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August 22, 2025
State of Nevada
E.M.R.B.
12:55 p.m.

CHRISTOPHER M. CANNON, ESQ.
Nevada Bar No. 9777
ANDREW REGENBAUM, J.D.
NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS
145 PANAMA STREET
HENDERSON, NEVADA 89015
(702) 431-2677 - Telephone
(702) 383-0701 - Facsimile
cannonlawnevada@gmail.com
andrew@napso.net

Attorneys for the Complainants

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

STATE OF NEVADA

HENDERSON POLICE SUPERVISORS
ASSOCIATION, A NEVADA
NON-PROFIT CORPORATION AND
LOCAL GOVERNMENT EMPLOYEE,
ORGANIZATION, and ITS NAMED AND
UNNAMED AFFECTED MEMBERS

Complainants

vs

CITY OF HENDERSON

Respondents

CASE NO: 2025-018

COMPLAINT

COMES NOW, Complainants, HENDERSON POLICE SUPERVISORS
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., and ANDREW REGENBAUM, J.D., of the
NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS (hereby "NAPSO"), and hereby
complain and allege against the CITY OF HENDERSON as follows:

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2. At all relevant times herein, the Association's affected members were and are *local government employees* as that term is defined in NRS 288.050.

4. The Government Employee-Management Relations Act was adopted by the Nevada Legislature in 1969, and is now embodied in NRS Chapter 288.

It is the right of every local government employee, subject to the limitations provided in subsections 3 and 4, to join any employee organization of the employee's choice or to refrain from joining any employee organization. **A local government employer shall not discriminate in any way among its employees on account of membership or nonmembership in an employee organization.** (Emphasis added).

1. Except as otherwise provided in subsection 6 and NRS 354.6241, every local government employer shall negotiate in good faith through one or more representatives of its own choosing concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for each appropriate bargaining unit among its employees. If either party so requests, agreements reached must be reduced to writing.

1 2. The scope of mandatory bargaining is limited to:

2
3 (a) Salary or wage rates or other forms of direct monetary compensation.

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5 (j) Recognition clause.

6 (k) The method used to classify employees in the bargaining unit.

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8 (m) Protection of employees in the bargaining unit from discrimination because of
9 participation in recognized employee organizations consistent with the provisions
10 of this chapter.

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12 (o) Grievance and arbitration procedures for resolution of disputes relating to
13 interpretation or application of collective bargaining agreements.

14 (p) General savings clauses.

15 (q) Duration of collective bargaining agreements.

16
17 7. NRS 288.270(1) provides in pertinent part as follows:

18 It is a prohibited practice for a local government employer or its designated
19 representative willfully to:

20 (a) **Interfere, restrain or coerce any employee in the exercise of any right guaranteed**
21 **under this chapter.**

22 (b) **Dominate, interfere or assist in the formation or administration of any employee**
23 **organization.**

24 (c) **Discriminate** in regard to hiring, tenure or any term or condition of employment **to**
25 **encourage or discourage membership in any employee organization.**

26 (d) **Discharge or otherwise discriminate** against any employee because the employee has
27 signed or filed an affidavit, petition or complaint or given any information or testimony
28 under this chapter, or **because the employee has formed, joined or chosen to be**
 represented by any employee organization.

 (e) **Refuse to bargain collectively in good faith with the exclusive representative as**
 required in NRS 288.150. Bargaining collectively includes the entire bargaining process,
 including mediation and fact-finding, provided for in this chapter.

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

3 (g) Fail to provide the information required by NRS 288.180.

4 (Emphasis added).

5 8. This Government Employee-Management Relations Board ("Board") has
6 jurisdiction pursuant to NRS 288.110(2) to "hear and determine any complaint arising out of the
7 interpretation of, or performance under, the provisions of this chapter by the Executive
8 Department, any local government employer, any employee, as defined in NRS 288.425, any
9 local government employee, any employee organization or any labor organization."

10 9. This Board has further jurisdiction pursuant to NRS 288.080 to hear and
11 determine "any controversy concerning prohibited practices."

12 10. When a labor dispute arises, employees and recognized employee organization are
13 required to raise before the Board issues within the jurisdiction of the Board before resorting to
14 civil litigation. *Rosequist v Int'l Ass'n of Firefighters Local 1908*, 118 Nev. 444, 450-451, 40
15 P.3d 651, 655 (2002), overruled on other grounds by *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565,
16 170 P.3d. 989 (2007).

17 11. The Association is the recognized bargaining unit for the members of the
18 Association. As such, committee members, officers, board members and other representatives
19 engage in collective bargaining negotiations with representatives of the City with respect to
20 contractual obligations and terms of employment. As part of this, these members of both the
21 Association and the City agree upon dates and times for these collective bargaining meetings,
22 and both parties are represented by legal counsel during these sessions.

23 12. The violations of state law and the "union busting" practices identified herein
24 have been an ongoing policy and practice of the City.

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1 22. That both police unions and the City agreed to select a mediator pursuant to NRS
2 288 as the next step in the negotiation process, before resorting to fact finding and arbitration, as
3 designated in NRS 288.190.

4 23. For speed, judicial economy and to conserve costs for all parties, the Henderson
5 Police Officers Association, the Henderson Police Supervisors Association and the City of
6 Henderson all agreed to use the same mediator for **both associations, and all parties agreed to**
7 ***waive the “fact finding” portion of the process.***

8 24. That the parties agreed to use Mediator Stephen Hayford for both of the
9 meditations, and that they would be held on consecutive days - August 11, 2025 and August 12,
10 2025 at the City of Henderson’s City Hall campus. Each Association would have their own
11 mediation day - HPOA on August 11, 2025; and HPSA on August 12, 2025.

12 25. That on August 11, 2025, the HPOA and City met and with the assistance of
13 Mediator Hayford - attempted to negotiate the terms of the new collective bargaining agreement.

14 26. That during the negotiation with the non-supervisor’s union, the City stated, in
15 writing, that:

16 “ HPOA and HPSA are advised and recognize that to fund the proposal (for
17 wages), the City plans to eliminate 7 vacant sergeant positions, 3 vacate lieutenant
18 positions, and 1 vacant captain position. Both HPOA and HPSA agree not to file
19 grievances, demands for decisional or impact and effects bargaining, unfair
20 practice complaints, or other challenges to the elimination of these vacant
21 positions”

22 27. That the City was aware that the HPSA was **not present for this mediation with**
23 **the City personnel, that these positions were covered in the HPSA’s CBA, and that HPOA**
24 **did not have the authority to unilaterally agree to eliminate the positions.**

25 28. That the HPOA recognized that they could not agree to such terms and could not
26 advocate for such a funding agreement, without the participation of HPSA in these negotiations.

27 29. That the HPSA **was not aware, nor had the City contacted the Association to**
28 **let them know that such an offer was even being made.**

1 30. That out of abundance of caution, and to avoid legal issues, the HPOA contacted
2 the HPSA and relayed the terms of the offer from the City of Henderson. The HPOA then
3 advised the City and the mediator that all the association officers/negotiating committees would
4 have to be present during the HPSA's designated mediation date (August 12, 2025) to discuss
5 this offer jointly. The City and the mediator agreed to such terms.

6 31. That on August 12, 2025, the day of the HPSA's mediation, the City again
7 improperly fashioned a counter proposal (as outlined in paragraph 26) - and stated that it required
8 *the support of both associations in order to be funded and passed.*

9 32. That the terms **required that both Associations: (1) to agree to the elimination**
10 **of HPSA positions and (2) required that both Associations *wave* any and all rights to legal**
11 **remedies to review and/or challenge the agreement before any court, administrative review**
12 **process and/or EMRB claim - regardless of the validity of such a legal claim.**

13 33. Once again, that despite these terms, both Associations agreed to meet jointly on
14 the day designated to mediate the HPSA's CBA.

15 34. That on August 12, 2025, mediation reconvened with all three (3) parties in the
16 room. Two separate proposals were passed by each association to the City, that included each
17 Association agree to *the to the position that supervisor positions would be eliminated as a term*
18 *of funding for both the HPOA and HPSA's CBA, but also addressing issues individually relevant*
19 *to the separate contracts.*

20 35. That after recognizing that the City was negotiating in bad faith - by requiring that
21 both unions agree to terms that adversely affected only one association, and failed to address
22 individual articles unique to the separate bargaining units, the HPSA rejected the City's offer.
23 The HPOA also rejected the City's proposal and remained at impasse. That the City then
24 responded that the HPOA and HPSA's counter proposals were "ridiculous".

25 36. That after expressing that the offer was rejected, the HPSA requested to continue
26 to meet with the City and the mediator to attempt to resolve the impasse on the remaining
27 contractual articles, and desired to continue to meet without the HPOA being present (a condition
28 the HPOA agreed to).

1 37. That in response to the rejection of the funding proposal by the HPOA, the City
2 refused to meet and negotiate with the HPSA on any terms of their CBA, and stated that
3 **without the acceptance of the funding terms, the City had nothing else to discuss with the**
4 **HPSA, effectively depriving them of their day with the mediator, costing them mediation**
5 **expenses and legal fees for their counsel to present for these mediation.**

6 38. That during this designated day of mediation, the chief negotiator for the City did
7 not appear, but instead the City was represented by outside hired counsel from Chicago.
8 Additionally, during the initial day of mediation, the City advocated that they would now argue
9 an “inability to pay” for a new CBA, which was the first time that the City stated such a legal
10 theory and such a theory was not supported by any evidence presented to the Associations.

11 39. That the City resorted to such tactics in an attempt to coerce both Associations to
12 agree to their terms and deprive the Association’s of their **individual right to negotiate for the**
13 **terms and conditions of their individual CBA, for their respective members.**

14 40. That the actions of the City **was a prohibited labor practice as outlined in NRS**
15 **Chapter 288.**

16 41. **Based on the foregoing,** the City of Henderson has committed unfair labor
17 practices in ways that included, but may not be limited to the following:

- 18 a. Interfere, restrain or coerce any employee in the exercise of any right guaranteed
19 under NRS 288, including engaging in bad faith bargaining by interfering with the
20 association’s ability to collectively bargain and/or engaging in an unfair labor
21 practice.
- 22 b. Discriminate in regard to the terms and conditions of the members’ employment
23 to discourage members to join the Association (“union busting”) in violation of
24 NRS 288.270.
- 25 c. Engaging in retaliatory treatment against the Association and their officers for
26 exercising their rights under NRS 288.

- d. Engaging in a concerted pattern of conduct to ignore contractual rights, rights imposed by state and federal law, judicial orders for the purpose of coercing the members of the Association to waive and/or give up their ability to enforce their rights within the law.
- e. Discriminating against members and leaders of the Association on the basis of political or personal reasons or affiliations in violation of NRS 288.270.
- f. Refuse to bargain collectively and in good faith as required by NRS 288.150

PRAYER FOR RELIEF

WHEREFORE, Complainants and its members, while reserving the right to amend this Complaint to set forth additional facts or causes of action that are presently unknown to them, pray for relief as follows:

1. For a finding in favor of the Complainants that the City engaged in an unfair labor practice by (1) coercing the supervisors police union to agree to terms of a contract that would adversely affect another Association's members and positions; (2) coercing both Associations to be present for the mediation **at the same time**, in an attempt to coerce them into agreeing to terms and depriving them of their statutory day of mediation, (3) refusing to negotiate with the supervisors association to mediate issues related to their particular contract.
2. For a finding in favor of the Complainants that the City refused to bargain collectively and in good faith, violating NRS 288.150;
3. For reimbursement of the costs of the mediation;
4. For a finding that the Respondent interfered in the administration of the Association in violation of NRS 288.270;
5. For an order that the Respondent cease and desist from retaliatory behavior towards the Association, its members and its officers;
6. For an order that Respondent cease and desist from all prohibited and unfair labor practices therein, and for any other conduct that would be considered "union busting";
7. For reasonable attorney's fees to prosecute this action;

8. For such other and further relief as the Board deems appropriate under the circumstances.

DATED this 22nd day of August, 2025.

BY: /Christopher Cannon/
CHRISTOPHER M. CANNON, ESQ.
Nevada Bar No. 9777
ANDREW REGENBAUM, J.D.
Nevada Association of Public Safety Officers
145 PANAMA STREET
HENDERSON, NEVADA 89015
(702) 431-2677 - Telephone
(702) 383-0701 - Facsimile
Attorneys for the Complainants

City of Henderson (Respondent)

Answer to Complaint

FILED
September 16, 2025
State of Nevada
E.M.R.B.
3:37 p.m.

1 **NICHOLAS G. VASKOV**
2 City Attorney
3 Nevada Bar No. 008298
4 **BRANDON P. KEMBLE**
5 Assistant City Attorney
6 Nevada Bar No. 011175
7 240 Water Street, MSC 144
8 Henderson, NV 89015
9 (702) 267-1200 Telephone
10 (702) 267-1201 Facsimile

11 Attorneys for Respondent
12 City of Henderson

13 **GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

14 **STATE OF NEVADA**

15 Henderson Police Supervisors Association, a
16 Nevada Non-Profit Corporation and Local
17 Government Employee Organization, and Its
18 Named and Unnamed Affected Members,

19 Complainants,

20 v.

21 CITY OF HENDERSON,

22 Respondent.

CASE NO.: 2025-018

RESPONDENT CITY OF
HENDERSON'S ANSWER TO
COMPLAINT

23 Respondent City of Henderson (the "City"), by and through its undersigned counsel of record,
24 hereby submits its answer to Complainants Henderson Police Supervisors Association ("HPSA" or
25 "Association") and its named and unnamed affected members' Complaint ("Complaint") by
26 admitting, denying and alleging as follows, and further declares its Affirmative Defenses below:

27 **JURISDICTIONAL ALLEGATIONS**

- 28
1. The City admits the allegations contained in Paragraph 1 of the Complaint.
 2. The City admits the allegations contained in Paragraph 2 of the Complaint.

CITY ATTORNEY'S OFFICE
CITY OF HENDERSON
240 S. WATER STREET MSC 144
HENDERSON, NV 89015

3. In answering Paragraph 3 of the Complaint, the City admits that it was and is a political subdivision of the State of Nevada. The City denies that it is a local government employee of the Association's members. However, the City admits that it is a local government employer of the Association's members as defined in NRS 288.060.
4. The allegations in Paragraph 4 of the Complaint are not asserted against the City and state legal conclusions, not factual allegations, such that no response is required. To the extent a response is required, the City denies the allegations.
5. The allegations in Paragraph 5 of the Complaint are not asserted against the City and state legal conclusions, not factual allegations, such that no response is required. To the extent a response is required, the City denies the allegations.
6. The allegations in Paragraph 6 of the Complaint are not asserted against the City and state legal conclusions, not factual allegations, such that no response is required. To the extent a response is required, the City denies the allegations.
7. The allegations in Paragraph 7 of the Complaint are not asserted against the City and state legal conclusions, not factual allegations, such that no response is required. To the extent a response is required, the City denies the allegations.
8. The allegations in Paragraph 8 of the Complaint are not asserted against the City and state legal conclusions, not factual allegations, such that no response is required. To the extent a response is required, the City denies the allegations.
9. The allegations in Paragraph 9 of the Complaint are not asserted against the City and state legal conclusions, not factual allegations, such that no response is required. To the extent a response is required, the City denies the allegations.

10. The allegations in Paragraph 10 of the Complaint are not asserted against the City and state legal conclusions, not factual allegations, such that no response is required. To the extent a response is required, the City denies the allegations.

11. The City admits the allegations contained in Paragraph 11 of the Complaint.

12. The City denies the allegations contained in Paragraph 12 of the Complaint.

13. The City denies the allegations contained in Paragraph 13 of the Complaint.

14. In answering Paragraph 14 of the Complaint, the City admits that the parties did not come to an agreement on ground rules for the negotiations.

15. In answering Paragraph 15 of the Complaint, the City admits that the City selected its negotiation team and designated a lead negotiator for negotiations. The City further admits that both parties reserved the right to change their representatives during negotiations. The City is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 15 of the Complaint and on this basis denies the same.

16. In answering Paragraph 16 of the Complaint, the City admits that the Association initially designated Lt. Charles Hedrick as its lead negotiator. At some point in the negotiations, the Association designated Andrew Regenbaum to be its lead negotiator for the remainder of the negotiations.

17. In answering Paragraph 17 of the Complaint, the City admits that the City designated Carlos McDade as its lead negotiator for the purposes of negotiations.

18. The City denies the allegations in Paragraph 18 of the Complaint; the City and the Association met a total of six meetings, including the meeting where ground rules were discussed: 3/05, 3/31, 5/14, 5/28, 6/04, and 6/18.

1 19. The City admits the Union declared an impasse following the parties' bargaining sessions
2 referred to in Paragraph 18 of the Complaint. The City is without sufficient knowledge or
3 information to form a belief as to the truth of the allegations contained in Paragraph 19 of the
4 Complaint regarding what the Union "noted" after the bargaining sessions and on this basis
5 denies the same.

6
7 20. The City admits the allegations contained in Paragraph 20 of the Complaint.

8 21. In answering Paragraph 21 of the Complaint, the City admits that the Henderson Police
9 Officers Association ("HPOA") declared impasse with the City of Henderson in June of 2025.

10 22. The City denies the allegations in Paragraph 22 of the Complaint, as the Association originally
11 requested to skip mediation. After the City declined to skip mediation, the parties agreed to
12 select the same mediator for both the HPOA mediation and the HPSA mediation.

13 23. The City admits the allegations contained in Paragraph 23 of the Complaint.

14 24. The City admits the allegations contained in Paragraph 24 of the Complaint.

15 25. The City admits the allegations contained in Paragraph 25 of the Complaint.

16 26. In answering Paragraph 26 of the Complaint, the City admits the Union selectively quotes one
17 portion of the City's proposal in mediation without the surrounding context. The City admits
18 that it contemplated a creative offer that required agreement by both the HPOA and HPSA,
19 and that to fund the offer it would require the elimination of vacant positions that would be
20 represented by the HPSA if the positions were filled. To avoid any potential disputes, the
21 City required that both Associations "agree not to file grievances, demands for decisional or
22 impact and effects bargaining, unfair practice complaints, or other challenges to the
23 elimination of these vacant positions."

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26 27. In answering Paragraph 27 of the Complaint, the City and the mediator understood that only
27 HPOA was present when it introduced the offer and that the HPOA could not agree to the
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1 offer on the HPSA's behalf. The mediator suggested that the HPOA and HPSA meet together
2 the following day to further discuss the City's proposal prior to starting the designated
3 mediation day with the HPSA, and all parties agreed to this suggestion. At no point did the
4 HPOA or HPSA object or state that meeting jointly would be a violation of either
5 Association's rights under the law.
6

7 28. The City is without sufficient knowledge or information to form a belief as to the truth of the
8 allegations contained in Paragraph 28 of the Complaint and on this basis denies the same.

9 29. The City is without sufficient knowledge or information to form a belief as to the truth of the
10 allegations contained in Paragraph 29 of the Complaint and on this basis denies the same.

11 30. In answering Paragraph 30 of the Complaint, the City admits that it agreed with the mediator's
12 suggestion that the HPOA and HPSA meet together the following day to further discuss the
13 City's proposal prior to starting the designated mediation day with the HPSA. With regards
14 to any remaining allegations in Paragraph 30 of the Complaint, the City is without sufficient
15 knowledge or information to form a belief as to the truth of the allegations contained in
16 Paragraph 30 of the Complaint and on this basis denies the same.
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18 31. In answering Paragraph 31 of the Complaint, the City admits that a condition of the City's
19 supposal offered at mediation included language requiring both Associations to waive their
20 right to challenge the City's decision to eliminate vacant but funded positions that would be
21 represented by the HPSA if the positions were filled; the elimination of the vacant positions
22 is what allowed the City to fund the generous supposal to the Associations. The City denies
23 that this supposal was improperly fashioned.
24

25 32. In answering Paragraph 32 of the Complaint, the City admits that a condition of the City's
26 supposal offered at mediation included language requiring both Associations to waive their
27 right to challenge the City's decision to eliminate vacant but funded positions that would be
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1 represented by the HPSA if the positions were filled; the elimination of the vacant positions
2 is what allowed the City to fund the generous supposal to the Associations.

3 33. In answering Paragraph 33 of the Complaint, the City admits that the Associations agreed to
4 jointly meet to discuss and consider the City's supposal on the second day of mediation,
5 designated for the HPSA mediation. At no time, did either Association voice any objections
6 to the City about discussing and considering the City's supposal, or state that meeting jointly
7 would be a violation of either Association's rights under the law.
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9 34. The City admits the allegations contained in Paragraph 34 of the Complaint.

10 35. The City denies the allegations contained in Paragraph 35 of the Complaint.

11 36. In answering Paragraph 36 of the Complaint, the City is without sufficient knowledge or
12 information to form a belief as to the truth of the allegations contained in Paragraph 36 of the
13 Complaint and on this basis denies the same.
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15 37. The City denies the allegations contained in Paragraph 37 of the Complaint.

16 38. The City denies the allegations contained in Paragraph 38 of the Complaint.

17 39. The City denies the allegations contained in Paragraph 39 of the Complaint.

18 40. The City denies the allegations contained in Paragraph 40 of the Complaint.

19 41. The City denies the allegations contained in Paragraph 41(a-f) of the Complaint.
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21 **AFFIRMATIVE DEFENSES**

22 Respondent, the City, asserts the following non-exclusive list of defenses to this action. These
23 defenses have been labeled as "Affirmative" defenses regardless of whether, as a matter of law, such
24 defenses are truly affirmative defenses. Such designation should in no way be construed to constitute
25 a concession on the part of the City that it bears the burden of proof to establish such defenses.

26 **First Affirmative Defense:** The Complaint fails to conform to the requirements of NAC
27 288.200(1)(c) and should be dismissed as it fails to include a clear and concise statement of the
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1 facts constituting the alleged practice sufficient to raise a justiciable controversy under chapter
2 288 of NRS.

3 **Second Affirmative Defense:** The Complaint fails to state facts that support a claim for bad faith,
4 interference with the administration of the Association, union busting, or retaliation.
5

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the City of Henderson prays for judgment against Plaintiff as follows:

- 8 1. That Complainants take nothing by virtue of their claims against the City of Henderson and
9 that the Complaint be dismissed with prejudice;
10 2. That Respondents be awarded attorneys' fees and costs incurred herein; and
11 3. For such other and further relief as the EMRB may deem just and proper.
12

13 DATED this 16th day of September 2025.

14 CITY OF HENDERSON

15 /s/ Brandon Kemble
16 BRANDON P. KEMBLE
17 Assistant City Attorney
18 Nevada Bar No. 011175
19 240 Water Street, MSC 144
20 Henderson, NV 89015

21 Attorney for Respondent
22 City of Henderson
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CITY ATTORNEY'S OFFICE
CITY OF HENDERSON
240 S. WATER STREET MSC 144
HENDERSON, NV 89015



CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September 2025, the above and foregoing, **RESPONDENT CITY OF HENDERSON'S ANSWER TO COMPLAINANTS' COMPLAINT**, was electronically filed with the EMRB (emrb@business.nv.gov) and served by depositing a true and correct copy thereof in the United States mail, postage fully prepaid thereon, to the following:

Christopher M. Cannon, Esq.
Andrew Regenbaum
Nevada Association of Public Safety Officers
145 Panama Street
Henderson, Nevada 89015
andrew@napso.net
aregenbaum@aol.com

/s/ Laura Kopanski
Employee of the Henderson City Attorney's Office

City of Henderson (Respondent)

Motion to Dismiss

FILED
September 16, 2025
State of Nevada
E.M.R.B.

2:13 p.m.

1 **NICHOLAS G. VASKOV**
City Attorney
2 Nevada Bar No. 008298
3 **BRANDON P. KEMBLE**
Assistant City Attorney
4 Nevada Bar No. 011175
240 Water Street, MSC 144
Henderson, NV 89015
5 (702) 267-1200
(702) 267-1201 Facsimile
6 Brandon.Kemble@cityofhenderson.com

7 Attorneys for Respondent
8 City of Henderson

9 **STATE OF NEVADA**

10 **GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

11 Henderson Police Supervisors Association, a
12 Nevada Non-Profit Corporation and Local
Government Employee Organization, and Its
13 Named and Unnamed Affected Members,

14 Complainants,

15 vs.

16 City of Henderson,

17 Respondent.

EMRB Case No.: 2025-018

18 **RESPONDENT'S MOTION TO**
19 **DISMISS**

20 Respondent City of Henderson ("City"), by and through its undersigned counsel,
21 hereby submits this Motion to Dismiss the Complaint filed by the Henderson Police
22 Supervisors Association ("HPSA" or "Union"). This Motion is made pursuant to NRS Chapter
23 288 (the Employee-Management Relations Act), NRS Chapter 233B and NAC Chapter 288

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1 and based upon the following points and authorities, the pleadings and documents on file with
2 the Board and attached to this Motion.

3 Dated this 16th day of September 2025.

4 CITY OF HENDERSON

5
6 /s/ Brandon Kemble
BRANDON P. KEMBLE
Assistant City Attorney
Nevada Bar No. 011175
240 Water Street, MSC 144
Henderson, NV 89015

9 Attorney for Respondent
10 City of Henderson

11
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13
14 **I. INTRODUCTION**

15 HPSA attempts to throw every possible argument at the wall to see what will stick.
16 Despite the barrage, the Union never successfully articulates an actual, and actionable, claim
17 under NRS 288 in the at-issue Complaint. More specifically, HPSA claims, without much
18 specification, that the City engaged in coercion and bad faith bargaining, discriminated against
19 them by "union busting," retaliated against them for exercising their rights, discriminated
20 against them, and engaged in coercion. However, despite this list of purported terribles, the
21 factual allegations fail to adequately explain or support their legal conclusions.
22

23 As often happens with public sector negotiations, the City has been negotiating with
24 multiple bargaining units for successor contracts simultaneously. Here, in relevant part, the
25 City has been bargaining with both HPSA and the Henderson Police Officers Association
26 ("HPOA") at the same time. And, as is also frequently the case, the amount of money the City
27 can dedicate to one unit has a direct impact on the amount of money it can or cannot dedicate
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1 to another unit. Such is the reality of collective bargaining in the public sector with finite,
2 taxpayer funded resources. As such, during mediation, when HPOA was yearning for a more
3 lucrative contract than the City had been offering, the City was in a bind. Any money the City
4 gave HPOA would directly impact the HPSA negotiations. After searching for a creative
5 solution, the City issued HPOA a much richer contract proposal and to avoid any potential
6 litigation from HPSA based on their litigation history, the City's proposal required support
7 from HPSA as well. Cooperative bargaining is not a new concept and has been accepted by
8 the National Labor Relations Board (NLRB) for decades. Nevertheless, both HPOA and
9 HPSA balked at the proposal. Each Union tendered its own counter-proposal. The City
10 understood the unions' positions, considered their offers, and as is the City's right, it did not
11 agree to either HPOA's or HPSA's counterproposal. None of this rises to the level of bad-
12 faith bargaining. At most, this represents the ordinary search for common ground that takes
13 place during good-faith negotiations.

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16 As fully explained below, the Complaint on its face fails to contain sufficient
17 allegations demonstrating that the City engaged in anything close to bad faith bargaining.
18 Moreover, HPSA's Complaint fails to contain a sufficiently detailed explanation of their
19 arguments against the City which, by definition, is a fatal flaw. While HPSA alleges a series
20 of facts and then a series of conclusions, HPSA does not adequately tie the two together. Given
21 the significant deficiencies in HPSA's above-captioned Complaint, the City respectfully
22 requests that the Board dismiss this Complaint in its entirety.

23 24 IL BACKGROUND

25 Based on the contents of the Complaint, the factual allegations brought by the Union
26 are as follows:

27 HPSA represents a bargaining unit of City Police Sergeants and Lieutenants; and the
28

1 City and HPSA have been parties to a collective bargaining agreement dated July 1, 2021 to
2 June 30, 2025. A copy of the HPSA CBA is on file with the Board and is attached hereto as
3 Exhibit A. The parties have been in successor bargaining negotiations for a period of time.
4 (Compl. ¶ 13). At the same time, the City has been in negotiations with a successor agreement
5 with the officer's union - HPOA. (Compl. ¶ 20). HPSA and HPOA negotiations are, by very
6 definition, tied at the hip. (Ex. A at Art. 5). The current status quo wage arrangement with
7 HPSA is that their members receive a flat percentage wage differential compared to the wages
8 of the HPOA. (*Id.*). Thus, while negotiating with the HPOA, particularly during their
9 discussion of wages, the City naturally had to consider the impact of its economic guarantees
10 to the HPOA on its HPSA negotiations. After six bargaining sessions without reaching a
11 voluntary agreement, HPSA declared an impasse. (Compl. ¶ 18-19). The parties proceeded to
12 mediation. (Compl. ¶ 22, 24).

15 During mediation, as the HPOA continued to propose increases the City couldn't
16 otherwise afford, the City came up with a creative proposal that could benefit both units.
17 (Compl. ¶ 26). But because the proposal would necessarily impact both units, the City
18 included a provision that would need both units to agree to the terms. (Compl. ¶ 26). For
19 whatever reason, the Unions balked at the concept and flatly declined the City's proposal.
20 (Compl. ¶¶ 34-36). The Unions counter-proposed individual proposals to the City. (Compl.
21 ¶¶ 34-35). The City declined both. (Compl. ¶ 35). According to HPSA, the City declined to
22 meet with them further on the date in question. (Compl. ¶37). The Complaint contains no
23 allegation that HPSA requested any further bargaining sessions after mediation was
24 unsuccessful. (Compl., generally). The Union's Complaint followed.

26 III. ARGUMENT

27 HPSA's Complaint is both unclear and fails to state a claim for relief. The Board may
28



1 dismiss a complaint if it “determines that no probable cause exists for the complaint” NAC
2 288.375(1). To establish a viable complaint, the complainant must include a “clear and
3 concise statement of facts constituting the alleged practice sufficient to raise a justiciable
4 controversy under chapter 288 of NRS” NAC 288.200(1)(c). Parties in proceedings before
5 the Board do not have the right to engage in extensive pre-hearing discovery; by extension,
6 respondents are prejudiced by pleadings that fail to provide sufficient notice of the issues
7 because they cannot adequately prepare to defend themselves. *See Coury v. Whittlesea-Bell*
8 *Luxury Limousine*, 102 Nev. 302, 308 (1986). Additionally, failure to allege facts constituting
9 a justiciable controversy equates to a lack of probable cause. *See Nevada Service Employees*
10 *Union, v. Clark County Water Reclamation District*, Case No. 2024-030, Item No. 905
11 (EMRB, Dec. 17, 2024).

12
13
14 **A. HPSA’s Complaint Fails to Establish the City Bargaining in Bad Faith.**

15 To the extent the City can identify the Union’s claims, it seems that its main contention
16 is that the City somehow bargained in bad faith in violation of NAC 288.270(1)(e). Whether
17 an employer has violated its duty to bargain in good faith turns on the totality of its conduct
18 and not on a single incident. *Int’l Brotherhood of Electrical Workers, Local 1245 v. City of*
19 *Fallon*, Case No. AI-045485, Item No. (1991); *N.L.R.B. v. Insurance Agents’ Union*, 361 U.S.
20 477, 49 (1960). Labor boards have repeatedly recognized that bargaining in good faith *does*
21 *not require* the parties to actually reach an agreement, rather, it requires the parties put forth
22 “a sincere effort” to do so. *City of Reno v. Int’l Ass’n of Firefighters, Local 731*, Item No.
23 253-A, Case No. AI-045472 (1991). “In order to show ‘bad faith’, a complainant must present
24 ‘substantial evidence of fraud, deceitful action or dishonest conduct.’” *Juvenile Justice Supr.*
25 *Ass’n v. County of Clark*, Case No. 2017-20, Item No. 834 (2018). HPSA’s allegations fail to
26 establish the City engaged in fraud, deceit, or dishonesty at the bargaining table.
27
28

1 As a threshold matter, there can be no bad faith bargaining here because the City had
2 no duty to bargain whatsoever. The EMRB has held, "there is no duty on the part of either
3 party to bargain after impasse is reached." *Clark County Classroom Teachers Ass'n v. Clark*
4 *County School Dist.*, Case No. A1-045302, Item No. 62, p. 9 ¶ 14 (1976), *cited with approval*
5 *in Las Vegas Fire Fighters Local 1285, International Association of Fire Fighters vs. City of*
6 *Las Vegas, Nevada Respondents*, Case No. A1-046074, Item No. 786, p. 8 (2013). In this
7 case, the Union accurately alleges that after six bargaining sessions, with sixteen unresolved
8 issues still on the table, the Union declared an impasse. (Compl. ¶ 18-19). The Union does
9 not allege that impasse was ever broken; to the contrary, the Union recognizes "the parties
10 remained at impasse." (Compl. ¶ 35). If there is no duty to bargain whatsoever after an
11 impasse, the City can hardly be accused of bad faith bargaining post-impasse.

12
13
14 Assuming for the sake of argument there was any duty to bargain whatsoever, the
15 Complaint still fails as a matter of law. It appears that HPSA's main gripe is the format of the
16 City's bargaining proposal during mediation. The City is unaware of any case law establishing
17 that a single proposal requiring agreement from multiple bargaining units can support an
18 allegation of bad faith bargaining. In fact, the NLRB has frequently held that, absent
19 extraordinary circumstances, use of coordinated bargaining, such as in the instant case, does
20 not constitute a prohibited practice (or an unfair labor practice, using the NLRB's term of art).
21 *See N.L.R.B. v. Indiana & Michigan Elec. Co.*, 599 F.2d 185, 190 (7th Cir. 1979) (an employer
22 may not refuse to bargain with unions engaging in coordinated bargaining absent unusual
23 circumstances); *Imperial Outdoor Advert.*, 192 NLRB 1248, 1249 (1971) (holding employers
24 had right to collaborate as a group for their convenience). Here, one proposal to increase pay
25 for both units in exchange for both units agreeing not to litigate against the City hardly
26 supports a finding of bad faith bargaining.



1 Even if the City's coordinated proposal was a permissive subject of bargaining, which
2 it should not be, that is still not enough for HPSA to establish bad faith bargaining. It is well-
3 established that merely proposing a permissive subject of bargaining is not, by itself, bad faith
4 bargaining. *City of Sparks vs. IAFF, Local No. 1265*, Case No. A1-045332, Item No. 103, ¶
5 8-12 (1980) (union's submission of permissive subject of bargaining regarding rules and
6 regulations did not constitute bad faith bargaining; although employer had no obligation to
7 negotiate over such proposals, the employer was required to discuss them).

9 Moreover, to the extent that HPSA takes issue with not being provided with the
10 proposal at the same time as HPOA, the fact that the City gave the proposal to HPOA first, as
11 opposed to giving it to both units simultaneously, is indicative of nothing. The proposal clearly
12 provides that it was going to be issued to both HPSA and HPOA, and HPSA clearly received
13 a copy of that proposal. (Compl. ¶ 30-33). There was no secret or deceitful conduct here.

15 HPSA also suggests that the use of outside counsel was somehow improper. As HPSA
16 itself infers throughout its Complaint, parties have the right to select their own bargaining
17 representatives. The City simply exercised its guaranteed right; HPSA's dissatisfaction with
18 the City's decision is not an unfair labor practice. In fact, the exact opposite is true. It would
19 be a prohibited practice for the Union to coerce the City in its choice of bargaining
20 representatives. *See, e.g., N.L.R.B. v. Int'l Bhd. of Elec. Workers Loc. 1547, AFL-CIO*, 971
21 F.2d 1435, 1435 (9th Cir. 1992).

23 Lastly, HPSA contends, or at least seems to contend, that the City's rejection of its
24 proposal and its decision to end mediation also constitute bad faith bargaining. At most, HPSA
25 alleges that the City engaged in hard bargaining by being dissatisfied by HPSA's counteroffer
26 and not wanting to discuss things further without addressing the funding issue. (See Compl. ¶
27 37). But the EMRB has consistently held "adamant insistence on a bargaining position or
28

1 'hard bargaining' is not enough to show bad faith bargaining." *Las Vegas Peace Officers*
2 *Association v. City of Las Vegas*, Case No. 2015-034, Item No. 821 (2017); *see, e.g., Reno*
3 *Municipal Employees Ass 'n v. City of Reno*, Case No. A1-045326, Item No. 93 (1980).
4 Furthermore, just as the Union cannot dictate who represents the City during negotiations, the
5 City has no control over who is in the bargaining room with HPSA when HPSA prepares and
6 tenders its proposals to the City. Nothing in NRS 288 compels the City to accept any of the
7 Union's offers, nor is the City compelled to tender further counterproposals after the City has
8 put all of its chips on the table. That is precisely what the impasse provisions of NRS exist to
9 address. Therefore, HPSA failed to raise a claim for bad faith bargaining and those positions
10 of the Complaint should be dismissed.

11
12 **B. HPSA's Complaint Fails to Establish the City Interfered with their Rights,**
13 **Discriminated or Retaliated Against them.**

14 In addition to arguing that the City engaged in bad faith bargaining, HPSA apparently
15 contends the City interfered with their rights, discriminated against them, and/or retaliated
16 against them. Absent any clear indication in the complaint, which is an additional basis for
17 dismissal as discussed in Section C below, the City presumes all of this relates to its proposal
18 to HPSA and HPOA. As a preliminary matter, the Union presents no facts or arguments
19 indicating how the City's proposal to further enhance bargaining unit employee wages and
20 benefits could be construed as discriminatory or retaliatory in nature. Thus, those arguments
21 are inherently defective. HPSA's interference argument comes slightly closer to the mark but
22 still fails to raise a claim under NRS Chapter 288.
23

24 To establish a viable interference claim pursuant to NRS 288.270(1)(a), the Board
25 determines whether there are sufficient facts demonstrating (1) a reasonable employee would
26 view the actions as coercive; (2) there was protected activity; and (3) "the employer fails to
27 justify the action with a substantial and legitimate business reason." *Billings and Brown v.*
28

1 *Clark County*, Case No. A1-046002, Item No. 751 (2012); citing *Medeco Sec. Locks, Inc. v.*
2 *NLRB*, 142 F.3d 733, 745 (4th Cir. 1988); *Reno Police Protective Ass'n v. City of Reno*, 102
3 Nev. 98, 101, 715 P.2d 1321, 1323 (1986).

4 As best the City can tell, the Union contends that by issuing a proposal that involves
5 multiple bargaining units it was "coercive." But the Union also fails to acknowledge that
6 cooperative bargaining, as noted above, has been a legitimate bargaining tactic for decades.
7 *Imperial Outdoor Advert.*, 192 NLRB 1248, 1249 (1971). The legal question is whether the
8 City's purported actions stripped the Unions of their individual decision-making. *See Don Lee*
9 *Distrib., Inc.*, 322 NLRB 470 (1996); *Subject: King Soopers Safeway Albertson's*, No. Case
10 27-CA-19325, 2005 WL 545232, at *3 (Feb. 17, 2005). HPSA's own allegations and the at-
11 issue proposal demonstrate that each Union was free to agree or not to agree as they deemed
12 appropriate. Nothing in the Complaint suggests that the City was forcing the union to give up
13 its autonomous status. To the contrary, the Complaint alleges the HPSA presented its own
14 proposal (Compl. ¶¶ 34-35). The City considered and then declined that proposal. (Compl. ¶
15 35). The allegations do not support a finding that the City insisted upon anything.

16 Additionally, the City had a legitimate reason for issuing a proposal that involved both
17 bargaining units. The current status quo with HPSA automatically ties the wages of both units
18 together. (See Ex. A, Art. 5). By extension, any agreement to provide wages to HPOA
19 automatically implicates wages for HPSA. Moreover, to adequately fund the proposal to
20 HPOA, and ultimately HPSA, the City needed certain concessions and guarantees. Namely,
21 the City needed to eliminate certain vacant supervisory positions to fund the additional
22 increases and wanted both units to agree to the elimination of those positions. (See Ex. B).
23 Why would the City agree to give both units more money than it could afford while also
24 signing itself up for prolonged litigation?
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1 The City's proposal was a legitimate, albeit creative, proposal that would have
2 benefited both units, while also being cost-effective. That HPSA is not used to seeing this
3 kind of proposal does not twist it into an unlawful coercive tactic. *See Juvenile Justice*
4 *Supervisors Association and Juvenile Justice Probation Officers Association v. County of*
5 *Clark, Nevada*, Case No. 2017-020, Item No. 834, pp. 12-13 (2018) (employer's actions while
6 bargaining in good faith did not "tend[] to interfere with, coerce, or deter the exercise of
7 protected activity by the EMRA"). Given that the City had a legitimate business reason for its
8 proposal and that it cannot be construed as coercive in any respect, HPSA's interference claim
9 also fails and this Complaint should be dismissed in its entirety.
10

11 **C. HPSA's Complaint Fails to Provide Adequate Notice.**

12 Finally, it is not particularly clear what the Union is alleging. HPSA, in a Complaint
13 substantially similar to HPOA's Complaint in EMRB Case No. 2025-017, details a series of
14 alleged acts and then a series of broad-spectrum legal conclusions; however, HPSA never
15 indicates which allegations belong with what conclusion. Certainly, the alleged facts are not
16 universally applicable to each category of alleged prohibited practices, and the City should
17 not have to engage in a guess game about what facts belong with what claim. To satisfy the
18 requirements of NAC 288.200(1)(c), HPSA needed to identify which allegations belonged
19 with each conclusion to put the City on sufficient notice of what was at issue. By failing to do
20 so, HPSA's Complaint is defective at the outset and should be dismissed on this basis alone.
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CITY ATTORNEY'S OFFICE
CITY OF HENDERSON
240 S. WATER STREET MSC 144
HENDERSON, NV 89015



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IV. CONCLUSION

Based on the foregoing, the City respectfully requests the Board dismiss the Complaint for failing to provide adequate notice and failing to present a justiciable controversy under NRS Chapter 288 for the Board's review.

Dated this 16th day of September 2025.

CITY OF HENDERSON

/s/ Brandon Kemble
BRANDON P. KEMBLE
Assistant City Attorney
Nevada Bar No. 011175
240 Water Street, MSC 144
Henderson, NV 89015

Attorney for Respondent
City of Henderson

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September 2025, the above and foregoing, **RESPONDENT'S MOTION TO DISMISS** was electronically filed with the EMRB (emrb@business.nv.gov) and served by depositing a true and correct copy thereof in the United States mail, postage fully prepaid thereon, to the following:

Christopher Cannon, Esq.
Andrew Regenbaum
Nevada Association of Public Safety Officers
145 Panama Street
Henderson, Nevada 89015
andrew@napso.net
aregenbaum@aol.com

/s/ Laura Kopanski
Employee of the Henderson City Attorney's Office

EXHIBIT “A”

**LABOR AGREEMENT BETWEEN
CITY OF HENDERSON, NEVADA
AND
HENDERSON POLICE SUPERVISORS ASSOCIATION**

JULY 1, 2021 – JUNE 30, 2025

**LABOR AGREEMENT BETWEEN
CITY OF HENDERSON, NEVADA
AND
HENDERSON POLICE SUPERVISORS ASSOCIATION**

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PREAMBLE:

WHEREAS, the CITY of Henderson (the "CITY") is engaged in furnishing essential public services vital to the health, safety and welfare of the population of the City;

WHEREAS, both the CITY and its employees have a high degree of responsibility to the public in so serving the public without interruption of essential services;

WHEREAS, both the CITY and the Henderson Police Supervisors Association (the "Parties") recognize this mutual responsibility, and have entered into this agreement as an instrument and means of maintaining the existing harmonious relationship between the CITY and its employees, and with the intention and desire to foster and promote the responsibility of sound, stable and peaceful labor relations between the CITY and its employees;

WHEREAS, the parties recognize that this Agreement is not intended to modify any of the discretionary authority vested in the CITY by the statutes of the State of Nevada; and

WHEREAS, the parties have reached an understanding concerning wages, hours and conditions of employment and have caused the understanding to be set out in this Agreement, with the effective dates of July 1, 2021 through June 30, 2025 and

NOW, THEREFORE, the parties do agree as follows:

ARTICLE 1. RECOGNITION:

The City of Henderson, (hereinafter referred to as the "CITY"), and the Police Department (hereinafter referred to as the "DEPARTMENT") recognizes the HENDERSON POLICE SUPERVISORS ASSOCIATION (hereinafter referred to as the "HPSA"), as the bargaining agent for the classifications listed in this Agreement for the purpose of collective bargaining as set forth in NRS 288.

ARTICLE 2. ASSOCIATION AND MANAGEMENT RIGHTS:

Section 1: The CITY and the HPSA agree that the City possess the sole right to operate the Department and that all Management rights remain with those officials. These rights include, but are not limited to:

- (a) Hire, direct, classify, assign, or transfer HPSA Members; except when such assignment or transfer is done as a part of the disciplinary process.
- (b) Reduce in force, demote, or lay off any HPSA Member because of lack of work or lack of money.
- (c) Determine appropriate staffing levels and work performance standards, and the means and methods by which operations are conducted, except for HPSA Member safety considerations.

- (d) Determine work schedules, tours of duty, daily assignments, standards of performance, and/or the services to be rendered.
- (e) Determine quality and quantity of services to be offered to the public and the means and methods of offering those services.
- (f) Determine the content of the workday, including without limitation workload factors, except for HPSA Member safety considerations.
- (g) Take whatever action may be necessary to carry on its responsibilities in situations of emergency such as a riot, military action, natural disaster or civil disorder.
- (h) Manage its operation in the most efficient manner consistent with the best interests of all its citizens, its taxpayers, and HPSA Members.
- (i) Promote HPSA Members and determine promotional procedures, as provided in this Agreement.
- (j) Educate and train HPSA Members and determine corresponding criteria and procedures.
- (k) The CITY shall have such other exclusive rights as may be determined by N.R.S. 288.150 and this Agreement.
- (l) The CITY'S failure to exercise any prerogative or function hereby reserved to it, or the CITY'S exercise of any such prerogative or function in a particular manner shall not be considered a waiver of the CITY'S rights reserved herein or preclude it from exercising the same in some other manner not in conflict with the provisions of this Agreement. Notice requirements set forth in this Agreement shall not be deemed as a limitation on the CITY'S right to exercise the prerogatives provided by this Article or the Nevada Revised Statutes.

Section 2: The CITY and the HPSA agree that the HPSA possesses those rights afforded to its members pursuant to NRS 288, NRS 289, State and Federal law, Departmental Policy, and the terms and conditions of this Agreement.

ARTICLE 3. CLASSIFICATION AND REPRESENTATION:

Section 1: The CITY and the HPSA agree that the following classifications are represented by the HPSA:

Police Sergeant
Police Lieutenant
Corrections Sergeant
Corrections Lieutenant

Section 2: Assignment Differential Pay:

- (a) For the period assigned, HPSA Members identified below shall receive assignment differential pay (ADP) as follows:

Specialized Assignments	ADP
Acting Pay	10%
Professional Standards Lieutenant	8%
K-9/ Tactical Response Lieutenant	8%
SWAT Sergeant	8%
K-9 Sergeant	8%
Motors Lieutenant	8%
Motors Sergeant	8%
CRU/PSU Lieutenant	8%
PSU Sergeant	8%
Narcotics/ROP/Intel Lieutenant	8%
Homeland Security Sergeant	8%
Homeland Security Lieutenant	8%
Narcotics Sergeant	8%
ROP/Intel Sergeant	8%
Investigations Lieutenant	8%
Investigations Sergeant	8%
Field Training Supervisor (per Section (c) below)	8%
Training Lieutenant	8%
Training Sergeant	8%
Support Lieutenant (Jail)	8%
Intelligence Lieutenant (Jail)	8%
Intelligence Sergeant (Jail)	8%
Technical Services Lieutenant	8%
Accreditation Sergeant	8%
IAB Lieutenant	8%
IAB Sergeant	8%
CRU Sergeant	8%
Administrative Sergeant	8%
Administrative Lieutenant	8%
PIO Lieutenant	8%
Special Programs and Services Sergeant (Jail)	8%
Special Programs and Services Lieutenant (Jail)	8%

If determined necessary by the Chief of Police that new specialized assignments are required and are eligible for ADP, a Sergeant and/or Lieutenant will receive the applicable ADP.

- (b) Assignment differential pay is a temporary monetary compensation paid to HPSA Members who are assigned to the assignment categories indicated above. ADP assignments are not promotional and therefore, no property rights exist. Employees shall only receive ADP pay for the duration of their assignment and the elimination of an ADP does not constitute a reduction in salary as defined in NRS 289.010.

The parties recognize that certain specialized assignments require

flexibility in work hours, locations and the sharing operational guidance during active enforcement incidents.

- (c) The number of required employees serving as Field Training Supervisors (FTS) will be based upon the number of projected promotions and the needs of the department. Those individuals assigned as an FTS will receive the appropriate PERS eligible ADP as defined in Section 2 (a) for the period(s) of time they are assigned and developing a Supervisor trainee, with a two (2) pay period minimum assignment. Extensions of the original assignment will be made on a full-pay period basis. Field Training Supervisors who are not assigned a trainee but who fill in as an FTS in the absence of a trainee's assigned FTS will receive the appropriate ADP as defined in Section 2 (a), on a day for day basis.
- (d) K-9 handlers will receive the equivalent of five (5.0) overtime hours of compensation bi-weekly per dog, for the at-home care, grooming, transportation, and feeding of the dog.
- (e) Police Sergeants and Lieutenants assigned to motorcycles will receive the equivalent of one and one-half (1.5) overtime hours bi-weekly for the off-duty maintenance and care of the motorcycle assigned to them.

Section 3: Shift Differential: For those HPSA Members whose 51% of the hours worked fall after 2:00 p.m. shall receive a 4% swing shift differential. For those HPSA Members whose 51% of the hours worked fall after 8:00 p.m. shall receive a 6% graveyard shift differential.

Shift Differential	4% swing shift
	6% graveyard shift

- (a) Upon re-assignment, differential pay would cease if no longer applicable. An exception to this policy would be in the case where an HPSA Member is injured in the line of duty, working modified duty, and whose normally assigned shift is other than days. In such cases, the HPSA Member will receive full salary, including shift differential.
- (b) Shift differential pay is a temporary monetary compensation paid to the HPSA Member who is assigned to the shifts indicated above. Employees working swing or graveyard shifts who are assigned to day shift to accommodate requests for temporary modified duty for non-occupational injury or illness will not receive shift differential for the duration of that accommodation. Shift differential shall continue to be paid during vacation leave, sick leave, and any other paid leaves, including administrative leave authorized by the Chief of Police or designee
- (c) Members assigned to swing, or graveyard shifts receive shift differential for all hours worked, including overtime. Conversely, day

shift employees do not receive shift differential when working overtime on swings or graveyard shifts. HPSA Members who receive overtime per the provisions of Article 3 Section 2 (d) and (e), will be paid shift differential for those hours.

- (d) Temporary assignments: HPSA Members that are assigned to a shift on a temporary basis through a written order from the Chief of Police, will be paid the applicable shift differential for the actual shift they work. For example: a dayshift employee assigned to a graveyard shift will receive graveyard shift differential and a graveyard shift employee assigned to day shift will receive no shift differential. Shift differential while on vacation or sick leave during this temporary assignment will be paid in accordance with the appropriate differential for the shift assigned.

Section 4: Bilingual Pay: HPSA Members who are eligible for bilingual pay must pass a City of Henderson approved Spanish proficiency examination at the City of Henderson's expense to receive a monthly payment of \$80.00 per month, beginning the first month after they have successfully completed the assessment. The payment will be received in the HPSA Member's paycheck. Once an HPSA member has successfully completed the mandatory assessment, they will not be required to complete another exam unless they voluntarily withdraw and then wish to re-enter the program. Should the HPSA Member demonstrate an unwillingness to utilize his second language skills for the benefit of the department, the department may remove the individual from the list and bilingual pay will cease for that individual.

Section 5: Acting Pay: Sergeants and Lieutenants who are directed via department Special Order by the Deputy Chief of Police, Chief of Police, or designee, to temporarily accept the responsibilities of their superior officer (Lieutenant or Captain) will be awarded acting pay. Acting pay shall be paid at a rate of ten percent (10%) higher than the HPSA Members current hourly rate and be in addition to any applicable shift differential and assignment differential if the elevated responsibilities are in a position eligible for an assignment differential.

Section 6: For full-shift absences where a Sergeant serves as Watch Commander, they will receive an eight percent (8%) premium for their shift. The Lieutenant designated as the Watch Commander will receive a 6% premium for all hours worked as the Watch Commander.

ARTICLE 4. HPSA MEMBERSHIP:

Section 1: HPSA membership shall be at the sole discretion of the employee.

Section 2: HPSA membership shall carry no validity in reclassification of an employee.

Section 3: The HPSA shall evidence in writing to the CITY all current officers of the HPSA representing employees under this Agreement.

ARTICLE 5. WAGES:

Section 1: Lump-Sum Bonus

Each member will receive a one-time lump-sum payment of one thousand five hundred (\$1,500) dollars. This payment will be made within two pay periods following the approval of this agreement.

For the years between July 1, 2022 – June 30, 2025, if HPOA members receive a lump-sum payment in lieu of wages, HPSA members will receive the same lump-sum payment under the same parameters as the HPOA payment. Notwithstanding the language in Article 36 or any other language in this Agreement, after the expiration date of the Agreement, which ends on June 30, 2025, HPSA will not be entitled to any lump-sum payments received by HPOA members as provided in this Section, and the City will not pay any other matching lump-sum payments. Subject to the provisions of (NRS 288 as amended), any lump-sum payment due to HPSA will be made in the same pay period as the HPOA payment.

Section 2: Wages:

Subject to the provisions of (NRS 288 as amended), and Section 1 above, effective the first pay period that includes July 1 of each fiscal year, the base wage of classifications covered by this Agreement shall be increased by the same general wage increase negotiated by the Henderson Police Officers' Association (HPOA). If the HPOA has not negotiated a wage modification by the beginning of the fiscal year, modifications to the HPSA wage schedule will occur on the same effective date of any subsequent HPOA wage schedule change.

- (a) This HPSA wage schedule reflects a twenty-five percent (25%) hourly wage differential between police and corrections officers and their respective sergeants. It also reflects a twenty percent (20%) hourly wage differential between police and corrections sergeants and their respective lieutenants. These percentage differentials will be maintained after each negotiation between the Henderson Police Officers' Association and the CITY.
- (b) The wage schedule for HPSA members covered by this Agreement is defined in Appendix B of this Agreement. The implementation details of this wage schedule and Step assignments for promotions after the effective date of this Agreement are included in Appendix B of this Agreement.

Section 3: Newly promoted HPSA members will establish and maintain a Step Increase Date that will mirror their promotion date and will not receive an additional Step increase at the end of their qualifying period.

- (a) Should subsequent negotiations between the Henderson Police Officers' Association and the CITY produce additional Steps above the current Thirteen (13) Step wage schedule, the CITY will add an

additional Step(s) to this wage schedule if a complimentary Step that reflects the 25% and 20% differential does not already exist.

- (b) Should subsequent negotiations between the Henderson Police Officers' Association and the CITY produce a wage schedule that increases the current five percent (5%) spread between each Step, the CITY will make the same change to the HPSA wage schedule.

Section 4: In the event of an employee's death, the CITY will help the beneficiaries fill out the necessary forms and ensure that they are properly signed in order to ensure that the beneficiaries will receive any monies due them.

- (a) A deceased employee's final paycheck, including wages earned and all payable leave accruals per this Agreement, will be distributed to the beneficiary(s) designated on the employee's COH Final Check Beneficiary Form, or the City-provided life insurance form if the Final Check Form has not been completed. If no such beneficiary(s) exist, the proceeds will be dispersed per NRS 281.155.

Section 5: The City will continue to make an \$118.28 contribution each pay period to a retirement health saving plan (RHS). This amount reflects the \$22 per pay period deduction per the provisions of the Joint Benefits Agreement.

ARTICLE 6. PAY DAY:

Pay day shall be bi-weekly and in no case shall more than five (5) regularly scheduled work days' pay be held back from the end of the pay period. All payroll-generated compensation will be made by electronic direct deposit to the HPSA Members' identified accounts, except for those circumstances where electronic deposit is temporarily unavailable to the Member. The Member should contact Payroll in advance if direct deposit is temporarily suspended.

ARTICLE 7. LONGEVITY:

In the event any other labor agreement with the City of Henderson incorporates and/or reinstates Longevity pay, the HPSA may request to reopen negotiations of the terms of Article 5 Wages and/or Article 7 Longevity, and such negotiations will commence no later than 30 days after the HPSA's request.

ARTICLE 8. CLOTHING AND PERSONAL EFFECTS ALLOWANCE:

Section 1: Effective the 1st month after City Council approval of this Agreement, the CITY shall provide a uniform allowance in the amount of One-Hundred Dollars (\$100.00) per month to each full-time HPSA member for the purchase and maintenance of uniforms. Such allowance shall be paid monthly and added to the HPSA Members' paycheck.

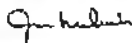
Section 2: Uniform standards shall be at the discretion of the CITY and as further specified in the Departmental Rules and Regulations.

Section 3: Upon any changes in the existing police uniform, including but not limited to the addition of clothing, equipment or related items, the party requesting the

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the effective date.

Date of Council Action: **December 13, 2022**

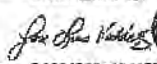
**CITY OF HENDERSON
CLARK COUNTY, NEVADA**

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RICHARD DERRICK
City Manager/CEO

01/10/2023 | 11:38 AM PST

Date

ATTEST:

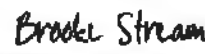
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JOSE LUIS VALDEZ, CMC
City Clerk

APPROVED AS TO FUNDING:

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JIM MCINTOSH
Assistant City Manager/Chief Financial Officer

APPROVED AS TO CONTENT:

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BROOKE STREAM
Director of Human Resources

APPROVED AS TO FORM:

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NICHOLAS G. VASKOV
City Attorney

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Review

HENDERSON POLICE SUPERVISORS ASSOCIATION:

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CHRISTOPHER AGUIAR
Association President

12/17/2022 | 10:12 PM PST

Date

Henderson Police Supervisors Association (Complainant)

Opposition to Motion to Dismiss

1 CHRISTOPHER M. CANNON, ESQ.
2 Nevada Bar No. 9777
3 ANDREW REGENBAUM, J.D.
4 NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS
5 145 PANAMA STREET
6 HENDERSON, NEVADA 89015
(702) 431-2677 - Telephone
(702) 383-0701 - Facsimile
cannonlawnevada@gmail.com
andrew@napso.net

7 Attorneys for the Complainants

8 **GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

9 **STATE OF NEVADA**

10 HENDERSON POLICE SUPERVISORS)
11 ASSOCIATION, A NEVADA)
12 NON-PROFIT CORPORATION AND)
13 LOCAL GOVERNMENT EMPLOYEE,)
ORGANIZATION, and ITS NAMED AND)
UNNAMED AFFECTED MEMBERS)

14 Complainants)

15 vs)

16 CITY OF HENDERSON)

17 Respondents)
18

CASE NO: 2025-018

COMPLAINT'S OPPOSITION TO
MOTION TO DISMISS

19 COMES NOW, Complainants, HENDERSON POLICE SUPERVISORS
20 ASSOCIATION (hereby "THE ASSOCIATION"), a local government employee organization,
21 and the Associations' named and unnamed affected members, by and through their undersigned
22 counsel, CHRISTOPHER CANNON, ESQ., and ANDREW REGENBAUM, J.D., of the
23 NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS (hereby "NAPSO"), and hereby
24 submit their OPPOSITION TO MOTION TO DISMISS. This is Motion is made pursuant to
25 NRS Chapter 288, NRS Chapter 233B and NAC Chapter 288, and based upon the following
26 points and authorities, the pleadings and documents on file with the Board.
27
28

FILED
October 1, 2025
State of Nevada
E.M.R.B.
5:36 p.m.

1 DATED this ____30th____ day of September, 2025

3 LAW OFFICE OF CHRISTOPHER
4 CANNON, ESQ

5 /Christopher Cannon/____

6 Christopher M. Cannon
7 Nevada Bar No. 9777
8 9950 West Cheyenne
9 Las Vegas, Nevada 89129
(702) 384-4012
(702) 383-0701
Attorney for Complainant

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. STATEMENT OF FACTS**

13 The HPSA is the employee organization, as defined in NRS 288.040, which is
14 compromised of police officers who work for the City of Henderson (local government
15 employees), and is the sole bargaining unit for the supervisory officers of City of Henderson
16 Police Department.

17 The HPSA has been active bargaining with the City in regards to pay and benefits and
18 crafting a new Collective Bargaining Agreement (CBA) with the City. The City and the HPSA
19 conducted six meetings, but following those over sixteen (16) articles were still left open and the
20 parties were left at an impasse.

21 While it is true that the City was bargaining with multiple labor associations at once,
22 including the HPOA (the Association which represents the line officers for the City of
23 Henderson), the City in this round of negotiations to initiated a "creative solution" (as referenced
24 in the City's Motion to Dismiss) by forcing the HPSA and HPOA to agree to eliminating
25 supervisory positions in the police department (those that are collectively represented by the
26 HPSA, with the exception of the Captain position) AND to restrain both Associations from filing
27 any type of legal challenges to this type of bargaining/offer.
28

1 In fact, while this offer was presented, the HPSA was not given the offer directly, but
2 instead it was given to the HPOA. Both Associations were then encouraged to meet “together”
3 on the HPSA’s day of mediation to discuss the offer and propose any counter proposals, if
4 needed. When the Associations were brought together, each then proposed issues that were
5 *individual* to their own Association and needed to be addressed in their respective CBA.
6 However, the City rejected all the offers, called subsequent offers “ridiculous” and then ended
7 the mediation (which was designated for the HPSA) after only three (3) hours of negotiation. The
8 City refused to meet with the HPSA separately to discuss their issues or open articles, and
9 adopted an attitude of “all of you” or “none of you” - thus effectively depriving the HPSA of
10 their day of mediation.

11 In the outlined Complaint, which was filed by the HPSA, the factual allegations were not
12 legal conclusions but instead an outline of the prohibited behavior and bad faith bargaining that
13 the City of Henderson employed. The Complaint on its face provides multiple examples of
14 prohibited labor practices and the fact that the City fails to see how their behavior qualifies as
15 such demonstrates the myopic view that the City has taken on these negotiations from the outset.

17 II. LEGAL ARGUMENT/STANDARD

18 A. THE MOTION TO DISMISS MUST BE DENIED BECAUSE THE HPSA’S 19 COMPLAINT ON ITS FACE IS SUFFICIENT FOR THE BOARD TO CONSIDER.

20 In evaluating a motion to dismiss, the Board must consider “all factual allegations in
21 [the plaintiff’s] complaint as true and draw all inferences in [the plaintiff’s] favor.”
22 *Limprasert v. PAM Specialty Hosp. of Las Vegas LLC*, 140 Nev. Adv. Op. 45, 550 P.3d
23 825, 829 (2024) (citing *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 244, 228, 181
24 P.3d 630, 672 (2008)). The Board cannot consider facts outside of the complaint. Instead,
25 a motion to dismiss tests the sufficiency of the pleadings. See *Breliant v. Preferred Equities*
26 *Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (“This court’s task is to determine
27 whether ... the challenged pleading sets forth allegations sufficient to make out the elements
28 of a right to relief.”)

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

5 There are two basis reasons for dismissal at this stage, Dismissal is proper where the
6 complaint is not founded upon a “cognizable legal theory.” *Balistreri v Pacificia Police Dep’t*,
7 901 F.2d. 696, 699 (9th Cir, 1988) (cited for this point in *Walsh v Green Tree Servicing, LLC*
8 Case No. 65066, 2015 WL 3370399 (unpublished order) (Nev. May 10, 2015). Yet, even of a
9 complaint does manage to articulate a cognizable legal theory, dismissal is still proper if the
10 complaint fails to allege adequate and sufficient facts to support the claim. *Id.*

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

15 When considering a motion to dismiss, the Court should take any well pled factual
16 allegations in the complaint at face value. *Morris v Bank of America*, 110 Nev. 1274, 1276, 886
17 P.2d 454, 456 (1994). While NCRP 8 accommodates a generous notice pleading standard, a
18 complaint must still set forth factual allegations that are sufficient, if true, to support a viable
19 claim of relief. *Sanchez el rel. Sanchez v. Wal-Mart Store, Inc.*, 125 Nev. 818, 823, 221 P.3d
20 1276, 1280 (2009) (explaining that, although the Court will accept the factual allegations in the
21 complaint as true, “the allegations must be legal sufficient to constitute the elements of the
22 claims asserted”). Conclusory allegations alone are inadequate to state a viable claim. *See Comm.*
23 *For Reasonable Regulation of Lake Tahoe v Tahoe Reg’l Panning Agency*, 365 F. Supp. 2d
24 1146, 1152 (D. Nev. 2005). Where the factual allegations in the complaint fall short of alleging a
25 viable claim, the Court should dismiss the complaint. *Danning v Lum’s Inc.*, 86 Nev. 868, 478
26 P.2d. 166 (1970).

27 The standard of notice pleading does not mean the complaint can rest on conclusory
28 allegation and devoid of factual substance. *State v Sandler*, 21 Nev. 13, 23 P. 799, 800 (1890)

1 (“To raise an issue before a Court facts must be stated, showing that there are real questions
2 involved”); *Dixon v City of Reno*, 43 Nev 413, 187 P. 308, 309 (1920); *Guzman v Johnson*, 137
3 Nev. 126, 132, 483 P.3d 531, 537, n. 7 (2021).

4 In contravention of these rules of law governing motions to dismiss, the City’s
5 response is rife with factual allegations that attempt to undermine Complainant HPSA’s claims.
6 Thus, the City is essentially endeavoring to convert their motion to dismiss into a motion for
7 summary judgment¹ without even attempting to follow the procedural requirements for doing so
8 or presenting facts that could meet their evidentiary burden² on a motion for summary judgment.

9 The City is not entitled to dismissal just because it denies the HPSA’s allegations,
10 as factual issues cannot be resolved on a motion to dismiss. The City’s failure to recognize that
11 on a motion to dismiss, HPSA’s allegations do not require proof and must be taken as true, and
12 the City’s bizarre effort to rely on unsupported factual claims to obtain dismissal are fatal to its
13 Motion, which should be denied without further consideration. Even if that were not the case,
14 HPSA’s claims are cognizable, as detailed below and as the City’s own cited case law shows.

15
16 **B. HPSA’S COMPLAINT ESTABLISHES BAD FAITH BARGAINING BY**
17 **THE CITY OF HENDERSON**

18 The City of Henderson acted in bad faith in violation of its duty to bargain in good faith
19 per NRS 288.270(1). It is a prohibited practice for a local government employer willfully to
20 refuse to bargain collectively in good faith with the exclusive representative as required in NRS
21 288.150. NRS 288.270(1)(e). The Act imposes a reciprocal duty on employers and bargaining
22

23 ¹See NRCP 12(d).

24 ² See NRCP 56(c)(1); see also *Nev. Ass’n Servs., Inc. v. Eighth Judicial Dist. Court*, 130
25 Nev. 949, 957, 338 P.3d 1250, 1255 (2014) (“Arguments of counsel are not evidence and
26 do not establish the facts of the case.”)
27
28

1 agents to negotiate in good faith concerning the mandatory subjects of bargaining listed in NRS
2 288.150. *Ed. Support Employees Ass'n v. Clark County Sch. Dist.*, Case No. AI-046113, Item
3 No. 809, 4 (2015).

4 The duty to bargain in good faith does not require that the parties actually reach an
5 agreement, but does require that the parties approach negotiations with a sincere effort to do so.
6 *Id.* Adamant insistence on a bargaining position or "hard bargaining" is not enough to show bad
7 faith bargaining. *Reno Municipal Employees Ass'n v. City of Reno*, Item No. 93 (1980).

8 "In order to show 'bad faith', a complainant must present 'substantial evidence of fraud,
9 deceitful action or dishonest conduct.'" *Boland v. Nevada Serv. Employees Union*, Item No. 802,
10 at 5 (2015), quoting *Amalgamated Ass'n of St., Elec. Ry. And Motor Coach Emp. of America v.*
11 *Lockridge*, 403 U.S. 274, 301 (1971). "A party's conduct at the bargaining table must evidence a
12 sincere desire to come to an agreement.

13 The determination of whether there has been such sincerity is made by drawing inferences
14 from conduct of the parties as a whole." *City of Reno v. Int'l Ass'n of Firefighters, Local 731*,
15 Item No. 253-A (1991), quoting *NLRB v. Int'l Union*, 361 U.S. 488 (1970).

16 NRS 288.270(1)(e) deems it a prohibited labor practice for a local government employer
17 to bargain in bad faith with a recognized employee organization and a unilateral change to the
18 bargained for terms of employment is regarded as a per se violation of this statute. A unilateral
19 change also violates NRS 288.270(1)(a). *O'Leary v. Las Vegas Metropolitan Police Dep't*, Item
20 No. 803, EMRB Case No. AI-046116 (2015).

21 Under the unilateral change theory, an employer commits a prohibited labor practice
22 when its changes the terms and conditions of employment without first bargaining in good faith
23 with the recognized bargaining agent. *Boykin v. City of N Las Vegas Police Dep't*, Case No.
24 AI-045921, Item No. 674E (2010); *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889,
25 59 P.3d 1212 (2002).

26 The City argues that once an impasse has been declared that the City **had no duty to**
27 **bargain whatsoever**. However, "Once. an impasse exists, a party is not required to engage in
28 continued fruitless discussions" See, *National Labor Relations Bd. v. American Nat. Ins. Co.*,

1 343 U.S. 395 (1952). *Thus*, the duty to bargain still exists, but the EMRB and NLRB would not
2 require the City nor the Associations to continue to set meetings and have discussions if they are
3 “fruitless”. *However*, the City continued to propose coercive offers - believing that being
4 “creative” would result in a CBA being agreed upon by all the parties. The simple fact that the
5 City continue to meet, entered into mediation, and arbitration demonstrates not only their *duty* to
6 bargain but also their willingness - at least to comply with the NRS and the terms of the CBA.
7 Therefore, the City’s position that they do not have a duty to bargain is nonsensical and should be
8 dismissed outright.

9 The City’s contention that their proposal was not coercive and would be considered
10 acceptable is also not supported by their own case law. Under the doctrine of coordinated
11 bargaining, the use of such bargaining is permitted *but it is the Union or Association’s choice to*
12 *use such a manner of bargaining, not the employer. In fact, the employer, if requested, cannot*
13 *refuse this type of bargaining. See NLRB v Indiana & Michigan elec. Co., 559 F.2d. 185, 190 (7th*
14 *Cir. 1979).*

15 Regarding the offer itself, the City prides itself on its creativity - to eliminate positions in
16 one bargaining unit to pay raises for both. However, this was a coordinated effort to bargain one
17 unit against another - with line officers being encouraged by raises and the supervisory unit being
18 concerned about losing positions. In effect, the “rob Peter to pay Paul” philosophy - and pitting
19 one association against another for the betterment of the City.

20 Even more shocking is the City’s stance that their offer, and the clause that neither Union
21 would seek any type of legal remedy against the City, demonstrates that not only was the City
22 aware of the coercive nature of the offer, but the City wants both units to waive any judicial or
23 administrative review of their actions. In effect, waive their contractual rights under the existing
24 CBA, and any other type of third party review of the terms and the manner in which they
25 reviewed. *In fact, an agreement would effectively preclude any review by this panel and/or Court*
26 *in the State.* Yet, the City still maintains that it is not engaging in bath faith bargaining?

27
28 In regards to the City’s allegations that the HPSA took issue with the City use of outside

1 counsel, that is another example of the City simply throwing arguments at the wall as a
2 distraction of what the true issues are before them. The HPSA has never had any issue with the
3 City employing outside counsel or any negotiations, the HPSA has *maintained that the argument*
4 *advanced by their counsel (either inside or outside of the City's employ) was the essence of bad*
5 *faith bargaining.*

6 The City advanced the argument that they would pay increases to both associations - with
7 the amount to be determined in negotiation. However, throughout negotiation, into impasse and
8 into mediation, the City NEVER advanced an argument of "inability to pay". However, now into
9 mediation and before arbitration, the City is now advancing such an argument. The City has
10 offered no evidence, and the Association has provided financial analysis which has shown that
11 the City has sufficient funds for the requests that they have made, but yet the City now advances
12 that theory in regressive and coercive bargaining in mediation. It was done for the simple reason:
13 to coerce the Association to take a proposal that was lower than what was originally was offered
14 by the City (would be considered regressive, at least). Currently, the City still is stating that they
15 "may" or "might" advance this theory before the EMRB or arbitration, without evidence and
16 upon the condition *what the Association asks for in their offers. In essence, if the Association*
17 ***asks for an amount deemed "too rich", the City will advance the inability to pay argument.***
18 ***If not the City will consider and propose a counter offer.***

19 The City also takes no issue with the ending of the day of mediation, calling it hard
20 bargaining and stating that it never engaged in anything "bad faith" or prohibited. The City
21 argues that they are not compelled to accept any of the Association's offers *after "the City has*
22 *put all of its chips on the table"*. However, NRS 288.033 defines collective bargaining as the
23 method of determining conditions of employment by negotiations and entailing the mutual
24 obligation of the local government employer and employee organization to meet at reasonable
25 times and bargain in good faith. The obligation under the statute does not compel either party to
26 agree to a proposal nor does not require the making of a concession. NRS 288.270
27 (1) (e) is the enforcing statute for this obligation and requires good faith negotiations process,
28 including mediation.

1 Here, the City - by their offer - required both Associations to be present for the second
2 day of mediation (which was designated for HPSA). The City sent over their offer - in regards to
3 pay - without addressing the Associations' individual needs (some which had nothing to do with
4 money). Once the Associations rejected the City's offer, the HPSA requested to continue to settle
5 other non-monetary subjects of bargaining (many which had been hindered because of the
6 monetary ones), but the City flat out refused, even causing the mediator to remark that the City's
7 position was coercive. Even if the City did not desire to continue to discuss the funding options,
8 they could have (and had designated that day to) address all outstanding issues before the
9 mediator. Instead, the City refused to participate in the mediation after three hours and refused to
10 meet with the HPSA in regards to their individual non-monetary contract issues. *Simply put, the*
11 *City wanted to punish the Association for not accepting the funding portion and shut down the*
12 *mediation entirely.*

13 The allegations advanced alone in the Complaint are sufficient on their face, and
14 accepting them as true, would require the Board NOT to dismiss the claim and allow the matter
15 to go to hearing for consideration and deliberation by the Board.

16
17 **C. HPSA'S COMPLAINT ESTABLISHES UNION INTERFERENCE BY THE**
18 **CITY OF HENDERSON**

19 The Association brought the claim on discrimination and interference based on the
20 actions of the City. The Association has entered into these negotiations in good faith, and has
21 acted in accordance with all the terms of their CBA, NRS 288, and any ground rules that the
22 parties have agreed to. The City, while arguing that they were acting in
23 "good faith" has resorted to coercive tactics in their bargaining which has interfered with the
24 operation of the Association and attempted to deprive them of the rights granted under NRS 288.

25 There are three elements to claim of interference with a protected right: "(1) an employer's
26 action can be reasonably viewed as tending to interfere with, coerce, or deter (2) the exercise of
27 protected activity, and (3) the employer fails to justify the action with a substantial and legitimate
28 business reason." *Medec Sec. Locks, Inc. v. N.L.R.B.*, 142 F.3d 733, 745 (4th Cir. 1998); *Clark*

1 *Count Classroom Teachers Ass'n v. Clark County School Dist.*, Item No. 237, EMRB Case No.
2 AI-04543 (1989).

3 While the City insists that it has done nothing wrong in including both unions into one
4 negotiation - especially when it involves monetary issues, the NLRB case history would disagree.
5 It has held that "Change in the scope of a bargaining unit is a nonmandatory subject. When either
6 employers or unions which have in the past bargained in separate units begin, without the
7 consent of the other side, to bargain jointly as if bargaining for a single contract, they are
8 engaging in unlawful insistence on a nonmandatory subject. **"Neither an employer nor a union**
9 **is free to insist, as a condition of reaching an agreement in one unit, that the negotiations**
10 **also include other units, or that the terms negotiated in the first unit be extended to other**
11 **units."** (Emphasis added) *Utility Workers Union, Local No. 111 (Ohio Power Co.)*, 203
12 N.L.R.B. 230, 238 (1973), enforced mem., 490 F.2d 1383 (6th Cir. 1974).

13 Therefore, the analysis should concentrate on whether or not the Associations consented
14 to negotiate together as a collective unit. From the facts presented, the HPOA and HPSA **did not**
15 agree in purpose or substance to negotiate as one group. Both had separate meetings and
16 negotiations. Both had separate issues within the CBA that they wanted to address and improve
17 for their members. When they went to impasse, both Associations requested their own days with
18 a mediator to address their issues. **The City has offered no evidence of consent or agreement to**
19 **bargain together.**

20 The fact that the City insisted that the Associations jointly take the financial portion of the
21 offer, without consideration of the individual needs of each unit for their own CBA, and when
22 rejected - refused to meet and confer any further demonstrate the very essence of coercion by the
23 City. The City essentially changed the rules of the negotiation, coerced the Associations to agree
24 to the new terms and when the Associations would not consent to the terms - ended the
25 mediation.

26 In terms of the test outlined in NRS 288.270(1)(a), it is simple to see that a reasonable
27 employee would look at the City's actions as coercive. Both Association had over eight (8)
28 members present during this mediation and all objected to the manner in which the City grouped

1 the Associations together. These are seasoned officers with the Union and negotiation
2 experience, if they felt such a tactic was coercive, then a reasonable employee would do so as
3 well.

4 The “protected activity” would be considered the bargaining process itself and the
5 requirement that the Association each waive their legal rights to object if the City acted in a
6 manner which demonstrated “bad faith bargaining”. The fact that the City unilaterally required
7 that both Associations consider the proposal - which adversely affected one Association’s status
8 for the betterment of the other - and consider that proposal on the day of mediation dedicated to
9 the HPSA, and then refused to further bargain if that proposal was not accepted interfered with
10 the bargaining power of the Associations. Further, the fact that the City was then going to require
11 each Association to waive any and all legal claims and challenges - which have been granted to
12 them by the CBA, state and federal law is further example of the coercive and interference that
13 the City conducted against these Associations.

14 The simple leg that the City relies upon is that they had a “substantial and legitimate
15 reason” to bring the Associations together and offer this proposal. While the HPSA and HPOA
16 are intertwined by contract in terms of pay scale (as there exists a compression ration between
17 officers and supervisors), the HPSA does not bargain for pay under the CBA. Further the City
18 has the ability to eliminate or “defund” positions within the police department. The City has
19 routinely had positions that remain in the rank hierarchy that remain unfilled until the City
20 determines that there is a need to fill that position. The City has the right to eliminate positions
21 within the police department or create new ones, under “management rights”. So why does the
22 City then feel the need to present these options to the Association for their acceptance, if they
23 have the right to do it without their consent? Because they wanted a coercive manner to provide
24 monetary funding for the CBA, and insulate themselves from any legal actions that might follow.
25 Otherwise, why did the City then ask for the “no sue/no grieve” clause? The City was aware that
26 their “creative” clause would be viewed as Association interference and attempted to shield
27 themselves from those claims with these actions.

28 There is no need to “twist” these actions into the appearance of a coercive tactic - as the

1 City suggests, the actions themselves are coercive.

2 The City has engaged in coercive interference with the Association, their bargaining
3 rights and their remedies. In looking at the Complaint and assuming all the facts are true, which
4 is required under a motion to dismiss, the Complaint on its face is valid and should not be
5 dismissed.

6
7 **D. HPSA'S COMPLAINT PROVIDES NOTICE OF VIOLATIONS BY THE**
8 **CITY**

9 When considering a motion to dismiss, the Court should take any well pled factual
10 allegations in the complaint at face value. *Morris v Bank of America*, 110 Nev. 1274, 1276, 886
11 P.2d 454, 456 (1994). While NCRP 8 accommodates a generous notice pleading standard, a
12 complaint must still set forth factual allegations that are sufficient, if true, to support a viable
13 claim of relief. *Sanchez el rel. Sanchez v. Wal-Mart Store, Inc*, 125 Nev. 818, 823, 221 P.3d
14 1276, 1280 (2009) (explaining that, although the Court will accept the factual allegations in the
15 complaint as true, “the allegations must be legal sufficient to constitute the elements of the
16 claims asserted”).

17 Here, the HPSA has articulated, with sufficient specificity, allegations against the City of
18 Henderson that qualify as “bad faith bargaining” and “Union interference” constituting a
19 prohibited labor practice. The Association has met the standard established by both the EMRB
20 and Nevada Supreme Court, and full consideration should be given to their claims in a full
21 hearing before the Board.

22
23 **III. CONCLUSION**

24 The Board should deny the Motion and should after consideration of the City's
25 Answer — assign the matter to a full panel for review and deliberation on the merits.

26
27
28

1 DATED this 30th day of September, 2025.

2
3 .BY: /Christopher Cannon/
CHRISTOPHER M. CANNON, ESQ.
Nevada Bar No. 9777
4 ANDREW REGENBAUM, J.D.
Nevada Association of Public Safety Officers
5 145 PANAMA STREET
6 HENDERSON, NEVADA 89015
7 (702) 431-2677 - Telephone
(702) 383-0701 - Facsimile
Attorneys for the Complainants
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City of Henderson (Respondent)

Reply in Support of Motion to Dismiss

FILED
October 16, 2025
State of Nevada
EMRB.
3:50 p.m.

1 **NICHOLAS G. VASKOV**
City Attorney
2 Nevada Bar No. 008298
3 **BRANDON P. KEMBLE**
Assistant City Attorney
Nevada Bar No. 011175
4 240 Water Street, MSC 144
Henderson, NV 89015
5 (702) 267-1200
(702) 267-1201 Facsimile
6 Brandon.Kemble@cityofhenderson.com
7 Attorneys for Respondent
City of Henderson
8

9 **STATE OF NEVADA**

10 **GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

11 Henderson Police Supervisors Association, a
12 Nevada Non-Profit Corporation and Local
Government Employee Organization, and Its
13 Named and Unnamed Affected Members,

14 Complainants,

15 vs.

16 City of Henderson,

17 Respondent.

EMRB Case No.: 2025-018

**RESPONDENT'S REPLY IN SUPPORT
OF MOTION TO DISMISS**

18
19 Respondent City of Henderson ("City"), by and through its undersigned counsel,
20 hereby submits this Reply in Support of its Motion to Dismiss the Complaint filed by the
21 Henderson Police Supervisors Association ("HPSA" or "Union") pursuant to NRS Chapter
22 288 (the Employee-Management Relations Act), NRS Chapter 233B and NAC Chapter 288

23 ///

24 ///

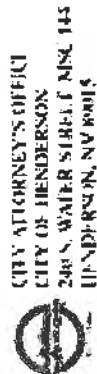
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1 and based upon the following points and authorities, the pleadings and documents on file with
2 the Board.

3 Dated this 16th day of October 2025.

4 CITY OF HENDERSON

5
6 /s/ Brandon Kemble
7 BRANDON P. KEMBLE
8 Assistant City Attorney
9 Nevada Bar No. 011175
10 240 Water Street, MSC 144
11 Henderson, NV 89015

12 Attorney for Respondent
13 City of Henderson

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **L ARGUMENT**

16 **A. HPSA Argues the Wrong Standard.**

17 In response to the City's Motion, the Union argues that the applicable standard for a
18 motion to dismiss is governed by the Nevada Rules of Civil Procedure. (Union Response at
19 4). However, this is not the applicable standard. A union recently made the same mistake in
20 *Nevada Service Employees Union vs. Clark County Water Reclamation District*, 2024 WL
21 5265365, at *1. In that case, the union argued that "the Board must apply the same standard
22 as a motion to dismiss brought under NRCP 12(b)(5)." *Id.* However, "the Board is not subject
23 to the Nevada Rules of Civil Procedure because the Nevada Rules of Civil Procedure do not
24 apply to administrative proceedings unless expressly adopted by the agency." *Id.* Reviewing
25 the applicable regulations, the Board concluded that the NRCP motion to dismiss standards
26 were inapplicable in motions to dismiss before the Board. *Id.*

1 The actual applicable standard was set forth in the City's initial Motion. In short, the
2 questions for the Board are whether there is probable cause and a clear and concise statement
3 of facts establishing a legal violation of the Act. *Coury v. Whittlesea-Bell Luxury Limousine*,
4 102 Nev. 302, 308 (1986); *see also Nevada Service Employees Union, v. Clark County Water*
5 *Reclamation District*, Case No. 2024-030, Item No. 905 (EMRB, Dec. 17, 2024). Thus,
6 HPSA's arguments regarding the appropriate standard for a motion to dismiss should be
7 ignored.
8

9 **B. HPSA's Response Still Fails to Establish the City Bargaining in Bad Faith.**

10 Next, the Union's arguments contending that they have sufficiently alleged a bad faith
11 bargaining charge do little to support their case.¹ With respect to whether a duty to bargain
12 was attached to the at-issue mediation sessions, the Union attempts to address the City's
13 argument that it had no duty to bargain because the parties had reached impasse by referencing
14 a quote that does not actually appear in the case cited. Specifically, the Union quotes as
15 support for their argument that "Once, an impasse exists, a party is not required to engage in
16 continued fruitless discussions," and attributed the statement to the Court in *N.L.R.B. v. Am.*
17 *Nat. Ins. Co.*, 343 U.S. 395 (1952). However, this quotation does not appear anywhere in the
18 cited case. Additionally, the City has been unable to find a case that includes that exact quote.
19
20

21 Regardless of what the standard under NLRB law may be, it is not the standard in
22 Nevada. The EMRB has held, "there is no duty on the part of either party to bargain after
23 impasse is reached." *Clark County Classroom Teachers Ass'n v. Clark County School Dist.*,
24 Case No. A1-045302, Item No. 62, p. 9 ¶ 14 (1976), *cited with approval in Las Vegas Fire*
25

26
27 ¹ In describing what constitutes bad faith bargaining, the Union includes the example of a unilateral
28 change to a mandatory subject of bargain. (Union Response at 6). As this argument is never developed,
and there is no allegation that the City made a unilateral change, this reference is irrelevant and should
be discounted.

1 *Fighters Local 1285, International Association of Fire Fighters vs. City of Las Vegas, Nevada*
2 *Respondents*, Case No. A1-046074, Item No. 786, p. 8 (2013). The Union fails to cite any
3 case law demonstrating otherwise. By extension, the City cannot engage in bad faith
4 bargaining when it had no duty to bargain in good faith in the first instance.

5
6 The Union's remaining arguments fare no better. For instance, with respect to
7 coordinated bargaining, the Union argues without support that it is the Union's choice, and its
8 choice alone, to engage in coordinated bargaining. However, the Union again fails to cite to
9 any case law in support of its contention. While the Union cites to *N.L.R.B. v. Indiana &*
10 *Michigan Elec. Co.*, 599 F.2d 185, 190 (7th Cir. 1979)² noting that the employer cannot refuse
11 to engage in coordinated bargaining, this case has little impact on the at-issue analysis. Put
12 differently, this case does not suggest that the City's proposal that impacts two units is
13 indicative of bad faith bargaining.

14
15 The Union also argues that the City engaged in bad faith bargaining because the City's
16 proposal pits one union against the other and requires them to waive their future bargaining
17 rights. Even if that is the case, which the City disputes, so what? It is commonplace for
18 employers to consider how their bargaining proposals impact other unit obligations and to
19 plan accordingly. That is especially true here, where the wages in the HPSA collective
20 bargaining agreement are explicitly linked to the wages in the HPOA bargaining agreement.
21 (Union Response at 11). Moreover, the Union does not cite any case that suggests the City's
22 type of proposal is indicative of bad faith bargaining. At worst, the Union contends that the
23 City's proposal seeks a waiver of its statutory rights; that is permissive, not illegal. *City of*
24 *Sparks vs. IAFF, Local No. 1265*, Case No. A1-045332, Item No. 103, ¶ 8-12 (1980) (union's
25
26
27

28 ² The Union incorrectly cites this case as 559 F 2d 185.

1 submission of permissive subject of bargaining regarding rules and regulations did not
2 constitute bad faith bargaining; although employer had no obligation to negotiate over such
3 proposals, the employer was required to discuss them). Thus, the City's proposal, in and of
4 itself, cannot constitute bad faith bargaining.

5
6 HPSA also contends that the City's argument that it would be unable to pay is a new
7 argument, regressive, and coercive in nature. According to the Union, "if the Association asks
8 for an amount deemed 'too rich', the City will advance the inability to pay argument" and that
9 such a concept is improper (Union Response at 8). Under the Union's argument, whenever a
10 municipal employer points out that it cannot afford the union's proposals, the employer is
11 being coercive or engaging in regressive bargaining. Putting aside that such a conclusion
12 defies logic, simply being unable to afford a union's offer is not indicative of bad faith
13 bargaining. See *International Association of Fire Fighters, Local 5046 vs. Elko County Fire*
14 *Protection District*, 2020 WL 12602576, at *4, Case No. 2019-011, Item No. 847-A (2020).

15
16 Lastly, the Union doubles down on its argument that the City's alleged ending of
17 mediation for the day is indicative of bad faith bargaining. First, despite initially claiming that
18 the parties cannot rely on allegations/evidence outside of the Complaint allegations in a
19 motion to dismiss, the Union inserts numerous "facts" in its Response that are nowhere to be
20 found in the Complaint. If the Union did not feel it could include these allegations in the
21 Complaint, it cannot allege this evidence on the backend.

22
23 The best the Union can do is suggest that the City's purported decision to end
24 mediation for the day constitutes a refusal to meet at reasonable times and bargain in good
25 faith. In other words, the Union contends that canceling a single session is sufficient to
26 establish bad faith. But, canceling a single meeting without evidence of the City's refusal to
27 meet further is evidence of nothing. *City of Reno, vs. Reno Police Protective Association*,
28

1 2013 WL 6199645, Case No. A1-046096, Item No. 790 (2013) (finding canceling of two
2 meetings is insufficient evidence to establish bad faith). If the Union had suggested the City
3 refused to meet with them ever again, the Union's argument could have merit. The Union did
4 not make such an allegation, because it would be wholly unsupported by the facts of the case.
5 Absent such allegations or facts, the Union's argument has no merit.
6

7 Therefore, HPSA failed to raise a claim for bad faith bargaining and those positions
8 of the Complaint should be dismissed.

9 **C. HPSA's Complaint Still Fails to Establish the City Interfered with their Rights,**
10 **Discriminated or Retaliated Against them.**

11 Despite its attempts to support its interference claim, the Union's Response still fails
12 to establish a viable interference claim. Essentially, the Union's entire interference argument
13 is based on its premise that submitting a permissive subject of bargaining is coercive and,
14 therefore, illegal interference. More specifically, the Union claims that (a) the City's proposal
15 equated to a proposal to change the scope of a bargaining unit (which is permissive); and (b)
16 the City's proposal required the waiver of any legal claims (which, again, is permissive).
17 (Union Response at 10-11); see *Loc. Joint Exec. Bd. of Las Vegas*, 1995 WL 937191, at *6
18 (Nov. 30, 1995) (addressing waiver of statutory rights) and *the Herald Company*, 21 NLRB
19 AMR 31083 (addressing scope of the bargaining unit).
20

21 The City is unaware of any case in which the Board has found that proposing a
22 permissive subject in the context of mediation is unlawful interference. If the Union's
23 argument was correct, every time a party made a proposal containing a permissive subject, the
24 proposer would be guilty of interference. Again, the Union does not allege that the City flatly
25 refused to bargain or insisted on any permissive subject to the point of impasse. The parties
26 were at impasse. The City made its proposal. The parties continued to bargain. The parties
27 remained at impasse. There are no allegations suggesting the legal conclusion as the Union
28

1 demands. The City simply came up with an idea that the Union did not like; that does not
2 constitute interference.

3
4 The Union also contends the City refused to negotiate after the Union rejected the
5 City's proposal, but its argument is contradictory to the allegations in its Complaint. The
6 Union explicitly alleged the parties continued to negotiate that day but when the Union
7 responded with a proposal the City considered untenable, the City decided to end for the day.
8 So, how can it have refused to continue to bargain?

9
10 The Union's argument that the City's reasoning behind its proposal was not legitimate
11 is preposterous. In its Response, the Union both acknowledges that the two units are
12 financially tied together and then states that the City can lawfully unilaterally slash positions
13 with impunity; therefore, why would the City need to secure the waiver of future rights? But
14 as the City noted in its original Motion, and as the instant Complaint is evidence of, the Union
15 is litigious. It is entirely rational, legitimate, and non-discriminatory in this instance for the
16 City to provide *a single proposal* to get all parties' acknowledgement that the City had the
17 right to not backfill positions to resolve negotiations.³

18
19 The Union's arguments, even when considering the allegations in the Union's favor,
20 utterly fail to establish that the City's actions constitute actionable interference. Therefore,
21 this portion of the Complaint should be dismissed as well.

22
23 ///

24 ///

25
26 ³ As with its bad faith bargaining argument, the Union sprinkles new "facts" in its Response that do
27 not appear in its Complaint. The Union cannot simultaneously argue that the Board is bound purely
28 by the Complaint allegations while also arguing that the Board should consider a litany of facts that
are not in the Complaint.

CITY ATTORNEY'S OFFICE
CITY OF HENDERSON
240 N. WATER STREET, MSC 144
HENDERSON, NV 89015



II. CONCLUSION

Based on the foregoing, the City respectfully requests the Board dismiss the Complaint for failing to provide adequate notice and failing to present a justiciable controversy under NRS Chapter 288 for the Board's review.

Dated this 16th day of October 2025.

CITY OF HENDERSON

/s/ Brandon Kemble

BRANDON P. KEMBLE
Assistant City Attorney
Nevada Bar No. 011175
240 Water Street, MSC 144
Henderson, NV 89015

Attorney for Respondent
City of Henderson

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October 2025, the above and foregoing, **RESPONDENT'S REPLY IN SUPPORT OF MOTION TO DISMISS**, was electronically filed with the EMRB (emrb@business.nv.gov) and served by depositing a true and correct copy thereof in the United States mail, postage fully prepaid thereon, to the following:

Christopher Cannon, Esq.
Andrew Regenbaum
Nevada Association of Public Safety Officers
145 Panama Street
Henderson, Nevada 89015
andrew@napso.net
aregenbaum@aol.com

/s/ Laura Kopanski

Employee of the Henderson City Attorney's Office