION"), a local government employee organization, and the Associations' named and unnamed affected members, by and through their undersigned counsel, CHRISTOPHER CANNON, ESQ., of the NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS (hereby "NAPSO"), and hereby file this MOTION TO DISMISS THE PROHIBITED LABOR PRACTICES COMPLAINT brought by the Complaint.

This Motion is brought in good faith, pursuant to NRCP, based on pleadings and papers on file herein, based upon the facts alleged therein, the following Points and Authorities, Declaration of Plaintiff attached hereto, and upon an oral argument the Court shall deem proper at the time of the hearing.

1 DATED this \_\_\_\_7th\_\_\_\_ day of August, 2025

2  
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4 CANNON, ESQ

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TO: Counsel for Complainant

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1   **I.     STATEMENT OF FACTS**

2           The Complainant, HECTOR VILLA, is a police officer for the City of Henderson Police  
3 Department and has served the Department and the City for approximately sixteen (16) years.  
4 During that period of time, Villa, was a member of the Henderson Police Officers Association  
5 (HPOA), and the HPOA was the exclusive bargaining unit for the pay and benefits for the non-  
6 supervisory officers under the Collective Bargaining Agreement (CBA) with the City of  
7 Henderson (“The City”).

8           Additionally, under the CBA, the HPOA also is contractually able to receive and process  
9 grievances for their members (non-supervisory officers) against the City. The HPOA processes  
10 the grievances for their members, which can including informal meetings, formal meetings with  
11 police administration and city leaders, mediation and arbitration (if necessary). However, the  
12 actions of the HPOA is guided by their elected executive staff which reviews, processes and  
13 makes decisions on how each grievance in handled, and to what extend the grievance will be  
14 financed (as both mediation and arbitration will have a financial impact to the HPOA). All  
15 members of the HPOA have the right to be elected to the executive staff, and all members have  
16 the right to be heard at all meetings about the operation and leadership of the HPOA.

17          Complainant, during his tenure with the Henderson Police Department, in January 2024,  
18 applied for the position of BACKGROUND INVESTIGATOR with the Police Department.  
19 When he applied, by his own admission, he was competing against twenty (20) other officers  
20 with differing backgrounds and experience with the police department.

21          Following Department interviews (conducted by police department personnel), and of  
22 which no members of HPOA Staff participated, another officer was selected for the position.  
23 This officer (Officer Meyers) was selected **solely** by police department officials (who are non  
24 members of the HPOA) and the HPOA did not assist in the preparation, selection and/or  
25 administration of the testing process.

26          After the selection of Officer Meyers, the Complainant complained to the HPOA that the  
27 person selected was ineligible for selection due to a prior disciplinary action against her and that  
28 the Department then placed her on a “probationary period” for review. *However, the HPOA did*



1 not have knowledge of such disciplinary action, and further even if Officer Meyers was not  
2 eligible for the selection for the position, the Complainant was not guaranteed the position. The  
3 Department has the ability to select any person of their choosing from an eligibility list (as it is a  
4 granted management right). **Further, even if the Complainant was to successfully argue that**  
5 **the list was to the rank ordered, the Complainant was not the next person on the list to be**  
6 **selected, undermining his claims.** Finally, the Association did not have any part in the process  
7 of the section of the candidate that was to be placed in the position of Background Investigator,  
8 and was solely made aware of the choice that was made by Police Command Staff.

9 The HPOA received the filed grievance by the Complainant, and began to process it, in  
10 accordance with the HPOA bylaws. When the Complainant took issue with how the grievance  
11 was being processed and handled with the Department, demanding that more be done, the HPOA  
12 explained that per their bylaws, they are entitled to handle the grievance in a manner that was  
13 for good of all the members and not solely the grieving member. Further, the Association  
14 explained that any and all processing would be handled consistent with prior grievances, the  
15 guidance of the Executive Staff and consistent with bylaws and Nevada law.

16 Unhappy with the outcome of the internal review and processing of the grievance, the  
17 Complainant demanded that the matter be taken to arbitration for a full legal review. When the  
18 Association explained the reasons that they did not desire to take that course of action,  
19 Complainant began to use email listserves to create disharmony between members and  
20 undermine the operation of the Association itself.

21 The Association requested that the Complainant understand that the handling of the  
22 grievance was within the purview of the Association itself, and undermining and attacking the  
23 operation of the Association was not assisting in achieving the outcome that he desired. The  
24 Association and the Executive Director weighed the legal basis, the legal precedent and the cost  
25 of arbitration when making the decision not to take the grievance to arbitration against The City.

26 The Complainant continued his erratic behavior and began to make defamatory  
27 statements against the Association, its members and the Executive Director. This behavior  
28 violated the HPOA member bylaws and continued to undermine the operation of the Association

1 on a day to day basis. The Association called on the Complainant to cease his behavior, not as a  
2 halt on his free speech, but because it was hindering the fair and equal operation of the  
3 Association. In short, the Complainant was requesting a resolution to his grievance that no other  
4 member would receive (under similar facts and circumstances) and when he did not receive it, he  
5 resorted to underlining the Association, defaming its staff and attempting to cause the  
6 Association to be viewed as one that affords protection to racist officers, covers for corrupt  
7 police administration, and fails to advance the rights of its members. *These allegations were all*  
8 *advanced without proof to the Association membership and/or the Executive Director, and done*  
9 *to advance the career of the Complainant solely.*

10 Based on his actions, the HPOA revoked Officer Villa's membership on January 11,  
11 2025.

12 The Complainant now stands before the EMRB arguing that his right to the duty of fair  
13 representation was violated, and that he was harassed, berated and expelled for no reason.  
14 However, his Complaint reflects no basis for the EMRB to act, is simply crafted in such a  
15 manner that it barely even reaches the jurisdiction of the EMRB and, without such proof, the  
16 Complaint should be dismissed at this juncture.

## 17 18 **II. LEGAL STANDARD**

19 The Nevada Rules of Civil Procedure instruct the Board to secure a "just, speedy and  
20 inexpensive determination" of a complaint and/or civil action. NRCP 1. In order to serve that  
21 purpose NRCP 12(b)(5) entitles the Defendant to seek dismissal of a complaint when the  
22 Plaintiff failed to set forth a cognizable claim for relief.

23 There are two basis reasons for dismissal at this stage, Dismissal is proper where the  
24 complaint is not founded upon a "cognizable legal theory." *Balistreri v Pacificia Police Dep't*,  
25 901 F.2d. 696, 699 (9<sup>th</sup> Cir, 1988) (cited for this point in *Walsh v Green Tree Servicing, LLC*  
26 Case No. 65066, 2015 WL 3370399 (unpublished order) (Nev. May 10, 2015). Yet, even of a  
27 complaint does manage to articulate a cognizable legal theory, dismissal is still proper if the  
28 complaint fails to allege adequate and sufficient facts to support the claim. *Id.*

1 Whether a complaint alleges a viable legal theory or not depends upon the facts as well as  
2 the applicable law. *Cf Randazza v Cox*, No. 2:12-CV-2040-JAD-PAL, 2014 WL 1407378, at 7  
3 (D. Nev. Apr. 10, 2014) (Dismissing common law claim for failure to state a claim where  
4 “Nevada law does not recognize this cause of action”).

5 When considering a motion to dismiss, the Court should take any well pled factual  
6 allegations in the complaint at face value. *Morris v Bank of America*, 110 Nev. 1274, 1276, 886  
7 P.2d 454, 456 (1994). While NCRP 8 accommodates a generous notice pleading standard, a  
8 complaint must still set forth factual allegations that are sufficient, if true, to support a viable  
9 claim of relief. *Sanchez el rel. Sanchez v. Wal-Mart Store, Inc*, 125 Nev. 818, 823, 221 P.3d  
10 1276, 1280 (2009) (explaining that, although the Court will accept the factual allegations in the  
11 complaint as true, “the allegations must be legal sufficient to constitute the elements of the  
12 claims asserted”). Conclusory allegations alone are inadequate to state a viable claim. *See Comm.*  
13 *For Reasonable Regulation of Lake Tahoe v Tahoe Reg’l Panning Agency*, 365 F. Supp. 2d  
14 1146, 1152 (D. Nev. 2005). Where the factual allegations in the complaint fall short of alleging a  
15 viable claim, the Court should dismiss the complaint. *Danning v Lum’s Inc.*, 86 Nev. 868, 478  
16 P.2d. 166 (1970).

17 The standard of notice pleading does not mean the complaint can rest on conclusory  
18 allegation and devoid of factual substance. *State v Sandler*, 21 Nev. 13, 23 P. 799, 800 (1890)  
19 (“To raise an issue before a Court facts must be stated, showing that there are real questions  
20 involved”); *Dixon v City of Reno*, 43 Nev 413, 187 P. 308, 309 (1920); *Guzman v Johnson*, 137  
21 Nev. 126, 132, 483 P.3d 531, 537, n. 7 (2021).

22 The doctrine of the duty of fair representation is judicially created law.<sup>1</sup> Even though  
23 there is no language within the agency’s enabling statute (NRS Chapter 288) that establishes the  
24 duty of fair representation explicitly, this duty had been recognized by both the Supreme Court of  
25 the United States and the Nevada Supreme Court.

26 In *Vaca v. Sipes*, the Supreme Court of the United States affirmed the doctrine of the duty  
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28 <sup>1</sup> *Peterson v. Kennedy*, 771 F.2d 1244, 1253 (9th Cir. 1985).

1 of fair representation by deriving such duty from the National Labor Relations Act (“NLRA”).<sup>2</sup>  
2 The EMRB often looks to NLRB precedents. To this end, the Nevada Supreme Court has also  
3 recognized the duty of fair representation owed by unions representing local government  
4 employees from NRS 288.270(1), (2).<sup>3</sup>

5 A union is given broad discretion to make decisions and to act in what it perceives to be  
6 the best interests of its members. However, it does not mean that a union can act freely and  
7 without any limitation. Under the doctrine of the duty of fair representation, the law requires that  
8 when a union represents or negotiates on behalf of the employees in its bargaining unit, it must  
9 conduct itself in a manner that is not “arbitrary, discriminatory, or in bad faith.”<sup>4</sup>

10 In *Air Line Pilots Association, International v. O’Neill*, the Supreme Court of the United  
11 States held that arbitrary actions are ones which “can be fairly characterized as so far outside a  
12 ‘wide range of reasonableness,’ that it is wholly ‘irrational’ or ‘arbitrary’.” In that case, a union’s  
13 decision to settle an ongoing strike with the employer was within “a wide range of  
14 reasonableness” even though not all employees’ interests were maximized.<sup>5</sup> Although the Court  
15 recognized that the settlement was not the wisest choice, it held that the union did not breach its  
16 duty of fair representation since it decided to settle with the employer after a reasonable  
17 consideration of different factors, including costs associated with future litigation and job  
18 security for some employees. Therefore, a bad judgment made in good faith generally does not  
19 constitute as arbitrary conduct performed by the union.

20 In *Peterson v. Kennedy*, the Ninth Circuit also supported the notion that union conduct

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22 <sup>2</sup> *Vaca v. Sipes*, 386 U.S. 171, 181-183 (1967).

23 <sup>3</sup> *Cone v. Nevada Serv. Employees Union/SEIU Local 1107*, 116 Nev. 473, 479, 998 P.2d  
24 1178, 1182 (2000).

26 <sup>4</sup> *Vaca v. Sipes*, 386 U.S. 171, 181-183 (1967).

27 <sup>5</sup> *Air Line Pilots Ass’n, Int’l v. O’Neill*, 499 U.S. 65, 78 (1991) (internal citation  
28 omitted).

1 need not be perfect and mere negligent conduct does not constitute as a breach of the union's  
2 duty of fair representation.<sup>6</sup> The court held that a good faith and non-discriminatory judgmental  
3 error on the part of the union in handling a grievance was not an arbitrary conduct. In that case,  
4 the union did not breach its duty of fair representation even though its representative gave  
5 erroneous advice to an employee in filing the appropriate type of grievance.<sup>7</sup>

6 On the other hand, the court follows a general principle that a conduct is deemed arbitrary  
7 if a union fails to perform a procedural or ministerial act without any rational basis, and the act  
8 itself does not require the exercise of judgement. Also, the act must prejudice a strong interest of  
9 the employee.<sup>8</sup>

10 In *Galindo v. Stooddy*, the employee was laid off by the employer because his union  
11 failed to notify the employer about the employee's steward status. Since notifying an employer  
12 of someone's steward status was a ministerial act that required no judgement on the part of the  
13 union, the court held that the union breached its duty of fair representation.<sup>9</sup>

14 Throughout the years, the Local Government Employee-Management Relations Board  
15 has decided numerous cases with issues revolving around the duty of fair representation. In  
16 *George v. Las Vegas Police Protective Association Metro, Inc.*, the union refused to proceed on a  
17 grievance filed by one of its members, Ginger L. George, who was a Las Vegas City Corrections  
18 Officer.<sup>10</sup> She suffered a work-related injury and she felt that she was not properly placed in a  
19 light-duty status position by the City of Las Vegas. Therefore, she contacted both the union  
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22 <sup>6</sup> *Peterson v. Kennedy*, 771 F.2d 1244, 1253 (9th Cir. 1985).

23 <sup>7</sup> *Id*

24 <sup>8</sup> *Galindo v. Stooddy Co.*, 793 F.2d 1502, 1514 (9th Cir. 1986).

25 <sup>9</sup> *Id.* at 1514-1515.

26  
27 <sup>10</sup> *George v. Las Vegas Police Protective Ass'n Metro, Inc.*, Item No. 485A, EMRB Case  
28 No. A1-045693 (2001).

1 representative and the union attorney for assistance, but her request was disregarded.<sup>11</sup> The  
2 Board held that LVPPA breached its duty of fair representation because it failed to inform  
3 George of the reasons why it could not represent her, failed to inform her of her right to file a  
4 formal grievance, and failed to provide any investigation into her complaint.

5 In a recent case, the Board held that a union breached its duty of fair representation when  
6 it refused to pursue a meritorious grievance absent any valid or compelling reasons. The union in  
7 that case had determined that the employer's false statements charge against the complainant was  
8 baseless.<sup>12</sup>

9 In short, unions are generally expected to conduct at least a minimal investigation on the  
10 merits of the grievance in order to satisfy its duty of fair representation. Arbitrary conduct, such  
11 as a failure to perform ministerial or procedural act, absent any valid justification may  
12 accordingly be determined to be a violation of the duty of fair representation.

13 Pursuant to NRS 288.270(2), an employee organization is prohibited to discriminate  
14 willfully because of "race, color, religion, sex, age, physical or visual handicap, national origin or  
15 because of political or personal reasons or affiliations."

16 In general, a union is required by law to apply its policies and procedures in a fair and  
17 consistent manner towards all members within the bargaining unit. In *Amalgamated Association*  
18 *of Street, Electric Railway and Motor Coach Employees of America, etc. v. Lockridge*, the  
19 Supreme Court of the United States held that a complainant must show "substantial evidence of  
20 discrimination that is intentional, severe, and unrelated to legitimate union objectives" in order to  
21 prove a certain union conduct to be discriminatory.<sup>13</sup>

22 In *Bisch v. Las Vegas Metropolitan Police Department*, the complainant, Laurie Bisch,  
23 alleged that her union breached the duty of fair representation by refusing to provide

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24 <sup>11</sup> *Id*

25 <sup>12</sup> *Simo v. City of Henderson*, Item No. 801, EMRB Case No. A1-046111 (2015).

26 <sup>13</sup> *Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of Am. v. Lockridge*, 403  
27 U.S. 274, 301 (1971).  
28

1 representation after she retained her own attorney. The Board held that the union did not  
2 discriminate against Bisch by withdrawing representation since it was a “straightforward  
3 application of its previously enacted bylaws” for the union to defer representation to a  
4 complainant’s private counsel. <sup>14</sup> The withdrawal was not directed towards Bisch personally, but  
5 instead, it was merely a union policy to withdraw representation after its member retained private  
6 counsel. Therefore, the union did not breach its duty of fair representation in this case.

7 However, in *Fraley v. City of Henderson*, the union engaged in discriminatory conduct by  
8 refusing to proceed on Officer Fraley’s grievances solely based on political reasons and  
9 affiliations. Therefore, the Board found that the union breached its duty of fair representation.<sup>15</sup>

10 In *Humphrey v. Moore*, the Supreme Court of the United States established that a union’s  
11 actions are in bad faith if the complainant presents “substantial evidence of fraud, deceitful action  
12 or dishonest conduct by the union”. In that case, the Supreme Court of the United States held that  
13 the union was not acting in bad faith since its false assurances of job security to the employees  
14 were due solely to lack of information. Since there was no evidence to show that the union was  
15 engaging in a conspiracy with the opposing party, its conduct was not performed in bad faith and  
16 no breach of the duty of fair representation was found. <sup>16</sup>

### 17 18 **III. ARGUMENT**

19 The Complainant asserts that he filed a grievance with the HPOA, and that he did not  
20 receive the adequate processing of that grievance (arbitration) that he desired. Complainant then  
21 stated that not only did not he receive the desired representation, but then the Association,  
22 particularly the Executive Board, went on a “head hunt” for him to discredit and finally remove  
23 him from the Association based on his political affiliation, the fact that he is a Hispanic officer,

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24 <sup>14</sup> *Bisch v. The Las Vegas Metro. Police Dept.*, Item No. 705B, EMRB Case No. 705B  
25 (2010).  
26

27 <sup>15</sup> *Fraley v. City of Henderson*, Item No. 547, EMRB Case No. A1-045756 (2004).

28 <sup>16</sup> *Humphrey v. Moore*, 375 U.S. 335, 347 (1964).

1 and the fact that he was openly critical of both the Association staff and the Executive Director.

2       The simple facts are: (1) He has no RIGHT to arbitration, regardless of the type of  
3 grievance that is filed; (2) There is a code of conduct that regulates the behavior of all the HPOA  
4 members and the Complainant's actions - in undermining, defaming and hindering the operation  
5 of the Association violates such a code; and (3) That the Association bylaws, which the  
6 Complainant agreed to be bound by when he joined the voluntary association, clearly gives the  
7 Executive Board and Membership the right to expel members who violate the Code of Conduct.  
8 *Therefore, the Association did its due diligence in processing the grievance for the Complainant,*  
9 *the Association behaved in accordance with the CBA and bylaws in its actions with the*  
10 *grievance and did not act in a capricious, arbitrary, and/or discriminatory manner and was*  
11 *justified in expelling any voluntary member that works against the operation of the association,*  
12 *after that member not only is aware of the code of conduct but willing chooses to violate it to*  
13 *advocate their position against that of the Association.*

#### 14 15       1.       THE DUTY OF FAIR REPRESENTATION

16       Under the doctrine of the duty of fair representation, the law requires that when a union  
17 represents or negotiates on behalf of the employees in its bargaining unit, it must conduct itself in  
18 a manner that is not "arbitrary, discriminatory, or in bad faith." *However the Association is*  
19 *granted wide leeway to handle the grievances in a manner that is in the best interests of its*  
20 *members.*

21       Here, the Complaint was not selected for a position as a background investigator - a  
22 voluntary assignment position that is determined by testing, established by the City and the  
23 Police Command Staff. The position has testing standards, and selection is made by the Police  
24 Command Staff itself, without input of the Association. Further, the determination of the  
25 promotional position is one that is squarely within "management rights". Finally, and most  
26 telling, the selection of Officer Meyers did not have a direct impact on the Complainant for two  
27 reasons: (1) even if Meyers were disqualified, there is no requirement to go directly down the  
28 selection list and the City/Department has the ability to pick other viable candidates; and (2) even



1 if Meyers were disqualified, the Complainant was not the #2 candidate, and was farther down  
2 the selection list, which does not make him the immediate "next selection" for the position, as he  
3 is alleging.

4       Next, when the Complainant formally grieved the selection of the position and expressed  
5 discontent over not being selected, the Association processed the grievance in accordance with  
6 the Association bylaws and the Collective Bargaining Agreement (CBA). *The grievance followed*  
7 *the process and was reviewed by the Chief and City Management, before the Association*  
8 *received a formal denial.* At that stage, according to the Association bylaws and the CBA, the  
9 Association and the Executive Board has the final determination if that matter would be appealed  
10 to arbitration or any other litigation. In essence, the Association, and not the member, controls  
11 the grievance and the manner in which its final outcome is reached. The simple fact that the  
12 Complainant does not agree with the way it is processed, does not give him the right to claim that  
13 the actions of the Association are discriminatory. The Association made a determination - based  
14 on the facts and circumstances, the CBA, and prior decisions in arbitration - not to take the  
15 matter to arbitration *and that is within their sole purview and not subject to second guessing by*  
16 *an individual member.*

17       Further, the Association's decision on the processing of the grievance and not taking it to  
18 the costly step of arbitration is "not so far outside of the range of reasonableness" since the  
19 Association has a duty to fiduciary duty to its members and to avoid costly litigation that has a  
20 minimal chance of success. And while not benefitting that individual member, it protected the  
21 membership as a whole.

22       Additionally, the Association completed the minstrel act of processing the grievance in  
23 accordance with the CBA and Association bylaws, made the Complainant aware of his rights and  
24 advised him of the process as it proceeded. The Association was not deceitful and did not lie to  
25 the Complainant when it explained that any grievance must be processed for the benefit of the  
26 entire membership and the manner in which is handled is at the sole control of the Association.

27       The idea that the Association officers' actions were discriminatory in nature, the  
28 Complainant has not shown any "substantial evidence of discrimination that is intentional,

1 severe, and unrelated to legitimate union objectives” in order to prove a certain union conduct to  
2 be discriminatory. *The Complainant has simply thrown out conclusory statements in his*  
3 *Complainant without any proof and in the face of the Association having clear objectives*  
4 *justifying their actions - undermines the Complainant’s claim and should sustain a dismissal.*  
5

## 6 2. ASSOCIATION DISMISSAL OF COMPLAINANT

7 When officers join the Association, they are provided a Code of Conduct that requires  
8 them to work with other members and the Association for the advancement of all members of the  
9 Association. Specifically, within the Association bylaws, behavior which undermines or  
10 advocates to undermine the Association is not tolerated nor supported by the remainder of the  
11 members. If such a member is found in violation of these bylaws and Code of Conduct, he can be  
12 expelled from the Association.

13 Complainant - after not being selected for the position and learning that the Association  
14 would not take the matter to arbitration - engaged in a pattern of conduct to enrage other  
15 members against the Association and state defamatory comments about the Executive Board to  
16 embarrass, harass and force their decision on the arbitration in this matter.

17 The Association advised and warned the Complainant that his behavior was in violation  
18 of the Code of Conduct and would not be tolerated. The Complainant did not cease his pattern of  
19 behavior and was expelled from the Association.  
20

## 21 3. DISMISSAL IS PROPER AND WARRANTED AT THIS STAGE

22 Dismissal is proper where the complaint is not founded upon a “cognizable legal theory.”  
23 Yet, even of a complaint does manage to articulate a cognizable legal theory, dismissal is still  
24 proper if the complaint fails to allege adequate and sufficient facts to support the claim.

25 Conclusory allegations alone are inadequate to state a viable claim and where the factual  
26 allegations in the complaint fall short of alleging a viable claim, the Court should dismiss the  
27 complaint.

28 *Here, the Complainant has not presented a cognizable legal theory. Their simple theory is*

1 that Complaint was discriminated against because he did not receive a premium position within  
2 the Department that he applied for, and that the Association did not process his grievance to his  
3 liking to achieve the result that he wanted.

4 The problem with that theory as advocated is that it is not based on law and/or legal  
5 precedent.

6 As stated before, the Association has no control over the testing process, did not  
7 participate in the process or the formulating of the test and did not assist in the selection of the  
8 officer for the position. The Complainant was not selected and was not even in the range of  
9 selection for the eligible candidates. But because he was not selected, he grieved. The  
10 Association processed the grievance but made the rational decision not to go to arbitration with  
11 it. This enraged the Complainant who then took to the membership to attempt to embarrass and  
12 harass the Association officers, who then moved forward with expulsion for the Association.

13 The fact that he was expelled does not present a legal claim for this Board to hear, and is  
14 not an actionable one.

15 In short, the Association made rational decisions that were based on good faith and were  
16 not arbitrary and capricious. The fact that the Complainant did not agree with the decision does  
17 not give him the right to claim a prohibited labor practice when none of the basis for one is  
18 present.

19 Dismissal is the correct and mandated option in this manner.  
20

#### 21 IV. CONCLUSION

22 Based on the foregoing, the Association prays for the following relief:  
23

24 (1) Dismissal of the Complaint

25 (2) Award of reasonable attorney fees and costs

26 (3) Any other relief that the Board would grant  
27  
28

1 DATED this 7<sup>th</sup> of August, 2025

2 /Christopher Cannon/  
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Response to Motion to  
Dismiss

FILED  
September 9, 2025  
State of Nevada  
E.M.R.B.  
7:23 p.m.

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**STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD**

HECTOR VILLA,

Case No.: 2025-013

Complainant

**RESPONSE TO MOTION TO  
DISMISS**

vs.

HENDERSON POLICE OFFICERS'  
ASSOCIATION (HPOA)

Date of Hearing:  
Time of Hearing:

Respondent

HECTOR VILLA, by and through the undersigned counsel, hereby responds to the motion to dismiss (the "Motion" or "Mot.") filed by Respondent the HENDERSON POLICE OFFICER's ASSOCIATION ("HPOA"). This Response is based on the memorandum of points and authority below, all declarations and exhibits attached thereto, and any oral argument the court may entertain at hearing.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Organizations like the Henderson Police Officers' Association ("HPOA") owe all its members a duty of fair representation; likewise, they are forbidden from ejecting members for impermissible reasons. Illegal discrimination or retaliation cannot justify decisions about representation or proceedings about ejection of union members. Officer Hector Villa's Complaint against the HPOA sufficiently alleges—in detail—that the HPOA both breached the duty of fair representation it owed him and ejected him from the HPOA for illegal reasons.

1 The HPOA's effort to dismiss the Complaint thus fails. The HPOA ignores that, when  
2 considering a motion to dismiss, the complainant's allegations must be taken as true and the  
3 complainant does not need to provide evidence.<sup>1</sup> This is not summary judgment and even it  
4 was, the HPOA also ignores that it cannot rely on unsupported, conclusory factual  
5 allegations (and denials) to obtain dismissal.

6 The HPOA's own cases show that what officer Villa has alleged is actionable. The  
7 HPOA's unsupported factual claims that the allegations are false are not even before the  
8 Board and should be ignored.

## 9 II. ARGUMENT

### 10 A. The Motion to Dismiss Must Be Denied Because It Is Predicated on 11 Irrelevant and Unsupported Factual Allegations.

12 In evaluating a motion to dismiss, the Board must consider "all factual allegations in  
13 [the plaintiff's] complaint as true and draw all inferences in [the plaintiff's] favor."  
14 *Limprasert v. PAM Specialty Hosp. of Las Vegas LLC*, 140 Nev. Adv. Op. 45, 550 P.3d  
15 825, 829 (2024) (citing *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 244, 228, 181  
16 P.3d 630, 672 (2008)).<sup>2</sup> The Board cannot consider facts outside of the complaint.<sup>3</sup> Instead,  
17 a motion to dismiss tests the sufficiency of the pleadings. *See Breliant v. Preferred Equities*  
18 *Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) ("This court's task is to determine  
19 whether ... the challenged pleading sets forth allegations sufficient to make out the elements  
20 of a right to relief.")

21 In contravention of these rules of law governing motions to dismiss, the HPOA's  
22 response is rife with factual allegations that attempt to undermine Complainant Hector  
23 Villa's claims. The HPOA even blatantly argues that the Complaint should be dismissed  
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25 <sup>1</sup> Indeed, it is impermissible to include exhibits. NAC 288.200(3).

26 <sup>2</sup> Even if the law governing motions to dismiss did not apply here, it would of course be  
27 impermissible and inequitable to dismiss an EMBR Complaint based on the HPOA's  
28 unsupported and disputed claims.

<sup>3</sup> When ruling on a motion to dismiss, a court generally may not consider matters outside  
the pleading being attacked. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858  
P.2d 1258, 1261 (1993).

1 because Officer Villa has not come forward with evidence. (Mot, p. 13:27 – 14:2.) Worse  
2 yet, the HPOA’s factual claims are unsupported by any citation to any declarations,  
3 affidavits, or exhibits. Thus, the HPOA is essentially endeavoring to convert their motion  
4 to dismiss into a motion for summary judgment<sup>4</sup> without even attempting to follow the  
5 procedural requirements for doing so or presenting facts that could meet their evidentiary  
6 burden<sup>5</sup> on a motion for summary judgment.

7 For example, the HPOA’s Motion relies on the claim that the HPOA “made rational  
8 decisions that were based on good faith and were not arbitrary and capricious.” Officer Villa  
9 has alleged the opposite—and his allegations are far from conclusory. The Complaint details  
10 specific factual allegations that, if true, support his claims. In 2022 and 2023, Officer Villas  
11 poke publicly about fellow officer Kevin LaPeer’s repeated misconduct on the job, which  
12 was widely reported in the local media. (Complaint, ¶¶ 3-11.) The Complaint also alleges  
13 that “HPOA leadership and members are aware of Officer Villa’s decisions to speak out  
14 against Officer LaPeer, which is a matter of public record, and have expressed (and  
15 continued to express) hostility towards Officer Villa for speaking out.” (*Id.*, ¶ 12.)

16 Then, in 2024, Officer Villa was passed over for the specialized position of  
17 Backgrounds Investigator in favor of Officer Meyers who was unqualified to hold that  
18 position by virtue of her being on probation and being sustained on multiple policy  
19 violations. (*Id.*, ¶¶ 13-16.) Rather than respond to Officer Villa’s complaints, union  
20 leadership lied about Officer Meyers’ probation status, denying his grievance on the basis  
21 that Officer Villa could not provide evidence that Officer Meyers was on probation, even  
22 though such evidence was in readily available public records. (*Id.*, ¶¶ 17-22.) While the  
23 HPOA approved Officer Villa’s grievance after he provided that evidence (which HPOA  
24 had all along), it refused to proceed on the grievance because Officer Villa had exposed  
25 LaPeer’s misconduct. (*Id.*, ¶¶ 23-26.) Ultimately, after being told by Andrew Regenbaum,

26  
27 <sup>4</sup> See NRCP 12(d).

28 <sup>5</sup> See NRCP 56(c)(1); *see also Nev. Ass’n Servs., Inc. v. Eighth Judicial Dist. Court*, 130  
Nev. 949, 957, 338 P.3d 1250, 1255 (2014) (“Arguments of counsel are not evidence and  
do not establish the facts of the case.”)



1 HPOA's Executive Director and Chief Negotiator that the union was refusing to proceed  
2 with his grievance *because of what Officer Villa said about LaPeer*, the HPOA launched  
3 a pretextual investigation against Officer Villa and terminated his HPOA membership. (*Id.*,  
4 ¶¶ 27-32.)

5 The HPOA is not entitled to dismissal just because it denies Officer Villa's allegations,  
6 as factual issues cannot be resolved on a motion to dismiss. Yet the HPOA contends that  
7 "[t]he Complainant has simply thrown out conclusory statements in his Complainant  
8 without any proof and in the face of the Association having clear objectives justifying their  
9 actions - undermines the Complainant's claim and should sustain a dismissal." (Mot., p.  
10 14:2-4 (emphasis in original).)

11 HPOA's failure to recognize that on a motion to dismiss, Officer Villa's allegations  
12 do not require proof and must be taken as true, and HPOA's bizarre effort to rely on  
13 unsupported factual claims to obtain dismissal are fatal to its Motion, which should be  
14 denied without further consideration. Even if that were not the case, Officer Villa's claims  
15 are cognizable, as detailed below and as the HPOA's own case law shows.

16 **B. Officer Villa Adequately Pled a Claim for Breach of the Duty of Fair**  
17 **Representation.**

18 Although Officer Villa acknowledges that "a union's conduct generally is not arbitrary  
19 when the union exercises its judgment," such conduct can "still violate the duty of fair  
20 representation if we find it discriminatory or done in bad faith." *Demetris v. Transp.*  
21 *Workers Union of Am., AFL-CIO*, 862 F.3d 799, 805-806 (9th Cir. 2017), as the HPOA  
22 concedes. "The duty [of fair representation] is designed to ensure that unions represent fairly  
23 the interests of all of their members without exercising hostility or bad faith toward any."  
24 *Peterson v. Kennedy*, 771 F.2d 1244, 1253 (9th Cir.1985).

25 It is not Officer Villa's position, as the HPOA claims, that the HPOA "did not process  
26 his grievance to his liking to achieve the result that he wanted." (Mot., p. 15:2-3.) Instead,  
27 Officer Villa alleged that the HPOA made its decision not to continue to pursue his  
28 grievance and took other actions for impermissible reasons. *See. e.g.*, Compl. ¶ 27 ("Ever

1 since Officer Villa spoke out against a racist fellow officer, the HPOA has engaged in a  
2 campaign of harassment against him.”) he also Officer Villa also alleged that the HPOA  
3 misrepresented facts about the grievance to him. *See. e.g.*, Compl. ¶ 18 (“Initially, union  
4 leadership and supervisors advised him that Officer Meyers was not on probation, which  
5 was contrary to the news stories and released public records showing she was in fact placed  
6 on probation.”) The HPOA cannot make decisions based on Officer Villa speaking out about  
7 a racist officer; such conduct is definitionally arbitrary, capricious and bad faith and would  
8 violate NRS 288.270(2) as well as other law. *Cf.* 29 U.S.C.A. § 411 (providing in part:  
9 “Every member of any labor organization shall have the right to meet and assemble freely  
10 with other members; and to express any views, arguments, or opinions; and to express at  
11 meetings of the labor organization his views, upon candidates in an election of the labor  
12 organization or upon any business properly before the meeting, subject to the organization’s  
13 established and reasonable rules pertaining to the conduct of meeting.”)

14 A case cited in HPOA’s Motion is directly on point. In *Fraley v. City of Henderson*,  
15 Item No. 547, EMRB Case No. A1-045756, 2004 WL 6247597 (2004), the Board heard  
16 testimony that the HPOA “treated members differently based on who the officer was” and  
17 that Fraley “was not a favored officer.” 2004 WL 6247597, \*16. The HPOA refused to take  
18 action concerning the several IAB investigations launched by the HPD into Fraley, any one  
19 of which could have resulted in his termination. *Id.* at \*17. The Board concluded that the  
20 HPOA “acted arbitrarily; without a reasonable, rational basis; and in an unfair or  
21 inconsistent manner towards the various members” and that the HPOA “breached its duty  
22 of fair representation in this case as evidenced by its continued refusal to grieve Fraley’s  
23 complaint.” *Id.* at \*18.

24 Here, as noted above, Officer Villa has more than adequately pleaded that HPOA  
25 leadership refused to pursue his grievances as punishment for impermissible reasons,  
26 including speaking up about Officer LaPeer’s racist remarks—indeed, an HPOA executive  
27 literally told Officer Villa so. (*See* Compl., ¶ 29.) Consistent with the applicable Rules of  
28 Practice before this Board, Officer Villa also included the legal bases for his claims.

1 At the motion to dismiss stage, this is more than enough and HPOA does not establish  
2 any basis for depriving Officer Villa of his right to have his Complaint considered by this  
3 Board.

4 C. Officer Villa Adequately Pleaded that HPOA Impermissibly Ejected  
5 Him.

6 The HPOA further argues that “[t]he fact that [Officer Villa] was expelled does not  
7 present a legal claim for this Board to hear, and is not an actionable one.” (Mot., p. 15:13-  
8 14.) This contention incorrectly assumes that the HPOA is above the law and what the  
9 HPOA ignores is that Officer Villa alleges that the HPOA ejected him for impermissible  
10 reasons, specifically that HPOA discriminated against him based on “personal reasons or  
11 affiliations,” which are specifically prohibited by NRS 288.270(2)(c).

12 For example, Officer Villa alleges that “Regenbaum told Officer Villa that  
13 Regenbaum refused to help Officer Villa with his grievances *because of what Officer Villa*  
14 *said about Officer LaPeer.*” (Compl., ¶ 29.) It is certainly fair to infer that—in light of  
15 Regenbaum’s unambiguous statement to Officer Villa regarding the reasoning behind not  
16 helping him with his grievances—the same “personal reasons or affiliations” impermissibly  
17 animated Officer Villa’s expulsion from HPOA.

18 Likewise, while the HPOA claims that Officer Villa was ejected for a “pattern of  
19 conduct to enrage other members” and defamed HPOA leaders, like all the other factual  
20 assertions the HPOA makes, it is not supported. But what HPOA claims is telling and  
21 appears to concede that the reason Officer Villa was ejected was based on the fact that  
22 “...Officer Villa raised concerns about the HPOA’ refusal to proceed to arbitration and  
23 shared information with other HPOA members to promote transparency about the  
24 promotion process as well as the union’s handling of the grievance.” (Compl., ¶ 26.) Just  
25 because the HPOA does not like what Officer Villa expressed does not justify ejecting him  
26 and, in fact, the HPOA is also prohibited from punishing members from speaking out on  
27 matters of public concern. *See* NRS 288.270(2)(c); *see also* *Madison School Dist. v. WERC*,  
28 429 U.S. 167 (1976).

1 As federal law makes clear:

2 Every member of any labor organization shall have the right to meet and  
3 assemble freely with other members; and to express any views, arguments,  
or opinions; and to express at meetings of the labor organization his views.

4 29 U.S.C.A. § 411. Officer Villa has protected rights to criticize a racist fellow officer and  
5 to criticize the HPOA and its leadership. Moreover, union members have due process rights  
6 that preclude being impermissibly ejected and, again, unions cannot interfere with union  
7 members' rights to engage in free debate. *See, e.g., Mitchell v. International Association of*  
8 *Machinists*, 196 Cal. App. 2d 903, 16 Cal. Rptr. 813 (1961), petition for hearing denied, No.  
9 24913, Cal. Sup. Ct. (1962).

10 The HPOA relies on its bylaws to claim dismissal is warranted. This ignores that  
11 whether the HPOA permissibly sought to expel and expelled Officer Villa for valid reasons  
12 or for impermissible, illegal reasons is a factual matter that the HPOA not support with  
13 anything other than argument, and is also not properly raised in a motion to dismiss.

14 For these reasons, as with Officer Villa's claim regarding breach of the duty of fair  
15 representation, Officer Villa's claim stemming from the HPOA decision to eject him is  
16 sufficiently alleged.

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1     **III.   CONCLUSION**

2           The Board should deny the Motion and should after consideration of HPOA's  
3 Answer<sup>6</sup>—order a preliminary investigation and proceed with this matter in accordance with  
4 NAC 288.211.

5  
6           DATED this the 9<sup>th</sup> day of September, 2025.

7  
8                                 /s/ Margaret A. McLetchie  
9                                 MARGARET A. MCLETSCHIE, Nevada Bar No. 10931  
10                                **MCLETSCHIE LAW**  
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15                                *Counsel for Complainant Officer Hector Villa*

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<sup>6</sup> Officer Villa served his Complaint on July 16, 2025, as reflected by the certified mail  
27 receipt of copy. (Ex. 1.) Thus, pursuant to NAC 288.220(1), HPOA had 21 days—until  
28 August 6, 2025—to file its answer. However, both HPOA's Motion to Dismiss and its  
answer were filed on August 8, 2025. Thus, the Board should preclude HPOA from  
asserting any affirmative defenses in this proceeding. NAC 288.220(3).

# **EXHIBIT 1**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Henderson Police Officers'  
Association  
ATTN: Gary Hargis or Registered  
145 Panamg St. Agent  
Henderson, NV 89015-7372



9590 9402 8132 2349 1916 87

2. Article

1589

PS Form 3811, July 2020 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *[Signature]*

☒ Agent

☐ Addressee

B. Received by (Printed Name)

*[Signature]*

C. Date of Delivery

*7/16*

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☒ No

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- ☐ Adult Signature
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**MCLECHIE LAW**

602 South 10<sup>th</sup> Street  
Las Vegas, NV 89101







## HPOA (Respondent)

Reply to Opposition to Motion to Dismiss

FILED  
September 15, 2025  
State of Nevada  
E.M.R.B.  
4:33 p.m.

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**GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**  
**STATE OF NEVADA**

HECTOR VILLA

Complainants

vs

HENDERSON POLICE OFFICERS  
ASSOCIATION (HPOA)

Respondents

CASE NO: 2025-013

REPLY TO OPPOSITION TO  
MOTION TO DISMISS

COMES NOW, Complainants, HENDERSON POLICE OFFICERS ASSOCIATION (hereby "THE ASSOCIATION"), a local government employee organization, and the Associations' named and unnamed affected members, by and through their undersigned counsel, CHRISTOPHER CANNON, ESQ., of the NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS (hereby "NAPSO"), and hereby file this REPLY TO OPPOSITION TO MOTION TO DISMISS THE PROHIBITED LABOR PRACTICES COMPLAINT brought by the Complaint.

This Motion is brought in good faith, pursuant to NRCP, based on pleadings and papers on file herein, based upon the facts alleged therein, the following Points and Authorities, Declaration of Plaintiff attached hereto, and upon an oral argument the Court shall deem proper at the time of the hearing.

1 DATED this \_\_\_\_15th\_\_\_\_ day of August, 2025

2  
3 LAW OFFICE OF CHRISTOPHER  
4 CANNON, ESQ

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1     **I.     STATEMENT OF FACTS**

2             The Complainant, HECTOR VILLA, is a police officer for the City of Henderson Police  
3 Department and has served the Department and the City for approximately sixteen (16) years.  
4 During that period of time, Villa, was a member of the Henderson Police Officers Association  
5 (HPOA), and the HPOA was the exclusive bargaining unit for the pay and benefits for the non-  
6 supervisory officers under the Collective Bargaining Agreement (CBA) with the City of  
7 Henderson (“The City”).

8             Additionally, under the CBA, the HPOA also is contractually able to receive and process  
9 grievances for their members (non-supervisory officers) against the City. The HPOA processes  
10 the grievances for their members, which can including informal meetings, formal meetings with  
11 police administration and city leaders, mediation and arbitration (if necessary). However, the  
12 actions of the HPOA is guided by their elected executive staff which reviews, processes and  
13 makes decisions on how each grievance in handled, and to what extend the grievance will be  
14 financed (as both mediation and arbitration will have a financial impact to the HPOA). All  
15 members of the HPOA have the right to be elected to the executive staff, and all members have  
16 the right to be heard at all meetings about the operation and leadership of the HPOA.

17             Complainant, during his tenure with the Henderson Police Department, in January 2024,  
18 applied for the position of BACKGROUND INVESTIGATOR with the Police Department.  
19 When he applied, by his own admission, he was competing against twenty (20) other officers  
20 with differing backgrounds and experience with the police department.

21             Following Department interviews (conducted by police department personnel), and of  
22 which no members of HPOA Staff participated, another officer was selected for the position.  
23 This officer (Officer Meyers) was selected **solely** by police department officials (who are non  
24 members of the HPOA) and the HPOA did not assist in the preparation, selection and/or  
25 administration of the testing process.

26             After the selection of Officer Meyers, the Complainant complained to the HPOA that the  
27 person selected was ineligible for selection due to a prior disciplinary action against her and that  
28 the Department then placed her on a “probationary period” for review. *However, the HPOA did*

1 not have knowledge of such disciplinary action, and further even if Officer Meyers was not  
2 eligible for the selection for the position, the Complainant was not guaranteed the position. The  
3 Department has the ability to select any person of their choosing from an eligibility list (as it is a  
4 granted management right). **Further, even if the Complainant was to successfully argue that**  
5 **the list was to the rank ordered, the Complainant was not the next person on the list to be**  
6 **selected, undermining his claims.** Finally, the Association did not have any part in the process  
7 of the section of the candidate that was to be placed in the position of Background Investigator,  
8 and was solely made aware of the choice that was made by Police Command Staff.

9 The HPOA received the filed grievance by the Complainant, and began to process it, in  
10 accordance with the HPOA bylaws. When the Complainant took issue with how the grievance  
11 was being processed and handled with the Department, demanding that more be done, the HPOA  
12 explained that per their bylaws, they are entitled to handle the grievance in a manner that was  
13 for good of all the members and not solely the grieving member. Further, the Association  
14 explained that any and all processing would be handled consistent with prior grievances, the  
15 guidance of the Executive Staff and consistent with bylaws and Nevada law.

16 Unhappy with the outcome of the internal review and processing of the grievance, the  
17 Complainant demanded that the matter be taken to arbitration for a full legal review. When the  
18 Association explained the reasons that they did not desire to take that course of action,  
19 Complainant began to use email listserves to create disharmony between members and  
20 undermine the operation of the Association itself.

21 The Association requested that the Complainant understand that the handling of the  
22 grievance was within the purview of the Association itself, and undermining and attacking the  
23 operation of the Association was not assisting in achieving the outcome that he desired. The  
24 Association explained to the Officer Villa that under the terms of the CBA and recent court  
25 decisions - City of Henderson Police Department and City policies cannot be taken to arbitration.  
26 So, in short, the Association processed the grievance as far as it legally could.

27 The Complainant continued his erratic behavior and began to make defamatory  
28 statements against the Association, its members and the Executive Director. This behavior

1 violated the HPOA member bylaws and continued to undermine the operation of the Association  
2 on a day to day basis. The Association called on the Complainant to cease his behavior, not as a  
3 halt on his free speech, but because it was hindering the fair and equal operation of the  
4 Association. In short, the Complainant was requesting a resolution to his grievance that no other  
5 member would receive (under similar facts and circumstances) and when he did not receive it, he  
6 resorted to underlining the Association, defaming its staff and attempting to cause the  
7 Association to be viewed as one that affords protection to racist officers, covers for corrupt  
8 police administration, and fails to advance the rights of its members. *These allegations were all*  
9 *advanced without proof to the Association membership and/or the Executive Director, and done*  
10 *to advance the career of the Complainant solely.*

11 Based on his actions, the HPOA revoked Officer Villa's membership on January 11,  
12 2025.

13 The Complainant now stands before the EMRB arguing that his right to the duty of fair  
14 representation was violated, and that he was harassed, berated and expelled for no reason.  
15 However, his Complaint reflects no basis for the EMRB to act, is simply crafted in such a  
16 manner that it barely even reaches the jurisdiction of the EMRB and, without such proof, the  
17 Complaint should be dismissed at this juncture.

## 19 **II. LEGAL STANDARD**

### 20 **A. FAILURE TO STATE A CLAIM**

21 The standard of review for a dismissal under NRCP 12(b)(5) is rigorous as this court  
22 "must construe the pleading liberally and draw every fair intendment in favor of the [non-moving  
23 party]." *Squires v. Sierra Nev. Educational Found.*, 107 Nev. 902, 905, 823 P.2d 256, 257 (1991)  
24 (citations omitted). All factual allegations of the complaint must be accepted as true. *Capital*  
25 *Mort. Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2d 126, 126 (1985). A complaint will not be  
26 dismissed for failure to state a claim "unless it appears beyond a doubt that the plaintiff could  
27 prove no set of facts which, if accepted by the trier of fact, would entitle him [or her] to relief."  
28 *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985) (citing *Conley v. Gibson*, 355

1 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957)).

2 The test for determining whether the allegations of a complaint are sufficient to assert a  
3 claim for relief is whether the allegations give fair notice of the nature and basis of a legally  
4 sufficient claim and the relief requested. *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407,  
5 408 (1984); see also *Western States Constr. v. Michoff*, 108 Nev. 931, 840 P.2d 1220, 1223  
6 (1992).

7 B. DUTY OF FAIR REPRESENTATION

8 In *Vaca v. Sipes*, the Supreme Court of the United States affirmed the doctrine of the duty  
9 of fair representation by deriving such duty from the National Labor Relations Act (“NLRA”).<sup>1</sup>  
10 The EMRB often looks to NLRB precedents. To this end, the Nevada Supreme Court has also  
11 recognized the duty of fair representation owed by unions representing local government  
12 employees from NRS 288.270(1), (2).<sup>2</sup>

13 A union is given broad discretion to make decisions and to act in what it perceives to be  
14 the best interests of its members. However, it does not mean that a union can act freely and  
15 without any limitation. Under the doctrine of the duty of fair representation, the law requires that  
16 when a union represents or negotiates on behalf of the employees in its bargaining unit, it must  
17 conduct itself in a manner that is not “arbitrary, discriminatory, or in bad faith.”<sup>3</sup>

18 A union breaches its duty of fair representation “when its conduct toward a member of  
19 the bargaining unit is arbitrary, discriminatory, or in bad faith.” *Marquez v. Screen Actors*  
20 *Guild, Inc.*, 525 U.S. 33, 44 (1998). Plaintiffs bear the burden of proving that a union breached  
21 such duty. *Beck v. United Food & Commercial Workers Union*, 506 F.3d 874, 879 (9th  
22 Cir. 2007).

23 In *Air Line Pilots Association, International v. O’Neill*, the Supreme Court of the United

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24 <sup>1</sup> *Vaca v. Sipes*, 386 U.S. 171, 181-183 (1967).

25 <sup>2</sup> *Cone v. Nevada Serv. Employees Union/SEIU Local 1107*, 116 Nev. 473, 479, 998 P.2d  
26 1178, 1182 (2000).

27 <sup>3</sup> *Vaca v. Sipes*, 386 U.S. 171, 181-183 (1967).



1 States held that arbitrary actions are ones which “can be fairly characterized as so far outside a  
2 ‘wide range of reasonableness,’ that it is wholly ‘irrational’ or ‘arbitrary.’” In that case, a union’s  
3 decision to settle an ongoing strike with the employer was within “a wide range of  
4 reasonableness” even though not all employees’ interests were maximized.<sup>4</sup> Although the Court  
5 recognized that the settlement was not the wisest choice, it held that the union did not breach its  
6 duty of fair representation since it decided to settle with the employer after a reasonable  
7 consideration of different factors, including costs associated with future litigation and job  
8 security for some employees. **Therefore, a bad judgment made in good faith generally does**  
9 **not constitute as arbitrary conduct performed by the union.**

10 When a union exercises its judgment, its action “can be classified as arbitrary ‘only  
11 when it is irrational, when it is without a rational basis or explanation.’” *Beck*, 506 F.3d at  
12 879 (quoting *Marquez*, 525 U.S. at 46). See also *Addington*, 791 F.3d at 983–84. Indeed, under  
13 this “highly deferential” standard, union conduct will only be deemed arbitrary if it is  
14 “so far outside [the] ‘wide range of reasonableness,’ *Ford Motor Co. v. Huffman*, 345 U.S.  
15 [330,] 338 [(1953)], that it is wholly ‘irrational.’” *Air Line Pilots Ass’n, Int’l, v. O’Neill*,  
16 499 U.S. 65, 78 (1991) (partial citation omitted). Typically, if the challenged conduct involves  
17 “the union’s judgment, then ‘the plaintiff[s] may prevail only if the union’s conduct  
18 was discriminatory or in bad faith.’” *Burkevich*, 894 F.2d at 349 (quoting *Moore v. Bechtel*  
19 *Power Corp.*, 840 F.2d 634, 636 (9th Cir. 1988))

20 Unions have a duty not to discriminate impermissibly among their members, but there is  
21 certainly “no requirement that unions treat their members identically as long as their  
22 actions are related to legitimate union objectives.” *Vaughn v. Air Line Pilots Ass’n, Int’l*, 604  
23 F.3d 703, 712 (2d Cir. 2010). A union’s decision to discriminate against its members on an  
24 impermissible basis will violate the duty of fair representation **only where the aggrieved**  
25 **members set forth “substantial evidence of discrimination that is intentional, severe, and**

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27 <sup>4</sup> *Air Line Pilots Ass’n, Int’l v. O’Neill*, 499 U.S. 65, 78 (1991) (internal citation  
28 omitted).

1 *unrelated to legitimate union objectives.” Amalgamated Ass’n of St., Elec. Ry. & Motor Coach*  
2 *Emps. of Am. v. Lockridge*, 403 U.S. 274, 301 (1971).

3 We have previously held that unions cannot discriminate against their members based on  
4 political animus or even political expediency. *Addington*, 791 F.3d at 984–85.

5 In *Peterson v. Kennedy*, the Ninth Circuit also supported the notion that union conduct  
6 need not be perfect and mere negligent conduct does not constitute as a breach of the union’s  
7 duty of fair representation.<sup>5</sup> The court held that a good faith and non-discriminatory judgmental  
8 error on the part of the union in handling a grievance was not an arbitrary conduct. In that case,  
9 the union did not breach its duty of fair representation even though its representative gave  
10 erroneous advice to an employee in filing the appropriate type of grievance.<sup>6</sup>

11 On the other hand, the court follows a general principle that a conduct is deemed arbitrary  
12 if a union fails to perform a procedural or ministerial act without any rational basis, and the act  
13 itself does not require the exercise of judgement. Also, the act must prejudice a strong interest of  
14 the employee.<sup>7</sup>

15 In short, unions are generally expected to conduct at least a minimal investigation on the  
16 merits of the grievance in order to satisfy its duty of fair representation. Arbitrary conduct, such  
17 as a failure to perform ministerial or procedural act, absent any valid justification may  
18 accordingly be determined to be a violation of the duty of fair representation.

19 Pursuant to NRS 288.270(2), an employee organization is prohibited to discriminate  
20 willfully because of “race, color, religion, sex, age, physical or visual handicap, national origin or  
21 because of political or personal reasons or affiliations.”

22 In general, a union is required by law to apply its policies and procedures in a fair and  
23 consistent manner towards all members within the bargaining unit. In *Amalgamated Association*  
24 *of Street, Electric Railway and Motor Coach Employees of America, etc. v. Lockridge*, the

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26 <sup>5</sup> *Peterson v. Kennedy*, 771 F.2d 1244, 1253 (9th Cir. 1985).

27 <sup>6</sup>*Id*

28 <sup>7</sup> *Galindo v. Stoddy Co.*, 793 F.2d 1502, 1514 (9th Cir. 1986).

1 Supreme Court of the United States held that a complainant must show “substantial evidence of  
2 discrimination that is intentional, severe, and unrelated to legitimate union objectives” in order to  
3 prove a certain union conduct to be discriminatory.<sup>8</sup>

### 4 **III. REPLY**

#### 5 **A. THE COMPLAINANT DID STATE FACTS, EVEN IN THE MOST** 6 **POSITIVE LIGHT AND ACCEPTED AS TRUE, WOULD NOT BE A** 7 **RECOGNIZABLE CLAIM AGAINST THE HPOA.**

8 Even giving credence to any of the Complainant's claims or looking at these in the most  
9 favorable light, the Association is still permitted to process the grievance as long as its actions  
10 (and judgment) is not arbitrary and capricious.

11 Officer Villa is aware of these facts and the standard, therefore in his complaint, he  
12 fabricates facts (such as an alleged hostility towards him) and then shapes it to fit a statutory  
13 narrative in an attempt to not only permit this Board from asserting jurisdiction over the alleged  
14 claim but also to avoid dismissal under State and Federal precedent.

15 This Board only has to look at the Complainant's claims in regards to his quest for the  
16 position of background investigator to see the lack of validity of his claims. Complainant was not  
17 qualified for his position, did not score high enough of the exam to qualify for the promotion -  
18 *even behind Officer Meyers - and then attempted to place fault with the Association when he was*  
19 *not selected.* But instead of accepting that reality, which was based on independent facts, he  
20 advanced that not on the Department, but also the Association, campaigned against him for  
21 speaking out against another officer.

22 The simple facts are: (1) He has no RIGHT to arbitration, regardless of the type of  
23 grievance that is filed; (2) There is a code of conduct that regulates the behavior of all the HPOA  
24 members and the Complainant's actions - in undermining, defaming and hindering the operation  
25 of the Association violates such a code; and (3) That the Association bylaws, which the

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27 <sup>8</sup> *Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of Am. v. Lockridge*, 403  
28 U.S. 274, 301 (1971).

1 Complainant agreed to be bound by when he joined the voluntary association, clearly gives the  
2 Executive Board and Membership the right to expel members who violate the Code of Conduct.

3 *The Association should still ne entitled to dismissal, as even if accepting all the claims as*  
4 *true, the Association was limited in being able to process that grievance to arbitration under the*  
5 *current Collective Bargaining Agreement (CBA) and under State and Federal law.*

#### 7 1. THE DUTY OF FAIR REPRESENTATION

8 Under the doctrine of the duty of fair representation, the law requires that when a union  
9 represents or negotiates on behalf of the employees in its bargaining unit, it must conduct itself in  
10 a manner that is not “arbitrary, discriminatory, or in bad faith.” *However the Association is*  
11 *granted wide leeway to handle the grievances in a manner that is in the best interests of its*  
12 *members.*

13 Here, the Complaint was not selected for a position as a background investigator - a  
14 voluntary assignment position that is determined by testing, established by the City and the  
15 Police Command Staff. The position has testing standards, and selection is made by the Police  
16 Command Staff itself, without input of the Association. Further, the determination of the  
17 promotional position is one that is squarely within “management rights”. Finally, and most  
18 telling, the selection of Officer Meyers did not have a direct impact on the Complainant for two  
19 reasons: (1) even if Meyers were disqualified, there is no requirement to go directly down the  
20 selection list and the City/Department has the ability to pick other viable candidates; and (2) even  
21 if Meyers were disqualified, the Complainant was not the #2 candidate, and was farther down the  
22 selection list, which does not make him the immediate “next selection” for the position, as he is  
23 alleging.

24 Next, when the Complainant formally grieved the selection of the position and expressed  
25 discontent over not being selected, the Association processed the grievance in accordance with  
26 the Association bylaws and the Collective Bargaining Agreement (CBA). *The grievance followed*  
27 *the process and was reviewed by the Chief and City Management, before the Association*  
28 *received a formal denial.* At that stage, according to the Association bylaws and the CBA, the

1 Association and the Executive Board has the final determination if that matter would be appealed  
2 to arbitration or any other litigation. In essence, the Association, and not the member, controls  
3 the grievance and the manner in which its final outcome is reached. The simple fact that the  
4 Complainant does not agree with the way it is processed, does not give him the right to claim that  
5 the actions of the Association are discriminatory. The Association made a determination - based  
6 on the facts and circumstances, the CBA, and prior decisions in arbitration - not to take the  
7 matter to arbitration *and that is within their sole purview and not subject to second guessing by*  
8 *an individual member.*

9 **Finally and MOST TELLING**, under the current Collective Bargaining Agreement, and  
10 based on prior Nevada Supreme Court decisions, **EVEN IF THE ASSOCIATION REQUESTED**  
11 **ARBITRATION, they would not be entitled to it.** The reason is simple: Complainant was  
12 grieving a Departmental policy for the selection for a specialized unit position. When he was not  
13 selected, he grieved the selection process and the policy itself. **POLICIES** of the Department  
14 and/or the City cannot currently be grieved to arbitration, under the terms of the CBA.

15 The Association processed the grievance through the informal and formal process, up to  
16 the level of arbitration. The Association could not advance the grievance any further and there  
17 was no independent manner for that policy to be reviewed under the CBA or other means. In  
18 short, the Association processed the grievance as far as the CBA would permit and when those  
19 avenues failed, the Association expressed that to the Complainant, who then made the irrational  
20 determination that it must have been for other reasons.

21 However, the Association processed the grievance as far as it could be prosecuted,  
22 regardless of Officer Villa's personal beliefs. Therefore, the Association acted in accordance with  
23 the requirements of Fair Representation, and there were no other avenues to exhaust. **In short, he**  
24 **is making a claim of a breach that did not exist and for there is no remedy.**

25 For those reasons alone, the Complaint should be dismissed.  
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1           2.       ASSOCIATION DISMISSAL OF COMPLAINANT

2           When officers join the Association, they are provided a Code of Conduct that requires  
3 them to work with other members and the Association for the advancement of all members of the  
4 Association. Specifically, within the Association bylaws, behavior which undermines or  
5 advocates to undermine the Association is not tolerated nor supported by the remainder of the  
6 members. If such a member is found in violation of these bylaws and Code of Conduct, he can be  
7 expelled from the Association.

8           Complainant - after not being selected for the position and learning that the Association  
9 would not take the matter to arbitration - engaged in a pattern of conduct to enrage other  
10 members against Officer Meyers, another member of the Association. The Association attempted  
11 to play mediator and calm the discord between the two members, but Officer Villa continued  
12 with his behavior. **To be clear, this was not based on Officer Villa's personal or political**  
13 **beliefs about Officer LaPeer, but solely due to the disharmony he was causing between**  
14 **other members of the Association.**

15           When the Association could not mediate the differences, Officer Meyer filed a complaint  
16 against Officer Villa with the HPOA and their Board of Directors. As required of them, they  
17 processed the complaint and following an independent investigation and review - determined that  
18 he was actively undermining the Association, and its members (effectively validating the  
19 Complaint of Officer Meyers) and expelled him from the Association.

20           Therefore, it was not Villa's personal beliefs or political stances that resulted in his  
21 expelling from the Association, it was his disruptive actions that was complained on by another  
22 member that caused the Association to take action. For if the Association did not take action,  
23 they would have breached their duty of representation to the other members of the Union.

24           While no member has a RIGHT to be a member of an Association, the Association has a  
25 duty to represent all members within their collective bargaining fairly in collective bargaining  
26 agreements, before administrative boards/IA hearings and in regards to grievances. The HPOA  
27 has acted within those guidelines and being so, the Complainant can show no actions that  
28 violated those duties.

1 IV. CONCLUSION

2 Based on the foregoing, the Association prays for the following relief:

3  
4 (1) Dismissal of the Complaint

5 (2) Award of reasonable attorney fees and costs

6 (3) Any other relief that the Board would grant  
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8  
9

10 DATED this 15<sup>th</sup> of August, 2025

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