

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
4

5 RICARDO BONVICIN,

6 Complainant,

7 vs.

8 NORTH LAS VEGAS POLICE OFFICERS
9 ASSOCIATION, LOCAL 41,
I.U.P.A.A.F.L.C.I.O.,

10 Respondent.

ITEM NO. 653A

CASE NO. A1-045893

ORDER

11 For Complainant: Daniel Marks, Esq.
12 Adam Levine, Esq.
13 Law Offices of Daniel Marks

14 For Respondent: Walter R. Cannon, Esq.
15 Peter Angulo, Esq.
16 Christopher M. Cannon, Esq.
Olson, Cannon, Gormley & Desruisseaux

17 **FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER**

18 On October 26, 2006, Ricardo Bonvicin ("Bonvicin") filed a complaint with the Local
19 Government Employee-Management Relations Board ("Board") against the North Las Vegas
20 Police Officers Association ("Association"). Bonvicin's allegations against the Association were
21 that it breached its duty of fair representation to him and as a result, Bonvicin has lost certain
22 rights guaranteed to him under the parties' collective bargaining agreement ("CBA"), i.e., the
23 right to an appeal of any arbitration decision rendered in the matter between Bonvicin and the
City of North Las Vegas ("City").

24 An answer was filed by the Association as well as a motion to dismiss. The motion was
25 denied, and the parties filed their respective prehearing statements. Thereafter, the matter was
26 scheduled for hearing on November 2, 2007, and concluded on December 19, 2007.

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1 When questioned if others in appointed positions were allowed to return to classified
2 positions, he stated there were others but could not recall their names. Tr. p. 51.

3 Upon cross-examination, Tarwater agreed that if an individual in an appointed position
4 was "terminated for cause," (CBA, p. 23, Art. 17, 4.6.1) he could not invoke the Ed Brown
5 clause. Tarwater stated that prior to utilizing the Ed Brown clause, "[t]here would have to be a
6 determination" that the termination was for cause or without cause. Tr. p. 58-9. If the
7 termination was for cause, you could not utilize the Ed Brown clause. Upon redirect, however,
8 Tarwater stated that the Association would have to proceed with the grievance process through
9 arbitration to determine if there was or was not cause for termination.

10 The next witness was Raymond Czak, currently a Detention Lieutenant with North Las
11 Vegas. Tr. p. 69. Concerning hearing Exhibit ("Ex.") 10 (email dated May 30, 2006 concerning
12 grievance #1), Czak testified that the Association's board of directors decided to represent
13 Bonvicin. Tr. p. 71. The incident leading to grievance #1 concerned a smoke grenade taken by
14 Bonvicin while he was a lieutenant with Detention, thus covered by the CBA.

15 Concerning Ex. 12, Czak agreed that this was Bonvicin's second grievance dated June 14,
16 2006, concerning Chief Paresi's refusal to return Bonvicin to the police force.¹ This request for
17 Association assistance through the grievance process was denied by Czak and the Association's
18 board of directors (Ex. 13). Czak claims the assistance denial was based on Bonvicin allegedly
19 voluntarily resigning from his position as a detention lieutenant to take the chief marshal
20 position. Tr. p. 81. He also clarified that it was the City's position that since the Chief Marshal
21 position is an appointed, unclassified position, the CBA would be inapplicable to Bonvicin.
22 During the time between the two requests for assistance, the Association's presidency changed
23 from Dave Smith to Terrence McAllister of the Internal Affairs Division.

24 This second grievance was not presented to the City by the Association. Tr. p. 84.
25 Admittedly, counsel for Bonvicin notified the Association to take whatever steps necessary to
26 preserve Bonvicin's right to the grievance process. Tr. p. 85. Czak further offered that there was

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¹ Bonvicin was eventually terminated on August 3, 2006. Tr. p. 80, 85.

1 no break in service by Bonvicin between the time he was a Lieutenant and the time he assumed
2 the Chief Marshal position. Tr. p. 83.

3 Bonvicin filed a third grievance (Ex. 18) after his termination, claiming the termination
4 was without cause. Czak stated the grievance was timely, but the Association did not present it
5 to the City. Although the request for grievance assistance was denied, Czak admitted that the
6 Association did not inform Bonvicin that it would not forward the grievance to the City for
7 processing, nor did the Association advise Bonvicin of the limited timeframe in which he himself
8 could present the grievance to the City. Tr. p. 89, 91.

9 The CBA requires the Association to present the grievance to the department chief. Tr. p.
10 90. A discussion ensued concerning Bonvicin's request to return to his former position on May
11 15, 2006, and the Chief's denial on May 23, 2006 (grievance #2). The Chief's refusal to return
12 Bonvicin to his former position was based upon his recollection that he "would allow [Bonvicin]
13 to return to [his] former position if the chief marshal position was eliminated. The chief marshal
14 position [had] not been eliminated." Tr. p. 97, 132. Bonvicin was placed on administrative leave
15 pending investigation of the smoke grenade incident (i.e., grievance #1, while Bonvicin was a
16 Lieutenant and definitely covered by the parties' CBA). Tr. p. 133.

17 The Association claims this grievance was untimely inasmuch as it was not filed until
18 June 14, 2006. Concerning that issue, Czak admitted that he had not checked the timeliness
19 issue; that the timeframe is not business days, but work days; and in this case, the work days
20 were Tuesday through Friday. Tr. p. 107. He later stated, without looking at a calendar, that the
21 grievance may be timely filed. Tr. p. 127. Czak further stated that the department chief has the
22 discretion to deny any transfer to a former position; and based upon Chief Paresi's denial, such
23 would be another reason for the Association not pursuing the grievance. Czak admitted, after
24 reviewing the CBA, that it does not require a position to be "eliminated" for a transfer to a
25 former position to occur. Tr. p. 132. He also stated he believed Bonvicin's former position had
26 not yet been filled. Tr. p. 133.

27 In response to the Board's questioning, Czak stated that Bonvicin was an "associate
28 member" of the Association at the time of his first grievance; and as an associate member,

1 Bonvicin could not vote, could not hold elective office in the Association, and was not entitled to
2 representation. Tr. p. 109. Representation was appropriate because the incident (smoke
3 grenade) occurred when Bonvicin was a lieutenant covered by the CBA. Tr. p. 110. Czak stated
4 the grievance concerning the transfer to the former position occurred while he was an appointed,
5 unclassified Chief Marshal, and lastly because the Chief had already determined the issue by
6 denying the transfer. Tr. p. 117. Upon further questioning by the Board, Czak stated that
7 because Bonvicin signed a document, "voluntarily resigning" as a Detention Lieutenant (i.e., no
8 longer covered by the CBA), he was not entitled to a transfer back to that position from Chief
9 Marshal. Tr. p. 120. He also stated that this voluntarily resignation was not considered by the
10 Board of Directors when it decided to represent Bonvicin. Tr. p. 121. Czak also testified that the
11 By-laws required the Board of Directors to "handle all written grievances with the exception of
12 the retiree position" thus requiring the Association to "handle all written grievances" for
13 associate members such as Bonvicin. Tr. p. 130.

14 The next witness was Terrence McAllister; and at the time of this hearing, he was the
15 Association's President, having been elected on July 12, 2006. He was also with the Internal
16 Affairs Division. Tr. p. 153, 154. He admitted that grievance #3, termination, was timely filed
17 on August 10, 2006 as Bonvicin was fired on August 3, 2006. Tr. p. 155. He admitted this
18 grievance was not presented to the City for some time (Tr. p. 156), and on October 10, 2006,
19 notified Bonvicin (Ex. 21) that the Association would not pursue the grievance because of the
20 Chief Marshal being an appointed position and based on Bonvicin's voluntary resignation from
21 the Lieutenant position. Tr. p. 160. He admitted that he had not seen this resignation although it
22 was referenced in the Association's letter. Tr. p. 161-62. McAllister then questioned whether
23 Bonvicin's appointment as Chief Marshal for the Las Vegas Municipal Court was a promotion.
24 He admitted, however, that he never consulted anyone regarding whether Bonvicin's transfer was
25 a promotion. Tr. p. 169. He also admitted that he notified Bonvicin that the grievance assistance
26 request was denied because Bonvicin was terminated for cause and could not return to a prior
27 position; however, his notice of the same to Bonvicin left out the language that as a "peace
28 officer" such a return was not possible. Tr. p. 170. He further admitted that if Bonvicin was not

1 terminated "for cause," he could have returned to his former position pursuant to the parties'
2 CBA. Tr. p. 171. Although an objection was raised to the question, McAllister was questioned
3 whether the information pertaining to termination "for cause" came from his position with
4 Internal Affairs and used by him as the Association president against Bonvicin. Tr. p. 173. As
5 for the grievance concerning termination, he agreed that he did not ask Bonvicin for additional
6 information, nor did he have Bonvicin appear before the Association's Board of Directors, nor
7 did the Association contact Bonvicin concerning the grievance filed in August until October 10,
8 2006. Tr. p. 175-76.

9 McAllister agreed that the Association's By-laws require the Association to gather
10 information from the member/grievant and schedule a meeting. Tr. p. 177. He claimed,
11 however, that since Bonvicin was an associate member, this requirement did not pertain to him,
12 even though the CBA and By-laws provide all rights to "members" except for retirees. Tr. p.
13 178, 189.

14 Testimony was offered that it is typical for the Internal Affairs Division to copy the
15 Association with documents. Tr. p. 231. McAllister also read into the record a portion of Ex.
16 25, an affidavit from former City Manager Kurt Fritsch, that:

17 Article 17, Section 4 of the agreement with the NLVPOA provides that
18 any member of the bargaining unit who is promoted to an appointed position and
19 subsequently removed from that position without cause would have the right to
20 return to his former position with the bargaining unit. The reason that the city
21 agreed to this provision in [the] collective bargaining agreement was the
22 difficulty in convincing peace officers to accept promotion to high ranking
23 positions that were not covered by the collective bargaining agreement
24 peace officers did not wish to jeopardize the job security that they enjoyed as a
25 result of the collective bargaining agreement

26 Tr. p. 294-95.

27 Ricardo Bonvicin was the next witness. He has been employed with North Las Vegas for
28 approximately fifteen years. Tr. p. 320. He has been employed as a correction officer, a
sergeant, and a corrections lieutenant prior to becoming Chief Marshal. He has been an
Association member at all times. Tr. p. 321. For the last eight to nine years, he testified that he
was assigned to the Municipal Court as a Court Services Lieutenant. Tr. p. 324.

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1 He testified that at one point in time, Detention (corrections) merged with the Police
2 Department. The Chief Marshal position was created in late 2005/early 2006. Police Chief
3 Paresi started pulling officers off their positions in the court; and the Municipal judges felt
4 security was compromised. Tr. p. 326.

5 He stated that he did not negotiate a contract with the City for the Chief Marshal position.
6 Tr. p. 329. The City Council established his pay. Id. Bonvicin stated he talked with Asst. Chief
7 Forti and Chief Paresi regarding the reassignment. Tr. p. 330. They allegedly supported the
8 move. Tr. p. 331. They indicated that if it did not work out, Bonvicin could return to his former
9 position. Bonvicin took the position on January 7, 2006. He stated there was no break in
10 service; and that the City treated it as a transfer only. Tr. p. 345, see also Ex. 23. He testified he
11 was not concerned that the transfer would impact his membership in the Association. See CBA,
12 p. 106. There were no changes in his benefits after the transfer. The Association continued to
13 collect his monthly dues. On April 3, 2006, the Municipal judge terminated his services.
14 According to Bonvicin, the Municipal judge told him what to write as a resignation. Ex. 2,
15 resignation.

16 Bonvicin rescinded the resignation (Ex. 4), and the Municipal judge accepted it (Ex. 5).
17 Bonvicin, however, was placed on administrative leave. Ex. 6. He requested to return to his
18 former position (Ex. 7), and he claims that this exhibit is a verbatim recital of his conversation
19 with Chief Paresi. Chief Paresi responded via correspondence (Ex. 9), but the contents did not
20 match the language of the CBA. Bonvicin was placed on notice of the internal investigation (Ex.
21 8) and Internal Affairs interviewed Bonvicin. Originally, the Association indicated they would
22 represent him (Ex. 10), and Attorneys Tom Pitaro and Adam Levine met with Association
23 officials. The Association officials did not object to the attorneys being involved. Tr. p. 368.

24 Bonvicin filed a grievance request to return to his former position (Ex. 12). The
25 Association then denied his request (Ex. 13). The reason cited was "voluntary resignation." At
26 that time, dues were still being taken from Bonvicin's wages. Tr. p. 372. Bonvicin claims that
27 the Association knew that his resignation was rescinded, and it knew that he was on
28 administrative leave as the Association received photocopies of all documents reflecting the

1 rescission and the leave. Bonvicin was formally terminated in August 2006 (Ex. 16). Bonvicin's
2 counsel placed the Association on notice on July 7, 2006 (Ex. 14) to protect his rights.

3 Bonvicin filed a grievance over the termination (Ex. 18). He further claimed the
4 termination grievance was not timely processed and that no one informed him that the grievance
5 was incomplete or missing information. Tr. p. 383. The City finally agreed to arbitrate the
6 matter. The harm sustained by Bonvicin due to the Association's inaction is that he had to give
7 up his right to appeal any arbitration decision. Tr. p. 390-91. He further indicated that Officer
8 McAllister was biased against him based upon his Internal Affairs investigation and that
9 influenced the Association not to proceed with Bonvicin's grievances. Tr. p. 433.

10 Bonvicin was not called before the Association's grievance committee (Tr. p. 486), but
11 did appear before the general membership asking for representation. Tr. p. 487. This appearance
12 was while he was on administrative leave/prior to termination.

13 Carie Torrance was the next witness. She is the City Attorney and has been for
14 approximately one year. She stated her expertise is in employment law. She claims that
15 appointed personnel are not part of the bargaining unit; they are at will employees and not
16 covered by the civil service rules. Tr. p. 493. Captains, assistant chiefs, and chiefs are not
17 covered by collective bargaining units. She claims that all employment terms and conditions for
18 appointed employees are set by the City Council.

19 She testified that Bonvicin resigned from his position with detention and was hired by the
20 Municipal Court. She stated that the Municipal Court is a separate branch of the government
21 (judicial). Tr. p. 498. The Internal Affairs division investigated Bonvicin at the request of
22 Debbie Miller, Municipal Court Administrator. Tr. p. 501. She indicated that as Chief Marshal,
23 Bonvicin had rights guaranteed by NRS chapter 289, but no rights under any CBA. City
24 Ordinance 1530 also provides rights/terms of employment for Bonvicin. Tr. p. 504.

25 She claimed the allegations against Bonvicin were "sustained." Tr. p. 507. She said the
26 notice to him should have indicated "for cause." The grievance was eventually filed with the
27 City by the Association, but the City did not accept it. The City ultimately agreed to arbitration
28 but not pursuant to any CBA. Tr. p. 513-14. This offer occurred in October 2006. On January

1 2, 2007, Bonvicin agreed to final, binding arbitration with no rights of appeal. It was not until
2 the end of May 2007 that the agreement was formalized. Lastly, she claims that Bonvicin was
3 not promoted. Tr. p. 519. He transferred into a different branch of the government. Id.

4 Torrance claims that neither she nor her office drafted the termination notice (Ex. 16); it
5 was drafted by the City's Human Resources Department. Tr. p. 530. She also claims that
6 Bonvicin was the first appointed employee who was terminated for cause who "went through this
7 process." Tr. p. 532. She stated she was unfamiliar with the "Ed Brown" clause, and was not
8 part of the group that created the Marshal's department. She did not negotiate for the Marshals'
9 benefits or employment terms, but do not think they were lost. Tr. p. 546.

10 Officer Mike Waller was the next witness. He is currently a sergeant for the City's
11 SWAT team. Before that, for approximately 3 to 3 ½ years, he was with Internal Affairs. He
12 has been with the police department for a total of 13 years. Tr. p. 564.

13 Waller described an Internal Affairs investigation and indicated that when the
14 investigation is completed, a report is generated. The report merely sets forth the allegations and
15 facts; he claims he does not make any recommendations for discipline. He claims it is the
16 command staff that makes a final ruling. Tr. p. 567. The allegations can be sustained,
17 unsustained, unfounded, and officer exonerated. A mitigation hearing would occur next.

18 Regarding Bonvicin, Waller claims that Chief Paresi asked for the investigation in April
19 2006 and the investigation was originally requested by the Municipal Court. Tr. p. 571. He
20 drafted the notice of the investigation (Ex. 8). Waller's findings were sent to Chief Paresi,
21 Debbie Miller, and the Acting Human Resources Director. Tr. p. 578. He indicated that the
22 allegations against Bonvicin were sustained and that "sustained findings" usually equates to "just
23 cause" for termination. Tr. p. 580.

24 Waller agreed that Bonvicin did not receive his Internal Affairs file with the results until
25 prior to the mitigation hearing. He also acknowledged that the questions posed of Bonvicin
26 exceeded what was contained in Ex. 8. Tr. p. 592. Waller also indicated that no one from the
27 Association was at the mitigation hearing. Tr. p. 623.

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1 The next witness was Assistant/Acting Chief Joseph Chronister. He has been with the
2 Police Department for 18 years. Tr. p. 640. He is a member in good standing with the
3 Association and pays dues. Id. He states that within the Association, there are members,
4 associates, and retirees. Tr. p. 641. An associate includes individuals in appointed positions.
5 Associate members can file grievances, but the Association does not have to process them. Tr. p.
6 642, 644. Acting Chief Chronister had heard of the "Ed Brown Clause." Tr. p. 651.

7 In September 2001, he became a captain. He himself received a memo from the Chief
8 that if he was promoted up to an unclassified position, that he could be returned to his former
9 position if not terminated for cause. Tr. p. 652.

10 Debbie Miller was the last witness. She is the Court Administrator for the North Las
11 Vegas Municipal Court. She has been with the City for 15 years. Tr. p. 656.

12 She states that the Chief Marshal's position was created in December 2005. The Chief
13 Marshal worked for the Municipal judges but she would direct his activities. She testified that
14 the Chief Marshal position was to be an appointed at will position. Tr. p. 657. In April 2006, the
15 Municipal judge told her of the allegations against Bonvicin. Tr. p. 659. The FBI apparently
16 had contacted the Municipal judge in early April 2006. She met with the Municipal judge, Joe
17 Forti from Detention, and Captain David Nohr from the Detention Center along with Bonvicin.
18 She claimed to have been in the meeting at all times. She does not recall whether the Municipal
19 judge told Bonvicin to resign. She does recall that Bonvicin asked for paper to write his
20 resignation. Tr. p. 660. She stated that they received a rescission of the resignation letter from
21 Bonvicin who was then placed on administrative leave. Tr. p. 661. She testified she was the
22 individual who requested the Internal Affairs investigation by the police department. Id. She
23 claims she does not have the resources within the Court to conduct such an investigation.

24 The allegations against Bonvicin included misconduct and policy violations. Tr. p. 662.
25 She reviewed Sgt. Waller's report and she determined that the allegations were sustained. Tr. p.
26 665. She believes there was "just cause" for termination, and no one from the Court was present
27 at Bonvicin's mitigation hearing.

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1 FINDINGS OF FACT

2 1. Prior to January 7, 2006, Bonvicin was a Detention Lieutenant as well as a Court
3 Services Lieutenant for the City of North Las Vegas, and a member of the North Las Vegas
4 Police Officers Association; and based upon such employment, Bonvicin is a government
5 employee as defined in NRS 288.050.

6 2. Pursuant to NRS 288.027, the Association was the recognized bargaining agent for
7 police officers employed by North Las Vegas in the specific bargaining unit at issue herein.

8 3. The City of North Las Vegas and its Police Department are local governmental
9 employers as defined in NRS 288.060.

10 4. A CBA exists between the parties and was presented as Ex. 26. Article 17, Section 4,
11 thereof is commonly known as the "Ed Brown Clause."

12 5. Ed Brown was a police officer who was promoted to an appointed position, and when
13 that position was eliminated, he was unable to return to his former position. According to Mr.
14 Tarwater, Brown had to "pretty much [start] all over, night shift as a police officer." Tr. p. 47.

15 6. According to the testimony offered at the hearing, it was difficult for the City and
16 Police Department to find qualified police officers willing to accept a promotion if there was no
17 assurance of the right to return to a former position. Because of this difficulty, the "Ed Brown
18 Clause" was incorporated into the parties' CBA as Article 17, Section 4.

19 7. That article states that "any peace officer who is appointed to an unclassified position
20 whose classification before promotion was covered" by the CBA "may request to return to a
21 position previously held." This transfer is at the "discretion of the Department Chief." Ex. 26,
22 Article 17, Sec. 4. Furthermore, "[a] peace officer who is removed from an unclassified position
23 for reasons other than cause shall be [r]eturned to the peace officer's former position in the
24 bargaining unit." Id.

25 8. The Board finds that Bonvicin was a peace officer who was promoted from Lieutenant
26 to Chief Marshal on January 7, 2006, and that Bonvicin's prior position as a Lieutenant was
27 covered by the parties' CBA. After the events identified in this matter, even the Marshals are
28 now covered by a CBA.

1 9. Bonvicin did say that he "would like to resign" from his position as Chief Marshal.
2 His resignation was tendered April 4, 2006. Ex. 2. He rescinded the resignation on April 17,
3 2006 (Ex. 4). The rescission was accepted on April 21, 2006 and Bonvicin was placed on paid
4 administrative leave, effective April 4, 2006 (Ex. 5).

5 10. On April 17, 2006, Bonvicin filed grievance #1 with the Association regarding the
6 Municipal Court judge's actions in forcing his resignation (Ex. 33, p. 189) due to the smoke
7 grenade incident and requested that he be allowed to return to his former position. Because the
8 smoke grenade incident occurred while Bonvicin was a Lieutenant, and covered by the CBA, the
9 Association agreed to represent him. The Board finds this grievance resolved inasmuch as the
10 Municipal Court rescinded the resignation.

11 11. On April 25, 2006, Debbie Miller requested Chief Paresi conduct an investigation
12 into Bonvicin's activities. Ex. 8.

13 12. Bonvicin sent correspondence to Chief Paresi on May 15, 2005, "officially"
14 requesting transfer to his former position. Ex. 7. Chief Paresi denied the request on May 23,
15 2006 (Ex. 9). On June 14, 2006, grievance # 2 was filed by Bonvicin with the Association
16 regarding that refusal. Ex. 12. On June 21, 2006, the Association, through Ray Czak, denied the
17 grievance request based upon Bonvicin's "voluntary resignation." Ex. 13. On June 21, 2006, the
18 Bonvicin's resignation had been rescinded approximately two (2) months earlier and Bonvicin
19 had been placed on paid administrative leave since April 4, 2006.

20 13. The Association claimed the grievance was untimely; however, Czak admitted that
21 he had not checked to verify the same and that it may have been timely filed. Tr. p. 127.
22 McAllister, while with Internal Affairs investigated Bonvicin and eventually became the
23 president of the Association, stated that this grievance (grievance #2) was the same as grievance
24 #1. However, such was not a credible reason for the rejection of the grievance as grievance #1
25 pertained to the acts of the Municipal Court judge and the requirement that Bonvicin resign.

26 14. Upon receipt of the June 21, 2006 Association correspondence, Bonvicin hired
27 outside private counsel, who notified the Association that he expected the Association "to
28 continue to take the necessary steps to ensure that the grievance continues to be properly filed on

1 Mr. Bonvicin's behalf with the city, and request an arbitration" hearing. Ex. 14. The Association
2 did nothing to protect Bonvicin's rights with respect to this grievance although required to do so
3 pursuant to the parties' CBA.

4 15. On August 2, 2006, a mitigation hearing was held concerning Bonvicin's activities,
5 and on August 3, 2006, termination was recommended effectively immediately. Ex. 16. This
6 notice does not contain the terms "with cause," "with just cause," or "without cause."

7 16. On August 10, 2006, Bonvicin filed grievance #3 with the Association claiming
8 wrongful termination. This grievance was not timely forwarded by the Association to the City;
9 and on October 10, 2006, the Association notified Bonvicin that it denied his grievance request.
10 Ex. 21. On October 25, 2006, however, the Association "accepted" the grievance and indicated
11 in correspondence to Bonvicin's counsel that it would forward the grievance to the City for
12 processing (Ex. 22). According to correspondence from the City, the grievance was received on
13 November 14, 2006 (Ex. 23).

14 17. Testimony indicates that the City has agreed to arbitration with Bonvicin concerning
15 the termination; however, Bonvicin has lost his right to seek a review of any decision by a court
16 of law. This was the arrangement agreed upon between the City and Bonvicin based upon the
17 Association's failure to timely present/process Bonvicin's grievance

18 18. The Association's by-laws (Ex. 27), Article 15, Sec. 3, state that should "a member"
19 wish the Association's assistance, that member shall contact the grievance committee.
20 Thereafter, the Grievance Committee "shall then attempt to obtain all information available
21 regarding the alleged incident." (Emphasis added.)

22 19. The parties' CBA, Article 23, Sec. 1, that the grievance "procedures set forth in this
23 Article shall be the exclusive remedy for any dispute or complaint that is defined as a grievance
24 hereunder." That section continues that the Association "recognizes its responsibility as
25 bargaining agent and agrees to fairly represent all employees in the bargaining unit."
26 Furthermore, it states that should "any employee wants to file a grievance, they must start the
27 process as outlined in Section 3, Step 1" of the CBA and that it "is expressly understood and
28 agreed that the grievance resolution system specified in this Article is the only grievance

1 resolution system available to this bargaining unit." Section 3 is the "grievance process" for all
2 employees, and Step 1 states that the Association "shall, within ten (10) working days present the
3 signed grievance to the Department Chief." (Emphasis added.) Thereafter, steps 2 through 5 are
4 identified, with step 5 being the right to arbitration.

5 20. The Board finds the testimony of various witnesses credible, especially that of Mr.
6 Tarwater who the City's negotiator was for the "Ed Brown Clause." Other testimony presented
7 by certain witnesses, e.g., why the Association did not process the various grievances submitted
8 by Bonvicin, were far less credible especially in light of the mandates found in the parties' CBA
9 and the Association's by-laws for the processing of grievances.

10 21. Bonvicin's situation (i.e., promotion and then a desire to return to a former position)
11 is exactly the situation envisioned in the parties' CBA, Article 17. The argument that the CBA
12 no longer applied to Bonvicin is illogical - - the purpose of Article 17 was to protect individuals
13 formerly covered by the CBA but who were promoted and now desired to return to the former
14 positions. The Association breached its duty to fairly represent Bonvicin in the rights guaranteed
15 to him.

16 22. Should any finding of fact be more properly construed as a conclusion of law, may it
17 be so deemed.

18 CONCLUSIONS OF LAW

19 1. This Board has jurisdiction over the parties and the subject matters of the complaint
20 on file herein pursuant to the provisions of NRS Chapter 288.

21 2. The City and its Police Department are local government employers as defined in
22 NRS 288.060.

23 3. The Association is an employee organization as defined by NRS 288.040.

24 4. Bonvicin is an employee of a local governmental employer as defined by NRS
25 288.050.

26 5. Prohibited labor practices are defined in NRS 288.270; and Section 2 thereof states that
27 it is a prohibited labor practice for an employee organization to "interfere with, restrain or coerce

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1 any employee in the exercise of any right guaranteed under this chapter." This would include a
2 breach of an employee organization's duty to represent the employees.

3 6. Pursuant to NRS 288.110(2), the Board may hear and determine any complaint arising
4 out of the interpretation of or the performance under the provisions of NRS chapter 288.
5 Pursuant thereto, the Board noticed this matter for hearing.

6 7. The Board concludes that Bonvicin was promoted to Chief Marshal, an appointed, at
7 will position; and prior to the promotion, he was covered by the parties' CBA.

8 8. Article 17 of the parties' CBA was negotiated for police officers' protection should
9 they wish to return to former positions after being promoted to appointed, at will positions.

10 9. Article 17 of the CBA discussed situations pertaining to terminations with and without
11 cause and the request to return to a former position.

12 10. It was not until August 3, 2006, that Bonvicin was terminated allegedly "for cause."
13 An arbitration hearing concerning that termination has not yet been conducted (i.e., it is not
14 finalized); and at the current time, Bonvicin is contesting the termination. Therefore, the
15 Association's refusal to process the grievances filed by Bonvicin prior to August 3, 2006 was a
16 breach of its duty to fairly represent him, and such intentional acts and/or omissions were in
17 violation of the parties' CBA and by-laws.

18 11. Because of the intentional acts and omissions by the Association in handling
19 Bonvicin's grievance, he has been harmed, e.g., he has had to hire outside counsel, including fees
20 and costs, and has lost the right to appeal any arbitration decision.

21 12. Should any conclusion be more properly construed as a finding of fact, may it be so
22 deemed.

23 DECISION AND ORDER

24 Based upon the above, the Board hereby orders as follows:

25 1. IT IS HEREBY ORDERED that the Board finds in favor of Bonvicin, and against the
26 Association.

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1 2. IT IS HEREBY ORDERED that because of the Association's breach of its duty to
2 fairly represent its members, and in this case, Bonvicin, it shall cease and refrain from such acts.
3 NRS 288.110(2).

4 3. IT IS FURTHER ORDERED that the Association shall reimburse Bonvicin for all
5 fees and costs incurred in bringing the action before the Board and all other fees and costs
6 incurred by Bonvicin by reason of the Association's breach of duty of representation. Bonvicin
7 shall file the appropriate motion with supporting documents evidencing the fees and costs
8 incurred as a result of the Association's breach within twenty (20) days from the date of this
9 Order. The Association shall thereafter have an opportunity to oppose the fees and costs
10 requested.

11 4. IT IS FURTHER ORDERED that the Association shall post notice of its breach of
12 duty in this matter on all bulletin boards for communications with all Police Department
13 personnel and Association members. The notice to be posted shall be provided by this Board.
14 The notice shall be posted for a period of 90 days and the Board's Commissioner may inspect the
15 facility to determine whether the Association is in compliance with this Order.

16 5. IT IS FURTHER ORDERED that the Association shall henceforth represent Bonvicin
17 in his grievance/arbitration with the City of North Las Vegas and the North Las Vegas Police
18 Department. In the alternative, the Association shall pay all fees and costs incurred by
19 Bonvicin's private counsel in pursuing the termination grievance through arbitration. This
20 selection of representation shall be by Bonvicin.

21 6. LASTLY, IT HEREBY ORDERED that the Board is considering awarding back pay
22 to Bonvicin. The parties are to file briefs concerning this back pay issue and the time frame for
23 any such award. Briefs are to be filed by the parties within twenty (20) days from the date of this
24 Order.

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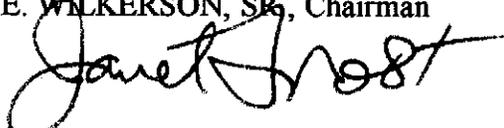
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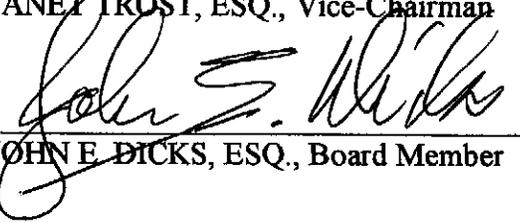
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1 DATED this 2nd day of April, 2008.

2 LOCAL GOVERNMENT EMPLOYEE-
3 MANAGEMENT RELATIONS BOARD

4 BY: 
5 JAMES E. WILKERSON, SR., Chairman

6 BY: 
7 JANET TROST, ESQ., Vice-Chairman

8 BY: 
9 JOHN E. DICKS, ESQ., Board Member