
In the Matter of an Interest Arbitration Pursuant to
NRS 288.215 between:

**Award, Reasons,
and Costs**

IAFF Local 1908

and

Clark County Nevada

NB 3243

Before

Norman Brand, Arbitrator

Appearances

For IAFF Local 1908
Davis, Cowell & Bowe, LLP
by W. David Holsberry, Esq.

For the Clark County
Fisher & Phillips, LLP
by Mark J. Ricciardi

January 19, 2011

Jurisdiction and Standards

The parties chose me to arbitrate this interest dispute pursuant to NRS 288.215. I held hearings in Las Vegas, Nevada on November 1, 2, 8, and 30, and December 9, 2010. Both parties were present at the hearings, and represented by counsel. Each had a full opportunity to examine and cross-examine witnesses, present evidence, and argue its position. Neither party objected to the conduct of the hearing. A certified court reporter recorded the hearing. At the close of the hearing the parties asked to simultaneously file post-hearing briefs and their single written statement containing a final offer for each of the unresolved issues. I received the briefs and written statements on January 10, 2009.

NRS 288.15 requires:

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.

(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.

It further requires:

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.

11. The decision of the arbitrator must include a statement:

(a) Giving the arbitrator's reason for accepting the final offer that is the basis of the arbitrator's award; and

(b) Specifying the arbitrator's estimate of the total cost of the award.

NRS 288.200 provides the following standards:

7.

(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.

Financial Ability of the Employer

IAFF Local 1908 (“Union”) represents employees of Clark County who work in the Clark County Fire Department.¹ The Fire Department is funded by the Clark County Fire Service District, a taxing authority, which provides fire services to the unincorporated towns in the County.² During the past 7 fiscal years, the District has ranged from a \$10.4 million deficit to a one time, \$3.1 million surplus (FY2007) inclusive of overhead.³ The largest deficit was in FY 2010. The projected deficit for FY 2011 (the current fiscal year) is \$47.8 million. (C-2, 20) The reason for the deficit and projected deficit is well known: the Great Recession. Southern Nevada has been particularly hard hit, with an unemployment rate of 15%, and a 23% decline in taxable sales. (C-1, 3)

Two thirds of the County’s revenues come from the property and consolidated tax. County assessed valuation, on which the property tax is based, has fallen from \$112 billion in FY2008 to \$63.9 billion in FY2011. Property tax revenue has fallen from a high of \$383.1 million in FY2009 to a projected \$273.7 in FY2011. (C-2, 7) For property in the Fire Service District, assessed valuation fell 15.4% in FY2010 and another 32.1% in FY2011. (C-2, 12) Assessed valuation went from \$57.2 billion in FY2009, to \$32.9 billion in FY2011. (C-2, 13) Fire Service District revenues declined by about 25 million dollars, which is roughly

¹ The Local represents two separate units of employees. The larger unit is made up of the non-supervisory employees, consisting of engineers, firefighters, captains, and other rank and file titles. The supervisory unit is made up of Battalion Chiefs, who supervise rank and file employees.

² The Fire District can tax property within its jurisdiction. “The Board of County Commissioners is the ex officio governing body of the Clark County Fire Service District, and all of the Clark County firefighters are paid by -- with a few exceptions are paid by the fire service district, and they're all county employees.” (Tr. 45:8-13)

³ The County provides overhead to the District and has absorbed any inability to pay the shortfall in past years.

one-sixth of total revenues of the district. (Tr. 61:16-18) The County estimates that after property values stabilize, if the County has a 5% annual increase in property tax collections, it will take approximately five years to get back to the FY2010 revenue level. (County Ex. 2, 18)⁴

Consolidated tax revenues to the District have dropped from \$46.3 million in FY2007 to \$35.5 million (budgeted) in FY2011. If District consolidated tax revenues were to increase at 3% a year, it would take seven years to return to the FY 2008 level. (County Ex. 2, 10) County consolidated tax revenues have dropped from \$341.8 million in FY2006 to an estimated \$247.4 million for FY2011. (County Ex. 2, 10) The County had a \$150 million budget deficit for FY2011, which it made up with “one-time” money, such as reductions in the fund balance and debt service. (County Ex. 2, 11) While this transfer of one time money created a FY2011 budget that met all statutory requirements, the County has demonstrated it cannot continue to pay a \$47.8 million District deficit. The County’s revenue problems are neither idiosyncratic, nor transient. They are the result of larger trends that will take a significant time to ameliorate.

The County claims an inability to continue paying the wages and benefits contained in the expired 2006-2010 Agreement. It alleges it has made extraordinary efforts to reduce expenditures in order to balance its budget, requiring sacrifices from other bargaining and non-bargaining groups it employs. In its view, the Union must accept some structural reductions in benefits commensurate with the County’s long term reduction in revenue. In addition, the

⁴ “...property owners' actual tax bill cannot increase by either 3 percent for residential, or 8 percent [for commercial] in any given year regardless of what the tax rate is.” (Tr. 50:6-9) The 5% limitation is a product of the property tax caps and a weighted average of the residential and commercial property in the District. (County Ex. 2, 16-17)

County proposes changes in contract language to permit it to address and reduce sick leave abuse. According to the County, after the reductions it proposes Clark County firefighters⁵ will still be the most highly compensated firefighters in Southern Nevada.

According to the Union, the County has the financial ability to continue paying for all the benefits contained in the 2006-2010 Agreement for an additional year. It budgeted those costs for FY2011. The agreement being arbitrated will expire on June 30, 2011. Since the parties will negotiate a new Agreement for FY2012, there is no current need for any reduction in benefits. The Union President also asserts he made a deal on concessions with the Board of Commissioners that the County never implemented. (Tr. 8-13)⁶ Although there is no need for current changes, the Union argues, it has been “responsive to the County’s pleas for fiscal relief.” Despite the Union’s responsiveness, the County “sought changes in longstanding contractual practices and it sought concessions on financial articles.” (Union Brief, 9:2-3)

There are three problems with the Union position. First, it ignores the structural imbalance: The County’s FY2011 expenditures exceed its projected revenues. It cannot afford its FY2011 expenditures, but it was obliged to continue

⁵ The term “firefighter” will be used throughout, unless rank is a consideration.

⁶ The evidence does not support the assertion. Union President Beaman spoke with Commissioner Sislak, then wrote an email to the other Commissioners stating the Union and County had a tentative deal on concessions. (Union 16B) Commissioner Sislak responded, asserting no deal had been made, noting many of the “cost-saving” ideas the firefighters wanted implemented involved matters outside the scope of bargaining. In addition, the purported agreement had a Union concession (eliminate 1% of a 3% scheduled increase) valued at \$1.2 million, for which the County would give the Union 2 additional personal leave days that would cost \$1.584 million. The Union also proposed using “station security” capital funds as operating funds, for which it credited itself with a \$4 million concession. The County Manager had informed President Beaman a month earlier that this tax rate override money could only be used for capital projects. (Union 15B) Because the concessions would actually increase County costs, and because there is no initialed tentative agreement or signed document embodying this alleged agreement, it is unlikely the County and Union made the alleged deal.

contractual benefits until it could negotiate a new agreement. It used one time funds to make up the deficit.(Tr. 58:14-59:17) Its inability to afford the current level of expenditures is not a transient phenomenon. There is no evidence there will be sufficient revenues in FY2012 to pay the ongoing, or increased, costs of the Department.⁷ Thus, the County is justified in bargaining for cost reductions in this contract. Second, the Union ignores the County's expenditure cuts and reductions in services since FY2009. The County provided extensive evidence of its cost containment efforts.⁸ These efforts involved furloughs and layoffs for other employees, but not firefighters. (Tr. 427:4-8) In fact, the County hired firefighters. Thus, the firefighters are not being singled out, but are being asked to share in the fiscal difficulties that are affecting all public employees. Third, I noted at the hearing that the issue of bad faith is not before me (Tr. 559:14-16). Even if it were, the County's effort to change "longstanding contractual practices" through negotiation is not evidence of bad faith.

The statute requires the arbitrator to make a threshold determination of "a current ability to grant monetary benefits" before considering the normal criteria for interest disputes in deciding which written statement of final offers to accept. It is clear the County does not have the current ability to grant any new monetary benefits. It is equally clear the Union is not asking for any new monetary benefits. But finding that County has no ability to grant new monetary benefits cannot

⁷ The Agreement contains automatic step increases, longevity, and an automatic pay raise when the PERS costs go up. In July 2011 the County's contribution for retirement will rise from 37% to 39.75% of pensionable payroll. (Tr. 625:17-19) The increase is split between employers and employees. Appendix B Section 7 gives firefighters an automatic pay increase equal to their half of any increase in pension cost. They will automatically get a 1.375% pay increase. The impact on the County is a 2.75% increase in payroll costs, or an ongoing annual cost of \$3.025 million. (See, Tr. 292:3-6) The full effect of this increase on firefighter retirement is described more fully below. Also noted below is the parties' agreement to freeze step increases for 12 months after an Agreement is signed.

⁸ The testimony of County Executive Valentine (Tr. 426-442), the binder titled "Cost Containment," and the document titled "Cost Containment Timeline" set forth the County's efforts.

prevent the arbitrator from considering the “normal criteria for interest disputes,” when the dispute is over a reduction in monetary benefits. It does, however, put the burden of proof on the County. Where the County seeks to change a “longstanding contractual practice,” it must prove the change is warranted.⁹ The statute also requires the arbitrator to estimate the total cost of the award. NRS 288.15.11(b) There is no distinction in the statute between positive and negative costs (i.e. savings). Thus, the statute requires estimating the total savings to the County of the award.¹⁰

Final Offers

During the course of the hearing the parties reached a number of agreements and withdrew various Articles. At the end of the hearing only Articles 16, 20, 30, 31, and Appendix B were at issue. By agreement, each party submitted its “single written statement containing its final offer for each of the unresolved issues” with its closing brief. The County’s final offer on each of the unresolved issues is attached as Addendum A and the Union’s final offer on each of the unresolved issues is attached as Addendum B.¹¹ Each of the unresolved issues is

⁹ The Union quotes a 1992 arbitral decision for the proposition that the County must also prove “there has been a *quid pro quo* offered of sufficient value to buy out the change.” That proposition assumes that collective bargaining is a one way street: the County can only give new benefits, never get anything back. That is not the case.

¹⁰ The parties disagree about whether the Union’s concessions during bargaining are counted toward the total savings of the Award. Benefits granted during negotiations are normally considered part of the total cost of an Award. Logically, savings achieved through negotiations should be treated the same way. Changes the County made in areas that are outside the scope of bargaining are not part of the process that culminates in an Award under NRS 288.215. Consequently, they cannot be counted as part of the estimated total savings of the Award.

¹¹ The County’s final offer did not include Article 20.

discussed below, along with an estimate of the cost savings associated with that article.

Article 16

Current Language

5. a. Certificate of Illness: Evidence in a form of physician's certificate, or certificate of illness shall be furnished as proof of adequacy of the reason of the employee's absence during the time which sick leave was requested. Certificates of illness may be requested by the Fire Chief or his/her designee when there is one (1) absence in excess of three (3) days or more and whenever there is reason to believe that sick leave privileges are being abused.

County Final Offer

a. Certificate of Illness: Evidence in a form of physician's certificate, or certificate of illness shall be furnished as proof of adequacy of the reason of the employee's absence during the time which sick leave was requested. *Certificates of illness may be requested by the Fire Chief or his/her designee after there are five (5) unexcused shifts of sick leave in a calendar year and whenever there is reason to believe that sick leave privileges are being abused. "Unexcused" shall be defined as those shifts when an employee does not provide a voluntary certificate of illness. If an employee is unable to provide a valid certificate of illness when required, the missed shift shall be considered an unexcused absence. If an employee has more than five (5) unexcused absences in a calendar year the employee shall be subject to the procedure described in Article 16 Section 5(b). Authorized leave used in accordance with Article 38 Miscellaneous Leaves, Article 21 Service Connected Disability and Rule and Regulation 2.21 (FMLA) shall not be subject to this provision. The certificate of illness shall be submitted to the Fire Chief or his/her designee.*

Union Final Offer

a. Certificate of Illness: Evidence in a form of physician's certificate, or certificate of illness shall be furnished as proof of adequacy of the reason of the employee's absence during the time which sick leave was requested. *Certificates of illness may be requested by the Fire Chief or his/her designee when there are in excess of five (5) unexcused shifts of sick leave in a calendar year and whenever there is reason to believe that sick leave privileges are being abused.* [Remainder identical to County final offer.]

The Union final offer is similar to the County's final offer, except for a language difference which creates uncertainty as to when the Chief can ask for a certificate of illness. In its Brief, the Union clarifies the language by noting that it has a 6th day trigger rather than the County's 5th day trigger.¹² Since there is only one day difference in the proposals, it can be assumed the Union agrees there is a need to change the current article. One must understand the firefighters' work schedule, and a bit of the evidence presented by the County, to see the importance of a single day's difference.

Firefighters who work in suppression (the majority of the unit) work 24 hour shifts. They have repeating 15 day work periods, in which they are scheduled to work a total of five days, for a total of 121.3 work days a year.¹³ For the first nine days of each work period, they work a day on and a day off. They then have six days off in a row before beginning a new 15 day period. Firefighters are entitled to twelve days (24-hour shifts) of sick leave each year (288 hours), which they can use in 4 hour increments. Sick leave can only be used for a bona fide illness of the employee or a member of his immediate family. (Article 16.1, 4)

¹² The Union makes the difference clear when it estimates its change will save \$1.5 million compared to the \$1.75 million the County estimates it will save with a 5th day trigger. (Union Brief, 50:19-26)

¹³ Exclusive of vacation, which ranges from an initial 8 shifts (20 days in a row on the fifteen day repeating cycle) for the first five years to 15 shifts (45 days in a row) after 15 years.

Currently, the Chief cannot ask for a certificate of illness until a firefighter has 4 consecutive shifts unexcused absences. This number of unexcused absences can amount to twelve days off work in a row, in a 15 day work period.

There is currently a “bonus” program to encourage firefighters to avoid unnecessary sick leave. If a firefighter uses only one shift of sick leave (24-hours) in a year, he receives 4 additional shifts (96 hours) of vacation that he can take or sell back to the County. If a firefighter uses 5 shifts of sick leave in a year, he receives 3 additional shifts. Firefighters can also accumulate up to 96 days of their sick leave, and be paid for them (based on a formula) when they retire. In their tenth year firefighters elect to receive payment for any accumulated shifts beyond 96, or to have those shifts go into a separate account. If they choose the separate account, they use days in that account for sick leave before using any of the 96 shifts previously accumulated. (Article 16.6)

Sick calls created over \$7,000,000 in overtime costs in 2009. (Tr. 90:20-24)¹⁴ The County presented data indicative of sick leave abuse. The data show three problems. First, some employees use sick leave as vacation, scheduling themselves to be “sick” months in advance. This improper use of sick leave is evident from emails the Department recovered.¹⁵ Second, it appears some firefighters may deliberately call in late to turn the overtime opportunity into a callback/overtime opportunity.¹⁶ A Battalion Chief complains about this in one of

¹⁴ The Department is required to have 4 firefighters on each engine and truck at all times. (Tr. 757:18-22) If someone calls in sick, another firefighter must be called in on overtime. Firefighters sign up to work overtime and callback. Ninety-eight percent (98%) of all overtime/callback worked is voluntary. (County Ex. 16G)

¹⁵ Battalion Chiefs, who come out of the bargaining unit and are represented by the same local, are responsible for scheduling. The emails (County Ex. 16z) demonstrate some of them have condoned improper use of sick leave.

¹⁶ Firefighters are paid time and one half for all overtime shifts. Ordinary overtime is not counted towards pension. If a firefighter works a “callback” overtime shift he is compensated at time and one half and the callback/overtime pay counts toward calculating his pension.

the emails. (County Ex. 16z) Third, some firefighters use sick leave, in combination with overtime/callback, to significantly increase their pay, and potentially their pensions.¹⁷

Firefighters' overall sick leave use (7.8% of their annual work year) is almost double the sick leave use in the SEIU unit (4%).¹⁸ (County Ex. 16A). The average is misleading for two reasons. First, the County data cannot discriminate between proper and improper sick leave use. Firefighting can be dangerous physical work. While the sick leave data exclude time off for work injuries (worker's compensation leaves) the general physical rigors may require greater sick leave use for firefighters as a group, especially as they age. Second, the data are skewed by a subset of employees who use significantly more sick leave than their co-workers.¹⁹ It is the latter group for whom the change is critical. The County must be able to require them to provide a certificate of illness at the earliest possible moment. The County presented records for what appears to be the chief abuser. In 2009, he took 48 days of paid sick leave, without ever taking 4 days in a row, so the Chief could require a certificate of illness. He worked 63 of his 121 scheduled shifts, took 11 days of vacation, and worked 92 shifts of overtime/callback. (County Ex. 16Y) He earned \$232,187 for the year. (County Ex. AC) The second worst offender in 2009 worked at the same station, and in the same classification.²⁰ He used sick leave and overtime to earn \$233,586. The County provided many other examples of firefighters who used multiple years'

¹⁷ The highest average sick leave use is among firefighters with 25-30 years of service. They average over 19 days (463-471 hours) of sick leave per year. (County Ex. 16D) The same group also works the most overtime/callback, approximately 38-45 days per year. (County Ex. 16F)

¹⁸ Battalion Chiefs use sick leave amounting to 5.6% of their annual work year.

¹⁹ Five employees used over 40 shifts of sick leave in 2009, 7 used 30-40 shifts, 41 used 20-30 shifts and 178 used 10-20 shifts.

²⁰ At a "closed" station, where both worked, one firefighter's sick leave requires another firefighter from the closed station, usually in the same classification, to work the overtime/callback.

accumulation of sick leave in 2009, worked hundreds or over a thousand hours of overtime/callback, without ever having 4 sick leave days in a row. (County Ex. 16AC) The County proved it needs the ability to stop sick leave abuse at the earliest moment possible. By requiring a certificate of illness after 5 unexcused absences it can move towards that goal. The County's urgent need for the change it proposes in Article 16 argues strongly for accepting its "single written statement containing its final offer for each of the unresolved issues."

The County estimates it can save \$1,745,520 a year by eliminating sick leave abuse.²¹

Article 30 – Reductions in Force

Current Language:

1. Reductions in force from the department, when and if required, shall be accomplished on the basis of reverse order of seniority within the department.

County Final Offer

1. 1. Reductions in force from the department, when and if required, shall be accomplished on the basis of reverse order of in-grade seniority within the department. For the purposes of this Article, in-grade seniority shall be determined as defined in Article 10 Paragraph 3 (Seniority) of this Agreement.

[Minor changes consistent with in grade seniority.]

²¹ The actual saving for FY2011 is estimated by the County at half that amount.

Union Final Offer

1. For those employees hired prior to the signing of this agreement (insert date). Reductions in force from the department, when and if required, shall be accomplished on the basis of reverse order of seniority within the department.
2. For those employees hired after the signing of this agreement (insert date) reductions in force from the department, when and if required, shall be accomplished in the following order, a) probationary employees shall be laid off first, and if further layoffs are required b) permanent employees shall be laid off on the basis of reverse order of in-grade, or in-classification seniority within the department. Permanent employees who are to be laid off shall have the right to bump into a previously held rank or classification, provided that the bumping employee has more seniority than the employee they are bumping.

The County's proposal to change the current language originates in the same economic circumstances that affected its tax base. During the economic boom the County hired new fire inspectors to meet the needs of a huge construction boom, including the world's largest construction project: CityCenter. (Tr. 706:18-22) Around the time CityCenter was being completed, those fire inspectors were reaching the end of their probationary year. (Tr. 706:13-17) The County apparently realized it might soon have more fire inspectors than it needed. It also had a firefighter recruit class that had been hired after the Inspectors. It attempted to negotiate an arrangement with the Union that would allow the Inspectors to pass off probation and the County to release them before the recruits, if necessary. (Tr. 423:-424:1) The Union did not agree.

In those negotiations, and in this arbitration, the County has consistently asserted the change in the current language is a “clarification.” It claims to already have the ability to lay off employees by in-grade, as opposed to Departmental seniority. The argument is supported by neither the contract language, nor the contract’s history, nor the County’s recent actions. The current agreement explicitly requires the County to lay off in reverse order of seniority within the department, not the classification. That requirement creates a dilemma for the County. If it finds it does not need all of its Inspectors, the Agreement requires it to lay off 40 firefighters and a fire department training instructor before it can lay off the first Inspector.²²

The County argues the proposal is reasonable because it allows the County to conduct layoffs that affect the smallest number of employees. It is also consistent with the practice in comparable jurisdictions. The current City of Las Vegas and City of North Las Vegas collective bargaining agreements provide for layoffs by reverse seniority in classification. (County Ex. 30K)

The Union argues that the County is simply asking the arbitrator to rescue it from the bad decision it made when it failed to release any Inspectors on probation. It cites no agreements that require layoffs by departmental seniority. Its final offer is to maintain the status quo for all employees who were hired before the date on which this new contract is signed. It argues that this is similar to what the parties have done with longevity pay, making the changes effective only for new employees.

²² While the Union presented arguments at the hearing that all the Fire Inspectors are actually needed, NRS 288.150(3) reserves to the County the right to determine staffing levels. It is not a subject of this arbitration, and the Union arguments on the need for the current number of Inspectors cannot be considered.

The Union is correct in asserting the County is asking to be rescued by new contract language. The alternative, however, potentially punishes taxpayers for the next 25 years by requiring the County to keep all of its current Inspectors, whether it needs them or not. That does not promote the interest and welfare of the public. While it may be true the County is trying to get out of a bad decision by negotiating new language, that is precisely what collective bargaining allows. Comparable Southern Nevada firefighters have layoffs by in-grade seniority. (County Ex. 30K) The Union final offer maintains a long term barrier to creating the most efficient mix of skills in the Department. It argues strongly against accepting the Union's "single written statement containing its final offer for each of the unresolved issues."

The County's proposal creates no savings during the term of the Agreement.

Article 31: Long Term Disability

Current Language

1. The County shall, by insurance or otherwise, provide protection against the hazards of death or permanent disability suffered in the line of duty during work hours in an amount equal to two (2) year's salary. The payment shall include the annual base salary or compensation rates as provided in Appendix B of the Agreement, longevity, premium pay, holiday pay, insurance and retirement contributions. This amount shall be paid in a lump sum payment to the employee, or on a bi-weekly basis on regular County paydays for the two (2) year period as though the affected employee were in active duty status with the County Fire Department. The method of payment shall be at the employee's or his/her beneficiary/estate's option.

County Final Offer

1.a. [Leaves death benefit unchanged from current.]

1.b. The disability benefit shall be sixty percent (60%) of the employee's annual salary (base pay, longevity, premium pay and holiday pay) reduced by income received by the employee from regular or disability pension benefits and workers' compensation disability benefits. This disability benefit shall begin the day following an elimination period equivalent to the number of sick leave shifts the employee is compensated for upon separation. The employee shall receive this disability benefit in monthly installments until the age of sixty-five (unless) the employee is subsequently employed in the same occupation held at the time of the application for benefits under this Article.

[The rest of the final offer provides that employees who applied for the disability benefit before the agreement is signed and are subsequently awarded the benefit can choose between the old and new benefit, and that any applicant after the date of the agreement will only be entitled to the new benefit. There are further minor language changes.]

Union Final Offer

Section A of this article shall apply to those employees hired prior to the signing of this agreement.

[Section A is identical to the current Article 31 1-4]

Section B of this article shall apply to those employees hired after the signing of this agreement.

[Death benefit remains the same as current Article 31]

b. The disability benefit shall be sixty percent (60%) of the employee's annual income (base pay, longevity, premium pay) reduced by income received by the employee, including regular or disability pension benefits and worker's compensation disability benefits. This disability benefit shall begin the day following an elimination period equivalent to the number of sick leave shifts the employee is compensated for upon separation. The employee shall receive this disability benefit in monthly installments until the earlier of: the age of sixty-five (65), the employee's return to the same occupation, or death.

[Further small changes identical to the County changes.]

The Article 31 disability benefit is uncoordinated with worker's compensation or PERS disability retirement benefits.²³ It is added on top of those benefits. It is in addition to Article 21 benefits, which provide full salary continuation for six months, without any charge to sick leave, when a firefighter has a worker's compensation covered injury.²⁴ Article 31 does not require the disability to be covered by worker's compensation. (Tr. 736:12-16)

²³ The last 10 Article 31 recipients retired with an average of 25.91 years of service and received an average of \$97,705 in PERS and worker's compensation benefits. Their Article 31 payments ranged from \$267,123 to \$366,944, averaging \$319,295. (County Ex. 31E) The word "salary" is defined in an unusual way in Article 31. It includes amounts the employee never received because the County paid them as contributions for insurance and retirement on behalf of the employee. For a 25 year Captain the unusual definition of "salary" adds about \$117,000 to his disability payment. (County Ex. 31-D-1)

²⁴ The injured firefighter gets the difference between worker's compensation and his full salary. The City of Las Vegas has a similar benefit, for two months. Thereafter, the City has the discretion to continue the benefit for thirty days at a time, up to 60 months.

The County proposes changing Article 31 to coordinate with worker's compensation and PERS disability retirement and to eliminate the lump sum payment. It makes five arguments to support the changes. First, it asserts the current benefit is not useful to employees with few years of service because it provides too small a salary continuation benefit. It is not until between the 15th and 19th years of service that the current benefit exceeds what the County proposes. (Tr. 250:20-24) Before that, the disabled employee currently gets less than what the County proposes in its final offer. Second, it argues that for those covered by PERS the County pays 43% of salary for a combination of worker's compensation and disability retirement benefits. (Tr. 199:19-20)²⁵ Third, it argues few Article 31 benefits currently go to firefighters during their active years. Instead, over the past 15 years two-thirds of the recipients of Article 31 benefits retired with 25 years of service. (County Ex. 31A) Fourth, the County argues the benefit is unique among Southern Nevada jurisdictions. Only Henderson provides an additional disability benefit, but that is limited to 60% of base pay and offset by PERS benefits.²⁶ (Tr. 234:11-16) Finally, it argues the legislative intent behind NRS 245.211, which passed in 1975 and authorized bargaining Article 31, was to supplement workers compensation benefits. It notes that at that time employees did not vest in PERS until after 10 years service and were not necessarily eligible for social security disability benefits. (Tr. 232:14-233:25)²⁷ Thus, in the County's

²⁵ The current PERS benefit costs 37% of salary (rising to 39.75% in June) and the worker's compensation portion is 6%. Since the County is self-insured for worker's compensation, presumably that is the actuarially determined amount required to fund the benefit. These amounts are held in a reserve fund. As the Union notes it is adequate to meet expected demands.

²⁶ The County proposal provides 60% of base pay, plus longevity, premium, and holiday pay. For a 25 year Captain, adding those three items of pay raises base salary (\$96,708) by \$36,797. A 60% disability award that includes these items is \$80,000 or 83% of base pay. For a 10 year Fire Fighter adding these items to "salary" raises the disability award from \$45,829 to \$55,900, or about 73% of base pay.

²⁷ The 1975 contract provides only for salary continuation and no lump sum payment.

view the original intent of Article 31 was to provide a supplement to worker's compensation disability before an employee vested in PERS.

The Union argues the Article 31 benefit was always intended to be "in addition to" the other available benefits in the contract. It makes four more arguments for its continuation. First, Article 31 benefits are paid from a separate \$80 million fund, which the County does not allege is low or inadequate. Second, the County's proposed benefit provides only an arguable benefit for younger employees, while providing "virtually no long-term disability benefits" for the last ten recipients, who had 24-30 years of service. Third, other Southern Nevada jurisdictions have this benefit. The City of Las Vegas Firefighters "are protected against a service incurred accident or illness for up to 60 months." (Union Brief, 40:10-11) Fourth, the employees who are most likely to need the benefit, those with 24-30 years of service have worked the longest with Article 31 in place. It is neither fair, nor reasonable, to change the benefit at the end of their careers.

Article 31 provides a benefit that is unique among Southern Nevada firefighter contracts. The City of Las Vegas benefit is comparable to Article 21 benefits, which remain unchanged. The Henderson benefit is both less generous (60% of base only) and coordinated with PERS. (Tr. 234:10-17)²⁸ The evidence shows Article 31 disproportionately benefits employees at the end of their careers, without necessarily providing adequate disability benefits to employees in the first half of their career. Thus, the benefit is unique to County firefighters and advantages those least in need of disability benefits to replace salary: retirees. Nonetheless, there is merit to the Union's position this change ignores the

²⁸ An Article 31 recipient can take a regular PERS retirement, which would result in no coordination. If the Article 31 recipient takes a PERS disability retirement, his first two years are offset by the Article 31 benefit. (Tr. 214:7-22)

reasonable expectations of long term employees. Neither the County's final offer, nor the Union's final offer, strongly supports adopting either party's single written statement containing its final offer.

The County estimates this change will save it \$500,000.

Appendix B.

Two aspects of Appendix B are at issue, wages and Paragraph 7, which reads:

In addition, during the term of this Agreement, if there is an increase in the rate of the retirement contribution for either the regular or early retirement program, the County shall fund the employees' portion of the retirement contribution under the Employer-Pay Contribution Plan in the manner provided for in NRS 286.421. This increase, if any, is in lieu of an additional salary increase.

In their final offers the parties agree on a 2% decrease in salary on the date of the new agreement. They differ over continuing Paragraph 7, the automatic County pickup of the employee's share of increased pension contributions "in lieu of an additional salary increase." The Union's final offer continues the automatic pay increase; the County final offer eliminates it.

The Union quotes Arbitrator Collins for the proposition: "absent other compelling reasons, the appropriate increase in salaries and benefits is that which maintains the relative position of the employees in question with the comparison group." (Union Brief, 20:28-21:2) The principal may be equally applicable when

there are requests for decreases in salaries and benefits. The 2% decrease in both final proposals leaves average annual compensation for County firefighters of all ranks significantly above their peers in Southern Nevada (City of Las Vegas, North Las Vegas and Henderson). They earn 118% of the annual average compensation earned by their peers. (County Ex. B-1) The Union argues this is attributable to low staffing and significant overtime. The data, however, show comparable overtime pay in other jurisdictions, with the exception of Henderson. Even without overtime, only Fire Inspectors earn less than the average annual compensation of the comparable jurisdictions. The rest earn significantly more. Captains earn 113% of average annual compensation, Fire Engineers 113%, Fire Fighters and Paramedics 115%. (County Ex. B-1)²⁹ All of the comparable jurisdictions have given up previously negotiated COLA increases. County firefighters have not.³⁰

None of the comparable jurisdictions has the same the automatic pay increase “in lieu of an additional salary increase” language that is in Paragraph 7. It is not a benefit generally enjoyed among firefighters in Southern Nevada. The City of Las Vegas contract (Article 17 – Wages) reflects a history of negotiation over the employee share of pension increases. The parties agreed the City would pay the employees’ share of the July 2009 increase in lieu of a pay raise and that the City would not pay the employees’ half of the July 2011 PERS increase from 37-39.75%. (County Ex. B-8) The City of North Las Vegas has a re-opener if there are pension increases. (County Ex. B-10) Henderson’s Article 14 requires the City to pay 100% of the PERS contribution but any increase in contributions is

²⁹ The average annual compensation for County firefighters is: Captain \$165,222; Fire Engineer \$140,622, Fire Fighter and FF/PP Paramedic \$108,027; Fire Inspector \$87,281.

³⁰ Their pay increases from 2001-2010 exceeded the actual increase in cost of living by 8.93%. (County Ex. B-2)

“in lieu of equivalent salary increases that may have been negotiated.” Thus, the City gets to reduce negotiated increases by any increase in pension contributions. (County Ex. B-10) Paragraph 7 requires the County automatically to give firefighters a pay increase that is in addition to any previously negotiated pay increases. It does not permit bargaining, or offsetting the increase against any previously negotiated pay increases. No other Southern Nevada firefighters have complete protection against ever paying anything toward the increased costs of their own pensions.³¹

Without a change in the Agreement before July 2011, the firefighters will automatically get a 1.375% increase in base wages. Assuming both parties negotiate in good faith, it is not in the best financial interest of its members for the Union to conclude an agreement before Paragraph 7 creates an automatic raise. In FY2008 and FY2009 firefighters enjoyed a total pay increase (COLA and PERS) of 7.75%. No comparable group gained as much. All have given up scheduled pay increases.³² The current language will inevitably produce a 1.375% increase in wages before the next Agreement can be negotiated. Without that automatic increase, County firefighters will continue to receive annual compensation that is 10% higher than comparable jurisdictions. With it they will move farther ahead of Southern Nevada firefighters.

³¹ As previously noted, while County firefighters are protected against paying their half of any increase in pension costs, they receive an increase in their pension benefits, based on the legal fiction that they contributed half the increased cost.

³² It is unclear whether Henderson firefighters actually paid for the City's increased contribution out of a previously negotiated wage increase. In a contract extension they gave up 1.25% of a raise due July 1, 2011, but it is not clear whether that is the entire previously negotiated amount, or there was something left to reimburse the City for the PERS increase it will pay. (County Ex. B-10) Insofar as this change might affect overall compensation, without overtime County firefighters at every rank receive annual compensation that is at least 110% of Henderson firefighters, with the exception of fire Inspectors who receive 105%.

The data support the County's argument on Paragraph 7. No other jurisdiction has a permanent automatic pay increase that cannot be bargained or offset by previously negotiated increases. It does not forward the interest and welfare of the public to require the County to automatically increase pay to cover the employee's share of pension cost increases. It is not unfair to employees to require them to pay their share of pension increases. Their pensions will be increased based on that payment. Overall, the County's final offer on Appendix B supports selecting the County's single written statement containing its final offer.

The County will have a cost saving of \$1,274,481 from the 2% wage reduction in FY2011. The full year saving is \$2,550,963 for FY2012.

In addition, during FY2012 the County will realize a cost saving of 1.375% or approximately \$1,753,787, from the elimination of Paragraph 7. The Union must be credited with this cost saving for future years.

AWARD

Choice of Written Statement of Final Offer (NRS 288.15.10)

I choose the County's single written statement containing its final offer for each of the unresolved issues.

In accordance with NRS 288.15.11(a), I have based my decision on considerations of ability to pay, comparability, and the interest and welfare of the public, as discussed above, for each of the issues in dispute.

Savings Attributable to the Award

In accordance with NRS 288.15.11(b), I find the following cost savings attributable to this Award.

Pre-Award Savings:

Article 29. The Union agreed to speed up bidding for airport vacancies. The Union calculated the savings for this agreement by taking a month when there were many vacancies at the airport due, to retirements, and calculating how much overtime cost that month. It multiplied that number by 12 and called that the savings. (Tr. 791:16-792:7, Union Ex. 19) This methodology extrapolates an unusual month into a year of savings. It has no logical justification. The Union has failed to demonstrate a specific saving for this change.

Elimination of Public Information Officer. The parties agreed to make the PIO an Engineer position when the incumbent moved back to being an Engineer. He subsequently retired. The County valued this at the difference between the PIO and Engineer position pay, or \$97,621 per year. The Union valued the change at \$180,892, the full PIO pay, because he retired. No Union agreement was required for him to retire. The County valuation is correct.

Step Freeze. The Union agreed to freeze step increases for one year from the time the contract is signed. The parties agree that has a value of \$1,653,053 in its first full year, after which the freeze ends. (Union Ex. 21) Only half of the savings are attributable to the FY2011 contract. The freeze has an ongoing delay value, in that employee's progressing through the salary schedule get each raise a year later. The County saves that amount. Over seven fiscal years the freeze saves \$4,978,590 (Union Ex. 21)

Article 12. The agreed equipment change saves \$10,000.

Article 22. The agreement freezes tuition reimbursement for FY2011. The saving is \$92,500.

Savings Attributable to Award

Article 16: \$1,745,520

Article 30: \$0

Article 31: \$500,000

Appendix B:

2% wage reduction: FY2011 \$1,275,481

Full Year: \$2,550,963

Paragraph 7: FY2011 \$0

FY2012 \$1,753,787

San Francisco, CA

January 19, 2011

Norman Brand