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DISTRICT COURT

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CLARK COUNTY, NEVADA

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CITY OF NORTH LAS VEGAS, Petitioner, v. NORTH LAS VEGAS POLICE OFFICERS ASSOCIATION, Respondent.	Case No.: A-12-662294-P Dept. No.: XXVIII **MOTION TO STAY ENFORCEMENT OF ARBITRATION AWARD ON AN ORDER SHORTENING TIME** Hearing Date: 6-8-12 Hearing Time: 10:30 A.M.

10 11 12 13 14 15

16 Petitioner, CITY OF NORTH LAS VEGAS ("Petitioner"), by and through their attorneys,
17 Fox Rothschild LLP, hereby moves the Court for an Order staying enforcement of the arbitration
18 award issued in the case entitled *North Las Vegas Police Officers Association v. City of North Las*
19 *Vegas,* FMCS Case No.: 110624-56862-A, pending the outcome of the Petition to Vacate
20 Arbitration Award.

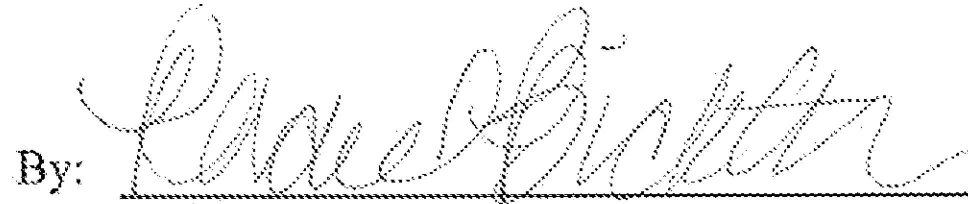
21 This motion is based upon the accompanying Memorandum of Points and Authorities, the
22 papers and pleadings on file, and on any oral argument the Court may entertain at hearing.

23 ///

24 ///

DATED this 24th day of May, 2012.

FOX ROTHSCHILD LLP

By: 

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DECLARATION OF RACHEL BICKLE-STONE, ESQ., IN SUPPORT OF REQUEST FOR ORDER SHORTENING TIME PURSUANT TO EDCR 2.26

STATE OF NEVADA)
)
COUNTY OF CLARK)

I, Rachel Bickle-Stone, being first duly sworn under oath, state as follows:

1. I am an attorney with the law firm of FOX ROTHSCHILD LLP, counsel for the Petitioner, City of North Las Vegas ("CNLV"), in the above-captioned case.

2. The Arbitration Award ("Award") at issue in this case is currently the subject of a Petition to Vacate filed by CNLV.

3. As more fully outlined in the Motion to Stay, the Award orders CNLV to take various actions before the Petition to Vacate can be adjudicated on its merits.

4. Likewise, the Award directs CNLV to take action before this Motion to Stay can be heard on a normal briefing schedule. Consequently, an Order Shortening Time on the Motion to Stay is appropriate.

5. For the reasons described herein, good cause is present for the Court to consider this motion on shortened time on a date convenient for the Court.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 24th day of May, 2012.

RACHEL BICKLE-STONE

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefore,

IT IS HEREBY ORDERED that the **Defendants' Motion to Stay Enforcement of Arbitration Award** shall be heard on shortened time on the 8th day of June, 2012, at the hour of 10 : 30 a.m./p.m. before the above-entitled Court.*

Petitioner is directed to serve the instant Motion to Stay and Order Shortening Time on Counsel for the Respondent by 3 : 00 a.m./p.m. on the 29th day of May, 2012.

Respondent's Brief in Opposition to the Petitioner's Motion to Stay must be served on Petitioner's Counsel and Court by 3 : 00 a.m./p.m. on the 4th day of June, 2012.

Petitioner's Reply Brief in support of its Motion to Stay must be served on the Respondent's Counsel and Court by 3 : 00 a.m./p.m. on the 6th day of June, 2012.

DATED this 24 day of May, 2012.

DISTRICT COURT JUDGE

* Courtroom 16B

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The North Las Vegas Police Officers Association ("POA") is the bargaining unit for non-supervisory police officers employed by CNLV of North Las Vegas ("CNLV"). The POA and CNLV are parties to a Collective Bargaining Agreement ("CBA") in effect from 2007 to 2012. The CBA requires that disputes concerning the CBA be submitted to an informal grievance procedure followed by arbitration. On June 16, 2011, the POA filed a grievance with the Chief of Police alleging that CNLV had violated the CBA provision related to medical insurance. Arbitration took place on January 12, 2012.

The Arbitrator issued his award on May 23, 2012 and sustained the POA's grievance, holding that CNLV breached Article 15, Section 2 of the CBA. To remedy its breach, the Arbitrator ordered CNLV to reimburse POA members for the premium payments made during the year and to immediately allow POA members to join any of the PPO plans offered at no cost. However, the Arbitrator didn't stop there. Instead, the Arbitrator made an unsolicited finding of fact that CNLV was obligated "to fully pay for the same high quality medical insurance as that which was in force at the time the CBA was executed" in 2007. In so doing, the Arbitrator determined that CNLV is/was precluded from unilaterally changing the quality of the medical insurance it provides to the POA. Or, in other words, the Arbitrator redrafted the CBA.

In light of the foregoing, CNLV has filed a Petition to Vacate the Arbitration Award (the "Petition") based on several arguments: The Arbitrator acted arbitrarily and capriciously by wholly ignoring the evidence presented and disregarding the explicit terms of the CBA; the Arbitrator exceeded his power because he effectively modified a critical portion of the CBA, which is prohibited under the terms of the CBA itself; the Award requires CNLV to perform a legal impossibility; and, the Arbitrator violated the governing rules of professional responsibility

by engaging in inappropriate behavior which could raise the specter of *ex parte* communications. *See* Petition to Vacate Arbitration Award, generally, filed contemporaneously herewith.

While petitions to vacate arbitration awards may be filed up to ninety (90) days after the moving party receives notice of the award (NRS 38.241(2)), the Award at issue here requires reimbursement to POA members within thirty (30) days of each member's request for reimbursement. *See* Award, page 15, **Exhibit A**. The Award is silent on any other deadlines for compliance. Additionally, the Arbitrator retained jurisdiction through June 6, 2012, "for the purpose of resolving any issue(s) pertaining to the relief ordered, including ordering any further relief as shall be just and proper to remedy any financial harm to those eligible for health insurance under Article 15 Section 2." *Id.*

Simply put, CNLV is required to comply with the terms of the Award before the Court will have the opportunity to fully examine the critical issues set forth in the Petition. Therefore, CNLV requests that the Court stay enforcement of the Award until the Petition has been fully briefed, heard and adjudicated.

II. LEGAL ARGUMENT

A. This Court Has the Inherent Power to Issue a Stay.

A stay in this case is appropriate because the consequences of the Award, as written, are far-reaching, severe, very expensive and wholly unwarranted based upon the evidence presented in the arbitration proceeding. As a result, a comprehensive review of the Petition *on its merits*, is entirely warranted. But the Petition will be rendered moot if enforcement of the Award is not temporarily stayed.

This Court has the inherent power to stay proceedings in any case that comes before it. Pursuant to Eighth Judicial District Court Rule ("EDCR") 1.90(b), the Court is empowered to manage its calendar in an efficient and effective manner. The Ninth Circuit has acknowledged as

much:

> A trial court may, with propriety, find it efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case. This rule applies whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court.

Levya v. Certified Grocers of California, Ltd., 593 F.2d 857, 863-864 (9th Cir. 1979). A stay may also be appropriate in order to avoid "duplicative litigation, inconsistent results, and waste of time and effort by itself, the litigants and counsel." *Stern v. U.S.*, 563 F.Supp. 484, 489 (D. Nev. 1983) (internal citations omitted). See also, *Halverson v. Hardcastle,* 123 Nev. 245, 261, 163 P.3d 428, 439-440 (2007) (acknowledging that the judiciary has broad inherent powers to carry out its basic functions, to administer its own affairs, and to perform its duties). The United States Supreme Court has similarly stated,

> [T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.

Landis v. North America Co., 299 U.S. 248, 254-255, 57 S. Ct. 163 (1936); see also, *Maheu v. Eighth Judicial District Court,* 88 Nev. 26, 493 P.2d 709 (1972).

Looking to a parallel area of law provides additional guidance here. Nevada Rule of Appellate Procedure ("NRAP") 8 governs Motions to Stay Pending Appeal. A Petition to Vacate an Arbitration Award to the District Court is analogous to an appeal from the District Court to the Supreme Court. The factors considered in determining whether to issue a stay pending appeal under NRAP 4 are: (1) whether the object of the appeal will be defeated if the stay is denied; (2) whether appellant will suffer irreparable or serious injury if the stay is denied; (3) whether respondent will suffer irreparable or serious injury if the stay is granted, and (4) whether appellant

1 is likely to prevail on the merits in the appeal. *Mikohn Gaming Corp. v. McCrea*, 89 P.3d 36, 38
2 (Nev. 2004). The Nevada Supreme Court recognizes that "if one or two factors are especially
3 strong, they may counterbalance other weak factors." *Id.* (citing to *Fritz Hansen A/S v. District*
4 *Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000)).

5 **B. The Court Should Issue a Stay.**

6 In this case, if a stay is not granted, there is a high probability that the entire substance of
7 the Petition will become moot; in other words, "the object of the appeal will be defeated if stay is
8 denied." *Mikohn Gaming*, 89 P.3d at 38. If CNLV reimburses POA members in compliance with
9 the Award and implements vastly more expensive medical insurance in compliance with the
10 Award, the money will be spent, the damage done. There will be no remaining justiciable issue to
11 address within the Petition.

12 In addition to causing "defeat" of the "object of the appeal," this type of financial harm also
13 constitutes "serious injury" under *Mikohn*. 89 P.3d at 38. The Court can take judicial notice of the
14 financial adversity CNLV is currently facing. As but one example, on May 16, 2012, CNLV
15 announced plans to lay off 200 City employees because of budgetary concerns. *See* Las Vegas
16 Sun article, "North Las Vegas slashes budget, clearing way for 200 layoffs," **Exhibit B.**
17 Implementing the portion of the award requiring 2007-level medical insurance will cost CNLV an
18 exorbitant amount of money. The City has been on the brink of a state takeover for at least the last
19 year. The devastating effects of the Award, as it is written, could push CNLV past the brink and
20 into the abyss of insolvency.

21 On the other hand, the POA will suffer very little prejudice, if any, if the stay is granted.
22 First, the POA will simply be left in the same position that it has been for almost a year, and not
23 for a particularly long period of time. The Petition will likely be fully adjudicated within
24 approximately 45 days. Tellingly, the POA never sought an injunction in this case, supporting

CNLV's argument that the POA will not be irreparably harmed if the status quo is extended during the pendency of the Petition.

Finally, CNLV has a reasonable likelihood of success on the merits of the Petition. CNLV's Petition outlines several bases upon which the Court could vacate the Award. The Arbitrator granted relief that not even the POA was seeking. The Arbitrator ignored the testimony provided at the hearing clearly demonstrating that CNLV had met its obligation to the POA by providing them with the same medical insurance it provides to the City's elected, appointed and confidential employees. The Award required CNLV to perform a legal impossibility. In light of the foregoing, CNLV will likely prevail if there is an opportunity for the Petition to be examined on the merits.

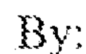
In comparing the consequences of enforcement to the consequences of a temporary stay, it becomes apparent that the only reasonable outcome would be the Court exercising its discretion and staying enforcement of the Award pending full adjudication of the Petition to Vacate the Arbitration Award.

III. CONCLUSION

Based on the foregoing, CNLV respectfully requests that the Court stay enforcement of the Arbitration Award pending the full adjudication of the Petition to Vacate the Arbitration Award.

Respectfully submitted this 24th day of May, 2012.

FOX ROTHSCHILD LLP



By: ______________________________

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Attorneys for City of North Las Vegas

EXHIBIT A

BEFORE ARBITRATOR: JAMES S. MARGOLIN

FMCS Case No: 110624-56862-A

NORTH LAS VEGAS POLICE OFFICERS ASSOCIATION,

Grievant,

vs.

CITY OF NORTH LAS VEGAS,

Employer.

Appearances:

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Attorney for Grievant,
North Las Vegas Police Officers Association

LYSSA S. ANDERSON, Esq.
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3800 Howard Hughes Pkwy. #500
Las Vegas, Nevada 89169
Attorneys for City of North Las Vegas

GRIEVANCE OF THE NORTH LAS VEGAS, NEVADA POLICE OFFICERS ASSOCIATION

OPINION AND AWARD

BACKGROUND

This case arises under the arises under the Parties' 2007-2012 Non-Supervisory Agreement (CBA) involving a grievance filed by the North Las Vegas [Nevada] Police Officers Association (POA), and concerns the obligation of the City of North Las Vegas, Nevada (City), under Article 15 of the Non-Supervisor Agreement 2007-2012 (CBA) between the POA and City, to pay 100% of the premium cost of members' participation in the same health insurance program provided by the City to the Elected, Appointed, and Confidential employees (Employees).

On June 16, 2011, the POA filed the following grievance with the Chief of Police:

> The North Las Vegas Police Officers Association ("NLVPOA"). on behalf of its membership, is hereby submitting a grievance as to the City of North Las Vegas' ("City") improper change and reduction in medical insurance benefits that is being provided to the NLVPOA members in violation of Article 15 of the current Non-Supervisory Collective Bargaining Agreement ("CBA"). Specifically, the City is changing the medical insurance benefits that are being provided to the NLVPOA membership without the agreement of the NLVPOA. Moreover, the City is attempting to extract partial premium payments from NLVPOA members in violation of the clear provision in the CBA which requires the City to pay for 100% of the premiums for medical insurance. The NLVPOA is hereby submitting the instant grievance to you in accordance with Article 23, Section 3 of the CBA as well as the laws of the State of Nevada. Said grievance is enclosed herewith for your review. With this grievance, the NLVPOA is demanding that the City continue to provide the same level of medical benefits to the NLVPOA membership as was provided in the prior fiscal year. For sake of simplicity, the NLVPOA demands that the City provide its membership with the new Premium insurance plan (which is virtually identical to the existing medical insurance plan) at no cost to the NLVPOA members. Any significant changes between the Premium insurance plan and the existing insurance plan would also have to be remedied.

Hearing was held in Las Vegas, Nevada on January 12, 2012. During the course of the hearing both parties were afforded full opportunity for the presentation of evidence, examination and cross-examination of witnesses. The parties elected to file post-hearing briefs which were timely filed. A

transcript of the proceedings was prepared by a certified court reporter, however that transcript is not the official record of the proceedings but was prepared merely for the convenience of the Arbitrator. The parties stipulated that the grievance was properly before the Arbitrator and agreed that the Arbitrator's Award may be published.

ISSUE PRESENTED

The issue before the Arbitrator is whether the City violated Article 15, Section 2, of the Agreement.

POA'S POSITION

The POA contends that the City breached the CBA by creating multi-option insurance plans that provided for cost sharing by the POA, for the reason that Article 15, Section 2A requires the City to pay for the entire cost of the medical insurance that is provided to the POA.

CITY'S POSITION

The City contends that it did not breach the POA because the City and POA did not negotiate for a specific insurance plan, level of coverage, or insurance provider, and that the POA, instead, chose to "tie its fate" to the Employees' insurance program. As such, the City urges that it may to choose the insurance program and change the terms and conditions of the program.

RELEVANT CONTRACT PROVISIONS

Non-Supervisory Collective Bargaining Agreement Between the City of North Las Vegas and the North Las Vegas Police Officers Association Dated 2007-2012.

Article 15 - Insurance and Disability - Section 2 Medical Benefits

A. The City shall provide a health benefit program, which is identical to the plan in force for the City's elected, appointed and confidential employees (medical, dental, vision, and cafeteria plan). The City shall pay 100% of the premium costs for medical, dental and vision coverage for peace officers and their eligible dependents.

B. If an employee's spouse is also employed by the City, the City shall pay 100% of the premium cost for one (1) employee only. The employees affected shall have the choice of which employee shall be deemed the primary insured. An employee who is deemed to be the dependant shall enjoy the same benefits as if they were the primary insured.

C. Current and future retirees of the North Las Vegas Police Officers Association will be afforded the opportunity to remain in the health benefit program at the same premium cost that the City pays for active members of the Association.

Article 24 - Duration of Agreement- Section 1- Validity of Agreement

This writing constitutes the complete agreement of the parties. Any amendment to this Agreement shall be of no validity unless reduced to writing and signed by both parties.

Article 26 - Entire Agreement

The provisions of this Agreement shall not be subject to renegotiation between the parties or otherwise modified prior to the termination of this Agreement without mutual agreement between the parties, except as specifically set forth in other Articles.

STATEMENT OF FACTS

The CBA between the parties for the period from 1998 to 2002 contained language regarding medical insurance that was significantly different than the language in the two previous CBAs. In that

earlier CBA, there was included a provision that allowed the City to impose medical insurance cost sharing on the POA. Following negotiations, the language from the 1998-2002 CBA that had authorized the City to impose medical insurance cost sharing on the POA was removed for the CBA covering 2002-2007.

The POA and the City are now parties to a CBA that is effective from July 1, 2007 through June 30, 2014. Under Article 15, Section 2A of the current CBA, the City is to provide a health benefit program identical to the plan in force for the City Elected, Appointed and Confidential employees, and for the City to pay 100% of the premium cost for medical, dental and vision coverage for peace officers and their eligible dependents.

The prior CBA between the City and the POA for 2002 to 2007 contained language that was virtually identical to the current Article 15, Section 2A. From the beginning of the 2002 CBA through June 30, 2011, the end of the City's most recent fiscal year, the City provided the POA with a high quality, PPO medical insurance policy, and paid for 100% of the cost of such medical insurance policies.

The City has recently experienced financial problems, and in order to alleviate its financial difficulties, the City sought to reduce its labor costs. In early 2009, the City asked the POA for concessions, and the POA agreed to various concessions of wages and benefits. One concession that the City asked of the POA was for of medical insurance cost sharing, specifically that the POA share in 5% of the cost of medical insurance for the then current policy for fiscal year 2009-2010. The POA refused the City's request, and the City again came back the following year and asked the POA for medical insurance cost sharing for fiscal year 2010-2011. The POA also refused that second request. The City asked the POA a third time to concede in sharing in 5% of the cost of the then current medical

insurance for the current fiscal year 2011-2012, and once again the POA refused.

Beginning on July 1, 2011, the City implemented a new medical insurance plan for all of its employees except for those represented by the Teamsters union. The new medical insurance plan consists of four options, any one of which can be selected by the employee. The four options include an HMO insurance policy through Health Plan of Nevada, Inc. and three PPO insurance policies of varying quality administered by UMR. The POA considers that the HMO insurance policy is inferior to the PPO medical insurance policies that the POA had previously been provided over for the past decade, and is the only option for which the City pays the full premium. In order for a POA member to obtain any of the PPO options, they would have to pay a portion of the cost. Option number 4, which the City refers to as the "Premium Plan", is virtually identical to the medical insurance policies that the POA received each year for the past decade. It is in response to the City's implementation of the medical insurance plan for the current fiscal year that the POA filed the instant grievance.

ANALYSIS

This grievance pertains to contract interpretation and, therefore, it is the POA's burden to prove that the Company has violated the contract. At the core of this dispute is whether Article 15, Section 2A allows for any such medical insurance cost sharing that affects current employees, current retirees and future retirees. The totality of the circumstances and the credibility of the witnesses are paramount factors to weighed by the Arbitrator. Included in this Arbitrator's analysis of the grievance are the CBA, past and current contract negotiations and bargaining history between the parties, requests and refusals for contract concessions, demeanor of the witnesses, perceived bias, personal or business interest or

motive, contradictions to the witness's testimony, their capacity to recall events and opportunity to perceive events. These factors bear directly on the credibility of a witness in evaluating the testimony and then allocating the proper weight to the testimony.

It is a basic precept of law that a contract is supposed to be interpreted consistent with what the parties truly intended when they entered into the contract. The best method for ascertaining the intent of the parties is by looking at the explicit language used by the parties in the contract. Nevada courts have held that when a written contract is clear and unambiguous on its face, it must be enforced as written. *See, Geo. B. Smith Chemical v. Simon*, 92 Nev. 580, 582, 555 P.2d 216, 216 (1976). The past practice and bargaining history of parties also provides persuasive evidence as to the parties' true intent in agreeing to a provision in a contract. *Smith Steel Workers, DALU 19806 v. A.O. Smith Corp.*, 626 F.2d 595 (7th Cir 1980.). Moreover, principles of contract interpretation ought to be employed in order to help provide meaning to a provision that may have been expressed with a lack of precision or foresight. *Elkouri & Elkouri, How Arbitration Works*, Ch. 9.3.A at pp. 447-448 (6th ed.).

Here, the primary dispute revolves around how the second sentence of Article 15, Section 2A should be interpreted. The POA contends that the language stating that "The City shall pay 100% of the premium cost for medical, dental and vision coverage for peace officers and their eligible dependents" was intended to obligate the City to pay for 100% of the cost of each and every medical insurance option that it offers to the POA regardless of how many options are offered. Conversely stated, that the parties intended this language to preclude the City from imposing a medical insurance cost sharing requirement on the POA. The City, on the other hand, argues that this provision only requires it to pay for 100% of the cost of one medical insurance option, and that it is free to pay for less than 100% of the cost for other medical insurance options. Otherwise stated, the City claims that this provision authorizes it to impose a

medical insurance cost sharing structure on the POA so long as it pays for 100% of any one insurance option.

The POA's interpretation is more convincing because it is supported by the clear and unambiguous language in Article 15, Section 2A, and it is consistent with the parties' past practice and bargaining history. Conversely, the City's interpretation is unsupported by the explicit language in Article 15, Section 2A, and it is contrary to the established past practice and bargaining history of the parties. The second sentence of Article 15, Section 2A is clear and unambiguous on its face in that it specifically requires the City to pay for 100% of the cost of the medical insurance provided to the POA. It should make no difference whether the City offers one medical insurance option or four options. Either way, the language obligates the City to pay for 100% of the cost of that medical insurance. Conversely, nothing in this language supports the City's position. The City contends that once it pays for 100% of the cost of one medical insurance option, it is free to impose a cost sharing requirement on the POA for the remaining options. But the language simply does not provide for this possibility. The contract language does not state or imply that the City can pay 100% of the cost of one medical insurance option and then pay less than 100% for other medical insurance options. Similarly, it does not state or imply that if the City pays for 100% of one medical insurance option, it is free to provide other medical insurance options without any constraints, completely unanchored from the provisions of the CBA. Nothing in the contract language allows for the possibility of medical insurance cost sharing, yet the City's current four option insurance program does impose a cost sharing requirement on the POA.

Contractual provisions can be best understood and interpreted by placing them in their proper context. The Restatement (Second) of Contracts provides:

"Meaning is inevitably dependent on context. A word changes meaning when it becomes part of a sentence, the sentence when it becomes part of a paragraph. A longer writing similarly affects the paragraph... Where the whole can be read to give significance to each part, that reading is preferred." *See,* Restatement (Second) of Contracts §202, comment d (1981).

The POA's interpretation of the second sentence of Article 15, Section 2A, unlike the City's interpretation, places this sentence in its proper context. That is, the POA's interpretation appropriately connects the second sentence of the provision to the first sentence. The first sentence of Article 15, Section 2A specifies what medical insurance the City is obligated to provide to the POA. It specifies that the POA will receive the same medical insurance that is in force for the Elected, Appointed and Confidential employees. The second sentence goes on to provide that the City must pay for 100% of the cost of the medical insurance for POA members. From its context it is clear what insurance is being referenced in this second sentence, that is, it is referring to whatever medical insurance is provided to the POA pursuant to the first sentence of the provision. Therefore, if the City provides the POA with a high quality PPO insurance policy pursuant to the first sentence, as it had done for a decade prior to the current fiscal year, then the City must pay for 100% of the cost of such insurance pursuant to the second sentence. If the City decides to provide the POA with four different medical insurance options pursuant to the first sentence as it has, then it must pay for 100% of each option pursuant to the second sentence. In short, the first sentence provides the reference point for the subject matter of the second sentence. The contrary interpretation urged by the City that the second sentence only requires it to pay 100% of *any* medical insurance option that it provides to the POA, requires the second sentence of Article 15, Section 2A to be read in a vacuum isolated from the first sentence. Such an interpretation is contrary to the principle that meaning is dependent on context.

The fact that the parties intended Article 15, Section 2A to preclude any medical insurance cost

sharing is also revealed by the past practice of the parties: From 2002 through June 30, 2011, the City had always paid 100% of the cost of the medical insurance provided to the POA. The fact that this past practice has spanned a decade, not to mention two separate CBAs, is persuasive to this arbitrator. *See, Elkouri & Elkouri, How Arbitration Works*, Ch. 12.8 at p. 623 (6th ed.), stating "Where practice has established a meaning for language contained in past contracts and continued by the parties in a new agreement, the language will be presumed to have the meaning given to it by that practice."

The bargaining history of the parties sheds additional light on this issue. A clause allowing the City to force the POA to pay a portion of the cost of medical insurance had been in a prior CBA but was negotiated out of two subsequent contracts so that no such clause exists in the current CBA. This is compelling evidence of the intent of the parties that the City should not be able to force the POA to pay any portion of the cost of medical insurance.

Each year for the past three years, the POA refused the City's requests to agree to pay a portion of the cost of their medical insurance. Only then did the City devise these four alternate plans, apparently intended to make an end-run around the POA's refusals to relieve the City of its obligations to provide full payment of health insurance. The alternative insurance plan that the City chose to pay without POA contribution was the very least desirable plan as compared to the other three, and the one with benefits the least comparable to the benefits the POA had been previously enjoying, including the ones in effect at the time of the most recent contract negotiations. If the City had the right to impose a cost sharing requirement on the POA it would not have repeatedly asked for permission to do so, and the City has in fact created an insurance plan that contains exactly the type of cost sharing element that it was unable to extract from the POA through negotiations and concessions. It is an inescapable

conclusion that the City is attempting to obtain through arbitration what they could not acquire through negotiations. *See, U.S. Postal Serv. v. Postal Workers*, 204 F. 3d 523, 530 (4th Cir. 2000).

The one option that the City is currently paying for in full is the least desirable. Most of the POA membership is paying a portion of the cost of their medical insurance even though Article 15, Section 2A explicitly provides that the City has to pay for 100% of the cost of medical insurance. Additionally, following the City's logic, as confirmed by Joyce Lira, the City's Director of Human Resources, there could be nothing to stop the City from reducing the quality of the fully paid insurance option even further in the future if the City's interpretation is correct.

That the City's interpretation of Article 15, Section 2A is contrary to the spirit and intent of that provision is revealed by the fact that in order to obtain the Premium Option that the City currently offers, POA members are required to pay 20% of the cost of the insurance policy. This Premium Option is essentially the same in terms of quality as the medical insurance policies that the POA received at no cost from 2002 through June 30, 2011. Consequently, POA members currently must pay 20% of the cost of the same medical insurance that they had received at no cost each and every year for the prior ten years.

Another dispute exists as to the correct interpretation of the first sentence of Article 15, Section 2A that "The City shall provide a health benefit program, which is identical to the plan in force for the City Elected, Appointed and Confidential employees (medical, dental, vision and cafeteria plan)." The dispute pertains to whether the "plan in force" that is being referred to is the medical insurance plan that is currently in force for the City's Appointed, Elected and Confidential employees or whether it is the

plan that was in force for such employees at the time the CBA was negotiated and executed back in the summer of 2007. The POA argues that it is the latter, and the Arbitrator agrees.

The POA concedes that the City has the ability to change medical insurance providers or even to create a self-insured plan as they have currently done. The POA also concedes that the City is not powerless to obtain a new medical insurance policy for the POA that contains minor changes to certain elements of the insurance policy, that is, the City can provide the POA with an insurance policy that contains deductibles for various medical procedures (e.g.: office visit, ER visit, out-patient surgery) that are slightly different than the deductibles that were in the insurance policy that was in force at the time the CBA was executed. Similarly, the POA concedes that the City can provide the POA with an insurance policy that has fine print that is different than before, such as provisions on submitting claims, notification requirements, appeals process, etc. The POA contends, however, that the City cannot make substantial changes to the quality of the medical insurance plan that it makes available to the POA. That is, the City cannot provide a medical insurance policy that is inferior to the quality of the insurance policy that was in force for the Elected, Appointed and Confidential employees at the time the CBA was negotiated and executed.

If the POA's contention is correct, then pursuant to the second sentence of Article 15, Section 2A, the City would have to pay for 100% of the cost of a medical insurance policy that is of substantially the same quality as the insurance policy that was in place at the time the CBA was negotiated and executed. The City concedes that the current Premium Option is virtually identical to the medical insurance policy that was in place at the time the CBA was executed. Thus, under the POA's interpretation of Article 15, Section 2A, the City should be paying for 100% of the cost of the Premium

Option instead of the paying 80% of the cost of that option that the City is currently paying, forcing the POA to pay the other 20%.

The City essentially conceded at the hearing through the testimony of the City's only witness, H. R. Director Lira, that the POA's interpretation of the first sentence of Article 15, Section 2A is correct. To better understand the City's position, this Arbitrator asked Ms. Lira a few questions. The question and answer exchange was as follows:

ARBITRATOR:	So when the contract clause says, "The City shall provide a health benefit program which is identical to the plan in force," do you take that to mean the plan in force now at the time this contract was negotiated? Is there any reason not to believe --
LIRA:	It would be.
ARBITRATOR:	So option four as it sits today is identical to the plan in force at that time; is that correct?
LIRA:	Yes.
...	
ARBITRATOR:	Is it unreasonable to read this 2A to say, the City shall provide a health benefit program identical to the plan in force today?
LIRA:	That wouldn't be unreasonable
ARBITRATOR:	Then taking the next step, would it then not be reasonable for the City to pay the full premium cost for option four?
LIRA:	Yes. That's a point.
ARBITRATOR:	A point you agree with?
LIRA:	It is a point, but again every year we change the plan.
ARBITRATOR:	I'm talking as we sit here today and with option four looking at the plan that was in effect at the time that agreement was signed, those are your identical plans?

LIRA: Yes.

Each year since the current CBA was executed in the summer of 2007 up through the beginning of the current fiscal year, the City had provided the POA with the same high quality medical insurance as that which was in force for the Elected, Appointed and Confidential employees at the time the current CBA was executed. Moreover, when the prior CBA was in effect (e.g.: from 2002 through 2007), the City had always provided the POA with the same high quality insurance as that which was in force for the Elected, Appointed and Confidential employees at the time the prior CBA was executed. This is significant because the language that is currently in Article 15, Section 2A was also contained in the prior CBA. This decade-long past practice reveals that the parties intended Article 15, Section 2A to preclude the City from unilaterally reducing the quality of the medical insurance that it provides to the POA. The fact that the City paid 100% of the cost of such high quality medical insurance each year for a decade further reveals that the parties intended Article 15, Section 2A to obligate the City to fully pay for the same high quality medical insurance as that which was in force at the time the CBA was executed.

DECISION AND AWARD

THE GRIEVANCE IS SUSTAINED. In light of the foregoing, it is the opinion of the Arbitrator that the North Las Vegas, Nevada Police Officers Association presented clear and convincing proof to a reasonable certainty and, to an even lesser quantum of proof, by a preponderance of the evidence, that the City of North Las Vegas, Nevada breached Article 15 Section 2 of the current Collective Bargaining Agreement.

As the remedy for the City's breach, the City shall make whole each person(s) eligible for health insurance under Article 15 Section 2 by reimbursing each such person(s) for the premium payments that they have made to obtain medical insurance, and each such person(s) shall be allowed immediately to obtain any of the available insurance options, including the Premium Option insurance policy, and to receive such medical insurance at no expense to such person(s), all such premiums are to be paid in full by the City. Such reimbursements shall be made within 30 days of each such request for reimbursement.

The Arbitrator retains jurisdiction over this matter for the purpose of resolving any issue(s) pertaining to the relief ordered, including ordering any further relief as shall be just and proper to remedy any financial harm to those eligible for health insurance under Article 15 Section 2. Such retention of jurisdiction shall be until and including June 6, 2012. Absent a written request for an extension of the Arbitrator's jurisdiction beyond June 6, 2012, any request for the exercise of this Arbitrator's jurisdiction over this matter shall be deemed untimely, and no further proceedings shall be had before the Arbitrator. It is within the sole discretion of the Arbitrator to determine whether the issue presented by the party or parties is within the jurisdiction of the provision pertaining to the Arbitrator's retention of jurisdiction. Nothing in the retention of jurisdiction shall operate to prevent this Award from being final on the date upon which the Arbitrator has executed this Award. This Award is in full settlement of all claims submitted to this Arbitration.

IT IS SO ORDERED THIS 23rd DAY OF May, 2012, by

JAMES S. MARGOLIN, ARBITRATOR

EXHIBIT B

Las Vegas Sun

North Las Vegas slashes budget, clearing way for 200 layoffs

By Gregan Wingert (contact)

Wednesday, May 16, 2012 | 12:05 a.m.

Emotions were high during a special meeting Tuesday night as the North Las Vegas City Council approved a budget that would call for about 200 police, firefighters and Teamsters Union members to lose jobs if concession agreements aren't made.

"We are going to balance our budget, we're going to live within our means and it hurts," Mayor Shari Buck said. "We're going to vote on unfortunately passing out pink slips if it comes to that."

The mayor and four city council members voted unanimously to proceed with a budget due on June 1. The budget without concessions would include more than 200 layoffs.

An estimated 57 firefighters, 100 city police department employees and about 60 additional city workers would get pink slips in the next two weeks if concession agreements with four union groups aren't settled.

"There's not one city council member up here who wants to lay anybody off," said the mayor, in an emotional tone. "You lay off a person, you lay off a family."

North Las Vegas leaders say a down economy, high foreclosures and unemployment rates have all caused revenue streams, such as property taxes, to dry up — leaving the city with a $33 million budget gap for the 2012-13 fiscal year, which ends June 30, 2013.

"It'll be a crawl, not a sprint, to recovery," said City Manager Tim Hacker.

The city is asking for a two-year freeze on annual raises, which includes no merit-based raises or cost of living increases. The concessions would also abolish a program that enables employees to sell back their holiday time, putting a stop to uniform allowances and asking administrators to maximize efficiencies.

So far the unions have not accepted the agreements.

"There seems to be no plan after four years of concessions," said Leonard Cardinale, president of the North Las Vegas Supervisors Association, whose organization is still in talks with the city.

The local Teamsters Union members have voted against the proposed concessions. The International Association of Firefighters Local 1607 did not meet a consensus and asked for the city to consolidate their department into any other nearby fire departments. The North Las Vegas Police Officers Association also lacked a consensus.

"It's up to our employees," the mayor said. "I think what we're asking for is reasonable."

Union leaders were disappointed with the council's decision.

Mike Yarter, president of the North Las Vegas Police Officers Association said, "They're defrauding taxpayers of North Las Vegas."

Yarter, a detective of the North Las Vegas Police Department said there are positions that the city is budgeting for that have been empty since July 2011. Positions he said aren't intended to be filled.

"Whatever the concessions they're asking for don't even come close to the $33 million," Yarter said.

During the special meeting, other cuts to the city's budget were expressed including cuts to North Las Vegas Library fund and the SafeKey fund, which supports an after-school program for children.

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