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

REPLY BRIEF OF THE APPELLANT CITY OF MEMPHIS

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Oral Argument Requested

ARGUMENT

I. MPA and Intervenors Have Not Addressed the City's Core Argument That the Arbitrator Exceeded His Authority.

MPA and Intervenors argue that all the Arbitrator did was to follow ordinary contract principles by interpreting the MOU, yet they base that argument on only a very limited portion of one sentence of one article of that document: the term "mutual agreement." "It is well-settled that courts must examine the content of the entire written agreement to determine the contracting parties' intent." *D & E Constr. Co. v. Robert J. Denley Co.*, 38 S.W.3d 513, 518 (Tenn. 2001). Viewing the MOU in its entirety, there can be no argument that the Arbitrator did nothing more than interpret the MOU, since if he gave effect to all the language in both Article 10 and Article 18, he could not have reached the conclusion that the City "specifically ceded" its Article 10 management right to create new jobs in Article 18. Article 18 does not give MPA any authority at all. It is strictly limited to the testing process for existing positions in the MPD and places all the authority for testing <u>on the City</u>. The City's only obligation to the MPA under Article 18 is to notify it of any proposed changes to the process and to solicit MPA's recommendations. The phrase "mutual agreement" in Article 18, so heavily relied on by the Arbitrator, refers to a mutually agreed upon *advisory process*, not a requirement to bargain, for changes to those testing procedures. The plain language of Article 18 does not even commit the City to bargain over the testing procedures, let alone nullify the City's management right

to unilaterally create new positions. How can it be evidence that the City "specifically ceded" its management authority?

Under the Arbitrator's "interpretation" of the MOU, the term "mutual agreement" in Article 18 is so important, and must be given such heavy weight, as to twist the remaining language of Article 18 far beyond its plain meaning or the basic understanding of the parties. In order to give "mutual agreement" such weight as to impose a requirement to bargain over a management right clearly specified in Article 10, the Arbitrator had to rewrite the MOU, taking out the phrase "solicit recommendations" in the first paragraph of Article 18 and changing it to "bargain with," changing the word "consultation" to "agreement" in the second paragraph, and changing "advisory process" to "bargaining process" in the third paragraph, despite the fact that the City Charter (as explicitly stated in Article 18) reposes sole authority for formulating testing procedures with the Human Resources Director of the City. In order to make this redrafted Article 18 applicable to the creation of new positions, he would have had to add the phrase "and creation of new positions" after "testing procedures" in the first paragraph of Article 18. He would also have had to remove the phrase "to establish new jobs and the wage rates for them" from Article 10. Finally, he would have to add "Second Lieutenant" to Exhibit A and make up a testing procedure for promotion to that position.

With regard to the "Promotional Committee" referenced in Article 18, the Arbitrator took an undefined term that appears nowhere else in the MOU, and created a body that has the power to bargain with the City over one of its clearly defined management rights. Without relying on

any other language from the MOU, he created the committee, staffed it, and ordered the City to bargain with it. MPA and Intervenors refer to this as "deciding a remedy." Certainly the Arbitrator is tasked with deciding a remedy in any arbitration, but he does not have the authority to make one up. This is exactly what the Tennessee Supreme Court rejected in *D & E Construction.* In that case, the Arbitrator made up the remedy of awarding attorney fees to the prevailing party even though the contract at issue made no mention of attorney fees. The Court found that, although the contract gave the arbitrator broad authority to decide "any claims" related to the breach of contract alleged, awarding attorney's fees as a remedy exceeded the parties' expressed intent and so his authority. 38 S.W.3d at 518.

In view of the foregoing, what the Arbitrator did here cannot by any stretch of logic or imagination be considered mere "interpretation." Where an arbitrator ignores relevant language in an agreement or adds or reads out material terms to such a degree as to effectively rewrite it, the Arbitrator's Award must be vacated. *Exide Technologies v. Int'l Bhd. of Elec. Workers, Local No. 700*, 964 F.3d 782, 786 (8th Cir. 2020); s*ee 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").

Under Tennessee law, arbitrators must construe a contract "according to the sense in which [the parties] mutually understood it at the time it was made." *Individual Healthcare Specialists, Inc. v. BlueCross BlueShield*, 566 S.W.3d 671, 688 (Tenn. 2019). No legitimate reading of Article 18, which refers only to notification, solicitation of

recommendations and an advisory process, could reach the conclusion that the parties to the MOU intended to give the MPA the power to tell the City what jobs it can create or not create. As MPA and Intervenors aptly point out, "[a]rbitrators exceed their power when they go beyond the scope of the authority granted by the arbitration agreement." *Arnold v. Morgan Keegan & Co.,* 914 S.W.2d 445, 447-48 (Tenn. 1996). By rewriting the MOU to reach a conclusion far outside both the language of the MOU and what either party to the MOU intended, the Arbitrator has done just that, and his decision should therefore be vacated.

II. The Trial Court's Silence on Its Basis for Recusal Does not Rebut Evidence of the Court's Bias.

MPA and the Intervenors argue that the trial court's recusal from the case without providing a reason cannot be evidence that the trial court could not be impartial based on personal bias or prejudice. It is true that Rule 2.11 of the Code of Judicial Conduct names a number of different reasons to question a judge's impartiality and thus mandate recusal. However, by recusing herself at all, Judge Dandridge has admitted that her impartiality might reasonably be questioned. Whether the reason for that admission is personal bias or prejudice or one of the other reasons enumerated in Rule 2.11 is immaterial.

Nor is the City's suggestion that Judge Dandridge's recusal may be based on personal bias or prejudice based solely on the judge's silence about the reason. A number of her actions in the case suggest personal bias against the City and towards MPA and Intervenors. She permitted Intervenors' participation in the lawsuit directly contrary to controlling

legal authority; she denied the City's Petition to Vacate the Arbitration Award and granted MPA's Counter-Petition to Confirm and Enforce the Arbitration Award with little or no legal reasoning, effectively rubber-stamping the Arbitrator's decision; and she refused to stay the judgment on the inexplicable ground that police officers holding the position of *First* Lieutenant (not Second Lieutenants, who are the actual subject of the lawsuit) would be prejudiced by a stay and without addressing whether and how the *Second* Lieutenants and City would be prejudiced by a denial of the stay.

Most importantly of all, however, is that the trial court made the decision to recuse herself only after she had made all the substantive decisions in the case. This set of facts demands that the City be given a new trial on its Petition to Vacate the Arbitration Award in order to protect the foundational presumption of fair and impartial decision-making that underlies our entire system of justice.

CONCLUSION

The trial court's decision to deny the City's Petition to Vacate the Arbitration Award is clearly erroneous. The City submits that the proper remedy would be reversal of the trial court and vacation of the Arbitration Award, but submits that, regardless of how this Court weighs the trial court's decision, the judge's decision to recuse herself after making it mandates that the City be given a new trial.

Respectfully submitted this 27th day of October, 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 27th day of October, 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 _____ words in compliance with Section 3, Rule 3.02(a)(1) of Supreme Court Rule 46 governing electronic filing.

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