

FILED
July 23, 2025
State of Nevada
E.M.R.B.
11:00 a.m.

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

Henderson Police Supervisors Association,
Inc., a Nevada Non-Profit Corporation and
Local Government Employee Organization,
and its Named and Unnamed Affected
Members,

EMRB No. 2024-041

Complainants,

NOTICE OF ARBITRATION DECISION

v.

City of Henderson and ~~XXXXXX~~
~~XXXXXX~~

Respondents.

Respondent City of Henderson, by and through its undersigned counsel of record, hereby
submits this Notice of Arbitration decision. A copy of the arbitrator's decision in the underlying
arbitration proceeding is attached hereto as Exhibit A.

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1 DATED this 23rd day of July 2025.

SNELL & WILMER L.L.P.

2
3 By: /s/ Brian Reeve

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 23rd day of July 2025, the above and foregoing, **NOTICE**
3 **OF ARBITRATION DECISION**, was electronically filed with the EMRB and served by
4 depositing a true and correct copy thereof in the United States mail, postage fully prepaid thereon,
5 to the following:

6
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/s/ Laurie McConnell
An employee of Snell & Wilmer L.L.P

EXHIBIT A

**UNDER THE RULES OF THE FEDERAL MEDIATION AND CONCILIATION
SERVICE (FMCS) IN THE MATTER OF:**

<p>The Henderson Police Supervisor's Association,</p> <p style="text-align: center;">Grievants,</p> <p>and</p> <p>The City of Henderson</p> <p style="text-align: center;">Employer</p>	<p>FMCS Case: 251231-02350</p> <p>Before: Arbitrator Betty R. Widgeon</p>
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Appearances

For the Union

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For the Employer

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Dates of the Hearing:
Location of the Hearing:
Transcript Received and Case Closed:
Date Decision Submitted:

April 2, 2025
240 Water Street, Henderson, NV
April 29, 2025
July 21, 2025

Issue

Did the City of Henderson violate Article 30 Section 4 of the parties' Collective Bargaining Agreement relative to Union Leave when it denied Association leave approved by the Henderson Police Supervisor's Association ("HPSA") President? If so, what shall the remedy be?

Decision

Having carefully considered Article 30 of the parties' CBA and the evidence presented by both parties, the Arbitrator finds that the Union failed to prove by a preponderance of the evidence that the City of Henderson violated the CBA when it denied association leave approved by the HPSA President. Therefore, the Grievance is **DENIED**. A brief background and the Arbitrator's analysis begin on page two.

Background

The Henderson Police Supervisors Association (“HPSA”) is one of four unions in the City of Henderson and the only one that does not have a full-time Union representative and for which no members of the board receive monetary compensation for their work in those positions. Instead, the Union is designated a number of hours to be used for Union affairs, and those hours are allocated among the Union board members when they conduct Union business.

In 1995, the predecessor Henderson Police Officers Association [Police Supervisors] (HPOA) contract, on which the HPSA contract is based, provided 120 hours of Union time and required a 30-day approval notice period. The language provided that the City retained “absolute final authority in granting of leave for Union business.” The contract further stated that leave would be accommodated to the best of the City’s ability without undue problems in scheduling, overtime, and other problems that may arise from time to time. Subsection A, which has remained virtually unchanged, provided that “the president or his designee will determine the use of association leave.”

In 1998, when a new HPOA CBA was negotiated, the number of Union hours was increased from 120 to 240. Section 4 B included new language stating, “All leave will be approved by the Department Head or designee.” In the 2003-2008 contract between the HPOA and the City of Henderson, the number of Union leave hours was increased to 720 hours. That contract also provided that all leave would be approved by the Department Head or designee.

In 2005, the City of Henderson negotiated its first contract with the HPSA. That contract carried over language directly from the 2003-2008 HPOA contract, including the number of Union leave hours and the language in 4A and 4B. In the 2008-2011 contract between the City and the HPSA, the number of Union leave hours was increased from 720 to 1200, where it remains. The language in 4A and 4B was unchanged.

In 2022, for the first time since the creation of the HPSA, there was an occasion on which the City denied Union leave. The leave in question was for Grievant, who was not the Union president at that time. The leave was denied for what the City described as an operational reason. The Union filed a grievance contesting the timing of the denial, which came after money had been spent to send Grievant to a conference. The Union subsequently withdrew that grievance without taking it to arbitration.

A second denial of Union leave occurred in 2023, when Captain Denison noted that the then-Union President was using leave on consecutive Sunday evenings. Captain Denison shared his concerns that (1) the Union leave was not being used for Union business but, rather, as a sort of “flex-time” to make up for meetings and activities that had taken place during the week and (2) that the practice caused an entire shift of out-of-class watch commander pay. No grievance was filed.

In the fall of 2024, Grievant, who had become the Union president, used Union leave on consecutive Sunday and Monday nights for four weeks in a row. The City denied the leave and addressed the issue with the Union in a labor-management meeting. In response, the Union filed the instant grievance. The grievance proceeded through the steps below and was appealed to arbitration. The undersigned held the arbitration hearing on April 2, 2025. Both sides were represented by seasoned Advocates. Before the start of the hearing, each confirmed that the grievance was properly before the Arbitrator. The Advocates confirmed that, although Article 29, Section 1, Step 8 states the non-prevailing party is responsible for the arbitrator’s fee and related expenses, they agreed that the Arbitrator would split her fee equally between the parties and the parties would work out the allocation per the contract.

Each side had the opportunity to make opening statements and closing arguments, submit exhibits, question its witnesses, and cross-examine the other side's witnesses. The matter is now ready for Decision and Award.

Pertinent Contract and Related Provisions

Article 30 [Section 4]

The CITY agrees to provide one thousand two hundred (1200) hours of Union Leave per fiscal year for use of the HPSA President or designee to conduct HPSA business, i.e., conventions, seminars, training, lobbying etc. HPSA Members utilizing this leave will record their time using the appropriate TRC code.

- (a) The HPSA President, or his designee, will determine the use of association leave.
- (b) The HPSA agrees not to exceed six (6) individual requests for HPSA leave at one time and, under normal circumstances, no two of the individuals can be from the same shift of the Department unless authorized by the Division Commander. All leave will be approved by the Department Head or designee.
- (c) When HPSA members participate in departmental or City committees or work groups as representatives of the HPSA (i.e. Assessment Centers and the Promotional Process, Diversity Committee, Risk Management Committee, Management Team Meetings, etc.) they will record their time using the appropriate TRC code.
- (d) Approved Union leave taken during normal working hours will be considered time worked for the purposes of computing overtime.

Position of the Parties

The Union

The Union's position is that the City is obligated to approve Union time as designated by the Association president or designee and that it violated Article 30, Section 4 of the CBA by failing to do so. It argues that the Union president is guided in its allocation of Union hours by guardrails that the Association president cannot take more than two officers from the same shift and that the president cannot take more than six supervisors at one time. The Union understands

the contract to provide that, the division commander's only real decision about whether or not to authorize Union hours arises if the Association president deviates from those guardrails.

Assuming that the Union president remains within the guardrails, however, the Association believes and argues that the department head is required to approve Union hours. In support of this position, it points to the fact that the last sentence of Subsection B does not say that the department head "can" or "may" approve leave but, rather, that the department head "will" approve the leave, which it takes to mean that the department head "must" approve the leave.

The Union goes on to argue that, if the City were to have the discretion to approve or deny leave, there would be abuses of power and the language of the CBA on this subject would be rendered meaningless. It also argues that there is nothing in the contract that states that the City can deny leave for reasons of operational efficiency or overtime issues.

The Union points out that, from 1998 to 2022, no Union hours were denied to the HPOA, that, from inception in 2005 until 2022, no Union hours were denied to the HPSA, and that operational efficiency was never raised as a concept. The Association believes that the CBA language gives the Association president the exclusive right and discretion to assign Union leave for the benefit of the Union. It points out that Section 4, Subparagraph B states that all *leave* will be approved; it does not mention leave "requests."

The City

The City's position is that this grievance centers on its fundamental right to manage and schedule its workforce. It stresses the critical importance of a public safety department being able to make decisions to ensure that quality supervisors are available on all shifts, and it argues that the grievance attacks the fundamental Management right to ensure that the City has quality supervision in place for every shift.

The City characterizes the Union's position as a request for the Arbitrator to rule that supervisors can take time from work whenever the Union dictates, with no guardrails whatsoever, and no protections against the impact such leave could have on operational needs or training and development. It argues that, according to the Union's interpretation of the language in question, a Union officer could take leave one minute before a scheduled shift on New Year's Eve or take an extended weekend and, as long as the Union claimed it was "Union leave," the City would have no choice but to approve the leave.

The City takes the position that the Union is arguing that the Arbitrator should infringe on the City's fundamental right to manage and schedule the workforce, and it points out that there is no language in the contract indicating that the City has given up this right. It argues that the Police Chief is clearly more than a records clerk who blindly rubber stamps leave requests regardless of impact on the department. It asserts that the right to approve leave requests is also the right to deny those requests. Further, it points out that Section 4D states that "*approved* Union leave, taken during normal working hours, will be considered time worked," and it argues that the word "approved" in this context would have no power and be wholly unnecessary if the City was powerless to deny leave.

The City also urges that extrinsic evidence supports a finding that the Union has not met its burden. It points out that, in the bargaining history, the City only agreed to increase the amount of Union time allowed after it received assurances that the City could still grant or deny Union leave based on operational needs. The City acknowledges that it cannot deny leave for unfounded or inappropriate reasons, but it holds fast to the premise that it still retains discretion to deny leave as necessary.

Finally, the City argues that there has never been a “past practice” of the City always granting Union leave. Rather, it explains that the operational issues for which the City could and should deny Union leave rarely came up and that, when it did come up, the Union had previously come to understand and accept the City’s reasoning.

Analysis

The question before the Arbitrator is primarily legal in nature: does the contract language permit the City to deny Union leave under the circumstances presented? The Union bears the burden of proving that the contract language favors its suggested interpretation, and the Arbitrator does not find that the Union has met its burden. The Union stresses that Article 30, Section 4 of the CBA states that the leave “will be approved,” and it interprets this as meaning that the leave *must* be approved. However, the negotiating parties could have directly incorporated such a mandate had they so desired. Consistent with this reading is the fact that, elsewhere, the contract references “approved leave,” thereby leaving open the possibility that some leave may not be approved.

Furthermore, the bargaining history shows that the City was always concerned with its ability to continue its responsibility to maintain operational efficiency and fiscal responsibility. Nothing presented regarding the history of bargaining for either the HPOA or the HPSA contracts suggests that the City bargained away its right to do so. On the contrary, unrebutted testimony presented by Management supports an opposite finding. The Arbitrator does not find a past practice of the City always approving leave— if such a thing, as articulated, could properly form the basis of a past practice determination — because the record shows that, when time that was designated for Union leave came into conflict with operational needs, the City addressed the issue with the Union, and it was resolved.

Moreover, the bargaining history and language of the contract contemplate that the Union time is to be used for a specific purpose, namely, time when Union work is being done. The City has previously, and now again in the underlying circumstances, raised concerns that Union time was being designated in ways inconsistent with its stated purpose. Nothing about the clear language of the contract suggests that this is beyond the scope of the City's authority, that the City has bargained away this authority, or that the City has waived this authority. For the reasons stated herein, the grievance is **DENIED**.


Betty R. Widgeon, Arbitrator

July 21, 2025
July 21, 2025