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Before the State of Nevada

Government Employee-Management

Relations Board

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731,

Complainant/Respondent,

v.

CITY OF SPARKS,

Respondent/Complainant.

CASE NO.: 2025-001

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731's MOTION TO DISMISS PURSUANT TO NRS 288.375

The INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 ("Union," "Complainant/Respondent" or "Local 731") moves to dismiss the CITY OF SPARKS' ("Respondent/Complainant" or "City") Amended Cross Complaint as containing claims outside the Board's jurisdiction, and claims that fail to raise a justiciable controversy or probable cause for consideration. This Motion is based upon papers and pleadings on file herein, the attached Memorandum of Points and Authorities, and any oral argument permitted.

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I.
INTRODUCTION

This case presents a textbook example of a frivolous and spurious pleading that demands immediate dismissal. The City of Sparks' Amended Cross Complaint a retaliatory maneuver to divert attention from its own bad faith bargaining practices. Local 731 brought its underlying Complaint to the Board because the City engaged in deceptive tactics and bad faith bargaining. In response, the City manufactured counterclaims so legally baseless that they should be dismissed before hearing.

The City's Amended Cross Complaint rests on three defective allegations: (1) that Local 731's counsel violated Nevada Rules of Professional Conduct (NRPC) 4.4(b) when he did not; (2) that Local 731 falsely represented in its Complaint that the City placed a cap on physical therapy visits, when the new plan language clearly functionally acts as a cap; and (3) that a non-lawyer union steward committed an unfair labor practice merely by articulating a legal argument contrary to the City's position. These claims fail as a matter of law and common sense.

First, this Board lacks jurisdiction to enforce attorney ethics rules, and even if it did, the City's allegations fail on the pleadings because counsel for Local 731 complied with NRPC 4.4 and the City actively waived any claim to privilege. Second, the City's own admissions confirm that the healthcare plan change Local 731 referenced can and does function as a cap on physical therapy visits. Third, the steward's statement—an argument in a grievance proceeding—cannot constitute bad faith bargaining any more than a defense lawyer's closing argument can constitute obstruction of justice.

NAC 288.375 authorizes this Board to dismiss a matter when there is no probable cause, when a complaint is spurious or frivolous, or when it raises only issues previously decided by the Board. The City's Amended Cross Complaint falls squarely within these grounds for dismissal. The Board should reject the City's attempt to use frivolous counterclaims as a cudgel to punish Local 731 for seeking relief from its own bad faith bargaining. Moreover, given the egregiously

baseless nature of these claims, the Board should award Local 731 its attorneys' fees and costs incurred in responding to this action.

II.
STATEMENT OF FACTS

The City is a local government employer within the meaning of NRS 288.060 and Local 731 is an employee organization or labor organization within the meaning of NRS 288.040. The City and Local 731 are parties to a successor one-year collective bargaining agreement ("CBA") to the July 1, 2020, to June 30, 2024, CBA.

Contemporaneously with the negotiations of a new CBA, the parties have been working through several grievances, one of which involved the City's use of the practice known as the Force Hire Program, or Mandatory Overtime wherein employees are forced to work overtime to ensure coverage (hereinafter referred to as the "Force Hire Grievance"). *See* Complaint filed on January 24, 2025, *at* ¶¶ 6, 10. The parties eventually reached a general agreement to resolve the Force Hire Grievance limiting the frequency a member could be Force Hired. *Id. at* ¶ 14. The resolution involved the authority to use the Force Hire Program as well as the limits thereto would be included in the CBA between the parties. Comp. *at* ¶ 16. The City provided a Memorandum of Understanding ("MOU") purporting to memorialize the agreement between the parties that included codifying the practice into the CBA, but the limits thereto would be implemented by policy. *Id. at* ¶ 18. The MOU contained comments showing the intent in putting the limits to the Force Hire Program in policy as opposed to the CBA was so that it could unilaterally change or otherwise remove those restrictions. *Id. at* ¶ 19.

Another relevant grievance the parties were working on involved the City's changes to the health plan and benefits specifically relating to the number of physical therapy visits without going through the Group Health Care Committee ("GHCC") which was comprised of 1 voting member and 1 alternate for Local 731, Operating Engineers 3 and Sparks Police Protective

Association (hereinafter referred to as the "GHCC Grievance"). *See generally Comp. at* ¶¶ 20-29. The GHCC Grievance was stayed at the City's request to "run the numbers" on the proposed resolutions from approximately July of 2024 through October 10, 2024. *Id. at* ¶¶ 30-31. During the stay, the City appointed the City of Sparks Police Chief to the GHCC on or about August 2024 and who Local 731 believes swayed the GHCC to retroactively approve of the City's unilateral changes to the health plan on or about September 19, 2024. *Id. at* ¶¶ 32-25. Thereafter, the City denied the GHCC Grievance. *Id. at* ¶ 35.

Based on the City's bad faith bargaining in relation to the Force Hire Grievance and the GHCC Grievance, Local 731 filed the underlying Complaint with the Board on January 24, 2025. Within the claim against the City regarding the Force Hire Grievance Local 731 cites to the redline comments within the City's proposed MOU as evidencing of the City's bad faith bargaining. *See Comp at* ¶ 19. Within the claim against the City regarding the GHCC Grievance Local 731 alleged that the City unilaterally "put[] a cap on physical therapy visits." *Id. at* ¶ 24.

The City filed a "Cross Complaint" on February 19, 2025, and an Amended "Cross Complaint" on February 19, 2025, hereinafter referred to as the Amended Cross Complaint. As discussed *supra* the City takes umbrage at the Union reading and using the comments to the redlined MOU as showing the City knowingly was making an illusory promise to restrict its authority to use Force Hires by placing such restrictions in the policies as opposed to the CBA, which can be changed by the City unilaterally. *See generally* Cross Complaint *at* ¶¶ 23-59 and ¶¶ 161-162. Additionally, the City falsely accuses Local 731 of making false representations by including ¶ 24 in its Complaint. *Id. at* ¶¶ 60-137 and ¶¶ 164-166. Finally, the City accuses Local 731 of false representations when, in discussions regarding a Light Duty Grievance, a steward said the City's practice of placing employees who work a 56-hour schedule on a 40-hour schedule for light duty violated Nevada statutes when the City previously provided case law indicating the contrary. *Id. at* ¶¶ 138-159 and ¶¶ 167-170.

III.
LEGAL STANDARD AND AUTHORITY

NRS 288.110(2) limits the Board's jurisdiction to complaints arising under the Government Employee-Management Relations Act (EMRA). Additionally, NAC 288.375(1) and (5) provides that the Board may dismiss a matter when there is no probable cause, when it is frivolous or spurious, or when it presents only previously decided issues.

Here, the Amended Cross Complaint should be dismissed as against Local 731 because there is no justiciable controversy concerning bad faith bargaining by Local 731 *vis-à-vis* the City.

IV.
MEMORANDUM OF POINTS AND AUTHORITIES

The City's Amended Cross Complaint is legally deficient for multiple reasons, all of which warrant dismissal under NAC 288.375. The arguments that follow establish that:

1. **The Board lacks jurisdiction to hear the City's allegations concerning Local 731's counsel and NRPC 4.4(b); even if it could, as a matter of law, the claim is frivolous and spurious.** The Board's jurisdiction is explicitly confined to matters arising under the EMRA, and the City's attempt to invoke ethics rules against opposing counsel falls well outside that scope. Even if the Board had jurisdiction, the City's claim is meritless because there was no violation of NRPC 4.4(b), and any alleged privilege concerns were waived by the City's own conduct, which this Board can determine on the face of the Counterclaim.
2. **The City's second counterclaim misrepresents the factual and legal implications of Local 731's Complaint.** The City insists that Local 731 falsely stated the City placed a "cap" on physical therapy visits. However, the new UMR plan undisputedly imposes a functional restriction at 25 visits, which was not previously present. Whether phrased as a "cap" or a "review threshold," the impact remains the same: employees now face a

limitation that they did not before. The City's argument is nothing more than an exercise in semantics designed to manufacture a bad faith claim where none exists.

3. **The City's third counterclaim attacks basic union advocacy.** The City asserts that a non-lawyer union steward engaged in bad faith bargaining merely by expressing a legal argument contrary to a Nevada Supreme Court decision. However, the steward's statements were made in the context of a grievance proceeding, which is precisely where legal arguments belong. The City's claim not only lacks merit but also poses a dangerous threat to collective bargaining by attempting to penalize routine advocacy and argument.

Each of these counterclaims is either jurisdictionally defective, factually inaccurate, or legally unfounded. Allowing them to proceed would not only waste this Board's time but would also set a dangerous precedent by permitting retaliatory claims to chill legitimate labor advocacy. The following sections address each of these issues in detail.

A. The Board Lacks Jurisdiction Over the City's Ethical Complaint Against Local 731's Counsel, and Even If It Had Jurisdiction, No Violation Occurred.

The City's first counterclaim alleges that Local 731's counsel violated NRPC 4.4(b) by reviewing privileged communications. This claim is legally unsound for two independent reasons. First, this Board lacks jurisdiction to enforce the Nevada Rules of Professional Conduct or to adjudicate alleged ethical violations against attorneys. Second, even if the Board had such jurisdiction, the City's claim is meritless because there was no violation of NRPC 4.4(b), and any alleged privilege concerns were waived by the City's own conduct.

1. The Board lacks jurisdiction to enforce and interpret NRPC 4.4.

The Board's jurisdiction is explicitly confined to matters arising under the Government Employee-Management Relations Act (EMRA). The Board's enabling statute, NRS 288.110(2), provides:

> The Board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this

> chapter by the Executive Department, any local government employer, any employee, as defined in NRS 288.425, any local government employee, any employee organization or any labor organization.

The Board's authority is strictly limited to matters concerning labor relations and collective bargaining under EMRA. It does not have the authority to discipline attorneys or interpret alleged violations of the Nevada Rules of Professional Conduct. As the Board has repeatedly affirmed, it will not exercise jurisdiction over claims that fall outside the EMRA. *See Kerns v. LVMPD*, Case No. 2017-010, Item No. 827 (2018) (holding that the Board has no authority to adjudicate claims arising under unrelated statutes).

Additionally, in *Association of Professional-Technical Administrators v. Washoe County School District*, Case No. 2024-001, Item No. 900 (2024), the Board declined to accept jurisdiction over a dispute concerning the authority of officers of a Nevada nonprofit corporation to act. The Board found that the matter fell squarely under NRS Chapter 82, not NRS Chapter 288. Just as the Board refused to extend its jurisdiction in that case beyond matters explicitly covered under the EMRA, it should likewise refuse to extend its jurisdiction here to adjudicate alleged ethical violations against attorneys, which properly fall within the jurisdiction of the Nevada Supreme Court and the State Bar of Nevada.[1]

The City attempts to circumvent this well-established precedent by recasting an alleged ethical violation as a labor dispute. This is a transparent attempt to misuse the Board's jurisdiction

[1] The Board has long recognized that its jurisdiction is limited to those areas delineated in its enabling statute. *Reno Police Protective Association vs. City of Reno*, Case No. 18273, Item No. 16 (1974). As such, the Board has repeatedly rejected going outside the EMRA and has consistently reaffirmed that its authority is limited to matters arising out of the interpretation of, or performance under the EMRA. *See Nye County Law Enforcement Association v. Nye County*, Case No. 2020-025, Item No. 872 (2021) (The Board does not have jurisdiction to find a violation of NRS 289); *Bonner v. City of N Las Vegas*, Case No. 2015-027, Item No. 820 (2017) (Interpretation of the North Las Vegas Municipal Code or the North Las Vegas City Charter are expressly beyond the Board's jurisdiction); *Int'l Ass'n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item No. 811 (2015) (The Board lacks authority to decide whether the County's merit system required a competitive appointment process in that case as NRS 245 is outside its jurisdiction); *Simo v. City of Henderson*, Case No. Al-04611, Item No. 796 (2014) (The Board's jurisdiction is to only hear complaints arising out of NRS 288).

for retaliatory purposes. Even if the City believed a violation of NRPC 4.4(b) had occurred, the proper forum for such a complaint would be the State Bar of Nevada—not this Board. Accordingly, the City's first counterclaim should be dismissed for lack of jurisdiction.

2. Even if the Board had jurisdiction, no violation of NRPC 4.4(b) occurred.

Even assuming, arguendo, that the Board had jurisdiction, the City's allegations fail on their own terms. NRPC 4.4(b) provides:

> A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

The rule is designed to allow the sender to take protective action when privileged material is inadvertently disclosed. *ABA Model Rule 4.4(b), Comment 2* further clarifies that the rule exists to ensure that attorneys provide notice, not that they take corrective action on behalf of the opposing party.

The City's allegations in its Amended Cross Complaint confirm that no violation of NRPC 4.4(b) occurred. First, Local 731's counsel did notify the City upon receipt of the allegedly privileged document, thereby complying with the rule. Second, the City never took protective action, thereby waiving any claim of privilege. The City engaged in discussions with Local 731 about the document's contents on multiple occasions, including during meetings on October 4,

2024, and October 10, 2024.[2] *See* Amended Cross Complaint at ¶¶ 44, 46, 50. These discussions demonstrate an intentional waiver of any alleged privilege.[3]

Moreover, Comment 3 to the *ABA Model Rules* makes clear that whether an attorney should return or delete an inadvertently sent document is a matter of professional judgment, not an obligation under the rule:

> Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving it that it was inadvertently sent. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer.

The Nevada Rules do not impose any greater obligation than this model rule. Therefore, even if the City had inadvertently sent privileged material (which is not established in the pleadings), Local 731's counsel was under no obligation to take additional action beyond notifying the City. Since Local 731's counsel provided such notice and the City failed to take protective action, there is no ethical violation.

Accordingly, even if the Board had jurisdiction over NRPC violations, which it does not, the City's first counterclaim is without merit and should be dismissed.

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[2]The Complaint explains that the City and Union met to discuss the Force Hire MOU. In that meeting, Ms. Coberly—an attorney for the City—explained the City's rationale for the comments. If the City intended to maintain the communication's privilege, it would have refused to discuss the comments at all. The City took the opposite approach, read the comments aloud, and explained them at length. The pot appears to be calling the kettle black because the only ethical question is whether Ms. Coberly had the authority to waive privilege on behalf of her client in that meeting.

[3]The City's discussion of the communication constitutes a waiver of privilege. *See Wynn Resorts, Limited v. Eighth Judicial District Court in and for County of Clark,* 133 Nev. 369 (2017) (holding that discussing the substance of a privileged documents waives the privilege of the document).

B. The City's second counterclaim misrepresents the nature of Local 731's complaint and is therefore frivolous and spurious.

The City's second counterclaim alleges that Local 731 falsely represented in its Complaint that the City "put[] a cap on physical therapy visits." This claim is both legally and factually baseless. The City's own admissions in its Amended Cross Complaint confirm that the new plan imposes a functional restriction at 25 visits. Whether described as a "cap" or a "review threshold," the practical effect remains the same: employees now face a limitation that was not previously in place. Because Local 731's statement in its Complaint is objectively accurate, this counterclaim fails as a matter of law.

1. The City's own admission confirms that a functional cap exists.

The Amended Cross Complaint concedes that under the new UMR-administered plan, physical therapy visits are subject to a medical necessity review after 25 visits. See Amended Cross Complaint at ¶¶ 80-81. While the City insists that this is not a cap, its own language betrays the reality of the situation. Under the prior Hometown Health plan, physical therapy visits were covered as long as they were deemed medically necessary by the provider. Under the new UMR plan, employees are now subject to an additional administrative hurdle: after 25 visits, they must undergo a medical necessity review that was not previously required. This imposed restriction acts as a functional cap.

While the City argues that a "cap" should refer only to a hard limit, that is not the only reasonable interpretation of the term. Many insurance plans structure coverage their limitations through administrative barriers rather than outright denials. In practical terms, when an employee reaches the 25-visit mark, they must obtain further approval, which may result in denials or delays. For employees facing chronic conditions requiring long-term therapy, this restriction creates a significant barrier to continued treatment. Thus, Local 731's characterization of the change as "putting a cap on physical therapy visits" is a fair and accurate summary of the plan's effect.

2. The City fails to allege any actual harm or misrepresentation, making the claim frivolous and spurious.

Even if the City disagrees with Local 731's phrasing, its counterclaim still fails because it does not establish that the alleged misrepresentation caused any harm. A fundamental requirement for a claim of false representation is that the complaining party relied on the statement to its detriment. *See Ballou v. United Parcel Serv., Inc.*, No. 20-2640-JWB, 2023 WL 130542, at *7 (D. Kan. Jan. 9, 2023), aff'd, No. 23-3021, 2024 WL 700424 (10th Cir. Feb. 21, 2024) (holding that a false representation must be material and result in reliance to constitute an unfair labor practice). The City does not, and cannot, allege that it relied on Local 731's statement in any way that affected its conduct.

Moreover, allowing counterclaims based on disagreement over word choice would open the floodgates to meritless litigation. Labor disputes often involve competing narratives, but characterizing a policy change in unfavorable terms does not constitute bad faith bargaining. The Board must not allow employers to weaponize counterclaims as a means of silencing unions from advocating on behalf of their members.

3. Allowing the counterclaim to proceed would chill collective bargaining and litigation.

Public policy strongly disfavors retaliatory counterclaims designed to penalize a union for filing a grievance or complaint. The City's second counterclaim is an attempt to chill Local 731's advocacy by turning routine legal assertions into a basis for liability. If unions were forced to defend against counterclaims every time they described an employer's actions in a way that the employer found unfavorable, the grievance and complaint process would be effectively stifled. The Board must reject this tactic to preserve the integrity of labor relations.

Courts have recognized that allowing employers to bring counterclaims based solely on allegations in a complaint would create a dangerous precedent. As the Supreme Court held in *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 740 (1983), the filing of a reasonably based

but unsuccessful lawsuit by a union cannot, by itself, constitute an unfair labor practice. Similarly, here, Local 731's statement about the functional impact of the City's new healthcare plan is, at worst, a difference in perspective—not a knowing falsehood. The City's counterclaim should be dismissed to prevent an erosion of collective bargaining protections.

The City's second counterclaim fails for multiple reasons. First, its own admissions confirm that the new plan imposes a functional restriction at 25 visits, which can reasonably be described as a cap. Second, the City does not allege that it relied on the alleged misrepresentation in any material way. Third, permitting counterclaims based on routine grievance language would severely undermine collective bargaining. For these reasons, the Board should dismiss the second counterclaim in its entirety.

C. The City's third counterclaim is a frivolous and baseless attack on union advocacy.

The City's third counterclaim alleges that Local 731 engaged in bad faith bargaining when a union steward stated that the City's practice of placing employees on a 40-hour light duty schedule violated Nevada law. This claim fails for multiple reasons: (1) the statement in question was an argument made in the course of a grievance discussion, which is an essential and protected component of labor negotiations; (2) the City's reliance on *Taylor v. Truckee Meadows Fire Protection District*, 479 P.3d 995 (Nev. 2021), is misplaced because the facts of that case differ materially from the grievance at issue here; and (3) permitting the City's counterclaim to proceed would create a dangerous precedent that would chill union advocacy and undermine the collective bargaining process.

1. A union steward's argument in a grievance discussion cannot constitute bad faith bargaining.

The essence of collective bargaining is the ability of both parties to present and argue their respective legal and factual positions. A union steward, acting as a representative of Local 731, has a fundamental right to articulate the union's interpretation of labor laws and contract

provisions during grievance discussions. Even if the steward's legal analysis differs from the City's interpretation or from binding precedent, it does not rise to the level of bad faith bargaining.

The Board and courts have long recognized that good faith bargaining does not require parties to agree—it merely requires them to engage in discussions and make reasonable efforts to resolve disputes. *See NLRB v. Katz*, 369 U.S. 736, 743 (1962) (holding that bad faith bargaining requires a showing of an intent to subvert the negotiation process). Here, the City's claim that Local 731 engaged in bad faith bargaining is based solely on the fact that a union steward took a legal position with which the City disagreed. Such an assertion is wholly insufficient to sustain a counterclaim for bad faith bargaining.

2. The City's reliance on Taylor v. Truckee Meadows Fire Protection District is misplaced—showing that this is, at worst, a disagreement over the law, not bad faith.

The City' argument is that *Taylor v. Truckee Meadows Fire Protection District* conclusively resolves the issue of whether placing a firefighter on a 40-hour light duty schedule is lawful. *See* Amended Cross Complaint at ¶¶ 140-149. However, the City misrepresents the scope and applicability of *Taylor* to the present case.[4]

In *Taylor*, the Nevada Supreme Court considered whether an employer's practice of reassigning injured firefighters from a 48-hour work schedule to a 40-hour light duty schedule violated Nevada law. The Court concluded that the change was not an "unreasonable burden" and found that the new schedule was "substantially similar" to the employee's original schedule. *Taylor*, 479 P.3d at 1001-02. However, the ruling in *Taylor* was fact-specific and did not establish

[4] Ironically, the City's Third Claim for Relief is not only without merit, but it also shows the absurdity of its Second Claim for Relief. As the City correctly points out in the Amended Cross Complaint, the dispute between Local 731 and the City in the Light Duty Grievance is the practice by the City in changing a workers' compensation-injured employee's schedule from a 56-hour schedule to a 40-hour schedule.

a blanket rule that any shift from a 56-hour schedule to a 40-hour light duty schedule is automatically lawful under all circumstances.

Unlike in *Taylor*, where the change involved a reduction from 48 to 40 hours per week, the practice challenged by Local 731 concerns a change from a 56-hour schedule to a 40-hour schedule, a much more substantial reduction. This distinction is crucial because Nevada law requires that temporary light-duty assignments be "substantially similar" to an employee's pre-injury position in terms of hours, location, and duties. See NRS 616C.475(8). A union steward raising this distinction in a grievance discussion is not making a false representation—it is engaging in legally protected advocacy.

Moreover, legal arguments about statutory interpretation are commonplace in collective bargaining. If the Board were to accept the City's argument that simply raising an alternative legal interpretation constitutes bad faith bargaining, it would effectively prohibit unions from advocating for workers' rights.

3. Allowing the counterclaim to proceed would undermine the collective bargaining process.

The City's third counterclaim is not just legally deficient—it is also dangerous from a public policy perspective. If employers were permitted to bring counterclaims against unions every time a steward or representative made a legal argument the employer disputed, unions would be forced to self-censor, undermining their ability to effectively represent employees in grievance proceedings.

The National Labor Relations Board (NLRB) and courts have long recognized that permitting employers to use bad faith bargaining claims as a weapon against unions could have a chilling effect on labor negotiations. *See Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 740 (1983) (noting that allowing retaliatory litigation against unions for protected advocacy could erode labor protections). This principle equally applies here: Local 731's steward was merely

engaging in protected advocacy on behalf of union members, and allowing the City's counterclaim to proceed would set a dangerous precedent.

The City's third counterclaim is wholly without merit. The statement at issue was made during a grievance discussion, and the fact that the City disagrees with the steward's legal analysis does not transform that statement into bad faith bargaining. Furthermore, the City's reliance on *Taylor* is misplaced, as the case does not provide a definitive answer to the grievance at hand. Finally, allowing employers to bring counterclaims based on routine legal arguments would create a chilling effect that would undermine the collective bargaining process. For these reasons, the Board should dismiss the third counterclaim in its entirety.

D. Generally, the City's counterclaims should be dismissed because they are frivolous and spurious under NRS 288.375.

In addition to the specific legal deficiencies in each of the City's counterclaims, the entirety of the Amended Cross Complaint is frivolous and spurious under NAC 288.375. The Board has the authority to dismiss complaints that lack probable cause, that present issues previously decided, or that are otherwise meritless. Here, the City's counterclaims serve no legitimate legal purpose but instead appear to be retaliatory in nature, intended to divert attention from the City's own bad faith bargaining.

First, the City's claims lack probable cause and present no judiciable controversy. NAC 288.375(1) states the Board may dismiss a matter if "the Board determines that no probable cause exists for the complaint, or if the complaint has been settled and notice of the settlement has been received by the Board."

Here, the City's counterclaims are predicated on factual distortions and legal theories that have no support in the law. As demonstrated in Sections A, B, and C above, the City's allegations against Local 731 do not amount to violations of NRS Chapter 288, nor do they establish any

cognizable legal claim. The absence of any material factual dispute or viable legal theory confirms that the counterclaims are wholly without probable cause.

Moreover, a "justiciable controversy" requires more than a hypothetical or abstract dispute—it requires a real, concrete issue affecting the rights of the parties. *See Personhood Nevada v. Bristol*, 245 P.3d 572, 574 (Nev. 2010) (highlighting the need for an active justiciable controversy). Here, the City has not demonstrated any actual harm or reliance on the alleged misrepresentations by Local 731. Instead, its counterclaims amount to disagreements over phrasing and advocacy—matters that do not give rise to an actionable dispute.

Second, the counterclaims are retaliatory in nature constitute an abuse of process. Public policy disfavors the use of retaliatory litigation tactics to suppress legitimate labor advocacy. The Board should not allow employers to weaponize counterclaims as a means of intimidating unions into submission. Courts and administrative agencies have consistently held that retaliatory legal actions designed to suppress protected activity should not be entertained. *See Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 740 (1983) (holding that retaliatory lawsuits brought against unions for engaging in protected activity are impermissible).

The timing and nature of the City's counterclaims strongly suggest that they were filed as a retaliatory response to Local 731's Complaint. The counterclaims do not identify any actual harm suffered by the City, nor do they seek any concrete relief beyond attempting to discredit Local 731. This kind of abusive litigation tactic should not be sanctioned by the Board, as it undermines the integrity of collective bargaining and grievance resolution processes.

Third, allowing these claims to proceed would open the floodgates for frivolous counterclaims. If the Board were to entertain the City's counterclaims, it would create a precedent that would encourage employers to bring retaliatory counterclaims whenever a union files a complaint. This would not only clog the Board's docket with frivolous litigation but would also have a chilling effect on unions seeking to enforce their rights under NRS Chapter 288.

The Board has long recognized its duty to prevent the misuse of its processes. *See CCCTA, et al., vs. Clark County School District*, Case No. A1-045428, Item No. 210 (1988) (holding that the Board can dismiss a complaint if there are not sufficient facts alleged to constitute a violation of NRS Chapter 288). Here, the City's counterclaims are not only legally deficient, but they also constitute a misuse of the Board's adjudicative authority. The Board should exercise its discretion under NAC 288.375 to dismiss these claims outright.

In short, the City's counterclaims are precisely the kind of meritless, retaliatory pleadings that NAC 288.375 was designed to address. They lack probable cause, fail to present a justiciable controversy, and serve only to distract from the City's own bad faith bargaining. Allowing these claims to proceed would set a dangerous precedent and undermine the collective bargaining process. Accordingly, the Board should dismiss the City's counterclaims in their entirety and Local 731 respectfully requests the Board award the Local its attorneys' fees and costs incurred in responding to this frivolous litigation.

Respectfully submitted,

/s/ Alex Velto

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CERTIFICATE OF SERVICE

I hereby certify that on March 20th, 2025, I have sent a true and correct copy of the foregoing **INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731's MOTION TO DISMISS PURSUANT TO NRS 288.375** as addressed via email to wduncan@cityofsparks.us and jcoberly@cityofsparks.us. I also have filed the document with the Nevada Government Employee-Management Relations Board via its email address at emrb@business.nv.gov:

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/s/Rachael L. Chavez

City of Sparks (Complainant/Respondent)
Opposition to IAFF Local No. 731's Motion to Dismiss Cross Complaint

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BEFORE THE STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

CITY OF SPARKS, Complainant/Respondent, v. INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731, Respondent/Complainant.	Case No.: 2025-001 **CITY OF SPARKS' OPPOSITION TO IAFF LOCAL NO. 731'S MOTION TO DISMISS**

The CITY OF SPARKS ("City") opposes the INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 ("Local 731")'s Motion to Dismiss the City's Amended Cross-Complaint because the claims therein are supported by probable cause as stated in the briefing and affirmed in Local 731's Answer. This opposition is based on the papers and pleadings on file herein, the below Memorandum of Points and Authorities, and any oral argument permitted.

I. INTRODUCTION

Local 731's Motion provides lengthy factual arguments in opposition to the facts alleged in the City's Amended Cross-Complaint, validating that there are sufficient factual allegations as required by NAC 288.200(1)(c) and the existence of probable cause required by NAC 288.375(1). Local 731's Motion does not provide any basis for a finding that the City's claims are not legally sound—rather, it disputes the facts alleged—thereby establishing that the City's Amended Cross-

Complaint alleges sufficient facts to establish a justiciable controversy and therefore must be heard by the Board. Motions to dismiss are not the appropriate vehicle to argue contested facts—the existence and relevance of the contested facts are to be determined by the Board after it hears the parties' cases-in-chief, not based upon counsel arguments.

Cross-complaints are routinely filed when a party is accused of bad faith negotiations and factual circumstances exist to support such claims. In this case, the City had no interest in pursuing the various credible bad faith claims it encountered during negotiations with Local 731, preferring to work through those challenges and move towards resolving grievances and reaching agreement on the collective bargaining agreement. But the City was compelled to file its Cross-Complaint after Local 731 filed the instant Complaint, without notice, one business day before the conclusion of collective bargaining for a new contract signed January 27, 2025. Although the City and Local 731 have since separately successfully resolved four previously pending grievances since the filing of Local 731's Complaint, the City must hold Local 731 accountable for its documented bad faith behavior. Because the City's Amended Cross-Complaint is based on demonstrable facts, some that Local 731 admitted to in its Answer, the Board should allow the City's claims to proceed and deny Local 731's request for attorneys' fees and costs.

II. STATEMENT OF FACTS

The City is a local government employer within the meaning of NRS 288.060 and Local 731 is an employee organization or labor organization within the meaning of NRS 288.040. The City and Local 731 are parties to a successor one-year collective bargaining agreement ("CBA") to the July 1, 2020 to June 30, 2024 CBA, signed January 27, 2025 and effective July 1, 2024.

Local 731 contends that in October 2024 its counsel's interpretation of inadvertently transmitted attorney-client privileged comments during negotiations for the "Force Hire" Grievance revealed that the City planned to violate the proposed draft agreement. Compl. ¶ 19. But Local 731 admits that, following the City's explanation that Local 731's interpretation of the comment was mistaken, it accepted the language proposed and continued to negotiate with the City. Ans. to Am. Cross-Compl. ¶ 52. The City contends that Local 731's counsel admitted via the notice email—and in the Answer to the Amended Cross-Compl. ¶ 42—that the comments at

issue at a minimum "appeared" privileged and Local 731's counsel did not provide the City's counsel an opportunity to take protective measures, constituting bad faith. *See* Am. Cross-Compl. ¶ 43. Instead, Local 731's counsel used the privileged comments in an attempt to ambush the undersigned and the City without notice, constituting bad faith. *See id.* ¶ 45. Local 731 also contends that the City acted in bad faith in "refus[ing] to fully incorporate" terms requested by Local 731 in the course of the Force Hire Grievance negotiations. Compl. ¶ 42.

Local 731 also alleges that the City unilaterally placed a cap on physical therapy treatments after the City transitioned to a new Third-Party Administrator ("TPA") for its health insurance Plan in January 2024. Compl. ¶ 24. The City provided the language of the Plan document in its Amended Cross-Complaint and contends that the Complaint falsely and in bad faith characterizes the consistent requirement in the Plan document to check for medical necessity as a "cap." Am. Cross-Compl. ¶¶ 80–83, 136. Local 731 argues that an agreed-upon extension during the GHCC Grievance process, granted prior to the City providing a full review of Local 731's claims regarding alleged changes to health benefits, Ans. to Am. Cross-Compl. ¶ 132, was a bad faith maneuver. Compl. ¶ 45. The City further alleged that the Union's former Steward's knowing misstatement in negotiations with the City constituted bad faith. Am. Cross-Compl. ¶¶ 148–49.

Local 731 filed its bad faith Complaint on January 24, 2025 and the City accordingly filed its Answer to the Complaint on February 18, 2025, and the operative Amended Cross-Complaint on February 27, 2025.[1] Local 731 filed its Answer to the Amended Cross-Complaint and its Motion to Dismiss on March 20, 2025. This Opposition follows.

III. LEGAL STANDARD AND AUTHORITY

NAC 288.200(1)(c) requires that a Cross-Complaint contain a "clear and concise statement of the facts constituting the alleged practice sufficient to raise a justiciable controversy under Chapter 288." "If there is a lack of sufficient facts to give rise to a justiciable controversy, there

[1] The City's initial Cross-Complaint included a claim that Local 731 engaged in surface bargaining by maintaining certain grievances but failing to pursue them. The subject grievances were thereafter deemed resolved by the parties and the City withdrew that claim, resulting in the Amended Cross-Complaint.

is also a lack of probable cause." *Nevada Services Employee Union v. Clark County Water Reclamation District*, Item #905 at 1 (Dec. 17, 2024). The Board may dismiss a matter that is lacking probable cause or is frivolous. NAC 288.375(1), (5). Here, the Amended Cross-Complaint provides ample factual justification for its three claims, and each alleged cognizable bad faith action by Local 731 sufficient for probable cause. The Cross-Complaint should therefore proceed to a hearing and Local 731's request for attorneys' fees and costs should be denied.[2]

IV. MEMORANDUM OF POINTS AND AUTHORITIES

The Board has jurisdiction under the Government Employee-Management Relations Act (EMRA) over "any complaint arising out of the … performance under, the provisions of this chapter by … any labor organization." NRS 288.110(2). The City's Amended Cross-Complaint contends that Local 731's performance of its role in grievance proceedings with the City constituted bad faith in three instances—when Local 731's counsel read and advised his clients based on comments he knew "appeared" privileged, Ans. to Am. Cross-Compl. ¶¶ 36,42, when Local 731 filed false claims unsupported by any documentation before the EMRB regarding a pending grievance, Compl. ¶ 24; **Exhibit A** (transmission email and Local 731 Request for Information (RFI) ¶¶ 14, 20, 22, 24), and when Local 731's Steward intentionally misrepresented case law during grievance negotiations, Am. Cross-Compl. ¶¶ 148–49. These claims include detailed factual allegations providing probable cause and all arise from grievance proceedings, which are explicitly within the Board's jurisdiction under NRS 288.505.

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[2] It is still unclear why Local 731 filed a bad faith Complaint four months after its first claims allegedly occurred during productive grievance negotiations, twelve months after its second claim allegedly occurred, and right as the parties were to enter negotiations for a successor collective bargaining agreement. The parties have since agreed on ground rules for the current round of collective bargaining on February 25, 2025, and have the first meeting scheduled for April 7, 2025. Local 731's request for attorneys' fees and costs at the forefront of its Motion presents a possible explanation, but the Complaint's timing could alternatively be due to the new negotiations. *Cf. International Association of Firefighters, Local 1908, Complainant Clark County, Respondent*, Case No. A1-045774, Item No. 571 at 4 (Dicks, J., dissenting) ("Therefore, unfair labor practice charges should not be brought lightly nor to gain advantage in negotiations (although, of course, this is done. However, the Board may levy sanctions may lie for frivolous prosecutions).").

The City's claim that Local 731 counsel violated Nevada Rule of Professional Conduct (NRPC) 4.4(b) does not ask the Board to issue discipline under the State Bar's authority, it instead identifies an ethical violation and argues that such behavior constitutes bad faith in grievance negotiations and is therefore reviewable by the Board. State and federal courts similarly do not have the State Bar's authority under the Nevada Supreme Court rules, but those courts may identify unethical conduct that violates NRPC as bad faith. *See e.g.*, *In re Girardi*, 611 F.3d 1027, 1061 (9th Cir. 2010) (concluding "recklessly or intentionally misrepresenting facts constitutes … 'the requisite bad faith'" (citation omitted)). Here, Local 731's counsel admits that the privileged nature of the comments was apparent, yet confronted the City's counsel in a meeting in front of both sets of clients with a misinterpretation of those comments. In such circumstances, there was no opportunity to protect the privilege which had already been irretrievably violated. Such behavior did not allow for protective measures, violated NRCP 4.4(b), and constitutes reviewable bad faith.

Local 731 then incorrectly contends in its Motion that the City admitted that it changed its healthcare plan to cap physical therapy visits. Mot. at 1. This is demonstrably not true in a review of the City's Answer to the Complaint. *See* Ans. to Compl. ¶ 24 ("Denied."). The City's Amended Cross-Complaint provided language from the health plan document demonstrating that Local 731's claim before the Board makes a false statement, Am. Cross-Compl. ¶¶ 79–84, 136, and all argumentation to the contrary simply demonstrates this claim should proceed to a hearing so that the Board can make a determination on the facts alleged. Proceedings before the Board are definitionally within the Board's jurisdiction and a false statement before the Board burdens City resources and time to respond, demonstrating harm to the City.

Finally, Local 731 argues in response to the City's third claim that its former Steward may provide arguments that "differ[]… from binding precedent" in grievance negotiations without acting in bad faith. Mot. at 13.[3] The City's claim is crucially more specific—the Steward knew

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[3] Local 731 also argues that because the former Steward's statement was "an argument in a grievance proceeding" it therefore "cannot constitute bad faith." Mot. at 2. If that broad protection (Footnote continued)

he was making arguments foreclosed by binding precedent, Am. Cross-Claim ¶ 149, but he sought to sway the City in the moment with a false statement regardless of that knowledge to achieve his desired outcome. The City maintains that it alleged facts demonstrating a knowing falsity with the intent to obtain concessions in a grievance negotiation constitutes bad faith, and the Board should investigate the factual circumstances alleged.

The Board has jurisdiction over the City's Amended Cross-Complaint and Local 731's Motion to Dismiss claims to the contrary fail on the law and the facts.

A. Unethical Conduct Can Constitute Reviewable Bad Faith

Local 731 incorrectly argues that the City seeks to discipline its attorney and such action is the province of the State Bar. Mot. at 6. But the City did not mistakenly file a bar complaint before the Board. The City does not ask the Board to issue discipline, it asks the Board to determine whether the unethical conduct alleged constitutes bad faith behavior in the context of the negotiations under NRS 288.620(2)(a) and NRS 288.110(2). Courts routinely make similar determinations in traditional litigation and there are sufficient facts alleged for the Board to determine whether bad faith occurred here. Local 731 additionally argues the merits of the City's bad faith claim, demonstrating the City provided sufficient factual allegations to enable such a response. Local 731 contends that counsel did not violate NRPC 4.4(b) and that the City waived the privilege when it discussed the comments in a meeting with Local 731 representatives. But Local 731 counsel admitted the comments were privileged, Ans. to Am. Cross-Compl. ¶¶ 36, 42, and counsel ambushing the City in a meeting with a litany of threats about what Local 731 planned to do in response to its counsel's misinterpretation of the attorney-client comments, Am. Cross-Compl.¶ 45, left no opportunity for the City to preserve the privilege or cure the inadvertent disclosure.

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of "statements made in a grievance proceeding" existed, then Local 731's own argument that the City's counsel made a point to its client regarding the Force Hire Grievance proceeding would be similarly exempt from the Board's jurisdiction as occurring "in a grievance proceeding." This argument proffered by Local 731 is unsurprisingly unsupported by any legal citation and would provide for absurd results.

1. Local 731's Counsel's Conduct In Grievance Negotiations Is Reviewable For Bad Faith.

Conduct that evinces bad faith in negotiations is explicitly within the Board's jurisdiction to review. The City contends that Local 731's counsel acted unethically pursuant to the standard set by NRCP 4.4(b) and therefore acted in bad faith in grievance negotiations.

In the Motion to Dismiss, Local 731 contends instead that its counsel's conduct in grievance negotiations is far outside the scope of the Board's purview and solely the province of the State Bar. Mot. at 7 (citing *Association of Professional-Technical Administrators (APTA) v. Washoe County School District*, Case No. 2024-001, Item No. 900 (June 6, 2024)); *see also* Mot. at 7 n.1 (citing *Simo v. City of Henderson*, Case No. Al-04611, Item No. 796 at 4 (2014) (the Board declining to hear a "purely contractual dispute[]" as outside the bounds of NRS 288)). But unlike the legal question in *APTA*, which attempted to bring "an intra-organizational dispute that must be resolved under NRS Chapter 82" before the Board, *APTA*, Item No. 900 at 2–3, or the purely contractual dispute in *Simo*, Item No. 796 at 4, the City here brings conduct that occurred during grievance negotiations and asks the Board to determine if such conduct constitutes bad faith—which is well within the Board's jurisdiction. *See* NRS 288.110(2) (authorizing evaluation of labor organization conduct). Furthermore, while Local 731 cites cases claiming that the Board has declined to exercise jurisdiction under other statutes, the Board in those cases still analyzed whether the alleged conduct constituted a violation under NRS 288. *See Nye County Law Enforcement Association v. Nye County*, Case No. 2020-025, Item No. 872 at 1 n.1, 10–11 (Jul. 20, 2021) (The Board does not have jurisdiction to find a violation of contract under NRS 289, but evaluated the content of the notices at issue and declined to find interference with protected activity under the EMRA); *Bonner v. City of North Las Vegas*, Case No. 2015-027, Item No. 820 at 12, 12 n.4, (Feb. 8, 2017) (Interpretation of the North Las Vegas Municipal Code or the North Las Vegas City Charter are expressly beyond the Board's jurisdiction, but the Board reviewed the complained-of behavior by the Council and determined it did not demonstrate discrimination of protected conduct under NRS 288); *International Association of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item No. 811 at 3–4 (Dec. 17, 2015) (The Board lacked

authority to decide the union's claim that the County's merit system violated NRS 245, but analyzed the complained-of conduct under NRS 288 and determined it pertained to a management right and was therefore "not within the scope of mandatory bargaining" at all under NRS 288.150(3)).

Such a question is not solely adjudicated by the State Bar. Whether a client's counsel acted in violation of NRPC is routinely a question before judges and arbitrators. Courts routinely rule based on the facts provided whether counsel violated the NRPC and consequently whether such conduct constituted bad faith activity. *See Avendano v. Sec. Consultants Grp.*, 2014 WL 6773027, at *12 (D. Nev. Dec. 2, 2014) (observing counsel's "failure to correct [misstatements] is a violation of his ethical obligations to the tribunal, and therefore, is conduct tantamount to bad faith," as was counsel's "tantamount to bad faith" decision to "fail[] to investigate" the factual basis for a claim); *Peterson v. Kennedy*, 771 F.2d 1244, 1258–59 (9th Cir. 1985) (evaluating attorney conduct for bad faith, which includes whether the attorney "performs[s] in a competent and professional manner" under the Rules of Professional Conduct); *In re Martinez*, 393 B.R. 27, 37–38 (Bankr. D. Nev. 2008) (counsel's conduct violated NRPC and can be sanctioned for demonstrating bad faith).

Counsel activity in legal proceedings routinely constitutes the basis for motions for sanctions and action taken against the represented parties as a consequence of counsel's actions. Alleged ethical violations, or acting in bad faith, are the basis of the majority of labor disputes that come before the Board. Determining whether those ethical lapses constitute bad faith and should not occur again is the duty of the EMRB under NRS 288. The City's first claim therefore should not be dismissed and should proceed to a hearing.

2. Local 731's Counsel Violated NRCP 4.4(B) And No Affirmative Waiver Occurred.

In its Motion to Dismiss, Local 731 proceeded to argue the merits of the City's claim, further demonstrating that it is appropriate for the Board to evaluate the articulated factual basis for the claim at a hearing. By attempting to argue against the factual basis alleged by the City, Local 731 is validating the existence of probable cause. In responding to the alleged factual basis of the City's Cross-Claim, Local 731's Motion intentionally omits essential elements of NRPC 4.4(b) Comment 2 and its admitted behavior violated the Rule pursuant to those explanatory

Comments. Local 731 argues that all Rule 4.4(b) Comment 2 requires is to provide notice, and Comment 3 simply notes counsel may delete or return such information. Mot. at 8–9. Yet the City is not contending that Local 731 counsel failed to do something optional under the Rules, like delete or return the draft with the comments. Rather, the City argues that Comment 2 specifies "this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures." If the notice does not allow for protective measures, it does not meet the requirement of the Rule. Here, the mere fact of Local 731 counsel's notice to the City, Mot. at 8, and Local 731's subsequent response in Answer to the Amended Cross-Complaint ¶¶ 36, 42, confirms that counsel not only identified that the document included privileged comments, but that counsel read through to the comment at issue on the last page of the document, despite the admitted "appearance" of privilege. Local 731 counsel then, regardless of whether it was before or after notice to the City, conveyed to Local 731 members his misinterpretation of the comment, in violation of NRPC 4.4(b), prior to a grievance meeting with the City the next day. Am. Cross-Compl. ¶¶ 44–45.[4] In short, counsel failed to comply with the requirement of allowing the City to take protective measures of the undisputed privileged communications in violation of NRCP 4.4.(b).

In that meeting, Local 731's Vice President Dunn opened the meeting reading a list of potential consequences Local 731 would utilize against the City in retaliation for bad faith conduct, including threatening a bar complaint against City's counsel. Local 731 counsel then expounded on its misinterpretation of the privileged comment. At that point, there was no opportunity for the City to preserve the privilege—Local 731 and its counsel had clearly discussed the privileged comments at length, determined a list of potential consequences, and agreed that Vice President Dunn would present that list to open the meeting as a bad faith negotiation tactic, followed by

[4] When Local 731 counsel emailed the City on October 1, 2024, providing notice that he had received the privileged comments, Am. Cross-Compl. ¶ 36, he stated in the notice that the comments were bad faith. Upon the City's request for clarification, Local 731 counsel did not respond, waiting to discuss the perceived bad faith in front of both sets of clients on October 2, 2024.

Local 731 counsel's explanation. Due to this ambush before both sets of clients, City counsel did explain the context of the comment, Am. Cross-Compl. ¶ 46, but it was in no way an affirmative waiver. *Contra* Mot. at 9 n.2, 3; *cf. Mayorga v. Ronaldo*, 606 F. Supp. 3d 1003, 1018 (D. Nev. 2022), *aff'd*, No. 22-16009, 2023 WL 8047781 (9th Cir. Nov. 21, 2023) (observing that privilege was not waived when counsel asserting privilege in a Motion failed to assert the privilege in a log, given opposing counsel already had obtained the privileged documents through other means, determining that to conclude otherwise would create a "'gotcha' result [which] cannot be the intent of these procedural rules").[5]

Furthermore, had City counsel invoked the privilege in that moment and refused to discuss the comments, Local 731 would be left with the impression that its counsel's gross distortion of the comment was correct. Instead, after City counsel explained the actual meaning of her comment, Local 731 accepted the proposed language referenced by the comment and proceeded to rely in subsequent drafts on the City's promise to preserve proposed language in a Standard Operating Procedure. Am. Cross-Compl. ¶¶ 52–53. This behavior clearly evinced that Local 731 believed that, if an agreement was reached on the Force Hire Grievance, the City would follow through on its promise—meaning that Local 731 no longer believed its previous misinterpretation of the privileged comment. Local 731 admits to this course of conduct in its Answer, where it acknowledges "it provided a qualified acceptance to amending the SOP." Ans. to Am. Cross-Compl. ¶ 52. The City maintains that Local 731 counsel violated Rule 4.4(b) when privileged comments were read, digested, used as a negotiation tactic, and then broadcasted in a meeting before the City could reassert the privilege after Local 731's notice of receipt of privileged communications.

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[5] Local 731 contends the grievance meeting discussion is akin to the waiver of privilege in *Wynn Resorts, Limited v. Eighth Judicial District Court in and for County of Clark*, 133 Nev. 369 (2017). Mot. at 9 n.3. Not so. In that case, Wynn Resorts intentionally attached a copy of a report to its complaint that it later attempted to claim was privileged. *Id.* at 346–47. Here, the inadvertently-sent attorney-client comments had already been distributed to Local 731 and its counsel beforehand, and the substance of those comments had already been discussed within Local 731's leadership. The City here did not voluntarily re-distribute the draft with the privileged comments in the meeting, it simply had no other option than to respond to the allegations lodged against it.

B. Local 731's Claim Before the Board Regarding the City's Health Plan Is Baseless, Constituting Reviewable Bad Faith

The City's claim that Local 731 made a false representation to the Board is brought under NRS 288 as it addresses labor organization conduct and is reviewable by the Board to determine whether the representation is false and therefore constituting a claim brought in bad faith. Local 731 claims that the City failed to allege a harm arising from its contention that Local 731 filed a baseless claim for bad faith against it (espousing perhaps willful ignorance that a party having to respond to a baseless claim is per se harmful), and claims that to allow the City's claim to proceed would chill union advocacy, relying on a single case that does not support its position. Mot. at 11–12. Local 731 then goes on to equivocate with the language it used in its Complaint to argue the City incorrectly calls it false, only emphasizing that broad language used in the Complaint *was* false. The City continues to urge the Board to review the City's claim and determine that Local 731's Group Health-related claim was brought in bad faith based on the dearth of factual support.

1. Detrimental Reliance is Not Required for a False Statement Claim to be Actionable as Bad Faith.

Local 731 argues that a false statement alone cannot be reviewed by the Board for bad faith because "the complaining party" must also have stated that it "relied on the statement to its detriment," Mot. at 11—stating the standard for a detrimental reliance claim, not a false statement. Neither the case cited by Local 731 nor the law in Nevada support this position. *See id.* (citing *Ballou v. United Parcel Serv., Inc.*, 2023 WL 130542, at *7 (D. Kan. Jan. 9, 2023), *aff'd*, 2024 WL 700424 (10th Cir. Feb. 21, 2024)). In *Ballou*, the court reviewed claims that the defendant employer made a variety of misstatements to employees, and observed "the NLRB could have legally and reasonably upheld a claim against Defendant based on an interpretation of the NLRA that would consider Defendant's alleged misrepresentation of a $25 Hub rate to have been a violation of its … duty to bargain collectively and in good faith," without reference to reliance interests. 2023 WL 130542, at *8. Furthermore, many statutes exist punishing false statements without requiring proof of reliance or harm. *See* 18 U.S.C. § 1011 (punishing "any false statement ... relating to the sale of any mortgage, to any Federal land bank"); 18 U.S.C. § 1015(a) (punishing

"any false statement under oath, in any case, proceeding, or matter relating to ... naturalization, citizenship, or registry of aliens"); 18 U.S.C. § 1026 (punishing "any false statement for the purpose of influencing in any way the action of the Secretary of Agriculture ... in connection with ... farm indebtedness"); 18 U.S.C. § 1027 (punishing "any false statement" made "in any document required by [ERISA]"). Supreme Court Justice Breyer has observed "many statutes and common-law doctrines make the utterance of certain kinds of false statements unlawful." *United States v. Alvarez*, 567 U.S. 709, 734 (2012) (Breyer, J., concurring). Crucially, here in Nevada, the law similarly punishes any willful "unqualified statement of that which the person does not know to be true" made under oath. NRS 199.145(2). If the Board's inquiry reveals Local 731's statement in its Complaint was false, it can determine Local 731 acted in bad faith. *Cf. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. NLRB*, 844 F.3d 590, 604–05 (6th Cir. 2016) (observing bad faith includes "dishonesty" and remarking that in the case before it, "had there been substantial evidence to support the claim that [the union steward] gave a partly false statement, the Board might have been able to establish bad faith conduct"); *see also Kor Media Grp., LLC v. Green*, 294 F.R.D. 579, 585 (D. Nev. 2013) ("The Court requires counsel to be candid in their briefing, and to make a reasonable inquiry into the legal contentions presented. Especially given that the Court highlights these deficiencies now, counsel should be mindful that future shortcomings could result in sanctions." (citations omitted)); *Lake v. Gates*, No. 23-16022, 2025 WL 815191, at *3 (9th Cir. Mar. 14, 2025) ("And if unsupported factual allegations are present in the FAC, the district court did not abuse its discretion in imposing sanctions.").

But even if detrimental reliance or some other harm was required to demonstrate that a false statement constitutes bad faith conduct, the harm suffered by the City is obvious. Indeed, the City is in this proceeding before the Board partially due to the false statement by Local 731 that there is a new "cap" on physical therapy benefits, and is thereby using valuable City time and resources to respond. This harm is particularly acute now as the City grapples with a budget deficit and City personnel time could instead be productively spent analyzing contracts and current resources to identify ways to save and earn money for the City to avoid significant layoffs. Instead, here we are.

2. Allowing the City's Claim to Proceed Does Not Chill Labor Relations.

Local 731 frames the City's Amended Cross-Complaint as some dramatic departure from custom and as retaliatory, Mot. at 11, which simply betrays Local 731's indignation that the City refused to roll over in response to every claim and grievance—delusive or otherwise—that they file and concede without protest. Being that is not the case, the City determined that a frank analysis of the parties' interactions to date warranted a cross-complaint. Cross-complaints are not per se retaliatory, they are best practice when a party is brought before the Board to determine if it too has valid legal grounds to claim it experienced bad faith behavior in negotiations. The complaint process is not stifled, if anything it is more robust because both parties are expected to provide sufficient facts for the valid legal claims alleged in any complaint.

As discussed *infra*, the City's claim that Local 731 made a false claim to the Board is factually based and Local 731's Answer to the Amended Cross-Complaint reveals that it is already back-tracking on its language—the previously alleged "cap" is now styled as a "potential barrier" in the Answer. Ans. to Am. Cross-Compl. ¶ 84. Furthermore, Local 731 sent sixty-two (62) RFIs to the City concurrent with the filing of its Motion, which gives the City thirty days to provide the City's Health Plan documents and contract with its Third-Party Administrator so that Local 731 can "prepar[e] for … [the] future EMRB hearing." **Exhibit A** at 6. NAC 288.200(1)(c) requires Local 731 to include in their complaint "[a] clear and concise statement of the facts constituting the alleged practice … including the time and place of the occurrence of the particular acts and the names of the persons involved." Thus, Local 731 was required to have the factual basis for its claim *before* the filing of its complaint, not after.[6] Local 731's decision to bring a claim of bad faith before the EMRB without apparently having copies of the very documents it contends created the bad faith only further demonstrates the falseness and frivolousness of Local 731's claim.

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[6] Furthermore, the Board has only allowed discovery in the form of depositions after motion practice—and Local 731 made no motion before conducting this discovery. *See Janet Kallsen vs. Clark County School District*, Case No. A1-045598, Item #378 at 1–2 (Mar. 20, 1996) (granting discovery in the form of specific depositions); *Nevada Classified School Employees Association, AFT/PSRP, Local 6181, AFL-CIO vs. Truckee-Carson Irrigation District*, Case No. A1-045895, Item #647 at 2 (Mar. 13, 2007) (granting motion for discovery in the form of depositions).

It is therefore unsurprising that the case Local 731 cites to contend that parties may not bring counterclaims solely based on allegations in the complaint does not stand for that principle. Mot. at 11–12. Instead, *Bill Johnson's Restaurants, Inc. v. NLRB* evaluates "whether the Board may issue a cease-and-desist order to halt an allegedly retaliatory lawsuit filed by an employer in a state court"—not a cross-complaint in the same proceeding. 461 U.S. 731, 737 (1983). But even though the lawsuit in *Bill Johnson's Restaurants* was clearly retaliatory given the evidence of "threats to 'get even with' and 'hurt' the defendants," *id.* at 736, (evidence not presented here), the United States Supreme Court concluded "the filing and prosecution of a well-founded lawsuit may not be enjoined as an unfair labor practice, even if it would not have been commenced but for the plaintiff's desire to retaliate against the defendant for exercising rights protected by the Act." *Id.* at 743. Rather, "if there is a genuine issue of material fact that turns on the credibility of witnesses or on the proper inferences to be drawn from undisputed facts, it cannot, in our view, be concluded that the suit should be enjoined." *Id.* at 745. The City contends that *Bill Johnson's Restaurants* instead stands for the proposition that the City's claim should be heard by the Board and factually evaluated to determine whether Local 731 made a false statement in its Complaint based on a publicly available document and acted in bad faith. Parties will not be dissuaded from filing bad faith claims if this occurs, it will simply underscore the Board's own regulation that Complaints must have probable cause. NAC 288.375. To allow otherwise encourages a race to file first and incentivizes abuse of the Board's process.

3. Local 731's Equivocation on the Language It Used in Its Complaint Further Demonstrates That Claiming a "Cap" Was Imposed Was a False Statement.

Local 731's Motion and concurrently filed Answer both demonstrate backtracking from the language used in the Complaint, which further emphasizes the falsity of the claim. Local 731 says that focusing on the words it used in the Complaint is inappropriate and the Board should look instead to the "practical effect," not that Local 731 used the word "cap" instead of "review threshold," and now contends "cap" does not necessarily "refer only to a hard limit." Mot. at 10. Except, if it does not mean a hard limit such that the benefit is "capped" or is diminished from the previous plan, then the benefit has not changed and by Local 731's own words, the claim would

be false. Local 731 seems to acknowledge that it went too far in its Complaint based on its Answer to the Amended Cross-Complaint, which says "the new TPA Plan requires review of medical necessity for physical therapy after 25 visits … which provides for a *potential barrier*." Ans. to Am. Cross-Compl. ¶ 84 (emphasis added). Acknowledging that Local 731's frustration with the Plan is not with the Plan document but how it believes the TPA is enforcing the Plan document is different than what Local 731 alleged—that the City unilaterally changed health Plan benefits as evidenced by the "healthcare [Plan] provisions." Compl. ¶ 24. It is obvious the City did not.

Requiring medical necessity is indeed a potential barrier to getting physical therapy in the form of massages as much and as often as you desire. As the City explained, medical necessity was always a requirement for physical therapy under the plan, Am. Cross-Compl. ¶ 79, but the prior TPA (Hometown Health) never checked for medical necessity for physical therapy appointments at all potentially due to a misunderstanding of Nevada law. *Id.* ¶ 81. Stating *when* the TPA should check for medical necessity is merely administrative guidance to ensure the TPA actually enforces the benefits in the Plan and guarantees medical insurance is actually used for medical care. Just because the prior TPA was potentially not enforcing the Plan as it should have does not equate to a change in benefits under the Plan. When medically necessary, physical therapy is provided—including any physical therapy beyond 25 visits—as long as medical necessity still exists.

Also, as the City pointed out in its Amended Cross-Complaint, the Plan document itself provides an efficient comparison between language imposing a "cap" on benefits, Am. Cross-Compl. ¶ 80 (citing Plan document language "medical necessity will be reviewed after 25 visits), and language directing the TPA as to how it should administer a benefit, Am. Cross-Compl. ¶ 82 (citing the next line in the Plan document capping speech therapy at "26 … maximum visits per calendar year"). Terms should never be evaluated in the abstract in contracts or insurance documents, but rather in the context of the entire document. Here, the context makes clear the difference between a cap on benefits and a review threshold for medically necessary physical therapy for ongoing conditions. The City therefore "prove[s] the falsity of the representations" by pointing to "the relevant provisions of the [Plan document] [which] differs significantly from those

representations." *Allen v. United Transp. Union*, 964 F.2d 818, 822 (8th Cir. 1992) (citation omitted).

Local 731 understood all of this prior to filing its bad faith claim. The City explained in its Amended Cross-Complaint and Local 731 acknowledged how the City painstakingly reviewed all claims of changed benefits raised by Local 731, and how the City specifically responded twice to concerns with the physical therapy benefit. Ans. to Am. Cross-Compl. ¶¶ 94–95 (admitting the first letter from the City reviewed alleged changes to benefits, including the physical therapy benefit); Am. Cross-Compl. ¶¶ 114–15 (describing the second letter from the City, providing further analysis of the physical therapy benefit concern); Ans. to Am. Cross-Compl. ¶ 133 (acknowledging the third letter from the City reviewing alleged changes to benefits).[7] As the City has consistently maintained, physical therapy that is medically necessary is covered by the Plan and will be covered by the Plan after 25 visits if the medical necessity still exists for a chronic condition. This baseless allegation in Local 731's Complaint fails to meet the probable cause requirement of NAC 288.200(1)(c), as evidenced by this subsequent backtracking as well as Local 731's March 20, 2025 RFIs, served on the City almost two months after the filing of the Complaint. Local 731's allegation that the Plan document now "caps" physical therapy benefits at a certain point—which it now refers to as a "potential barrier"—is a false statement based on the Plan document and the Board should review the factual basis of this claim at a hearing.

C. Knowing Falsity in Negotiations Constitutes Reviewable Bad Faith

Local 731 argues that basic union advocacy cannot be the basis of a bad faith claim by law, but the City's claim provides sufficient factual basis for the Board to conduct an investigation to determine whether the former Steward's statement in negotiations was knowingly false. Again,

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[7] Oddly, Local 731 denies receiving the City's second letter, although it was addressed to the same then-Vice President Darren Jackson, just like the first and third letters, to which it acknowledges receipt. This type of inconsistency is rife within Local 731's Answer, where it engages with statements the City cites from the UMR Plan document, but then denies as lacking information quoted statements from the same Plan document page. *Compare* Ans. to Am. Cross-Compl. ¶ 80 (acknowledging that the UMR Plan document requires a review for medical necessity after 25 visits for physical therapy) *with id.* ¶ 82 (denying as lacking information quoted language from the next line down on the same page of the UMR Plan document).

Local 731's argument is largely factual, demonstrating the facts of the claim should go before the Board for a hearing. Local 731 cannot establish by law that its former Steward's statement was protected and the Board should determine that the statement was a knowingly false statement made in bad faith.

1. Statements in Grievance Negotiations May be Reviewed for Bad Faith.

Local 731 rests on one case cite for the proposition that there must be a "showing of intent to subvert the negotiation process" to have a statement in negotiations constitute bad faith. Mot. at 13. But *NLRB v. Katz* doesn't say that. The Supreme Court in *Katz* instead acknowledges that "[u]nilateral action … without prior discussion … does amount to a refusal to negotiate" and can "conclusively manifest[] bad faith." 369 U.S. 736, 745, 747 (1962). But regardless, there was intent to deceive here. Local 731 argues that the former Steward is able to provide "legal analysis [that] differs … from binding precedent" without acting in bad faith. Mot. at 13. But this was not the former Steward's first presentation of his analysis that "differ[ed] … from binding precedent." The City explained in its Amended Cross-Complaint that in previous Labor-Management meetings, Fire Department Management had provided the case *Taylor v. Truckee Meadows Fire Protection District*, 137 Nev. 1, 479 P.3d 995 (2021), and explained that the Nevada Supreme Court's analysis affirmed the City's approach to light duty. It was after that explanation that the former Steward met with the City Manager and alleged—knowingly, falsely, and again—that the City was in violation of statute for its approach to light duty. Am. Cross-Compl. ¶¶ 142, 148. The former Steward sought to portray a false legal position in order to obtain concessions from the City in the grievance negotiation. Had the City relied on that statement and not sought out Fire Department Management to understand the history of the negotiations, the City could have provided concessions based on the knowingly false statement. To utilize Local 731's phrase, that conduct does, in fact, establish an intent to subvert the negotiation process.

2. Allowing the City's Claim to Proceed Does Not Chill Good Faith Advocacy.

Local 731 again retreats to the position that a cross-complaint alleging fact-based claims for bad faith is somehow by definition a retaliatory move. Mot. at 14. But the City's Cross-Complaint arose after the City examined its recent interactions with Local 731 upon receipt of the

Complaint and determined there were indeed bad faith behavior in those interactions, and accordingly filed cross-claims—as contemplated by the Board. *See, e.g.*, *Clark County Classroom Teachers Association vs. Clark County School District and Barry Gunderson (Complaint) and Clark County School District vs. Clark County Classroom Teachers Association (Cross-Complaint)*, Case No. A1-045607, Item #396 (Oct. 1, 1996). And as addressed *supra*, *Bill Johnson's Restaurants, Inc.* addresses state lawsuits filed outside of the labor dispute process, not cross-complaints, and explicitly protects fact-based claims even when filed purely for retaliatory purpose. 461 U.S. at 743. Further, as evidenced by the resolution of a pending grievance even after the filings in this case, the City has maintained its good faith efforts to negotiate with Local 731, despite the conduct of Local 731 and its counsel.

If parties can say anything in grievance discussions without consequences, then surely the Force Hire Grievance claim against the City—predicated on counsel's comment made in grievance proceedings (albeit to its own client)—logically goes away as well as protected by this new "grievance discussion" mantle. But if there are standards, and sincerity is important, then the Board should hold both parties to a good faith standard. NRS 288.270(2)(b). The City contends that it is within the Board's jurisdiction to determine whether "a party's conduct at the bargaining table must evidence a sincere desire to come to an agreement" and evaluate that sincerity "by 'drawing inferences from the conduct of the parties as a whole.'" *Washoe County School District v. Washoe School Principals' Association and Washoe School Principals' Association v. Washoe County School District*, Consolidated Case 2023-024, Item #895 at 3 (Mar. 29, 2024) (en banc) (citation omitted). As such, if the Board determines the former Steward's statement was false, it is bad faith. *See Ballou*, 2023 WL 130542, at *7 (acknowledging unilateral acts can constitute bad faith and specifically "false representations [can] amount to 'a failure to bargain in good faith'" (citation omitted)); *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, 844 F.3d at 604–05 (remarking that "had there been substantial evidence to support the claim that [the union steward] gave a partly false statement, the Board might have been able to establish bad faith conduct"); *Ackers v. Celestica Corp.*, 274 F. App'x 450, 452 (6th Cir. 2008) (identifying allegations that the employer made false "statements about its commitment to the Columbus

operation" to union members and observing "[t]his conduct would represent a failure to bargain in good faith"). And that is a determination the Board can only make after conducting the hearing and examining the evidence—not arguments by Local 731's counsel.

3. The Former Steward's Statement Was Knowingly False.

Local 731 argues that *Taylor* was limited in scope and factually distinguishable from the City's approach to light duty, but it misrepresents the Sparks Fire Department's schedule by omitting the key analogous facts. Local 731 acknowledges that the Nevada Supreme Court in *Taylor* determined that going from a "preinjury schedule" of 48-hours on to a 40-hour light duty schedule is "substantially similar" to the employee's original schedule. 479 P.3d at 1002. But Local 731 contends the "crucial" difference between the decision in *Taylor* and the City's light duty schedule is that in *Taylor* the schedule was only reduced from 48-hours on to 40-hours on, and in the City's case the schedule was reduced from 56-hours on to 40-hours on—an additional 16 hours. Mot. at 13–14.

But this argument ignores the practical reality that the schedule in *Taylor* and a Sparks Fire Department shift is the same where it counts in the Court's analysis. Just like Taylor's schedule, Local 731 members only work <u>48-hours at a time for a shift</u> (there are just multiple 48-hour shifts that overlap pay periods and Fair Labor Standards Act accounting that create a "56-hour" pay period schedule). And it was that 48-hour *shift* (not the entirety of the schedule in a pay period) that the Court focused on in its analysis. The Court determined that being 48-hours on and transitioning to a 40-hour schedule meant that "[b]oth jobs required Taylor to work at least half of his ***<u>shift</u>*** during the day," (emphasis added) and therefore the "administrative schedule … did not require him to work unusual hours or an atypical timetable." *Taylor*, 479 P.3d at 1001. The total amount of hours in a schedule makes no difference pay-wise, as the employee in *Taylor* and at the City are both paid the same salary as the preinjury position. The Court acknowledged that "the light-duty job schedule was entirely during the day as opposed to the firefighter schedule's fifty-fifty split between day and night,"—just like Sparks' 48-hour shifts—but this was not an "unreasonable burden." *Id.* Here, while Local 731 members may work more times in a pay period than Truckee Meadows firefighters, they work the same 48-hour shifts. The light-duty shift indeed

results in fewer worked hours in a pay period, but the lack of "work in the evenings" and overall "fewer hours [working] than [the] preinjury job but at the same rate of pay suggest that the offer was a legitimate attempt to provide reasonable light-duty employment pending a return to full health" and was therefore not "an unreasonable burden." *Id.*

Indeed, "[t]o say that this administrative schedule is *not* substantially similar to Taylor's preinjury firefighter schedule would in effect preclude injured firefighters from *ever receiving* an offer of temporary, light-duty employment, since such nonfirefighter employment generally is not undertaken on a firefighter schedule." *Id.* at 1002 (emphases added).[8] Because the critical considerations and the overall approach the Court took in *Taylor* are identical to Local 731's contention here, *Taylor* forecloses the claim that the City's practice of putting 56-hour employees on 40-hour light duty schedule violates Nevada statutes.[9] After being informed of such in Labor-Management meetings, the former Steward's decision to continue to make the knowingly false statement that the City's procedure violated statute in an attempt to subvert the negotiation process constituted bad faith.

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[8] Interestingly, the former Grievance Steward also argued that the schedule change posed a burden on employees with children needing to arrange additional care for a 40-hour work week and suggested that employees needing light duty could assist Battalion Chiefs. But the *Taylor* court specifically acknowledged that "babysitter problems" were considered in the legislative history and did not affect its decision, and the court specifically rejected the idea that light-duty employees could "assist" Battalion Chiefs, remarking the employer did not need to "create new, temporary positions for injured employees based on their preferences when other valid light-duty jobs already exist." *Id.* at 1001–02.

[9] Local 731 also contends that the Light Duty Greivance included another element, in that Local 731 offered another way to for the City to "cure" its allegedly grieveable conduct of transitioning 56-hour employees to a 40-hour schedule by also transitioning those employees to the 40-hour pay and benefits model. Mot. 13 n.4. But as the City stated in its Amended Cross-Complaint, that approach was specifically considered and denied by the Fire Chief at Step One in the Grievance Process and Vice President Dunn acknowledged that he could "saw the City's point" made by that analysis and it was not discussed further at the meeting. Am. Cross-Compl. ¶¶ 143–47.

V. CONCLUSION

As demonstrated by the detailed factual information included in the City's claims arising under NRS 288, the City provided adequate probable cause to create a justiciable controversy[10] for its claims that Local 731 acted in bad faith by its counsel violating NRCP 4.4(b), by filing a false claim before the Board, and by its former Steward making false statements in grievance negotiations. The final three pages of Local 731's Motion consist of conclusory statements urging the Board to accept Local 731's reasoning and dismiss the Amended Cross-Complaint so that its counsel can receive attorneys' fees.[11]

As the City described above, its claims are rooted in facts, its allegations regarding false claims do not require harm to constitute bad faith, and the filing of a cross-complaint does not automatically chill union representation. Unions should expect when they cast aspersions of bad faith in a relationship with the employer that the other party will take stock of the interactions and identify whether facts exist for counterclaims sufficient to file a claim under NRS 288. In this instance they certainly do.

Respectfully submitted this 3rd day of April, 2025.

WESLEY K. DUNCAN
Sparks City Attorney

By: /s/ Jessica L. Coberly
JESSICA L. COBERLY
Attorneys for Respondent City of Sparks

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[10] Local 731 cites *Personhood Nevada v. Bristol*, 126 Nev. 599, 245 P.3d 572 (2010) to contend the City's Amended Cross-Complaint lacks "a real, concrete issue affecting the rights of the parties." Mot. at 16. In *Personhood Nevada*, the plaintiff brought a proposed initiative that was ineligible to be voted on because it lacked sufficient signatures, mooting the case before the Nevada Supreme Court. 245 P.3d at 602. The City does not bring moot issues before the Board, it brings three factually-based claims that it asks the Board to review and determine whether the claims constitute bad faith conduct. Such claims are within the Board's jurisdiction and clearly distinguishable from the claims in *Personhood Nevada.*

[11] Of note, Local 731 contends the "timing and nature of the City's counterclaims strongly suggest that they were filed as a retaliatory response to Local 731's Complaint." Mot. at 16. How could a counterclaim ever not be "retaliatory" under this analysis, as "counter"-claims must always come … after the initial claim?

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Sparks City Attorney's Office, Sparks, Nevada, and that on this date, I am serving the foregoing document(s) entitled CITY OF SPARKS' OPPOSITION TO IAFF LOCAL NO. 731'S MOTION TO DISMISS on the person(s) set forth below by email pursuant to NAC 288.0701(d)(3):

Alex Velto, Esq.
alex@rrvlawyers.com

Paul Cotsonis, Esq.
paul@rrvlawyers.com

DATED this 3rd day of April, 2025.

/s/ Roxanne Doyle
Roxanne Doyle

EXHIBIT A

From:	Rachael Chavez
To:	Duncan, Wes; Coberly, Jessica
Cc:	Alex Velto; Paul Cotsonis
Subject:	Request for Admission Set One
Date:	Thursday, March 20, 2025 1:45:28 PM
Attachments:	image001.png 2025.3.20 RFI Set One .pdf
Importance:	High

Good afternoon, Mr. Duncan and Ms. Coberly,

I hope that this email finds you well. Attached please find correspondence dated today from Mr. Velto with respect to our offices Request for Admission-Set One for your review and response. Should you have any questions or concerns, please do not hesitate to contact our office. We look forward to your responses. Have a wonderful rest of your Thursday!

Most Sincerely,
Rachael L. Chavez
Sr. Paralegal to Devon T. Reese and
Alex Velto

reese ring velto

Nevada's Labor & Litigation Attorneys

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March 20, 2025

Via. Electronic Mail:

Jessica Coberly
Attorney for City of Sparks
jcoberly@cityofsparks.us

RE: Request for Information, Set one (Health Care)

Ms. Coberly,

Pursuant to NRS 288.180, Local 731 submits the following Requests for Information (RFIs) regarding the recent unilateral changes to the health insurance plan, including modifications to the plan document and the transition to a new Third-Party Administrator (TPA). These requests seek information necessary to evaluate the financial and substantive impact of these changes on bargaining unit members and to prepare for the upcoming arbitration scheduled for May 28-29, 2025.

Under NRS 288.180(2), an employee organization is entitled to request and receive reasonable information concerning any subject matter included in the scope of mandatory bargaining. This statute expressly mandates that such information must be furnished without unnecessary delay, be accurate, and be presented in a form responsive to the request and in the format in which the records containing it are ordinarily kept.

Requests for Information, Set One (Health Care)

1. Meeting Packets for all Group Health Care Committee meeting minutes from October 2023 to present.

2. All communications between any city employee and any employee of United Health Network or UMR from January 2023 to present.

3. All communications between any city employee and any employee of Hometown Health or HHP from January 2023 to present.

4. All communications in which Jill Valdez or Mindy Faulk is a recipient or sender, that include any employee from United Health Network or UMR from January 2023 to present.

5. All communications in which Jill Valdez or Mindy Faulk is a recipient or sender, that include any employee from Hometown Health or HHP from January 2023 to present.

6. All communications in which Alyson McCormick is a recipient or sender, that include any employee from Hometown Health OR HHP from January 2023 to present.

7. All communications in which Alyson McCormick is a recipient or sender, that include any employee from United Health Network or UMR from January 2023 to present.

8. All communications in which John Martini is a recipient or sender, that include any employee from United Health Network or UMR from January 2023 to present.

9. All communications in which John Martini is a recipient or sender, that include any employee from Hometown Health or HHP from January 2023 to present.

10. All communications in which Neil Krutz is a recipient or sender, that include any employee from Hometown Health or HHP from January 2023 to present.

11. All communications in which Neil Krutz is a recipient or sender, that include any employee from United Health Network or UMR from January 2023 to present.

12. All communications in which Chris Crawforth is a recipient or sender, that include any employee from Hometown Health or HHP from January 2023 to present.

13. All communications in which Chris Crawforth is a recipient or sender, that include any employee from United Health Network or UMR from January 2023 to present.

14. Any UMR Plan Documents in effect from January 2023 to present.

15. Any UMR Plan draft documents prior to its adoption with the City.

16. Any UMR Plan draft documents prior Jill Valdez, or any City of Sparks' employe's agreement to a contract with the City of Sparks.

17. All communication including Jill Valdez, Alyson McCormick, and/or any City of Sparks City Manager or Acting City Manager discussing United Health Network, UMR, Hometown Health or HHP from January 2023 to present.

18. All Hometown Health or HHP Plan Documents in effect from January 2023 to present.

19. Provide copies of the prior and current Summary Plan Descriptions and plan documents for any insurance plan offered by the City of Sparks from January 2023 to present.

20. Provide copies of the full plan documents for both the prior and current plan.

21. Identify all modifications to benefits made to the plan as a result of the change in Third-Party Administrators.

22. Identify all language changes to any plan document as a result of the change in Third-Party Administrators.

23. Provide a side-by-side comparison of covered services, co-pays, deductibles, and out-of-pocket maximums before and after the plan change.

24. Identify any reductions in coverage or increased costs to employees.

25. Identify any new exclusions or limitations added to the plan.

26. Provide all cost savings analyses conducted prior to switching TPAs.

27. Identify how much the City expected to save and how that number was calculated.

28. Provide documents showing actual savings to date compared to projections.

29. Provide a breakdown of administrative fees paid to the prior and current TPA.

30. Identify the number of claims versus number of claims denied for each bargaining group in the City of Sparks.

31. Produce or identify the cost of healthcare for each employee in the City of Sparks.

32. Produce or identify the cost of healthcare for each employee covered by Local 731.

33. Produce any emails between Chris Crawforth and any GHCC members from January 2023 to present.

34. Provide a list of any new fees associated with the new TPA that were not present under the prior arrangement.

35. Provide any consultant reports, actuarial studies, or third-party evaluations related to the financial impact of the plan change.

36. Provide records showing employer vs. employee contribution rates under the old and new plans.

37. Identify whether the City's costs per employee have increased or decreased due to the plan change.

38. Identify whether employee premiums, co-pays, or deductibles have increased as a direct result of the plan change.

39. Provide claims data for the last two years under the prior TPA and data since implementation of the new TPA.

40. Provide a breakdown of denied claims before and after the plan change.

41. Identify all claims that were not considered due to deficiencies and what those deficiencies are.

42. Identify any changes in network coverage that resulted in higher out-of-pocket costs for employees.

43. Provide copies of stop-loss insurance policies for both the prior and current plan.

44. Identify whether any changes in stop-loss coverage have increased the City's liability or employee costs.

45. Provide details and documentation that outline how the new plan handles high-cost claims differently than the prior plan.

46. Provide documents showing who was involved in the decision to switch TPAs.

47. Provide any requests for proposals (RFPs), bid evaluations, or selection criteria used in choosing the new TPA.

48. Identify whether employee representatives or unions were consulted before making the change.

49. Provide any documents detailing the City's role as a self-insured entity.

50. Identify how the City's financial responsibility for claims has changed under the new plan.

51. Provide any agreements between the City and the new TPA regarding cost containment measures, claim reviews, or payment policies.

52. All PowerPoint presentations given in any Group Health Care Committee Meetings from January 2023 to present.

53. Identify the claims submission process currently available to members.

54. Provide a data set of UMR's compliance with the claim processing requirement under the plan document.

55. Provide a breakdown of UMR's claimed compliance with City of Sparks benchmarks as the TPA.

56. All UMR policies and procedures that outline acceptance and denial of claims.

57. Standard Operating Procedures (SOPs) used by UMR to evaluate and process claims, including criteria for determining whether claims are accepted or denied.

58. Internal guidelines, manuals, training materials, or procedural documents used by UMR claim reviewers, auditors, or adjusters in making coverage determinations.

59. Any documentation explaining how prior authorization requirements, medical necessity determinations, and appeals processes are handled under UMR's administration.

60. Any updates or modifications to UMR's claims-processing policies since assuming administration of the City's health plan.

61. Identify any previous city employees currently employed by UMR or any of its subsidiaries.

62. All open claims pending from Hometown Health or HHP.

Given the time-sensitive nature of these requests, we request that the City provide the requested information no later than 30 days from the date of this request: **April 21, 2025**.[1] The typical timeline for an employer to respond to RFI's under NRS Chapter 288 is much shorter, however, we are attempting to accommodate the large volume of requests. Accordingly, timely compliance is necessary to ensure that the information can be reviewed, analyzed, and incorporated into our preparation for arbitration and a future EMRB hearing. Any delay in providing these materials will prejudice the Union's ability to meaningfully address the unilateral plan changes and its impact on members of Local 731.

We appreciate your prompt attention to these requests and remain available to discuss any clarifications needed to facilitate a complete and expedient response.

Sincerely,
REESE RING VELTO, PLLC

/s/ Alex Velto
Alex Velto and
Paul Cotsonis
For the Firm

ARV/rlc

[1]April 21, 2025 is the Monday following 30 days from this request.

IAFF Local 731 (Complainant/Respondent)
Reply in Support of Motion to Dismiss the City's Amended Cross Complaint

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FILED
April 17, 2025
State of Nevada
E.M.R.B.
6:25 p.m.

Before the State of Nevada

Government Employee-Management

Relations Board

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 Complainant/Respondent, v. CITY OF SPARKS, Respondent/Complaint.	Case No.: 2025-001 **INTERNATIONAL ASSOCAITION OF FIREFIGHTERS LOCAL NO. 731's REPLY IN SUPPORT OF MOTION TO DISMISS**

The INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 ("Union," "Complainant/Respondent" or "Local 731") hereby submits this Reply to the CITY OF SPARKS' ("Respondent/Complainant" or "City") Opposition ("Opposition") to Local 731's Motion to Dismiss the City's Amended Cross-Complaint (hereinafter "Reply"). This Reply is based on the papers and pleadings on file herein, the below Memorandum of Points and Authorities, and any oral argument the Board so permits.

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I.

INTRODUCTION

The City's Opposition confirms what was clear from the outset: its Amended Cross-Complaint is not a legitimate EMRA dispute but a thinly veiled act of retaliation. Unable to defend its claims under Chapter 288, the City pivots to factual quibbles and rhetorical outrage. It tries to turn its own mishandling of a privileged document into a liability against opposing counsel. It tries to reframe a fair and factually grounded description of healthcare plan changes into a false statement. And it tries to punish a union steward for making a legal argument during a grievance meeting—an argument that is, at most, a reasonable distinction from case law.

These are not prohibited practices. They are protected advocacy, legitimate disagreement, and the normal functioning of collective bargaining. The City's effort to recast them as violations only underscores the retaliatory nature of its Cross-Complaint. Under NAC 288.375, the Board has not only the authority but the obligation to dismiss complaints that lack probable cause, are frivolous or spurious, or fall outside its jurisdiction.

The City's Cross-Complaint meets all three grounds for dismissal. The Board should dismiss it in its entirety, with prejudice, and end this misuse of its processes for the following reasons:

First, the City's primary allegation—that Local 731's counsel mishandled a privileged document—rests on an alleged violation of NRPC 4.4(b), a rule the Board has no jurisdiction to interpret or enforce. Even if the Board could reach the issue, the pleadings confirm that Local 731's counsel complied with the applicable rule by promptly notifying the City, after which the City failed to take protective action.

Second, the City's claim that Local 731 made a false statement by characterizing a functional limit on physical therapy visits as a "cap" is nothing more than a semantic dispute over the plan's impact. The City concedes that new restrictions exist; it simply dislikes how Local 731 described them. That disagreement, grounded in fact and protected advocacy, cannot sustain a prohibited practice claim.

Third, the City's attempt to punish a union steward for making a legal argument during a grievance meeting defies decades of labor law protections for grievance advocacy. The steward's

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statement was not knowingly false, was materially distinguishable from the City's cited case law, and is precisely the type of protected speech that collective bargaining depends on.

Finally, and fatally, the City's counterclaims fail to allege any material harm, causation, or interference with bargaining rights. Mere litigation burden is not a cognizable injury under EMRA. Nor can the City transform factual disagreements into prohibited practices simply by labeling them as bad faith. Allowing the City's claims to proceed would encourage retaliatory litigation every time a union asserts its rights, chilling advocacy and undermining the collective bargaining framework the EMRA was designed to protect.

II.

THE CITY'S ETHICS-BASED CLAIM EXCEEDS THE BOARD'S JURISDICTION AND LACKS MERIT

In its Opposition the City now claims it doesn't want to discipline Local 731's counsel, just have the Board declare his conduct "bad faith." This is a distinction without a difference as any analysis on whether Local 731, through counsel, acted in bad faith necessarily requires the Board to find an ethics violation. In order to do that the Board would have to interpret Nevada Rules of Professional Conduct ("NRPC") 4.4(b).

Furthermore, as discussed in more detail below, the pleadings clearly establish that Local 731's counsel complied with NRPC 4.4(b)'s requirement of notifying the sender. Thereafter, it becomes the responsibility of the other party to take protective actions. Nowhere in the pleadings does the City indicate that they took protective measures beyond whining that it was ambushed. *See* Opp'n at 10.

A. The Board Has No Authority to Adjudicate Alleged Violations of the Rules of Professional Conduct

Calling an alleged NRCP 4.4(b) violation "bad faith" does not convert it into a claim under Chapter 288. The Board has made clear that it does not enforce outside statutes or regulate attorneys. See Nye County Law *Enforcement Ass'n v. Nye County*, Case No. 2020-025, Item No. 872 (Board declined to enforce NRS 289); *APTA v. Washoe County School District*, Case No. 2024-001, Item No. 900 (Board refused to adjudicate claims arising under NRS Chapter 82); *Simo v. City of*

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Henderson, Case No. A1-04611, Item No. 796 (2014).

Notwithstanding the City's protestations, this claim has been and continues to be an ethics complaint, unfounded as it is, dressed in EMRA clothing. The City doesn't point to any prohibited practice under NRS 288.270(2) allegedly committed by Local 731. Instead, as mentioned *supra,* it asks the Board to interpret the Nevada Rules of Professional Conduct and find "bad faith" from a mischaracterized record. As discussed in the Motion, the underlying Cross Complaint is nothing more than an attempt by the City to misuse the Board's jurisdiction as a tool to retaliate against Local 731 for daring to file a complaint against it. Nothing in the Opposition changes that fact.

B. The Alleged Conduct Does Not Violate NRPC 4.4(b)

Even if jurisdiction existed, the claim still fails. The facts in the City's own Opposition show that Local 731's counsel provided prompt Rule 4.4(b) notice on October 1, 2024 (*see* Opp'n at 3; Am. Cross-Compl. ¶ 36), and that the document in question had already been reviewed and distributed among multiple union representatives before then. Whatever privilege existed had already been waived by the City itself. Furthermore, nowhere in the pleadings does the City assert that it took any action assert or otherwise claim the privilege. Instead, it whines that it was ambushed, and that City's counsel was therefore was somehow too helpless to assert privilege during the October 2, 2024, meeting. Counsel's mere reference to those comments in a meeting does not amount to bad faith, especially when the City fails to claim and/or assert the privilege. Furthermore, reliance on *In re Girardi*, is misplaced. 611 F.3d 1027, 1061 (9th Cir. 2010). *Girardi* made it clear that bad faith requires intentional misconduct, not error or disagreement. Here, the pleadings make clear that Local 731's counsel notified the City pursuant to NRCP 4.4(b) and, thereafter, it was the City's responsibility to take protective action, not freeze like a deer in headlights and say nothing and do nothing to assert the privilege.

C. The City is attempting to bootstrap non-bad faith claims into bad-faith claims to expand the EMRB's Jurisdiction.

Even now, the City cannot articulate how its Amended Cross-Complaint states a violation of any provision of NRS 288.270. The EMRA is clear: to invoke the Board's jurisdiction, a complaint must allege interference with bargaining rights, unlawful domination of an employee organization,

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discrimination for protected activity, refusal to bargain, or related conduct explicitly listed in the statute. See NRS 288.270(1)–(2).

The City's claims do not meet that threshold. Allegations that a union advocate made a disputed legal argument, or that counsel allegedly mishandled a privilege notice, or that a grievance filing used unfavorable language, do not implicate any statutory right under the EMRA. They may be rhetorical grievances, but they are not prohibited practices.

The Board has repeatedly rejected efforts to stretch its jurisdiction to cover generalized allegations of bad conduct untethered to statutory bargaining rights. *See Nye County Law Enforcement Ass'n v. Nye County*, Case No. 2020-025, Item No. 872 (Board refusing to adjudicate unrelated statutory claims); *APTA v. Washoe County School District,* Case No. 2024-001, Item No. 900. The Board should do the same here. Bad feelings are not a substitute for a prohibited practice, and the City's attempt to manufacture jurisdiction must be rejected.

III.

THE "FALSE STATEMENT" CLAIM STILL LACKS MERIT AND PROBABLE CAUSE

The City insists that Local 731 "falsely" claimed a cap on physical therapy visits exists under the UMR health plan. But in its own filings, the City admits that the UMR health plan imposes a review requirement after 25 visits and that Hometown health did not. *See* Am. Cross-Compl. ¶¶ 79–84. That's not just a threshold, it's a functional limit.

The City's assertion that this difference is meaningful, "review" vs. "cap," is an argument over semantics, not substance. And the fact that Local 731 described that threshold as a "cap" is not only reasonable, but also protected. *See NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969) (even forceful or inflammatory union rhetoric is protected if based on fact). There's also no authority to support the City's theory that making a strongly worded factual claim, especially one grounded in plan language, constitutes a prohibited practice. Nor is there any actual harm alleged. The City claims "burden" from responding to the original Complaint (Opp'n at 5), but litigation burden is not legal injury. If it were, every denied motion would justify a counterclaim.

Finally, allowing a claim to stand that is based on an allegation by a party opponent in a pleading is against public policy for multiple reasons. First, it encourages frivolous litigation in that

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pleadings are inherently adversarial and often contain broad, unverified allegations. If false representation claims could be based solely on these allegations, it would incentivize parties to weaponize pleadings as a tool for retaliatory lawsuits in an endless cycle of claim and counterclaim. This would necessarily undermine judicial economy as the Board would be flooded with litigation over the truthfulness of allegations, diverting resources away from the resolution of substantive claims. Second, this would lead to chilling legal advocacy as attorneys and parties may hesitate to make necessary but aggressive legal arguments for fear of being sued for false representations, ultimately stifling the adversarial process that is fundamental to justice. Instead of going down the primrose path into the legal abyss that the City is trying to go, the proper remedy to an alleged untruthful allegation within a pleading is to defend against that allegation and show it to be false.

IV.

UNION STEWARD ADVOCACY IS NOT BAD FAITH

The City's final claim is the most dangerous: that a union steward's legal argument during a grievance meeting, because it allegedly contradicted case law, was "knowingly false" and therefore prohibited. This turns grievance meetings into legal landmines. If the City's theory is accepted, any legal argument not backed by Supreme Court precedent becomes "bad faith." That would chill routine, protected advocacy and silence non-lawyer stewards from doing their jobs.

The Board has never adopted such a standard. And for good reason. A steward's job is to assert members' rights, not to get the law exactly right every time. The assertion that Local 731's steward "knew" a legal interpretation was wrong is pure speculation. There's no evidence the steward acted with intent to mislead, nor any showing that the statement had legal or practical effect. It was an argument. One the City could, and apparently did, reject. That's the grievance process working as designed.

Additionally, the City correctly points out in the Amended Cross Complaint, the dispute between Local 731 and the City in the Light Duty Grievance is the practice by the City in changing a workers' compensation-injured employee's schedule from a 56-hour schedule to a 40-hour schedule. *See* Amended Cross Complaint *at* ¶¶ 140, 141, 144, 148, and 149. In support of its false representation claim, the City goes on to provide that the Nevada Supreme Court held in *Taylor v.*

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Truckee Meadows Fire Protection District, 479 P.3d 995, 1001–02 (Nev. 2021) its practice was essentially ok. *Id. at* ¶ 142. Specifically, the Amended Cross Complaint provides as follows:

> In Labor Management discussions, Management provided the Union the Nevada Supreme Court case *Taylor v. Truckee Meadows Fire Protection District*, 479 P.3d 995, 1001–02 (Nev. 2021), which determined that the employer's practice of putting Fire Department employees that normally work a 56-hour schedule on a 40-hour light duty schedule when those employees experience workers' compensation-covered injuries is not "an unreasonable burden" and constitutes a "substantially similar" schedule to the employee's 56-hour schedule.

Id. at ¶ 142. And here's the rub, *Talyor* involved an employee whose pre-injury schedule had him working on a ***48-hour*** schedule who was moved to a 40-hour schedule. *Taylor*, 479 P.3d 995, 1000. Therefore, *Taylor* did not specifically hold that "putting employees that normally work a 56-hour schedule on a 40-hour light duty schedule when those employees experience workers' compensation-covered injuries is not 'an unreasonable burden' and constitutes a 'substantially similar' schedule to the employee's 56-hour schedule[,]" as the City asserts. *See* Amended Cross Complaint *at* ¶ 142. And by the City's absurd logic in its claim of bad faith against Local 731 for the use of the term "cap," the City has committed an unfair labor practice and Local 731 should amend its complaint to include that allegation and round-n-round we go.

Additionally, as the Court in *Taylor* noted, "[u]nder NRS 616C.475(8), an employer may offer temporary, light-duty employment to an injured employee in lieu of paying temporary total disability [("TTD")] benefits to that employee." *Id. at* 998. However, for the offer to be valid and effectively cut off TTD benefits under NRS 616C.475(8), it must be, *inter alia,* "substantially similar to the employee's position at the time of his or her injury in relation to the location of the employment and the hours the employee is required to work." *Id.* After determining that the term "hours" include the term "schedule," as in work schedule, *id. at* 1001*,* the Court found that the 40-hour light-duty employment offer's schedule was substantially similar to his preinjury 48-hour firefighter job in terms of hours. *Id.* Naturally, the key word there is ***substantially,*** and a valid argument can clearly be made to distinguish *Taylor* from the Light Duty Grievance at hand just from the fact that the employee went from a 48-hour schedule to a 40-hour schedule in *Taylor* whereas in the Light Duty Grievance the practice is to change from a 56-hour schedule to a 40-hour schedule. As such, on its face, Former

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Steward Stewart's alleged statement that the City's practice "constituted a violation of statute[,]" *see* Amended Complaint *at* ¶ 148, even if made is not in contradiction of case law as the City alleges. *Id. at* ¶ 149. Instead, it's merely an advocate distinguishing the Light Duty Grievance from *Taylor.*

V.

THE CITY HAS NOT BEEN HARMED

The City's Opposition reveals another fatal flaw: even if everything it alleges were true, it still fails to plead material harm required to state a claim. To constitute a prohibited practice, alleged misconduct must materially interfere with bargaining rights, the grievance process, or representational activity under Chapter 288.

Instead, the City claims only that it was "burdened" by having to respond to Local 731's original Complaint. But litigation burden is not legal injury. If it were, every complaint or grievance could be met with a retaliatory lawsuit, gutting the protections Chapter 288 is designed to ensure. The Board and courts have consistently held that inconvenience, frustration, or litigation cost alone do not amount to actionable harm in labor disputes. See Bill Johnson's Restaurants, Inc. v. NLRB, 461 U.S. 731, 740 (1983) (retaliatory lawsuits must cause material harm to protected rights, not mere burden).

Here, the City alleges no facts showing that Local 731's conduct impeded negotiations, chilled employee rights, or otherwise caused material injury. It simply disagrees with Local 731's advocacy. That is not enough. The Amended Cross-Complaint must be dismissed.

VI.

THE CITY'S CROSS-COMPLAINT IS RETALIATORY LITIGATION IN VIOLATION OF THE EMRA

Beyond being legally defective, the City's Cross-Complaint is a textbook example of retaliatory litigation intended to chill protected activity. The timing, nature, and content of the City's claims leave no doubt: it filed these counterclaims not because it suffered any real injury, but because Local 731 had the audacity to file a grievance alleging the City's own bad faith bargaining.

Retaliating against an employee organization for filing a complaint is itself a violation of NRS 288.270(1)(a), which prohibits interference with the exercise of protected rights. See IAFF Local

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1908 v. Clark County, EMRB Case No. A1-045417, Item No. 200 (1987) (finding prohibited practice where employer retaliated against union for filing grievance).

Allowing the City's Cross-Complaint to proceed would reward precisely the conduct the EMRA was enacted to prevent. It would send the message that unions who assert bargaining rights do so at their peril, risking retaliatory legal claims simply for participating in the grievance process. The Board should refuse to allow its processes to be hijacked for retaliatory purposes. The Amended Cross-Complaint should be dismissed with prejudice.

VI.

CONCLUSION

The City's Opposition changes no part of the legal equation. What the City seeks is not resolution, but retribution. The EMRB should recognize the counterclaims for what they are: retaliatory litigation intended to chill protected activity constitutes bad faith under NRS 288.270(1)(a). Here, the City's Cross-Complaint was filed immediately after Local 731 exercised its statutory right to file a grievance. The City's claims lack independent factual or legal basis and are transparently intended to punish Local 731 for exercising its rights under the EMRA. The Board must dismiss such retaliatory claims to preserve the statutory framework. That is not the purpose of the Board, and it is not a reason to proceed to hearing. Therefore, and for the foregoing reasons, Local 731 respectfully requests that the Board dismiss the Amended Cross-Complaint in its entirety, with prejudice, and deny the City's request for any further proceedings.

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DATED this 17th day of April, 2025.

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CERTIFICATE OF SERVICE

Pursuant to NAC 288.0701(d)(3), I certify that I am an employee of the law firm of REESE RING VELTO, PLLC and that on the 17th day of April 2025, I caused service a true and correct copy of the **INTERNATIONAL ASSOCAITION OF FIREFIGHTERS LOCAL NO. 731's REPLY IN SUPPORT OF MOTION TO DISMISS** to be served via email on the following persons:

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