Alex Velto, Esq.
Nevada State Bar No. 14961
Paul Cotsonis, Esq.
Nevada State Bar No. 8786
REESE RING VELTO, PLLC
200 S. Virginia Street, Suite 655
Reno, NV 89501
Telephone: (775)446-8096
alex@rrvlawyers.com
paul@rrvlawyers.com
Attorneys for Complainant

FILED
January 24, 2025
State of Nevada
E.M.R.B.
3:22 p.m.

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

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 PROHIBITED PRACTICE COMPLAINT AGAINST CITY OF SPARKS

INTRODUCTION

This is a prohibited practice complaint pursuant to Nevada Revised Statutes ("NRS") 288.270(1)(e) based on the City of Sparks' ("Respondent" or "City") refusal to bargain in good faith with the International Association of Firefighters Local No. 731 ("Union," "Complainant," or "Local 731"). Local 731 asserts that the City violated NRS 288.270(1)(e) by unilaterally changing healthcare providers and benefits and then bargaining in bad faith the resolution of the subsequent grievance and by refusing to implement an agreed-to resolution involving Force Hires.

Complainant, by and through its undersigned counsel, respectfully submits this Complaint and complains and alleges as follows:

JURISDICTION AND PARTIES

1. At all times relevant herein, Complainant Local 731 was and is an "employee organization" pursuant to NRS 288.040 and/or a "labor organization." Complainant's current mailing address is 9590 S. McCarran Blvd, Reno Nv. 89523.

2. At all times relevant herein, Respondent is and was a "Government Employer" pursuant to NRS 288.060. Respondent's current mailing address is 431 Prater Way, Sparks, NV 89431.

3. The Board has jurisdiction of this matter pursuant to NRS 288.110 to hear and determine "any controversy concerning prohibited practices."

4. NRS 288.270 provides in relevant part:

> It is a prohibited practice for a local government employer or its designated representative willfully to:
>
> (a) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter.
> (b) Dominate, interfere or assist in the formation or administration of any employee organization.
> ...
> (e) Refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150. Bargaining collectively includes the entire bargaining process, including mediation and fiact-finding, provided for in this chapter.
> (f) Discriminate because of race, color, religion, sex, sexual orientation, gender identity or expression, age, physical or visual handicap, national origin or because of political or personal reasons or affiliations.

5. The Respondent and Complainant have completed the negotiations for a successor one-year collective bargaining agreement ("CBA") to the parties' July 1, 2021, to June 30, 2024, CBA, that has yet been ratified.

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FACTUAL ALLEGATIONS

Force Hire Program

6. Respondent engages in a practice known as the "Force Hire Program" which is a practice of forcing employee overtime to ensure twenty-four hour seven-days a week coverage for certain positions.

7. The Force Hire Program operates off a rotating list whereby employees at the top of the list would be required to work forced overtime.

8. Initially an employee could expect to be forced to work overtime under the Forced Hire Program once a year, but over time the use of Force Hire occurrences increased to multiple times per six-day week in certain circumstances.

9. On or about March 2, 2022, Local 731 filed a grievance regarding the Force Hire Program ("Force Hire Grievance").

10. An arbitration regarding the Force Hire Grievance was subsequently held, but did not finish.

11. On or about July 12, 2023, the parties reached a side letter agreement putting the Force Hire Grievance Arbitration in abeyance and placing limits on the Force Hire Program's usage for a period of six months ("Side Letter").

12. On or about July 12, 2024, the parties proceeded to mediation on the Force Hire Grievance but were unsuccessful in reaching a resolution.

13. On or about September 4, 2024, Local 731 Vice President, Darren Jackson and Local 731 Representative, Mike Szopa, met with Chief Walt White and Division Chief Derek Keller to discuss the Force Hire Grievance and another grievance involving ambulance usage ("Ambulance Grievance").

14. During that meeting the parties reached an agreement to both the Ambulance and Force Hire Grievances. The parties agreed and shook hands over the essential terms of a resolution to

the grievance, which included a limitation on the frequency a member may be Force Hired and allowance of a specific number of refusals of Force Hires per sixth month period.

15. The agreed to resolution to the Ambulance Grievance included a 5% pay bump for ambulance work.

16. The agreed to resolution to the Force Hire Grievance was the official authorization of the practice into the CBA and codifying the limits thereto as were outlined in the Side Letter into the CBA as well.

17. Thereafter, on or about September 9, 2024, the City provided a draft Memorandum of Understanding ("MOU") which was a significant deviation from what was agreed to during the meeting.

18. Specifically, the MOU purported to revise the CBA to officially authorize the Force Hire Program, but did not include the agreed-to limits to that authorization into the CBA. Instead, the limits to the Force Hire Program were purportedly to be implemented by policy.

19. The City included a redlined version of the MOU that included edits and comments, including a comment that expressly clarified the City's intent was to keep the resolution in policy so that it could revoke the resolution between the Parties at any time later on. Including their intent to take work from L731 members and give said work to members of the Chief's Association and the Operating Engineers 3 union members in direct contradiction to arbitrator's previous decisions.

20. Thereafter, the Local 731 repeatedly attempted to get Respondent to put the limitations to the Force Hire Program into the CBA, rather than policy, as agreed to during the August , 2024, meeting, but Respondent refused.

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Group Health Care Committee

21. Pursuant to the CBA, the health benefits and changes thereto are governed by a Group Health Care Committee ("GHCC") comprised of 1 voting member and 1 alternate for Local 731, Operating Engineers 3("OE3"), and Sparks Police Protective Association ("SPPA").

22. The GHCC is empowered to bind each bargaining unit to any modification in benefits provided at least two voting members of the GHCC ratify said modification.

23. Changes to the health plan and benefits have always been made through the GHCC.

24. On or about January 1, 2024, Respondent unilaterally changed healthcare provisions including but not limited to putting a cap on physical therapy visits.

25. In April of 2024, Local 731 discovered Respondent's unilateral changes to the healthcare provisions and filed a grievance regarding Respondents blatant violation of the CBA ("GHCC Grievance").

26. Respondent then tried to have the GHCC approve of the changes on or about July 18th, 2024, which was unsuccessful.

27. The parties met in July of 2024 for the Step II meeting on the GHCC Grievance ("Step II").

28. During the Step II discussions the parties discussed getting Local 731's vote on the GHCC to retroactively approve the changes and resolving the GHCC Grievance.

29. Local 731's proposed options for resolution to the GHCC Grievance and securing Local 731's vote on the GHCC included providing additional benefits to Local 731 members, such as a health savings account, inclusion of a high deductible plan, more favorable sick leave conversions and/or higher percentages for retiree coverage.

30. At the conclusion of the Step II, Respondent requested the GHCC Grievance be stayed to October 10th of 2024 to allow Respondent to "run the numbers" on the proposed options to resolve the GHCC Grievance.

31. Local 731 agreed to Respondent's request for a stay to the GHCC Grievance.

32. On or about ~~October~~ August 28th of 2024, before the expiration of the stay to the GHCC Grievance, Respondent appointed City of Sparks Police Chief, Chris Crawforth as Committee Vice Chair to sit in on the September GHCC meeting, however, Chief Crawforth presided over the meeting that day.

33. On or about September 19, 2024, by a vote of 2 to 1 with the OE3 and SPPA in favor and Local 731 opposed, the GHCC voted to approve of the changes Respondent previously made to the health plan.

34. Shortly after the GHCC vote, Respondent denied the GHCC grievance.

35. Local 731 believes and herein alleges that Respondent had no intention of "running the numbers" in relation to Local 731's proposed options for resolving the GHCC Grievance and, instead, was using this as an excuse to delay the grievance process to allow Respondent to insert City of Sparks Police Chief Crawforth as Committee Chair to the GHCC in order to sway SPPA's vote in favor of approving of the changes Respondent made to the health plan.

36. The Collective Bargaining Agreement requires the City to negotiate over changes to the Plan, which means all changes, no matter how large or small.

37. Historically, the City has requested Union approval for all changes to the agreement regarding benefits.

38. The changes the City made were not small. They created significant changes, including, placing a limitation on the number of Physical Therapy visits a member can receive per year in an arbitrary manner.

39. Further, in late December 2024, the Union became aware of a change in the policy that effectively prevents members from submitting claims by no longer providing a process for Local 731 to submit claims.

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FIRST CLAIM FOR RELIEF

Prohibited Practice under NRS 288.270(1)(e)

40. The allegations contained in all preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth herein.

41. Under NRS 288.270(1)(e) it is a prohibited practice to "[r]efuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150. Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter.

42. Respondent violated NRS 288.270(1)(e) when it refused to fully incorporate the agreed-to-terms resolving the Force Hire issue by codifying both the authorization for the Force Hire Program and limits to that authority into the CBA as agreed to.

SECOND CLAIM FOR RELIEF

Prohibited Practice under NRS 288.270(1)(e)

43. The allegations contained in all preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth herein.

44. Respondent violated NRS 288.270(1)(e) in seeking a continuance of the GHCC Grievance process under the false pretense of seeking a resolution to the GHCC Grievance when it had no such intention.

45. Local 731 believes and herein alleges that Respondent sought the continuance of the GHCC Grievance process to buy it time to pressure the SPPA member of the GHCC to vote in favor of retroactively ratifying Respondents changes to the Health Plan by putting the City of Sparks Chief of Police as the chair of the GHCC.

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PRAYER FOR RELIEF

Complainant respectfully requests that this Board:

1. Find in favor of Complainant and against the Respondent on each and every claim in this Complaint;

2. Find that Respondent violated NRS 288.270(1)(e) by failing to bargain in good faith with respect to the Force Hire Program;

3. Find that Respondent violated NRS 288.270(1)(e) by failing to bargain in good faith with respect to the GHHC Grievance;

4. Order that due to Respondent's bad faith bargaining in relation to the Force Hire Program that Respondent is enjoined from using it until such time as the parties have bargained in good faith over the terms of its usage and have come to an agreement;

5. Order Respondent to bargain in good faith with Local 731 the effects of its unilateral changes to the health care provisions;

6. Order that Respondent pay Complainant's attorney's fees and costs incurred in this matter; and

7. Order such further relief as the Board deems appropriate under the circumstances.

Date: January 24th 2025.

Respectfully submitted,

/s/ Alex Velto

ALEX VELTO, ESQ.
NV BAR NO. 14961
PAUL COTSONIS, ESQ.
NV BAR NO. 8786
REESE RING VELTO, PLLC
200 S. Virginia Street, Suite 655
Reno, Nevada 89501
T: 775-446-8096
E: alex@rrvlaw_ers.com
paul@rrvlaw_ers.com

CERTIFICATE OF SERVICE

I hereby certify that on January 24th 2025, I have mailed in portable document format as required by NAC 288.070(d)(3), a true and correct copy of INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 PROHIBITED PRACTICE COMPLAINT AGAINST CITY OF SPARK as addressed below and sent certified mail pursuant to NAC 288.200(2). I also have filed the document with the Nevada Government Employee-Management Relations Board via its email address at emrb@business.nv.gov:

CITY OF SPARKS
431 Prater Way
Sparks, NV 8523

/s/Rachael L. Chavez

City of Sparks (Respondent)

Answer to Prohibited Practice Complaint

Wesley K. Duncan, #12362
Sparks City Attorney
wduncan@cityofsparks.us
Jessica L Coberly, #16079
Acting Chief Assistant City Attorney
jcoberly@cityofsparks.us
P.O. Box 857
Sparks, Nevada 89432-0857
(775) 353-2324
Attorneys for Respondent City of Sparks

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 **ANSWER TO PROHIBITED PRACTICE COMPLAINT**

ANSWER

Respondent City of Sparks (Respondent), answers Complainant International Association of Firefighters Local No. 731 (Complainant)'s Prohibited Practices Complaint (Complaint) as follows, in paragraphs numbered to correspond to the paragraph numbers in the Complaint and with headings and subheadings that correspond to the headings and subheadings used in the Complaint.

JURISDICTION

1. Respondent is without information sufficient to form a belief as to the allegations contained in paragraph 1 regarding Complainant and therefore denies paragraph 1.

2. Admitted that Respondent is and was a "Government Employer" pursuant to NRS 288.060. Denied to the extent that any mail regarding this matter should be sent to mailing address 431 Prater way, Sparks, NV 89431 without additional direction—all mail regarding this matter that cannot be sent via e-mail should be sent c/o City Attorney's Office.

3. The allegation in paragraph 3 states Complainant's characterization of the law, which requires no response as the applicable law speaks for itself. To the extent Complainant's allegation is inconsistent with applicable law, Respondent denies it.

4. The allegation in paragraph 4 states Complainant's characterization of the law, which requires no response as the applicable law speaks for itself. To the extent Complainant's allegation is inconsistent with applicable law, Respondent denies it.

5. Admitted that as of the filing date of the Complaint, January 24, 2025, the City of Sparks City Council had not yet voted to approve the successor one-year Collective Bargaining Agreement (CBA). Denied to the extent that the allegation maintains that the CBA remains not yet ratified, as the CBA was approved by City of Sparks City Council on January 27, 2025.

FACTUAL ALLEGATIONS

Force Hire Program

6. Denied that Respondent operates any program or practice that the Respondent refers to as a "Force Hire Program," and Respondent restates this denial throughout the Answer to any use in the Complaint of the term "Force Hire Program." Admitted that it is the City's practice pursuant to CBA Section 1, Article C(5) and (6) to utilize mandatory emergency and non-emergency callback overtime and mandatory emergency and non-emergency overtime (collectively, "mandatory overtime").

7. Admitted that when Respondent utilizes mandatory overtime, Respondent operates off of one rotating list whereby employees at the top of the list would be required to work any type of mandatory or voluntary overtime.

8. Respondent lacks knowledge of what Sparks Fire Department (SFD) employees "expect[ed]," lacks knowledge of what time period this clause referred to through the use of the word "initially," and therefore denies the first clause of paragraph 8. Respondent lacks knowledge of what time period is referred to by the use of the words "over time" in the second clause and therefor denies the second clause as overbroad, vague and ambiguous. Respondent admits that since 2020, Respondent has utilized mandatory overtime more than one time in a six-day week per individual employee.

9. Denied that Respondent received any grievance from Complainant on March 2, 2022.

10. Admitted that Respondent previously attend a grievance arbitration regarding Complainant's Grievance 22-004, referred to in Complainant's Complaint as the "Force Hire Grievance," that did not finish.

11. Admitted that the parties reached a side letter agreement on July 12, 2023 regarding the Force Hire Grievance, putting the Force Hire Grievance in abeyance. Denied that that the side letter "plac[ed] limits on" any "force hire program," as SFD does not have a program with the title "force hire program." Admitted that in the July 12, 2023 side letter, Respondent committed to providing two opportunities per calendar year, per Complainant member, to turn down mandatory overtime, for a trial period of six months.

12. Admitted.

13. Admitted.

14. Admitted that the parties agreed generally on terms of a resolution to the Ambulance and Force Hire Grievances, which included a limitation on the frequency a member may be "Force Hired" as termed by Complainant. Denied that the essential terms included an "allowance of a specific number of refusals of Force Hires per sixth month period," or that any resolution discussed waiting until the sixth month of a year to place a limit on refusals. Denied that the agreement was a formal document or formal set of terms, as Chief White agreed to bring back a draft proposal and a separate draft SFD Standard Operating Procedure 1.16.

15. Admitted that the agreed-to resolution to the Ambulance Grievance included a 5% special pay for employees assigned to the ambulance.

16. Denied.

17. Admitted that Chief White provided to Complainant a draft Memorandum of Understanding (MOU) on September 6, 2024. Denied that the September 6, 2024 MOU "was a significant deviation from what was agreed to during the [September 4, 2024] meeting."

18. Admitted that on September 6, 2024, Respondent provided a draft Memorandum of Understanding (MOU) to Complainant that, if adopted, would revise the CBA to incorporate

a 1.75% special pay rate of the employee's base salary for mandatory overtime, provided at the Fire Chief's sole discretion, when attempting to maintain minimum staffing as outlined in CBA Section 1, Article G. Respondent admits that the September 6, 2024 MOU draft did not incorporate the process for filling any mandatory overtime vacancies into the CBA.

19. Admit to the first clause of paragraph 19, insofar as Respondent erroneously provided to Complainant a draft MOU with attorney-client privileged and deliberative comments. Respondent denies the second clause of the first sentence of paragraph 19 and denies the remainder of paragraph 19.

20. Admitted that Complainant "repeatedly attempted to get Respondent to put the limitations to the Force Hire Program into the CBA, rather than policy," and admitted that "Respondent refused." Respondent denies that Respondent agreed to incorporate the process for filling any mandatory overtime vacancies into the CBA during any meeting with Complainant.

Group Health Care Committee

21. Denied that "[p]ursuant to the CBA, the health benefits and changes thereto are governed by a Group Health Care Committee (GHCC)", given that the CBA states that the GHCC's "purpose … is to discuss cost containment measures and to *recommend to the City Council* any benefit changes." (emphasis added). Admitted that the GHCC is comprised of one (1) voting member and one (1) alternate for Local 731, Operating Engineers 3 ("OE3"), and Sparks Police Protective Association ("SPPA").

22. Denied. Admitted "[t]he voting member of each recognized bargaining unit shall have the authority to bind said bargaining unit to any modification in benefits *recommended to the City Council* subject to ratification of at least two (2) of the voting members." (emphasis added).

23. Denied that all changes to the wording or formatting of the health plan "have always been made through the GHCC." Admitted that the GHCC votes on all changes to the benefits in the health plan.

24. Denied.

25. Denied that Respondent made "unilateral changes to the healthcare provisions" and

denied that Respondent "blatant[ly] violat[ed] … the CBA." Admitted that Complainant filed a grievance on April 8, 2024.

26. Denied.

27. Admitted.

28. Denied.

29. Denied.

30. Denied.

31. Admitted that on August 6, 2024, Complainant agreed to Respondent's August 1, 2024 emailed request for a 90-day extension to issue the Step 2 response to the GHCC Grievance on October 10, 2024. Denied that Respondent made a "request for a stay to the GHCC Grievance."

32. Admitted that on August 28, 2024, Respondent re-appointed Chris Crawforth as Committee Vice Chair of the GHCC. Denied that any GHCC meeting occurred on August 28, 2024.

33. Denied that Complainant voted on September 19, 2024 on General Business Item 7.3, "Review, Discussion, and consideration to determine threshold for medical necessity review as applied to medically necessary therapies." The allegation in Complainant's second clause of paragraph 33 states Complainant's characterization of the GHCC General Business Item, which requires no response as the GHCC General Business Item speaks for itself. To the extent Complainant's allegation is inconsistent with the title and content of GHCC General Business Item 7.3, Respondent denies it. To the extent Complainant is characterizing in the second clause of paragraph 33 "the changes Respondent made to the health plan" as the "unilateral changes to the healthcare provisions" in "blatant violation of the CBA" referenced in paragraph 25, Respondent denies the second clause of paragraph 33.

34. Denied that "shortly after the GHCC vote" Respondent denied the GHCC Grievance. Admitted that Respondent's City Manager provided his Step 2 response and denied the Grievance on October 10, 2024.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. The City lacks awareness of the factual basis for paragraph 39 and therefore denies the allegation as overbroad, vague, and ambiguous.

FIRST CLAIM FOR RELIEF

Prohibited Practice under NRS 288.270(1)(e)

40. Respondent admits and denies the allegations of paragraph 40 as stated above.

41. The allegations in paragraph 41 state Complainant's characterizations of law, which require no response as the applicable law speaks for itself. To the extent Complainant's allegations are inconsistent with the law, Respondent denies them.

42. Denied.

SECOND CLAIM FOR RELIEF

Prohibited Practice under NRS 288.270(1)(e)

43. Respondent admits and denies the allegations of paragraph 43 as stated above

44. The allegations in paragraph 41 state Complainant's characterizations of law, which require no response as the applicable law speaks for itself. To the extent Complainant's allegations are inconsistent with the law, Respondent denies them.

45. Denied.

PRAYER FOR RELIEF

Respondent denies that Complainant is entitled to any of the relief requested in the Complaint, including, but not limited to, the relief prayed for in paragraphs 1 through 7 of the Prayer for Relief.

Respectfully submitted this 18th day of February, 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 **ANSWER TO 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

I also have filed the document with the Nevada Government Employee-Management Relations Board via its email address at emrb@business.nv.gov.

DATED this 18th day of February, 2025.

/s/ Roxanne Doyle
Roxanne Doyle

City of Sparks (Complainant/Respondent)

Cross Complaint

Wesley K. Duncan, #12362
Sparks City Attorney
wduncan@cityofsparks.us
Jessica L Coberly, #16079
Acting Chief Assistant City Attorney
jcoberly@cityofsparks.us
P.O. Box 857
Sparks, Nevada 89432-0857
(775) 353-2324
Attorneys for Complainant/Respondent City of Sparks

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' CROSS COMPLAINT**

INTRODUCTION

This is a prohibited practices complaint pursuant to Nevada Revised Statutes (NRS) 288.270(2)(b) based on the International Association of Firefighters Local No. 731 (Union/Complainant/Respondent)'s refusal to bargain in good faith with the City of Sparks (City/Respondent/Complainant). The City contends that the Union violated NRS 288.270(2)(b) by Union counsel violating the Nevada Rules of Professional Conduct (NRPC) in knowingly reviewing attorney-client privileged communications, the Union presenting false allegations to the Employee Management Relations Board (EMRB), the Union making knowingly false assertions in grievance meetings, and the Union engaging in surface bargaining within the grievance process as a whole by going through the motions to file grievances the Union has no real intention of pursuing. The City, by and through its undersigned counsel, respectfully submits this Cross-

Complaint and complains and alleges as follows:

JURISDICTION

1. At all times relevant herein, City is and was a "Government Employer" pursuant to NRS 288.060. City's current mailing address is c/o City Attorney's Office, 431 Prater Way, Sparks, NV 89431.

2. At all times relevant herein, Union was and is an "employee organization" pursuant to NRS 288.040 and or a "labor organization." Union's current mailing address is 9590 S. McCarran Blvd, Reno NV 89523.

3. The Board has jurisdiction to hear and review this matter pursuant to its authority to determine "[a]ny controversy concerning prohibited practices." NRS 288.110.

4. The City alleges that the Union violated NRS 288.270(2)(b) by "[r]efus[ing] to bargain collectively in good faith with the local government employer."

5. The City and the Union completed negotiations for a successor one-year collective bargaining agreement (CBA) to the parties' July 1, 2021 to June 30, 2024 CBA. The Union voted to approve the successor CBA on January 10, 2025, and the City Council approved the successor CBA on January 27, 2025.

FACTUAL ALLEGATIONS

Force Hire Grievance Background Facts

6. The Union filed Grievance 22-004 (the "Force Hire Grievance") on March 17, 2022, claiming that the City agreed in the CBA that it "would not force-hire firefighters to work overtime" and that when there are insufficient numbers of Sparks Fire Department (SFD) employees to staff an apparatus, the City should instead "place apparatuses out of service."

7. Pursuant to the then-current July 1, 2021 through June 30, 2024 CBA, under Section 1, Article L(4) - Grievance procedure, the City provided the Fire Chief's Step 1 response on April 13, 2022, the City Manager's Step 2 response on May 18, 2022, and the Union appealed the Step 2 decision to arbitration on June 7, 2022.

8. In lieu of arbitration, the City and the Union attempted to resolve the Force Hire Grievance through various means, including attending an ultimately unsuccessful mediation on

July 12, 2024.

9. Since June 7, 2022, the Union filed two additional grievances that related to the Force Hire Grievance.

10. The Union filed Grievance 22-009 regarding ambulance staffing (which contended lack of minimum staffing on an ambulance should result in placing the apparatus out of service),, to which the City provided a Step 1 response on July 8, 2022 and a Step 2 response on August 3, 2022, whereafter the Union appealed the response to arbitration on August 24, 2022.

11. In July 2023, Fire Chief Walt White began a discussion with the Union that resulted in a Side Letter detailing a proposed process for SFD employees to turn down mandatory overtime assignments, which gave employees two opportunities to turn down "force hire overtime" and limited force hire overtime of any individual to once per pay period. The Side Letter agreed to a six-month trial period of this process.

12. The Union further filed Grievance 24-004 regarding ambulance staffing (generally claiming safety and staffing issues again consistent with the arguments alleged under the Force Hire Grievance), on July 10, 2024.

13. The City began settlement discussions with the Union to craft a memorandum of understanding (MOU) to resolve all three grievances relating to force hiring in September 2024.

14. Negotiations consisted of numerous meetings between the Fire Chief and the Union, and multiple meetings and discussions with the City Manager's office.

15. In those negotiations, regarding "Ambulance" Grievances 22-009 and 24-004, the Union requested that normal daily staffing of ambulances be set at two (2) personnel, that no cross-staffing of the ambulance occur from other apparatuses except under extenuating circumstances, that the City would discuss with the Union before implementing single-role EMT or paramedics on the ambulance, and that Union employees assigned to the ambulance receive a special pay of 5% while assigned to the ambulance.

16. Regarding the Force Hire Grievance, the Union requested that a procedure be developed to allow SFD employees to turn down mandatory overtime assignments.

17. The City drafted an MOU that incorporated all the Ambulance Grievance requests,

addressed the Force Hire Grievance by proposing incorporation of a process to turn down mandatory overtime assignments into SFD's existing Standard Operating Procedure (SOP) 1.16 for "Overtime/Callback", 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.

18. The Union reviewed the draft, and in a meeting regarding the Force Hire and Ambulance Grievances on September 4, 2024, additionally requested that all negotiated elements of the MOU be incorporated into the CBA, including the process the City proposed for inclusion in SOP 1.16 by which the Fire Chief would allow employees to turn down mandatory overtime assignments.

19. In the September 4, 2024 meeting, the City did not agree to incorporate all elements of the MOU in the CBA.

20. Because the City declined to incorporate the proposed process for employees to turn down mandatory overtime into the CBA, in a later call between the City Manager and Union President Dan Tapia, the City instead offered in the next draft of the MOU that the City would not change the terms of that SOP for at least two years.

21. SFD's SOPs normally may be changed at the Fire Chief's discretion by issuing a new SOP for a "ten (10) day hanging," or allowing ten days for SFD employees to review and comment on the policy—referred to as a notice and comment process—before implementing the new SOP.

22. The City Manager's offer acknowledged the Union's request to keep the process to turn down mandatory overtime consistent and committed to retaining the process in SFD's SOP 1.16 for two years, instead of allowing the Fire Chief to change at any time through the normal ten-day notice and comment process.

NRPC 4.4 Violation – Force Hire Grievance

23. On September 6, 2024, Fire Chief White sent then-Union Vice President Darren Jackson, Union Vice President Tom Dunn, and then-Union Grievance Steward Jarrod Stewart the City's proposed amended MOU responding to the Union's suggested edits.

24. The draft provided by Chief White to the Union erroneously included deliberative and attorney-client privileged comments.

25. The MOU draft's title clearly indicated that it included revisions from at least two City employees, "alm" and "JLC."

26. Upon opening the document, it was immediately clear that the document contained internal and attorney-client privileged City comments. In fact, Jessica Coberly (Attorney Coberly), at the time Senior Assistant City Attorney, made an attorney-client privileged comment as early as Page 1 of the MOU.

27. The draft also included comments from Alyson McCormick, the Assistant City Manager (ACM) for the City of Sparks. As ACM McCormick does not currently fulfill a legal counsel role, her comments constituted deliberations that are protected from disclosure as part of the City's deliberative process. *Clark Cnty. Sch. Dist. v. Las Vegas Rev.-J.*, 134 Nev. 700, 705 (2018) (Deliberative Process is a recognized basis for the confidentiality of government records that "were part of a predecisional and deliberative process that led to a specific decision or policy").

28. ACM McCormick's comments on a draft sent to the City's attorney for review also constitute client requests for legal advice and would similarly be protected by the attorney-client privilege.

29. Both then-Union Vice President Jackson and then-Grievance Steward Stewart had met with Attorney Coberly numerous times regarding pending grievances and were aware she was an attorney employed by the City as early as May 20, 2024, when they both arranged to meet with her to discuss Grievance 24-002 regarding the City's Health Plan (Health Care Grievance).

30. Also on May 20, 2024, Attorney Coberly was introduced to Alex Velto, counsel for the Union via email sent by then-Vice President Jackson. ***See id.*** Counsel Velto was on notice that Attorney Coberly was an attorney for the City from May 20, 2024 forward.

31. At some point in time after September 6, 2024, the Union provided Fire Chief White's email and/or the attached draft MOU with Attorney Coberly's comments to Counsel Velto.

32. As demonstrated by the Complaint 2025-001 filed by Counsel Velto with the EMRB on January 24, 2025, Counsel Velto opened the draft MOU some time after September 6, 2024 and reviewed the attorney-client privileged comments on pages 1 and 2 before arriving to Attorney Coberly's final comment on page 3.

33. The Union's Complaint 2025-001 takes issue with Attorney Coberly's comment on page 3 of the draft MOU. Attorney Coberly's comment highlighted the words "Standard Operating Procedure (SOP)" in the following draft MOU language:

> SECTION 5: The parties agree that Fire Department Standard Operating Procedure (SOP) 1.16 will be amended to provide a process for filling any Mandatory Overtime vacancies.

34. Attorney Coberly's comment, directed internally, questioned that draft language to her client by adding the comment "Just confirming that SOPs can be amended without the notice & comment process."

35. The draft MOU itself stated that agreeing to the MOU would result in a change to an SFD SOP, but did not address the 10-day notice and comment process identified in the CBA to change SOPs.

36. On October 1, 2024, Counsel Velto provided notice under NRPC 4.4(b) to ACM McCormick that he received "a document … relating to the representation of the lawyer's client … inadvertently sent."

37. NRPC 4.4(b) is identical to the American Bar Association (ABA) Model Rule of Professional Conduct (MRPC) 4.4(b).

38. Under NRPC 1.0A, "[t]he … comments to the ABA Model Rules of Professional Conduct … may be consulted for guidance in interpreting and applying the Nevada Rules of Professional Conduct."

39. ABA MRPC 4.4 Comment 2 explains that "this Rule requires the lawyer to promptly notify the sender in order to permit that person *to take protective measures*." (emphasis added). Furthermore, per Comment 3, "[s]ome lawyers may choose to return a document … unread, for example, when the lawyer learns before receiving it that it was inadvertently sent."

ABA MRPC 4.4 Comment 3.

40. Similarly, as far back as 1992 the American Bar Association in a formal opinion observed:

> A lawyer who receives on an unauthorized basis materials of an adverse party that she knows to be privileged or confidential should, upon recognizing the privileged or confidential nature of the materials, either *refrain from reviewing such materials* or review them only to the extent required to determine how appropriately to proceed.

Gomez v. Vernon, 255 F.3d 1118, 1132 (9th Cir. 2001) (quoting ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 382 (1994)).

41. Counsel Velto knew before September 2024 that Attorney Coberly provided legal representation to the City before reviewing the draft MOU and still read all of Attorney Coberly's comments in the draft MOU.

42. Counsel Velto knew from the substance of the comments that these internal comments were privileged attorney-client communications and pertained to the confidential deliberative process of government decision-makers, and still read the remainder of the comments throughout the draft document, taking issue with the last comment written by Attorney Coberly on page 3 of the document after several other attorney-client and deliberative comments on the previous pages.

43. Given the confidential nature of the draft MOU was clear from page 1, reviewing all the comments on the MOU was not necessary to "determine how appropriately to proceed," *Gomez*, 255 F.3d at 1132, and Counsel Velto's review of the entire document did not permit Attorney Coberly "to take protective measures." ABA MRPC 4.4, Comment 2.

44. Following Counsel Velto's review of the attorney-client privileged and deliberative process comments, the City and the Union met to discuss the draft MOU on October 2, 2024.

45. At the October 2, 2024 meeting, Union Vice President Tom Dunn and Counsel Velto explained they interpreted Attorney Coberly's internally-directed comment regarding SFD's normal procedure for issuing SOPs as demonstrating the City's intent to immediately disregard the negotiated term of the MOU contained in SOP 1.16—regarding the process for

declining mandatory overtime—at any time, asserting that the comment demonstrated that the City intended to blatantly violate its commitment in the MOU to retain the SOP for two years.

46. Attorney Coberly explained in that meeting to the Union and its Counsel that, as it was directed internally, her comment was flagging that *in the MOU itself* the Union and the City were considering changing an SOP without the notice and comment process pursuant to the CBA.

47. Counsel Velto responded that he would not have arrived at his impression of Attorney Coberly's comment had not Fire Chief White made a representation that Counsel Velto believed Fire Chief White had yet to follow through on in an unrelated SFD personnel matter.

48. Attorney Coberly does not work on that unrelated personnel matter, which is handled by outside counsel hired by the City.

49. Chief White's alleged representations in an unrelated personnel matter have no bearing on the veracity or interpretation of Attorney Coberly's comment on the MOU to resolve the Ambulance and Force Hire Grievances.

50. In that October 2, 2024 meeting, the City and the Union had further discussions pertaining to other aspects of the MOU and the Union provided additional edits to the MOU for the City's consideration.

51. On October 15, 2024, Fire Chief White provided the City's response to the Union's October 2, 2024 suggested edits to the MOU as his formal Step 1 response to Grievance 24-004.

52. On November 4, 2024, the Union responded to the City's October 15, 2024 draft of the MOU, accepting the City's proposed edit to the MOU to retain the process for employees to turn down mandatory overtime in SOP 1.16 for at least two years.

53. The City reviewed the November 4 MOU draft and provided additional edits on November 13, 2024, similarly retaining the process to turn down mandatory overtime in SOP 1.16 for at least two years.

54. After failing to come to an agreement, the parties agreed to proceed with arbitration regarding the Force Hire Grievance on February 5–7, 2025.

55. On February 4, 2024, the evening before the Force Hire Grievance arbitration, the Union sent a draft MOU to the City's outside counsel for that arbitration entitled

"L731_EDITS_2OCT2024 Ambulance OTF MOU."

56. Given its "2OCT2024" title, this draft did not include the agreed-upon language from the Union's November 2024 draft, and instead again proposed incorporating the process to turn down mandatory overtime in the CBA, despite having already accepted edits in November 2024 providing an alternative solution.

57. The City again declined to incorporate the process to turn down mandatory overtime into the CBA. Instead, on February 5, 2025, the City offered a draft MOU committing that the process to turn down mandatory overtime in SOP 1.16 would only be changed after notice and discussion with the Union in a Labor-Management meeting and ninety (90) day notice to the employees, instead of the CBA's required ten (10) day notice.

58. This February 2025 proposal by the City was even more in the Union's favor than the November 2024 solution that the Union had agreed to and subsequently reneged on.

59. The Union did not agree to the City's February 5, 2024 proposed MOU terms and on February 5 and 6, 2025, the parties arbitrated the Union's contract interpretation claim in the Force Hire Grievance.

False Statement to EMRB – Group Health Care Grievance

60. For decades, the City has sponsored its self-funded Health Care Plan and administered that Plan through the use of Third-Party Administrators (TPAs), meaning that all Sparks employees have "City of Sparks" health insurance, administered by whatever company the City Council decides to contract with to process insurance payments to employee members' providers.

61. The City of Sparks previously used a TPA called CDS until January 2016, whereupon the City Council entered into a contract with Hometown Health to administer the City's Health Care Plan.

62. When the City contracted with CDS to be the City's TPA, the City used CDS's Plan document template to present the City's Health Plan benefits to its members.

63. Similarly, from January 2016 to January 2024, the City utilized Hometown Health to administer the City's Plan and used a Hometown Health Plan document template to present the

City's Health Plan benefits to its members.

64. In January 2024, the City Council entered into a contract with UMR, a UnitedHealthcare company, to administer the City's Health Plan and began using a UMR Plan document template to present the City's Health Plan benefits to its members.

65. Pursuant to the language in the CBA between the Union and the City, and in the CBA between the Sparks Police Protective Association (SPPA) and the City, and in Operating Engineers Local Union No. 3 Skilled Workforce (OE3) and the City, the City maintains a Group Health Care Committee (GHCC), comprised of one voting member from each of these three unions, and the GHCC's purpose "is to discuss cost containment measures and to recommend to the City Council any benefit changes to the City's self-insured group health and life insurance plan."

66. The GHCC did not vote on the formatting changes of the City's Plan document when the City changed TPAs from CDS to Hometown Health or from Hometown Health to UMR.

67. Changing TPAs does not change the Health Plan benefits offered by the City.

68. Despite having the exact same language regarding the GHCC's purpose in both SPPA's and OE3's CBAs, neither union has joined this Union by filing a grievance regarding the City's new TPA UMR or publicly expressed support for the Union's grievance.

69. In a September 21, 2023 GHCC meeting, the City's Human Resources (HR) department provided a presentation explaining that because then-City TPA Hometown Health's contract with the City would expire on December 31, 2023, that the City put out a Request for Proposals for a new TPA, and that the City Council would evaluate three potential TPAs—Hometown Health, UMR, and Meritain.

70. The City's HR presentation explained that, beginning in 2024, Staff would recommend to the City Council to select UMR as the City's TPA because UMR had a broader network of covered providers than Hometown Health, UMR's performance guarantees collectively held UMR to a higher standard than Hometown Health, and UMR had uniquely better mental health services than both other TPAs.

71. The GHCC does not have contracting authority for the City and did not vote on the

City's TPA selection.

72. The GHCC may only vote on "cost containment measures" and "any benefit changes."

73. At the September 21, 2023 GHCC meeting, Police Chief Chris Crawforth was identified as the Vice Chair.

74. On September 25, 2023, the Sparks City Council voted to select UMR as the City's TPA.

75. At the December 7, 2023 GHCC meeting, the City's HR department provided a presentation on the City's physical therapy medical benefit. Then-HR Director Jill Valdez explained that the City's Plan document required the then-TPA Hometown Health to "look for medical necessity" as it relates to Physical Therapy.

76. Later in that meeting, the Hometown Health representative revealed that Hometown Health believed all physical therapists must receive a doctor's prescription before providing physical therapy. Then-HR Director Valdez explained that was not the case in Nevada.

77. During the TPA transition from Hometown Health to UMR, the City learned during that Hometown Health had never confirmed whether any members' physical therapy was medically necessary as required by the City's Hometown Health-administered Plan document.

78. The December 7, 2023 meeting minutes list Police Chief Crawforth as the Vice Chair of the GHCC.

79. Both the Hometown Health-administered Plan document and the UMR-administered Plan document require physical therapy to be "medically necessary."

80. After the TPA transition to UMR, the City's UMR-administered Plan document provides administrative guidance that "medical necessity will be reviewed after 25 visits" for therapy services, including physical therapy.

81. The Hometown Health-administered Plan document did not include this administrative guidance, and Hometown Health was not reviewing physical therapy claims for medical necessity at all and was not enforcing the "medically necessity" requirement for the City's physical therapy benefit.

82. The City's UMR-administered Plan document further states that there is a cap of "26 … maximum visits per calendar year" for speech therapy services for developmental delays. ***Id.***

83. The language "review for medical necessity" is not the same as the language capping "maximum visits per calendar year."

84. Pursuant to the Plan's language, the administrative review conducted by UMR at 25 therapy visits determines whether medical necessity exists to authorize further therapy visits.

85. In early May 2024, before May 9, 2024, the City Attorney's Office's met with then-Union Vice President Jackson and then-Union Grievance Steward Stewart regarding member concerns about the City Council's recent decision to change the TPA of the City's Group Health Plan.

86. In that meeting, the Union provided a document to the City Attorney's Office for review a document with extensive annotations challenging perceived changes in benefits in the City's newly-issued UMR Plan, which was also shared with the City Manager's office.

87. The City immediately began reviewing the Union's over 100 identified concerns and began working with UMR to understand whether the Union's concerns constituted changes in benefits, or whether the new wording in the City's UMR Plan document presented the same benefits as the City's previous Hometown Health Plan document.

88. While that review was ongoing, on May 9, 2024, the Union filed Grievance 24-002, alleging that the City "den[ied] healthcare treatment previously provided by [the City's Health Care] Plan."

89. The May 9, 2024 Grievance identified an awareness date of April 8, 2024. ***Id.*** at 1.

90. An awareness date of April 8, 2024 made the grievance untimely pursuant to the CBA's requirement that any grievance be filed "within twenty (20) working days from the day the employee is grieved" (given that 20 working days from April 8, 2024 would have been May 3, 2024). "Grievances not filed within the required time frames will be forfeited."

91. On June 12, 2024, the Fire Chief denied the grievance and explained to the Union

the City Council's choice of the TPA was beyond the scope of his authority.

92. During the City's review of the Union's concerns, HR explained in the June 4, 2024 GHCC workshop that during the TPA transition from Hometown Health to UMR, "the City elected to choose 25" physical therapy visits "as a review spot for medical necessity. Not to say this is a cap, this is where we are going to review medical necessity.... [G]uidelines in the plan should never be bypassed [and] [t]here are guidelines in the plan that talk about medical necessity."

93. On June 24, 2024, the City Attorney's Office sent a letter to the City Manager detailing 59 concerns raised by the Union regarding the City's UMR-administered Health and Dental Plan documents that the City Attorney's Office determined did not demonstrate changes in benefits. The City Manager provided this letter to the Union.

94. The June 24 letter explained that any differences in language between the Hometown Health Plan document and the UMR Plan document did not result in a change in benefits as it related to physical therapy.

95. On June 25, 2024, the City Manager, former Acting City Manager/Police Chief Crawforth, City Attorney, and then-Senior Assistant City Attorney Coberly met with the Union for a "pre-meeting" regarding the Group Health Plan.

96. In the pre-meeting, the Union discussed its member who was experiencing difficulty with receiving UMR's approval for his physical therapy claims or his wife's multiple times a week physical therapy claims beyond the 25-visit check point stated in the City's UMR-administered Plan document.

97. The Union's solution to this particular employee's problem was for the City to reject the Plan document administered by UMR and force UMR to administer the Hometown Health Plan document language.

98. Making changes to the UMR-administered Plan document without UMR's notice or mutual consent is a violation of the City's contractual requirement to "mutually agree[] in writing prior to implementation of [any] change."

99. After this meeting, the Union sent a follow-up letter to the June 24 letter with further

questions and concerns.

100. On June 26, 2024, the City Manager's office requested an extension for the Step 2 response. The Union did not explicitly grant an extension but requested a meeting with the City Manager in lieu of an extension.

101. The City Manager agreed to meet with the Union until the Union no longer requested meetings and would then send the Step 2 response.

102. The City Manager met with the Union on July 16, 2024 for the Step 2 meeting at City Hall.

103. In the July 16, 2024 Step 2 meeting, Union counsel explained the Union's position was that *any* change to the City's Plan document—not just "any benefit changes", must go before the GHCC for a vote.

104. In that July 16, 2024 Step 2 meeting, no discussion occurred from either the City or the Union regarding potential future benefit changes to the City's Health Plan—in the form of adding a health savings account, inclusion of a high deductible plan, more favorable sick leave conversions and/or higher percentages for retiree coverage—in exchange for the Union's willingness to resolve the Group Health Grievance.

105. After the July 16, 2024 meeting, the Union agreed to continue meeting with the City in lieu of granting a written extension for the City Manager's Step 2 response.

106. On July 18, 2024, the Union sent then-Vice President Jackson to the scheduled GHCC meeting. Then-Vice President Jackson arrived 20 minutes late and refused to vote to approve the agenda and open the GHCC meeting.

107. Then-Vice President Jackson stated the Union demanded the City revert to the Plan document format used by former TPA Hometown Health and treat it as the controlling document, despite the City's contract signed by the City Council with UMR.

108. The July 18, 2024 GHCC meeting did not occur as the agenda was not approved by a majority of the voting members.

109. On July 24, 2024, the City met with the Union for scheduled collective bargaining negotiation.

110. In that discussion, the Union requested the City consider additional health benefits, and although the Union did not have a formal proposal to present, the Union discussed the possibility of the City adding a health savings account, inclusion of a high deductible plan, more favorable sick leave conversions and/or higher percentages for retiree coverage.

111. The Union did not request that the City consider implementing those new health benefits as a resolution to the Group Health Grievance.

112. The City Manager noted in the meeting that any change to the City's health benefits would have to be voted on by the GHCC and that he could not implement a change to benefits solely through CBA negotiations, but agreed to look into the cost to the Plan and the impact to the City's current benefits if any one of those options were presented to the GHCC.

113. On July 31, 2024, the City Attorney's Office sent a second letter to the City Manager explaining that the 15 clarification questions raised in the Union's follow-up letter still did not demonstrate changes in benefits in the Health Plan, and that 25 other concerns with the UMR-administered Health Plan document raised by the Union did not demonstrate changes in benefits. The City Manager provided this letter to the Union.

114. The July 31, 2024 letter specifically responded to the Union's additional question regarding the physical therapy benefit and expanded upon its previous response to clarify why the City did not interpret the change in the language of the Plan document as demonstrating a change in benefits.

115. The Union did not ask additional follow up questions regarding the City's interpretation of the City's physical therapy benefit after receiving the July 31, 2024 letter.

116. On August 1, 2024, the City Manager emailed then-Union Vice President Jackson requesting confirmation in writing by August 6, 2024, that the Union would grant an extension for his Step 2 response, explaining that he would provide his Step 2 response on August 7, 2024 if no extension was granted.

117. On August 6, 2024, the Union granted the City Manager's requested 90-day extension to October 10, 2024.

118. On September 19, 2024, the City Attorney's Office presented to the GHCC the

results of its review of over 161 concerns raised by the Union regarding the UMR-administered plan document.

119. The presentation identified that of the concerns raised, 138 did not constitute changes in employee health benefits or require additional clarification.

120. To ensure the Plan language clearly reflected the same benefits as the prior Hometown Health Plan document, the City would request 23 language changes be made to the UMR Plan document to clarify the benefits remained the same.

121. None of the City's requested language changes described in the presentation related to the Union's concern regarding the need to demonstrate medical necessity for physical therapy benefits.

122. None of the City's requested changes related to any concerns previously brought forward by any members of the City's Health Plan.

123. The Union's representative on the GHCC thanked the City Attorney's Office for the hard work.

124. The GHCC did not vote on the changes presented by the City Attorney's Office, as those changes clarified that employees' health benefits stayed the same.

125. Also at the September 19, 2024 meeting, GHCC Vice Chair Police Chief Crawforth gave a presentation explaining why, when he was the Acting City Manager in 2023 and 2024, he and Human Resources agreed on setting the 25 visit checkpoint with UMR.

126. UMR told then-Acting City Manager Crawforth that the average physical therapy patient uses 12 physical therapy appointments a year. The City determined that it would request UMR check for medical necessity at 25 appointments, once more than double the average amount of physical therapy appointments had occurred.

127. GHCC Vice Chair Crawforth also gave an overview of other municipalities in the area, identifying that Reno's health plan administered by UMR also checked for medical necessity of therapies at 25 visits.

128. GHCC Vice Chair Crawforth explained that UMR identified that seven members of the City's plan utilized PT more than 25 times in a year.

129. The GHCC voting members SPPA and OE3 at the September 19, 2024 meeting voted on General Business Item 7.2 to ratify the City's decision to set 25 visits as the threshold at which UMR would conduct its City Plan-required medical necessity review.

130. The Union did not vote on General Business Item 7.2 at the September 19, 2024 meeting.

131. On October 3, 2024, the City Attorney's Office sent a third letter to the City Manager identifying that the remaining 37 concerns raised by the Union did not demonstrate changes in benefits. With this letter, the City through counsel had reviewed and responded to all of the Union's identified concerns and determined that none demonstrated a change in benefits.

132. The City Manager provided this letter to the Union on October 3, 2024.

133. The Union did not ask for further clarification after receiving the October 3, 2024 letter.

134. Therefore, pursuant to the agreed-upon extensions, the City Manager timely provided the Step 2 response to the Union's Group Health Care Grievance denying the Grievance on October 10, 2024.

135. The statement in the Union's EMRB complaint 2025-001 that the UMR Plan document "put[] a cap on physical therapy visits" is a false statement.

136. "[F]alse representations amount to 'a failure to bargain in good faith regarding each of the above mandatory subjects of bargaining,' which 'constitutes an unfair labor practice.'" *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).

False Statements in Negotiations – Light Duty Grievance

137. On November 4, 2024, the Union filed Grievance 24-005 ("Light Duty Grievance").

138. The Grievance does not state the factual basis for the alleged violation of the CBA.

139. Prior to filing the Grievance, in Labor Management discussions the Union argued that the City's past practice of placing employees on light duty due to a workers' compensation injury on a 40-hour schedule, while retaining the employees' 56-hour pay and benefits, violated

the CBA in two ways.

140. The Union argued the CBA required that either (a) employees put on a 40-hour work schedule for light duty due to a workers' compensation injury be fully transitioned to a 40-hour schedule, including pay rate and benefits, and the City's past practice of keeping employees' pay and benefits on a 56-hour schedule and only changing the work schedule to a 40-hour schedule violated the CBA; or (b) employees on light duty due to a workers' compensation injury should stay on a 56-hour schedule for their schedule, pay, and benefits, because temporarily transitioning 56-hour employees to a 40-hour schedule due to workers' compensation injuries violated Nevada statute.

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

142. In the Fire Chief's review of the Light Duty Grievance, he evaluated the option presented by the Union to fully transition workers' compensation-injured employees onto a 40-hour schedule for work and benefits, and determined the CBA specifically provided that employees on light duty could be transitioned to a 40-hour work schedule and retain 56-hour pay and benefits, consistent with the City's past practice.

143. The Fire Chief determined that the City did not have bed space to maintain workers' compensation employees on 56-hour schedules, particularly given the Union's secondary claim in the Ambulance Grievance that the current sleeping accommodations were insufficient.

144. The Fire Chief's Step 1 response accordingly denied the Light Duty Grievance on December 19, 2024, determining it did not state a violation of the CBA.

145. The Union's Vice President Dunn and by that time former-Grievance Steward Stewart met with the City Manager and the City Attorney's Office in a Grievance "pre-meeting" on January 15, 2024.

146. Union Vice President Dunn said he "saw the City's point" regarding the Fire Chief's Step 1 response pointing to CBA language that specifically allowed the City's past practice of transitioning employees' work schedule—but not pay and benefits—to 40-hour schedule when on light duty due to a workers' compensation injury.

147. Former Steward Stewart in that meeting then contended that changing a workers' compensation-injured employee's schedule from a 56-hour schedule to a 40-hour schedule constituted a violation of statute.

148. This statement was in direct contradiction to the case law former Steward Stewart had been presented in Labor Management meetings, which established 56-hour schedules for firefighters are "substantially similar" to 40-hour schedules. *Taylor*, 479 P.3d at 1001–02.

149. "[F]alse representations amount to 'a failure to bargain in good faith regarding each of the above mandatory subjects of bargaining,' which 'constitutes an unfair labor practice.'" *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).

Surface Bargaining – Outstanding Grievances

150. In addition to these Grievances and those for which the Union is continuing to negotiate, the Union maintains two additional grievances, Grievance 22-009 filed in November 2022 and appealed to arbitration in February 2023, and Grievance 23-001 filed in January 2023 and appealed to arbitration in April 2023.

151. In the over two years since these Grievances were filed, the Union has failed to select arbitrators, which is a required initial step to commence these arbitration proceedings, indefinitely stalling any resolution of these Grievances.

152. In the over two years since these Grievances were filed, the Union is not currently negotiating with the City regarding these grievances.

153. The Union's filing of grievances just to let them languish for years evinces a lack of good faith in the underlying alleged concern.

154. "[A] party's conduct at the bargaining table must evidence a sincere desire to come to an agreement. The determination of whether there has been such sincerity is made by 'drawing

inferences from the conduct of the parties as a whole.'" *Washoe County School District v. Washoe School Principals' Association and Washoe School Principals' Association v. Washoe County School District*, Item #895 Consolidated Case 2023-024 (consolidated with 2023-031) at 3 (EMRB, Mar. 29, 2024) (en banc) (quoting *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A (EMRB, Feh. 8, 1991)).

155. "Surface bargaining is a strategy by which one of the parties merely goes through the motions, with no intention of reaching an agreement. In this regard, it is a form of bad faith bargaining." *Id.* at 6 (citing *City of Reno v. Int'l Ass'n of Firefighters, Local 731,* Item No. 253-A (EMRB, Feb. 8, 1991)).

156. The Union's practice of filing grievances and moving them through the grievance process only to abandon them after requesting arbitration constitutes surface bargaining, where the Union merely goes through the motions to file grievances that do not have good faith basis to use the existence of grievances as negotiation tools.

157. To provide additional context to the Union's interaction with the City, in March 2022, the Union's predecessor union, International Association of Fire Fighters Local 1265, published a motion approved at a Union executive board meeting by then-President Darren Jackson, wherein the Union stated then-Fire Chief Jim Reid "mismanaged COVID-19 relief funds."

158. Under NRS 204.020, if a "public officer … who has control or custody any public money belonging … to any … city … who uses any of the public money … for any purposes other than one authorized by law, if the amount unlawfully used is $650 or more, is guilty of a category D felony."

159. Stating that then-Fire Chief Reid "mismanaged" thousands of dollars in City funds states a claim that then-Fire Chief Reid committed a felony under NRS 204.020.

160. Then-City Manager Krutz reached to the Union for clarification or details regarding this accusation of fiscal mismanagement.

161. Local 1265 then-President Darren Jackson replied by email, stating, "We are not alleging some kind of unlawful act. We are simply stating that an opportunity was missed and

that the small amount of money that the FD received was not spent on anything that the men and women on the line could use to make our response to COVID better."

162. Under NRS 200.510(1)–(2), "libel is a malicious defamation, expressed by …writing … tending to … impeach the honesty, integrity, virtue, or reputation, … of a living person … and thereby to expose them to public hatred, contempt or ridicule," which is a gross misdemeanor.

163. Then-City Manager Krutz stated "I am pleased that Local 1265 clarified that they are not alleging that Chief Reid engaged in illegal activity."

164. Publishing a false statement asserting that then-Fire Chief Reid committed a felony, knowing it was not a felony, constitutes libel.

165. "[F]alse representations amount to 'a failure to bargain in good faith regarding each of the above mandatory subjects of bargaining,' which 'constitutes an unfair labor practice.'" *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).

FIRST CLAIM FOR RELIEF

Prohibited Practice under NRS 288. 270(2)(b)—Unethical Review of Privileged Communications

166. The allegations contained in all preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth herein.

167. Under NRS 288.270(2)(b), it is a prohibited practice to "Refuse to bargain collectively in good faith with the local government employer.... Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter."

168. The Union violated NRS 288.270.(1)(e) when its counsel opened the draft MOU inadvertently sent to him containing attorney-client privileged and deliberative communications, read initial attorney-client privileged communications between Attorney Coberly and Chief White, and then attempted to utilize attorney-client privileged and deliberative process communications against the City in grievance negotiations, in violation of NRPC 4.4(b), ABA

MRPC 4.4(b) Comment 2, 3, and long-established ABA Committee on Ethics and Professional Responsibility Formal Opinions.

SECOND CLAIM FOR RELIEF

Prohibited Practice under NRS 288. 270(2)(b) – False Statements to the EMRB

169. The allegations contained in all preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth herein.

170. Under NRS 288.270(2)(b), it is a prohibited practice to "Refuse to bargain collectively in good faith with the local government employer.... Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter."

171. The Union violated NRS 288.270.(1)(e) when it falsely stated in its EMRB complaint 2025-001 that the UMR Plan document "put[] a cap on physical therapy visits."

172. "[F]alse representations amount to 'a failure to bargain in good faith regarding each of the above mandatory subjects of bargaining,' which 'constitutes an unfair labor practice.'" *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).

THIRD CLAIM FOR RELIEF

Prohibited Practice under NRS 288. 270(2)(b) – Bad Faith Negotiation

173. The allegations contained in all preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth herein.

174. Under NRS 288.270(2)(b), it is a prohibited practice to "Refuse to bargain collectively in good faith with the local government employer.... Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter."

175. The Union violated NRS 288.270.(1)(e) when it falsely stated in grievance negotiations to the City in relation to the Light Duty Grievance that the City's practice was in violation of statute when the Union was on notice that the City's past practice was in accordance with Nevada Supreme Court case law evaluating the same claim.

176. "[F]alse representations amount to 'a failure to bargain in good faith regarding each of the above mandatory subjects of bargaining,' which 'constitutes an unfair labor practice.'" *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).

FOURTH CLAIM FOR RELIEF

Prohibited Practice under NRS 288. 270(2)(b) – Surface Bargaining By Failing to Pursue Filed Grievances

177. The allegations contained in all preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth herein.

178. Under NRS 288.270(2)(b), it is a prohibited practice to "Refuse to bargain collectively in good faith with the local government employer.... Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter."

179. The Union violated NRS 288.270.(1)(e) when it engaged in surface bargaining through filing grievances and appeals to arbitrators in bad faith that it had no intent to pursue.

180. "Surface bargaining is a strategy by which one of the parties merely goes through the motions, with no intention of reaching an agreement. In this regard, it is a form of bad faith bargaining." *Washoe County School District*, Item #895 at 6 (EMRB, Mar. 29, 2024) (en banc) *Id.* at 6 (citing *City of Reno v. Int'l Ass'n of Firefighters, Local 731,* Item No. 253-A (EMRB, Feb. 8, 1991)).

PRAYER FOR RELIEF

The City respectfully requests that this Board:

1. Find in favor of the City and against the Union on each and every claim in this Complaint;

2. Find that the Union violated NRS 288.270(2)(b) by failing to bargain in good faith by Union counsel violating NRPC 4.4(b);

3. Find that the Union violated NRS 288.270(2)(b) by making false statements to the EMRB;

4. Find that the Union violated NRS 288.270(2)(b) by failing to bargain in good faith by making false statements in negotiations for the Light Duty Grievance;

5. Find that the Union violated NRS 288.270(2)(b) by failing to bargain in good faith by surface bargaining through filing bad faith grievances;

6. Order that the Union bargain in good faith with the City;

7. Order that the Union pay the City's attorney's fees and costs incurred in this matter; and

8. Order such further relief as the Board deems appropriate under the circumstances.

Respectfully submitted this 19th day of February, 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' CROSS 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 19th day of February, 2025.

/s/ Roxanne Doyle
Roxanne Doyle

City of Sparks (Complainant/Respondent)

Amended Cross Complaint

Wesley K. Duncan, #12362
Sparks City Attorney
wduncan@cityofsparks.us
Jessica L Coberly, #16079
Acting Chief Assistant City Attorney
jcoberly@cityofsparks.us
P.O. Box 857
Sparks, Nevada 89432-0857
(775) 353-2324
Attorneys for Complainant/Respondent City of Sparks

FILED
February 27, 2025
State of Nevada
E.M.R.B.
12:24 p.m.

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' AMENDED CROSS COMPLAINT

INTRODUCTION

This is an amended prohibited practices complaint pursuant to Nevada Revised Statutes (NRS) 288.235(1) and NRS 288.270(2)(b) based on the International Association of Firefighters Local No. 731 (Union/Complainant/Respondent)'s refusal to bargain in good faith with the City of Sparks (City/Respondent/Complainant). The City contends that the Union violated NRS 288.270(2)(b) by Union counsel violating the Nevada Rules of Professional Conduct (NRPC) in knowingly reviewing attorney-client privileged communications, the Union presenting false allegations to the Employee Management Relations Board (EMRB), the Union making knowingly false assertions in grievance meetings, and the Union engaging in surface bargaining within the grievance process as a whole by going through the motions to file grievances the Union has no

real intention of pursuing. The City, by and through its undersigned counsel, respectfully submits this Cross-Complaint and complains and alleges as follows:

JURISDICTION

1. At all times relevant herein, City is and was a "Government Employer" pursuant to NRS 288.060. City's current mailing address is c/o City Attorney's Office, 431 Prater Way, Sparks, NV 89431.

2. At all times relevant herein, Union was and is an "employee organization" pursuant to NRS 288.040 and or a "labor organization." Union's current mailing address is 9590 S. McCarran Blvd, Reno NV 89523.

3. The Board has jurisdiction to hear and review this matter pursuant to its authority to determine "[a]ny controversy concerning prohibited practices." NRS 288.110.

4. The City alleges that the Union violated NRS 288.270(2)(b) by "[r]efus[ing] to bargain collectively in good faith with the local government employer."

5. The City and the Union completed negotiations for a successor one-year collective bargaining agreement (CBA) to the parties' July 1, 2021 to June 30, 2024 CBA. The Union voted to approve the successor CBA on January 10, 2025, and the City Council approved the successor CBA on January 27, 2025.

FACTUAL ALLEGATIONS

Force Hire Grievance Background Facts

6. The Union filed Grievance 22-004 (the "Force Hire Grievance") on March 17, 2022, claiming that the City agreed in the CBA that it "would not force-hire firefighters to work overtime" and that when there are insufficient numbers of Sparks Fire Department (SFD) employees to staff an apparatus, the City should instead "place apparatuses out of service."

7. Pursuant to the then-current July 1, 2021 through June 30, 2024 CBA, under Section 1, Article L(4) - Grievance procedure, the City provided the Fire Chief's Step 1 response on April 13, 2022, the City Manager's Step 2 response on May 18, 2022, and the Union appealed the Step 2 decision to arbitration on June 7, 2022.

8. In lieu of arbitration, the City and the Union attempted to resolve the Force Hire

Grievance through various means, including attending an ultimately unsuccessful mediation on July 12, 2024.

9. Since June 7, 2022, the Union filed two additional grievances that related to the Force Hire Grievance.

10. The Union filed Grievance 22-009 regarding ambulance staffing (which contended lack of minimum staffing on an ambulance should result in placing the apparatus out of service),, to which the City provided a Step 1 response on July 8, 2022 and a Step 2 response on August 3, 2022, whereafter the Union appealed the response to arbitration on August 24, 2022.

11. In July 2023, Fire Chief Walt White began a discussion with the Union that resulted in a Side Letter detailing a proposed process for SFD employees to turn down mandatory overtime assignments, which gave employees two opportunities to turn down "force hire overtime" and limited force hire overtime of any individual to once per pay period. The Side Letter agreed to a six-month trial period of this process.

12. The Union further filed Grievance 24-004 regarding ambulance staffing (generally claiming safety and staffing issues again consistent with the arguments alleged under the Force Hire Grievance), on July 10, 2024.

13. The City began settlement discussions with the Union to craft a memorandum of understanding (MOU) to resolve all three grievances relating to force hiring in September 2024.

14. Negotiations consisted of numerous meetings between the Fire Chief and the Union, and multiple meetings and discussions with the City Manager's office.

15. In those negotiations, regarding "Ambulance" Grievances 22-009 and 24-004, the Union requested that normal daily staffing of ambulances be set at two (2) personnel, that no cross-staffing of the ambulance occur from other apparatuses except under extenuating circumstances, that the City would discuss with the Union before implementing single-role EMT or paramedics on the ambulance, and that Union employees assigned to the ambulance receive a special pay of 5% while assigned to the ambulance.

16. Regarding the Force Hire Grievance, the Union requested that a procedure be developed to allow SFD employees to turn down mandatory overtime assignments.

17. The City drafted an MOU that incorporated all the Ambulance Grievance requests, addressed the Force Hire Grievance by proposing incorporation of a process to turn down mandatory overtime assignments into SFD's existing Standard Operating Procedure (SOP) 1.16 for "Overtime/Callback", 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.

18. The Union reviewed the draft, and in a meeting regarding the Force Hire and Ambulance Grievances on September 4, 2024, additionally requested that all negotiated elements of the MOU be incorporated into the CBA, including the process the City proposed for inclusion in SOP 1.16 by which the Fire Chief would allow employees to turn down mandatory overtime assignments.

19. In the September 4, 2024 meeting, the City did not agree to incorporate all elements of the MOU in the CBA.

20. Because the City declined to incorporate the proposed process for employees to turn down mandatory overtime into the CBA, in a later call between the City Manager and Union President Dan Tapia, the City instead offered in the next draft of the MOU that the City would not change the terms of that SOP for at least two years.

21. SFD's SOPs normally may be changed at the Fire Chief's discretion by issuing a new SOP for a "ten (10) day hanging," or allowing ten days for SFD employees to review and comment on the policy—referred to as a notice and comment process—before implementing the new SOP.

22. The City Manager's offer acknowledged the Union's request to keep the process to turn down mandatory overtime consistent and committed to retaining the process in SFD's SOP 1.16 for two years, instead of allowing the Fire Chief to change at any time through the normal ten-day notice and comment process.

NRPC 4.4 Violation – Force Hire Grievance

23. On September 6, 2024, Fire Chief White sent then-Union Vice President Darren Jackson, Union Vice President Tom Dunn, and then-Union Grievance Steward Jarrod Stewart the

City's proposed amended MOU responding to the Union's suggested edits.

24. The draft provided by Chief White to the Union erroneously included deliberative and attorney-client privileged comments.

25. The MOU draft's title clearly indicated that it included revisions from at least two City employees, "alm" and "JLC."

26. Upon opening the document, it was immediately clear that the document contained internal and attorney-client privileged City comments. In fact, Jessica Coberly (Attorney Coberly), at the time Senior Assistant City Attorney, made an attorney-client privileged comment as early as Page 1 of the MOU.

27. The draft also included comments from Alyson McCormick, the Assistant City Manager (ACM) for the City of Sparks. As ACM McCormick does not currently fulfill a legal counsel role, her comments constituted deliberations that are protected from disclosure as part of the City's deliberative process. *Clark Cnty. Sch. Dist. v. Las Vegas Rev.-J.*, 134 Nev. 700, 705 (2018) (Deliberative Process is a recognized basis for the confidentiality of government records that "were part of a predecisional and deliberative process that led to a specific decision or policy").

28. ACM McCormick's comments on a draft sent to the City's attorney for review also constitute client requests for legal advice and would similarly be protected by the attorney-client privilege.

29. Both then-Union Vice President Jackson and then-Grievance Steward Stewart had met with Attorney Coberly numerous times regarding pending grievances and were aware she was an attorney employed by the City as early as May 20, 2024, when they both arranged to meet with her to discuss Grievance 24-002 regarding the City's Health Plan (Health Care Grievance).

30. Also on May 20, 2024, Attorney Coberly was introduced to Alex Velto, counsel for the Union via email sent by then-Vice President Jackson. Counsel Velto was on notice that Attorney Coberly was an attorney for the City from May 20, 2024 forward.

31. At some point in time after September 6, 2024, the Union provided Fire Chief White's email and/or the attached draft MOU with Attorney Coberly's comments to Counsel

Velto.

32. As demonstrated by the Complaint 2025-001 filed by Counsel Velto with the EMRB on January 24, 2025, Counsel Velto opened the draft MOU some time after September 6, 2024 and reviewed the attorney-client privileged comments on pages 1 and 2 before arriving to Attorney Coberly's final comment on page 3.

33. The Union's Complaint 2025-001 takes issue with Attorney Coberly's comment on page 3 of the draft MOU. Attorney Coberly's comment highlighted the words "Standard Operating Procedure (SOP)" in the following draft MOU language:

> SECTION 5: The parties agree that Fire Department Standard Operating Procedure (SOP) 1.16 will be amended to provide a process for filling any Mandatory Overtime vacancies.

34. Attorney Coberly's comment, directed internally, questioned that draft language to her client by adding the comment "Just confirming that SOPs can be amended without the notice & comment process."

35. The draft MOU itself stated that agreeing to the MOU would result in a change to an SFD SOP, but did not address the 10-day notice and comment process identified in the CBA to change SOPs.

36. On October 1, 2024, Counsel Velto provided notice under NRPC 4.4(b) to ACM McCormick that he received "a document … relating to the representation of the lawyer's client … inadvertently sent."

37. NRPC 4.4(b) is identical to the American Bar Association (ABA) Model Rule of Professional Conduct (MRPC) 4.4(b).

38. Under NRPC 1.0A, "[t]he … comments to the ABA Model Rules of Professional Conduct … may be consulted for guidance in interpreting and applying the Nevada Rules of Professional Conduct."

39. ABA MRPC 4.4 Comment 2 explains that "this Rule requires the lawyer to promptly notify the sender in order to permit that person *to take protective measures*." (emphasis added). Furthermore, per Comment 3, "[s]ome lawyers may choose to return a document

… unread, for example, when the lawyer learns before receiving it that it was inadvertently sent." ABA MRPC 4.4 Comment 3.

40. Similarly, as far back as 1992 the American Bar Association in a formal opinion observed:

> A lawyer who receives on an unauthorized basis materials of an adverse party that she knows to be privileged or confidential should, upon recognizing the privileged or confidential nature of the materials, either *refrain from reviewing such materials* or review them only to the extent required to determine how appropriately to proceed.

Gomez v. Vernon, 255 F.3d 1118, 1132 (9th Cir. 2001) (quoting ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 382 (1994)) (emphasis added).

41. Counsel Velto knew before September 2024 that Attorney Coberly provided legal representation to the City before reviewing the draft MOU and still read all of Attorney Coberly's comments in the draft MOU.

42. Counsel Velto knew from the substance of the comments that these internal comments were privileged attorney-client communications and pertained to the confidential deliberative process of government decision-makers, and still read the remainder of the comments throughout the draft document, taking issue with the last comment written by Attorney Coberly on page 3 of the document after several other attorney-client and deliberative comments on the previous pages.

43. Given the confidential nature of the draft MOU was clear from page 1, reviewing all the comments on the MOU was not necessary to "determine how appropriately to proceed," *Gomez*, 255 F.3d at 1132, and Counsel Velto's review of the entire document did not permit Attorney Coberly "to take protective measures." ABA MRPC 4.4, Comment 2.

44. Following Counsel Velto's review of the attorney-client privileged and deliberative process comments, the City and the Union met to discuss the draft MOU on October 2, 2024.

45. At the October 2, 2024 meeting, Union Vice President Tom Dunn and Counsel Velto explained they interpreted Attorney Coberly's internally-directed comment regarding SFD's normal procedure for issuing SOPs as demonstrating the City's intent to immediately

disregard the negotiated term of the MOU contained in SOP 1.16—regarding the process for declining mandatory overtime—at any time, asserting that the comment demonstrated that the City intended to blatantly violate its commitment in the MOU to retain the SOP for two years.

46. Attorney Coberly explained in that meeting to the Union and its Counsel that, as it was directed internally, her comment was flagging that *in the MOU itself* the Union and the City were considering changing an SOP without the notice and comment process pursuant to the CBA.

47. Counsel Velto responded that he would not have arrived at his impression of Attorney Coberly's comment had not Fire Chief White made a representation that Counsel Velto believed Fire Chief White had yet to follow through on in an unrelated SFD personnel matter.

48. Attorney Coberly does not work on that unrelated personnel matter, which is handled by outside counsel hired by the City.

49. Chief White's alleged representations in an unrelated personnel matter have no bearing on the veracity or interpretation of Attorney Coberly's comment on the MOU to resolve the Ambulance and Force Hire Grievances.

50. In that October 2, 2024 meeting, the City and the Union had further discussions pertaining to other aspects of the MOU and the Union provided additional edits to the MOU for the City's consideration.

51. On October 15, 2024, Fire Chief White provided the City's response to the Union's October 2, 2024 suggested edits to the MOU as his formal Step 1 response to Grievance 24-004.

52. On November 4, 2024, the Union responded to the City's October 15, 2024 draft of the MOU, accepting the City's proposed edit to the MOU to retain the process for employees to turn down mandatory overtime in SOP 1.16 for at least two years.

53. The City reviewed the November 4 MOU draft and provided additional edits on November 13, 2024, similarly retaining the process to turn down mandatory overtime in SOP 1.16 for at least two years.

54. After failing to come to an agreement, the parties agreed to proceed with arbitration regarding the Force Hire Grievance on February 5–7, 2025.

55. On February 4, 2024, the evening before the Force Hire Grievance arbitration, the

Union sent a draft MOU to the City's outside counsel for that arbitration entitled "L731_EDITS_2OCT2024 Ambulance OTF MOU."

56. Given its "2OCT2024" title, this draft did not include the agreed-upon language from the Union's November 2024 draft, and instead again proposed incorporating the process to turn down mandatory overtime in the CBA, despite having already accepted edits in November 2024 providing an alternative solution.

57. The City again declined to incorporate the process to turn down mandatory overtime into the CBA. Instead, on February 5, 2025, the City offered a draft MOU committing that the process to turn down mandatory overtime in SOP 1.16 would only be changed after notice and discussion with the Union in a Labor-Management meeting and ninety (90) day notice to the employees, instead of the CBA's required ten (10) day notice.

58. This February 2025 proposal by the City was even more in the Union's favor than the November 2024 solution that the Union had agreed to and subsequently reneged on.

59. The Union did not agree to the City's February 5, 2024 proposed MOU terms and on February 5 and 6, 2025, the parties arbitrated the Union's contract interpretation claim in the Force Hire Grievance.

False Statement to EMRB – Group Health Care Grievance

60. For decades, the City has sponsored its self-funded Health Care Plan and administered that Plan through the use of Third-Party Administrators (TPAs), meaning that all Sparks employees have "City of Sparks" health insurance, administered by whatever company the City Council decides to contract with to process insurance payments to employee members' providers.

61. The City of Sparks previously used a TPA called CDS until January 2016, whereupon the City Council entered into a contract with Hometown Health to administer the City's Health Care Plan.

62. When the City contracted with CDS to be the City's TPA, the City used CDS's Plan document template to present the City's Health Plan benefits to its members.

63. Similarly, from January 2016 to January 2024, the City utilized Hometown Health

to administer the City's Plan and used a Hometown Health Plan document template to present the City's Health Plan benefits to its members.

64. In January 2024, the City Council entered into a contract with UMR, a UnitedHealthcare company, to administer the City's Health Plan and began using a UMR Plan document template to present the City's Health Plan benefits to its members.

65. Pursuant to the language in the CBA between the Union and the City, and in the CBA between the Sparks Police Protective Association (SPPA) and the City, and in Operating Engineers Local Union No. 3 Skilled Workforce (OE3) and the City, the City maintains a Group Health Care Committee (GHCC), comprised of one voting member from each of these three unions, and the GHCC's purpose "is to discuss cost containment measures and to recommend to the City Council any benefit changes to the City's self-insured group health and life insurance plan."

66. The GHCC did not vote on the formatting changes of the City's Plan document when the City changed TPAs from CDS to Hometown Health or from Hometown Health to UMR.

67. Changing TPAs does not change the Health Plan benefits offered by the City.

68. Despite having the exact same language regarding the GHCC's purpose in both SPPA's and OE3's CBAs, neither union has joined this Union by filing a grievance regarding the City's new TPA UMR or publicly expressed support for the Union's grievance.

69. In a September 21, 2023 GHCC meeting, the City's Human Resources (HR) department provided a presentation explaining that because then-City TPA Hometown Health's contract with the City would expire on December 31. 2023. that the City put out a Request for Proposals for a new TPA, and that the City Council would evaluate three potential TPAs—Hometown Health, UMR, and Meritain.

70. The City's HR presentation explained that, beginning in 2024, Staff would recommend to the City Council to select UMR as the City's TPA because UMR had a broader network of covered providers than Hometown Health, UMR's performance guarantees collectively held UMR to a higher standard than Hometown Health, and UMR had uniquely better mental health services than both other TPAs.

71. The GHCC does not have contracting authority for the City and did not vote on the City's TPA selection.

72. The GHCC may only vote on "cost containment measures" and "any benefit changes."

73. At the September 21, 2023 GHCC meeting, Police Chief Chris Crawforth was identified as the Vice Chair.

74. On September 25, 2023, the Sparks City Council voted to select UMR as the City's TPA.

75. At the December 7, 2023 GHCC meeting, the City's HR department provided a presentation on the City's physical therapy medical benefit. Then-HR Director Jill Valdez explained that the City's Plan document required the then-TPA Hometown Health to "look for medical necessity" as it relates to Physical Therapy.

76. Later in that meeting, the Hometown Health representative revealed that Hometown Health believed all physical therapists must receive a doctor's prescription before providing physical therapy. Then-HR Director Valdez explained that was not the case in Nevada.

77. During the TPA transition from Hometown Health to UMR, the City learned during that Hometown Health had never confirmed whether any members' physical therapy was medically necessary as required by the City's Hometown Health-administered Plan document.

78. The December 7, 2023 meeting minutes list Police Chief Crawforth as the Vice Chair of the GHCC.

79. Both the Hometown Health-administered Plan document and the UMR-administered Plan document require physical therapy to be "medically necessary."

80. After the TPA transition to UMR, the City's UMR-administered Plan document provides administrative guidance that "medical necessity will be reviewed after 25 visits" for therapy services, including physical therapy.

81. The Hometown Health-administered Plan document did not include this administrative guidance, and Hometown Health was not reviewing physical therapy claims for medical necessity at all and was not enforcing the "medically necessity" requirement for the

City's physical therapy benefit.

82. The City's UMR-administered Plan document further states that there is a cap of "26 … maximum visits per calendar year" for speech therapy services for developmental delays.

83. The language "review for medical necessity" is not the same as the language capping "maximum visits per calendar year."

84. Pursuant to the Plan's language, the administrative review conducted by UMR at 25 therapy visits determines whether medical necessity exists to authorize further therapy visits.

85. In early May 2024, before May 9, 2024, the City Attorney's Office's met with then-Union Vice President Jackson and then-Union Grievance Steward Stewart regarding member concerns about the City Council's recent decision to change the TPA of the City's Group Health Plan.

86. In that meeting, the Union provided a document to the City Attorney's Office for review a document with extensive annotations challenging perceived changes in benefits in the City's newly-issued UMR Plan, which was also shared with the City Manager's office.

87. The City immediately began reviewing the Union's over 100 identified concerns and began working with UMR to understand whether the Union's concerns constituted changes in benefits, or whether the new wording in the City's UMR Plan document presented the same benefits as the City's previous Hometown Health Plan document.

88. While that review was ongoing, on May 9, 2024, the Union filed Grievance 24-002, alleging that the City "den[ied] healthcare treatment previously provided by [the City's Health Care] Plan."

89. The May 9, 2024 Grievance identified an awareness date of April 8, 2024.

90. An awareness date of April 8, 2024 made the grievance untimely pursuant to the CBA's requirement that any grievance be filed "within twenty (20) working days from the day the employee is grieved" (given that 20 working days from April 8, 2024 would have been May 3, 2024).

91. Under the CBA, "Grievances not filed within the required time frames will be forfeited."

92. On June 12, 2024, the Fire Chief denied the grievance and explained to the Union the City Council's choice of the TPA was beyond the scope of his authority.

93. During the City's review of the Union's concerns, HR explained in the June 4, 2024 GHCC workshop that during the TPA transition from Hometown Health to UMR, "the City elected to choose 25" physical therapy visits "as a review spot for medical necessity. Not to say this is a cap, this is where we are going to review medical necessity.... [G]uidelines in the plan should never be bypassed [and] [t]here are guidelines in the plan that talk about medical necessity."

94. On June 24, 2024, the City Attorney's Office sent a letter to the City Manager detailing 59 concerns raised by the Union regarding the City's UMR-administered Health and Dental Plan documents that the City Attorney's Office determined did not demonstrate changes in benefits. The City Manager provided this letter to the Union.

95. The June 24 letter explained that any differences in language between the Hometown Health Plan document and the UMR Plan document did not result in a change in benefits as it related to physical therapy.

96. On June 25, 2024, the City Manager, former Acting City Manager/Police Chief Crawforth, City Attorney, and then-Senior Assistant City Attorney Coberly met with the Union for a "pre-meeting" regarding the Group Health Plan.

97. In the pre-meeting, the Union discussed its member who was experiencing difficulty with receiving UMR's approval for his physical therapy claims or his wife's multiple times a week physical therapy claims beyond the 25-visit check point stated in the City's UMR-administered Plan document.

98. The Union's solution to this particular employee's problem was for the City to reject the Plan document administered by UMR and force UMR to administer the Hometown Health Plan document language.

99. Making changes to the UMR-administered Plan document without UMR's notice or mutual consent is a violation of the City's contractual requirement to "mutually agree[] in writing prior to implementation of [any] change."

100. After this meeting, the Union sent a follow-up letter to the June 24 letter with further questions and concerns.

101. On June 26, 2024, the City Manager's office requested an extension for the Step 2 response. The Union did not explicitly grant an extension but requested a meeting with the City Manager in lieu of an extension.

102. The City Manager agreed to meet with the Union until the Union no longer requested meetings and would then send the Step 2 response.

103. The City Manager met with the Union on July 16, 2024 for the Step 2 meeting at City Hall.

104. In the July 16, 2024 Step 2 meeting, Union counsel explained the Union's position was that *any* change to the City's Plan document—not just "any benefit changes", must go before the GHCC for a vote.

105. In that July 16, 2024 Step 2 meeting, no discussion occurred from either the City or the Union regarding potential future benefit changes to the City's Health Plan—in the form of adding a health savings account, inclusion of a high deductible plan, more favorable sick leave conversions and/or higher percentages for retiree coverage—in exchange for the Union's willingness to resolve the Group Health Grievance.

106. After the July 16, 2024 meeting, the Union agreed to continue meeting with the City in lieu of granting a written extension for the City Manager's Step 2 response.

107. On July 18, 2024, the Union sent then-Vice President Jackson to the scheduled GHCC meeting. Then-Vice President Jackson arrived 20 minutes late and refused to vote to approve the agenda and open the GHCC meeting.

108. Then-Vice President Jackson stated the Union demanded the City revert to the Plan document format used by former TPA Hometown Health and treat it as the controlling document, despite the City's contract signed by the City Council with UMR.

109. The July 18, 2024 GHCC meeting did not occur as the agenda was not approved by a majority of the voting members.

110. On July 24, 2024, the City met with the Union for scheduled collective bargaining

negotiation.

111. In that discussion, the Union requested the City consider additional health benefits, and although the Union did not have a formal proposal to present, the Union discussed the possibility of the City adding a health savings account, inclusion of a high deductible plan, more favorable sick leave conversions and/or higher percentages for retiree coverage.

112. The Union did not request that the City consider implementing those new health benefits as a resolution to the Group Health Grievance.

113. The City Manager noted in the meeting that any change to the City's health benefits would have to be voted on by the GHCC and that he could not implement a change to benefits solely through CBA negotiations, but agreed to look into the cost to the Plan and the impact to the City's current benefits if any one of those options were presented to the GHCC.

114. On July 31, 2024, the City Attorney's Office sent a second letter to the City Manager explaining that the 15 clarification questions raised in the Union's follow-up letter still did not demonstrate changes in benefits in the Health Plan, and that 25 other concerns with the UMR-administered Health Plan document raised by the Union did not demonstrate changes in benefits. The City Manager provided this letter to the Union.

115. The July 31, 2024 letter specifically responded to the Union's additional question regarding the physical therapy benefit and expanded upon its previous response to clarify why the City did not interpret the change in the language of the Plan document as demonstrating a change in benefits.

116. The Union did not ask additional follow up questions regarding the City's interpretation of the City's physical therapy benefit after receiving the July 31, 2024 letter.

117. On August 1, 2024, the City Manager emailed then-Union Vice President Jackson requesting confirmation in writing by August 6, 2024, that the Union would grant an extension for his Step 2 response, explaining that he would provide his Step 2 response on August 7, 2024 if no extension was granted.

118. On August 6, 2024, the Union granted the City Manager's requested 90-day extension to October 10, 2024.

119. On Septemher 19, 2024, the City Attorney's Office presented to the GHCC the results of its review of over 161 concerns raised by the Union regarding the UMR-administered plan document.

120. The presentation identified that of the concerns raised, 138 did not constitute changes in employee health benefits or require additional clarification.

121. To ensure the Plan language clearly reflected the same benefits as the prior Hometown Health Plan document, the City would request 23 language changes be made to the UMR Plan document to clarify the benefits remained the same.

122. None of the City's requested language changes described in the presentation related to the Union's concern regarding the need to demonstrate medical necessity for physical therapy benefits.

123. None of the City's requested changes related to any concerns previously brought forward by any members of the City's Health Plan.

124. The Union's representative on the GHCC thanked the City Attorney's Office for the hard work.

125. The GHCC did not vote on the changes presented by the City Attorney's Office, as those changes clarified that employees' health benefits stayed the same.

126. Also at the September 19, 2024 meeting, GHCC Vice Chair Police Chief Crawforth gave a presentation explaining why, when he was the Acting City Manager in 2023 and 2024, he and Human Resources agreed on setting the 25-visit checkpoint with UMR.

127. UMR told then-Acting City Manager Crawforth that the average physical therapy patient uses 12 physical therapy appointments a year. The City determined that it would request UMR check for medical necessity at 25 appointments, once more than double the average amount of physical therapy appointments had occurred.

128. GHCC Vice Chair Crawforth also gave an overview of other municipalities in the area, identifying that Reno's health plan administered by UMR also checked for medical necessity of therapies at 25 visits.

129. GHCC Vice Chair Crawforth explained that UMR identified that seven members

of the City's plan utilized PT more than 25 times in a year.

130. The GHCC voting members SPPA and OE3 at the September 19, 2024 meeting voted on General Business Item 7.2 to ratify the City's decision to set 25 visits as the threshold at which UMR would conduct its City Plan-required medical necessity review.

131. The Union did not vote on General Business Item 7.2 at the September 19, 2024 meeting.

132. On October 3, 2024, the City Attorney's Office sent a third letter to the City Manager identifying that the remaining 37 concerns raised by the Union did not demonstrate changes in benefits. With this letter, the City through counsel had reviewed and responded to all of the Union's identified concerns and determined that none demonstrated a change in benefits.

133. The City Manager provided this letter to the Union on October 3, 2024.

134. The Union did not ask for further clarification after receiving the October 3, 2024 letter.

135. Therefore, pursuant to the agreed-upon extensions, the City Manager timely provided the Step 2 response to the Union's Group Health Care Grievance denying the Grievance on October 10, 2024.

136. The statement in the Union's EMRB complaint 2025-001 that the UMR Plan document "put[] a cap on physical therapy visits" is a false statement.

137. "[F]alse representations amount to 'a failure to bargain in good faith regarding each of the above mandatory subjects of bargaining,' which 'constitutes an unfair labor practice.'" *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).

False Statements in Negotiations – Light Duty Grievance

138. On November 4, 2024, the Union filed Grievance 24-005 ("Light Duty Grievance").

139. The Grievance does not state the factual basis for the alleged violation of the CBA.

140. Prior to filing the Grievance, in Labor Management discussions the Union argued that the City's past practice of placing employees on light duty due to a workers' compensation

injury on a 40-hour schedule, while retaining the employees' 56-hour pay and benefits, violated the CBA in two ways.

141. The Union argued the CBA required that either (a) employees put on a 40-hour work schedule for light duty due to a workers' compensation injury be fully transitioned to a 40-hour schedule, including pay rate and benefits, and the City's past practice of keeping employees' pay and benefits on a 56-hour schedule and only changing the work schedule to a 40-hour schedule violated the CBA; or (b) employees on light duty due to a workers' compensation injury should stay on a 56-hour schedule for their schedule, pay, and benefits, because temporarily transitioning 56-hour employees to a 40-hour schedule due to workers' compensation injuries violated Nevada statute.

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

143. In the Fire Chief's review of the Light Duty Grievance, he evaluated the option presented by the Union to fully transition workers' compensation-injured employees onto a 40-hour schedule for work and benefits, and determined the CBA specifically provided that employees on light duty could be transitioned to a 40-hour work schedule and retain 56-hour pay and benefits, consistent with the City's past practice.

144. The Fire Chief determined that the City did not have bed space to maintain workers' compensation employees on 56-hour schedules, particularly given the Union's secondary claim in the Ambulance Grievance that the current sleeping accommodations were insufficient.

145. The Fire Chief's Step 1 response accordingly denied the Light Duty Grievance on December 19, 2024, determining it did not state a violation of the CBA.

146. The Union's Vice President Dunn and by that time former-Grievance Steward Stewart met with the City Manager and the City Attorney's Office in a Grievance "pre-meeting"

on January 15, 2024.

147. Union Vice President Dunn said he "saw the City's point" regarding the Fire Chief's Step 1 response pointing to CBA language that specifically allowed the City's past practice of transitioning employees' work schedule—but not pay and benefits—to 40-hour schedule when on light duty due to a workers' compensation injury.

148. Former Steward Stewart in that meeting then contended that changing a workers' compensation-injured employee's schedule from a 56-hour schedule to a 40-hour schedule constituted a violation of statute.

149. This statement was in direct contradiction to the case law former Steward Stewart had been presented in Labor Management meetings, which established 56-hour schedules for firefighters are "substantially similar" to 40-hour schedules. *Taylor*, 479 P.3d at 1001–02.

150. "[F]alse representations amount to 'a failure to bargain in good faith regarding each of the above mandatory subjects of bargaining,' which 'constitutes an unfair labor practice.'" *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).

151. To provide additional context to the Union's interaction with the City, in March 2022, the Union's predecessor union, International Association of Fire Fighters Local 1265, published a motion approved at a Union executive board meeting by then-President Darren Jackson, wherein the Union stated then-Fire Chief Jim Reid "mismanaged COVID-19 relief funds."

152. Under NRS 204.020, if a "public officer … who has control or custody any public money belonging … to any … city … who uses any of the public money … for any purposes other than one authorized by law, if the amount unlawfully used is $650 or more, is guilty of a category D felony."

153. Stating that then-Fire Chief Reid "mismanaged" thousands of dollars in City funds states a claim that then-Fire Chief Reid committed a felony under NRS 204.020.

154. Then-City Manager Krutz reached to the Union for clarification or details regarding this accusation of fiscal mismanagement.

155. Local 1265 then-President Darren Jackson replied by email, stating, "We are not alleging some kind of unlawful act. We are simply stating that an opportunity was missed and that the small amount of money that the FD received was not spent on anything that the men and women on the line could use to make our response to COVID better."

156. Under NRS 200.510(1)–(2), "libel is a malicious defamation, expressed by …writing … tending to … impeach the honesty, integrity, virtue, or reputation, … of a living person … and thereby to expose them to public hatred, contempt or ridicule," which is a gross misdemeanor.

157. Then-City Manager Krutz stated "I am pleased that Local 1265 clarified that they are not alleging that Chief Reid engaged in illegal activity."

158. Publishing a false statement asserting that then-Fire Chief Reid committed a felony, knowing it was not a felony, constitutes libel.

159. "[F]alse representations amount to 'a failure to bargain in good faith regarding each of the above mandatory subjects of bargaining,' which 'constitutes an unfair labor practice.'" *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).

FIRST CLAIM FOR RELIEF

Prohibited Practice under NRS 288. 270(2)(b)—Unethical Review of Privileged Communications

160. The allegations contained in all preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth herein.

161. Under NRS 288.270(2)(b), it is a prohibited practice to "Refuse to bargain collectively in good faith with the local government employer…. Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter."

162. The Union violated NRS 288.270.(1)(e) when its counsel opened the draft MOU inadvertently sent to him containing attorney-client privileged and deliberative communications, read initial attorney-client privileged communications between Attorney Coberly and Chief

White, and then attempted to utilize attorney-client privileged and deliberative process communications against the City in grievance negotiations, in violation of NRPC 4.4(b), ABA MRPC 4.4(b) Comment 2, 3, and long-established ABA Committee on Ethics and Professional Responsibility Formal Opinions.

SECOND CLAIM FOR RELIEF

Prohibited Practice under NRS 288. 270(2)(b) – False Statements to the EMRB

163. The allegations contained in all preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth herein.

164. Under NRS 288.270(2)(b), it is a prohibited practice to "Refuse to bargain collectively in good faith with the local government employer.... Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter."

165. The Union violated NRS 288.270.(1)(e) when it falsely stated in its EMRB complaint 2025-001 that the UMR Plan document "put[] a cap on physical therapy visits."

166. "[F]alse representations amount to 'a failure to bargain in good faith regarding each of the above mandatory subjects of bargaining,' which 'constitutes an unfair labor practice.'" *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).

THIRD CLAIM FOR RELIEF

Prohibited Practice under NRS 288. 270(2)(b) – Bad Faith Negotiation

167. The allegations contained in all preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth herein.

168. Under NRS 288.270(2)(b), it is a prohibited practice to "Refuse to bargain collectively in good faith with the local government employer.... Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter."

169. The Union violated NRS 288.270.(1)(e) when it falsely stated in grievance negotiations to the City in relation to the Light Duty Grievance that the City's practice was in

violation of statute when the Union was on notice that the City's past practice was in accordance with Nevada Supreme Court case law evaluating the same claim.

170. "[F]alse representations amount to 'a failure to bargain in good faith regarding each of the above mandatory subjects of bargaining,' which 'constitutes an unfair labor practice.'" *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).

PRAYER FOR RELIEF

The City respectfully requests that this Board:

1. Find in favor of the City and against the Union on each and every claim in this Complaint;

2. Find that the Union violated NRS 288.270(2)(b) by failing to bargain in good faith by Union counsel violating NRPC 4.4(b);

3. Find that the Union violated NRS 288.270(2)(b) by making false statements to the EMRB;

4. Find that the Union violated NRS 288.270(2)(b) by failing to bargain in good faith by making false statements in negotiations for the Light Duty Grievance;

5. Order that the Union bargain in good faith with the City;

6. Order that the Union pay the City's attorney's fees and costs incurred in this matter; and

7. Order such further relief as the Board deems appropriate under the circumstances.

Respectfully submitted this 27th day of February, 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' CROSS 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 27th day of February, 2025.

/s/ Roxanne Doyle
Roxanne Doyle

IAFF Local 731 (Respondent/Complainant)

Answer to Amended Cross Complaint

Alex Velto, Esq.
Nevada State Bar No. 14961
Paul Cotsonis, Esq.
Nevada State Bar No. 8786
REESE RING VELTO, PLLC
200 S. Virginia Street, Suite 655
Reno, NV 89501
Telephone: (775)446-8096
alex@rrvlawyers.com
paul@rrvlawyers.com
Attorneys for Complainant

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Before the State of Nevada

Government Employee-Management

Relations Board

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731, Complainant/Respondent, v. CITY OF SPARKS, Respondent/Complainant.	CASE NO.: 2025-001 **INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731's ANSWER TO AMENDED CROSS COMPLAINT**

The INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 ("Union," "Complainant/Respondent" or "Local 731"), answers CITY OF SPARKS' ("Respondent/Cross Complainant" or "City") Amended Cross Complaint as follows, in paragraphs numbered to correspond to the paragraph numbers in the Amended Cross Complaint and with headings and subheadings corresponding to the headings and subheadings used in the Complaint.

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JURISDICTION

1. Answering paragraph 1 of the Amended Cross Complaint, Local 731 admits the City is and was a "Government Employer" pursuant to NRS 288.060 and that the City's current mailing address is 431 Prater Way, Sparks, NV 89431. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

2. Answering paragraph 2 of the Amended Cross Complaint, Local 731 admits Local 731 was and is an "employee organization" pursuant to NRS 288.040 and or a "labor organization," and that its current mailing address is 9590 S. McCarran Blvd, Reno NV 89523. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

3. Answering paragraph 3 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response in required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 3.

4. Answering paragraph 4 of the Amended Cross Complaint, Local 731 denies every allegation therein.

5. Answering paragraph 5 of the Amended Cross Complaint, Local 731 admits the parties have reached an agreement on a successor Collective Bargaining Agreement ("CBA") covering July 1, 2024, to June 30, 2025. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

FACTUAL ALLEGATION

Force Hire Grievance Background Facts

6. Answering paragraph 6 of the Amended Cross Complaint, Local 731 admits that it filed a grievance regarding the City's use of Force Hiring in March of 2022 (hereinafter "Force

Hire Grievance"). To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

7. Answering paragraph 7 of the Amended Cross Complaint, Local 731 admits the Force Hire Grievance proceeded through the grievance process which included Local 731's moving the Grievance to arbitration. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

8. Answering paragraph 8 of the Amended Cross Complaint, Local 731 admits the parties attempted to resolve the Force Hire Grievance outside of arbitration. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

9. Answering paragraph 9 of the Amended Cross Complaint, Local 731 admits that it has filed additional grievances that are related to the Force Hire Grievance. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

10. Answering paragraph 10 of the Amended Cross Complaint, Local 731 admits it filed grievance regarding ambulance usage/staffing ("Ambulance Grievance 22-009"). To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

11. Answering paragraph 11 of the Amended Cross Complaint, Local 731 admits that in July of 2023, the parties reached an agreement placing limits of the Force Hire usage and staying the Force Hire Grievance for six months ("Side Letter"). To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

12. Answering paragraph 12 of the Amended Cross Complaint, Local 731 admits it filed a subsequent grievance that was related to the Ambulance Grievance 22-009 regarding

("Ambulance Grievance 24-004"). To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

13. Answering paragraph 13 of the Amended Cross Complaint, Local 731 admits the parties conducted settlement discussions in or around September of 2024 regarding the Force Hire Grievance and Ambulance Grievances 22-009 and 24-004 (collectively referred to as "Ambulance Grievances"). To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

14. Answering paragraph 14 of the Amended Cross Complaint, Local 731 admits the parties conducted settlement discussions in or around September of 2024 regarding the Force Hire Grievance and Ambulance Grievances. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

15. Answering paragraph 15 of the Amended Cross Complaint, Local 731 admits the parties resolved the Ambulance Grievances to include a 5% pay bump for ambulance work. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

16. Answering paragraph 16 of the Amended Cross Complaint, Local 731 admits that it sought a limitation mechanism to the use of Force Hires, including allowing employees a certain number of refusals. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

17. Answering paragraph 17 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 and, on that basis, denies every allegation therein.

18. Answering paragraph 18 of the Amended Cross Complaint, Local 731 admits that the Union and City met on September 4, 2024, and discussed the Force Hire Grievance and Ambulance Grievance and that the Union sought to have any negotiated elements to any

resolution to the Force Hire Grievance to be incorporated into the Parties' CBA. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

19. Answering paragraph 19 of the Amended Cross Complaint, Local 731 admits the City reneged on its prior agreement to include the agreed-to limits in the Side Letter into the CBA. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

20. Answering paragraph 20 of the Amended Cross Complaint, 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. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

21. Answering paragraph 21 of the Amended Cross Complaint, Local 731 admits the Standard Operating Procedure ("SOP") referred to in the Amended Cross Complaint may be unilaterally changed by the City provided they are properly posted pursuant to the CBA. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

22. Answering paragraph 22 of the Amended Cross Complaint, 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. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

NRPC 4.4 Violation – Force Hire Grievance

23. Answering paragraph 23 of the Amended Cross Complaint, Local 731 admits the City provided a proposed MOU *via* email on or about September 6, 2024, to resolve the Force Hire and Ambulance Grievances. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

24. Answering paragraph 24 of the Amended Cross Complaint, Local 731 denies every allegation therein.

25. Answering paragraph 25 of the Amended Cross Complaint, Local 731 denies every allegation therein.

26. Answering paragraph 26 of the Amended Cross Complaint, Local 731 denies every allegation therein.

27. Answering paragraph 27 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 27.

28. Answering paragraph 28 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 28.

29. Answering paragraph 29 of the Amended Cross Complaint, Local 731 admits Steward Stewart has met with Attorney Coberly about pending grievances. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

30. Answering paragraph 30 of the Amended Cross Complaint, Local 731 admits that Local 731's counsel was cc'd on an email dated May 20, 2024, from Darren Jackson to Jessica Coberly. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

31. Answering paragraph 31 of the Amended Cross Complaint, Local 731 admits the MOU was provided to Local 731's counsel sometime after the City sent it to Local 731. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

32. Answering paragraph 32 of the Amended Cross Complaint, Local 731 admits Local 731's counsel saw the MOU provided by the City. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

33. Answering paragraph 33 of the Amended Cross Complaint, Local 731 admits it takes issue with the City reneging on its prior commitment to include limitations to the Force Hire Program in the CBA and, instead, putting the restrictions in the SOP's purportedly to allow the City to unilaterally rescind those restrictions. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

34. Answering paragraph 34 of the Amended Cross Complaint, Local 731 admits the MOU contained a comment stating "[j]ust confirming that SOP's can be amended without the notice & comment process." To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

35. Answering paragraph 35 of the Amended Cross Complaint, Local 731 admits the MOU purported to amend SOP 1.16 to provide for a process for the Force Hire Program. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

36. Answering paragraph 36 of the Amended Cross Complaint, Local 731 admits Local 731's counsel emailed Ms. McCormick notifying her that the MOU appears to have comments from counsel to its client. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

37. Answering paragraph 37 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 37.

38. Answering paragraph 38 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 38.

39. Answering paragraph 39 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 39.

40. Answering paragraph 40 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 40.

41. Answering paragraph 41 of the Amended Cross Complaint, Local 731 denies every allegation.

42. Answering paragraph 42 of the Amended Cross Complaint, Local 731 admits Local 731's counsel recognized the MOU *appeared* to have comments from counsel to its clients

and that it showed bac faith bargaining. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

43. Answering paragraph 43 of the Amended Cross Complaint, Local 731 denies every allegation.

44. Answering paragraph 44 of the Amended Cross Complaint, Local 731 admits the City and Local 731 met to discuss the City's proposed MOU on or about October 2, 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

45. Answering paragraph 45 of the Amended Cross Complaint, Local 731 admits it had multiple concerns with the City's proposed MOU and that it conveyed those concerns to the City during the meeting with the City on or about October 2, 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

46. Answering paragraph 46 of the Amended Cross Complaint, Local 731 admits the parties discussed the comments attached to the MOU during the meeting on or about October 2, 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

47. Answering paragraph 47 of the Amended Cross Complaint, Local 731 admits Local 731's counsel conveyed concerns regarding Chief White not following through on representations he made in the past. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

48. Answering paragraph 48 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 and, on that basis, denies every allegation therein.

49. Answering paragraph 49 of the Amended Cross Complaint, Local 731 denies every allegation therein.

50. Answering paragraph 50 of the Amended Cross Complaint, Local 731 admits the parties discussed the MOU during the meeting on or about October 2, 2024, with Local 731 proposing edits to the MOU. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

51. Answering paragraph 51 of the Amended Cross Complaint, Local 731 admits that after the October 2, 2024, meeting, the City provided another proposed MOU to resolve the Force Hire Grievance and Ambulance Grievances on or about October 15, 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

52. 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.

53. Answering paragraph 53 of the Amended Cross Complaint, Local 731 admits that on or about November 13, 2024, the City provided additional edits to the MOU removing Local 731's qualification to its acceptance of the SOP provision. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

54. Answering paragraph 54 of the Amended Cross Complaint, Local 731 admits the Force Hire Grievance proceeded to arbitration on February 5 and 6, 2025. To the extent this

paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

55. Answering paragraph 55 of the Amended Cross Complaint, Local 731 admits that on or about February 4, 2025, it submitted a draft MOU to the City. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

56. Answering paragraph 56 of the Amended Cross Complaint, Local 731 admits the February 4, 2025, draft MOU was different than its November 4, 2024, draft MOU. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

57. Answering paragraph 57 of the Amended Cross Complaint, Local 731 admits the City rejected the Union's February 4, 2025, draft MOU and that it submitted another draft MOU to Local 731 on or about February 5, 2025. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

58. Answering paragraph 58 of the Amended Cross Complaint, Local 731 denies every allegation therein.

59. Answering paragraph 59 of the Amended Cross Complaint, Local 731 admits every allegation therein.

False Statement to EMRB – Group Health Care Grievance

60. Answering paragraph 60 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 and, on that basis, denies every allegation therein.

61. Answering paragraph 61 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 and, on that basis, denies every allegation therein.

62. Answering paragraph 62 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 and, on that basis, denies every allegation therein.

63. Answering paragraph 63 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 and, on that basis, denies every allegation therein.

64. Answering paragraph 64 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 and, on that basis, denies every allegation therein.

65. Answering paragraph 65 of the Amended Cross Complaint. Local 731 admits that the health benefits and changes thereto are governed by a Group Health Care Committee ("GHCC") comprising of 1 voting member from three (3) recognized bargaining units (Operating Engineers, Sparks Police Protective Association, and Local 731) pursuant to the CBA between the City and Local 731. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

66. Answering paragraph 66 of the Amended Cross Complaint, Local 731 admits the GHCC did not vote on the changes to employee health benefits implemented by the City in January 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

67. Answering paragraph 67 of the Amended Cross Complaint, Local 731 denies every allegation therein.

68. Answering paragraph 68 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 and, on that basis, denies every allegation therein.

69. Answering paragraph 69 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 and, on that basis, denies every allegation therein.

70. Answering paragraph 70 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 and, on that basis, denies every allegation therein.

71. Answering paragraph 71 of the Amended Cross Complaint, Local 731 admits the GHCC did not vote on the City's TPA selection. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

72. Answering paragraph 72 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 72.

73. Answering paragraph 73 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 and, on that basis, denies every allegation therein.

74. Answering paragraph 74 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 and, on that basis, denies every allegation therein.

75. Answering paragraph 75 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 and, on that basis, denies every allegation therein.

76. Answering paragraph 76 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 and, on that basis, denies every allegation therein.

77. Answering paragraph 77 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 and, on that basis, denies every allegation therein.

78. Answering paragraph 78 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 and, on that basis, denies every allegation therein.

79. Answering paragraph 79 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 and, on that basis, denies every allegation therein.

80. Answering paragraph 80 of the Amended Cross Complaint, Local 731 admits that beginning on or about January 1, 2024, healthcare provisions were changed to require review for medical necessity for physical therapy after 25 visits. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

81. Answering paragraph 81 of the Amended Cross Complaint, Local 731 admits that prior to on or about January 1, 2024, there was no requirement for review of medical necessity for physical therapy after 25 visits. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

82. Answering paragraph 82 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 and, on that basis, denies every allegation therein.

83. Answering paragraph 83 of the Amended Cross Complaint, Local 731 denies every allegation therein.

84. Answering paragraph 84 of the Amended Cross Complaint, Local 731 admits the new TPA plan requires review of medical necessity for physical therapy after 25 visits before authorizing further therapy visits which provides for a potential barrier or bar to physical therapy visits beyond 25. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

85. Answering paragraph 85 of the Amended Cross Complaint, Local 731 admits the Union and City discussed the Union's concerns regarding the City's changing of TPA's in early May of 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

86. Answering paragraph 86 of the Amended Cross Complaint, Local 731 admits that it provided the City with a document with citations to changes in healthcare benefits pursuant to the new TPA in early May of 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

87. Answering paragraph 87 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 and, on that basis, denies every allegation therein.

88. Answering paragraph 88 of the Amended Cross Complaint, Local 731 admits it filed a grievance on or about May 9, 2024, regarding implementation of changes to the healthcare plan (hereinafter referred to as "Grievance S2024-002"). To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

89. Answering paragraph 89 of the Amended Cross Complaint, Local 731 admits that Grievance S2024-002 indicates awareness as of April 8, 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

90. Answering paragraph 90 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 90.

91. Answering paragraph 91 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 91.

92. Answering paragraph 92 of the Amended Cross Complaint, Local 731 admits the City denied Grievance S2024-002 at Setp 1. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

93. Answering paragraph 93 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 and, on that basis, denies every allegation therein.

94. Answering paragraph 94 of the Amended Cross Complaint, Local 731 admits the June 24, 2024, letter from the City Attorney's Office to the City Manager ("June 24, 2024, Letter") alleges that certain concerns raised by Local 731 did not demonstrate differences in benefits. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

95. Answering paragraph 95 of the Amended Cross Complaint, Local 731 admits the June 24, 2024, Letter alleges that any physical therapy that did not produce improvement should have been denied under both the old TPA and new TPA plan. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

96. Answering paragraph 96 of the Amended Cross Complaint, Local 731 admits that on or about June 25, 2024, that there was a meeting with City personnel and Union personnel regarding the Group Health Plan. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

97. Answering paragraph 97 of the Amended Cross Complaint, Local 731 admits that during the meeting on or about June 25, 2024, it discussed issues that at least one of its members was facing regarding the number of physical therapy visits. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

98. Answering paragraph 98 of the Amended Cross Complaint, Local 731 denies every allegation therein.

99. Answering paragraph 99 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 99.

100. Answering paragraph 100 of the Amended Cross Complaint, Local 731 admits it had numerous questions and concerns regarding the health plan and that it has raised them with the City multiple times and in multiple ways. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

101. Answering paragraph 101 of the Amended Cross Complaint, Local 731 admits the Step II meeting on Grievance S2024-002 occurred on or about July 16, 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

102. Answering paragraph 102 of the Amended Cross Complaint, Local 731 admits the Step II meeting on Grievance S2024-002 occurred on or about July 16, 2024. To the extent this

paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

103. Answering paragraph 103 of the Amended Cross Complaint, Local 731 admits the Step II meeting on Grievance S2024-002 occurred on or about July 16, 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

104. Answering paragraph 104 of the Amended Cross Complaint, Local 731 admits that its position has consistently been that any change to the City's Plan document must go before the GHCC for approval. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

105. Answering paragraph 105 of the Amended Cross Complaint, Local 731 denies every allegation therein.

106. Answering paragraph 106 of the Amended Cross Complaint, Local 731 admits it agreed to a 90-day extension to the City's Step II response deadline to Grievance S2024-002. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

107. Answering paragraph 107 of the Amended Cross Complaint, Local 731 admits sending a representative to the GHCC meeting on or about July 18, 2024, and that the representative was late because the City did not have an avenue to allow the representative, who was on duty at the time of the meeting, to attend and that its representative abstained from voting on the agenda because the agenda was to vote on changes to a Health Plan that was never formally adopted. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

108. Answering paragraph 108 of the Amended Cross Complaint, Local 731 denies every allegation therein.

109. Answering paragraph 109 of the Amended Cross Complaint, Local 731 admits the agenda was not approved at the GHCC meeting on or about July 18, 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

110. Answering paragraph 110 of the Amended Cross Complaint, Local 731 admits that there was a bargaining session on July 24, 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

111. Answering paragraph 111 of the Amended Cross Complaint, Local 731 admits that adding health savings account, inclusion of high deductible plans, more favorable sick leave conversions and/or higher percentages for retiree coverage were discussed with the City. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

112. Answering paragraph 112 of the Amended Cross Complaint, Local 731 denies every allegation therein.

113. Answering paragraph 113 of the Amended Cross Complaint, Local 731 admits that the City Manager did indicate that one or more of the proposals listed in paragraph 111 required approval by the GHCC. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

114. Answering paragraph 114 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 114 and, on that basis, denies every allegation therein..

115. Answering paragraph 115 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 115 and, on that basis, denies every allegation therein..

116. Answering paragraph 116 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 116 and, on that basis, denies every allegation therein.

117. Answering paragraph 117 of the Amended Cross Complaint, Local 731 admits the City requested a 90-day extension to the City's Step II response deadline to Grievance S2024-002. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

118. Answering paragraph 118 of the Amended Cross Complaint, Local 731 admits it agreed to a 90-day extension to the City's Step II response deadline to Grievance S2024-002. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

119. Answering paragraph 119 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 119 and, on that basis, denies every allegation therein.

120. Answering paragraph 120 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 120 and, on that basis, denies every allegation therein.

121. Answering paragraph 121 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 121 and, on that basis, denies every allegation therein.

122. Answering paragraph 122 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 122 and, on that basis, denies every allegation therein.

123. Answering paragraph 123 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 123 and, on that basis, denies every allegation therein.

124. Answering paragraph 124 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 124 and, on that basis, denies every allegation therein.

125. Answering paragraph 125 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 125 and, on that basis, denies every allegation therein.

126. Answering paragraph 126 of the Amended Cross Complaint, Local 731 admits Crawforth spoke about the 25-visit checkpoint at the GHCC meeting on September 19, 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

127. Answering paragraph 127 of the Amended Cross Complaint, Local 731 admits it was asserted that the median average for physical therapy visits was about 12 during the GHCC meeting of September 19, 2024. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

128. Answering paragraph 128 of the Amended Cross Complaint, Local 731 admits that it was alleged at the September 19, 2024, GHCC meeting that certain other municipalities check for medical necessity after 25 visits. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

129. Answering paragraph 129 of the Amended Cross Complaint, Local 731 admits that during the September 19, 2024, GHCC meeting it was asserted that seven members exceeded 25 physical therapy visits. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

130. Answering paragraph 130 of the Amended Cross Complaint, Local 731 admits the GHCC approved medical necessity review at the 25th visit for medically necessary therapies at the 9/19/24 GHCC meeting. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

131. Answering paragraph 131 of the Amended Cross Complaint, Local 731 admits that it did not vote on General Business Item 7.2. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

132. Answering paragraph 132 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 132 and, on that basis, denies every allegation therein.

133. Answering paragraph 133 of the Amended Cross Complaint, Local 731 admits it was provided a letter dated October 3, 2024, purportedly from the City Attorney's Office to the City Manager regarding the City Attorney Office's purported analysis that there were no changes in benefits between Hometown Health and UMR plans. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

134. Answering paragraph 134 of the Amended Cross Complaint, Local 731 admits it did not ask for further clarification after being provided with the October 3, 2024, letter. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

135. Answering paragraph 135 of the Amended Cross Complaint, Local 731 admits the City denied the GHCC Grievance in its Step II response. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

136. Answering paragraph 136 of the Amended Cross Complaint, Local 731 denies every allegation therein.

137. Answering paragraph 137 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 137.

False Statements in Negotiations – Light Duty Grievance

138. Answering paragraph 136 of the Amended Cross Complaint, Local 731 admits to filing a grievance regarding light duty ("Light Duty Grievance"). To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

139. Answering paragraph 139 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 139.

140. Answering paragraph 140 of the Amended Cross Complaint, Local 731 admits it believes the way the City handled the assignment to light duty assignments of employees due to worker's compensation injuries violated the CBA. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

141. Answering paragraph 141 of the Amended Cross Complaint, Local 731 admits argued that the CBA required that either (a) employees put on a 40-hour work schedule for light duty due to a workers' compensation injury be fully transitioned to a 40- hour schedule, including pay rate and benefits, and the City's past practice of keeping employees' pay and benefits on a 56-hour schedule and only changing the work schedule to a 40-hour schedule violated the CBA; or (b) employees on light duty due to a workers' compensation injury should stay on a 56-hour

schedule for their schedule, pay, and benefits, because temporarily transitioning 56-hour employees to a 40-hour schedule due to workers' compensation injuries violated Nevada statute. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

142. Answering paragraph 142 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 142.

143. Answering paragraph 143 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 143 and, on that basis, denies every allegation therein.

144. Answering paragraph 144 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 144 and, on that basis, denies every allegation therein.

145. Answering paragraph 145 of the Amended Cross Complaint, Local 731 admits the City denied the Light Duty Grievance at Step 1 of the grievance process. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

146. Answering paragraph 146 of the Amended Cross Complaint, Local 731 admits to meeting with the City regarding the Light Duty Grievance. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

147. Answering paragraph 147 of the Amended Cross Complaint, Local 731 admits to meeting with the City regarding the Light Duty Grievance. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

148. Answering paragraph 148 of the Amended Cross Complaint, Local 731 admits its position is that the facts and circumstances surrounding the Light Duty Grievance are distinguishable from the Nevada Supreme Court case *Taylor v. Truckee Meadows Fire Protection District*, 479 P.3d 995, 1001– 02 (Nev. 2021) and that notwithstanding that the City's practice is unlawful. To the extent this paragraph contains additional allegations or allegations inconsistent with this admission, Local 731 denies same.

149. Answering paragraph 149 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 149.

150. Answering paragraph 150 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 150.

151. Answering paragraph 151 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 151 and, on that basis, denies every allegation therein.

152. Answering paragraph 152 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 152.

153. Answering paragraph 153 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 153.

154. Answering paragraph 154 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 154 and, on that basis, denies every allegation therein.

155. Answering paragraph 155 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 155 and, on that basis, denies every allegation therein.

156. Answering paragraph 156 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 156.

157. Answering paragraph 157 of the Amended Cross Complaint, Local 731 lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 157 and, on that basis, denies every allegation therein.

158. Answering paragraph 158 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 158.

159. Answering paragraph 159 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 159.

FIRST CLAIM FOR RELIEF

Prohibited Practice under NRS 288.270(2)(b)—Unethical Review of Privileged Communications

160. Local 731's responses contained in all proceeding paragraphs of this Answer are incorporated herein by reference as if fully set forth herein.

161. Answering paragraph 161 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 161.

162. Answering paragraph 162 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 162.

SECOND CLAIM FOR RELIEF

Prohibited Practice under NRS 288.270.(2)(b) – False Statements to the EMRB

163. Local 731's responses contained in all proceeding paragraphs of this Answer are incorporated herein by reference as if fully set forth herein.

164. Answering paragraph 164 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 164.

165. Answering paragraph 165 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 165.

166. Answering paragraph 166 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 166.

THIRD CLAIM FOR RELIEF

Prohibited Practice under NRS 288(2)(b) – Bad Faith Negotiations

167. Local 731's responses contained in all proceeding paragraphs of this Answer are incorporated herein by reference as if fully set forth herein.

168. Answering paragraph 168 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 168.

169. Answering paragraph 169 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 169.

170. Answering paragraph 170 of the Amended Cross Complaint, Local 731 objects to the allegations contained therein to the extent they call for a legal conclusion, as such allegations are improper and not subject to admission or denial. Insofar as a response is required and subject to and without waiving this objection, Local 731 denies the allegations contained in Paragraph 170.

PRAYER FOR RELIEF

171. Answering the requests for relief 1-7 in the Amended Cross Complaint, Local 731 denies that Respondent/Cross Complainant is entitled to any relief.

AFFIRMATIVE DEFENSES

1. Failure to State a Claim: The Amended Cross Complaint fails to state a cognizable prohibited practice under NRS Chapter 288.

2. Statute of Limitations: The claims raised in the Cross Complaint are untimely.

3. Lack of Jurisdiction: The Board lacks authority and jurisdiction to hear and decide the claims raised in the Cross Complaint.

4. Waiver: The Complainant, by its own actions, inactions, or conduct, has waived any right to assert the claims in the Cross-Complaint.

5. Estoppel: The Complainant is estopped from pursuing the claims due to its own representations, conduct, or agreements, upon which Local 731 reasonably relied.

6. Laches: The Complainant unreasonably delayed in bringing the claims, resulting in prejudice to Local 731.

7. Good Faith Conduct: Local 731 has acted in good faith at all times relevant to the allegations in the Cross-Complaint and has fulfilled its obligations under NRS Chapter 288.

8. Failure to Identify a Specific Prohibited Practice: The Cross-Complaint fails to allege any specific prohibited practice as defined by NRS 288.270 or other applicable provisions.

9. No Demonstrable Harm: The Complainant has not suffered any tangible harm as a result of the alleged actions of Local 731, and therefore, no relief is warranted.

10. Mootness: The claims are moot because the circumstances giving rise to the allegations have been resolved or are no longer applicable.

11. Unclean Hands: The Complainant's own conduct, actions, or omissions contributed to or caused the alleged harm, and therefore, the Complainant is barred from seeking relief.

12. Failure to Mitigate: The Complainant has failed to mitigate any alleged damages or harm, and therefore, any relief should be limited or denied.

13. Lack of Causal Connection: The alleged harm or violations are not the result of Local 731's actions, and there is no causal connection between the alleged conduct and the claims asserted.

14. Collective Bargaining Agreement Supersedes Claims: The claims asserted are governed by the terms of the Collective Bargaining Agreement (CBA), which supersedes any claim before the EMRB.

15. Compliance with Statutory and Contractual Obligations: Local 731 has complied with all obligations under NRS Chapter 288, applicable regulations, and any relevant contractual provisions.

16. Public Policy Considerations: The relief sought by Complainant would violate public policy, including principles governing collective bargaining and labor relations.

17. Reservation of Additional Defenses: In the event further inquiry reveals the applicability of additional affirmative defenses, Local 731 reserves the right to amend its Answer to specifically assert additional defenses.

WHEREFORE, this answering Complainant/Respondent prays as follows:

1. That Respondent/Cross Complainant take nothing by way of this Cross Complaint;
2. That judgement be awarded in favor of this answering Complainant/Respondent, International Association of Firefighters Local No. 731;
3. That this answering Complainant/Respondent, International Association of Firefighters Local No. 731, be awarded attorney's fees and costs in this matter; and
4. For such other and further relief as the Board deems just and appropriate.

DATED this 20th day of March, 2025.

Respectfully submitted,

/s/ Alex Velto

Alex Velto, Esq.
Nevada State Bar No.14961
Paul Cotsonis, Esq.
Nevada State Bar No. 8786
REESE RING VELTO, PLLC
200 S. Virginia Street, Suite 655
Reno, Nevada 89501
T: 775-446-8096
E: alex@rrvlawyers.com
paul@rrvlawyers.com

CERTIFICATE OF SERVICE

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

CITY OF SPARKS
Wesley Duncan, Esq.
wduncan@cityofsparks.us
Jessica Coberly
jcoberly@cityofsparks.us

/s/Rachael L. Chavez

City of Sparks (Complainant/Respondent)

Motion to Defer
and
Renewed Motion to Dismiss

Wesley K. Duncan, #12362
Sparks City Attorney
wduncan@cityofsparks.us
Jessica L Coberly, #16079
Acting Chief Assistant City Attorney
jcoberly@cityofsparks.us
P.O. Box 857
Sparks, Nevada 89432-0857
(775) 353-2324
Attorneys for Complainant/Respondent City of Sparks

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 DEFER AND RENEWED MOTION TO DISMISS**

The CITY OF SPARKS ("City") moves to Defer the second claim in INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 ("Local 731")'s Complaint and renews its Motion to Dismiss the first claim in the Complaint.

I. FACTUAL & PROCEDURAL BACKGROUND

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 two-year collective bargaining agreement ("CBA") executed on September 22, 2025, effective July 1, 2025 through June 30, 2027. On January 24, 2025, Local 731 filed a complaint alleging two instances of bad faith in the City's participation in resolving Local 731's "Force Hire" and "Group Health" Grievances. The City filed its amended Cross-Complaint on February 27, 2025, and the parties filed cross motions to dismiss. The Board issued

an Order denying both motions on May 22, 2025. Following the Board's Order, on June 12, 2025, the parties filed pre-hearing statements identifying the evidence each party planned to rely on before the Board at a hearing. Based on the evidence listed, the Board issued an Order to stay the proceedings on July 3, 2025, determining that the "on-going arbitration of the [Group Health] grievance brought by Complainant" may warrant deferral by the Board to the Arbitrator's decision. Order at 2. The Board ordered the matter stayed pending the Arbitrator's award and decision, and that "after the receipt of the Arbitrator's award and decision, the prevailing party shall file a motion to defer." *Id.*

The Arbitrator's October 6, 2025 award and decision (hereinafter "Opinion" or "Op.") regarding the Group Health Grievance concluded that "no benefits provided by the [City's] healthcare plan were improperly changed following the implementation of the current Plan Document" and consequently "[n]o violation of the [CBA] has been proved" by Local 731 and determined "[t]he [Group Health] grievance is DENIED." Op. at 36. Given the Arbitrator's determination that the City was the prevailing party on all issues raised during the Arbitration and in accordance with the Board's Order, the City files this Motion to Defer Local 731's second claim in this pending matter regarding the Group Health Grievance. Although the Complaint's first claim regarding the Force Hire Grievance was not directly addressed by that decision sufficient for a cognizable deferral motion, testimony from both the subject Group Health Grievance Arbitration and the February 2025 Force Hire Grievance Arbitration demonstrate that a renewed motion to dismiss the first claim is also appropriate.

II. STANDARD OF REVIEW

Regarding the Motion to Defer, the Board applies a five-part test relative to deferral in arbitration, acknowledging that the Board shall defer to an arbitration decision if:

1. The arbitration proceedings were fair and regular;
2. The parties agreed to be bound;
3. The decision was 'not clearly repugnant to the purposes and policies of the [Employee-Management Relations Act]';
4. The contractual issue was factually parallel to the unfair labor practice issue; and

5. The arbitrator was presented generally with the facts relevant to resolving the [unfair labor practice].

City of Reno v. Reno Police Dept., 118 Nev. 889, 896 (2003) (per curiam) (adopting the NLRB deferral standard as the Board's standard). "The party asking this Board to reject an arbitration award has the burden of demonstrating that the five-part test above was not met." *AFSCME Local 4041 v. State of Nevada*, Case No. 2023-019 and 2023-029, Item #909 at 2 (July 28, 2025).

In evaluating a Motion to Dismiss, 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 v. Elko County Fire Protection District ("IAFF Local 5046")*, Case 2019-011, Item #847-A at 5 (July 8, 2020) (citation omitted).

III. ARGUMENT

The Arbitrator's Opinion (**Exhibit A**) and the sworn testimony from the Group Health Arbitration (**Exhibit B**) demonstrate that Local 731's entire Complaint should be deferred and dismissed. Local 731's second claim, relating to the City's handling of the Group Health Grievance. should be deferred because the Arbitrator's Opinion fully addressed the factual claims therein and determined they were baseless. All five deferral factors were fulfilled through the Arbitration process and the ensuing Opinion. Accordingly, the Board should defer to the Arbitrator's explicit factual determination that the City's requested extensions during the Group Health Grievance process were "to allow for a thorough review of the concerns raised," Op. at 17, and not to persuade the Sparks Police Protective Association (SPPA) to vote in any particular way as alleged by Local 731 before the Board. Compl. ¶ 45. The Arbitrator determined there was "no indication [the Group Health Care] Committee [(GHCC)]"—of which SPPA is a voting member—

"operated under the sway of the City in general, or with regard to the issues raised by [Local 731]." Op. at 29.

The Arbitrator's Opinion also established certain facts that eliminated bases on which Local 731 intended to rely on to demonstrate bad faith under its Force Hire claim, warranting a renewed motion to dismiss. First and foremost, if Local 731's Group Health Grievance is deferred, then the first claim regarding the Force Hire Grievance negotiations represents a single isolated incident, and a finding of bad faith categorically cannot rest on a "single isolated incident." *IAFF Local 5046*, Item #847-A at 5 (citation omitted). Local 731's Force Hire Claim alleged two factual scenarios that amounted to a single alleged act of bad faith: (1) that the parties reached a verbal contractual agreement that the City purportedly "reneged" on two days later when it sent a draft Memorandum of Understanding (MOU) retaining certain management rights, and (2) that the internally-directed attorney-client comments demonstrated the City intended to continue to "reserve" its authority over such policy changes. Local 731 Prehearing Statement at 6–7.[1] Ultimately, those allegations both turn on whether there was a verbal contractual agreement made by the parties in the September 4 Grievance meeting, wherein Local 731 members Darren Jackson and Mike Szopa participated in a conversation with the City's Fire Chief White and Division Chief Keller. Compl. ¶ 13. Local 731 must rely solely on those two individuals' testimony to convince the Board that the contractually-required "meeting of the minds" occurred. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) ("preliminary negotiations do not constitute a binding contract unless the parties have agreed to all material terms," and such an enforceable contract

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[1] Again, 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)). The City's internal privileged discussion of the mechanics of the MOU terms does not evince a "threat of reprisal," *id.*, 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. Not only were these comments not directed to Local 731, but Local 731 should not have reviewed apparently privileged communications.

requires a "meeting of the minds").

But in the Group Health Arbitration, Local 731's witness Mr. Jackson demonstrably lied in sworn testimony before the Arbitrator—as established below—and the Arbitrator specifically acknowledged that contrary testimony from the City's witness on that topic was therefore "uncontroverted." Op. at 6. Because Local 731 now cannot credibly rely on Mr. Jackson's testimony in proving its Force Hire Claim, the Board should dismiss the Force Hire Claim as wholly lacking "sufficient facts." Local 731 can now only feasibly rely on Mr. Szopa to potentially credibly claim that on September 4, 2024 the Fire Chief and Division Chief verbally agreed to amend the CBA to incorporate limits on the City's ability to force hire—which both the Fire Chief and Division Chief would deny. Furthermore, both Local 731 counsel and Mr. Szopa already previously testified that the at-issue September 4th meeting constituted a negotiation to change the CBA, *See* **Exhibit C** (Force Hire Arbitration Tr. Day 2, 49:3–23)—which would make it subject to the parties' applicable CBA Ground Rules, requiring all such agreements to be in writing. Thus, even if the testimony of one witness (Mr. Szopa) could out-weigh the testimony of the Fire Chief and the Division Chief in order to establish the veracity of the factual allegations as to a purported verbal agreement, that factual basis is nevertheless irrelevant given that any such agreement had to have been in writing. The Force Hire claim is wholly lacking in "sufficient facts", and because the second claim (the Group Health Care Grievance) must now be deferred pursuant to the Arbitrator's Opinion, "the totality of the conduct throughout negotiations" evinces the City's good faith and fails to provide even an inference of bad faith, thereby warranting dismissal of the entirety of this Complaint. *IAFF Local 5046*, Item #847-A at 5 (citation omitted).

A. All Five Deferral Factors Are Satisfied as to Local 731's Second Claim—the Group Health Grievance.

The Group Health Arbitration award and underlying testimony demonstrates that the proceedings were fair and regular, the parties agreed to be bound, and the decision is in accordance with the purposes and policies of the Act. The Arbitrator's Opinion and sworn testimony from the Arbitration directly address the issue raised and wholly refutes the factual allegations underlying that claim.

Under Factor 1, the proceedings were fair and regular as "[b]oth parties had an opportunity to present their arguments to the Arbiter through their respective legal representatives which included the presentation of witnesses, oral argument and the filing of written briefs." *AFSCME Local 4041*, Item #909 at 2; *see* Group Health Arbitration Tr. Day 3, p. 226:20–26 (parties stipulating to admitted exhibits). Both parties followed the CBA provisions regarding choosing an arbitrator and mutually agreed upon dates and times. CBA Art. L(5); Group Health Arbitration Tr. Day 1, p. 267:7–12 (Local 731 discussing extending the arbitration). The first factor is satisfied given there are no allegations from either party on the record that the Arbitrator conducted unfair proceedings. *See* Op. at 2 (summarizing the evidentiary process and timeline of the Arbitration); *see also Charles Ebarb v. Clark County and Clark County Water Reclamation District*, Case No. 2018-006, Item No. 843 at 9 (June 28, 2019) (en banc) (identifying proceedings that are not fair or regular where "critical evidence was not presented to the arbitrator" or "evidence was deliberately withheld" (citation omitted)). In fact, over the City's objection, the Arbitrator allowed Local 731 to present the testimony of their expert witness who was not disclosed to the City until one business day prior to the Arbitration, further highlighting the procedural fairness provided to Local 731. Op. at 20.

Under Factor 2, "[t]here is no dispute by Complainant or Respondent that the parties agreed to be bound by the grievance and arbitration processes set out in the CBA." *AFSCME Local 4041*, Item #909 at 2. The Arbitrator was selected "by agreement of the parties." Group Health Arbitration Tr. Day 1, p. 6:16–17. Pursuant to the CBA Section L(5), the parties accordingly "authorized the Arbitrator to determine" the statement of the issue, Op. at 2, and the Arbitrator found the Grievance arbitrable, *id.* at 8, but that "[n]o such violation of the parties' Collective Bargaining Agreement has been proved." *Id.* at 34.

Pursuant to Factor 3, the Arbitrator's decision correctly applied case law and secondary sources to arrive at findings and conclusions that were consistent with Nevada Law. The Arbitrator evaluated the factfinding decision that created the GHCC, *id.* at 9, the applicable contractual provision of the CBA, *id.*, *see also id.* at 25–27, the factual details of the Grievance Process, *id.* at 17–19, chose to accept expert testimony from Local 731's expert, *id.* at 20, adopted Local 731's

expert's proffered definition of "benefits," *id.* at 21, analyzed whether a past practice supported Local 731's position, *id.* at 22–25, and applied that analysis to determine the City did not violate the CBA. *Id.* at 27–33. This analysis cited extensively to both parties' evidence, briefs, and testimony, *see generally id.* at 1–35, and incorporated secondary sources. *See, e.g.*, *id.* at 23, 25. Therefore, the Arbitrator's decision fulfilled deferral Factor 3.

Factor 4 requires that the contractual issue was factually parallel to the unfair labor practice issue and Factor 5 requires that the Arbitrator was presented generally with the facts relevant to resolving the unfair labor practice issue. *City of Reno*, 118 Nev. at 896. To determine whether issues are factually parallel, the Board acknowledges that often the "the arbitration issue is one of contractual interpretation while the unfair labor practice issue is whether the Respondent failed to bargain in good faith," but the issues are still factually parallel if the determination of the contractual issue was "resolved by the same facts." *International Association of Fire Fighters, Local 4068 and Van Leuven v. Town of Pahrump (IAFF Local 4068)*, Case No. 2017-009, Item No. 833 at 9 (Nov. 14, 2018) (quoting *Reichold Chemicals*, 275 NLRB 1414, 1415 (1985)). Here, the Arbitrator made factual determinations that directly impacted Local 731's Group Health claim before the Board and concluded it was baselessness. Local 731's Complaint alleges the City's request for a continuance to consider the Group Health Grievance was "an excuse to delay the Grievance process to allow Responded to … sway SPPA's vote in favor of approving the changes … to the health plan." Compl. ¶ 35; *see also id.* ¶ 45 (the continuance was "to buy [the City] time to pressure the SPPA member of the GHCC to vote in favor of … Respondents[']changes to the Health Plan"). But during the Arbitration, Local 731 representative Mr. Stewart testified that Local 731 expected to offer liberal extensions and that "we basically understood that they're going to need time and we said take what time you need, what extensions you need, let us know, let's just stay within the -- put everything in writing." Group Health Tr. Arbitration Day 3, p. 11:20–24. Mr. Stewart further explained that specifically after meeting with the City Manager in summer 2024, Local 731 explicitly expected the City "would request another request another extension because of the lengthy depth of work needed" to resolve Local 731's remaining concerns within the Grievance. *Id.* at Day 3, p. 36:7–8. The City specifically asked Mr. Stewart at the Arbitration:

> Q: So you made multiple references to the City Attorney's Office needing time and the City needing time to look into the allegations made by Local 731 due to the depth of the issues. So it's your understanding that those extensions were sought for more time to look at the issue?
>
> A: Yes.

Id. at Day 3, p. 44:9–15 (emphasis added).

As a result of these colloquies, the Arbitrator determined that the City's extensions were sought for one reason—"[t]he parties agreed to extend timelines for the City's response to allow for a thorough review of the concerns raised." Op. at 17. And after an exhaustive review of the operations of the GHCC and the GHCC vote on September 19, 2024 referenced in Local 731's Complaint, *id.* at 22–28, 30–33, the Arbitrator determined that in that GHCC meeting "[t]he unions' representatives provided input, raised challenges, brought questions and concerns to the fore, and were deliberative when taking action on issues under consideration. There is no indication the Committee [which included SPPA] operated under sway of the City in general, or with regard to the issues raised by the Union." *Id.* at 29 (emphasis added). Therefore, pursuant to Factors 4 and 5, Local 731's Group Health Grievance claim that the City's extensions were an "excuse" to "sway SPPA" was directly evaluated, addressed, and dismissed. *Dennison Nat. Co.*, 296 NLRB 169, 170 (1989) ("As to whether the parties generally presented the arbitrator with facts relevant to the statutory issue, the record shows that the arbitrator received ample evidence, i.e., the parties' contract and evidence of past practice. The Board would necessarily consider the same facts in reaching a decision on the Union's [bad faith] allegation. Accordingly, we find that the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice.").

Here, as in *IAFF Local 4068*, "it is evident that the Arbitrator considered and made numerous and detailed factual findings, and was presented generally with the facts relevant to resolving the unfair labor practice." Item No. 833 at 7. The Arbitrator's decision included evaluation of "the same facts" under Factor 5 and "[t]hus, the issues are factually parallel" pursuant to Factor 4. *Robert Ortiz v. Service Employees International Union, Local 1107*, Case

No. 2020-021, Item No. 879 at 5, 6 (citation omitted). In a well-reasoned and thoughtful opinion, the Arbitrator fulfilled the five deferral factors and determined the City did not violate the CBA in changing Third Party Administrators. Accordingly, the City urges the Board to defer the second claim in the Complaint as resolved by the Arbitrator's factual findings and Order.

B. Arbitration Testimony Demonstrates the First Claim is Legally Insufficient.

"In order to show 'bad faith', a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" *IAFF Local 4068*, Item No. 833 at 5 (citations omitted). Particularly when discussing conduct during negotiations, "[a] party's conduct at the bargaining table must evidence a sincere desire to come to an agreement. The determination of whether there has been such sincerity is made by 'drawing inferences from conduct of the parties as a whole.'" *City of Reno v. International Association of Firefighters, Local 731 (IAFF, Local 731),* Item No. 253-A at 8–9 (Feb. 8, 1991) (*quoting NLRB v. Ins. Agent's Int'l Union,* 361 U.S. 488 (1970)).

Local 731's Force Hire claim in this matter is that the parties came to a verbal agreement on a change to the CBA on September 4, 2024, and the draft MOU circulated a few days later (which proposed some Force Hire language to be implemented into the CBA and some ForceHhire language to be implemented into policy) did not propose the changes to the CBA that Local 731 believed should have been included, evincing bad faith. Compl. ¶¶ 14–15. Local 731's argument relies on two legal principles, both of which must be viable for this claim to survive dismissal: that Local 731 can produce sufficient evidence to demonstrate a meeting of the minds occurred during a verbal meeting in the manner set forth in the Complaint's allegations, and that a verbal agreement can constitute a binding contract in the labor negotiation context. Local 731's Arbitration testimony from the Force Hire and Group Health Arbitrations demonstrates both those legal principles are not met here, and therefore the claim fails on each of those bases. Consequently, the Board should dismiss the first claim.

1. Given Basic Contract Principles, Local 731 Cannot Prove the Parties Agreed on an Amendment to the CBA.

Local 731 cannot produce sufficient facts to demonstrate there was a meeting of the minds with Chief White such that the parties agreed to incorporate "a specific number of refusals of Force

Hires per sixth month period" into the CBA, Compl. ¶ 14, even if both its witnesses (Mr. Jackson and Mr. Szopa) could credibly testify as such. Verbal testimony about negotiations, absent other proof and contradicted by later written agreement, is insufficient as a matter of law to establish that a meeting of the minds, or mutual assent, actually occurred. As the District of Nevada observed in a recent case,

> [t]hough these terms were essential, [plaintiff] failed to prove that the parties agreed to them. [A witness] testified that the parties entered into an agreement, but I do not find that testimony credible or persuasive. It may be true that [defendant] made oral representations to [the witness], but I do not find that those representations amounted to an agreement.... nothing in the documents corroborates that the parties entered into a contract or agreed to these terms on a specific timeline. In light of the frequency of email exchanges between the parties and the fact that they entered into multiple written agreements, it strains credulity that no one on either side would at least send an email listing the essential terms of the contract at some point in the parties' yearslong relationship.

JB Carter Enters., LLC v. Elavon, Inc., 2023 WL 5206887, at *15 (D. Nev. Aug. 11, 2023), *aff'd in relevant part, rev'd in part and remanded*, No. 23-16142, 2025 WL 17112 (9th Cir. Jan. 2, 2025). Two parties providing conflicting testimony disagreeing about whether an oral agreement was reached demonstrates there was no mutual assent. *See JB Carter Enters., LLC v. Elavon, Inc.*, No. 23-16142, 2025 WL 17112, at *2 (9th Cir. Jan. 2, 2025) ("The parties presented conflicting testimony about whether there was a firm understanding that [defendant] would provide [services] by a particular date. The district court did not clearly err in finding that [plaintiff] failed to prove a meeting of the minds by a preponderance of the evidence.").

"Under Nevada law, '[m]utual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties.' 'If the outward words and acts of the parties can reasonably be interpreted as acceptance, then mutual assent exists.'" *CF Staffing Sols., LLC v. Dist. Healthcare Servs., LLC*, 2025 WL 1279716, at *4 (D. Nev. May 2, 2025) (citations omitted). "With respect to contract formation, preliminary negotiations do not constitute a binding contract unless the parties have agreed to all material terms." *May*, 121 Nev. at 672, 119 P.3d at 1257. Here, the Complaint admits that the MOU draft—provided two days after the September 4th conversation—proposed some changes to the CBA, but did not put the Force Hire limits into the

CBA but rather into policy. Compl. ¶ 18. Local 731 does not allege in its Complaint that there is any written manifestation of its alleged verbal agreement to put such limits into the CBA.

Furthermore, Local 731 admitted in its Answer to the Cross-Complaint that it accepted the incorporation of the Force Hire limits into the policy as a term of the MOU in later drafts. *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 ...."). By all "outward words and acts," *CF Staffing Sols.*, 2025 WL 1279716 at *4, the parties did not evince that they agreed upon placing the Force Hire Limits in the CBA during that September 4 meeting, but rather that the parties agreed the limits would be in policy. *Cf. Merchants' Mut. Ins. Co. v. Lyman*, 82 U.S. 664, 670–71 (1872) ("We think it equally clear, that the terms of the contract having been reduced to writing, signed by one party and accepted by the other at the time the premium of insurance was paid, neither party can abandon that instrument, as of no value in ascertaining what the contract was, and resort to the verbal negotiations which were preliminary to its execution, for that purpose. The doctrine is too well settled that all previous negotiations and verbal statements are merged and excluded when the parties assent to a written instrument as expressing the agreement." (emphasis added)). Here, there was a written instrument that Local 731 later assented to in writing. Therefore, because Local 731's Complaint and Pre-Hearing Statement does not allege any written evidence that could possibly support its first claim, and all the written evidence in fact establishes the opposite, the claim should be dismissed as insufficient to demonstrate bad faith.

2. The Group Health Arbitration Testimony Established Mr. Jackson is Not a Credible Witness.

Local 731's prehearing statement indicates it plans to rely solely upon Mr. Jackson and Mr. Szopa to testify regarding the alleged "agreement reached with the City" from September 4, 2024. Local 731 Prehearing Statement at 10–11. The entirety of the claim relies upon the contested testimony of these two witnesses, one of whom now lacks any reliability. Specifically, Mr. Jackson lied on the record in the Group Health Arbitration regarding a different conversation from 2024 with SPPA's President Detective Nick Slider, as established during Arbitration and discussed

below. As such, Mr. Jackson's testimony should not be considered by the Board as evidence whether there was a verbal agreement to incorporate the Force Hire limits into the CBA because he is demonstrably not credible.

Mr. Jackson attempted to conceal that he had reached out to at least one other union that ultimately declined to join Local 731's Group Health Grievance. When asked during the Group Health Arbitration if he had "ask[ed] those unions to join in this grievance," he responded "not directly, no. I—I did not really have contact with either Union directly." Group Health Arbitration Tr. Day 1, p. 172:14–15. Mr. Jackson said he "d[id] remember when … I saw specifically SPPA members, I asked [SPPA members] to please have their president contact me and he never did." *Id.* at Day 1, p. 173:10–12. When asked again to confirm he "never contacted [the SPPA president] directly" he responded unequivocally "No. I did not have his contact info, that's why I was reaching out to [SPPA members] to try to get it." *Id.* at Day 1, p. 173:14–15. Mr. Jackson further claimed there were changes in the SPPA presidency in 2023/2024, meaning the identity of the SPPA president "might have even switched twice" and he "d[i]dn't know" if he even knew who the SPPA president was in April 2024. *Id.* at Day 1, p. 173:17–25. Unfortunately for Mr. Jackson and his failed attempt to deceive the Arbitrator, Detective Slider has been SPPA President since February 2023 and still is the President, *Id.* at Day 3, p. 184:1–6—there were no changes in the time period Mr. Jackson mentioned.

Further establishing Mr. Jackson's dishonesty, on Day 2 of the Arbitration, prior to the City introducing evidence of his multiple and substantive conversations with SPPA President Detective Slider, Mr. Jackson changed his testimony and said "I didn't think I spoke to him directly." *Id.* at Day 2, p. 165:20–21 (emphasis added). But the Arbitrator recalled his testimony that "the president did not contact him or that he never contacted him" from Day 1 of the Arbitration. *Id.* at Day 2, p. 169:14–19. That was false testimony, as demonstrated by the introduction of SPPA President Detective Slider's phone records, indicating almost an hour of phone conversations with Mr. Jackson over the course of three phone calls on April 10th and 16th, 2024. *Id.* at Day 2, p. 169:22–170:19. President Slider spoke to Mr. Jackson directly on three different occasions on the phone "specifically in this matter" of Local 731's Grievance. *Id.* at Day 3, p. 186:14–15. Mr. Jackson

received Detective Slider's phone number from another Local 731 member, not an SPPA member, *Id.* at Day 3, p. 187:11–13, and Mr. Jackson specifically asked Detective Slider to join Local 731's Group Health Grievance. *Id.* at Day 3, p. 188:17–25. When confronted with the proof of his false testimony—the phone records from the year before—Mr. Jackson claimed "I'm not denying now that I see the record that I made the phone call but I don't remember it." *Id.* at Day 2, p. 170:22–24.

But Mr. Jackson's original testimony on Day 1 of the Arbitration was not unclear, vague, or at all consistent with his subsequent testimony that he "didn't remember" a conversation—he gave detailed, specific answers painting the picture of all his efforts to get in contact with a supposedly unknown SPPA President, all the while unequivocally stating he was never able to speak to the SPPA President. Mr. Jackson lied on record, in detail, and at length, to prevent the Arbitrator from knowing that from the birth of this Group Health Grievance—regarding alleged issues that should have affected every single employee of the City—that those perceived issues somehow only impacted a handful of members in one bargaining group. The Arbitrator acknowledged these misstatements both during the Arbitration, Group Health Tr. Day 2, p. 169:14–19, and in her Opinion, where she specified that it was "[u]ncontroverted" that Mr. "Jackson wanted to know whether SPPA would be interested in joining the grievance" by citing to Detective Slider's phone records at Exhibit 43, Op. at 6, despite Mr. Jackson's initial testimony stating he never had the opportunity to make that ask. When "[a] witness [is] willfully false in one material part of his or her testimony" the witness is "to be distrusted in others"—in fact, in a trial context, "[t]he jury may reject the whole of the testimony of a witness who has willfully sworn falsely as to a material point." *Burns v. State*, 88 Nev. 215, 219, 495 P.2d 602, 604, n.3 (1972) (approving this Jury Instruction in a criminal jury trial proceeding).

Perhaps cognizant that such facts reflected poorly on the Grievance and inherently undermined any of its merit, Mr. Jackson attempted to hide that fact and only admitted that he contacted Detective Slider when he was found out. This behavior is not consistent with good faith and the Board should not accept his testimony, particularly those statements that are uncorroborated by a written document. *See Litton Sys.*, 300 NLRB 324, 403 (1990) ("Even if an

insisted-upon position does not fall within the category of the 'predictably unacceptable,' if it is taken for reasons which are nonexistent or demonstrably false, the Board and the Courts will find that the position has been taken in bad faith." (citation omitted)); *see also Ewing v. Sargent*, 87 Nev. 74, 78, 482 P.2d 819, 821–22 (1971) ("it is the prerogative of the trier of fact to evaluate the credibility of any witness's testimony, and to reject it, at least where the testimony of the witness is contradicted as in the instant case, is impeached, is inherently incredible, or conflicts with other evidence or inferences arising from evidence").[2]

3. The Force Hire Arbitration Testimony Established that Local 731's Counsel and Witness Mr. Szopa Viewed the Discussion of the MOU as a Contract Negotiation—Meaning a Written Agreement Was Required.

The Force Hire Grievance Arbitration transcript from February 6, 2025 reveals that Local 731 viewed the discussion with Chief White as contract negotiations, meaning that its assertion in its April 17, 2025 Opposition to the City's initial Motion to Dismiss patently misled the Board as to Local 731's view of the discussion. The City's initial Motion to Dismiss argued that the Board's precedent required a writing to demonstrate an agreement had been reached between the parties, and Local 731 responded in Opposition that the City's cited caselaw was specific to "contract negotiations" and "involved a situation where the parties set ground rules specifically requiring agreements be reduced to writing," which was "unlike this instance." Local 731 Opp'n to Mot. to Dismiss at 5. But that was not Local 731's counsel's position at the subsequent Force Hire Arbitration, and both Local 731 counsel and Mr. Szopa's testimony in that Arbitration demonstrates that Local 731 viewed the discussion as a contract negotiation—meaning a writing was required to establish that there was any agreed-to change to the CBA.

Local 731 counsel Mr. Velto (also counsel of record for this Complaint) specifically argued at the Force Hire Arbitration that he "disagree[d]" that the September 4th conversation was "not a

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[2] For further context, police officers who are documented lying in any situation or proceeding—both formal and informal—are fired, as the fact of their prior false testimony would be introduced as *Brady* evidence in any future court hearing and their credibility is irrevocably damaged. Group Health Arbitration Tr. Day 3, p. 185:11–22.

negotiation as recognized under NRS 288" of the CBA, stating definitively "[t]his was a negotiation." Force Hire Arbitration Tr. Day 2, p. 49:3–7. Local 731 Representative Mr. Szopa agreed, explaining "it seems like that was a -- it was a discussion back and forth on provisions in that MOU, which to me, at a very basic level, seems like a negotiation to me." Force Hire Arbitration Tr. Day 2, p. 49:17–20. It is undisputed that CBA negotiations were ongoing in September 2024 and predictably, the applicable ground rules for that ongoing CBA negotiation required written tentative agreements—meaning the alleged verbal agreement between Local 731 and Chief White does not constitute a binding agreement. *See* **Exhibit D** (FY 25 Contract Negotiation Ground Rules at 2, "All tentative agreements shall be in writing").[3] Both the City and Local 731 must agree on that basic premise. However, now, Local 731 attempts to contradict their own position (now established on the record in the Force Hire Arbitration) to dispute the existence and application of the Ground Rules. The MOU proposed changes to the CBA, even if they weren't all the changes Local 731 wanted, and discussions of proposed changes to the CBA logically constitute CBA negotiations subject to mutually agreed-upon Ground Rules. Because "the evidence may reasonably be viewed to disclose the parties' intention that there would be no enforceable contract until a written agreement was finally signed, their rights and duties are fixed by the final written agreement. Their preceding negotiations, in legal contemplation, became merged therein ...." *Widett v. Bond Est., Inc.*, 79 Nev. 284, 286, 382 P.2d 212, 213 (1963). Local 731's claim in Opposition to the Motion to Dismiss denying in April 2025 what its counsel and its witness both previously testified to be true in the Force Hire Arbitration in February 2025 reveals that Local 731 attempted to mislead the Board to unnecessarily extend the instant proceedings. Thus, not only does this claim fail, but it has now been established to be knowingly frivolous.

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[3] "A court may ... consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *Anderson v. Albertson's LLC*, 679 F. Supp. 3d 1049, 1053 (D. Nev. 2023) (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). A stipulated agreement between parties can be a matter of judicial notice. *Rosales-Martinez v. Palmer*, 753 F.3d 890, 891 (9th Cir. 2014).

Therefore, the City reasserts that where "[t]he Board finds no evidence of a written and initialed agreement concerning the issue of" implementing the Force Hire limits into the CBA—despite other changes to the CBA being proposed, it "therefore concludes that no agreement was reached … on that subject" and this claim should be dismissed. *Reno Municipal Employees Association vs. City of Reno (RMEA)*, 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."). Thus, where 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," Local 731 Opp'n at 3, such a exchange was a negotiation over CBA contract terms—falling within *RMEA*'s and the FY 2025 Ground Rules' scope of application and a written agreement was required to demonstrate the parties had a contractual meeting of the minds.

The requirement that agreements regarding changes to a CBA be in writing is consistent with the Board's prior approaches to verbal negotiations. In *IAFF, Local 731*, the Board determined 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." Item No. 253-A at 5–6. Similarly here, Local 731 is contending in its Complaint (though contradictory to their position taken during the Force Hire Arbitration) that an alleged verbal agreement to amend the CBA occurred in a meeting and the City should be held to the terms of that undocumented claim, rather than the terms the City decided to formally offer in writing two days later—which Local 731 then later accepted. Any contrary ruling would have a tremendous chilling effect on 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 a cognizable claim under established law and would render an absurd result.

The Board should therefore "find[] no evidence of a written and initialed agreement concerning the issue of [Force Hire limits in the CBA] and therefore concludes that no agreement was reached to discontinue or cease negotiations on that subject.... the subsequent events surrounding the [September] 4th [meeting] do not reflect bad faith bargaining on the part of the City. The City was entirely justified to continue to negotiate the [Force Hire limits] issue." *RMEA*, Item #93 at 2.

4. The Conduct of the Parties Throughout the Force Hire Grievance As a Whole Does Not Demonstrate Bad Faith.

As the Board is aware, Local 731 has not filed another bad faith complaint against the City. But Local 731 has continued to negotiate with the City regarding a resolution to the Force Hire Grievance following the February 2025 Arbitration and those negotiations resulted in a full resolution of Grievance in the form of a mutually signed MOU amending the CBA on October 27, 2025. The complete lack of any additional claims of bad faith demonstrate that, with the alleged exception of the September 2024 conversation, the City has conducted itself in good faith throughout the proceedings. "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." *IAFF Local 5046*, Item #847-A at 5 (citation omitted). Local 731 does not allege the City acted in bad faith in any other aspect of this years-long negotiation. That silence demonstrates "there is a lack of sufficient facts to give rise to a justiciable controversy, [and] there is also a lack of probable cause" for the instant complaint. *Nevada Services Employee Union*, Item #905 at 1.

Following Local 731's filing of its Complaint in January 2025, Local 731 participated in an Arbitration with the City on the Force Hire Grievance in February 2025 and obtained notice of the Arbitrator's decision that the City must negotiate a resolution to the Force Hire Grievance on May 29, 2025. Beginning immediately after their receipt of the arbitration award, both parties convened to establish ground rules and a schedule for negotiations pursuant to the arbitration

award on June 4, 2025. The parties met eight more times for negotiations and ultimately agreed on a Tentative Agreement ("TA") to draft an MOU to resolve the Grievance on August 7, 2025. The MOU based on the TA was circulated to both parties on August 8, 2025. Local 731's membership would have begun voting on the MOU immediately after it voted to approve the July 1, 2025–June 30, 2027 CBA on September 9, 2025, but the vote needed to be re-noticed to the membership. As a result, the MOU was not approved by Local 731's membership until October 17, 2025. Based on City Council public noticing timelines, the City agreed to put the MOU on the October 27, 2025 Agenda for approval and to submit the required staff report even after the internal deadline of October 14, 2025 (further evidencing the City's good faith efforts). On October 20, 2025, Local 731 informed the City that the MOU "passed overwhelmingly" by vote of the membership and the City included the MOU on its agenda to approve the MOU at the October 27, 2025 meeting. *See* Sparks City Council Meeting Agenda, October 27, 2025, https://shorturl.at/2iy2F. Sparks City Council approved the MOU on October 27, 2025. At that City Council meeting, both Vice Presidents of Local 731 (Reno Vice President Tom Dunn and Sparks Vice President Mike Szopa) thanked the City for its partnership during the negotiation process and made no mention of the bad faith claim before the Board.

The parties to this matter have no other outstanding grievances after the resolution of the Force Hire and Group Health Grievances, other than the instant claims before the Board. The remaining Force Hire claim in this Complaint should be dismissed as there is not sufficient evidence for this claim to survive, a single incident is insufficient to demonstrate "substantial evidence of … dishonest conduct" by the City, *IAFF Local 5046*, Item #847-A at 5 (citation omitted), and a hearing on the matter would not be an efficient use of the Board's, the City's, or Local 731's resources.

IV. CONCLUSION

The Group Health Arbitration testimony and Order fulfilled the five deferral factors such that Local 731's second claim must be deferred and dismissed by the Board. Additionally, the Group Health and Force Hire Arbitration testimony and applicable legal argumentation

demonstrate the first claim should likewise be dismissed as legally insufficient to state a claim for bad faith.

Respectfully submitted this 30th day of October, 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 DEFER AND RENEWED 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 30th day of October, 2025.

/s/ Nancy Ortiz
Nancy Ortiz

INDEX OF EXHIBITS

EXHIBIT A

ARBITRATOR'S OPINION & AWARD

IN THE MATTER OF THE ARBITRATION BEFORE ARBITRATOR CHARLENE MACMILLAN

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 Union and CITY OF SPARKS Employer Health Plan Changes — Section 3, Article A	FMCS No.: 251031-00825 Grievance No.: 24-002 Date Issued: October 6, 2025

APPEARANCES

For the Union:

Alex Velto, Esq.
Reese Ring Velto
200 South Virginia St., Ste 655
Reno, NV 89501

For the Employer:

Jessica L Coberly, Esq.
City of Sparks CAO
PO Box 857
Sparks, NV 89432-0857

PRELIMINARY MATTERS

This contract interpretation case arises pursuant to a Collective Bargaining Agreement to which the International Association of Firefighters Local No. 731 and the City of Sparks, Nevada are parties. It resolves a dispute over alleged unilateral changes to benefits affecting the bargaining unit.

An evidentiary hearing was held on May 28 & 29, and June 30, 2025, during which both parties had opportunities to present argument and evidence, examine and cross-examine witnesses and make rebuttals. All testimony was given under oath. The record was closed for evidence at the conclusion of the hearing, and the evidence admitted as of that date formed the basis for all factual findings contained in this Award.

The parties filed closing briefs on August 25, 2025, by agreement.

The Statement of the Issue

The parties did not agree on a statement of the issue, and authorized the Arbitrator to determine its final formulation.

The Union offers that the statement of the issues is: "1. Whether the City violated CBA §3.A by implementing plan-document changes that modified benefits without GHCC approval and City Council ratification. 2. Even if all document changes do not need to go before the GHCC, whether the City violated CBA §3.A by changing any benefits without GHCC approval and City Council ratification. 3. Whether the grievance is timely and arbitrable. 4. What the appropriate remedy should be".[1]

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[1] *Brief* at 7. At hearing, the Union stated the issues as follows: "Whether the City violated the Collective Bargaining Agreement Section 3(A) when it implemented a change to the health Plan Document and benefits without abiding by the process outlined in the Collective Bargaining Agreement requiring it to get approval from the Group Health Care Committee for those changes"; and "Whether the City violated NRS 288.150 when it failed to negotiate changes to the insurance plan with the Union through the Group Health Care Committee." With regard to the latter, at hearing the parties explained they believed this was an acceptable framing of the issues, because they mutually viewed obligations under the CBA as deriving from the Statute (Tr. 3-13:6-18:23), but each altered their positions at closing. The City standard: "ultimately this Grievance is not about a failure to bargain such that NRS 288 is implicated, Local 731 is simply arguing that the City is not following the contract that resulted from that bargaining—a contract issue, not a statutory one" (*Brief* at 69); and the Union proffered the revised issue statement cited above. As its closing arguments were consistent with its revised statement, the Union is deemed to have amended its pleadings. Violation of NRS 288 is therefore not a matter under consideration in this Decision.

The Employer frames the issues as: "A. Is the grievance timely? B. If it is determined the grievance is timely, does the applicable CBA Section 3, Article A(3) require that the Group Health Care Committee (GHCC) vote on all changes to the City of Sparks health Plan Document or solely require the GHCC to vote on changes to benefits in the City of Sparks health Plan Document; C. Regardless, did the City intentionally change the benefits in the Plan Document to the detriment of any member without a GHCC vote; and, D. If so, what is the appropriate remedy?

Based on the parties' submissions, the record, and the Collective Bargaining Agreement, the issues to be decided are:

1. *Is the grievance arbitrable?*
2. *If yes, did the City violate the Collective Bargaining Agreement by implementing changes to employee benefits on January 1, 2024, without a vote of the Group Health Care Committee and ratification by the City Council?*
3. *If yes, what is an appropriate remedy?*

The parties were advised that, in the event the grievance is deemed inarbitrable, its merits would not be addressed absent their joint, express request. No such request was made.[2]

Whether the Grievance Is Arbitrable

The grievance alleges the City of Sparks ("the City") violated Articles A2b and A3 of the parties' Collective Bargaining Agreement by "implement[ing] changes to the healthcare plan that were not voted on by majority consent from the GHCC, causing harm...and denial of healthcare treatment previously provided by the plan" (U1). The Group Health Care Committee (GHCC or "the Committee") is a labor-management committee whose purpose is to address matters related to the City's health benefits plan.

[2] In its closing arguments, while holding that the grievance should be denied as untimely, the City noted that it "seeks the Arbitrator's review of the substance of the Grievance regardless" (*Brief* at 2). Findings on the arbitrability of the matter were reached prior to receipt of the parties' closing briefs.

The City moved to have the grievance dismissed as inarbitrable on grounds tbat the grievance was untimely filed. The International Association of Firefighters Local No. 731 ("the Union") argued this challenge was barred under Nevada law because the City first announced its intention to move for dismissal on the morning of the hearing. NRS 38.231(2) provides: "An arbitrator may decide a request for summary disposition of a claim or particular issue...Upon request of one party to the arbitral proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond." While the City may not have given prior notice of its intent to challenge arbitrability, in labor arbitration, a challenge on the arbitrability of a matter is often not deemed ripe for adjudication until it is brought before an arbitrator. Even so, with respect to NRS 38.231(2), the Union was allowed "reasonable opportunity to respond" before this Decision was made, and did so competently, at hearing and in its closing arguments (Tr. 1-13:8-17:18, *Brief* at 4, 7-9).

The City asserted the Union came into possession of the information leading to the grievance on April 8, 2024, but filed the grievance on May 9, 2024, three days after the contractual deadline. The Union contends it did not have actual knowledge of the violation until May 7, 2024, and that the violation is ongoing.

The Collective Bargaining Agreement between the parties establishes the following parameters for initiating the grievance procedure:

> 2. Definition of "Working Day": For the purpose of this Article, a working day shall be defined as a normal Monday through Friday workday, holidays excluded.
> 3. Time Frames: Grievances not filed within the required time frames will be forfeited...The City and Firefighters may agree in writing to extend any time requirements of this Article.
> 4. Procedure:
>
> a. STEP 1 - The employee concerned must within twenty (20) working days from the day [the] employee is grieved, file a written grievance with the Fire Chief or designee. (Article L)

The provisions defining the filing deadline, and the penalty for failing to meet it, are clear and unambiguous and may therefore be enforced as written. However, the conditions precedent to initiation of the filing require interpretation.

When Did the Grievance Occur?

The City's motion was denied because the arguments presented by both parties demonstrated there were material questions of fact as to the appropriate point at which the filing timeline should be fixed.

The action being grieved is "the implementation of changes to the healthcare plan that were not voted on by majority consent from the GHCC, causing harm..." (U1). As the parties' Agreement provides that the timeline for filing a grievance begins "the day [the] employee is grieved", that day is the effectual ground zero of the grievance process. In the common parlance, an individual is aggrieved when his rights are adversely affected.[3] The rights at issue here relate to the benefits due to bargaining unit employees under the health benefits plan.

The terminology used in the parties' Agreement does not explicitly require knowledge of the adverse effect. However, to the extent it is possible employees' rights may be adversely affected without their, or their Union's[4], knowledge, the language must be deemed to require it. This is due to the simple fact that it is impossible to contest an action or condition of which one is unaware.[5]

By both parties' accounts, the alleged benefit would have taken effect on January 1, 2024. Strictly speaking, this would be the date employees' rights were allegedly adversely affected. However, prior to the date and following, the City explicitly communicated its expectation that the existing plan would be administered, unchanged, by the new administrator, and the GHCC ostensibly addressed those benefit changes it wished to implement (C1, C19:1460, C19:1514-5, C21:1580, C21, U5, U39). As a result, at the time the change in third-party administrator took effect, it likely was not obvious to the Union that a potential violation had occurred. The record indicates, however, that the Union was aware of the issues giving rise to the grievance well in advance of the date it was filed.

[3] ref. Garner, *Black's Law Dictionary* 83 (11th Ed. 2004)

[4] While the Collective Bargaining Agreement refers to "the employee", it is recognized that this is a class action matter that affects more than a single employee, and that the Union stands in proxy.

[5] "When the running of a limitations period commences with 'the alleged incident,' 'cause,' or 'event,' these terms may require interpretation, because the date a party knew or should have known of a contract violation will be different from the date a grievable action occurred..." Indeed, "some arbitrators...hold that time limits on filing run only from the time the Grievant knew or should have known of a claim." (*Fairweather's Practice and Procedure in Labor Arbitration*, Schoonhoven, 4th Ed., pp. 126, 129).

When Did The Union Become Aware of a Grievable Event?

The record establishes that the Union was in possession of the document which formed the basis for its determination that the Collective Bargaining Agreement had been violated by April 8, 2024 (Testimony of Darren Jackson ("Jackson"), Firefighter and GHCC representative for the Union, at Tr. 2/186:11-187:11). Though it claimed to have been misled by the fact that the document was identified as a draft, the first page of the document plainly stated it was effective January 1, 2024. The Union took note of this fact during its review (C24, U39). More importantly, it was established on the record that by April 10th, 2024 the Union had sufficient understanding of the issues it had identified that it was able to assess potential impacts to its members and determine a grievance was warranted.

On April 10 and April 16, 2024, Jackson made three phone calls to the president of the Sparks Police Protective Association (SPPA) Detective Nick Slider ("Slider"). During those calls, Jackson informed Slider the Union intended to file a grievance "relating to the City's 2024 Health Plan Document and the change in the City's Third-party administrator", based on their findings after reviewing the draft health Plan Document. Jackson wanted to know whether SPPA would be interested in joining the grievance (Slider Testimony (Uncontroverted), C35, C43). The record suggests the Union may also have sought OE3's participation, though the timing of such efforts is unclear (Testimonies of Ralph Handel ("Handel"), OE3 Business Representative; Jackson, C33).

These facts demonstrate the Union was sufficiently informed of the basis for its grievance as early as April 10th, 2024. By the terms of the Collective Bargaining Agreement, the grievance should have been filed no later than May 8th. The Union informed the City on May 7th of its intention to file a grievance (U10), but did not do so until May 9th (U1). Therefore, even granting the most favorable timeline possible, the grievance was filed at least one day after the contractual deadline. Based on the plain language of the Collective Bargaining Agreement, it should he forfeit.

Whether the Matter Constitutes an Ongoing Violation

The Agreement prescribes forfeiture where a grievance is not filed within twenty days of the employee being grieved. Given that the issues here involve the provision of health benefits, it may be anticipated that employees in the bargaining unit may become aware of impacts at various times. For this reason, the Union's designation of the grievance as an ongoing violation warrants examination.

An ongoing, or continuing, violation is one in which the condition being challenged occurs, or may reasonably be expected to occur, repeatedly. It is distinct from a violation that occurs only once, but whose effects are perpetuated; with a continuing violation, it is the alleged violation itself that perpetuates. Rather than revive the timeline for filing a grievance arising from a one-time event, the alleged improper action spawns separate violations, each with its own timeline for filing.[6] A union may reasonably invoke this anticipated 'continuing violation', not to circumvent the contractual time limits, but to avert a potential slew of similar or identical grievances. While the continuing violation must be applied with circumspection, this efficiency of dispute management is one of its advantages.

It is not solely a matter of economy, however. The continuing violation is an anomaly, an exception to the parties' mutual obligation to adhere to the contractual time limits. It is allowed for the purpose of preserving the otherwise legitimate rights of access to the grievance procedure for those who become aggrieved by, or who become aware of, the alleged violation at some later time, since the misinterpretation or misapplication of the contract may be imposed upon multiple employees and/or at varying intervals. Arbitrators recognize the premise must be narrowly applied so as to avoid the indiscriminate nullification of the contractual time limits, and will critically assess whether an exception is warranted.

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[6] For example, an incorrect application of the contract with regard to payment of wage premiums can be an ongoing violation if there is reason to believe the same incorrect interpretation will be applied to each eligible employee, in each eligible circumstance (this would not apply to one-off situations or mere mistakes; the circumstances must be pervasive to some degree). Each such occurrence would constitute a new grievable event with its own filing timeline because the premiums have not been paid as required by the CBA. In deference to established grievance timelines, remedies in such cases are limited to the date the grievance was filed, since no timely grievance was filed on the prior violations. Compare this with the 'classic' example of a non-continuing violation: lost paychecks resulting from an alleged improper discharge are not considered to be a continuing violation because the ongoing loss of wages is merely an effect of the discharge (the alleged improper action) and not additional potential violations. An untimely filing of the grievance appealing the discharge could not be cured by characterizing the discharge as a continuing violation.

Here, the nature of the claims makes the grievance susceptible of a continuing violation. While the implementation of the new Plan Document was a discrete action, and was not timely challenged, it is inextricably linked to the claim of resulting harm to Union members. The Union has in the course of the dispute cited impacts to its members such as inability to access treatment and out-of-pocket costs due to denial of coverage (see for example, C23, U12, U14). Having deemed the grievance an ongoing violation, it reasonably follows that the Union would consider those situations, and any others that might subsequently arise, to be covered by the grievance.

The City argues that concerns arising from difficulty in using benefits are more appropriately resolved via the Plan's appeals process. However, the grievance alleges violation of the parties' Agreement resulting in provision of unbargained benefits, not breach of the health plan as an isolated concern. Whether the plan was changed in breach of the Collective Bargaining Agreement, and whether that caused harm to any employee, are issues to be resolved on the merits. As to the question of arbitrability, the matter reasonably attains to the standard of a continuing violation, since each alleged change in benefits could be grounds for a separate grievance when applied to a covered employee. On that basis, the grievance must be deemed arbitrable.[7]

[7] A finding that a matter constitutes a continuing violation is not a finding that a violation occurred. It merely recognizes that the timeline for grieving an alleged violation may reasonably be activated at various intervals.

BACKGROUND AND FACTUAL FINDINGS ON THE MERITS

In 1991, the City and the Union were parties to a factfinding which granted the City's proposal "to establish a joint committee which would be empowered to review costs and benefits provided under the City's group health programs, with the objective of maximizing benefits while keeping costs to a reasonable level". The Factfinder noted that: "although each individual union participating in the joint committee gives up its individual autonomy, the unions as a group will have three of five votes on the committee. It must therefore be presumed that the interests of employees will be fairly and adequately represented" (U23).

The Group Health Care Committee (GHCC, "the Committee") thus established included two other unions with which the City has collective bargaining agreements, Sparks Police Protective Association (SPPA) and Operating Engineers (OE3). All three unions were made equal parties and voting members of the Committee. The contractual provision regarding the GHCC, which has remained largely unchanged since its inception, appears in each of the unions' Collective Bargaining Agreements. It provides:

> **SECTION 3 Article A - GROUP HEALTH AND LIFE INSURANCE**
> 2. b. The City shall maintain an equal or better standard of group health insurance coverage unless change is agreed to as provided in Paragrapb 3 of this Article.
> 3. Group Health Care Committee: The purpose of this Committee is to discuss cost containment measures and to recommend to the City Council any benefit changes to the City's self-insured group health and life insurance plan.
> The Committee shall be comprised of one (1) voting members and one (1) alternate member from each of the following recognized bargaining units:
> • Operating Engineers (OE3)
> • Sparks Police Protective Association (SPPA)
> • International Association of Firefighters (IAFF)
> ...
> The voting member of each recognized bargaining unit shall have the authority to bind said bargaining unit to any modification in benefits recommended to the City Council subject to ratification of at least two (2) of the voting members (OE3, SPPA, IAFF). Any two (2) of the listed three (3) bargaining units can bind the remaining bargaining units to changes to the City's self-insured group health and life insurance plans. Any modification in benefits agreed to by the City Council on recommendation of the committee shall be binding upon each represented and non-represented group. (C5, U2, U3)

As a self-insured entity, the City uses a third-party administrator to manage its health benefits program. It was understood within the Committee that the City had the sole right to select its third-party administrator, and to enter into contracts to effect such changes. It was also understood that a change in third-party administrator would not, in itself, affect the benefits provided, because changes to benefits were the particular purview of the GHCC.

The Medical and Dental Benefits Plan Document & Summary Plan Description ("the Plan Document") sets forth the benefits City employees are entitled to receive and dictates how the plan must be administered. In the years since its inception, the GHCC has routinely addressed substantive benefit changes and updates to the Plan Document necessary to effectuate those changes (City Exhs 10, 11, 13, 16, 18 & 46; Union Exhs 24-34).

For most of the Committee's existence, updates to the Plan Document were made by the third-party administrator. That changed in or around 2016 when the City changed began contracting with Hometown Health (HTH), which placed responsibility for managing the Plan Document back in the hands of the City (C11, C12, C23:1704; U27, U38). This resulted in changes to the Plan Document format and language. Those changes were not reviewed or voted on by the GHCC (Jackson Testimony, C2, C9, C13, C14, C15, U28). During this transition, the GHCC continued to discuss and take action on proposed changes to benefits (C13, C14, C15, U28).

In October 2017, the Committee voted on added pre-certification requirements for out-of-state hospitalization and out-patient surgery, specifying the point at which pre-certification must occur for those benefits (U30-32). These changes were included in a larger packet of benefit changes under consideration by the GHCC.[8]

[8] There is insufficient information on the record to determine whether the pre-certification changes approved by the Committee were advanced to the Council for ratification.

The City Selects a New Third-Party Administrator

At a meeting of the GHCC on September 21, 2023, the City announced its intention to change its third-party administrator upon expiration of its contract with HTH. Committee Chair Jill Valdez ("Valdez") stated,

> So, what the TPA choice does not affect or does not change is number one benefit levels. The benefit levels are established in the Group Health Plan Document which is voted on by this Committee and ratified by City Council... (C19:1460)

In response to questions regarding time for Committee review before the Council vote, Valdez explained, "the TPA selection is not something that comes to a vote here. It goes to Council. It's not a change in benefit levels. The [] role of this Committee is to make Plan Document design changes...regardless of which TPA we're using, they have to apply the Group Health Plan Document" (C19:1514-5).

The City Council voted on September 25th, 2023 to approve a three-year contract with UMR as its third-party administrator. As the new third-party administrator, UMR would assume responsibility for management of the Plan Document, including making any needed updates to its content, using its own standard template (C23:1705, 1759; U38). In preparation for the transition, the City began "going through specific benefits with UMR...just to ensure that all of the claims are processed as they should be processed based on the intention of the plan language" (C21:1624).

The Committee Discusses Plan Changes

At the next meeting of the GHCC on December 7, 2023, Valdez made the following statements regarding the transition to the new third-party administrator:

> We've had some questions about the Plan Document and the UMR format. As you know, each time you do a new implementation, the Plan Document normally is updated by the new third-party administrator so that it reflects all the information, the contact information, etc., from the new third-party administrator. We will have that for January 1st...
> The – putting the new information in the new format does not change any of the benefits that only the Group Health Committee can change. (C21: 1579-80).

The Committee discussed some differences in benefits that would be available through UMR, including access to most hospitals in the state rather than a single hospital system, and an expanded provider network.

Valdez later addressed questions regarding physical therapy benefits:

> So, the Medical Benefit Summary is not meant to override the detail – the meat, if you will, of the plan...In the beginning of the Eligible Medical Expense over –section, it generally talks about the need for services to be approved by a physician or other appropriate provider, that they must be medically necessary...Physical therapy specifically is listed...
> ...It does talk about excluding things that are not medically necessary or not physician prescribed. So, medical necessity is something that we see throughout the Plan Document. It's – it's common. It's – the utilization is supposed to look for medical necessity...So, services for a member who's not under the regular care of a physician; so, they're going to seek services that haven't been – you know, recommended, approved, certified by a physician, is an exclusion.
> ...
> Does physical therapy require pre-certification? The answer to that is no, not as the plan is written...
> Is there a maximum visit of physical therapy in the plan? No, that is not – there is no cap on the number of physical therapy visits per year.
> ...because of the number of questions that we've gotten on this topic, I wanted to be as thorough as possible, going over places in the document where it talks about things that are relevant to how this should be looked at and will be looked it by UMR. (C21:1616-9)

Acting City Manager and GHCC Committee member Chris Crawforth ("Crawforth") added, "This is not something new. This is just something that was supposed to be occurring over the last seven years, because that's what our plan says, but it wasn't happening...it wasn't supposed to be happening that way where you just show up and it gets paid for". No committee member disputed these statements from Valdez or Crawforth (C21:1620). The Plan Document as it existed under HTH included the medical necessity requirement for treatments such as physical therapy, but did not specify a limit on the number of visits that would be covered (Testimonies of Rachel Arulanantham ("Arulanantham"), SPPA GHCC voting member; Ralph Handel ("Handel"), OE3 Business Representative; Dion Louthan ("Louthan"), City Manager; Jackson; Slider; Jarod Stewart ("Stewart"), Firefighter/Operator and Union Grievance Committee Lead; C2, C23, U16, U38).

Another agenda item address by the Committee in this December 2023 meeting was the City's presentation of "some clarifying language that we're making you aware of, but there are also items that we need your vote on specifically because they are call outs or changes to potential benefits on the Plan Document." (C21:1623):

> We're changing the format of the Group Health Plan Document. That does not mean that any benefit levels change...
> Where we're looking for your input and/or clarification, it's with the specific benefit questions that we did not feel comfortable giving an interpretation for unless we talked to you about it first because, again, the primary role of the Group Health Care Committee is to look at the benefits and try to contain costs, but also to make changes and recommendations as necessary.
> Specifically, there are six – or five to six items that you'll be voting on...these are coming up because they're silent in the plan or a specific language is not exactly clarified, so we want to clarify. But again, we need your input before we can make that recommendation.
> Here is the list. We've got the usual and customary language. Extended care facility, hospice care, emergency room, Telehealth and Teledoc. (C21:1623-5)

The Committee voted unanimously, with "possible recommendation to City Council", to update the Plan Document to remove "usual and customary claims" language; to place a cap on extended care "with extension based on medical necessity and prior authorization"; for "clarifying language regarding in-home respite care up to eight hours per week for members under Hospice care"; and against clarifying language to exclude out-of-network Telehealth services. Voting on removal of language guaranteeing payment for emergency room visits at 100% and clarifying language for behavioral health and dermatology services through TeleDoc was tabled to allow time for discussion with union membership.[9] No voting member of the Committee moved for a vote on the anticipated changes to the formatting or other strictly typographical aspects of the Plan Document (C21:1646-1655, U37). Arulanantham requested that a discussion on whether the physical therapy benefit was properly reflected in the Plan Document be added to the agenda for the next meeting, to ensure consistency with state law.

The contract between the City and UMR was executed on April 30, 2024, with an effective date of January 1, 2024 (C22).

[9] It is not clear from the record whether or when these issues were brought back to the Committee.

The Union Identifies Other Changes

On April 4, 2024, the City responded to a public records request from Union member Darren Partyka ("Partyka") which sought, among other items, the healthcare plan documents for 2022, 2023 and 2024. After twenty-five physical therapy sessions, Partyka had been denied additional treatment on the basis of medical necessity (Jackson Testimony). In its response to Partyka's public records request, the City noted, "the UMR Plan Document is a draft and it may need to be extended or delayed due to review of UMR specifications on dissemination" (U5, U11). The document contained redline changes to the healthy lifestyle benefit, making the eligible age 6 instead of age 7, removing a 26-visit cap, adding a $150 benefit limit, and correcting a related typo. These changes had previously been voted on by the GHCC (C1, U5, U39).

Partyka shared the UMR Plan Document with the Union on or around April 8, 2024. Chris Hartwig ("Hartwig"), Firefighter and voting member of the Committoe on behalf of the Union, identified numerous differences between it and its predecessor which he believed were, or could constitute, substantive changes to the benefits received by Union members, categorizing the issues as "direct changes", language changes for which "a change in benefits can be interpreted", and changes "in which wording and formatting has changed significantly" (U21, U39).

The Union had discussed these concerns with SPPA president Slider, who directed Arulanantham to canvass their membership to learn whether any members were "experiencing difficulty obtaining medical benefits…No members reported any concerns with receiving medical benefits generally or physical therapy specifically" (Testimonies of Arulanantham, Slider, E35, E36). Though SPPA was invited to join the grievance, it chose not to do so. OE3 representatives also learned of the impending grievance, but its officers declined to participate, ostensibly because it had received no concerns from its membership (Handel Testimony).

The Union and the City met on May 7th to discuss the issues the Union had raised. During that meeting, the City informed the Union the document it had received was the Document in effect. The Union filed the grievance two days later, identifying the matter as an ongoing violation.

The City contacted UMR on May 23rd and outlined 47 "differences that appear to create a decrease in benefits". The City noted further that, "There are other items in the 2024 Plan that simply use different language than the 2022 Plan which could potentially constitute decreases in benefits", but that it only included in the letter those it had positively identified as decreases. The City shared this communication with the Union. After consulting with UMR, the City proposed changes to the language in the Plan Document "to ensure the benefits from the 2022 Plan are reflected in the 2024 Plan" (C26, U9).

The Committee Addresses Concerns with the Third-Party Administrator Change

The GHCC held a workshop on June 5, 2024 during which the Committee addressed specific concerns raised by each of the unions, including IAFF's list of issues it had categorized as direct changes, language changes, and changes in wording and formatting.

In the course of these discussions, UMR's representative to the City acknowledged that folic acid screening for women was excluded from the current plan, but had been expressly provided for in the prior document (1758). Among other issues addressed was a change in out-of-network coverage for ambulance service from 60% to 80%, which the City explained had been made to ensure regulatory compliance; and the Union's concern that the Plan Document listed 60 more exclusions than the previous document. All other items raised by the Union were determined not to constitute a change in the benefits received by employees. Hartwig noted, however, "the point is, is that it's changed and we didn't vote on it. Right? And there's a possibility here for a member to have to deal with those costs, at least temporarily...why not bring the [inaudible] to the group health plan or the committee and just say these are language differences, uh, there's no change in benefits, but [inaudible] vote on it?" (C23:1795-6, 1805-6; U38).

Hartwig introduced a motion to add to the next meeting's agenda further discussion of changes the Union helieved had been made to benefits. The City invited all three unions to identify any differences they believed constituted a change in benefits, which the City would then review with UMR and determine whether clarification or a vote of the GHCC was needed (C23:1810, 1815-6; U38).

Partyka made public comment, in his private capacity, regarding "physical therapy, medical necessity, and maintenance therapy". He attested to physical pain, "emotional stress", and financial burden he experienced due to treatments not being covered by the health plan (C23:1692-4). In addressing concerns related to physical therapy, the City stated:

> It's being continuously worked on. Um, we are looking for solutions. Um, and I also want to clarify that the intention was never to change any benefits. Um, as we know, we talk about benefit changes coming to the committee. The intention here was not to change a benefit at all.
> During the implementation process with UMR, however, we do have to identify administrative processes. I believe in the discussion of how should we administer the PT, um, medical necessity review. The question was asked, when do we initiate the medical necessity review? Do we do it at 8 visits, 12 visits, 14 visits? What is it? Um, standard practice can be anywhere from 8 to 12. The city elected to choose 25 as a review spot for medical necessity. Not to say this is a cap, this is where we are going to review medical necessity...
> UMR needed a threshold for the medical review in order to administer that benefit...We do realize in all of these discussions that this could be argued to be a change and the staff is working with the attorney's office on alternative options. (C23:1712-3, U38)

Hartwig explained one of the Union's concerns was that using UMR's Plan Document template would necessarily result in changes to the language, which "may be what makes it possible for UMR to deny our claims" (C23:1761, U38). In a related discussion regarding maintenance therapy, which the City explained was excluded in the HTH and UMR plan documents, Hartwig reiterated his concern that the language used in the UMR plan would "make it easier for a service to be viewed as a maintenance therapy and therefore denied" (C23:1792, U38).

The City explained there was "no cap" on visits for therapy, and that additional treatment would be provided if a physician determined they were medically necessary (C23:1771). It conceded the medical necessity review was "something that we should probably, you know, get in front of the committee and have them vote ..." (C23:1785-6, U38). The group agreed to place the issue on the agenda for the next Committee meeting. Hartwig stated:

> ...I'm just looking to agendize a vote...to remove the medical necessity review off of physical therapy [inaudible]. The reason is, is we have a lot of members that go to physical therapy to avoid a million-dollar surgery on their back or people that go to physical therapy to not have [inaudible] surgery, which are all big dollar things that are going to cost our plan more money down the

> road...But we can't do that, because there is a cap placed for visits that -- or there is a -- not cap, but there's a [inaudible] there for medical necessity, now it needs to get reviewed. And I hate to say it, but it's going to inevitably be denied if we go to maintenance therapy, right?
> ...
> What I am motioning to put on as an action item for the next agenda, for the next meeting, is we have a change that required medical necessity at 25 visits, that was a change in our medical benefits that we sussed out earlier and it wasn't there on the previous contract. I am motioning to undo that change that we didn't vote on ... (C23:1847-8; U38)

The City disagreed with Hartwig's characterization, reiterating its prior assertions that the benefit had not changed, but had been "poorly administered" under HTH. It asserted this situation did not "create a benefit. So the benefits remain the same..." (C23:1854-8; U38).

The City Responds to the Grievance

The grievance was denied at Step 1 on June 12th, and was advanced to Step 2. The parties agreed to extend timelines for the City's response to allow for a thorough review of the concerns raised. By letter dated June 24, the City Attorney's Office (CAO)[10] provided a detailed response to 59 of those concerns, which it "determined did not demonstrate differences between the 2024 and 2022 plans" (C25, U12). For a meeting of the parties scheduled to occur the following day, City Attorney Wes Duncan ("Duncan") stated that the City planned to share "differences brought to our attention and the language we will be requesting UMR to add so the 2022 and 2024 plans mirror one another" (U18). During that meeting, the Union provided markups to the City's June 24th letter, identifying areas where it believed there was new, added, or more restrictive language; comments made by the City it believed not to be true; and seeking definitions for some terms used (C27, C29).

The City provided responses to 25 other issues raised by the Union, including its markups to the June 24th letter, on July 31, 2024. On August 1st, the City requested the deadline for its Step 2 response be extended to October 10th. The Union granted this extension, on the condition that the parties would continue their efforts to reach resolution (C28).

[10] Generally, references to the CAO mean Assistant City Attorney Jessica Coberly, who was the City's lead in responding to the grievance, and its advocate for these proceedings.

The GHCC Votes on Medical Necessity Review

On September 19, 2024, and the CAO made a presentation to the GHCC "concerning which Group Health Care Plan Document the City is currently operating under and additional redline changes by the City Attorney's office to ensure the same benefits are maintained". It explained:

> ...the IAFF brought, um, over 136, uh, different issues that they -- they thought could be potential differences in plan benefits. Um, we have only made 21 changes...13 changes are language changes that make it clear the plan benefits are the same...But because it's clearer if we add the old plan language in that those benefits are the same, we added those changes.
> And then there were seven changes where we want to ensure plan benefits remain the same, meaning there's potential that the language, um, wouldn't have been administered the same, so we made, um, those changes. Something important to note, that it gets its own slide. Um, at this time no prior claims have been identified as impacted by these redline changes...And if so, they would be reprocessed because they are covered by the plan...(C4:485-8)

The CAO discussed in detail the concerns it had addressed and explained its reasoning on each. One of the redline changes the City had made to the Plan Document was additional wording to include coverage of folic acid for women (C3:439). It also presented a number of reports, including on emergency room claims that had been paid at 80%, and the frequency of denial for continued physical therapy based on medical necessity.

The Committee discussed, and called for a vote on, the timing of the medical necessity review. Hartwig announced he had "been advised not to vote on this item...731 is close to a resolution with our grievance and part of that is potentially amending the Plan Document on some items..." (C4:532). SPPA'S Arulanantham moved to approve medical necessity review after 25 visits for physical therapy. SPPA had determined, based on its communications with its members, that "conducting a medical necessity review after the 25th visit for any therapy was not perceived as an issue by the SPPA" (Testimonies of Arulanantham, Slider, E35, E36). OE3's Ihnat seconded, having deemed the review to be "reasonable". Ihnat had not received any "official complaints" from that union's members, and believed any questions that had been raised had been resolved (Testimonies of Handel, Ihnat, E34). The measure was approved (C4:532), hut the issue was not subsequently presented to the City Council for ratification.

The City Denies the Grievance

On October 3, 2024, the CAO issued a third letter to the Union addressing 28 other concerns it had raised, plus a number of "changes in administration, not in benefits" the City had identified (C30). The letter concluded:

> At this point, I have reviewed all potential issues with the UMR Plan documents raised by the Union pursuant to Grievance 24-002 (Step 2 response due 10/10). As discussed in my presentation to the GHCC on September 19, I suggested 21 edits to the UMR Health Plan and 2 edits to the UMR Dental Plan to clarify that the benefits remain the same after reviewing 160+ potential issues/clarifications raised by the Union. The GHCC also voted to confirm the 25-visit checkpoint for medical necessity in the UMR Health Plan that was not previously stated in the Hometown Health Plan. (C30)

The Union replied that it was "continuing to find issues", and provided an example of one such issue, to which the City promptly responded (C44, U12). The City received no other questions, issues or requests for clarification from the Union (Testimonies of Hartwig, Jackson, C8, U8).

On October 10, 2024, the City denied the grievance, asserting it had "ensured that the UMR Plan Document accurately reflects the benefits included in the prior HTH Plan Document". It held that the Union's argument that the GHCC must vote on any and all changes to the plan documents was inconsistent with the language of the Collective Bargaining Agreement. Regarding the issue of medical review after 25 therapy visits, the City averred: "While this was not a change in benefits but a change in administration, out of an abundance of caution, this was brought to GHCC for a vote" (C8, U8).

The Parties Proceed to Arbitration

The matter remained unresolved, and the parties proceeded to arbitration. There, the Union held that the City's implementation of the current Plan Document constituted a change in the established structure and practice related to benefit changes, and provided documentary evidence and witness testimony to support its argument in this regard. The Union also enlisted the assistance of industry expert Troy Smith ("Smith") to perform an independent comparison of the HTH and UMR Plan Documents and determine whether the current Document contained substantive changes to the benefits provided.

The City moved to exclude the testimony of this expert witness on grounds that it received just one day's notice of his appearance, and that it was therefore prejudiced because it had insufficient time for review and preparation of a response to the evidence he would provide. The City also challenged the methodology of the review, the content of the report produced by the witness, and his qualifications to give expert testimony. The motion was not granted, because the parties would have opportunities to establish any necessary foundation and to rebut proffered evidence on cross-examination. Further, the City would have had additional time to secure and prepare its own expert witness, since an additional day of hearing was being planned. The City ultimately chose not to call an expert witness.

Smith testified to and provided evidence of his more than 30 years of experience in the healthcare industry, his qualifications, and his expertise working with self-insured entities in benefit plan design and administration (Tr. 1/209:1-211:4, U20). The report of his findings was admitted to the record. Making reference to NRS 689A.540, NRS 689C.075, NRS 689A.220, NRS 689A.230, and NRS 686C, Smith defined benefits as "the healthcare services, treatments, or financial reimbursements provided under a health insurance policy" (U19).

The document Smith reviewed for purposes of his analysis was the version of the Plan Document the Union had obtained through Partyka's public records request, and had used for its own initial review and identification of issues (Tr. 1/211:5-20, U5). Smith's report presented a side-by-side comparison of the essential benefits listed in the current and prior Plan Documents, and identified a total of 8 potential disparities. Those disparities included a decrease in benefits related to out-of-pocket maximums and hospice care; increase in benefits related to "Teladoc/ Telehealth"[11], preventive care, maternity care, contraception, and ambulance services; and new language not necessarily constituting a change in acupuncture and medical necessity for ambulance services. All other benefits reviewed were deemed not to have been changed, including durable equipment, emergency room, home health care, and vision benefits. Under cross-examination, Smith conceded that out-of-pocket maximums, acupuncture, maternity and preventive care, hospice care, and "Teladoc/Telehealth" benefits had not in fact been changed.

[11] Noted in quotes because the record indicates Smith may have improperly combined the two benefits.

Smith was also unaware that changes related to ambulance services, vision, and the healthy lifestyle benefit, had previously been addressed at the GHCC (Tr. 1/234:7-237:7, 238:1-240:18, 240:20-241:11, 242:1-243:14, 243:21-244:18, 251:11-252:7, 252:9-254:4, 254:7-256:17, 257:15-258:8, 258:13-259:13).

Regarding the medical necessity review, Smith affirmed medical necessity was required for all services offered under both plan documents, and that if an individual demonstrated medical necessity for further treatment, the current Plan Document does provide that entitlement (Tr. 1/240:10-18, 257:15-22). He confirmed that even under the prior Plan Document, confirmation of medical necessity would have been required "at some point" (Tr. 1/265:24-266:3). On the question of whether medical necessity was a benefit, Smith seemed to equivocate. He initially stated that an individual denied further treatment on the basis of medical necessity would "perceive" it as a change in benefits as compared with the services they received under the prior third-party administrator (Tr. 1/259:21-260:12), but later asserted the review would constitute a decrease in benefits (Tr. 1/263:15-264:10).

In closing, the Union argued the City had imposed benefit changes "without GHCC action and City Council ratification", in violation of Article 3A of the Collective Bargaining Agreement. It asserted that, "The appropriate remedy is a status quo reset: restore the pre-change plan terms, reprocess affected claims, make members whole with interest, cease and desist from further unilateral changes... fees and costs based on the City's refusal to correct admitted decreases" (*Brief* at 2-3).

The City indicated its willingness to adopt the definition of benefits developed by the Union's industry expert, but held fast to its position that the GHCC "votes on changes to benefits, not clarifying language changes". It contended there is no merit to the Union's allegations, and that the language of the Agreement, and the parties' bargaining history, support its interpretation. The City further noted that no other union member of the GHCC agrees that benefits have decreased, and asserted that its "transition in Plan Document formats caused no harm to Local 731 members" (*Brief* at 2, 17).

OPINION

The Union generally argues that the City violated both the Collective Bargaining Agreement and established past practice by improperly implementing changes to the benefits plan without the required participation of the GHCC and the City Council. The appeal to past practice is based on the proposition that the GHCC has always voted on even minute changes to the Plan Document, including grammatical and typographical edits, and that the City contravened this practice when it changed language in the Plan Document without a vote of the Committee.

Whether a Past Practice Exists

In support of this argument, the Union pointed to its Exhibit 29, which it claimed demonstrates that the Committee "approved even micro-edits (e.g., inserting a space before "APPO Directory"), deleted phrases...and struck or moved language..." (*Brief* at 13). However, the record revealed these edits were made to effect significant changes to benefits, or the manner in which they would be administered, pursuant to an agenda item approved by the Committee. The amendments being made on that occasion included changes to definitions which the City intended to send to the unions via email. The exhibit does not show that those definition changes were put to a vote. By contrast, the exhibit also includes a list of changes to health-related payments and services being considered by the Committee, which had been identified as being "for possible action", i.e., voting (Jackson Testimony). None was solely typographical (pp. 1, 6, 21). The exhibit thus demonstrates the Committee did review language changes, but that they were treated differently than were substantive changes to benefits, in that the latter were specifically identified as requiring a vote of the Committee.

A similar agenda item, listed as "benefit plan document updates", appears in Union's Exhibit 30. It followed discussions regarding certain "benefit design changes", for which the City presented "supporting language". These changes included adjustments to deductibles and elimination or addition of certain benefits. This agenda item was set for voting. A reference to "typos" appears to have been directly related to language providing for "legislated benefits and clarification for covered benefits", and not as a standalone item for Committee action.

The Union argued further that "even mandatory legal changes" were voted on by the Committee, suggesting that even changes the Committee had no power to deny were brought to a vote. It should be noted that the Collective Bargaining Agreement does not exclude legislated benefits from the GHCC's purview. The legislative items brought to the Committee were substantive additions or changes to the existing "healthcare services, treatments, or financial reimbursements". It was therefore appropriate for the City to bring those items to the Committee, and its vote on those changes was wholly appropriate under the terms of the Agreement.

While there is evidence the Committee discussed changes to the language of the plan document, that evidence does not demonstrate there was a binding past practice. The existence of a past practice may be validated if it is shown the parties possessed a shared understanding of the nature and terms of the practice asserted, but there is no evidence of such mutuality.[12]

In the first instance, the record revealed the City did not share the Union's understanding that the Committee routinely voted on inconsequential edits to the Plan Document. During the meeting of the Committee on December 7, 2023, the City explicitly distinguished between "clarifying language that we're making you aware of" and "items that we need your vote on specifically because they are call outs or changes to potential benefits on the Plan Document." (C21:1623). By this statement, the City clearly communicated its position that clarifying language was not a matter for approval by the Committee, but that changes to benefits were. Had clarifying language and typos been considered voting items as a matter of practice, the City would have had no reason to make this distinction. The perspective of the Union's cohort on the Committee is an equally important point of consideration, since it is the GHCC, and not the Union alone, which must be party to the alleged past practice. The City's statement was made before the full Committee and in the course of its normal and legitimate functioning. If voting on strictly editorial or grammatical changes was the known and accepted practice, the Union, or any of its counterparts, could be expected to lodge an objection to the City's characterization of these agenda items. There is no evidence they did.

[12] Ref. *Past Practice and Administration of Bargaining Agreements* by Mittenthal, R.

In addition, at hearing, OE3 provided evidence that it does not interpret the CBA as requiring the GHCC to vote on all changes to the Plan Document, and specifically not on changes to wording or format (Handel, E33). Consistent with this, and particularly relevant to the circumstances present in this matter, the record contains no suggestion that any Committee member or participant expected to vote on editorial changes that were made concurrent with the previous third-party administrator transition in 2015, when the City began contracting with HTH. The Union acknowledged no such voting occurred (Jackson Testimony, C2, C9, C13, C14, C15, U28).

On balance, the claim that the Committee has exercised jurisdiction on every jot and tittle of the Plan Document is not well-evidenced. The record shows instead that responsibility for making edits to the Document has passed between the City and its third-party administrator, and never was vested to the Committee.[13] The record further demonstrates the Committee routinely reviewed changes to the language of Plan Document, but that its focus was on substantive changes to healthcare services, treatments or payments when it came to voting (see, for eg., U24, 24-26; U25, 1, 20-22; U26 3-4).[14] The fact that typos were included in the editorial changes necessary to implement some change to a benefit does not elevate them to equal status.

While the City routinely apprised the Committee of the exact language that would accompany benefit changes, this is not tantamount to proof that overseeing typographical changes was the practiced role of the Committee. This course of dealing was a good faith discharge of the contractual obligations of the GHCC. Collective bargaining operates on a foundational principle of good faith, and in this context such action is valuable in fully satisfying the requirements of the Agreement.

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[13] The parties have no doubt engaged in multiple contract negotiations in the years since the GHCC language was drafted, yet there is no indication the Union ever sought to amend the Agreement to establish the Committee as steward of the Plan Document. This creates both a presumption of acceptance, and establishes that the parties have acted on a mutual understanding that the GHCC votes, not on minor typographical edits, but on actual benefit changes.

[14] The Union noted that the City provided no witness who had first-hand experience of the GHCC's operation, but the record contains agendas, notes, recordings and, in many cases, transcriptions, of a number of meetings spanning approximately ten years. As the Committee meetings are conducted under open meeting law, agendas are set with deliberation and minutes are recorded. It is therefore not necessary to rely on witness testimony in order to obtain a reliable representation of the Committee's functioning over the years.

As the entitlements provided by the plan are contained and communicated in the Plan Document, it is appropriate that a showing of proper performance in matters touching the Committee's actions be made. "Arbitrators use the doctrine of good faith as an interpretive tool to define ambiguous contractual language in a way that prevents an employer or union from evading the spirit of the bargain or willfully rendering an imperfect performance..." (T. St. Antoine, *The Common Law of the Workplace*, 82 (2nd Ed., 2005). Discussion and review of accompanying changes to the content of the Plan Document supports this goal.

What the Collective Bargaining Agreement Provides

Ultimately, past practice is not determinative in answering this dispute because the operative language is clear and efficacious in itself. The Agreement sets forth the roles, rules, and restrictions of the GHCC, and of its members. It provides:

> The City shall maintain an equal or better standard of group health insurance coverage unless change is agreed to as provided in Paragraph 3 of this Article.
> The purpose of this Committee is to discuss cost containment measures and to recommend to the City Council any benefit changes to the City's self-insured group health and life insurance plan.
> ...
> Any two (2) of the listed three (3) bargaining units can bind the remaining bargaining units to changes to the City's self-insured group health and life insurance plans. Any modification in benefits agreed to by the City Council on recommendation of the committee shall be binding upon each represented and non-represented group.

The parties jointly understand that the overarching purpose and function of the Group Health Care Committee are to "discuss cost containment measures and to recommend to the City Council any benefit changes to the City's self-insured group health and life insurance plan". Given the City's willingness to adopt the definition put forward by the Union's industry expert, throughout this Opinion, a benefit will be defined to include any healthcare service, treatment, or financial reimbursement provided under the City's group health plan. In this vein, the Agreement is rendered:

> The purpose of this Committee is to discuss cost containment measures and to recommend to the City Council any [*healthcare service, treatment, or financial reimbursement*] changes to the City's self-insured group health and life insurance plan.

The Collective Bargaining Agreement thus empowers the GHCC to discuss cost-saving measures related to healthcare services, treatments or reimbursements, and to recommend to the City Council changes to the health plan.

Regarding the Plan Document

The specific services, treatments and reimbursements provided by the plan are outlined in the Plan Document, which is relied upon by the City's third-party administrator, and the GHCC, in performing their respective roles. While the health plan is contained in the Plan Document, it must be noticed that the Collective Bargaining Agreement makes no reference to the Document itself, and does not specify any particular role for the GHCC with respect to its editing. Consequently, if the Committee voted to change a benefit, but the City, or UMR, failed to update the Plan Document to reflect the change, that failure would not constitute a violation of the Collective Bargaining Agreement, because the language acts upon the benefits offered by the plan, not upon the Plan Document. Similarly, a change to the Document which does not constitute a change to benefits or to the plan design would not violate the Agreement.

Regarding the Structure of the GHCC

The structure of the GHCC facilitates the right and ability of each member union to ensure their individual interests are "fairly and adequately represented", as contemplated by the 1991 factfinding determination prescribing its establishment (U23). The Collective Bargaining Agreement stipulates that the IAFF, the OE3, and the SPPA all have equal authority in determining what changes may be implemented. The language of the Collective Bargaining Agreement makes clear that the GHCC's legitimate function consists in the triumvirate action of all three member unions. It offers no mechanism by which any one union may have preeminence, or may overturn a determination reached by a vote of the Committee.

Regarding the Powers of the GHCC

While the unions have the power, collectively, to determine what benefit changes may be advanced for the Council's consideration, the Agreement does not provide that the Council is obligated to implement any measure recommended by the Committee. However, where the Council ratifies a majority vote of the Committee, the Agreement stipulates that all three unions are bound by the change, even if the Committee vote was not unanimous. The corollary is that a measure that passes the Committee, but which does not receive the Council's approval, is not binding on the unions; it is an incomplete performance, in that it fails to give effect to action taken by the Committee.

Applying the accepted definition of the word 'benefit', the City may be deemed to have violated the terms of the Collective Bargaining Agreement if it is shown to have altered any healthcare service, treatment, or reimbursement provided by the plan without a majority concurrence of the GHCC, or if it fails to present to the City Council those amendments in which it has concurred.

Whether the City Violated the Collective Bargaining Agreement

The Union maintains the City's actions related to the implementation of the Plan Document constituted violation of the Collective Bargaining Agreement due to resulting changes in benefits which were not approved by the GHCC and ratified by the City Council. It points to the City's May 23, 2024 email to UMR as evidence of the City's acknowledgement that benefits provided under the plan had decreased.[15]

[15] While the parties primarily make reference to decreases in benefits, reasonable arguments may be lodged to the effect that even an increase in benefits must adhere to the contractual procedure, since they obviously constitute a change. This perspective must be balanced, however, with the stipulation that the City "maintain an equal or better standard of group health insurance coverage unless change is agreed to" by the GHCC and ratified by Council. This clause identifying an increase in benefits as an exception to the procedural requirement means the City may implement such increases independent of the Committee-Council review. That said, increases in one benefit often increases costs in other areas, require a decrease in other benefits, or both. The weighing and balancing of needs, interests and costs necessitated in these circumstances lies within the purview of the GHCC. As testified to by Stewart, "It's the Union's job to question these things and to sift through them, which is why we have a GHCC with Union reps in there on health care to evaluate these things and when there is an agreement to disagree there's a vote and majority rules" (Tr. 3/67:11-16). Each of the member unions must be allowed to bring to bear on all such decisions the voice of their memberships. For this reason, while the City is arguably not obligated to seek GHCC approval for improved benefits, it is more consistent with the complete terms of the CBA, and with good faith bargaining, that it do so.

Considered within its proper context, that communication was not an admission to changes in benefits. It was part of the City's initial inquiries intended to learn whether the benefits reflected in the new Plan Document had in fact changed as the Union alleged. As previously noted, UMR had assumed maintenance of the plan as part of its contracted service, and had utilized its own template for the Plan Document. This resulted in descriptions of plan benefits that differed from that contained in the prior Plan Document. In its email, the City informed UMR it had identified differences in the Document that "appear to be a decrease in benefits". It went on to identify those potential decreases as "issues" it wished to address, not as anticipated or accepted changes to the plan. Further, after receiving UMR's analysis and response to the issues, the City provided "language changes to ensure the benefits from the 2022 Plan are reflected in the 2024 Plan" (U9). There has been no assertion, or evidence, to the effect that the City's proffered language changes accomplished anything other than this stated goal.

The City would eventually review, analyze, consult on, and discuss with the Union, each of the more than 100 purported changes it identified. The Union finds these responses to be generally unsatisfactory. It maintains the City did in fact change health benefits, and that it did so in violation of the parties' Collective Bargaining Agreement, a claim the City denies.

Whether Benefits Were Improperly Changed

It is not necessary within the scope of these proceedings to reach an independent determination as to whether individual benefits have been altered, because the issues to be decided here turn on whether there has been a violation of the Collective Bargaining Agreement, not the Plan Document. That said, the Union is not bound to rely solely on the City's own assertions. The trail of the dispute is replete with input from other, well-informed sources on the specific issues the Union has raised.

The third-party administrator, whose role and expertise are concerned with administering the plan, was invited to provide input from the inception of the dispute. The administrator identified only one difference in the benefits provided during the June, 5, 2024 workshop: coverage for folic acid, with was later rectified.

Along the way, each area of concern raised by the Union was discussed at various Committee meetings beginning in or about December 2023, as well as during the workshop. These discussions occurred in the presence, and with the participation, of the full Committee. As reflected in the record, along with Local 731, the other two member unions were consistent, active and competent participants on the Committee. The unions' representatives provided input, raised challenges, brought questions and concerns to the fore, and were deliberative when taking action on issues under consideration. There is no indication the Committee operated under sway of the City in general, or with regard to the issues raised by the Union. Yet, even in this context, no other Committee member determined benefits had been changed in violation of the Collective Bargaining Agreement. This is particularly salient in light of the fact that OE3 and SPPA had made efforts to determine whether any of their members had experienced any adverse impacts following the implementation of the Plan Document, and reported no concerns.

Latterly, and quite compellingly, the Union's own expert identified only a handful of potential changes of any kind. Applying his considerable expertise, Smith documented only 8 potential issues, far fewer than did the Union. The majority of these were ultimately shown not to have been changes to benefits, and the remainder, namely changes to the emergency room and Teledoc benefits, had been addressed by the Committee in December 2023, before the current Plan Document took effect. Voting on those changes was tabled by agreement of the Committee, though it is unclear whether or when they were revisited. In any event, the parties had initiated their agreed-upon procedure for addressing changes to those particular benefits. If they remain unresolved, their resolution properly resides with the Committee, and does not pass to this arbitration.

In light of the input provided by those most knowledgeable about the benefit entitlements, the meaning of the language contained in the Plan Document, and its impact on the members of all three unions represented on the Committee, there is no reason to conclude plan benefits were improperly changed, or resulted in harm as the grievance alleges.

With regard to impacts to its own members, though the Union properly invoked the continuing violation doctrine in its grievance filing, it has identified no individual or systemic loss of right or privilege. There is evidence employees throughout the City experienced difficulties related to claims management following the installation of the new third-party administrator. On June 5, 2024, the City reported that, between October 2023 and June 4, 2024, there were a total of 72 complaints or requests for support, and that, as of the date of that meeting, only 4 were yet to be resolved. The City explained at that time that the majority of the complaints had to do with missing benefit cards, while the next largest category was "claims that have been questioned" (C23:1709, U38). It was not shown that those issues remained at the time of hearing. The single exception is Partyka's case, in which he reportedly was denied access to further physical therapy due to the imposition of a medical necessity review for those services.

The Medical Necessity Review

The parties are at odds as to whether the imposition of a review for medical necessity for some treatments constitutes a change in the benefits provided. The Union contends this added requirement "redefine[s] what the plan covers and how members qualify to receive it" (*Brief* at 15). Citing Partyka's inability to receive further physical therapy under the plan, the Union held that this "utilization gate" "reduced access and raised costs" (*Brief* at 19). The City denies it changed the benefit provided, and defends the review as imperative to the third-party administrator's ability to enforce the requirements of the health plan.

It has been established on the record that medical necessity, including for physical therapy, was an express requirement in the previous Plan Document as well as the Document currently at issue, but for which no enforcement mechanism had been specified (Testimonies of Arulanantham, Handel, Louthan, Jackson, Slider, Stewart, C2, C21:1616-9, C21:1620, C23, U16, U38). The critical change is thus not the requirement for medical necessity, but the manner in which it is administered.

The Union rejects this characterization on the basis that the review ultimately affects employees' ability to continue accessing the benefit, and this is so. A finding that therapy is no longer medically necessary could be expected to result in denial of further coverage: Prior to 2024, employees were able to continue receiving the benefit without limitation; thereafter, they would encounter a restriction after twenty-five treatments, a situation no doubt experienced as a glaring departure from previous conditions, and as a reduced benefit. But this was manifestly a difference in administration, and not a difference in benefits.

The medical necessity review consists of an administrative analysis to determine whether additional medical treatments and services are warranted. It is a health plan feature intended to ensure compliance with the plan by precluding coverage for treatments, services or payments that are not medically necessary.[16] To this point, Smith offered the following testimony:

> **Q** For medical benefits, acupuncture, why did you highlight in yellow the in-network language?
>
> **A** I highlighted the yellow because it was a difference between the two that explicitly stated medical necessity next to the benefit, No. 1.
> No. 2, medical necessity after 25 visits is excessively rich in comparison to the industry, and No. 3, I just was drawing attention that it was a silent area under acupuncture under the SPD for Hometown Health SPD, it is typical for a third-party administrator and care management company to apply medical necessity during the visits. Typically in this example you'll allow several visits to occur, after they get excessive in that 25 in this category or it could be 10, you'll investigate and have a medical director get involved and review the chart to determine whether additional services are medically necessary.
>
> **Q** Was the Hometown Health Plan silent as to when there was a medical necessity review?
>
> **A** That's correct.
>
> **Q** However, there was a change in the UMR plan to obligate a medical necessity review after 25 visits; is that correct?
>
> **A** It's explicitly spelled out, yes. (Tr. 1/217:14-218:16)

The medical necessity review does not deny access to a benefit provided under the health plan, but ensures the benefit is provided in conformance with it.

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[16] It is akin to a coordination of benefits function, which is intended to avoid overpayments. With coordination of benefits, covered individuals do not lose access to benefit entitlements, but the amount paid might be limited to the extent alternative coverage is appropriate. Similarly, with a medical necessity review, individuals retain access to all provided health-related services, treatments and payments, but only to the extent they are medically necessary.

The medical necessity review is not a benefit, because it is not itself a healthcare service, treatment or payment, and the decision to ensure its enforcement does not constitute a change in the benefits provided. The Union's cohorts on the GHCC share this view. SPPA's Arulanantham testified that she did not see it as "a loss or change of benefit" (Tr. 3/179:17-24), and OE representative Handel stated that he did not think it was a change in benefits (Tr. 3/217:10-16).

Based on the record, the GHCC was discussing questions regarding the physical therapy benefit and medical necessity for such treatments before the current Plan Document came into effect. In the course of those discussions, the City communicated its understanding that medical necessity was always applicable to the physical therapy benefit, and that the benefit needed to be managed to this parameter. Neither the Union nor its counterparts seemed opposed to the City's assertions at that time. Related discussions continued following the filing of the grievance, and culminated in the vote setting a review for medical necessity after twenty-five visits.

Because the medical necessity review is not a benefit, and did not change the benefits provided by the plan, it was not necessary to obtain GHCC approval or Council ratification for its implementation. There is, however, some limited precedent for the City's consultation with the Committee regarding the timing of the review. In October 2017, the Committee discussed, and voted on added pre-certification requirements for out-of-state hospitalization and out-patient surgery (U30-32). As neither the pre-certification nor medical necessity review constituted a change in benefits, the fact that the Committee voted on these issues is notable. But its precedential value cannot be applied beyond this activity because it is not clear from the record whether the pre-certification changes approved by the Committee in 2017 were advanced to Council for ratification. That said, as those changes likely did not modify the benefits themselves, Council ratification would not have been contractually necessary. The same is true here. Consequently, while the involvement of the GHCC was a good faith and reasonable action given the potential impact of the review, the City's failure to take the matter to Council did not violate the Collective Bargaining Agreement.

The Union has advocated for rescission of the medical necessity review on the basis that there had been a "change that required medical necessity at 25 visits, that was a change in our medical benefits..." (C23:1847-8; U38) that needed to be corrected. There is no dispute the medical necessity review had been conducted in Partyka's case prior to the Committee's vote approving its conduct after the specified number of visits. However, setting aside the fact that the review did not change benefit entitlements, to the extent the vote occurred after the change was implemented, it currently stands as a matter upon which the Committee has acted. Any conceivable breach has been thereby mended. The Committee's action cannot be overturned on the basis of this grievance, particularly since there is no evidence suggesting the Committee might have arrived at different conclusions had the timing been different. Even if the medical necessity review could be deemed to constitute a change in benefits, any attempt to turn back the proverbial clock at this point would serve only to embroil the parties in a pro forma mimicry of the contractual procedure in a matter upon which the majority has already spoken.

As communicated during the meetings of the GHCC, the Union believes there is value in allowing its members to receive the physical therapy benefit without having to prove an ongoing medical need for such treatment. The desirability of this type of maintenance therapy is certainly understandable, but it is simply not provided for under the health plan. It is only allowable by a majority vote of the GHCC, and the GHCC has voted to enforce the medical necessity requirement. The Union opted to abstain from the vote, but that choice does not delegitimize its outcome. Neither does the Union's dissent. The Collective Bargaining Agreement explicitly authorizes the GHCC the make changes to the benefit plan as a body. That power is not vested in Local 731, or any of its counterparts, individually. Each of the unions holds equal authority, and each is bound by a majority vote of the Committee; unanimity is not required. The Committee's vote in September 2024 was a legitimate exercise of its powers, and the decision of the voting members was informed by their engagement with their stakeholders and with the rest of the Committee. It cannot be set aside here.

DECISION

The ultimate objective at arbitration is to restore to aggrieved parties the contractual rights and privileges they would have enjoyed hut for a proven breach of agreement. No such violation of the parties' Collective Bargaining Agreement has been proved.

The parties to this dispute are the City and the Union, and these proceedings derive from the Collective Bargaining Agreement between those entities. The Agreement entrusts authority and oversight of all changes to benefits to the three members of the GHCC, equally. It provides no mechanism by which determinations made by the Committee may be reviewed by arbitration to which only one of the Committee members is party.

The record established that the City and the GHCC routinely reviewed snbstantive changes to the health plan as well as changes to the Plan Document that did not affect the benefits provided. However, no binding past practice with regard to voting on typographical changes was established. Such discussions were a reasonable, good faith discharge of the work of the Committee, but were not shown to be recognized issues upon which the Committee voted as a matter of course. Moreover, the relevant Collective Bargaining Agreement language provides that the GHCC's jurisdiction rests with the healthcare plan itself, not the Plan Document. Though the one is contained in the other, the two are distinguishable, and the parties' hargaining history demonstrates they have operated within this framework for many years. Further to this, the Union's request that the City be required to revert to the prior Plan Document is not a viable option, because the Plan Document has been revised to reflect a number of benefit changes approved by the Committee in the legitimate exercise of its authority prior to and throughout the course of this dispute.

The essential question at issue in this matter is not whether the City violated the Collective Bargaining Agreement by making changes to the Plan Document, but whether it did so by improperly making changes to the benefits articulated therein.

Within the context of this dispute, the definition of a benefit, as proffered by the Union's industry expert and accepted by the City, is any healthcare service, treatment or reimbursement provided by the City's group health plan. The evidence on the record, particularly as articulated by UMR, the Union's own industry expert, and GHCC member unions OE3 and SPPA, established no benefits were improperly changed by unilateral action of the City. This determination by a majority of the Committee members that no improper change had been made is sufficient to compel a finding that there was no breach of the Collective Bargaining Agreement.

In addition, the question of medical necessity, particularly as it relates to physical therapy, was being addressed in meetings of the Committee prior to the implementation of the current Plan Document, and months before the grievance was filed. As medical necessity was a pre-existing feature of the plan, the City did not err when it directed the incoming third-party administrator to enforce it. Neither its enforcement, nor the number of visits at which it would be conducted, constitutes a change in the benefit covered individuals are entitled to receive. As such, the Committee's vote was not contractually required.[17]

As the evidence on the record did not support a finding that benefits provided under the City's group health plan were improperly changed, or that members of the Union were contractually harmed as a result, the grievance must be denied.

[17] Had the medical necessity review constituted a change in benefits, the City would be ordered to obtain Council ratification, since failure to do so where a benefit has changed would constitute incomplete performance. This not being the case, Council ratification will not be ordered.

AWARD

1. The Collective Bargaining Agreement authorizes the Group Healthcare Committee to make changes to benefits provided under the City's healthcare plan by majority vote of its members and ratification by the City Council.

2. Based on the record of these proceedings, including the attestations of the two member unions with which Local 731 shares this authority, no benefits provided by the healthcare plan were improperly changed following the implementation of the current Plan Document.

3. The medical necessity review did not change the benefit entitlements provided by the healthcare plan. Consequently, GHCC approval and Council ratification were not required for its implementation.

4. No violation of the Collective Bargaining Agreement has been proved. The grievance is DENIED.

5. In accordance with Section 1, Article L(5) of the Collective Bargaining Agreement, the findings contained in this Award are final, and are binding on all parties concerned.

6. In accordance with Section 1, Article L(5) of the Collective Bargaining Agreement, all costs of the Arbitrator's services will be borne equally by the parties.

Dated this 6th day of October, 2025

Charlene MacMillan, Arbitrator

EXHIBIT B

DAY 1

PURSUANT TO NOTICE, and on Wednesday, the 28th day of May, 2025, at the hour of 9:23 a.m. of said day, at the offices of Sparks City Attorney's Office, 431 Prater Way, Sparks, Nevada, before me, John Molezzo, a Certified Court Reporter, whereupon ARBITRATION - DAY 1 was heard.

THE ARBITRATOR: All right. We are on the record. The time is 9:23 a.m. This is Day 1 in a hearing in a matter between the International Association of Firefighters and the City of Sparks. The case number is FMCS 251031-00825. The hearing is being held at the City of Sparks City Hall located at 431 Prater Way in Sparks, Nevada. 09:23AM 09:24AM

My name is Charlene MacMillan, I'm the arbitrator by agreement of the parties. I'm going to ask the applicants would you please introduce yourselves and your teams for the record, starting with the Union.

MR. VELTO: Yes. Good morning, Arbitrator. My name is Alex Velto with the law firm Reese Ring Velto. I represent Local 731. I'm here with my client Representative Jarrod Steward, who is the grievance representative. 09:24AM

Just for your background, you might see in the 09:24AM

A Yes.

Q Says, "Any modification in benefits recommended to the City Council"?

A Yes.

Q It doesn't say "Direct City Council," it just says "recommend," correct? 02:00PM

A It doesn't say "Direct to the City Council," no.

Q Okay. And then, let's see.

Okay. So are you aware whether this exact language is in the O3 and SPPA contracts, as well? 02:01PM

A I'm not aware.

Q Did you ask those unions to join in this grievance?

A Not directly, no. I -- I did not really have contact with either Union directly, I remember discussing it, I don't think I discussed it -- I've never had an in-person meeting with either of the leaders of those unions in my entire tenure. 02:01PM

Q But you remember discussing it with members of those unions? 02:01PM

A I don't remember.

Q Okay. So is it safe to say neither Union has joined this grievance, is that correct?

A That is correct.

Q And do you recall in discussions about this 02:02PM

grievance whether those other unions agreed?

MR. VELTO: Objection, vague as to discussions. Discussions with who?

BY MS. COBERLY:

Q So you said you remembered discussing it, are you saying that you remember discussing this grievance with other different Union's members? 02:02PM

A I'm sure I mentioned it in passing to some of the members as I ran into them, but they would not have had decision making capacity. I do remember when I -- when I saw specifically SPPA members, I asked them to please have their president contact me and he never did. 02:02PM

Q So you never contacted him directly?

A No. I didn't have his contact info, that's why I was reaching out to them trying to get it. 02:03PM

Q Do you know who the SPPA president was?

A Part of the time, I think during this time it switched and there was promotions, it might have even switched twice, I'm not even positive.

Q So you didn't know who the president was of SPPA? 02:03PM

A No, not always, no.

Q In April of 2024, you didn't know who the president of SPPA was?

A I don't know. 02:03PM

(Inaudible discussion.)

THE ARBITRATOR: We'll, I can't stand in for the court reporter.

MR. VELTO: It looks like we continue tomorrow at 9:00 a.m. 04:58PM

THE ARBITRATOR: All right then.

MR. VELTO: I would just note do we want to try to talk about scheduling a third day off the record?

THE ARBITRATOR: Why don't we go off the record for a couple minutes. 04:58PM

(Discussion off the record.)

(Proceedings concluded at 5:13 p.m.)

DAY 2

president in 2024, you did not know who the SPPA president was in 2024, and only asked SPPA members in passing to have him call you to discuss this potential grievance, correct?

A No.

Q Did you speak with the president of SPPA?

A I said I didn't remember speaking, if I had spoken with him. So I was expressing to you that there were several -- there were several presidents during that time due to promotions and I -- sometimes I knew and sometimes I didn't know who the SPPA president was and I didn't recall if I had spoken to that person when they were president or after they were promoted and in a different bargaining group. That's a more elaborate version of what I should have said.

Q Okay. So your testimony now is you don't remember if you spoke with the SPPA president in 2024.

A Right. I said I didn't think I spoke to him directly.

Q Okay.

A Because I wasn't sure who was president during that entire time. During my whole tenure they changed a number of times and there was no

Mr. Jackson. They are directly contrary to his testimony yesterday, which was unequivocal and not saying he doesn't remember.

MR. VELTO: There's also no foundation for this exhibit because the president is not here to authenticate it.

MS. COBERLY: And the president will be here to authenticate these records because he is listed on the City's witness list. But I want to give the witness the opportunity to respond to this information where he will not be here and not be able to respond when the president testifies about it in June.

ARBITRATOR MacMILLAN: Yeah. I'm gonna overrule the objection because I do recall Mr. Jackson saying yesterday that the president did not contact him or that he never contacted him, and so you can go ahead and question him regarding these records. Maybe he does want to correct his testimony.

BY MS. COBERLY:

Q Mr. Jackson, these are Nicholas Slider's phone records from April 9th and it shows -- sorry, April 10th. And you see in the highlighted portion on page one that there were two phonecalls between

Mr. Slider and your cell phone number ending in 4613. One call lasted nine minutes, as it shows under the minute column, and one call lasted three minutes, and these are both occurring on April 10th.

A Okay.

Q So do you know now the name of the SPPA president?

A I do now, yes.

Q So you don't remember this phonecall?

A I really don't.

Q Okay. Turn the page. So this is another phonecall on April 16th -- you'll see highlighted with your cell phone number 4613 -- and it says it's a 28-minute-long phonecall.

So you don't remember Nicholas Slider's name, you don't remember contacting him and you don't remember having almost an hour of cumulative conversation with him?

A I remember his name now that I see it. It does ring a bell, so I won't say I don't remember his name. I don't remember -- I don't remember making the phonecall. I'm not denying now that I see the record that I made the phonecall but I don't remember it.

Q Okay. So you don't remember anything you

DAY 3

draft?

A Based on the fact that it said draft, yes, initially.

Q Is it true when you first learned it was not a draft -- I'm sorry, strike that.

Is it true the first time you learned it was not a draft, but actually an implemented plan was in a meeting with the City in May of 2024?

A That is the first time that it was affirmed that that was actually the case.

Q Is that why you filed a grievance shortly thereafter?

A Yeah, not only did we file a grievance shortly thereafter, we informed the City's counsel, Jessica, in that meeting that we would be filing a grievance and the purpose of the grievance, because they did say that they want to go through the documents, we agreed with them that that was a mountain of work. It was a mountain of work for a bunch of firefighters, so we basically understood that they're going to need time and we said take what time you need, what extensions you need, let us know, let's just stay within the -- put everything in writing. We said we're going to file a grievance. It's nothing personal. We just need to go through

because at that point it is not our -- the onus is not on us to request an extension. The response is waiting on -- we are waiting on a response from the City.

So those were our two expectations of what would happen next. One, they would sit down with us or two, they would request another extension because of the lengthy depth of work needed to get data on those resolutions, and that did not happen as is evident by the denial of the grievance, which was quite a surprise.

Q Why do you say you expected the City to grant the grievance?

A Because when we sat down and they acknowledged the fact that health care benefits had changed and that they then acted on that and were actively trying to revert it back to the old plan's benefits, that to me was an admission and I think everybody was in agreement that that was the case.

Why we wouldn't -- you know, if there was some discussion -- there was -- how do I put this? There was never a single discussion in any meeting to the fact that there was no contract violation, simply that they were working on it to try and fix it. Therefore, in our understanding the grievance was

So he didn't have the numbers from Mr. Jackson in that meeting. Mr. Jackson was asserting it was cost neutral?

A He requested he needed to time to look at the numbers.

Q So were numbers provided to him in that meeting?

A No.

Q So you made multiple references to the City Attorney's Office needing time and the City needing time to look into the allegations made by Local 731 due to the depth of the issues. So it's your understanding that those extensions were sought for more time to look at the issue?

A Yes.

Q Okay, great.

Then we talked a lot about physical therapy. Has physical therapy always been medically necessary in the document?

A Can you clarify?

Q Has the plan document always required physical therapy covered by the document to be medically necessary?

A Yes.

Q So you stated that you believe the City,

So I will ask you a couple of questions going through here. Under number 1 it says I am and have been the president of the Sparks Police Protective Association, SPPA, since February 2023; is that correct?

A Yes.

Q And so number 2, we'll talk a little bit more about this, but you were approached by Darren Jackson informing you under line 3, informing me that IAFF intended to file a grievance against the City relating to the City's 2024 health plan document and the change in the City's third party administrator; correct?

A Yes.

Q Then there is some discussion about that conversation, which we will get into separately, but if you go to number 6, is it a correct summary here that the SPPA Collective Bargaining Agreement you believe is the same language regarding the IAFF Collective Bargaining Agreement regarding the Group Health Care Committee?

A Yes.

Q As Exhibit A, if you want to turn to that, Exhibit A is your -- the SPPA Collective Bargaining Agreement, does that look accurate,

specifically the Collective Bargaining Agreement from fiscal year '23 through '25?

A Yes.

MS. COBERLY: Move to admit the exhibit.

MR. VELTO: No objection.

THE ARBITRATOR: Exhibit 35 is admitted.

BY MS. COBERLY:

Q So we will ask a couple of additional questions. So starting off with, why do police officers take testifying under oath so seriously?

A Based as a pillar of our employment is our integrity. So when we testify under oath it relays to our credibility. There is case law stating that in the event credibility is compromised for a police officer their testimony is not as valid. It's Brady v. Maryland. Otherwise they could be labeled as what is commonly known as a Brady cop.

Q When someone becomes a Brady cop do they normally have to be fired because their testimony can't be used in any other legal forums?

A Yeah, it would compromise investigations and it would always come up and compromise those.

Q Let's talk about a little bit about some of the topics covered in your affidavit.

Previously in this arbitration Darren

Jackson said that SPPA had possibly switch presidents twice in 2024, but he wasn't sure. So again how long have you been president of SPPA?

A Since February of '23.

Q So there were no changes in 2024?

A No, I am the current president still.

Q Then Darren Jackson said he didn't have your contact info and he, quote, never contacted you directly. How many times have you spoken to him directly?

A Three total times, phone call -- this is not including, you know, incidents on patrol or anything like that where we would have had contact in employment, but specifically in this matter three separate phone calls.

MS. COBERLY: So I just wanted to clarify with the Arbitrator, we did have the call records discussed before, but looking back at the transcript I wasn't sure if we had successfully admitted them.

THE ARBITRATOR: I thought we had.

MS. COBERLY: You had said this was allowed questioning, but I wasn't sure we specifically admitted the call records.

THE ARBITRATOR: We identified those as 43.

MS. COBERLY: Okay, we're good.

THE ARBITRATOR: Let me double-check, because I thought we had. 43, yes, we did.

MS. COBERLY: Okay, so we don't need to turn to this then.

BY MS. COBERLY:

Q So Darren Jackson then specifically said he didn't have your contact information, but since he called you do you know how he got your contact information?

A Yes, he got it from a fellow fire department employee who disseminated it to him after he got my permission to do so.

Q So Darren Jackson said in April of 2024 he, quote, did not know that if he knew who the president of SPPA was. When he called you, did you have the understanding that he called you because you were the president of SPPA?

A Yes, presumably to discuss that, the grievance.

Q Then Mr. Jackson also said he did not, quote, directly ask SPPA to join this grievance. Is that true?

A To the best of my recollection, due to the time --

MR. VELTO: Objection, misstates testimony. We're following along in the transcript for Mr. Jackson and I think these quotes are inaccurate.

MS. COBERLY: Go to page 172.

MR. VELTO: I'm there.

MS. COBERLY: And the word is directly, which shows up and says --

MR. VELTO: Line 14.

MS. COBERLY: So his answer to did you ask the unions to join in this grievance? Not directly, no, is the sentence on line 14.

So the question is did he directly ask SPPA to join the grievance?

THE ARBITRATOR: Okay, go ahead and answer.

THE WITNESS: To the best of my recollection due to the time gap between now and when these calls occurred, it was brought forth that IAFF was very potentially going to file a grievance regarding Group Health Care Committee based on some findings they had discovered in their review of documents and wanted to make us aware of that and see if we were interested in reviewing those as well and seeing if we agreed to join the grievance.

THE WITNESS: Could you repeat the question, please?

BY MS. COBERLY:

Q Have you received any bribes from the City to be present here today --

A No.

Q -- or to participate?

A No.

MS. COBERLY: Pass the witness.

THE ARBITRATOR: Any recross?

MR. VELTO: No questions, no.

THE ARBITRATOR: Thank you so much, Mr. Handel. We appreciate you coming.

MR. VELTO: Arbitrator, we had a discussion off the record about timelines and do you want to put it on?

THE ARBITRATOR: Absolutely, good catch.

MR. VELTO: I will put my recollection on the record.

The parties have stipulated to the admissibility of all exhibits in both the Union and the City's binders, except for Union Exhibit 22, which the Union is withdrawing.

The parties have agreed to a closing brief deadline of Monday, August 25th for closing

EXHIBIT C

DAY 2

THE ARBITRATOR: Do sit right there, please.
MR. SZOPA: Thank you, sir.
THE ARBITRATOR: Please state your name.
MR. SZOPA: My name is Michael Szopa.
THE ARBITRATOR: Could you spell your first and last name for the record?
MR. SZOPA: First name, M-I-C-H-A-E-L. Last name, S as in Sam, Z as in zebra, O-P as in Paul, A as in apple.
THE ARBITRATOR: Thank you.

EXAMINATION

BY MR. VELTO:

Q. Mr. Szopa, can you please tell the arbitrator about your experience as a firefighter?

A. I've been with the Sparks Fire Department for ten years. I've promoted a couple years ago to FAO, fire apparatus operator. I -- I love working for the City of Sparks and the Sparks Fire Department. I -- I don't know where else to go with that. It's -- it -- I -- I think it's a great department. The -- the -- I know we've had lots of hiccups dealing with the City and with different things, but I'm sure that's a common issue with most fire departments and cities. I -- I work with a lot of really great people, a lot of smart people, and I -- I respect a lot of our management team

and the people who run the City and -- yeah. I -- I love the job.

Q. Okay. And do you have a role in the union?

A. I do, yes. A little over a year ago, I was elected as an E-board member. It was my first real forte into union business. After a year, our previous vice president for 731 decided not to run again, and I was asked to step up to that role since I had a little bit of experience and people seemed to have some trust in me and, hopefully, my ability to run the union. So I ran for vice president for Local 731 and was elected, and I'm about two months into my position as vice president for Sparks 731.

THE ARBITRATOR: And you're still vice president?

THE WITNESS: Yes, sir. It's a two-year term, so I've got time.

BY MR. VELTO:

Q. There has been a lot of discussion during this arbitration about types of overtime. What is an extension of the workday overtime?

A. Per the contract, the extension of workday overtime is anything that is -- when you are hold over for situations in which, like, you were on an emergency call during shift change and you have to stay over a

little longer, or when there is a shift -- shuffling around of personnel, someone coming from another station to relieve you, you may have to stay a little bit later. But ultimately, the -- the idea is to maintain minimum staffing during shift change or while on an emergency, having to stay over past your normal shift.

Q. And have you ever had an extension of the workday that lasted 24 hours?

A. I have not. It's typically about half an hour to 45 minutes or so.

Q. Is an extension of the workday different than a force hire?

A. Yes. There's a different code in TeleStaff. It's -- like -- like I had said, it's -- it's -- it's -- it's two maintained minimum staffing during a situation in which there's a shift change and either this person can't get there or you are held over on an emergency call.

Q. And you mentioned that there's a difference in the coding and TeleStaff. Are you aware of any instances where the City of Sparks has coded a force hire where someone stays for 24 hours as an extension of the workday?

A. I'm not aware of any circumstance.

Q. Is there a specific code for force hire?

A. There is. It's OTF.

Q. Were you involved in the -- oh, wait. Let me back up. Were you -- were you involved in the negotiations with the City during the recent round of collective bargaining agreement?

A. Yes, I was.

Q. Did the City at times assert that there was a management right to dictate staffing?

A. Yes.

Q. Did they do that often?

A. Yes. They said it was a right of -- staffing is a right of management.

Q. And I want to turn your attention to what is in the white binder -- sorry. The black binder, going to be marked as Exhibit number 2.

A. Exhibit number 2. Is that -- tab number 2, I'm assuming, right?

Q. Yes. My fault.

A. Okay.

Q. That's the exhibit, Tab number 2. That's -- that's correct.

A. Okay.

Q. So is this a letter drafted to -- first, who was Neil Krutz?

A. Neil Krutz was the former city manager of Sparks.

Q. And was this a letter from my office to Neil Krutz regarding the force hire dispute?

A. That's what it looks like, yes.

Q. And it appears in this letter that there's an explanation of the problem that there's a 56-hour work period and that the City is not abiding by it. And then if you look to the second page, there's a request at the end, where there's a couple different options. One of the options is to negotiate force hires and incentives, potentially, with force hires with the union.

A. Okay.

Q. Do you know if the City agreed in response to this letter that it should negotiate force hires?

A. To -- to this day? No, there's been no agreement, as far as I understand, to negotiate force hires.

Q. Now, I want to turn your attention now to the white binder because the very next correspondence that we received from the City was a letter from Neil Krutz to my law partner, Mr. Reese, and that's Exhibit 4 -- or Tab 4.

A. Tab 4, yes.

Q. Have you ever seen this letter?

A. I have not.

Q. Okay. But you have no reason to dispute its validity?

A. I have -- I have no reason to, no.

Q. Now, as you look at this letter, is there any portion of this letter that indicates the City is willing to negotiate force hires with the union?

THE ARBITRATOR: Have you ever seen this letter?

THE WITNESS: I have not.

THE ARBITRATOR: Okay.

THE WITNESS: I'm not --

MR. VELTO: You asked for your -- Mr. Arbitrator, you've asked for, like, a dates and a timeline of responses from the City --

THE ARBITRATOR: Yeah.

MR. VELTO: -- so I'm trying to build a record of that as we go --

THE ARBITRATOR: So, essentially, it -- it speaks for itself, that it --

MR. VELTO: It does speak for itself. It speaks --

THE ARBITRATOR: -- it was -- the -- the -- the first letter that you just mentioned on --

MR. VELTO: February 9th?
THE ARBITRATOR: February 9th, and then this one is their -- the -- the response?
MR. VELTO: Well, this is not the response, Mr. Arbitrator. This is a response --
THE ARBITRATOR: A response. This is --
MR. VELTO: -- where the City, instead of addressing our issue, tried to conflict out my law partner.
THE ARBITRATOR: Okay. But this witness would not know anything about that?
MR. VELTO: No firsthand knowledge.
THE ARBITRATOR: No.
MR. VELTO: But I'm going through this just to show the timeline.
THE ARBITRATOR: Okay.
BY MR. VELTO:
Q. Does this letter at all address the substance of the force hire issue?
A. As far as I'm seeing so far, I'm not seeing that it does address it.
Q. Okay. There's then a -- a letter sent from the City of Sparks responding -- or I'm sorry. Then there's a -- a grievance that is formally filed on -- my apologies. But there's a response then. If you

could turn to Exhibit 4 in the black binder -- tab 4 in the black binder. This is dated April 13, 2022. Is this a response from the City of Sparks addressing the grievance?

THE ARBITRATOR: To your knowledge. Have you seen this letter before?

THE WITNESS: I have not seen this letter before, no.

THE ARBITRATOR: Okay.

MR. VELTO: Okay.

THE ARBITRATOR: I think Mr. Crosby would probably stipulate that these letters were sent.

MR. CROSBY: Yeah.

THE ARBITRATOR: And the letters from you or -- or -- or your partner and these letters, they're all authentic?

MR. VELTO: Uh-huh.

THE ARBITRATOR: This witness has no firsthand knowledge.

MR. VELTO: Understood. Okay.

BY MR. VELTO:

Q. Has the City ever indicated to you that it wanted to negotiate force hires?

A. There is -- it's -- the beginning of September 2023, we -- myself and then-president -- Vice

President Jackson met with --

Q. Was it 2023 or 2024?

A. 2024. I apologize. Met with Fire Chief Walt White and Division Chief Derek Keller specifically regarding ambulance staffing and force hire language for our contract. We had a discussion in there regarding information that we had put together regarding the ambulance staffing and reimplemation of -- reimplementation of the Force Hire Side Letter that we had had previously. We discussed it there, and in that meeting, Walt -- Chief White came to an agreement with us regarding both of those articles all in one. We discussed it back and forth --

THE ARBITRATOR: Excuse me for one minute.

THE WITNESS: Yeah.

THE ARBITRATOR: Is this relating to the issue of an agreement was reached and -- and the fire department did not sign it? That's what you're talking about?

MR. VELTO: Yes.

THE ARBITRATOR: And day, time, and place when you met on this and who else was present?

MR. CROSBY: And just so I can have a -- I'm going to relaunch my objection that this is -- these are settlement discussions. These are post-grievance,

post-start-of-arbitration.

THE ARBITRATOR: I understand.

MR. CROSBY: This is an attempt to resolve a grievance, not a negotiation, as recognized under Nevada Revised Statute 288.

MR. VELTO: I -- I disagree. This was a negotiation.

THE ARBITRATOR: This was not negotiations for a contract provision?

THE WITNESS: It was for an MOU, which, to my understanding, is an amendment to the --

THE ARBITRATOR: Well, put it in, and it'll be argued in the briefs.

Go ahead.

THE WITNESS: Okay. So having not had a lot of time in union, I would -- to me, it seems like that was a -- it was a discussion back and forth on provisions in that MOU, which to me, at a very basic level, seems like a negotiation to me. That agreement was reached between the two parties, myself and Vice President Jackson and Chief White, and we had handshake agreements that that was the MOU that was going to be submitted moving forward at that moment.

BY MR. VELTO:

Q. When did this meeting occur?

A. It was early September. September 4th, I think, maybe, but sometime within that.

Q. Where did --

THE ARBITRATOR: Then where?

THE WITNESS: It was in Chief White's office, on the second floor of station 1.

THE ARBITRATOR: And who else was present?

THE WITNESS: It was Chief Keller, Chief White, myself, and Darren Jackson.

THE ARBITRATOR: Okay.

BY MR. VELTO:

Q. And did Chief Keller, in your impression, agree with the resolution that Chief White and yourself and Darren Jackson agreed to?

A. No. He -- he voiced his -- his concerns with it.

Q. What did he say?

A. That it was a mistake and it wasn't going to work out.

Q. Even still, did the chief reach an agreement with you?

A. He did, yes.

Q. And what were the terms of that agreement?

A. Specifically regarding to the entire thing or just the force hire portion of it?

Q. The force hires.

A. The force hire portion was -- it was essentially the original Side Letter, which meant that personnel can only be forced once per pay period and that there were two "get-out-of-jail-free cards" or refusal cards every six months. There was some discussion on that portion, the refusal cards. Chief White wanted to have just one per six months. We asked for two, he agreed on that,. and it was reiterated that those two would not be carried over every six months. It would be a new set every six months, but those were the provisions.

Q. And can you turn to Exhibit 28 in the black binder?

A. Oh, man.

Q. Is this the Side Letter you were referring to?

A. Stand by. Let me just read here. This looks as it's -- as it is, yes.

Q. So when you say the chief was agreeable to an extension of the terms of this agreement, that what you were referring to?

A. Yes, sir.

Q. Now, there came a point in time where the City decided to not continue this Side Letter prior to

reaching the settlement, correct?

A. Yes, sir.

Q. Can you please turn to Exhibit 29 in the binder you're looking at?

Do you recall when the Side Letter was terminated by the City of Sparks?

A. In my recollection, assuming I didn't see the date on here, it was early 2024.

Q. And was this an e-mail sent out by the City with a policy for force hires?

A. I'm not understanding --

Q. What is this e-mail communicating to the membership?

A. So for any policy changes, we have a ten-day aim and that must be had and then sent out to all e-mail users throughout the departments, just informing us that there is a changed policy. We have ten days to voice any concerns with it, but essentially ten days until it is in enacted.

Q. And is this that communication of the notice of the -- the policy?

A. It looks as so, yes.

Q. And if you look down to the -- the bold text says, "The Side Letter regarding overtime refutals has -- refusals has completed its six-month trial period as

of 1-12-24. SOP 1.16 has been reverted to the original version"?

A. Yes.

Q. Is there a reason given for why the City decided not to continue the Side Letter?

A. To my understanding, the reasoning was that there was, in -- in the -- their opinion, an excess of hours of browned-out rigs during that six-month time period, and it was too excessive and they didn't want to continue the process, to my understanding.

THE ARBITRATOR: What gave you that understanding?

THE WITNESS: I was at one point -- and this was later down the road. To illustrate the amount of times that there had been brownouts of rigs, I was given a list by D.C. Keller, just outlining the hours in which they were browned out. So I -- I -- I can't say specifically that he told me that that was the reason why. I was just under the impression, not from D.C. Keller but just in general, that that was the -- the reason why it was discontinued.

BY MR. VELTO:

Q. Can you turn to Exhibit 26 in that binder? What are you looking at here?

A. This is a -- some documents of information

that I compiled from that list that was given to me of the browned-out hours. I went through and verified with each day the -- or the -- the amount of hours that were actually browned out in TeleStaff versus the -- the sheet that outlined the hours, also including the training that was going on that day, the information on persons who were on various forms of leave, and when it occurred during the pay period.

Q. And can you explain your analysis?

A. So I -- the purpose was to just confirm that the hours that were compiled by the chiefs was accurate. So, ultimately, going through each day, comparing the hours that were actually browned out per TeleStaff and then comparing them to what was on the training schedule and what special events might have been going on, this is the -- the exact hours that I found in TeleStaff that shows what was browned out and for how long. I did find there were discrepancies as far as the hours that were listed. Sometimes it was less. Sometimes it was non-existent, so -- so the -- the numbers that were listed on the sheet was given to me, there were some days where there was no brownouts shown in TeleStaff. Some of them were a little bit less than the hours that were shown. I did find one day that it was more than what was listed on that sheet.

So it wasn't entirely accurate. I did have a conversation with Chief Keller at one point because I was unsure why I was seeing something different in TeleStaff versus the sheet that he gave me. And he did explain that it was an e-mail -- when there was a brownout, there was an e-mail sent by the battalion chief at the time to, I'm assuming, the division chief, explaining that there was a brownout and that something may have been fixed or changed during that time period. Someone may have come in, so that's why it was changed. But ultimately, TeleStaff shows different than what was shown on the papers that were given to me.

THE ARBITRATOR: You drafted this?

THE WITNESS: Yes, sir.

THE ARBITRATOR: Okay.

BY MR. VELTO:

Q. So I -- I just want to understand what you said. So you were given data from D.C. Keller explaining when engines have been browned out, which was the basis for not extending the Side Letter; is that correct?

A. My understanding, yes.

Q. And in response, you looked at data from TeleStaff and analyzed that data to determine whether

the data given to you by D.C. Keller was accurate?

A. Yes.

Q. And did you conclude that D.C. Keller's data was accurate?

A. It was inaccurate.

Q. And I want to talk to you about some of these names that are on here. I see B.C. Jones's name on here a lot. Would that -- is B.C. Jones the battalion chief that would've browned out an engine?

A. I put that on there because he was the battalion chief on duty during the time when an engine was browned out. I don't --

Q. And --

A. I can't say with full certainty that it was him that browned it out, but he was the B.C. on duty.

Q. And does the union currently have a grievance filed against B.C. Jones?

A. Yes, we do.

Q. And what is the basis of that grievance?

A. From my understanding, the basis is prohibited practice of, basically, a labor -- a -- a -- speaking ill about union -- the union, union representatives, union business. And yeah, that's what I understand it to be.

Q. So the union currently has a grievance where

it is calling out B.C. Jones for actively demeaning the union to firefighters?

A. Yeah, that's what I understand it to be. Yes.

Q. And if we look at the number of times that an engine was browned out under B.C. Jones's watch, the first three on this page were B.C. Jones, on the first page. B.C. Jones comes up twice on the second page of this exhibit. B.C. Jones comes up on the third page, twice on the fourth -- and twice on the fourth; is that accurate?

A. Yes.

Q. If you turn to Exhibit Number 27. Did you also create this exhibit?

A. I did, yeah.

Q. How is this exhibit different than Exhibit 27?

A. It's a condensed version. The other one was the extensive -- every little bit of information that I found. This was just more of an easier-to-read, concise version that just shows the hours and trainings, basically.

Q. Did you form an opinion as to whether any of the trainings that were scheduled while the engines were browned out could have been scheduled at a

different time, which would not have forced the brownout?

A. So there were a few days definitely that there was trainings going on that may have affected the fact that there was brown outs. I -- I -- I can't say that every single training led to that or could have been rescheduled.

Q. Some could have in your opinion?

A. Some could have. There -- there was a truck academy during one of the days that I feel like that was a training opportunity for people in our department. So I'm not sure if that was something that could have been rescheduled, but I feel like some of them could have been. Some of them seem necessary.

Q. Which of these trainings do you think could have been rescheduled to avoid a brown out of an engine?

A. On the -- the 3rd there was -- I'm not sure. On the 3rd, there was a Level A HAZMATs training day. I -- again, I was looking specifically at TeleStaff, so I can't say specifically that that training led to it. There was a Calm the Chaos training that was going on during -- and in July at the RTC. That was a -- I don't remember if that was a nighttime or daytime drill, but that -- that could have been rescheduled. I -- I -- I don't know. I don't make the decisions on

trainings. I'm sorry.

Q. What percentage of time -- did you form an opinion as to what percentage of total time an engine was browned out during the existence of the side letter?

A. Yes.

Q. What was that?

A. So the -- the hours that were given to me were 210 hours during the entire -- entirety of that side letter. Per --

THE ARBITRATOR: Six months.

THE WITNESS: What's that? I'm sorry.

THE ARBITRATOR: Six months?

THE WITNESS: Yes, sir. During six months, 210 hours. The research that I found based on just the days that were given to me, I found 177.5 hours instead of the 210. So [inaudible] of about what? 30 -- 36, maybe. I'm not sure. I -- I did -- I did put in here just for full transparency that I did find another day that wasn't listed on the sheet that D.C. Keller gave me, with an additional 10.5 hours that a rig was browned out. So ultimately, with that information, I saw that it was 188 total hours as opposed to 210.

BY MR. VELTO:

Q. And how many rigs are running on any day?

A. There are eight. We got seven engines and

the truck.

Q. So there were a total of 210 hours where one of those eight was not work -- was not running?

A. Correct.

Q. So 210 hours out of six months where one rig was not running?

A. Correct. Seven rigs. I apologize. Not eight.

Q. Understood. Thank you. Do you think that the limitations on force hires need to be -- affect your working conditions? Therefore --

A. Can you repeat that? I'm sorry.

Q. Sure. Yeah. So do -- do you think that the city's force hire policy affects your working conditions and therefore should be negotiated with the union?

A. I believe so, yes.

Q. Why do you say that?

A. There are -- there's been times in the past plenty times where people have been force hired multiple times in a row and it -- it -- there's many studies that shows -- show that being at work, especially on a rig that is busy and where they're not getting proper rest periods can affect things like overall health, judgment, safety, various -- various

things. But mostly the safety issue is a problem, especially for people who are driving to emergency scenes. If they're being forced day after day, it can lead to problems, I believe.

Q. How many times a night are you typically woken up on your current assignment?

A. Average, four or five times a night.

THE ARBITRATOR: What do you do?

THE WITNESS: What's that? I'm sorry.

THE ARBITRATOR: What is it that you do specifically?

THE WITNESS: On those calls?

THE ARBITRATOR: Are you on an engine?

THE WITNESS: I'm on an engine. Yes, sir.

THE ARBITRATOR: Or are you an EMT?

THE WITNESS: I -- I am a paramedic on a fire engine.

THE ARBITRATOR: Paramedic?

THE WITNESS: Yes, sir.

BY MR. VELTO:

Q. So as a paramedic on a fire engine, you're typically woken up four or five times a night with a call?

A. Yes, sir.

Q. And how --

A. On average. Sorry. On average. Sometimes more.

Q. And how long does it take once you're woken up to get back to your -- your bed?

A. It -- it could be anywhere between 20 minutes to an hour, depending on the call. There are times where we are canceled or we -- we get on scene and it's a quick easy help REMSA get the patient in there, we get back. But getting back to sleep after you're being woken up, especially in my position as a apparatus operator, it's -- when I'm woken up, I have to be -- I have to be awake because I have to drive the -- the engine to calls. And so I have to be awake and alert immediately and -- and try to wind back down after that and try to get to sleep. Assuming there's not another call before I fall asleep.

Q. So how many hours of sleep do you think you're actually getting a night?

A. Five to six, I guess.

Q. Broken up?

A. Yeah. Yeah. Yes. Not -- typically not consistent sleep.

MR. VELTO: Okay. I'll pass the witness.

THE ARBITRATOR: Okay. Did you need a few minutes?

MR. CROSBY: No. I'm fine.

EXAMINATION

BY MR. CROSBY:

Q. So your shifts are 24 hours, right?

A. Yes, sir.

Q. And --

A. Oh, well --

Q. Well, 24 off -- 24, 24, and then off for 96, right?

A. Yes, sir.

Q. So 48 and then 96.

A. Yes.

Q. You can sleep in the daytime?

A. Typically, there are -- there are things going on in the daytime. It's not a scheduled thing. We're supposed to be doing work between the hours of 7:00 p.m. -- or 7:00 a.m. and 5:00 p.m. We're supposed to be in our uniforms by at least 8:00 a.m. There are -- there has been leeway given to captains to allow for rest periods if an engine gets overly worked over the night. But you know, we are -- we are a fire agency. So --

Q. You signed up for the 24 --

A. Yeah. And -- and --

Q. -- on call. But you said you can --

A. And because we can -- we can rest, but it doesn't mean that we will get rest.

Q. Fair enough. I -- I was saying that you -- you -- you have the -- you have the option if it's available, and you -- you said you can ask a captain. I need some rest time, we are call to call to call all night. Right?

A. Sometimes.

Q. Right. When a -- when we -- when the city places an apparatus, like an engine out of service, that -- that affects the continuity of service that the fire department can provide to the city, right?

A. It reduces one of the apparatus, so --

Q. Reduce --

A. Request apparatus to respond.

Q. So it reduces the level of service we can provide?

A. It can, yeah.

Q. Right? Now that -- that side letter, you talked about, Exhibit 28, I just want to understand. You -- you weren't actually told specifically by anyone from the city why the side letter agreement was not being continued? You just got an impression?

A. From what I remember, I don't remember being told exactly what --

Q. Okay. So what you were testifying to is your impression --

A. Yes, sir.

Q. -- of -- of the reason why. You -- you do know that that side letter had a had a term on it, right? It was a six-month side letter.

A. Six months.

Q. Right. And the city didn't end it prior -- prematurely?

A. No.

Q. Right.

A. As far as I know, no, sir.

Q. And -- and were you part of -- of any reevaluation of that side letter agreement?

A. I personally was not.

Q. Okay. B.C. Jones, was he ever involved in the union, do you know?

A. He was. He was a -- I don't know if he held any other positions, but I know he was the union president.

Q. For a number of years?

A. Yeah.

Q. Okay.

THE ARBITRATOR: Can I -- os -- is he now management?

THE WITNESS: He is, yes.
THE ARBITRATOR: Okay. Okay.
BY MR. CROSBY:
Q. Yes. This Exhibit, the 26 and 27, I think it is, for the -- the summaries. You -- you compiled this?
A. Yes, sir.
Q. And this was strictly based off TeleStaff data?
A. TeleStaff data and the training calendar.
Q. And the training calendar. And you said you can't -- you couldn't state whether -- definitively whether or not training directly led to putting engines out of service, right?
A. It is hard for me to show that exactly.
Q. Right. And you weren't involved in scheduling training, you said?
A. I'm not.
Q. Right. And the -- the union doesn't have the role in scheduling training either, correct? Or it's not its obligation. It's the city's obligation?
A. The city decides that.
Q. And training is important for you guys?
A. Absolutely.
Q. Right. And when -- when was this compiled,

just roughly, these Exhibit 26 and 27?

A. It was over a period of time between July 24 and just recently, a couple weeks ago. (crosstalk)

Q. Okay. So in preparation for this arbitration, I assume?

A. Yeah. I believe -- the arbitration has been scheduled for a while. I was asked to start this project, I think in July of last year.

THE ARBITRATOR: Were you asked to compile those things?

THE WITNESS: Yes, sir.

THE ARBITRATOR: By?

THE WITNESS: By our union leadership at the time.

THE ARBITRATOR: Okay.

BY MR. CROSBY:

Q. Exhibit 29, which was the 10-day hanging you testified to?

A. Yes, sir.

Q. The -- the bold section that Mr. Velto directed you to, this -- this hanging notice, was that the city is reverting to the original version of SOP 1.16, correct?

A. It appears to be. Yeah.

Q. Right. And do you know -- are you familiar

with SOP 1.16?

A. I -- I couldn't recite it off the top of my head, but I'm familiar with it, yes.

Q. And how long have you been with the city? 10 years?

A. 10 years.

Q. 10 years. And just recently FAO, like last year and -- year or so?

A. Over -- a little over two years.

Q. Two years. And then you're two months into your term as vice president of the union?

A. Yes, sir.

Q. And prior to that, you served on the E-board?

A. Yes, sir.

Q. Okay. And how long has force hire overtime been occurring at the fire department since you've been here?

A. 10 years.

Q. So the entire time you've been here?

A. Yeah, there's always been force hires as far as I'm aware.

Q. And was -- the union was aware of -- of that, obviously because you were this entire time.

A. The union was aware there were force hires?

Q. Yeah.

A. Yeah. I -- I think everyone in emergency services know that.

Q. Were you part of the negotiations for the 2021 to 2024 collective bargaining?

A. I was not, no.

Q. Were you part of the negotiations for the most recent successor agreement that was just completed?

A. Yes, sir.

Q. Okay. And were you on the team?

A. I was.

Q. Okay. And did the union open Article -- section 1 of Article M? The hours -- or sorry, Section -- I think it's Section 2 -- might be. No, it Section 1, Article M [inaudible] the hours -- hours article?

A. I can't recall exactly if that was the one. It -- I don't remember exactly if that one was open. I'm sure it was --

Q. Did the union open Section 2, Article --

THE ARBITRATOR: Do you want to see the --

THE WITNESS: Yeah, I probably should.

BY MR. CROSBY:

Q. Yeah. Well, I -- I -- I -- well, yeah. So if you look at Exhibit 13 or you can look in the black one. It's Exhibit 1.

A. Section 2?

Q. So first off Section 1, Article M. It's on Page 7 of the collective bargaining agreement. Do you know if the city opened article M?

A. We did.

Q. And what -- what part of Article M did you open?

A. It was the -- so initially the city opened that article because they had initially offered us to change the -- the period of work from 12 to 14 days. So the city initially opened that one up, although they rescinded that eventually and wanted to go back to the 12 days.

Q. Okay.

A. But I believe that we did open up regarding the conversion of hours from 40 to 56 hour work week.

Q. Okay. And did the city -- or did the city or the union open Section 2, Article C, which is on -- it starts on Page 12?

A. I'm trying to remember if we did open that or not. I can't say for certain off the top of my head.

Q. Okay. When you started your direct examination, it was opened up with this discussion of extension of the workday. And you talked about that -- that essentially -- and I'm very loosely paraphrasing, when you're held on over usually no longer than an hour

because your engine is out and you're staffing -- minimum staffing on that engine on an incident, right?

A. Yeah. We're held over on an emergency call.

Q. Right. The city and the union have agreed to minimum staffing on apparatuses, correct?

A. Yeah. I believe it's in our contract, the three people --

Q. Right.

A. -- three person --

Q. In references to that -- you're familiar with the collective bargaining agreement with local 731 and Sparks Fire Department?

A. Yes.

Q. From the City of Sparks. And that minimum -- minimum staffing, that's -- that -- when there's references to minimum staffing in the contract, that's what it's referring to, right? Is to --

A. To the number of personnel on an apparatus.

Q. Number of personnel on apparatus, right?

A. Yes.

MR. CROSBY: No further questions. Thank you.

EXAMINATION

BY MR. VELTO:

Q. The contract when it talks about minimum

staffing and the number of personnel on a contract, what is the remedy outlined for the city when they are unable to meet their own staffing?

A. So the -- there are a couple different options. Those --

Q. I want to actually draw your attention to the contract manuel --

A. Oh, yeah. Okay.

Q. So if you can go to -- sorry about that. If you can go to Article -- section 1, Article G, Sub 9. This is Page 4.

A. Yep.

Q. If you look at Section 9, what is the remedy for the city when staffing falls below the minimum outline?

A. The apparatus, we place out of service in -- in dispatch -- with dispatch.

Q. Is there any other remedy specified in this portion of the contract for when the city is unable to meet minimum staffing?

A. That's what it says is that it would placed out of service.

Q. Now you were asked by Mr. Crosby, whether you agreed to sign up for 24 hour shifts when you started this job?

A. Yes.

Q. When you signed up for this job, did you agree to work multiple days after your 24-24 hour shifts?

A. The job description -- the -- the thing I -- the job that I applied for was for 48 hours, 96 hours off, is ultimately what I applied for.

Q. Was -- now you've been asked about whether force hires were ever used by the city. I think we agreed that at -- there were points in times where they were used sporadically. Was there a point in time where there was a drastic increase in force hires?

A. Yeah, there's -- during the summer, there's always an increase in force hires. We have been -- it -- it seems to me, the force hires have gotten more frequent over the last couple of years, but there's a time and period during the year where force hires are definitely more common than others.

Q. Do you think that there's been a change in working conditions because there's been an increase in force hires in recent years?

A. I'm sorry, can you repeat that?

Q. Do you think tbat there's been a change in working conditions for the firefighters due to the increase in force hires in recent years?

A. It -- it seems that there has been because of the increase in force hires. There's -- I -- I think it directly attributed to the amount of people that we have and the call volume that we have and people being on sick leave and workers' comp, there has been, I think, an increase in the burden on firefighters for sick -- for force hires.

MR. VELTO: Okay. Pass the witness. Thank you.

THE ARBITRATOR: Anything else?

MR. VELTO: I'm sorry, one more question. I apologize.

BY MR. VELTO:

Q. Does the union need force hires or does the city need force hires?

A. The city needs force hires to keep apparatus staff.

MR. VELTO: Pass the witness.

THE ARBITRATOR: Did you have anything Mr. Crosby?

EXAMINATION

BY MR. CROSBY:

Q. You said increases in your opinion. Seem to increase during the summer, is that because people are on vacation?

A. It's a combination of vacation, wildland assignments. There's special -- special events such as the rib cook offs and --

Q. So wildland assignments. That's when we send firefighters and apparatus out to fires outside of our jurisdiction to help, like, in the surrounding area?

A. Yeah. Yeah. For mutual aid assignments.

Q. Mutual aid. We don't have an obligation to do that?

A. I think there's a moral obligation and there's a -- there's a -- definitely a -- as far as I understand, there's cooperative agreements with local jurisdictions and Cal OES and such.

Q. Would the union be fine with the city stopping sending firefighters out to help assist sister agencies?

A. I don't -- I -- I don't know if I can speak to that.

Q. As the vice president, would that be something you'd be fine with?

A. I think that's something we'd have to look into and decide. I can't really say right now, but I'd be okay with that.

Q. I mean, the -- the -- the obvious reason why I'm asking is, if we don't have bodies out on helping

sister agencies, that's more bodies here, less force hires, if the logic runs in my head correctly.

A. Well hiring is the issue, right? It's -- it -- hiring more people. It -- I think that going out on wildland assignments is extremely valuable for our members. It gains experience. It helps us learn how to deal with wildland events that happen in our area constantly. I --

Q. If I understand your testimony, it's also detrimental to your members.

A. Force hires are detrimental to our members.

Q. Well, but if we have members out fighting fires in California, for example, so six guys or girls out and help, that six less bodies on -- available to work in town. Right? And you add people who maybe get sick, people who are injured, or on light duty, people who are taking planned vacations, that invariably, there's six less bodies available to work. And in this --

A. I don't know where six -- There's four per --

Q. In my example. In my example.

A. Okay. If you send six people out.

Q. If -- if we send six people. If we send two people out, it's two less bodies.

A. Right.

Q. Which means there's two less bodies to staff for minimum staffing in the city, right?

A. Yeah. I --

Q. Which prompts volunteer over time opportunities and force hire opportunities.

A. If people are not signing up to work.

Q. Right. And are people signing up to work?

A. Yeah. There are people that are signing up to work. But --

Q. Are there people who are not signing up to work?

A. Yeah.

Q. Are there people who are refusing force hires?

A. In -- in the proper way, yeah.

Q. Yeah. I'm not -- I wasn't saying that, like I'm suggesting it's nefarious.

A. Yeah.

Q. I'm just talking about bodies available.

A. Yeah. Yeah.

Q. And has -- has the city -- the fire department ever said, we don't want to hire any more people? Don't give us any more money. We don't need to hire any more people.

A. I don't think that they've said we don't

want to hire any people.

Q. Okay.

A. There just -- the -- the funding hasn't been given to us by the city to hire people

Q. And is --

MR. CROSBY: No further questions.

THE ARBITRATOR: Okay. Thank you for your testimony.

THE WITNESS: Good. Thank you.

THE ARBITRATOR: Okay.

MR. VELTO: We have Mr. Tom Dunn.

THE ARBITRATOR: Come again?

MR. VELTO: We have Mr. Dunn.

THE ARBITRATOR: I think we're going to take a removal of coffee break.
You are still under oath.

THE WITNESS: Yes, sir.

EXAMINATION

BY MR. VELTO:

Q. Good morning -- good morning, Mr. Dunn.

A. Good morning.

Q. I'd like to hear from you about how other agencies and unions have navigated force hire issues.

THE ARBITRATOR: Based on your personal knowledge.

EXHIBIT D

GROUND RULES FOR FY 2025 NEGOTIATIONS BETWEEN INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 731 AND CITY OF SPARKS

International Association of Fire Fighters Local 731 (IAFF) and the City of Sparks (City) (collectively, the parties) agree to negotiate in good faith according to these ground rules and the applicable provisions of NRS Chapter 288 for the purpose of negotiating a successor collective bargaining agreement for the fiscal year beginning July 1, 2024. The parties shall only negotiate through their designated exclusive bargaining representatives listed below and those individuals added to the parties' negotiation teams in accordance with these ground rules, if any.

1. **Chief Negotiators:** There shall be one (1) Chief Negotiator designated for each party. Each Chief Negotiator may request a team member or other resource person address a specific issue. Each Chief Negotiator shall have the authority to present, amend, and receive proposals for discussion and to sign tentative agreements for each party. Such tentative agreements may be signed in person or electronically. The Chief Negotiator for each party may designate an alternative Chief Negotiator to serve as the Chief Negotiator at all or some of the negotiation sessions and notify the other party of that designation in writing.

2. **Negotiation Teams:** Prior to the first meeting to review proposals, each party will provide the other a written statement naming the members of the party's Negotiation Team and alternates, if any. If either party changes any Negotiation Team members, it will provide the other party with prior written notice of the change. Each Negotiation Team shall be limited to 7 representatives at the bargaining table per session.

3. **Meetings:** The parties agree to schedule mutually agreeable dates on which to negotiate in good faith consistent with NRS Chapter 288 and these ground rules. Negotiation sessions shall be scheduled with the locations, dates, and times mutually agreed upon by the parties. Meetings shall be scheduled for a minimum of two (2) hours unless otherwise agreed upon in advance by both Chief Negotiators. Negotiation sessions shall be alternated between a city provided location and a Local 731 provided location unless otherwise agreed upon by the Chief Negotiators. Meetings may be held virtually with the prior consent of both Chief Negotiators. Each meeting room shall accommodate both negotiation teams. Adequate parking shall be available. A separate area shall be available to accommodate caucus meetings. Negotiation sessions may be cancelled with 24 hours notice to the other Chief Negotiator, or with as much notice as possible if due to an emergency.

4. **Proposals:** All proposals shall be submitted in writing including the full text of the article with deleted language depicted with ~~strikethroughs~~ and proposed language additions depicted in **bold**, and any counterproposal changes underlined (in addition to ~~strikethroughs~~ and **bold** to indicate deletions and additions). All proposals will be on the bargaining table by the end of the fourth negotiation

session. The ground rules meeting on March 1, 2024, does not count as the first negotiation session. This rule does not preclude written counter proposals after the fourth (4th) negotiation session, however articles/subjects not addressed in initial proposals submitted by the conclusion of the fourth (4th) negotiation session may not be included in counter proposals without consent of the other Chief Negotiator. Parties will accept, reject, or counter-propose all proposals by the end of the sixth (6th) negotiation session.

5. **Tentative Agreements:** All tentative agreements shall be in writing, dated, and signed by each party's Chief Negotiators. All tentative agreements are subject to finalization of contract language and agreement on a total tentative agreement. If impasse is declared by either party prior to an agreement on a total tentative agreement, signed tentative agreements in existence at declaration of impasse will not be submitted to fact finding or interest arbitration and will become part of the final agreement following fact finding and/or any interest arbitration award.

   The City will provide both a "track changes" and a clean copy of the total tentative agreement for signatures within ten (10) business days of executing tentative agreement(s) resolving all disputed issues. IAFF shall have 5 business days after receipt to identify any corrections to be made, the City shall have 5 business days to deliver a corrected version for review, and IAFF shall have 5 business days to confirm the corrections or identify any other corrections.

6. **Ratification:** Only a total tentative agreement resolving all disputed issues is subject to ratification by IAFF and final approval by the City Council. Final contract language is subject to approval as to form by the Sparks City Attorney. The negotiation teams guarantee that they will support any successor collective bargaining agreement in good faith when it is presented to their respective ratifying bodies. Further, the parties understand that the ratifying bodies approve or reject the proposed successor collective bargaining agreement as a whole. Upon IAFF's ratification, the City will place the proposed collective bargaining agreement on the next available City Council meeting agenda for consideration. If either body rejects the proposed agreement, the parties will return to the bargaining table, and all previous tentative agreements shall be null and void unless the Chief Negotiators both agree in writing to continue any previous tentative agreement in effect.

7. **Confidentiality:** All negotiations sessions and meetings shall be confidential and closed to the public. During the negotiation period, neither party, nor its immediate constituents, may issue any statement to any news media about the substance of the negotiations. The parties and their immediate constituents shall refrain from making public statements about the batgaining process until a full ratified and approved agreement has been affected, including during impasse and post-impasse proceedings. Both parties and their immediate constituents will refrain from posting or disseminating any information in public concerning contract negotiations until the negotiations are complete. This section is not meant to restrict dissemination of information to each negotiation team's constituent groups.

8. **Communications:** Bargaining shall only take place between the parties' respective negotiation teams. The negotiation teams, parties, and their immediate constituents shall refrain from discussing the substance of the negotiations and bargaining process except through the Chief Negotiators for both parties.

9. **Minutes:** The parties will keep their own written minutes of the negotiation sessions. No recording devices of any kind, including video recordings, or court reporter will be present, utilized, or allowed at any negotiation sessions without mutual consent of the parties. This does not apply to the use of computers, cell phones, or tablets, provided they are not used to record. This requirement does not apply to fact finding or interest arbitration conducted pursuant to NRS 288.

10. **Caucuses:** Either Chief Negotiator may recess negotiations for the purpose of conducting a caucus. Such caucuses will not exceed 30 minutes without approval of the other Chief Negotiator. Such approval shall not be unreasonably denied.

11. **Requests for Information:** All requests for information pursuant to NRS 288.180(2) by either party shall be in writing and provide enough detail to specify the document or type of information that is being requested. Both parties will cooperate in providing requested information as soon as reasonably possible.

12. **Timelines:**

    (a) In the event that ratification occurs prior to July 1, 2024, all terms under any new agreement shall take effect at 0800 hours on July 1, 2024, unless otherwise stated in the agreement.

    (b) In the event ratification occurs after July 1, 2024, all terms under any new agreement will be considered in full effect at 0800 hours on the first business day following ratification by both the City of Sparks and IAFF except as listed in 12(c) below.

    (c) Any changes to working conditions shall not be retroactive, and will commence upon full ratification by both parties, consistent with 12(b) above.

13. **Impasse:** The negotiation teams shall hold at least six (6) negotiation sessions before any party declares impasse, unless impasse is declared earlier by mutual agreement of both Chief Negotiators.

14. **Mediation:** In the event that the parties agree to engage in non-binding mediation prior to any fact finding, all events and communications that occur in mediation are confidential and are not admissible in any fact finding or interest arbitration. This includes but is not limited to any proposals or counter-proposals given in mediation, and information shared or statements in mediation.

15. **Term of Ground Rules:** The ground rules listed above constitute all the ground rules agreed to by the parties and they supersede any other agreements the parties may have made regarding ground rules. These ground rules shall remain in effect until an agreement has been reached or until an impasse resolution procedure or arbitration hearing, if any, is completed. Any of the ground rules may be modified by mutual agreement of the parties.

Dated this 1st day of March, 2024.

International Association of Fire Fighters, Local 731	City of Sparks
Matt Joseph, Chief Negotiator	Alyson McCormick, Chief Negotiator

IAFF Local 731(Complainant/Respondent)

Opposition to City of Sparks' Motion to Defer
and
Renewed Motion to Dismiss

Alex Velto, Esq.
Nevada State Bar No. 14961
Paul Cotsonis, Esq.
Nevada State Bar No. 8786
REESE RING VELTO, PLLC
200 S. Virginia Street, Suite 655
Reno, NV 89501
Telephone: (775)446-8096
alex@rrvlawyers.com
paul@rrvlawyers.com

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 ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731's OPPOSITION TO CITY OF SPARKS' MOTION TO DEFER AND 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 Defer and Motion to Dismiss the Union's Complaint (hereinafter referred to as "Opposition"). 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's Motion to Defer and Renewed Motion to Dismiss ("Motions") rests on a series of mischaracterizations of the arbitrator's award; of Local 731's claims; of counsel's statements in a separate arbitration, and even of the parties' ground rules for negotiations for a successor collective bargaining agreement ("CBA"). Once those distortions are stripped away, denial of the City's Motions becomes clear for two basic reasons.

First, deferral is improper because the arbitrator decided contractual issues, not statutory ones, and did not consider or resolve the bad faith bargaining allegations, such as grievance manipulation that Local 731 brings here. Second, dismissal is improper because the Complaint alleges detailed facts that, taken as true, constitute prohibited practices under NRS 288.270(1)(e), and the City's arguments rely on credibility disputes and factual contestations that cannot be resolved at this stage. .

In its Motions the City's core theme in arguing for dismissal is that the September 4, 2024, Force Hire meeting was "a negotiation" subject to successor-CBA ground rules and that, because no written tentative agreement was executed, no agreement was reached. This argument fails for two independent reasons.

First, the September 4 meeting was a grievance-resolution negotiation, not successor-CBA bargaining, and therefore the ground rules did not apply. Second, even if it were a "negotiation," Nevada law requires good faith bargaining in grievance resolution, and Local 731's allegation is that the City repudiated agreed terms. Repudiation of agreed terms is conduct that constitutes bad faith regardless of ground rules.

The Complaint sets out two well-pled prohibited practice claims:

- The City reached agreement with Local 731 on essential Force Hire grievance terms and then reneged on those terms.
- The City delayed the GHCC grievance under false pretenses without an earnest desire to resolve the dispute but, rather, to manipulate the GHCC composition and secure a retroactive vote which is classic surface bargaining.

Both claims belong before this Board. The Motions should be denied.

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Reno, NV 89501 RRMlawyers.com
reese ring velto PLLC

II.
LEGAL STANDARD

A. Deferral Doctrine

Nevada's deferral doctrine is narrow and applies only in limited circumstances. The EMRB has long held that it will defer to an arbitration award only when the arbitrator has resolved the same factual and legal issues presented in the prohibited labor practice complaint, based on the same evidentiary record. The Nevada Supreme Court has adopted the NLRB's five-factor test for deferral: (1) the parties agreed to be bound by arbitration; (2) the arbitration procedures were fair and regular; (3) the parties were given adequate notice and opportunity to present evidence; (4) the contractual issue decided by the arbitrator is factually parallel to the ULP issue; and (5) the arbitrator was presented with, and actually decided, all facts necessary to resolve the statutory issue. *City of Reno v. Reno Police Protective Ass'n,* 118 Nev. 889, 895-97, 59 P. 3d 1212, 1217-1218 (2002).

The fourth and fifth factors carry particular weight, because deferral is proper only when the arbitrator actually decided the same statutory duty that the EMRB is required to resolve, based on the same factual inquiry. Where arbitration addresses only contract interpretation, while the ULP concerns questions arising under NRS 288.270(1)(e), such as whether the employer acted with improper motive, engaged in pretextual conduct, undermined the bargaining process, or repudiated an agreement, the issues are not factually parallel, and the arbitrator necessarily lacked the evidence required to decide the statutory claim. *See City of Reno, 118 Nev. at* 895–96 (EMRB retains exclusive jurisdiction over statutory issues).

The EMRB reaffirmed this principle in *Clark County Education Support Employees Ass'n v. Clark County School District,* Case No. A1-045901, Item No. 764B (2012), holding that "the contractual issue is not factually parallel to the prohibited labor practice issue" and that arbitration proceedings cannot resolve statutory bargaining obligations. Id. at 2–3. Overlap in background facts is insufficient; deferral applies only when the arbitrator decided the same statutory question using the same evidentiary record.

Thus, deferral is inappropriate where the arbitrator did not address the statutory allegations

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raised in the complaint or lacked the evidentiary record necessary to decide those issues. That is the posture here.

B. Motion to Dismiss

Motions to dismiss prohibited practice complaints are governed by the probable cause standard under Nevada Administrative Code ("NAC") 288.375(1). A complaint may be dismissed only if "no probable cause exists for the complaint." NAC 288.375(1); *Nev. Emp. Servs. Union v. Clark Cnty. Water Reclamation Dist.*, Case No. 2024-030, Item No. 905 (Dec. 17, 2024), at 1. Probable cause is a modest threshold under NAC 288.375(1); a complaint need only allege facts which, if true, would constitute a prohibited practice. As the Board has consistently held, "cases involving factual disputes and credibility determinations require a hearing and cannot be disposed of by a motion to dismiss." *Las Vegas v. Las Vegas Peace Officers Ass'n*, Case No. 2019-016, Item No. 851 (2019).

The duty to bargain in good faith under NRS 288.270(1)(e) extends to the entire bargaining relationship, including the grievance process. "Collective bargaining" is defined to include "the resolution of any question arising under a negotiated agreement." NRS 288.032(3). Grievance and arbitration procedures are mandatory subjects of bargaining. NRS 288.150(2)(o). And the EMRB has held that the statutory duty includes adhering to the bargained-for grievance process and not undermining or refusing to participate in it. *Michael Turner v. Clark County School District*, Case No. A1-046106, Item No. 800 (Jan. 21, 2015), at 3 (*citing Kallsen v. CCSD*, Item No. 393-B (Feb. 12, 1998)).

Accordingly, dismissal is inappropriate where, as here, the complaint alleges conduct—such as repudiation of agreed terms or conduct during the grievance process that, if proven, could constitute bad faith bargaining. Such allegations necessarily raises factual and credibility issues and, therefore, the Board cannot resolve at the pleading stage under NAC 288.375(1).

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III.

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ARGUMENT

A. Opposition to Motion to Defer

The City's request for deferral fails because the arbitrator did not resolve the statutory issues raised in Local 731's Complaint regarding the GHCC grievance. The arbitration addressed only contractual questions under the CBA; the ULP concerns the City's statutory duty to bargain in good faith under NRS 288.270(1)(e). These are not factually parallel issues, and the arbitrator lacked both the authority and the evidentiary record necessary to resolve the statutory claims. Under City of Reno v. RPPA and EMRB precedent, deferral is therefore inappropriate.

1. The Arbitrator Decided the Contractual Issues, Not Statutory Bad faith Allegations.

The City's deferral argument fails at the outset because the arbitrator addressed only contractual questions, not the statutory bad faith bargaining issues presented to the EMRB. The arbitrator's Award evaluated (1) whether the January 2024 GHCC benefit changes constituted a change in benefits under the CBA, and (2) whether GHCC's subsequent majority vote retroactively approving those changes satisfied the contractual requirements. *See* Exhibit A attached to the City's Motions. These are matters of contract interpretation, squarely within the arbitrator's limited jurisdiction. In contrast, Local 731's ULP alleges statutory bad faith bargaining which are issues arbitrators cannot decide unless expressly submitted.

The ULP, however, alleges something fundamentally different—namely, that the City engaged in statutory bad faith bargaining in violation of NRS 288.270(1)(e) in its handling of the GHCC grievance. The Complaint alleges that the City:

- sought extensions of the grievance timeline under false pretenses;
- used the delay to take advantage of a restructuring in GHCC leadership;
- created a decisional posture more likely to approve the City's unilateral changes; and
- denied the grievance immediately after securing a favorable GHCC vote.

These allegations concern motive, pretext, manipulation, and bargaining conduct. These are issues that arbitrators lack authority to decide unless expressly submitted for adjudication. Other than in passing, these statutory questions were not presented to the arbitrator or addressed in the

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Award.

Although the arbitration record included limited testimony regarding the City's stated explanation for requesting extensions—primarily through Mr. Stewart's understanding of what the City conveyed—the arbitrator did not evaluate whether that explanation was accurate, complete, or pretextual. She made no findings on the City's motive, did not assess credibility on this point, and did not consider whether the timing of the extensions was connected to changes in GHCC leadership or to the City's strategic interests. The Award contains only a brief procedural notation that the parties extended the timelines "to allow for a thorough review," *see* Ex. A attached to the City's Motions *at* p. 17, but this narrative description is not a factual finding and reflects no analysis of the statutory bargaining issues raised in this prohibited practice charge. Because the arbitrator did not adjudicate the reasons behind the delay or the implications of the City's conduct, she did not decide the statutory questions presented to the EMRB.

Under *City of Reno v. RPPA*, deferral is appropriate only where the arbitrator actually decided the same statutory issue based on the same factual inquiry required in the ULP. 118 Nev. at 895–97. The EMRB reaffirmed this principle in *Clark County Education Support Employees Ass'n v. Clark County School District*, Case No. A1-045901, Item No. 764B (2012), holding that deferral is improper where an arbitrator rules only on contractual compliance while the prohibited practice complaint concerns the employer's course of conduct and statutory bargaining duties, and that the matters are "not factually parallel." *Id.* at 2–3.

The same is true here. The arbitrator resolved a narrow contract grievance. The EMRB must decide whether the City's conduct during the GHCC grievance process violated its statutory obligation to bargain in good faith. Because these issues are distinct in both nature and evidentiary requirements, Factor 4 fails, and deferral is inappropriate as a matter of law.

2. The Arbitration Record Did Not Include the Evidence Necessary to Resolve the Statutory Issues.

Even apart from the lack of parallel issues, deferral fails because the arbitrator did not have the evidentiary record necessary to resolve the statutory bad faith bargaining allegations. Under *City of Reno v. RPPA*, deferral is appropriate only where the arbitrator was "presented generally

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with the facts relevant to resolving the [statutory] issue." 118 Nev. at 897. That did not occur here.

While the arbitrator heard limited testimony regarding the City's stated explanation for requesting extensions of the GHCC grievance timelines, she was not presented with, and did not evaluate, evidence bearing on the statutory questions raised in this ULP. The arbitrator did not examine whether the City's explanation was genuine or whether the delay was used to take advantage of changes in GHCC leadership, whether the timing of events surrounding the grievance process reflected pretext, or whether the City's conduct undermined the statutory obligation to bargain in good faith. No testimony or exhibits were presented on the City's internal deliberations, its reasons for requesting extensions beyond the stated justification, or the relationship between the grievance timeline and the GHCC reorganization.

The Award contains only a brief procedural notation that the parties extended the timelines "to allow for a thorough review," id. *at* p. 17, but this narrative statement is not a factual finding about motive or purpose and does not reflect any evidentiary assessment. Because the arbitrator lacked the factual record necessary to determine why the delay occurred, what its effects were, or whether the City's conduct during the grievance process comported with NRS 288.270(1)(e), she could not have resolved the statutory issues before the EMRB.

The EMRB has been clear that deferral is improper under these circumstances. In *Clark County Education Support Employees Ass'n v. Clark County School District*, Case No. A1-045901, Item No. 764B (2012), the Board rejected deferral where the arbitrator lacked the evidence needed to decide the employer's course of conduct and statutory bargaining obligations, holding that deferral cannot apply merely because the same background events appear in both proceedings. *Id.* at 2–3. The same deficiency exists here. The arbitrator simply did not have the factual record required to evaluate statutory bad faith.

Because the arbitrator was not presented with, and did not decide the facts necessary to resolve the statutory allegations, Factor 5 of the deferral test cannot be met, and deferral must be denied.

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Reno, NV 89501 RRVlawyers.com
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B. Opposition to Renewed Motion to Dismiss

The City's Motion to Dismiss must be denied because, accepting the Complaint's allegations as true, as required under NAC 288.375(1), Local 731 has clearly alleged facts which, if proven, constitute a violation of NRS 288.270(1)(e). Dismissal is proper only where "no probable cause exists for the complaint." NAC 288.375(1). Probable cause is a low threshold; the complaint need only allege facts that state a plausible statutory violation. *Nev. Emp. Servs. Union v. Clark Cnty. Water Reclamation Dist.*, Case No. 2024-030, Item No. 905 (Dec. 17, 2024), *at* 1. And where factual disputes or credibility determinations are required, dismissal is inappropriate. *Las Vegas v. Las Vegas Peace Officers Ass'n*, Case No. 2019-016, Item No. 851 (2019); *Operating Eng'rs Local 3 v. Incline Vill. Gen. Improvement Dist.*, Case No. 2020-012, Item No. 864 (2020).

1. The Complaint Properly Alleges an Agreement in Principle

The Complaint alleges that at the September 4 meeting, the parties reached an agreement in principle over Force Hire. *See* Comp. *at* ¶¶ 13, 14 and 16. Specifically, the City's ability to mandate overtime and the negotiated limitations that would accompany it into the CBA. *Id.* At the pleading stage, this is more than sufficient to allege that mutual assent was reached. Whether the City now claims no agreement existed is a factual dispute inappropriate for resolution on a motion to dismiss.

2. The Complaint Alleges the City Repudiated That Agreement

Local 731 alleges that after agreeing to the limitations, the City repudiated the agreement by removing those limitations from its draft MOU and attempting to shift them into unilateral City policy rather than binding contract language. *Id. at* ¶¶ 17, 18 and 19. A party may not withdraw from an agreement-in-principle or materially alter its terms after reaching accord. Such conduct constitutes bad faith bargaining under NRS 288.270(1)(e).

3. Withdrawal of Accepted Offers is Recognized Bad faith Bargaining

The EMRB has recently reaffirmed that "withdrawal of accepted offers" is a recognized indicator of bad faith bargaining. *Washoe Cnty. Sch. Dist. v. Washoe Sch. Principals' Ass'n*, EMRB Item 895 (2024), *at* 6. Local 731 alleges precisely that here. Specifically, Local 731 alleges that the City accepted the negotiated Force Hire limitations on September 4, to be in the CBA and

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Reno, NV 89501 RRVlawyers.com
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then effectively neutering those limitations by indicating they would be going into policy as opposed to the CBA. That is the textbook example of bad faith bargaining.

4. Single Act of Repudiation is Legally Sufficient to State a Claim

The City's argument that Local 731 alleges only a "single incident" misunderstands the legal standard. Repudiation or withdrawal of accepted terms is itself a hallmark of bad faith bargaining. The EMRB has expressly recognized "withdrawal of accepted offers" as evidence of bad faith bargaining. *Washoe Cnty. Sch. Dist. v. Washoe Sch. Principals' Ass'n*, EMRB Item 895 (2024), at 6. Local 731 alleges precisely that here: after reaching agreement in principle on September 4, the City removed the negotiated limitations from its draft and attempted to substitute unilateral policy language in their place. This constitutes repudiation of agreed terms and states a prohibited practice under NRS 288.270(1)(e).

Moreover, the City's "single incident" argument is legally and logically incorrect. A single act of repudiation is sufficient to constitute bad faith bargaining. Federal labor law has long held that when parties reach agreement, a party's unilateral refusal to honor or execute the agreement is, by itself, a violation of the duty to bargain. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 525–26 (1941).[1] Thus, even if the September 4 repudiation were the only allegation, it would still be sufficient to state a claim.

Additionally, accepting the City's position would effectively grant public employers one "free" repudiation of an agreement, an outcome fundamentally at odds with the purposes of collective bargaining statutes. Were that the rule, an employer could openly withdraw from an agreement reached at the table, refuse to honor commitments, or unilaterally alter agreed terms

[1] Although Heinz involved multiple unfair labor practices overall, the Supreme Court treated the employer's refusal to sign a written contract embodying agreed terms as an independent and self-sufficient violation of the duty to bargain in good faith. 311 U.S. at 525–26. More recent labor precedent continues to apply Heinz for this precise proposition. *See Perrigo New York, Inc.*, ALJ Decision No. JD(NY)-09-23, at 5–6 (Mar. 20, 2023) (holding that "failure, upon request, to execute a contract embodying agreed-on terms constitutes an unlawful refusal to bargain," *citing Heinz* and reaffirming that refusal to execute agreed terms is a *per se* violation). Additionally, the Supreme Court of Nevada has held that it is proper to look to the National Labor Relations Board for guidance on issues involving the Employee-Management Relations Board. *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 892, 59 P.3d 1212, 1214 (2002). Accordingly, the Nevada Employee-Management Relations Act "should be interpreted consistently with the National Labor Relations Act." *Weiner v. Beatty*, 113 P.3d 313, 315 (Nev. 2005).Nevada applies these federal principles when interpreting NRS 288.270(1)(e). Thus, federal principles governing repudiation and refusal to execute agreements apply with full force in the EMRB context.

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Reno, NV 89501 RRWlawyers.com
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once, without consequence. Neither federal law nor Nevada law permits such an outcome. The duty to bargain in good faith applies to each act of bargaining conduct, and a single repudiation of agreed terms is sufficient to constitute a prohibited practice.

5. The Ground Rules Do Not Apply to Grievance Negotiations

The City argues that no agreement existed on September 4 because no written tentative agreement ("TA") was executed under the FY25 Ground Rules. This argument fails for a basic reason: the FY25 Ground Rules apply only to successor CBA negotiations, and the September 4 meeting was not part of the successor CBA bargaining process. It was convened to resolve the Force Hire grievance.

The City's reliance on a brief exchange in the Force Hire arbitration transcript, *see* Motions *at* p. 14 -15 citing Exhibit C attached thereto, does not change this conclusion. In that proceeding, City counsel objected on the ground that the September 4 discussion was "not a negotiation as recognized under NRS 288," and Union counsel responded, "I disagree. This was a negotiation." *Id. at* p. 49: 6 – 7. But this remark was made by counsel was not sworn testimony and did not assert that the meeting was a successor CBA negotiation governed by the Ground Rules. When the Arbitrator asked whether it was "negotiations for a contract provision," the witness clarified only that the parties engaged in a back-and-forth discussion over an MOU intended to resolve the grievance. *Id. at* p. 49: 15 – 24. This is a description that is fully consistent with Local 731's position that this was a grievance negotiation, not a successor-CBA bargaining session. Nothing in the transcript supports the City's attempt to retroactively categorize the meeting as ground-rules bargaining.

Because the September 4 meeting was not a ground-rules bargaining session, the Ground Rules' written-TA requirement does not apply. The absence of a written TA therefore does not defeat Local 731's allegation that the parties reached an agreement in principle on Force Hire. The City cannot impose successor-bargaining formalities on a grievance-resolution negotiation in order to avoid the consequences of repudiating agreed terms.

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200 S. Virginia St., Ste. 655
Reno, NV 89501 RRVlawyers.com
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6. The Complaint Alleges the City Rendered the Agreement Illusory

Local 731 also alleges that even apart from repudiation, the City engaged in bad faith bargaining by attempting to convert negotiated, mutually accepted Force Hire limitations into unilateral City policy rather than binding contract language. This conduct, as set forth in the Complaint and supported by the City's own MOU draft, would allow the City to alter, suspend, or disregard those limitations at will. An agreement that leaves essential terms to the unilateral discretion of one party is illusory, and the attempt to replace bargained-for contractual protections with nonbinding policy language constitutes additional evidence of bad faith bargaining under NRS 288.270(1)(e).

At this stage, the Board must accept these allegations as true. If Local 731 proves that the City removed agreed-upon limitations from contract language and sought instead to reserve unilateral control over those terms, this would independently establish a statutory violation. Therefore, finding no probable cause exists under NAC 288.375(1) is unwarranted. The City's attempt to recast negotiated terms as discretionary policy is not a legal defect in the Complaint, it is a factual dispute that must be resolved at hearing and cannot form the basis for dismissal.

7. The City's Motion Presents Factual Disputes That Cannot Be Resolved on a Motion to Dismiss.

Even if the City's arguments were taken at face value, its Motion to Dismiss fails because it raises factual disputes that cannot be resolved at this stage. A motion to dismiss under NAC 288.375(1) is proper only when "no probable cause exists for the complaint," and the Board has repeatedly held that cases involving contested facts or credibility determinations must proceed to hearing. *See Las Vegas v. Las Vegas Peace Officers Ass'n*, EMRB Case No. 2019-016, Item No. 851 (2019); *Operating Eng'rs Local Union No. 3 v. Incline Vill. Gen. Improvement Dist.*, EMRB Case No. 2020-012, Item No. 864 (2020).

Here, the parties sharply dispute several material facts, including:

- whether the parties reached an agreement in principle on September 4;
- what terms were included in that agreement;
- whether the City's subsequent draft reflected or repudiated those terms;

200 S. Virginia St., Ste. 655
Reno, NV 89501 RRVlawyers.com
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- whether negotiated limitations were intentionally removed or altered;
- whether the City attempted to shift bargained-for terms into unilateral policy; and
- whether these actions constitute bad faith bargaining under NRS 288.270(1)(e).

Compounding these factual disputes, the City's Motion repeatedly asks the Board to reject the Complaint's allegations based on its assertion that Local 731 member Darren Jackson is not credible. *See* Motions *at* p. 5. But credibility determinations cannot be made on a motion to dismiss. *See Incline Village*, Item No. 864 (credibility questions require a hearing); *LVPOA*, Item No. 851 (dismissal inappropriate where resolution depends on "which witness is to be believed"). At the pleading stage, the Board must accept the Complaint's allegations as true and may not substitute the City's assessment of Jackson's credibility for the evidentiary evaluation that must occur at hearing.

Because the City's Motion depends on contested facts and premature credibility arguments, it fails to meet NAC 288.375's dismissal standard. Local 731 has alleged a viable statutory violation, and a hearing is required.

8. The Complaint Satisfies the Probable Cause Standard

Under NAC 288.375(1), the Board may dismiss a complaint only where there is a lack of probable cause. As the Board explains in *Nevada Service Employees Union v. Clark County Water Reclamation District*, EMRB Item No. 905 (Dec. 17, 2024) *at* 1, probable cause is lacking only where the complaint fails to allege sufficient facts to "raise a justiciable controversy under Chapter 288," as required by NAC 288.200. Item 905 *at* 1 (noting that dismissal is appropriate where the complaint lacks adequate factual allegations). A complainant is not required to prove its case at the pleading stage; it must simply allege facts which, if true, would constitute a prohibited practice. And where resolution of the dispute will require factual development or credibility determinations, dismissal is improper. *See Las Vegas v. Las Vegas Peace Officers Ass'n*, EMRB Item No. 851 (2019); *Operating Eng'rs Local Union No. 3 v. Incline Vill. Gen. Improvement Dist.*, EMRB Item No. 864 (2020).

Local 731's Complaint easily satisfies this standard. Accepting its allegations as true, the Complaint alleges that:

200 S. Virginia St., Ste. 655
Reno, NV 89501 RRVlawyers.com
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- the parties reached an agreement in principle on September 4;
- the City subsequently repudiated that agreement by removing negotiated limitations;
- the City withdrew or altered accepted terms, conduct the Board has expressly recognized as indicia of bad faith bargaining (Item 895);
- the City attempted to render the agreement illusory by shifting negotiated terms into unilateral policy; and
- these actions constitute bad faith bargaining within the meaning of NRS 288.270(1)(e).

These allegations, if proven, would establish a statutory violation. Taken together, they clearly "raise a justiciable controversy under Chapter 288" within the meaning of NAC 288.200 and referenced in Item 905. Because the City's Motion depends on disputed facts and asks the Board to make improper credibility determinations, particularly regarding Local 731 member Darren Jackson, it cannot satisfy the standard for dismissal under NAC 288.375(1). The Complaint alleges more than sufficient facts to establish probable cause, and a hearing is required.

IV.
CONCLUSION

For all of the foregoing reasons, the City's Motion to Defer and Renewed Motion to Dismiss should be denied. Deferral is inappropriate because the arbitration award did not resolve the same factual or legal issues presented in this unfair labor practice proceeding, nor did the arbitrator consider or decide the statutory questions of bad faith bargaining that fall within the EMRB's exclusive jurisdiction. Likewise, dismissal is improper because Local 731's Complaint alleges specific facts which, if proven, would constitute violations of NRS 288.270(1)(e), and the City's arguments depend on disputed facts and credibility determinations that cannot be resolved at the pleading stage.

Local 731 has alleged that the City reached an agreement in principle, repudiated that agreement, withdrew accepted terms, and attempted to replace bargained for protections with unilateral policy. This is conduct that, taken individually or collectively, states a prohibited

200 S. Virginia St., Ste. 655
Reno, NV 89501 RRVlawyers.com
reese ring velto PLLC

practice under Nevada law. Because the Complaint plainly raises a justiciable controversy and establishes probable cause under NAC 288.375, this matter must proceed to hearing. Accordingly,

Local 731 respectfully requests that the Board deny the City's Motion to Defer and Renewed Motion to Dismiss in their entirety.

DATED this 15th day of December, 2025.

REESE RING VELTO, PLLC

/s/Alex Velto
Alex Velto, Esq.
Nevada State Bar No. 14961
Paul Cotsonis, Esq.
Nevada State Bar No. 8786
200 S. Virginia Street, Suite 655
Reno, NV 89501
Telephone: (775)446-8096
alex@rrvlawyers.com
paul@rrvlawyers.com
Attorneys for Complainant/Respondent

200 S. Virginia St., Ste. 655
Reno, NV 89501 RRVlawyers.com
reese ring velto PLLC

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 15th day of December 2025, I caused service a true and correct copy of the **INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731's OPPOSITION TO CITY OF SPARKS' MOTION TO DEFER AND MOTION TO DISMISS** to be served via email on the following persons:

Wesley K. Duncan, Esq.,
wduncan@cityofsparks.us

Jessica L. Coberly, Esq.,
jcoberly@cityofsparks.us

Attorney for Respondent/Complainant

/s/Rachael Chavez
An employee of Reese Ring Velto, PLLC

200 S. Virginia St., Ste. 655
Reno, NV 89501 RRVlawyers.com

City of Sparks (Complainant/Respondent)

Reply In Support of Its Motion to Defer
and
Renewed Motion to Dismiss

Wesley K. Duncan, #12362
Sparks City Attorney
wduncan@cityofsparks.us
Jessica L Coberly, #16079
Acting Chief Assistant City Attorney
jcoberly@cityofsparks.us
P.O. Box 857
Sparks, Nevada 89432-0857
(775) 353-2324
Attorneys for Complainant/Respondent
City of Sparks

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' REPLY IN SUPPORT OF ITS MOTION TO DEFER AND RENEWED MOTION TO DISMISS

The CITY OF SPARKS ("City") hereby files this Reply in support if its Motion to Defer the second claim in INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL NO. 731 ("Local 731")'s Complaint and the City's renewed Motion to Dismiss the first claim in the Complaint. This Reply is based on the papers and pleadings on file herein, the below Memorandum of Points and Authorities, and any oral argument the Board so permits.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Arbitrator's October 6, 2025 award and decision (hereinafter "Opinion" or "Op.") regarding the Group Health Grievance conclusively determined that the bad faith allegations contained in Local 731's Complaint's second claim (the "Group Health" claim) are incorrect and

must be deferred. The Arbitrator evaluated the Group Health grievance, the City's responses during the grievance process, and the Group Health Care Committee's (GHCC) vote ratifying a checkpoint for medical necessity and concluded in relevant part:

1. "[N]o benefits provided by the [City's] healthcare plan were improperly changed following the implementation of the current Plan Document," "[n]o violation of the [CBA] has been proved" by Local 731, Op. at 36—meaning the City did not "unilaterally change[] healthcare provisions" in "blatant violation of the CBA." Compl. ¶¶ 24–25.
2. The Arbitrator made the factual finding that "the parties agreed to extend timelines for the City's response to allow for a thorough review of the concerns raised," Op. at 17, not "as an excuse to delay the grievance process." Compl. ¶ 35.
3. The Arbitrator specified in the Opinion that "[t]here is no indication the Committee operated under *sway* of the City in general, or with regard to the issues raised by the Union," Op. at 29 (emphasis added), directly contrary to Local 731's claim before the Board that the City's extension was a delay in an attempt "to *sway* SPPA's vote in favor of approving of the changes [the City] made to the health plan." Compl. ¶ 35 (emphasis added).

The Arbitrator's factual findings and determinations are both factually parallel to the instant claims under Factor 4 and the Arbitrator specifically considered the facts relevant to resolving the Group Health claim under Factor 5, meaning the claim should be deferred.

Regarding the Motion to Dismiss the Complaint's first claim (the "Force Hire" claim), Local 731 fails to address that Nevada Law requires a party to allege an "outward manifestation" of agreement to legally allege mutual assent occurred, and Local 731's Complaint does not do so. Local 731 also urged the Board to ignore Local 731's attorney's and named witness' affirmative claims in the Force Hire arbitration that the Force Hire negotiation was *not* "an attempt to resolve a grievance," and *was* a contract "negotiation as recognized under [NRS] 288." Mot., Ex. C at 49. But the Board should not let either the witness or counsel recant their prior sworn testimony and legal argumentation before the arbitrator. Finally, even if Local 731 successfully pled that the parties somehow reached an agreement on the single contested term without putting such agreement in writing, the claim that the City disagreed with one term among many agreed-to terms in the course of drafting a later-signed global agreement is legally insufficient to establish probable cause for bad faith under the Board's "totality of the circumstances" analysis. The first claim should also be dismissed.

II. STANDARD OF REVIEW

"The party asking this Board to reject an arbitration award has the burden of demonstrating that the five-part test above was not met." *AFSCME Local 4041 v. State of Nevada*, Case No. 2023-019 and 2023-029, Item #909 at 2 (July 28, 2025). Local 731 fails to carry its burden. It concedes Factors 1–3 are met in this matter and only objects to Factors 4 and 5, without meaningfully engaging with the clear statements in the Arbitrator's decision that demonstrably address the same issues in the Group Health claim, fulfilling both Factors.

In evaluating a Motion to Dismiss, NAC 288.200(1)(c) requires that a Complaint contain "[a] clear and concise statement of the facts constituting the alleged practice." "In order to show 'bad faith'" through factual allegations, "a complainant must present 'substantial evidence,'" which cannot rest on a "single isolated incident," but rather "the totality of the conduct throughout negotiations." *Int'l Ass'n of Fire Fighters, Local 5046 v. Elko Cnty. Fire Prot. Dist.*, Case No. 2019-011, Item #847-A at 5 (July 8, 2020) (citations omitted). Local 731 fails to identify a Board decision that has ever found that a party acted in bad faith based on a single point of disagreement in a negotiation that then culminated both in an admitted agreement on that identified point and overall reached resolution. Furthermore, its recitation of the legal arguments in its Opposition fail to demonstrate it proffered sufficient facts to substantiate the single act of bad faith alleged. The Force Hire claim should therefore be dismissed.

III. ARGUMENT

Local 731 makes minimal attempt to engage with the statements made in the Group Health Grievance Arbitrator's decision or its own witness' and counsel's statements from the Force Hire arbitrator—instead it would prefer to reallege its Complaint in Opposition, urge the Board to hold its own hearing, and recover the same ground as prior arbitrators. But the Board's deferral doctrine exists to provide the Board an efficient way to address claims already evaluated by arbitrators, and Local 731 does not address multiple on-point findings and determinations made by the Group Health Grievance Arbitrator that conclusively dismissed the allegations underlying the Group Health claim before the Board.

The Motion to Dismiss similarly simplifies the Force Hire claim to a single legal issue—

whether agreement *could* be alleged via a verbal meeting. Local 731's named witness for the Force Hire claim previously testified that the Force Hire negotiation regarding potential changes to the CBA was a contract negotiation under NRS 288 (to support the clear statements made by his counsel on the matter) and Local 731's Force Hire claim is therefore subject to the Ground Rules for the then-ongoing CBA negotiation—which under NRS 288.150(1) required agreements to be reduced to a written agreement. For this claim, there was no written agreement reached on the term Local 731 contests, meaning Local 731 does not allege facts demonstrating there was a meeting of the minds sufficient to create legally-binding agreement. And even if it could do so, a single act is insufficient to establish that the totality of the circumstances demonstrate bad faith as a matter of law. The Force Hire claim should be dismissed.

A. The Deferral Factors Are Satisfied as to Local 731's Group Health Claim.

In response to the Motion to Defer Local 731's Group Health claim, Local 731 concedes by failing to argue otherwise that the Group Health arbitration award and underlying testimony demonstrated that the proceedings were fair and regular under Factor 1, the parties agreed to be bound under Factor 2, and the decision was in accordance with the purposes and policies of the Act under Factor 3. *See Polk v. State*, 126 Nev. 180, 181, 233 P.3d 357, 358 (2010) (when a party "failed to directly address" an issue, "it effectively confessed" to the issue unaddressed).

Local 731's argument regarding Factor 4—that contract arbitrations cannot result in deferral of bad faith claims—cited an inapposite case with unique contract language that specifically barred arbitration of bad faith claims that is not present in the applicable CBA here. Local 731 further claimed under Factor 5 that one of the City's multiple identified findings and determinations from the Arbitrator did not directly address its claim before the Board—ignoring the specific, almost word-for-word refutation by the Arbitrator of the core of its claim in other parts of the Opinion. Local 731 does not refute the City's cited case law that issues are factually parallel if the arbitrator's determination of the contractual issue is "resolved by the same facts" as those underlying the bad faith claim. Mot. at 7 (citing *Int'l Ass'n of Fire Fighters, Local 4068 and Van Leuven v. Town of Pahrump (IAFF Local 4068)*, Case No. 2017-009, Item No. 833 at 9 (Nov.

14, 2018) (quoting *Reichold Chemicals*, 275 NLRB 1414, 1415 (1985))). Because Local 731 does not identify any facts that the Arbitrator did not consider and cannot refute the applicability of the Arbitrator's factual findings and legal determinations directly relevant to its claims, the Group Health claim should be deferred as fulfilling all five factors.

1. Under Factor 4, the Board Can Legally Defer a Statutory Bad Faith Claim When It Is Resolved By the Same Facts Presented To An Arbitrator in A Contract Arbitration.

Local 731 claimed that a contract arbitration cannot be factually parallel to a bad faith claim because "statutory bad faith bargaining [claims] ... are issues arbitrators cannot decide unless expressly submitted," citing to inapposite case law. Opp'n at 5–6 (citing *City of Reno v. Reno Police Protective Ass'n,* 118 Nev. 889, 895–97, 59 P.3d 1212, 1217–18 (2002) and *Clark Cnty. Educ. Ass'n v. Clark Cnty. Sch. Dist. (CCEA)*, Case No. A1-045901, Item No. 764B (Aug. 3, 2012)). These cases do not support Local 731's strained interpretation. In fact, "[t]hat is not the standard for deferral,"— the Board instead evaluates whether the same facts needed to decide the statutory issue were presented to the arbitrator and whether the arbitrator analyzed them. *IAFF Local 4068*, Item No. 833 at 8; *see also Goodwin v. N.L.R.B.*, 979 F.2d 854, *6 (9th Cir. 1992) (unpublished) (determining because "[t]he arbitrator was presented generally with the facts necessary to decide the statutory issue, and the contractual and statutory issues were factually parallel"). The City addressed this exact argument in its Motion and Local 731 declined to engage with the Board's reasoning in *IAFF Local 4068*, which explicitly addressed whether contractual arbitration decisions result in deferral of statutory bad faith issues:

> Complainants seem to only conclusory argue that ... ['Jthe only issue decided by the arbitrator was a contractual one'.... Complainants argue that because they pled bad faith bargaining and unilateral changes related thereto, an unfair labor practice, no arbitrator finding, no matter how relevant and factually overlapping, is enough to satisfy *City of Reno's* deference standard. Complainants' logical end would nullify the deferral doctrine.... *See also Badger Meter, Inc.*, 272 NLRB 824, 826 (1984) ("[t]he arbitrator was faced with the contractual question of whether the Respondent's transfers and subcontracting violated its collective-bargaining agreement. The Board is faced with the statutory question of whether the Respondent's actions constituted unilateral changes that violated its bargaining obligation under Section 8(a)(5).... **Evidence of the parties' collective-bargaining agreements, bargaining history, and past practice are parallel facts that should resolve both issues**. Accordingly, we find that the contractual and

> statutory issues are factually parallel.... The Board's involvement is not in the nature of an appeal by trial de novo.")

IAFF Local 4068, Item No. 833 at 8–9 (emphasis added). Therefore, "[t]he contractual issue ... was factually parallel to the unfair labor practices issued alleged" when "[t]he arbitrator was presented generally with the facts relevant to resolving the unfair labor practice." *Id.* at 10; *see Olin Corp.*, 268 NLRB 573, 576 (1984) (deferring Board review where "[t]hese factual questions [considered by the arbitrator] are coextensive with those that would be considered by the Board in a decision on the statutory question").

Local 731's two cited cases simply do not support their claimed rule. In *City of Reno*, the Board determined that the contract arbitration could not resolve the bad faith claim because the CBA there specified "Disputes arising under this Article [regarding unfair labor practices] shall not be grievable ... but shall be submitted to the Nevada Local Government Employee–Management Relations Board of resolution." 118 Nev. at 895, 59 P.3d at 1216. Local 731 does not allege that the CBA governing the parties here has such a provision, and it does not. Therefore, the unique situation addressed in *City of Reno* has no bearing on whether the Board may defer to the Group Health Arbitrator's decision here. *CCEA* similarly does not hold that parties must "expressly submit" bad faith claims to the arbitrator in order for the Board to defer. *CCEA* simply determined that, pursuant to the five-factor inquiry, in that case the arbitrator focused solely on the "content of the [CBA]" rather than "the course of action leading up to" the alleged bad faith act, and the facts presented to that arbitrator were therefore not "factually parallel." *CCEA*, Item #764B at 2. While Local 731 contends that the Arbitrator here only "resolved a narrow contract grievance," Opp'n at 6, it mischaracterizes the multi-day hearing leading to a 36-page Opinion. The Arbitrator here had to resolve whether the City changed the benefits provided to employees in the transition of its health plan's Third Party Administrator (TPA). Op. at 3. This was not completed by analyzing a sentence in the CBA in a vacuum like in *CCEA*, it was produced after analyzing the entire process the City took for years before in bringing plan changes and notice of the TPA change to the GHCC and the City's conduct throughout the year after it switched TPAs, which necessarily involved evaluation of the historical and immediate factual circumstances

underpinning the bad faith allegations—specifically, the co-occurring grievance process and the GHCC's medical necessity review vote cited in the complaint. *Id.* at 9–19. The Arbitrator's wide-reaching factual findings and legal analysis correspondingly reviewed and made determinations about the Group Health grievance process sufficient to be "factually parallel" under Factor 4.

2. Under Factor 5, the Arbitrator Explicitly Considered the Same Facts Needed to Evaluate Local 731's Claim Before the Board.

Here, as in *IAFF Local 4068*, under Factor 5 "it is evident that the Arbitrator considered and made numerous and detailed factual findings, and was presented generally with the facts relevant to resolving the unfair labor practice." Item No. 833 at 7. For clarity, Local 731's Opposition's rendition of its claims are provided below, with the corresponding determination from the Arbitrator included for comparison:

> The Complaint alleges that the City:
>
> • sought extensions of the grievance timeline under false pretenses;
>
> > The Arbitrator determined that the City's extensions were sought for one reason—"[t]he parties agreed to extend timelines for the City's response to allow for a thorough review of the concerns raised." Op. at 17.
>
> • used the delay to take advantage of a restructuring in GHCC leadership;
>
> > The Arbitrator determined "[t]here is no indication the Committee operated under sway of the City in general, or with regard to the issues raised by the Union." Op. at 29.
>
> • created a decisional posture more likely to approve the City's unilateral changes; and
>
> > But there were no unilateral changes. "[T]he Union's own industry expert, and GHCC member unions OE3 and SPPA, established no benefits were improperly changed by unilateral action of the City." Op. at 35.
>
> • denied the grievance immediately after securing a favorable GHCC vote.[1]

[1] The City continues to be puzzled as to Local 731's approach to the GHCC vote, which was regarding a discrete issue of whether to ratify the City's direction to its TPA to check for medical necessity (which was always required for medical coverage) after 25 visits. Op. 30–33, 35 ("medical necessity was a pre-existing feature of the plan"). The Complaint frames this vote as "approving of the changes" or the "unilateral changes" to the health plan, Compl. ¶¶ 25, 35, but it was limited to the one issue of when to check for medical necessity. The Arbitrator determined scheduling a check for medical necessity was "not a benefit, and did not change the benefits provided by the plan, [and] it was not necessary to obtain GHCC approval or Council ratification for its implementation." Op. at 32.

> The GHCC vote ratifying medical necessity review of therapies after 25 visits occurred on September 19, 2024. Op. at 18. Local 731's grievance was denied three weeks later—not "immediately," Opp'n at 5, after the City sent Local 731 its third letter explaining its final analysis of Local 731's grievance claims on October 3 and provided the Union another week to raise any additional concerns. Op. at 19. None were raised and the grievance was denied on October 10. *Id.*

Opp'n at 5. Local 731 elsewhere contends "[t]he City delayed GHCC grievance under false pretenses without an earnest desire to resolve the dispute but, rather, to manipulate the GHCC composition and secure a retroactive vote which is classic surface bargaining." Opp'n at 2. The Arbitrator's Opinion demonstrates this is categorically false. The Opinion detailed the City's "earnest desire to resolve" the dispute through conduct that could not be described as "surface bargaining," *id.*, detailing the City's "review[ing], analyz[ing], consult[ing] on, and discuss[ing] with the Union, each of the more than 100 purported changes it identified." Op. at 28, *see also id.* at 17–19 (factual findings detailing the City's multiple letters to Local 731 analyzing its concerns). The "GHCC composition," Opp'n at 2, of SPPA, IAFF, and OE3, did not change during the grievance process. Op. at 9, 18. The "retroactive vote" outcome, Opp'n at 2, occurred without any coercion by the City. *Id.* at 29. Thus, the Arbitrator explicitly considered the same facts needed to evaluate this unfounded claim and specifically rejected them.

Despite the City listing these specific facts and determinations that directly contradicted Local 731's Group Health claim, Mot. at 7–8, Local 731 contends these issues were only addressed "in passing," Opp'n at 5–6, which euphemistically admits that the Arbitrator reviewed and made determinations on every issue raised in the Group Health claim before the Board, just perhaps not to Local 731's satisfaction. The standard is not whether the complainant likes the Arbitrator's findings, but whether the Arbitrator "was presented generally with the facts relevant to resolving the unfair labor practice," and that occurred here. *IAFF Local 4068*, Item No. 833 at 4 (citation omitted). The Arbitrator here was presented with substantial testimony and dozens of written exhibits on this exact topic over a multiple-day hearing. To say these factual issues were only addressed "in passing" is a gross mischaracterization of the very detailed arbitration hearing and resulting Opinion.

Local 731 further claims the Arbitrator heard only "limited testimony regarding the City's

stated explanation for requesting extensions" from Mr. Stewart, but did not evaluate "whether that explanation was accurate, complete, or pretextual" or "assess credibility on this point." Opp'n at 6. This cannot be overstated: Local 731 is trying to argue that its own witness at the Arbitration hearing is not credible and his sworn testimony should be ignored by the Board. Mr. Stewart was *Local 731's witness and former Grievance Steward during the Group Health grievance*, and he is also designated by Local 731 in *this* matter as a witness to testify regarding Local 731's allegations regarding the grievance process. Local 731 Pre-Hearing Statement at 10. The overlap of the factual basis of these two matters is obvious and cannot be overstated—they are inextricably intertwined. Further, why would Local 731 question the accuracy, completeness, credibility, or pre-textual nature of its *own witness's testimony*? Is it not rather a benefit to Local 731 that the Arbitrator accepted everything Mr. Stewart said regarding the grievance process extensions as true in her Opinion?[2] Mr. Stewart's "understanding of what the City conveyed," Opp'n at 6, was presented under oath on behalf of Local 731 and at Local 731's election. Mr. Stewart, and therefore Local 731, agreed it was his "understanding that those extensions were sought for more time to look at the [substantial allegations made by Local 731 in the grievance]." Mot. at 8 (quoting Mot., Ex. B at 44). It is odd that Local 731 is impliedly diminishing the credibility of its own witness that it is apparently eager to present before the Board at a potential hearing if the City's Motion is denied.[3]

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[2] The Arbitrator did not accept all of Mr. Stewart's testimony as true in her Opinion and therefore impliedly made a credibility determination on this point. At arbitration, Mr. Stewart also alleged that SPPA accepted a bribe (specifically a "quid pro quo," Tr. Day 3, p.41) from the City in order for SPPA to vote to ratify the medical necessity review at 25 visits. Without detailing his allegation, the Arbitrator determined that neither union member of the GHCC "operated under the sway of the City in general, or with regard to the issues raised by [Local 731]," demonstrably rejecting the allegation of bribery and the veracity of Mr. Stewart's testimony on that topic. Op. at 29. There was no reason why Mr. Stewart could not have explained Local 731's equally baseless theory that the GHCC vote was delayed so that the City could use the Police Chief as a non-voting Vice Chair to sway the GHCC when he was asked why the City requested an extension. *See* Compl. ¶ 35. But Mr. Stewart did not, and the Arbitrator—in that instance—believed the testimony he chose to give.

[3] Local 731 further claimed the Arbitrator's reference to Mr. Stewart's testimony is a "brief procedural notation," not a factual finding, but it is provided under the section "Background and *Factual Findings* on the Merits." Op. at 9, 17 (emphasis added). Further, this attempt at distinguishment is irrelevant, given that all is require for deferment is that the Arbitrator was (Footnote continued)

And while Local 731 decries the Arbitrator's factual finding regarding why the City's extensions were requested as made "in passing" and resulting from "limited testimony," Opp'n at 5–6, Local 731 does not address the Arbitrator's ultimate determination in the Opinion (not factual findings section), clearly based on multiple witnesses from the City and Local 731, that there is "no indication," or no evidence, that the City coerced the GHCC in any way:

> Along the way, each area of concern raised by the Union was discussed at various Committee meetings beginning in or about December 2023, as well as during the workshop. These discussions occurred in the presence, and with the participation, of the full Committee. As reflected in the record, along with Local 731, the other two member unions were consistent, active and competent participants on the Committee. The unions' representatives provided input, raised challenges, brought questions and concerns to the fore, and were deliberative when taking action on issues under consideration. **There is no indication the Committee operated under sway of the City in general, or with regard to the issues raised by the Union**. Yet, even in this context, no other Committee member determined benefits had been changed in violation of the Collective Bargaining Agreement. This is particularly salient in light of the fact that OE3 and SPPA had made efforts to determine whether any of their members had experienced any adverse impacts following the implementation of the Plan Document, and reported no concerns.

Op. at 29 (emphasis added). This finding of the Arbitrator is detailed and relevant. Local 731 does not challenge this portion of the Arbitrator's decision as being inapplicable or unsubstantiated, and it directly contradicts Local 731's core allegation from the Group Health claim: that the City attempted to "sway SPPA's vote" or "pressure the SPPA member of the GHCC" at any time. Compl. ¶¶ 35, 45. Therefore, the factual record presented to the Arbitrator clearly was presented "generally with the facts relevant to resolving the [alleged] unfair labor practice," *IAFF Local 4068*, Item #833 at 7, and Local 731 "has not shown that the arbitrator was lacking any evidence relevant to the determination of the nature of the obligations imposed by the … [CBA] and" the bad faith claim. *Olin Corp.*, 268 NLRB at 576. "Thus the evidence before the arbitrator was essentially the same evidence necessary for determination of the merits of the unfair labor practice charge." *Id.* The overlapping of the evidence for these matters is irrefutable, and the Group Health

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presented generally with the relevant facts. The stylistic decisions on how an Arbitrator drafts their Opinion has no bearing on the deferment analysis.

claim must be deferred.

B. The Force Hire Claim is Legally Insufficient and Should Be Dismissed.

The Board may dismiss a matter if no probable cause exists for the complaint. NAC 288.375(1). To rebut the City's legal argument that the Force Hire claim is legally insufficient to establish probable cause, Local 731's Opposition re-states its Complaint's allegations and urges again that those alleged facts sufficiently support their argument that a legally-binding agreement verbally occurred. But Local 731 does not engage with the City's citations to established Nevada Law, which require facts to be alleged that there was "outward manifestation" to demonstrate mutual assent. This failure to oppose, or even address, this dispositive Nevada law is a separate ground on which the Board should grant this Motion to Dismiss.

Furthermore, Local 731 does not dispute that its counsel argued in the February 2025 arbitration that the Force Hire negotiation was a contract negotiation under NRS 288, but instead here urges the Board to overlook that "brief exchange" and contends that his legal argument to the Arbitrator at arbitration "was not sworn testimony." Opp'n at 10. While it is true that Local 731's counsel was not testifying under oath, he undisputedly has been directly involved in the Force Hire negotiation process, thus having both factual and legal knowledge of the process, and made this direct representation to an Arbitrator. Nevada lawyers are required to provide accurate and true statements to tribunals, and any knowing failure to do so could result in discipline. Nev. R. of Prof'l Resp. 3.3 ("Candor Toward the Tribunal."). Thus, the Arbitrator was entitled to accept the legal counsel's arguments at the arbitration as true, even if he was not under oath at the time. Further, Local 731 also misrepresents its witness' testimony that corroborated counsel's statement. and that *is* sworn arbitration testimony demonstrating the Board should look to the applicable Ground Rules to separately determine a written agreement was required to allege an agreement occurred.

Ultimately, "[t]he determination of whether there has been … sincerity [in negotiations] is made by 'drawing inferences from conduct of the parties as a whole.'" *City of Reno v. International Association of Firefighters, Local 731*, Case No. A1-045472, Item No. 253A at 8–9 (Feb. 8, 1991) (citation omitted). Local 731 does not dispute in Opposition that it made no other bad faith claims

regarding the City's conduct throughout the remainder of the Force Hire negotiations, which culminated in both parties ratifying an agreement in October 2025. Local 731 does not identify any case law justifying its position that, after a long and successful negotiation resulting in a signed agreement, one disagreement over one term during the process could constitute bad faith. And it does not—it constitutes negotiation. The City therefore urges the Board to dismiss this claim on any of these three independent bases.

1. Given Basic Nevada Contract Principles, Local 731 Cannot Prove the Parties Agreed on an Amendment to the CBA.

Local 731 cannot produce sufficient facts to demonstrate there was a meeting of the minds between it and Chief White such that the parties agreed to incorporate "a specific number of refusals of Force Hires per sixth month period" into the CBA, Compl. ¶ 14, simply by stating a verbal agreement occurred during negotiations on September 4, 2024. This is a legal issue appropriate for a motion to dismiss, not a question of fact for the Board to address at the hearing. *Oberstein v. Live Nation Ent., Inc.*, 60 F.4th 505, 517 (9th Cir. 2023) ("Although mutual assent is generally a question of fact, whether a certain set of facts is sufficient to establish a contract is a question of law.").[4] Per uncontested Nevada case law, "preliminary negotiations do not constitute a binding contract unless the parties have agreed to *all* material terms." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) (emphasis added). And in Nevada, an agreement requires mutual consent, which "is determined under an objective standard applied to the outward manifestations or expressions of the parties." *Alter v. Resort Props. of Am.*, 130 Nev. 1148, *2 (2014) (unpublished) (citation omitted); *Terry v. Lamont's Wild W. Buffalo, LLC*, 544 P.3d 237,

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[4] Local 731's two case cites are not to the contrary. *Las Vegas v. Las Vegas Peace Officers Ass'n*, Case No. 2019-016, Item No. 851 at 1 (Sept. 27, 2019) details a complaint that alleges a tentative agreement (a written, signed agreement) was withdrawn and the City disputed whether it was withdrawn. This case did not involve the Board questioning whether the Complaint successfully alleged an agreement occurred. *Operating Eng'rs Local 3 v. Incline Vill. Gen. Improvement Dist.*, Case No. 2020-012, Item No. 864 at 2 (June 2, 2020) merely stands for the proposition that factual disputes go to hearing, not that the Board's analysis there demonstrates there is a factual dispute here. This is not a factual dispute here—based upon the Complaint's allegations, this is a question of law presented to the Court, subject to review on a Motion to Dismiss.

*2 (Nev. 2024) (unpublished) (citing Restatement (Second) of Contracts § 19 (Am. L. Inst. 1981)). To sufficiently allege mutual assent, Local 731 must allege an "outward manifestation" demonstrating as such.

But the Force Hire claim does not do so. The only "outward manifestation" of mutual asset alleged was reference to a draft MOU that, by the very allegations in this Complaint, did *not* show agreement on including the frequency of Force Hires in the CBA, while still agreeing to amend other parts of the CBA. Compl. ¶ 18. Under Nevada Law, Local 731 therefore failed to allege sufficient facts to show an "outward manifestation" of mutual assent on the specific incorporation of Force Hire limits into the CBA between September 4 to September 6 that could be repudiated in the draft MOU. "The parties' outward manifestations must show that the parties all agreed upon the same thing in the same sense, and [i]f there is no evidence establishing a manifestation of assent to the same thing by both parties, then there is no mutual consent to contract and no contract formation." *Godun v. JustAnswer LLC*, 135 F.4th 699, 712 (9th Cir. 2025) (cleaned up). The claim instead details a discussion intended to produce an agreement in writing, resulting in a draft MOU that proposed to incorporate multiple terms into the CBA but did not incorporate the Force Hire limit into the CBA. Compl. ¶¶14–18. Local 731 contends it did not initially agree with that MOU term on September 6, but *admits* that it ultimately did accept that specific term on November 4, 2024. *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 ...."). By all "outward manifestations" alleged in the Complaint, Local 731 does not demonstrate there was mutual assent on incorporating Force Hire limits into the CBA on September 4, which is insufficient to state a claim under Nevada law and this claim must be dismissed.

Local 731 in its Opposition simply restates "the parties reached an agreement," Opp'n at 11, the City provided a writing that did not include a portion of the agreement, Compl. ¶ 18, and contends that statement "is more than sufficient" at the pleading stage, citing no case law. Opp'n at 8. By law, it is not. Two parties providing conflicting testimony disagreeing about whether an oral agreement was reached demonstrates there was no mutual assent. *Cf. JB Carter Enters., LLC*

v. Elavon, Inc., No. 23-16142, 2025 WL 17112, at *2 (9th Cir. Jan. 2, 2025) ("The parties presented conflicting testimony about whether there was a firm understanding that [defendant] would provide [services] by a particular date. The district court did not clearly err in finding that [plaintiff] failed to prove a meeting of the minds by a preponderance of the evidence."). Furthermore, when there is a later MOU draft, still maintaining the Force Hire limits in policy not the CBA, that Local 731 *admits it accepted*, Ans. to Am. Cross-Compl. ¶ 52, the Supreme Court states "neither party can abandon that instrument … and resort to the verbal negotiations which were preliminary to its execution.... [A]ll previous verbal statements are merged and excluded when the parties assent to a written instrument as expressing the agreement." *Merchants' Mut. Ins. Co. v. Lyman*, 82 U.S. 664, 670–71 (1872). The remainder of Local 731's argumentation regarding alleged repudiation and such repudiation constituting bad faith flows from whether Local 731 successfully alleged an agreement occurred. Under Nevada law, it did not and the claim should be dismissed.[5]

2. Local 731's Counsel and Witness Argued the MOU Discussion was a Contract Negotiation—Meaning a Written Agreement Was Required.

The City presented transcribed Arbitration testimony from Local 731's witness (also proffered in this matter) and its counsel (also in this matter) arguing before the Force Hire Arbitrator that the September 4 discussion was a contract negotiation under NRS 288. In Opposition, Local 731's counsel now states instead that the September 4 discussion "was convened

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[5] Local 731 also contends that the City's explanation of the Group Health Arbitrator's credibility determination of potential witness Mr. Jackson requires the Complaint be given a hearing for the Board to make a credibility determination. First, Local 731 admits that the Arbitrator found Mr. Jackson not credible through nonresponse to this argument. *Polk*, 126 Nev. at 185, 233 P.3d at 360 (collecting cases). Second, the City is not asking for the Board to make a credibility determination—it is asking the Board to accept the Arbitrator's determination. Neither case cited by Local 731 indicate that the Board is rejecting the *arbitrator's* determination on credibility, and both indicate the parties were asking the Board to make a determination in the first instance. *Las Vegas Peace Officers Ass'n*, Item No. 851 at 1–2; *Incline Vill. Gen. Improvement Dist.*, Item No. 864 at 2. Further, a credibility determination as to Mr. Jackson is unnecessary to reach a dismissal here, given two parties providing conflicting testimony disagreeing about whether an oral agreement was reached demonstrates there was no mutual assent. *See JB Carter Enters., LLC*, 2025 WL 17112, at *2. Even if Mr. Jackson could theoretically be deemed credible by the Board at a later hearing, Local 731 cannot establish an oral agreement through his testimony.

to resolve the Force Hire grievance," and that his prior legal argument before the arbitrator that "this was a negotiation" under NRS 288, *not* a grievance negotiation, should be disregarded as "not sworn testimony." Opp'n at 10. As noted above, Local 731's counsel undisputedly has been directly involved in the Force Hire negotiation process, thus having both factual and legal knowledge of the process, and made this representation to an Arbitrator based on his direct knowledge of the proceedings. And were this case to proceed to a hearing before the Board, the Board could rely on oral argument from counsel to make its determination. Why should it not rely on this same counsel's oral argument before the Arbitrator? *See In the Matter of Clark Cnty. Teachers Ass'n v. Bd. of Trs. of the Clark Cnty. Sch. Dist.*, Case No. A1-045354, Item No. 131 at 2 (July 12, 1982) (in reviewing a motion for summary judgment, the Board acknowledged "[a]lthough the Board in cases alleging unfair labor practices prefers to hear testimony … in this matter the facts necessary for this decision *were agreed to by counsel* and are as admitted in the pleadings." (emphasis added)).

Despite urging the Board to disregard his prior statements,[6] Local 731's counsel then argued there is no evidence in the testimony that either he or Local 731's witness Mr. Szopa presented that the Force Hire discussion was a contract negotiation, characterizing it as "the City's attempt to retroactively categorize the meeting as ground-rules bargaining." Opp'n at 10. But in the lengthy—not "brief," *id.*—discussion on the matter, the parties stated the following:

> Q [Local 731 Counsel Velto]. Has the City ever indicated to you that it wanted to negotiate force hires?

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[6] Although Local 731's counsel here contends the Board should disregard his "remark … [that] was not sworn testimony"—but nonetheless a legal argument proffered during a transcribed arbitration wherein he was bound by the Nevada Rules of Professional Conduct to only make true statements—he conversely urged the State Bar to enforce its Creed of Civility "with the force of law" regarding any *out of court* statements by other counsel that he would deem uncivil. Carr, R. & Velto, A., *Give Civility the Force of Law*, 33 NEV. LAWYER 16–17 (Nov. 2025). Given that "[w]e owe it to our communities, our colleagues, our families, and our state to have a legal system that is an instrument of the truth," *id.* at 16, the City urges the Board to give Mr. Velto's February 2025 legal argument during the Arbitration the appropriate weight it deserves. As he stated, the September 2024 conversation was a contract negotiation, and correspondingly a lack of written agreement pursuant to the applicable Ground Rules requires dismissal of Local 731's first claim.

A [Local 731 Witness Vice President Szopa]. There is – it's – the beginning of September 2023, we – myself and then-president – Vice President Jackson met with –

Q. Was it 2023 or 2024?

A. 2024. I apologize. Met with Fire Chief Walt White and Division Chief Derek Keller specifically regarding ambulance staffing and force hire language for our contract [….] We discussed it back and forth --

MR. CROSBY [City Outside Counsel]: **This is an attempt to resolve a grievance, not a negotiation, as recognized under Nevada Revised Statute 288.**

MR. VELTO: **I -- I disagree. This was a negotiation.**

THE ARBITRATOR: **This was not negotiations for a contract provision?**

THE WITNESS: **It was for an MOU, which, to my understanding, is an amendment to the ---.**

THE ARBITRATOR: Well, put it in, and it'll be argued in the briefs. Go ahead.

THE WITNESS: Okay. So having not had a lot of time in union, I would -- to me, it seems like that was a **-- it was a discussion back and forth on provisions in that MOU**, which to me, at a very basic level, **seems like a negotiation to me**. That agreement was reached between the two parties, myself and Vice President Jackson and Chief White, and we had handshake agreements that that was the MOU that was going to be submitted moving forward at that moment.

Mot., Ex. C at 47–49. Local 731's counsel now argues in this Opposition that he did not "assert that the meeting was a successor CBA negotiation," but at arbitration he clearly did wherein he stated he "disagree[d]" when Mr. Crosby stated the September 4 discussion was not a negotiation "recognized under NRS 288,"—meaning Mr. Velto was explicitly asserting that the discussion *was* a CBA negotiation governed by NRS 288. Therefore, NRS 288.150(1) would apply: "every local government employer shall negotiate in good faith …. If either party so requests, agreements reached must be reduced to writing," hence the FY25 Ground Rules requiring agreements in writing. Local 731 counsel also contends in Opposition that witness Mr. Szopa was clarifying that it was "a grievance negotiation, not a successor CBA bargaining session." Opp'n at 10. But Mr.

Szopa is clearly supporting his counsel's legal argument in his bolded statements above—the only logical completion of his sentence is that "It was for an MOU, which, to my understanding, is an amendment to the [CBA]," Mot., Ex. C at 49, as an attempt to respond to the arbitrator's question and support his counsel's clear prior statement that this was "a negotiation for a contract provision," not simply a grievance resolution. *Id.*

The FY25 successor CBA negotiation was ongoing during the Force Hire discussion. Opp'n at 10. The mutually adopted FY25 Ground Rules requiring "tentative agreements … in writing" applied to CBA negotiations. Mot., Ex. D at 2. Local 731's counsel and main witness for this particular meeting on behalf of Local 731 both argued in transcribed and sworn arbitration testimony that the Force Hire negotiation discussion was an NRS 288-covered CBA negotiation. This establishes that the Ground Rules applied and the parties—consequently, pursuant to the Ground Rules—produced an MOU in writing to reduce the agreed points to a writing, which did not include the Force Hire limits that Local 731 claims were orally agreed to. Compl. ¶ 18. Local 731 ultimately accepted incorporating those limits into policy only in a later draft MOU. Ans. to Am. Cross-Compl. ¶ 52. Local 731's assertion in its Complaint that the parties reached an "agreement" that the City later repudiated is legally incorrect, as no written agreement occurred that the City could have theoretically repudiated. Thus, the claim should be dismissed. *See Widett v. Bond Est., Inc.*, 79 Nev. 284, 286, 382 P.2d 212, 213 (1963) ("As the evidence may reasonably be viewed to disclose the parties' intention that there would be no enforceable contract until a written agreement was finally signed, their rights and duties are fixed by the final written agreement. Their preceding negotiations, in legal contemplation, became merged therein…."); *Reno Mun. Emps. Ass'n vs. City of Reno*, Case No. A1-045326, Item #93 at 2 (Jan. 11, 1980) ("[t]he Board finds no evidence of a written and initialed agreement concerning the issue of" implementing the Force Hire limits into the CBA—despite written agreement to other proposed changes to CBA, it "therefore concludes that no agreement was reached … on that subject").

3. The Conduct of the Parties Throughout the Force Hire Grievance As a Whole Does Not Demonstrate Bad Faith.

Even if the Board declines to dismiss the Force Hire claim under the two separate bases

discussed above, Local 731's bad faith claim is still based on an alleged "single isolated incident" in the course of years of negotiation, which is legally insufficient as a matter of law to show bad faith. Local 731 first contends that " the City's 'single incident' argument is legally and logically incorrect." Opp'n at 9. But the City's position is not mere argument, it is the assertion of binding analogous Board precedent. In evaluating an allegation of bad faith bargaining due to cancelled negotiation meetings, the Board opined "[a] charge that one party has failed to bargain in good faith does not turn on a single isolated incident; rather the Board looks at the totality of conduct throughout the negotiations to determine 'whether a party's conduct at the bargaining table evidences a real desire to come into agreement.'" *City of Reno v. Reno Police Protective Ass'n*, Case No. A1-046096, Item No. 790 at 5 (No. 27, 2013) (quoting *Int'l Brotherhood of Electrical Workers, Local 1245 v. City of Fallon ("Local 1245")*, Case No. Al-045485, Item No. 269 at 5 (1991) ("it is not any one act, but rather the totality of the City's conduct throughout the negotiations" that the Board reviews for bad faith)). The Board in *Local 1245* explained "[t]he 'totality of conduct' doctrine generally stems from the Decision in *NLRB vs. Virginia Electric & Power Co.*, 314 U.S. 469, 9 LRRM 405 (1941)." Item No. 269 at 5.

Here, Local 731 does not dispute the City's recitation of the events that occurred during the remainder of the Force Hire negotiations and does not dispute that the City and Local 731 have reached an agreement on Force Hires without any additional claims of bad faith from Local 731 during the remainder of the negotiation—rather, its Vice Presidents spoke at City Council about their appreciation for the City during the negotiation. Mot. at 18. It is absurd for Local 731's Vice Presidents to publicly praise the negotiation process upon approval, then turn around and allege bad faith based on allegations surrounding one single term within the negotiation and ultimately agreed-to resolution. The "totality of the circumstances" could not possibly yield a finding of bad faith against the City, even if Local 731 misinterpreted a single discussion during those negotiations. Local 731's contention that the Board does recognizes the "withdrawal of accepted offers" as an "indicator of bad faith," Opp'n at 8 (emphasis added), cites a case where the Board identifies a long list of items to explain "signs of bad faith bargaining may include" the withdrawal of accepted offers, plural. *Washoe Cnty. Sch. Dist. v. Washoe Sch. Principals' Ass'n*, Case No.

2023-024 and 2023-031, Item 895 at 4 (Mar. 29, 2024). This caselaw still conforms with the Board's approach of needing the "totality of the circumstances," or more than a "single isolated incident" of a single withdrawn offer to demonstrate bad faith. *Id.* Local 731 fails to provide any law to refute that legal principle. All the other cases that Local 731 cites as applying the proposition that one withdrawn offer constitutes bad faith involve a party refusing to honor an *entire negotiated agreement*, not a single term a party refused to tentatively agree to (out of many agreed-to terms) during a negotiation process. *See H.J. Heinz Co. v. N.L.R.B.*, 311 U.S. 514, 526 (1941) (addressing a "refusal to honor, with his signature, the [entire] agreement [the employer] ha[d] made with a labor organization"); *Perrigo New York, Inc. & Loc. 210, Int'l Bhd. of Teamsters*, No. 02-CB-298980, 2023 WL 3245159 (May 3, 2023) ("The counsel for the General Counsel alleges that the Respondent violated section 8(b)(3) of the Act by refusing the charging party employer's request to sign the 2018-2022 conformed CBA.").[7] Repudiation of an entire agreement consequently repudiates all the prior tentative agreements incorporated therein (ergo, agreements plural).

There unsurprisingly are no cases affirming Local 731's absurd position that disagreement over a single term in the course of a negotiation, culminating in a signed agreement, could possibly constitute bad faith. With the Group Health claim deferred, the fact that Local 731's remaining claim only makes one allegation of bad faith behavior in the course of years of Force Hire negotiations demonstrates it is legally insufficient to demonstrate that the "totality of the City's conduct throughout the negotiations" demonstrated bad faith, therefore lacks probable cause to state a claim and should be dismissed. *Local 1245*, Item No. 269 at 5. That silence demonstrates "there is a lack of sufficient facts to give rise to a justiciable controversy, [meaning] there is also a lack of probable cause" for the instant complaint. *Nev. Sers. Emp. Union v. Clark Cnty. Water*

[7] Interestingly, Local 731 implores the Board to look at cases *negotiating the CBA* as reasons to decide this particular negotiation should constitute bad faith. But it is the written requirements for the applicable CBA process in the Ground Rules that Local 731 does not want to apply here. Local 731 cannot demand the benefits of the CBA process (to claim that because repudiating an entire negotiated CBA is bad faith, then disagreeing on one contract term in an MOU is too) but then say that the CBA negotiation Ground Rules do not apply to this process (despite the parties proceeding according to those ground rules by producing a writing).

Reclamation Dist., Case No. 2024-030, Item #905 at 1 (Dec. 17, 2024). Thus, the unsubstantiated single incident of purported bad faith is insufficient to support this claim, and it must be dismissed.

IV. CONCLUSION

The Board has all the information it needs to dismiss this case and make room in its calendar for cases of statewide significance. The Group Health Arbitrator made clear factual findings and conclusions of law finding that the City did not take action to sway the GHCC and that the GHCC conducted its own analysis to come to the conclusion ratifying the medical necessity review at 25 visits, nullifying Local 731's Group Health claim in this matter, and that second claim should therefore be deferred. Nevada law requiring an "outward manifestation" to show mutual assent sufficient to allege an agreement establishes that Local 731 cannot rely on an alleged verbal agreement contradicted by a writing to legally allege an agreement under its Force Hire claim. The Force Hire arbitration testimony further demonstrated that Local 731's counsel and witness both argued that the Force Hire negotiation was a CBA negotiation under NRS 288, meaning that the in-force FY25 Ground Rules at the time applied and an agreement was not "reached" until the parties agreed to a writing. Local 731's first claim is therefore legally insufficient to claim an agreement occurred. The first claim should be dismissed.

Respectfully submitted this 5th day of January, 2026.

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 DEFER AND RENEWED 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 5th day of January, 2026.

/s/ Nancy Ortiz
Nancy Ortiz