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November 17, 2014

Karl S. Hall, Reno City Attorney  
City Attorney's Office  
One East First Street, 3rd Floor  
Reno, Nevada 89505

Re: IAFF Local 731 Drug and Alcohol Testing Policy and Procedures

Dear Mr. Hall,

This office represents Mr. Jeff Church, a Reno citizen concerned about the current General Operations Manual for Drug and Alcohol Testing Policy and Procedures between the City of Reno and the IAFF Local 731.

Under Nevada State law as well as in accordance with the Uniform Controlled Substances Act, **"It is unlawful for a person knowingly to use or be under the influence of a controlled substance** except in accordance with a lawfully issued prescription." [Emphasis Added]. See, NRS 453.411.

Further, "It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his or her blood or urine that is equal to or greater than:

Prohibited substance	Urine Nanograms per milliliter	Blood Nanograms per milliliter
(a) Amphetamine	500	100
(b) Cocaine	150	50
(c) Cocaine metabolite	150	50
(d) Heroin	2,000	50
(e) Heroin metabolite:		
(1) Morphine	2,000	50
(2) 6-monoacetyl morphine	10	10
(f) Lysergic acid diethylamide	25	10
(g) Marijuana	10	2
(h) Marijuana metabolite	15	5
(i) Methamphetamine	500	100
(j) Phencyclidine	25	10

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See, NRS 484C.110(3). However, the purported Drug and Alcohol Testing Policy and Procedures dated March 20, 2002 by and between the City of Reno and the IAFF allows City employed on-duty firefighters, who may or may not be operating fire trucks at the time, to be under the influence of many of these drugs up to two times the legal limits set forth in NRS 453.411 before it can be found to be a "positive" test. See, Drug and Alcohol Testing Policy and Procedures at Section 5. This effectively means that on-duty firefighters can be under the influence- up to two times more than the legal limit, without facing discipline.

This is completely absurd. What happens when an impaired firefighter misses a stop sign and plows into cross traffic killing not only a citizen of this City but other firefighters in the vehicle at the time? These are public safety employees- our first responders who we entrust and employ to save lives. They simply cannot be allowed to put lives at risk.

It has been a longtime rule of law that contracts that are the basis of an illegal purpose or against public policy are void and unenforceable. See, *Gaston v. Drake*, 14 Nev. 175 (1879). Pursuant to NRS 484C.110, driving while impaired is illegal per se. Additionally, many of these permitted drugs are illegal under Federal law as well. As such and aside from the more pressing public safety problems that the current policy imposes, the current policy may potentially limit or prohibit the City of Reno's ability to receive Federal grant money. Accordingly, this "policy" must immediately be declared void and invalid.

While it is my understanding that there has been some push back from the Reno Fire Department to agreeing to engaging in negotiations to change this agreement, it is the position of this office that the City of Reno does not need the Fire Department's permission to declare the current policy null and void.

While this policy dates back to 2002, the policy itself explicitly states, "The procedures outlined in this document for drug and alcohol testing shall be covered by all other applicable articles of the Labor Agreement between the City of Reno and the Reno Fire Fighters, Local 731, IAFF." See, p.2. It has been the Fire Department's position that it is just an old policy that has not posed any issues and, as such, has never been reviewed or updated since its inception. However, the current Labor Agreement, which was extended by agreement through 2014 specifies that, "The parties agree that manuals of all current directives, bulletins, **policy procedures, operational notices, memos and other materials relating to the Fire Department's operational policies and administration policies** shall be issued in a manner of proper index, consecutive number and date of issue.

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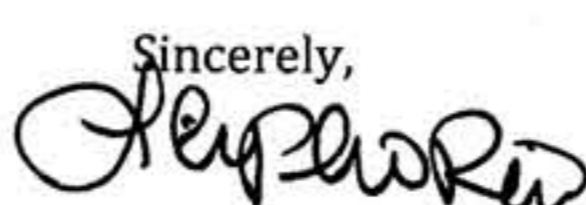
**Said manuals shall be updated no less frequently than annually.**" [Emphasis Added]. See, City of Reno and Local 731 Labor Agreement dated July 1, 2011 to June 30, 2013, at p. 11, sec. 10(b).

The subject Drug and Alcohol Policy explicitly calls itself a "General Operations Manual." As such, in order to comply with the very terms of the current Labor Agreement, this "manual" must have been updated at least annually. Under the current Labor Agreement and at the very least, the Drug and Alcohol Policy would have had to be updated in 2011, 2012, 2013 and 2014. Further, any updates made during those years would require City Council approval prior to becoming effective. See, NRS 288.153, providing, ("Any new, extended or modified collective bargaining agreement or **similar agreement between a local government employer and an employee organization must be approved by the governing body of the local government employer at a public hearing...**"). [Emphasis Added]. Evidently, this has never once been done in accordance with the current Labor Agreement. Thus, the parties are in breach of Article 10, Section (b) of the current Labor Agreement.

Despite opposition from the Fire Department that this is not an item that is currently on the negotiation table, the City has the ability to demand that this policy be immediately updated in accordance with the current Labor Agreement. Alternatively and due to the fact that the parties are in material breach of Section 10 of the Labor Agreement, the City would be well within its rights to find that the current illegal Drug and Alcohol Policy that is in direct violation of public policy is void and unenforceable.

As a concerned taxpayer and citizen who is provided public safety services by the Reno Fire Department, my client demands that immediate action be taken. The City of Reno has a duty to protect its citizens and ensure that all public safety officers are fit to serve and protect our community. Allowing Firefighters to work under the current Drug and Alcohol Policy puts our entire community in danger- an unnecessary danger that the City of Reno has the ability to immediately put an end to.

Again, it is respectfully requested that the City of Reno take immediate action to nullify the current Drug and Alcohol Policy. Please advise as to your intention to act in accordance with the requests herein. We look forward to hearing from you.

Sincerely,  
  
Stephanie Rice, Esq.

SR/cr  
Cc: Client; File.

Enclosure(s): None.