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MEMORANDUM

TO: Steve Sisolak, Chairman, Clark County Commission

FROM: Mary-Anne Miller, County Counsel, Civil Division

DATE: October 15, 2013

SUBJECT: Arbitration Award

You have asked me to review the award of Arbitrator Robert Perkovich in the matter of the September, 2013 collective bargaining agreement arbitration between the Las Vegas Metropolitan Police Department and the Las Vegas Police Protective Association. In this review, I have noted several deviations from Nevada law.

Labor arbitrations of this nature are governed by NRS Chapter 288, and police arbitrations by NRS 288.215, specifically. There are certain requirements built into this chapter with the obvious intent to provide transparency to the public. With certain amendments adopted in 2009, there are two ways to resolve a pending collective bargaining agreement: by arbitration or by negotiation of the parties. If the latter process is successful, the governing body of a public entity subject to NRS 288 may only approve such an agreement after a public hearing at which the chief executive officer of the local government reports to the local government the fiscal impact of the agreement. NRS 288.153. The terms of the collective bargaining agreement are public record.

If negotiations are not fruitful, the dispute is submitted to an arbitrator. NRS 288.214(4). The arbitrator "must" (NRS 288.215(3)) be selected by striking names from panels submitted by either the AAA or the FCMS. NRS 288.200. You have been informed, however, that this process was not followed. The mandatory statutory procedure for striking names submitted by the federal services was abandoned.

The next glaring deficiency associated with this award is the lack of the statutorily required paper trail. The arbitrator is charged with the duty to ensure that "a full and complete record of the hearings" is kept. NRS 288.215(4). The expense of a certified court reporter was engaged for the three-day hearing but you were informed that the parties, in violation of this statute, waived the reporting of the final arguments in support of their last best offers. As a result, there is no record of this important phase, upon which, presumably, the arbitrator based his decision.

More surprisingly, there is no written record of the final offers of each party. After you repeatedly asked for copies of the record, including the written final offers, it was determined that, though a certified court reporter was present, there is no record (not written, not recorded, and not reported) of the last best offers submitted by the parties. This violates the express statutory requirement of written final offers. NRS 288.215(9) requires that "each of the parties shall submit a single written statement containing its final offer for each of the unresolved issues." Finally, at the conclusion of the hearing, someone made the determination that the hearing would not be transcribed, and, even though you have requested an expedited transcript for review, we are informed that this service is not available in this instance. Therefore, your review of the record of this arbitration will not be able to be completed before it appears on a Fiscal AffairsCommittee meeting pursuant to NRS 288.215(12). That meeting must include a discussion of: (a) the issues submitted; (b) the statement of the arbitrator justifying his decision; and (c) the overall fiscal impact of the decision.

Although the bases for his decision must be discussed, the arbitrator appears to be in violation of NRS Chapter 288 in the preparation of his order and by his failure to adhere to statutory criteria upon which that order is based. In his initial order, the arbitrator provided no basis for his decision, did not identify the final positions of the party, and did not even indicate, as required by law, which party's proposal he was selecting. *See* NRS 288.215(10). He merely indicated that the contract shall be revised to reflect the additional wage increase and health benefits. He also failed to specify the financial cost of his award, as required.

You inquired of Metro staff about these deficiencies and were advised, reportedly, that the arbitrator was "not familiar with Nevada law." After your inquiry, the arbitrator was requested to revise his award in conformance with Chapter 288. Although he provided a "Supplemental Opinion and Award" dated October 9, 2013, it does not appear that he took this opportunity to update himself on Nevada law, as that supplement also fails to meet the requirements of NRS Chapter 288.

By law, an arbitrator in these types of disputes must first make a preliminary determination as to the financial ability of the local employer to pay the claim of the employee group. He shall consider "[a]ll 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," as well as funding for the current year being negotiated. NRS 288.215(10); 288.215(7). No such preliminary finding was made by the arbitrator.

Once a finding is made that the employer is financially able to grant monetary demands, the arbitrator then shall consider the compensation paid to other government employees, both in and out the state. NRS 288.215(7). There are no statutory criteria other than these upon which an

arbitrator may make an award. Yet, in his supplemental order, the arbitrator identifies that he is choosing the "Association's modified final offer"[1] because "it is more closely aligned with the change in the cost of living, in the interest and welfare of the public to do so, and with the financial ability of the Department" to meet the costs of the final offer. The first two grounds are not statutorily recognized, and one must infer from the last ground cited that the arbitrator made a determination of Metro's financial ability to pay. However, the basis of that determination was not provided as required by NRS 288.200(7), adopted for police arbitrations by NRS 288.215(10): "The fact finder's report ***must contain the facts upon*** which the fact finder based the fact finder's determination of financial ability to grant monetary benefits ...." (emphasis added). In addition, the award must specify "the arbitrator's estimate of the ***total*** cost of the award." NRS 288.215(11)(b)(emphasis added). In his original opinion, the arbitrator incorporated into his award tentative agreements on merit and longevity. He failed to specify the significant costs of that part of his award in either his original or supplemental order.

In conclusion, it is clear that the arbitrator's conduct of this arbitration was not in compliance with Nevada law. I cannot determine from the information available to me at this time whether that was the sole responsibility of the arbitrator or whether statutory requirements were improperly waived by the participating parties.

MAM:ab

cc: Clark County Commissioners
Donald G. Burnette, County Manager

[1] No final written offer of the parties, modified, or otherwise, is part of the record at this point. There is also no provision in Chapter 288 to modify what is commonly referred to as a "last, best offer;" in fact, modification indicates that the last best offer was, in fact, ***not*** the final offer.