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## Summary of Ruiz v. City of North Las Vegas, 127 Nev. Adv. Op. No. 20

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*Ruiz v. City of North Las Vegas*, 127 Nev. Adv. Op. No. 20 (May 19, 2011)<sup>1</sup>

## CIVIL PROCEDURE AND ADR – CHALLENGING AN ARBITRATION AWARD

### **Summary**

An appeal from the District Court's dismissal of a petition to vacate an arbitration decision because the petitioner lacked standing.

### **Disposition/Outcome**

District Court's decision reversed and remanded because the party had standing pursuant to NRS 289.120.

### **Factual and Procedural History**

Officer Lazario Ruiz (Ruiz) was a police officer with the North Las Vegas Police Department (NLVPD) and was a member of its correlative union. The union and the City of North Las Vegas have a collective bargaining agreement (CBA). The CBA provides a grievance procedure for challenging a union member's termination and for submitting the termination to binding arbitration. Further, the CBA vests this right with the union, not the officer.

NLVPD terminated Officer Ruiz's employment for alleged unprofessional conduct and lack of candor resulting from an investigation wherein he was a witness. NLVPD reached this conclusion after a NLVPD Internal Affairs officer observed without Ruiz's knowledge or consent one of Ruiz's interviews concerning the matter Ruiz witnessed. Pursuant to the CBA, the union submitted the termination to binding arbitration, wherein the union sought to exclude certain evidence allegedly obtained in violation of Officer Ruiz's statutory Peace Officer Rights.<sup>2</sup>

After losing arbitration, the Union assigned its right to challenge the arbitration decision to Ruiz. Ruiz individually petitioned the district court to vacate and remand for a new arbitration. The City filed a motion to dismiss for a lack of standing, claiming Ruiz was a non-party and thus could not bring a challenge. The district court agreed and further concluded the right to challenge was not assignable and Ruiz had not met the prerequisites to sue under the Peace Officer Bill of Rights. Ruiz appealed the district court's decision to the Nevada Supreme Court.

### **Discussion**

Justice Hardesty, writing for a unanimous three justice panel, addressed each of Ruiz's arguments: 1) Ruiz was a party for the purpose of appealing an arbitral decision pursuant to Nevada's Arbitration Act, 2) Ruiz had authority to challenge the arbitral decision because the union assigned their rights to him, and 3) Ruiz had standing under NRS 289.120 to seek relief.

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<sup>1</sup> Christian Balducci authored this summary.

<sup>2</sup> See NEV. REV. STAT. 289.010- .120 (2007).

### *Whether Ruiz Was a Party*

In a case of first impression, the court decided an aggrieved employee does not have standing as a “party” to challenge a decision made in an arbitral proceeding between their employer and their union. The need to preserve uniformity in the interpretation of the Uniform Arbitration Act was of significant importance in this conclusion.<sup>3</sup> Consequently, the Court adopted another court’s reasoning and concluded, “an individual employee may not appeal an unfavorable award where the union expressly determines not to appeal.”<sup>4</sup> Accordingly, Ruiz was not a party because his union decided not to appeal.

### *If The Union Could Assign Their Rights*

Collective bargaining agreements are contractual by nature, and thus, a union contractually bargains for and on behalf of its members. Keeping in line with the fundamentals of contract law, a contracting party cannot make an assignment of rights increasing the non-assigning party’s obligations or risks under a contract.<sup>5</sup> Allowing a union to assign its rights to union members would impose additional obligations and risks on the City. Accordingly, the union’s assignment of its right to appeal to Ruiz was invalid.

### *Standing Under NRS 289.120 to Seek Judicial Relief*

NRS 289.120 allows peace officers to apply to the district court for judicial relief when their employer violates their Peace Officer Rights if all internal grievance procedures are exhausted.<sup>6</sup> The City argued Ruiz did not exhaust the internal grievance procedures as they related to the Peace Officer Bill of Rights because the grievance was a general wrongful termination grievance.

The Court disagreed and found Ruiz “grieved” and exhausted the issue and all procedures when the union alleged four specific violations in the initial grievance. Further, the NLVPD and City’s failure to consider said argument is not significant. Accordingly, Ruiz had standing to challenge the arbitral decision in the district court because the City allegedly violated his Peace Office Rights and because he exhausted the internal grievance procedures.

### **Conclusion**

For the purpose of Nevada’s Arbitration Act, an aggrieved employee does not have standing as a “party” to challenge a decision made in an arbitral proceeding between their employee and their union.

However, a peace officer may appeal an arbitral decision arising from a grievance their union filed on their behalf once all internal grievance procedures are exhausted if their employer

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<sup>3</sup> Nevada adopted the Uniform Arbitration Act of 2000. *See* NEV. REV. STAT. § 38.206.

<sup>4</sup> *Eisen v. St. Dep’t of Pub. Welfare*, 352 N.W.2d 731, 736 (Minn. 1984)

<sup>5</sup> *HD Supply Facilities Maint. V. Bymoen*, 125 Nev. 200, 204, 210 P.3d 183, 186 (2009).

<sup>6</sup> *See* NEV. REV. STAT. § 289.120 (2007).

violated their statutory Peace Officer Rights. Further, an issue is “grieved” and later exhausted if raised during the internal proceedings.