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

CITY OF MEMPHIS,
Petitioner/Appellant,

vs.

MEMPHIS POLICE ASSOCIATION,
Respondent-Counter-Petitioner/Appellee,

vs.

FAUSTO FRIAS, ET AL,
Intervenors/Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF
SHELBY COUNTY, TENNESSEE
Case No. CT-2027-24

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

BRIEF OF RESPONDENT-COUNTER-PETITIONER/APPELLEE MEMPHIS POLICE ASSOCIATION

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the Trial Court was correct in granting the Memphis Police Association's Counter-Petition to Confirm and Enforce the Arbitrator's Award pursuant to the Tennessee Revised Uniform Arbitration Act, Tenn. Code Ann. § 29-5-323 and in denying the City of Memphis' Petition to Vacate.

2. Whether the Trial Court properly exercised its discretion in permitting sergeant members of the Memphis Police Association to intervene in the case.

3. Whether the City of Memphis waived any argument that the Trial Court was not impartial when it rendered judgment against it.

STATEMENT OF THE CASE

The City of Memphis (the "City") and the Memphis Police Association (the "MPA") are parties to a Memorandum of Agreement ("MOU") which contains a provision for binding arbitration of grievances. Grievances are defined as "any disagreement submitted in writing and signed by a member or in the event of a group grievance the Association President, over the interpretation and application of the terms of this Agreement." (MOU, R. Vol. 1, pp. 13-72).

Following discussions concerning the development of a field sergeant position in the Memphis Police Department ("MPD"), the City unilaterally changed the promotional process of the MOU for promotions to Sergeant and Lieutenant in Articles 18 and Exhibit A. A grievance was filed accordingly. The MPA followed the grievance arbitration process of Article 12 of the MOU and an arbitration hearing was held before Arbitrator Thomas G. McConnell, Jr. (the "Arbitrator") who was mutually selected by the parties from the Federal Mediation and Conciliation Service ("FMCS"). At the commencement of the hearing the parties stipulated to the issue to be determined as "Whether the City of Memphis and Memphis Police Department violated the Agreement between the parties by unilaterally changing the rank structure and promotion process set forth in Article 18 and Exhibit A of the Agreement.? If so, what shall the appropriate remedy be?" (Arbitration Award, R. Vol. 1, p. 75).

Following two days of hearings, the Arbitrator issued his award on March 9, 2024. (R. Vol. I, pp. 74-112). He found that the City violated Article 18 and Exhibit A of the MOU by changing the rank structure and promotion process. Arbitrator McConnell ordered the City of Memphis to restore the status quo ante in relation to the rank structure and process at issue. The Arbitrator further ordered that "The promotion committee referenced in the last paragraph of Article 18 of the MOU is

hereby activated which shall be comprised of an equal number of representatives from each party. The City is ordered to abide by Article 18 and Exhibit A of the 2022-2025 MOU unless and until the terms of Article 18 and Exhibit A are changed through joint action of the parties in the Promotion Committee or through future negotiations." (Arbitration Award, R. Vol. 1, pp. 111-112).

The City has been steadfast in its refusal to comply with the Arbitrator's award. On March 25, 2025, 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 Arbitrator's Award, R. Vol. 1, pp. 1-6). On April 26, 2024, the MPA filed an Answer and Counter-Petition to Confirm and Enforce the Arbitration Award. (Exhibit 1 to Appellant's Brief).

On April 29, 2024, seventy-three Sergeants filed a Motion to Intervene. (Motion and Memorandum of Law to Intervene, R. Vol. I, pp. 115-131). Following a hearing on the motion on August 20, 2024, the Trial Court granted their motion and allowed the intervention. (Order Granting Non-Party Police Officers' Motion to Intervene, R. Vol. II, pp. 211-212).

After briefing by the parties, the Trial Court held a hearing on March 6, 2025, and ruled that the City's Petition to Vacate the Arbitrator's Award was denied and the MPA's Counter-Petition to Confirm and Enforce the Arbitrator's Award was granted. (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).

On April 24, 2025, the City filed its Notice of Appeal and a Motion to Stay Execution of the Judgment of the Trial Court. (Motion for Stay of Execution of Judgment, R. Vol. II, pp. 238-42). Following a hearing, the Trial Court denied the City's motion to stay. (See Exhibit 4 to Appellant's Brief). The City appealed the Trial Court's denial of a stay to this Court, which denied the stay in a per curium order dated July 9, 2025. The City sought reconsideration of the Court's denial of

the Stay which was again denied. (Court of Appeals Order dated July 9, 2025, attached hereto as Exhibit A). The City then appealed to the Tennessee Supreme Court, which likewise denied the stay. (Supreme Court Order dated September 17, 2025, attached hereto as Exhibit B).[1]

[1] Appellant's Brief states that the Tennessee Supreme Court granted the stay on August 16, 2025, however such was a temporary administrative stay only. (Appellant's Brief, p. 10)

STATEMENT OF FACTS

The City's version of the facts is unsupported by the record and self-serving. The relevant facts are undisputed. It cannot be disputed that the City unilaterally changed the rank structure and promotional process of the MPD in a manner contrary to the terms of the MOU between the City and the MPA. The MPA filed a grievance pursuant to Article 12 of the MOU and the parties proceeded to Arbitration. After a two-day hearing in which all parties were given the opportunity to present evidence and argument the Arbitrator ruled that the City had violated the MOU. In doing so, the Arbitrator thoroughly examined the evidence and interpreted the language of the MOU. Specifically, he found that:

1. There is no rank of Second Lieutenant in Exhibit A – there is only one rank/classification, i.e., Lieutenant.

2. The pay for the Second Lieutenant is less than the pay for the First Lieutenant.

3. The Criteria for eligibility to take the Second Lieutenant promotional exam has changed from seven (7) years of seniority and two (2) years in grade as Sergeant to five (5) years seniority only.

4. There is an exclusion from eligibility for officers who have discipline of more than five (5) suspension days within the two (2) year period preceding the eligibility cutoff date.

5. After the current promotional process Sergeants will have to promote to Second Lieutenant before they can enter the promotional process for First Lieutenant (formerly Lieutenant) and have two (2) years in grade.

6. If a Sergeant takes the tests for Second Lieutenant and for First Lieutenant and is offered a promotion to Second Lieutenant before his number is reached on the promotion roster for First Lieutenant, he or she will lose their place on the First Lieutenant list and then have to wait for at least another two (2) years before being eligible to enter the First Lieutenant process again. (See testimony of Sgt. Byron Haynes, Tr. Vol. 1, p. 147).

(Arbitration Award R. Vol. 1 p. 104).

Arbitrator McConnell ordered the City to restore the status quo ante in relation to the rank structure and process at issue. The Arbitrator further ordered that "The promotion committee referenced in the last paragraph of Article 18 of the MOU is hereby activated which shall be comprised of an equal number of representatives from each party. The City is ordered to abide by Article 18 and Exhibit A of the 2022-2025 MOU unless and until the terms of Article 18 and Exhibit A are changed through joint action of the parties in the promotional committee or through future negotiations." (Arbitration Award, R. Vol. 1, p. 73).

The City's reasoning for taking the action that it did is not relevant to this appeal. Contrary to the City's recitation of facts, as noted by the Arbitrator and in accordance with the evidence presented during the arbitration, the parties had been in discussions regarding a field sergeant position on and off since 2018. (Arbitration Award, R. Vol. 1, p. 104). The parties agreed that more field supervision was needed. However, the City took unilateral action without further negotiation or agreement of the MPA despite the MPA's request to convene the promotional committee as provided for in Article 18 of the MOU. (Arbitration Award, R. Vol. 1, pp. 87, 104).

STANDARD OF REVIEW

In *Arnold v. Morgan Keegan & Co. Inc*. 914 S.W.2d 445 (1996) the Tennessee Supreme court considered the standard of review to be applied by the Court of Appeals when it reviews the decision of a trial court in an arbitration case. The Court held that it should accept findings of fact that are not "clearly erroneous." Matters of law, it stated "if not able to be resolved by resort to controlling statutes, should be considered independently, with the utmost caution, and in a manner designed to

minimize interference with an efficient and economical system of alternative dispute resolution." In that case, the Tennessee Supreme Court found that the Court of Appeals had essentially conducted a *de novo* review of the arbitration proceedings, rather than a more restricted review of the trial court's action, reversed the Court of Appeals and reinstated the trial court decision confirming the arbitration award.

Courts have a "limited role" in reviewing an arbitration decision and must follow a "differential standard of review." The court does not reweigh the evidence presented to the arbitrator. The court's review of an arbitration decision is "one of the narrowest standards of judicial review in all of American jurisprudence." *Morgan Keegan & Co. v. Smythe*, 2014 WL 2462853, (Tenn Ct. App. May 29, 2014). Courts may set aside an arbitration decision only in "very unusual circumstances" and the award will stand unless shown to be "clearly erroneous." *Arnold v. Morgan Keegan & Co.*, 914 S.W.2d 445, 450 (Tenn. 1996). The Tennessee Supreme Court has remarked:

> If an arbitrator makes a mistake, either as to law or fact, it is a misfortune of the party, and there is no help for it. There is no right of appeal and the Court has no power to revise the decision of "judges" who are of the parties' own choosing. An [arbitration]award is intended to settle the matter in controversy and thus save the expense of litigation. If a mistake be a sufficient ground for setting aside an award, it opens a door for coming into court in almost every case; for in nine cases out of ten some mistake either of law or fact, may be suggested by the dissatisfied party. Thus…arbitration, instead of ending would tend to increase litigation. *Arnold* v. *Morgan Keegan & Co.*, 914 S.W.2d. at 449.

Judicial review of arbitration awards is narrow because arbitration is intended to be the final resolution of disputes. *National Wrecking Co. v. International Brotherhood of Teamsters Local 731*, 990 F.2d 957, 961 (7th Cir.1993). Public policy favors alternative dispute resolution because it is quicker, less expensive and relieves court congestion. *Buraczynsk v. Eyring*, 919 S.W.2d 314, 318 (Tenn. 1996)

SUMMARY OF THE ARGUMENT

The scope of review of arbitrator's awards is extremely limited. It must be so in order for arbitration to be a legitimate alternative to litigation and for there to be finality in the resolution of disputes. The MPA followed the procedure provided in the MOU. The parties to the arbitration should be required to honor the outcome, win or lose**.** The integrity of the process is at stake. The Trial Court here did not err in finding that the Arbitrator did not exceed his power or authority under the MOU and the ruling of the Trial Court should be affirmed.

Under the Tennessee Revised Uniform Arbitration Act (TRUAA),[2] upon petition to the court for an order on an arbitration award, the court **must** issue a confirming order, unless the award is modified or corrected pursuant to T.C.A. § 29-5-321 or T.C.A. § 29-5-325 or is vacated pursuant to T.C.A. § 29-5-324. The only grounds upon which the City sought to vacate that arbitrator's award was that the arbitrator exceeded his powers. The City was unable to establish that the arbitrator exceeded his powers and the Trial Court so found. Accordingly, the Arbitration award must be confirmed.

ARGUMENT

THE TRIAL COURT DID NOT ERR IN RULING THAT THE ARBITRATOR DID NOT EXCEED HIS AUTHORITY

After reviewing all the evidence and analyzing the testimony of witnesses for both the City of Memphis and the MPA, the Arbitrator interpreted the language of the MOU and found that "The City violated Article 18 and Exhibit A of the MOU

[2] The Tennessee Uniform Arbitration Act (TUAA) was replaced by the Tennessee Revised Uniform Arbitration Act (TRUAA), which went into effect on July 1, 2023. T.C.A. § 29-5-323.

by changing the rank structure and promotion process." The Arbitrator's analysis was thorough and rational. Specifically, he found that:

1) There is no rank of Second Lieutenant in Exhibit A – there is only one rank/classification, i.e., Lieutenant.

2. The pay for the Second Lieutenant is less than the pay for the First Lieutenant.

3. The Criteria for eligibility to take the Second Lieutenant promotional exam has changed from seven (7) years of seniority and two (2) years in grade as Sergeant to five (5) years seniority only.

4. There is an exclusion from eligibility for officers who have discipline of more than five (5) suspension days within the two (2) year period preceding the eligibility cutoff date.

5. After the current promotional process Sergeants will have to promote to Second Lieutenant before they can enter the promotional process for First Lieutenant (formerly Lieutenant) and have two (2) years in grade.

6. If a Sergeant takes the tests for Second Lieutenant and for First Lieutenant and is offered a promotion to Second Lieutenant before his number is reached on the promotion roster for First Lieutenant, he or she will lose their place on the First Lieutenant list and then have to wait for at least another two (2) years before being eligible to enter the First Lieutenant process again. (See testimony of Sgt. Byron Haynes, Tr. Vol. 1, p. 147).

(Arbitration Award, R. Vol. 1, p. 104).

Arbitrator McConnell ordered the City to restore the status quo ante in relation to the rank structure and process at issue. The Arbitrator further ordered that "The promotion committee referenced in the last paragraph of Article 18 of the MOU is hereby activated which shall be comprised of an equal number of representatives from each party. The City is ordered to abide by Article 18 and Exhibit A of the 2022-2025 MOU unless and until the terms of Article 18 and Exhibit A are changed

through joint action of the parties in the Promotional Committee or through future negotiations." (Arbitration Award R. Vol. 1, p. 112).

The Arbitrator further wrote "As this is a contract interpretation case, the prime directive is to discern the intention of the parties." **(**citing *Common Law of the Workplace* (2d. ed. 2005) at p. 71, §2.2. (Arbitration Award, R. Vol. 1, p. 105). Interpreting the MOU, the Arbitrator noted that "Although the management rights provision indicates that the 'management and the direction of the working force are vested exclusively in the City, the parties also agreed in that same sentence that such rights can be trumped by other provisions within the MOU. This theme is repeated in the second paragraph of the management rights clause, where the City reserves its rights and powers, **except where matters are 'specifically ceded' in the MOU.** Article 18 and Exhibit A specifically trump the general management rights of the City.'" (emphasis added) (Arbitration Award, R. Vol. 1, p. 105; MOU Articles 10, 18 and Exhibit A, R. Vol. 1, pp. 24-25, 38, 65-67).

The Arbitrator went on to analyze the first and second paragraphs of Article 18 noting:

> 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. (*Id*).

Reading the above two paragraphs together, the Arbitrator reasoned that "in order to change the testing procedures, the City was obliged to meet the prerequisites

contained in the first paragraph and the last paragraph thus requiring mutual agreement of the parties in a Promotional Committee." (*Id*).

The Arbitrator cited the well accepted rule of interpretation that "All words of the parties are to be read together to give harmony to the effect of all the parties words." Elkouri and Elkouri, *How Arbitration Works*, (7th Ed. 2012) at 9-35. Arbitrator McConnell reasoned, "I cannot come up with an alternative interpretation which makes more sense, or for that matter any sense. Once accepting this construction, it must also be concluded that the City 'ceded control' on this issue, and thus management rights do not prevail in this case of contract construction." (Arbitration Award, R. Vol. 1, p. 110). Tennessee case law is consistent with arbitral authority. "[a]ll provisions of a contract should be construed in harmony with each other so as to give effect to each provision." *Cummings, Inc. v. Dorgan*, 320 S.W.3d 316, 333 (Tenn. Ct. App. 2009).

MPA President, Essica Cage Rosario had requested that the Promotional Committee be reconstituted. Memphis Police Chief Davis initially asked her to name the representatives that she was designating for the Committee. President Rosario did so. In response, Deputy Chief Sean Jones stated that the Memphis Police Department was no longer pursuing changing the rank structure. (Arbitration Award, R. Vol. 1, p. 95).

In activating the promotional committee, the Arbitrator specifically acknowledged that "I am acting as grievance arbitrator here, not an interest arbitrator." (Arbitration Award, R. Vol. 1, p. 111). The arbitrator acknowledged that he did not have the authority to set policy or to add to or subtract from the terms of the agreement, writing:

> It is not my function to determine whose position I would adopt if I had free reign to do so based upon my own personal assessment. Here in the parties' own words, their 'intent" is to require mutual agreement of the Promotion Committee before a change in the procedures could be

> made. It also makes sense to me that if there is no extant Promotion Committee, then the party wishing to change the status quo on promotion procedures has the burden of establishing one as a first step in accomplishing the goal of reaching mutual agreement. As no mutual agreement was reached here, I must find that the City violated the MOU in establishing the new rank in a manner which is inconsistent with Article 18 and Exhibit A.
>
> (Arbitration Award, R. Vol. 1, p. 111).

Returning the parties to the status quo ante is the seminal remedy for a unilateral change in the parties' agreement. "When the parties elect to submit a dispute to an arbitrator they are not engaged in an academic exercise. They desire a solution to an issue (not infrequently the grievance involves a recurring issue) and a directive restoring the *status quo ante*." M. Hill and A. Sinicropi, *REMEDIES IN ARBITRATION* 506 (2d ed. 1991). Arbitrator McConnell did not dictate to the City what the resulting promotional process would look like, only finding that it needed to be done by mutual agreement through the Promotional Committee or other negotiation.

The City argues that the Arbitrator exceeded his powers because he "created a promotional committee." The Arbitrator did not "create" a promotional committee. The parties make specific reference to a Promotional Committee in the last paragraph of Article 18. There is no indication that the parties viewed such a committee to still be operating during the relevant time frame leading up to the grievance. The Arbitrator wrote "the fact that the parties do reference such a committee in Article 18 of the MOU means to me that the parties intended that either party has the authority to activate that committee when times call that to be done. As such, in my view the parties need not go through the process set forth in Article 11 (Labor Management Committee) to establish a subcommittee on the issue of promotions, as they would with other issues provided the Labor Management

Committee agreed. I therefore take the MPA's requested remedy to include activation of the Promotional Committee, and it is so activated. Of course, it is up to the parties to determine whether convening the committee process will be meaningful and if so for how long." (Arbitration Award, R. Vol. 1, p. 39).

It is a most reasonable interpretation of the language that the promotional committee consists of representatives of both parties, i.e. MPD Management and the MPA. The Arbitrator did not usurp any power of the City and did not tell the City how to conduct its promotional process. He ruled only that the City could not unilaterally implement changes in the specific provisions of the MOU without going through the promotional committee and reaching mutual agreement.

The Arbitrator's Opinion and Award is clearly within his authority to interpret the MOU and decide the grievance issue jointly submitted to him by the parties. The City's effort to vacate the Arbitrator's award is motivated merely by its loss. The term "Grievance" is defined in the MOU "as any disagreement submitted in writing and signed by a member or in the event of a group grievance the Association President, over the interpretation and application of the terms of this Agreement." (MOU Article 12, R. Vol. 1, p. 26-29). The grievance process under the MOU provides that if a grievance is not resolved in Step #4 "the matter will be submitted to binding arbitration." (MOU, R. Vol. 1, p. 28)

The City complains that the Trial Court did not make specific findings. However, the Trial Court's review of the arbitrator's award was a properly limited one. The Judge found that the Arbitrator had in fact interpreted the language of the MOA. The Trial Court's review was in accordance with the TRUAA and case law developed therefrom. The City's essential argument is that the arbitrator got it wrong. However, that is not grounds for vacating an arbitrator's award even if it were so. In her Order Judge Dandridge specifically found that "[t]he Arbitrator abided by the Agreement. He did not exceed his authority or powers as he did

interpret the MOU, which is what the parties asked him to do. He interpreted Articles 10 and 18. Article 18 states that … 'in accordance with the City Charter, responsibility for testing procedures rests with the Director of Human Resource. 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.' The City did in fact change the procedures, which is consistent with the Arbitrator's interpretation." (Order on Petition to Vacate Arbitrator Award and Counter-Petition to Confirm and Enforce Arbitrator's Decision and Award, R. Vol. II, p. 236).

The Arbitrator's decision was thorough and well-reasoned. To accept the City's argument, one would have to read the term "mutual agreement" out of the MOU. Article 18 PROMOTIONS provides "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 effect 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." (emphasis added) (MOU Article 18, Vol. 1, p. 38).

The City then complains that the remedy in the case, i.e. returning to the status quo ante because it will require the demotion of Second Lieutenants. That problem is of the City's own making. The Court noted in *Arnold v. Morgan Keegan,* that Tenn. Code Ann. § 29-5-313 (a) specifically provides that "[t]he fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award." *Supra*, at 451.

THE COURT DID NOT ERR IN ALLOWING THE INTERVENTION OF SERGEANTS WITH AN INTEREST IN THE OUTCOME OF THE CASE.

Appellant acknowledges that permissive intervention is within the sound discretion of the Trial Court. (Appellant's Brief, p. 28). Here the Trial Court Judge exercised her discretion and allowed the Sergeants whose promotional expectations were at stake to participate in the case. Both patrol officers and sergeants are in the bargaining unit represented by the MPA. (MOU, R. Vol. 1, p. 18). As the Court noted, the MPA did not object to the Sergeants' participation. Their participation caused no delay or disruption to the proceedings. Their participation played virtually no role in the proceedings other than to file briefs and participate in arguments before the court. Their participation had no demonstrable effect on the outcome of the case. It had no adverse effect upon the City and as such does not constitute grounds for appeal.

The MPA would further defer to the Intervenors' Brief in this regard.

THERE IS NO SUPPORT FOR THE CONTENTION THAT THE COURT WAS NOT IMPARTIAL AND THE CITY IS NOT ENTITLED TO A "NEW TRIAL"

The City's contention that the Trial Court Judge was not impartial is wholly without merit and is frankly an insult to the Courts. Moreover, the City failed to timely raise its allegations of judicial bias or prejudice.

Among Tennessee courts, "It is a well-known and well-accepted rule that a party must complain and seek relief immediately after the occurrence of a prejudicial event and may not silently preserve the event as an 'ace in the hole' to be used in event of an adverse decision." *Gotwald v. Gotwald*, 768 S.W.2d 689, 694 (Tenn. Ct. App. 1988). It is the "duty" of the party alleging judicial prejudice "to bring such facts to the attention of the trial court immediately and he is not permitted to suppress such information until he has received an adverse decision. . . . A mistrial must be

demanded as soon as its grounds are known, otherwise, it is waived." *Spain v. Connolly*, 606 S.W.2d 540, 543-44 (Tenn. Ct. App. 1980). More succinctly, "Allegations of bias and prejudice must be raised at the trial court level by a Motion to Recuse, or the issue is waived." *Ellis v. Rowe*, No. E2011–00375–COA–R3–CV, 2012 WL 391074, at *5 (Tenn. Ct. App. 2012).

In the instant case, the City did not raise any allegation of judicial bias or prejudice at the Trial Court level. In fact, the City did not question the Judge's partiality at any point before the Judge issued her "adverse decision[s]" by granting the Union's Motion to Confirm and Enforce Arbitration Award and denying the City's Motion to Vacate Arbitration Award. *Spain*, 606 S.W.2d at 543. The Judge voluntarily recused herself after the final ruling in the case. In fact, the City did not raise the issue until the Court of Appeals denied a stay of the Judge's Order in the case. The City may not now use the Judge's post-decision *sua sponte* recusal as an "ace in the hole" to try to get another bite at the apple with a different judge. *Gotwald*, 768 S.W.2d at 694. If the City were aware of grounds for recusal that existed at any point before the Judge issued her decisions, it had a duty to bring them to the Court's attention as soon as it became aware of them and has now waived such objections. *Spain*, 606 S.W.2d at 543-44. Alternatively, if the City were not aware of grounds for recusal before the Judge issued her decisions, and the Judge did not feel compelled to recuse herself before issuing the decisions, it is reasonable to infer that the basis for her recusal did not exist until some point after she issued the decisions. Thus, the City either waived its allegations of partiality by failing to timely raise them, or no basis for recusal existed.

JUDGE WAS NOT REQUIRED TO DISCLOSE THE REASON FOR HER SUA SPONTE RECUSAL

Tennessee Supreme Court Rule 2.11(C) states:

> A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1) or for participation in a judicial settlement conference under paragraph (A)(6)(e), **may** disclose on the record the basis of the judge's disqualification and **may** ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding. (emphasis added).

The plain text of the rule states that a judge who recuses himself or herself "*may* disclose" the basis for his or her disqualification and "ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification." Tenn. Sup. Ct. R. 10, PRC 2.11(C). This rule does not require judges to disclose why they recuse themselves; it merely provides a judge the option to disclose the basis for disqualification (and allow the parties an opportunity to waive the matter) when the disqualification is for a reason other than personal bias or prejudice. Here there was no reason to seek a waiver from the parties as the case was effectively concluded other than any post judgment matters.

There are several reasons for disqualification other than personal bias or prejudice, some of which are enumerated in Tenn. Sup. Ct. R. 10, PRC 2.11(A), e.g.,

> . . .
>
> (2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:
>
> > (a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
> > (b) acting as a lawyer in the proceeding;
> > (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

Tenn. Sup. Ct. R. 10, PRC 2.11(A).

A judge recusing herself for any of the reasons cited in the rule may choose to disclose the reason for her recusal, but the Tennessee Supreme Court Rules do not require it. Consequently, a judge's decision not to disclose why she recused herself does not raise an inference that the basis for recusal was bias or prejudice.

THE CITY CANNOT MEET ITS BURDEN OF ESTABLISHING THAT THE JUDGE WAS BIASED OR PREJUDICED

"Personal bias or prejudice" is only one among many reasons for recusal. Tenn. Sup. Ct. R. 10, PRC 2.11(A). With regard to bias or prejudice, the Tennessee Supreme Court has clarified, "Not every bias, partiality, or prejudice merits recusal. . . . To disqualify, prejudice must be of a personal character, directed at the litigant, 'must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from ... participation in the case.'" *State v. Rimmer*, 250 S.W.3d 12, 38 (Tenn. 2008) (citing *Alley v. State*, 882 S.W.2d 810, 820 (Tenn. Crim. App. 1994)). Personal bias "involves an antagonism toward the moving party but does not refer to any views that a judge may have regarding the subject matter at issue." *Id.*

The party alleging bias "bears the burden" of establishing that "any alleged acts of bias or prejudice arise from extrajudicial sources rather than from events or observations during the litigation of the case." *Adams v. Dunavant*, 674 S.W.3d 871, 878-79 (Tenn. 2023). When a party alleges that the bias "stems from events occurring in the course of the litigation of the case," it has an even "higher burden of establishing bias." *Boren v. Hill Boren, PC*, 557 S.W.3d 542, 552 (Tenn. Ct. App. 2017). In that instance, the party must show that "the bias is so pervasive that it is

sufficient to deny the litigant a fair trial." *Rimmer*, 250 S.W.3d at 38; *see also McKenzie v. McKenzie*, No. M2014–00010–COA–T10B–CV, 2014 WL 575908, at *3 (Tenn. Ct. App. Feb.11, 2014). Common indications of bias include "[a]n expression of opinion of the merits of the case prior to hearing" and "[r]emarks which suggest that the judge has taken a position favorable or unfavorable to a party." *Alley*, 882 S.W.2d at 822. No such indications of bias are alleged by the City.

Significantly, "A trial judge's adverse rulings are not usually sufficient to establish bias." *State v. Cannon*, 254 S.W.3d 287, 308 (Tenn. 2008). As the Tennessee Supreme Court explained, "If the rule were otherwise, recusal would be required as a matter of course since trial courts necessarily rule against parties and witnesses in every case, and litigants could manipulate the impartiality issue for strategic advantage, which the courts frown upon." *Davis v. Liberty Mutual Ins. Co.*, 38 S.W.3d 560, 565 (Tenn. 2001). A trial judge's rulings, "even if erroneous, numerous and continuous, do not, without more, justify disqualification." *Alley*, 882 S.W.2d at 821.

The City neglects to identity any "extrajudicial sources" of bias, or any words or actions to indicate a bias so "pervasive" as to "deny the litigant a fair trial." *Rimmer*, 250 S.W.3d at 38. The City's allegations of bias or prejudice rest on (1) the judge electing not to disclose the reason for recusing herself; (2) the judge recusing herself after issuing the decisions in this case; and (3) the "fact that the judge provided little reasoning and law or fact-based reasoning for the decision she made, all of which were against the City." (Appellant's Brief, p. 32).

With regard to the first claim, considering that Tennessee Supreme Court Rule 2.11(A) outlines several reasons other than personal bias or prejudice for a judge to recuse herself, and Tennessee Supreme Court Rule 2.11(A) does not require any judge to disclose his or her reason for self-recusal, there is no factual basis for

concluding that the judge recused herself due to personal bias or prejudice. The City's second claim—that the judge recusing herself after issuing the decisions "call[s] into question the legitimacy of her rulings"— overlooks the obvious explanation that the reason for the judge's recusal did not arise until some point after the decisions were issued. (Appellant's Brief, p. 32). The City's third claim—that adverse, or possibly erroneous, rulings are an indication of partiality— disregards established Tennessee law that adverse rulings, even if erroneous, are insufficient to establish bias. *State v. Cannon*, 254 S.W.3d at 308; *Davis v. Liberty Mutual Ins.*, 38 S.W.3d at 565; *Alley v. State*, 882 S.W.2d at 821.

CONCLUSION

For all of the foregoing reasons, the Judgment of the Trial Court Confirming and Enforcing the Arbitration Award should be affirmed. The City's appeal should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2025, a true and correct copy of the foregoing filing, Respondent-Appellee's Brief, has been served upon the following, electronically and via first class mail, postage pre-paid:

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I certify that the foregoing brief contains 5,909 words in compliance with Section 3, Rule 302(a)(1) of Supreme Court Rule 46 governing electronic filing.

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