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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' MOTION TO DISMISS**

The CITY OF SPARKS ("City") moves to dismiss the INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 ("Local 731")'s Complaint because the claims therein are not supported by probable cause and the second claim is outside the Board's jurisdiction due to the applicable Statute of Limitations. 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 two claims can be summarized as describing a rectified misunderstanding and an attempt to turn a verifiably necessary extension into a (time-barred) bad faith ploy, and both should be dismissed as lacking probable cause. Local 731 admitted in its Answer to key contentions made by the City in its Amended Cross-Complaint that demonstrate the City's track

record of good faith throughout the events underlying the Complaint.

At the outset, Local 731's second claim, the Group Health Care Committee ("GHCC") Greivance alleging the City "unilaterally changed healthcare" benefits, has never made sense. Local 731's health benefits are the City's health benefits—the City Manager's, the City Attorney's, all members of the Sparks Police Protective Association ("SPPA"), all the City employees' health benefits. It simply does not pass the smell test that any City employee in leadership would conspire to clandestinely eliminate *his or her own benefits*. It is in every City employee's interest to ensure the City's health benefits remained the same through the City's transition to a new TPA. The fact that Local 731 continues to beat the drum that the City decreased its *own* benefits in bad faith, just to spite Local 731, ignores logic and intentionally omits the extensive work the City did after receiving Local 731's grievance to confirm *all employees' benefits* remained the same. Am. Cross-Compl. ¶¶ 87, 94–95, 114–15, 132.

Given that the Board must take "the totality of the conduct throughout negotiations," *International Association of Fire Fighters Local 5046 v. Elko County Fire Protection District*, Case 2019-011, Item #847-A at 5 (July 8, 2020) (citation omitted), Local 731's admissions demonstrate that the City acted in good faith during both the Force Hire and GHCC Grievance processes. Because Local 731 was demonstrably aware of these facts prior to filing the Complaint, its claims are frivolous and the City should be awarded attorneys' fees and costs for the filings necessitated before the Board.

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 in the course of 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 its notice email—and in the Answer to the Amended Cross-Complaint ¶ 42—that the comments at issue at a minimum "appeared" privileged and that Local 731's counsel failed to provide the City's counsel an opportunity to take protective measures. *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 alleges 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—over a year after the transfer of administration of the City's plan to the new TPA under the new Plan document—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-

[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. Cross-Compl. ¶¶ 150–56. The subject grievances were thereafter deemed resolved by the parties and the City withdrew that claim, resulting in the Amended Cross-Complaint.

Complaint and its Motion to Dismiss on March 20, 2025. This Motion follows, filed concurrently with the City's Opposition to Local 731's Motion to Dismiss.

III. LEGAL STANDARD AND AUTHORITY

NAC 288.200(1)(c) requires that a 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 is also a lack of probable cause." *Nevada Services Employee Union v. Clark County Water Reclamation District*, Case No. 2024-030, Item #905 at 1 (Dec. 17, 2024). "In order to show 'bad faith', a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct,'" which cannot rest on a "single isolated incident" but rather "the totality of the conduct throughout negotiations." *International Association of Fire Fighters Local 5046*, Item #847-A at 5 (citations omitted).

The Board may dismiss with prejudice a matter that is lacking probable cause or is frivolous. NAC 288.375(1), (5); *CCCTA, vs. Clark County School District*, Case No. A1-045428, Item No. 210 at 1–2 (1988). "An action becomes frivolous when the result appears obvious or the arguments are wholly without merit…." *Tollen v. Clark Cnty. Ass'n of Sch. Admin. & Pro. Emps.*, 2016 WL 7451623, at *1 (D. Nev. Dec. 2, 2016) (citing *Christianburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978)). When a Complaint is frivolous, the Board may award attorneys' fees. *Clark County Water Reclamation District*, Item #095 at 4 ("[A]n award [of attorneys fees] could have been justified because the Complaint was borderline frivolous. The Board would like to remind practitioners of the need to ensure that Complaints are fully supported so as to not waste the resources and time of the Board and opposing parties.").

Furthermore, "[t]he Board may not consider any complaint or appeal filed more than 6 months after the occurrence which is the subject of the complaint or appeal." NRS 288.110(4). "This subsection operates as a statute of limitations commencing upon unequivocal notice of a final adverse action." *Simo v. City of Henderson*, Case No. Al-04611, Item No. 796 at 2 (2014).

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IV. MEMORANDUM OF POINTS AND AUTHORITIES

Based on Local 731's allegations in their Complaint and Answer to the Amended Cross Complaint, Local 731 fails to provide sufficient allegations to support probable cause for either of its claims. Because Local 731's arguments are "wholly without merit" and therefore frivolous, *Tollen*, 2016 WL 7451623, at *1, the City respectfully seeks attorneys' fees and costs for its representation in this matter.

The first claim regarding the Force Hire Grievance alleges that the City revealed an intention to negotiate a contract that it then planned to violate via an internal privileged comment inadvertently sent to Local 731. Compl. ¶ 19. This alleged conspiracy is untenable, as it assumes—with zero factual support—a complicated purported scheme by City employees not supported by the plain language of the comments and that could have been simply addressed by the City refusing to agree to terms it disagreed with, which is what the City actually did. Am. Cross-Compl. ¶¶ 34–35, 46, 52. Local 731's Answer reveals that Local 731 *accepted* the City's explanation for their counsel's misinterpretation of the internal privileged comment and that both parties continued to negotiate and rely on the disputed term, demonstrating both parties' good faith in the process. Ans. to Am. Cross-Compl. ¶ 52. Bringing a claim before the Board based on that clarified misinterpretation three months later lacks probable cause and is frivolous. Local 731's subsequent conclusion that the City failing to cave to Local 731's "repeated[] attempt[s] to get [the City] to put limitations to the Force Hire Program" constituted bad faith is unsupported by caselaw. Compl. ¶ 20. "The obligation under the statute does not compel either party to agree to a proposal nor does it require the making of a concession." *Clark County Classroom Teachers Association vs. Clark County School District*, Case No. A1-045302, Item #62 at 4 (Dec. 10, 1976).

Local 731's second claim suffers a number of deficiencies. First, Local 731's allegations regarding the City's change in TPAs and the subsequent GHCC Grievance negotiations are time-barred under NRS 288.110(4). Furthermore, Local 731 sent sixty-two (62) Requests for Information (RFIs) to the City, concurrent with the filing of its Answer on March 20, 2025, seeking the City's current and prior Plan documents for the specific purpose of preparing for the hearing before the Board. *See* **Exhibit A** (transmission email and RFI). This request for written discovery

(a process that does not exist in Board proceedings, particularly not without leave of the Board) reveals that Local 731 lacked the key documentary evidence to support probable cause for its second claim—or that it is making frivolous RFIs for documents Local 731 already has in an attempt to intimidate or overwhelm the City. Consequently, the second claim both misstates the document on which it is based and further makes illogical claims about the grievance negotiation process timeline that do not withstand close scrutiny. Local 731's second claim completely falls apart upon Local 731's Answer revealing the truth—the City sought an extension in the GHCC Grievance process, not to "buy [] time to pressure … [GHCC voting member] SPPA," Compl. ¶ 45,[2] but because it was diligently reviewing and responding in good faith to Local 731's concerns about the Plan document. Because both of Local 731's claims are factually baseless or legally insufficient such that they are frivolous, the City moves to dismiss both claims and seeks attorneys' fees and costs.

A. The Force Hire Grievance Claim Is Factually Unsupported And Does Not Constitute Bad Faith Under Existing Precedent

Local 731 makes two arguments under the umbrella of its first claim, neither of which constitute bad faith on the facts or the law. Local 731 contends that a draft Memorandum of Understanding (MOU) it received in the course of negotiations to resolve the "Force Hire" Greivance, relating to the circumstances under which the City could require employees to work mandatory overtime or being "force hired," included comments that indicated "the City's intent was to keep the resolution [explaining how firefighters could turn down Force Hires] in policy so that it could revoke the resolution between the Parties at any time." Compl. ¶ 19. Local 731 thus contends that the City, although committing in the same MOU draft to retain the turn-down policy

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[2] Interestingly, Local 731 has no concerns for or wild theories as to why the third member of the GHCC, Operating Engineers 3 ("OE3"), *also* voted with SPPA to ratify the City's administrative decision to check for medical necessity after 25 visits to ensure physical therapy under the City's health insurance is be provided only when medically necessary. Am. Cross-Compl. ¶ 130; Ans. to Am. Cross-Compl. ¶ 130. While Local 731's alleged grand conspiracy between SPPA and the City against Local 731 is an entertaining thought experiment, it may just be that Local 731 failed to convince any other members of the GHCC that their members' health benefits changed when the City changed TPAs.

language for two years, Am. Cross-Compl. ¶ 52, evinced a desire to come to an agreement and then violate it. This is untrue, Am. Cross-Compl. ¶¶ 33–35, 46, for two reasons: first, Local 731 misconstrues the plain language of the complained-of attorney-client comments, and second, internal discussions regarding the mechanics of proposed MOU terms cannot be evidence of bad faith. *See Clark County Association of School Administrators vs. Clark County School District*, Case No. A1-045593, Item #394 at 13 (Oct. 24, 1996) (observing "the expression of any views, argument, or opinion shall not be evidence of an unfair labor practice, so long as such expression contains no threat of reprisal or force or promise of benefit" (citation omitted)). Even in Local 731's misconstruction of the internal privileged comment, there was no threat of reprisal. And here, Local 731 acknowledges in its Answer that it ultimately accepted the City's explanation of the internal comment (which simply observed the MOU itself was committing to changing the Standard Operating Procedure (SOP) without following the Collective Bargaining Agreement's 10-day review procedure) by expressly accepting the very term (preserving the SOP language for two years) that it claims demonstrated the City's bad faith. *See* Ans. to Am. Cross-Compl. ¶ 52 ("Local 731 admits that on or about November 4, 2024, it provided a qualified acceptance to amending the SOP to make the SOP as it relates to Force Hires unchangeable for two years ….").

Local 731 could not both be sure that the City would act in bad faith and renege on its promise to retain the turn-down policy language for two years, and yet also later agree to accept the exact same language in a subsequent MOU draft. Local 731's Answer demonstrates that while it may have believed, due to its counsel's misinterpretation of privileged communications, as of the October 2, 2024 meeting that the City planned to act in bad faith, it thereafter accepted both the City's explanation of the comment and the proposed term in the MOU, and both parties continued to negotiate in good faith. Therefore, Paragraph 19 of Local 731's Complaint fails to provide probable cause for a bad faith claim.

But Local 731 asserts later in the Complaint that the City acted in bad faith when in the September 6, 2024 MOU draft it refused to commit to "fully incorporate the agreed-to-terms" from the City's policy into the CBA. Compl. ¶ 42. This claim lacks probable cause and is legally insufficient. First, the City did not agree to incorporate the turn-down policy into the CBA and

instead provided the commitment to retain the policy for two years as a compromise, pursuant to conversations with Local 731's President. Am. Cross-Compl. ¶¶ 20, 22.[3] Local 731 admits that "at some point after the September 4, 2024, meeting that the City offered to make the SOP changes irrevocable for two years," Ans. to Am. Cross-Compl. ¶¶ 20, 22, an offer that was then incorporated *two days later* into the September 6, 2024 MOU. Am. Cross-Compl. ¶¶ 23, 52. This timeline makes no sense unless the two-year retention was offered *in response* to Local 731's demand from the September 4th meeting that the turn-down policy be incorporated into the CBA. While it appears at least Local 731 Vice President Darren Jackson must have honestly believed the parties verbally agreed in that meeting to incorporate the turn-down policy into the CBA in the next draft, Local 731 cannot allege it has documentary proof of such a "handshake" agreement, Compl. ¶ 13, because none exists. This claim should therefore be dismissed as lacking probable cause. Where "[t]he Board finds no evidence of a written and initialed agreement concerning the issue of" the Force Hire policy, it "therefore concludes that no agreement was reached … on that subject." *Reno Municipal Employees Association vs. City of Reno*, Case No. A1-045326, Item #93 at 2 (Jan. 11, 1980); *see also NLRB v. Tomco Commc'ns, Inc.*, 567 F.2d 871, 883 (9th Cir. 1978) ("The law does not require that each … indication of possible acceptance be included in the final contract …. To do so would hamper the ability of parties to explore their respective positions early in their negotiations. "To bargain collectively" does not impose an inexorable ratchet, whereby a party is bound by all it has ever said."). Probable cause is the touchstone of the Board's analysis in a motion to dismiss because it should not have to wade through baseless claims without evidentiary support in a hearing. NAC 288.200(1)(c); NAC 288.375(1); *cf. Tomco Commc'ns, Inc.*, 567 F.2d at 883 (overturning the Board's striking of certain CBA terms where "[t]here is no evidence that the Company ever falsely described its written proposals. There is no evidence that it ever subsequently altered non-initialed terms to nullify concessions made elsewhere in the contract.").

Furthermore, Local 731 cannot contend that the City's decision to continue to negotiate

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[3] Again, evidencing the City's ongoing good faith negotiations with Local 731.

instead of accepting Local 731's requested resolution constitutes bad faith, even if the City had agreed in a conversation to consider incorporating the Force Hire policy into the CBA. "Adamant insistence on a bargaining position or 'hard bargaining' is not enough to show bad faith bargaining." *International Association of Fire Fighters Local 5046*, Item #847-A at 5; *International Association of Fire Fighters, Local 1265 vs. City of Sparks*, Case No. A1-045362, Item #136 at 5 (Aug. 21, 1982) ("Adamancy on a single issue is not in and of itself a violation of the duty to bargain in good faith …."). While the City did not agree to incorporate the turn-down policy into the CBA, the City did agree to restrict cross-staffing of the ambulance, to discuss with Local 731 before implementing single-role paramedics, to create the turn-down in the Department's SOP, that employees assigned to the ambulance receive a special pay of 5% while assigned to the ambulance, and *additionally* offered a 1.75% special pay, at the Fire Chief's discretion, to any employees required to work mandatory overtime on any apparatus, in an effort to fully address the Force Hire Grievance. Am. Cross-Compl. ¶¶ 15–17; Ans. to Am. Cross Compl. ¶¶ 15 (admitting the City offered a 5% special pay to employees working on the ambulance); 16 (admitting that the SOP allowed a certain number of refusals); 17 (denying for lacking information that the City offered an additional 1.75% special pay, although Local 731 could only have answered ¶ 15 and ¶ 16 by looking at the September 6 MOU, which included this proposed term).

Because the Board evaluates the "totality of conduct throughout negotiations to determine 'whether a party's conduct at the bargaining table evidences a real desire to come into agreement,'" *International Association of Fire Fighters Local 5046*, Item #847-A at 5 (citation omitted), the City's robust concessions going above and beyond what Local 731 asked for demonstrates the City acted in good faith in declining *one* of Local 731's multiple requests to resolve the Force Hire Greivance. *See also Tomco Commc'ns, Inc.*, 567 F.2d at 882 (determining no bad faith bargaining occurred where, taking the employer's concessions and demands on the whole, the conduct did "not support a charge of bad faith negotiations" where the Company provided compromise proposals incorporating the union's request instead of forcing the union to accept its initial proposal). The Board should dismiss this claim as lacking probable cause because "nothing in the

[NRS] … requires an employer to abandon a settled position on a certain issue because of either the quantity or quality of concessions offered by the Union in the hope of securing such abandonment. It is still a matter of bargaining." *Clark County Classroom Teachers Association vs. Clark County School District*, Case No. A1-045302, Item #62 at 4 (Dec. 10, 1976) (quoting *NRLB v. United Clay Mines Corp.*, 291 F.2d 120, 126 (6th Cir. 1955)).

B. Local 731's Second Claim Is Time-Barred And Local 731 Admits It Had No Evidence Prior To Filing Its Baseless Healthcare Bad Faith Claim

1. Local 731's GHCC Claim is Time-Barred.

Local 731 may not file a Complaint "more than 6 months after the occurrence which is the subject of the complaint or appeal." NRS 288.110(4). But here, Local 731 reveals that its GHCC claim is time-barred, contending "[o]n or about January 1, 2024, [the City] unilaterally changed healthcare provisions including but not limited to putting a cap on physical therapy visits." Compl. ¶ 24 (emphasis added). This allegation cannot substantiate a viable claim for bad faith before the Board as Local 731's January 24, 2025 Complaint comes over 12 months after the TPA and Plan document transition occurred and the claim should be dismissed. *See CCCTA*, Item No. 210 at 2 (dismissing a Complaint under NRS 288.110(4) regarding the composition of a bargaining unit as it was regarding an action that occurred "over nineteen (19) years before the filing"). All of Local 731's subsequent allegations arise from this "final adverse action," and "it is the actual occurrence of the event, rather than some pre-occurrence indication of intent, that determines the six-month limitations period." *Washoe County Sheriff's Supervisory Deputies Association and Washoe County Sheriff's Deputies Association v. Washoe County*, Case No. A1-046052, Item #789 at 3 (Oct. 17, 2013).

Local 731 may contend it did not realize the alleged impact of this January 1 transition to its health benefits until April 8, 2024, when it filed its GHCC Grievance. Compl. ¶ 25. Such a claim is *still* time-barred, as the Complaint was filed over nine months after the filing of the April 8, 2024 GHCC Grievance. Local 731 may also argue that it does not view the actual change in the Plan documents as bad faith (dubious, considering it is the subject of the Grievance and is specifically alleged in its Complaint as "unilateral action"), but it *only* views the City's request for

a continuance to respond to the GHCC Grievance as the bad faith act. Compl. ¶ 45. But the City's first request for a continuance occurred on June 26, 2024, and Local 731 granted it on July 16, 2024, Am. Cross-Compl. ¶¶ 100–06; Ans. to Am. Cross Compl.¶ 106,—meaning the claim is *still* time-barred, as the Complaint was filed eight days after the six-month statute of limitations ran on the first of the City's requested extensions on July 16, 2024.[4] Furthermore, the entire grievance process relates back to the original claim that the City's "unilateral action" of allegedly changing Plan document benefits was in bad faith, intertwining the entire claim with the date the new TPA's Plan document went into effect—January 1, 2024. Local 731's GHCC claim should therefore be dismissed as time-barred. *See Heath Barnes v. Clark County and Service Employees International Union, Local 1107*, Case No. A1-045962, Item #711 at 1–3 (Nov. 10, 2009) (determining the complaint was time-barred because the final adverse action triggering the six-month timeline occurred when the employee received a Final Written Warning, not when the County refused to permit a grievance be filed regarding the Warning a few days later).

2. Local 731 Admits It Has No Evidence To Support Its GHCC Claim.

Even if the Board determines Local 731's second claim is within the statute of limitations of NRS 288.110(4), Local 731's attempt to use written discovery during this proceeding demonstrates that it has no documentation substantiating its document-based claim before the Board. Local 731 makes multiple document-based assertions under its GHCC claim, alleging the City "unilaterally changed healthcare provisions" in the City's health insurance Plan document, claiming "[h]istorically, the City has requested Union approval or all changes to the agreement regarding benefits," and that the new Plan document "limit[ed] … the number of Physical Therapy

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[4] Local 731 may alternatively contend the first extension prior to the Step 2 meeting was in good faith, but somehow the second extension after the Step 2 meeting requested on August 1, 2024 was not. There is no difference between the extensions, as both were requested to allow the City to continue reviewing Local 731's claims that adopting the UMR Plan document created a change in benefits. *See* Ans. to Am. Cross-Compl. ¶ 133 (admitting the City presented its final analysis of Local 731's claims on October 3, 2024). If the extensions are the focus of Local 731's ire, the date on which the extensions *began* must be the focus. Local 731 cannot arbitrarily identify a date within six-months from its Complaint when the substance of its claims all occurred long before the statutorily-allowed time frame.

visits a member can receive per year." Compl. ¶¶ 24, 37–38. This "unilateral action" claim is dependent up on the terms of the Plan document, as "[a] local government employer, … does not commit a unilateral change where the employer does not change any of the bargained for terms and adheres to the terms of the collective bargaining agreement." *Pamela Vos v. City of Las Vegas and Las Vegas Peace Officers Association*, No. A1-046000, Item #749 Case at 6 (Mar. 24 2014). Presumably, Local 731's counsel investigated these claims prior to filing a bad faith Complaint on behalf of Local 731, and would not rely solely on a verbal recitation of perceived wrongs without actually verifying that the new Plan document did, in fact, "limit" the number of Physical Therapy visits a member can receive per year.

But here, months after filing the Complaint, Local 731 sent the City a "Request for Admission" (a civil litigation term used in the transmission email), containing sixty-two (62) RFIs under NRS 288.180(2), claiming that the RFIs must be responded to in thirty days or less so that counsel could "prepar[e] for [the GHCC Grievance] arbitration [on May 28–29, 225] ***and a future EMRB hearing***." **Exhibit A** at 6 (transmission email and RFIs) (emphasis added). Local 731 did not request the Board's permission to conduct discovery, and the City is unaware of any instance where the Board has ever granted written discovery. *See Nevada Classified School Employees Association, AFT/PSRP, Local 6181, AFL-CIO v. Truckee-Carson Irrigation District*, Case No. A1-045895, Item #647B at 1 (May 14, 2009) (parties may file a motion for permission to conduct discovery). But more importantly, Local 731 has never requested documents from the City throughout the entirety of the CBA's three-step process for the GHCC Grievance. But now, when preparing for a hearing before the Board and *after* having alleged that Local 731 has probable cause to support its claims in the Complaint, it used a discovery method exclusive to the collective bargaining process to request "[a]ny UMR Plan Documents in effect from January 2023 to present," "copies of the full plan documents for both the prior and current plan," and "[a]ll Hometown Health or HHP Plan Documents [from the City's prior TPA] in effect from January 2023 to present." **Exhibit A** at 3 ¶¶ 14, 18, 20.

Requesting these documents demonstrates that Local 731 did not have the City's 2023 and

2024 Plan documents, rendering Local 731's documentary claims entirely unsupported.[5] This lack of documents explains why Local 731's answers to the Amended Cross-Complaint are so inconsistent, admitting certain terms in the Plan document but denying others. *Compare* Ans. to Am. Cross-Compl. ¶ 80 (admitting that the current UMR Plan document included an administrative review for medical necessity after 25 visits); *with id.* ¶ 82 (denying as lacking information the veracity of the next line in the UMR Plan document capping speech therapy visits at 26 visits per year). It is implausible that Local 731 can admit to some terms of the UMR Plan document but "lacks information" to admit others. Complainants are expected to have probable cause *in order to* file complaints before the Board—probable cause does not develop during the Board's review, as Local 731 attempts to do here. This evident lack of probable cause demonstrated by the extensive RFIs issued so late in the Greivance process,[6] without the Board's approval for discovery, should result in dismissal of this claim.

3. Local 731's GHCC Claim Lacks Probable Cause Based on the Timeline Alleged and Admitted.

A portion of Local 731's GHCC claim argues that the City only sought a continuance to respond to the GHCC Grievance to "buy [] time" before the September 21, 2024 GHCC meeting, wherein both SPPA and OE3 voted to ratify the City's administrative check point to ensure

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[5] The only other plausible explanation for such Requests for Information—which again are not even allowed as part of the Board's procedures absent Board approval—are that these are an obvious attempt to intimidate, overwhelm, and harass the undersigned and the City.

[6] Arguably, the City should not have to respond to the RFIs at all, as RFIs enable unions to "investigate and process grievances" *prior* to pursuing them, *Nevada Service Employees Union v. Southern Nevada Health District*, Case No. 2024-009, Item #903 at 2 (Nov. 21, 2024) (quotation omitted)—RFIs are not intended to be used as an abusive discovery tactic during grievance arbitration preparations, where an obligation to exchange exhibits prior to the arbitration already exists. However, the City is providing substantive responses to most of the RFIs contemporaneously with the filing of this Motion, with some clarifying questions on others, again demonstrating the City's willingness to engage in good faith negotiations with Local 731. Presumably, any union matter proceeding to the expensive step of paying for an arbitrator's time would, to properly steward union members' dues and City taxpayer funds, already have investigated the documentary evidence underlying the claim(s) and determined whether it was sufficiently supported to continue through the grievance process. To do otherwise could be construed as frivolous or wasteful.

ongoing medical necessity for physical therapy. Compl. ¶ 45. This allegation is unsupported by the timeline admitted to in Local 731's Answer.

Local 731 acknowledges that the City met with at least the former Steward[7] regarding the change in TPAs in May 2024, received the City's first letter reviewing alleged changes to benefits in the Plan document on June 24, 2024, and received the City's third letter completing the City's review of all Local 731's 100+ alleged changes to benefits in the Plan document on October 3, 2024. Ans. to Am. Cross-Compl. ¶¶ 85, 94–95, 133.[8] The three letters represent hundreds of City personnel hours in reviewing both Plan documents, clarifying questions with the TPA UMR, and drafting responses to Local 731, culminating in a presentation to the GHCC on the outcome of the review on September 19, 2024, Am. Cross-Compl.¶¶ 119–24—a robust process emphasizing the City's good faith investigation into Local 731's concerns.[9] Admitting that it received the City's October 3, 2024 letter reveals that Local 731 was advised of the real reason for the City's requests for continuances—to fully respond to Local 731's allegations that the City had changed the benefits in the Plan document. When the City requested a continuance to provide its Step 2 response to Local 731's GHCC Grievance on June 26, 2024, the City had only sent one letter to Local 731 that reviewed only some of Local 731's concerns. Am. Cross-Compl. ¶¶ 93, 100. When the City requested to extend the continuance on July 16, 2024, it still had only provided the first letter to Local 731. *Id.* ¶ 105. When the City again requested to extend the continuance on August 1, it had sent Local 731 two letters reviewing some of their concerns but had not yet completed its review of all Local 731's over 100 separate claims. *Id.* ¶¶ 113–17. In fact, it was not until the

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[7] Local 731 oddly denies that the City met with Local 731 Vice President Darren Jackson in that same meeting, Ans. To Am. Cross-Compl. ¶ 29, although he initiated the meeting, was present, and led the conversation. Am. Cross-Compl. ¶ 29.

[8] Local 731 again mysteriously denies receiving the City's second letter sent via email on July 31, 2024, Ans. to Am. Cross-Compl. ¶¶ 113–15, although it was sent to Local 731 Vice President Jackson, just like the first and third letters.

[9] Interestingly, Local 731 admits that GHCC Vice Chair Crawforth made a presentation at the September 19, 2024 GHCC meeting, Ans. to Am. Cross-Compl. ¶¶ 126–27, but denies as lacking information the City's description of the City Attorney Office's presentation regarding the alleged benefit changes that occurred at the *same meeting*. *Id.* ¶¶ 119–27.

letter Local 731 admits receiving on October 3, 2024, that the City completed its review and provided analysis disagreeing with all 100+ alleged changes Local 731 in the UMR Plan document. Ans. to Am. Cross-Compl. ¶ 133. The substantial and unprecedented amount of specific challenges levied by Local 731, requiring careful comparison of both Plan documents, necessitated the continuances. The City then did not provide its Step 2 response to the GHCC Grievance until October 10, 2024, allowing Local 731 an additional week to raise concerns about the City's analysis in the October 3, 2024 letter, to which Local 731 admits it asked no further questions after October 3. *Id.* ¶ 134. The City demonstrably sought extensions to fully respond to Local 731's voluminous benefit change contentions, not to "pressure" SPPA, an assertion for which Local 731 has provided zero evidentiary allegations in support.[10]

The entirety of the City's interactions with Local 731 regarding the GHCC Grievance are critical to the Board's understanding as to whether the City's request for a continuance could constitute bad faith. "A state of mind such as good faith is not determined by a consideration of events viewed separately. The picture is created by a consideration of all the facts viewed as an integrated whole." *Tomco Commc'ns, Inc.*, 567 F.2d at 883 (quoting *NLRB v. Stanislaus Imp. & H. Co.*, 226 F.2d 377, 381 (9th Cir. 1955)). Taking into account the letters Local 731 admits it received regarding the City's responses to its 100+ concerns and the September 21, 2024 presentation by the Vice Chair explaining the City's approach to the 25-visit review point Local 731 admits occurred, Ans. to Am. Cross-Compl. ¶¶ 126, 133, the City contends there is ample evidence of good faith and the Board should dismiss this claim as lacking probable cause.

The GHCC claim can be summarized as Local 731 decrying the fact that the City reviewed

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[10] Furthermore, the vote to ratify the administrative review point that Local 731 is so concerned about required the affirmative vote of the other *two* participating unions in the GHCC, not just SPPA. There are no allegations in the Complaint that the City somehow pressured OE3, the other participating union, meaning Local 731 agrees that a union could come to the decision to ratify the administrative review point of its own accord. Local 731 therefore lacks probable cause in its contention that SPPA somehow did not act of its own accord due to the presence of the Police Chief, who had been the Vice Chair of the GHCC in 2023 and 2024, due to his role at that time as the Acting City Manager. Am. Cross-Compl. ¶¶ 73 (Vice Chair in September 2023); 78 (Vice Chair in December 2023); 125 (Vice Chair in September 2024).

its alleged changes to benefits and disagreed that any of them constituted a change in benefits, coupled with SPPA and OE3 listening to Local 731 explain its concerns at multiple GHCC meetings and disagreeing with Local 731's position.[11] If those good-faith disagreements are to be labeled bad faith, it would "come perilously close to determining what the employer should give [to Local 731] by looking at what the employees want." *Tomco Commc'ns, Inc.*, 567 F.2d at 883. The City urges the Board to dismiss Local 731's second claim as lacking probable cause based on Local 731's own allegations and answers to the Amended Cross-Complaint, which demonstrate that the City negotiated in good faith and simply disagreed with Local 731 as to how to resolve the GHCC Grievance.

V. FRIVOLOUSNESS

The Board should both dismiss Local 731's Complaint and levy attorneys' fees for the frivolous nature of the claims therein. *Tollen*, 2016 WL 7451623, at *1. Local 731 admitted that in the Force Hire Grievance process it had no documentation to prove an agreement occurred on September 4 that the City could have reneged on by September 6, and it admitted that the City offered to preserve the turn-down policy for two years "sometime" after September 4, as encapsulated in the September 6, 2024 MOU. These admissions make clear that the City did not negotiate in bad faith—it simply did not accept Local 731's proposal. Local 731 accuses the City of providing deceptive terms in the MOU, relying upon blatantly misconstrued interpretations of protected privileged internal comments, but then admits that it agreed to those exact terms in subsequent MOU drafts. The complete absence of bad faith in these proceedings demonstrates that

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[11] Local 731 includes a single contention at the end of its second claim alleging a "change in [] policy" in December 2024 that "effectively prevents members from submitting claims by no longer providing a process for Local 731 to submit claims." Compl. ¶ 39. This is a garbled reference to UMR's difficulty processing a $150 reimbursement unique to the City's Plan called a "Healthy Lifestyle Benefit." UMR's email inbox designated to receive these submissions became full in December 2024. UMR changed that submission process so that the Healthy Life Style benefit is processed like all other claims. *See Transcript Of Audio-Recorded Meeting of the Sparks Group Healthcare Committee*, March 20, 2025, https://agendas.cityofsparks.us/OnBaseAgendaOnline/Meetings/ViewMeeting?id=1058&doctype=2 (UMR's representative explains the issue and the solution for submitting the Healthy Lifestyle Benefit). The City is unaware of any Local 731 member who has not yet received their reimbursement.

Local 731's claim was frivolous, and the City should be awarded attorneys' fees and costs for having to respond.

Similarly, the second claim is time-barred and Local 731 has demonstrated that it lacks documentary evidence of its document-based claims by levying sixty-two (62) RFIs upon the City *after* the filing of the subject Complaint. Both the amount of and timing of the RFIs reveal the frivolity of these proceedings. Furthermore, Local 731's admitted timeline of the Grievance process demonstrates that the City had a perfectly reasonable purpose for seeking a continuance—to finish responding to Local 731's 100+ allegations of changes in benefits, all of which the City determined were not changes in benefits. Local 731 has not provided any substantive challenge to that response. The totality of the circumstances demonstrates that the City acted in good faith throughout the GHCC Grievance negotiation process and that contending otherwise is frivolous, warranting an award of attorneys' fees and costs to the City.

VI. CONCLUSION

The City is and has been negotiating in good faith with Local 731. While the City is prepared to demonstrate that good faith before the Board through producing and discussing each email and document exchanged on the Force Hire and GHCC Grievances and through cross-examining Local 731's witnesses, the City contends that the Board can make its determination as to the City's good faith based on this Motion, Local 731's Answer to the Amended Cross-Complaint, and Local 731's Complaint. Local 731's claims of bad faith entirely lack probable cause and its second claim is additionally time-barred. The City urges the Board to grant this Motion to Dismiss Local 731's Complaint so that both parties can focus on the current collective bargaining agreement negotiations and finish resolving outstanding grievances.

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

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' 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)
Opposition to City of Sparks' Motion to Dismiss

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Attorneys for Complainant/Respondent

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 OPPOSITION TO CITY OF SPARKS' MOTION TO DISMISS**

The INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 ("Union," "Complainant/Respondent" or "Local 731") hereby opposes the CITY OF SPARKS' ("Respondent/Complainant" or "City") Motion to Dismiss the Union's Complaint (hereinafter referred to as "Opposition") because the Complaint sets forth factual allegations that, taken as true, constitute bad faith bargaining under NRS 288.270(1)(e). This Opposition 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 of Sparks seeks dismissal of credible, well-supported allegations of bad faith bargaining by reframing the facts, misstating the law, and demanding a standard that the law does not require. But the City's motion fails for a simple reason: the Complaint alleges two distinct prohibited practices, both supported by detailed factual allegations and both properly within this Board's jurisdiction.

First, the Force Hire Grievance alleges that the City reached an agreement with Local 731 on essential terms, then reneged by gutting critical protections and falsely representing that its rewritten proposal reflected the parties' deal. That is textbook bad faith bargaining under NRS 288.270(1)(e).

Second, the GHCC Grievance alleges that after being caught making unilateral changes to healthcare benefits, the City manipulated the grievance process—delaying, deflecting, and ultimately rigging the Group Health Care Committee process to retroactively bless its unlawful conduct. The City's surface bargaining and tactical delay constitute independent violations of its duty to bargain in good faith.

The City's arguments to the contrary—about timing, probable cause, and supposed "frivolity"—are meritless. They either mischaracterize the claims, ignore the factual allegations, or invite the Board to improperly resolve disputed facts on a motion to dismiss. The City's attempt to turn factual disputes into grounds for dismissal must be rejected.

At this stage, the Board must accept the Complaint's allegations as true and draw all inferences in favor of Local 731. When it does so, the result is clear: Local 731 has alleged two viable claims for bad faith bargaining, each warranting a hearing. The Motion to Dismiss should be denied.

II.

LEGAL STANDARD

A motion to dismiss under NAC 288.200(1)(c) must be denied if the complaint states "sufficient facts to give rise to a justiciable controversy." A complaint supported by probable cause—***not ironclad proof***—is enough to proceed. *Nevada Serv. Emps. Union v. Clark Cty. Water Reclamation Dist.*, EMRB Case No. 2024-030, Item #905 at 1 (Dec. 17, 2024).

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The burden to bargain in good faith under NRS 288.270(1)(e) is not satisfied with posturing or hollow promises. The duty includes the "entire bargaining process," and extends beyond initial negotiations of a collective bargaining agreement. As the EMRB has consistently held:

> The duty to bargain in good faith is stated at NRS 288.270(1)(e). This duty requires a local government employee to "bargain collectively in good faith." Under the Act, "collective bargaining" is defined to include "the resolution of any question arising under a negotiated agreement." NRS 288.033(3). Grievance and arbitration procedures are, in turn, mandatory subjects of bargaining. NRS 288.150(2)(o). We have previously recognized that the duty to bargain in good faith includes adhering to the bargained-for grievance process. *See, e, g., Kallsen v. Clark County School District*, Item No. 393-B, EMRB Case No. Al-045598 (Feb. 12, 1998) (finding the School District in violation ofNRS 288.270(1) for refusing to arbitrate a grievance).

Michael Turner v. Clark County School District, Case No. A1-046106, Item #800 (1/21/15) at 3.

III.

ARGUMENT

A. First Claim: Force Hire Grievance – Agreement Made, Then Broken

In September 2024, Local 731 and the City reached a resolution to the Force Hire grievance. The essential terms, including codifying limits on forced overtime, were agreed to in person and acknowledged by both sides. Specifically, the essential terms were two-fold. The City got what it wanted in which its authority to mandate overtime was to be incorporated into the Collective Bargaining Agreement ("CBA") between the Parties. In exchange, this authority was limited and those limits were also to be incorporated into the CBA. That resolution was later disregarded by the City.

The MOU the City issued days later stripped out the limits, reclassifying them as "policy" terms, which the City could unilaterally revoke anytime thereafter. To make matters worse, the City's redlined version included comments confirming that intent. The City appears to be making the argument that the comments within its proposed MOU was really just a statement that the MOU was committing to the change of policy without the 10-day review procedure provided for the in CBA.

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See Motion at p. 7.[1] However, even if the comments were, in fact, not stating that the policy could be unilaterally changed at a later date and were really referencing the MOU changing the policy without the 10-day review period, it does not change the fact that the effect of that reclassification as "policy" terms as opposed to CBA terms was that it could unilaterally change that policy. Furthermore, the reclassification of the restrictions as "policy" as opposed CBA terms was contrary to what the parties previously agreed. In short, the City reneged on its agreement.

When Local 731 pushed back, the City refused to return to the agreed terms to ***fully*** incorporate both the City's authority and limits to that authority to mandate overtime into the CBA.[2] This is not hard bargaining. It's bad faith in that the City falsely represented the MOU as reflecting what the parties agreed to, when it clearly did not. Courts and the Board have long recognized that:

> False representations amount to 'a failure to bargain in good faith regarding each of the above subjects of bargaining,' which 'constitutes an unfair labor practice.

Ballou v. United Parcel Serv., Inc., No. 20-2640-JWB, 2003 WL 130542, at *7 (D. Kan. Jan. 9, 2023), aff'd, No. 23-3021, 2024 WL 700424 (10th Cir. Feb. 21, 2024) (cited by the City itself multiple times in its Am. Cross-Compl. ¶¶ 137, 150, 159, 166, and 170). That is exactly what Local

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[1] The City appears to conflate Local 731's Answer to the City's allegation in Paragraph 52 as its acceptance of its explanation regarding the comments, *see* Motion at p. 7, when it does not actually do that. Specifically, the Union's Answer specifically stated:

> Answering paragraph 52 of the Amended Cross Complaint, Local 731 admits that on or about November 4, 2024, it provided a qualified acceptance to amending the SOP to make the SOP as it relates to Force Hires unchangeable for two years subject to an arbitrator's decision on whether the Force Hire Program was a subject of mandatory bargaining within the MOU with the understanding that should the arbitrator rule that it was a subject of mandatory bargaining the subject changes to the SOP would be incorporated into the CBA. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

The City's characterization of the Answer as acceptance of its explanation of what the comments meant is an outright dishonest reading. The Answer says no such thing. Instead, all it is evidence of is that despite the City's reneging on the prior agreement to ***fully*** incorporate both the authority and limits to mandating overtime into the CBA, that Local 731 was continuing to try and reach a resolution in good faith to the dispute.

[2] Ironically, the City seems to argue the fact that the Union's continued negotiations with the City after it reneged on its agreement as somehow absolving it. However, the Union's continued negotiations with the City only evidences that Local 731 was earnest in its attempts to negotiate a resolution to the dispute in good faith despite the City's prior bad acts. Nothing more, nothing less. Furthermore, the City's subsequent offer to limit its ability to revise the policy for two years does not absolve it of its initial prohibited practice.

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731 alleges: that the City made false representations, both through omission and in redlines, about the agreement's substance, with the specific intent to walk back a compromise. It is the textbook example of what *Ballou* and this Board prohibit. Regardless, even if the City disagrees about whether there was final agreement (though evidence suggests there was), that is a disputed factual issue, not a reason for dismissal.

Furthermore, the City's reliance on *Reno Mun. Emps. Ass'n v. City of Reno*, EMRB Item No. 93 at 2 (Jan. 11, 1980) ("The Board finds no evidence of a written and initialed agreement … therefore concludes that no agreement was reached …") is misplaced for a couple of important reasons. First, this matter involves attempts to resolve a dispute while that case involved contract negotiations. *Id. at* 5. Secondly, unlike in this instance, that case involved a situation where the parties set ground rules specifically requiring agreements be reduced to writing. *Id. at* 2.

Likewise, the City's reliance on *NLRB v. Tomco Commc'ns, Inc.*, 567 F.2d 871, 883 (9th Cir. 1978) ("The law does not require that each … indication of possible acceptance be included in the final contract …. To do so would hamper the ability of parties to explore their respective positions early in their negotiations. "To bargain collectively" does not impose an inexorable ratchet, whereby a party is bound by all it has ever said.") is also misplaced. Local 731 is not trying to bind the City to "all it is has ever said." Instead, the agreement reached was straightforward. The parties agreed that the authority to mandate overtime and the limits to that authority be incorporated into the CBA. If this were a situation where the Local 731 was litigating the minutia of the language to be incorporated into the CBA, the City might have a point, but that is not the case here. It is the fact that the City reneged on its original agreement to incorporate the authority and limitations thereto into the CBA at all that the Complaint was filed. That is not misunderstanding. That is a bait-and-switch.

Therefore, dismissal of Local 731's First Claim regarding the Force Hire Grievance is inappropriate as the Complaint sets forth facts showing that: A grievance was resolved in principle on September 4, 2024; the City deviated from the agreed terms in its MOU draft of September 2024; and that the City insisted the limits on Force Hire remain in policy, not the CBA, preserving unilateral control. Those facts, taken as true, allege bad faith bargaining under NRS 288.270(1)(e), rendering dismissal improper.

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B. Second Claim: GHCC Grievance – Delay, Deception, and a Stacked Vote

The City argues that Local 731's second claim regarding the GHCC Grievance is untimely, pointing to changes to the health plan that took effect January 1, 2024. Although Local 731 contends that the City's unilateral act in January of 2024 was an unfair labor practice, that is not the alleged prohibited practice at issue in Local 731's Complaint. The prohibited practice at issue is the City's manipulation of the grievance process to avoid its obligation to bargain in good faith "the resolution of any question arising under a negotiated agreement." *See Turner v. Clark County School District*, Case No. A1-046106, Item #800 (1/21/15) at 3; *see also* Compl. ¶¶ 24-35.

Specifically, Local 731 discovered the health plan changes in April 2024 and filed a grievance. *Id.* ¶ 25. During the grievance process the parties discussed the possibility of the City securing Local 731's vote on the GHCC to retroactively approve its changes to the healthcare provisions in exchange for providing certain additional benefits to Local 731 members. *Id. at* ¶¶ 27-29. The City asked for a stay to "run the numbers," regarding those additional benefits. *Id. at* ¶ 30.[3] Local 731 agreed. But the City never produced a good-faith proposal. Instead, it used the subterfuge to delay meaningful engagement on the grievance to buy it time to bypass Local 731 at the GHCC.

This was not bargaining. It was maneuvering. And it became clear only at the September 19, 2024, vote that the delays were not logistical, they were tactical. This conduct bears all the hallmarks of surface bargaining, pro forma negotiation with no real intent to reach agreement:

> "[S]urface bargaining constitutes bad faith where the employer engages in delays or insincere negotiations without the intent of reaching a final agreement."

City of Reno v. Int'l Ass'n of Firefighters, Local 731, EMRB Item No. 253-A (Feb. 8, 1991). The repeated extensions, shifting leadership, and preemptive GHCC vote demonstrate precisely that. The City used the trappings of negotiation to sidestep its obligations, not to fulfill them.

Furthermore, Local 731 did not, nor could it, know of the City's subterfuge until the City bypassed the Union at the GHCC, secured its retroactive approval of its unilateral actions on or about

[3] The City appears to allege the requested continuances were for it to review Local 731's concerns and respond thereto, *see* Motion *at* 14, as opposed to the Union's assertion that the City stated its purpose for the requested continuances was to "run the numbers" on possible resolutions to the GHCC Grievance. The City's motivation for requesting the continuances is clearly a factual dispute between the parties that has a direct bearing on Local 731's allegation of bad faith bargaining by the City. And as such, dismissal without resolving that factual dispute would be unwarranted.

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September 19, 2024, and then summarily deny the GHCC Grievance. That is the final adverse action upon which Local 731 is basing its claim. "The statute of limitations commences upon unequivocal notice of a final adverse action." *see City of N. Las Vegas v. State Local Gov't Employee-Mgmt. Relations Bd.*, 127 Nev. 631, 261 P.3d 1071 (2011). "It is the actual occurrence of the event, rather than some pre-occurrence indication of intent, that determines the six-month limitations period." *Washoe Cty. Sheriff's Supervisory Deputies Ass'n v. Washoe Cty.*, EMRB Case No. A1-046052, Item #789 at 3 (Oct. 17, 2013). A respondent bears the burden to show that complaint is untimely. *A&L Underground and Plumbers Local # 8*, 302 N.L.R.B. 467, 46 (1991).

Here, contrary to the City's apparent assertions, the triggering events were the September GHCC vote and the City's subsequent denial of the Union's GHCC Grievance. The Complaint was filed January 24, 2025, four months after the triggering events. This is well within the six-month window under NRS 288.110(4).

Additionally, the City frames the GHCC grievance claim as a stale challenge to the January 1, 2024, health plan changes. But the prohibited practice alleged is the City's manipulation of the grievance process—its tactical delays, false promises, and orchestration of a stacked vote to retroactively bless unilateral action. Those acts occurred between July and September 2024, culminating in the GHCC vote on September 19, 2024. The statute of limitations runs from the final adverse action. *See City of N. Las Vegas v. State Local Gov't Emp.-Mgmt. Relations Bd.*, 127 Nev. 631, 261 P.3d 1071 (2011). The Complaint, filed in January 2025, is timely.

The City repeatedly asserts that it acted in good faith because it believed it was acting in its own employees' interests. But the duty to bargain in good faith is judged objectively based on conduct—not subjective intent. *Int'l Ass'n of Fire Fighters Local 5046 v. Elko Cty. Fire Prot. Dist.*, EMRB Case No. 2019-011, Item #847-A at 5 (July 8, 2020). The City's internal beliefs, no matter how sincerely held, do not excuse bad faith bargaining if the objective conduct—the bait and switch on Force Hire restrictions and the deceptive GHCC grievance delay—violates NRS 288.270(1)(e).

Therefore, dismissal of Local 731's Second Claim regarding the GHCC Grievance is inappropriate as the Complaint sets forth facts showing that: A grievance was filed and the grievance process was ongoing regarding the City's unilateral change to the healthcare provisions; that during the

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grievance process, Local 731 made proposals for the City to secure its vote on the GHCC to retroactively ratify the City's actions and thereby resolving the grievance; that the City requested continuances to the grievance process to allow it to "run the numbers" on Local 731's proposals; and that this purported purpose for the continuances were later revealed to Local 731 to be an outright lie by the City to delay the grievance process and enable the City to bypass Local 731 at the GHCC. Those facts, taken as true, allege surface bargaining by the City, a type of bad faith bargaining under NRS 288.270(1)(e). As such dismissal of this Claim is improper.

C. The Complaint is Not Frivolous—It's Factual and Well-Grounded

The City accuses Local 731 of acting "frivolously" because it later issued Requests for Information. That argument fails on its face. The RFIs weren't speculative; they were targeted efforts to gather supporting documents and data for arbitration and Board proceedings. Local 731 didn't issue discovery to find a theory. It issued discovery to **support its theory**. Which is exactly what competent representation requires. Preparing for arbitration isn't an admission of weakness. It's diligence, not gamesmanship.

Further, the City's attempt to paint Local 731's Requests for Information (RFIs) as proof that its claims lacked merit misses the mark. Local 731 has a statutory right under NRS 288.180(2) to request information necessary to prepare for grievances and hearings. Issuing RFIs to gather additional supporting material does not retroactively negate probable cause. Rather, it reflects diligent preparation and competent representation. Preparing for arbitration and a future hearing based on an already-supported theory is not frivolous; it is responsible advocacy.

The City's reliance on the finding in *Tollen v. Clark Cnty. Ass'n of Sch. Admin. & Pro. Emps.*, 2016 WL 7451623, at *1 (D. Nev. Dec. 2, 2016) that "[a]n action becomes frivolous when the result appears obvious or the arguments are wholly without merit[,]" is misplaced. Here, the result is not obvious, and the claims are far from meritless. The City's own 17-page motion demonstrates as much: you don't spend 17 pages rebutting what you think is nonsense.

D. The City Misstates the Probable Cause Standard

The City's motion improperly demands that Local 731 prove its claims now, rather than simply allege facts that, if true, constitute a prohibited practice. But the standard under NAC

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288.200(1)(c) is not proof beyond dispute; it is whether the Complaint states "sufficient facts to give rise to a justiciable controversy." *Nevada Serv. Emps. Union v. Clark Cty. Water Reclamation Dist.*, EMRB Case No. 2024-030, Item #905 at 1 (Dec. 17, 2024). At this stage, all that is required is that Local 731's claims are plausible—not that they be ultimately proven. The City's invitation to weigh evidence and resolve factual disputes is improper on a motion to dismiss. The motion should be denied on that basis alone.

IV.

CONCLUSION

This Board need not decide who's right at this point. It need only decide that Local 731's claims deserve to be heard. Which they do. At this stage, the Board's role is to determine whether Local 731's claims, taken as true, plausibly allege a prohibited practice. Where factual disputes exist—such as whether the parties agreed to CBA incorporation of Force Hire limits, whether the City delayed the GHCC grievance process in good faith, or whether surface bargaining occurred—those disputes must be resolved in favor of the nonmoving party. *See* NAC 288.200(1)(c). Dismissal is improper when contested facts are at the heart of the case. The Force Hire claim alleges a broken agreement. The GHCC claim alleges a deceptive stall tactic used to rig a vote with the triggering event occurring in September of 2024, not earlier as the City alleges. Both describe violations of NRS 288.270(1)(e). Both are timely. And neither is frivolous.

For all the reasons stated above, and because the City's motion repeatedly asks this Board to weigh disputed facts and misconstrues the applicable legal standards, Local 731 respectfully requests that the Board deny the City's Motion to Dismiss in its entirety and allow these claims to proceed to hearing.

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DATED this 17th day of April, 2025.

REESE RING VELTO, PLLC

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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 OPPOSITION TO CITY OF SPARKS' MOTION TO DISMISS** to be served via email on the following persons:

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City of Sparks (Respondent)
Reply in Support of its Motion to Dismiss

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BEFORE THE STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

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

The CITY OF SPARKS ("City") submits this Reply in support of the City's Motion to Dismiss INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 ("Local 731")'s Complaint because the claims therein are unsupported by probable cause as stated in the Motion and admitted in Local 731's Answer. This Reply is based on the papers and pleadings on file herein, the below Memorandum of Points and Authorities, and any oral argument permitted.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Both of Local 731's asserted claims are baseless and frivolous, and the City urges the Board not to waste its or the parties' time and dismiss the Complaint based on its demonstrable lack of probable cause. Local 731 failed to rebut the City's legal grounds demonstrating both its claims are unsupported and time barred, and Local 731's admissions in its Answer contradict its claims

in its Complaint. Even taking everything Local 731 presented in this matter as true, the Complaint lacks probable cause and should be dismissed.

II. LEGAL STANDARD

If the Board determines that the facts alleged by Local 731 in its Complaint and admitted by Local 731 in its Answer do not demonstrate bad faith on the part of the City, that "lack of sufficient facts to give rise to a justiciable controversy" means "there is also a lack of probable cause." *Nevada Services Employee Union v. Clark County Water Reclamation District (CCWRD)*, Case No. 2024-030, Item #905 at 1 (Dec. 17, 2024).[1] "In order to show 'bad faith', a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct,'" (emphasis added), and because Local 731 attempts to rely on one misconstrued element in each of the Force Hire and Group Health Care Committee (GHCC) Grievance procedures, but admits to the good faith demonstrated throughout each process, its claim rests on a "single isolated incident" while "the totality of the conduct throughout negotiations" contradicts the claim. *International Association of Fire Fighters Local 5046*, *v. Elko County Fire Protection District*, Case 2019-011, Item #847-A at 5 (July 8, 2020) (citations omitted). The City is not requiring Local 731 to prove its claims in its Complaint, Opp'n at 9, but stresses that there must be more to the Board's probable cause standard than a merely hypothetical "if true, it constitutes a prohibited practice," because that would allow Local 731 to make up lies and claim that they pass the probable cause standard by virtue of the fact that "if true, such lies constitute a prohibited practice." There has to be sufficient facts alleged underlying the claims such that they could be true. Here, Local 731's admissions in its Answer demonstrate that its claims are not true.

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[1] The City notes that Local 731 tries to contend that this Board previously determined a complaint that is "not [supported] by ironclad proof" could still have probable cause. Opp'n at 2 (citing *Nevada Serv. Emps. Union*, Item #905 at 1). This is a complete mischaracterization of the law and the case. The argument that a complaint lacking in evidentiary support can still demonstrate probable cause does not come from the case cite following that sentence, which merely states that a complaint must have alleged sufficient facts. *Id.* The undersigned is unaware of any case ruling that the applicable standard is whether a complaint is supported by "ironclad proof," and if not, then it can proceed. The standard is clear: the threshold issue for the Board to decide is whether the facts as alleged fail to give rise to a justiciable controversy or establish probable cause for the claim sought.

Given that the good faith of the City under both Grievances was so obvious that Local 731 admitted to elements of it in its Answer, Local 731's complaint is "wholly without merit" and the Board should award attorneys' fees to the City. *Tollen v. Clark Cnty. Ass'n of Sch. Admin. & Pro. Emps.*, 2016 WL 7451623, at *1 (D. Nev. Dec. 2, 2016); *see also CCWRD*, Item #905 at 4.

Furthermore, where Local 731's GHCC claim arises from an alleged "final adverse action" that is either time-barred by the 6-month statute of limitations, *Simo v. City of Henderson*, Case No. Al-04611, Item No. 796 at 2 (June 17, 2014), or unexhausted, the Board should dismiss the GHCC claim. In Opposition, Local 731 now contends its bad faith claim was triggered (in part) by "denial of the Union's GHCC Grievance," Opp'n at 7, which is currently pending arbitration and is not ripe for adjudication. Because "[t]he Board will not take jurisdiction in a matter which is clearly a contract grievance ripe for arbitration," and because "the City was compelled to prepare a defense against a complaint with no merit," Local 731 should be "ordered to pay the City" its attorneys' fees in this matter. *International Association of Firefighters, Local 731, Complainant the City of Reno, Respondent City of Reno, Counter-claimant International Association of Firefighters, Local 731, Counter-respondent*, Case No. A1-045466, Item #257 at 7 (Feb. 15, 1991).[2]

III. ARGUMENT

A. The Force Hire Grievance Claim is Legally and Factually Unsupported

1. Local 731's Opposition Confirms the First Claim is Legally Unsupported

Local 731's first claim for bad faith gets more convoluted in its Opposition, but Local 731's core argument is that the Board should wait to see if Local 731 can demonstrate that an oral agreement to amend the collective bargaining agreement (CBA) occurred, and then the Board should determine whether the City's decision to issue a written draft CBA provision two days later,

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[2] The City observes that Local 731's attempt to make the same claim before the Board that is currently slated for arbitration this month: that the City's change in TPAs (and consequently the formatting of its Health Plan document) constituted a violation of the CBA. Subverting the arbitration process agreed to in the CBA for handling grievances by filing claims in multiple forums before the conclusion of the arbitration on whether the changes were prohibited by the CBA at all, does not "adher[e] to the bargained-for grievance process." Opp'n at 3.

that did not incorporate that alleged oral agreement, constituted bad faith. Because Local 731 failed to rebut the City's cited on-point Board precedent that only holds parties to written agreements regarding changes to the CBA, the Board should dismiss this claim as it fails as a matter of law. The City also highlights that Local 731's Opposition admits that the MOU was clear on its face as to its intention to retain the policy for two years (which Local 731 initially alleged was only revealed by the misinterpreted privileged comment), and Local 731's subsequent acceptance of the very term it claimed was bad faith demonstrates that Local 731 dropped any resistance to the term and affirmatively accepted it after the City's explanation—completely negating any implication of bad faith.

EMRB and Ninth Circuit caselaw are aligned—in labor contract negotiations, parties are held to their written commitments. Local 731 tries to distinguish *Reno Municipal Employees Association v. City of Reno (City of Reno)*, by claiming *City of Reno*'s statement that, lacking "evidence of a written and initialed agreement," there was "no agreement reached," Case No. A1-045326, Item No. 93 at 2 (Jan. 11, 1980), as limited in scope to contract negotiations where there were specific ground rules requiring proposals in writing. Opp'n at 5. But Local 731 contends that under the Force Hire Grievance it wanted the City's "authority" to mandate overtime be "limited and those limits were also to be incorporated into the CBA," Opp'n at 3, which is a negotiation over contract terms—falling within *City of Reno*'s scope of application. Similarly, the CBA negotiations were ongoing during this Grievance negotiation and both parties were operating (unsurprisingly) under the agreed-to CBA negotiation ground rules that required all proposals in writing—the MOU itself was drafted in accordance with those ground rules, showing bolded proposed new language and strikethrough proposed deletions. *City of Reno* demonstrates that the Board reviews parties' written agreements to determine whether bad faith exists as it relates to agreements on contract terms, and Local 731 provides no contrary Board decision for its contention that it can assert unsubstantiated verbal agreements and rely on those representations to reach a hearing before the Board. *See* Opp'n at 3–5.[3]

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[3] Indeed, this Board has evinced a preference for not chaining parties to specific statements in (Footnote continued)

The Board's established position that parties are only held to written commitments is further strengthened by the Ninth Circuit's decision in *N.L.R.B. v. Tomco Communications, Inc.*, which affirms the importance of relying on written proposals rather than alleged verbal agreements when discussing potential amendments to the CBA. 567 F.2d 871, 883 (9th Cir. 1978). The Ninth Circuit specifically observed that in the context of reviewing CBA negotiations followed by written agreements,

> it is perfectly legitimate for a party to retract a proposal before the other side has accepted it. It may do so because the offer was germane only to the context in which it was made, or because it feels a different offer is more likely to be accepted, or because it has further determined the relative bargaining strengths of the opposed sides.

Id. Therefore, "[t]he law does not require that each offer and indication of possible acceptance be included in the final contract …. To do so would hamper the ability of parties to explore their respective positions early in their negotiations." *Id.* Therefore, while Local 731 claims it is not trying to bind the City to "all it has ever said," Opp'n at 5, in exactly the same way as the labor organization in *Tomco*, Local 731 is attempting to bind the City to some perceived "indication of possible acceptance," 567 F.2d at 883, before the City had the opportunity to reduce that proposal to writing and clarify the City's position. Because any bad faith claim before the Board based on an alleged verbal statement during negotiations that was never reduced to writing fails as a matter of law and would only serve to chill verbal negotiations if it became precedent, this claim must be dismissed.

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negotiations, determining in *City of Reno v. International Association of Firefighters, Local 731(IAFF, Local 731)* that the City of Reno's declination to allow a stenographer record negotiations was not bad faith as the proposed "presence of a stenographer" by IAFF during CBA negotiations "can surely stifle the spontaneous, frank, no-holds-barred exchange of ideas and persuasive forces that successful bargaining often requires. One party's insistence upon the presence of a stenographer, over the objection of the other, creates an uncooperative and repressive climate for collective bargaining." Case No. A1-045472, Item # 253-A at 5–6 (Feb. 8, 1991). Similarly here, Local 731 is contending that an alleged verbal agreement occurred in a meeting and the City should be held to the terms of that undocumented claim, rather than to what the City decided to formally offer in writing. The impact would be to chill any exchange of ideas in negotiations due to the fear that a briefly considered or ambiguously phrased verbal proposal would be taken as a firm offer and any change in wording in written conveyance of the final offer would constitute bad faith. That is simply not the law.

2. Local 731's Answer Confirms the First Claim is Factually Unsupported

Local 731's attempts in its Opposition to backtrack from its admissions in its Answer only serve to bolster the City's position that the Force Hire claim should be dismissed. Local 731 fails to respond to the City's contention that under Board precedent the misinterpreted privileged comment cannot demonstrate bad faith given "the expression of any views, argument, or opinion shall not be evidence of an unfair labor practice, so long as such expression contains no threat of reprisal or force or promise of benefit." *See Clark County Association of School Administrators vs. Clark County School District*, Case No. A1-045593, Item #394 at 13 (Oct. 24, 1996) (citation omitted) (emphasis added); *see* Mot. at 7. The City's internal privileged discussion of the mechanics of the MOU terms does not evince a "threat of reprisal," as they were not directed to Local 731 at all, which Local 731's Answer acknowledges—the comments "appeared" privileged, or directed internally. Ans. to Am. Cross-Compl. ¶ 42. Further, Local 731's "failure to assert in an opposition arguments that oppose those presented in the [City's] motion…. constitutes consent to granting the same." *Knickmeyer v. Nevada ex rel Eighth Jud. Dist. Ct.*, 173 F. Supp. 3d 1034, 1044 (D. Nev. 2016), *aff'd sub nom. Knickmeyer v. Nevada ex rel. Eighth Jud. Dist. Ct.*, 716 F. App'x 597 (9th Cir. 2017) (citing D. Nev. Local Rule 7-2(d)). The misinterpreted privileged comment therefore does not demonstrate bad faith.[4]

Local 731 lastly contends its undisputed acceptance of the two-year preservation of the Force Hire turn-down procedure in policy just shows Local 731's good faith, it doesn't "absolve[e]" the City of its alleged bad faith. Opp'n at 4 n.2.[5] What Local 731 is arguing is that

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[4] In Opposition, Local 731 tries to cast the entire MOU as bad faith because the City proposed an MOU term that would allow the City to reconsider the Force Hire turn-down procedure after the two-year period expired. Opp'n at 4, 4 n.1. Yes, the City offered a limited two-year concession but retained the management right to "determine [a]ppropriate staffing levels," NRS 288.150(3)(c)(1), through application of mandatory overtime, after the two years passed. The City is not required to acquiesce to every labor organization demand and this proposed compromise between the two parties' positions is not bad faith.

[5] Local 731 contends that the alleged verbal agreement by the City Manager constitutes a "false statement" under *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). *Ballou* does not address the standard to be applied to false statements in the context of contract (Footnote continued)

it can hold two contradictory beliefs simultaneously—that a term is acceptable based on what it says and Local 731 agreed to it in a draft MOU amending the CBA, but at the same time the term is in bad faith due to how it was presented and was not acceptable. In other words, Local 731 wants to have its cake and eat it too—it wants to claim bad faith for a term that it deemed agreeable.

The point of having written requirements for proposing changes to an agreement is so the end result with its accepted changes are clear. If Local 731 maintained the belief that the two-year preservation term was in bad faith, it should not have ever accepted it. But instead, Local 731 evinced that it believed the City's October 2 explanation of the impermissibly reviewed privileged comment that was, at a minimum, misconstrued, by admitting it subsequently accepted the term on November 4, 2024. Ans. to Am. Cross-Compl. ¶ 52. To allow Local 731's claim to proceed to a hearing allows parties to maintain a double mind about every agreed-upon written term in this manner and would chill the exchange of any proposals in negotiation, generally setting up the entire collective bargaining system for failure. Parties must, in writing, present offers and counter-offers regarding CBA terms, and acceptance of terms should mean that the term is acceptable, or the collectively-bargained contracts mean nothing and no accepted terms could ever be final. That is a basic tenant of contract law. The City maintains that Local 731's first claim is legally insufficient and should be dismissed.

B. Local 731's Second Claim Is Time-Barred And Local 731 Admits It Had No Evidence Prior To Filing Its Baseless GHCC Bad Faith Claim

1. The Second Claim is Time-Barred

Local 731 agrees that the six-month statute of limitations (SOL) "commences upon unequivocal notice of a final adverse action," Opp'n at 7, and then casts about trying to identify a date of such an action that the Board will accept. Local 731 acknowledges that although it claims "the City's unilateral act [changing Third-Party Administrators (TPAs)] in January of 2024 was an unfair labor practice, that is not the alleged prohibited practice at issue in Local 731's

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negotiations and the City maintains that the Board should apply its clear precedent in *City of Reno* here to determine that Local 731's Complaint does not provide sufficient evidence to plead that the City acted in bad faith.

Complaint." *Id.* at 6. Local 731 therefore concedes any bad faith assertions in the Complaint specific to the alleged impact of the change in the City's TPA, effective January 2024, should be dismissed as time-barred, which includes paragraphs 21–25 and 36–39. *See generally* Compl. ¶¶ 21–39. This leaves only paragraphs 26–35, describing the Step 2 Grievance discussion and the denial of the Grievance, for Local 731 to use in attempting to make a timely claim.

But Local 731 is unclear in its Opposition as to when in that Grievance process it now claims that the City issued its "final adverse action"—it couldn't be when "Local 731 discovered the health plan changes in April 2024," Opp'n at 6, as Local 731 does not contest that date is also outside the SOL. *Id.*, *see* Mot. at 10. In its Complaint, Local 731 identified the "continuance of the GHCC Grievance process" as the triggering date, Compl. ¶¶ 44–45, but does not respond in its Opposition and therefore accedes to the City's argument that the first continuance was granted on July 16, 2024, meaning even if the Board were to accept the flawed argument that the City's final adverse action was the continuance of the GHCC Grievance process, the Complaint was filed eight days too late. Mot. at 11; *Knickmeyer*, 173 F. Supp. 3d at 1044. Furthermore, Local 731 does not explain how a request for a continuance, granted by Local 731, constitutes final adverse action of the City—the requestor, not the grantor.

In any event, the Opposition appears to abandon Local 731's initial position that the request and approval for a continuance was the triggering date. Local 731 instead contends the City's bad faith was revealed when "the City bypassed the Union at the [September 19, 2024] GHCC … and then summarily den[ied] the GHCC Grievance. That is the final adverse action upon which Local 731 is basing its claim." Opp'n at 6–7 (emphasis added). There are two dates referenced in the preceding sentence, and neither suffice to save Local 731's second claim. On September 19, 2024 at the GHCC meeting, the City took no action. The Sparks Police Protective Association (SPPA) and the Operating Engineers No. 3 (OE3) unions voted to ratify the City's initial direction to its TPA to check whether additional physical therapy visits after the twenty-fifth visit in a calendar year were medically necessary (which was always required). Compl. ¶ 33, Am. Cross-Compl. ¶¶ 126–31. Because the City did not act at that meeting, it could not constitute the "final adverse

action" by the City on which Local 731 can rest its claim.[6] And the date of the City's denial at Step 2 of the GHCC Greivance process on October 10, 2024 also cannot serve as the "final adverse action"—the grievance process is not over, with Step 3 Arbitration due to occur May 28–29, 2025. Thus, if the claim rests upon this date, then it is unripe. *International Association of Firefighters, Local 731*, Item #257 at 7 ("The Board will not take jurisdiction in a matter which is clearly a contract grievance ripe for arbitration."). By Local 731's own argument, this claim is either time-barred or it is unripe. Either way, it must be dismissed.

Local 731's citation to *City of N. Las Vegas v. State Local Gov't Emp.-Mgmt. Relations Bd.*, 127 Nev. 631, 261 P.3d 1071 (2011) cannot save these claims—the Board in *City of North Las Vegas* agreed that the employee's resignation was the date on which the "final adverse action" occurred, *id.* at 127 Nev. at 639, 261 P.3d at 1077, but agreed that the SOL could be equitably tolled to the date when the employee learned about other employees who did not receive similar discipline. *Id.* at 127 Nev. at 640, 261 P.3d at 1077. Here, Local 731 does not even argue for such equitable tolling. But even if the Board were to apply *City of North Las Vegas* to equitably toll the final adverse action date, the alleged "final adverse action" was clearly the change in TPAs in January 2024, which *at best* is stretched by *City of North Las Vegas* to April 2024—Local 731's alleged date of awareness of its concerns with the Plan document, Compl. ¶ 25, not an arbitrary date during the grievance process. Local 731's Opposition concedes by failing to oppose the City's argument that the granted continuances do not constitute a "final adverse action," Mot. at 10–11, and the new positions it adopts in briefing still fail to save its second claim and it should be dismissed as untimely under NRS 288.110(4) or nonjusticiable as unripe.

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[6]Even if one was inclined to indulge in Local 731's unsupported conjecture regarding the City's alleged influence over SPPA, Local 731 alleges that the City appointed Chief Crawforth as the Vice Chair of the GHCC (a non-voting position, with no impact to any union) on August 28, 2024, Compl. ¶ 32,—the month before the September GHCC meeting, where SPPA (not Chief Crawforth) voted on the medical necessity review point. So even if the Board takes all Local 731's claims as true when considering the Motion to Dismiss, the two other unions' vote at the September 19, 2024 GHCC meeting simply does not constitute City action. Nor does it make sense that Chief Crawforth would conspire with the City to allegedly reduce his own medical benefits as a fellow member of the City's Health Plan.

2. Local 731's Answer Demonstrates the City's Good Faith

In a footnote, Local 731 contends that the purpose of the City's two continuances is "clearly a factual dispute," Opp'n at 6 n.3, but does not address that it admitted in in Answer to receiving the City's full review of its claims after the September GHCC meeting. Mot. at 14–15, *see generally* Opp'n 6–8. Again, Local 731 admits that the City spent months and hundreds of hours reviewing and responding via letters to all of its over 100 Plan document concerns, meaning that the City's behavior could not be "surface bargaining" as defined by the Board in *IAFF, Local 731*. *See* Opp'n at 6. *IAFF, Local 731* involved Local 731 declaring impasse too early, Item # 253-A at 10–11, while here Local 731 acknowledges that the City actively considered its concerns from May 2024 (before Local 731 filed its grievance), Ans. to Am. Cross-Compl. ¶ 29, through the City's first letter reviewing some of Local 731's claims on June 24, *id.* at ¶ 94, through the September 19, 2024 meeting, culminating in its final letter on October 3, *id.* ¶ 133, and its Step 2 denial on October 10. Therefore, the requested continuances allowed the City to respond to Local 731's GHCC Grievance through written responses. The City sought extensions to fully respond to Local 731's voluminous benefit change contentions and those admitted-to letters demonstrate the City's good faith. *Tomco Commc'ns, Inc.*, 567 F.2d at 883 ("A state of mind such as good faith is not determined by a consideration of events viewed separately. The picture is created by a consideration of all the facts viewed as an integrated whole." (citation omitted)).

It is churlish of Local 731 to contend the City is relying on assertions of its subjective intent to demonstrate good faith—City does not point to its own intent, it points to conduct admitted to by Local 731. Under both claims, the City points to documented actions and concessions, while all Local 731 can rely on is its perception of the City's subjective intent—under the Force Hire claim, Local 731 supposedly believes there was a verbal agreement that it believes the City violated in providing a written agreement, while the City points to Local 731's admission that it accepted the terms of the written agreement; under the GHCC claim, Local 731 believes the City sought an extension to answer its grievance for the sole purpose of "rigging" a vote relating to one claim within that grievance, while the City points to admissions that Local 731 received detailed documents from the City reviewing Local 731's 100+ claims after that meeting. These concessions

that documentary evidence exists rebutting Local 731's two claims demonstrate that a hearing on these claims would be a waste of the Board's (and the parties') time and should be dismissed.

3. Local 731's Discovery Issued Under the Second Claim Reveals the Claim is Baseless.

Local 731 does not deny it issued sixty-two Requests for Information (RFI) to the City long after it filed the subject Complaint, without leave of the Board, for the specific purpose of preparing for "a future EMRB hearing." Mot. at 12–13, *see* Opp'n at 8. Local 731 asserts that the sixty-two RFIs were "targeted," Opp'n at 8, without addressing the City's observation that the RFIs were overlapping and repetitive. *See* Mot. at 12 (citing three RFIs seeking the same Plan document using different words). Local 731 then argues that the RFIs show diligence in supporting its theory in advance of the GHCC Grievance's Step 3 arbitration. Opp'n at 8. An RFI could demonstrate diligence if it was sent before Local 731 filed its GHCC Grievance (or its EMRB Complaint), which Local 731 has done in the past with other potential grievances. Instead, counsel for Local 731 is scrambling to develop a workable contract violation theory after former Local 731 leadership decided to pursue the GHCC grievance to arbitration. While Local 731 contends it is merely gathering "additional supporting material," Opp'n at 8 (emphasis added), the RFI asks for a copy of the prior and current Plan document. Mot. at 12–13. If Local 731's counsel did not have copies of those two Plan documents, how could it claim the 2024 Plan document demonstrated a change in benefits? This lack of documentation demonstrates that counsel lacked diligence in filing not one but two different legal actions[7] before actually confirming whether Local 731's claims were colorable. The RFIs, issued as discovery in this EMRB proceeding without the Board's leave, demonstrate that Local 731 is unprepared and pursued both Step 3 arbitration and this bad faith Complaint, without first reviewing the critical documents at issue—let alone digesting the City's detailed responses to Local 731's over 100 claimed concerns. Because Local 731's claims are legally and factually insufficient, they should be dismissed.

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[7] The City observes that during the pendency of this action, counsel for Local 731 sent the City a demand letter threatening to file a third legal action, again alleging violations of the CBA due to the change in TPAs in a proposed federal lawsuit.

IV. FRIVOLOUSNESS

In response to the City's demonstration that the Complaint is frivolous and that the claims are legally unsupported, Mot. at 16–17, Local 731's argued "you don't spend 17 pages rebutting what you think is nonsense." Opp'n at 8. But rebutting false information always takes more time in legal briefing compared to the time it takes to argue nonsense or make the false and unsupported assertion.

Take, for instance, Local 731's Reply brief in support of its Motion to Dismiss the Amended Cross-Complaint. It takes one sentence on page 9 of that brief for Local 731 to assert "See IAFF Local 1908 v. Clark County, EMRB Case No. A1-045417, Item No. 200 (1987) (finding prohibited practice where employer retaliated against union for filing grievance)." (emphasis added). It takes the City multiple sentences to explain why that citation is fabricated:

(1) The case title from Local 731's citation, "IAFF Local 1908 v. Clark County" is the title of Item #34, not Item #200, and Item #34 is a one-page decision dismissing the case as resolved. *See Nevada Federated Fire Fighters of International Association of Fire Fighters, Local 1908 vs. County of Clark*, Case No. A-101573, Item #34 (May 5, 1975).

(2) The case number of Local 731's citation is the case number of yet another case—Item #195, not Item #200, which is another one-page decision dismissing the case due to the parties stipulating to dismissal. *See Las Vegas City Employee Protective and Benefits Association, Inc. vs. City of Las Vegas*, Case No. A1-045417, Item #195 (Sept. 10, 1987).

(3) Item #200, which matches neither the case name nor number cited by Local 731, is again a one-page dismissal due to the parties' stipulation. *See Classified School Employee Association vs. Clark County School District*, Case No. A1-045423, Item #200 (Mar. 10, 1988).

(4) Therefore, Local 731's Reply brief in support of its Motion to Dismiss's citation is entirely made up, it is not a mistake of just one mis-cited element of the citation, and the accompanying parenthetical supporting Local 731's argument must also be completely fabricated, given that the undersigned is unable to find any EMRB decision that supports that proposed finding.

This exercise helps illustrate Professor Noam Chomsky's quote that "[i]t takes one minute to tell a lie, and an hour to refute it."[8] It also demonstrates that the City's meticulous refutation of Local 731's Complaint as baseless does not somehow give the Complaint legs. The Complaint is frivolous and the City should be awarded attorneys' fees for its time. *See International Association of Firefighters, Local 731,* Item #257 at 7–8.

V. CONCLUSION

Legal principles explain that the Board does not need to waste its time here. Under its first claim, Local 731 does not allege a written agreement occurred but plans to rebut a written document with an alleged verbal agreement, which Board caselaw demonstrates is not actionable in the labor contract negotiation context. Local 731's second claim is either time-barred or unripe, depending on which assertion in the briefing the Board looks to. But even if the Board were to find the claim ripe for adjudication, the claim rests on Local 731's steadfast refusal to acknowledge (in its Complaint or briefing) that the City was diligently responding to its concerns, only to undercut its own story by admitting in its Answer that it received the City's concluding analysis after the September 19 hearing. The City asks the Board to apply the law and dismiss the complaint: Local 731 does not allege probable cause to state a claim.

Respectfully submitted this 1st day of May, 2025.

WESLEY K. DUNCAN
Sparks City Attorney

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JESSICA L. COBERLY
Attorneys for Respondent City of Sparks

[8] Noam Chomsky, *A-Z Quotes*, https://www.azquotes.com/quote/1426728, (last visited April 24, 2025).

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 **REPLY IN SUPPORT OF THE MOTION TO DISMISS THE PROHIBITED PRACTICE COMPLAINT** 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 1st day of May, 2025.

/s/ Roxanne Doyle
Roxanne Doyle