

**IN THE MATTER OF ARBITRATION**

**OPINION & AWARD**

**-between-**

**THE LAS VEGAS POLICE PROTECTIVE  
ASSOCIATION, CIVILIAN EMPLOYEES**

**Interest Arbitration**

**-and-**

**THE LAS VEGAS METROPOLITAN  
POLICE DEPARTMENT  
LAS VEGAS, NEVADA**

**Before: Jay C. Fogelberg  
Neutral Arbitrator**

**Representation-**

For the Association: Christopher Platten, Attorney  
John Harper, Office of the Gen. Counsel  
Kathryn Werner Collins, Office of the Gen. Counsel

For the Employer: Robert J. Smith, Attorney

**Statement of Jurisdiction-**

In accordance with the Nevada Revised Statutes Chapter 288 ("Act"), which governs the method under which the parties elected to advance to binding arbitration after reaching impasse under their collective bargaining process, the undersigned was notified of his selection by the parties as the Impartial Arbitrator to hear evidence and arguments concerning the outstanding issues, and to thereafter render an award.

A hearing was convened on January 8, 2013, in Las Vegas. Following receipt of position statements, testimony (including the cross-examination of witnesses) and supportive documentation, the hearing was completed on the following day.<sup>1</sup> At the conclusion of the proceedings, the parties indicated a preference for submitting post-hearing brief which were filed simultaneously and received on or before March 13, 2013, at which time the hearing was deemed officially closed. No amended final offers were submitted, as was their option under the statute, and both sides elected to stand by their positions articulated at the hearing. The parties also waived the ten day time limitation for rendering the award as set forth in NRS 288.14 (10).

**Relevant Statutory Provisions-**

From NAS 288.215

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7. A determination of the financial ability of a local government employer must be based on:

(a) All existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision.

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<sup>1</sup> A certified court reporter recorded the proceedings and made a record of the hearing.

(b) Consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multi-year contract the arbitrator must consider the ability to pay over the life of the contract being negotiated or arbitrated.

Once the arbitrator has determined in accordance with this subsection that there is a current financial ability to grant monetary benefits, the arbitrator shall consider to the extent appropriate, compensation of other governmental employees, both in and out of this State.

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9. If the parties do not enter into negotiations or do not agree within 30 days, each of the parties shall submit a single written statement containing its final offer for each of the unresolved issues.

10. The arbitrator shall, within 10 days after the final offers are submitted, accept one of the written statements, on the basis of the criteria provided in NRS 288.200, and shall report the decision to the parties. The decision of the arbitrator is final and binding on the parties. Any award of the arbitrator is retroactive to the expiration date of the last contract.

From: NRS 288.200

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(b) Once the fact finder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, and subject to the provisions of paragraph (c), the fact finder shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and

provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute and the fact finder shall consider whether the Board found that either party had bargained in bad faith.

(c) A consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multiyear contract, the fact finder must consider the ability to pay over the life of the contract being negotiated or arbitrated.

**Preliminary Statement of the Case-**

This matter arises from an impasse between the Las Vegas Police Protection Association, Civilian Employees (hereafter "Association," "Union," or "PPACE") and the Las Vegas Metropolitan Police Department ("Employer," "Department" or "Metro"). Pursuant to Chapter 288 of the Nevada Revised Statutes, the Association and the Employer are required to resolve collective bargaining disputes through the interest arbitration process once negotiations have reached an impasse. The same law requires the neutral chosen to preside over the dispute to award one party's final total package offer for the current fiscal year 2013.

Metro was created pursuant to legislative authorization to provide police protection services to the City of Las Vegas, several unincorporated towns located in Clark County, as well as other smaller incorporated

municipalities in geographic proximity to Las Vegas (NRS Ch. 280). In all, the Department serves nearly 1.5 million residents in the County out of a total population of nearly two million people. Based upon a statutory formula, approximately 70% of the Employer's annual funding is provided by the County and the City of Las Vegas who together are budgeted to contribute some \$305,700,000 toward Metro's budget in FY '13.

The Police Protective Association Employees bargaining unit is made up of approximately 1,300 civilian employees. It includes a diverse range of positions including Supply Clerks, Custodians, Dispatchers, and Criminologists. It is the largest bargaining unit within Metro. While it contains more than eighty different job classifications, over half of the entire bargaining unit work in just three: Dispatch Specialist II (130 employees), Support Technicians (434 employees), and Senior Support Techs (121 employees) (Tr. p. 145-46).<sup>2</sup>

In addition to the PPACE bargaining unit there are two other labor organizations representing employees within the Police Department. The Police Protective Association ("PPA") which represents licensed peace officers working in the Department, and the Police Managers' and Supervisors' Association ("PMSA"). Both the PPA and the PMSA are

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<sup>2</sup> The hearing was transcribed and a record made by a court reporter. All references to the transcript of the hearing are noted as "Tr." followed by the page number.

currently working under two-year labor agreements that were arrived at voluntarily through the bargaining process, and both expire on June 30<sup>th</sup> of this year, the same expiration date of the PPACE contract.

Through ten plus bargaining sessions addressing the new contract between these parties, the Association and Metro have reached tentative agreements – largely noneconomic in nature – which have been ratified by the Union and approved by the Employer (Joint Ex. 4). There remains then, four outstanding issues for consideration.

**The Issues-**

1. Sick Leave; Article 12.11 (Bonus Time)
2. Step Advancement Eligibility, Article 15.2
3. Health Insurance Contributions; Article 21.1
4. Longevity; Article 22.8<sup>3</sup>

**Issue No. 1  
Sick Leave (Bonus Time)**

Association's Position: For the term of the new Agreement, PPACE proposes the following new language be appended to Article 12.11:

"If a permanent employee uses three (3) or fewer days

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<sup>3</sup> Previously identified issues addressing cost of living increases, and duration have been resolved by the parties.

of sick leave (including FMLA) within a year the employee will receive three (3) shifts of bonus time hours based on the employee's regular work schedule eight (8), nine (9) ten (10), or twelve (12) hours at the time of accrual (employee's hire date) which shall be credited to the employee's bonus leave account the following pay period. An employee hired prior to July 1, 1982, has no limit to their accrual of bonus hours. Employees hired from July 1, 1982 through June 30, 1997, may accumulate up to 240 hours of bonus time. Employees hired on or after July 1, 1997, may only accumulate 240 hours of bonus time. If an employee terminates, the employee shall receive 100% of any bonus leave accumulated at the time of leaving."

Department's Position: The Employer seeks to maintain the existing "Bonus Time" language for the term of the new contract.

#### **Issue No. 2 Step Advancement Eligibility**

Association's Position: The PPACE proposes to retain the 4% step advancements for all eligible employees for the current contract term under the existing salary schedule provided the Employer cannot show any legitimate reason for their denial per the provisions set forth in Article 15, Section 2.

Department's Position: Metro opposes the step advancements for the term of the agreement, seeking to suspend all merit increases for FY 2013, but noting that their position does not prevent their restoration in future contracts should that be accomplished through the bargaining

process.

**Issue No. 3**  
**Health Insurance Contributions**

Association's Position: The LVPACE bargaining unit seeks to amend the existing contribution formula for the Employer as follows:

"21.1 Contributions. The Department and the Association agree that the Department will pay part of the employees' and dependents' hospitalization and health insurance plan.

Effective July 1, 2012 the Department will contribute the following amounts towards the health insurance plan - \$8,572.73

Department's Position: The Employer seeks no change to the existing language contained in Article 21, for the term of the new contract.

**Issue No. 4**  
**Longevity Pay**

Association's Position: That longevity pay for employees be paid on the following basis

- Upon completion of five (5) consecutive years of employment, covered employees shall be paid the equivalent of an additional two and one-half (2½) percent of their bi-weekly base salary.

- For each continuing year of consecutive service thereafter, each employee shall receive an additional one-half (½) on one (1) percent increase of the base salary until a maximum of 15 percent has been reached; and

- Longevity pay shall become effective on the hiring anniversary date of the employee.



- Employees hired after July 28, 2003, upon completion of ten (10) consecutive years of employment will be compensated five percent (5%) of their bi-weekly base salary on their ten (10) year anniversary and will continue to receive longevity increases as specified in the second paragraph above.

Department's Position: Similar to Issue Number 3, the Employer proposes a freeze on longevity pay whereby employees not receive an increase and the year of service gained in FY 2013 will not be cumulative for future longevity increases. They note again however, this does not prevent the parties from negotiating with regard to restoring these suspended years in future collective bargaining.

**Analysis of the Evidence:**

In arriving at what is believed to be a fair and reasoned decision concerning the issues that have been certified at impasse, I have given careful consideration to the applicable provisions of the Nevada Revised Statutes which requires the reviewing neutral to examine first the financial ability of the Employer. I have also examined and evaluated various critical factors normally employed by the reviewing neutral in disputes such as this, which includes both internal and external comparisons, along with other criteria routinely applied in interest arbitration.

Perhaps the most salient unrefuted fact underlying my consideration of the economic issues that remain at impasse, is the adverse impact the "Great Recession" has had on the City of Las Vegas, Clark County and indeed, the entire state. It is no secret that Nevada which depends so heavily on the gaming industry, has been hit particularly hard by the recession. The County and Las Vegas both have experienced high unemployment (from 4.6% in 2006 to over 14% by 2009), housing foreclosures due to plummeting home values, and a soaring bankruptcy rate since the economic downturn began in 2008. It is estimated that even at a blended rate of 5%, the County, which depends so heavily on property taxes, will need six years to return to their pre-recessionary revenue levels (Tr. p 103).

The adduced evidence demonstrates that approximately 70% of Metro's funding is derived from contributions from Clark County and the City of Las Vegas. In FY13 they are budgeted to contribute a total of \$305.7 million towards the Employer's budget. The amount is based upon a statutory formula with the County's assistance being nearly twice that of the City's (Joint Ex. 10). Both the County and Las Vegas are currently experiencing a structural deficit. For Las Vegas it is projected to be some \$2 million in FY13. The County's situation however dwarfs that of the City's. In FY11 its structural deficit had grown from \$54.6 million the year before to

nearly \$70 million. For fiscal year 2013 it has been able to reduce the deficit to \$34.6 million. However, this reduction has come at the expense of canceled capital projects and depletion of its general fund (Tr. p. 107). Under Metro's funding formula then, it comes as no surprise that it too has experienced a significant drop in revenue since 2009 (\$93 million; Employer's Ex. 18). While it has managed to reduce expenditures during the same period of time by more than \$56 million through downsizing its work force and other cost-cutting measures, it has not been enough to erase the structural deficit which is projected to be \$37 million in FY13 (*id.*).

The Association maintains that notwithstanding the difficult economic decline experienced in the past four or five years, the Employer nevertheless projects a FY13 year-end fund balance of nearly \$21 million, which is considerably more than the \$8.2 million contained in Metro's budget for the same period of time (Tr. p. 225-27; Union's Ex. 6). This difference reflects a deliberate budgeting strategy utilized by the Department. PPACE maintains that since FY09 the Employer has consistently underestimated year end general fund balances by tens of millions of dollars and the current fiscal year under consideration here is no different (Association's Ex. 3; Tr. p. 126). When considered collectively these discrepancies illustrate, in the Union's view, that the Las Vegas Metropolitan Police Department has made it a practice of over-estimating its annual

expenditures while under-estimating its general fund and year end balances in order to give an appearance of operating far more lean and conservative than reality warrants. Further, PPACE makes the observation (largely unrefuted) that the Employer has managed to provide adequate public safety needs and meet most of its financial obligations over the past four or five years. Moreover, it has done so without laying off any Union represented employees (Tr. p. 149-50).

I do not quarrel with the Association's characterization of the Employer's overall budgetary strategy, as the weight of the evidence supports the claim that the Department's approach to its finances has indeed been a conservative one. This is quite understandable however, in light of the extreme recession which has been experienced recently. At the same time however, the concessionary bargaining that has taken place between these parties since FY10 cannot be discounted. The documented evidence demonstrates that the past three contracts have resulted in monetary givebacks from PPACE in excess of \$14 million (Union Exs. 2 & 7; Department Ex. 7; Joint Ex. 5). Finally, the record reveals that Metro has already budgeted for both the merit increases and longevity adjustments for the current contract term. As testified to by the Employer's Chief Financial Officer, Karen Keller, beyond the Union's two wage proposals, their final position on health insurance and sick leave bonus

are the two additional items not in the Employer's budget (Tr. p. 127).

The Association's ability to pay argument however, is necessarily tempered by other evidence in the record supporting the Employer's claim of economic restraint. As demonstrated in the documentation, with a structural deficit in excess of \$37 million, the general fund projection for year end FY13 would still exhaust the fund balance in less than a year (Employer Ex. 18). \$22 million represents only 4.5% of Metro's \$503 million annual expenditures (Department Ex. 21; p. 16). The adduced evidence reveals that over the past two years the general fund balance has diminished by nearly 90% (Department's Exs. 20 & 21). I am further influenced by the testimony of the County's Chief Financial Officer, George Stevens, who demonstrated that the Clark County's financial condition has not improved since 2011, and that for FY13 it has a projected structural deficit of its own estimated to be some \$34.5 million (Employer's Ex. 9; Tr. p. 106-07).

PPACE urges that Mr. Stevens' testimony and accompanying documentary evidence are not relevant to determining the outstanding issues in this matter as only the Department's fiscal condition is relevant. The argument ignores the fact however, that the County is the single

largest source of revenue for Metro (Tr. p. 118).<sup>4</sup>

It has been said that the potential utility of "total package" interest arbitration is that it forces the parties to carefully consider the reasonableness of each of their positions on the outstanding issues prior to submitting their final offers. At the same time however, the procedure runs the risk of asking the arbitrator to adopt one or more proposals in the award that would not otherwise be granted under a final offer issue-by-issue process. Under a mandated total package approach, where it is determined that a position taken by a party on one of the more critical outstanding issues is particularly indefensible, the consequence may well render their entire final offer unacceptable. Such is the case in this instance.

As previously noted, the Union has adequately demonstrated that Metro has funded for merit increases and longevity adjustments for the new one year labor agreement. Under direct examination by the Association, Ms. Keller offered the following:

PPACE: "Now, outside of the merit pay and longevity pay, it's correct, is it not, that the only proposal that the Association has before the arbitrator that would cause additional funds to be expended that have not otherwise been budgeted for this fiscal year would be the insurance increase, is that correct?"

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<sup>4</sup> In addition, the City of Las Vegas' financial condition is not much better, as it too is operating with a structural deficit. Indeed, it recently had its financial outlook downgraded to "negative" by the Fitch Ratings service who has assigned Las Vegas a "Negative Outlook" based upon its structural deficit (Employer's Ex. 15).

Keller: Yes, insurance, and then on bonus if someone accrued time and then cashed out" (Tr. p. 127).

Further, when isolated, issues 2 and 4 tend to favor the Association's position when the economic sacrifices they have made at the bargaining table in recent years are considered and compared to other internal employee organizations (Union's Ex. 2). PPACE's wage proposals however cannot be viewed in a vacuum. Rather, by statutory mandate I am required to consider each side's total package final offer .

The fly in the ointment here is the Union's position on health insurance contributions. While the Employer might be able to withstand an increase in merit pay and longevity for FY13 (primarily because it has been already budgeted) the totality of both parties' respective final offers must be emphasized in light of Metro's substantial multi-million dollar structural deficit, its declining general fund balance, and the current financial outlook.

The Association estimates an award of their final offer for an increase in health care premium contributions by the Employer to be approximately \$1.289 million (Union's Ex. 1), while Metro places it at closer to \$1.456 million (Department Ex. 3). In my judgment, the adoption of either calculation is not practical considering the current state of the Employer's finances.

The Union maintains that while it does not presume to be made whole for the loss of wages and diminished benefits conceded to the Employer in previous bargaining, it nevertheless believes that the ramifications of the prior sacrifices must now be addressed. In support of their position for increased health insurance contributions from the Employer, the Association relies heavily on internal comparisons. More particularly they assert that their request to raise the Department's obligation by nearly \$1000 per employee, per year, would result in parity with both the PPA and the PMSA bargaining units.<sup>5</sup> Currently, the contribution rate by the Department for those in this bargaining unit opting to receive single health coverage is \$6048 annually. For those electing dependent coverage it is approximately \$9479 (PPACE Ex. 1).<sup>6</sup> Adopting their final position would, in the Association's view, equal the exact dollar contribution the Department makes for employees in the other two bargaining units per their respective contracts.

The PPACE notes that there has been a double digit rise in medical premiums in recent years while at the same time the Department has not

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<sup>5</sup> Ms. Keller testified that when expressed in composite rates, the Employer contributes some \$8572 for PPA and PMSA represented personnel, while PPACE employees receive \$7588 by comparison (Tr. p. 173-74; Department Ex. 32).

<sup>6</sup> At the time of the hearing, some 615 bargaining unit members were enrolled in the Union's own health care plan selecting single coverage, with approximately 512 employees electing dependent coverage. Approximately 214 members have opted to participate in the Company's trust for health care coverage (*id.*).



increased its dollar contribution to their plan since FY09. As a consequence, its members are paying more money out of their own pockets for benefits. PPACE claims that it has experienced losses for dependent care coverage under their plan – known as the United Health Care Plan, or “HPN” – largely because the Employer contributions are not keeping pace with rising premium costs. Concomitantly, their insurance reserves are evaporating.

The Union’s final offer seeks to change the existing practice of separate distinct payments by the Employer toward single and dependent coverage to a single composite annual premium of \$8572.73. As such they bear the burden of proof to demonstrate through clear and convincing evidence both the need for the change and the reasonableness of it. The documentation in the record indicates that the separate premium contributions have been in effect for more than ten years (Joint Ex. 9). While it is uncontested that costs have risen over this time, there was no evidence proffered that United Health Care has changed the members’ plan such that it now charges the Association a composite premium. Rather, United continues to distinguish between the premiums it charges for single coverage versus dependent coverage (Union Ex. 1; Tr. p. 231). Moreover, the record shows that by moving to a single composite contribution, the Department would be forced to pay a significantly larger

amount of money than necessary to cover the cost of single coverage. Union President Terri Yada testified that the current cost of single health insurance coverage for her members is \$424.56 per month, while Metro contributes \$504.03 monthly toward s that coverage (Tr. p. 35). At the same time however, the Association asserts that those electing dependent coverage are not receiving a contribution sufficient to cover their premiums (a shortfall of \$179.34 per month). Yet a move to a composite premium would more than offset the difference with an overpayment for single coverage of more than \$210.

There is no dispute but that the Association's health plan has two months left in reserve (Tr. p. 35). Further, the evidence addressing billing suggests that the current payments adequately fund the premiums charged by United Health (Employer's Exs. 32-34; Tr. p. 175). In addition Union's Exhibit 1 demonstrates that under the existing premium contribution formula, its insurance reserves will experience significant growth (at p. 2). Moreover, data provided to the Employer by PPACE and introduced at the hearing as District's Exhibit 32, indicate that in FY12 the Association's insurance reserves increased by a significant amount (estimated to be in excess of \$1 million).

I have also been influenced in my decision by the internal comparability evidence in the record. While the Union has stressed the

former, it is my judgment that the documentation and testimony presented fails to adequately support their final offer. Association President Yada noted that for nearly twenty years the vast majority of the bargaining unit has been covered by a medical plan administered by PPACE as opposed to the trust plan provided to members of the PPA and PMSA units. She further testified that for the "last several years" the two other internal bargaining units have not had a separate employee and dependent coverage contribution specified. Rather the Department and those two unions have negotiated a single composite contribution for medical insurance. Ms. Yada acknowledged that her union's experience relative to this benefit has been in stark contrast to what PPA and PMSA have practiced (Tr. p. 72-72).

There is no question but that premium contributions made to both PPA and PMSA bargaining units have involved a self funded health and welfare trust as opposed to the Association's fully funded plan run through the carrier they have selected (United Health). Notably, there is an absence of an historical internal comparability pattern with respect to the amount of contributions for health coverage made to the Association's members versus the other two bargaining units since 2008, as demonstrated by the data contained in Metro's Exhibit 26. In sum I find that the Union's position regarding this issue is not adequately supported by

the weight of the evidence based on the financial inability of the Employer demonstrating that it cannot now be saddled with the additional costs of PPACE's offer; the bargaining history of the parties, and; both internal and external market comparators.

The Union has acknowledged that external market conditions play a part in an interest dispute such as this, noting that they consider "other jurisdictions in the valley" and how employees involved in public safety are compensated in terms of both wages *and* benefits (Tr. p. 85). They did not however, place any external comparability data into the record. The Department, on the other hand, presented two exhibits (6 and 28) which together indicate that PPACE's members fair well when their total compensation is placed along side similarly classified employees in Clark County, the City of Las Vegas, and the state (*id.*). Indeed, the unrefuted fact that Metro has not experienced any difficulties with both attracting and maintaining employees in recent years, lends further support to their argument.

Finally, the matter of sick leave bonus time has been considered. It is, however, the least significant of the four outstanding issues involved in this dispute in terms of the emphasis (or more accurately lack of emphasis) that has been placed upon it by both sides and the attendant costing. Moreover, there is an absence of any significant evidence in the record

demonstrating an internal pattern among the three unions that would favor its adoption, nor has an adequate need for such a change been established at this time. It is further noted that the language in the Master Contract governing the benefit has been in place for nearly fifteen years (Joint Ex. 9).


**Award-**

Based upon the forgoing analysis of the evidence and the accompanying arguments made by each side in this dispute, I conclude that the Department's final position is the most reasonable and therefore it is to be adopted. I am keenly aware of the fact that its incorporation into the parties' new labor agreement will necessarily trigger a payback for many of the employees in the bargaining unit who have received merit or longevity increases since July of last year. While another remedy would be preferred relative to this particular issue, the "evergreen clause" found in Article 26 of the parties' contract mandate automatic payment for step increases and longevity pay as of July 1<sup>st</sup> each year. Union President Yada testified that her membership was informed in advance that repayment of the increases might be necessary in the event PPACE's final position in arbitration was not favored (Tr. p. 86-87). It is further noted Metro has represented that in order to minimize the impact on the affected

Association members, payback of the merit and longevity adjustments they have already received can be spread out over the next six months following implementation of this award (Joint Ex. 2).

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Respectfully submitted this 26<sup>th</sup> day of April, 2013.



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Jay C. Fogelberg, Neutral Arbitrator