

CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Date: December 15, 2014

To: Civil Service Commission

E. DENNIS NORMANDY
PRESIDENT

From: Sandra Eng *GE*
Acting Executive Officer

DOUGLAS S. CHAN
VICE PRESIDENT

Subject: **Fiscal Years 2015-16 and 2016-17 Mayor's Budget Instructions and Department Budget Preparation Schedule**

KATE FAVETTI
COMMISSIONER

Departments are required to submit a Two-Year Budget Plan for Fiscal Years 2015-16 and 2016-17. This report outlines the Civil Service Commission Budget Request.

SCOTT R. HELDFOND
COMMISSIONER

I. Planning Calendar

GINA M. ROCCANOVA
COMMISSIONER

The Mayor's Office has not yet issued its detailed Budget Instructions for FY 2015-16 and 2016-17 but met with departments to discuss the five year financial plan goals for the City. All departments, including the Civil Service Commission, are required to submit their respective Budget Plan to the Office of the Controller and the Office of the Mayor on February 21, 2014.

SANDRA ENG
ACTING EXECUTIVE OFFICER

TARGET DATE	DESCRIPTION
December 4, 2014 - January 4, 2015	Preliminary Work: Preparation of Draft Budget Request
January 5, 2015	Civil Service Commission reviews and comments on Draft Budget Request
January 5, 2015 – January 28, 2015	Budget Preparation for February 2, 2015 Civil Service Commission meeting
February 2, 2015	Civil Service Commission review and approval of Budget Request
February 3, 2015 until Budget Submission Deadline	Changes made by Civil Service Commission incorporated and final Budget Request prepared
February 23, 2015	Civil Service Commission Budget Request submission due to Controller's Office
February 23, 2015	Civil Service Commission Budget Request submission due to Mayor's Office

II. Budget Outlook for Fiscal Years 2015-16 and 2016-17

The City has worked to strengthen its long term financial management and reduce volatility on the City's budget process by having departments prepare two-year budget plans and five year financial plans. The five year financial plan from the Mayor's Office indicates continued economic recovery with revenue increases, no recession occurs within the projection period, no major changes to service levels and numbers of employees, and funding levels equal to Fiscal Year 2015-16 adopted budget for technology and equipment. Expenditure continues to outpace revenues Citywide due

to negotiated labor agreements, minimum wage increases, investments in technology, new public safety building, Central Subway, and public safety hiring. There are no reductions for Fiscal Year 2015-16 but the Mayor's Office has instructed the Civil Service Commission to reduce by 1% or \$8188 for Fiscal Year 2016-17. For Fiscal Year 2015-16, the Mayor's Office has instructed departments to find ways to improve on public service.

III. Fiscal Year 2014-15 Overview

A. Summary of Current Fiscal Year 2014-15

Below is a final Fiscal Year 2014-15 (current) Civil Service Commission Budget. The total budget allocation was \$1,119,109, of which \$809,109 was General Fund Support. The remaining support consisted of Interdepartmental Expenditure Recovery totaling \$310,000.

This budget supports the administration of the three (3) major programs that are essential core functions of the Commission's Charter mandate: 1) Appeals and Requests for Hearings, Rules, Policies, and Administration; 2) Merit System Review, Inspection Services and Audit; and 3) Employee Relations Ordinance Administration.

Account	FY 2014-15 Adopted Budget	Total
Salary and Fringe Benefits		
Permanent Salaries	580,826	
Temporary Salaries	1,500	
Mandatory Fringe Benefits	256,575	
	Sub-total	838,901
Professional Services	10,300	
Material and Supplies	3,395	
Services of Other Departments	266,513	
	Sub-total	280,208
General Fund Support		809,109
Interdepartmental Recovery		310,000
Total Budget Appropriation		1,119,109

B. Fiscal Year 2014-15 Staffing

The Commission's Fiscal Year 2014-15 budget includes a budgeted staff of 6.0 FTE:

- Two Administrators
 - Executive Officer (Job Code 0961 Department Head I)
 - Assistant Executive Officer (Job Code 0951 Deputy Director I)

- One Professional
 - Merit System Review/Audit and Employee Relations Ordinance Administrator (Job Code 1244 Senior Personnel Analyst)
- Three Technical and Support Staff
 - Rules, Personnel & Office Coordinator (Job Code 1203 Personnel Technician)
 - Appeals Coordinator (Job Code 1840 Junior Management Assistant)
 - Administrative Staff Assistant (Job Code 1426 Senior Clerk Typist)

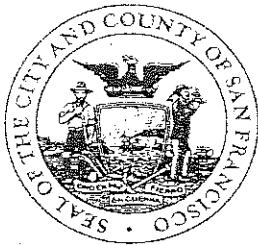
IV. Fiscal Year 2015-16 and Fiscal Year 2016-17 Budget Request

As indicated, the current Fiscal Year 2014-15 budget allocation for the Civil Service Commission is \$1,119,109, of which \$809,109 is General Fund Support. Benefit cost growth will not be known until 2015.

The Budget Request for Fiscal Years 2015-16 and 2016-17 must provide sufficient funding for the Civil Service Commission to operate its function of overseeing the merit system and Rule-making authority to provide qualified persons for appointment to City and County service. Commission staff will prepare the budget request without affecting the services required of the Civil Service Commission, while still seeking ways to increase access to public information from the Commission. The loss of 1 FTE in this small Department of 6.0 FTE would have a devastating impact in the vital merit system oversight provided by the Civil Service Commission as mandated by the Charter; as such, the Executive Officer will ardently advocate for sufficient funding to support the Commission's current full complement of staff

V. Recommendation

Direct Commission staff to prepare Fiscal Years 2015-16 and 2016-17 Budget Request at current service and staff levels; continue to negotiate amounts; present Budget Request at the Commission meeting of January 5, 2015; incorporate changes made by the Commission up to the Budget Request submission deadline; and approve to submit the Fiscal Years 2015-16 and 2016-17 Budget Request to the Controller and the Office of the Mayor by February 23, 2015.



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Sent via Electronic Mail

December 4, 2014

E. DENNIS NORMANDY
PRESIDENT

DOUGLAS S. CHAN
VICE PRESIDENT

KATE FAVETTI
COMMISSIONER

SCOTT R. HELDFOND
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

SANDRA ENG
ACTING EXECUTIVE OFFICER

NOTICE OF CIVIL SERVICE COMMISSION MEETING

Carey Dall
SEIU Local 1021
350 Rhode Island, Suite 100 South Bldg.
San Francisco, CA 94103
carey.dall@seiu1021.org

SUBJECT: APPEAL BY CAREY DALL ON BEHALF OF EMILY A. MENESES OF THE DEPARTMENT OF HUMAN RESOURCES REJECTION OF APPEAL REGARDING THE 2930 PSYCHIATRIC SOCIAL WORKER WRITTEN EXAMINATION.

Dear Mr. Dall:

The above matter will be considered by the Civil Service Commission at a meeting to be held on **December 15, 2014 at 2:00 p.m.** in Room 400, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at www.sfgov.org/Civil_Service under "Meeting" no later than end of day on Wednesday, December 10, 2014. Please refer to the attached Notice for procedural and other information about Commission hearings. A hard copy is also available for your review at the Civil Service Commission's office located at 25 Van Ness Avenue, Suite 720, San Francisco. If, however, you would like an electronic copy of the staff report, you may email your request to CivilService@sfgov.org.

In the event that you wish to submit any additional documents in support of your appeal, the deadline for receipt in the Commission office is 5:00 p.m. on **Tuesday, December 9, 2014** (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Again, please be sure to redact your submission for any confidential or sensitive information that is not relevant to your appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

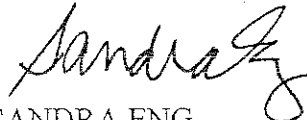
It is important that you or an authorized representative attend the hearing on your appeal. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance.

THIS DOCUMENT SUPPORTS
CALENDAR ITEM 9

All non-privileged materials being considered by the Civil Service Commission for this item are available for public inspection and copying at the Civil Service Commission office Monday through Friday from 8:00 a.m. to 5:00 p.m.

You may contact me at (415) 252-3247 or at Sandra.Eng@sfgov.org if you have any questions.

CIVIL SERVICE COMMISSION



SANDRA ENG
Acting Executive Officer

Attachment

Cc: Saru Cownan, Department of Public Health
Susan Gard, Department of Human Resources
John Kraus, Department of Human Resources
Lillian Louie, Department of Public Health
Emily Meneses, Appellant
Commission File
Commissioners’ Binder
Chron

Appeal

Eng, Sandra (CSC)

From: GEORGE DUGAN <
Sent: Tuesday, November 11, 2014 12:03 PM
To: Eng, Sandra (CSC); Firm Courtney; laborers261@gmail.com; Kawa, Steve (MYR)
Subject: Request for postponement of my hearing do to being notify to late

To Sandra Eng Acting Executive Officer Civil Service Commission I George Dugan will need to request to postponement my hearing to a later date. The notice that was sent to me was dated November 6, 2014 from your office, it was sent by U.S. Mail to my house 15842 Via Arroyo San Lorenzo Ca. 94580.

I did not receive your letter until November 10, 2014 from the U.S. Mail-man, the time was around 1:30pm as you can see this dose not give me enough time to send in my supplemental material also request to have Steve Flarity from the San Francisco Controlers office to explain about my Whistle-blower complaints regarding Ray Mattias, Brian Goe, Herb Dang, Tommy Moala and Lewis Harrison

Also I would like to have someone from PUC personal to explane to the Commission how Ray Mattias was not Terminated for theft, improper use of a City vehicles and other improper unlawful acts.. Personal reccommendation was Termination but someone decided to give him thirty days suspension not Termination

Back in 1984 Ray Mattias was Terminated for doing the same things theft and other unlawful acts. And he was able to come back to the City And County Of San Francisco to work and once more to do unlawful acts with the Tax-Payers money.

Now to Bian Goe he was also doing the samething just like Ray Mattias misapropration of City funds Personal reccommendation was to give him thirty days suspension he was only given fifteen days suspension and for Lewis Harrison and Tommy Moala was given no time off.

Sandra please set up a new date and time for my hearing and please give me one week notice than you Mr. George Dugan if you need to call me 415-806-2751

2014 NOV 12 AM 8:2
CIVIL SERVICE COMMISSION

Eng, Sandra (CSC)

From: Eng, Sandra (CSC)
Sent: Monday, November 10, 2014 4:20 PM
To:
Cc: Henriquez, Lizzette (CSC)
Subject: G. Dugan Appeal
Attachments: G. Dugan Appeal.pdf

Mr. Dugan,

Per your request, attached is the staff report regarding your appeal to the Civil Service Commission. Please call or email me if you have any questions.

Sincerely,

Sandra Eng

*Sandra Eng
Assistant Executive Officer
Civil Service Commission
City and County of San Francisco
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
Direct (415) 252-3254
Main (415) 252-3247
Fax (415) 252-3260*

Eng, Sandra (CSC)

From: Eng, Sandra (CSC)
Sent: Wednesday, November 12, 2014 12:57 PM
To: 'GEORGE DUGAN'
Cc: Henriquez, Lizzette (CSC)
Subject: RE: Request for postponement of my hearing do to being notify to late
Attachments: FW: Request for postponement of my hearing do to being notify to late

Mr. Dugan,

The email I sent to you this afternoon at 12:06 p.m. confirmed that your appeal has been postponed to the meeting of December 15, 2014 (attached). The Civil Service Commission will be emailing you another Notice of the Meeting on Thursday, December 3, 2014 informing you that your appeal is scheduled for the meeting of December 15, 2014. Thank you for informing us that Local 261 is no longer representing you.

Sincerely,

Sandra Eng

*Sandra Eng
Assistant Executive Officer
Civil Service Commission
City and County of San Francisco
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
Direct (415) 252-3254
Main (415) 252-3247
Fax (415) 252-3260*

From: GEORGE DUGAN [mailto:
Sent: Wednesday, November 12, 2014 12:35 PM
To: Eng, Sandra (CSC)
Subject: Re: Request for postponement of my hearing do to being notify to late

Dec. 15-2014 the date for the next hearing at 2:00pm please send me the new information regarding this. Also I was told by Sylvia Courtney , Legal Counsel, Labors Local 261 at 3271- 18th. Street San Francisco Ca. 94110..On Tuesday November 11-2014 by phone, that the Labors Local 261 would not be Representing me any more. please send all information to me thank you.

On Wednesday, November 12, 2014 7:58 AM, "Eng, Sandra (CSC)" <sandra.eng@sfgov.org> wrote:

Mr. Dugan,

The Civil Service Commission meets on the first and third Mondays of each month unless there is a holiday. The next 3 meetings are the following:

- December 1, 2014 (Any additional material is due on November 25, 2014)
- December 15, 2014 (Any additional material is due on December 9, 2014)
- January 5, 2015 (Any additional material is due on December 30, 2014)

Please let me know which meeting you will be available to attend. We will also need to check the availability of the department staff. The Commission will only be hearing your appeal on your future employment restrictions with the City. Whistleblower Complaints are handled separately by the Controller's Office. Please call me if you have additional questions.

Sincerely,

Sandra Eng

Sandra Eng
Assistant Executive Officer
Civil Service Commission
City and County of San Francisco
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102
Direct (415) 252-3254
Main (415) 252-3247
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Back in 1984 Ray Mattias was Terminated for doing the same things theft and other unlawful acts. And he was able to come back to the City And County Of San Francisco to work and once more to do unlawful acts with the Tax-Payers money.



CIVIL SERVICE COMMISSION
City and County of San Francisco
 25 Van Ness Avenue, Suite 720
 San Francisco, California 94102-6033
 Jennifer Johnston, Executive Officer
 (415) 252-3247

Original of Fax

CSC Register No.
 0026-14-4

To: _____

CC: _____

APPEAL TO THE CIVIL SERVICE COMMISSION

<p>INSTRUCTIONS: Submit an original copy of this form to the Executive Officer of the Civil Service Commission at the address above within the designated number of days following the postmarked mailing date or email date (whichever is applicable) of the Department of Human Resources' or Municipal Transportation Agency's notification to the appellant. The appellant's/authorized representative's original signature is required. (E-mail is not accepted.) It is recommended that you include all relevant information and documentation in support of your appeal.</p>	<p>TYPE OF APPEAL: (Check One)</p> <p>Examination Matters (by close of business on 5th working day)</p> <p>Employee Compensation Matters (by close of business on 7th working day) - Limited application</p> <p>Personal Service Contracts (Posting Period)</p> <p>Other Matters (i.e., Human Resources Director/Executive Officer Action) (30 Calendar days)</p> <p>Future Employability Recommendations (See Notice to Employee)</p>
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Emily Alexandra Meneses	3801 3 rd St. Suite 400, San Francisco, CA, 94124 (415) 970-3911		
Full Name of Appellant	Work Address	Work Telephone	
2930	Psychiatric Social Worker	Department of Public Health	
Job Code	Title	Department	
Residence Address	City	State	Zip Home Telephone
Carey HR Dall	(415)215-8102		
Full Name of Authorized Representative (if any)	Telephone Number of Representative (including Area Code)		

NOTE: If this is deemed to be a timely and appealable matter, the department will submit a staff report to the Civil Service Commission to request that it be scheduled for hearing. You will be notified approximately one week in advance of the hearing date, at which time you will be able to pick up a copy of the department's staff report at the Commission's offices. If you would instead prefer Commission staff to email you a copy of the meeting notice and staff report, please provide your email address below.

Email: carey.dall@seiu1021.org

COMPLETE THE BASIS OF THIS APPEAL ON THE REVERSE SIDE. (Use additional page(s) if necessary)

<p>Does the basis of this appeal include new information not previously presented in the appeal to the Human Resources Director? If so, please specify.</p>	<p>Check One: <input checked="" type="radio"/> Yes <input type="radio"/> No</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------

Carey Dall SEIU 1021 *October 10 2014*

Original Signature of Appellant or Authorized Representative _____ Date _____

State the basis of this appeal in detail. For more information about appeal rights and deadlines, please review the Civil Service Rules located on the Civil Service Commission's website at www.sfgov.org/Civil_Service.

SEIU 1021, on behalf of Emily Meneses, is appealing the decision of DHR not to uphold her protest of the 2. Examination given on August 28, 2014.

Ms. Meneses, and her Union, believe that the 2930 Psychiatric Social Worker permanent position test did not adequately address the duties or client population served by 2930's in DPH. She is currently working at the Foster Care Mental Health program as a provisional 2930. On a daily basis she is interacting with children and their families, completing assessments and treatment plans, working in collaboration with HSA, schools, other clinics and organizations, case managing/linking clients to the appropriate services, and providing on-going therapy.

The test did not allow Ms. Meneses to demonstrate her clinical knowledge or abilities in regards to the population with which she works on a daily basis. As the test did not represent the wide range of clients served by the 2930 positions in the City and County, it cannot lead to a fair evaluation of the comprehensive skill sets and competencies of the candidates who took the exam. Thus, the test did not give candidates the opportunity to make clear their abilities to work with the wide range of the Mental Health clientele served by the City and County of San Francisco.

Mental Health Services for the City and County of San Francisco provides resources, services, and treatment to a wide spectrum of clientele. This clientele includes patients with the specific needs of children, youth, young adults, adults, geriatrics, and clients with substance abuse issues. Unfortunately, the exam was exclusive of the many other client populations that are served by the City and County. It is a disservice to the communities we serve to favor one target client population in the exam, to the exclusion of the others.

A written exam in this context makes no sense. Roughly three decades ago the City and County realized that a written exam did not necessarily lead to hiring well qualified candidates in clinical social worker positions. At that time, a model of Training and Experience was implemented. This model proved effective in selecting suitable candidates who had the skill bases and competencies (linguistic, cultural, etc.) necessary to serve the particular populations served at particular clinics.

Finally, the test format allows for many different responses raising great concern in regards to the scoring process. It appears scoring will be heavily subjective. It follows that the City and County of San Francisco should ensure for the candidates that the raters of the exam will be highly trained and experienced in the art of rating such examinations. Furthermore, it is a sound practice to assure candidates of an objective process by employing raters who have no affiliations with Mental Health Services for the City and County of San Francisco in order to ensure objectivity and fairness in the scoring process. To date these guarantees have not been assured, underscoring concerns around subjectivity and the raters' qualifications.

CSC-12 (5/13)

(Use additional sheets if needed)



SEIU 1021

10/10/14

STAFF REPORT

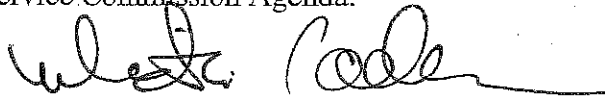


CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

Refer to Civil Service Commission Procedure for Staff - Submission of Written Reports for Instructions on Completing and Processing this Form

1. Civil Service Commission Register Number: 0226 - 14 - 4
2. For Civil Service Commission Meeting of:
3. Check One: Ratification Agenda
 Consent Agenda
 Regular Agenda **X**
 Human Resources Directors Report
4. Subject: Appeal by Cary Dall, SEIU 1021 on behalf Emily A. Meneses of the Department of Human Resources rejection of protest regarding the 2930 Psychiatric Social Worker (CBT-2930-900039) written examination.
5. Recommendation: Deny the appeal and adopt the report
6. Report prepared by: Lillian Louie, DPH Merit Division Telephone number: 554-2912
7. Notifications: **(Attach a list of the person(s) to be notified in the format described in IV. Commission Report Format -A).**
8. Reviewed and approved for Civil Service Commission Agenda:

Human Resources Director: 

Date: 12/2/14
9. Submit the original time-stamped copy of this form and person(s) to be notified (see Item 7 above) along with the required copies of the report to:

**Executive Officer, Civil Service Commission
25 Van Ness Avenue, Suite 720, San Francisco, CA**

94102

10. Receipt-stamp this form in the ACSC RECEIPT STAMP box to the-right using the time-stamp in the CSC Office.

Attachment

CSC RECEIPT STAMP
THIS DOCUMENT SUPPORTS CALENDAR ITEM <u>9</u>

NOTIFICATIONS

Emily Meneses
[REDACTED]
[REDACTED]

Carey Dall
SEIU Local 1021
350 Rhode Island, Suite 100 South Bldg
San Francisco, CA 94103

Lillian Louie
DPH, Merit Systems Division
Room 214, 101 Grove Street
San Francisco, CA 94103

Saru Cownan
DPH, Merit Systems Division
Room 214, 101 Grove Street
San Francisco, CA 94103

John Kraus
Department of Human Resources
1 S Van Ness Ave. floor 4
San Francisco CA 94103

Susan Gard
Department of Human Resources
1 S Van Ness Ave. floor 4
San Francisco CA 94103



Edwin M. Lee
Mayor

Micki Callahan
Human Resources Director

MEMORANDUM

DATE: Dec. 3, 2014

TO: The Honorable Civil Service Commission

THROUGH: Micki Callahan, Human Resources Director

FROM: Lillian Louie, Senior Personnel Analyst, DPH Merit Systems Division
Saru Cownan, Manager, DPH Merit Systems Division
John Kraus, DHR Recruitment and Assessment Services Director

SUBJECT: Appeal of Carey Dall, SEIU 1021 on behalf of Emily A. Meneses the decision of the Department of Human Resources not to uphold Ms. Meneses protest of the 2930 Psychiatric Social Worker Examination

BACKGROUND

The 2930 Psychiatric Social Worker provides a variety of mental health services such as assessing prospective clients, developing treatment plans and providing group or individual counseling/therapy. The classification was announced and tested in parallel with the 2931, Marriage, Family and Child Counselor, which has similar duties but requires a different license. Applications were initially accepted from March 21, 2014 through April 4, 2014. The recruitment was reopened for further filing from May 16, 2014 through May 23, 2014. During the week of August 25, 2014, a written examination involving hypothetical scenarios and requiring narrative responses was administered. The responses of candidates were scored by Department of Public Health (DPH) experts from September through October, and compiled into a tentative eligible list which was posted on November 10, 2014.

The 2930 examination was developed using a content validation strategy. In January of 2014, the assigned analyst met with 12 subject matter experts (SMEs) who completed a job analysis questionnaire to identify tasks and knowledge, skills and abilities (KSAs) required in the job. The SMEs had an average of 21 years of experience serving in the job or supervising incumbents.

Based on discussions with DPH managers and supervisors, it was determined that a scenario-based written test would best evaluate the KSAs. This was communicated to applicants in the job announcement and in the June 24 scheduling letter:

Candidates who meet the minimum qualifications will be evaluated to measure their relative knowledge, ability and skill level in one or more of the following job related areas as appropriate. These areas may include, but not be limited to: knowledge of pertinent laws and regulations; decision making ability; knowledge of the principles

of psychiatric case managements; knowledge of clinical methods; knowledge of appropriate resources; self-protection/assessment skills; written communication skills; oral communication skills; and knowledge of basic personnel policy and practices.

The SMEs and analyst worked cooperatively to formulate scenarios to target various aspects of the job. The scenarios used were drawn from realistic simulations of cases handled by 2930 Psychiatric Social Workers. These scenarios were organized into three test forms which allowed the administration of morning and afternoon test sessions, as well as a make-up exam. A formal process was used to rate the difficulty of the questions to ensure equivalency of the forms.

Once the questions were finalized, SMEs worked with the DPH Merit System Division (MSD) to develop scoring benchmarks; that is, critical elements that should appear in candidate responses to the scenarios. After the test was administered, DPH evaluators received formal training and then graded the candidates' responses.

It should be noted that Mr. David Canham of SEIU Local 1021 had submitted a request to DPH to meet and confer concerning the format of the 2930 examination in June of 2014. Both DPH and the Department of Human Resources (DHR) advised SEIU that the test format is not a condition of "meet and confer". Rather, SEIU had an opportunity to appeal the test format, as a term of the job announcement, when the job announcement was issued. However, SEIU failed to exercise its right to challenge the test format when the announcement was issued in March of 2014 and also when the announcement was reposted in April of 2014. It therefore appears that SEIU has written this appeal of the 2930 Psychiatric Social Worker Examination on behalf of Ms. Meneses, at least in part, as a means to resurrect its challenge to the examination methodology. This is suspected because Ms. Meneses' original protest made no mention that DPH should have used a Training and Experience Rating (T&E) to assess 2930 candidates. SEIU, on the other hand, indicated its T&E preference in June of 2014 and has now incorporated this additional item into Ms. Meneses' appeal to the Civil Service Commission.

ISSUES

The appellant alleges that the test (a) did not adequately address the range of duties nor the client population served by 2930s; (b) did not allow her to demonstrate her clinical knowledge and abilities; and (c) allowed a variety of responses without a "rubric" for scoring to prevent subjectivity on the part of evaluators.

AUTHORITY/STANDARDS

Sec. 111.7 Adequacy of Examinations

Subject to the approval of the Commission, the Human Resources Director, subject to appeal to the Civil Service Commission, shall judge the adequacy of the examination to rate the capacity of the applicants to perform service for the City and County.

ANALYSIS

The City and County of San Francisco (City) uses the 2930 Psychiatric Social Worker classification in various areas (Child Youth Family/L.E.G.A.C.Y, Foster Care Mental Health, Community Oriented Primary Care, etc.). To analyze the job, meetings were held with SMEs representing all areas where the City's Psychiatric Social Workers serve. The SMEs identified the essential job tasks and behaviors necessary to perform the 2930 job across these various areas. They also identified important knowledge and ability areas required to perform the duties.

In addition, the SMEs created the scenarios or situations presented in the test, which assessed candidates' knowledge and abilities identified in the job analysis. These scenarios were drawn from realistic simulations of cases handled by 2930 Psychiatric Social Workers. It was the opinion of the SMEs that qualified candidates should be competent in responding to these job-relevant scenarios and that the essential knowledge and abilities (e.g., analytical thinking, decision making) measured in these scenarios are applicable to all client populations. In other words, these are knowledge and abilities used by all Psychiatric Social Workers.

The appellant asserts that the "test did not represent the wide range of clients served by the 2930 positions" and that, allegedly, she was not given an opportunity "to demonstrate her clinical knowledge or abilities in regards to the population with which she works on a daily basis." It should be noted that the appellant, according to her application, has limited experience as an MSW Clinician. At the time of application, she possessed less than one month experience as an MSW Clinician and 12 months as an MSW Clinical Intern. Consequently, her experience is somewhat narrow. In this regard, it is not altogether surprising that she might be disappointed that the test scenarios did not concentrate on the particular client population with which she is most familiar. However, as already stated, the test scenarios were designed to measure knowledge and abilities that are relevant to the work of all Psychiatric Social Workers regardless of the particular population served. In this regard, the appellant, indeed, was given an opportunity to demonstrate her competencies with regard to the specific knowledge and abilities that SMEs, as part of a content valid process, had identified as essential to the success of a Psychiatric Social Worker.

According to the appellant, "a written exam...makes no sense." Rather, the appeal suggests that a T&E Rating is a better methodology because it has "proved effective in selecting suitable candidates" in the past. Unfortunately, this is not supported by the literature or by the direct experience among human resources professionals.

Point-based T&Es are based on the presumption that the greater the level of education one possesses, or the greater length of time one has spent performing a set of job-specific tasks, the better performer that individual will be in the target job. However, one problem with this selection methodology is that it allows applicants to self-rate/certify their qualifications based on their responses to a supplemental questionnaire. This, unfortunately, often results in applicants inflating their qualifications and, ironically, can punish the applicants who are most honest.

Perhaps of greater significance, is the fact that a T&E says nothing about the quality of one's experience or education. One could be a mediocre student or a mediocre performer on the job

and receive the same score, everything being equal, as someone who is exceptional. In a T&E methodology no one "fails" the T&E because no one is required to *demonstrate* that she or he possesses the knowledge, skills or abilities required to be successful on the job. This is why a T&E approach has been shown in the professional literature to have very poor validity in terms of its ability to predict job success.

Written examinations, on the other hand, tend to have far greater predictive value. For example, the 2930 examination required candidates to *demonstrate* their knowledge and abilities by writing narrative responses to job-related scenarios. This is a common approach in employment testing. As long as evaluators are trained and scoring guidelines provided, as was the case in the 2930 examination, this methodology can be expected to produce highly predictive results.

We appreciate that the appellant has opinions regarding the content and format of the test. However, she has not presented any evidence to suggest that the test did not meet legal and professional standards.

RECOMMENDATION

Deny the appeal filed by Carey Dall, SEIU Local 1021 on behalf of Emily A. Meneses.



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

Sent via Electronic Mail

December 4, 2014

E. DENNIS NORMANDY
PRESIDENT

DOUGLAS S. CHAN
VICE PRESIDENT

KATE FAVETTI
COMMISSIONER

SCOTT R. HELDFOND
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

SANDRA ENG
ACTING EXECUTIVE OFFICER

NOTICE OF CIVIL SERVICE COMMISSION MEETING

George Dugan

SUBJECT: REQUEST FOR HEARING BY SYLVIA COURTNEY ON BEHALF OF GEORGE DUGAN, SEWER REPAIR SUPERVISOR (7246) ON HIS FUTURE EMPLOYMENT RESTRICTIONS WITH THE CITY AND COUNTY OF SAN FRANCISCO.

Dear Mr. Dugan:

As you are aware, the above matter will be considered by the Civil Service Commission at a meeting to be held on **December 15, 2014 at 2:00 p.m.** in Room 400, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at www.sfgov.org/Civil_Service under "Meeting" no later than end of day on Wednesday, December 10, 2014. Please refer to the attached Notice for procedural and other information about Commission hearings. A hard copy is also available for your review at the Civil Service Commission's office located at 25 Van Ness Avenue, Suite 720, San Francisco. If, however, you would like an electronic copy of the staff report, you may email your request to CivilService@sfgov.org.

In the event that you wish to submit any additional documents in support of your appeal, the deadline for receipt in the Commission office is 5:00 p.m. on **Tuesday, December 9, 2014** (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Again, please be sure to redact your submission for any confidential or sensitive information that is not relevant to your appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

It is important that you or an authorized representative attend the hearing on your appeal. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance. As a reminder, you are to be honest and forthright during all testimony and in all documentation that you provide to the Civil Service Commission, failure to do so could lead to discipline, up to and including termination, in accordance with your department's policy.

THIS DOCUMENT IS PUBLIC
CALENDAR ITEM 10

All non-privileged materials being considered by the Civil Service Commission for this item are available for public inspection and copying at the Civil Service Commission office Monday through Friday from 8:00 a.m. to 5:00 p.m.

You may contact me at (415) 252-3247 or at Sandra.Eng@sfgov.org if you have any questions.

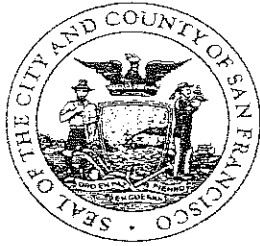
CIVIL SERVICE COMMISSION



SANDRA ENG
Acting Executive Officer

Attachment

Cc: Susan Gard, Department of Human Resources
Rachel Gordunio, Public Utilities Commission
Andrea Gourdine, Public Utilities Commission
Justine Hinderliter, Public Utilities Commission
Commission File
Commissioners' Binder
Chron



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

November 21, 2014

NOTICE OF CIVIL SERVICE COMMISSION ACTION

E. DENNIS NORMANDY
PRESIDENT

DOUGLAS S. CHAN
VICE PRESIDENT

KATE FAVETTI
COMMISSIONER

SCOTT R. HELDFOND
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

SANDRA ENG
ACTING EXECUTIVE OFFICER

George Dugan
c/o Sylvia Courtney, Legal Counsel
Laborers Local 261
3271 – 18th Street
San Francisco, CA 94110

SUBJECT: REQUEST FOR HEARING BY SYLVIA COURTNEY ON BEHALF OF GEORGE DUGAN, SEWER REPAIR SUPERVISOR (7246) ON HIS FUTURE EMPLOYMENT RESTRICTIONS WITH THE CITY AND COUNTY OF SAN FRANCISCO.

Dear Ms. Courtney:

At its November 17, 2014 at 2:00 p.m., the Civil Service Commission had for its consideration the above matter.

The Commission approved to postpone the item to the meeting of December 15, 2014 at the request of Mr. Dugan.

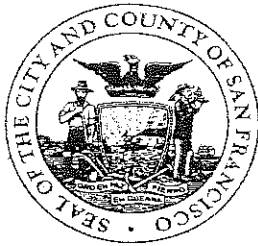
If this matter is subject to Code of Civil Procedure (CCP) Section 1094.5, the time within which judicial review must be sought is set forth in CCP Section 1094.6.

CIVIL SERVICE COMMISSION

A handwritten signature in black ink, appearing to read "Sandra Eng".

SANDRA ENG
Acting Executive Officer

Cc: George Dugan, Appellant
Susan Gard, Department of Human Resources
Rachel Gordunio, Public Utilities Commission
Andrea Gourdine, Public Utilities Commission
Justine Hinderliter, Public Utilities Commission
Commission File
Chron



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

November 6, 2014

NOTICE OF CIVIL SERVICE COMMISSION MEETING

E. DENNIS NORMANDY
PRESIDENT

DOUGLAS S. CHAN
VICE PRESIDENT

KATE FAVETTI
COMMISSIONER

SCOTT R. HELDFOND
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

SANDRA ENG
ACTING EXECUTIVE OFFICER

George Dugan
c/o Sylvia Courtney, Legal Counsel
Laborers Local 261
3271 – 18th Street
San Francisco, CA 94110

SUBJECT: REQUEST FOR HEARING BY SYLVIA COURTNEY ON BEHALF OF GEORGE DUGAN, SEWER REPAIR SUPERVISOR (7246) ON HIS FUTURE EMPLOYMENT RESTRICTIONS WITH THE CITY AND COUNTY OF SAN FRANCISCO.

Dear Ms. Courtney:

As you are aware, the above matter will be considered by the Civil Service Commission at a meeting to be held on November 17, 2014 at 2:00 p.m. in Room 400, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at www.sfgov.org/Civil_Service under "Meetings" no later than end of day on Wednesday, November 12, 2014. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal is attached; however, a hard copy is also available for your review at the Civil Service Commission's office located at 25 Van Ness Avenue, Suite 720, San Francisco.

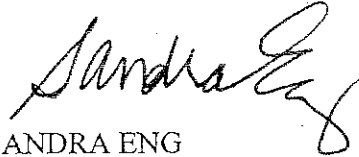
In the event that you wish to submit any additional documents in support of your appeal or your request for postponement, the deadline for receipt in the Commission office is on Wednesday, November 12, 2014 by 11:00 a.m. (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Please be sure to redact your submission for any confidential or sensitive information that is not relevant to the appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

It is important that you or an authorized representative attend the hearing on your appeal. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance. As a reminder, you are to be honest and forthright during all testimony and in all documentation that you provide to the Civil Service Commission, failure to do so could lead to discipline, up to and including termination, in accordance with your department's policy.

All non-privileged materials being considered by the Civil Service Commission for this item are available for public inspection and copying at the Civil Service Commission office Monday through Friday from 8:00 a.m. to 5:00 p.m.

You may contact me at (415) 252-3247 or at Sandra.Eng@sfgov.org if you have any questions.

CIVIL SERVICE COMMISSION



SANDRA ENG
Acting Executive Officer

Attachment

Cc: George Dugan, Appellant
Susan Gard, Department of Human Resources
Rachel Gordunio, Public Utilities Commission
Andrea Gouridine, Public Utilities Commission
Justine Hinderliter, Public Utilities Commission
Commission File
Commissioners' Binder
Chron

Appeal



CIVIL SERVICE COMMISSION
 City and County of San Francisco
 25 Van Ness Avenue, Suite 720
 San Francisco, California 94102-6033
 Anita Sanchez, Executive Officer
 (415) 252-3247

W

CSC Register No.
 0162-12-7
 To: X M. Salahan
 D. Kotake
 CC: L. Marvoni
 M. DE VERA

APPEAL TO THE CIVIL SERVICE COMMISSION

<p>INSTRUCTIONS: Submit an original copy of this form to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102-6033. Appeal must be received by the Executive Officer within the designated number of days following the postmarked mailing date of notification from the Department of Human Resources to the appellant. Original signature of appellant or authorized representative required for appeals. (E-mail not accepted.) *COB=Close of Business</p>	<p>TYPE OF APPEAL: (Check One)</p> <p><input type="checkbox"/> Examination Matters (by COB* on 5th working day)</p> <p><input type="checkbox"/> Employee Compensation Matters (by COB* on 7th working day) - Limited application</p> <p><input type="checkbox"/> Personal Service Contracts (Posting Period)</p> <p><input type="checkbox"/> Other Matters (30 Calendar days) (i.e., Human Resources Director/ Executive Officer Action)</p> <p><input type="checkbox"/> Future Employability Recommendations (See Notice to Employee)</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Full Name of Appellant George Dugan		Work Address None	Work Telephone	
Job Code 7246 Sewer Repair Supervisor	Title	Department San Francisco Public Utilities Commission (SFPUC)		
Residence Address		City	State	Zip Home Telephone
Full Name of Authorized Representative (if any) Theresa Foglio, Business Agent, Laborers Local 261/ Sylvia Courtney, Legal Counsel, Laborers Local 261		Telephone Number (including Area Code) (415) 826-4550		

COMPLETE THE BASIS OF THIS APPEAL ON THE REVERSE SIDE. (Use additional page(s) if necessary)

<p>Does the basis of this appeal include new information not previously presented in the appeal to the Human Resources Director? If so, please specify.</p>	<p>Check One:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------

Sylvia Courtney
 Original Signature of Appellant or Authorized Representative

2012 MAY 29 PM 1:42
 May 29, 2012
 Date

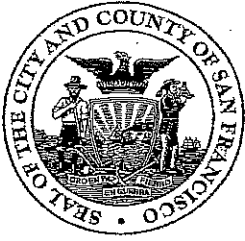
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 2012 MAY 29 PM 1:42

State the basis of this appeal in detail:

George Dugan has been an employee of the City and County of San Francisco since 1985. He was appointed to a permanent civil service position as Class 7246 Sewer Repair Supervisor in 2000. On May 9, 2012, he received notice of termination from employment effective May 9, 2012, along with Notice of Separation with restrictions against future employment with the City and County of San Francisco as well as with the Public Utilities Commission. Mr. Dugan contests the restrictions as violations of his rights to due process, as he has not yet had a full hearing on the charges underlying the disciplinary action and contends that many of the charges are unsubstantiated, the disciplinary action is without just cause and does not follow progressive discipline. Mr. Dugan's overall performance has been satisfactory, and the evidence will show that not only has he been willing to, but has made successful efforts to correct his performance deficiencies since he was on the job for approximately two months prior to being terminated, but will also show that the termination was motivated in substantial part because he filed a whistleblower complaint against coworkers and supervisors alleging misappropriation of funds and property of the City.

Accordingly, Mr. Dugan requests a hearing before the Civil Service Commission in order to present evidence of his good character and satisfactory performance, the timing and basis for the whistleblower complaint and its relationship to the termination action, in order to demonstrate that there is no basis to deny him future employment with the Public Utilities Commission and the City and County of San Francisco.

STAFF REPORT

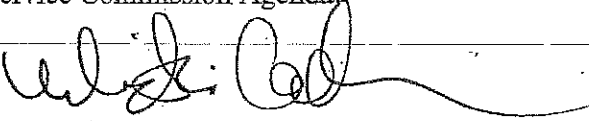


CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

Refer to Civil Service Commission Procedure for Staff - Submission of
Written Reports for Instructions on Completing and Processing this Form

1. Civil Service Commission Register Number: 0162- 12 - 7
2. For Civil Service Commission Meeting of: November 17, 2014
3. Check One: Ratification Agenda
 Consent Agenda
 Regular Agenda
 Human Resources Directors Report
4. Subject: Appeal by George Dugan of the restrictions on his future employment with the City and County of San Francisco.
5. Recommendation: Deny the appeal and adopt the report.
6. Report prepared by: Rachel Gardunio, Sr. Personnel Analyst, SFPUC;
Tel. Number: 415 554-2422
7. Notifications: See Attached.
8. Reviewed and approved for Civil Service Commission Agenda:

Human Resources Director: 

Date: November 5, 2014

9. Submit the original time-stamped copy of this form and person(s) to be notified (see Item 7 above) along with the required copies of the report to:

Executive Officer
Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102

10. Receipt-stamp this form in the ACSC RECEIPT STAMP box to the right using the time-stamp in the CSC Office.

Attachment

CSC RECEIPT STAMP

NOTIFICATIONS

George Dugan
[REDACTED]
[REDACTED]

Sylvia Courtney, Legal Counsel, Laborers Local 261
3271 18th Street
San Francisco, CA 94110

Andrea Gourdine, Interim Director, HRS, SFPUC
525 Golden Gate Avenue, 3rd Floor
San Francisco, CA 94102

Justine Hinderliter, Manager, Employee Relations and EEO Programs, SFPUC
Andrea Gourdine, Interim Director, HRS, SFPUC
525 Golden Gate Avenue, 3rd Floor
San Francisco, CA 94102

Rachel Gordunio
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 3rd Floor
San Francisco, CA 94102

Susan Gard
Department of Human Resources
One South Van Ness Avenue, 4th Floor
San Francisco, CA 94103



MEMORANDUM

TO: Civil Service Commission

THROUGH: Micki Callahan, Human Resources Director

FROM: Rachel Gardunio, Sr. Personnel Analyst
 Employee Relations/EEO Programs - SFPUC

DATE: November 6, 2014

REGISTER NO: 0162-12-7

APPELLANT: George Dugan

I. AUTHORITY

Pursuant to Civil Service Commission Rule 122 Article I, persons who are terminated from employment and have restrictions placed on their future employment may appeal those employment restrictions to the Commission for review. Mr. Dugan filed his written appeal within the 20-day appeal period of the mailing date of the Notice of Future Employment Restrictions.

II. SUMMARY

George Dugan ("Appellant") was notified on May 9, 2012 that, pursuant to Section A8.341 of the Charter of the City and County of San Francisco ("City"), the January 10, 2012 recommendation that he be terminated from his employment as a Class 7246 Sewer Repair Supervisor with the San Francisco Public Utilities Commission ("SFPUC" or "Department") was sustained. Appellant was terminated from employment effective close of business May 9, 2012 and restrictions were imposed on his future employment with the City, including the SFPUC.

Appellant filed an appeal of his future employment restrictions with the Civil Service Commission on May 29, 2012. (Exhibit A.)

Appellant was terminated from his employment based on the following charges:

1. Mistreatment of Persons
2. Dishonesty
3. Inattention to Duty
4. Fighting
5. Violation of Prevention of Violence in the Workplace Policy
6. Violation of Policy Prohibiting the Use of Slurs in the Workplace
7. Violation of Collection System Division Work Climate Expectations
8. Conduct Unbecoming of an SFPUC Employee
9. Violation of Civil Service Rule 111.9.1
10. Abuse of Authority

Edwin M. Lee
 Mayor

Ann Moller Caen
 President

Francesca Vietor
 Vice President

Vince Courtney
 Commissioner

Anson Moran
 Commissioner

Harlan L. Kelly, Jr.
 General Manager



On January 10, 2012, a Notice of Proposed Discipline and Employee Conference/*Skelly* Meeting (“the January 10, 2012 Notice”) was issued advising Appellant that the SFPUC was recommending he be terminated from his position with the Department’s Collection System Division (“CSD”) in the SFPUC’s Wastewater Enterprise (“WWE”). (Exhibit B.)

Following three requests from Appellant’s union to reschedule, the *Skelly* meeting was held on March 12, 2012. Appellant was provided an opportunity to be fully heard on the charges and materials that formed the basis of the CSD’s recommendation that he be terminated, and he was represented at the *Skelly* meeting by his union representative and the union’s attorney. The recommendation for termination was upheld and became effective May 9, 2012.

Appellant appealed his termination through the applicable grievance procedure and Arbitrator Alexander “Buddy” Cohn presided over a three-day arbitration held on August 6, 2013; October 8, 2013; and January 28, 2014. On June 19, 2014, Arbitrator Cohn issued his Arbitrator’s Opinion and Award upholding SFPUC’s termination of Appellant’s employment. (Exhibit C.)

III. BACKGROUND

The Sewer Operations Division is comprised of four work groups: Sewer Services, the Inspection Group, the Planning Group and the Swing Shift. Appellant oversaw the work performed by the approximately 17 employees in the Sewer Services work group. Appellant’s responsibilities as a 7426 Sewer Service Supervisor included supervising crews of workers engaged in maintaining and repairing sewers and responding to customer complaints and concerns. As part of his job duties, he was in frequent contact with members of the public, other departmental personnel, and external organizations and agencies.

The 10 charges against Appellant span the time period from October 2010 to August 2011 and are detailed in the January 10, 2012 Notice. (Exhibit B.)

Briefly, the charges include that, in October of 2010 the Appellant violated the requirements of Civil Service Rule 111.9.1 by manipulating scoring on an interview panel for the selection of five vacant 7241 Sewer Maintenance Worker positions at the Department of Public Works (“DPW”) and directed two of his subordinates to likewise manipulate the scoring. This manipulation resulted in an improperly low score for an experienced candidate and ultimately negatively impacted the candidate’s appointment opportunities.

On June 23, 2011, the Appellant verbally attacked and threatened a California Department of Transportation (“Caltrans”) official by using abusive and offensive language, including challenging the official to a physical confrontation and calling him an “asshole, white trash, hillbilly, mother fucking redneck.”

During the spring and summer of 2011, Appellant demonstrated a pattern of lashing out at his co-workers with inappropriate hostility and threats, calling various co-workers the following derogatory names: “punk ass bitch”; “idiot”; and a “piece of shit.” He also threatened co-workers by saying that he was “coming after them” or that he was ready for a confrontation “any place and any time.” He was also hostile and defiant towards his superiors during this time.

IV. ISSUE ON APPEAL TO THE CIVIL SERVICE COMMISSION

Whether the proposed restrictions on Appellant's future employment with the City, including SFPUC, are appropriate given the causes of his termination and the fact that his termination was upheld through arbitration.

V. FINDINGS AND ANALYSIS

A. THE DEPARTMENT'S TERMINATION OF APPELLANT'S EMPLOYMENT AND THE FUTURE EMPLOYMENT RESTRICTIONS ARE JUSTIFIED.

The Department's January 10, 2012 Notice demonstrates in detail the procedure and rationale the Department used in terminating Appellant's employment. (Exhibit B.) Each of the charges therein supports the termination of Appellant's employment, as well as restrictions on his future employment with the Department and the City. Further, following a three-day arbitration where Appellant was represented by legal counsel, Arbitrator Cohn found just cause for, and upheld the SFPUC's termination of Appellant.

1. **The City's investigation found that Appellant falsified candidate rankings for Civil Service interviews in direct violation of Civil Service Commission Rules.**

On or around October 1, 2010, Appellant was asked by DPW Human Resources to serve on an interview panel to select candidates for vacant Class 7421 Sewer Maintenance Worker positions at DPW. Appellant also asked two of his subordinates to serve as the remaining panelists. All panelists were required to and executed Confidentiality Agreement forms, which contained an excerpt from Civil Service Rule 111.9.1 – Aid, Hindrance and Collusion in Examination. The excerpt on the Confidentiality Agreement stated:

No person or officer, shall by himself/herself or in cooperation with others, defeat, deceive or obstruct any person in respect to his or her right of exam...or furnish any person any special or secret information for the purpose of either improving or inquiring the prospects of changes of any person being appointed, employed or promoted.

On February 7, 2011, Ray Mattias, Class 7246 Sewer Service Supervisor (Appellant's co-supervisor at CSD) alleged that the Appellant directed the other two panelists to lower the scores given his cousin, Kevin Mattias, one of the candidates, because of the Appellant's animus towards Ray Mattias.

The City's investigation spanned 10 months and four City departments: SFPUC, DPW, Department of Human Resources ("DHR"), and the Civil Service Commission. Both DPW and DHR investigated the allegations of tampering surrounding the DPW 7421 interviews. DHR's investigation was overseen by then Chief of Policy Jennifer Johnston. DHR was involved in the investigation because the misconduct involved four City departments and because the allegations involved a number of potential serious violations of merit system policies and requirements. (Exhibit C 28:12-18.)

The investigation consistently confirmed that the panelists violated the Civil Service Rules by taking the following actions: providing inappropriate aid and/or allowing other panelists to provide inappropriate aid to two of the candidates during the interview process; applying inconsistent and inappropriate rating standards to at least

some of the candidates; and assigning one specific candidate inappropriately low scores.

The facts also demonstrated that Appellant was motivated to manipulate the scoring for the 7421 Sewer Maintenance Worker selection process to the detriment of Kevin Mattias because of his animus towards his colleague, Ray Mattias. At arbitration, Appellant continued to deny any wrongdoing, but did concede that his scoring of the applicants' interview answers was inconsistent among applicants given their years of experience and completeness of answers. (Exhibit C 45:5-46:7.)

In considering Appellant's scoring of the applicants, Arbitrator Cohn concluded that even if he gave Appellant "every benefit of the doubt, he could not find that these were simply good faith errors ... [Appellant] was inappropriately manipulating the system." (Exhibit C 71:10-14.) In addition, the Arbitrator also found that "[Kevin] Mattias was clearly given inappropriately lower scores in comparison to other candidates, even though he had more experience and more complete answers." (Exhibit C 71:16-18.) Arbitrator Cohn also stated that he thought Appellant's rationales for these lower scores were "odd" and did "not comport with common sense and experience." (Exhibit C 71:19-26.) He went on to conclude that "most, if not all, employees covered by a Civil Service system know that their job and/or advancement is controlled by exams that must be neutral, fair and equitable." (Exhibit C 72:1-3.)

2. Appellant threatened and used abusive language with a Caltrans official, while on duty and representing the SFPUC.

On June 23, 2011, an issue arose regarding a sewer system catch basin located at Jamestown and 3rd Avenue that was causing flooding. Appellant made several calls to the San Francisco Caltrans office regarding the water draining issue. At approximately 10:00 a.m., Appellant spoke with the Caltrans Director's Office. During the conversation, Appellant used an angry and lecturing tone, saying that Caltrans "needed to learn how to answer the phone," and that she "better get someone there within 10 minutes to meet [him] and look at the situation."

At approximately 10:45 a.m., Appellant had a follow-up conversation with Caltrans South West Region Manager Robert Salazar. Earl Sherman III, Caltrans Santa Clara County Manager I, and Raul Herrera, Caltrans San Francisco and San Mateo Counties Manager I, were also in the car with Mr. Salazar and heard the conversation over speakerphone with Appellant. Both witnesses independently reported that Appellant was obstinate, used abusive and offensive language, and challenged Mr. Salazar to a physical confrontation. When Mr. Salazar tried to explain to Appellant that the area in question was the responsibility of the City and not Caltrans, Appellant called Mr. Salazar an "asshole, white trash, hillbilly, mother fucking redneck." Mr. Salazar tried to calm the Appellant and explained that he was in the car with two other officials who were listening to the conversation. Before hanging up, Appellant demanded that Mr. Salazar "come fix this you mother fucker," and threatened, "fuck you, you want some of me? I can meet you anywhere and I'll kick your fucking ass."

Mr. Salazar reported the conversation to both WWE Assistant General Manager Tommy Moala and CSD Manager Lewis Harrison.

The three Caltrans officials provided consistent testimony at arbitration. Arbitrator Cohn found their account credible and commented that "[a]fter thirty (30) years hearing and deciding labor and employment disputes, the Arbitrator finds it uncommon for an employee of another employer to register and carry through a

complaint with the City. Most people do not take time out of their schedules to participate in the grievance and arbitration process.” (Exhibit C 68:23-69:20.)

Appellant’s misconduct and threats had long-lasting impacts on the relationship between the Department and Caltrans. Both Mr. Salazar and Mr. Moala testified at arbitration that it is important for the Department and Caltrans to have a good working relationship. (Exhibit C 6:27-28; 23:8-9.) Mr. Salazar further testified that the incident with Appellant damaged the relationship between the parties, and that he informed Mr. Moala that he “would not have his people interact” with Appellant. (Exhibit C 7:28-8:2.)

3. Appellant threatened and used abusive language on numerous occasions towards his WWE colleagues.

Appellant also has a history of threatening and using abusive language towards his SFPUC WWE colleagues, as detailed in the January 10, 2012 Notice. (Exhibit B.)

At arbitration, Appellant denied the substance of many of these allegations and even in the face of consistent and overwhelming testimony to the contrary, continued to assert that all the City’s witnesses were lying. Arbitrator Cohn did not find him credible and stated that he found it “unnecessary to detail each and every time an allegation was made that [Appellant] incredibly denied.” (Exhibit C 69:21-19; FN. 146.)

B. APPELLANT’S ARGUMENTS AGAINST FUTURE EMPLOYMENT RESTRICTIONS ARE NOT PERSUASIVE.

Appellant states six reasons for his appeal, and as discussed more fully below, many of these arguments were presented at arbitration and found to be wholly without merit.

1. Appellant argues that the restrictions are a violation of his due process rights because he has not had a full hearing on the charges underlying the disciplinary action.

This argument is moot. Appellant had a three-day arbitration where he was represented by legal counsel and Arbitrator Cohn upheld the Appellant’s termination. (Exhibit C 1:6-2:12.)

2. Appellant claims that many of the charges are unsubstantiated and the disciplinary action is without just cause.

This argument was addressed at arbitration. More than 10 credible witnesses provided consistent testimony under oath that Appellant was abusive towards his co-workers, threatened them with violence on multiple occasions, and maliciously and blatantly manipulated the Civil Service Rules and merit system principles to negatively impact an applicant’s opportunity for employment with the City. Appellant’s primary defense was to deny any wrongdoing and instead assert that Department’s witnesses were lying. In a 73-page Arbitrator’s Opinion and Award, Arbitrator Cohn weighed the evidence and found just cause for termination. (Exhibit C.)

3. Appellant claims that the termination is inappropriate because there was no progressive discipline.

This defense was raised at arbitration. In his Arbitrator’s Opinion and Award, Arbitrator Cohn explained progressive discipline concepts and stated that it does not have to “follow the oral warning, written warning, suspension, and discharge path in lockstep order” as Appellant seems to be arguing. (Exhibit C 66:7-9.) Arbitrator Cohn

also explained that “progressive discipline concepts do not apply in the face of proven misconduct which warrants summary dismissal in the first instance.” (Exhibit C 66:10-11.)

Arbitrator Cohn found that “given the extremely serious nature of certain sustained charges, despite [Appellant’s] long years of service ... the record demonstrates that this is not a case for progressive discipline. The City has carried its burden of persuasion.” (Exhibit C 66:7-11; 19-22.)

4. Appellant claims that his overall performance has been satisfactory.

This argument was addressed at arbitration. Arbitrator Cohn considered Appellant’s “long years of service with essentially no prior progressive discipline” when weighing the “totality of the established facts and circumstances” to conclude that the Appellant was terminated for just cause. (Exhibit C 72:20-21; 73:4-9.)

5. Appellant claims that he made successful efforts to correct his performance deficiencies while he was still on the job for the two months prior to being terminated.

Even assuming for the sake of argument the accuracy of this statement, given the egregiousness of his misconduct, two months of “successful efforts to correct his performance deficiencies” is insufficient and this argument demonstrates both Appellant’s complete inability to grasp the gravity of his misconduct and his consistent lack of remorse.

6. Appellant argues that his termination was in retaliation for filing a whistleblower complaint that alleged misappropriation of funds and property by coworkers and supervisor.

The Appellant also raised this defense at arbitration, and it was considered when Arbitrator Cohn concluded that the Appellant was terminated for just cause. (Exhibit C 73:4-9.) The arbitrator also found that “[e]vidence that any City witness actually knew that [Appellant] filed the whistle blower complaint at the time is particularly scarce.” (Exhibit C FN. 149.)

Furthermore, as set forth in the SFPUC’s Notice of Disciplinary Action, “the investigation into [Appellant’s] inappropriate conduct was well underway prior to” his initiation of any whistleblower complaint. (Exhibit B.) Specifically, the incidents that form the basis of Appellant’s termination took place between October 1, 2010 and August 25, 2011, but Appellant did not file the whistleblower complaint until late September 2011. (Exhibit C 40:16-17.)

VI. RECOMMENDATION

For all of the reasons stated herein, the SFPUC respectfully requests that the Civil Service Commission uphold the SFPUC’s decision to restrict the future employment of George Dugan with the City and the SFPUC, and deny Mr. Dugan’s appeal.

ATTACHMENTS:

- Exhibit A: CSC Appeal Documents
- Exhibit B: Notice of Disciplinary Action with attachments, dated May 9, 2012
- Exhibit C: Arbitrators Opinion and Award, dated June 19, 2014

Exhibit A

CITY AND COUNTY OF SAN FRANCISCO
CIVIL SERVICE COMMISSION

2012
CALENDAR YEAR

DUGAN
LAST NAME

TRANSACTION RECORD

DATE TRANSACTION CARD PREPARED 6/4/2012 CSC REGISTER NO. 0162-12-7

NAME GEORGE DUGAN

ADDRESS c/o Sylvia Courtney, Legal Counsel, Laborers Local 261, 3271 - 18th Street.

CITY, STATE, ZIP San Francisco, CA 94110

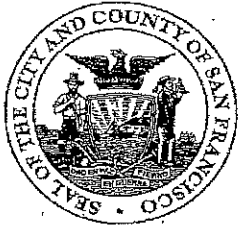
HOME PHONE [REDACTED] WORK PHONE (415) 826-4550

- CATEGORY:
- EXAMINATIONS
 - RULES/IN-SERVICE
 - CLASSIFICATION
 - OTHER
 - LABOR RELATIONS
 - DISCRIMINATION COMPLAINTS
 - PERSONAL SERVICES CONTRACTS

COMMENTS: Request for hearing on future employment restrictions as a 7246 Sewer Repair Supervisor with the PUC

TRANSACTION

DATE:	TRANSACTION:
<u>5/29/2012</u>	<u>Received letter of appeal</u>
<u>6/4/2012</u>	<u>Acknowledged receipt with x-1 to Callahan</u>



**CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

EDWIN M. LEE
MAYOR

**REQUEST FOR HEARING ON
FUTURE EMPLOYMENT RESTRICTIONS**

E. DENNIS NORMANDY
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

SCOTT R. HELDFOND
COMMISSIONER

MARY Y. JUNG
COMMISSIONER

ANITA SANCHEZ
EXECUTIVE OFFICER

DATE: June 4, 2012

REGISTER NO.: 0162-12-7

APPELLANT: GEORGE DUGAN

Micki Callahan
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

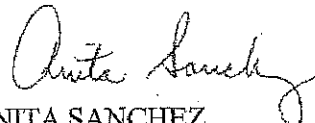
Dear Ms. Callahan:

The Civil Service Commission received the attached letter from Sylvia Courtney, Legal Counsel, Laborers Local 261, on behalf of George Dugan, requesting a hearing on his future employment restrictions as a 7246 Sewer Repair Supervisor with the Public Utilities Commission, which is transmitted to you for review and action as is appropriate.

This matter has been tentatively scheduled for hearing by the Civil Service Commission at 2:00 p.m. on July 2, 2012 in Room 400, 4th Floor, City Hall, 1 Dr. Carlton B. Goodlett Place. If you are unable to proceed on this date or if for any reason the appeal is not timely or appropriate, please notify me by use of the "Action Request on Pending Appeal/Request" (CSC Form Number 13).

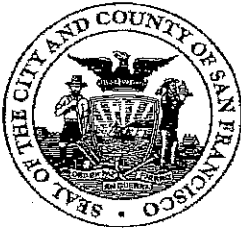
Sincerely,

CIVIL SERVICE COMMISSION


ANITA SANCHEZ
Executive Officer

Attachment

c: Donna Kotake, Department of Human Resources
Marie De Vera, Department of Human Resources
Linda Marini, Public Utilities Commission



**CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

EDWIN M. LEE
MAYOR

DATE: June 4, 2012
REGISTER NO.: 0162-12-7
APPELLANT: GEORGE DUGAN

E. DENNIS NORMANDY
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

SCOTT R. HELDFOND
COMMISSIONER

MARY Y. JUNG
COMMISSIONER

ANITA SANCHEZ
EXECUTIVE OFFICER

Sylvia Courtney, Legal Counsel
Laborers Local 261
3271 - 18th Street
San Francisco, CA 94110

Dear Ms. Courtney:

The Civil Service Commission received your letter on behalf of George Dugan requesting a hearing on his future employment restrictions with the Public Utilities Commission.

Your request has been forwarded to the Department of Human Resources for investigation and response to the Civil Service Commission.

If timely and appropriate, this matter will be scheduled for hearing by the Civil Service Commission in the near future. You will be notified approximately one week in advance of the hearing date. In the meantime, you may wish to compile any additional information you would like to submit to the Commission in support of your position. In addition, you will be notified and provided a copy of the staff report of your matter when it is received in the Commission office.

The Civil Service Commission meets on the 1st and 3rd Mondays of each month. The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date.

Sincerely,

CIVIL SERVICE COMMISSION

ANITA SANCHEZ
Executive Officer

- c: Micki Callahan, Human Resources Director
- Donna Kotake, Department of Human Resources
- Marie De Vera, Department of Human Resources
- Linda Marini, Public Utilities Commission
- George Dugan, Appellant

10



CIVIL SERVICE COMMISSION
City and County of San Francisco
 25 Van Ness Avenue, Suite 720
 San Francisco, California 94102-6033
 Anita Sanchez, Executive Officer
 (415) 252-3247

CSC Register No.

01162-12-7

To: X M. Callahan
 D. Kotake
 CC: L. Marvoni

M. De Vesa

APPEAL TO THE CIVIL SERVICE COMMISSION

<p>INSTRUCTIONS: Submit an original copy of this form to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102-6033. Appeal must be received by the Executive Officer within the designated number of days following the postmarked mailing date of notification from the Department of Human Resources to the appellant. Original signature of appellant or authorized representative required for appeals. (E-mail not accepted.) *COB=Close of Business</p>	<p>TYPE OF APPEAL: (Check One)</p> <p><input type="checkbox"/> Examination Matters (by COB* on 5th working day)</p> <p><input type="checkbox"/> Employee Compensation Matters (by COB* on 7th working day) - Limited application</p> <p><input type="checkbox"/> Personal Service Contracts (Posting Period)</p> <p><input type="checkbox"/> Other Matters (30 Calendar days) (i.e., Human Resources Director/ Executive Officer Action)</p> <p><input type="checkbox"/> Future Employability Recommendations (See Notice to Employee)</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Full Name of Appellant George Dugan	Work Address None	Work Telephone
Job Code 7246 Sewer Repair Supervisor	Title	Department San Francisco Public Utilities Commission (SFPUC)
Residence Address [REDACTED]	City [REDACTED]	State [REDACTED]
	Zip [REDACTED]	Home Telephone
Full Name of Authorized Representative (if any) Theresa Foglio, Business Agent, Laborers Local 261/ Sylvia Courtney, Legal Counsel, Laborers Local 261	Telephone Number (including Area Code) (415) 826-4550	

COMPLETE THE BASIS OF THIS APPEAL ON THE REVERSE SIDE. (Use additional page(s) if necessary)

<p>Does the basis of this appeal include new information not previously presented in the appeal to the Human Resources Director? If so, please specify.</p>	<p>Check One:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------

Sylvia Courtney
 Original Signature of Appellant or Authorized Representative

24:1 Md 62 AMM Z10Z
 May 29, 2012
 CIVIL SERVICE COMMISSION
 EXECUTIVE OFFICER
 RECEIVED

Date

CSC-12 (07/07)

Date Received by Civil Service Commission: _____

State the basis of this appeal in detail:

George Dugan has been an employee of the City and County of San Francisco since 1985. He was appointed to a permanent civil service position as Class 7246 Sewer Repair Supervisor in 2000. On May 9, 2012, he received notice of termination from employment effective May 9, 2012, along with Notice of Separation with restrictions against future employment with the City and County of San Francisco as well as with the Public Utilities Commission. Mr. Dugan contests the restrictions as violations of his rights to due process, as he has not yet had a full hearing on the charges underlying the disciplinary action and contends that many of the charges are unsubstantiated, the disciplinary action is without just cause and does not follow progressive discipline. Mr. Dugan's overall performance has been satisfactory, and the evidence will show that not only has he been willing to, but has made successful efforts to correct his performance deficiencies since he was on the job for approximately two months prior to being terminated, but will also show that the termination was motivated in substantial part because he filed a whistleblower complaint against coworkers and supervisors alleging misappropriation of funds and property of the City.

Accordingly, Mr. Dugan requests a hearing before the Civil Service Commission in order to present evidence of his good character and satisfactory performance, the timing and basis for the whistleblower complaint and its relationship to the termination action, in order to demonstrate that there is no basis to deny him future employment with the Public Utilities Commission and the City and County of San Francisco.



San Francisco
Water Power Sewer
 Services of the San Francisco Public Utilities Commission

Exhibit B

1155 Market Street, 8th Floor
 San Francisco, CA 94103
 T 415.554.1670
 F 415.554.1529
 TTY 415.554.3488

Via Hand Delivery

May 9, 2012

George Dugan
 [Redacted]
 [Redacted]

RE: Notice of Disciplinary Action

Dear Mr. Dugan:

Pursuant to Section A8.341 of the Charter of the City and County of San Francisco (CCSF), you are hereby notified that the January 10, 2012 recommendation that you be terminated from your employment as a Class 7246 Sewer Repair Supervisor with the San Francisco Public Utilities Commission ("SFPUC") is sustained. **You are hereby terminated from employment effective close of business Wednesday, May 9, 2012.** Further, restrictions are being imposed on your future employability within the CCSF, including within the SFPUC.

This disciplinary action stems from your pattern of abusive and inappropriate behavior and communication. Although your inappropriate behavior has been documented as an issue in your Performance Plan and Appraisals for the last several years, you continue to display a pattern of bullying and threatening behavior towards co-workers, supervisors and outside agency personnel.

Namely, you violated City and County of San Francisco Civil Service Rules by directing two of your subordinates to manipulate an interview panel to select vacant 7421 Sewer Maintenance Worker positions at the Department of Public Works (DPW); verbally attacked a Caltrans official on June 23, 2011 by calling him an "asshole, white trash, hillbilly mother fucking redneck" and threatening him; displayed combative behavior and verbal attacks against your supervisor Herb Dang, Class 5130 Sewage Treatment Plant Superintendent, claiming that he did not know what he was doing and tearing up an agenda sheet that he had provided you; and repeatedly lashed out at co-workers with inappropriate and aggressive hostility and threats, such as calling one of them a "punk ass bitch" and threatening others to "try and go up against you."

Specifically, the charges were as follows:

- Mistreatment of Persons
- Dishonestly
- Inattention to Duty

Edwin M. Lee
 Mayor

Anson Moran
 President

Art Torres
 Vice President

Ann Moller Caeu
 Commissioner

Francesca Vietor
 Commissioner

Vince Courtney
 Commissioner

Ed Harrington
 General Manager



- Fighting
- Violation of Prevention of Violence in the Workplace Policy
- Violation of Policy Prohibiting the Use of Slurs in the Workplace
- Violation of Collection System Division Work Climate Expectations
- Conduct Unbecoming on an SFPUC Employee
- Violation of Civil Service Rule 111.9.1
- Abuse of Authority

An employee conference/*Skelly* meeting was originally scheduled for January 13, 2012. Pursuant to your business representative's requests, the meeting was rescheduled three times and eventually it was held on March 12, 2012. You attended the meeting with your Local 261 business representative, Theresa Foglio, and Local 261 attorney Silvia Courtney. Also present at the March 12th meeting was Lewis Harrison, Class 0941 Collection System Division Manager.

During the meeting, you offered little in your defense and simply denied the majority of the accusations. In two instances, you admitted to some of the accused behavior: regarding the May 6, 2011 incident where you became engaged in a verbal confrontation with co-worker Ray Mattias, you confirmed that you said, "if I were part of the Mattias family, I would be a piece of shit," or something to that effect; regarding the August 11, 2011 incident at a staff meeting where you verbally assaulted your supervisor, Mr. Dang, you confirmed that you tore up the agenda/sign in sheet, crumpled it into a ball and tossed it on the table. Notably, you had denied any inappropriate behavior regarding the August 11, 2011 incident—including destroying the agenda/sign in sheet—during the fact finding meeting held on September 28, 2011.

Your denials are not believable for a number of reasons. First, you did not provide any documentation or evidence to refute the allegations and charges. Second, despite a virtual blanket denial to each and every charge and event, you nonetheless apologized for your actions at the close of the employee conference. You apologized for being aggressive and said that if you could go back in time, knowing what you know now, you would have acted differently.

Third, you claimed to have recently completed anger management classes and stated that you are willing to take more anger management training. Although taking some initiative to correct hostile and unacceptable behavior is commendable, it undercuts your denial that you engaged in the behavior associated with the charges.

Fourth, there were a total of 11 witnesses who provided statements regarding your inappropriate behavior over the course of the events associated with the charges. It is unlikely that 11 different people would complain of similar behavior on your part had it not in fact occurred.

May 9, 2012
George Dugan
Notice of Disciplinary Action
Page 3 of 5

Fifth, regarding the October 1, 2010 7421 DPW interviews, three independent investigations verified that you manipulated the interview process. Additionally, the interview tapes provided in conjunction with the City's Department of Human Resources (DHR) investigation make it clear that you and the other panelists—both of whom were your subordinate employees—rated the candidates inaccurately and that the panelists, including you, engaged in misconduct by providing at least one candidate with correct answers and inappropriately coached and/or aided at least one candidate.

Sixth, regarding the June 23, 2011 Caltrans incident, three Caltrans officials independently confirmed that you verbally attacked and threatened Mr. Salazar.¹ It seems unlikely that individuals who have had no prior dealings with you, who do not work for the SFPUC, and who have no vested interest in the outcome, would all conjure up an accusation against you.

Seventh, you became visibly agitated during the *Skelly* meeting and displayed a lack of control, which strongly indicates that you previously engaged in a pattern of aggressive, bullying, and threatening behavior.

The union proffered a variety of arguments in your defense; however, all the arguments lack merit. First, Ms. Foglio claimed that the climate at Sewer Operations is hostile and you are just one of many in this hostile environment. However, Ms. Foglio later stated that she was commenting on the past state of Sewer Operations rather than the current state.

Second, Ms. Foglio said that you had filed a whistleblower complaint regarding alleged misuse of overtime, pay for hours not worked, and misuse of SFPUC vehicles within Sewer Operations. She stated that the complaints against you as part of this disciplinary action could be retaliatory because most of the evidence against you came out soon after you initiated the whistleblower complaint. However, the investigation into your inappropriate conduct was well underway prior to you initiating any whistleblower complaint. Additionally, this argument is not credible because Ms. Foglio did not provide any documentation or other evidence indicating a connection between the alleged whistleblower complaint and the disciplinary action, and the

¹ During the employee conference Local 261 business representative Theresa Foglio pointed out that there is a conflicting date regarding this allegation. She said that the documentation of complaints about you came in on June 21, 2011 – two days before the incident. This was simply a typographical error in the January 10, 2012 *Skelly* Notice, and the documentation of the complaints relating to the events on June 23, 2011 in fact were received on June 23, 2011 or on a later date. Indeed, the documents supporting this allegation are all dated June 23, 2011 or later. (See Documents 3-11 to the *Notice of Proposed Discipline and Employee Conference/Skelly Meeting* dated January 10, 2012.)

May 9, 2012
George Dugan
Notice of Disciplinary Action
Page 4 of 5

alleged whistleblowing issues mentioned were minor compared to the charges against you.

Third, Ms. Foglio stated you had not been given progressive discipline. However, having reviewed your personnel file, you had been issued written warnings in the past and there was a consistent theme in your performance reviews that your behavior and communication is unacceptable. Furthermore, progressive discipline is not required in instances of significant misconduct, such as is the case here.

Fourth, Ms. Foglio claimed that the language in the Local 261 contract says that an employee has 30 days to address issues after a warning. The relevant contract states instead that discipline need merely be initiated 30 days after a diligent and timely investigation has been completed. This requirement has been met in your case and you produced no evidence to the contrary.

Fifth, Ms. Foglio said that you have not been given a performance review for two years. This point does little to justify or excuse your behavior and there was a consistent theme in your performance reviews that your behavior and communication is unacceptable.

Sixth, Ms. Foglio stated that you have "learned your lesson," "the recommendation of termination is too harsh," "you are willing to take more anger management classes," and that "you are not a total waste." These statements again do little to excuse your repeated aggressive and bullying behavior, especially considering the breadth of the impact your hostility has created.

In sum, you and your representative presented no compelling argument sufficient to mitigate the proposed termination for egregious misconduct. You directed two of your subordinates to manipulate the interview process to select vacant 7421 Sewer Maintenance Worker positions at the DPW; verbally attacked a Caltrans official on June 23, 2011 calling him an "asshole, white trash, hillbilly mother fucking redneck" and threatening him; displayed combative behavior and verbal attacks against your supervisor Mr. Dang claiming that he did not know what he was doing and tearing up an agenda sheet that he had provided you; and repeatedly lashed out at co-workers with inappropriate and aggressive hostility and threats, such as calling one of them a "punk ass bitch" and threatening others to "try and go up against you."


The multiple instances of serious misconduct, coupled with your past performance evaluations and the breadth of impact your aggressive and inappropriate behavior is unacceptable and will not be tolerated.

May 9, 2012
George Dugan
Notice of Disciplinary Action
Page 5 of 5

Conclusion

Taking into account the *Notice of Proposed Discipline and Employee Conference/Skelly Meeting* dated January 10, 2012 (attached) and all of its attachments, the prior discipline that has been imposed on you, and the information you provided during the March 12, 2012, I am sustaining the recommendation of termination. **Finding just cause for your dismissal, your termination will be effective as of close of business Wednesday, May 9, 2012.** Further, you are prohibited from future employment with the City and County of San Francisco, including the San Francisco Public Utilities Commission. A notice of this action is being transmitted to the Department of Human Resources.

Sincerely,


ED HARRINGTON
General Manager

Enclosures: *Notice of Proposed Discipline and Employee Conference/Skelly Meeting* (dated January 10, 2012) with attachments
Separation Report
Notice of Future Employment Restrictions

cc: Employee Personnel File
Theresa Foglio (L261), without attachments
Tommy Moala (WWE), without attachments
Lewis Harrison (WWE), without attachments
Micki Callahan (DHR), c/o Thomas Burns

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF HUMAN RESOURCES

SEPARATION REPORT (SR)

NAME (LAST, FIRST, M.I.) Dugan, George		DATE OF BIRTH [REDACTED]	SOCIAL SECURITY NO. [REDACTED]	DHR USE ONLY SR-	
CLASS NO. 7246	TITLE Sewer Repair Supervisor	RANK 4	LIST 050088	CERTIFICATION OR START WORK DATE 07/24/2000	DHR RQ NUMBER 1044857
HOME ADDRESS (REQUIRED) [REDACTED]		DATE ISSUED 05/09/12	DATE EFFECTIVE 05/09/12	DEPT. RQ NO. P9133	
HOME TELEPHONE NUMBER: [REDACTED]		TYPE OF APPOINTMENT		WORK SCHEDULE	
<input checked="" type="checkbox"/> PERMANENT (PCS) <input type="checkbox"/> EXEMPT-PERM. (PEX) <input type="checkbox"/> TEMPORARY (TCS) <input type="checkbox"/> EXEMPT-TEMP. (TEX) <input type="checkbox"/> PROVISIONAL (TPV) <input type="checkbox"/> RETIREE (REX) <input type="checkbox"/> LIMITED TENURE (TLT) <input type="checkbox"/> NON-CIVIL SERVICE (NCS)		<input checked="" type="checkbox"/> FULL-TIME <input type="checkbox"/> PART-TIME <input type="checkbox"/> SCHOOL TERM/FULL-TIME <input type="checkbox"/> SCHOOL TERM/PART-TIME <input type="checkbox"/> AS NEEDED (Irregular)		IS THE EMPLOYEE SERVING A PROBATIONARY PERIOD AT THE TIME OF SEPARATION? <input type="checkbox"/> YES IF YES, SPECIFY TYPE: _____ ENTRANCE <input checked="" type="checkbox"/> NO <input type="checkbox"/> PROMOTIVE	
IS THIS A COMPLETE SEPARATION FROM CITY & COUNTY SERVICE?		IF NO, RETURNING TO PCS POSITION?		IF ACCEPTING OTHER EMPLOYMENT:	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> YES DEPT: _____ <input type="checkbox"/> NO <input type="checkbox"/> NO CLASS: _____		<input type="checkbox"/> PROMOTIVE NEW DEPT: _____ <input type="checkbox"/> STATUS GRANT STATUS: _____			

1 REASSIGNMENT

NEW REQUISITION	DEPT REQ NBR	DHR REQ NBR	DEPT	CLASS	WORK SCHED

2 LEAVE/SUSPENSION OVER 5 DAYS

<input type="checkbox"/> MILITARY LEAVE (ATTACH ORDERS)	<input type="checkbox"/> SUSPENSION	APPROVED DURATION
LESS THAN 180 DAYS		START DATE
MORE THAN 180 DAYS	<input type="checkbox"/> OTHER-SPECIFY	END DATE
<input type="checkbox"/> UNPAID ADMINISTRATIVE LEAVE		

3 RESIGNATION

BY THE APPOINTEE: I HEREBY FREELY AND VOLUNTARILY RESIGN FROM THE ABOVE POSITION. I REQUEST APPROVAL OF THIS RESIGNATION AS OF THE EFFECTIVE DATE WITH THE FULL UNDERSTANDING THAT ONCE APPROVED, I MAY ACQUIRE ANOTHER POSITION IN THIS CLASS ONLY AS PROVIDED IN THE RULES OF THE CIVIL SERVICE COMMISSION (SEE EMPLOYEE COPY AND CSC RULES 114 & 119)

SATISFACTORY SERVICES (TER: RSS)
 UNSATISFACTORY SERVICES (TER: RUS)

SIGNATURE _____ DATE _____

5 TERMINATION

RELEASE FROM APPOINTMENT

REACHED LEGAL LIMIT (LLT)
 SETTLEMENT AGREEMENT (RZA)
 RELEASE OF NCS, TPV, EX (RLS)

RELEASE FROM PROBATION

DISCIPLINARY (RFC)
 NON-DISCIPLINARY (RFP)

DISMISSAL OF A PCS (DPE)
 DISMISSAL OF A TLT (TLT)
 TERMINATED FOR CAUSE (TFC) (TPV, NCS, & EXEMPTS ONLY)
 DEATH OF AN EMPLOYEE (DEA)
 AUTOMATIC RESIGNATION (ARS)
 NEVER REPORTED TO WORK (DSH)
 OTHER (Specify)

6 TRANSFER

ADMIN (ADM) LIMITED TERM (LT)
 EER REQUEST (EER) FUNCTION (TOP)

7 RETIREMENT

NORMAL-RMT DISABILITY-RTD ERP-ERT

4 LAY-OFF

<input type="checkbox"/> INVOLUNTARY LEAVE (PCS_LIL)	REASON	<input type="checkbox"/> HAND DELIVERED
<input type="checkbox"/> INVOLUNTARY LAY-OFF (PCS_LIO)		<input type="checkbox"/> LACK OF WORK
<input type="checkbox"/> VOLUNTARY LAY-OFF (PCS_LVO)		<input type="checkbox"/> LACK OF FUNDS
<input type="checkbox"/> ELECTIVE INVOLUNTARY LVE (PCS_EIL)		<input type="checkbox"/> A.S.O. <input type="checkbox"/> OTHER
PV & EX ONLY: <input type="checkbox"/> INVOL. (NHI) <input type="checkbox"/> VOL. (NHV)	<input type="checkbox"/> DISPLACED	<input type="checkbox"/> RETRENCHMENT
	BY ELIG. <input type="checkbox"/>	BY HOLDOVER <input type="checkbox"/>

METHOD

BY THE APPOINTEE: I ACKNOWLEDGE RECEIPT OF THE DHR INFORMATION LEAFLET.

SIGNATURE _____ DATE _____

APPOINTING OFFICER SIGNATURE
Linda Marini

TELEPHONE NUMBER
415-554-1670

NAME/TITLE
Linda Marini, Director, Human Resource Services

DEPARTMENT NO. 40	DEPARTMENT NAME SFPUC	PERSONNEL FILE FORWARDED? YES _____ NO <input checked="" type="checkbox"/>	FORWARDED TO DEPT: _____
		CONTACT: _____	

DHR USE

ACTION PENDING: YES NO

ANALYST: _____
DATE: _____

RQ STATUS:

CANCEL RQ: YES NO

DOC. #: _____ Date _____

SR POSTED _____ Date _____

CN POSTED _____ Date _____

Holdover Canvass _____

**CITY AND COUNTY OF SAN FRANCISCO
NOTICE OF FUTURE EMPLOYMENT RESTRICTIONS**

Via Hand Delivery

George Dugan
NAME OF EMPLOYEE

May 9, 2012
MAILING DATE

ADDRESS

SFPUC/WWE
DEPARTMENT/DIVISION

CITY

STATE

ZIP CODE

PCS
TYPE OF APPOINTMENT

Termination
TYPE OF SEPARATION
(Do not use for release from probation)

This notice is to inform you that a future employment restriction is being imposed along with your separation from employment in **Class 7246, Sewer Repair Supervisor**, effective (*) **May 9, 2012** for the reasons outlined in the attached document(s).

You may request a hearing before the Civil Service Commission on your future employability with the civil service system of the City and County of San Francisco. The Civil Service Commission has the authority to remove restrictions or impose additional restrictions on your future employability. However, the Commission CANNOT reverse the department's decision to terminate your employment.

You may request a hearing for review of any restrictions on your future employability with the Civil Service Commission with 20 calendar days of the mailing date of this notice or from the date of separation, whichever is later. The request must be submitted in writing to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102 by **May 29, 2012**. Requests received after this date will not be considered and your right to a hearing will be forfeited. If you do not request a hearing or file an appeal, the Human Resources Director will take final administrative action to confirm the restriction(s) in effect on the date of your separation (*).

The items checked below are the recommendations made by the department on your employability for positions covered by the San Francisco civil service system:

<input type="checkbox"/>	No restrictions on future employability.	<input type="checkbox"/>	Cancel any current examination and eligibility status.
<input checked="" type="checkbox"/>	No future employment with this department.	<input type="checkbox"/>	Return name to the eligible list from which appointed to this position.
<input checked="" type="checkbox"/>	No future employment with the City and County of San Francisco.		
<input type="checkbox"/>	Future employment subject to the review and approval of the Human Resources Director after satisfactory completion of _____ year(s) of work experience outside the City and County service.		
<input type="checkbox"/>	OTHER (specify): _____		

(*) Note: Future Employment Restriction(s) effective immediately.

If this matter is subject to the Code of Civil Procedures (CCP) Section 1094.5, the time by which judicial review must be sought is set forth in CCP Section 1094.6.

(SEE REVERSE SIDE)

MUST BE COMPLETED BY DEPARTMENT:

Rank: 4 List # 050088
SSN: _____
Employee Organization: Local 261

METHOD OF SERVICE: Hand Delivery
Certified Mail: _____ Hand Delivered: x
Certified Mail #: _____

Linda Marini
SIGNATURE OF APPOINTING OFFICER

Linda Marini
NAME

Director, Human Resource Services, SFPUC
TITLE

Attachments(s)

DHR 1-13D (Revised 6-2004)

21

INFORMATION FOR THE FORMER EMPLOYEE FOLLOWING SEPARATION

1. This document serves as an official notice of future employment restrictions to the former employee, the Civil Service Commission, and the Department of Human Resources.
2. If there are no restrictions imposed with the separation, the box indicating "No restrictions on future employability" would be checked.
3. A separated employee may request a hearing before the Civil Service Commission only for review of any restrictions on their future employability with the City and County of San Francisco.
4. Such appeals or requests for hearing must be in writing and received from the employee or the employee's representative within twenty (20) calendar days from the mailing date of this notice, or the effective date of the separation, whichever is later. The request must be submitted to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.
5. An employee who requests a hearing within the time limits is entitled to:
 - a. Representation by an attorney or authorized representative of his/her own choice.
 - b. Notification of date, time, and place of hearing at a reasonable time in advance.
 - c. Inspection by the employee's attorney or authorized representative of those records and materials on file with the Civil Service Commission which relate to the restrictions on future employability.
6. Any interested party may request that the hearing be continued (postponed).
7. The decision of the Civil Service Commission is final and not subject to review.
8. In the absence of a timely request for a hearing as provided above, no later request for a hearing will be considered.



San Francisco
Water Sewer
 Services of the San Francisco Public Utilities Commission

1155 Market Street, 8th Floor
 San Francisco, CA 94103
 T 415.554.1670
 F 415.554.1529
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Via HAND-DELIVERY and CERTIFIED MAIL

January 10, 2012

George Dugan
 [REDACTED]

Re: Notice of Proposed Discipline and Employee Conference/Skelly Meeting

Dear Mr. Dugan,

This letter serves as notice that the San Francisco Public Utilities Commission ("SFPUC"), Wastewater Enterprise ("WWE"), is recommending that you be terminated from employment with the SFPUC. The Department has scheduled an Employee Conference/Skelly Meeting for 2:00 p.m. on Friday, January 13, 2012 at City Hall Room 034, San Francisco, CA to discuss the charges noted below.

You will have an opportunity to respond to the charges and the proposed discipline at the meeting. You are entitled to bring a representative of your choice to the meeting. It is your responsibility to contact your representative and provide him/her with a copy of your Employee conference/Skelly notice.

You are not required to attend the Employee Conference/Skelly meeting. You may submit a written response and any relevant written materials for the Department to consider before it makes a final decision. If you choose this option, you must submit your written materials to me by 5:00 p.m. on January 12, 2012. If you do not attend the Employee Conference/Skelly meeting or submit a written response, the Department will make a decision on your proposed suspension based on the enclosed information and materials.

The charges are as follows:

- Mistreatment of Persons
- Dishonesty
- Inattention to Duty
- Fighting
- Violation of Prevention of Violence in the Workplace Policy
- Violation of Policy Prohibiting the Use of Slurs in the Workplace
- Violation of Collection System Division Work Climate Expectations
- Conduct Unbecoming of an SFPUC Employee
- Violation of Civil Service Rule 111.9.1
- Abuse of Authority

Edwin M. Lee

Aaron Moran

Art Torres

Ann Moller Chen

Francesca Victor

Yvonne Courtney

Ed Harcourt

The proposed discipline is based on the following:

You have engaged in a pattern of threatening, bullying and harassing behavior toward several of your co-workers, supervisors, and State of California officials. You directed two of your subordinates to manipulate an October 1, 2010 interview panel to select vacant 7421 Sewer Maintenance Worker ("7421") positions at the Department of Public Works ("DPW"), which ultimately negatively impacted a candidate's opportunity for appointment.

You also verbally attacked a Caltrans official on June 23, 2011 by calling him an "asshole, white trash, hillbilly mother fucking redneck," and then threatening him saying "fuck you, you want some of me? I can meet you anywhere and I'll kick your fucking ass." Your verbal attack was witnessed by two other Caltrans officials who heard the confrontation on speakerphone.

You have also directed combative behavior and verbal attacks to your supervisor, Herb Dang, Class 5130 Sewage Treatment Plant Supervisor. On August 11, 2011, during a routine departmental staff meeting, you became agitated and unruly while Mr. Dang distributed work assignments. When Mr. Dang gave you the meeting agenda sheet to sign and date, you refused to do so, tore the document into several pieces, crumpled the pieces into a ball and threw the ball of paper on the table. You stated that your supervisors did not know what they were doing.

You have also repeatedly lashed out at co-workers with inappropriate hostility and threats. On April 15, 2011 you verbally attacked three WWE co-workers, calling one of them a "punk ass bitch," and threatening them all to "try to go up against you." On May 6, 2011, you called another employee an "idiot" and a "piece of shit," disparaged his family, physically threatened him, told him that his "time was coming," and told him you were ready for a confrontation "any place and any time."

On August 19, 2011, during a phone conversation with co-supervisor Brian Goe, Class 7246 Sewer Repair Supervisor, to discuss staffing, you were argumentative and used profanity, telling Mr. Goe that "[he] and Mr. Dang can go fuck off," and threatening that he and Mr. Dang better "watch out" because you were "coming after" them.

In an August 25, 2011 meeting with Lewis Harrison, Class 0941 Collection System Division Manager, and Mr. Dang regarding your pattern of disruptive and inappropriate behavior, you said that you "wanted (another employee's) blood" and you claimed to have "built this place," when referring to your Division.

Your inappropriate behavior and poor communication skills have been documented as an issue in your Performance Plan and Appraisals for the last several years, yet you continue to display a pattern of bullying and threatening behavior towards co-workers, supervisors and outside agency personnel. This behavior is unacceptable and will not be tolerated.

The facts presented below support the charges listed above.

A. Factual Findings

I. Background.

You started working for the City and County of San Francisco ("CCSF") at the DPW in

1985. Since July 2000, you have held a permanent civil service appointment with the SFPUC as a Class 7246 Sewer Repair Supervisor in the WWE.

Within the WWE, you currently work in the Sewer Operations Division and report to Mr. Dang, who reports to Mr. Harrison, who reports directly to WWE Assistant General Manager Tommy Moala. (Doc. 37.)

The Sewer Operations Division is comprised of Sewer Services, the Inspection Group, the Planning Group and the Swing Shift. Sewer Services cleans and flushes sewers, responds to customer complaints and performs preparations for seasonal changes. It is comprised of approximately seventeen employees, and is supervised by you.

The Inspection Group responds to internal and public requests to inspect sewers and performs inspections/examinations as part of planned city-wide sewer examination. It is comprised of approximately eighteen employees, and is supervised by Raymond Mattias¹, Class 7246 Sewer Repair Supervisor.

The Planning Group performs quality assurance/quality control on generated data, plans night jobs for the Inspection Group and performs investigations. It is comprised of approximately five employees, and is supervised by Kevin Roche, Class 7262 Maintenance Planner.

The Swing Shift is comprised of both Sewer Services and Inspection Group employees (approximately ten employees) such that it handles both sewer repair/maintenance and inspection work, performed during the hours of 2:30 p.m. and 11:00 p.m., and is supervised by Mr. Goe.

Your responsibilities as a 7426 include supervising crews of workers engaged in maintaining and repairing sewers and responding to customer complaints and concerns. As part of your job duties, you are in frequent contact with members of the public, other departmental personnel and external organizations and agencies. (Doc. 1.)

Your recent performance evaluations reflect your need to improve your communication skills. For example, your 2008-2009 performance evaluation noted that you "need to work on how [you] express this communication. [You] should at all times maintain a professional demeanor with whomever [you are] communicating." (Doc. 35.) Similarly, your 2007-2008 performance evaluation recommended that you "reflect on how [you] interact with those individuals around [you] and that [you] acquire a more dispassionate, objective manner of dealing with the various personalities [you] encounter daily." (Doc. 35.) Your performance evaluation for fiscal year 2006-2007 reflected similar sentiments and noted that a "[r]eport has been made that slurs against an employee have been made by Mr. Dugan."² (Doc. 35.)

2. Fact Finding Meeting.

A fact finding meeting was held with you on September 28, 2011. Also present at the meeting were Criss Romero, Class 1244 Senior Personnel Analyst, Justine Hinderliter, Class 1244 Senior Personnel Analyst, Naseem Ghaffari, Class 1241 Personnel Analyst,

¹ Hereinafter, all references to "Mr. Mattias" refer to Raymond Mattias unless otherwise noted.

² Your current performance evaluation has not yet been issued.

Theresa Foglio, Business Representative Local 261, Mr. Dang and Lt. Kurt Bruneman, Homeland Security Director. During the meeting you were asked questions regarding a variety of incidents dating back to April 15, 2011. (Doc. 26.)

3. Department of Public Works 7421 Selection Interviews.

In or around October 1, 2010, you were asked by DPW Human Resources to serve on an interview panel to select vacant 7421 positions at DPW. You also recruited Gene Chruszcz and Don Nevels, both 7449 Sewer Service Workers and your subordinates, to serve as the remaining panelists. You did not inform DPW Human Resources that the panelists you were enlisting were your subordinates. (Doc. 2, Ex. D.) All panelists were required to sign, among other forms, a Confidentiality Agreement form, which contained an excerpt from Civil Service Rule 111.9.1—Aid, Hindrance and Collusion in Examination.³ (Doc. 2, Ex. E.) Cris Lui, Class 1244 Senior Personnel Analyst with DPW, provided the panelists with an orientation and instructions. Among other things, she directed the panelists to use ink for scoring and informed them that if they were to change their scores they must cross out the original score, write in the new score and initial. (Doc. 2, Ex. D.) The panelists were also provided a number of pens to use throughout the day, a tape recorder to record the interviews (i.e., not the panelists' deliberations), and rating sheets with which to evaluate the candidates' answers to five specific questions. (Doc. 2.) The rating sheets were kept locked and secured throughout the day on October 1, 2010 and until the time they were scored by DPW human resources. (Doc. 2.)

Following the October 1, 2010 interviews, an allegation was made that you directed Mr. Chruszcz and Mr. Nevels to lower the scores given to one of the candidates, Kevin Mattias⁴ (Kevin Mattias is the cousin of Raymond Mattias, with whom you work in Sewer Operations).

Both DPW and CCSF's Department of Human Resources ("DHR") conducted independent investigations into the allegations surrounding the DPW 7421 interviews. All three investigations (two conducted by DPW and one by DHR) confirmed that the panelists assigned inappropriate scores to the candidates, and that such inappropriate scoring directly harmed Kevin Mattias' opportunity for appointment. Specifically, all three panelists: provided inappropriate aid and/or allowed other panelists to provide inappropriate aid to two of the candidates during the interview process; applied inconsistent and inappropriate rating standards to the scores of at least some of the candidates; and assigned Kevin Mattias inappropriately low scores, especially when compared to the scores assigned to the other top five candidates.

The DHR investigation considered the panelists' rating sheets for each candidate, and it was revealed that your rating scores contained several changes in both blue and black ink. The DHR investigation also considered the tapes recorded during each of the

³ Civil Service Rule 111.9.1—Aid, Hindrance and Collusion in Examination: No person or officer, shall by himself/herself or in cooperation with others, defeat, deceive or obstruct any person in respect to his or her right of exam...or furnish any person any special or secret information for the purpose of either improving or inquiring the prospects of chances of any person being appointed, employed or promoted. (Doc. 31, Rule 111.9.1.)

⁴ Hereinafter referred to as "Kevin Mattias."

interviews, and it was discovered that without coaching from the panelists, one candidate, Nicole Cook, would have been unable to answer several of the interview questions. The tapes revealed that unlike with the other candidates, the panelists often rephrased and explained the questions to Ms. Cook and attempted to lead her to the correct answers. Then, despite the coaching and her actual incorrect answers, the panelists assigned her inappropriately high scores. (Doc. 2.)

It was specifically concluded that you: gave Kevin Mattias inappropriately low scores; coached at least one of the candidates (Ms. Cook) toward correct answers; directed the other two panelists to lower Kevin Mattias' scores; assigned inappropriately high scores to some of the candidates; and engaged in these acts in order to negatively impact Kevin Mattias' chances for appointment to a 7421 position with DPW. (Doc. 2.)

On August 22, 2011, Niger Edwards, Class 1244 Senior Personnel Analyst, interviewed you as part of the DHR investigation. At the beginning of that interview, you were reminded, among other things, that you were obligated to be truthful and cooperative, and that failure to do so could subject you to discipline, up to and including termination. (Doc. 2, Ex. K.)

During the investigatory interview, you were asked a series of questions regarding your participation in the 7421 interviews. You denied any wrong doing during the 7421 interviews. You denied making any changes to your rating sheets. Instead, you claimed that the changes were made in blue ink, and that you had not used blue ink that day. (Doc. 2, Ex. K.) You were also asked if you had been instructed regarding making changes to the rating sheets. You responded "no, we weren't directed to change, only directed to use best ability..." (Doc. 2, Ex. K.) When asked if you had suggested, asked or directed the other panelists to assign lower scores to any of the candidates you responded "No I didn't," and when asked if you had suggested, asked or directed any of the other panelists to assign higher scores to any of the candidates, you stated "I did not." (Doc. 2, Ex. K.) When asked if any of the other panelists gave correct answers to any of the candidates, you responded, "To the best of my recollection, I do not recall." (Doc. 2, Ex. K.)

During the investigation you provided evasive responses to Ms. Edwards' direct questions regarding the events of October 1, 2010. (Doc. 2.) When asked if you knew Kevin Mattias, you stated, "No, I don't recall." (Doc. 2, Ex. K.) When asked if any of the other panelists gave correct answers to any of the candidates, he responded, "To the best of my recollection, I do not recall." (Doc. 2, Ex. K.)

As part of the DHR investigation, other individuals were interviewed, including John Maroney, Class 7307 Bricklayer for DPW. Mr. Maroney stated that you phoned him after the 7421 interviews and said "Hey, Maroney do you know if any Mattias' were hired?" (Doc. 2, Ex. L.)

The DHR investigation also found that it was well-known by those interviewed that you and Mr. Mattias do not get along. (Doc. 2.) Indeed, during your August 22, 2011 interview when specifically asked about your relationship with Mr. Mattias, you became agitated and did not want to answer the questions, stating "I work with him. I will not comment. I work with him." (Doc. 2, Ex. K.)

On August 23, 2011, the day following your interview with Ms. Edwards, you telephoned her demanding whether she knew who Daniella Mattias was. (Doc. 2, Ex. U.) After she told you that she did not know who Daniella Mattias was, you persisted, finally ending the phone call by stating, "you can tell whoever you want about this conversation and I'll just deny it." (Doc. 2, Ex. U.)

4. June 23, 2011 Incident.

On June 23, 2011 an issue arose regarding a catch basin located at Jamestown and 3rd Avenue that was causing flooding. You made several phone calls to the San Francisco Caltrans office regarding the water drainage issue. At about 10:00 a.m., you spoke with the Chief of Staff with the Caltrans Director's office, Katie Benouar. During the conversation, you used an angry tone with Ms. Benouar, telling her that Caltrans "needed to learn how to answer the phone," and that she "better get someone there within 10 minutes to meet [you] and look at the situation." (Doc. 3.)

Following that conversation, Ms. Benouar sent an email to Division Manager Harrison. She reported that you: used an angry tone with the receptionist when you first called; told Ms. Benouar that there was flooding at 3rd and Jamestown and you had determined the location was Caltrans property; were angry that Caltrans was apparently not taking responsibility and was not being responsive; told her that you had made several calls but had received no answers or recordings to leave a message; that Caltrans needed to learn how to answer the phone; used a "lecturing and angry tone"; and that you told her she "better get someone there within 10 minutes to meet [you] to look at the situation." (Doc. 3.) Ms. Benouar also reported that she quickly relayed the information to the District 4 Deputy District Director of Maintenance, Nader Eshghipour, who asked Robert Salazar, Caltrans South West Region Manager, to respond to you. (Docs. 3 and 11.)

On June 21, 2011, at approximately 10:45 a.m. you had a follow-up phone conversation with Mr. Salazar. In the car with Mr. Salazar at the time of the call were Caltrans Santa Clara County Manager I, Earl Sherman III, and Caltrans San Francisco and San Mateo Counties Manager I, Raul Herrera. Both Mr. Sherman and Mr. Herrera provided statements describing in detail what they overheard transpire between you and Mr. Salazar. They stated that Mr. Salazar called you to address your complaint. Both witnesses independently reported that you were obstinate, used abusive and offensive language and challenged Mr. Salazar to a physical confrontation. In their statements they also stated that when Mr. Salazar tried to explain to you that the area in question was the responsibility of the City and County of San Francisco and not Caltrans, you called Mr. Salazar an, "asshole, white trash, hillbilly, mother fucking redneck." Mr. Salazar tried to calm you down and explained that he was in the car with two other officials who were listening to your conversation, however, before hanging up, you demanded that Mr Salazar "come fix this you mother fucker," and threatened, "fuck you, you want some of me? I can meet you anywhere and I'll kick your fucking ass." (Docs. 4, 5 and 6.)

Following your conversation, Mr. Salazar called Assistant General Manager Moala to report your threatening and abusive behavior and emailed Division Manager Harrison describing his distress over your language and combative attitude. (Doc. 8.) Subsequently, Mr. Moala also sent an email to Mr. Harrison expressing his concern

regarding your conduct, specifically that you were overheard by two people swearing at and calling Mr. Salazar obscene names. (Doc. 7.)

Following your conversation with Mr. Salazar, you sent an email to Mr. Harrison presenting your version of what occurred between you and the various Caltrans officials. You stated that you received a phone call from someone at Caltrans whose name you did not know, but "he" (Mr. Salazar) was dismissive to your requests, that you did not "get" his name, that he told you that "[you] did not know what [you were] talking about and that Caltrans did not own any catch basins in that area," and that he said "fuck you" and hung up the phone. (Doc. 9.) You also stated that following that conversation, you spoke to a female Caltrans official in the Sacramento office who stated that she believed you were speaking to "Bob Salazar" about the problem. You stated that you told her that you wanted to speak to his (Mr. Salazar's) boss, or you would call the Governor. (Doc. 9.)

During your June 23, 2011 post-incident interview with Mr. Harrison, you stated that you did not know who you were speaking to from Caltrans during the initial call and the official was rude and never told you his name. When asked if you used rude or abusive language during your conversations with Caltrans officials, you stated that at no time did you do so and recommended that Mr. Harrison speak with the "state woman who answered the phone (Ms. Benouar)" if he wanted to "get all the facts" about what transpired. (Doc. 10.) To that end, Ms. Benouar sent an email to Mr. Harrison stating that you were rude, hostile and demanding. (Doc. 3.) She also submitted transcripts of correspondence between several Caltrans officials discussing how your hostile and difficult attitude had impacted their opinion of the SFPUC as an organization. (Doc. 11.) Ms. Benouar confirmed that Caltrans officials responded to you immediately and stated that she hoped that you would be more "professional." (Doc. 3.)

During the September 28, 2011 fact finding interview, you claimed you never chastised Ms. Benouar and that you told her that if "she didn't want to help that [you] would go to the Governor's Office." (Doc. 26.) You also claimed that Mr. Salazar did not tell you that two other individuals were able to hear your conversation with him, that he did not speak to you about the agreement governing jurisdiction of the area in question, that you "didn't call him any names," and that Mr. Salazar ended the call by saying "fuck you" and hanging up. You also stated that Mr. Chruszcz was in the office at the time of the call and could provide information about what happened. (Doc. 26.)

To that end, a fact finding meeting was held on November 15, 2011 with Mr. Chruszcz during which he was asked questions regarding the events of June 23, 2011, including your phone call with Mr. Salazar. Mr. Chruszcz stated that he was not listening to the conversation and did not know what was said or not said. (Doc. 36.) He said that after you hung up the phone, you turned to Mr. Chruszcz and told him that "they told me to fuck off and hung up." (Doc. 36.)

5. August 11, 2011 Incident.

On August 11, 2011, you engaged in combative and confrontational behavior with your supervisor, Mr. Dang, during his facilitation of your department's staff meeting. Upon receipt of new crew assignments, you raised your voice and stated that you would not comply with the new procedures, because Mr. Harrison had not signed off on it and

you would not consider the assignments to be final until you received a signed copy. When Mr. Dang provided you the signed agenda sheet for you to sign and date, you refused to do so. Instead, you tore the document into several pieces, crumpled the pieces into a ball and threw the ball of paper on the table. You also claimed that "Lewis (Harrison) and Herb (Dang) did not run this place," that "you did," and that "[they] did not know what [they] were doing." Mr. Mattias, Mr. Dang, Mr. Roche, Mr. Goe and Jose Banaria, Class 6319 Senior Construction Inspector, all submitted statements confirming your abusive behavior. (Docs. 12, 13, 14, 15 and 16.)

Moreover, your behavior in general during the meeting was disruptive and unprofessional. As Mr. Dang moved through the agenda items, you objected and yelled. When tasked, along with co-supervisors Mr. Mattias and Mr. Goe, with the responsibility of asking your subordinates to provide the expiration dates of their drivers' licenses, you raised your voice at Mr. Dang and stated that this responsibility was not highlighted in your MOU, that it was not your job and was solely the responsibility of the Equipment Manager. While the other supervisors present at the meeting tried to work together to determine an alternate way to obtain the necessary information, you objected and refused to participate. When the other supervisors brought up that they would like a better process to contact staff as part of the call out procedure, you yelled "no," and raised irrelevant issues impeding a constructive discussion on the call out procedure. When staff members tried to raise new issues, you again impeded any constructive discussion and refused to acknowledge them. Mr. Mattias, Mr. Dang, Mr. Roche, and Paul Martini, 7208 Heavy Equipment Operations Supervisor, all submitted statements describing your inappropriate behavior at the meeting. (Docs. 12, 13, 14 and 17.)

Immediately following the meeting, Mr. Dang asked you to stay for a private conversation during which he explained that your actions and behavior were unacceptable. Rather than acknowledging that your behavior was inappropriate and disruptive, you continued to deflect any wrong doing to your co-workers and warned Mr. Dang that he "better act on it." (Doc. 13.)

During the September 28, 2011 fact finding interview, you denied any inappropriate behavior during the staff meeting, and stated that it was "your opinion" that Mr. Dang did not deserve his job.

6. Incidents Involving Confrontations with Co-Supervisors.

On April 9, 2010, Mr. Harrison disseminated a Work Climate Expectations Policy in response to claims of employee dissatisfaction with the work environment within Sewer Operations. (Doc. 30.) The goal of the policy was to foster a healthy work environment and to assist in creating strong work relationships for the staff. Since the implementation of the policy, there have been five staff meetings attended by supervisory staff, including you, where issues of disrespectful and improper conduct from employees were discussed, including how negative behavior infects the workplace and creates a negative work environment. (Doc. 34.)

Despite this policy and your attendance at meetings to discuss the workplace environment, you have continued to display negative, abusive, threatening and bullying behavior towards your co-workers and superiors.

a. April 15, 2011 Incident.

On April 15, 2011, you had a disagreement with Mr. Goe regarding his scheduling of a replacement employee for an open shift. You became agitated and disruptive during the interaction and referred to Mr. Roche as a "punk ass bitch," and threatened that if he (Mr. Goe), Mr. Mattias and Mr. Roche "try to go up against [you], [they] will lose." You also told Mr. Goe not to forget that he "work[s] for [you] and all of [them] work for [you]," and that Lewis (Harrison) and Herb (Dang) work for you. Throughout the interaction with Mr. Goe, you raised your voice in a threatening manner and criticized his interpretation and application of the process for filling vacant shifts. As a result of your confrontational outburst, your co-supervisors were not able to call anyone in and the shift was not covered. Mr. Roche witnessed part of your interaction with Mr. Goe. Mr. Goe and Mr. Roche submitted witness accounts of the incident. (Docs. 18 and 19.)

At Mr. Dang's request, you sent an e-mail regarding the incident to Mr. Dang, Mr. Harrison and Hope Broadus, (former) Class 1244 Senior Personnel Analyst, Human Resources Services on April 18, 2011. In your e-mail, you stated that you did not initiate the confrontation but were reacting to Mr. Goe telling you to "min[d] your own business" and "fed up with your shit." You admitted in your e-mail that you told Mr. Goe that you were fed up with his, Mr. Mattias' and Mr. Roche's bullshit, and that if Mr. Goe thought that the three of them were going to "fuck with [you,] [they] better think twice." (Doc. 20.)

During the September 28, 2011 fact finding meeting, when asked if you responded to Mr. Goe after he told you he was "fed up with your shit," you first claimed you did not make any response and only later said that you "might have said something" but that you made no "threats." (Doc. 26.)

b. May 6, 2011 Incident.

On May 6, 2011, you were involved in a verbal disagreement with Mr. Mattias regarding his scheduling of overtime work. During the disagreement, you yelled, used aggressive language and physically threatened Mr. Mattias. You referred to Mr. Mattias as an "idiot" and a "piece of shit," and disparaged his family. You stated that if you were in Mr. Mattias' family, you would be a "piece of shit." You also told Mr. Mattias that his "time was coming," and that you were ready for a confrontation "any place and any time." (Doc. 21.)

Following your outburst, Mr. Mattias sent an e-mail to Mr. Dang documenting the incident. He noted in his e-mail that your behavior had happened "many times" before, that you were creating a hostile work environment, and that he feared someone could get hurt as a result of your threats of violence. (Doc. 21.)

Andrew Wayne and William Clarke, 7449 Sewer Service Workers who witnessed your interaction with Mr. Mattias on May 6, 2011, were both interviewed regarding the incident. Both Mr. Wayne and Mr. Clarke stated that you initiated the confrontation, yelled at Mr. Mattias, and insulted his family. (Doc. 22.)

At Mr. Dang's request, you sent an e-mail to Mr. Dang regarding the incident on May 11, 2011. In your e-mail, you stated that Mr. Mattias told you to "get the fuck out of his office," and in response, you replied "fuck you too." You also stated that when

Mr. Mattias called you a "piece of shit," you responded that "if I am a piece of shit then I would be a part of your family." (Doc. 23.)

During the September 28, 2011 fact finding interview you claimed that you and Mr. Mattias had "exchanged words." You stated that Mr. Mattias had called you a "piece of shit," to which you responded that "if I am a piece of shit then I would be a part of your family," and you denied making any threats. (Doc. 26.)

c. August 19, 2011 & August 25, 2011 Incidents.

On August 23, 2011 Mr. Goe sent an email to Mr. Dang reporting a threat you made against him on August 19, 2011. Mr. Goe stated he contacted you to inform you of staffing decisions made for vacant shifts, but that you disagreed with his decision. In your anger, you told Mr. Goe that you had called in another employee, and that "he (Mr. Goe) and Herb (Dang) can fuck off." Mr. Goe stated that shortly thereafter you called Mr. Goe's personal cell phone but did not leave a message. When Mr. Goe returned your call, you warned him that "he (Mr. Goe) and Herb (Dang) better watch out because you were coming after them." In his email, Mr. Goe conveyed the fear he had for himself and for other employees in the department and asked that Mr. Dang take action to ensure that everyone would be protected. (Doc. 24.)

Subsequently, on August 25, 2011, during a post-incident follow-up meeting with Mr. Harrison and Mr. Dang, Mr. Harrison addressed your pattern of inappropriate behavior, and gave you an opportunity to explain your actions. But you again displayed angry behavior and expressed violent statements, and Mr. Harrison reported that you refused to acknowledge how your behavior was negatively affecting your co-workers and your department. Mr. Harrison confirmed that you were disparaging and disrespectful towards Mr. Mattias, Mr. Roche and Mr. Goe, and that you claimed to have "built this place." Both Mr. Harrison and Mr. Dang reported that you remained fixated on Mr. Mattias. In fact, you told Mr. Harrison that you "wanted his (Ray Mattias') blood" and that you wanted to "see him get time off." (Doc. 25.)

During the September 28, 2011 fact finding meeting, you denied any confrontation with Mr. Goe on August 19^b and denied making any threats regarding Mr. Mattias, other than acknowledging that you "wanted him." (Doc. 26.)

B. Applicable Policies and Procedures

SFPUC Prevention of Violence in the Workplace Policy

The SFPUC Prevention of Violence in the Workplace Policy states, among other things, that violence, threats of violence or abusive behavior of any kind towards the public or co-workers is absolutely unacceptable and will be considered serious misconduct. It is the policy of the City and County of San Francisco and the Public Utilities Commission that employees treat co-workers and members of the public with courtesy and respect. Violent or abusive behavior of any kind, including threats, does not belong in the workplace and will not be tolerated. (Doc. 27.)

SFPUC Prevention Against the Use of Slurs in the Workplace Policy

The SFPUC Prevention Against the Use of Slurs in the Workplace Policy states, among other things, that all employees shall refrain from the willful or

negligent use of slurs against any person on the basis of race, color, creed, national origin, ancestry, age, sex, sexual orientation or disability. A slur is a word or combination of words that by its very utterance inflicts injury, offers little opportunity for response, appeals not to rational faculties, or is an unessential or gratuitous part of any exposition of fact or opinion. (Doc. 28.)

SFPUC Employee Manual:

Workplace Violence Prevention Policy: The SFPUC Workplace Violence Prevention Policy states, among other things, violence both acts and threats of violence. For example, violence includes any conduct, verbal or physical, that tends to cause another to reasonably fear for his/her own personal safety or that of his/her family, friends, associates, or property. Threats include direct or indirect, intentional or unintentional, words or actions targeted at oneself or another individual. (Doc. 29.)

Discourteous Treatment of Others: Rude or abusive behavior towards co-workers, supervisors, the public, or other individuals in the course of duties. (Doc. 29.)

Fighting: Verbally or physically attacking or abusing another person. (Doc. 29.)

Dishonesty: Not telling the truth in order to deceive, cheat, or fraud. (Doc. 29.)

Inattention to Duty: Failure to perform assigned duties at an acceptable level for reasons such as undue carelessness, negligence, or intentional disregard. Failure to report an illegal act related to the activities of the Public Utilities Commission to a supervisor. (Doc. 29.)

Failure to Follow Rules and Regulations: When an employee disobeys rules and regulations. (Doc. 29.)

SFPUC, WWE, Collection System Division Memo: Workplace Climate Expectations:

Disrespect and improper conduct between employees promotes a negative work climate. Respect is an organizational value for the SFPUC and it means we all are individually responsible for understanding and appreciating the inherent value of each other and supporting a cooperative work environment... [S]upervisors have primary responsibility for observing and engaging in issues that affect the work climate. It is urgent that supervisors pay attention to how staff members interact and model the proper behavior to improve the working environment. The following is a list of the prohibited conduct that fosters a hostile work climate:

No angry interchanges; no verbal or physical intimidation; no verbal abuse such as name calling, belittling jokes or sarcastic remarks, yelling, blaming or personal insults against anyone, for any reason; no uneven treatment of staff such as ignoring or being curt with one person, while being friendly and supportive of others; no one has a 'right' to put people in their place; no talk about other people's poor performance in a public forum; no power plays, one-

upmanship, or challenges issued over perceived threats to a person's authority. (Doc. 30.)

*Civil Service Commission Rule 111.9.1—Aid, Hindrance and Collusion in Examinations:*⁵

No person or officer, shall by himself/herself or in cooperation with others, defeat, deceive or obstruct any person in respect to his or her right of exam...or furnish any person any special or secret information for the purpose of either improving or inquiring the prospects of chances of any person being appointed, employed or promoted. (Doc. 31, Rule 111.9.1.)

CCSF Employee Handbook:

Policy Prohibiting Employee Violence in the Workplace: The City is committed to maintaining a workplace free from violence and threats of violence, and will not tolerate acts or threats of violence in the workplace. (Doc. 33.)

Violence: Violence includes both acts and threats of violence. For example, violence includes any conduct, verbal or physical, which causes another to reasonably fear for his or her own personal safety or that of his or her family, friends, associates, or property. (Doc. 33.)

Policy: Failure to comply with these policies may result in employee discipline up to and including termination as well as criminal prosecution. (Doc. 33.)

CCSF Charter, Section 10.101—General Powers and Duties

The Civil Service Commission shall adopt rules, policies and procedures to carry out the civil service merit system provisions of this [C]harter...such rules shall govern applications [and] examinations. (Doc. 38.)

C. Charges

- 1. Violation of Prevention of Violence in the Workplace Policy; Violation of Policy Prohibiting the Use of Slurs in the Workplace; Fighting; Mistreatment of Persons; Violation of Collection System Division Work Climate Expectations Policy.**

You have continuously violated CCSF and SFPUC policies by threatening and mistreating numerous SFPUC employees and officials of other California organizations. The SFPUC Employee Manual and policies, and the CCSF Employee Handbook, prohibit the use of violence and slurs in the workplace. The policies emphasize that employees must refrain from abusive or threatening behavior when interacting with co-workers, the public, or other individuals. Additionally, the Collection System Division Work Climate Expectations Policy requires that all employees treat co-workers with respect and courtesy, and that supervisors model appropriate behavior.

⁵ The CCSF Charter empowers the Civil Service Commission to promulgate rules to uphold the principles of the civil service merit system. (Doc. 38.) These principles include the "fair treatment of applicants in all aspects of employment." (Doc. 31, Rule 101.3.)

In blatant disregard of these policies and expectations, you have continued to treat members of outside agencies, co-workers and supervisors alike with hostility and aggression. This pattern of bullying and threatening behavior is outrageous and will not be tolerated.

a. June 23, 2011 Incident.

On the June 23, 2011 you threatened and verbally assaulted Caltrans officials, with whom you were discussing a flooding problem. Specifically, you used abusive and offensive language with Mr. Salazar over the telephone, called him an "asshole, white trash, hillbilly, mother fucking redneck" and demanded that he "come fix this you mother fucker." You also threatened him by stating, "fuck you, you want some of me? I can meet you anywhere and I'll kick your fucking ass." Your behavior was overheard via speakerphone by two other Caltrans staff who were in the vehicle with Mr. Salazar and who submitted statements regarding the incident.

While addressing the same issue, you used an angry and lecturing tone with Ms. Benouar and the receptionist in the Caltrans' Director's office and made several demands in a disrespectful manner. Specifically, you told her that "[Caltrans] need[s] to learn how to answer the phone" and that "[she] better get someone there within in 10 minutes to meet [you] and look at the situation." During your second phone call, you yelled at Ms. Benouar and demanded "an apology from Robert Salazar's boss," and told her to "get someone to meet [you] within five minutes or [you] would call the Governor's Office."

Although you claim that you did not use abusive language or make any threats, your version of what transpired is not credible. Several Caltrans officials reported your hostile and abusive tone, and three independent accounts described the obscene language and violent threats you directed towards Mr. Salazar. Further, Mr. Chruszcz did not corroborate your version of the phone call with Mr. Salazar as he conceded that he did not hear the call and was instead focusing on his work. He only confirmed what you told him after you hung up the phone. Your behavior was unprofessional, rude, abusive, and negatively impacted the SFPUC's working relationship with Caltrans.

A working relationship with Caltrans is vital for SFPUC's operations. Caltrans has assets and properties that run throughout the SFPUC's region and intersect with SFPUC assets and properties. SFPUC's operational staff often must access Caltrans assets and properties in order to respond to service requests and to access its own facilities and properties. For example, several major roadways, including the Great Highway, 19th Street, Highways 280 and 101, are all Caltrans properties that City residents and workers use on a constant basis. As a result, issues with run off or flooding can significantly impact daily life and City operations, and it is imperative that the SFPUC and Caltrans work collaboratively to determine the source of the nuisance and to respond to it appropriately. Similarly, when service issues impact properties such as Candlestick Park and AT&T Park, significant monies may be implicated and stakeholders and the public expect that responding agencies, such as the SFPUC and Caltrans, will cooperatively and expeditiously handle any jurisdictional and service issues. Additionally, in the event of an emergency, it is paramount that the SFPUC be able to rely on the good, working relationship with Caltrans so that our response is timely and effective.

b. Incidents Involving Co-Workers and Supervisors.

On several occasions you have physically threatened your co-workers and supervisors – direct violations of CCSF and SFPUC policies. For instance, on April 15, 2011, you had a disagreement with Mr. Goe regarding scheduling issues, became agitated and disruptive and referred to another employee as a “punk ass bitch.” You threatened that if he (Mr. Goe), Mr. Mattias and Mr. Roche “try to go up against [you], [they] will lose.” In your April 18, 2011 email to Mr. Dang and Ms., Broadus, you admitted that on April 15, 2011, you threatened Mr. Goe and two other employees and attempted to justify your behavior by claiming that Mr. Goe and the two employees were conspiring against you.

On May 6, 2011, you were involved in a verbal disagreement with Mr. Mattias regarding his scheduling of overtime work. You used aggressive language and physically threatened Mr. Mattias and his family, calling him an “idiot” and a “piece of shit” and the rest of the Mattias family as “pieces of shit.” You also threatened Mr. Mattias when you stated that “his time was coming” and that you were ready for a confrontation “any place and any time.” On May 11, 2011, you sent an email to Mr. Dang admitting that you had a verbal disagreement with Mr. Mattias and that you had used profanity and verbally assaulted him and members of his family. You tried to justify your behavior by claiming that you were reacting to Mr. Mattias’ aggressive attitude.

On August 23, 2011, Mr. Goe expressed concerns for his personal safety after two separate phone calls he had with you on August 19, 2011, where you cursed at him and warned him that you were coming after him and Mr. Dang. On August 25, 2011, Mr. Harrison and Mr. Dang reported that you were combative and threatening during a post-incident interview where your behavior was discussed. Not only were you unwilling to address concerns regarding your volatile and disruptive behavior, but that you continued again to disparage your co-workers.

Further, on August 11, 2011, during a routine staff meeting, you angrily refused to follow the directives of supervisor Mr. Dang regarding general work assignments and responsibilities, and tore up and crumpled a ball of paper and threw it on the table. In front of other staff, you told Mr. Dang that he and Mr. Harrison did not know what they were doing, and questioned Mr. Dang’s authority and position.

Although you deny making any threats, you have consistently displayed an abrasive attitude that has left your entire department, your supervisors and members of the public fearful for their personal safety. On numerous occasions you have used profane and disparaging language as a means of intimidation and bullying. Your combative attitude, and constant threats of physical violence and retribution, have led the members of your department to ask for additional help from upper management to ensure that they are protected in the work place.

Your behavior continues to escalate and has not only created a difficult and unsafe work environment but has also tarnished the reputation of the SFPUC. Your attempts to justify your behavior by blaming others demonstrates your inability to take responsibility for your own actions. You have not taken any affirmative action towards improving or resolving your workplace and/or interpersonal relationships. You have continued to launch personal attacks on members of your department and outside

agencies with which the SFPUC must maintain professional and respectful relationships. Your hostile and threatening behavior violates multiple SFPUC policies, can no longer continue, and will not be tolerated.

2. Inattention to Duty; Conduct Unbecoming of a SFPUC Employee.

With your position comes the understanding that you are capable of communicating with your superiors, co-workers, and subordinates within the Sewer Operations Division. But your demonstrated refusal to communicate professionally with superiors and co-supervisors regarding workplace operations not only negatively impacts your Division, and the employees within your Division, but has also negatively impacted your ability to execute supervisory duties in a timely and effective manner.

On April 15, 2011, you had a disagreement with Mr. Goe regarding his scheduling of a replacement employee for an open shift. You became agitated and disruptive during the interaction and referred to Mr. Roche as a "punk ass bitch," and threatened that if he (Mr. Goe), Mr. Mattias and Mr. Roche "try to go up against [you], [they] will lose." You told Mr. Goe not to forget that he "work[s] for [you] and all of [them] work for [you]," and that Lewis (Harrison) and Herb (Dang) work for you. Throughout the interaction with Mr. Goe, you raised your voice in a threatening manner, and criticized his interpretation and application of the process for filling vacant shifts. As a result of your confrontational outburst, your co-supervisors were not able to call anyone in and the shift was not covered, putting the SFPUC at risk.

On August 11, 2011, during a routine staff meeting, you refused to follow the directives of your supervisor, Mr. Dang, regarding general work assignments and responsibilities, while also displaying obstructive and combative behavior, which effectively impeded any progress during the meeting. Upon receipt of new crew assignments, you raised your voice and stated that you would not comply with the new assignments. When Mr. Dang provided you the signed agenda sheet for you to sign and date, you refused to do so, and instead you tore the document into several pieces, crumpled the pieces into a ball and threw the ball of paper on the table. You also claimed that "Lewis (Harrison) and Herb (Dang) did not run this place," that "you did" instead and that "[they] did not know what [they] were doing."

As Mr. Dang moved through the agenda items, you continued to object and yell. When the supervisors were tasked with the responsibility of asking subordinate employees to provide drivers' license expiration dates, you raised your voice at Mr. Dang and stated that this responsibility was not highlighted in your MOU, not your job and solely the responsibility of the Equipment Manager. While the other supervisors present at the meeting tried to work together to determine an alternate solution, you objected and refused to comply with the task. When the other supervisors brought up that they would like a better process to contact staff as part of the call out procedure, you yelled "no," and raised irrelevant issues, essentially impeding a constructive discussion. When staff members tried to raise new issues, you again impeded constructive discussion and refused to acknowledge any problems.

Your constant altercations are loud, disruptive and interfere with efficient and effective operations, the performance of your work and the work of others. As a supervisor, you are required to conduct yourself professionally and be respectful of others. Abusively confronting co-workers and superiors regarding operations and instructions given to

you is not professional or respectful. You have constructive avenues available to voice your objections, including explaining your rationale for recommending alternate courses of action. Yelling, cursing, threatening, and disrespecting your superiors and co-workers is an unacceptable course of action to take—a fact which an employee with over 20 years of CCSF experience should and is expected know.

3. Violation of Civil Service Rule 111.9.1—Aid, Hindrance and Collusion in Examinations; Abuse of Authority.

During the 7421 interviews, you used your position of authority to manipulate and influence the DPW 7421 interview and selection process to disadvantage Kevin Mattias. You served as an interview panelist and, at the same time, recruited Mr. Chruszcz and Mr. Nevels, both of whom are your subordinates, to serve as co-panelists. Following three independent investigations into the October 1, 2010 interviews, it was confirmed that the panelists assigned inappropriate scores to the candidates, and that such inappropriate scoring directly harmed Kevin Mattias' opportunity for appointment. Specifically, you: gave Kevin Mattias inappropriately low scores; coached at least one of the candidates (Ms. Cook) toward correct answers; directed the other two panelists to lower Kevin Mattias' scores; assigned inappropriately high scores to some of the candidates; and engaged in these acts in order to negatively impact Kevin Mattias' chances for appointment.

Such conduct is not only an abuse of authority bestowed upon you as a supervisor within the SFPUC, but it is also in direct violation of Civil Service Commission Rule 111.9.1⁶, of which you were made aware and agreed to uphold on October 1, 2010. Your behavior is unacceptable, especially considering that you used your position of authority for your own negative purposes; and because you not only harmed a candidate's chance of appointment but your behavior has also reflected poorly on the SFPUC.

4. Dishonesty.

You have engaged in a disturbing pattern of dishonesty you continually behave inappropriately and then deny any wrong doing. When asked direct questions, you are deliberately vague and evasive, obstructing the objective at hand. As an employee with eleven years of supervisory tenure in the SFPUC, you are expected to model appropriate conduct. Your 7421 interviews and the subsequent DHR investigation, particularly as a supervisor, is reprehensible and unacceptable.

a. 7421 Interviews and Subsequent DHR Investigation.

DPW asked you to participate on an interview panel for the open 7421 positions. You were also asked to recommend other panelists to assist in the process because two of the original panelists were unable to participate. You agreed to enlist replacement panelists, however, you did not inform DPW that the panelists you were enlisting were

⁶ No person or officer, shall by himself/herself or in cooperation with others, defeat, deceive or obstruct any person in respect to his or her right of exam...or furnish any person any special or secret information for the purpose of either improving or inquiring the prospects of chances of any person being appointed, employed or promoted. (Doc. 31.)

both your subordinates. This omission was dishonest, especially considering your actions during the 7421 interviews themselves.

Following the October 1, 2010 DPW 7421 interviews, DHR launched an investigation regarding potential misconduct on the part of the three panelists, including you, during the 7421 interview process. You were interviewed by Ms. Edwards on August 22, 2011. At the beginning of that interview, you were reminded, among other things, that you were obligated to be truthful and cooperative, and that the failure to do so could subject you to discipline up to, and including, termination. During the interview, you were asked a series of questions regarding your participation in the 7421 interviews. Your answers were generally evasive and vague, however, you conveniently remembered quite specific details regarding the 7421 interviews at certain times as well.

For example, you denied making changes to your rating sheets and claimed that the changes were made in blue ink and that you had not used blue ink that day. Your story lacks credibility, however, since several changes—in both blue and black ink—were made on your rating sheets, a number of pens were provided to the panelists to use throughout the day, you could have easily used multiple pens, and the rating materials were kept locked and secured at all times—both during the day on October 1, 2010 and subsequent to the interviews until they were scored by DPW human resources.

You were also asked if you had been instructed regarding making changes to the rating sheets. You responded “no, we weren’t directed to change, only directed to use best ability...” But this statement directly contradicts not only your rating sheets, but also the instructions Ms. Lui provided to all of the panelists. Specifically, Ms. Lui directed the panelists to use ink for scoring and told them that, if they were to change their answers, they had to cross out their original scores, write in the new score and initial.

When asked if you knew if you knew Kevin Mattias, you first stated, “No, I don’t recall.” (Doc. 2, Ex. K.) Yet, following the 7421 interviews you telephoned Mr. Maroney to inquire whether or not “any Mattias” had been hired. You also called Ms. Edwards to inquire about Daniella Mattias. These actions indicate a fixation on the Mattias family that makes it unlikely that you did not know or at least suspect Kevin Mattias was related to Mr. Mattias, with whom you have had a history of disagreements. Not only were your actions during the 7421 driven by your deleterious motives, but your subsequent statements and actions during the DHR investigation demonstrate your dishonesty.

When asked if you had suggested, asked or directed the other panelists to assign lower scores to any of the candidates you responded “No I didn’t.” When asked if you had suggested, asked or directed any of the other panelists to assign higher scores to any of the candidates, you stated “I did not.” But the DHR investigation specifically concluded that you gave Kevin Mattias inappropriately low scores; that you directed the other two panelists to lower Kevin Mattias’ scores; that you assigned inappropriately high scores to some of the candidates; and that you engaged in these acts to negatively impact Kevin Mattias’ chances for appointment to one of the vacant 7421 positions at DPW, thereby rendering false your statements to the contrary.

When asked if the panelists gave correct answers to any of the candidates, you responded, “To the best of my recollection, I do not recall.” However, the interview

tapes recorded during each of the interviews revealed that unlike with the other candidates, the panelists often rephrased and explained the questions to Ms. Cook and attempted to lead her to the correct answers. The investigation concluded that without coaching from the panelists, Ms. Cook would have been unable to answer several of the interview questions. Additionally, despite the coaching and her actual incorrect answers, the panelists assigned her inappropriately high scores.

During the course of the DHR investigation, and after you were interviewed, you called Ms. Edwards on August 23, 2011, and inquired about Daniella Mattias. At the end of your unsolicited phone call, you stated "you can tell whoever you want about this conversation and I'll just deny it." This statement in and of itself demonstrates your dishonesty. Despite your denial of any wrong doing during the 7421 interviews, your version of the events is not credible, and you were found to be dishonest and purposely evasive during the investigative process.

b. June 23, 2011 Incident.

Following your interaction with Caltrans officials on June 23, 2011, you were interviewed by Mr. Harrison and asked to give an honest and accurate account of your conversations with Caltrans representatives. When asked if you had ever used foul language during your conversation with Caltrans Manager, Robert Salazar, you stated that you never used inappropriate language or engaged in bullying behavior.

But Caltrans Managers, Mr. Herrera and Mr. Sherman, were in the car with Mr. Salazar and heard the entire conversation on speaker phone. They submitted detailed accounts of the conversation and confirmed that not only did you curse throughout the exchange with Mr. Salazar, but you used several slurs and physically threatened Mr. Salazar, told him to "go fuck himself," calling him an "asshole, white trash hillbilly mother fucking redneck."

Despite your attempts to deflect responsibility onto Mr. Salazar, your version of what transpired during your June 23, 2011 conversation is not credible. Taking into account witness statements submitted by Caltrans officials, coupled with your escalating aggressive behavior towards co-workers and supervisors, there is little evidence to support your claims that you did not threaten or curse at Mr. Salazar. To the contrary, the statements presented support Mr. Salazar's version about your interactions with him and establish that your confrontational behavior is out of control. Your continued use of abusive language, threats of violence and bullying tactics are unacceptable and unbecoming of an employee, let alone a supervisor with the SFPUC.

D. Prior Disciplinary Action

- Written Warning: February 2008 Unsatisfactory Behavior in falsely opening and using a BMG music account in a co-worker's name & signature fraud.
- 1-Day Suspension: May 2004 for failure to report an accident while driving a City vehicle.
- Letter of Instruction: March 2003 for yelling at a subordinate employee.

Copies of the following documents are attached and were relied on in making this recommendation:

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- Doc. 1 7246 Sewer Repair Supervisor Job Description
- Doc. 2 Department of Human Resources (DHR) 7421 Post-Referral Panelist Misconduct Report
- Doc. 3 June 30, 2011 Email from Katie Benouar to Harrison Lewis: Account of June 23, 2011 contact with George Dugan
- Doc. 4 June 28, 2011 Letter from Robert Salazar to Lewis Harrison: Account of the events and conversation with George Dugan
- Doc. 5 June 23, 2011 Memorandum from Earl R. Sherman III to Robert Salazar: Account of June 23, 2011 phone conversation between Robert Salazar and George Dugan
- Doc. 6 June 23, 2011 Memorandum from Raul Herrera to Robert Salazar: Account of June 23, 2011 phone conversation between Robert Salazar and George Dugan
- Doc. 7 June 23, 2011 Email from Tommy Moala to Lewis Harrison regarding George Dugan's conversation with Caltrans various officials and Manager Bob Salazar.
- Doc. 8 June 24, 2011 Email from Robert Salazar to Lewis Harrison; Mohammed Nuru; Tommy Moala (cc Nader Eshghipour) regarding conversation with George Dugan
- Doc. 9 June 23, 2011 Email from George Dugan to Lewis Harrison: Account of interaction with Caltrans officials
- Doc. 10 June 23, 2011 Lewis Harrison's interview of George Dugan regarding interaction with Caltrans Officials
- Doc. 11 June 23, 2011 Email correspondence between several Caltrans officials regarding George Dugan's behavior and tone
- Doc. 12 Email from Ray Mattias to Lewis Harrison and Hope Broadus: recollection of August 11, 2011 staff meeting
- Doc. 13 Statement from Herb Dang to Naseem Ghaffari: recollection of August 11, 2011 staff meeting
- Doc. 14 Email from Kevin Roche to Herb Dang: recollection of August 11, 2011 staff meeting
- Doc. 15 Email from Brian Goe to Herb Dang regarding observations of August 11, 2011 staff meeting
- Doc. 16 Email from Jose Banaria to Herb Dang (cc Vanessa Conrad) regarding observations from August 11, 2011 staff meeting

- Doc. 17 Email from Paul Martini to Herb Dang regarding statement of August 11, 2011 meeting
- Doc. 18 Statement by Brian Goe regarding April 15, 2011 events
- Doc. 19 April 18, 2011 Email from Kevin Roche to Herb Dang: Recollection of April 15, 2011 events
- Doc. 20 April 18, 2011 Email from George Dugan to Herb Dang, Lewis Harrison and Hope Broadus regarding April 15, 2011 events
- Doc. 21 Email from Ray Mattias to Herb Dang and Hope Broadus: recollection of May 6, 2011 events
- Doc. 22 Investigative notes regarding interviews with Andrew Wayne and William Clarke regarding May 6, 2011 events
- Doc. 23 Email from George Dugan to Herb Dang: recollection of May 6, 2011 events
- Doc. 24 Email from Brian Goe to Herb Dang: recollection of August 19, 2011 phone conversations
- Doc. 25 Email from Lewis Harrison to Lori Regier (cc Hope Broadus) dated August 26, 2011 outlining the post-incident meeting with George Dugan and Herb Dang
- Doc. 26 September 28, 2011 Fact Finding Interview of George Dugan, Questions and Answers
- Doc. 27 SFPUC Prevention of Violence in the Workplace Policy
- Doc. 28 SFPUC Prevention Against the Use of Slurs in the Workplace Policy
- Doc. 29 CCSF-PUC Employee Manual (excerpt)-Section 11.2 Workplace Violence; Discourteous Treatment of Others; Dishonesty; Fighting; Inattention to Duties; Failure to Follow Rules and Regulations
- Doc. 30 SFPUC, WWE, Collection System Division Memo: Work Climate Expectations
- Doc. 31 Excerpts from Civil Service Commission Rules: Merit System Principles (Rule 101.3); Aid, Hindrance and Collusion in Examinations (Rule 111.9.1)
- Doc. 32 Receipt of CCSF and SFPUC Workplace Violence Guidelines, July 17, 2000

- Doc. 33 CCSF Employee Handbook (excerpt)- Prohibiting Workplace Violence
- Doc. 34 Sewer Operations Weekly Meeting Agendas (dated April 9, 2010; April 22, 2010; May 7, 2010; May 20, 2010; May 27, 2010)
- Doc. 35 Performance Plan and Appraisal Reports (Fiscal Years: 2008-2009; 2007-2008; 2006-2007)
- Doc. 36 November 15, 2011 Fact Finding Interview of Gene Chruszcz, Questions and Answers
- Doc. 37 WWE Organizational Chart
- Doc. 38 Excerpt from CCSF Charter (Section 10.101)
- Doc. 39 Prior Discipline Documents

E. Conclusion

Your pattern of threatening, harassing and hostile conduct is outrageous. Furthermore, your disruptive and volatile attitude seems uncontrollable and creates an unmanageable and unprofessional environment for your superiors, co-workers and subordinates. Your behavior on October 1, 2010 (and during the ensuing DHR investigation), April 15, 2011, May 6, 2011, June 23, 2011, August 11, 2011, August 19, 2011, and August 25, 2011 will not be tolerated. As an SFPUC employee with over eleven years of experience, you are expected to uphold and model the conduct-related policies for the City and County of San Francisco and the Public Utilities Commission. Moreover, you are expected to uphold the principles of the merit system provisions as promulgated by the Civil Service Commission under the authority of the City and County of San Francisco Charter.

Your manipulation, hostile bullying and constant outbursts show a complete disregard for your role as a supervisor and for CCSF and SFPUC policies and expectations. Your failure to correct your poor communication skills and negative attitude—despite having been instructed to do so in several recent performance evaluations—demonstrates your refusal to accept responsibility for your actions. Your threatening behavior and lack of respect for those around you will no longer be tolerated.

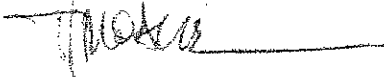
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Each of these charges independently and collectively supports the recommended termination of your employment with the San Francisco Public Utilities Commission. If you have any questions about this letter, please feel free to contact me at (415) 554-2465.

Sincerely,



TOMMY T. MOALA
Assistant General Manager, WWE

cc: Lewis Harrison (Collection Systems Division Manager, WWE)
Linda Marini (Director, HRS)
Herb Dang (Superintendent Sewer Operations, WWE)
Theresa Foglio, Local 261
Skelly Officer
Personnel File

Exhibit C

1 ALEXANDER COHN
2 Arbitrator - Mediator
3 P.O. Box 4006
4 Napa, CA 94558.
5 (707) 226-7096

6
7 IN ARBITRATION PROCEEDINGS PURSUANT TO
8 AGREEMENT BETWEEN THE PARTIES

9 In the Matter of a Controversy

10 between

11 LIUNA, LOCAL UNION 261,

12 and

13 CITY AND COUNTY OF SAN FRANCISCO,
14 PUBLIC UTILITIES COMMISSION.

15 Involving the dismissal Appeal of George Dugan,
16 Grievant.
17 ERD No.: 40-12-2519.

18 ARBITRATOR'S
19 OPINION AND AWARD

20 This Arbitration arises pursuant to Agreement between the LIUNA, LOCAL
21 UNION 261, hereinafter referred to as the "Union," and the CITY AND COUNTY OF
22 SAN FRANCISCO, PUBLIC UTILITIES COMMISSION, hereinafter referred to as the
23 "City" and/or "Department," under which ALEXANDER COHN was selected to serve
24 as sole, impartial Arbitrator and whose decision shall be final and binding upon the
25 parties.

26 Hearing was held on August 6 and October 8, 2013, and January 28, 2014, in
27 San Francisco, California. The parties were afforded full opportunity for the
28 examination and cross-examination of witnesses, the introduction of relevant
exhibits, and for closing argument. Post-hearing briefs were received from the parties
on or before March 24, 2014, and the matter was submitted.

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APPEARANCES:

On behalf of the Union:

CONCHITA LOZANO-BATISTA, Esquire, Weinberg,
Roger & Rosenfeld, 1001 Marina Village Parkway,
Suite 200, Alameda, California 94501-1091.

On behalf of City:

ERIK A. RAPOPORT, Esquire, Deputy City Attorney,
Office of the City Attorney, City and County of San
Francisco, 1390 Market Street, 5th Floor, San
San Francisco, California 94102.

ISSUE

Did the City have cause to terminate Grievant; and if not,
what is the appropriate remedy?

RELEVANT PROVISIONS OF AGREEMENT'

....

ARTICLE 1 – REPRESENTATION

I.D. MANAGEMENT RIGHTS

11. The City and its departments retain all rights as set forth in the provisions in the Charter, existing ordinances and civil service rules establishing and regulating the civil service system... These rights include, but are not limited to, the power, duty and right to hire, promote, transfer, assign and retain employees, **to suspend or terminate for proper cause...** In no event shall the exercise of any of these rights conflict with any applicable Statute, Charter Provision, Civil Service Rule or any other pertinent provision of law. (Emphasis added)

....

1.G - Time Limits

...

19: ... All time limits referred to in **this section** are binding on each party. If the Union fails to follow the time limits (unless mutually extended), the grievance shall be considered withdrawn. If the City fails to follow the time limits (unless mutually extended), the Union shall be able to move the grievance to the next step. (Emphasis added)

....

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1 ARTICLE II – EMPLOYMENT CONDITIONS

2 II.B. PERSONNEL FILES

3 77. Upon request of an employee to the Appointing Officer or designee, material
4 relating to disciplinary actions in the employee's personnel file which have been in
5 the file more then (sic) five (5) years of actual work shall be "sealed" (i.e., shall
6 remain confidential) to the maximum extent legally permissible, provided the
7 employee has no subsequent disciplinary action since the date of such prior action.
If an employee has a pending disciplinary action, (s)he shall not be permitted to
remove or request to seal any material relating to any disciplinary action until that
matter has been resolved. Performance evaluations are excluded from this
provision.

8 80. ...Rather, the intent...is to assure that the material is not discarded or destroyed
9 so that it is available to the City Attorney only on an as needed basis. In the event a
10 sealed file is to be opened, the department will notify the employee and allow the
employee and his/her representative to be present.

11 81. **No action to impose discipline against an employee shall be initiated more**
12 **than thirty (30) days from the date the employer knows of the conduct and has**
13 **completed a diligent and timely investigation except for conduct which would**
14 **constitute commission of a crime.** The discipline imposed may take into account
conduct that is documented in the employee's personnel file or was the subject of a
prior disciplinary action. (Emphasis added)

15

16 **RELEVANT PROVISION OF CIVIL SERVICE COMMISSION RULE 111.9.1**

17 ... No person or officer shall, by himself/herself or in cooperation with others, defeat,
18 deceive or obstruct any person in respect to his or her right of exam...or furnish to
any person any special or secret information for the purpose of either improving or
injuring the prospects of chances of any person being appointed, employed or
promoted.

19

20 **FACTS**

21 The salient facts are not in dispute. Grievant was terminated effective May 9,
22 2012. Prior to dismissal, he was a Sewer Repair Supervisor² at the Department and
23 a Department employee since 1985.³

24 On October 1, 2010 Grievant participated as an interview panel member for

25 _____
26
27 ²JX 1.

28 ³It is noted that, in 1996, the Department of Public Works ("DPW") was split and Grievant's work unit
moved to the PUC.

1 selection of a 7421 Sewer Maintenance Worker ("SMW") for DPW.⁴ Grievant was
2 called by Chris Lui and asked to be on the interview panel. After initially saying he
3 did not want to, Lui said it would get her out of a bind and he then agreed to help her.
4 The interview panel originally was Grievant, Lorenzo Hale and Gene Chruszcz, but
5 Hale called in sick and Grievant replaced him with Don Nevels. Chruszcz and Nevels
6 were direct subordinates of Grievant at PUC. Lui introduced the candidates and
7 would leave the room while the panel conducted the interview. The interviews were
8 recorded and Grievant controlled the recorder. All three panel members signed a
9 Confidentiality Agreement.⁵ On February 7, 2011, an email complaint was filed
10 alleging possible tampering/score change by the interview panel.⁶ Following the
11 complaint DPW conducted two investigations resulting in reports dated February 28
12 and March 17, 2011.⁷ Subsequently, the Department of Human Resources ("DHR")
13 also conducted two investigations into the 7421 selection process resulting in reports
14 dated August 10 and October 17, 2011.⁸

15 Between August 30 and September 22, Grievant went out on leave for
16 surgery.⁹ When he returned to work on September 22, Grievant was notified he was
17 transferred from sewer operations to the southeast treatment plant to report to Tony
18 Flores. Shortly thereafter, Grievant filed a whistle-blower complaint alleging
19 dishonesty, time theft, misuse of City property, and other issues, by some
20 Department employees.¹⁰ On September 28, Grievant attended a fact-finding
21

22 ⁴The classification and selection process will be variously referred to by the parties as 7421 selection,
interview, hiring, or exam.

23 ⁵JX 2, Tab 2, Exhibit E.

24 ⁶JX 2, Tab 2, Exhibit B.

25 ⁷JX 2, Tab 2, Exhibit B, containing both reports.

26 ⁸JX 2, Tab 2, Exhibit C, and document preceding the lettered exhibits, respectively.

27 ⁹JX 42.

28 ¹⁰Most City witnesses denied that they knew Grievant filed the whistle-blower complaint.

1 meeting regarding potential workplace misconduct related to workplace policies on
2 violence in the work place and policy prohibiting the use of slurs, and included
3 alleged incidents on the following dates:¹¹

4 April 15, 2011: A disagreement with Brian Goe about how Goe was
scheduling overtime.

5 May 6, 2011: A disagreement with Ray Mattias about scheduling
overtime for William Clark.

6 June 23, 2011: Communications with Caltrans regarding a sewer
7 drainage problem and dispute over whose responsibility it was to fix the
problem – Caltrans or the PUC.

8 August 11, 2011: Weekly staff meeting when Grievant objected to
items on the agenda.¹²

9 August 23, 2011: A disagreement with Goe about who should fill an
assignment due to someone calling in sick.

10 August 25, 2011: A meeting Grievant requested with Lewis Harrison
that Dang also attended.

11 Subsequently, on January 10, 2012 Grievant was issued a "Notice of
12 Proposed Discipline and Employee Conference/Skelly Meeting."¹³ The Skelly notice
13 cited the following ten charges against Grievant:

14 mistreatment of persons, dishonesty, inattention to duty, fighting,
15 violation of Prevention of Violence in the Workplace policy, violation of
Policy Prohibiting the Use of Slurs in the Workplace, violation of
16 Collection System Division Expectations, conduct unbecoming on an
SFPUC employee, violation of Civil Service rule 111.9.1, and abuse of
17 authority.¹⁴

18 The Skelly meeting originally was scheduled for January 13, but the Union requested
19 three extensions,¹⁵ and the Skelly meeting was held on March 12.¹⁶ Effective May 9,
20 Grievant was terminated citing the same ten charges listed in the January 10th Skelly
21 notice.

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23 ¹¹JX 26.

24 ¹²Witnesses identified attendees as Herb Dang, Grievant, Ray Mattias, Brian Goe, Jose Banaria, Paul
Martini and Kevin Roche.

25 ¹³JX 1.

26 ¹⁴JX 67.

27 ¹⁵JX 66.

28 ¹⁶JX 67.

1 Robert Salazar, Regional Manager for Caltrans southwest region (San
2 Francisco, San Mateo and Santa Clara counties), has been a Regional Manager for
3 about 10 years. Salazar testified that on June 23, 2011 his Deputy District Director
4 asked him to contact Grievant regarding a complaint about the drainage system; that
5 his Deputy District Director stated he should be cautious in how he spoke to
6 Grievant; that he called Grievant regarding the complaint; that he looked at Caltrans
7 records and advised Grievant that the drainage was not Caltrans responsibility; that
8 Grievant immediately went into a tirade, cursing and swearing; and, that Grievant
9 called him a liar and "white trash, hillbilly, redneck motherfucker."

10 According to Salazar, he had his phone on speaker phone and had two other
11 managers with him; that Grievant told him to go fuck himself and that he reacted and
12 said, no, you go fuck yourself; that Grievant then got very hostile and told him to
13 come down here and "I will kick your fucking ass anywhere, anytime;" that he told
14 Grievant he was on speaker phone and he said he did not care; that he considered
15 Grievant's statement to be a threat; that he had never met or heard of Grievant
16 before the incident; that after the incident he called the Deputy Director for DPW,
17 Mohammed Nuru, and advised him about what had happened; that Nuru said he
18 knew about Grievant but Grievant did not work for him and advised him to contact
19 the Department's Deputy Director, Tommy Moala; that he called Moala and informed
20 him; that he had not had a negative experience with anybody at the City before; and,
21 that Grievant had made comments about contacting the Governor's office because
22 he contended the drainage systems were Caltrans' responsibility, but he considered
23 that to be just more threats.

24 Salazar further stated that JX 11 are Caltrans email notes about the incident
25 with Grievant; that Lewis Harrison, CSD Manager, asked him, along with the other
26 two gentlemen who were with him to document the incident because the City was
27 looking into it and JX 4 is his letter to Harrison; that it is important for Caltrans to have
28 good working relationships with the Department; that the incident damaged the

1 relationship; and, that he had told Moala he would not have his people interact with
2 Grievant, but would contact someone else at the Department.

3 Raul Herrera, a Maintenance Manager 1 for about 7 years, but with Caltrans a
4 total of 37 years, and oversees the San Mateo and San Francisco County
5 maintenance crews. Herrera testified that, on June 23, 2011, he recalled he, his
6 boss, Salazar, and Earl Sherman another Maintenance Manager were en route to
7 meet with two of his employees; that Salazar's boss called and asked him to call
8 Grievant; that Salazar made the call on speaker phone; that Grievant used pretty bad
9 language; that Grievant called them ass holes and called Salazar white trash, hillbilly
10 motherfucker and even called Salazar out saying if you come down here anytime, I'll
11 meet you, I'll kick your ass; that he considered Grievant's statement a threat of
12 violence; that he wrote a statement about the incident;¹⁷ that he recalled Salazar
13 saying something to Grievant like fuck yourself; that he did not know Grievant was
14 going to file a complaint with the Governor's office; and, that he filed his statement at
15 the request of his boss (Salazar).

16 Earl Sherman, a Caltrans Maintenance Manager 1 for about 5 years out of his
17 23 years, oversees all maintenance operations in San Clara County. Sherman
18 testified he recalled on June 23, 2011 he, Salazar and Herrera were in a car; that
19 Salazar had a discussion with Herrera concerning a maintenance agreement; that
20 Salazar and Herrera said the drains were City responsibility; that Salazar then called
21 Grievant due to his complaint and told Grievant the drains were not Caltrans
22 responsibility; that the call was on speaker phone; that Grievant said yes they are,
23 and said something to the effect of you white trash, hillbilly motherfucker, you know
24 those are your drains; that Grievant also said something like, if you want to come
25 down here and have me show you, I'll kick your ass; that he considered Grievant's
26 statement a threat of violence; that he thinks Grievant said go fuck yourself and,

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¹⁷See, JX 6.

1 Salazar replied back no, you go fuck yourself; and that after that he thinks Grievant
2 hung up.

3 Raymond Mattias, acting superintendent of sewer operations since July 2013,
4 was sewer and street repair supervisor for about 15 years, and worked for the City 27
5 1/2 years. Mattias testified that he was the same classification as Grievant; and, that
6 the supervisor position requires regular contact with the public and outside
7 organizations to keep them abreast of what services were being provided or when
8 they are called to do work.

9 According to Mattias, on May 6, 2011 Grievant came into his office stating he
10 was not following the overtime list properly. He testified that he had seen employee
11 Fred Gonzalez outside his office and asked "If I get to you on the list, would you be
12 interested in working tonight?" and Gonzalez said sure; that after talking with
13 Gonzalez he went into his office and started calling people off the list; that Grievant
14 came into his office screaming he was doing the list wrong, and he told Grievant he
15 was not; that Grievant "went off" and called him a piece of shit and his family is a
16 piece of shit; that he denies calling Grievant a piece of shit to which Grievant
17 responded that "if I were a piece of shit, I'd be a relative of yours;" that Grievant did
18 say "if was a relative of yours, you go downtown and get me a job;" that after that he
19 told Grievant to get out of his office; that he admits he may have told Grievant to "get
20 the fuck out of my office" because he was upset; that Grievant stood in his doorway
21 tapping his chest saying "Here I am. Anytime you want it, here I am" and he
22 considered it a threat by Grievant; that he wrote a statement about the incident;¹⁸ that
23 he admits he cannot find in this statement the comment about Grievant tapping his
24 chest and saying "here I am" to incite him, but it was something he remembered as
25 he was testifying; that he wrote "this type of behavior with the wrong person will
26 trigger an aggressive type of action where someone could get hurt" because
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28 ¹⁸See, JX 21.

1 somebody may want to try something violent in return; that no one asked him to write
2 his statement about the incident; that he submitted it to Dang, his supervisor, and
3 personnel analyst Hope Broadus because of training classes; that he does not know
4 if Grievant was disciplined for the incident; that Andy Wayne was present in his office
5 when the incident occurred; and, that he does not know if Wayne stated in his
6 interview that both he and Grievant were yelling and swearing at each other.

7 Regarding the August 11, 2011 staff meeting, Mattias testified that Dang was
8 explaining a transition period of bringing on a swing shift and relieving some duties
9 from day shift; that Grievant became very agitated, began screaming at Dang; that
10 Grievant said Dang was not running the place, he was; that Grievant said Harrison
11 did not authorize any changes and he was not going to be doing any of them; that
12 Grievant said Harrison and Dang did not know what they were doing and did not
13 belong there; that Dang told Grievant "If this continues, you're going to become
14 insubordinate and there will be ramifications;" that Grievant said there was nothing in
15 writing about the changes "I need a signed statement;" that Dang signed the agenda
16 sheet and handed it to Grievant; that Grievant tore the sheet into little pieces,
17 crumpled it in his hand, threw it on the table, and said "I'm not doing any of this;" that
18 after the meeting Dang asked everyone to sit down and write statements about what
19 had happened, which he did;¹⁹ that he sent his statement to Harrison and Broadus;
20 that he noted in his statement that Dang told Grievant "this type of behavior is
21 unacceptable and if continued he would be insubordinate;" that he mentioned a fear
22 of retaliation in his statement because Grievant is a very argumentative, combative
23 person and a new employee, not knowing his history, may take his tone as a threat
24 and retaliate against him; that he wrote Grievant's actions might lead to an act of
25 violence because the way Grievant talks to people is very threatening and very
26 angry; and, that he does not know if Grievant was disciplined for the incident.

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¹⁹See, JX 12.

1 Mattias also testified that Grievant has made a threat of violence against
2 another city employee; that Grievant called him and said "You better tell your little
3 friend (Mabel Chow) to watch her back because I'm going to be coming after her"
4 because there was an investigation dealing with one of Grievant's employees; that he
5 told Grievant to tell her himself, but he also told Chow and reported it to then
6 Superintendent Mark Watanabe; that Nevels was involved in the incident; that Nevels
7 told him Grievant had just pushed him in the chest, grabbed the phone out of his
8 hands, and started calling him names; that he told Nevels to talk to Watanabe and
9 Watanabe instructed Nevels to write a statement; that he does not know what
10 happened to the statement; that he admits he was not present to witness the Nevels
11 incident, but only heard what Nevels told him; that he does not know if Grievant was
12 disciplined for the incident; and, that during his employment he has never been
13 informed about a confidential personnel matter regarding employees he does not
14 supervise.

15 According to Mattias, it is fair to say he and Grievant have not gotten along.
16 He testified that he does not know why Grievant does not like him or his family; that
17 he admits he does not like Grievant; that he has a professional relationship, meaning
18 strictly business, with Grievant, not a contentious one; that it is Grievant and not him
19 that argues; that he admits he used foul language against Grievant in the May 6,
20 2011 incident and only recalls that one time; that the workplace is like a men's locker
21 room, but he believes Grievant crossed the line with his language; that he was not
22 aware Grievant filed a complaint against him regarding misuse of overtime; that he
23 was told of a whistle-blower complaint investigation by management and he would be
24 asked to answer questions; that he was questioned about his use of the City cell
25 phone and vehicle, and overtime that he had received; that the investigation was
26 about four months prior to this hearing; that he admitted he worked for the City Park
27 and Rec Department previously, but did not pass probation; that he did not know why
28 he was released from probation, but admitted on further questioning that prior to his

1 release he was asked about misappropriation of city property, which he denied; and,
2 that he believes his probation was ended in 1984.

3 Brian Goe, swing shift sewer repair supervisor for 3 years of his 23 years with
4 the City, is responsible for assigning overtime. He usually runs it by management
5 before working overtime. He has never reported to Grievant. Goe testified that,
6 regarding the April 15, 2011 incident, he was in his office and Grievant came in
7 asking if Harrison or Dang knew about a vacant position and wondering why he was
8 not filling it with overtime; that he told Grievant he did not need to bring someone in
9 on overtime; that he remembers hearing Grievant say "If you and Ray and that punk
10 ass bitch Kevin Roche try to go up against me, you will lose;" that he did not
11 understand why Roche was called that name and it was shocking; that Grievant was
12 upset; that he disagreed there was a lot of name calling and foul language used by
13 employees on his shift; that he considered Grievant's statement a threat because of
14 the tone of voice; that he did not feel it was warranted to threaten a coworker or an
15 equal supervisor; that he wrote a statement about the incident²⁰ wherein he wrote
16 Grievant said "And don't forget you work for me, all of you, Lewis (Harrison) and Herb
17 (Dang) work for me;" that he does not know why Grievant would make that
18 statement; that he was really upset by Grievant and told him to get the fuck out of his
19 office; that Grievant told him to "make me;" that he walked to the parking lot to leave
20 the situation and calm down; that he was upset because the way Grievant
21 approached him was threatening; that he believes his tone of voice, the
22 unprofessionalism and the way Grievant approached him; that he believes Grievant's
23 response was threatening when told to get out of his office; and, that he does not
24 know if Dang did anything to Grievant after the incident or if Grievant was disciplined.

25 Goe also testified that, in the August 11 staff meeting, Dang gave Grievant a
26 piece of paper he signed and told Grievant that he was to follow it; that Grievant
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28 ²⁰See, JX 18.

1 totally disagreed, disregarded it, grabbed the paper, crumpled it up and tossed it on
2 the floor; that Grievant's conduct was destructive; that he recalls Grievant's voice
3 was a little higher than normal; and, that JX 15 is his email about the incident, in
4 which he wrote "For he (Grievant) believes we are all against him and disagreed with
5 the process we were doing."

6 Goe further testified that, on August 23, he wrote an email to Dang²¹ regarding
7 the August 19 incident; that he believes at the time there was a discrepancy about
8 callout and who was in charge of the on-call book; that Grievant had tried to fill and
9 was told he already called someone and Grievant said "You and Herb can fuck off;"
10 that he was upset and hung up on Grievant; that he then had a missed call from
11 Grievant and called Grievant back asking what he wanted; that Grievant's voice was
12 sharp and mean and said "You and Herb better watch out because I'm coming after
13 you;" that he asked why Grievant was so angry and at some point Grievant must
14 have hung up; that he considered Grievant's statements to be a threat; that in his
15 statement he wrote "I don't want anyone to get hurt on my shift" because he was
16 concerned about his employees and that if something happened, meaning someone
17 hurt or false accusations, Grievant may be the person behind it; and, that he does
18 not know if Grievant was disciplined regarding the incident, but as far as he knew
19 Grievant remained at work, stayed on the same crew, and same position as
20 supervisor.

21 According to Goe, he was investigated by the City as part of a whistle-blower
22 complaint. He testified that he believes others, including Mattias, Moala, Chruszcz,
23 Harrison also were being investigated; that it was just his understanding that the
24 group was being investigated, rather than some just being witnesses; but was not
25 told that by the interviewers; that he believes in talking in a group the men were
26 discussing being investigated and guesses they said "so am I," but he did not recall
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28 ²¹See, JX 24.

1 when the discussion took place; that he was being investigated for accusations of
2 misuse of a City vehicle, paying people overtime when they were not at work, use of
3 drugs (marijuana) and alcohol during employment, clocking people in and out, people
4 knowing his computer password, and working at home; that he does not know who
5 filed the whistle-blower complaint; that he did discuss the complaint with others; that
6 he told a group meeting "Gentlemen, we're being investigated by the whistle-blowers,
7 and I want you guys just to be on your best behavior;" that he told the group because
8 that is what supervisors do, they keep people in line; that he recalls discussing the
9 investigation with others three days before he was interviewed; that he cannot recall
10 the exact date but it was in 2013; that nothing has come of the whistle-blower
11 complaint; that as best as he can recall he knew he was going to be called in for an
12 interview because he got something in writing or one of his supervisors informed him;
13 and, that he discussed what the complaint was about with Dang and asked if he
14 should call the ethics commission or get Union representation.

15 Dang, Sewage Superintendent for about 15 years, has worked for the City
16 since June 1979. He testified that he currently is Sewage Superintendent in the SSIP
17 group, but became Superintendent over sewer ops in August 2010 for about a year;
18 that at sewer ops he supervised Grievant; that at sewer ops he and Harrison were
19 making changes to operations, including going from paper records to a computerized
20 maintenance management system (CMMS), writing SOPs and training people on
21 them, a new CCTV system (sewer inspection camera), and bringing on a swing shift
22 crew; that the swing shift proposal already was on the table when he came to sewer
23 ops and Goe already was hired before he arrived; and, that the swing shift was
24 added since it could accomplish more after hours because there are places in the
25 city where work cannot be done during daytime.

26 According to Dang during the August 11, 2011 weekly staff meeting Grievant
27 objected to several items on the agenda. He testified that Grievant asked if he had
28 passed the items past Harrison and he told Grievant he had talked with Harrison; that

1 one item was reassigning the response crews to Goe, which had been reporting to
2 Grievant who works days; that other items Grievant objected to it were the
3 assignment of vehicles to be double shifted, getting information about California
4 driver licenses, and extending the number of telephone numbers to call for a callout;
5 that Grievant wanted him to sign off on the crew reassignments because he said he
6 was not going to follow the instruction; that he signed and dated the agenda and
7 gave it to Grievant; that Grievant balled it up and threw it at him or in his direction at
8 the table; that he thinks Grievant's behavior was insolent and insubordinate,
9 disrupted the meeting and his voice was in raised tones; that JX 13 is his written
10 documentation of what happened and was given to Harrison and HR to register his
11 complaint about Grievant's behavior; that he admitted he sent it to HR because in the
12 past Harrison had asked him not to pursue some things, such as Grievant getting
13 upset and yelling at him or getting in his face, and he was making sure Grievant's
14 behavior was not going to continue; that he admitted Grievant apologized to him in
15 private; that he knows Grievant was told he was being disciplined because he stood
16 in for Harrison at a fact-finding about the August 11, 2011 incident and because
17 Grievant was removed from sewer operations and moved to the southeast plant in
18 September or October 2011; and, that he does not know if Grievant was told he was
19 moved as punishment.

20 Dang also testified that, in JX 13. he noted Grievant said "(Harrison) and I did
21 not run this place, he did, and we did not know what we were doing;" that he believes
22 Grievant made the statement because before he came to sewer ops there was no
23 superintendent and Grievant and Mattias had run the place for a year and a half or
24 two, and that Grievant also thought he was not qualified or was making judgments
25 and changes that would hurt the operation; that after the staff meeting he asked
26 Grievant to stay to tell him his behavior was inappropriate and he would be acting on
27 it; that he asked all the other people at the meeting to write up a summary of what
28 occurred; that JX 14 is Roche's version of events; that he put together all the

1 statements from people in one package and sent them to HR; and, that he previously
2 received an email about another incident from Roche²² about Grievant about April 18,
3 2011, and thinks Grievant was disciplined for it when it was all rolled up together and
4 Grievant was terminated.

5 Regarding the August 25, 2011 meeting with Harrison and Grievant, Dang
6 testified that Grievant had told him at the end of the August 11 staff meeting he had
7 things he wanted to expose, but Grievant would not share it until the meeting with
8 Harrison; that he believes he let HR know about Grievant's claim, but did not
9 remember if it was before or after the August 25th meeting; that he told Grievant his
10 behavior (at the staff meeting) was unacceptable and was insubordinate; that
11 Grievant talked about misuse of vehicles, that he believed Goe and Mattias had
12 people having time in when they were not at work; that Grievant got pretty extreme
13 and said "I want (Mattias') blood;" that he considered the "blood" statement a threat,
14 but does not know if Grievant meant violence; that he does not think Grievant would
15 act on his threats, he talks that way, but is basically not physically violent; that a lot of
16 people use colorful language, which he was trying to correct by modeling behavior for
17 everyone; and. that JX 25 is a document from Harrison to Lori Regler about the
18 August 25th meeting.

19 Dang also testified that, at the August 25, 2011 meeting, Grievant gave some
20 of the incriminating information he had, including GPS printouts, some logs of when
21 people check in and out, and he thinks some time sheets; that theft of time was
22 alleged; that he took the information to figure it was valid and talked to Harrison on
23 how to continue; that he found a common practice was to not stop a job in the middle
24 for lunch or breaks and people were leaving early at the end of the day; that he
25 discontinued that practice; that there also was a practice when people who are on
26 call were answering questions or doing callouts were putting time down they felt

27 _____
28 ²²See, JX 19 which refers to the incident where Grievant allegedly called Roche a punk bitch, not the
August 11, 2011 staff meeting written up in Roche's JX 14.

1 warranted for the time it took to do the task; that he did not find anybody intentionally
2 misleading the City, but asked the on-call supervisor to write calls down so he would
3 know the number of calls; that he did not find the practice proper, but it was not
4 documented well enough to pin it down to time theft; that for everything he
5 investigated he made structural changes; that Mattias was disciplined for using City
6 vehicles to go to a club to work out after work, he thinks with a written reprimand, but
7 it could have been a letter of instruction; that Mattias was disciplined shortly after he
8 got the information; that Goe was not disciplined for stopping and getting out of the
9 car to smoke, but he had several interactions with him to make sure he is conforming
10 on vehicle use; and, that when he left (to his new position about a month ago) he
11 was still tracking to see that people were signing in correctly.

12 Testifying about the whistle-blower complaint, Dang stated he did not know
13 specifically that Grievant filed it but Grievant had told him he was going to. Dang
14 testified that no one in the Department told him Grievant filed the complaint; that
15 people speculated about who filed the complaint since when someone leaves and
16 there is a series of complaints, it is assumed the person who left made them; that he
17 admits he talked about the complaint at a group meeting with Mattias, Goe and
18 Chruszcz; that he was arranging for them to go meet with the Controller;²³ that Moala
19 and Harrison were not present; that he thinks Harrison told him they all had to
20 appear; that he also thinks he got an email and a phone conversation from someone
21 in the Controller's office; that he was interviewed and asked a series of questions
22 including overtime sheets, signatures, who put in e-time, who tracked GPS, when
23 start and stop times were; that he infers the questions were directed to him both as a
24 supervisor and subject of the investigation; that he does not recall when he had the
25 meeting but it was in 2012; and, that he does not know if the investigation is still
26 ongoing or where it is.

27
28 ²³The Controller is the investigating office.

1 According to Dang, he believes Grievant may have resented him and Harrison
2 because while the Superintendent was not present Grievant and Mattias shared the
3 Superintendent duties. He testified that there had been a tug of war between the
4 inspection (Mattias' group) and response (Grievant's group) units when there was no
5 Superintendent; that because they did not have prerequisites to get the
6 Superintendent job,²⁴ they did not have the means to get to Superintendent, so there
7 was some resentment; that he tried to create a promotional path within the group;
8 that Mattias and Grievant had expressed they did not like what he was doing and it
9 would hurt the organization; that he felt they were dissatisfied with his leadership;
10 and, that he would describe Grievant's behavior during the summer of 2011 as
11 becoming more frequent in his objections and as more changes started Grievant
12 objected more and more vigorously; that Grievant's period of objection got shorter
13 and shorter; and, that he believes Grievant repeatedly crossed the line as to what is
14 acceptable conduct in the workplace.

15 Harrison, Collection Systems Division Manager since 2008, has worked for the
16 City since 1979. Harrison testified that he was assigned to the Collection Systems
17 Division to modernize the operation; that modernizing included replacing a
18 computerized tracking system to replace a manual system to associate work to
19 assets and how much costs were to operate the system; that the planning phase
20 started in 2008 and implementation rolled out in '09, '10 and '11, and still is ongoing;
21 that the system change was a huge change; that he also was trying to change the
22 work climate and wrote Work Climate Expectations drafted in January, 2010;²⁵ that
23 he reviewed the expectations with Grievant who was informed violating the
24 expectations could lead to discipline; that agendas for staff meetings every two
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27 ²⁴Dang cited prerequisites as: having worked in the treatment plant, having certification from the State
to operate a plant, or a certification from CWA to be a maintenance supervisor.

28 ²⁵See, JX 30.

1 weeks showed discussion of the expectations and went through the whole thing;²⁶
2 that the April 9, 2010 agenda discussed ways to improve the work climate, they
3 needed the supervisors to understand the expectations and engage whenever it
4 occurred and the May 7, 2010 agenda item "Policy on improving work climate"
5 reflected what was discussed; that he admitted coworkers did not get along with each
6 other, sometimes fought, and it was not just Grievant; and, that he admitted other
7 people used bad language.

8 Regarding the June 23, 2011 incident, Harrison testified that Moala called him
9 about a complaint concerning an encounter Grievant had with Caltrans personnel for
10 him to look into;²⁷ that he talked with the Caltrans employees involved and found they
11 were outraged by Grievant's behavior; that he also called them again to get
12 statements from them for his investigation; that Katie Benouar, chief of staff for
13 Caltrans emailed her statement about her phone conversation with Grievant;²⁸ that
14 Benouar's email expressed Caltrans wanted some accountability for Grievant's
15 behavior; that on the same day he called Grievant into his office, outlined what he
16 knew and asked Grievant what happened; that Grievant said he had the
17 conversation with Caltrans and told him he did not curse at the Caltrans people, but
18 they said fuck you to him; that Grievant said he was completely innocent and they did
19 all the cursing; that JX 10 is his write-up of the interview with Grievant; that he wrote
20 Grievant was "upset at me for not backing him up" because Grievant denied it had
21 occurred and he thought Grievant felt he was not going to take Grievant's side; that
22 he determined that clearing the drains at the center of the dispute was the PUC's
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26 ²⁶See, JX 34 which included agendas for April 9, April 22, May 7, May 20 and May 27, 2010.

27 ²⁷See, JX 7, an email from Moala regarding Grievant's swearing, etc.

28 ²⁸See, JX 3.

1 responsibility;²⁹ that he does not recall Grievant telling him he called Cliff Wong³⁰ who
2 confirmed to him that the property at issue was Caltrans' responsibility; that he does
3 not know if JX 41-A through -D are things Grievant had in his hands; that because
4 there are questions about jurisdiction, they have to check records to find out; that for
5 questionable area calls would have to be made; that in such cases it would not be
6 unreasonable to call Caltrans; that Grievant told him he was going to file a complaint
7 with the Governor's office, but he told Grievant to stop because Grievant was
8 determined to get somebody in trouble; that he thinks Grievant did stop; that he does
9 not recall telling Grievant not to file a complaint and that he would let Grievant know if
10 he needed to; and, that it was important to have a good working relationship with
11 Caltrans because of the interconnecting responsibility and to get things done quickly
12 instead of finger pointing.

13 According to Harrison, at the meeting on August 25 Grievant was focused on
14 issues with Dang and complaints he had brought and was not satisfied they were
15 resolving them to his satisfaction. He testified that he remembered Grievant being
16 focused on Mattias in particular, but had told Grievant many times he would
17 investigate all the allegations; that he told Grievant he would not tell him what was
18 being done with investigating and resolving them, but that he took every complaint
19 seriously and assured Grievant the complaints were being handled; that he asked
20 Grievant why he was not satisfied and Grievant said "Because I want his blood,"³¹ that
21 he told Grievant he could not talk like that; that Grievant said you "...are letting this
22 stuff happen under your nose and not doing anything about it" and "Where I used to
23 work, we had our own way of taking care of this kind of problem...[at the shipyard]

24
25 _____
26 ²⁹See, JX 41 - A through D define the responsibilities the City has versus Caltrans where their assets
intersect, such as flows from freeway off ramps to City drains and includes maps indicating where properties
overlap.

27 ³⁰Wong is an engineer with the City.

28 ³¹Referring to Ray Mattias.

1 people would disappear in a hole"; that he told Grievant he was "totally out of
2 bounds" and that this was violent; that Grievant was really upset and wanted to see
3 what the result was of his complaint and it sounded like if we did not do it the way he
4 expected he was going to take care of it himself; that he took Grievant's statements
5 to be a threat of violence; that policies on violence in the workplace were reinforced
6 at various points in training;³² that, to his knowledge Grievant was informed of the
7 policies, as was everybody who works for PUC; and, that his understanding of JX 29
8 item 10-2 was that violence included both acts and threats of violence.

9 Harrison did not recall Grievant bringing papers to the August 25 meeting to
10 show time theft by employees. He testified that he does not remember the issue of
11 time theft; that he does not recall being showed violations of overtime; that he does
12 not recall being showed overstating of time used for non-work incidents, and recalls
13 Grievant verbally telling him, but not giving documentation; that it is possible Grievant
14 may have given documents to Dang at the meeting, but he does not recall; that there
15 were investigations of Grievant's allegations; that he recalls Grievant talking about
16 the GPS (information) and Mattias was not going straight home with his vehicle; that
17 Mattias admitted he did it and did not know it was a problem, that there was
18 discipline, but he could not recall if it was a warning or a letter of instruction; and, that
19 the discipline was fairly quick and in the summer of 2011.

20 Harrison also testified that he attended Grievant's *Skelly* hearing; that
21 Grievant's response was he denied any allegation was true; that Grievant's denial
22 was a concern to him because he spent many hours talking with Grievant trying to
23 get him to understand his behavior was out of bounds; that his sense of Grievant's
24 behavior during the summer of 2011 was that things were getting worse; that his and
25 Dang's coaching was not helping; that Grievant was getting worse in defiance of
26

27 ³²Policies discussed included JX 27 (Prevention of violence in the Workplace, JX 28 (Policy Prohibiting
28 the use of Slurs), JX 29 (SFPUC Water Power Employee Manual), and JX 33, (Employee Handbook, City
and County of San Francisco.

64

1 everything they were trying to do to change the climate and get everyone to row in
2 the same direction; and, that it seemed like it was spinning out of control with
3 Grievant's language and so forth and he was not getting that things were serious.

4 Harrison acknowledged when an allegation of hostile work climate is made, an
5 investigation must immediately begin and the personnel liaison immediately
6 informed³³ and he believes it was followed in Grievant's case. He testified that he
7 was aware Grievant was reprimanded via termination for incidents beginning in April
8 2011 and continuing through August 2011; that he was aware of the April 15, 2011
9 incident and believes an investigation was done; that he does not know if Grievant
10 was disciplined as a result of the incident because several incidents were back to
11 back including the April 15, May 6 and June Caltrans incidents; that even though they
12 were having discussions with Grievant, the incidents were in such a cluster
13 conversations were had, investigations were taking place, but other things were
14 occurring, and he thinks what happened is the things were so extreme they wound
15 up being pursued in one big effort; that Grievant knew he was being investigated on
16 every one of the incidents and he was trying to get Grievant to understand it had to
17 stop; and, that Grievant was told through conversations he and Dang had with
18 Grievant consistently with every incident that came up.

19 Harrison also testified that, after the Caltrans incident, he wrote everything up
20 for the HR investigation; that it is his understanding the Department conducts and
21 coordinates PUC employee investigations; that it is his understanding the HR
22 department conducted a diligent and timely investigation; that he is aware the MOU
23 requires thirty days or upon a reasonable investigation in order to impose discipline;
24 that Grievant's actions were so extreme he thought Grievant was a threat of violence
25 in some cases, even though Grievant was not terminated until May 2012; that he did
26 not seek a protective order or restraining order against Grievant and did not call the
27

28 ³³See, JX 30.

1 police on any of the incidents; that Grievant's transfer shortly after the August 25,
2 2011 incident was to try to cool off everything while the investigation was going on
3 and they thought it too risky to keep him in his position; that he does not know if
4 Grievant had further incidents after the transfer; that the transfer was part of the
5 disciplinary process, but does not know if Grievant was told it was because he
6 (Harrison) was on leave; that disciplinary to him means trying to improve somebody
7 through conversation and documentation; that he agrees disciplinary also means
8 escalating documentation to change or improve conduct; and, that he believes that
9 happened even though incidents were rolled up into one investigation in the
10 termination of Grievant.

11 Regarding the whistle-blower complaint, Harrison testified he was not aware
12 Grievant filed it; that he did not know if it was common knowledge Grievant filed the
13 complaint; that he does not remember if Grievant told him he was going to file a
14 whistle-blower complaint at the August 25, 2011 meeting, but remembers him saying
15 it as things were pursued against Grievant; that he was investigated as a result of the
16 whistle-blower complaint; that he gave testimony or provided evidence, he believes
17 that was early 2013; that some of the allegations included using a City vehicle for
18 personal use and people not working their full shift for overtime; that he denied there
19 was an allegation that he personally improperly burned through \$200,000 of
20 overtime; that he recalls a question as to how overtime was being used; and, that he
21 was investigated for improper use of overtime.

22 Moala, Assistant General Manager since 2007 and in charge of wastewater
23 enterprises³⁴ and a City employee since 1990, testified that, on June 23, 2011, he
24 received a phone call from Nuru regarding the Caltrans complaint about Grievant;
25 that after talking with Nuru he called Harrison and talked to him; that he spoke to
26 Caltrans' Salazar; that Salazar told him he had never encountered that kind of

27
28 ³⁴See, JX 37.

1 behavior; that Salazar said there were witnesses in the car with him and the call was
2 on speaker phone; that he was told Grievant had used a bunch of swear words,
3 called him motherfucker and hillbilly, and said he would meet Salazar anywhere kind
4 of thing; that Salazar told him he felt he had been threatened by Grievant; that he
5 thought the June 23 incident was an embarrassment to the Department; and, that the
6 incident impacted the Department's relationship with Caltrans because Salazar said
7 he did not want any of his employees to come into contact with Grievant in the future.

8 According to Moala, it is important for the Department to have a good working
9 relationship with Caltrans because the City and Caltrans share a lot of easements.
10 He testified that the Department also works closely with other State Departments;
11 that the agencies each have access to each other's property; that he considers PUC
12 a public service utility because they are there to serve the rate payers; that the
13 customer service mission is a significant one and means they are held responsible,
14 not only for the system, but also service to the public, residents, and other
15 departments; that to his knowledge the Department holds supervisors to a higher
16 standard of conduct than line-level employees because they are supposed to set the
17 example, so if there is a tirade, that is the example being set; that supervisors have
18 to understand we are paid by the public and other entities to perform their work; that
19 in considering the level of discipline imposed on Grievant, it is important to consider
20 his position includes public contact and representing the Department; that the
21 collection system people, unlike the treatment plant people, are in the public all the
22 time and is where the majority of complaints are made, so it is important they take
23 their job seriously; that PUC is moving forward with a multi-billion dollar program and
24 it is important to have public engagement, that the public is treated well; that the
25 ability to work closely and cooperatively with outside agencies and other departments
26 is of significant importance, and working together makes the job a lot easier for
27 access to their properties and them to ours; that being honest at work is very
28 important and being transparent is part of the mission because they are spending

1 public dollars and they are a heavily regulated, self-reporting agency; and, that
2 Grievant's failure to acknowledge wrongdoing and accept responsibility were
3 concerning because, if you do not think there is something wrong with what you are
4 doing, and there are three witness, people who he and Grievant did not know, who
5 heard the same conversation and take the time to call DPW, it is a huge issue and
6 not how we should be conducting business and spending public dollars.

7 Leonard Williams, a truck driver for PUC for nine years, testified that Grievant
8 was his supervisor on the night shift; that he is aware Grievant was terminated, but
9 does not know why; that he does not recall Grievant calling anyone a punk ass bitch;
10 that he never heard of Grievant being disciplined for calling Roche a punk ass bitch;
11 that while he probably was at work that day, he did not hear any of the JX 19³⁵ things
12 being said; that, although JX 19 describes an exchange where Grievant was yelling
13 at him, he would not say Grievant was yelling at him, it is just the way the two of them
14 interact and he has kind of a loud voice himself; that he agrees employees in the
15 Department use colorful language; that it is like a drill sergeant or men's locker room;
16 that they talk that way out in the field, but not in front of females; that he does not
17 recall Grievant saying he had plenty on him, but he could have, but if he did, it did not
18 mean anything, it was just throwing something out there; and, that he does not recall
19 having a conversation with Grievant about GPS.

20 Gene Chruszcz, a service worker in sewer ops for seventeen years, testified
21 that Grievant was his supervisor for four or five years; that he is aware Grievant was
22 terminated; that he recalls the June 23, 2011 incident with Caltrans; that he does not
23 remember talking to anyone at PUC about the incident; that he guesses Grievant
24 determined by observing that the flooding was coming from Caltrans' facilities; that
25 he did not know if it was, but it sounded right; that Grievant went back to the office
26 and called; that he was in the room when Grievant called, but does not recall what

27
28 ³⁵JX 19 refers to the April 15, 2011 incident.

1 was said; that after reading the *Skelly* notice description of the incident he does not
2 recall Grievant using the word asshole, white trash, hillbilly or mother fucking
3 redneck; that he does not recall Grievant saying "Come fix this, you motherfucker;"
4 that he does not recall Grievant threatening a person on the phone saying "I can
5 meet you anywhere and I'll kick your fucking ass;" that he guesses it was possible
6 Grievant made the statements outside of his presence; that he does not recall
7 leaving the room while Grievant was on the phone with Caltrans, but agreed it also
8 was possible Grievant left the room and spoke to the Caltrans employee on his cell
9 phone; that, in looking at JX 36,³⁶ he recalls being called in on November 15, 2011
10 and being questioned; that JX 36 (page 3, question 10) notes "Later spoke to Cliff,"
11 the engineer, "who spoke to Herb (Dang) maybe but found out that...PUC was
12 responsible for maintaining it..." and he agreed that later he thought they did find that
13 out; that he also recalls participating in the 7421 civil service class hiring round in
14 October of 2010; that Grievant asked him to participate; that initially he did not want
15 to, but Grievant said he needed him to, so he said yes; and, that he participated but
16 would rather not have done it.

17 Lui, senior personnel analyst for ten years and has worked with DPW for a
18 total of thirteen years, testified she recalls administering the 7421 selection process
19 October 1, 2010; that the interview process was pretty much second nature since she
20 had done it for ten years; that she provided an orientation to interview panelists;³⁷
21 that there is no other training panelists receive on how to interview; that in orientation
22 she gave the panelists a folder they had not seen before, which included a
23 confidentiality form, the interview questions and possible answers that she goes over;
24 that Grievant did not know who was being interviewed that day and was not given an
25 advance list or told ahead of time; that she explains applicants can read upside down

27 ³⁶JX 36 – City and County of San Francisco-PUC, HR Services, fact-finding questions.

28 ³⁷JX 2, Tab 2, Exhibit D.

1 so they need to roll their answer sheet up so applicants cannot see the answers; that
2 the panelists signed confidentiality agreements;³⁸ that she also explained that as
3 subject matter experts (SME's) the applicant may give answers that were not thought
4 of, and they are allowed to use them to give a score; that panelists are not allowed to
5 coach applicants, suggest answers or show applicants the written answers; that
6 during the selection process she interacts with applicants introducing herself to
7 applicants;³⁹ that at the end of the day she collects all the interview materials; that
8 she tells panelists they do not have to calculate the scores because it takes more
9 time between each candidate; that about twenty people were interviewed that day;
10 that interviews typically take about fifteen to twenty minutes each; and, that she does
11 not think panelists get fatigued since they get breaks.

12 According to Lui she was aware who was on the 7421 interview panel before
13 the interviews. She testified that panels are scheduled way ahead of time; that the
14 panel was different than the one initially, which often happens when someone is
15 unable to attend, and they often have to scramble to get somebody so they do not
16 have to cancel interviews; that even in last minute scrambles they know the
17 panelists; that she did not recall Lorenzo Hale calling in sick and Nevels taking his
18 place; that she did not identify any issues with the people on the panel and if she
19 had, would have dealt with it beforehand; that she recalls asking Grievant to pick a
20 replacement after one panelist dropped out; that she does not recall who he picked,
21 but Grievant just said he would show up with someone; that she did not know the
22 other panelists worked for Grievant, but it would not really be her responsibility; that
23 they try to make sure the SME's know the job, are not from the same department,
24 and are diverse; that diverse means not all men or women, but that is hard because
25

26 ³⁸JX 2, Tab 2, Exhibit E.

27 ³⁹Interactions include: having them fill out a confidentiality form not talk about any of the questions asked,
28 copying their driver's license to ensure they are the person to be interviewed, and escorting them to the
panelists and introducing them.

1 the field does not have a lot of women; that Nevels was African-American, but she
2 did not know if Chruszcz was Caucasian or that Grievant was listed as Latino; that
3 normally she would check, but they had to get the panel done quickly since it was a
4 last minute panel; and, that she denies panelists were told to lie about what
5 department they were with so it would appear more impartial.

6 Lui also testified that she talked with Grievant about being on the panel and
7 was the first person she called; that she does not recall if Grievant had only done
8 interviews once before three years prior; that she knows he had done interviews
9 before, does not know how often, but would not be surprised if it was one three years
10 ago; that she does not know if Grievant had to operate the tape recorder; that she
11 denies telling panelists to read the questions in case an applicant could not read, but
12 she had them read questions because applicants are nervous a lot of the time; that
13 she denies telling panelists prior to Nicole Cook's interview she was the only female
14 being interviewed and they had to be extra nice to her; that she does not recall if
15 Cook was the only female interviewed; that she did tell them the point spread should
16 be three to five points and if bigger they need to discuss it because a panelist may
17 have heard something the others did not; that if they were not within three to five
18 points they would not have to revise points; that if they changed points, they would
19 have to cross off what they had, and she recalls telling panelists they needed to initial
20 the change; that the rating answer sheets were the same for each candidate; that JX
21 2 (Tab 2) Exhibit N is one of the rating sheets and shows the maximum points for all
22 the questions was twenty points; that tallied scores for each candidate is the sole
23 determining factor on whether somebody gets the job the majority of the time; that
24 she thinks the selection was based solely on the scoring; that the department head
25 could override the ranking and select someone lower ranked, but it does not happen;
26 that the ranking of candidates was given to Nuru who discussed it with the
27 Superintendent and she was not involved in that process; that after they made their
28 determination, they gave it back to her to offer the job, and she made the job offer

1 calls going straight down the score listing; that she does not recall there being an
2 error in the score tallies; that she does not recall if Cook and Kevin Mattias actually
3 tied, but Cook was ranked ahead of Mattias; that the job was offered to Cook; that
4 she does not recall if Grievant was involved in tallying the scores, although panelists
5 are told not to, sometimes they do; that she would only know if something is written
6 on the documents; that she would tally the scores separately and rank people; that in
7 case of a tie they would be not be listed on the same line, but one above the other,
8 and both would have the same ranking; that, if there was a tie for first place, they
9 would bring both applicants in for a second interview; that she does not recall if
10 Mattias was brought in for a second interview; and, that Grievant is not responsible
11 for determining whether somebody is brought back for a second interview.

12 Jennifer Johnston, Executive Officer of the Civil Service Commission (CSC),
13 has worked for the City since 2002, and previously worked in DHR. Johnston
14 testified that she oversaw the investigation into the 7421 SMW selection process and
15 supervised Niger Edwards who conducted the investigation; that she was involved in
16 the investigation because it was involved four departments (PUC, DPW, DHR and
17 CSC),⁴⁰ involved discipline and a number of potential serious violations of Merit
18 System policies and requirements; that one department head does not have authority
19 to investigate and discipline in another department; that DHR did not get involved in
20 the investigation until late April when she became aware of the situation and began
21 trying to understand what happened; that she recalls an investigation was started
22 due to an email from Ray Mattias;⁴¹ that JX 2 states DHR launched an investigation
23 into the matter in June 2011; that the CSC requested investigation because Larry
24 Mazzola of the Plumbers Union wrote a letter complaining about the process at

25 _____
26 ⁴⁰PUC because it was their employees involved, DPW because it was their selection process, DHR
27 because it was their policy on the selection process, and CSC because it implicated Civil Service rules.

28 ⁴¹ JX 2, October 17, 2011 DHR confidential fact-finding investigative report into alleged misconduct for
the 7421 post-referral process notes "In February 2011, the" DPW "received a complaint
alleging...misconduct..."

1 DPW;⁴² that she does not know if Ray Mattias works closely with Mazzola or if Ray
2 Mattias is a plumber; that between March 17th and June 2011 there was a lot of
3 confusion requiring communications with DPW, the City Attorney's office, PUC trying
4 to figure out what occurred, what the issues were, and determine who had
5 jurisdiction; that in her review of the DPW investigation reports the reports did not
6 include all the relevant information and exhibits;⁴³ and, that the DPW reports did not
7 answer all the questions she felt needed to be answered.

8 According to Johnston, DHR broke the investigation into two parts because
9 the first concern was did the DPW selection process comport with Merit System
10 requirements and DPW could not audit itself, but because of what was found in the
11 first report, then looked at what had happened. She testified that preparing the
12 reports took a significant amount of time because, aside from the length of the
13 reports, it took a lot of time trying to make sense of everything, listening to the
14 interview tapes over and over, reviewing everybody's interviews over and over, then
15 trying to finalize questions to ask the panelists; that the investigation did not find
16 Grievant truthful during his interview, which added to the confusion about what
17 happened; that she cannot speak to why it took a year to issue a notice of discipline
18 because she only knows the part she oversaw at DHR; and, that regarding how long
19 it took to make conclusions about the 7421 examination from the date the complaint
20 was lodged in February 2011 she could not speak to what another department did,
21 only what DHR did for investigation.

22 Johnston also testified that the DHR investigation found DPW went far beyond
23 usual practice for most departments regarding selection process;⁴⁴ that DPW not only
24

25 ⁴²As noted in JX 2, Section C, referencing Mazzola letter dated June 21, 2011.

26 ⁴³See, e.g., the content of the interview tapes was discussed but the transcripts or the tape itself was not
27 included.

28 ⁴⁴JX 2 Exhibit C (in Tab 2) is the first DHR investigative report in August 2011 and the first document in
Tab 2 (preceding the Exhibit Tabs) is the second DHR report from October 2011. Johnston described the
selection process as follows: individuals have to pass the minimum qualifications (MQs), those who pass

1 did a screen down review, but the process was a very formal, structured, interview
2 panel process that was tape recorded, gave detailed instructions on how to score
3 and provided scoring sheets, and tried to minimize nepotism, favoritism or any
4 inappropriate conduct by having interview panelists from outside the department;
5 and, that she only knows DPW saw nepotism as an issue because they identified it
6 as a reason for having such a structured process.

7 According to Johnston, the investigation also found evidence of misconduct on
8 the part of panelists⁴⁵ based on an extensive review of the scoring sheets, questions,
9 the panelists' scoring and listening to the interview tapes. She testified that although
10 the investigators were lay people, based on the scoring sheets, the way each
11 candidate answered the questions, it was their opinion Mattias should have been
12 scored far above the other two candidates; that the second DHR report⁴⁶ confirmed
13 the panelists had assigned Mattias inappropriately low scores and he should have
14 been scored number one or two on the list; that she reviewed Grievant's score
15 sheets regarding Mattias; that she noted in her second report⁴⁷ Grievant had not
16 changed his scores for Mattias and that Chruszcz did not change his score for
17 Mattias; that it was obvious from listening to the tapes at least Cook was coaxed into
18 some of the answers; that there were instances where Mattias gave correct answers
19 but was scored lower, while the other candidates' scores were much higher than they
20 should have been; that one panelists' score sheets noted "wow" or "excellent" but the
21 score had been crossed out and Mattias given a lower score; that she believes
22 Mattias and Cook were tied and there was a tie-breaker mechanism; that her report
23

24 _____
25 MQs then take the examination and those who pass are placed on the eligible list; a department must use
26 the eligible list for hiring, which DHR refers the department, the department screens down and does the final
27 selection; rule 113 provides discretion to the appointing officer as long as the process is documented, based
28 on merit, and non-discriminatory.

⁴⁵Exhibit C, Tab 2, page 2, third paragraph.

⁴⁶JX 2, Tab 2, report preceding the Exhibits.

⁴⁷JX 2, Tab 2.

1 states:

2 Although Ms. Cook and Mr. Mattias received tied scores, they were
3 ranked fifth and sixth, respectively, due to an error by DPW human
4 resources personnel;⁴⁶
5 that she recalls DPW discussing that they had a tie-breaker mechanism; that she
6 does not know if anyone other than Grievant was disciplined for the [ranking] screw-
7 up since she cannot speak to what happened at DPW; that she does not know if
8 procedures were revised as a result of the error; that she does not know if DPW has
9 a written policy on how interview panels are put together; that she does not know if
10 Mattias was interviewed toward the end of the day; that the time of day someone is
11 interviewed was not part of her investigation because it was not a factor they felt was
12 right; that when there are approximately twenty candidates, time of day could be
13 important depending on the circumstances; that she does not know if the panel re-
14 views everyone at the end of the day since she does not know that part of DPW's
15 process; that it would not surprise her if a candidate is interviewed and does
16 mediocre, then another candidate at the end of the day also interviews mediocre,
17 that the candidate at the end of the day might have a little different score; and, that
18 she does not know if candidates scores are revised from one candidate to the next.

19 Johnston also testified she believes it correct that Grievant was asked to bring
20 panelists with him to the interview and he chose the panelists; that she believes it
21 correct that Grievant gave the names of the panelist to the Department, but does not
22 know if it was in advance; that she does not know if Grievant knew who was going to
23 be interviewed and she believes it correct that no one said that he did; that she
24 believes there is some animosity between Grievant and Ray Mattias; that it would be
25 logical to say if Grievant brought in two different people than he did, that they also
26 would have known people coming in for interviews; that she does not recall if in her
27 investigation she found wrongdoing with the panelists Grievant brought with him to

28

⁴⁶See, JX 2, Tab 2, Exhibit C, p. 7.

1 be on the interview panel and that they were fellow employees of the PUC; that for
2 her investigation Edwards interviewed Nevels and Chruszcz; that Nevels and
3 Chruszcz denied artificially assigning scores or that Grievant told them to assign
4 artificially low scores; that she does not know if Nevels or Chruszcz were disciplined;
5 that she knows Ray and Kevin Mattias are related; that Kevin Mattias was not hired
6 as part of the 7421 interview process; and, that she believes, but does not know if,
7 Kevin Mattias now works for the City.

8 Kevin Mattias was rehired as a utility plumber for the City about a year ago,
9 but has worked for the City about twelve years. Mattias testified he stopped his prior
10 employment with the City at the end of 2007 due to health reasons; that he resigned
11 and was not asked to resign; that at that time he applied for the 7421 SMW position
12 in 2010, he was not working for the City; that he was interviewed and thought he did
13 very well; that after a few months he got the result; that he did not get the position
14 and was very disappointed; that about a month or month and a half after finding out
15 he did not get the job, his cousin, Ray Mattias, called him and said he was told his
16 interview score was taken down so he would not get the position; that he thinks his
17 cousin Ray said he was told by one of the men on the panel or somebody of that
18 nature; that having his score taken down means even though you get answers
19 correct someone has the power to nudge them down; that Ray Mattias did not review
20 the score sheets before he told him; that he was highly upset and contacted Ms.
21 Marlo Thomas; that he would have taken the position had it been offered; that he
22 does not know if he was the last candidate interviewed that day; that his interview
23 was toward the end of the day, around four o'clock; that he did not see other
24 candidates around when he left, but he was not really looking; and, that he does not
25 know Grievant.

26 Justine Hinderliter, a senior personnel analyst at the Department since
27 September 2011, has been employed by the City since December 2009 and worked
28 at the Police Department. Hinderliter testified that she was involved in the

1 investigation of Grievant; that two days after she started work at the Department she
2 participated in the September 28, 2011 fact-finding interview with Grievant conducted
3 by former senior personnel analyst Criss Romero, and JX 26 is the fact-finding
4 meeting notes; that Hope Broadus was her predecessor and had started the
5 investigation for the Department; that Broadus left PUC employment at the beginning
6 of August 2011; that Romero was interim investigator after Broadus left and before
7 she arrived; that once she arrived at PUC she was assigned as lead investigator; and
8 that, prior to the September 28th fact-finding meeting, Grievant had a fact-finding
9 meeting on August 22, 2011 related to the overall City investigation of Grievant and
10 primarily conducted by DHR pertaining to the DPW 7421SMW exam.⁴⁹

11 According to Hinderliter, she coordinated the PUC investigation with the DHR
12 investigation. She testified that she read and analyzed the final DHR investigation
13 report⁵⁰ to understand what it entailed and figure out what else needed to be done;
14 that she was responsible for completing the overall City investigation into all the
15 allegations against Grievant; that she drafted the investigative report, which was the
16 *Skelly* notice and final investigative report issued to Grievant in January 2012;⁵¹ that it
17 is common practice at PUC to fold the investigative report into the *Skelly* notice; that
18 drafting the report took more than a normal amount of time because of the
19 complexity of the allegations, the number of documents and witnesses involved, the
20 overlap with different departments and even outside agencies, and there was a lot of
21 information to put together to analyze and put into a coherent report; that the lumping
22 of all things together is not the reason it took a fair amount of time to draft the overall
23 report; that it was her job to combine the DHR report with PUC's investigation into the
24 incidents that took place between May and August 2011; that when an employee

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26 ⁴⁹JX 2, Tab 2, Exhibit K, are the notes from the August 22, 2011 fact-finding.

27 ⁵⁰JX 2, Tab 2.

28 ⁵¹JX 2 not in binder tabs.

1 denies all allegations made it requires more time to complete an investigation; that
2 she found the DHR and PUC investigations overlapped since the incident involved a
3 similar theme, although the DHR investigation was focused on manipulation of the
4 DPW exam, it also involved allegations of abuse of authority and harassment and
5 bullying misconduct by Grievant; that she did not investigate harassment until late
6 September 2011 because that is when she began working at PUC; that the
7 investigation began months after some of the events occurred, but one event
8 occurred in late August, three days before she began working and thirty-three days
9 before she took over the investigation; and, that although she had read the August
10 investigation report, it found no civil service issue and was not something she had to
11 investigate further.

12 Hinderliter also testified that Grievant was notified by letter November 2, 2011

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1 certain documents of his official personnel file would be unsealed;⁵² that unsealing
2 the documents was needed to determine if those documents were relevant to the
3 investigation; that Grievant has been a long-term employee and there were a lot of
4 documents in Grievant's personnel file to review; that she unsealed documents, but
5 did not know if she would find discipline or something relevant to her ongoing
6 investigation; and, that she did not unseal documents from Chruszcz's or Nevels'
7 files because they did not have sealed documents, but she reviewed their files.

8 According to Hinderliter, the Department transferred Grievant out of his
9 position at sewer operations around September 22, 2011, less than a week before
10 she started working at PUC. She testified that Grievant was removed from his
11 position based on a series of escalating events of his interactions with colleagues,
12 supervisors and outside agencies; that if Grievant was removed from his position for
13 disciplinary reasons, she would have to speculate, but it was done to remove
14 Grievant from the situation in which he was performing the alleged misconduct; that
15 she does not know if Grievant worked fewer hours as a result of the transfer; and,
16 that she does not know if a police officer was present when Grievant was informed of
17 the transfer or if he was given five minutes to clear out everything, because she was
18 not there.

19 Hinderliter also testified that she determined additional fact-finding was
20 needed after DHR issued its report; that JX 36 is the notes from fact-finding she
21 conducted of Chruszcz on November 15, 2011, after rescheduling at the Union's
22 request;⁵³ that her fact-finding with Chruszcz was specific to the Caltrans incident;
23 that she admits Chruszcz told her Grievant uses no more profanity than anyone else
24 in the Department; that just because Chruszcz did not hear Grievant call somebody a
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27 ⁵²JX 43.

28 ⁵³JX 44.

1 white trash, hillbilly, motherfucker⁵⁴ does not mean it did not happen, but admits
2 Chruszcz said he never heard; that Chruszcz's response to whether Grievant said he
3 would meet the person anywhere and kick his fucking ass was the question was
4 "no";⁵⁵ that she also needed to interview sewer operations employees Andy Wayne
5 and Liam Clarke after reading the DHR report; that Wayne and Clarke told her an
6 incident they remembered between Grievant and Ray Mattias; and, that it took some
7 time to set up the Wayne and Clarke interviews and interviewed Wayne on
8 December 9, 2011 and Clarke on December 12, 2011.⁵⁶

9 Hinderliter further testified that she found Grievant's fixation with (Ray)
10 Mattias' family one of the strings that ties the DHR and PUC investigations together;
11 that Grievant's fixation with the Mattias family was reflected in the fact he found a
12 Mattias (Daniella) was working at DHR; that she does not think it a conflict of interest
13 that Daniella Mattias was working at DHR since she was not involved in the
14 investigation of Grievant and works in a completely different unit; that she does not
15 know if Grievant knew if Daniella Mattias was not involved in the investigation; that
16 JX 2 (Tab 2), Exhibit U reflects a conversation Grievant had with one of the
17 investigators from DHR concerning Daniella Mattias, who she believes is Ray
18 Mattias' daughter; and, that Exhibit U was included in the *Skelly* notice because it
19 showed an alleged pattern of Grievant's fixation on Ray Mattias and his family, as
20 well as his threats, intimidation and overall misconduct.

21 Hinderliter also testified that the other string tying the DHR and PUC
22 investigations together was Grievant's overall harassment, intimidation and bullying;
23 that these factored into the 7421 selection procedure also; that Grievant's
24 manipulation of the selection process was based on his bullying and intimidation of
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26 ⁵⁴JX 36, question 13.

27 ⁵⁵JX 36, question 14.

28 ⁵⁶JX 22 interview notes.



1 the other panelists; that she came to the determination that "Although the scores
2 were not changed on [Grievant's] and Mr. Chruszcz's rating sheets for Mr. Mattias,
3 the scores that they gave him in comparison" to others "were artificially low,"⁵⁷ based
4 on the candidates answers, the scores assigned to Mattias by all three of the
5 panelists in relation to other candidates did not reflect his level of experience and the
6 correct answers that were provided for the questions; that she admits she was not at
7 the interview and her opinion is based on her investigation; that she does not recall if
8 Grievant gave Chruszcz and Nevels a specific order to lower scores; that JX 2 (Tab
9 2), Exhibit M refreshes her recollection that someone did say Grievant directed
10 Nevels to change his score⁵⁸ that Grievant manipulated the process; that direction
11 can be provided several ways nonverbally as well as verbally; that on the interview
12 tapes you can hear direction on how people should proceed since there is
13 whispering, pen tapping, all sorts of direction happening, in addition to the hostile
14 work environment perpetrated by Grievant; that the interview recordings were only of
15 the times when interviews were being done; that with interviewees present pen
16 tapping and whispering was part of the overall manipulation of the situation; that she
17 was not in the room during the interviews, but the manipulation is an inference based
18 on listening to the tapes and other documents and information; that she did not ask
19 Chruszcz or Nevels who tapped the pen or whispered, but the investigation was for
20 the most part conducted by DHR; and, that she does not know if DHR was asked to
21 re-ask questions to find out who the pen tapping culprit was.

22 According to Hinderliter, Grievant was accused of being dishonest⁵⁹ because
23 he agreed to enlist replacement panelists, but did not say that they were his

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25 ⁵⁷JX 2, Tab 2, p. 6, third paragraph.

26 ⁵⁸JX 2, Exhibit M, p. 3, interview of Francisco Lastra by Niger Edwards: "So can you tell me to the best
27 of your recollection, what Don (Nevels) told you?" Lastra response: "To the best of my recollection, that
(Grievant) asked him to change the score, because he doesn't like Ray Mattias; a personal vendetta. I don't
28 know if Don did. Knowing Don I doubt that he did; Don is a pretty stand-up guy."

⁵⁹JX 1 (not in binder tabs) bottom of p. 16.

1 subordinates. She testified that she is not sure if anyone asked Grievant who the
2 replacements were, but omission is considered dishonest; that DPW did not know
3 because the employees (on the interview panel) were not DPW employees; that she
4 does not know if it is incumbent on the Department to put controls in place to make
5 sure there is no impropriety; that she does not know whether any of the panelists
6 knew who was being interviewed for a job for the 7421 interviews; that she believes
7 DHR asked if they recognized the interviewees, but does not know if they asked if
8 they knew before they went to the interviews; that she is not sure if DPW's protocol is
9 to not tell panelists the names of interviewees beforehand; that she would not be
10 surprised if Lui testified they never pre-inform of who is being interviewed; that
11 Grievant was not disciplined for his decision to select Nevels for the 7421 hiring
12 panel in his *Skelly* notice; that PUC disciplined Chruszcz and Nevels for their
13 participation in the 7421 interview process; that Chruszcz and Nevels were issued
14 30-day suspensions, but believes they were settled to 10-days apiece; and, that JX
15 46 and JX 47 are the Union's (Plumbers Local 38) responses pertaining to
16 Chruszcz's and Nevels', respectively, involvement in the DPW exam process and is
17 the position the Union took at their *Skelly* hearings.

18 Moala, when re-called, testified that he heard the testimony of Hinderliter
19 regarding Chruszcz and Nevels ultimately receiving 10-day suspensions for their
20 roles in the 7421 exams; that the 10-day suspensions were the full discipline they
21 received; that the 10-day suspensions were by agreement with their Union; that he
22 was not aware Grievant filed the whistle-blower complaint; that he recalls from the
23 first hearing day some people testified many people in the Department were aware it
24 was Grievant who filed the whistle-blower complaint; that the allegations in the
25 whistle-blower complaint to his memory included dishonesty, misuse of time, misuse
26 of City property and time theft; that Ray Mattias was one of the individuals who

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1 received an initial notice of discipline;⁶⁰ that two notices of proposed discipline have
2 been issued and he believes they are termination notices; that the charges included
3 all those in the whistle-blower complaint; that it would be incorrect to say some
4 people received 30-day suspensions; that he has only done two proposed discipline
5 notices, one for Ray Mattias and the other for Goe; that he was not sure if the
6 discipline notice to Mattias included the incident in which Mattias admitted using foul
7 language with Grievant; that he does not believe Mattias' incident with Grievant was
8 rolled into the investigation regarding time theft; that he has no knowledge if the City
9 unsealed the records of the employees accused in the time theft investigation; that
10 he does not believe in issuing Mattias the initial notice of termination that the City
11 took into consideration Mattias had previously been terminated from DPW; that
12 supervisors are held to a higher standard and honesty and transparency are
13 important; that he was involved in delivering the disciplinary notices to Goe and
14 Mattias; that he reviewed the notices before delivering them; that he believes Goe
15 was accused of similar allegations as Mattias; that it is entirely possible Goe got a
16 30-day suspension and Mattias received notice of termination; that with respect to
17 receiving a 30-day suspension for that type of conduct, he does not know what would
18 be typical; that he agrees time theft, misuse of City property and dishonesty are
19 serious allegations; that HR brings him *Skelly* notices to sign and they recommend
20 proposed discipline; and, that he generally goes with the recommendation, but asks
21 for justification.

22 Grievant testified that he and Ray Mattias were equal level supervisors; that
23 he tried to keep from dealing with Mattias because Mattias did not go by the book;
24 that they did not get along, which was mutual, and sometimes it would get heated;
25 that Mattias also tried to avoid him; that other people's relationships were like a

27 ⁶⁰The Arbitrator issued a protective order on the record for the purposes of this line of testimony involving
28 disciplinary actions pending (no discipline was imposed yet) as a result of the whistle-blower complaint,
including the two known pending actions against Ray Mattias and Goe.

1 ticking time bomb, and some people did not get along and would not want to work
2 with each other; that ticking time bomb means anyone at any time anything could
3 happen, not violent-wise but exchanging words; that communication between people
4 was never polite, it was blue collar, and sometimes hotter than a men's locker room
5 because a locker room is not as wild as people think, but they are one step up from a
6 men's locker room; that to his knowledge it did not include threats of violence; that it
7 was common practice and people did not get disciplined for talking that way; that
8 Mattias' way of doing things was to put down phony overtime, time for being on call,
9 writing down that he put in hours of phone calls trying to solve a problem; that Mattias
10 also, for eight years, was making \$1.10 per hour more than him and he never got a
11 clear answer from personnel why; that the difference in pay bothered him because
12 he was sent out on every tough job, while Mattias would sit in his office and do
13 nothing, especially when it rained, and no one would say anything to him; and, that
14 Mattias had a nickname "Weekday Ray" because he would plan all his non-
15 necessary overtime for Tuesday through Thursday.

16 Grievant also testified that he believes he filed the whistle-blower around
17 September 24, 2011; that he filed the whistle-blower complaint after numerous times
18 informing Dang and Harrison and it was not being looked at; that he complained
19 verbally to Harrison and Dang regarding the problems with Mattias and Goe; that he
20 started complaining to them in an email dated February 4, 2011, followed up with an
21 email on March 18 and again on March 22⁶¹ and never got a response, which upset
22 him; that he admitted he was asking for information in the emails about Mattias
23 receiving extra pay and he was not; that he sent an email April 18, 2011 as another
24 complaint to Dang, Harrison and Broadus concerning overtime that was not needed
25 on April 15;⁶² that he was told to mind his own business; that the April 18 email was
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27 ⁶¹JX 56, email to Hope Broadus, Lewis Harrison, Dang and Mr. Courtney.

28 ⁶²JX 57.

1 about Goe interfering with his business on swing shift when he was still in charge of
2 the Vac-Con crews; that the interference was he had already covered missing people
3 on the swing shift with people already there without paying overtime and Goe and
4 Mattias wanted one of their friends paid overtime; that he acknowledged Goe was an
5 equal level supervisor; that Goe was not responsible for assigning swing shift
6 overtime, but he was responsible for assigning night shift Vac-Con crews overtime
7 until Dang reassigned the responsibility at the August 18, 2011 staff meeting; that he
8 admitted until the reassignment of responsibility he only was responsible for
9 assigning overtime for four people on two Vac-Con crews; that there was a heated
10 exchange and Goe called him a snitch; that Goe and Mattias brought up Warren
11 Best and a problem on Treasure Island; that he got his crews to Treasure Island and
12 got a call saying Best never showed up; that he GPS'd Best and found he was just
13 driving around the City, so he turned Best in, but nothing happened out of it; and, that
14 he told Dang, Goe had called him a snitch.

15 According to Grievant, he emailed Dang on May 11 concerning the May 6
16 incident.⁶³ He testified that he had been told Mattias was planning another phony
17 overtime and he was not following the overtime "wheel" but was just asking "if I get to
18 you, do you want to work?"; that he went into Mattias' office and asked what he was
19 doing asking people to work overtime and not going through the [overtime] wheel;
20 that Mattias said "fuck you" and he replied: "No, fuck you too" and exchanged a few
21 more words; and that as he walked down the hall, Mattias told him to get the fuck out
22 of his office and called him a piece of shit; that he replied:

23 If I'm a piece of shit, then that would mean that I am a relative of yours
24 and then you would have to go downtown to get me a job like you do
with all the other people you try to hustle;

25 that he admitted the exchange with Mattias happened and was written up for the
26 incident; that Dang asked him to write something up about the incident; and, that
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28 ⁶³JX 58.

1 once he wrote it up he did not hear anything for follow up.

2 Grievant further testified that on August 18, 2011 he emailed Harrison about
3 Mattias, Goe and Dang;⁶⁴ that Dang was aware Mattias and Goe were falsifying
4 records and leaving the job early, making phony overtime, and he wanted to have a
5 meeting with Harrison because he was not getting anywhere with Dang; that the
6 meeting took place on August 25 and Harrison invited Dang to sit in; that he told
7 Harrison he was fed up because Dang was not doing anything and asked what
8 Harrison was going to do; and, that he gave a bunch of materials to Harrison showing
9 GPS for Goe and Mattias using City vehicles and Mattias going to the gym every
10 other night leaving early, and Goe would put down overtime but GPS showed he was
11 on the Bay Bridge at eight o'clock when he said he worked until 2:00 a.m.

12 Grievant also testified that, when he returned to work on September 22, 2011,
13 Dang came into his office and told him he needed to see him in the conference room;
14 that he asked Dang why and Dang just said "come with me;" that he told Dang he
15 wanted to go under *Weingarten*, to have a Union rep; that Dang left and came back
16 and said "I'm giving you a direct order to follow me into the conference room" and he
17 said OK; that in the conference room was Romero, a police officer and Dang;⁶⁵ that
18 he does not know why the police officer was there; that he asked what it was about
19 and Romero read a statement that he was ordered to leave the premises and
20 reassigned to southeast treatment plant; that he was then told he had five minutes to
21 take what he needed and then report to Tony Flores; that he did not have time to get
22 everything out in five minutes so left a lot of stuff; that he has asked for the left items
23 but has never gotten them; that when he reported to Flores he was taken to a trailer
24 that only had a desk; that he said he needed a computer and got a new one since his
25 old one was kept; that Alan (the IT person) took a copy of his files from his old
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27 ⁶⁴JX 59.

28 ⁶⁵Later Grievant stated Theresa Foglio, the Union representative, was also present.

1 computer and he recovered a lot of information he had on the old computer, like the
2 whistle-blower claim; that the City also took away his truck and he was not given a
3 new one; that the transfer resulted in a loss of hours because they took him off call,
4 also called pager pay, which used to rotate; that pager pay was a about \$420 per
5 week in addition to regular pay; that he also was not allowed to work overtime; and,
6 that he did not consider this discipline, but as retaliation for telling Harrison and Dang
7 he was going to file a whistle-blower charge with the materials he provided on Goe
8 and Mattias.

9 Regarding the October 2010 exams for the 7421 SMW, Grievant testified he
10 was interviewed twice - one with DHR by Edwards and another with Romero; that he
11 had done one interview panel several years before; that he selected the other two
12 panel members; i.e., that Hale and Chruszcz which made a diverse panel, since Hale
13 was African-American, Chruszcz Caucasian and he was Hispanic; that he felt a
14 diverse panel was something he should do because they had a diverse group of
15 people coming in; that after Hale called in sick he asked Nevels to replace him since
16 Nevels also is African-American; that he did not order any of them to participate on
17 the panel; that he did tell Chruszcz it would be good experience because Chruszcz
18 would fill in for him when he was not there and it would be an opportunity for
19 Chruszcz to move up one day; and, that Chruszcz and Nevels told him they did not
20 have prior panel experience.

21 Grievant also testified that Lui talked to them briefly before the interviews; that
22 the City did not offer training for interview panels; that they did not receive any real
23 training; that Lui gave an overview of the process, but the City does not provide
24 formal training on how to conduct interviews; that he understood he was not
25 supposed to cheat; that they were told to use their judgment since they are familiar
26 with the classification; that even though he was not directly told, he agrees common
27 sense tells him applicants are not to be coached in answering questions or to tell
28 applicants the correct answers; that he did not read the statement on the

1 Confidentiality Agreement before signing it but agrees with it now,⁶⁶ that he did not
2 understand at the time he signed the Confidentiality Agreement that he could be
3 disciplined for providing information that would give someone an unfair advantage,⁶⁷
4 that Lui asked "Can you guys write down...that maybe you're from sewer operations,
5 you're from the water department, and you're from street repair?," but they all three
6 said no; and, that Lui asked them to do it because she knew that the two [other
7 panelists] worked for him.

8 According to Grievant, Lui gave them test papers and told them to use their
9 knowledge to give scores they believed people deserved. He testified that she told
10 them if someone disagrees to try to work it out; that he does not recall whether or not
11 Lui told them to compare scores and make sure they are within three to five points of
12 each other; that they were told to read the questions out loud in case someone may
13 not read very well; that they scored the questions as each question was asked; that
14 he took some notes on the papers; that they scored each question before moving on
15 to the next question; and, that after all the questions were asked, they did not talk
16 among themselves, just went on to the next interview.

17 Grievant heard they had 20 candidates, but he thinks there were 18. He
18 testified that they finished interviews around quarter to 5:00 p.m.; that it was
19 especially long since he started work at 6:30 a.m., because he first reported to the
20 office and dispatched his crews; that he reported for the interviews at 7:30 or quarter
21 to 8:00 a.m.; that Kevin Mattias was either the first or last interview; that they did not
22 revisit any prior scores for candidates after hearing what some other candidates had
23 answered; that Lui told them they were not to add up the scores, so they did not

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25 ⁶⁶See, JX 2, Tab 2, Exhibit E. The statement is as follows: "Civil Service Commission Rule 111.9.1...No
26 person or officer, shall by himself/herself or in cooperation with others, defeat, deceive or obstruct any
27 person in respect to his or her right of exam...or furnish to any person any special or secret information for
the purpose of either improving or injuring the prospects of chances of any person being appointed,
employed or promoted."

28 ⁶⁷JX 2, Tab 2, Exhibit E. "I understand that I will be subject to disciplinary action for any breach of
confidentiality or unauthorized disclosures of confidential information."

1 waste time doing it; that he recalls interviewing Nicole Cook; and, that he recalls Lui
2 telling them before bringing Cook in that she was the only female, was very nervous,
3 and she wanted them to be extremely nice to her, so they were.

4 Grievant denied that he consistently gave Mattias a lower score than scores
5 given to other candidates. He testified that, on question 1 regarding experience, he
6 gave Mattias 17 points for Mattias' 17 years experience in construction,⁶⁸ that it is
7 true he gave Cook a score of 18 on question 1 even though she had no prior
8 experience;⁶⁹ that he gave Mattias a score of 17 on question 2 even though he got
9 seven out of ten answers correct,⁷⁰ but it is true he gave Suarez 19 points even
10 though he only got four out of ten correct⁷¹ and Cook 17 points even though she got
11 three out of ten correct;⁷² that JX 49 actually shows a score of 19, however, Grievant
12 asserted someone changed the score and he gave 17; that the discrepancy was
13 raised by Grievant,⁷³ and his testimony is summarized later in the text; that on
14 question 3 he gave Cook a score of 15 points, even though she got it wrong,
15 because her answer was close enough;⁷⁴ that Cook answered 10 yards, but the
16 correct answer was 15 yards and he gave her the benefit of the doubt because she
17 was nervous and tried; that it is not true he coached Cook on question 3 by showing
18 or telling her part of the answer; that on question 4 he gave Mattias a score of 17, but
19 gave Cook a score of 20 when she missed one of the questions; that he identified
20 the voice on the tape as Chruszcz as telling Cook she had said blue for water when
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22 ⁶⁸Question 1 is as follows: "Please recount to the panel your education, training and work experience in
sewer excavations."

23 ⁶⁹JX 49.

24 ⁷⁰JX 53.

25 ⁷¹JX 54.

26 ⁷²JX 49.

27 ⁷³See, JX 60.

28 ⁷⁴JX 49.

1 she had not;⁷⁵ that regarding Chruszcz's coaching Cook, he did not pay attention to
2 what was going on, he was just going by Cook's answers; that he gave Suarez 20
3 points on question 4; that he has no idea if Suarez first identified Hetch Hetchy water
4 as the color green; that although someone whispers "pink" to Suarez he knows the
5 voice is not his;⁷⁶ and, that on question five he gave Mattias a score of 17, that all the
6 checkmarks on the scoring sheet are his,⁷⁷ and he does not recall if Mattias gave
7 lengthy, detailed answers, often with more information than the rating sheet provided.

8 Grievant also testified that he did not tell his subordinates Nevels and
9 Chruszcz to manipulate scores to lower Mattias' scores; that he denied any
10 wrongdoing related to the 7421 selection process;⁷⁸ that he never had a conversation
11 with Chruszcz and Nevels about what scores they should give Mattias; that they
12 never had a conversation after they interviewed Mattias about giving him artificially
13 lower scores; that they treated him just like everyone else; that they did not know any
14 connection between Kevin Mattias and Ray Mattias; that he did not use pencil
15 tapping or use fancy finger gestures to send secret messages to Chruszcz and
16 Nevels about what scores to give; that he feels he gave Mattias the scores he
17 deserved; that he does not take other things into consideration, but goes off what
18 (the interviewee) is feeding back to him with the correct answer; and that, despite
19 Chruszcz and Nevels testimony that he never told them to give lower scores to
20 Mattias, they relied on their own findings that the whole thing was improper because
21 they just wanted to end it and hang somebody and came after him.

22 Grievant further testified that, prior to the day of the interviews, he was not told
23 who the candidates were; that he does not recall if he was given the candidate
24

25 ⁷⁵JX 55 Cook tape at 7 minutes 48 seconds.

26 ⁷⁶JX 55 Suarez tape at 4 minutes 50 seconds.

27 ⁷⁷JX 53.

28 ⁷⁸JX 2 (Tab 2) Exhibit K, p. 11.

1 applications on the day of the interviews; that he did not know Kevin Mattias was
2 being interviewed and neither did Chruszcz or Nevels to his knowledge; that he has
3 never seen the September 23, 2009 eligible list that was posted September 18,
4 2009;⁷⁹ that the interview was the first time he ever met Mattias; that he did not know
5 Ray and Kevin Mattias were related because a lot of people have the same last
6 names; that JX 53 includes his score sheet for Kevin Mattias with the points he gave
7 for answers in his writing; that he did not change any of the points he gave Mattias;
8 that the scratched out numbers on Nevels' score sheet⁸⁰ is not his writing; that he did
9 not revise points he gave to others; that in his score sheet for Jones,⁸¹ he does not
10 recall having made any revision to the points given on question 4 and he brought up
11 that somebody made changes using blue ink and they were not his because he used
12 a black pen all day;⁸² that he wrote an email about the changed scores and asking for
13 the handwriting to be looked at to Micky Callahan and to Erik Rapoport;⁸³ that after
14 the interviews, he did not try to find out if Mattias had been hired; that John Maroney
15 was lying when telling investigators that he (Grievant) had asked him if any Mattias'
16 were hired off the 7421 eligible list;⁸⁴ that Maroney lied because he was trying to
17 buddy up to Ray Mattias because he wanted to get out of DPW and come over to our
18 side (PUC); and, that Maroney saying his actions were "abuse of supervisory
19 power"⁸⁵ was Maroney's opinion, and if he did not have the personnel to drive those

21 ⁷⁹JX 65. Kevin Mattias' name was on the list.

22 ⁸⁰JX 53.

23 ⁸¹JX 51.

24 ⁸²Grievant stated he raised the issue to Edwards and Hinderliter, but did not state when.

25 ⁸³Callahan answered that he should bring it up at the (meeting) and Rapoport wrote that he represented
the City and Grievant should contact his Union.

26 ⁸⁴JX 2, Tab 2, Exhibit L, p. 3.

27 ⁸⁵JX 2, Tab 2, Exhibit M, p. 5. Maroney stated: "... I have to call him for Vactor trucks. He'll have nine
28 trucks parked he'll say 'I can't do it today' and tell me 'to call him back in a couple of days. Abuse of
supervisory power.

1 trucks, he could not send them out.

2 According to Grievant he does not have a fixation for (Ray) Mattias or anyone
3 in his family. He testified that it is correct that he was annoyed by Mattias because he
4 got favorable treatment, got away with time theft and things of that nature that
5 management knew about; that he believes Francisco Lastra would tell the DHR
6 investigator that he had a personal vendetta against Ray Mattias⁸⁵ because he
7 disciplined Lastra; that he has no idea why Lastra would tell the investigator that he
8 was worried (Grievant) would find out he was [being interviewed] and make his
9 position hell;⁸⁷ that he was aware Ray Mattias was related to somebody in DHR; that
10 he does not know Daniella Mattias and found out later she was Ray Mattias'
11 daughter when Goe mentioned it at work; that he called somebody and asked about
12 it because he thought it was improper for someone in DHR to investigate him when
13 Mattias' daughter worked there and everybody knew he had a bad relationship with
14 Ray Mattias; that in an unsolicited phone call to Edwards on August 23, 2011 he did
15 not insist Edwards knew Daniella Mattias; that his concern about Daniella Mattias
16 was that in his opinion Ray Mattias was getting preferential treatment because his
17 daughter worked for DHR; that he did not tell Edwards she could tell whoever she
18 wants about the conversation and he will just deny it; that, as to Edwards' notes on
19 the call,⁸⁸ some of it was true; that what was not true in Edwards' notes are that he
20 was not angry with her and he did not say this conversation never happened; that it
21 was true he used Daniella Mattias' name and with the call to Edwards as of August
22 23, 2011 he knew Daniella was Ray Mattias' daughter; and, that Edwards statement
23 that he said he would deny the conversation was not a truthful statement.

24 ///

25 _____
26 ⁸⁵JX 2, Tab 2, Exhibit M, p. 3.

27 ⁸⁷JX 2, Tab 2, Exhibit M, p. 6.

28 ⁸⁸JX 2, Tab 2, Exhibit U.

1 Grievant also testified that it was not true he called Linda Marini⁸⁹ to intimidate
2 her regarding PUC's investigation, but he was trying to clarify something; that, during
3 the call with Marini, he did not refer to PUC HR as a "henhouse" or use a threatening
4 tone of voice;⁹⁰ that Marini was lying; that regarding charges related to the events of
5 April 15, May 6, June 23, August 11, August 19 and August 25 the fact-finding was
6 September 28, 2011; that at the fact-finding meeting he denied making inappropriate
7 comments to the Caltrans employees and manipulating the 7421 SMW selection
8 process; that he was not aware of the investigation for the April 15, 2011 incident
9 with Goe; that he did know he was being investigated for the 7421 interview charge;
10 that he thinks he found out [about harassment charges] at the September 28,
11 2011 fact-finding; that he recalls being asked about the April 15, 2011 incident;⁹¹ that
12 he remembers having an argument with Goe and that Goe said he called Roche a
13 punk ass bitch, but Roche was not even in the area that he and Goe were having the
14 conversation; that he did not call Roche a punk ass bitch and Goe is lying; that he
15 told Goe "...if the three of you are going to fuck with me you better think twice;"⁹² that
16 because Goe and Mattias knew he was up to something about misusing equipment
17 and phony time, Goe started writing letters making up incidents that never happened
18 and gave them to Dang; and, that he does not believe he was ever asked for his side
19 of the story prior to the fact-finding hearing.⁹³

20 Grievant recalls the June 23, 2011 incident with Caltrans workers. He testified
21 that Nevels went to the site the day before and Nevels said it belonged to Caltrans

22 _____
23 ⁸⁹Head of PUC HR.

24 ⁹⁰JX 48 email dated January 5 2012 from Marini to Lori Regler.

25 ⁹¹The alleged "punk ass bitch" incident.

26 ⁹²JX 20. Email to Dang, Harrison and Broadus dated April 18, 2011. The reference to the "three of you"
27 is to Mattias, Goe and Roche. Grievant's statement was made in response to Goe telling Grievant "I am fed
28 up with your shit."

⁹³Grievant frequently misstated this as a *Skelly* hearing. However, the *Skelly* hearing was March 12,
2012. Subsequent references to the *Skelly* in testimony that actually refer to the fact-finding meeting are
corrected herein.

1 and told Caltrans they had a problem; that on June 23 the dispatcher called saying
2 the water department was called by Caltrans about a water leak; that SF Water went
3 out and determined it was not their leak, but could be from Caltrans; that he went
4 back to the office and determined it was not PUC's problem; that in 26 years he
5 never worked on an on/off ramp and a permit is required from Caltrans; that he called
6 Cliff Wong from engineering and he said it was Caltrans problem; that he had called
7 Caltrans but nobody answered their phones; that he got a call from Caltrans, and
8 Salazar said it was PUC's problem, and he said it was not, that we do not work on/off
9 ramps and we do not have a permit; that Salazar said no and he told Salazar to not
10 tell him no, and Salazar said "fuck you" and hung up; that he then called Caltrans
11 main office, talked to a woman and made a report that one of their workers told him
12 to fuck off; that the woman took down the information but he does not know what she
13 did with it; that about ten minutes later he got a call from Harrison asking if he got
14 into an argument with Caltrans and he told Harrison Caltrans called him and ended
15 the conversation saying fuck you; that he told Harrison he wanted to file a charge
16 and was told not to do anything until he got Caltrans' side of the story; that Harrison
17 talked to Caltrans and told him not to call Caltrans and not to call the Governor's
18 Office, and he said OK; that he sent Harrison an email about the incident the day of
19 the incident;⁹⁴ that Harrison never got back to him; that he feels Harrison deprived
20 him of taking care of this matter because DHR would be involved and he would be
21 able to tell his side of the story; that he never cursed at anybody at Caltrans; that he
22 denies saying something like Salazar was an asshole, white trash, hillbilly, mother
23 fucking redneck; that he denies he even got a conference call with Salazar and the
24 two other Caltrans employees; that it is not true he challenged Salazar to a fight; that
25 the three Caltrans employees were all lying; that the Caltrans employees lied

26 ///

27
28 ⁹⁴See, JX 61.

1 because he wanted to report them to their HR and he called one of their superiors⁹⁵
2 informing her that Salazar told him to go fuck myself; and, that he never heard
3 anything about it until the September 28, 2011 fact-finding meeting at which he
4 admits stating Salazar was "a lying manager who needs to step up and do his job."

5 Grievant recalled that, at the August 11, 2011 staff meeting, Dang was
6 bringing up new rules and he did not know what he was doing. He testified that all
7 their staff meetings are not quiet, but everybody says what is on their mind; that he
8 tried to tell Dang he was doing more harm than good; that Dang did not have a right
9 to set rules; that Dang could in certain ways have the right to direct him; that Harrison
10 was the person who would approve or not approve new changes; that he does not
11 believe Dang had a right to manage him as a subordinate; that the staff meeting was
12 after several times trying to tell Dang about what was going on with Mattias and Goe
13 and certain others; that the testimony of three others about the incident were all
14 different;⁹⁶ that what happened was Dang gave him a piece of paper, he read it and
15 was pissed off, and crumpled it up and put it right in front of him; that when the
16 meeting was over Dang told him he did not like the way he rolled up the paper and
17 he told Dang "Well, if you're the boss, how come you're not doing anything about the
18 things I told you about" and "I asked you for your help, and you haven't done
19 anything"; that afterward he picked up the piece of paper, stuck it in his pocket, and
20 went home; that although in the September 28, 2011 fact-finding⁹⁷ he said he folded
21 the paper and put it in his pocket, his testimony is he crumpled it, stuck it in his
22 pocket, and did not throw it at anybody; that he admits he told Dang in his opinion
23 Dang did not deserve the job;⁹⁸ that it is true he told Dang he refused to collect

24 _____
25 ⁹⁵Grievant did not recall who he talked to. It is noted this was the call made to the Caltrans Chief of Staff.

26 ⁹⁶Mattias stating he tore the paper to pieces, Goe saying he rolled it up and threw it on the floor and Dang,
he believes, saying he tossed it at him.

27 ⁹⁷See, JX 26. Question 88, p. 14.

28 ⁹⁸JX 26, September 28, 2011 fact-finding, p. 14, question 91.

1 driver's license information from truck drivers in his crew; that he denies telling Dang
2 he would not comply with the new crew assignments; that it was not true he told
3 Dang that he and Harrison did not run the place, he did, and they did not know what
4 they were doing; that no one interviewed him about the incident after it happened;
5 and, that he felt it was resolved after the conversation with Dang.

6 According to Grievant, regarding the alleged August 19, 2011 incident, it was
7 not true he told Goe he and Dang could go fuck off. He testified that it was not true
8 he told Goe they better watch out because he was coming after them; that when Goe
9 stated⁹⁹ that, he said "...I already called Meany and you and Herb can fuck off" he did
10 not say it; that when Goe wrote in the email that his "voice was very sharp and mean
11 when he said that you and Herb better watch out because I'm coming after you" that
12 it never happened; that Goe was lying; and, that when Goe wrote in the email "I don't
13 want anyone to get hurt on my shift" that he has no idea why Goe would say it.

14 As to the alleged threats to Dang and Goe,¹⁰⁰ Grievant testified that he never
15 threatened people at work; that he did tell them they can fuck off; that people do not
16 convey to him that they fear for their lives around him; that he was not acting in a
17 manner that made people nervous or scared; that the majority of people would rather
18 work for him than anyone else; that he never said to Harrison he wanted Mattias'
19 blood; that he has never threatened violence against anyone; and, that he feels he is
20 about in the middle of the way people talk to each other, that some people go way
21 out of line, but it is common practice.

22 Regarding the May 6, 2011, incident, Grievant gave a written statement about
23 it to Dang dated May 11,¹⁰¹ which was requested by Dang. He testified that he wrote
24 in his email "...if I did not want to put something in writing, then you would need to

25 _____
26 ⁹⁹Email from Goe to Dang dated August 23, 2011.

27 ¹⁰⁰JX 1 (not in Tab). *Skelly* notice to Grievant dated January 10, 2012, p. 10, item c., August 19, 2011 &
28 August 25, 2011 incidents.

¹⁰¹JX 62 email.

1 have a fact-finding meeting. I chose to put it in writing¹⁰² because he did not think
2 the incident was a big deal and it was easier to just tell his side of the story; that they
3 did not have a fact-finding; that he never heard anything more until the September
4 28, 2011 fact-finding hearing; that he denies walking into Mattias' office May 6th and
5 in a dispute stating if he was in the Mattias family he would be a piece of shit; that he
6 denies calling Mattias' daughter a piece of shit; that he admits he wrote in a May 11,
7 2011 email to Dang:

8 Ray said you're a piece of shit. And I stopped in the hallway and I
9 replied if I am a piece of shit that would mean that I would be part of
10 your family and you would need to go downtown and kiss someone's
11 ass to get me a job like you did for your daughter,¹⁰³

12 that the reference in JX 58 was to Mattias' daughter; that he denies telling Mattias, as
13 Mattias testified, he was ready for a confrontation at any place, any time, and, that
14 his time was coming; and that Mattias was lying.

15 According to Grievant, his August 18, 2011 email to Harrison¹⁰⁴ was trying to
16 set up the meeting for August 24 to discuss the problems he was having with Dang,
17 Mattias and Goe. He testified that he was giving them warning that he wanted a
18 meeting if nothing is resolved; that he told them what is going on and they were
19 aware of it and did not do anything about it; that he told Harrison that Dang was well
20 aware what was going on and that he was fed up; that they were making accusations
21 about him and his staff and he told them he was the good guy here; that he never
22 told Harrison and Dang he wanted Mattias' blood and Harrison and Dang lied in their
23 testimony; that the only thing he said was he wanted to see him get time off for
24 misappropriation of City funds; that he never told Harrison "Where I used to work, we
25 had our own way of taking care of this kind of problem. When I worked in the
26 shipyard, people would disappear in a hole" and Harrison was lying; and, that he

26 ¹⁰²See, JX 62.

27 ¹⁰³See, JX 58.

28 ¹⁰⁴JX 63.

1 admitted he had worked in a shipyard.

2 Grievant also testified that after the September 28, 2011 fact-finding to
3 change his attitude he took workplace violence; while still working he took an anger
4 management class in October or November 2011 through the City EAP; that he took
5 the anger management class because he needed to let go his thinking, frustration,
6 with Mattias, Goe and Roche, along with Dang and Harrison; that he did not take
7 anger management because of (his) behavior in the workplace; that he wrote a letter
8 saying he completed the classes he needed to complete and gave it to Tony
9 Flores;¹⁰⁵ that he acknowledges he signed the policy on workplace violence;¹⁰⁶ that
10 he does not recall reviewing the Prohibiting Workplace Violence part of the Employee
11 Handbook¹⁰⁷ about the time he signed JX 32; that he understood violating the
12 workplace violence policies was a term and condition of employment that could result
13 in discipline up to and including discharge; that he has not seen, and does not recall
14 reviewing, the Work Climate Expectations¹⁰⁸ on or about April 9, 2010, or any time,
15 with Harrison; that he was counseled by Watanabe and signed a letter of instruction
16 dated April 8, 2003;¹⁰⁹ that he received it because of an argument he had with Frank
17 Nunez;¹¹⁰ that he does not know if under the MOU a letter of instruction can be
18 grieved; that he recalls receiving a one-day suspension May 5, 2004,¹¹¹ but he does
19 not believe it was for insubordination; that he believes the one-day suspension was
20

21 ¹⁰⁵Flores was the person Grievant reported to after being transferred from his position September 22,
2011.

22 ¹⁰⁶JX 32.

23 ¹⁰⁷JX 33.

24 ¹⁰⁸JX 30.

25 ¹⁰⁹See, JX 39.

26 ¹¹⁰Grievant stated Nunez called him a faggot, however, the letter of instruction states the investigation
27 was inconclusive on this point, and the letter of instruction was issued because Grievant, as a supervisor,
should not have engaged in a yelling match with Nunez.

28 ¹¹¹JX 39, includes an April 7, 2004 *Skelly* notice and subsequent conversion to a one-day suspension
dated May 5, 2004.

1 because he did not report a little tap on Goe's fender;¹¹² that this was the only prior
2 discipline he received; that he has never seen the memo from Nevels to Watanabe
3 stating Grievant treated him unfairly because of his race and used inappropriate
4 names toward him;¹¹³ that it was not true he tried to get Nevels to withdraw his
5 complaint; that he does not believe the statement is true, attributed to Chruszcz, that:

6 ...the work environment at the PUC yard was a hostile work
7 environment in which (Grievant) ran the shop by intimidation, fear,
8 physical, mental, and verbal abuse for years.¹¹⁴

9 that he believes Local 38 would and submit a statement that "Mr. Nevels was forced
10 into the position of panelist by (Grievant), in which he was not qualified or trained for"
11 because they were representing their personnel,¹¹⁵ but he does not know why Local
12 38 would single him out; that he was never counseled or written up for any of the
13 alleged incidents related to harassment; that Nevels gave him a copy of Nevels'
14 settlement agreement of his discipline regarding the 7421 interviews, which was a
15 10-day suspension;¹¹⁶ that Chruszcz told him he also received a 10-day suspension;
16 and that he was never offered a 10-day or a 30-day suspension.

17 Theresa Foglio works for the City as a Laborer, but is on leave and is
18 Business Agent/City Representative for the Union. Foglio testified Goe and Mattias
19 had *Skelly* hearings¹¹⁷ regarding a whistle-blower complaint filed by Grievant; that
20 Goe's proposed discipline was a 30-day suspension for time theft, fraud, approved
21 leave without absence and various other policy violations; that Mattias' proposed

22 ¹¹²The *Skelly* notice and one-day suspension letter both cite insubordination and failure to report the
23 accident as the charges for discipline.

24 ¹¹³JX 68.

25 ¹¹⁴JX 46. JX 46 is not on letterhead, however, Hinderliter testified it was an official business record from
26 PUC's files, submitted by Local 38 for Chruszcz's *Skelly* hearing regarding the 7421 hiring process.

27 ¹¹⁵JX 47.

28 ¹¹⁶JX 69, dated January 23, 2013.

¹¹⁷JX 70 - Goe's *Skelly* notice dated September 27, 2013. JX 71 Mattias' *Skelly* notice dated September
27, 2013.

1. discipline was a termination for time theft, fraud, approved leave without absence
2. and various other policy violations; that Goe is a Union member, but Mattias is not a
3. dues paying member; that she represented both of them at their *Skelly* hearings; that
4. she does not agree with management's view of their cases as written; that Goe and
5. Mattias do not deserve the proposed discipline; and, that they deny the conduct they
6. are charged with.

7. Edwards, senior personnel analyst, has worked for the City almost three
8. years, and previously worked at DHR, but for the past five months works at the
9. Department of Building Inspection. Edwards testified that she interviewed PUC
10. employee Frank Lastra about August 10, 2011;¹¹⁸ that Lastra told her Nevels told him
11. Grievant advised Nevels to change scores for Kevin Mattias during the interview
12. process; that she does not know if Nevels changed any scores; that she interviewed
13. Nevels and Nevels did not back up what Lastra said; that she found Lastra credible;
14. that Lastra was concerned about coming in and talking to her as the DHR
15. investigator; that Lastra said he was coming in for the interview on his day off so
16. Grievant would not know he was there because he was concerned about being
17. retaliated against;¹¹⁹ that she interviewed PUC employee John Maroney;¹²⁰ that
18. Maroney had been mentioned by another person who was interviewed as being a
19. possible witness; that Maroney told her he received a call from Grievant asking
20. whether or not any Mattias had been hired off an eligible list; that she believes the list
21. referred to was the 7421 examination; that JX 65 is a Civil Service eligibility list, a
22. public record and was posted on the DHR website; that she recalls Maroney was
23. concerned about being retaliated against, his job made more difficult, because he
24. needed equipment from Grievant and felt his testimony or knowing he had

26. ¹¹⁸JX 2, Tab 2, Exhibit M.

27. ¹¹⁹JX 2, Tab 2, Exhibit M, p. 6 Lastra stated: "If he [Grievant] knew I was in here, I don't know if he knows
28. or not, I hope he doesn't. But he'd probably make my position hell."

¹²⁰JX 2, Tab 2, Exhibit L.

1 interviewed would be used against him not to be able to get equipment he needed;
2 and, that Maroney was a credible witness because he was forthcoming, nervous
3 about being interviewed, he had not come forward but she had sought him out, and
4 he did not have anything to hide.

5 Edwards also testified that she worked with Jennifer Johnston conducting the
6 DHR investigation into the 7421 hiring process but was not involved in the 7421
7 interviews; that Grievant alleged someone else had written in different color ink pens
8 on his rating sheets when she interviewed him; that she looked into Grievant's
9 allegation by investigating the process of the examination;¹²¹ that after the 7421
10 interviews there were two people in PUC HR who had access to the scoring sheets;
11 that the two PUC HR people were asked about changing scores; that in her interview
12 with Chruszcz he said there was a stack of pens on the table and they just picked
13 them up and used them, and he had used different colored pens to score
14 candidates;¹²² and, that Grievant told her he only used a black pen.

15 According to Edwards, Grievant called her on August 23, 2011 and asked if
16 she knew Daniella Mattias, and she said she did not. She testified that Grievant
17 referred to Daniella Mattias by name; that Grievant insisted she did know her, and
18 she advised him again she did not and did not understand what that had to do with
19 the investigation; that she had only been working there for four months and did not
20 know everyone in DHR; that Grievant told her he would report her, or something to
21 that effect, for her conduct of how she interviewed him; that Grievant was very angry;
22 that she just advised him she was doing her job trying to get down the facts; that
23 before he hung up he told her she could tell anybody about it, he would just deny it;
24 and, that JX 2 (Tab 2) Exhibit U is her account of the telephone call.

25 _____
26 ¹²¹Edwards testified the investigation of the process included where the materials were, who had access,
27 if there was any time the materials were not locked up and what materials were provided.

28 ¹²²JX 2, Tab 2, Exhibit J, p. 7. Edwards asked: "I see you used a pink pen to rate her scores, while you
use a blue pen for the other candidates...can you tell me why that is?" and Chruszcz responded: "I don't
know. There was a stack of pens on the table. I used whatever was on the table."

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POSITION OF CITY

2 The grievance should be denied because the City had just cause for
3 Grievant's termination. The City proved, with consistent testimony of more than ten
4 credible witnesses, that Grievant was abusive toward coworkers, threatened violence
5 on multiple occasions, and blatantly manipulated the 7421 SMW Civil Service hiring
6 process. Grievant is irredeemably dishonest, out of control and has irreparably
7 breached the trust that adheres to the employer-employee relationship.

8 Grievant conceded he was aware of the City and Department policies he was
9 charged with violating: Civil Service rules prohibit coaching in Civil Service
10 examinations;¹²³ Acknowledgment of Receipt of Violence in the Work Place
11 Policies;¹²⁴ and Employee Handbook regarding Work Place Violence.¹²⁵ Moreover,
12 Harrison specifically reviewed the PUC Work Climate Expectations policy with
13 Grievant and informed him that violation of these policies could lead to discipline.¹²⁶

14 Incredibly, Grievant steadfastly denied any wrongdoing and would have the
15 Arbitrator believe that every City witness lied. The City witnesses had absolutely no
16 reason to lie, let alone conspire with each other, and their sworn testimony was
17 amply corroborated by the documents and recordings in evidence.¹²⁷

18 Contrary to Grievant's claim, the City's investigation was timely. The
19 investigation took ten months to complete due to the breadth of Grievant's bad
20 behavior, his continued denials of any wrongdoing, his intimidation of multiple City

21
22 ¹²³JX 65; Tr. 499:1-19.

23 ¹²⁴JX 32; Tr. 468:10-19.

24 ¹²⁵JX 32, Tr. 468:20-469:21.

25 ¹²⁶See, JX 30; see also JX 27-29; Tr. 142:10-143:18.

26 ¹²⁷Nonetheless, Grievant testified that: (1) he never referred to Roche as a "punk ass bitch" (Tr. 472:9;
27 541:11); (2) he never told Goe that if he, Mattias and Roche "were going to fuck with him they had better
28 think twice" (Tr. 472:17); (3) Goe is lying (Tr. 473:15; 492:20; 493:4); (4) Mattias is lying (Tr. 476:12); (5)
he never used profanities with Caltrans staff (Tr. 476:15-478:20; 541:18-542:7); (6) all of the Caltrans
employees are lying (Tr. 477:11-17; 479:10); (7) he never said he wanted Mattias' "blood" (Tr. 493:22); (8)
Harrison is lying (Tr. 494:9); (9) Maroney is lying (Tr. 530:20); (10) Marini is lying (Tr. 544:5); and, (11)
Edwards is lying (Tr. 548:1-6).

1 witnesses, his escalating threats of violence during the summer of 2011, and the
2 participation of, and coordination between, four separate City departments – PUC,
3 DPW, Civil Service Commission, and DHR.¹²⁸ Given Grievant's escalating pattern of
4 threatening conduct, the numerous but overlapping incidents to investigate, the
5 efforts to review relevant documents, analyze the 7421 exam data, conduct
6 interviews, and synthesize the information into one final report was "timely and
7 diligent."

8 Moreover, the City was justified in including all of Grievant's conduct into one
9 investigation as it did not become apparent until mid-summer 2011 the extent to
10 which Grievant's behavior all was connected. The City was first notified of Grievant's
11 manipulation of the 7421 hiring process on February 7, 2011.¹²⁹ While investigating
12 the 7421 hiring process, Grievant began to act out in more and more extreme ways.
13 What originally appeared to be two separate issues, the 7421 exam manipulation
14 and coworker harassment, became linked. During the summer of 2011, Grievant
15 engaged in an increasingly serious pattern of abusive and threatening behavior
16 toward Mattias, Goe, Dang and Caltrans staff. Harrison explained:

17 And I had people very concerned about his behavior; and I was
18 beginning to get alarmed that I didn't know what could come of it,
19 because it was getting worse and worse. And so it was a cascading
series of things that we were grappling with at the time trying to
understand why this was spinning out of control.¹³⁰

20 After Grievant threatened to kill Mattias on August 25, 2011, stating he wanted his
21 "blood" and that "...we had our own way of taking care of this kind of problem. When
22 I worked in a shipyard, people would disappear in a hole," the Department
23 transferred Grievant to a new work location pending completion of the
24 investigation.¹³¹

25 _____
26 ¹²⁸Tr. 263:5-24; 266:5-268:21; 269:6-271:6; 287:9-24; 338:19-22.

27 ¹²⁹JX 2, Tab 2, Exhibit A.

28 ¹³⁰Tr. 1168:8-18.

¹³¹Tr. 326:2-327-16.

1 Additionally, Grievant went out on leave from August 30 – September 21,
2 2011.¹³² After Grievant returned to work, the record shows the City diligently
3 conducted the relevant background interviews, fact-finding interview, document
4 review, follow-up interviews and finalized the investigative report/Skelly notice on
5 January 10, 2012.¹³³ Further, Grievant’s intimidation of coworkers was a significant
6 impediment to the investigation. During panelist Nevels’ and Chruszcz’s Skelly
7 hearing regarding the 7421 hiring process, both claimed Grievant had intimidated
8 them into manipulating the hiring interviews.¹³⁴ Also, the investigation further revealed
9 evidence of Grievant’s pattern of witness intimidation.¹³⁵

10 When an employee does not believe he is subject to any management
11 authority, and continues to deny any misconduct in the face of eight testifying
12 witnesses, in addition to numerous documents and recordings confirming his
13 misconduct, termination is the only possible disciplinary option. Grievant is an out of
14 control, dishonest employee beholden to no one by his own testimony:

15 Q: Okay. So that’s your testimony today, that your supervisor, Herb Dang,
16 had no right to manage you as a subordinate, isn’t that true?

17 A: Yes.¹³⁶

18 When Grievant’s type of escalating bullying and intimidation is combined with willful
19 manipulation of a Civil Service hiring interview and repeated defiance of
20 management authority, just cause for termination cannot be in doubt.

21 **POSITION OF UNION**

22 _____
23 ¹³²JX 42; Tr. 327:3-12.

24 ¹³³JX 2, 22, 26, 36, 43-44; Tr. 278:25-282:21; 330:17-332:24; 322:9-323:10; 335:6-336:19; 338:10-12.

25 ¹³⁴JX 46, p. 3, 47, p. 2; Tr. 340:7-341:18.

26 ¹³⁵JX 48 (Grievant threatens PUC HR Director Marini); JX 2 (Tab 2), Exhibit U (Grievant threatens DHR
27 investigator Edwards); JX 2 (Tab 2), Exhibit M, p. 6-7 (witness Lastra expresses fear of Grievant finding out
28 he participated in the investigation); JX 21, p. 3 (witness Maroney expresses fear of Grievant finding out he
participated in the investigation, and confirms Grievant calls him to ask if “any Mattias” were hired off the
eligible list).

¹³⁶Tr. 481:5-15.

1 The grievance should be sustained and Grievant reinstated to full employment
2 and made whole for all losses in wages and benefits as a result of the improper
3 termination because the City did not have just cause to terminate Grievant.
4 Additionally, the Union urges the Arbitrator to order that the back pay and benefits
5 Award include interest on all of the monies, starting from the date of discharge.
6 Interest is not punitive because it simply reimburses Grievant for the value of money
7 not received. Awards of interest are authorized by law for California employees and
8 there is judicial support for the authority of an Arbitrator to award interest;¹³⁷ the
9 amount of interest should be the same as that set by the State of California courts.
10 The controlling rate of interest pursuant to Civil Code Section 3289 (b) is 10% per
11 annum from the date of the breach.

12 Grievant was a City employee for more than 25 years, including 11 years as a
13 supervisor. Grievant received only one written discipline in his tenure, which was
14 unrelated to any incidents alleged in the *Skelly* notice dated January 10, 2012.
15 Despite his record and many years of service the City terminated Grievant based on
16 a series of allegations regarding his conduct toward other employees and an incident
17 involving job applicant interviews. The City failed impose discipline timely; failed to
18 investigate timely; failed to progressively discipline; and failed to properly train
19 Grievant and his colleagues to conduct applicant interviews, a task outside their
20 normal scope of duties, and held these individuals accountable, while the City also
21 admits to making mistakes.

22 The City failed to abide by the terms of the MOU by not timely imposing
23 discipline for Grievant's alleged acts. MOU Article II.B, Personnel Files, is clear on
24 the imposition of discipline. The MOU language requires that: (1) discipline be
25 imposed no more than 30 days after the City knows of the offending conduct and has
26 completed an investigation, and (2) the investigation be diligent and timely, unless
27

28

¹³⁷Citations omitted. The Arbitrator takes notice the Union cited multiple Court and arbitration cases.

1 the conduct would constitute the commission of a crime. There are no facts which
2 would allow the City to extend this deadline, since Grievant has not been accused of
3 criminal acts. The Union recognizes Article II.B does not require that discipline be
4 imposed within 30 days of the offending conduct, but allows the City time to complete
5 a diligent and timely investigation. While the Arbitrator has the power to impose a
6 remedy, the Arbitrator does not have the power to revise the MOU to extend the
7 deadline to impose discipline.

8 The Arbitrator should find the City failed to complete a diligent and timely
9 investigation into, and impose discipline for, any of the allegations against Grievant.
10 The complaint regarding the 7421 interview process was received from Mattias on
11 February 7, 2011, and the City began a lengthy investigation into the allegation. The
12 last report issued by DHR on the 7421 interview process was August 10, 2011. This
13 was the third investigative process by the City as the initial report was in February,
14 2011, followed by one in March 2011.¹³⁸ Thereafter, the City conducted interviews
15 with individuals through August 30, 2011. No action was taken thereafter regarding
16 these until January 10, 2012.

17 Grievant was re-interviewed on September 28, 2011 as part of an
18 investigation into the alleged harassment incidents occurring between April 15, 2011
19 and August 25, 2011, before the 7421 process investigation was concluded. The
20 City waited until November 15, 2011 to interview Chruszcz regarding these incidents.
21 Chruszcz's testimony clearly supported Grievant's testimony on the harassment
22 allegations.

23 Not until January 10, 2012 did the City issue the Notice of Proposed
24 Discipline/Skelly letter. The City violated both the MOU requirements regarding
25 timeliness for imposition of discipline. Regarding the 7421 process, the City did not
26 impose discipline within 30 days of completing the investigation, since those
27

28 ¹³⁸The Arbitrator notes there were four reports, the fourth was issued October 17, 2011.

1 interviews were concluded on August 30, 2011. Additionally, with respect to the
2 alleged harassment incidents, the City did not impose discipline within 30 days of
3 completing their investigation, since Chruszcz was the last interviewee on November
4 15, 2011. In fact, it was not until the City began to investigate the 7421 interview
5 incident that they considered imposing discipline for the alleged incidents of
6 harassment. At that point, those incidents were stale under the MOU and the time
7 for conducting a timely investigation had passed. For the alleged harassment
8 incidents, the City had notice at the time the incidents took place and solicited emails
9 and statements from the individuals involved. If the City had any interest in imposing
10 discipline, it was required to do so upon receipt of those statements.

11 The City failed to conduct timely investigations into the allegations of
12 harassment, intimidation and threatening conduct, as well as into the applicant
13 interview incident. The City took over a year to complete the investigation into the
14 7421 hiring process, and did not initiate an investigation into the harassment
15 incidents until well after the incidents took place. It is apparent the City is attempting
16 to sandbag Grievant by grouping the incidents together when they realized they were
17 not sufficient, either individually or together, to support Grievant's termination. At
18 arbitration, the City tried to imply Grievant was a threat to his coworkers and make
19 him sound like a violent person, despite testimony by many he was not a threat and
20 used language just as foul as others. The City's failure to timely impose discipline
21 and conduct diligent investigations violates the MOU.

22 The City violated the MOU by refusing to engage in progressive discipline.
23 The City compiled a list of bad acts, imposing no discipline for the alleged acts until
24 his *Skelly* notice was issued, despite maintaining that Grievant was harassing,
25 intimidating and threatening employees.¹³⁹

26 The Grievant has known issues with many of his coworkers, and in some

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28 ¹³⁹It is worth noting Grievant was given some verbal counseling immediately following some verbal
exchanges with coworkers, but never was told he was being disciplined for his conduct.

1 cases coworkers had mutual feelings of dislike and freely expressed them. These
2 issues stem from Grievant's complaints about his coworkers' and supervisors'
3 misuse of authority and theft of City property. However, only Grievant was
4 disciplined. The City is obligated to use progressive discipline as corrective action.
5 The City failed to conduct a timely investigation and issue discipline in a timely
6 manner, and in a way that comports with the principles of progressive discipline.
7 Except for the most egregious misconduct, discipline must be corrective or
8 progressive so the employee is put on notice the infraction is unacceptable, and if
9 repeated, will be progressively applied with increasing severity up to and including
10 termination. Progressive discipline does not mean an employee is given a certain
11 number of "chances" based on any type of infraction. The degree of penalty should
12 be in keeping with the seriousness of the offense.¹⁴⁰

13 The facts in Grievant's case give a quintessential example of "less serious
14 infractions" that do not call for the severe discipline that was imposed on Grievant.
15 The City's failure to bring the issues to Grievant's attention in a timely manner did not
16 give Grievant the opportunity to correct and/or defend himself. Even if the Arbitrator
17 determines the City had some cause for discipline, a lesser form is only what could
18 be appropriate in keeping with the tenets of progressive discipline. At most, the City
19 should have given Grievant a verbal warning as anything more would have been
20 disparate compared to what others received. Progressive discipline is not a "three
21 strikes" law. The unrelated offenses with which Grievant is charged cannot be
22 lumped together. Discipline for one does not provide notice and an opportunity to
23 correct for another.

24 The City's termination of Grievant evidences a clear pattern of disparate
25 treatment toward him. The City treated Grievant differently than his coworkers by
26 disciplining him for offenses that others were not disciplined for and by investigating
27

28 ¹⁴⁰See, Elkouri & Elkouri, *How Arbitration Works* (6th Ed.), p. 964.

1 incidents well past the time contemplated in the MOU. Grievant filed a whistle-
2 blower complaint against his coworkers and supervisors, both of which were aware
3 he filed complaints regarding their time theft and misappropriation of City property.
4 These individuals had motive and means to have Grievant terminated.

5 The City requests that the Arbitrator uphold the termination of Grievant despite
6 having imposed much lesser discipline on others named by Grievant in his whistle-
7 blower complaint for which the City found evidence of wrongdoing that exceeded any
8 wrongdoing allegedly committed by Grievant. Mattias' proposed discipline for
9 falsification of time sheets, fraud, absence without approved leave, misuse of City
10 resources, violations of three City policies and dishonesty is termination. However,
11 Mattias was neither investigated nor disciplined for incidents of verbal harassment he
12 admitted to engaging in with Grievant. Goe's proposed discipline for the same
13 allegations as Mattias is a 30-day suspension. The disparity in discipline of Grievant
14 compared to Mattias and Goe is reinforced in that both Mattias and Goe have been
15 accused of potentially criminal conduct. Moreover, regarding the 7421 interview
16 process, there is a disparity in discipline of Grievant compared to the other panelists,
17 who received a 30-day suspension, later mitigated to 10 days for each. The City
18 clearly holds Grievant to a higher standard than his coworkers and supervisors.
19 Disparate treatment is well recognized as a basis for overturning discipline. The
20 Arbitrator should find the City's disparate treatment of Grievant violated the MOU.

21 OPINION

22 Preliminary Matters

23 The Union bears the burden on its affirmative timeliness defense, while the
24 City bears the burden on the merits, if reached. As to the former, without question,
25 procedural and due process protections in a labor contract are just as enforceable as
26 any other provision. For example, time limits are meant to be kept. With the passage
27 of time, it is more difficult to prosecute and/or defend a grievance because memories
28 may fade, witnesses may move, documents may be lost, etc.

1 If the merits are reached, the City bears the burden to demonstrate that just
2 cause exists for Grievant's discharge. The just cause standard, generally, requires
3 persuasive proof the rules and/or policies alleged were violated and, if so, that under
4 the totality of circumstances, the penalty imposed is not excessive. In addition,
5 generally, the just cause standard favors progressive discipline which affords an
6 employee the opportunity to modify behavior before more severe discipline up to and
7 including discharge is imposed. Progressive discipline, however, does not always
8 have to follow the oral warning, written warning, suspension, and discharge path in
9 lockstep order. The facts and circumstances in each case determine the appropriate
10 level of discipline. Moreover, progressive discipline concepts do not apply in the face
11 of proven gross misconduct which warrants summary dismissal in the first instance.

12 Here, given the nature of this case, including the seriousness of the charges, it
13 may be helpful to set out a few general principles. For example, there is a substantial
14 amount of hearsay in this record. While generally inadmissible in Court, in labor
15 arbitration – where the rules of evidence are either non-existent or loosely applied –
16 while admissible, the issue goes to the “weight.” However, arbitrators do not draw
17 fundamental conclusions based on hearsay, but hearsay may sometimes bootstrap
18 other direct and/or circumstantial evidence.¹⁴¹

19 As to alleged threats of violence, the issue is how the words spoken were
20 reasonably perceived; i.e., did they cause apprehension/fear, etc. The person
21 addressed need not take the time to decide if the speaker was joking, using
22 hyperbole, etc. Put simply, the speaker's undisclosed intent is of little moment. This
23 is 2014 and all know that so many tragic workplace incidents have occurred that Zero
24 Tolerance policies are usually found reasonable. Yet, if the charge is established, the
25 employer must still make its evidentiary burden under the labor contract's just cause
26 provision.

27

28 ¹⁴¹When determining the weight of hearsay evidence, exceptions to the hearsay rule often help establish the weight to be given evidence; e.g., dying declarations, business records, etc.

1 Numerous employees were directly or indirectly involved in this matter. The
2 Union, which must bear the burden of persuasion on the defense, *inter alia*, argues
3 Grievant was the victim of disparate treatment compared to other employees. In
4 disparate treatment cases, the general rule is that variations in penalties based on
5 variations in circumstances rarely result in a disparate treatment finding. More
6 specifically, when determining whether employees in like circumstances were treated
7 differently, each case turns on its own discrete facts.

8 Finally, it is not difficult to understand why the Union argues its case so
9 vigorously. Grievant has 25+ years of essentially discipline free service, filed a
10 whistle blower complaint against others in the Department which may, or may not,
11 result in serious consequences. To the Union, the complaint (and other factors)
12 demonstrate a motive for multiple employees to fabricate evidence. Further, Grievant
13 was clearly not trained in the interviewing process. And, progressive discipline was
14 ignored so that termination for any proven infraction(s) is simply too severe.

15 Without question, the Union left no stone unturned in Grievant's defense –
16 often detailing an answer for every allegation. On this record, however, Grievant was
17 his own worst enemy. As noted below, finding him wholly incredible in the Caltrans
18 incident tips the scales against him on most of the credibility (i.e., he said/he said)
19 issues. Specifically, given the extremely serious nature of certain sustained charges,
20 despite Grievant's long years of service and the whistle blower complaint, the record
21 demonstrates this is not a case for progressive discipline. The City has carried its
22 burden of persuasion.

23 Time Limits

24 The Union vigorously argues that the discipline imposed was well past 30 days
25 from City knowledge of any allegation and certainly exceeded any reasonably
26 required time for a "timely and diligent" investigation. The City, to the contrary, argues
27 that there was a multiplicity of Departments involved and charges continued to arise
28 so that it made sense to combine all of them into one overall investigation. Moreover,

1 given the number of witnesses and Grievant's time off, etc., it simply took a
2 substantial period of time to do a "timely and diligent" investigation.

3 Taking administrative notice from the fact that he has been one of the rotating
4 Expedited Arbitrators with the City and almost all of its unions, the Arbitrator has
5 dealt with the "timely and diligent" language a number of times. For more than 15
6 years, the Arbitrator has sustained grievances, reduced penalties and/or denied a
7 violation when the issue was raised. This is because each such case turned on its
8 own discrete facts and circumstances.¹⁴²

9 As noted above, delays in grievance processing poses problems for the
10 parties. A grievance is not generally filed in a discipline case before the charges
11 (allegations) are made. It is patently obvious a number of the charges were not filed
12 within thirty (30) days of City/Department knowledge. However, absent more
13 persuasive evidence to the contrary, on this record, the outcome determinative factor
14 on this issue is the modifier "diligent." Certain charges involved PUC, DPW, CSC and
15 DHR. Also, Grievant himself was out on sick leave for several weeks. Although the
16 "timely and diligent" investigation may well have strained the outside limits of
17 reasonableness, it cannot be concluded that Grievant was prejudiced in the Union's
18 ability to defend him.¹⁴³ It took this amount of time for a diligent investigation.

19 On the totality of the record presented, it cannot be concluded the City
20 violated paragraph 81 of the MOU. Accordingly, the charges against Grievant were
21 timely.

22 Merits

23 After thirty (30) years hearing and deciding labor and employment disputes,
24 the Arbitrator finds it uncommon for an employee of another employer to register,

25 _____
26 ¹⁴²When Articles I(G)19 and II(B)(81) are read in context and as a whole, it is not surprising the Union
does not argue for a forfeiture remedy.

27 ¹⁴³So there is no misunderstanding, the Arbitrator is not in any way suggesting that the length of time
28 between the date the City learned of the first issue and the date the multiple charges were filed, somehow
establishes a "timely and diligent" length of time. Redundantly, each case stands or falls on its own discrete
facts and circumstances.

1 and carry through, a complaint with the City. Most people do not take time out of their
2 schedules to participate in the grievance and arbitration process. Salazar testified
3 under oath that Grievant called him a "mother-fucking hillbilly" or "white trash, hillbilly,
4 redneck mother-fucker" during their telephone conversation. Herrera and Sherman,
5 also from Caltrans, testified under oath that they were on the speaker phone when
6 the conversation took place and corroborated Salazar's testimony. According to
7 Grievant, Salazar told him "fuck you" and hung up. He never cursed Salazar.

8 Respectfully, Grievant's denial simply does not comport with common sense
9 and experience. There is no rational basis to believe that Salazar, Herrera and
10 Sherman would put their jobs on the line and continue the process through this
11 arbitration simply because Grievant was calling their boss to say Salazar said "fuck
12 you" to him and hung up on him. This is more important than just establishing
13 Grievant's credibility, or lack of it. As a Supervisor, Grievant is required to have
14 regular contact with the public. Salazar, who felt threatened by Grievant, told Moala
15 that he did not want any of his (Caltrans) employees coming into contact with
16 Grievant in the future. In sum, it is simply incredible to believe that Salazar would
17 take that position just because he and Grievant disagreed on who was responsible
18 for water accumulating on the roadway. Moreover, this issue has nothing to do with
19 either Grievant's whistle blower complaint or the typical daily workplace atmosphere
20 and/or anything else that is internal to the Department.

21 As noted, *supra*, this finding impacts Grievant's credibility on many other
22 allegations. For example, Dang and Harrison both testified that Grievant told them he
23 "wanted Mattias' blood." Grievant denies he said that. Although Grievant may have
24 had a different meaning in mind, Harrison and Dang took it as a threat of violence to
25 Mattias.¹⁴⁴

26 In August, 2010, Harrison and Dang were making changes in operations.
27

28 ¹⁴⁴The Arbitrator does not ignore Dang's view that he did not believe management would do anything
because Grievant was not "physically violent."

1 Grievant did not appreciate it as he did not believe they knew what they were doing.
2 At a staff meeting, Grievant told Dang "I'm not going to do any of this." He then
3 crumpled up the signed sheet and tossed it away. For a Supervisor, his conduct
4 undercuts management's operational authority and, therefore, is insubordinate.¹⁴⁵
5 Goe and Mattias confirmed Grievant threw away the sheet. Clearly, standing alone,
6 this misconduct may warrant a written warning. However, as noted below, it put one
7 more straw on the pile.

8 According to Goe, on April 15, 2011, Grievant said "if you, Ray, and that punk
9 ass bitch Kevin Roche try to go up against me, you will lose." Goe believed
10 Grievant's tone of voice made it a threat. Again, as noted above, the issue is how the
11 speaker's words are perceived. Grievant made the comment and was untruthful
12 when he denied it.

13 Finally, on the topic of threats,¹⁴⁶ Grievant, who admits he had previously
14 worked in a shipyard, testified that Harrison was lying when he said he (Grievant)
15 made the comment that, in the shipyard, they took care of their problems – "people
16 would disappear in a hole." Suffice it to say that Harrison's rendition of the
17 conversation has the ring of truth. Why else would Harrison mention Grievant's
18 former shipyard experience? Here again, it is concluded Grievant was untruthful and
19 made a threat of violence.¹⁴⁷

20 The most nettlesome part of the case concerns the Civil Service Panel
21 charges. First, Grievant was not sufficiently trained to be Chair. Second, neither
22 Chruszcz nor Nevels were sufficiently prepared to be panel members. Moreover,
23 some of the City's evidence – pencil tapping, finger signals, etc. – is just silly when it
24

25 ¹⁴⁵Grievant testified that he merely folded up the sheet and put it in his pocket. Here, again, that testimony
is inherently incredible.

26 ¹⁴⁶On this record, the Arbitrator finds it unnecessary to detail each and every time an allegation was made
27 that Grievant incredibly denied.

28 ¹⁴⁷On this record, the Arbitrator credits Chruszcz's statement that the "work environment at the PUC was
a hostile work environment in which [Grievant] ran the shop by intimidation, fear, physical, mental and verbal
abuse for years." (See, JX 46)

1 comes to proof. On the other hand, the three on the Panel knew, or should have
2 known, through basic common sense that one cannot willfully increase or decrease
3 an applicant's scores.¹⁴⁸

4 While these Panels are conducted by humans and, therefore, not expected to
5 be pristine procedures, it is beyond dispute that Grievant gave Cook 18 points on
6 question 1, even though she had no experience; he gave Suarez 19 points on
7 question 2, even though he only had 4 of 10 correct answers; he gave Cook 17
8 points on the question, even though she only had 3 of 10 correct answers; on
9 question 3, he gave Cook 15 points, even though she was incorrect and, on question
10 4, he gave Cook 20 points, even though she missed a question. Even if the Arbitrator
11 gave Grievant every benefit of the doubt, he could not find that these were simply
12 good faith errors. Whether he was trying to help Cook or hurt Mathias, separate and
13 apart from anything Chruszcz and Nevels were doing, he was inappropriately
14 manipulating the system. This is so, even if he had the best intentions to the only
15 female applicant.

16 In addition, Mattias was clearly given inappropriately lower scores in
17 comparison to other candidates, even though he had more experience and more
18 complete answers. Yet, Grievant's rationale for the lower scores given Mattias were
19 odd; i.e., he could not recall if Mattias gave lengthy, detailed answers, often with
20 more information than the ratings sheet [model answers] provided, but gave Mattias
21 the scores he deserved. However, in questioning Grievant about his scoring of
22 Mattias in comparison to other candidates on the five exam questions, it is clear that
23 Johnson's and Hinderliter's analysis correctly concluded Mattias was scored lower on
24 his experience and more complete answers and others were scored higher for less
25 experience and fewer or incorrect answers. Here again, Grievant's rationale does not
26 comport with common sense and experience. More specifically, even without more

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28 ¹⁴⁸The same would be true if one leaked, in whole or in part, a Civil Service exam question to an applicant in advance.

1 training, it is concluded that most, if not all, employees covered by a Civil Service
2 system know that their job and/or advancement is controlled by exams that must be
3 neutral, fair and equitable.

4 Put simply, whether Grievant was trying to help Cook or hurt Mattias, separate
5 and apart from anything Chruszcz and Nevels were doing, Grievant was
6 inappropriately manipulating the system.

7 The Union vigorously argues that Grievant was a victim of disparate treatment
8 in comparison with his fellow panelists during the exam process. As stated above,
9 variations in penalties based on variations in circumstances rarely result in a
10 disparate treatment finding. Separate and apart from the fact that Chruszcz and
11 Nevels were in a different bargaining unit, Grievant was their Supervisor, held to a
12 higher standard than subordinate employees. Put simply, although the Union finds it
13 patently unfair, on this record it cannot be concluded that it carried its burden of
14 persuasion on the disparate treatment issue.

15 Given the above findings based on this voluminous record, it is clear that
16 cause for discipline exists. The case then turns on the question of whether just cause
17 for discharge also exists. Generally, to determine whether the penalty imposed for
18 the proven misconduct is excessive, mitigating and aggravating factors must be
19 balanced.

20 At the outset, Grievant's long years of service with essentially no prior
21 progressive discipline cannot be ignored. Further, he had limited to no real training in
22 conducting an exam panel. In addition, the interchange between employees in his
23 unit was far from that expected in a monastery. On the other hand, Grievant was a
24 supervisor held to a higher standard, has no remorse and has accepted no real
25 responsibility for anything. Despite what he may have thought, he made threats of
26 violence against other coworkers and subordinates for years. In addition, and
27 particularly egregious, Grievant threatened and cussed out a Caltrans manager
28 simply doing his job notwithstanding Grievant's public contact responsibilities in

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general and the obvious need to work with Caltrans employees specifically. Finally, and particularly egregious, he incredibly asserts that each of the three (3) Caltrans managers lied about what he said during their phone call.

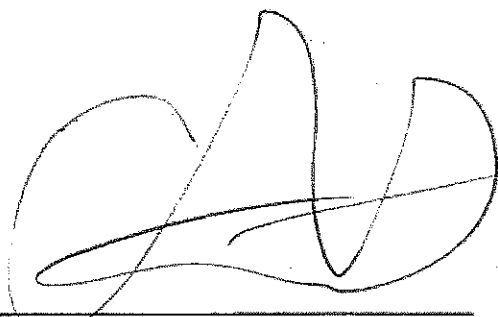
In sum, while all discharges have harsh results, on this record and despite the Union's effort on his behalf, when the totality of established facts and circumstances¹⁴⁹ – including mitigating and aggravating factors - are considered together, it cannot be concluded that the City's decision to impose the ultimate penalty of dismissal can be second guessed. The City has carried its burden to demonstrate that Grievant was discharged for just cause.

The grievance is denied.

AWARD

Grievant was discharged for just cause.

DATED: June 19, 2014



ALEXANDER COHN - Arbitrator

¹⁴⁹Evidence that any City witness actually knew that Grievant filed the whistle blower complaint at the time is particularly scarce.

**ADDITIONAL INFORMATION
SUBMITTED BY APPELLANT**

To the Civil Service Commission City And County Of San Francisco E. Dennis Normandy President ,Douglas S. Chan Vice President ,Kate Favetti Commissioner ,Scott R. Heldfond Commissioner and Gina M. Roccanova Commissioner.

I have filed with the State Of California RCI Investigation Unit Department Of Industrial Relations Division Of Labor Standards Enforcement Retaliation Complaint Investigation . The City Attorney office and Micki Callahan office has been notify by The State Of California will be taking a look regarding my Termination from the City And County Of San Francisco PUC Sewer Operation.

I will prove to the State Of California that Micki Callahan DHR , Lauri Regler PUC EEO, Justine Hinderliter PUC EEO, Eric Rapoport Deputy City Attorney Labor Team and Alexander Cohn the Arbitrator.. Clearly each one of them over step there Authority regarding the MOU.

I will prove to The State Of California that the City Of San Francisco retaliated and discriminated on me because I filed a Whistleblower complaint to the San Francisco Controller's office. Each one of you on the Commission need to read the MOU Agreement with the Labors Union 261 and to the City Of San Francisco.. Don't be mislead by anyone, from Micki Callahan, Lauri Ragler, Justine Hinderliter and Eric Rapoport.

Once more I need to say Read The MOU Agreement between Labors Union 261 and The City Of San Francisco. I thank you George Dugan 12-03-2014PP

George Dugan 12/03/14

Memorandum of Understanding (MOU) Definition | Investopedia

Page 1 of 3

IN THE INVESTIVE / A / T / PERSONAL FINANCE / ACTIVE TRADING FOR BEGINNERS / TUTORIALS / VIDEO / SIMULATOR

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Memorandum of Understanding - MOU

AAA |

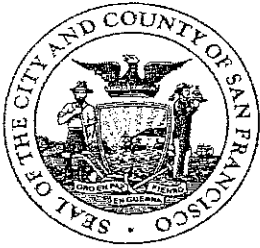
DEFINITION OF 'MEMORANDUM OF UNDERSTANDING - MOU'

A legal document outlining the terms and details of an agreement between parties, including each parties requirements and responsibilities.

INVESTOPEDIA EXPLAINS 'MEMORANDUM OF UNDERSTANDING - MOU'

The MOU is often the first stage in the formation of a formal contract. An MOU is far more formal then a handshake and is given weight in a court of law should one party fail to meet the obligations of the memorandum.

READ ↑



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

November 21, 2014

NOTICE OF CIVIL SERVICE COMMISSION ACTION

E. DENNIS NORMANDY
PRESIDENT

DOUGLAS S. CHAN
VICE PRESIDENT

KATE FAVETTI
COMMISSIONER

SCOTT R. HELDFOND
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

George Dugan
c/o Sylvia Courtney, Legal Counsel
Laborers Local 261
3271 – 18th Street
San Francisco, CA 94110

SUBJECT: REQUEST FOR HEARING BY SYLVIA COURTNEY ON BEHALF OF GEORGE DUGAN, SEWER REPAIR SUPERVISOR (7246) ON HIS FUTURE EMPLOYMENT RESTRICTIONS WITH THE CITY AND COUNTY OF SAN FRANCISCO.

Dear Ms. Courtney:

At its November 17, 2014 at 2:00 p.m. the Civil Service Commission had for its consideration the above matter.

The Commission approved to postpone the item to the meeting of December 15, 2014 at the request of Mr. Dugan.

If this matter is subject to Code of Civil Procedure (CCP) Section 1094.5, the time within which judicial review must be sought is set forth in CCP Section 1094.6.

CIVIL SERVICE COMMISSION

SANDRA ENG
Acting Executive Officer

Cc: George Dugan, Appellant ✓
Susan Gard, Department of Human Resources
Rachel Gordunio, Public Utilities Commission
Andrea Gouridine, Public Utilities Commission
Justine Hinderliter, Public Utilities Commission
Commission File
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SANDRA ENG
ACTING EXECUTIVE OFFICER



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

November 6, 2014

NOTICE OF CIVIL SERVICE COMMISSION MEETING

E. DENNIS NORMANDY
PRESIDENT

DOUGLAS S. CHAN
VICE PRESIDENT

KATE FAVETTI
COMMISSIONER

SCOTT R. HELDFOND
COMMISSIONER

GINA M. ROCCANOVA
COMMISSIONER

SANDRA ENG
GENERAL EXECUTIVE OFFICER

George Dugan
c/o Sylvia Courtney, Legal Counsel
Laborers Local 261
3271 – 18th Street
San Francisco, CA 94110

SUBJECT: REQUEST FOR HEARING BY SYLVIA COURTNEY ON BEHALF OF GEORGE DUGAN, SEWER REPAIR SUPERVISOR (7246) ON HIS FUTURE EMPLOYMENT RESTRICTIONS WITH THE CITY AND COUNTY OF SAN FRANCISCO.

Dear Ms. Courtney:

As you are aware, the above matter will be considered by the Civil Service Commission at a meeting to be held on November 17, 2014 at 2:00 p.m. in Room 400, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at www.sfgov.org/Civil_Service under "Meetings" no later than end of day on Wednesday, November 12, 2014. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal is attached; however, a hard copy is also available for your review at the Civil Service Commission's office located at 25 Van Ness Avenue, Suite 720, San Francisco.

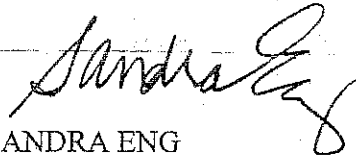
In the event that you wish to submit any additional documents in support of your appeal or your request for postponement, the deadline for receipt in the Commission office is on Wednesday, November 12, 2014 by 11:00 a.m. (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Please be sure to redact your submission for any confidential or sensitive information that is not relevant to the appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

It is important that you or an authorized representative attend the hearing on your appeal. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance. As a reminder, you are to be honest and forthright during all testimony and in all documentation that you provide to the Civil Service Commission, failure to do so could lead to discipline, up to and including termination, in accordance with your department's policy.

All non-privileged materials being considered by the Civil Service Commission for this item are available for public inspection and copying at the Civil Service Commission office Monday through Friday from 8:00 a.m. to 5:00 p.m.

You may contact me at (415) 252-3247 or at Sandra.Eng@sfgov.org if you have any questions.

CIVIL SERVICE COMMISSION



SANDRA ENG
Acting Executive Officer

Attachment

Cc: George Dugan, Appellant
Susan Gard, Department of Human Resources
Rachel Gordunio, Public Utilities Commission
Andrea Gourdine, Public Utilities Commission
Justine Hinderliter, Public Utilities Commission
Commission File
Commissioners' Binder
Chron

Subject: Request for postponement of my hearing do to being notify to late
From: GEORGE DUGAN (dukeofdugan@sbcglobal.net)
To: Sandra.Eng@sfgov.org; courtneyfirm@yahoo.com; laborers261@gmail.com; steve.kawa@sfgov.org;
Date: Tuesday, November 11, 2014 12:03 PM

To Sandra Eng Acting Executive Officer Civil Service Commission I George Dugan will need to request to postponement my hearing to a later date. The notice that was sent to me was dated November 6, 2014 from your office, it was sent by U.S. Mail to my house 15842 Via Arroyo San Lorenzo Ca. 94580.

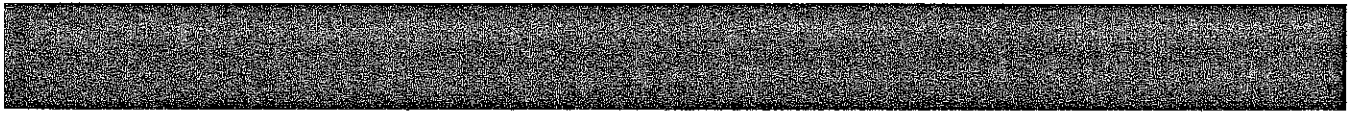
I did not receive your letter until November 10, 2014 from the U.S. Mail-man, the time was around 1:30pm as you can see this dose not give me enough time to send in my supplemental material also I request to have Steve Flarity from the San Francisco Controlers office to explain about my Whistle-blower complaints regarding Ray Mattias, Brian Goe, Herb Dang, Tommy Moala and Lewis Harrison.

Also I would like to have someone from PUC personal to explane to the Commission how Ray Mattias was not Terminated for theft, improper use of a City vehicles and other improper unlawful acts.. Personal reccommendation was Termination but someone decided to give him thirty days suspension not Termination

Back in 1984 Ray Mattias was Terminated for doing the same things theft and other unlawful acts. And he was able to come back to the City And County Of San Francisco to work and once more to do unlawful acts with the Tax-Payers money.

Now to Bian Goe he was also doing the samething just like Ray Mattias misapropration of City funds. Personal reccommendation was to give him thirty days suspension he was only given fifteen days suspension and for Lewis Harrison and Tommy Moala was given no time off.

Sandra please set up a new date and time for my hearing and please give me one week notice thank you Mr. George Dugan if you need to call me 415-806-2751



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Memorandum of Understanding - MOU

AAA |

DEFINITION OF 'MEMORANDUM OF UNDERSTANDING - MOU'

A legal document outlining the terms and details of an agreement between parties, including each parties requirements and responsibilities.

INVESTOPEDIA EXPLAINS 'MEMORANDUM OF UNDERSTANDING - MOU'

The MOU is often the first stage in the formation of a formal contract. An MOU is far more formal then a handshake and is given weight in a court of law should one party fail to meet the obligations of the memorandum.

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Memorandum of Understanding (MOU)

What is a MOU?

A Memorandum of Understanding (MOU) is a written agreement between two or more parties that defines the roles and responsibilities of each party with respect to the collaborative efforts of a particular program/project. A MOU is sometimes called a Memorandum of Agreement (MOA).

Why is a MOU important?

A MOU is important because it outlines specific roles and responsibilities so that all parties have a clear understanding of their purpose in the partnership. With a clear understanding of the purpose, organizations can begin working together on the objectives to achieve the goal(s) of the MOU.

What makes an effective MOU?

To develop an effective MOU:

- An organization should first have a clear mission statement. With a clear mission statement, the parties can develop a meaningful purpose statement, identify the scope, assign responsibilities and outline the terms of understanding.
- A MOU should always be signed by someone in the organization with authority to enter into the agreement. Also, assign appointees (who may be different from the signing authorities) from each organization who have a strong knowledge of their organization's purpose and the purpose of the collaboration so that he or she can carry out the responsibilities as described in the MOU.
- Review a MOU at least once a year to ensure that it is fulfilling its purpose and to make any necessary revisions. All revisions should be noted and agreed upon by both signing authorities.
- Establish a term for the MOU, usually one to three years from the effective date, and state termination guidelines.

What are the types of partnerships that a MOU might establish?

There are two main types of partnerships: public-private partnership and strategic partnership.

A public-private partnership occurs when a public entity (federal, state, tribal or local government) collaborates with the private sector (corporations, nonprofit organizations, foundations or civic groups) to work on specific programs/projects.

A strategic partnership occurs when two or more groups within a business or organization join to work on a specific project/program, or when two or more like organizations work together on a specific project/program.

The main difference between the two partnerships is the legal entity of the partner. For example, if a housing authority works with a nonprofit organization to develop on a child care program, the partnership is a public-private partnership. If a housing authority collaborates with the local TANF agency to work on a workforce development program, the partnership is a strategic partnership.

How does an organization develop a MOU?

Attached are a template and sample MOUs that can be used to frame your organization's MOU.

How does an organization use the attached MOU template?

The template contains standard language used in a MOU. The italic, underlined areas require information from your organization and/or the partnering organization, and allow you to tailor the MOU to fit your needs. Fill in the italic, underlined areas with the information requested. After you fill in these areas, reread the MOU for accuracy and clarity; make changes to the standard language as necessary.

BusinessDictionary.com

memorandum of understanding (MOU)

Definition

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A document that expresses mutual accord on an issue between two or more parties.

Memoranda of understanding are generally recognized as binding, even if no legal claim could be based on the rights and obligations laid out in them. To be legally operative, a memorandum of understanding must (1) identify the contracting parties, (2) spell out the subject matter of the agreement and its objectives, (3) summarize the essential terms of the agreement, and (4) must be signed by the contracting parties. Also called letter of intent.

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Fw: Unfair Fact-Finding-Meeting from Linda Marini

GEORGE DUGAN [redacted]
Reply-To: **GEORGE DUGAN** [redacted]
To: "ods02160cpc@officedepot.com" <ods02160cpc@officedepot.com>

Tue, Sep 23, 2014 at 10:27 PM

State Of California Case No. [redacted] Dugan V S F Public Utilities

On Tuesday, September 23, 2014 12:15 PM, **GEORGE DUGAN** <[redacted]> wrote:

On Thursday, March 22, 2012 10:51 AM, "Dugan, George" <gdugan@sfgwater.org> wrote:

From: GEORGE DUGAN [mailto:[redacted]]
Sent: Friday, February 03, 2012 4:15 PM
To: Dugan, George
Subject: Fw: Unfair Fact-Finding-Meeting from Linda Marini

READ
↓

— On Fri, 2/3/12, **GEORGE DUGAN** [redacted] wrote:

From: GEORGE DUGAN <[redacted]>
Subject: Fw: Unfair Fact-Finding-Meeting from Linda Marini
[redacted]
Date: Friday, February 3, 2012, 3:34 PM

— On Fri, 2/3/12, **GEORGE DUGAN** [redacted]

From: GEORGE DUGAN [redacted]
Subject: Unfair Fact-Finding-Meeting from Linda Marini
To: micky.callahan@sfgov.org
Cc: trydstron@sfgwater.org
Date: Friday, February 3, 2012, 3:29 PM

Dear Micky Callahan I am requesting for your help with a very serious and unfair Fact-Finding Report. From Linda Marini and staff Niger Edwards and Justine Hinderliter on Aug 22-2011 at 30 Vanness Ave I had a meeting with Niger and my union rep. This was regarding a test for class 7421 back in Oct. 2010 for DPW I was ask by Chris

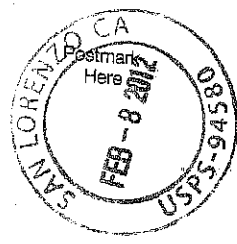
Lui from DPW to sit on a interview panel with Gene Chruszc and Don Nevels. We interview 17 people that day from 8:00AM to 3:30PM asking various questions in regards to the job class 7421. I need to point out that I gave True answers to all the questions and at no time did I ask anyone to change any scores I also pointed out that I was using a black ink pen all day and that someone Not being me had change some of my scores on my paper wokk. And that this was not my hand writting at all. I request to you and your office to have someone that is impartial to this case to review my hand writting on the change scores they will confirm that I did not change any one scores. This fact-finding meeting is based on Ray Mattias and Francisco Lastra hear say and nothing more than that I will not sit back and let this happen I have worked for the city 26 years. Now to Cal-trans so-call complaint at no time did I use any type of Abusive language to any one from Cal-Trans the only person who did was Robert Salazar he tells Lewis Harrison in his letter he told me to go fuck myself. This was the only time that any type of Abusive language was used and it was not from me someone needs to talk to Gene Chruszc once more someone who is not from Linda Marini Staff. You should also talk to the Contolers office about a Whistle Blower complaint that I made about works abusing city funds and trucks being over paid for false overtime. I would like to have a answer from you on or before February 27-2012 because I have the Skelly meeting on February 29-2012 location City Hall room 034 at 1:30PM Thank you I hope to hear back soon George Dugan 15842 Via Arroyo San Lorenzo Calif 94580 Cell phone 415-806-2751P

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 ONE South Van Ness SF 4#1



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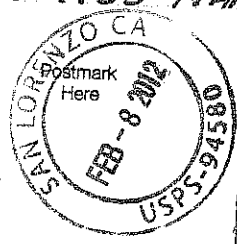
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Memorandum of understanding

From Wikipedia, the free encyclopedia

A **memorandum of understanding (MoU)** describes a bilateral or multilateral agreement between two or more parties. It expresses a convergence of will between the parties, indicating an intended common line of action. It is often used in cases where parties either do not imply a legal commitment or in situations where the parties cannot create a legally enforceable agreement. It is a more formal alternative to a gentlemen's agreement.

Whether or not a document constitutes a binding contract depends only on the presence or absence of well-defined legal elements in the text proper of the document (the so-called "four corners"). The required elements are: offer and acceptance, consideration, and the intention to be legally bound (*animus contrahendi*). In the U.S., the specifics can differ slightly depending on whether the contract is for goods (falls under the Uniform Commercial Code [UCC]) or services (falls under the common law of the state).



Keyport, Washington, (January 11, 2007) - Left, Rear Adm. Richard Houk, commander, 13 Coastguard District, and Rear Adm. William French, commander, Navy Region Northwest, sign a memorandum of understanding with the Washington State Veterans Affairs. The MoU, signed by 32 organizations, is to ensure all service members returning from combat zones can take advantage of benefits available to them.

Contents

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- 1 U.S. private law
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U.S. private law

In private U.S. law, MoU is a common synonym for a **letter of intent**. One example is the MoU between Bush and Kerry for the 2004 debates iii.

Inside a company or government agency

Many companies and government agencies use MoUs to define a relationship between departments, agencies or closely held companies. In the United Kingdom, such an MoU is often called a *concordat*. An example is the 2004 Concordat between bodies inspecting, regulating and auditing health or social care. The term is often used in the context of devolution, for example the 1999 concordat between the central Department for Environment, Food and Rural Affairs and the Scottish Environment Directorate.

In public international law

In international relations, MoUs fall under the broad category of treaties and should be registered in the United Nations treaty collection.^[1] In practice and in spite of the United Nations' Legal Section's insistence that registration be done to avoid 'secret diplomacy', MoUs are sometimes kept confidential. As a matter of law, the title of MoU does not necessarily mean the document is binding or not binding under international law. To determine whether a particular MoU is meant to be a legally binding document (i.e. a treaty), one needs to examine the parties' intent as well as the signatories' position (e.g. Minister of Foreign Affairs vs. Minister of Environment). A careful analysis of the wording will also clarify the exact nature of the document. The International Court of Justice has provided some insight into the determination of the legal status of a document in the landmark case of *Qatar v. Bahrain*, 1 July 1994.^[2]

Advantages

One advantage of MoUs over more formal instruments is that, because obligations under international law may be avoided, they can be put into effect in most countries without requiring parliamentary approval. Hence, MoUs are often used to modify and adapt existing treaties, in which case these MoUs have factual treaty status. The decision concerning ratification, however, is determined by the parties' internal law and depends to a large degree on the subject agreed upon. MoUs that are kept confidential (i.e. not registered with the UN) cannot be enforced before any UN organ, and it may be concluded that no obligations under international law have been created. As was obvious in *Qatar v. Bahrain*, disputes may arise concerning the status of the document once one of the parties seeks to enforce its provisions.

Although MoUs in the multilateral field are seldom seen, the transnational aviation agreements are actually MoUs.

Examples

Examples include:

- The *Memorandum of Understanding Relating to the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems on May 26, 1972* signed by US President Richard Nixon and the Soviet Union updating the Anti-Ballistic Missile Treaty^[3]
- The agreement between the Cayman Islands and Cuba under which Cayman immigration officers must give Cuban refugees two choices: disembark and be repatriated back to Cuba, or continue on their way with no help

- The *Memorandum of Understanding on Hijacking of Aircraft and Vessels and Other Offenses* between the US and Cuba, meant to criminalize hijacking in both countries (February 3, 1973)
- The Agreed Framework between the U.S. and North Korea over nuclear weaponry on October 21, 1994
- The Oil for Food program, for which Iraq signed an MoU in 1996
- The agreement between the government of Indonesia and the GAM in the Aceh peace process, 15 August 2005.
- The agreement between the UK and Jordan, Libya and Lebanon regarding potential extradition of suspects (commonly terrorists suspects) who if they are to be tried, must be tried fairly and in a manner similar to the European Convention on Human Rights, for example withholding from using evidence obtained through the use of torture(Article 3). Such an understanding has been criticised for its inability to be legally enforced. This has been highlighted in the current deportation process of the suspected terrorist Abu Qatada, who is wanted by Jordan in connection with a terrorist attack. However, at present, the Court of Appeal have rejected the UK Government's appeal based on their concern at Jordan obtaining evidence potentially incriminating Qatada through the use of torture.
- The *Memorandums of Understanding on Labour Cooperation* between The People's Republic of China, Singapore and New Zealand on 2008, in parallel with their respective free trade agreements

References

1. ^ "United Nations Treaty Collection" (<http://treaties.un.org/>). treaties.un.org. Retrieved 2013-12-31.
2. ^ "International Court of Justice" (<http://www.icj-cij.org/docket/index.php?p1=3&p2=1&PHPSESSID=66a15edfa6bb89698b26627e76c1d56b&case=87&code=qb&p3=4/>). Icj-cij.org. Retrieved 2013-10-13.
3. ^ "ABM Treaty: Memorandum of Understanding" (<http://www.acq.osd.mil/tc/treaties/abm/72sccreg.htm>). *Treaty Compliance*. Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics. Retrieved 2013-09-30.

See also

- Memorandum of agreement

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DEPARTMENT OF INDUSTRIAL RELATIONS

Division of Labor Standards Enforcement

Retaliation Complaint Investigation

2031 Howe Avenue, Suite 100

Sacramento, CA 95825

Tel: (916) 263-2991 Fax: (916) 263-2853



September 15, 2014

George Dugan
[REDACTED]
[REDACTED]*Re: State Case No. [REDACTED] Dugan v SF Public Utilities*

Dear Complainant:

We have reviewed your complaint and would like to request additional information from you. The timing of events is extremely important. Prepare a chronology following the enclosed instructions. Your chronology will assist in the evaluation of your complaint. The chronology should be a brief summary of information.

In addition, gather contact information for any witnesses, and collect paperwork that will support your case. Emails, letters or other written evidence of complaints made to government agencies or to your employer; any termination notice or other disciplinary actions, and copies of your final checks may be needed.

Your employer has been asked to respond to your complaint; when their response is received you will be given a chance to review the response and to provide a rebuttal.

You must send a written notice of any change to your phone number or address to the address listed above. Remember to include your case number in any correspondence with this office. If we are unable to contact you, we will be unable to proceed with the investigation and, as a result, your case will be closed.

After we have reviewed your chronology and the employer's response to the complaint, your case will be reviewed to determine the next appropriate step. Submit the chronology, witness list and other documents in support of your complaint by 10/15/2014.

Sincerely,

Joan Healy

Joan Healy

RCI Investigation Unit

Enc.

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DAVID A. ROSENFELD
WILLIAM A. SCHOL
BLYTHE MICKELSON
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State Case No. [REDACTED]
Dugan v SF Public Utilities

• Admitted in Hawaii
•• Also admitted in Nevada
••• Also admitted in Illinois
•••• Also admitted in New York

March 24, 2014

Mr. Alexander "Buddy" Cohn
Labor and Employment Dispute Resolution
19 Hahnemann Lane
P.O. Box 4006
Napa, CA 94558

Re: Laborers international Union of North America, Local Union No. 261
City and County of San Francisco
Grievance of George Dugan – Discharge

Dear Mr. Cohn:

I. INTRODUCTION

Laborers Local 261 ("Union") submits this letter brief as the closing argument in the arbitration of George Dugan, which was held over three days before Arbitrator Alexander Cohn. The Grievant, George Dugan, was an employee of the City and County of San Francisco ("City") for more than 25 years, and a supervisor for approximately 11 years prior to the incidents that gave rise to this arbitration. In his tenure with the City and County of San Francisco, Mr. Dugan received only one written disciplinary notice. This discipline, based on Mr. Dugan's failure to follow a work rule, was not related to any of the incidents that were alleged in the *Skelly* notice dated January 10, 2012. Despite his record, reflecting an unrelated disciplinary incident, and his many years of service with the San Francisco Public Utilities Commission ("PUC"), Mr. Dugan's employment was terminated based on a series of allegations regarding his conduct toward other employees, and an incident involving job applicant interviews. The brief will address with these charges separately.

The City and the PUC violated the Memorandum of Understanding ("MOU") when it terminated Mr. Dugan, as it had no just cause to do so. Instead, the City attempted to sandbag Mr. Dugan during his termination and at his arbitration by compiling a list of bad acts that allegedly occurred during his employment and for which he was never timely disciplined. The City also violated the MOU by refusing to engage in progressive discipline, as it is required to do. In fact, the City imposed no discipline at all for these alleged acts until the *Skelly* Notice was issued, despite maintaining that Mr. Dugan was

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Sacramento, CA 95814-2341
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Union Plaza
1136 Union Mall, Suite 402
Honolulu, HI 96813-4500
TEL 808.528.8880 FAX 808.528.8881

harassing, intimidating and threatening employees.¹ The City also failed to abide by the terms of the MOU by imposing discipline in a timely manner. The City also failed to properly train Mr. Dugan and his colleagues to conduct applicant interviews, a task which does ^{not} fall within the scope of their usual employment, and then held these individuals accountable for the results of the interview process, which the City admits they also made mistakes with. Finally, the City failed to conduct timely investigations into the allegations of harassment, intimidation and threatening conduct, as well as into the applicant interview incident. As a result, the grievance should be dismissed and Mr. Dugan should be reinstated to full employment and made whole.

II. ISSUE AND STIPULATIONS

The parties agreed that the issue before the Arbitrator was the following: Was the Grievant, Mr. Dugan, discharged for just cause? If not, what is the appropriate remedy? The parties agreed that the Arbitrator had the authority to craft the appropriate remedy and that the Arbitrator would maintain jurisdiction over any potential remedy.

III. APPLICABLE CONTRACT PROVISIONS

Article I.D Management Rights: The City and its department retain all rights as set forth in the provisions in the Charter, existing ordinances and civil service rules establishing and regulating the civil service system; provided, however, that amendments to said existing ordinances may be proposed through the meeting and conferring process. These rights include, but are not limited to, the power, duty and right to...terminate for proper cause....

Article II.B Personnel Files: Upon request of an employee to the Appointing Officer or designee, material relating to disciplinary actions in the employee's personnel file which have been in the file for more than five (5) years of actual work shall be "sealed" (i.e., shall remain confidential) to the maximum extent legally permissible, provided the employee has no subsequent disciplinary action since the date of such prior action. If an employee has a pending disciplinary action, (s)he shall not be permitted to remove or request to seal any material relating to any disciplinary action until that matter has been resolved. Performance evaluations are excluded from this provision.

...

No action to impose discipline against an employee shall be initiated more than thirty (30) days from the date the employer knows of the conduct and has completed a diligent and timely investigation except for conduct which would constitute the commission of a crime. The discipline imposed may take into account conduct that is documented in the employee's personnel file or was the subject of a prior disciplinary action.

¹ It is worth noting that Mr. Dugan was given some verbal counseling immediately following some verbal exchanges with co-workers by superiors, but was never told he was being disciplined for his conduct.

ARTICLE II – EMPLOYMENT CONDITIONS

removal may be considered on a case by case basis, depending upon the circumstances, by the Appointing Officer or designee.

79. Once the statute of limitations for the filing of civil litigation has run involving any material that has been sealed, the removal provisions of paragraph one shall apply.
80. It is understood that replacing the word "removed" with the word "sealed" above shall not be construed to change the intent of this section with respect to the department's access to such material. Rather, the intent of this change is to assure that the material is not discarded or destroyed so that it is available to the City Attorney only on an as needed basis. In the event a sealed file is to be opened, the department will notify the employee and allow the employee and his/her representative to be present.

81. No action to impose discipline against an employee shall be initiated more than thirty (30) days from the date the employer knows of the conduct and has completed a diligent and timely investigation except for conduct which would constitute the commission of a crime. The discipline imposed may take into account conduct that is documented in the employee's personnel file or was the subject of a prior disciplinary action.

II.C. SENIORITY

READ ↑

82. It is recognized that the appointing authority has the sole authority regarding work shift assignments and the assignment of work generally. Nonetheless, and consistent with departmental operational needs, the Employee Relations Division, and the Union recommend and encourage City departments to give due consideration to departmental seniority in the bidding of work shifts, the making of assignments and the selection of vacation time.

II.D. TRAVEL PAY

83. Employees who reside within the City and County of San Francisco and are assigned to work at San Francisco International Airport or Sharp Park shall be reimbursed for travel expenses to and from these locations in the amount of \$2.30 per day. Employees who reside within the City and County of San Francisco and are assigned to work at Millbrae shall be reimbursed for travel expenses to and from this location in the amount of \$2.00 per day.
84. Effective July 1, 2010, travel pay for employees who reside within the City and County of San Francisco and are assigned to work at San Francisco International Airport, Sharp Park or Millbrae shall sunset.
85. Employees who reside within the City and County of San Francisco and are assigned to work at Sunol shall be reimbursed for travel expenses to and from Sunol in the amount of \$7.00 per day. In order for an employee to be eligible for this benefit, he or she must file a

Other agencies. Included in these were incidents that took place on April 15-2011, May 06-2011, June 23-2011, August 11-2011, August 19-2011 and on August 25-2011. All of these incidents involved exchanges That I allegedly had with individuals for which I never disciplined. I admitted to some of these events Having taken place and I disputed others..

10. I did not receive any discipline for these so-call hear-say incidents until my Skelly was issued on January 10-2012--over eight months following the initial incident . The investigation regarding this Alleged harassment did not even begin until September 28-2011--over a month since the last incident-- According to Justine Hinderlighter from DHR, and an investigation into these incidents was only Conducted once the 7421 examination issues arose. Accordingly, it was the Labors Union 261 position That any discipline for the April 15, May 06, June 23, August 11, August 19 and August25-2011 incidents Is improper, untimely and in Violation of the MOU between the parties and should not be considered by The Arbitrator Alexander Cohn .

11. The MOU agreement between the Labors Union 261 and the City And County Of San Francisco Article II- Employment Conditions 81. No action to impose discipline against an employee shall be initiated More than Thirty (30) days from the date the employer knows of the conduct and has completed a diligent And timely investigation except for conduct which would constitute the commission of a crime. The Discipline imposed may take into account conduct that is documented in the employee's personnel file or was the subject of a prior disciplinary action.

12. I was not charge with any type of a crime and the City Of San Francisco and the Arbitrator Alexander Cohn disregarded the MOU agreement neither the City of San Francisco and the Arbitrator Has No right to make any type of changes to the MOU at any time.. From May 09-2012 up to My first Arbitration hearing that took place on August 06-2013 sixteen months after my termination The next hearing was on October 08-2013 and the last hearing was on January 28-2014. On June 09-2014 Alexander Cohn agreed with the City to Terminate me from my job.

13. I am asking The Department Of Industrial Relations Division Of Labor Standards Enforcement Retaliation Complaint Investigation (To over turn the Arbitrator Alexander Cohn judgment to have me Terminated from the City And County Of San Francisco PUC Department Of Sewer Operations after

The pass Twenty-Six and a half years)

14. The City Of San Francisco DHR and the Office Of The Controller City Service Auditor Davison did their own investigations regarding to my Whistleblower complaint and they clearly justified that Ray Mattias and Brian Goe, among others, have received discipline which includes termination for Ray Mattias and thirty days off for Brian Goe with out pay. After my Arbitration and the Arbitrator Alexander Cohn up held my Termination some one was able to make a deal regarding Ray Mattias and Brian Goe. Ray Mattias was only given twenty five days off with out pay and Brian Goe was given only Fifteen days Off Ray Mattias daughter works at DHR.

15. I should never had been Terminated but Tommy Moala PUC AGM, Lewis Harrison Division Manager PUC Sewer Operations, Herb Dang PUC Sewer Operation Superintended , Ray Mattias, PUC Sewer Operations , Brian Goe PUC Sewer Operations and among others. They all new that I was the one that turn them all in to the City Controllers Office. I was used by the City Controllers Office they gave me know help And I was the only one Terminated for what the Arbitrator Alexander Cohn called me a long time Bully This was an insult to me and my family and I was the one to suffer at the end.. Thank You for your help.

George Dugan Case No. [REDACTED] Dugan v SF Public Utilities

[REDACTED]



Fw: State Case Number [REDACTED] Dugan V S F Public Utilities

GEORGE DUGAN <[REDACTED]>
Reply-To: GEORGE DUGAN <[REDACTED]>
To: "ods02160cpc@officedepot.com" <ods02160cpc@officedepot.com>

Wed, Sep 24, 2014 at 12:35 PM

On Wednesday, September 24, 2014 12:29 PM, GEORGE DUGAN <[REDACTED]> wrote:

Hello Theresa Ray Mattias and Brian Goe was part of my defense to show that I filed a Whistleblower complaint on them.
And that the City Of San Francisco did there own investigation regarding my complaint and they ageed that both Ray Mattias and Brian Goe were engaging in unlawful acts at work. These acts included time theft, improper use of City vehicles, among other thing.

It was introduce as evidence to my hearing from Concepcion E. Lozano-Batista Local 261 Laborers Union Attorney.

The State Of California Department Of Industrial Relation, Division of Labor Standards Enforement. Retaliation Complaint Investigation. Request that I gather contact information all paperwork that will support my case.

On the State Of California letter to me that I sent you a copy, it said to collect E-mails, Letters or other written evidence of complaints to government agencies or to your employer. Ray Mattias and Brian Goe Skelly hearing paper work is part of my Complaint Case No.36875-SACRCI: Dugan V S F Public Utilities. Thank You

On Wednesday, September 24, 2014 10:53 AM, Theresa Foglio <laborers261@gmail.com> wrote:

Hello George,
I will have the secretaries begin to copy the appropriate MOU 2009-2012 for you. As for the other employees/members disciplinary files, I can not provide those to you as it will result in several violations of their rights to privacy and confidentiality.

I will make sure that the secretaries have the MOU copied for you by September 29th.

Thanks,

On Wed, Sep 24, 2014 at 12:29 AM, GEORGE DUGAN <dukeofdugan@sbcglobal.net> wrote:

Hello Theresa I hope everything is going good with you. I need a copy of the MOU regarding the 30 day rule for discipline also for progressive discipline. Alexander Cohn step out of line regarding this MOU Rule

I also need both copy's that you gave Alexander Cohn regarding Ray Mattias And Brian Goe Skelly hearing. At my hearing Tommy Moala said that he was going to follow the recommendation from DHR to Terminate Ray Mattias and to give Brian Goe 30 day's off.

It never happen they were given progressive discipline for stealing from the tax payer's and they terminate me because they said that I was a Bully.

I will prove to the State Of California that I was Set-Up and that the City and Alexander cohn Step over the line.

and some how someone made a sweet heart deal for Ray Mattias and Brian Goe. I will hope that the State takes a good hard look at who made the deal.

I would like to pick up everything on September 29-2014 around 1:30 pm please let me know if there is a problem. Thank you

STEWART WEINBERG
DAVID A. ROSENFELD
WILLIAM A. SOKOL
BLYTHE MICKELSON
BARRY E. HINKLE
CHRISTIAN L. RAISNER
JAMES J. WESSER
THEODORE FRANKLIN
ANTONIO RUIZ
MATTHEW J. GAUGER
ASHLEY K. IKEDA *
LINDA BALDWIN JONES
PATRICIA A. DAVIS
ALAN G. CROWLEY
KRISTINA L. HILLMAN **
EMILY P. RICH
BRUCE A. HARLAND
CONCEPCIÓN E. LOZANO-BATISTA
CAREN P. SENCER
ANNE I. YEN
KRISTINA M. ZINNEN
JANNAH V. MANANSALA
MANUEL A. BOIGUES ***
KERIANNE R. STEELE ***
GARY P. PROVENCHER
EZEKIEL D. CARDER ****
MONICA T. GUIZAR
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STEPHANIE L. MARN
ANTHONY J. TUCCI
ROBERT E. SZYKOWNY

VINCENT A. HARRINGTON, Of Counsel
PATRICIA M. GATES, Of Counsel
ROBERTA D. PERKINS, Of Counsel
NINA FENDEL, Of Counsel
ANA M. GALLEGOS, Of Counsel

* Admitted in Hawaii
** Also admitted in Nevada
*** Also admitted in Illinois
**** Also admitted in New York

March 24, 2014

Mr. Alexander "Buddy" Cohn
Labor and Employment Dispute Resolution
19 Hahnemann Lane
P.O. Box 4006
Napa, CA 94558

**Re: Laborers international Union of North America, Local Union No. 261
City and County of San Francisco
Grievance of George Dugan – Discharge**

Dear Mr. Cohn:

I. INTRODUCTION

Laborers Local 261 ("Union") submits this letter brief as the closing argument in the arbitration of George Dugan, which was held over three days before Arbitrator Alexander Cohn. The Grievant, George Dugan, was an employee of the City and County of San Francisco ("City") for more than 25 years, and a supervisor for approximately 11 years prior to the incidents that gave rise to this arbitration. In his tenure with the City and County of San Francisco, Mr. Dugan received only one written disciplinary notice. This discipline, based on Mr. Dugan's failure to follow a work rule, was not related to any of the incidents that were alleged in the *Skelly* notice dated January 10, 2012. Despite his record, reflecting an unrelated disciplinary incident, and his many years of service with the San Francisco Public Utilities Commission ("PUC"), Mr. Dugan's employment was terminated based on a series of allegations regarding his conduct toward other employees, and an incident involving job applicant interviews. The brief will address with these charges separately.

The City and the PUC violated the Memorandum of Understanding ("MOU") when it terminated Mr. Dugan, as it had no just cause to do so. Instead, the City attempted to sandbag Mr. Dugan during his termination and at his arbitration by compiling a list of bad acts that allegedly occurred during his employment and for which he was never timely disciplined. The City also violated the MOU by refusing to engage in progressive discipline, as it is required to do. In fact, the City imposed no discipline at all for these alleged acts until the *Skelly* Notice was issued, despite maintaining that Mr. Dugan was

harassing, intimidating and threatening employees.¹ The City also failed to abide by the terms of the MOU by imposing discipline in a timely manner. The City also failed to properly train Mr. Dugan and his colleagues to conduct applicant interviews, a task which does not fall within the scope of their usual employment, and then held these individuals accountable for the results of the interview process, which the City admits they also made mistakes with. Finally, the City failed to conduct timely investigations into the allegations of harassment, intimidation and threatening conduct, as well as into the applicant interview incident. As a result, the grievance should be dismissed and Mr. Dugan should be reinstated to full employment and made whole.

II. ISSUE AND STIPULATIONS

The parties agreed that the issue before the Arbitrator was the following: Was the Grievant, Mr. Dugan, discharged for just cause? If not, what is the appropriate remedy? The parties agreed that the Arbitrator had the authority to craft the appropriate remedy and that the Arbitrator would maintain jurisdiction over any potential remedy.

III. APPLICABLE CONTRACT PROVISIONS

Article I.D Management Rights: The City and its department retain all rights as set forth in the provisions in the Charter, existing ordinances and civil service rules establishing and regulating the civil service system; provided, however, that amendments to said existing ordinances may be proposed through the meeting and conferring process. These rights include, but are not limited to, the power, duty and right to...terminate for proper cause....

Article II.B Personnel Files: Upon request of an employee to the Appointing Officer or designee, material relating to disciplinary actions in the employee's personnel file which have been in the file for more than five (5) years of actual work shall be "sealed" (i.e., shall remain confidential) to the maximum extent legally permissible, provided the employee has no subsequent disciplinary action since the date of such prior action. If an employee has a pending disciplinary action, (s)he shall not be permitted to remove or request to seal any material relating to any disciplinary action until that matter has been resolved. Performance evaluations are excluded from this provision.

...

No action to impose discipline against an employee shall be initiated more than thirty (30) days from the date the employer knows of the conduct and has completed a diligent and timely investigation except for conduct which would constitute the commission of a crime. The discipline imposed may take into account conduct that is documented in the employee's personnel file or was the subject of a prior disciplinary action.

¹ It is worth noting that Mr. Dugan was given some verbal counseling immediately following some verbal exchanges with co-workers by superiors, but was never told he was being disciplined for his conduct.

IV. STATEMENT OF FACTS

The Grievant, George Dugan, began working for the City and County of San Francisco at the Department of Public Works ("DPW") in 1985. Beginning in July of 2000, he began work with the PUC as a Sewer Repair Supervisor in the Waste Water Department. Mr. Dugan's job classification is 7246 Sewer Repair Supervisor II, which includes supervising crews of workers, maintaining and repairing sewers and responding to complaints and concerns regarding the waste water system.

On October 1, 2010, Mr. Dugan, along with Gene Chruszcz and Don Nevels, both 7449 sewer service workers, served on a panel for interviews to select vacant 7421 Sewer Maintenance Worker positions at the Department of Public Works. Mr. Dugan had been asked by Chris Lui of the Human Resource Department of DPW to participate on this panel. Mr. Dugan was also asked by Ms. Lui to recruit additional workers to assist him with the interviews. Mr. Dugan initially recruited Lorenzo Hale and Gene Chruszcz to assist him. However, Mr. Hale could not be present on the day of the interviews so Mr. Dugan scrambled at the last minute and asked Mr. Nevels to assist him and Mr. Chruszcz. Mr. Dugan had previously participated on a similar panel years earlier. Mr. Dugan, Mr. Chruszcz and Mr. Nevels had never received training on interviewing job candidates, or on how to conduct such interviews. They relied on the brief instructions they were given prior to the interview by Chris Lui, a Senior Personnel Analyst with the DPW. These instructions included telling the interviewers to go easy on the only female candidate that day, which they did.

Mr. Dugan, Mr. Chruszcz and Mr. Nevels used scoring sheets to evaluate the candidate's answers as they were given and a tape recorder to record the interviews for all of the candidates they interviewed that day. The interviewers did not know in advance who they were interviewing and did not know any of the candidates to be interviewed. This was confirmed not just by the testimony of the interviewers, but also by Ms. Lui. While the City argued that the interviewers had familiarity with the interviewees based on Exhibit No. 65, Exhibit 65 is a posting dated September 18, 2009, and contains a large quantity of people which were not interviewed by these interviewers.

The interviews began in the early morning hours and continued until close to 5:00 p.m. that day. Mr. Dugan testified that he believed he interviewed at least 17 people on October 1, 2010. An individual by the name of Kevin Mattias was the last candidate to be interviewed that day and testified he was interviewed at approximately 4:00 p.m. The interviewers asked all the panelists the same questions and scored them on their answers. They turned in the scoring sheets to Ms. Lui who was responsible for tallying these scoring sheets.

Once the scoring sheets were turned into Ms. Lui, the Human Resource Department was responsible for tallying the scores, rating the candidates and making the final decisions regarding employment. The Department had five positions open for which the interviews were conducted. In tallying the scoring sheets, the Human Resource Department made an error when it calculated the scores for the individuals involved and marked Ray Mattias as sixth, even though his scores tied him with Nicole Cook, who was put in the fifth place spot. As a result the employment offer, which could have been offered to Mr. Mattias at that time, was not offered to him. While the City acknowledged error in this simple addition mistake, no investigation was done to figure out who in the Human Resource Department ranked Ms. Cook ahead of Mr. Mattias and offered her the job. Instead, the blame was placed on the interviewers alone.

Thereafter, on or about February 7, 2011, Ray Mattias, a cousin of interviewee Kevin Mattias sent an email to Hope Broadus claiming that Mr. Dugan had instructed Mr. Nevels and Mr. Chruszcz to lower his cousin's scores during the interview process. At some point after this complaint, the City conducted a sluggish and conclusory investigation into the 7421 interview process. The investigation began in February of 2011 and did not conclude until the *Skelly* was issued almost a year later, on January 10, 2012. The investigation was conclusory and negligent, at best. Ms. Hinderlighter's testimony made this clear when she accused Mr. Dugan with having a "fixation" with the Mattias family, and accused Mr. Dugan of sending secret messages to the other interviewers on the panel by tapping his pencil and whispering to the panel members, despite having no evidence to support these assertions. Ms. Hinderlighter herself admitted that the investigation took an inordinate amount of time, as the Human Resource Department needed more evidence with which to support their conclusion.

During the period that the investigation was ongoing, and immediately upon returning from a disability leave, Mr. Dugan was transferred from his job area to another, and as a result worked fewer hours in different conditions. Mr. Dugan had his truck taken away, as well as his computer. In addition, the City had a San Francisco Police Officer present when Mr. Dugan was forced to transfer who made Mr. Dugan leave his worksite and his belongings and transfer immediately. While this transfer was clearly disciplinary and resulted in adverse consequences for Mr. Dugan, including loss of hours and job benefits, the City maintained it was not disciplinary.

After the lengthy investigation, the City imposed discipline on Mr. Dugan, Mr. Chruszcz and Mr. Nevels. Mr. Chruszcz and Mr. Nevels received only a ten-day suspension for their conduct in the 7421 interview process, while Mr. Dugan was terminated from his job.

The City attempted to justify its termination of Mr. Dugan by including in their *Skelly* notice various incidents involving Mr. Dugan having personality conflicts with other individuals who worked with him and members of other agencies. Included in these were incidents that took place on April 15, May 6, June 23, August 11, August 19 and August 25 of 2011. All of these incidents involved exchanges that Mr. Dugan allegedly had with individuals for which he was never disciplined. Mr. Dugan admitted to some of these events having taken place and disputed others. Mr. Dugan did not receive any discipline for these incidents until his *Skelly* was issued on January 10, 2012—over eight months following the initial incident. The investigation regarding this alleged harassment did not even begin until September 28, 2011—over a month since the last incident—according to Justine Hinderlighter, and an investigation into these incidents was only conducted once the 7421 examination issues arose. Accordingly, it is the Union's position that any discipline for the April 15, May 6, June 23, August 11, August 19 and August 25, 2011 incidents is improper, untimely and in violation of the MOU between the parties and should not be considered by the Arbitrator as a basis for discipline.

It is undisputed that Mr. Dugan had personality conflicts with some of the individuals he worked with, both co-workers and his managers. Mr. Dugan and others testified to this during the hearing, and Mr. Dugan has never denied this fact. Instead, Mr. Dugan made very clear why he had issues with many of these individuals. The basis for Mr. Dugan's issues with these individuals was their misuse of authority and their misconduct, which was later substantiated by the City's own investigation and the discipline they issued against these individuals. Mr. Dugan became aware that many of these individuals were engaging in unlawful acts at work. These acts included time theft, improper use of City vehicles, among other things. Mr. Dugan's feelings about his co-workers were the subject of a whistleblower

complaint that he filed with the City and County of San Francisco, and were clearly justified, as the City has imposed discipline on all of the individuals involved. In fact, Ray Mattias and Brian Goe, among others, have received discipline which includes termination and a 30-day suspension, respectively. While these individuals are currently in the process of disputing the findings of the City, Exhibits 70 and 71 make clear that there is reason to believe that these individuals engaged in fraudulent conduct, which included theft.²

V. ARGUMENT

READ ✓

a. **The City failed to conduct a fair, diligent and timely investigation into any of the allegations against Mr. Dugan**

The MOU is clear on the timelines regarding the imposition of discipline. It states: "No action to impose discipline against an employee shall be initiated more than thirty (30) days from the date the employer knows of the conduct and has completed a diligent and timely investigation except for conduct which would constitute the commission of a crime."

This language requires that: 1) discipline be imposed no more than 30 days after the City knows of the offending conduct and has completed an investigation, and 2) that the investigation be diligent and timely, unless the conduct would constitute the commission of a crime. There are no facts which would allow the City to extend this deadline, as Mr. Dugan has not been accused of acts which could constitute a crime.

The complaint regarding the 7421 interview process was received by the City on February 7, 2011. Thereafter, the City began a lengthy investigation into the allegations made by Mr. Mattias. The last report issued by the Department of Human Resources regarding the investigation into the 7421 interview process was issued August 10, 2011. This was the third investigative process conducted by the Department, as the initial one began in February 2011 and was followed up by one in March 2011. Thereafter, interviews were conducted with individuals through August 30, 2011 regarding these interviews. No action was taken thereafter regarding these incidents until January 10, 2012. The City then re-interviewed Mr. Dugan on September 28, 2011 as part of an investigation into the alleged incidents involving harassment, for alleged incidents that took place between April 15, 2011 and August 25, 2011—before the investigation into the 7421 process was concluded. Thereafter, the City waited until November 15, 2011 to interview Mr. Chruszcz regarding these incidents. Mr. Chruszcz's testimony was clear and supported Mr. Dugan's testimony on the alleged incidents of harassment. The City did not issue the Notice of Proposed Discipline and Skelly letter until January 10, 2012.

The City has violated both of the requirements discussed above regarding the timelines for the imposition of discipline. The City did not impose discipline within 30 days of completing their investigation into the 7421 process, as those interviews were concluded on August 30, 2011. The City also did not impose discipline within 30 days of completing their investigation into the alleged

² It is interesting to note that with regard to Mr. Mattias, the City chose not to include charges relating to inappropriate verbal exchanges he had with Mr. Dugan which he admitted to during his testimony. In fact, Mr. Mattias was never disciplined for these incidents.

harassment, as Mr. Chruszcz was last interviewed on November 15, 2011 and gave brief testimony which only supported Mr. Dugan's testimony.

In addition, the City also failed to conduct a timely and diligent investigation into both of these sets of incidents. The City took over a year to complete the investigation into the 7421 hiring process and did not initiate an investigation into the harassment incidents until well after these incidents had taken place. It is apparent from the City's conduct that they were attempting to sandbag Mr. Dugan by grouping these incidents together when they realized that they were not sufficient, either independently or together, to support the discipline of termination they wished to impose on Mr. Dugan. This is supported by the City's conduct during the arbitration wherein they attempted to imply that Mr. Dugan was a threat to his coworkers and to make Mr. Dugan sound like a violent individual, despite testimony by many that Mr. Dugan was not a threat and used just as much foul language as others.

The Arbitrator should find that the City cannot misuse their power in the manner attempted by stretching out conclusory investigations over the span of a year and by attempting to relate back allegations which were never properly investigated when they initially took place. If the City wishes to impose discipline on employees who violate policies in the future, it should be required to adhere to the terms of the MOU and do so in a fair, timely and diligent manner. Their failure to timely impose discipline and to conduct a diligent and timely investigation in this case violates the terms of the MOU. Accordingly, the Arbitrator should uphold the grievance and reinstate Mr. Dugan.

b. The City failed to impose progressive discipline

The Grievant has known issues with many of his coworkers. These issues stem from the Grievant having witnessed and complained about his coworkers and supervisors' misuse of authority and theft of City property. In some cases, his coworkers had mutual feelings of dislike against Mr. Dugan and freely expressed them. Despite this, only Mr. Dugan was disciplined (and in an untimely manner) for the personality conflicts he had at work. Rather than handle the situation as it did, the City was obligated to use progressive discipline as a means of corrective action. The City should have notified Mr. Dugan in a timely manner of any issues it had with Mr. Dugan's conduct and issued appropriate discipline, if it felt that was necessary. Instead, the City failed to conduct a timely investigation and issue discipline in a timely manner and in a way that would comport with the principles of progressive discipline.

We recognize the Arbitrator's comprehensive knowledge of basic principles. However, the Union requests that they be included in the Award to prevent future violations of the CBA. A fundamental aspect of the just cause standard is that, except for the most egregious kinds of misconduct, such as theft or actual violence, discipline must be corrective or progressive. In other words, the employee must be put on notice that the particular infraction is unacceptable and, if repeated, discipline will be progressively applied with increasing severity up to and including termination.

Progressive discipline does not mean that an employee is given a certain number of "chances" based on *any* type of infraction of the various employer rules, each of which hold varying degrees of importance. The standard is specific and is founded on an underlying purpose. It is said to be "axiomatic the third degree of penalty should be in keeping with the seriousness of the offense."

(*Elkouri & Elkouri*, How Arbitration Works (Sixth Ed.) at p. 964) And "those less serious infractions of plant rules or of proper conduct such as tardiness, absence without permission, careless workmanship, influence, etc. ... call not for discharge for the first offense and usually not even for the second or third offense, but for some milder penalty aimed at correction." (*Id.*)

Discipline may be considered to be excessive 'if it is disproportionate to the degree of the offense, if it is out of step with the principles of progressive discipline, if it is punitive rather than corrective...' Arbitrators are likely to set aside or reduce penalties when the employee had not previously been reprimanded and warned that his or her conduct would trigger discipline.

([citation omitted] *id.* at p. 966.)

The facts here give a quintessential example of "less serious infractions" that do not call for the severe discipline that was imposed. Moreover, the City's failure to bring these to Mr. Dugan's attention in a timely and fair manner did not give Mr. Dugan the opportunity he deserved to correct these issues and/or to defend himself from the allegations made against him.

Even should the Arbitrator determine that the City had cause to issue some level of discipline on Mr. Dugan, a lesser form of discipline is only what could have been appropriate in keeping with the tenets of progressive discipline. At most, the City should have given Grievant a verbal warning with regard to the allegations of verbal harassment against Mr. Dugan's coworkers, as anything more would have been disparate compared to what others he worked with received.

Progressive discipline is not a "three strikes" law. The spirit and purpose behind this foundational linchpin of the just cause standard directs that the employee be put on proper notice "aimed at correction." (*Elkouri* at p. 964.) The unrelated offenses with which the Grievant is charged cannot be lumped together. Discipline for one does not provide notice and an opportunity to correct for another.

c. The City's discipline of Mr. Dugan evidences its disparate treatment of employees

The City's attempt to terminate Mr. Dugan for the Skelly allegations evidences a clear pattern of disparate treatment towards Mr. Dugan. Mr. Dugan, who filed a whistleblower complaint against his coworkers and supervisors, was viewed as causing trouble for other PUC employees. Both his supervisors and his coworkers were aware that Mr. Dugan had filed complaints with the City regarding their time theft and misappropriation of City property. These individuals had the motive and means to have Mr. Dugan terminated and worked hard to achieve this goal. The City participated in treating Mr. Dugan differently from his coworkers by disciplining Mr. Dugan for offenses that others were not disciplined for and by investigating incidents well past the time period contemplated by the parties in the MOU.

The City has requested that the Arbitrator uphold the termination of Mr. Dugan despite having imposed much lesser discipline on other individuals named by Mr. Dugan in his whistleblower complaint for which the City found evidence of wrongdoing that exceeded any wrongdoing allegedly committed by Mr. Dugan.

While Ray Mattias' proposed discipline for falsification of time sheets, fraud, absence without approved leave, misuse of City resources, violations of three City policies and dishonesty was termination, Brian Goe's proposed discipline for these same allegations is a 30-day suspension. Moreover, Mr. Mattias was never disciplined for the incidents of verbal harassment he admitted to having engaged in with Mr. Dugan, nor did the City investigate Mr. Mattias' verbal harassment towards Mr. Dugan.

The City clearly holds Mr. Dugan to a higher standard than any of his coworkers and supervisors. Disparate treatment of employees is well-recognized as a basis for overturning discipline. As such, the Arbitrator should find that the City's disparate treatment of Mr. Dugan violates the MOU and dismiss the discipline imposed on Mr. Dugan.

d. The allegations do not provide sufficient basis for the termination of Mr. Dugan.

The City's attempt to misuse the MOU between the parties must be denied. The MOU between the parties makes clear that the City has 30 days from the date they knew of any offending conduct and completed a diligent and timely investigation to impose discipline. The Union maintains that the City violated this provision when it chose to impose discipline against Mr. Dugan close to one year after the 7421 interview process took place, and when it failed to timely impose discipline relating to the alleged harassing conduct involving Mr. Dugan. The Union recognizes that this provision does not require that discipline be imposed within 30 days of the offending conduct taking place, but allows the City time to complete a diligent and timely investigation. However, the Arbitrator should find that the City did not complete a diligent and timely investigation of any of the allegations against Mr. Dugan based on the arguments and facts above.

While the Arbitrator has the power to impose a remedy in this matter, the Arbitrator does not have the power to revise the MOU between the parties to extend the deadline to impose discipline. The parties must mutually agree upon that in writing in order to do so. The provisions of the MOU are clear on this topic and were not followed by the City. In fact, it was not until the City began to investigate the 7421 interview incident that they considered imposing discipline for the alleged incidents of harassment. At that point, those incidents were stale under the MOU and the time for conducting a timely investigation had passed.

While the City will argue that it required close to a year to conduct a thorough investigation of the allegations, the facts show otherwise. With regard to the alleged harassing incidents, the City had notice at the time these incidents took place and solicited emails and statements from the individuals involved. If the City and the Department had any interest in imposing discipline, it was required to do so upon receipt of these statements. It chose, instead, to wait close to a year to do so.

Even if the Arbitrator were inclined to allow the City to assert that the investigation of the 7421 interview process was timely, the Arbitrator should find that the discipline the City imposed against Mr. Dugan is far beyond what was called for, as the other panelists involved only received 30-day suspensions, which were later mitigated to 10 days for each. The disparity in the discipline received by Mr. Dugan as compared to others is reinforced by the proposed discipline pending against Mr. Mattias and even more by that pending against Mr. Goe, who have both been accused of conduct which is potentially criminal, as it involves theft and fraud.

VI. REMEDY

When an employer has failed to establish that a discharge is justified under all of the circumstances, the remedy is to restore the *status quo ante* by setting the termination aside and ordering that the grievant be reinstated and made whole for loss of pay and benefits resulting from the wrongful termination. Such a remedy is called for in this case. Here, the Employer violated the MOU when it terminated Mr. Dugan without cause. As such, Mr. Dugan is entitled to reinstatement and back pay.

The Union urges the Arbitrator to order that the back pay and benefits Award include an order that interest be paid on all of these monies, starting on the date of discharge. This award of interest is not punitive, because it simply reimburses Ms. Cruz Colon for the value of the money not received, and conversely requires the Employer to pay for the use of that money during the lengthy period while this grievance has been pending. Awards of interest are authorized by law for California employees. Goldfarb v. Civil Service Com. (1990) 225 Cal.App.3d 633; 275 Cal.Rptr. 284; San Diego County Deputy Sheriffs Assn. v. San Diego County Deputy Sheriffs Assn. v. San Diego County (1998) 68 Cal.App.4th 1084; 80 Cal.Rptr. 2d 712. Many Awards support this conclusion.

In Allied Chemical Company, 47 LA 686, 690 (Hilpert 1966), the Arbitrator ruled that interest should be a proper component of an Arbitrator's award, absent a specific contractual provision to the contrary. See also Oscar Joseph Stores, Inc., 41 LA 567 (Whitting, 1963) (Award of interest appropriate when employee withheld contractually scheduled wage increase); Osborn & Ulland, Inc., 68 LA 1146 (Beck, 1977) (Interest awarded on back pay to improperly discharged employee); Coppes, Inc., 80 LA 1060 (Kossoff, 1983) (Interest awarded when employer withheld vacation pay due to depressed economic conditions); Hollander & Co., 64 LA 816 (Edelman, 1975); Farmer Bros. Co., 66 LA 354 (Jones, 1976); Smithtown Nursing Home, 65 LA 363, 365 (Sandler, 1975).

Some arbitrators have awarded interest where the Employers' conduct was knowingly without merit or otherwise offensive. Sunshine Convalescent Hospital, 62 LA 276 (1974); Markle Manufacturing Co., 73 LA 1292 (1980). While the awards of interest were especially compelling in these cases, such special circumstances are not required because an award of interest is fundamentally compensatory, rather than punitive.

There is judicial support for the authority of an Arbitrator to award interest. In Falstaff Brewing Corp. v. Local No. 153, Teamsters, 103 LRRM 2008 (D.C. NJ 1978), aff'd 108 LRRM 2864 (3rd Cir. 1979), the court held that an Arbitrator did not exceed his contractual authority by imposing interest on the amount of damages assessed against an employer for breach of the labor contract.

The amount of interest awarded should be the same as that set by the State of California courts. As between the Employer, which violated the contract, and the grievant, the Employer should bear the burden of paying for the cost of the money during the litigation of this case. The parties authorized the Arbitrator to fashion an "appropriate remedy." Certainly the request for interest is reasonable and inherently within the power of the Arbitrator. The controlling rate of interest pursuant to Civil Code Section 3289 (b) is 10% per annum from the date of the breach.

Mr. Alexander "Buddy" Cohn
March 24, 2014
Page 10

VII. CONCLUSION

For the foregoing reasons the Union asks the Arbitrator to uphold the grievance and find that there was no just cause for the termination of Mr. Dugan, and reinstate MR. Dugan with a full back pay award.

Sincerely,



Concepción E. Lozano-Batista

CEL:
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ARTICLE II – EMPLOYMENT CONDITIONS

removal may be considered on a case by case basis, depending upon the circumstances, by the Appointing Officer or designee.

79. Once the statute of limitations for the filing of civil litigation has run involving any material that has been sealed, the removal provisions of paragraph one shall apply.

80. It is understood that replacing the word "removed" with the word "sealed" above shall not be construed to change the intent of this section with respect to the department's access to such material. Rather, the intent of this change is to assure that the material is not discarded or destroyed so that it is available to the City Attorney only on an as needed basis. In the event a sealed file is to be opened, the department will notify the employee and allow the employee and his/her representative to be present.

81. No action to impose discipline against an employee shall be initiated more than thirty (30) days from the date the employer knows of the conduct and has completed a diligent and timely investigation except for conduct which would constitute the commission of a crime. The discipline imposed may take into account conduct that is documented in the employee's personnel file or was the subject of a prior disciplinary action.

II.C. SENIORITY

82. It is recognized that the appointing authority has the sole authority regarding work shift assignments and the assignment of work generally. Nonetheless, and consistent with departmental operational needs, the Employee Relations Division, and the Union recommend and encourage City departments to give due consideration to departmental seniority in the bidding of work shifts, the making of assignments and the selection of vacation time.

II.D. TRAVEL PAY

83. Employees who reside within the City and County of San Francisco and are assigned to work at San Francisco International Airport or Sharp Park shall be reimbursed for travel expenses to and from these locations in the amount of \$2.30 per day. Employees who reside within the City and County of San Francisco and are assigned to work at Millbrae shall be reimbursed for travel expenses to and from this location in the amount of \$2.00 per day.

84. Effective July 1, 2010, travel pay for employees who reside within the City and County of San Francisco and are assigned to work at San Francisco International Airport, Sharp Park or Millbrae shall sunset.

85. Employees who reside within the City and County of San Francisco and are assigned to work at Sunol shall be reimbursed for travel expenses to and from Sunol in the amount of \$7.00 per day. In order for an employee to be eligible for this benefit, he or she must file a

ARTICLE II – EMPLOYMENT CONDITIONS

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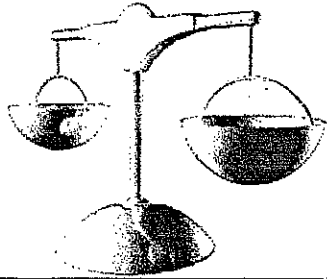
CSC-12 (07/07)

Date Received by Civil Service Commission: _____

State the basis of this appeal in detail:

George Dugan has been an employee of the City and County of San Francisco since 1985. He was appointed to a permanent civil service position as Class 7246 Sewer Repair Supervisor in 2000. On May 9, 2012, he received notice of termination from employment effective May 9, 2012, along with Notice of Separation with restrictions against future employment with the City and County of San Francisco as well as with the Public Utilities Commission. Mr. Dugan contests the restrictions as violations of his rights to due process, as he has not yet had a full hearing on the charges underlying the disciplinary action and contends that many of the charges are unsubstantiated, the disciplinary action is without just cause and does not follow progressive discipline. Mr. Dugan's overall performance has been satisfactory, and the evidence will show that not only has he been willing to, but has made successful efforts to correct his performance deficiencies since he was on the job for approximately two months prior to being terminated, but will also show that the termination was motivated in substantial part because he filed a whistleblower complaint against coworkers and supervisors alleging misappropriation of funds and property of the City.

Accordingly, Mr. Dugan requests a hearing before the Civil Service Commission in order to present evidence of his good character and satisfactory performance, the timing and basis for the whistleblower complaint and its relationship to the termination action, in order to demonstrate that there is no basis to deny him future employment with the Public Utilities Commission and the City and County of San Francisco.



Krasney v. Cohn

Krasney v. Cohn

Filed 5/22/07 Krasney v. Cohn CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

KELLY KRASNEY,	E040485
Plaintiff and Respondent,	(Super.Ct.No. RIC 436286)
v.	OPINION

ALEXANDER COHN,

Defendant;

COUNTY OF RIVERSIDE,

Real Party in Interest and Appellant.

APPEAL from the Superior Court of Riverside County. Edward D. Webster, Judge. Affirmed.

Joe S. Rank, County Counsel, and Jamila T. Purnell, Deputy County Counsel, for Real Party in Interest and Appellant.

Roth & Roth and Diane Catran Roth for Plaintiff and Respondent.

The single issue in this case is whether appellant, defendant, Alexander Cohn, can impose an 80-day suspension rather than a 40-day suspension on a County employee, plaintiff Kelly Krasney.

The County of Riverside, the real party in interest, appeals from a judgment by the superior court reversing the arbitrators award imposing an 80-day suspension, instead of a 40-day suspension, on Krasney. The arbitrator had also reversed the County's decision to terminate Krasneys employment. That reversal is not challenged on appeal.

The County argues the superior courts judgment was an abuse of discretion because the arbitrator could properly award an 80-day suspension. Krasney contends the arbitrator could award only a 40-day suspension.

We are not persuaded that the governing memorandum of understanding (MOU) affords the arbitrator power to impose greater discipline than it gives the County. We affirm the judgment of the superior court reversing the 80-day suspension.

2. Factual and Procedural Background

Krasney was a supervisor in the Countys Department of Public Social Services (DPSS). In early March 2002, a child was killed who had been the subject of a department referral handled by Krasney. Krasneys handling of three other cases was also reviewed. Krasneys employment was terminated in January 2003. A six-day arbitration was conducted in 2003 and 2004. In March 2005, the arbitrator ruled that Krasney was not discharged for just cause and the improper termination shall be converted to a disciplinary suspension without back pay or benefits, except seniority, for eighty (80) working days.

The relevant sections of the governing MOU are articles XI and XII. Article XI, entitled Discipline, Dismissal, and Review, provides in section 3: Suspension of an employee shall not be for more than 40 working days. Article XII, entitled Disciplinary Appeal Procedure, provides in section 8.J.4: In the case of discharges, if the arbitrator finds the order of discharge should be modified, the appellant shall be reinstated to a position in the classification held immediately prior to discharge subject to forfeiture of pay and fringe benefits for any period of suspension imposed by the arbitrator.

Furthermore, at the beginning of the arbitration, the parties stipulated the issue in dispute in this matter is whether Grievant was discharged for just cause and, if not, what shall be the remedy?

3. Discussion

The acknowledged standard of review is whether the arbitrators determination of the 80-day suspension constitutes a substantial error of law. (*Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 217-218.)

The MOU states the County may impose a suspension of no more than 40 days. Notwithstanding this limitation on suspension, the County asserts that an arbitrator hearing an appeal of a County disciplinary action may impose any period of suspension.

We disagree. The County does not point to any language in article XII, covering Disciplinary Appeal Procedure, that grants an arbitrator expanded or unlimited authority to fix the period for a disciplinary suspension. The County offers no credible argument or authority that any period of suspension in article XII was intended to or operated to supplant the 40-day suspension expressed in article XI.

The primary case cited by the County, *Kolender v. San Diego County Civil Service Com.* (2005) 132 Cal.App.4th 1150, dealt with the reduction by a civil service commission of a termination by the sheriff to a 90-day suspension. *Kolender* did not address whether the 90-day suspension was too long pursuant to an MOU, the issue presented here.

The case of *Hankla v. Long Beach Civil Service Com.* (1995) 34 Cal.App.4th 1216, 1222, merely expressed the general principle that the arbitrators decision must be supported by substantial evidence. The issue in the present case is not whether the suspension was correct or not but whether it could be 80 days instead of 40. Under the terms of the MOU, 40 days was the longest permissible suspension.

The Countys reliance on *Barber v. State Personnel Board* (1976) 18 Cal.3d 395, 404-405, and *Pegues v. Civil Service Com.* (1998) 67 Cal.App.4th 95, 107, also does not help. Both of those cases hold the trial court or appellate court may not substitute its own discretion on the issues of penalty. Neither case states an arbitrator may override the terms of an MOU.

The stipulation regarding the scope of the arbitration did not include an agreement the arbitrator could impose a different penalty than the one established by the MOU. Therefore, the arbitrators award was not based on contractual language or the parties conduct. (*Sunshine Mining Co. v. United Steelworkers of America, etc.* (9th Cir. 1987) 823 F.2d 1289, 1293.) The arbitrator exceeded the scope of the issues submitted and made a decision violating due process accorded to public employment and running counter to public policy. (*Perea v. Fales* (1974) 39 Cal.App.3d 939, 941; *SFIC Prop. v. Internat. Ass'n of Mach. & Aero. Wkrs.* (9th Cir. 1996) 103 F.3d 923, 925.)

4. Disposition

The 80-day suspension was an abuse of discretion by the arbitrator. We affirm the judgment of the superior court. Respondent shall recover her costs on appeal.

s/Gaut

J.

We concur:

s/Hollenhorst

Acting P. J.

s/Richli

J.

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Commissioner Biographies



Vince Courtney is President of the Commission. He is a San Francisco native, has been the Labor Representative/Political Director for Laborers' International Union (LIUNA) Local 261 since 2004. He was appointed to the Northern California District Council of Laborers (NCDCL) as Special Assistant to LIUNA Vice-President and NCDCL Business Manager Oscar De La Torre in 2009, and is involved in labor relations/collective bargaining throughout the region. In 2010, he was elected to the Executive Committee of the San Francisco Labor Council and was appointed to the Executive Board of the California Alliance for Jobs.

President Courtney serves as the Executive Director and Board Member of the Laborers' Community & Training Foundation (LCTF) Board of Directors, developing unique "pre-apprenticeship" career path opportunities for community youth in the construction trades.

He has also been a member of the San Francisco Department of Public Works Apprenticeship Board since 2005 and was instrumental in the development of the first State-Certified Horticultural Worker Apprenticeship Program. This work resulted in the establishment and accreditation of the San Francisco Recreation and Park Department Gardener Apprenticeship Program on October 20, 2010.

A graduate of the University of California, Santa Cruz, Courtney earned his law degree from San Francisco Law School in 1999. Under Mayor Willie L. Brown, Jr., he served the City as Delinquency Prevention Commissioner and later as member of the Sunshine Ordinance Task Force. He currently resides in the Fillmore District.

President Courtney serves in Seat 5: At-Large Member. His current term began 9/25/12 and ends 8/1/16.



Ann Moller Caen is the Vice President of the Commission. She is President of her own company, Moller & Associates, a consulting firm. She also serves on the Board of Governors of the San Francisco Symphony, the Board of Trustees of Golden Gate University, as well as the UCSF Foundation. She has served on Boards of the San Francisco Convention and Visitors Bureau, the Fisherman's Wharf Merchant's Association, and the San Francisco Museum of Modern Art. Caen was also a Director of Pier 39, Siwel, Inc., and Sico Inc. Additionally, she was President of the Nob Hill Capital and Publisher of the San Francisco Visitor News. She is also involved with the Audubon Canyon Ranch, the International Hospitality Center, KQED, the California Pacific Medical Center, the San Francisco Junior League, and the Northern California Cancer Center, the San Francisco Junior League, and the Northern California Cancer Center.

Commissioner Caen holds a BS in Biology and Education and an MBA in Finance. She is the widow of Pulitzer Prize-winning columnist, Herb Caen. She was first appointed by Mayor Willie L. Brown, Jr. in March 1997, and reappointed for a second term in November 2001. Mayor Gavin Newsom reappointed her to a third term in January 2005. Mayor Edwinn Lee reappointed her to a fourth term in September 2012. She served as President of the Commission from July 1998 to January 2000; September 2001 until January 2003; and January 2008 until September 2009.

Vice President Caen serves in Seat 3: Experience in project finance. Her current term began 9/25/12 and ends 8/1/16.



Francesca Vietor has more than 20 years of experience working for environmental and social change in the United States and internationally. Previous positions include serving as President of the Urban Forest Council (2003-2005), Chair of the Mayor's Environmental Transition Team (2003), President of the S.F. Commission on the Environment (1997-1999), and Director of the San Francisco Department of the Environment (1999-2001). Francesca was appointed to the San Francisco Public Utilities Commission in September of 2008.

Vietor is currently the Program Director for Environment, Public Policy and Civic Engagement at The San Francisco Foundation. Previously she served as the Executive Director of the Chez Panisse Foundation. She has served on both the staff and board of the Rainforest Action Network and worked for Greenpeace, Island Press, Commonweal, and CARE Madagascar. She is the co-founder and co-director of 1000 Flowers, a national woman's voter registration and mobilization effort, which registered and activated over 20,000 women in 47 states.

Francesca has also contributed to her community through many board appointments over the years. She currently serves on the board of directors of EWG and SPUR. She holds a Bachelor of Sciences from Georgetown University, pens a blog for the Huffington Post. Vietor lives in San Francisco with her daughter Chiara.

CLOSED SESSION

**(11) Filling the vacancy of the position of Executive Officer – Personnel Matter.
(File No. 0181-14-1) – Discussion and Possible Action**

- A) Public Comment on all matters pertaining to the Agenda item and the potential closed session.
- B) Vote on whether to hold closed session pursuant to San Francisco Administrative Code Section 67.10 (b) and California Government Code Section 54957 (b) (1) - Public Employee Appointment – Executive Officer. – Action Item
 - 1) PERSONNEL MATTER - Public Employee Appointment – Executive Officer (Discussion and Possible Action Item)
California Government Code Section 54957 (b) (1) and San Francisco Administrative Code Section 67.10 (b)
- C) Reconvene in open session:
 - 1) Vote to elect whether to disclose any or all discussions held in closed session.
(San Francisco Administrative Code Section 67.12(a). (Action Item)
 - 2) Disclosure of action taken in closed session pursuant to California Government Code Section 54957.1 (a) (5) and San Francisco Administrative Code Section 67.12(b) (4).

August 22, 2014:

The Commission agreed on the following actions:

1. Allocated a budget not to exceed \$15,000 for a recruitment firm that will undertake the majority of the work under the joint direction of Ted Yamasaki and a Subcommittee/Task Force working together.
2. Commissioner Favetti will assist Commission President Normandy in screening who to interview, with the agreement that as the process is shaped it will be reported to the Commission. And once the finalists are chosen, the Commission will conduct interviews.
3. The Subcommittee and Mr. Yamasaki will determine the appropriate scope of the recruitment, with the initial preference being the Bay Area and then the State of California in light of concerns to limit costs, as a suggestion for the recruiter to consider.
4. Request the Executive Officer to review interview questions, provide input on the selection process and regularly update the Civil Service Commission on the recruitment process at these meetings.
5. Adopt the staff report subject to the above resolutions, and adopt recommendations 3, 4 and 5 of the Executive Officer's staff report: the Subcommittee is to update the Executive Officer announcement, including amendments to the minimum and desirable qualifications with the advice of the recruiter to ensure a healthy pool of candidates; and schedule closed session hearings of the Commission when appropriate in recognition of the interest of confidentiality of applications and applicants.

- October 20, 2014: The Commission voted not to disclose any and all discussions held in Closed Session.
- November 3, 2014: The Commission voted not to disclose any and all discussions held in Closed Session.
- November 17, 2014: The Commission voted not to disclose any and all discussions held in Closed Session.
- December 1, 2014: The Commission voted unanimously to select a candidate for the position of Executive Officer and will disclose name when negotiations are final.
- Recommendation:** Open for discussion.

**Commissioners'
Announcements!
Request**

Adjournment
