IN THE TENNESSEE COURT OF APPEALS
FOR THE WESTERN DIVISION AT JACKSON

CITY OF MEMPHIS,
***Petitioner/Appellant*,**

v.

Memphis Police Association
Respondent/Appellee

v.

Fausto Frias, et al
Intervenors/Appellees

Circuit Court of Shelby County, Tennessee
Case No. CT-2027-24

Case No. W2025-00580-COA-R3-CV

BRIEF OF THE APPELLANT CITY OF MEMPHIS

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred in denying the petition of the City of Memphis to vacate the arbitrator's award in a grievance between the City and the Memphis Police Association on the grounds the arbitrator exceeded his powers in violation of Tenn. Code Ann. §29-5-324(a)(4).

2. Whether the trial court erred in permitting 73 members of the Memphis Police Association to intervene as individual parties in the case either as of right or by permission under Rule 24 of the Tennessee Rules of Civil Procedure.

3. Whether the City of Memphis is entitled to a new trial on the grounds that the trial court was not impartial, as evidenced by the trial court's *sua sponte* recusal after rendering judgment against the City of Memphis, with little to no legal reasoning, on all issues in the case.

STATEMENT OF THE CASE

This case arose out of the decision of the City of Memphis ("the City"), which became more urgent in the wake of the death of Tyre Nichols after his encounter with members of the Memphis Police Department ("MPD") and subsequent U.S. Department of Justice investigation, to create a new front-line supervisor position called Second Lieutenant to provide more supervision to MPD officers in the field. On March 3, 2023, the Memphis Police Association ("MPA") filed a grievance pursuant to Article 12 of the Memorandum of Understanding ("MOU") between the City and MPA, alleging that the City was not in fact creating a new position, as it has the right to do under Article 10 of the MOU, but rather was changing the testing procedures required for promotions under Article 18 of the MOU. The grievance sought elimination of the Second Lieutenant position, demotion of all the officers who had been promoted to that position, and the formation of a "promotion committee."

Hearings were held before Arbitrator Thomas B. McConnell, Jr. ("the Arbitrator") on October 31, 2023 and November 9, 2023. On March 9, 2024, the Arbitrator rendered the Arbitration Award at issue in this appeal. (Arbitration Award, R. Vol. I, pp. 74-112). In rendering the Arbitration Award, the Arbitrator determined that the City had specifically ceded its managerial right to create a new position under Section 10 of the MOU based on language in Article 18 of the MOU, which governed testing and promotion procedures for existing MPD positions. In so ruling, the Arbitrator eliminated the newly-created position of Second Lieutenant in the MPD and ordered all officers promoted to that position be demoted back to their previous position.

On March 25, 2024, the City filed a Petition to Vacate the Arbitrator's Award in the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis. (Petition to Vacate, R. Vol. I, pp. 1-6, 11-112). On April 26, 2024, MPA filed an Answer and Counterclaim, in which it sought to confirm and enforce the Arbitration Award.[1]

On April 29, 2024, seventy-three officers, all but three of whom were represented by MPA ("the Intervenors"), filed a motion to intervene as separate parties in the case. (Motion to Intervene, R. Vol. I, pp. 115-131). The trial court orally granted their motion to intervene at the hearing on the motion on August 20, 2024. (Hearing Transcript, R. Vol. III; Order Granting Non-Party Police Officers' Motion to Intervene, R. Vol. II, pp. 211-212).

After briefing by the City, MPA and the Intervenors, the trial court held a hearing on March 6, 2025, and ruled from the bench that the City's Petition to Vacate the Arbitrator's Award was denied and that MPA's Counter-Petition to Confirm the Arbitrator's Award was granted. (Hearing Transcript, R. Vol. V).[2] An order reflecting the trial court's ruling was entered on March 28, 2025. (Order on Petition to Vacate Arbitrator Award and Counter-Petition to Confirm and Enforce Arbitrator's Decision and Award, R. Vol. II, pp. 234-37). This appeal followed.

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[1] MPA's Answer and Counterclaim, filed April 26, 2024, does not appear in the appellate record. A copy is attached hereto as Exhibit 1.

[2] The transcript of the hearing transmitted through the appellate record does not include the trial court's ruling. A corrected transcript including the ruling is attached hereto as Exhibit 2.

On April 24, 2025, the same day it filed its notice of appeal, the City filed a motion to stay execution of the judgment of the trial court pending appeal. (Motion for Stay of Execution of Judgment, R. Vol. II, pp. 238-42). The trial court held a hearing on the City's motion on June 20, 2025, and ruled from the bench that the City's motion to stay was denied.[3] Three days after the trial court's oral ruling, on June 23, 2025, MPA filed a motion to hold the City in civil contempt of court for appealing to this Court rather than implementing the Arbitrator's March 3, 2024 decision after the trial court confirmed it and denied a stay of the judgment. (Motion for Contempt, R. Vol. III, pp. 355-62). Before a hearing was set on the motion for contempt, the trial court *sua sponte* recused itself, without stating a reason, by order dated August 28, 2025.[4]

The City appealed the trial court's denial of a stay to this Court, which denied the stay in a *per curiam* order dated July 9, 2025.[5] The City then appealed to the Tennessee Supreme Court, which granted the stay on August 16, 2025.[6]

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[3] An order to this effect was entered on June 27, 2025, but does not appear in the appellate record. A copy of this order is attached hereto as Exhibit 3.

[4] A copy of this order, which was entered after transmittal of the appellate record, is attached as Exhibit 4.

[5] A copy of this order is attached as Exhibit 5.

[6] A copy of this order is attached as Exhibit 6.

STATEMENT OF THE FACTS

Concerned about the rising crime rate, the City sought to improve the effectiveness of its Police Department by increasing supervision in the field. To accomplish this goal, Petitioner created a new front-line supervisor position that was eventually named "Second Lieutenant." The Second Lieutenant position would report to the First Lieutenant and was designed to provide more direct supervisory support to officers in the field.

On January 10, 2023, Memphian Tyre Nichols died after a January 7, 2023 traffic encounter with MPD officers. Less than two (2) weeks later, the United States Attorney's Office for the Western District of Tennessee, in coordination with the Federal Bureau of Investigation and the Civil Rights Division of the United States Department of Justice, opened a civil rights investigation into Tyre Nichols' death. This incident increased the City's existing commitment to the creation of the Second Lieutenant position to provide more supervision of MPD officers in the field.

The City's creation of the Second Lieutenant position falls squarely within its rights contained in the MOU between the City and Respondent. Article 10 of the MOU provides the City with specific management rights, including, among others, the right "to establish new jobs and the wage rates for them," "to determine the duties and production standards," and "to combine jobs" and "to eliminate classifications of work."

MPA opposed the creation of the new position because, among other things, the City took the position that the new position, which was supervisory in nature, could not be part of the bargaining unit, based both on traditional labor law principles and the Executive Order by which MPA was voluntarily recognized.

After consultation with MPA concerning testing for the new position, as required by Article 18 of the MOU, testing for the Second Lieutenant Position began in the summer of 2023. As a result of the testing process, 125 officers were promoted to the Second Lieutenant Position.

On March 3, 2023, MPA filed a grievance pursuant to Article 12 of the MOU alleging that the City was not in fact creating a new position, as it has the right to do under Article 10 of the MOU, but rather was changing the testing procedures required for promotions under Article 18 of the MOU, which MPA maintained was a mandatory subject of bargaining pursuant to the MOU. The grievance sought elimination of the Second Lieutenant position, demotion of all the officers who had been promoted to that position, and the formation of a "promotion committee" by which the parties must bargain over the creation of the position.

Hearings were held before the Arbitrator via a videoconferencing platform on October 31, 2023 and November 9, 2023. Briefs were submitted on December 11, 2023. The Arbitrator rendered his decision on March 9, 2024.

Article 12 of the MOU specifically states that, in adjudicating grievances, the Arbitrator "will have no authority to set policy or to add or subtract from or change any terms of the [MOU]." Clearly exceeding

his authority, the Arbitrator inexplicably found that the promotional testing procedures outlined in Article 18 of the MOU and the accompanying Exhibit A to the MOU constituted an explicit waiver of the City's absolute right under Article 10 to unilaterally create a new position. Remarkably, the Arbitrator went further and created, staffed and activated a "promotional committee" with which the City would be required to bargain before it could create a Second Lieutenant position, despite the fact that nothing whatsoever in the MOU defined, created or described such "promotional committee," much less imbued it with the power to accept or reject a new position created by the City.

Nowhere in the MOU is the capitalized term "Promotional Committee" defined. Yet the Arbitrator not only "activated" this committee, he also decided how many members it would have: six (6), and that it would be composed of: three (3) MPA representatives and three (3) representatives of the City. The Arbitrator even went so far as to give that committee the power not only to advise the City concerning the testing procedures, which is the only role mentioned in Article 18, but also to dictate the terms of any new position created by the City, in direct contravention of Article 10. The Arbitrator has therefore changed the terms of the MOU, which indisputably exceeds his authority as an arbitrator in this matter.

After wrongfully changing the terms of the MOU, the Arbitrator ordered the City to demote the 125 officers who tested for and were given the new position. This directive would deal a devastating blow to the morale of the very officers who are charged with protecting the citizens of Memphis from the numerous murders, assaults and carjackings that

have drawn national attention, and would deprive MPD of a position desperately needed to fight the crime in the City while avoiding incidents like that involving Tyre Nichols.

ARGUMENT

I. Standards of Review.

Conclusions of law are reviewed "*de novo* without a presumption of correctness afforded to the lower court's conclusions of law." *Blair v. Brownson*, 197 S.W.3d 681, 683–84 (Tenn. 2006). Findings of fact are reviewed *de novo* with a presumption "that the findings of fact are correct unless the preponderance of the evidence is otherwise." *Byrd v. Byrd*, 184 S.W.3d 686, 691 (Tenn. Ct. App. 2005) (citing Tenn. R. App. P. 13(d)). Where "the trial court has not made a specific finding of fact on a particular matter," the Court of Appeals "will review the record to determine where the preponderance of the evidence lies without employing a presumption of correctness." *Austin v. Sneed*, 2007 WL 3375335, at *4 (Tenn. Ct. App. Nov. 13, 2007) (citation omitted).

II. The Trial Court Erred When it Determined that the Arbitrator Had Not Exceeded his Authority under the MOU in Rendering the Arbitration Award.

A. The Trial Court Made No Findings to Support its Denial of the City's Petition to Vacate.

In its ruling from the bench, the trial court's entire basis for denying the City's Petition to Vacate the Arbitration Award was as follows:

> Now, I cannot state that he exceeded his powers because he did interpret. That's what you asked him to do, interpret the MOU. And that's what he did. And that's his interpretation along with Article 10 and Article 18.
>
> And Article 18 states, in accordance with the City Charter, responsibility for testing procedures rests with the director of human resources. Testing procedures in effect as of the effective date of the agreement for positions for which bargaining unit employees are eligible would not be changed except as indicated within this article.
>
> And that's what the City did. You changed it. And that's the arbitrator's interpretation, and that's the Court's ruling. Thank you. It stands.

(R. Vol. V).[7]

The trial court's summary ruling does not even begin to address any of the arguments raised by the City. It is simply a rubber stamp of the Arbitration Award. Its ruling should therefore be entitled to no deference, and the Court should consider *de novo* the question of whether the Arbitrator exceeded his authority under the MOU in making the Arbitration Award.

B. Courts' Deference to the Arbitrator Does not Include Permitting the Arbitrator to Exceed his Authority by Rewriting the Parties' Agreement.

[7] See n. 2.

The Uniform Arbitration Act governs the scope of judicial review of arbitration awards. *See* Tenn. Code Ann. § 29-5-301 *et seq*. It is well established that the scope of the authority of an arbitrator is regulated by the terms of the agreement between the parties, including the agreement of the parties to arbitrate the dispute. *Int'l Talent Group, Inc. v. Copyright Management, Inc.*, 769 S.W.2d 217, 218 (Tenn. Ct. App. 1988). The trial court plays a "limited role in reviewing the decisions of arbitrators" and is severely limited in its authority to retry the issues decided by arbitration. *Arnold v. Morgan Keegan & Co.*, 914 S.W.2d 445, 448 (Tenn. 1996) (citation omitted). This is made clear via the statute which provides that the trial court shall only vacate an arbitration award under certain specifically enumerated circumstances. *See* Tenn. Code Ann. § 29-5-324. One such instance under which a trial court must vacate an arbitration award is if an arbitrator exceeded the arbitrator's powers. *See* Tenn. Code Ann. § 29-5-324(a)(4).

An arbitrator exceeds its powers when he or she operates outside the scope of authority established by the contract(s) between the parties. *Int'l Talent Group,* 769 S.W.2d at 218. Arbitrators are prevented from awarding relief in excess of the terms of the agreement entered into between the parties. *Id*. at 219. Thus, in determining whether an arbitrator exceeded its powers, a trial court must look at the terms of the agreement between the parties. *Williams Holding Co. v. Willis*, 166 S.W.3d 707, 711 (Tenn. 2005).

MPA and Intervenors have taken the position throughout this litigation that the City has challenged the Arbitration Award simply

because it does not agree with it. Nothing could be further from the truth. The City is well aware that claiming an arbitrator exceeded his authority because the decision he made is incorrect is not a valid argument under Tennessee law. *See, e.g., id.* (concluding that the arbitrator did not exceed the scope of his authority in assigning defendant 100% of the fault); *Arnold v. Morgan Keegan & Co., Inc.*, 914 S.W.2d 445, 450 (Tenn. 1996) (rejecting argument that arbitration panel's decision was so irrational, that the panel should be found to have exceeded its power); *Davis v. Reliance Elec.*, 104 S.W.3d 57, 61 (Tenn. Ct. App. 2002) (rejecting argument that the arbitrator exceeded his power in failing to apply the correct burden-shifting analysis). The issue in this case does not concern the correctness of the determinations of the Arbitrator's Award, but rather whether the Arbitrator was authorized by the terms of the contract between the City and MPA to make such an award.

Courts will vacate an arbitrator's award where "relevant language was not considered by the arbitrator or it appears that the arbitrator has not interpreted the specific contract at issue." *Exide Technologies v. Int'l Bhd. of Elec. Workers, Local No. 700*, 964 F.3d 782, 786 (8th Cir. 2020). Vacating the award is also appropriate where the arbitrator's interpretation of the Agreement "so directly contradicts the plain meaning of the parties' agreement that it effectively rewrites it." *Id.*

Applying this standard, the court in *Int'l Ass'n of Sheet Metal, Air, Rail and Transp. Workers-Mechanical Div. v. Union Pacific R.R.,* 2021 WL 6927566 (D. Neb. Dec. 10, 2021), vacated an arbitrator's decision based on the allocation of the burden of proof in a particular issue to the

union despite specific, clear and controlling language in the collective bargaining agreement that the employer had the burden of proof. *Id.* at *5. *See also PMA Capital Ins. Co. v. Platinum Underwriters Bermuda Ltd.*, 400 F. App'x 654, 655-56 (3d Cir. 2010) (vacating arbitrator's award because it "wrote material terms of the contract out of existence").

Tennessee law is in accord. "When the language of the contract is plain and unambiguous, the court must determine the parties' intention from the four corners of the contract, interpreting and enforcing it as written." *Simonton v. Huff*, 60 S.W.3d 820, 825 (Tenn. Ct. App. 2000) (citations omitted). As recently described by the Tennessee Supreme Court:

> The common thread in all Tennessee contract cases—the cardinal rule upon which all other rules hinge—is that courts must interpret contracts so as to ascertain and give effect to the intent of the contracting parties consistent with legal principles.
>
> Also foundational to our jurisprudence is the principle that the rules used for contract interpretation have for their sole object to do justice between the parties, by enforcing a performance of their agreement **according to the sense in which they mutually understood it at the time it was made**. Common sense must be applied to each case, rather than any technical rules of construction.

Individual Healthcare Specialists, Inc. v. BlueCross BlueShield, 566 S.W.3d 671, 688 (Tenn. 2019) (citations omitted) (emphasis added). When an arbitrator's award provides relief not contemplated by the parties in their contractual agreement, such an award exceeds the

arbitrator's power. *D & E Constr. Co. v. Robert J. Denley Co.*, 38 S.W.3d 513, 518 (Tenn. 2001).

In *D & E Constr.*, the Tennessee Supreme Court looked to the content of the parties' contract to determine whether the arbitrator exceeded his authority in awarding attorney's fees. The Tennessee Supreme Court first established that the matter turned on contract interpretation, and thus the contract should be examined to determine the intent of the parties, giving the ordinary meaning to contractual terms. *Id.* In examining the contract, it was determined that based on the plain language of the contract, an award of attorney's fees was not contemplated by the parties. *Id.* at 518-519. Having determined that the parties did not contemplate an award of attorney's fees in their contract, the Court concluded that such an award was not within the scope of the arbitrators' power, and held the award should be vacated because the arbitrators exceeded their power. *Id.* at 519.

In the same way, the Arbitrator in this case ignored the plain language of the MOU to create a new agreement not contemplated by the parties.

C. The Arbitrator's Rewriting of the Agreement Exceeds the Arbitrator's Authority.

The MOU between the City and MPA contains each of the terms by which the parties negotiated and agreed to be bound from July 1, 2022 through June 30, 2025. Specifically, the City and MPA negotiated and agreed in Article 10 that "[i]t is the City's inherent right to . . . promote and assign to transfer employees to any job or any work any time or anywhere . . . [and] to establish new jobs and the wage rates for them."

(R. Vol. I, pp. 11-12). The City and MPA agreed that the City reserved this inherent right and power, except where matters are "specifically ceded" in the MOU. (R. Vol. I, p. 12). Additionally, the City and MPA negotiated and agreed in Article 18 that when "legal or professional considerations, as determined by the City, make changes required or desirable to improve these promotional procedures, the City agrees to notify the Association and solicit recommendations prior to instituting the changes." (R. Vol. I, p. 25). Finally, the City and MPA contemplated the process by which grievances would be adjudicated in Article 12 of the MOU. Specifically, the City and MPA negotiated and agreed that during any arbitration under the MOU, an arbitrator would "have no authority to set policy or to add or subtract from or change any terms of [the] Agreement." (R. Vol. I, p. 16).

The Arbitrator found that the consultation process for promotional testing procedures outlined in Article 18 of the MOU, and the accompanying Exhibit A to the MOU (R. Vol. I, pp. 65-67), specifically ceded the City's absolute managerial rights under Article 10 to unilaterally create new positions. (R. Vol. I, p. 110). The Arbitrator determined that the City "specifically ceded" its absolute right under Article 10 to create the position of Second Lieutenant. (*Id.*). In doing so, the Arbitrator did not merely misapply the terms of the MOU, rather he changed the terms of the MOU in a manner which was not contemplated by the parties.

The terms contained in the MOU should be given their ordinary meaning and "construed harmoniously to give effect to all provisions and to avoid creating internal conflicts." *Wilson v. Moore*, 929 S.W.2d 367,

373 (Tenn. Ct. App. 1996). Nowhere in the MOU is there language evidencing the parties' intent to bargain over the creation of a new position. In looking to Article 18 and/or Exhibit A, on which the arbitrator relied to determine that the City had ceded its management rights, the language makes clear that the parties did not agree to bargain even over changes to existing promotional testing procedures, much less over the creation of a new position under Article 10.

Article 18 states:

> In accordance with the City Charter, *responsibility for testing procedures rests with the Director of Human Resources*. Testing procedures in effect as of the effective date of the Agreement for positions for which bargaining unit employees are eligible will not be changed except as indicated within this Article. In the event that technological, legal, or professional considerations, as determined by the City, make changes required or desirable to improve these promotional procedures, the City agrees to *notify* the Association and *solicit recommendations* prior to instituting changes.
>
> Each of the parties to this agreement hereby recognize and acknowledge that the testing procedures now in effect, and as set forth in Exhibit "A" as an addendum to this agreement, were formulated and agreed upon through the mutual effort and *consultation* of both parties.
>
> While recognizing management's responsibilities and rights with regard to formulation of testing procedures, it is the stated intention of the parties that any changes be effected only after the implementation of a similar *advisory process* with the mutual agreement of the Promotional Committee.

(R. Vol. I, p. 25) (emphasis supplied).

Article 18 says only that if the City, which has complete responsibility for the testing process for promotions, decides to change the existing process, as evidenced by Exhibit A,[8] it "agrees to notify the Association and solicit recommendations prior to instituting the changes." By the plain language of Article 18, the term "mutual agreement," on which the Arbitrator relies heavily in determining the City gave up its management right to create new positions, refers only to agreement on "the implementation of a similar *advisory process*." Yet somehow the arbitrator determined that Article 18, which refers only to consultation and advice, and so does not require the City to bargain even over changes to the testing process for promotions, operates to read out of the MOU the City's clear management right to unilaterally create new positions.

In order to do this, the arbitrator had to change the wording of the MOU to take out the phrase "solicit recommendations" in the first paragraph of Article 18 and change it to "bargain with," to change the word "consultation" to "agreement" in the second paragraph, and to change "advisory process" to "bargaining process" in the third paragraph. In order to make this redrafted Article 18 applicable to the creation of new positions, he would have to add the phrase "and creation of new positions" after "testing procedures" in the first paragraph of Article 18. He would also have to remove the phrase "to establish new jobs and the wage rates for them" from of Article 10. Finally, he would have to add

[8] Exhibit A describes the promotional testing procedures for promotion to "sergeant" and "lieutenant."

"Second Lieutenant" to Exhibit A and make up a testing procedure for promotion to that position.

This extensive rewriting of the parties' agreement clearly exceeds the arbitrator's power, which, by the parties' express agreement, deprives him of the authority "to add or subtract from or change any terms of [the] Agreement." (R. Vol. I, p. 16). The Arbitrator changed the MOU in a manner not contemplated by the City and MPA. Such a decision and award exceeds the Arbitrator's power, and thus, the trial court erred in denying the City's Petition to Vacate the Arbitration Award.

D. The Arbitrator's Creation of the "Promotional Committee" Exceeds the Arbitrator's Authority.

The Arbitrator also exceeded his authority by creating a "Promotional Committee," dictating how many specific members the committee would be comprised of, and making up out of whole cloth what role that committee would play moving forward in the creation of any new position. (R. Vol. I, p. 108-112). This new contractual obligation is clearly not within the scope of the MOU of the parties, and would require the parties to perform duties not contemplated when entering into the MOU.

Again, following the analysis and reasoning of the Tennessee Supreme Court in *D & E Constr.*, the plain language of the MOU does not require the creation of a committee any time a new position is contemplated. Nor does the MOU contain any language outlining that this new committee must agree and approve the terms of any new position. In fact, the term "promotional committee" is used one time in the entire agreement (R. Vol. I, p. 25), and does not contain any definition

or direction on how it should be considered. In creating, activating, and providing duties for this new promotional committee, the Arbitrator has clearly changed the MOU in a manner not contemplated by the City and MPA. Such a decision and award exceeds the Arbitrator's power, and thus, the trial court erred in denying the City's Petition to Vacate the Arbitrator's Award.

E. The Remedy Fashioned by the Arbitrator Is Extreme and Exceeds the Scope of His Authority.

The Arbitrator's entire decision appears to hinge on the notion that the City was required to consult with the MPA over the testing procedures for the Second Lieutenant position and failed to do so. Mere "consultation," which is the specific word used in the Agreement, does not require the City to do anything more than listen to the MPA's ideas. Yet his remedy is not to order the parties to consult, but rather to eliminate the Second Lieutenant position altogether and demote all the officers holding that position until the parties, through a made-up promotional committee, *reach an agreement, i.e. bargain,* as to those testing procedures for the Second Lieutenant position. This draconian remedy is nowhere contemplated in the four corners of the agreement and will create chaos in the MPD. In fashioning this remedy, the Arbitrator has clearly exceeded his authority, and his decision must be vacated.

III. The Trial Court Erred by Granting the Motion to Intervene.

Intervention by a party or parties to existing litigation is governed by Rule 24 of the Tennessee Rules of Civil Procedure. The party seeking intervention carries the burden of establishing the need for intervention

to the trial court. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 190-91 (Tenn. 2000). The Intervenors in this case failed to carry their burden and the trial court erred in granting their motion.

A. The Intervenors Should Not Have Been Permitted to Intervene as of Right Because MPA Is Required to Represent Their Interests and Can Do So Well and Adequately.

Tennessee Rule of Civil Procedure 24.01 provides:

> Upon timely motion any person shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties; or (3) by stipulation of all the parties.

Tenn. R. Civ. P. 24.01. A party wishing to intervene as of right under Rule 24.01 carries the burden of establishing that the proposed intervenor has a substantial legal interest in the subject matter, that the proposed intervenor's ability to protect that interest is impaired; and that the parties to the underlying suit cannot adequately represent the intervenor's interests. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 190-91 (Tenn. 2000).

There is not a significant dispute that the Intervenors have an interest in the subject matter of the arbitrator's decision, as they are presumably the intended beneficiaries of the erroneous award. However, that is merely a portion of the threshold requirement, as the Intervenors

are required to establish that their interest is impaired absent intervention and that the current parties do not adequately represent that interest. A party is permitted to intervene when the party claims an interest relating to the property which is the subject of the action and the party "is so situated that disposition of the action may as a practical matter impair or impede the [party's] ability to protect that interest, ***unless the party's interest is adequately represented by existing parties***." *See Blount v. City of Memphis*, 2007 WL 1094155, at *2 (Tenn. Ct. App. Apr. 13, 2007)(emphasis added).

The MPA is the selected representative of the Intervenors per the MOU.[9] Under the MOU, the MPA is the solitary collective bargaining agent and the exclusive representative of the bargaining unit with respect to arbitration. As such, the MPA is required to represent the very interests which the Intervenors contend are unprotected. Each of the individual officers are permitted to voice their concerns to the MPA and be heard through their exclusive representative. This privilege is one of the many reasons the individual officers pay dues to the MPA, and why the MPA exists in the first place.

The Intervenors argue in their motion that the MPA may not be able to adequately represent them because *the City* argues that the union acquiesced in the "drastic alteration of the rank structure and promotional process." (R. Vol. I, p. 123). The MPA has made it clear in its counterclaim that it believes the Arbitrator correctly found that it did

[9] Seventy out of the seventy-three officers are current members of the bargaining unit, and as such, are represented in all grievances by the MPA.

not acquiesce to anything of the sort. How then can it be that the MPA's position is at odds with that of the Intervenors?

In *Parking Guys v. Metro. Gov't of Nashville & Davidson County*, 605 S.W.3d 451 (Tenn. Ct. App. 2019), the Tennessee Court of Appeals denied intervention when an existing party was already advocating the proposed intervenor's position: "[T]he narrow question before us is whether the Commission's decision was supported by material evidence. Metro, the named Respondent in this case, has filed a brief asserting that it was. That position already has a competent advocate. Respectfully, Schipani's intervention would be superfluous." *Id.* at 461. In the same way, the facts before the Court make clear that to date: the MPA negotiated the underlying issues, filed the grievance on behalf of the bargaining unit against the City, arbitrated the underlying issues, and is currently litigating against the City to enforce the arbitrator's award, including his conclusion that the MPA did not agree to the creation of the Second Lieutenant position. Respectfully, intervention by the 73 officers would therefore be superfluous. The facts clearly show that the Intervenors have adequate representation in this matter, and therefore the trial court erred in permitting them to intervene.

B. Permissive Intervention Is Not Applicable When Intervenors Have Identical Interests to MPA and their Interests Are Being Represented by MPA.

Tennessee Rule of Civil Procedure 24.02 provides, "[u]pon timely motion any person may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when a movant's claim or defense and the main action have a question of law or fact in

common." Tenn. R. Civ. P. 24.02. A court must also consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 190 (Tenn. 2000). A trial court's denial is proper if it is based in law, fact, or is otherwise logical and informed. *Id.* at 192-93.

Although permissive intervention is within the sound discretion of the trial court, courts have generally refused permissive intervention when the proposed intervenors have the same interests and make the same arguments as an existing party in the litigation who can adequately represent those interests. *See, e.g., League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018) (identity of interest with existing party and fact that proposed intervenor's position is being represented by existing party counsel against permissive intervention); *Blount-Hill v. Bd. of Educ. Of Ohio*, 195 F. App'x 482, 487 (6th Cir. 2006) (trial court did not abuse its discretion in denying permissive intervention where allowing intervention "would result only in the duplication of the efforts of the existing Defendants and undue delay of the litigation"); *Tiger Lily LLC v. U.S. Dept. of Housing and Urban Dev.*, 2020 WL 7658076, *3 (W.D. Tenn. 2020) (permissive intervention inappropriate where proposed intervenor "has not identified a single new or unique argument that it could advance" and "shares nearly identical interests and arguments with Defendants in this matter").[10]

[10] These cases were decided under Rule 24(b) of the Federal Rules of Civil Procedure, which is nearly identical to Tenn. R. Civ. P. Rule 24.02.

The issue of whether a group of twenty-four union members could intervene either as of right or permissively in a petition to enforce an arbitration award in which the existing parties were the employer and the union was squarely before the court in *Int'l Bhd. of Teamsters v. J.F. Partyka & Son, Inc.*, 176 F.R.D. 429 (D. Mass 1997). That case, decided under Federal Rule of Civil Procedure 24 (the federal equivalent of Tennessee Rule of Civil Procedure 24), held that both intervention as of right and by permission were inappropriate when it was clear that the union had to that point and would continue to adequately and well represent the interests of the group of union members who sought to intervene. 176 F.R.D. at 431-32. This is the identical situation presented here.

Because the Intervenors and MPA have identical interests and arguments and Intervenors are well and adequately represented by MPA, there was no reason for the trial court to exercise its discretion to permit them to intervene in this case.

C. The Trial Court Did Not Provide a Rational Basis for Granting the Motion to Intervene and so Abused its Discretion.

It is unheard of for a trial court to permit the intervention of 73 individuals who are already represented by their union without a finding that the union either cannot or will not represent their interests in the litigation, but that is exactly what the trial court did. The sole basis for the trial court's decision to grant the motion to intervene was that the union did not object to intervention (although the City most vociferously did) and that any of the 73 Intervenors could "opt out" of being

represented by separate counsel, as if they were intervening as a class instead of 73 individual parties:

> THE COURT: Right. But you do not oppose the intervention?
>
> MS. GODWIN: Correct . That is correct, Your Honor.
>
> THE COURT: All right. Thank You. All right.
>
> MS. KRUPICKA: Your Honor, just again to -- I guess I'm trying to make two points. First of all, the Union is, according to the MOU, is the sole and exclusive bargaining agent for the office -- the non-supervisory officers of the police department. The Union is a party in this case. The union represents all of the officers in this case. It's not enough that they may lack confidence in the Union. They have to be able to show that the Union cannot or will not represent their interest, and since they're seeking the identical relief that the Union is seeking, they don't have a basis to intervene as parties. Now, you know –
>
> THE COURT: Well, excuse me. It seems to me that -- okay. I said confidence. They don't have the confidence, but I think they want to make sure that their interests is adequately represented by the Union because of y'all, the City, when I say you, filing a motion or a petition to vacate the arbitration award. So I think that's the main issue. Y'all are -- you have filed a petition to vacate. The Union said they don't have a problem with the intervention. They do not have a problem with the intervention. So I don't see why the City would have a problem.
>
> MS. KRUPICKA: Well, the City just would like to not have 73 additional parties to deal with.
>
> THE COURT: Well, I don't think you're going to have 73. You have an attorney, he represents -- Mr. Spence represents all the parties, and if one of those parties do not agree with Mr.

> Spence, they can opt out. I can't see in my opinion how many officers is it in this -- we have signed up for you, Mr. Spence?
>
> MS. KRUPICKA: 73.
>
> THE COURT: Okay. So the Union doesn't oppose. All right. So I'm going to allow the motion to intervene because officers' positions and promotional opportunities will be affected. Thank you.

(R. Vol. IV, pp. 32-35).

The fact that MPA did not object to the intervention of 73 officers, most of whom were its members, is not the standard by which a motion to intervene is decided. The fact that the Intervenors' positions and promotional opportunities will be affected by the outcome of the litigation does not differentiate Intervenors' position from that of the MPA, whose members, which include the Intervenors, will be identically impacted. Because the trial court's decision is not based on law or fact and is not logical or informed, it is an abuse of discretion and should be reversed.

IV. The City is Entitled to a New Trial Because the Trial Court Has Admitted It Was Not Impartial.

After permitting Intervenors to intervene against the City's opposition, after denying the City's Petition to Vacate the Arbitration Award and granting MPA's Counter-Petition to Confirm and Enforce the Arbitration Award, and after denying the City's motion to stay enforcement of its judgment pending appeal, the trial court entered an order *sua sponte* recusing itself from the case. The order cites only Section 1.04 of Rule 10B of the Code of Judicial Conduct (Tenn. Sup. Ct. R. 10B, PRC 1.04), which describes the procedure for reassignment of a

case after recusal, and Local Rule 23(B), which also governs the procedure for transferring a case after recusal. (Local Rules of Practice, 30th Jud. Dist. of Tennessee 23(B)).

Rule 2.11(A) of the Code of Judicial Conduct provides that a judge must disqualify (recuse) herself from a case under circumstances where the judge's "impartiality might reasonably be questioned," including but not limited to cases in which "[t]he judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding." (Tenn. Sup. Ct. R. 10, PRC 2.11(A)). The rule further provides that, except in cases of bias or prejudice, the judge may disclose the basis for her recusal in order to permit the parties to decide whether to waive disqualification. (*Id.* at 2.11(C)).

Because the trial court did not disclose the basis for its recusal, it is possible to conclude that the basis was personal bias or prejudice, which cannot be waived. Regardless of the basis, however, the fact of the trial court's recusal is an admission that the judge's impartiality might reasonably be questioned in this case. The fact that the judge recused herself *after* she had made all of the decisions in the case, thus immediately calling into question the legitimacy of her rulings, demands the granting of a new trial. The need for a new trial is reinforced by the fact that the judge provided little reasoning and no law- or fact-based reasoning for the decisions she made, all of which were against the City.

CONCLUSION

The City submits that the trial court's decision to rubber-stamp the Arbitration Award without any consideration of the many ways in which the Arbitrator exceeded his authority is error. The trial court's decision should be reversed and the Arbitration Award vacated. The City further submits that the trial court's decision, contrary to applicable law, to permit the intervention of 73 individual police officers despite the presence of the officers' own union as a party is also error and should be reversed. In the alternative, the fact that the trial court recused itself after making these decisions, coupled with the lack of legal rationale for those decisions, is grounds for a new trial. At the very least, the City should have an opportunity to have its case decided by a court that can decide this matter impartially.

Respectfully submitted this 11th day of September, 2025,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing has been served upon the following electronically and via U. S. Mail, postage prepaid, this 11th day of September, 2025, which parties should receive notice of docketing of the appeal:

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief contains 7,018 words in compliance with Section 3, Rule 3.02(a)(1) of Supreme Court Rule 46 governing electronic filing.

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