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January 23, 2026

OPINION AND AWARD
INTEREST ARBITRATION PROCEEDINGS
PURSUANT TO THE CHARTER OF
THE CITY AND COUNTY OF SAN FRANCISCO

In the Matter of a Dispute Between	)	
	)	
The City and County of San Francisco (Employer)	)	
	)	2025 Reopener
and	)	
Municipal Attorneys Assn., Teamsters Local 856 (Union)	)	

Appearances:

For the Employer:	Arthur A. Hartinger, Attorney Renne Public Law Group 350 Sansome St., Suite 300 San Francisco, CA 94104
For the Union:	Susan K. Garea, Attorney Laura Christensen Garcia, Attorney Beeson, Tayer, and Bodine 492 9th St., Suite 350 Oakland, CA 94607

The Arbitration Board:

Appointed by the Employer:	Jonathan V. Holtzman, Attorney Renne Public Law Group
Appointed by the Union:	Nathan A. Quigley, President Municipal Attorneys Association
Neutral Chairperson:	Paul D. Roose, Arbitrator and Mediator Golden Gate Dispute Resolution

Testifying on Behalf of the Employer:

Steve Ponder
Claire McCaleb
Arthur Hartinger (examined by Mr. Holtzman)
Louise Renne
Elizabeth Salveson
Dennis Herrera
Carol Isen

Testifying on Behalf of the Union:

Matthew Finnegan
Kara Lacy
Matthew Beltramo
Kerianne Steele

STATUTORY AND CONTRACTUAL FRAMEWORK AND PROCEDURAL BACKGROUND

The parties have a collective bargaining agreement in place that runs through June 30, 2027. In 2024, the undersigned arbitrator served as the neutral chairperson of the arbitration board in the last round of negotiations. Mediation of the contested issues resulted in a tentative agreement on April 25, 2024, that was subsequently ratified by the Union membership and the Employer's governing board. The relevant section of the resulting MOU reads as follows:

> The Union has filed PERB Charge No. SF-CE-2157-M. If the PERB Board issues a decision on the merits on or before October 30, 2026, the MOU will reopen on the issue of job protections and the parties will proceed consistent with PERB's decision. The Parties will bargain for a period of thirty (30) days and then will proceed to applicable impasse procedures pursuant to PERB's order before Paul Roose within ninety (90) days of the PERB Decision. Nothing in this provision will preclude either party from pursuing a judicial appeal of PERB's decision or a court order to stay or void any arbitration award under the Charter impasse resolution process.

On April 25, 2025, the California Public Employment Relations Board (PERB) issued its decision in the above-referenced case. In accordance with the reopener language, the parties bargained from May 20 to July 9, 2025. They reached impasse and scheduled mediation and arbitration sessions with the undersigned neutral.

Under the Charter of the City and County of San Francisco (CCSF), Section A8.409-4 Impasse Resolution Procedures, unresolved disputes related to wages, hours, benefits, and other terms and conditions of employment for non-safety employees are subject to interest arbitration. The recognized employee organization and the employer each appoint a member to an Arbitration Board, and a neutral chairperson is selected by mutual agreement of the parties. The parties, in the instant matter, each appointed an Arbitration Board member and mutually selected the undersigned to serve as the neutral chairperson in accordance with the reopener provision.

The Charter states that the Board holds a public hearing and receives evidence from the parties.[1] The Charter states that the "Arbitration Board may also adopt such other procedures that are designed to encourage an agreement between the parties, expedite the arbitration hearing process, or reduce the costs of the arbitration process."

An off-the-record mediation session was convened in San Francisco on September 2, 2025. Agreement was not reached. On-the-record arbitration sessions took place in San Francisco on September 5, September 26, and October 17, 2025. Throughout this time frame, additional off-the-record arbitration board meetings and mediation sessions took place, both in person and via Zoom. On October 23, 2025, the parties stipulated that a single issue was before the arbitration board for decision – job protections for attorneys. On that date, the parties also submitted to the arbitration board their last, best and final offers of settlement.

The parties chose to conclude their presentations by filing written briefs. Those briefs were received by the arbitration board on December 22, 2025. The undersigned neutral chair agreed to submit a draft decision to the arbitration board by January 14, 2026, with the final decision due January 23, 2026.

The Board must decide the issue on a majority vote by:

> selecting whichever last offer of settlement on that issue it finds by a preponderance of the evidence presented during the arbitration most nearly conforms to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of public and private employment, including, but not limited to: changes in the average consumer price index for goods and services; the wages, hours, benefits and terms and conditions of employment of employees performing similar services; the wages, hours, benefits and terms and conditions of employment of other employees in the City and County of San Francisco; health and safety of employees; the financial resources of the City and County of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst for the Board of Supervisors; other demands on the City and County's resources including limitations on the

[1] No member of the public attended the arbitration sessions.

amount and use of revenues and expenditures; revenue projections; the power to levy taxes and raise revenue by enhancements or other means; budgetary reserves; and the City's ability to meet the costs of the decision of the Arbitration Board. In addition, the Board shall issue written findings on each and every one of the above factors as they may be applicable to each and every issue determined in the award. Compliance with the above provisions shall be mandatory. [A8.409-4(d)]

OTHER RELEVANT CCSF CHARTER PROVISIONS

SEC. 10.104. EXCLUSIONS FROM CIVIL SERVICE APPOINTMENT.

All employees of the City and County shall be appointed through competitive examination unless exempted by this Charter. The following positions shall be exempt from competitive civil service selection, appointment, and removal procedures, and the person serving in the position shall serve at the pleasure of the appointing authority:

13. All attorneys, including an attorney to the Sheriff and an attorney for the Tax Collector, City Attorney's and District Attorney's investigators…

RELEVANT CCSF CIVIL SERVICE COMMISSION RULES

Sec. 114.25 Exclusions from Civil Service Appointment

All permanent employees of the City and County shall be appointed through the civil service process by competitive examination unless exempted from the civil service examination and selection process in accordance with Charter provisions. Appointments excluded by Charter from the competitive civil service examination and selection process shall be known as exempt appointments. Any person occupying a position under exempt appointment shall not be subject to civil service selection, appointment, and removal procedures and shall serve at the pleasure of the appointing officer.

"Service Adviser" dated April 1, 2018:

EXEMPT APPOINTMENTS (Know Your Status)

Charter Section 10.104 provides for positions and appointments excluded from permanent civil service appointment and removal procedures. These positions and appointments are defined as "exempt." Exempt employees are considered "at-will" and serve at the discretion of the appointing officer. Department Heads may, but are not required to use merit system criteria as guidelines in exempt selection, appointment and employment. However, Federal, State and Local anti-discrimination laws continue to apply to exempt selection, employment, and removal decisions. Departments are required to give notification to the exempt appointee of their exempt status.

RELEVANT CONTRACT PROVISIONS

PREAMBLE

1. This Memorandum of Understanding (hereinafter "MOU") is entered into by and between the City and County of San Francisco (hereinafter "City") acting through its designated representatives and the Municipal Attorneys Association (hereinafter "MAA"). It is agreed that the delivery of municipal services in the most efficient, effective, ethical, professional and courteous manner is of paramount importance to the City and the represented attorneys. Such purpose is recognized to be a mutual obligation of the parties to this agreement within their respective roles and responsibilities. Nothing in this agreement shall be construed to require any represented attorney to violate the California Rules of Professional Conduct.

ARTICLE I. REPRESENTATION

I.A. RECOGNITION

2. The City acknowledges the MAA as the exclusive bargaining representative for all represented attorneys assigned to Bargaining Unit 31 in the following job codes:

8177 Attorney
8181 Assistant Chief Attorney I
8182 Head Attorney, Civil and Criminal
8183 Assistant Chief Attorney II
8190 Attorney, Tax Collector
8193 Chief Attorney I (Civil and Criminal)

I.B. INTENT

7. The provisions of this MOU shall supersede and control over contrary or contradictory Charter provisions, ordinances, resolutions, rules or regulations of the City to the extent permissible by Charter Section A8.409.

I.C. MANAGEMENT RIGHTS

8. Unless specifically in conflict with the MOU, all management rights shall remain vested exclusively with the City. City management rights include but are not limited to:

15. g. The right to establish and enforce employee performance standards;

17. i. The right to hire, fire, promote, discipline, reassign, transfer, release, layoff, terminate, demote, suspend or reduce in step or grade, all employees;

19. k. The right to inquire and investigate regarding complaints or concerns about employee performance deficiencies or misconduct of any sort, including the right to require represented attorneys to appear, respond truthfully and cooperate in good faith regarding any City investigation;

ARTICLE II - EMPLOYMENT CONDITIONS

II.A. NON-DISCRIMINATION

57. The City and the Union agree that discriminating against or harassing employees, applicants, or persons providing services to the City by contract because of their actual or perceived race, color, creed, religion, sex/gender, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, age, political affiliation or opinion, gender identity, gender expression, sexual orientation, military or veteran status, or other protected category under the law, is prohibited. This paragraph shall not be construed to restrict or proscribe any rule, policy, procedure, order, action, determination or practice taken to ensure compliance with applicable laws.

II.I. SEVERANCE PAY

73. The City agrees that when removing or releasing a represented attorney from employment, the Appointing Officer will endeavor to inform the attorney at least thirty (30) calendar days before the attorney's final day of work. Where the Appointing Officer fails or declines to inform the attorney a full thirty (30) calendar days in advance, the attorney shall receive pay in lieu of the number of days less than thirty (30) upon which the attorney was informed.

74. Due to the unique job responsibilities of the attorneys and the attorneys' status in the City as exempt from civil service selection, appointment and removal procedures (as provided by the Charter), the City and MAA agree to the following: In addition to the notice or pay in lieu thereof provided above, a represented attorney in an attorney job code who is removed or released from City service by the Appointing Officer shall receive the following severance benefit in exchange for a general release, in a form acceptable to the City, signed by the represented attorney and MAA, of any and all claims that the attorney may have against the City (including any officer or employee thereof).

75. This release shall include a waiver of any rights the employee may have to return to City employment, a waiver of Section 1542 of the California Civil Code, and a waiver of claims under the Age Discrimination in Employment Act. The release shall exclude the right to grieve the proper amount of notice or severance pay due under this Section II.I.

76. In order to receive severance pay, an eligible employee or MAA must notify the Appointing Officer or the Appointing Officer's designee that the employee is electing to receive severance pay within thirty (30) days of notification of involuntary release or removal from employment.

77. The decision to accept severance pay in exchange for a general release is entirely voluntary. Employees are free to reject severance pay (and not provide a release) in order to pursue other lawful remedies.

78. Severance benefits are as follows:
1-4 years completed: 4 weeks' pay severance
5 years completed: 5 weeks' pay severance
6 years completed: 6 weeks' pay severance
7 years completed: 7 weeks' pay severance
8 years completed: 8 weeks' pay severance
9 years completed: 9 weeks' pay severance
10 years completed: 10 weeks' pay severance
11 years completed: 11 weeks' pay severance
12 years completed: 12 weeks' pay severance

13 years completed: 13 weeks' pay severance
14 years completed: 14 weeks' pay severance
15 years completed: 15 weeks' pay severance
16 years completed: 16 weeks' pay severance
17 years completed: 17 weeks' pay severance
18 years completed: 18 weeks' pay severance
19 years completed: 19 weeks' pay severance

79. For attorneys with twenty or more years of City service, the severance benefit shall increase to two weeks' pay for each year of City service over ten years.
Example of calculation:
A represented attorney has 24 years of service at the time of separation.
1 to 10 years=10 weeks
10 to 24 years= 28 weeks
Total Severance= 38 weeks

86. The City is not required to pay severance if it terminates the represented attorney under the following procedure:

87. The represented attorney may be removed or discharged at a hearing by the appointing officer for gross misconduct by clear and convincing evidence on that allegation after being provided with written notice of the charges, copies of all documentation upon which the charges are based and after an opportunity to respond to the charges before the appointing officer or the designee.

88. Pending investigation of gross misconduct, the appointing officer may place the accused person on paid administrative leave. If, after 60 days of paid administrative leave, the investigation is found to have been delayed by an act of the accused (as determined by the arbitrator), the accused may be placed on unpaid administrative leave until the conclusion of the hearing before the appointing officer otherwise the accused shall be continued on paid administrative leave until the conclusion of the hearing.

89. When the appointing officer imposes discharge or removal the appointing officer shall, in writing, notify the person removed or discharged of the right to appeal the discharge or removal by mailing such statement to the employee's last known address.

90. The employee shall have thirty days from the date of the mailing of the notice to file an appeal of the matter in writing with the appointing officer. Upon receipt of a timely appeal, the appeal shall be referred to a standing panel of arbitrators who will agree to hear and resolve such disputes within 60 days after submitting the matter to arbitration. If the parties cannot agree upon a standing panel, either side may request a list of 7 qualified arbitrators who are members of the National Academy of Arbitrators and who agree to the 60 day time limitation from the California State Mediation and Conciliation Service. If the parties are unable to agree mutually on the arbitrator, the parties shall alternately strike names until one remains on the list. The parties shall establish the order of first strike by lot.

91. If the employee is exonerated, the hearing officer shall order payment of salary to the employee for the period of unpaid administrative leave, reinstate the employee's rights under the severance provisions of the MOU, and the report of such period of discharge or removal for gross misconduct or unpaid administrative leave shall thereupon be expunged from the record of service of such employee.

RELEVANT EXCERPTS FROM PERB DECISION ON CHARGE SF-CE-2157-M

PERB Decision No. 2958-M

Among the remaining issues in dispute, the threshold issue is whether the Charter allows or disallows interest arbitration over MAA's job protections proposals. If the Charter affords MAA the right to engage in interest arbitration over its job protection proposals, then the City violated the Charter, and by extension the MMBA, meaning there is no need to decide whether the MMBA permits a local agency to establish an interest arbitration mechanism that excludes job protection proposals. The ALJ ruled in MAA's favor on the threshold issue (as well as on the complaint's bad faith bargaining claim), and therefore found no need to determine whether the MMBA permits an employer to adopt an interest arbitration mechanism that excludes job protection proposals.

Having reviewed the record de novo, we affirm the above-described conclusions of the ALJ, though our analysis does not entirely match the proposed decision. We notably reverse one significant conclusion in the proposed decision. Specifically, as part of analyzing three Charter provisions the City relied on to support its position, the ALJ found a Charter provision to be facially inconsistent with the MMBA to the extent it states that attorneys "shall serve at the pleasure of the appointing authority." We interpret the provision differently from the ALJ, and for that reason we do not find it facially inconsistent with the MMBA.

...

The City fails to recognize the import of Charter subsections A8.409-4(g)-(h) and A8.590-5(g)(1), (2), and (3). These explicit, narrow exceptions to interest arbitration show that Charter drafters were fully aware how to remove matters from interest arbitration, and in fact did so for a limited set of disciplinary matters—those related to police officers, deputy sheriffs, and firefighters. Yet there is no exclusion for attorney discipline. Indeed, while section A8.409-4 is quite lengthy—detailing interest arbitration provisions over the course of 13 paragraphs comprising 1650 words—it includes only two narrow exceptions to the broad definition of covered topics found in subsection (a). Neither exception excludes MAA's job protection proposals from interest arbitration.

...

Charter section 10.104, titled "Exclusions from Civil Service Appointment," covers a variety of City employees, including: attorneys, investigators, physicians, dentists, assistant law librarians, curators, teaching instructional aides, and paraprofessional aides. Section 10.104 states that these positions "shall be exempt from competitive civil service selection, appointment and removal procedures," and that "the person serving in the position shall serve at the pleasure of the appointing authority." There is no question this provision exempts attorneys from the civil service merit system. But that does not help the City establish its position that job protection proposals are fully bargainable but ineligible for interest arbitration. One central problem for the City is that if section 10.104 represents a Charter mandate that attorneys must be "at will" and the City has no discretion on that issue, then the City could not concede, as it has, that it is authorized to negotiate over just cause protections. Instead, the City would have to deny any such discretion, which it acknowledges would violate the MMBA.

Having conceded that section 10.104 leaves the City discretion to negotiate over job protections, it would be fanciful for the City to suggest that section 10.104 carves out such protections from interest arbitration. Indeed, section 10.104 does not mention interest arbitration. Moreover, as discussed ante, the Charter's interest arbitration provisions broadly cover bargaining disputes as to mandatory bargaining topics, subject only to specifically enumerated exceptions that are plainly not applicable here…

In any event, serving "at the pleasure" of management has no single, uniform meaning, as it leaves open what protections management may adopt relative to the positions in question. Thus, while employees serving at the pleasure of management normally have no property interest giving rise to constitutional due process, they are fully able to avail themselves of job protections that may be in place by MOU or by any other lawful policy…

...the City has conceded not only that it has the power to agree to just cause protections in bargaining, but also that it has the power to delegate to an arbitrator discretion over such issues…

We therefore reverse the ALJ's conclusion that Charter section 10.104 is facially unlawful. Another factor leads us to the same conclusion: California Supreme Court precedent, like PERB precedent, requires harmonizing the Charter with the MMBA wherever possible…

Charter section 10.104 can exist in harmony with the MMBA principle that disciplinary procedures and criteria fall within the scope of bargaining. As explained above, having attorneys serve at the appointing authority's pleasure nonetheless means that the City can establish protections by regulation, policy, or MOU, including provisions negotiated with MAA or directed as part of the Charter's broad interest arbitration mechanism for resolving bargaining disputes…

For the foregoing reasons, MAA's job protection proposals were eligible for interest arbitration under the City Charter. Therefore, the City violated its Charter and MMBA section 3509(b) by refusing to engage in interest arbitration over the job protection proposals.

<u>Remedy</u>

As noted above, the parties pre-negotiated one aspect of how they would comply with our decision when they agreed as follows: "If the PERB Board issues a decision on the merits on or before October 30, 2026, the MOU will reopen on the issue of job protections and the parties will proceed consistent with PERB's decision. The Parties will bargain for a period of thirty (30) days and then will proceed to applicable impasse procedures before Paul Roose within ninety (90) days of the PERB Decision."

Because this agreement effectuates the MMBA's purposes, we incorporate it into our remedial order along with a cease-and-desist order, make-whole relief, and instructions for communicating the outcome of this case to employees.

ISSUE

Which proposal on job protections for attorneys most closely conforms to the factors specified in Section A8.409-4 (d) of the Charter of the City and County of San Francisco?

FACTS

The Employer and the Bargaining Unit: The City and County of San Francisco is the fourth largest city in California, with a population of 827,000. It is the second-most densely populated large city in the United States. It is also a world-renowned tourist destination, a primary financial and tech center, and home to iconic structures and services such as the Golden Gate Bridge and the cable cars. The total number of employees working for city / county government is approximately 43,000.

San Francisco is unique in the state of California as a governmental entity insofar as it is the only city that is also an entire county. Local government provides all services traditionally provided by a city and a county. It is also unique in that all three of the major departments that employ attorneys – the District Attorney's Office, the Public Defender's Office, and the City Attorney's Office – are headed by elected officials.

The bargaining unit is comprised of nearly all attorney positions in the employment of CCSF. The exceptions are a few high-level management positions. The unit was constituted prior to the inception of interest arbitration in the 1990s. Total positions in 2025 numbered 501.

The three largest groups are in the offices of the City Attorney (194 positions), District Attorney (144 positions) and the Public Defender (126 positions). Other unit attorneys are in the Rent Arbitration Board (10 positions), Police and Police Accountability (12 positions) and a handful in a few other CCSF departments.

The vast majority (406) are in Attorney classification 8177 with the remainder being assistant chief, head and chief attorneys. In broad strokes, the latter group are lead attorneys who direct and check the work of 8177s.

Attorney Discipline and Layoffs at the City and County of San Francisco: The Employer has released relatively few non-probationary attorneys in the last fourteen years. In the City Attorney's office, six were released, for an average of .4 per year. In the District Attorney's office, 33 were released, averaging 2.4 per year. In the Public Defender's office, only one was released in fourteen years. And in all other City departments, three were released, averaging .2 per year.

The largest group of releases took place after the election of District Attorney Chesa Boudin in 2020 and his recall and replacement in 2022. Seven attorneys were released by Mr. Boudin, a former

public defender.[2] After Mr. Boudin was recalled by voters in 2022, he was replaced by the current District Attorney, Brooke Jenkins. She released ten attorneys from the DA's office. Those removals provided much of the inspiration and motivation for the Union's proposal in this matter.

No evidence was in the record of any discipline of attorneys short of termination.

Kara Lacy worked as an 8177 attorney in the DA's office from 2014 until she was released by Mr. Boudin in 2020.[3] She testified as follows:

> On January…10th, 2020, I received a phone call from the newly elected sworn-in District Attorney, Chesa Boudin. He told me that I served at the pleasure of the elected District Attorney, and that my…service was no longer needed, I was terminated from my employment.

The following exchange took place on direct examination:

> Q. Did you…know Mr. Boudin professionally or personally before he was installed as the elected District Attorney in January of 2020?
>
> A. Yes. So prior to winning the election and becoming the elected District Attorney, Mr. Boudin worked in the Public Defender's office. And when I was a part of the general felonies unit…each DA had between two and four Public Defenders that we were partnered with, and we would pick up cases on the same day and carry them through trial. And so, he was one of my assigned Public Defenders. He was my partner in court.
>
> Q. Was there a case that stands out in your mind from that period of time when you were sort of partnered in court that you think impacted your professional relationship?
>
> A. Yeah. If I look back on it, I think there's one particular case that sort of defined the relationship that we had, which I would say was professional yet very contentious and adversarial. It had to do with an officer-involved shooting that occurred by a San Francisco Police [officer]. The case originated as an armed robbery, where there were two suspects. The Defendant in that case got out of a car and was arrested. And after he was arrested, the second suspect fired on police officers, and they returned fire. And that suspect was killed. So at that time, SFPD investigated both the officer-involved shooting as well as the ancillary crime, which was the robbery. And so, when that case came in for the Defendant that was alive, and he was charged with a robbery, there was extensive litigation that we engaged in around discovery and how much discovery related to that officer-involved shooting Mr. Boudin would be entitled to. I took a rather strong position that he was not entitled to any of that discovery.
>
> That did not sit well with him. He accused me of…misconduct, of Brady violations, of withholding information from him. Ultimately, we litigated that. I was not found to have

[2] According to the testimony of Kara Lacy, four of the seven were "managers." Given the composition of the bargaining unit, it is probable that these would all be bargaining unit members. However, the four may have been excluded from just cause rights under the Union's proposal.

[3] No one else from the DA's office testified about these 2020 events.

> committed any misconduct or withheld any information from him. So that was certainly a contentious way to begin that case.
>
> As that case moved through the system, I had a feeling that Mr. Boudin was skirting his legal and ethical obligations of conveying my offer to his client. I ended up putting that offer on the record. His client, in open court, asked to take that offer. There was, again, extensive sort of issues in court regarding the way that that was handled. His client ultimately took it, against the advice of him. And I think, sort of, that entire case was a very high-profile case, where his client ended up pleading to a very serious charge. Sort of defined, I guess, the relationship we had.

Ms. Lacy stated that the other two 8177s who were released, Tom Ostly and Craig Menchin, also had "contentious relationships" with Mr. Boudin in court prior to his election. Both later went to work for the California Attorney General's office.

Ms. Lacy was subsequently hired as an attorney by another CCSF department, the Police department.[4] She was promoted to the position of Director of Constitutional Policing. In August 2025, she was informed by interim Police Chief Paul Yep that she was being laid off. She stated that two attorneys in the department with less seniority than her were retained. She stated that she was qualified to perform their duties.

Status Quo and Bargaining History: Under the current MOU, bargaining unit attorneys have no just cause rights and no access to any CBA-defined process to contest their discipline or removal.

The record included one incident of an employee of the City Attorney's office being terminated and filing suit. Dennis Herrera was the elected City Attorney from 2001 until 2022. He testified that he terminated attorney Joanne Hoeper. She filed a wrongful termination suit and received a $5 million jury verdict that was upheld by the Court of Appeals. (Mr. Herrera did not recall the exact amount of the verdict.)

The Union has represented CCSF attorneys from before the passage of the interest arbitration charter amendments in the early 1990s.[5] The issue of "at will" status has long been a bone of contention. In 1976, the Union supported a proposition on the ballot to grant civil service status and its associated protections to attorneys with three or more years of service. Proposition G was placed on the ballot by

[4] No one else from the Police Department testified about these events.

[5] No evidence was in the record that the Employer ever contested granting the attorneys collective bargaining status. Nor was evidence introduced that the Employer ever sought to exclude any attorneys from the bargaining unit based on their status as "confidential" employees.

unanimous vote of the Board of Supervisors, including by then-supervisor Dianne Feinstein. The voters soundly rejected the proposition by a two-thirds vote.

In the 1995 MOU, severance pay for released unit members was first introduced into the CBA. In 1998, the Union's proposal for an advisory appeal process went before panel chair Arbitrator William Riker. The Employer proposed current contract language. Arbitrator Riker selected the Union's proposal. The Employer went to court to get the award set aside based on its view that it violated the "at will" provisions of the Charter. In lieu of further litigation, the parties settled on a more robust severance provision that granted to more senior unit members one week of severance pay for each year of service.

In 2005, Arbitrator Ron Hoh was designated as the panel chair for the interest mediation / arbitration process. The Employer proposed to add a clause that allowed it to fire or demote an employee for "misconduct" without paying severance. The determination on whether misconduct occurred would be made by a neutral arbitrator. The Union proposed a similar clause but modified the threshold to "gross misconduct on a finding of just cause." Arbitrator Hoh selected the Union's proposal.[6]

In subsequent negotiations up through and including 2022, severance pay provisions were enhanced. In 2024, the Union affiliated with Teamsters Local 856. The local had recently won job protection rights for attorneys in nearby Alameda County. This development was the chief impetus for the affiliation agreement.

Internal Comparability: The vast majority of employees who work for the City and County of San Francisco enjoy just cause disciplinary standards and neutral decision-maker appeal processes. Those employees include other non-attorney classifications in the departments that also employ attorneys. They also include the other non-attorney employees represented by Teamsters Local 856 in other bargaining units.

Of the list of employees in Charter Section 10.104 excluded from civil service protection and designated as serving "at the pleasure of the appointing authority," most are high-level managers not in bargaining units. One group of excluded employees – doctors and dentists – are in a bargaining unit represented by the Union of American Physicians and Dentists. The relevant sections in their MOU regarding release are as follows:

> 68. The Appointing Officer may terminate the employment of, or discipline, or release exempt employees. In the event that termination or discipline or release of an

[6] At some point in subsequent negotiations, the criteria for denial of severance pay were modified to "gross misconduct by clear and convincing evidence."

exempt employee is recommended to the Appointing Officer, the exempt employee shall be entitled to the following due process prior to the execution of such termination or discipline or release:

69. a. The employee shall receive written notice of the reasons for the termination or discipline or release and supporting documentation, if any.

70. b. The employee shall be notified of their right to submit a written response including the written statements of any individuals supporting the employee's position. The written answer must be submitted within ten (10) working days of the date of notice of termination or discipline or release in order to be reviewed.

71. c. After the expiration of the period of time designated for the exempt employee to submit their statement, the Appointing Officer shall review all documents provided and shall notify the employee in writing of their decision within twenty (20) working days.

72. d. Upon issuance of the Appointing Officer's decision, the employee may request that an impartial, fact-finding panel be convened. Such a request shall be made in writing to the Appointing Officer within five (5) working days of the date of issuance of the Appointing Officer's decision. Upon receipt of the request, the Appointing Officer shall appoint an impartial fact-finding panel of three (3) members, one of whom is to be nominated by the Union, to perform in an advisory capacity to the Appointing Officer in release, termination or other disciplinary proceedings. The members of the fact-finding panel are required to be licensed medical doctors only for cases in which the charges for termination or other discipline pertain to a doctor's professional practice of medicine. The panel is required to provide its findings and recommendation within five (5) working days. The procedure described in this section applies to clinical and non-clinical issues and is advisory only. The report of the fact-finding panel is not binding in any way upon the Appointing Officer.

External Comparability: For the purposes of the attorney classification, the most relevant external comparators are the nine Bay Area counties. (Both parties agree this is a pertinent comparison group). The State of California, because it has offices throughout the Bay Area, is also relevant. For City Attorney comparisons, the large cities in the Bay Area are relevant. The following charts capture the most significant comparisons on the issue of just cause and a neutral appeals process for discipline and discharge.

Due Process Job Protections for Deputy District Attorneys

Jurisdiction	Job Protections (Yes/No)	Notes
California Attorney General's Office	Yes	Deputy Attorney Generals
Alameda County	Yes	
Contra Costa County	Yes	
Marin County	Yes	

Napa County	Yes	
San Mateo County	Yes	
Santa Clara County	Yes	
Santa Cruz County	Yes	
Solano County	Yes	
Sonoma County	Yes	

Due Process Job Protections for Deputy Public Defenders

Jurisdiction	**Job Protections (Yes/No)**	**Notes**
California Attorney General's Office		No DPDs
Alameda County	Yes	
Contra Costa County	Yes	
Marin County	Yes	
Napa County	Yes	
San Mateo County		No DPDs
Santa Clara County	Yes	
Santa Cruz County	Yes	
Solano County	Yes	
Sonoma County	Yes	

Due Process Job Protections for Deputy County Counsel / Deputy City Attorneys

Jurisdiction	**Job Protections (Yes/No)**	**Notes**
California Attorney General's Office		No DCCs
Alameda County	Yes	
Contra Costa County	Yes / No	More Recently Hired DCCs are At Will
Marin County	Yes	
Napa County	No	
San Mateo County	Yes	
Santa Clara County	Yes	
Santa Cruz County	Yes	
Solano County	No	
Sonoma County	Yes	
City of Oakland	Yes	
City of San Jose	?	The MOU includes the language "discharge or discipline for cause." However, declarations from San Jose City officials are that the deputy city attorneys serve at will.

Comparative data for layoffs by seniority were not directly presented by either side. The Union asserted that the relevant comparator jurisdictions have layoffs by seniority and provided hyperlinks to various MOUs. A spot check by the neutral arbitrator found this:

Layoff by Seniority

Jurisdiction	Layoff by Seniority (Yes/No)	Notes
California Attorney General's Office	Yes	Deputy Attorney Generals
Alameda County	Yes (Prosecutors)	Special skills, knowledge and ability can be deemed a separate classification for layoff
Contra Costa County	Yes (Public Defenders)	
Marin County	Yes (Public Defenders)	
Napa County	Yes (Attorneys)	
San Mateo County	No	
Santa Clara County	Yes	
Santa Cruz County	Yes	Special skills exception
Solano County	No information located	
Sonoma County	No information located	

The Employer asserted that no private sector attorneys in the Bay Area have just cause and neutral appeals process. The Union did not disagree.

UNION'S PROPOSAL[7]

I.H—DISCIPLINARY PROCESS FOR ATTORNEYS

57. **All discipline shall be for just cause. As used in this section, "discipline" means and includes letters of reprimand (warnings), demotions, suspensions, or terminations (discharges). The intent of progressive discipline is to be corrective in nature where appropriate. Progressive discipline may allow an attorney to correct behavior and/or change behavior going forward. The City shall use progressive discipline in addressing the behavior of an attorney. However, the circumstances of each case dictate the appropriate disciplinary response and the City reserves the right to skip one or all levels of progressive discipline, if necessary. The City and the Association agree that the level of discipline called for in any particular circumstance shall take into account the nature and seriousness of the offense as well as the attorney's record (including overall job performance and previous counseling/disciplinary history, if any). Any documented counseling (as opposed to a letter of reprimand, suspension, demotion or termination) will not be placed in the attorney's personnel file.**

[7] Language proposed to be added to the MOU is underlined and bolded. Language proposed to be deleted from the MOU is in strikeout.

Upon request, an attorney has a right to have a representative present at a meeting with the employer where the attorney has a reasonable belief that disciplinary action against that attorney may result. The attorney shall be given a reasonable period of time to identify a representative to be present. Securing representation is the responsibility of the attorney.

58. **All attorney demotions, suspensions and terminations will be reviewable, appealable and subject to binding arbitration as provided for in Article I.G., beginning at Step 3 of the Grievance procedure. Employees noticed of termination in conformance with the provisions set forth herein shall have the option of protesting the termination through the grievance procedure in Article I.G. or accepting the severance pay set forth in section II.I. Any grievance protesting termination or acceptance of the severance pay must occur within thirty (30) days of service of the notice of termination. In no event shall an attorney or the Union be permitted to both accept severance and challenge the termination through the grievance process.**

59. **LETTERS OF REPRIMAND. Should corrective measures to address performance or conduct not result in sustained improvement, the City may issue a letter of reprimand. Such letter shall be served on the attorney in person or by mail (to include e-mail) and shall be included in the attorney's personnel file. If requested by the attorney within 30 calendar days of issuance of the letter of reprimand, the attorney shall have the right to submit a written statement for an administrative review of the letter by the applicable department head or their designee. Letters of reprimand shall be removed from the attorney's personnel file(s) after one (1) year from the date of issuance, provided that no additional letter of reprimand or other discipline has been issued to the attorney during the one-year period.**

60. **RECOMMENDED DISCIPLINARY ACTION. Before the City may take disciplinary action against any attorney by suspension of five days or greater, demotion, or discharge, it must notify the attorney in writing at least 15 days prior to the proposed imposition of the discipline. Notice of recommended disciplinary action must be served on the attorney in person or by certified US mail. The notice shall not be included in the attorney's personnel file, unless disciplinary action becomes final. Copies shall be delivered to the Association by mail (to include e-mail). The notice shall include:**

a) The proposed level of discipline;
b) A statement of the nature of the disciplinary action;
c) A description of the rules, regulations, laws or standards that are alleged to have been violated;
d) The effective date of the proposed action;
e) An explanation of the cause of the discipline;
f) Statement in ordinary and concise language of the act or omissions upon which the cause(s) is/are based;
g) A statement of the attorney's right to respond, either orally at a meeting requested by the attorney, in writing or both. The attorney will have 15 days to provide a written response and request the meeting an impartial hearing officer
h) A statement advising the attorney of the right to Association representation.

61. **NOTICE OF FINAL DISCIPLINARY ACTION. Following the meeting (if any) set forth in section (g) above, the City may take final disciplinary action against an attorney, which may include suspension, demotion or discharge. The attorney must be notified in writing of the final disciplinary action. Notice of final disciplinary action shall be served on the attorney in person or by certified US mail at least 15 days prior to the effective date of discipline. The final notice shall include a statement of the attorney's right to appeal the decision through binding arbitration, as set forth herein.**

62. **The notice of final disciplinary action described above shall be attached to the disciplinary action notice (prepared in compliance with the recommended disciplinary action above) and include all information relied upon recommending the level of discipline and if a violation occurred. The notice will be included in the attorney's personnel file. Copies shall be delivered to the Association in person or by mail (to include e-mail).**

63. **EXCLUSIONS. Attorney discipline procedures set forth in section I.H shall apply to employees in the 8177 [Attorney] and 8190 [Attorney, Tax Collector] classifications. Employees in the 8181 [Assistant Chief I], 8182 [Head Attorney], 8193 [Chief Attorney I], 8183 [Assistant Chief Attorney II] classifications shall remain at will employees. In the event that an employee in the 8181, 8182, 8183, or 8193 classifications is released from employment, such employee has the right to return to the most recent prior attorney position in the bargaining unit that is covered by attorney discipline procedures and in which the employee passed probationary status, if any. The right of return includes the right to self-demote to their previously held position, if any. If an employee exercises this right of return, the employee shall forego any severance pay under Article II.I in connection with their release from employment.**

I.I-PROBATIONARY PERIOD

64. **DEFINED. The probationary period shall be regarded as an integral part of the hiring process. It shall be utilized for the effective adjustment of the probationer, for close observation of the probationer's performance, and for termination, if such performance does not meet the work standards for the classification or if the probationer's conduct, moral responsibility, or integrity is found to be unsatisfactory.**

65, **APPOINTMENTS SUBJECT TO PROBATIONARY PERIOD. The following types of appointments are subject to satisfactory completion of a probationary period: Regular and promotional appointments; and demotion appointments of probationers.**

66. **EXCLUSION OF LIMITED TERM APPOINTMENTS. Time served in a temporary appointment shall not be credited toward the completion of any period of probation and shall not confer upon the appointees any tenure rights.**

67. **WHEN PROBATIONARY PERIOD NOT REQUIRED. A new probationary period is not required for the following types of appointments:**

Attorneys currently employed with the City with more than 2080 hours in a 8177 or 8190 classification prior to the signing of this MOU.

Voluntary demotion appointments of employees with tenure in a classification.

68. **LENGTH. Original appointments shall be tentative and subject to a probationary period of 12-months (and a minimum of 2,080 hours) of actual work, exclusive of all leave and light duty and shall be completed within a 24-month period.**

69. **PROBATIONARY PERIOD AND MILITARY LEAVE. Probationary employees who are granted military leaves of absence shall complete the balance of their probationary period within a period of 12-months following their return to City service.**

70. **EXCLUSION. Employees hired or rehired on or before 12-months prior to the adoption of the MOU by the Board of Supervisors, shall be subject to the requirements of Section 6 (Probationary Period) until such time as the employees have worked 2080 hours as provided in the above subsection, for their classification.**

71. **STATUS UPON COMPLETION OF PROBATIONARY PERIOD. An employee who satisfactorily completes the period of probation for the classification to which the employee was regularly appointed, shall be considered to have tenure.**

72. **REJECTION. During the probationary period, an employee may be rejected at any time without right of appeal or hearing in any manner. An employee rejected from a classification to which the employee has been promoted shall be reinstated to the position from which the employee was promoted and had tenure, unless the employee is terminated for just cause.**

73. **The City has appealed the PERB Case No. SF-CE-2157-M, by way of the First District Court of Appeal in Case No. A173302. To the extent that the First District Court of Appeal in Case No. A173302 overturns PERB Case No. SF-CE-2157-M, the parties will reopen the contract to meet and confer regarding the effects of the decision within 30 days of the Court's decision and to the extent that the parties do not reach agreement it shall be submitted to binding interest arbitration with a hearing scheduled within ninety days of the Court decision. However, if the Courts decision is issued on or after January 1, 2027, the parties will roll this issue into successor MOU negotiations and interest arbitration. This in no way waives any party's right to appeal the First District Court of Appeal's decision in Case No. A173302.**

I.J- REDUCTION IN FORCE AND LAYOFF

74. **ORDER OF LAYOFF. When a reduction in force becomes necessary, layoff and demotions in lieu of layoff shall be accomplished in inverse order of total continuous service in the classification(s) in the current department of the effected attorney, covered by this MOU. However, the Department can retain a less senior employee in the event that no more senior employee is qualified (or could become qualified within six months) to**

perform the work. For the purpose of this subsection. (Order of Layoff), total service shall include unpaid leaves of absence taken by the employee pursuant to FMLA, Sabbatical, Injury or Illness, and family leave.

Attorneys working as retired annuitants, temporary, or probationary who work in a classification identified for layoff must be terminated prior to the layoff of a tenured employee.

75. **DEMOTION IN LIEU OF LAYOFF. A represented attorney in a classification affected by a reduction in force may, in lieu of layoff, elect to demote to their prior 8177 attorney position in the department provided that such employee had tenure in that classification. When both the represented attorney demoting and the least senior represented attorney in the lower paying classification have equal total departmental service, the represented attorney in the lower paying classification would be laid off or demoted first. Reduction in force or demotion in lieu of layoff in one department shall not affect employees in any other City agencies/departments.**

76. **NOTICE. The Department shall give the Association written notice and seniority list of the classification affected by a reduction in force at least thirty (30) calendar days before layoffs. Upon request, the Department shall meet with the Association to review and discuss the seniority list. An employee may be laid off thirty (30) calendar days after formal, written notice has been presented or mailed to the employee's last known address.**

EMPLOYER'S PROPOSAL

II.H.1. RELEASE OF CLASSIFICATION 8177 ATTORNEYS

72a. This Section II.H.1 shall apply to involuntary releases, excluding layoffs, of all classification 8177 attorneys who have completed one full year of service in classification 8177 ("8177 Attorney(s)"). It shall not apply to resignations or retirements.

72b. As provided in Charter section 10.104(13), all attorneys employed by the City are exempt from civil service selection, appointment, and removal procedures and serve at the pleasure of the Appointing Officer. Nothing in this Section II.H.1 alters that at-will status.

72c. If an Appointing Officer intends to release an 8177 Attorney, the Appointing Officer shall provide written notice of the intended release, which shall start the 30-day notice period under Section II.I of this MOU. The Appointing Officer or designee shall send the notice to the attorney's personal email (if known) and by first class mail to the attorney's home address on file with the City. Except where an Appointing Officer determines to deny severance for gross misconduct under Section II.I, the notice shall advise the 8177 Attorney that they shall elect to either (1) use the procedures set forth below in this section ("Review Panel Process") or (2) receive the severance benefit as set forth in Section II.I of this MOU. Within seven (7) calendar days of the date of the notice of intended release from the Appointing Officer, the 8177 Attorney shall provide written notice of their election to the Appointing Officer or designee. This election is irrevocable. If the Appointing Office determines to deny severance for gross misconduct, the notice of intended release shall state that information and initiate the process under Section II.I.

72d. If an 8177 Attorney elects the Review Panel Process, the 8177 Attorney is not entitled to severance, but is entitled to the following process before the Appointing Officer makes a final decision on the release:

72e. **a. Within five (5) calendar days after receiving the 8177 Attorney's notice electing the Review Panel Process, the Appointing Officer or designee shall notify the Department of Human Resources ("DHR") to convene a Review Panel of three (3) members: one selected by the Union, one selected by DHR, and one selected by the Appointing Officer. The Appointing Officer or designee shall copy the 8177 Attorney and Union on that notice. The Union, DHR and the Appointing Officer shall promptly identify their panel members.**

b. The DHR member of the Review Panel, in consultation with the other panel members, shall schedule a meeting as soon as possible and not longer than twenty (20) calendar days from the notice to DHR from the Appointing Officer.

c. Within seven (7) calendar days of sending the notice to DHR requesting the Review Panel Process under (a), above, the Appointing Officer or designee shall provide the 8177 Attorney with written notice of reason(s) for the release and supporting documentation, if any.

d. At the Review Panel meeting, the 8177 Attorney or their representative shall have up to two (2) hours to respond to the proposed release. The department is not required to respond or present information.

e. After the 8177 Attorney's presentation, the panel members shall meet and discuss the proposed release and provide a written recommendation on the release within three (3) calendar days. The recommendation is advisory only, and not binding on the Appointing Officer.

f. The Appointing Officer shall consider the Review Panel's recommendation in making a final decision on the intended release.

72f. At any time after providing the 8177 Attorney with a notice of intended release, the Appointing Officer may place an attorney on paid administrative leave under Administrative Code section 16.17 through a final decision on the release.

II.I. SEVERANCE PAY

….

76. ~~In order to receive severance pay, an eligible employee or MAA must notify the Appointing Officer or the Appointing Officer's designee that the employee is electing to receive severance pay within thirty (30) days of notification of involuntary release or removal from employment.~~

….

77. An 8177 Attorney who elects the Review Panel Process under Section II.H.1. of this MOU is ineligible for severance benefits under this Section II.I.

….

UNION'S POSITION

The status quo "subjects the City and County to potentially expensive litigation over employment disputes that could be resolved through more cost-efficient arbitration," the Union argues. "The financial factors are not relevant to this proceeding," the Union writes. "No evidence was presented by the City and County regarding the average consumer price index; the financial resources of the City and County of San Francisco; revenue projections; budgetary reserves; or the City and County's ability to meet the costs of the decision. To the extent any of these factors are considered, they weigh in favor of the Union LBFO as it is more likely to reduce costs by avoiding employment litigation and through employees declining severance."

"This panel should reject," the Union contends, "any argument by the City and County that the Union faces a heightened burden. Under any burden of proof, however, the Union's LBFO must prevail."

The Union's brief contends that "PERB relied on the entirely obvious principle that serving 'at the pleasure of' the appointing authority means that the appointing authority exercises discretion, which can include binding itself to due process or other job protections. PERB also relied on the undisputed factual findings that the City and County has negotiated seniority to be a consideration for layoffs for another group of employees exempted from civil service under Charter section 10.104.2."

"This is not the venue for the City and County's appeal," the Union asserts. "Any arguments that attorneys cannot have just cause job protections because they 'serve at the pleasure of the appointing authority' must be disregarded in their entirety. Serving 'at the pleasure of' the appointing authority means that the appointing authority exercises discretion which could include binding itself to due process or other job protections through negotiation or interest arbitration."

"The City and County of San Francisco is an outlier as compared to comparably sized jurisdictions," the Union asserts. "Every single Bay Area county offers job protections either through MOU or civil service to at least some, if not all, of its line public attorneys except for CCSF...One hundred percent of the Bay Area counties provide job protections to District Attorneys and Public Defenders…almost 75% of County Counsel in the surrounding Bay Area counties have job protections… No other county in the Bay Area provides no job protections for any of its public attorneys."

"The Union LBFO…brings the City and County into parity with the other Bay Area counties and large cities and counties throughout the state…The Bay Area is trending towards more job protections for

public attorneys," the Union argues. "CCSF's LBFO would cement the City and County of San Francisco as an anachronistic, inequitable employer that clings to the ability to arbitrarily fire and/or fire public attorneys for political retribution…Without job protections, elected Department Heads, can more easily exert undue pressure on public attorneys to carry out political vendettas or other abuses of office."

"The Union's current proposal for seniority-based layoffs…seeks to prevent arbitrariness from guiding layoff decisions. Without a seniority-based layoff system, the just cause protection could be rendered meaningless by the City and County simply labeling its termination a layoff," the Union contends. "Other Bay Area comparator cities and counties provide for seniority-based layoffs in their MOU. "

"The vast majority of City and County of San Francisco permanent employees," the Union writes, "are covered by an MOU with job protections and binding grievance arbitration…There is no evidence whatsoever that the City and County is unable to operate its other departments or hold those employees accountable."

The Union asserts that "none of the employee groups listed in [Charter Section]10.104 are comparable to public attorneys. They are high-ranking, such as electeds, commissioners, department heads that are not generally represented by a union and are not provided job protections in counties across the Bay Area, or other employee groups generally excluded from union representation or just cause protections, such as confidential or temporary employees."

The Union's brief notes that "not a single department head from any of the three main departments at issue (public defender, city attorney, and district attorney) testified in support of the City and County…the City and County presented no evidence that it would be difficult to administer such a program in the District Attorney or Public Defender offices." As for the city Attorney's office, the Union argues that no Employer witnesses "explained why following just cause principles such as progressive discipline and due process would hamper the quality of an attorney's work or would undermine their ability to keep client matters confidential."

The Union emphasizes that, in its LBFO, "no attorney may receive severance and still challenge their termination." And in its layoff proposal "exceptions to seniority apply based on skills and qualifications."

In conclusion, the Union writes as follows:

The Union presented robust and comprehensive evidence that the Union's Last, Best, and Final Offer best meets the criteria outlined in Charter section A8.409-4(d) as compared to CCSF's LBFO. The undisputed terms and conditions of internal and external comparators clearly support granting just cause job protections to public sector attorneys. The City and County – contrary to the plain language of the reopener, PERB's binding decision and the MMBA – tried to re-litigate PERB's decision and argue that the Charter section 10.104 must preclude job protections for public attorneys. The City and County failed to present cognizable evidence in support of its LBFO based on the Charter factors. The Union respectfully requests that the panel select its LBFO.

EMPLOYER'S POSITION

"Traditional factors entirely cut against the Union's offer," the Employer writes. "First, of course, the longstanding status quo should be overturned only upon a very strong and compelling showing that it is problematic. The Union has a heavy burden to overturn a century old policy, included in both the City's Charter and its Civil Service Rules, holding that attorneys working for the city 'shall serve at the pleasure of the appointing authority.'"

The Employer argues that "absent other strong statutory factors, the union must argue that the status quo is unfair and/or has not worked well in practice. Here, the status quo argument is particularly strong for the City because (1) the union's showing of alleged problems with the status quo is limited to only one office while its LBFO covers all attorney offices in the City; (2) the MOU has bargained-for language expressly recognizing Charter section 10.104, and providing the most generous severance package in the City; (3) the voters have effectively endorsed the status quo by rejecting a proposition to eliminate the 'at pleasure' provision of the charter for attorneys; and (4) the union has challenged the status quo at least twice in recent years and lost."

"Outside of the District Attorney's Office, there is no evidence even of a significant number of dismissals in the unit, much less unfair dismissals," the Employer argues. "Yet the Union seeks to change the status quo radically for all attorney offices in the City. And, even in the District Attorney's Office, the relatively few dismissals that have occurred have been associated with changes in elected leadership and criminal justice policy. Those dismissals are a feature of democratic leadership, not a bug."

"Even if the Union could prevail on the argument that it would be legal to adopt a 'for cause' requirement along with binding arbitration of discipline (which it cannot given the Charter's express language), its case would at most support job protections in the Office of the District Attorney, and not in any of the other offices employing lawyers in the City," the Employer contends. "Right or wrong, the public has a right to make such choices, and the District Attorney has a right to make personnel decisions that reflect the voters' sentiment."

"The underlying PERB opinion – which is not final and is on appeal – at most stands for the proposition that the City can negotiate 'job protections.' The primary job protection the parties have

negotiated is the most generous severance package available to any city employee group," the Employer contends.

"While the City believes the Charter and Civil Service Rules, in combination with the state constitution, are binding on the arbitration panel, at a minimum they are entitled to great weight," the Employer asserts. "Section 10.104 is a *substantive* employment term, protected by the express language of the state constitution…Further, because the voters have exclusive control over substantive terms of employment they laid down in the Charter, any purported legislative delegation of substantive matters fixed in the charter to an arbitration panel would violate the California Constitution."

The Employer argues that "the mandate in section 10.104 that attorneys 'shall serve at the pleasure of the appointing officer' cannot be twisted to mean that the appointing officers may hand over their Charter mandated discretionary authority to arbitrators, as PERB absurdly found. As a matter of law, not just plain English, "[s]erving at pleasure means one is an at-will employee who can be fired without cause." (Hill v. City of Long Beach (1995) 33 Cal.App.4th 1684, 1693, citing Bogacki v. Board of Supervisors (1971) 5 Cal.3d 771, 783.) PERB failed to acknowledge Hill and instead invoked Bogacki, a case cited by the Court of Appeal in Hill as well by PERB's own ALJ for the opposite conclusion. But the point of Bogacki is that an at-will employee in certain circumstances may be entitled to a constitutionally mandated process (Bogacki, 5 Cal.3d at pp. 778-779), not that 'at-will' may also somehow mean 'for just cause' as a matter of statutory interpretation."

The Employer asserts that "the power to implement the union's specific demand for 'for cause' rights does not reside in the Board of Supervisors or with an arbitrator—it is reserved to the voters."

The Employer writes in its brief that "the state constitution is an important rule the Arbitrator must consider. Article XI, section 4(f) provides that county charters give local governing bodies the right to determine 'the fixing and regulation…of the appointment and number of …persons to be employed…and the duties, qualifications and compensation of such persons …and the manner of their appointment and removal.' Article XI, section 5(b) grants 'plenary power, subject only to the restrictions of the article' for a city charter to set forth 'the terms for which the several municipal…employees…shall be appointed, and for their removal…'"

"Bargaining history is also an important traditional factor," the Employer writes. "Here, there is undisputed evidence that the severance provisions of the MOU came about as a direct exchange for the Union agreeing to forego a limited procedure imposed by Arbitrator Riker that implicated at-will employment."

"Operational workability is another traditional factor," contends the Employer. There is "no question that individual departments that employ attorneys will incur substantial new costs to overhaul their personnel systems to address a burden when disciplining or releasing attorneys from employment."

External comparability supports the Employer's proposal, the Employer contends. "The City's methodology focuses on the ten Bay Area counties, and the 12 largest cities within those counties – the San Francisco / Oakland / San Jose Consolidated Statistical Area… While there is evidence that just cause protections have been afforded to attorneys in a variety of counties in the Bay Area, this evidence cannot be blithely applied to cities."

On internal comparability, "It is undisputed that no other unions representing employees who are exempt and at will under Charter section 10.104 have binding arbitration of discipline or seniority based layoffs," the Employer writes.

The City's brief asserts that "The procedure proposed by the City is more robust than a typical 'Skelly' procedure (which typically only applies to employees with a property interest in employment). That process does not involve anyone from the Union in the decision-making process. And Skelly does not require a 'neutral' decision-maker. Flippin v. Los Angeles City Bd. of Civ. Serv. Commissioners (2007) 148 Cal.App.4th 272, 281. Further, there are many internal administrative procedures that run through DHR where DHR serves as a decision maker. For example, Charter Section 10.103 vests the DHR Director with the authority to review and resolve all complaints of discrimination and investigating all employee complaints concerning job-related conduct. The Union has argued that few if any dismissed employees are likely to utilize this process and give up the ability to receive severance pay. However, this trade-off is the same as provided in the most analogous other advisory MOU procedure – for the physicians."

The Employer concludes as follows:

> The Union's complaint here is with the Charter, and its remedy is with the voters. In the end, this is not a close case. Even if the Arbitrator believes he has the authority to supersede Charter section 10.104, the evidence here is not nearly enough to warrant taking such a radical action. And the Union's proposed "solution" to an alleged problem in the District Attorney's Office is wildly overbroad. The City's LBFO, on the other hand, may be modest, but it is already a very significant departure from the City's long-held position – a position it has successfully defended in court on at least two occasions. The City has also paid significant consideration for its position in the form of a very generous severance program. The panel should award the City's LBFO.

DISCUSSION

Most of the Charter Factors Are Irrelevant in the Instant Dispute: Charter section A8.409-4 (d) identifies factors that an arbitration board must consider in its decision. The following listed factors are not germane to this dispute:

- changes in the average consumer price index for goods and services
- health and safety of employees

- the financial condition of the City and County of San Francisco and its ability to meet the costs of the decision of the Arbitration Board.

These factors, and all related financial factors, are not relevant since the Employer is not arguing that cost is a barrier to implementing the Union's proposal.

External Comparability Weighs Heavily in Favor of the Union's Proposal: The most significant charter factor driving an analysis of this dispute is as follows:

> the wages, hours, benefits and terms and conditions of employment of employees performing similar services

It is the "terms and conditions of employment" reference in that charter factor that best outlines the parameters of the disagreement. It is correct, as the Employer points out, that this section includes public and private sector employers. However, the public employers of attorneys must be given far greater weight than the private sector, for two reasons. First, no evidence was in the record that privately employed attorneys were covered by collective bargaining agreements. Second, two of the three main jobs covered by the Union in this matter do not exist in the private sector – deputy district attorney and deputy public defender. Evaluating the Employer by a benchmark of private law firms is an "apples to oranges" comparison.

The arbitration board takes the approach of utilizing a group of nine Bay Area counties as the core of the comparability analysis. Neither side disagreed that these counties are relevant comparators. The State of California, proposed as a comparator by the Union but not by the Employer, is included. Many state attorneys work in the geographical area within which the Employer is situated. Evidence was that attorneys released by the CCSF went to work for the State.

Finally, the two largest cities in the Bay Area other than San Francisco are included. After Oakland and San Jose, population numbers fall off significantly and make comparisons inapt.

Based on a public sector analysis, the prevalence of just cause job protections for journey level attorneys in the San Francisco Bay Area is overwhelming. While the exact mechanism varies from jurisdiction to jurisdiction, the comparable agencies' procedures have two common themes – a just cause standard for discipline, and delegation of authority to a mutually selected outside neutral as the decision maker for discipline and discharge disputes.

A significant factor influencing the undersigned neutral arbitrator's decision is the trend line. Two of the largest comparators – counties adjacent to San Francisco in competition to be the employers of

choice for attorneys desiring a public sector career – have recently added these rules and procedures. The import of the agreement reached in Alameda County and the unilateral decision by the Board of Supervisors in San Mateo County should not be downplayed.

The inclusion of the deputy city attorneys in this dispute presents a different comparison challenge for the arbitration board. San Francisco's status as California's only combination city / county means that both deputy county counsels and deputy city attorneys must be considered. The board must look to cities as well as counties for relevant comparisons.

The majority of deputy county counsels in the Bay Area enjoy protections similar to those proposed by the Union. But the evidence is not quite as solid as for the other two major attorney groups. Contra Costa County, one of the Bay Area's largest counties, has stepped away from providing job protections to this group. And the Bay Area's largest city, San Jose, may not have job protections for its deputy city attorneys, as evidenced by the declarations in evidence.

Nonetheless, taken as a whole, the combined group of deputy county counsels and deputy city attorneys provides a favorable comparison supporting the Union's proposal.

The Union presented a thorough and robust case on the issue of discipline rights. Its case on layoffs by seniority was less compelling. The Union merely provided the arbitration board with hyperlinks, in effect inviting the board to do its own research. On the other hand, the Employer made no attempt to undermine the Union's case that layoffs by seniority was the norm.

The undersigned neutral did examine layoff provisions in comparator counties. On the surface, most comparators did appear to use seniority as the basis for layoffs. Many had the kinds of qualifying language that is included in the Union's proposal.

Internal Comparability Paints a Mixed Picture, But on Balance Supports the Union's Proposal: The other highly relevant charter factor is internal comparison**.** The charter requires the arbitration board to consider "the wages, hours, benefits and terms and conditions of other employees in the City and County of San Francisco." The Employer has 43,000 employees. The vast majority are in one of twenty-six bargaining units. The overwhelming majority of these employees enjoy just cause rights and neutral adjudication of discipline.

The three main departments involved in this dispute – City Attorney, District Attorney, and Public Defender – all have collective bargaining agreements with unions that include traditional just cause

and grievance arbitration of discipline. Clerical, administrative and technical employees have these protections.

The Employer argues that the relevant internal comparison group are the employees called out in Charter Section 10.104. This contention has some merit but is less than persuasive. Other than the doctors and dentists, the other employees specified as "at will" have no appeal mechanisms. Most of the others are management-level employees not covered by collective bargaining agreements. Even medical professionals who have appeal rights do not have a procedure culminating in a binding decision by an outside neutral.

The factor of internal comparison cuts both ways in this dispute. It is not the decisive factor.

The Employer's Argument That Just Cause / Job Protections are Not Operationally Workable is Not Persuasive: The Employer asserts two other factors that must be considered, based on the opening clause in the charter section, requiring that the arbitration board select:

> whichever last offer of settlement most nearly conforms to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of employment, including, but not limited to…

The Board agrees that factors "traditionally taken into consideration," yet not specified in the Charter language, must be examined. The first factor the Employer raises is "operational workability."

The Employer's argument that management of these three (and the other smaller) departments are ill-equipped to administer a just cause / adjudication system for its attorneys falls well short. Attorney managers are familiar with just cause / discipline grievance systems because their other non-attorney employees are covered by these agreements.

The Employer's own statistics show that post-probationary attorney releases are rare. These upper echelon attorney managers are themselves highly skilled and knowledgeable attorneys. They have intimate knowledge of the work that the journey-level attorneys are hired to perform. The arbitration board has absolute confidence that managers will quickly adapt to a new system and execute it with skill and fairness.

"Local Rules, Regulations, or Ordinances" Are a Factor Traditionally Considered in Public Sector Bargaining in California: The other factor identified by the Employer is their central argument in this dispute – local ordinances. The Arbitration Board agrees that this is a major factor and must be

carefully considered. The primary obstacle standing in the way of the Union's proposal is the nine key words in the charter: [attorneys] "shall serve at the pleasure of the appointing authority."

Serving "at the pleasure of" is typically interpreted as being synonymous with "at will." In other words, these employees may be released at any time for any reason, or no reason. This section has been in the charter for over 100 years and was reinforced by the voters in 1976. It has substantial weight.

Several factors mitigate the significance of this language, however. One is that PERB has rejected the notion that the charter section bars the Employer from negotiating job protections and procedures. PERB, in its April 2025 decision, found that the charter language can be harmonized with state law that allows bargaining for binding grievance arbitration (or other adjudication), including for discipline.

The neutral chair believes that the Employer recognizes this obligation. Carol Isen is the human resources director for the Employer and testified at the hearing. She stated as follows:

> The primary problem with the [Union's] proposal…is the language in the charter that says that this occupation serves at the pleasure of the appointing officer.

However, on cross-examination, the following exchange took place:

> Q. PERB held that the language in 10.104 that says that city attorneys serve at the pleasure of the appointing authority was not in conflict with negotiating job protections or submitting job protections to an interest arbitrator?
>
> A. Yes, I'm aware of that.
>
> Q. So despite the fact that that language is in the charter, the parties do have to negotiate about job protections, correct?
>
> A. Correct.
>
> Q. And the interest arbitrator could order job protections?
>
> A. Correct.

The neutral arbitrator agrees with this assessment by HR Director Isen. The charter language in 10.104 does not bar the Employer from negotiating job protections, up to and including binding arbitration of disciplinary grievances. The Employer can, in essence, delegate its "at the pleasure of" authority to an outside mutually selected individual and agree to live with that individual's decision.

The corollary to this finding is that anything the Employer can voluntarily negotiate with the Union can, if it is determined that it meets the charter's interest arbitration criteria, be imposed by an interest arbitration panel.

Another mitigating factor is the Employer's previous agreements and other rules and guidelines. First is in sections 86 – 91 of the CBA. In those sections, the Employer has agreed to delegate to an outside arbitrator the right to decide on whether an attorney committed "gross misconduct by clear and convincing evidence." While this provision was imposed by interest arbitrator Hoh, the Employer made a similar proposal in those same negotiations. This language shows that, under certain circumstances, the Employer has been willing to delegate to an outside neutral decision-making authority over the fate of an employed attorney.

The Employer's interpretations of its own rules also demonstrate that it does not consider its authority over attorney employment issues to be absolute. It shows that it allows appointing authorities the right to establish guidelines. "Department Heads may, but are not required to use merit system criteria as guidelines in exempt selection, appointment and employment," a "Service Adviser" reads. It goes on to say "Federal, State and Local anti-discrimination laws continue to apply to exempt selection, employment, and removal decisions."

The Employer's Proposal Does Little if Anything to Bring CCSF into Alignment With External Comparators by Enhancing Job Protections for Attorneys: The undersigned neutral arbitrator finds it highly unlikely that any attorney subject to proposed release would utilize the procedure proposed by CCSF. The proposal establishes a three-person review panel, but two of the three panel members are selected by the Employer. That panel only has the power to issue a recommendation. The appointing authority can ignore that recommendation with no further appeal allowed.

Most significantly, the unit member must relinquish their right to severance when opting to use the procedure. The most likely outcome of adding this process to the CBA is that unit members who believe they were unjustly fired would simply take the severance pay and forego the process. Some, such as attorney Hoeper who was terminated by Mr. Herrera, would sue the City for wrongful discharge. The release of attorneys would likely be adjudicated, not arbitrated.

The Union's Proposal Includes Significant Carveouts and Provisions That Protect Management's Right to Manage: The Union's proposal introduces a common procedure into the CBA: binding arbitration of disciplinary grievances based on a just cause standard. It leaves undisturbed management's right to "hire, fire, promote, discipline, reassign, transfer, release, layoff, terminate, demote, suspend or reduce in step or grade, all employees," as specified in the management rights clause of the CBA. Management retains the right to "establish and enforce employee performance standards." Management also reserves the "right to inquire and investigate regarding complaints or concerns about

employee performance efficiencies or misconduct of any sort, including the right to require represented attorneys to appear, respond truthfully and cooperate in good faith regarding any City investigation."

The Union's proposal is not extreme. It includes several clauses that protect management's right to manage. The first, and most important moderating clause, excludes Assistant Chief Attorney, Head Attorney, and Chief Attorney classifications from the disciplinary appeal process. Those classifications, even though in the bargaining unit, would remain "at will." Employees in those classes may return to a journey level position but may be removed from a manager position without recourse to an appeal process.

This carveout allows the appointing authority to reorganize the department without fear of appeal. It provides a tool for a newly elected District Attorney, Public Defender or City Attorney to select their own upper management staff in accord with whatever philosophy they bring to the job.

The Union's proposal falls within the mainstream of public employee contract provisions by excluding probationary employees from the appeal process. It imposes a standard one-year probation period.

The Union's proposal also excludes Letters of Reprimand from the appeal process. Only suspensions and terminations are subject to the grievance procedure. This allows managers to warn employees of poor performance without triggering a lengthy appeal procedure.

The clause in the Union's proposal that requires a discharged attorney to choose either the severance benefit or an appeal is significant. The current CBA has a robust severance package. It is highly likely that many attorney employees under this new CBA will continue to opt for severance. The number of appeals that go before an independent arbitrator are likely to be few and far between.

Finally, the Union's proposal on layoffs allows the Employer to retain a less senior employee during a layoff under certain conditions. "The Department can retain a less senior employee in the event that no more senior employee is qualified (or could become qualified within six months) to perform the work," the CBA would read. No evidence was in the record that attorney layoffs have been commonplace. Only one proposed layoff of two attorneys was discussed. In the rare circumstance of an attorney layoff, the Employer will have the discretion to consider attorney specialization in its layoff decision.

The Union's Proposal Provides for a Reopener if the Employer's Judicial Appeal Prevails: The record included evidence that the Employer has filed a judicial appeal of PERB's April 25, 2025,

decision about the arbitrability of attorney job protections. The Union, in properly acknowledging this appeal to the First District Court of Appeal, has included a reopener clause that is triggered by the potential overturning of PERB's decision by the appeals court.

This reopener clause inserts a realistic process for the parties to address a potential reversal of the PERB ruling. It is a Union concession to the Employer's view that the PERB ruling was wrongly decided under the law.

The Strength of the Union's Comparability Case Justifies a Significant Departure From the Status Quo: The undersigned neutral arbitrator is sympathetic to the Employer's core position in this matter. The CCSF is strenuously attempting to honor what it considers to be the wishes of the voters to relegate city/county-employed attorneys to "at will" status. The Employer sees the charter clause as an insurmountable barrier to granting the Union's proposal. The Employer also characterizes the Union's proposal as a radical departure from a longstanding practice. To the extent that these are the Employer's motivating factors, they deserve serious consideration.

Where the Employer goes off track is in attempting to defend the charter-specified practice as beneficial to the Employer and its unionized attorneys. That case has not been made. The Employer's presentation in arbitration was devoid of any current representatives of the three major departments (or any other department) explaining why they needed to retain "at the pleasure of" managerial rights. It lacked any reliable contemporaneous testimony on the harm that would come to the departments were they to adopt a just cause standard and grant appeal rights to outside neutrals.

The Union's case, on the other hand, included unrebutted testimony about the releases under the newly elected District Attorney Boudin and the lack of supportable or even identified causes for those releases. It is no surprise that the Union has drawn a lesson from those releases that it needs a fair process to protect its journey-level members under future leadership changes.

The Employer's reliance solely on the "nine words" in the Charter butts up against the undeniable trend in San Francisco Bay Area public attorney employment. The trend is strong, deep and consistent. It is undoubtedly fueled in part by the high-profile firings of career federal attorneys under the current federal administration. It also flows from the heated political debates, and subsequent elections, about the proper role of prosecutors in Bay Area counties.

The City and County of San Francisco must sooner or later realize that it is noticeably out of step with its Bay Area colleagues and competitors in the rights it grants to public attorneys. The undersigned

neutral arbitrator believes that this interest arbitration decision is unlikely to end the dispute. It will hopefully move the Employer a step in the direction of satisfying the mandates of its own charter to provide comparable terms of employment to a critical part of its workforce.

AWARD

1. The Union's proposal on job protections for attorneys most closely conforms to the factors specified in Section A8.409-4(d) of the Charter of the City and County of San Francisco.

2. The Arbitration Board selects the Union's last offer of settlement on the stipulated issue of job protections for attorneys.

_____

Paul D. Roose, Neutral Chairperson of the Board

Date: January 23, 2026

___/s/ *Nathan Quigley*_____

Nathan Quigley, Union-appointed Board Member

__x___I concur with the Award

___/s/ *Jonathan Holtzman*_____

Jonathan Holtzman, Employer-appointed Board Member

__x___I dissent from the Award (see attached)

I dissent.

The panel majority's decision would require a radical departure from the status quo that is both contrary to the public interest and inherently undemocratic. It seeks to impose "just cause" and seniority layoff rights for MAA represented attorneys across the City over the City's strong and consistent objection. This directly conflicts with Charter section 10.104 which provides that attorneys "shall serve at the pleasure of the appointing officer" – express at-will language not found in other jurisdictions. The panel majority climbs out on a very precarious limb by relying solely on the not-yet-final PERB decision as its sole legal foundation. PERB found section 10.104 *facially valid*; accordingly, that section has the full force of state law. While PERB also found "job protections" could be negotiated and arbitrated under Charter section A8.409, that is not the same as finding that "just cause" is negotiable, an issue PERB ducked by using the broader, generic phrase "job protections." Perhaps PERB took that route because just cause rights are irreconcilable with serving "at the pleasure" of the appointing officer, even if other job protections might not conflict with 10.104 – including the severance and advisory due process that PERB offered as examples of negotiable job protections. PERB concludes that bargaining can be "harmonized" with Charter section 10.104, not obliterate it; the majority here completely ignores that legal imperative.

This decision could have implications far beyond MAA – it will likely upend an entire civil service appointment type that applies to roughly 2,000 City employees, and, if its logic holds, could unravel long-standing bargaining processes for Citywide retirement, health, and other substantive employment terms set in the Charter. Even if there were a "trend" toward just cause rights for criminal attorneys, which the City disputes, *imposing* such rights on the more than 40% of the unit who are not criminal attorneys is the wrong approach. If the comparability and policy case were truly compelling, MAA should bring it to the voters, who reserved that decision for themselves. They have expressly refused to do so. The voters, not an arbitration panel dominated by a single unelected arbitrator, should make this critical policy decision. That is the only legally permissible approach.

I urge the panel to reverse its decision, or at a minimum stay it pending a determination on the appeal of the PERB decision and other legal challenges.

DISCUSSION

For over 100 years, San Francisco's Charter has provided that its attorneys "serve at the pleasure" of their appointing officers. Nearly 40 years ago, the City enacted the most progressive collective bargaining system in the state—the only system that provides for

interest arbitration for non-safety employees. The system was championed by the City's unions and was the product of extensive negotiations between the City and its unions.

Although the City's interest arbitration process delegates a significant portion of the Board of Supervisors' powers to an arbitration board to decide bargaining proposals, it contains vital safeguards.

First, it contains "carveouts" from bargaining under the section A8.409 Charter process, including interest arbitration, for "those matters within the jurisdiction of the civil service commission which establish, implement and regulate the civil service merit system" except insofar as they affect compensation. (Charter, § A8.409-3.) The majority panel's opinion runs directly afoul of that carveout. (While the Union has wrongly argued this language only pertains to civil service rules and not substantive Charter provisions, the opinion itself cites the very civil service rule embracing the Charter "at-will" status of attorneys.)

Second, the interest arbitration process only delegates the powers the Board of Supervisor itself has. The Board does not have the power to change or ignore San Francisco's Charter. Yet the majority panel's opinion purports to do just that, by awarding just cause rights, including seniority-based layoff procedures, directly in conflict with the Charter's mandate that attorneys "shall serve at the pleasure of the appointing officer."

Third, the Charter makes clear that the labor provisions in the appendix (where the bargaining provision reside)are superseded by the text of the Charter itself (where section 10.104 is located) Yet, while the Charter commands that attorneys serve at the pleasure of their appointing officers, the opinion wrongly suggests that the labor sections in the Charter's appendix control over the text of substantive provisions.

This goes to a deeper flaw propagated by the PERB decision and applied by the majority panel's opinion: the view that there can be a difference between merit system at-will status, on the one hand, and labor relations at-will status, on the other. In essence, the argument seems to be that even when the Charter, in its merit system provisions, states that attorneys serve at the pleasure of the appointing officer, a labor contract can provide for greater – and directly conflicting – protections. Of course, this is contrary to the Meyers-Milias-Brown Act (MMBA)itself, which says that the MMBA cannot interfere with merit system rules. (See Gov. Code, § 3500(a)) But, more importantly, it ignores the deep and rich history of the City's merit system—which, itself, developed from high-minded progressive concepts. The core of the merit system is that "for cause" status in the public sector must be earned by excelling in competitive examinations. Those who are selected through examination can earn "for cause" status after completing a probationary period,

itself a part of the examination process. Here, attorneys are not selected by exam because the Charter expressly provides they are exempt from civil service selection, appointment, and removal procedures. For that reason, the Charter says they serve "at pleasure." The false dichotomy between the merit system and labor rights simply does not hold water. Because they did not go through a competitive selection and appointment process, attorneys have not earned and should not receive just cause protections upon removal.

In the interest arbitration world, it has long been the case that an arbitrator cannot bind an employer to engage in interest arbitration for a succeeding round of bargaining. While not directly applicable here, the principles animating that rule are also at play. The City expressed serious concerns that public lawyers have a great deal of independence, discretion and authority. They are also charged with "standing in the shoes" of their elected bosses and must reflect their policies. How would the public feel about the current District Attorney being forced to keep attorneys hired by their recalled predecessor, when the public's complaint was that the office wasn't doing its job? Requiring appointing officers only to release attorneys in whom they have lost confidence after repeated instances of misconduct or incompetence is a recipe for mediocrity and tone deafness in our attorney ranks. City attorneys earn approximately $147,914 – $259,142 per year; San Franciscans have a right to ask more from their attorneys.

Two esteemed former San Francisco City Attorneys, Louise Renne and Dennis Herrera, testified that they would not have been able to build the office into what is widely viewed as one of the very best public law firms in the country without the flexibility that at-will employment brings. This testimony was strangely ignored by the majority panel's opinion. To be clear, the value of at-will employment is not that either former City Attorney fired very many lawyers; but at-will employment does allow for frank discussions with attorneys who are not working out, and for them to find another job or role in the office without being fired. It also means that the spirit of "standing in the shoes" of the elected City Attorney is honored by the attorneys. It is admittedly hard to explain why at-will workforces tend to be more motivated, but they are. As a lawyer who served the City in an at-will capacity for 15 years, I can say that it is not, as the Union contended, that employees live in fear. Most lawyers I know who work for the City love their jobs. It is more about a culture of excellence and dedication, and recognition for being a professional with significant responsibilities.

The panel majority makes much of the fact that current elected department heads did not testify at the hearing. But the salient point is this: the current elected department heads may well be reasonably satisfied with their workforce. The importance of the at-will doctrine is to allow their *successors* to have similar freedom to select personnel with whom they want to work. Imagine if this opinion applied in the Mayor's office, whose

employees are exempt under the same Charter provision (and it could, given the potential consequences of this decision) Would Mayor Lurie have been required to keep Mayor Breed's staff? This is not to say there was anything wrong with Mayor Breed's staff, it is simply to observe that a new Mayor – or any new leader – should be free to pursue their vision with staff aligned with that vision.

I am confident a reviewing court will overturn the PERB decision that forms the basis of this award. I suggest that the majority panel reverse or at a minimum stay this award until the PERB decision on which it is based is final.

However, so the record is complete for anyone reading this award and the PERB decision which it wholly asserts as a legal basis to ignore the Charter, I feel it necessary to set the record straight briefly in this dissent.

THE LAW

We start with the most obvious point. Despite briefing from both parties, the majority panel's opinion on page 3 cites the Charter provision pertaining to safety employees—a section that was not the subject of bargaining between the parties and does not contain similar safeguards. The correct provision applicable here is Charter section A8.409, and for these impasse procedures, section A8.409-4(d):

> In the event no agreement is reached prior to the conclusion of the arbitration hearings, the Board shall direct each of the parties to submit, within such time limit as the Board may establish, a last offer of settlement on each of the remaining issues in dispute. The Board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds by a preponderance of the evidence presented during the arbitration *most nearly conforms to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of public and private employment, including*, but not limited to: changes in the average consumer price index for goods and services; the wages, hours, benefits and terms and conditions of employment of employees performing similar services; the wages, hours, benefits and terms and conditions of employment of other employees in the City and County of San Francisco; health and safety of employees; the financial resources of the City and County of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst for the Board of Supervisors; other demands on the City and County's

> resources including limitations on the amount and use of revenues and expenditures; revenue projections; the power to levy taxes and raise revenue by enhancements or other means; budgetary reserves; and the City's ability to meet the costs of the decision of the Arbitration Board.

(Emphasis added.)

Importantly, although the applicable Charter provision cites many specific factors, they are only examples: the test is "traditional factors," of which most arbitrators recognize the status quo is paramount. Generally, a longstanding *status quo* will be upset only where there is compelling evidence it has not worked well. That evidence is entirely lacking here. The closest the panel's majority opinion comes to a rationale for such a radical departure from the status quo is the testimony of a single lawyer formerly employed by two different City departments and dismissed from both. The City chose not to drag a discussion of her performance into this proceeding but, at a minimum, the fact that two separate appointing authorities found her services wanting suggests an issue. The panel majority's other central factual argument is a supposed "trend" toward "for cause" employment of lawyers, an erroneous determination I address below.

Putting aside the fact that the panel majority's decision cites the wrong Charter section as a basis for the award, it does not cite other relevant Charter sections, such as the bargaining carveouts in section A8.409-3 and, most notably, it fails to acknowledge the State Constitution, which provides: "[P]lenary authority is hereby granted, subject only to the restrictions of this article, to provide [in a charter] or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, a*nd for their removal*, and for their... and for the compensation, method of appointment, qualifications, tenure of office *and removal* of such deputies, clerks and other employees..." (Cal. Const., art. XI, § 5(b), emphasis added.) The Charter is not, as PERB asserts, a "local rule"—rather, it is an extension of the State Constitution under which both the City and PERB operate. Courts have repeatedly recognized that charters have the force and effect of state law. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 698, fn. 4.)

As the panel majority concedes, Charter section 10.104 clearly states that attorneys are exempt from merit system selection, appointment and removal procedures, and "shall serve at the pleasure of the appointing officer." Section 10.104, in its current form, is in the main body of the Charter and was reenacted after Charter section A8.409 et seq. Charter section 16.116 provides that the provisions in Appendix A (including section A8.409 et seq.) "shall remain in effect as a part of this Charter as 'Appendix A Employment Provisions,'

except that in instance of conflict or inconsistency between these sections of the Charter of 1932 and the body of this Charter, this Charter shall prevail…". The essence of the arbitration award is that section A8.409 prevails over the body of the Charter; but the Charter expressly says just the opposite. The panel majority's opinion is simply wrong as a matter of law in how it prioritizes the relevant Charter provisions.

The panel majority's major error as relates to the law is its reliance on the flawed decision by PERB, which is not yet final and is on appeal. I will not reargue that appeal but attach the City's opening and reply briefs in that case as Exhibit A and incorporate them herein. For the purposes of this dissent, I highlight the following:

- The PERB decision holds that section 10.104 is facially valid. In an effort to nonetheless find a path to require the City to bargain MAA's just cause proposal, PERB framed the bargaining issue as one of "job protections" generally (rather than just cause specifically, the true issue in dispute) and found the City could and must bargain "job protections," including through interest arbitration under section A8.409-4. By that sleight of hand, PERB ducked an express finding that the City could and must negotiate "just cause" rights, because PERB must understand that any such position is utterly unsupportable—there is no discretion under section 10.104 if an arbitrator can reverse the decision. If section 10.104 is facially valid, as PERB found, then any bargainable "job protections" must be consistent with that section, and just cause rights are not. The discretion of appointing officers to dismiss employees is non-existent if an arbitrator can reverse their decision.

- The notion that the City has "conceded" anything regarding the meaning of section 10.104 by bargaining certain "job protections" is patently silly. As PERB itself points out, and MAA witness Matt Finnegan acknowledged in his testimony, severance is a form of job protection but certainly does not violate section 10.104 because it does not impinge on the appointing officer's discretion. Moreover, other advisory mechanisms do not violate section 10.104 so long as the appointing officer retains the ultimate decision.

- The notion that "shall serve at the pleasure" has "no single, uniform meaning" is equally absurd. One need only look to any labor/employment hornbook to understand that "at the pleasure" and "at-will" mean the same thing. And just cause rights are entirely inconsistent with at-will status.

- PERB correctly recognized that the California Supreme Court calls for harmonization where possible. However, the leading case on the subject, *People ex*

rel. Seal Beach Police Officers Assn. v. City Seal Beach (1984) 36 Cal.3d 591, expressly finds that the way to harmonize charter provisions with bargaining obligations is to bargain over a charter amendment to be approved by the voters! That is precisely what MAA is unwilling to do— and, for understandable reason, since their last attempt was rejected by the voters overwhelmingly. The Charter delegates this decision to the voters, not the Board of Supervisors and certainly not to the arbitration board under the Charter impasse resolution procedures. Through its decision, the panel majority has illegally usurped the authority of the voters. Even if an arbitration panel had the authority to impose just cause rights, it *should not* disrespect the clearly expressed will of the voters.

- The Charter provisions pertaining to safety members do expressly "carve out" discipline. That is because discipline of police and fire are handled by citizen commissions. It was unnecessary to do so in Charter section A8.409 et seq. because the merit system carveouts expressly preserved exempt employment statuses, and the charter defined them. In the nearly 40 years since the enactment of section A8.409 et seq., every City union has accepted this interpretation of the Charter. Indeed, it is the very basis on which the generous severance benefits were negotiated, as well as other advisory job protections that did not conflict with section 10.104. That carveout for safety discipline provides no support for the panel majority's decision.

The panel majority attempts to support the PERB decision based on a few alleged concessions by the City. They are chimerical.

Troublingly, the panel majority's opinion selectively cites and then misrepresents the testimony of Carol Isen, the City's Human Resources Director, who said that "job protections" could be negotiated.[1] That testimony itself is not controversial, it is what the City has said all along; there are certain job protections that can be negotiated. But the panel majority's opinion then "agrees" with Isen and extends her general testimony about generic and unspecified "job protections" to included just cause rights and binding arbitration of disciplinary grievances. That is the precise opposite of the entire thrust of Isen's testimony. (*Cf.* Transcript, p. 499:23-500:6 ["Q. So your understanding is that the

[1] See, e.g., Transcript, p. 501:8-16, ("Well, the City has negotiated other forms of job protections and we're prepared to continue to do that. We have the option for employees in many of these exempt types of severance payments if they're released. We have administrative hearings in some instances that employees can request, and we hold essentially evidentiary hearings with recommendations made to the appointing officer.").

Union is proposing to have binding arbitration to challenge discipline and terminations and so forth? A. yes, I do. Q. [D]o you have any issues with that proposal? A. Well, my – the primary problem with the proposal … is the language in the charter that says that this occupation serves at the pleasure of the appointing officer."].) This intentional distortion of Isen's testimony is outrageous and deeply problematic. If the panel majority wishes to issue a lawless opinion, so be it. But it should not attempt to drag one of the City's highest-level officials into the topsy-turvy mess by misstating their testimony and position.

The panel majority's decision also cites the inclusion of MOU language regarding the handling of "gross misconduct," as an alleged concession by the City on the bargainability of MAA's proposal. But that procedure only applies in the discretion of an appointing officer and provides an optional mechanism to withhold the severance benefit if an employee being released from employment has engaged in gross misconduct. That provision does not relate to or interfere with the appointing officer's discretion to dismiss attorneys without a stated cause—i.e., "at the pleasure."

Finally, the panel majority seems to harbor the misimpression that arbitration of discipline will prevent lawsuits. I think the opposite is true. The current severance benefit includes a release of claims in exchange for the generous severance payment – that actually prevents lawsuits. Under MAA's just cause proposal, if an attorney elects the just cause arbitration process rather than severance, then there is no release of claims and even if a dismissal is sustained after a grievance arbitration, nothing precludes the attorney from filing and pursuing a lawsuit, regardless of merit. The current process also has the benefit of minimizing potential reputational harm around a termination. As the decision notes, not many attorneys in the City are dismissed. When it does happen, however, the "at the pleasure" doctrine allows for candid conversations with attorneys and for them to find other jobs without the stigma of dismissal.

COMPARABILITY

The core of the panel majority's opinion is that comparability favors the Union because that is the "trend" for public attorneys. This argument completely misses the boat; this "determination" is unsupported and plainly wrong. While it is true that many counties have "for cause" protections for district attorneys and public defenders, the picture is far more mixed for civil attorneys. And the "trend" is comprised of two counties that recently conferred "for cause" status – while one County—Contra Costa—removed for cause protections for civil attorneys. In short, there is no "trend" among counties.

With respect to cities, there is no reasonable way that logic survives scrutiny. The most comparable jurisdiction for San Francisco is San Jose, whose civil attorneys are at-will.

Strangely, the majority panel ignores this evidence, although the City definitively proved that status. (See Exhibit B).

Another serious flaw in the panel majority's analysis is that it completely ignores private sector data – which is equally relevant and an explicit factor under section A8.409-4(d). Of course, virtually all attorneys in the private sector are at-will. And the testimony regarding the City Attorney's Office is that it operates in much the same way as a private law firm – and recruits primarily from the private sector. The City Attorney's Office is 40% of the bargaining unit, yet the Union proposal sweeps it into its LBFO. The failure to consider private sector data, itself, is a basis for a writ of mandate reversing this opinion for failure to evaluate a "mandatory" factor.

Another major flaw is the treatment of internal comparability. The Charter provides that the panel must consider "the wages, hours, benefits and terms and conditions of employment of other employees in the City and County of San Francisco…" The panel majority's opinion "fuzzes" this factor by looking to *all* employees of the City, rather than other Charter exempt employees—the most relevant group for the purposes of analyzing this particular issue. Obviously, internal comparability means that one must look at similarly situated jobs. While the opinion does cite to the physicians' non-binding procedure, suggesting it is superior to what the City proposed here, that procedure honors the at-will status of physicians. *No other exempt group even has that kind of MOU language*. In short, the internal comparability is not mixed; it strongly favors the City because it 100% recognizes the at-will status of that group.

This means that two of the three comparability factors—private employment and internal comparability—favor the City. The panel majority's analysis completely fails to apply these factors in any reasonable or proportionate way.

CONCLUSION

It is undeniable that the "crocodile in the bathtub," as former Justice Kaus would say, is politics. Our nation is seeing a wholescale attack on the rule of law, so the natural inclination is to try to protect lawyers from arbitrary or capricious employment actions. It is entirely possible that San Francisco voters would agree we should. That is why it is not unreasonable to propose a Charter amendment to resolve this issue—the only proper way to change the Charter.

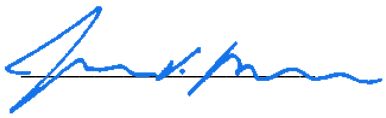
But it is also important to recognize that San Francisco is not Washington, D.C. We elect the heads of each of the three major departments affected by this opinion, and San Francisco voters are generally progressive. There is no evidence that the appointing officers here have anything in common with Donald Trump or Pam Bondi. The number of

attorneys dismissed when the District Attorney job has turned over is roughly 5% of the attorney workforce in their DA's department, with only a few line employees; the rest were in leadership positions. Far fewer have been dismissed from the City Attorney's or Public Defender's offices, or smaller departments employing attorneys.

The question San Franciscans will ultimately need to decide is whether giving those we elect some latitude to build their own teams, and to make sure they can have the best lawyers they can recruit, is important or not.

It is often said that elections have consequences. The public's decision to recall the last District Attorney was widely interpreted as a mandate for more effective prosecuting. Did that require some change in personnel? I don't know, personally. But, as a fundamental democratic principle, we elect people to make these kinds of decisions.

In the end, the panel majority's opinion itself amounts to an assault on democracy, as it completely fails to honor the expressed will and policy decision of San Francisco's voters. The decision turns a successful labor relations program on its head and will undoubtedly have broad ramifications and negative consequences for San Franciscans. I hope and trust the decision will be overturned.



Jonathan V. Holtzman
Panel Member for City and County of San Francisco

Exhibit A

Case No. A173302 No Fee (Gov. Code § 6103)

IN THE COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FIVE

CITY AND COUNTY OF SAN FRANCISCO,

Petitioner,

v.

PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent,

MUNICIPAL ATTORNEYS ASSOCIATION OF SAN FRANCISCO, TEAMSTERS LOCAL 856,

Real Party in Interest.

Appeal of Public Employment Relations Board
Decision No. 2958-M
(Case No. SF-CE-2157-M)

PETITIONER CITY AND COUNTY OF SAN FRANCISCO'S OPENING BRIEF

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Attorneys for Petitioner
CITY AND COUNTY OF SAN FRANCISCO

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
(CALIFORNIA RULES OF COURT 8.208 AND 8.488)

Court of Appeal Case No.: A173302
PERB Case No.: SF-CE-2157-M

Case Name: CITY AND COUNTY OF SAN FRANCISCO v. PUBLIC EMPLOYMENT RELATIONS BOARD

X There are no interested entities or persons to list in this certificate per California Rules of Court, Rule 8.208(e)(3).

____ Interested entities or persons are listed below:

Name of Interested Entity or Person **Nature of Interest**

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (l) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Signature of Attorney/Party Submitting Form
Jonathan V. Holtzman
Printed Name
RENNE PUBLIC LAW GROUP

Party Represented: City and County of San Francisco
State Bar No: 99795

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

Statutes

TABLE OF AUTHORITIES: (continued) **Page(s)**

Other Authorities

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

INTRODUCTION

On its face, this case involves a plenary power expressly reserved by the Constitution to charter cities—the power to determine "the compensation, method of appointment, qualifications, tenure of office and removal of" city employees. (Cal. Const., art. XI, § 5(b).) By its clearly erroneous decision, Respondent, the Public Employment Relations Board ("PERB"). has improperly forced Petitioner, the City and County of San Francisco ("City"), to submit to binding interest arbitration a proposal to provide "for cause" protections to its attorneys, a proposal that directly contradicts express Charter language providing that attorneys serve "at the pleasure" of their appointing officers, i.e., in an "at will" status. (Charter, § 10.104.) This Charter provision was passed by the voters, the only ones who have the power to amend the City's Charter. PERB's decision undermines the role and will of the voters by improperly delegating to a third-party arbitrator the power to decide an issue—removal of attorneys—the Charter reserves for the voters. PERB is owed no deference in interpreting the City's substantive Charter provisions, and its decision grossly misreads and misapplies express Charter language.

But this case implicates much larger constitutional issues that merely labor "for cause" rights for attorneys. PERB's decision improperly expands who can decide and stand in the shoes of the City's voters and those City boards and officials to whom voters delegate authority, in this case, the City's top

elected attorneys. While policy arguments can be mustered for and against the at-will employment of attorneys, the core principle is that the City's voters—not PERB, and not an unelected arbitrator or even the City's Board of Supervisors—have the authority to make that decision. That is the essence of the plenary powers granted to the voters. And it is that power that PERB erroneously eviscerated in its decision.

This decision will impact other municipal matters set in the Charter where the voters have similarly reserved authority for themselves or specifically allocated authority to a board, commission or official, for example, matters related to retirement, retiree health, and other topics within the jurisdiction of the City's Civil Service Commission ("Commission" or "CSC"). This case is about preserving charter home rule authority and appropriately harmonizing it with collective bargaining rights under the Meyers-Milias-Brown Act ("MMBA"), and preventing PERB from elevating the procedural requirements of the MMBA over local substantive authority and decision-making. The MMBA creates procedural duties to bargain; it does not bestow on PERB or interest arbitrators the power to alter to whom the voters choose to delegate—or not to delegate—decision-making authority.

LEGAL AND FACTUAL BACKGROUND

I. The City's "Home Rule" Authority Over Municipal Employment

The City is a charter city and county organized under Article XI, section 3(a) of the California Constitution. (See *Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 160.) Under Article XI, section 5(a) of the Constitution—colloquially known as the "home rule" provision—City voters possess the "plenary authority" over the City's "municipal affairs," subject only to conflicting constitutional provisions and preemptive state law on matters of statewide concern. (See *State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 556.) This includes the power to determine "the compensation, method of appointment, qualifications, tenure office and removal of" city employees. (Cal. Const., art. XI, § 5(b).) The terms set in the Charter can be "amended, revised, or repealed" only in the same manner as they were originally adopted—i.e., by majority vote of the electorate. (See *id.*, § 3(a); *Santa Clara County v. Superior Court* (1949) 33 Cal.2d 552, 554.)

II. The MMBA's Meet-and-Confer Requirement

The MMBA governs labor relations between local public entities and employee unions. It has two stated purposes: (1) to "promote full communication" between local public employers and employees, by establishing collective bargaining as the method for resolving employer-employee disputes regarding

compensation and other terms and conditions of employment; and (2) to provide a uniform basis for recognizing the representation rights of public employees and public employee unions. (Gov. Code, § 3500(a).)

In its core provision, the MMBA requires public entities and unions representing public employees to "meet and confer in good faith" regarding wages, hours, and other terms and conditions of employment "within the scope of representation." (Gov. Code, §§ 3504, 3505.) The MMBA requires that the parties "seriously attempt to resolve their differences and reach a common ground," but it does not require they reach agreement. (*Seal Beach*, *supra*, 36 Cal.3d at p. 596.) It also does not prescribe any binding process for resolving bargaining impasses. Instead, the MMBA includes optional mediation and, upon union request, advisory factfinding. In addition, the MMBA authorizes public entities to adopt, after consulting with the unions, their own "reasonable rules and regulations" for bargaining, including any additional procedures for impasse resolution. (Gov. Code § 3507(a); *Santa Clara County Correctional Peace Officers' Assn., Inc. v. County of Santa Clara* (2014) 224 Cal.App.4th 1016, 1033-1034.)

When the Legislature enacted the MMBA in 1968, civil service systems had been in place at the State and local level for decades. (See, e.g., *Hanley v. Murphy* (1953) 40 Cal.2d 572, 577 [describing the City's early Charter-based system].) The Legislature stated its intent with respect to such systems as follows:

> *Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies that establish* ***and regulate*** *a merit or civil service system or which provide for other methods of administering employer-employee relations* nor is it intended that this chapter be binding upon those public agencies that provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter. *This chapter is intended, instead, to strengthen merit, civil service* and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.

(Gov. Code, § 3500(a), emphasis added.)

III. *Seal Beach* Bargaining

The California Supreme Court set the standard for applying the MMBA to matters governed by city or county charters in *People ex rel. Seal Beach Police Officers Association v. City of Seal Beach* (1984) 36 Cal.3d 591 ("*Seal Beach*"). In *Seal Beach*, a police officers' union challenged three charter amendments concerning discipline and other matters on the ground that the city failed to meet and confer over the amendments before placing them on the ballot. (*Id.* at p. 596.) The city argued that requiring it to bargain over the amendments would undermine the city council's constitutional authority to

propose charter amendments to voters. The Supreme Court disagreed.

Initially, the Court stated that the "simple question posed by this case is whether the unchallenged constitutional power of a charter city's governing body to propose charter amendments may be used to circumvent the legislatively designed methods of accomplishing the goals of the MMBA." (*Seal Beach*, *supra,* 36 Cal.3d at p. 597.) The Court recognized that although the Constitution gives the governing body of a charter city the right to propose charter amendments to voters, "a city's power to amend its charter may be subject to legislative regulation." (*Id.* at p. 598.) The Court also emphasized the "distinction" between legislation that sought to control the "substance" of matters reserved for local governments and those that merely established a "procedure" for resolving such matters, noting that the latter are constitutionally permissible while the former are not. (*Id.* at p. 601, fn. 11.)

Applying these principles, the Court found that the MMBA's meet-and-confer requirement could be harmonized with the city council's constitutional right to proposed charter amendments, reasoning that:

> Although [the MMBA's meet-and-confer requirement] encourages binding agreement resulting from the parties' bargaining, the governing body of the agency—here the city council—retains the ultimate power to refuse an agreement and to make its own decision.... This power preserves the

> council's rights under article XI, section 3, subdivision (b)—it may still propose a charter amendment if the meet-and-confer process does not persuade it otherwise.

(*Seal Beach*, *supra*, 36 Cal.3d at p. 601.)

Thus, under *Seal Beach*, any charter-governed matter that is also subject to the MMBA's bargaining requirement must first go through meet and confer before it may ultimately be submitted to and decided by the voters. (See *Seal Beach*, *supra*, 36 Cal.3d at pp. 594-595, 600-601; see also *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 904.) The bargaining over such matters is known as "*Seal Beach* bargaining." (See, e.g., *City and County of San Francisco* (2023) PERB Decision No. 2867-M, p. 7, fn. 5.)

IV. Charter Provisions Governing City Employment

A. Provisions Regarding Employee Selection, Appointment, and Removal

The City Charter provides for a "civil service merit system" administered by the CSC.[1] (See Charter, §§ 10.100-105.) Under this system, City employees are appointed through a competitive examination process unless they serve in positions specifically exempted from that process by the Charter. (*Id.*, § 10.104.) The

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[1] The current Charter sections cited herein are part of Charter Article X (Personnel Administration) and Charter Appendix A (Employment Provisions). Both Article X and Appendix A are in the record in their entirety. (See Volume 4 of the Administrative Record ("AR"), 2569-2806.)

Charter provides that employees who are selected through the competitive examination process and complete a probation period gain permanent civil service status in their positions and may not be removed except "for cause" and after a hearing. (See *id.*, §§ A8.341, § A8.343.) With respect to positions "exempt from the competitive civil service selection, appointment, and removal procedures," the Charter provides persons serving in those positions "s***hall serve at the pleasure of the appointing authority***...." (*Id.*, § 10.104. emphasis added.) The Charter enumerates nineteen types of exempt positions, including "[a]ll attorneys." (*Id.*, § 10.104(13).)

B. Origin of Attorneys' "At-Will" Status Under the Charter

Attorneys employed by the City's elected officials have been at-will employees since the voters adopted the City's original Charter in 1898, ratified by the Legislature in 1900. (See RJN, Ex. 1 [former Charter, Art. V, Chapter II, § 4, Chapter III, § 3 (1900); former Charter, §§ 26, 29 and 33 (1932)].)[2] This legislative choice by the voters reflects the unique position of attorneys who serve under elected legal officers.

In *Ramirez v. San Mateo County District Attorney's Office* (9th Cir. 1981) 639 F.2d 509, a failure-to-hire Title VII case against a district attorney with plenary powers to hire and fire, the Ninth Circuit put it this way:

[2] "RJN" refers to the City's concurrently-filed Request for Judicial Notice.

> This characterization of the deputy's position in county law tells us much about the working relationship the county envisions between the district attorney and deputy. The exclusive powers of selection and retention indicate that deputies perform to the district attorney's personal satisfaction rather than to the more generalized standards applied to other county workers by the civil service system. Such a level of personal accountability is consistent with the highly sensitive and confidential nature of the work which deputies perform as well as with the considerable powers of the deputy to represent the district attorney in legal proceedings and in the eyes of the public.

(*Id.* at p. 513; see also *Fazio v. City and County of San Francisco* (9th Cir. 1997) 125 F.3d 1328 [assistant district attorney could be terminated for political reasons under the First Amendment's "policy maker" exception because political considerations are "appropriate requirement[s] for the effective performance of the public office involved"].)

Real Party in Interest Municipal Attorneys Association ("MAA") earlier sought to eliminate the Charter's at-will provisions through the legislative process. In 1976, the City's Board of Supervisors placed on the ballot an MAA-sponsored Charter amendment under which attorneys appointed by the City Attorney, District Attorney, Public Defender, and Public Administrator would acquire just cause rights after three years of

service. (4AR 2815.) It failed by two-thirds of the vote. (See RJN, Ex. 2 [Prop. G ballot digest and vote result].)

C. Implementing Civil Service Rules

The Charter authorizes the Commission to adopt rules implementing the civil service provisions of the Charter. (Charter, § 10.101.) The Commission's rulemaking authority encompasses all aspects of the civil service system, including the classification of positions and "the designation and filling of positions as exempt, temporary, provisional, part-time, seasonal or permanent." (*Id.*)

Consistent with Charter section 10.104, the Commission adopted Rule 114.25, which provides that appointments to the positions designated as exempt are not subject to the merit-based selection, appointment and removal procedures, and that the exempt appointees ***"shall serve at the of pleasure of the appointing officer***." (2AR 632, emphasis added.) Pursuant to its section 10.101's authority, the Commission also established civil service job classifications for the positions designated as exempt, including attorney positions. (See 5AR 2891.) Though exempt from the selection, appointment and removal procedures, exempt employees are subject to civil service rules regarding other matters, such as conflicts of interest, resignation, medical examinations, and leaves of absence. (See 2AR 461-470, 511-526, 616-643, 653-661, 738-741, 747-785; 5AR 3219-3220.) The overall civil service system by its express language and administration applies to more than just permanent civil service employees.

V. 1990 and 1991 Charter Amendments on Bargaining and Interest Arbitration

A. Legislative Nature of Interest Arbitration

Interest arbitration is a means for resolving disputes over the terms of a collective bargaining agreement. (*County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322, 341.) Unlike so-called grievance arbitration, which concerns the meaning of an existing agreement, interest arbitration concerns "the acquisition of future rights." (*Id.* at pp. 341-342.) Thus, an interest arbitrator's function is "effectively legislative," and the arbitration result amounts to quasi-legislative action that has the force of law. (*Id.*) Consequently, as applied in the public sector, binding interest arbitration "may push the arbitrator into the realm of social planning and fiscal policy." (*Id.* at p. 342.) It is rare for public employers to adopt this form of arbitration because it delegates authority that otherwise resides in the legislative body to an unelected arbitrator. (See *Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22, 25 ["the ultimate act of applying the standards and of fixing compensation is legislative in character, invoking the discretion of the council"].)

B. Origin of the Amendments

Before 1990, the Charter did not provide for interest arbitration to resolve bargaining impasses. Instead, impasse resolution procedures, including non-binding mediation and a fact-finding process, were set out in a City ordinance. Historically, the City also did not set compensation and certain

other terms and conditions of employment through full collective bargaining; instead, the City used surveys, formulas and other means to determine most of the economic terms of employment. (See *City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 906-907.)

In the late 1980s, the unions began to advocate for replacing the City's survey-based compensation setting process with collective bargaining and binding arbitration, because wages had been frozen under the Charter formula due to financial problems in the City. (3AR 2222, 2225, 2227-2228.) The City and the unions engaged in *Seal Beach* bargaining to formulate the necessary Charter amendments. The City first bargained with the unions that represent the "safety" employees of the police and fire departments. That bargaining resulted in a proposed Charter amendment (named Proposition D), which the voters approved in November 1990, and is now codified in Charter Appendix sections A8.590 et seq.

The City then bargained with a group of the unions that represent the "miscellaneous" employees, a category which comprises the bulk of the City's workforce and includes attorneys. The group, called the Public Employees Committee, included MAA. (3AR 2228-2230.) That bargaining resulted in a proposed Charter amendment, Proposition B, which the voters approved in November 1991, and is now codified in Charter Appendix sections A8.409 et seq.

C. The Amendments Codified Under Sections A8.409 et seq.

In section A8.409-3, the 1991 amendments covering "miscellaneous" employees incorporated MMBA's "mutual obligation to bargain in good faith on all matters within the scope of representation, "as defined by Government [C]ode section 3504, relating to the wages, hours, benefits and other terms and conditions of City and County employment...." (Charter, § A8.409-3.) After specifying the matters about which the City and unions were required to bargain under section A8.409-3, that section sets an express "carveout," i.e., exclusion from the scope of bargaining under section A8.409: "provided, however, that except insofar as they affect compensation, those matters within the jurisdiction of the civil service commission which establish, implement and regulate the civil service merit system *shall not be subject to bargaining under this part*," i.e., under section A8.409. (*Id.*, emphasis added.) Rather, as to those excluded civil service matters, "the [Commission] shall continue to be required to meet and confer pursuant to state law." (*Id.*)

Consistent with the Commission's jurisdiction as established by Charter section 10.101, the civil service matters that are expressly excluded from bargaining under section A8.409-3 include: (1) "the authority, purpose, definitions, administration and organization of the merit system and the civil service commission;" (2) "the establishment and maintenance of a classification plan including the classification and reclassification of positions;" and (3) ***"the designation of positions as exempt,***

temporary, limited tenure, part-time, seasonal or permanent." (Charter, § A8.409-3, emphasis added.) The civil service "carveouts" were a bone of contention during *Seal Beach* bargaining that led to the amendments, and the Commission took an active role in the bargaining to preserve its role and exclusive authority over the civil service system. (See 3AR 2186-2192, 2196-2197, 2200, 2233-2244.)

In section A8.409-4, the Charter provides that disputes "pertaining to wages, hours, benefits and other terms of and conditions of employment" that remain unresolved after good faith bargaining will be submitted to a three-member "Mediation/Arbitration Board" whose decisions "shall be final and binding on the parties." (Charter, § A8.409-4(a), (e).) Two members of the board are appointed by the parties; the third is a "neutral" arbitrator—typically a professional neutral.[3] Significantly, in rendering an award, the arbitration panel may only choose between the City's and the union's last, best, and final offers on each issue; the panel has no discretion to fashion a compromise that deviates from the final offers of one or the other party. (Charter, § A8.409-4(d).) Section A.8.409-4 includes two carveouts from interest arbitration, in A8.409-4(g), related to consent decrees and compliance with federal, state or local laws, and A8.409-4(h), regarding strikes.

[3] In effect, of course, the private and paid neutral acts as the "tie breaker" and is the ultimate decisionmaker.

And in addition to the civil service matters excluded from Charter bargaining under section A8.409-3, the Charter amendments also exclude other bargainable topics from the impasse resolution provisions in A8.409-4: (1) the calculation of retirement and death allowances, which are within the jurisdiction of the San Francisco Employee Retirement System; and (2) retirement health benefits, which are administered by the Retiree Health Care Fund. Those topics are excluded from the Charter impasse process under sections A.8.409-5 and A8.409-7. The Charter also excludes various other matters from interest arbitration separate from the 1991 amendments. (See *id.*, §§ A8.506-2 and 506-5, A8.509, A8.587-8(f), A8.600-8(f) [reserving matters for determination by the Retirement System and the Board of Supervisors].) Each of these provisions constitutes an exercise of the voters' constitutional authority to reserve certain matters to themselves or to a designated City body.

D. Limitations on the 1991 Amendments

In 1995, as part of the first major Charter reform since 1932, the voters approved Proposition E, which primarily concerned the allocation of executive authority over City departments. Proposition E also made several procedural and technical changes in the Charter. These changes included moving the 1991 amendments from the body of the Charter, where they were initially codified, to Charter Appendix A. In connection with this change, Proposition E specified that the 1991 amendments remained in effect as Appendix A, "except that

in instance of conflict or inconsistency," the body of the Charter "shall prevail" over the Appendix. (Charter, § 16.116.) The Charter provision requiring that attorneys serve at the pleasure of their appointing officers (section 10.104) is in the main body of the Charter, while the bargaining provisions are in an appendix. (See RJN, Ex. 3 [Prop. E ballot digest].)

VI. The City's Bargaining with MAA Concerning Attorneys' At-Will Status

A. Attorneys Represented by MAA

Under the Charter, the following elected officials may employ attorneys in their professional capacity: City Attorney, District Attorney, Public Defender, Sheriff, and Treasurer/Tax Collector. (See Charter, §§ 6.102-6.106, 10.104(13).) Under Commission rules and procedures, the City's Human Resources Department ("DHR") processes those officials' discretionary attorney employment requests and appoints the attorneys to exempt positions as provided under Charter section 10.104. (See 5AR 3219, 3221.) The attorneys may be appointed to one of six civil service job classifications, adopted by the DHR Director under authority in the Charter and Commission's rules. (See 5AR 2891.) MAA currently represents approximately 500 attorneys—most of whom serve in the offices of the City Attorney, District Attorney, and Public Defender—all in a single bargaining unit. (3AR 1901.)

B. Pre-2024 Bargaining

Based on the "very clear" language in the Charter, the City had always taken the position that attorneys' at-will/exempt status could not be altered except by Charter amendment. (3AR 2155-2156.) Until the present round of bargaining, MAA had never disputed that fundamental point; to the contrary, the union relied on that status to achieve increased severance pay and other proposals. (See 5AR 3174, 3183, 3169, 3171.) For example, in 2003, the City agreed to consolidate four attorney classifications into a "deep class" with a salary plan that provides for faster increases than the plan the City uses for most other employees, and a new and generous severance program when attorneys are dismissed or simply demoted to a lower job classification. (3AR 2157-2159; 4AR 2539-2541; 5AR 3176, 3191.) Past interest arbitration decisions involving the City and MAA bargaining incorporated the understanding that attorneys' status under the Charter was at-will. (See 5AR 3171.)

In 2022, MAA proposed adopting a disciplinary appeal process that covered disciplinary actions ranging from written reprimands to dismissals, and provided for binding arbitration at either party's request. (4AR 2364-2365.) MAA made the proposal in anticipation that the 2022 San Francisco District Attorney recall election could result in a change in that office. (3AR 2048-2049.) The City rejected MAA's proposal on the ground that the Charter precluded altering the at-will status of attorneys, and also that attorneys are situated differently than

other employees because of their duty of loyalty and ethical obligations to clients. (*Id.*, 1905-1906, 2050, 2061-2063.) The negotiations then pivoted to economic issues, and MAA successfully leveraged the issue to achieve increased severance pay. (*Id.*, 2049-2051.)

C. 2024 Bargaining

In January 2024, the City and MAA began to negotiate a successor to the 2022-2024 MOU. That month, MAA had affiliated with the International Brotherhood of Teamsters, Teamsters Local 856, "because they wanted to take on the City and its untenable position that it refuses to bargain over job protections for this unit." (3AR 1869-1870.) As MAA later explained to PERB's Administrative Law Judge ("ALJ"), "the issue rose in importance with the mass political firings that occurred after Chesa Boudin was elected DA in 2020 and then after Mr. Boudin's recall in 2022 Brooke Jenkins' election." (*Id.*, 1869.) In bargaining, MAA immediately proposed adopting a disciplinary process typical of rank-and-file government employees which provided that "all discipline shall be for just cause and progressive" and "subject to binding arbitration." (4AR 2368-2370 .) Later MAA also submitted an additional proposal that would limit the appointing officials' discretionary Charter authority to dismiss attorneys by imposing a seniority-based order of layoffs. (*Id.*, 2387.)

The City and MAA discussed the proposal in subsequent negotiation sessions and emails. During these discussions, the

City reiterated its longstanding position that while discipline is a mandatory subject of bargaining under MMBA, the City could not alter the Charter at-will provision by an agreement at the bargaining table. (See 3AR 2056-2058, 2065-2072; 4AR 2390-2393, 2499-2514.) The City also took the position that the parties' bargaining dispute concerning attorneys' at-will status is not subject to binding arbitration, because it fell within section A8.409-3's civil service carveout from the Charter bargaining process. *(*4AR 2501.) Notwithstanding its position on at-will status, the City indicated it was willing to consider MAA's job security concerns in some fashion compatible with the Charter and suggested exploring the possibility of an advisory disciplinary process. The City also suggested submitting MAA's proposal for non-binding mediation. (3AR 2077-2088; 4AR 2507.)

MAA took the position that (1) the MMBA's bargaining requirement trumped Charter section 10.104; and (2) the matter was subject to arbitration under section A8.409-4, because attorneys were not part of the civil service system carved out from arbitration under section A8.409-3. (3AR 1969, 1986, 2057; 4AR 2391-2393.) Consistent with its stated intent to bring the at-will status issue to a head, MAA rejected the City's suggestion to discuss Charter compatible means of addressing attorneys' job security concerns. (3AR 2072-2073.) MAA never proposed to engage in *Seal Beach* bargaining over a potential proposed Charter amendment, maintaining that the City had the power to reach a binding agreement on the issue.

The parties eventually reached a tentative agreement on all other issues. By then MAA had filed its unfair labor practice charge with PERB, and the current MOU includes a negotiation reopener clause to accommodate the final PERB decision in this matter. (4AR 2516.)

VII. PERB Proceedings

A. MAA's Unfair Practice Charge

MAA filed its underlying unfair practice charge in April 2024. In its charge, MAA alleged that the bargaining impasse between the parties broadly concerned "contractual job protections" and "discipline and job security," rather than specifying the issues as attorneys' at-will status. (See 1AR 14-19.) Based on these allegations, MAA asserted that the City's refusal to submit the dispute to interest arbitration constituted "Maintenance and Enforcement of an Unreasonable Rule in Violation of the MMBA." (*Id.*, 17.) MAA based its charge on the claim that the bargaining and impasse resolution provisions under Charter sections A8.409-3 and A8.409-4 are unlawful either on their face or as applied. (*Id.*) MAA's charge made no mention of section 10.104.

MAA also claimed that the City engaged in unlawful bad faith bargaining under PERB's "totality of the circumstances" standard. (1AR 18-19.) In connection with this claim, MAA likewise ignored section 10.104 and the fact that the City refused to submit at-will status to arbitration based on the key mandate of that section. (See 4AR 2500-2501.) Instead, MAA alleged that

the City refusal to arbitrate was "not consistent" with section A8.409-3 because that section carves out civil service matters and "the Union's proposal has nothing to do with civil service." (See *id.*, 2501.)

In response to MAA's charge, the City argued that section A8.409's provisions excluding at-will status were not unreasonable, because the MMBA did not establish any right to interest arbitration for resolving impasses. (1AR 125-134.) The City also argued that MAA's bad-faith claim failed because the City's position was consistent with the Charter and did not conflict with the MMBA. (*Id.*, 130-133.)

B. PERB's Complaint

In an inexplicable rush, PERB expedited MAA's charge, over the City's objection that the charge raised complicated issues involving interpretation of the Charter and the application of the MMBA to municipal affairs. (1AR 83-878, 102-104.) PERB then issued a Complaint against the City on May 2, 2024, one day after the City responded to the charge. (See *id.*, 135, 153-159.) The Complaint included two claims: (1) section A8.409-4 is a "policy" that violates the MMBA "as it prohibits an interest arbitrator from ruling on proposals regarding contractual job protection" and interferes with MAA members' representation rights; and (2) the City engaged in bad-faith bargaining because it "refused to bargain over mandatory subjects of bargaining including but not limited to just cause protections and seniority." (*Id.*, 153-157.)

C. ALJ's Proposed Decision

In July 2024, the parties participated in a three-day hearing before PERB's Chief ALJ Eric Cu. At the hearing and in post-hearing briefing, the parties restated their respective negotiation positions and legal arguments. (See 1AR 204-227, 230-260.)

In October 2024, the ALJ issued a proposed decision, finding that the City violated the MMBA, based in part on a legal theory that MAA chose not to raise in its charge and PERB did not assert in the Complaint. Invoking PERB's precedent for adjudicating "unalleged claims," the ALJ first ruled that Charter section 10.104 is facially invalid. The ALJ found that "there is no dispute" that section 10.104 means what it says, i.e., that elected officials who appoint attorneys may remove them at will, as opposed to "for cause." See 1AR 306, 322-324.) According to the ALJ, this provision violated the MMBA, and the MMBA preempted such conflicting provisions in municipal charters. (*Id.*, 325.)

The ALJ then ruled that (1) section 10.104 is severable from the rest of the Charter provisions concerning bargaining and binding arbitration; and (2) the City unlawfully applied the civil service carveout under section A8.409-3, because MAA's "job protection" proposals did not involve any matter within the jurisdiction of the Commission. (See 1AR 329, 332-337.) In making this finding, the ALJ asserted that it is "not even clear" that references to "exempt" status under section A8.409-4 refer to

"at-will" status under section 10.104. Despite the ostensible lack of clarity about the connection, the ALJ declined to consider CSC Rule 114—which spells it out—on the ground that the City did not formally introduce the Rule into the record. (See *id.*, 336, fns. 14 & 15.)

Finally, the ALJ ruled that the City engaged in bad-faith bargaining, under the "surface bargaining theory." The ALJ based this ruling on the ground that the City prevented a "meaningful give-and-take" on the matter of "job protections" without a valid justification. Additionally, the ALJ found that the City's negotiator inaccurately represented to MAA during bargaining that City officials did not support extending "for cause" rights to attorneys (1AR 341-343), finding that alleged misrepresentation significant even though those City officials have no power to revise the Charter and no authority over the City's labor relations programs.

D. PERB's Decision

The City filed a statement of exceptions to the proposed decision; MAA filed cross-exceptions. (2AR 1735.) On April 25, 2025, PERB issued a decision, affirming the "conclusions of the ALJ," though based on an "analysis that does not entirely match the proposed decision." (*Id.*, 1812.)

PERB initially bypassed the ALJ's ruling that Charter section 10.104 is facially invalid. Instead, PERB first addressed Charter sections A8.409-3 and 8.409-4 and concluded that they mandate interest arbitration over issues involving attorney

discipline, dismissal, and "for cause" protections. PERB's main grounds for this conclusion were that: (1) attorneys are not part of the civil service system carved out from arbitration; (2) unlike section A8.403's provisions concerning "miscellaneous" employees, the "safety employee" provisions under section A8.590-5 expressly carved out "discipline" from interest arbitration; and (3) as a general principle, arbitration must normally encompass all arbitrable issues. (2AR 1824-1832.)

Only then did PERB turn to section 10.104. It reversed the ALJ's decision that the section is facially invalid. PERB ruled that section 10.104 exempts attorneys from the civil service system, but grants to the City the discretion to bargain over "job protection" proposals and agree to give away attorneys' at-will status—effectively saying that the City could agree during labor negotiations to either ignore or de facto amend the Charter. PERB's main grounds for this ruling were: (1) the City would not have conceded that "job protections" were bargainable if the law were otherwise; (2) caselaw shows that at-will employees may still be entitled to MOU or employer policy based protections; and (3) the City had set a precedent by bargaining about "job protections" with physicians employed in exempt positions. (2AR 1835-1839.) According to PERB, section 10.104 "can exist in harmony" with the MMBA when construed in this fashion. (*Id.*, 1839.)

PERB also ruled that the City engaged in bad faith bargaining because it "repeatedly misrepresented" that MAA's proposal was not subject to arbitration. (2AR 1841-1842.) Based

on these purported MMBA violations, PERB ordered the City to reopen bargaining with MAA "on the issue of job protections" and, in the absence of agreement, to submit the issue to binding arbitration. PERB also ordered a monetary award to MAA for "extra bargaining costs and any wasted or diverted resources" caused in "substantial part" by City's purported violations. (*Id.*, 1842-1843.)

On May 23, 2025, the City timely filed a petition for extraordinary relief.

STANDARD OF REVIEW

PERB has authority to adjudicate unfair labor practice claims under the MMBA and other public sector labor relations statutes. (*Boling*, *supra*, 5 Cal.5th at p. 911.) Courts generally defer to PERB's interpretation of these laws unless it is clearly erroneous on the theory that interpreting such laws "'falls squarely within PERB's legislatively designated field of expertise.'" (See *id.* at pp. 911-912, 917.) "Even so, courts retain final authority to state the true meaning of the statute." (*Id.* at p. 912, citations and quotations omitted.) This "hybrid approach to review in this narrow area maintains the court's ultimate interpretive authority while acknowledging the agency's administrative expertise." (*Id.*)

In contrast with labor statutes, construing a city charter is a legal issue subject to *de novo* review. (See, e.g., *San Diegans for Open Government v. City of San Diego* (2018) 31 Cal.App.5th 349, 375.) In exercising independent judgment, the courts give

deference to a city's own interpretation of the charter. "An interpretation of a charter provision by an administrative agency charged with its implementation is entitled to great weight and respect unless shown to be clearly erroneous." (*Id.*, citation and quotations omitted.) In short, the City's consistent interpretation of its Charter as precluding negotiation or arbitration of "for cause" protections for attorneys absent a Charter amendment is entitled to great weight. (Cf. *San Francisco Fire Fighters Local 798 v. City & County of San Francisco* (2006) 38 Cal.4th 653, 674 ["when there is a reasonable relationship, section A8.590-5(g)(3) withdraws the action from binding arbitration even if there is a bona fide dispute between the City and the Union about the City's determination that the action is the appropriate means of ensuring compliance with anti-discrimination laws"].)

PERB's factual findings are conclusive "if supported by substantial evidence on the record considered as a whole." (Gov. Code § 3509.5(b).) But PERB's findings must be "set aside when the record before the Court of Appeals clearly precludes [PERB's] decision from being justified by a fair estimate of the worth of testimony of witnesses or its informed judgment on matters within its special competence or both." (*Sam Andrews' Sons v. Agric. Labor Relations Bd.* (1984) 162 Cal.App.3d 923, 929, citation and quotations omitted; see also *Martori Bros. Dist. v. Agric. Labor Relations Bd.* (1981) 29 Cal.3d 721, 727.)

ARGUMENT

I. Requiring the City to Submit the Issue of "For Cause" Rights to Interest Arbitration Violates Well-Established Constitutional and Labor Law Principles

A. Forcing Charter Cities and Counties to Submit Substantive Terms and Conditions of Employment to Interest Arbitration Is Unconstitutional

As our Supreme Court has recognized, Article XI, section 5(b) of the Constitution's conferral of "home rule" authority "represents an affirmative constitutional grant to charter cities of all powers appropriate for a municipality to possess and includes the important corollary that so far as municipal affairs are concerned, charter cities are supreme and beyond the reach of legislative enactment." (*City of Vista*, *supra*, 54 Cal.4th at p. 556, quotations and alterations omitted.)

It is difficult to conceive of a matter more core to municipal affairs than the decision as to whether an elected city council or an unelected and unaccountable arbitrator will exercise final authority for setting the terms and conditions of employment for city employees. (See *Bagley*, *supra*, 18 Cal.3d at pp. 24-25".) This is reinforced by article XI, section 11(a), which provides that "[t]he Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation … money, … or perform municipal functions." (Cal. Const., art. XI, § 11(a); *County of Sonoma*, *supra*, 173 Cal.App.4th at p. 352; cf. *Taylor v. Crane*

(1979) 24 Cal.3d 442, 453 [binding grievance arbitration was not unlawful delegation in part because "[t]he power to set the terms and conditions of employment is broader and more intrusive upon the functions of city government than the arbitrator's authority in this case to resolve an individual grievance"].)

Indeed, in *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, the Supreme Court invalidated an attempt by the Legislature to impose on local governments a requirement that disputes over employee compensation be submitted to binding interest arbitration. (See *id.* at pp. 285-296; see also *City of Vista*, *supra*, 54 Cal.4th at pp. 563-564 ["We there concluded that state law could not force a county into binding arbitration over the compensation paid to county employees"].) In doing so, the Court "applied two state constitutional provisions: one giving all counties authority to 'provide for the compensation of their employees' (Cal. Const., art. XI, § 1, subd. (b)), the other prohibiting the Legislature from 'delegating to a private person or body power to interfere with county or municipal corporation money' (*id.*, § 11, subd. (a))." (*City of Vista*, at p. 563, alterations omitted [discussing *County of Riverside*].)

These principles are even stronger in the charter context given charter cities' "plenary authority" over the substance of "salaries of local employees of a charter city" (*Seal Beach*, *supra*, 36 Cal.3d at p. 600, fn. 11) as well as "their removal." (Cal. Const., art. XI, § 5(b).) Critically, unlike the meet-and-confer obligation in *Seal Beach*—which reserved for the city council "the ultimate power to refuse an agreement and to make its own

decision" (36 Cal.3d at p. 601)—the binding interest arbitration laws at issue in *Riverside County* and *County of Sonoma* could not "be viewed as a mere procedural regulation of county labor relations." (*County of Sonoma*, *supra*, 173 Cal.App.4th at p. 348, citing *County of Riverside*, *supra*, 30 Cal.4th at pp. 288-289.) Rather, the interest arbitration laws in those cases were "instead substantive, in that [they] impinge[d] substantially on the authority of local governing bodies to provide for the compensation of their employees, and [they] therefore conflict[ed] with the Constitution's reservation of this power to local governments." (*Id.*)

In sum, as a matter of constitutional law, it requires the *express decision* of the governing body or voters for cities and counties to submit substantive terms and conditions of employment to interest arbitration for resolution. As set forth below, the City's voters have *expressly foreclosed* submitting "for cause" rights to binding interest arbitration in the Charter provisions at issue. PERB cannot ignore or change the Charter, and order that issue to arbitration. Because PERB's decision distorts the Charter and takes this substantive decision away from the voters, it must be vacated.

B. The City's Charter Precludes Adopting "For Cause" Rights for Attorneys Via MOU or Interest Arbitration

In construing charter provisions, courts apply the general principles of statutory construction to ascertain the intent of the voters. (*Don't Cell Our Parks v. City of San Diego* (2018) 21

Cal.App.5th 338, 349.) Courts "look first to the language of the charter, giving effect to its plain meaning":

> When the words of the charter are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the charter or from its legislative history. An interpretation that renders related provisions nugatory must be avoided ... [ ], [and] each sentence must be read in the light of the [charter's overall] scheme.... When the charter language has more than one reasonable interpretation, courts may consider extrinsic aids, such as legislative history including ballot pamphlets, public policy, contemporaneous administrative construction and the overall statutory scheme.

(*Id.*, citations and quotations omitted.)

As an overarching principle, "a restriction on the exercise of municipal power may not be implied," and charter language must be construed "in favor of the exercise of the power and against the existence of any limitation or restriction thereon." (*Domar Electric, Inc. City of Los Angeles* (1994) 9 Cal.4th 160, 171.) Here, all the relevant considerations, beginning with section 10.104's plain language, compel the conclusion that the Charter mandates at-will status for attorneys. That precludes converting their status to "just cause" absent a voter-approved Charter amendment.

1. Section 10.104's "At Will" Provision On Its Face Precludes "For Cause" Rights

Section 10.104 exempts attorneys from the generally applicable civil service selection, appointment and removal processes; simultaneously, it provides that persons serving in such exempt positions "shall serve at the pleasure of the appointing authority." (Charter, § 10.104(13).) The meaning of this language is clear: "Serving at pleasure means one is an at-will employee who can be fired without cause." (*Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1693, citing *Bogacki v. Bd. of Supervisors* (1971) 5 Cal.3d 771, 783.)

Under the general rules of statutory construction, "shall" means the provision is mandatory. (See, e.g., *Guardianship of C.E.* (2019) 31 Cal.App.5th 1038, 1051.) Thus, the Charter's plain language precludes providing "for cause" rights to attorneys who serve "at pleasure" in exempt positions. This mandate dates back to the City's original Charter and the voters directly reaffirmed it when they rejected MAA's 1976 proposed Charter amendment to provide "for cause" rights to attorneys. (See *supra*, pp. 16-17.) That choice comports with the public policy reasoning that attorneys are situated differently than most public servants because of their special role and responsibilities, and authority and discretion they exercise on behalf of their appointing officer. (See *Ramirez*, *supra*, 639 F.2d at p. 5133; *Fazio*, *supra*, 125 F.3d at p. 1328; see also *Hill*, *supra*, 33 Cal.App.4th at p. 1694.) The vast majority of the City's attorneys report to elected officers. This is important because it means that

the Charter's framers wanted elected officials to be able to implement their views through attorneys who "stand in their shoes." (See *Ramirez*, *supra*, 639 F.2d at p. 513.)

2. The Charter's Bargaining and Interest Arbitration Provisions Incorporate Section 10.104's "At-Will" Provision

The 1991 amendments to the Charter recognized the MMBA's meet-and-confer requirement and adopted binding interest arbitration as the means for resolving bargaining impasses, except where the Charter excluded a subject from that resolution mechanism. (See Charter, §§ A8.409-3, A8.409-4.) Based on settled principles of statutory construction, attorneys' at-will status mandated by section 10.104 and implementing civil service regulation is not subject to binding interest arbitration under those provisions.

First, this design is evident from section A8.409-3's express terms. That section adopts the MMBA's meet-and-confer requirement, but subject to a comprehensive civil service carveout that is consistent with MMBA's own express intent not to supersede any local laws or regulations which "establish and regulate a merit or civil service system." (Gov. Code, § 3500(a).) The civil service matters carved out from bargaining and interest arbitration under section A8.409 include "the designation of positions as exempt." (Charter, § A8.409-3.) Implementing the long-standing mandate under section 10.104, the Commission designated all attorney positions as exempt from the merit-based hiring and removal procedures and as serving "at the pleasure,"

i.e. at-will and without "for cause" rights. (2 AR 632.) It necessarily follows that section A8.409-3's civil service carveout encompasses the co-extensive "exempt" and "at the pleasure" designations.

Further, related statutory or Charter provisions must be construed together and harmonized "to the extent possible." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 736; see also *Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 349.) Here, section A8.409-3 and section 10.104 work in harmony when section A8.409-3's carveout is construed to encompass attorneys' at-will status. This interpretation generally effectuates the Charter's bargaining and interest arbitration provisions, and at the same time, it comports with section 10.104's mandate.

A contrary interpretation would be tantamount to finding that the 1991 amendments repealed section 10.104 by implication, which is an untenable result. Implied repeal occurs when "a later statute supersedes or substantially modifies an earlier law but without expressly referring to it." (*Isaak v. Superior Court* (2022) 73 Cal.App.5th 792, 800.) "All presumptions are against a repeal by implication," based on the assumption that the legislature and/or the voters are aware of already existing legal provisions and intend to maintain a consistent body of law. (*Id.*; see also *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, 1079.) Accordingly, absent an express declaration of intent to repeal the prior legislation, courts will find an implied repeal only when the two provisions at issue

are "'irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation,'" and there is "'no rational basis for harmonizing'" them. (*Isaak*, *supra*, 73 Cal.App.5th at p. 800; *All Persons Interested*, *supra*, 66 Cal.App.5th at p. 1079.)

In this case there is no basis to find an implied repeal, as the 1991 amendments are easily harmonized with the pre-existing at-will mandate. Moreover, there is no indication—much less the requisite express declaration—that the voters intended to repeal section 10.104's at-will provision, which dates back to the City's founding Charter. And again, the last time the matter was squarely presented to the voters, they decided resoundingly against changing attorneys' status from at-will to "for cause." (See *supra*, p. 17.)

Additionally, courts give "great weight" to a city's own interpretation of its charter. (*Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 350.) A longstanding administrative interpretation that was contemporaneous with the enactment under consideration is entitled to even "increased deference." (*Id*.) In administering the civil service system, the Commission has always interpreted the Charter to mandate at-will status for attorneys, both before and after the 1991 amendments. (See 5AR 3220.) Based on the express terms and the compatibility of Charter sections 10.104 and A8.409, that is the only reasonable conclusion.

This interpretation is reinforced by section 16.116, which expressly states that a provision in the body of the Charter

prevails in "any conflict or inconsistency" with a provision in the Appendix. (See Charter, § 16.116.) Attorneys' at-will status under section 10.104 has been part of the Charter since 1900, and are in its body. (See RJN, Ex. 1 [former Charter, Art. V, Chapter II, § 4 and Chapter III, § 3 (1900); former Charter, §§ 26, 29 and 33 (1932)].) Accordingly, this mandate prevails over the bargaining and interest arbitration provisions under section A8.409, found in Appendix A, even if there were any basis to apply to attorneys' exempt and at-will status, which there is not.

3. The City Cannot Give Away Charter Mandated At-Will Status Through MOU Bargaining or Interest Arbitration

A charter city may not act in conflict with its charter, and any city act that conflicts with the charter is void. (*Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 349.) A key issue in this regard is the specific content of MAA's bargaining proposal that the City rejected.

Notwithstanding the echoing statements by the ALJ and PERB, MAA's proposal did not broadly involve "discipline" or "job protections"—some aspects of which could be negotiated and settled at the bargaining table or through interest arbitration. Rather, MAA proposed and demanded to arbitrate full "for cause" rights as the only issue and it declined to consider any other bargaining options because it sought a confrontation on its "for cause" demand. (See *supra*, pp. 25-29.) Under the Charter, an arbitrator had no authority to compromise that position—only to accept it, or the City's proposal to maintain the status quo. The

City could not accept MAA's proposal as part of MOU negotiations, nor submit it to interest arbitration, as the Charter expressly mandates attorneys' at-will status, and the matter is reserved to the voters. For that reason, any MOU negotiated or arbitration-imposed change in the at-will status would have been a nullity. (See *Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 349.)

As the City explained during bargaining with MAA and later at PERB, the crux of the matter is not that attorneys' at-will status under the Charter is exempt from bargaining. As recognized in section A8.409-3, the matters carved out from bargaining and interest arbitration remain bargainable "pursuant to state law," i.e., the MMBA. (Charter, § A8.409-3.) But with respect to the Charter's substantive terms, the MMBA's meet-and-confer requirement means *Seal Beach* bargaining with the result put to the voters in the form of a proposed Charter amendment. (See *Seal Beach*, *supra*, 36 Cal.3d at pp. 594-595, 600-601; *Boling*, *supra*, 5 Cal.5th at p. 904.)

At PERB, MAA summarily dismissed the notion of *Seal Beach* bargaining over attorneys' at-will status under the Charter as "truly bizarre." (2AR 1673.) But MAA knows better and in fact has engaged in *Seal Beach* bargaining when it wants to change the Charter. Aside from the 1976 failed Proposition G that concerned this very matter, and the 1991 Charter bargaining amendments approved by the voters, MAA bargained with the City in 2004 over a proposed Charter amendment to put before the voters concerning retirement benefits for certain

represented attorneys (which the voters approved). (RJN, Ex. 4 [Prop. B ballot pamphlet].) In this case, MAA simply chose to bypass the voters and seek Charter revision through PERB.

C. PERB's Ruling Is Legally and Factually Groundless

1. PERB Failed to Properly Harmonize Section 10.104 and the MMBA

Section 10.104 is the key provision in this case and the logical starting point of any analysis, since it is the source of the at-will status that MAA claims is bargainable and subject to interest arbitration under section A8.409. The ALJ recognized as much in the proposed decision, which begins with and necessarily depends on the (erroneous) finding that section 10.104 is preempted by the MMBA. (See 1AR 306, 322-324.) Despite the centrality of section 10.104, PERB addressed section A8.409 first. PERB construed section 10.104's at-will mandate as a grant of "discretionary" authority allowing the City to provide "for cause" rights to attorneys in bargaining and/or through arbitration under section A8.409-4. (See 2AR 1835-1839.) PERB's finding is a critical error that compromises the rest of its decision.

In its analysis, PERB refused to acknowledge both the constitutional standing of section 10.104 as an exercise of home rule power, and the controlling *Seal Beach* analysis for resolving any tension between local charters and the MMBA. Under the Constitution, section 10.104 is "the law of the State" with "the force and effect of legislative enactments." (Cal. Const., art. XI,

§ 3(a).) PERB instead endorsed the ALJ's characterization of that Charter section as a "local rule that cannot define the scope of bargaining" under MMBA. (2AR 1839.) This is wrong on both counts.

First, section 10.104's at-will provision is a "home rule" substantive term of employment that precedes the MMBA by decades, not a "local rule" promulgated under Government Code section 3507(a)(5) to regulate the MMBA's bargaining requirement. Second, as discussed, section 10.104 in no way restricts bargaining over at-will status; the power to implement the union's specific demand of "for cause" rights does not reside in the Board of Supervisors or with an arbitrator—it is reserved to the voters. (See *Seal Beach*, 36 Cal.3d at pp. 594-595, 600-601; *Boling*, *supra*, 5 Cal.5th at p. 904.) As explained in *Seal Beach*, this does not present a conflict since the MMBA's bargaining requirement does not compel any particular result, and does not require binding arbitration for bargaining impasse resolution. (See Gov. Code, §§ 3504, 3505.) Thus, the applicable bargaining process for MAA's objective is *Seal Beach* bargaining, not Charter-based MOU bargaining. That process would meet all MMBA requirements.

PERB cited *Huntington Beach Police Officers Assn. City of Huntington Beach* (1976) 58 Cal.App.3d 491, but that case is inapposite because it involved a charter resolution which sought to wholly exclude a bargainable matter from the MMBA "meet and confer" process, which section 10.104 does not. (See *id.* at pp. 499-504.) PERB nowhere acknowledged *Seal Beach,* which

provides post-*Huntington Beach* guidance on how section 10.104 and the MMBA can be harmonized.

2. PERB Ignored Section 10.104's Plain Mandate

Disregarding *Seal Beach*, PERB proceeded to distort section 10.104 beyond recognition in order to engage in the gratuitous exercise of "harmonizing" it with MMBA. Overruling the "undisputed" finding of the ALJ, PERB transmogrified "shall serve at the pleasure" into "may be granted just cause rights." PERB is owed no deference here, as section 10.104 is a substantive component of the Charter, as opposed to a MMBA provision within the ambit of PERB's presumed expertise. (See *Boling*, *supra*, 5 Cal.5th at pp. 911-912, 917, *San Diegans for Open Government*, *supra*, 31 Cal.App.5th at p. 375.) In any event, PERB's construction of section 10.104 would not survive review under any standard.

PERB's primary basis for its construction was the repeated assertion that the City "conceded that section 10.104 leaves the City the discretion to negotiate over job protections" and to submit the matter to arbitration. (2AR 1826, 1835, 1837-1838.) This assertion is both factually incorrect and legally irrelevant. The record shows that during 2024 bargaining the City reiterated its longstanding position and consistently distinguished between (1) the Charter mandated "at-will" status, which is bargainable but ultimately subject to voters' control; and (2) broader "job protections," such as severance or advisory procedures, which the

City was willing to discuss at the bargaining table or in arbitration—but MAA was not. (See 3AR 2056-2058, 2065-2072, 2077-2088, 2499-2514; 4AR 2507.)

PERB obfuscated the nuance in the City's position with its all-encompassing "job protections" mantra, and its only evidence of the purported concession concerning at-will status was a single sentence plucked from a City post-hearing brief. In its brief, the City stated: "Further, the fact that the Charter can be amended only by the City's voters also does not interfere with good-faith bargaining. Certainly, to the extent MAA seeks to change the language of the Charter, any such amendment would require a vote of the electorate. But to the extent MAA seeks contractual 'job protections'—such as "for cause" rights—the City has the ability (but not the duty) to voluntarily agree to certain changes." (1AR 283:18-24, citing *Taylor*, *supra*, 24 Cal.3d 442.) PERB ignored the first two sentences and seized on the third. (See 2AR 1836-1837.) But *Taylor* holds only that a city may agree to arbitrate a matter when its charter actually allows it to do so, and the passage as a whole in no way represents a concession that section 10.104 can be revised without voter approval (and such a concession would make no sense given the City's clearly expressed previous opinions on the subject). Because PERB's "concession" finding is based on one snippet of argument from a post-hearing brief—cherry-picked from the record as a whole—the finding does not even meet the substantial evidence standard. (See *Martori Bros*, *supra*, 29 Cal.3d at p. 727.) Regardless, the meaning of a charter provision is determined by its plain

language, legislative history and other materials that show the intent of the voters. (*Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 349.) Any purported concession by a City agent is insufficient to determining the voters' intent.

As to section 10.104's plain and dispositive "shall serve at the pleasure" language, PERB ignored the "shall" and absurdly found that "serving 'at the pleasure' of management has no single, uniform meaning, as it leaves open what protections management may adopt relative to the position in question." (A.R. Vol. II, 1836.) PERB failed to acknowledge authority that is directly contrary (see, e.g., *Hill*, *supra*, 33 Cal.App.4th at p. 1693, citing *Bogacki*, *supra*, 5 Cal.3d at p. 783), and the cases PERB cites do not support its conclusion.

Remarkably, PERB invoked *Bogacki*, a case cited by the Court of Appeal in *Hill* and PERB's own ALJ for the conclusion opposite to PERB's. PERB cited *Bogacki* for the proposition that at-will employees may still be "afforded certain dismissal procedures" (2AR 1836), a vague assertion which elides the point the California Supreme Court made in the case. In *Bogacki*, a probationary employee serving at-will under the terms of an ordinance sued for reinstatement on the ground that he had been dismissed for exercising his constitutional rights. Affirming the trial court's judgment against the employee, the Supreme Court noted that an at-will employee may not be dismissed for the exercise of constitutional rights without a showing of a compelling public interest. (*Bogacki*, *supra*, 5 Cal.3d at p. 778.) Where no exercise of constitutional rights is involved, however, a

judicially cognizable good cause is not required for dismissal, and "the courts will not intervene." (*Id.* at p. 779.)

Thus, *Bogacki* merely recognizes that appointing authorities may be judicially required to provide constitutionally mandated processes to at-will employees; it does not even remotely suggest that a charter-bound appointing authority may provide "for cause" rights to at-will employees as a matter of administrative discretion. The two other cases that PERB cited similarly provide no basis to construe the plain language of section 10.104 in any such manner, against settled California precedent. (See *Bishop v. Wood* (1976) 426 U.S. 341, 344-347 [ordinance specifying grounds for dismissal of permanent employees construed by lower courts to mean that employee was at-will under South Carolina law]; *Mervin v. Federal Trade Comm.* (D.C. Cir. 1978) 591 F.2d 821, 828-829 [federal statutory at-will status supplemented with procedural requirements under departmental manual].)

Besides these inapposite cases, PERB also relied on the false theme that section 10.104 is a "local rule" governing interest arbitration. PERB stated that the section must be interpreted to "require arbitration on the full range of negotiable issues." (2AR 1840, citing *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 623.) Here PERB again ignored the fact that section 10.104 is a purely substantive provision regulating the city's civil service system that in itself does address bargaining or impose any mandate for arbitration. *Fire Fighters Union* does not support any other conclusion, since it concerned the scope of a

charter provision which itself provided for interest arbitration. (*Fire Fighters Union*, *supra*, 12 Cal.3d at pp. 614-615.)

PERB also cited the title of section 10.104 ("Exclusions from Civil Service Employment") as confirmation that its purpose is "to exclude employees from civil service merit protections rather than to specify what alternate protections may result from bargaining and interest arbitration, or from policy determinations for unrepresented employees." (2AR 1838.) Here, PERB again simply ignores the plain language of section 10.104, which expressly mandates that attorneys "shall" serve "at the pleasure" of the appointing official. (Charter, § 10.104(13).)

PERB's last argument was that the City set a precedent in bargaining with at-will physicians, who are also exempt employees under section 10.104. (2AR 1837-1838.) This too is a red herring. The City has agreed to provide dismissed physicians a choice between severance and a limited and *purely advisory* pre-termination process. (See *id.*, 1488-1489 [¶¶ 67-73].) In connection with layoffs, as opposed to dismissals, the City also agreed to consider performance, seniority and other factors in its discretion. (*Id.*, 1495 [¶ 102].) None of these terms conflicts with the section 10.104's at-will mandate, and the City *never* refused to bargain over any such terms with MAA. Indeed, the City already provides severance pay for attorneys, *specifically in recognition of their at-will statu*s, and it offered to negotiate an advisory process, but was rebuffed. The City never granted "for cause" rights to physicians in bargaining, nor could it, as section 10.104's plain language mandates at-will status.

3. PERB's Isolated Construction of Sections A8.409-3 and A8.409-4 Cannot Stand

Having wrongly concluded section 10.104 allows the City to negotiate "for cause" rights for attorneys, PERB next erred by ruling that attorneys' at-will status mandated by that section is subject to section A8.409-4's binding interest arbitration mechanism. (See 2AR 1824-1825.) PERB ruled that by refusing to submit MAA's "for cause" proposal to arbitration the City violated sections A8.409-3 and A8.409-4, and by extension, the MMBA provision that requires public agencies to follow the local rules they chose to adopt. (*Id.*; see also Gov. Code § 3509(b).) PERB is wrong.

As with section 10.104, PERB's starting point here was the hazy assertion that "the City concedes that [MAA's] job protection proposals are a mandatory subject of bargaining under the MMBA." (2AR 1826.) But the only actual issue in bargaining was attorneys' at-will status and MAA's "for cause" proposal, as opposed to any other unspecified "job protection," and the City's consistent position was that at-will status is bargainable under the MMBA, but is ultimately subject to voters' control, in accord with *Seal Beach*. And that other protections that did not conflict with section 10.104 were negotiable, including through interest arbitration.

On the merits, PERB again proceeded in an order that obscures the key Charter provision. The logical starting point is section A8.409-3, which defines what is bargainable within the

meaning of section A8.409 as a whole, and thus what is subject to interest arbitration under section A8.409-4.

PERB began instead with section A8.409-4, and also with section A8.590-5, which provides for arbitration specifically for safety employees. In addition to the civil service exclusion from A8.409 contained in section A8.409-3, section A8.409-4 excludes from interest arbitration matters relating to consent decrees and to bargaining proposals pertaining to the right to strike. (Charter, § A8.409-4(g), (h).) The safety employee section in A8.590-5 similarly excludes from arbitration matters relating to consent decrees; it also excludes disciplinary procedures. (*Id.*, § A8.590-5(g)(2), (3).) Based on these provisions, PERB mused that "the Charter drafters knew how to remove matters from interest arbitration ... yet there is no exclusion for attorney discipline." (2AR 1827.)

But again: at-will status is the *only* "discipline" matter that the union chose to place at issue, and for civil service employees the Charter excludes that specific matter in section A8.409-3's civil service carveout which incorporates the section 10.104 at-will mandate. The additional carveouts for consent decrees and strike-related proposals in section A8.409-4 have absolutely no bearing on this. Indeed, under section A8.409-3, matters within the civil service exclusion do not fall within A8.409 at all, but are bargained under the MMBA. Thus, there is no need to carve out those exclusions in A8.409-4.

Further, the carveout for disciplinary matters under section A8.590-5(g)(2) reflects the fact, well-known to PERB, that

the Charter separately sets forth a disciplinary process for "safety" employees which ends with a determination by a civilian commission. (Charter, § A8.341-6.) In that respect, it is akin to the carveouts for merit system matters. Lasty, PERB apparently believes that exclusions from the interest arbitration process must reside solely in section A8.409-4, failing to note the express exclusions from interest arbitration in sections A8.409-5 and A8.409-7. As discussed, exclusions from the interest arbitration process are peppered throughout A8.409 as a whole, and include the civil service exclusion in A8.409-3. (See *supra*, pp. 19-21.) In the end, PERB's purported interpretation is fatally flawed.

As to section A8.409-3's civil service carveout, PERB first concluded based on "plain language" that did not apply at all, because section A8.409-3 mandates bargaining for matters including "agreements to provide binding arbitration of discipline and discharge." (2AR 1828-1289, emphasis omitted.) This is nonsense, since the carveout follows from that general mandate, not the other way around. Virtually all jurisdictions have some at-will employees who are not subject to "for cause" requirements. Thus, binding arbitration of discipline and discharge is bargainable under A8.409, unless it conflicts with a civil service carveout, such as exempt/at-will status. In a similar vein, PERB concluded that the carveout "touch[es] on termination but do[es] not exclude the explicitly included topic of 'binding arbitration of discipline and discharge'"—never mind that the carveout explicitly includes section 10.104's mandated civil service

designations of positions as exempt, which includes attorneys. (See Charter, § A8.409-3.)

Next, PERB found that the carveout does not apply to attorneys' exempt and at-will status because "attorneys have never been subject to the civil service merit system, and MAA has never proposed adding attorneys to the system." (2AR 1830.) PERB's finding here is both incorrect and ultimately irrelevant. It is incorrect because section 10.104 and the implementing Civil Service Rule 114.25 on their face exempt attorneys only from the merit-based *selection, appointment and removal procedures*, not from the entire civil service system. (See Charter, § 10.104; 2AR 632.) The Commission has always interpreted it that way (see 5AR 3220), and its interpretation is entitled to deference. (*Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 350.) In addition, PERB's apparent conclusion that the civil service carveout only applies to permanent civil service employees renders express Charter language null. Why would the carveout cover the "designation of positions as exempt, temporary, limited tenure, part-time, seasonal or permanent" if it only applied to permanent employees? The carveout is for "matters within the jurisdiction of the [Commission] which establish, implement and regulate the civil service system"—a system as a whole, that encompasses more than just permanent civil service employees.

PERB grounded its own interpretation on a single sentence isolated from the testimony of former Commission Executive Director Kate Favetti. Without citing to the record, PERB asserted that Favetti "agreed" that "the rules that the

[Commission] establishes with respect to all of the various carveouts listed are not applicable to attorneys." (2AR 1830.) As the record shows, here PERB was quoting a question asked by MAA's attorney, to which Favetti actually replied that the rules don't apply "*[t]o the extent* that they don't apply to exempt employees, correct." (3AR 2205:9-13, emphasis added.) In any case, PERB's civil service status finding would not be dispositive even if it were well founded because attorneys' at-will status derives from the explicit language in Charter section 10.104, not their status as members of the civil service system. Indeed, PERB acknowledged this very point when it dismissed the exempt and at-will civil service designation under Civil Service Rule 114.25 because the Rule "simply relies on that pre-existing exemption." (2AR 1830.)

Aside from those purportedly "plain language" constructions of the Charter, PERB also perceived "another fatal flaw in the City's reasoning" in that the Commission did not participate in the 2024 bargaining. (2AR 1831-1832.) According to PERB, this is telling because section A8.409-3 recognizes the Commission's obligation to bargain about the carved out matters within its jurisdiction "pursuant to state law." (*Id.*) PERB then cites the MMBA's legislative intent section which in fact expressly disavows all intent to supersede charter provisions and civil service rules that regulate local civil service systems, in order to "strengthen" such systems. (*Id.*, 1831, citing Gov. Code, § 3500(a).) PERB also cites *Los Angeles County Civil Service Comm. v. Superior Court* (1978) 23 Cal.3d 55, which simply and

irrelevantly held that a county civil service commission may not hold a public hearing in lieu of bargaining with a union. (See *id.* at pp. 65-67.)

MAA never requested to bargain with the Commission because of its mistaken view that the Board of Supervisors and/or an arbitrator had the power to grant "for cause" rights to attorneys. And, in any event, all parties agree that the Commission also lacked the power to change the Charter. But again, this issue is essentially a sideshow because an arbitrator has no authority to change section 10.104, and, to the extent there is any conflict between that section and section A8.409 et seq., the body of the Charter prevails over the appendices. (See Charter, § 16.116.) Nothing in the Charter or the MMBA required the Commission to participate in MOU bargaining where MAA demanded a change in a Charter-mandated provision that the Commission and the City itself are powerless to make. The Commission may choose to do so, as it did during the *Seal Beach* bargaining that preceded the 1991 Charter amendments to ensure that its jurisdiction is preserved. (See 3AR 2186-2130, 2233-2244.) But its absence from the 2024 bargaining with MAA has no significance.

The rest of PERB's decision likewise provides no basis for its conclusion with respect to sections A8.409-3 and A8.409-4. A general principle favoring arbitration alleged by PERB *does not apply to interest arbitration* but in any event cannot overcome the specific civil service carveout under section A8.409-3, much less section 10.104's at-will mandate, which can be eliminated only by

the voters. It is well settled that arbitration agreements only cover those matters within the scope of the agreement that the parties have agreed to arbitrate and there is no "presumption" in that area. (See, e.g., *Freeman v. State Farm Mut. Auto Ins. Co.* (1975) 14 Cal.3d 473, 481; *Crowley v. Maritime Corp. v. Boston Old Colony Ins. Co.* (2008) 158 Cal.App.4th 1061, 1069.)

The ballot materials for the proposed and enacted 1991 Charter amendments which PERB quoted (again without reference to the record) also do not provide any support for PERB, as they simply reproduce the Charter language at issue, without any additional insight. (See 2AR 1833-1834.) And the same goes for the fact that the 1991 amendments involved a tradeoff between interest arbitration and the right to strike (see *id.*, 1834, fn. 9); contrary to PERB's conclusory assertion, it does not somehow follow that at-will employees obtained protected status rights by availing themselves of interest arbitration.

PERB's purported factual findings based on hearing testimony also have no weight. First, this case turns entirely on a charter interpretation question; the meaning of Charter provisions is determined by the courts based on plain language, legislative history, and other evidence of voters' intent (*Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 349); PERB's manipulation of witness testimony adds nothing to that analysis. Second, PERB's points are once again unsupported by the record. In finding in MAA's favor, PERB stated (without reference to the record) that Human Resources Director Carol Isen agreed on cross-examination that "there is no carve-out for binding

arbitration of discipline and discharge." (2AR 1833.) But the record does not show any such concession. Isen agreed only that section A8.409-3 generally mandates bargaining for matters including "agreements to provide binding arbitration of discipline and discharge" (see 3AR 2247:11-2248:22); as already discussed, that general mandate is then qualified by the immediately following civil service carveout, and Isen said nothing to the contrary. (See Charter, § A8.409-3.)

4. Sections A8.409-3 and A8.409-4 Are Reasonable Within the Meaning of the MMBA

PERB ruled that the City's interpretation of sections A8.409-3 and A8.409-4 "amounted to an unreasonable enforcement of a local rule" in violation of MMBA and PERB regulations. (2AR 1840.) However, the reasonableness requirement is not implicated here. As discussed, the MMBA does not require the City to submit to arbitration the issue of attorneys' mandated at-will status, as the MMBA's bargaining requirement does not displace the voters' ultimate decision-making power under the home rule doctrine. (See Gov. Code, §§ 3504, 3505; *Seal Beach*, *supra*, 36 Cal.3d at pp. 594-595, 600-601; *Boling*, *supra*, 5 Cal.5th at p. 904.) Likewise, MMBA does not require local agencies to adopt any particular bargaining impasse procedure, much less require the City to submit the matter to binding arbitration. (See Gov. Code, § 3507(a).) Thus, there was nothing unreasonable about the City's refusal to

provide "for cause" protections for attorneys at the bargaining table, or to submit it to binding arbitration.

5. PERB's Ruling Violates Constitutional Home Rule Principles and Allows a Publicly Unaccountable Arbitration Panel to Rewrite the Charter

As it stands, PERB's decision effectively delegates the authority to de facto amend a substantive term of the Charter to unelected and unaccountable arbitrators, in total derogation of the City voters' exclusive power under the Constitution to set the terms of City employment. (See Cal. Const., art. XI, § 5(b).) The decision is fundamentally unlawful, because PERB failed to apply *Seal Beach*, where the Supreme Court dispositively explained that any process for revising charter mandated terms of employment must culminate in municipal elections. PERB decided that consideration of the settled home rule doctrine was unnecessary, based on PERB's own factual and legal error ridden analysis of the Charter. (2AR 1839-1840.)

Moreover, allowing a private arbitrator to ignore or de facto amend the Charter without voter approval would also violate the settled constitutional doctrine of separation of powers. Amending a Charter provision is a legislative act and PERB, an administrative agency, cannot compel legislative action consistent with that doctrine. (See *City of Palo Alto v. Public Employment Relations Bd.* (2016) 5 Cal.App.5th 1271, 1313-1316; *Myers v. Phillip Morris Companies, Inc.* (2002) 28 Cal.4th 828,

846 ["An established rule of statutory construction requires us to construe statutes to avoid constitutional questions"].)

PERB's unconstitutional ruling has implications that reach beyond labor law. The Charter governs numerous municipal matters by allocating the final decision-making authority to the voters or a specifically designated governing body or official. Besides employment related matters within the jurisdiction of the Civil Service Commission, the San Francisco Employee Retirement System and the San Francisco Health Commission, the Charter consigns other municipal governance functions to the Mayor, the Board of Supervisors, and various elected officials including City Attorney, District Attorney and Public Defender. PERB's "harmonization" analysis in this case creates a precedent for future decisions impairing the substantive authority the Charter reserves to City voters and the elected government. Ultimately, PERB's decision ignores the will of the voters and erodes the City's constitutional autonomy.

By its own count, as of July 2023, PERB has issued eight decisions involving challenges to various provisions of the City Charter. (See *City and County of San Francisco*, *supra*, PERB Decision No. 2867-M, at p. 2, fn.1.) Each is a stepping stone in PERB's steady campaign to amplify the MMBA's procedural mandates and correspondingly derogate voter-approved Charter provisions. (See *id.*, at p. 3 [striking certain strike-related provisions]; see also *County of Sonoma* (2023) PERB Decision No. 2772a-M, pp. 23-29 [manner in which employers conduct workplace investigations falls within the MMBA's "scope of

representation"]; cf. *Assn. of Orange County Deputy Sheriffs v. County of Orange* (2013) 217 Cal.App.4th 2, 44-46.) These decisions have significantly disrupted California's most sophisticated and comprehensive labor relations system covered by the MMBA, and the largest and most complex government covered by the MMBA (because San Francisco is both a city and county). In the process, PERB has effectively eviscerated a mutually negotiated system of labor relations that for three decades prevented strikes and led to excellent wages and working conditions for employees. [4] To date, PERB generally has received deference on judicial review, based on its presumed expertise in the application of the MMBA. But since this case turns solely on the interpretation of the Charter, as opposed to any MMBA provision requiring labor expertise, the Court should not defer to PERB here to any degree here. This is the ninth decision following this trend, and it is unlawful and anti-democratic. It must be vacated.

[4] For example, PERB's decisions have dismantled the voters' careful coordination of labor contract decisions (costing hundreds of millions of dollars) with the City's annual budget process (see *City and County of San Francisco* (2020) PERB Decision No. 2691-M) and have conferred a right to strike even though interest arbitration was an express tradeoff for a no strike clause (see *City and County of San Francisco* (2017) PERB Decision No. 2536-M). If allowed to stand, this latest decision—attacking voter control over substantive Charter provisions—could spell the death knell of the City's longstanding labor relations system; a program that has greatly benefitted City employees and residents alike.

II. The City Did Not Bargain in Bad Faith

As discussed, the MMBA requires that public agencies and recognized employee organizations mutually bargain in good faith over matters within the "scope of representation." (Gov. Code § 3505.) In determining whether a party has violated this duty, PERB uses either a "per se" test or a "totality of circumstances" test, depending on the specific conduct involved. (See *County of Ventura* (2021) PERB Decision No. 2758-M, p. 32.)

"Per se" violations involve conduct that violates statutory rights or procedural norms, such as an outright refusal to bargain in good faith. (*County of Ventura*, *supra*, PERB Decision No. 2758-M, p. 32.) Under the "totality of circumstances" test, "[t]he Board weighs the facts to determine whether the conduct at issue 'indicates an intent to subvert the negotiation process.'" (*County of Riverside* (2004) PERB Decision No. 1715-M.) Indicia of bad faith bargaining can include "surface bargaining," which "is defined as going through the motions of negotiating, without any real intent to reach an agreement.… 'Hard bargaining,' on the other hand, is found where a party genuinely and sincerely insists on provisions that the other party deems unacceptable, even though it may produce a stalemate." (*William Dal Porto & Sons, Inc. v. Agricultural Labor Relations Bd.* (1984) 163 Cal.App.3d 541, 549.) "The obligation of the employer to bargain in good faith does not require the yielding of positions fairly maintained." (*Placentia Fire Fighters v. City of Placentia* (1976) 57 Cal.App.3d 9, 23.)

Under PERB precedent, the same conduct may give rise to violations under both per se and surface bargaining theories, but each theory must be alleged as a separate unfair practice in a PERB complaint. (*County of Sacramento* (2020) PERB Decision No. 2745-M, pp. 11-12; *Fresno County In-Home Supportive Public Authority* (2015) PERB Decision No. 2418-M, pp. 18-19.) Here, the Complaint only asserted a per se refusal to bargain theory. Nevertheless, the ALJ ruled against the City under the "totality of circumstances" test, and PERB affirmed the ALJ on the ground that "the City engaged in bad faith bargaining when it repeatedly and preemptively stated that MAA's job protection proposals would be ineligible for interest arbitration." (2AR 1841.) This ruling cannot stand because, as discussed, MAA's only "job protection" proposal was to alter attorneys' at-will status, a Charter mandated term of employment which the City could not delegate to an arbitration panel. Because the Charter mandates "at-will" status, the City did not make any "misrepresentations" or set down "an unsupportable and unilaterally announced ground rule," as PERB found. The MMBA's "good faith" bargaining requirement in no way requires the City to act in conflict with the Charter, nor could it have any such reach. (See, e.g., *City of San Jose* (2013) PERB Decision No. 2341-M, pp. 43-44 [matters falling with the MMBA's scope of representation may be rendered impermissible subjects of bargaining by external law]; *San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 580, 864-864 [same].)

PERB's finding that the City's negotiator "misrepresented" the views individual City officials had on the matter of at-will status also does not support a finding of "bad-faith" in any way. First, as a factual matter, there is only the testimony of one MAA witness that the City's negotiator had stated "something to the effect that they or the elected officials have no interest in giving or having job protections for the attorneys." (3AR 116:14-20.) The same witnesses later admitted that there were "different degrees of how much protection or how many classifications" that elected officials were purportedly comfortable with, which does not contradict the City negotiator's representation that City officials did not favor the specific MAA proposal to do away with attorneys' at-will status. (See 4AR 2398.)

Moreover, as a legal matter, the purported City misrepresentations would be irrelevant even if any had been made, as neither the Board of Supervisors nor any other group of City officials ultimately have any say in the matter—only the voters do. To the extent that MAA sought to foolishly negotiate directly with the City's elected officials concerning attorneys' at-will status which they have no power to change, the union circumvented the City's negotiating team and engaged in unlawful "direct dealing." (See *County of Tulare* (2020) PERB Decision No. 2697-M, pp. 47-48.) PERB's ruling that the City engaged in bad-faith bargaining is groundless, and it must be vacated along with PERB's underlying erroneous ruling on the meaning of the Charter.

III. PERB's "Make Whole" Remedy Is Improper

PERB ordered that the City "(a) [m]ake MAA whole for extra bargaining costs and any wasted or diverted resources (other than costs of litigating this case) that the City's MMBA violations caused in substantial part; and (b) augment any monetary relief owed with daily compound interest, at an annual rate of seven percent, accrued from the date of the harm until payment." (2AR 1842-1843.) This remedy would exceed PERB's authority and have to be vacated even if the City engaged in any unlawful conduct, which it did not.

While PERB's remedial authority is broad, it is limited to orders reasonably "necessary to effectuate the purposes of [the MMBA]" (Gov. Code, § 3509(b)), which means PERB may not issue orders that are punitive. (*Boling* v. *Public Employment Relations Bd.* (2019) 33 Cal.App.5th 376, 388.) PERB's remedy here effectively punishes the City for allegedly failing to bargain in good faith by giving MAA an advantage in future negotiations that it would not otherwise have. Further, PERB's "normal remedy" for bargaining violations is "[r]estoration of the status quo." (*Id.*; see also *Modesto City Schools* (1983) PERB Decision No. 291, pp. 67-68 [properly designed remedial orders seek "restoration of the situation as nearly as possible to that which would have been obtained but for the unfair labor practice"].) PERB typically achieves this goal by ordering employers to "make *employees* 'whole' from losses suffered as a result of the [unfair labor practice]" (*Boling,* at p. 388, emphasis added), as

opposed to adding a corresponding "make whole" aimed at the representative employee organization.

The cases where PERB has awarded union expenses as part of a make whole remedy are distinguishable. Most of these cases involve litigation costs incurred in other forums, or other factual situations that are very different than the present case. (See, e.g., *Palomar Health* (2024) PERB Decision No. 2895-M [legal expenses to defend against lawsuit to enjoin union activity]; *City and County of San Francisco* (2024) PERB Decision No. 2891-M [costs related to failure to provide information]; *Victor Valley Union High School Dist.* (2022) PERB Decision No. 2822 [deposition defense costs]; *Bellflower Unified School Dist.* (2022) PERB Decision No. 2544a [lost dues]; *Sacramento City Unified School Dist.* (2020) PERB Decision No. 2749 [attorney fees for litigating petition to compel arbitration]; *City of San Diego* (2019) PERB Decision No. 2464a-M [fees for litigating quo warranto suit to rescind voter initiative unlawfully placed on ballot]; *Omnitrans* (2009) PERB Decision No. 2030-M [criminal defense costs resulting from unfair practice].)

Moreover, at hearing, MAA failed to present evidence establishing any "extra bargaining costs and any wasted or diverted resources" stemming from the City's conduct here. Since MAA never changed its initial position—other than to "double-down" by adding a proposal for seniority-based layoffs—it is hard to see how the City's conduct added to the union's bargaining costs. But more importantly, given MAA's failure to present any evidence regarding such added bargaining costs, PERB was

barred from awarding reimbursement for such costs. It is well established that in the formal hearing setting, the charging party must establish its entitlement to a particular remedy, in addition to proving the underlying unfair practice. Requiring the charging party to make this showing enables the respondent to present rebuttal evidence on whether a requested remedy is necessary and proper and also allows the hearing officer to fashion an appropriate remedy. (See, e.g., *United Teachers of Los Angeles* (2001) PERB Decision No. 1453, pp. 3-4 [affirming ALJ's refusal to award attorney fees as remedy in proposed decision].)

Accordingly, should the Court sustain PERB's underlying decision in any respect, PERB's ordered "make whole" remedy should still be vacated.

CONCLUSION

In the end, this case is about whether an administrative agency can interfere with the voters' right to retain ultimate control over substantive issues regulating municipal affairs, as expressed directly in the California Constitution. For the reasons stated above, PERB Decision No. 2598-M is clearly erroneous and unsupported by substantial evidence. Accordingly, this Court should issue a peremptory writ directing PERB to set aside and vacate that decision.

Respectfully submitted,

Dated: August 21, 2025 RENNE PUBLIC LAW GROUP

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CERTIFICATION OF WORD COUNT
(California Rules of Court, Rule 8.204(c)(1))

The foregoing brief contains 13,988 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word word processing program used to generate the brief.

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PROOF OF SERVICE

Case Name: PUBLIC EMPLOYMENT RELATIONS BOARD v MUNICIPAL ATTORNEYS ASSOCIATION OF SAN FRANCISCO, TEAMSTERS LOCAL 856
Case No.: **A173302**

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On August 21, 2025, I served the following document(s):

PETITIONER CITY AND COUNTY OF SAN FRANCISCO'S REQUEST FOR JUDICIAL NOTICE

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I declare, under penalty of perjury that the foregoing is true and correct. Executed on August 21, 2025, in San Francisco, California.

Valerie Vitullo

Case No. A173302 No Fee (Gov. Code § 6103)

IN THE COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FIVE

CITY AND COUNTY OF SAN FRANCISCO,
Petitioner,
v.
PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent,
MUNICIPAL ATTORNEYS ASSOCIATION OF SAN FRANCISCO, TEAMSTERS LOCAL 856,
Real Party in Interest.

Appeal of Public Employment Relations Board
Decision No. 2958-M
(Case No. SF-CE-2157-M)

PETITIONER CITY AND COUNTY OF SAN FRANCISCO'S CONSOLIDATED REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

Statutes

TABLE OF AUTHORITIES: (continued) **Page(s)**

Other Authorities

INTRODUCTION

PERB's decision violates the California Constitution and disregards the will of San Francisco voters as expressed in the San Francisco Charter. PERB has impermissibly intruded into substantive employment terms, committed clear legal error, and violated basic rules of statutory construction by ignoring plain Charter language and compelling San Francisco (the "City") to binding interest arbitration on a matter that the voters never agreed to arbitrate. The legal issues in this case are subject to de novo review, and not the deferential review generally afforded to PERB. The Court should reverse PERB's unconstitutional decision.

Under well-settled constitutional "home rule" principles, the City's voters have the exclusive authority to set the terms of municipal employment. This includes the express power to determine "the compensation, method of appointment, qualifications, *tenure of office and removal*" of City employees. (Cal. Const., art. XI, § 5(b), emphasis added.) In the City's very first Charter—adopted more than a century ago—the voters expressly mandated that attorneys employed by the City serve "at the pleasure" of their appointing authorities and may be dismissed at-will. That express and unambiguous mandate, now codified in Charter section 10.104, can be changed only by the voters. The last time the voters were asked to change it, they emphatically declined to do so.

PERB's decision unlawfully impinges on the City's constitutional self-governance rights by purporting to delegate to an unelected and publicly unaccountable arbitration panel the authority to override Charter section 10.104's at-will mandate and impose "for cause" rights for attorneys even though that directly conflicts with the Charter—a power even the Board of Supervisors lacks. PERB reached this unconstitutional result by failing to follow Supreme Court precedent for harmonizing the Meyers-Milias-Brown Act's ("MMBA") procedural bargaining mandate with substantive employment provisions of city and county charters. (See *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591 ("*Seal Beach*").) Further, in purporting to construe the Charter under its own erroneous "harmonization" analysis, PERB violated basic rules of statutory interpretation by ignoring the plain language of section 10.104, as well as of section A8.409-3, which carves out "exempt" and "at-will" employment status from arbitration under the City's local bargaining process found in the Charter (but not from bargaining under state law, i.e., *Seal Beach* bargaining).

In applying its own "harmonization" analysis instead of controlling Supreme Court precedent, PERB misused its limited legislative mandate. As *Seal Beach* teaches, the MMBA's procedural bargaining requirement cannot be used to challenge substantive charter provisions adopted by the voters in exercising their "home rule" authority. Yet that is exactly the result PERB reached here. PERB is not entitled to any deference from this Court, because this case turns entirely on the proper

interpretation of Charter provisions that are not remotely within PERB's presumed labor expertise. To the contrary, it is the City's longstanding interpretation of its own Charter provisions governing employment that deserves respect. PERB's result-oriented decision does not survive scrutiny under the de novo standard that is appropriate here, or indeed *any* standard of judicial review. PERB impermissibly crossed constitutional lines, exceeded its authority, and committed clear legal error. Its fundamentally undemocratic decision must be vacated in its entirety.

ARGUMENT

I. PERB's Construction Of The Charter Is Subject To De Novo Review

PERB invites the Court to review its decision only for "clear error," based on the rule that courts generally defer to PERB on issues within its MMBA-designated authority and expertise in labor matters. (See PERB's Brief, pp. 25-26, citing *Boling v. Public Employment Relations Bd.* (2015) 5 Cal.5th 898, 911-912 ("*Boling*").) But this case does not turn on any nuanced issues within PERB's statutorily-designated area of expertise. Under settled authority, including *Boling*, PERB is owed no deference regarding the meaning and the application of any of the Charter provisions at issue in this case.

A. PERB's Interpretation Of Charter Section 10.104 Is Not Entitled To Deference

Courts review city charter provisions de novo. (See *San Diegans for Open Government v. City of San Diego* (2018) 31 Cal.App.5th 349, 375; *Don't Cell Our Parks v. City of San Diego* (2018) 21 Cal.App.5th 338, 349-350.) Under *Boling*, any judicial deference to PERB is limited solely to the agency's interpretation of a "public employee labor relations statute [that] falls squarely within PERB's legislatively designated field of expertise." (*Boling*, *supra*, 5 Cal.5th at p. 912). Analogous federal law governing review of decisions by the National Labor Relations Board is in accord. (See *Hoffman Plastic Compounds, Inc. v. National Labor Relations Bd.* (2002) 535 U.S. 137, 144 ["[W]hile the Board's interpretation of the NLRA should be given some deference, the proposition that the Board's interpretation of statutes outside its expertise is likewise to be deferred to is novel"]; *National Labor Relations Bd. v. International Assn. of Bridge, Structural, Ornamental, and Reinforcing Iron Workers, Local 229, AFL-CIO* (9th Cir. 2019) 941 F.3d 902, 904 [de novo review applies to NLRB's interpretation of constitutional provisions].)

As explained in the City's Opening Brief, Charter section 10.104 is a constitutionally grounded "home rule" provision setting a substantive term of employment that has the force and effect of state law—not an MMBA-derived "local rule" within PERB's statutorily assigned labor competence, as PERB described it in its decision. (Opening Brief, pp. 50-51.) In its

opposition, PERB equivocates on its "local rule" mischaracterization. (See PERB's Brief, p. 31, fn. 5 [it was "not necessary to the Board's holding"].) Regardless, interpreting Charter section 10.104's at-will employment mandate in no way falls within PERB's labor expertise, much less "squarely." (See *Boling*, *supra*, 5 Cal.5th at p. 912.) Therefore, de novo review is the applicable standard. (See *ibid.*; *San Diegans for Open Government*, *supra*, 31 Cal.App.5th at p. 375.)

B. PERB's Interpretation Of Charter Sections A8.409 Et Seq. Is Not Entitled To Deference

PERB similarly is not entitled to deference for its interpretation of Charter section A8.409-3's civil service bargaining carveout from the scope of bargaining under the City's local Charter procedures and section A8.409-4's binding interest arbitration process for bargaining impasse resolution. PERB proclaims that the City conceded that section A8.409-4 is a "local rule" in *City and County of San Francisco v. International Union of Operating Engineers, Local 39* (2007) 151 Cal.App.4th 938 ("*Operating Engineers*"). (PERB's Brief, p. 31.) But *Operating Engineers* concerned only PERB's jurisdiction, not the standard of judicial review. In that case, the City filed suit in superior court to enforce section A8.409-4 against a union that refused to submit unresolved bargaining disputes to interest arbitration. (*Operating Engineers*, 151 Cal.App.5th at pp. 941-942.) The superior court dismissed the suit for lack of jurisdiction, and the court of appeal affirmed. The court held that PERB had

exclusive jurisdiction over the claimed violations of section A8.409-4, because the MMBA grants PERB jurisdiction over unfair labor practice claims arising under "local rules" adopted under the statute. (*Id.* at pp. 944-947.) In upholding PERB's jurisdiction over unfair labor practice claims, the court never addressed judicial review of PERB's decision exercising that jurisdiction. (See *ibid.*) Because jurisdiction was the only issue in *Operating Engineers*, the City's position with respect to A8.409-4 "local rule" status in that specific context is not relevant here.

Further, even if SectionA8.409 is deemed a local rule, PERB's jurisdiction over claimed violations of that section does not automatically entitle PERB to deference by this Court, as PERB presumes. Even when an administrative agency construes a statute or regulation within its purview, the degree of any deference ultimately is "situational." (*Boling*, *supra*, 5 Cal.5th at p. 911, citing *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12 ("*Yamaha*").) Thus, an agency's interpretation may have weight when the agency has "a comparative interpretive advantage over the courts" because "the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy and discretion." (*Ibid.*, internal quotations omitted.) In other circumstances, agency interpretations may have "little worth." (*Yamaha*, *supra*, 19 Cal.4th at p. 8.) In *Yamaha*, the Supreme Court summarized the law as follows: "The standard for judicial review of agency interpretation is the *independent judgment* of the court, giving

deference to the determination of the agency *appropriate* to the circumstances of the agency action." (*Id.* at p. 8, emphasis in original.) And in all cases, "the proper interpretation of a statute is ultimately the court's responsibility." (*Boling*, *supra*, 5 Cal.5th at p. 911; *Yamaha*, 19 Cal.4th at p. 12 [same].)

PERB's construction of section A8.409 et seq. is not entitled to any deference under this situational analysis. As the City has shown and reiterates below, the civil service bargaining carveout and the binding interest arbitration provisions under those sections are inextricably bound up with the "at-will" mandate under section 10.104 as well as with the City civil service system regulation. Yet PERB has no legislative authority and no expertise as to either of those matters. To the contrary, the MMBA expressly recognizes and affirms local control of civil service system regulation. (See Gov. Code, § 3500(a).) Indeed, as discussed *infra*, it is the San Francisco Civil Service Commission's interpretation of the civil service carveout provisions under section A8.409-3 that merits deference, not PERB's. In the end, virtually the only direct MMBA-related issue in this entire case is the proper harmonization of the Charter and the MMBA, which involves no labor law technicalities and is resolved by applying controlling Supreme Court authority, including *Seal Beach*, *supra*. Because interpreting section A8.409-4 turns on statutory interpretation and legal issues that are entirely outside PERB's administrative and quasi-judicial competence, PERB has no viable claim to

deference. (See *Boling*, *supra*, 5 Cal.5th at p. 911; *Yamaha*, *supra*, 19 Cal.4th at pp. 8, 12.)

The cases recited by PERB and MAA do not support any other conclusion. Three of the cases are inapposite because they concern solely PERB's interpretations of the MMBA or other labor statutes. (See *Boling*, *supra*, 5 Cal.5th at pp. 916-918 [definition of "governing body" required to bargain under the MMBA]; *California State Employees' Assn. v. Public Employment Relations Bd.* (1996) 51 Cal.App.4th 923, 934-935 [determination of "unilateral change" in violation of the bargaining requirement under the Higher Education Employer-Employee Relations Act]; *Oakland Unified School Dist. v. Public Employment Relations Bd.* (1981) 120 Cal.App.3d 1007, 1011-1012 ["unilateral change" under the Educational Employment Relations Act].) In the fourth case, the Supreme Court noted PERB's jurisdiction under public employment statutes, before it independently reviewed and rejected PERB's claim regarding the length of the MMBA's limitations period for filing unfair labor practice charges. (See *Coachella Valley Mosquito and Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1087-1091 ("*Coachella*").) Thus, *Coachella* in fact shows that PERB's jurisdictional authority in itself does not warrant deference on judicial review.

C. The Civil Service Commission's Interpretation Of The Charter's Civil Service Provisions Does Merit Deference

The Charter charges the San Francisco Civil Service Commission (the "Commission") with implementing the civil service provisions of the Charter. (Charter, § 10.101.) As discussed in the Opening Brief, the Commission promulgated rules that classify attorneys as "exempt" civil service appointees who serve at will. (See Opening Brief, p. 23; see also 5AR 3219-3220 [Commission policy on exempt appointments].) Based on section 10.104, the Commission has interpreted the civil service carveout under section A8.409-3 to encompass attorneys who serve in "exempt" and thus "at-will" positions. (See Opening Brief, pp. 60-61 [discussing testimony of former Commission Executive Director Favetti].) Because the Commission is the agency that administers the civil service system, its interpretation has "great weight." (See *San Diegans for Open Government*, *supra*, 31 Cal.App.5th at p. 375; *Jenkins v. County of Riverside* (2006) 138 Cal.App.4th 593, 608-609 [county's interpretation of civil service rules governing employee status is "entitled to deference, and will not be overturned unless clearly erroneous"].) According deference to the Commission is all the more appropriate because the civil service system is intricate and employs specialized language in which the Commission has expertise. (See *Yamaha*, *supra*, 19 Cal.4th at p. 12; *Boling*, *supra*, 5 Cal.5th at p. 911.)

PERB and MAA dispute the Commission's interpretive authority by alleging that the City made inconsistent statements in bargaining about its obligations under the Charter. (PERB's Brief, pp. 29-31; MAA's Brief, pp. 33-34.) This is a retreat from PERB's previous claim that the City altogether conceded arbitrability of attorneys' at-will status, but nevertheless it is equally groundless. The record shows that the City had interpreted sections 10.104 and A8.409-3 to preclude arbitration for decades, up to and including the 2024 round of bargaining. (See Opening Brief, pp. 30-32, 52-53.) In 2024, the City laid out its reasoning several times in memoranda and emails to MAA. (See 4AR 2504-2511.) PERB and MAA cite bits of the City bargaining representative's statements that do not show any inconsistency considering the context. (See Opening Brief, pp. 30-32, 52-53.)

Aside from being counterfactual, PERB's and MAA's claim is also legally irrelevant. Because the Commission is the agency charged with administering the civil service system, it is the Commission's interpretation that matters. (See *San Diegans for Open Government*, *supra*, 31 Cal.App.5th at p. 375.) Any alleged statements by the City's bargaining agent provide no basis to deny credit to the Commission's longstanding and consistent position that attorneys serve at will.

Based on settled authority governing judicial review of PERB's decisions, PERB is not entitled to any deference in interpreting Charter sections 10.104, A8.409-3, and A8.409-4, the City civil service rules, or any other matter that is not "squarely"

within PERB's legislatively designated MMBA expertise. (See *Boling*, *supra*, 5 Cal.5th at p. 912; *Hoffman*, *supra*, 535 U.S. at p. 144.) Moreover, as discussed in City's Opening Brief and reiterated here, PERB's purported constructions of the Charter are legally wrong. Consequently, PERB's decision could not stand even under the deferential "clearly erroneous" standard.

II. PERB Misconstrued Section 10.104 Contrary To Its Plain Language

A. Attorneys' At-Will Status Under Section 10.104 Is The Only "Job Protection" At Issue In This Case

As discussed in the City's Opening Brief, PERB's decision rests in part on a pervasive mischaracterization of the scope of the specific legal controversy in this case. Throughout its decision, PERB purported to decide whether the Charter provided for binding interest arbitration of a broad undefined category of "job protections." (See 2AR 1824-1843.) The record shows, however, that the only "job protection" proposal that the City declined to submit to interest arbitration in 2024 was MAA's sole and unconditional demand for full "just cause" rights, accompanied by a mandatory seniority-based layoff process. (See Opening Brief, pp. 31-33.) Accordingly, the actual issue in this case is narrow and limited to the question of whether the Charter provides for binding interest arbitration of "just cause" rights, notwithstanding section 10.104's express mandate that attorneys serve "at the pleasure" of their appointing officer, i.e., their employment is at-will.

PERB does not dispute what transpired in bargaining, but it asserts that a "broader description of the matter" is appropriate because (1) various "job protection" proposals "could" be made; and (2) MAA and the City "proposed or considered" proposals within that hypothetical "spectrum." (PERB's Brief, pp. 41-42 [referring to MAA's "just cause" proposal and the advisory process bargaining suggestion that the City made and MAA ignored].) But PERB does not and cannot demonstrate any relevance of hypothetical or unrealized "job protections" in determining whether the Charter allows for the "just cause" rights that MAA specifically and exclusively demanded, and whether a just cause proposal is subject to interest arbitration under the Charter. Indeed, as pointed out in the City's Opening Brief, in rendering an award, the interest arbitration panel may only choose between the City's and the union's last, best, and final offers on each issue; the panel has no discretion to fashion a compromise that deviates from the final offers of one or the party. (Charter, § A8.409-4(d).)

PERB obfuscates the actual issue in this case because, when it is accurately stated, the dispositive force and effect of the "at-will" mandate under section 10.104 is crystal clear. While some "job protection" proposals would not conflict with section 10.104 and could be negotiated or submitted to and awarded by an arbitration panel, MAA's "just cause" proposal directly conflicts with that section and cannot be harmonized or reconciled with that substantive employment term set in the Charter.

B. PERB Inverted The Plain Meaning Of Section 10.104's Mandate That Attorneys Serve At Will

"In construing a provision adopted by the voters our task is to ascertain the intent of the voters." (*Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 349, citation omitted.) To determine voters' intent, "[w]e look first to the language of the charter, giving effect to its plain meaning." (*Ibid*.)

Here, section 10.104 provides both that attorneys are exempt from civil service selection, appointment and removal processes and they "shall serve at the pleasure of the appointing officer." (Charter, § 10.104(13).) This legislative choice by City voters reflects a recognized and logical public policy that attorneys should perform to the personal satisfaction of the elected officials who appointed them to perform sensitive public duties on their behalf, as opposed to the generalized standards of the civil service system. (See *Ramirez v. San Mateo County District Attorney's Office* (9th Cir. 1981) 639 F.2d 509, 513.)

PERB insists that section 10.104 allows elected officials to delegate to unelected arbitrators their discretionary authority to fire attorneys whom they hired. (See PERB's Brief, pp. 43-48; see also MAA's Brief, pp. 44-48 [same].) This is flatly incorrect based both on plain English and clear law. "Serving at [the] pleasure means one is an at-will employee who can be fired without cause." (*Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1693, citing *Bogacki v. Bd. of Supervisors* (1971) 5 Cal.3d 771, 783); see also "At-Will, Adjective" *Dictionary.com*, https://www.dictionary.com/browse/at-will (last visited January 3,

2026) ["at-will" means the employer may end the employment relationship "at any time without notice or cause"].) PERB asserts that *Hill* involved the status of a single employee, but that distinction made no difference in *Hill*, and it makes no difference here. Likewise, it does not make any difference that the at-will employee in *Hill* had a "job protection" right to revert to a "for cause" position following termination, because such a right does not restrict the employer's right to terminate the employee without cause in the first place. (See *Hill*, *supra*, 33 Cal.App.4th at pp. 1692-1695.)

PERB's reliance on *Bogacki* is similarly misplaced. As discussed in the Opening Brief, *Bogacki* explains that an at-will employee may be entitled to constitutionally mandated pre-termination process; it is no authority for PERB's proposition that "at-will" status can be construed to mean "just cause." (*Bogacki*, *supra*, 5 Cal.3d at pp. 778-779.) And as with PERB's failed attempts to distinguish *Hill*, it makes no difference that in *Bogacki* the county had a process regarding future employment of terminated at-will employees. Again, notwithstanding PERB's attempts to muddy the waters, the issue here is whether "at-will" attorneys may obtain "just cause" rights in conflict with the clear language of section 10.104, rather than some other type of "job protection" that does not conflict, such as the severance or advisory procedures PERB discussed in its decision finding "job protections" bargainable and subject to arbitration.

PERB's purported construction of section 10.104 defies its plain language, common meaning, and the law. It is also illogical

because it upends the calculated balance the voters vested in elected officials' authority to both hire and fire attorneys in their own discretion; this is not the result that the City voters intended. In short, PERB's reading of section 10.104 is egregiously wrong.

C. There Is No Extrinsic Basis To Construe Section 10.104 Against Its Plain Meaning

"Where the words of the charter are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the charter or from its legislative history." (*Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 349, quoting *Domar Electric, Inc. v. City of Los Angeles* (1994 9 Cal.4th 161, 172.) Here, PERB refused to acknowledge section 10.104's plain meaning and instead improperly misconstrued its clear mandate based largely on purported extrinsic considerations. But PERB does not and cannot show any reason to ignore Charter language that unambiguously expresses the will of the voters. (See *ibid.*)

1. PERB's Groundless Claims Regarding City Representations In Bargaining Are Irrelevant

As discussed in the Opening Brief, PERB construed section 10.104 based on the wholly conclusory assertion that the City had conceded in bargaining that attorneys' at-will status could be settled at the bargaining table or in binding arbitration. PERB now abandons that groundless claim and re-characterizes the City's alleged key concession as an "inconsistent" position

(PERB's Brief, pp. 30-31), which is equally without merit. (See Opening Brief, pp. 31-32, 53-54.) According to MAA, the City both made inconsistent statements and conceded the issue (MAA's Brief, pp. 33-34, 45), which is a logical impossibility. In the end, these shifting and conflicting claims are irrelevant, because alleged statements by a City bargaining agent are no basis to discern the meaning of a statute, particularly where the plain language leaves no ambiguity as to that meaning. (See *Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 349 [discussing recognized statutory construction aids].) Neither PERB nor MAA responds to this dispositive point.

2. PERB "Harmonized" Section 10.104 By Ignoring The Critical *Seal Beach* Distinction Between Substantive And Procedural Regulation

PERB's second prominent theme is that section 10.104 must be construed to allow binding interest arbitration of MAA's demand for "just cause" rights to avoid a conflict with the MMBA's bargaining requirement. This is clear legal error.

a. The Law Distinguishes Between Substance And Procedure For MMBA Application Purposes

As discussed in the Opening Brief, the California Constitution grants charter cities and counties "home rule" autonomy with respect to municipal affairs. (See *State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 566 ("*Vista*").) This constitutional right to

self-government includes the power to control the terms of employment and compensation of city and county employees. (See Cal. Const., art. XI, § 5(b).) Cities and counties organized under general law possess equivalent autonomy in the California constitutional design. (See *id.*, § 1(b).) The constitution reinforces these local self-government rights by prohibiting delegation of municipal functions to any private person, including arbitrators. (See *id.*, § 11(a); see also *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 285-296 [holding that state law cannot force general law county into binding arbitration over employee compensation].) Thus, as a matter of constitutional law, only the voters have the power to change the substantive terms of employment and compensation which they adopted in the first place. (See *ibid.*) Here, City voters decided and enshrined in the Charter that City attorneys should serve at-will, and only the voters can change that decision.

As discussed, the California Supreme Court established a harmonization framework that preserves "home rule" authority of charter cities and counties without impairing the MMBA's bargaining requirement. The analysis turns on the "clear distinction between the *substance* of a public employee labor issue and the *procedure* by which it is resolved." (*Seal Beach*, *supra*, 36 Cal.3d at p. 601, fn. 11, emphases in original, quoting *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 317; see also *County of Riverside*, *supra*, 30 Cal.4th at p. 289 [same].)

Based on this cardinal distinction, the MMBA's preemptive reach is limited solely to local procedural regulation of bargaining, which may not conflict with the MMBA's bargaining requirements, which are similarly procedural. (See e.g., *County of Los Angeles v. Los Angeles County Employee Relations Comm.* (2013) 56 Cal.4th 905, 925 [county restriction on union access to employee contact information protected for bargaining purposes under the MMBA].) With respect to substantive "home rule" charter provisions, the voters always possess exclusive final decision-making authority which cannot be infringed. (See *County of Riverside*, *supra*, 30 Cal.4th at p. 288 ["*regulating* labor relations is one thing; *depriving* the county entirely of its authority to set employee salaries is quite another"].) In cases where a substantive "home rule" governs a matter that is subject to the MMBA's procedural bargaining requirement, the provisions are harmonized simply by requiring good-faith bargaining when a new rule is adopted or an existing rule changed, subject to voters' exclusive authority to adopt or reject any resulting agreement. (See *Seal Beach*, *supra*, 36 Cal.3d at pp. 594-595, 599-601; *Boling*, *supra*, 5 Cal.5th at pp. 914-918 [city required to engage in bargaining over proposed charter amendment sponsored by mayor before submitting it to voters].) This result does not violate the MMBA's procedural bargaining requirements, since the statute speaks only to process and does not compel any particular bargaining result, and it does not require binding arbitration as a means for resolving bargaining impasses. (See Gov. Code, §§ 3504, 3505.)

b. *Seal Beach* Controls In This Case

The *Seal Beach* analysis controls in this case. Contrary to PERB's purported "harmonization" rationale, section 10.104 does not restrict bargaining over attorneys' at-will status in any way. It is just that settled constitutional doctrine reserves the final say in the matter to the voters, and not to an arbitration panel under the City's local bargaining impasse resolution procedures. (See *Seal Beach*, *supra*, 36 Cal.3d at pp. 594-595, 599-601; *Boling*, *supra*, 5 Cal.5th at pp. 914-918; *County of Riverside*, *supra*, 30 Cal.4th at p. 289.) Put differently, "home rule" powers allow the voters to organize their government as they choose. Here, the City's Charter delegates various powers to the Mayor, the Board of Supervisors, department heads, and even arbitrators. But certain powers are reserved to the voters themselves and not delegated. The right to change section 10.104 is not delegated to any City body or employee. Thus, neither the Board of Supervisors nor an arbitration panel has the power to change this Charter provision.

PERB still baldly asserts that section 10.104 somehow "defines" the scope of bargaining (see PERB's Brief, pp. 47-49) and again attempts to analogize this case to *Huntington Beach Police Officers Association v. City of Huntington Beach* (1976) 58 Cal.App.3d 491 ("*Huntingto*n"). But *Huntington* involved a city claim that a charter management rights provision wholly precluded bargaining on a topic bargainable under the MMBA (see *id.* at pp. 499-504), whereas here section 10.104 does no such

thing, and the City has never claimed that it does. The City has agreed that provision is subject to MMBA bargaining, but under *Seal Beach*. Thus, PERB's justification for misconstruing the "at-will" mandate is based itself on yet another misstatement of the bargaining record and section 10.104's plain language.

PERB and MAA cursorily cite several other cases that similarly do not support PERB's "harmonization" effort. In *Building Material & Construction Teamsters' Union, Local 216 v. Farrell* (1986) 41 Cal.3d 651 ("*Farrell*"), the Supreme Court ruled that a City civil service job reclassification and reorganization that resulted in transfer of work from one bargaining unit to another was within the scope of the bargaining requirement. (See *id.* at p. 688.) In doing so, the Supreme Court harmonized the MMBA with the Commission's process used to reclassify civil service positions, not with any substantive Charter "home rule" provision. (See *id.* at pp. 665-667.)

In *Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, the Supreme Court ruled that firefighters' right to organize under the Labor Code precluded the city from discriminating against firefighters under city charter "loyalty" provisions. (See *id.* at pp. 279-280, 287-294, fns. 1 & 2.) The MMBA's own separate prohibition on discrimination based on union activity was the only issue in *San Leandro Police Officers Association v. City of San Leandro* (1976) 55 Cal.App.3d 553. (See *id.* at pp. 557-559 [salary incentive plan provided solely to non-union employees].) In *California Federal Savings and Loan Association v. City of Los Angeles* (1991) 54 Cal. 3d 1, the issue

was preemption of local taxation of financial corporations by the Revenue and Taxation Code. (See *id.* at pp. 3-5.) None of these cases has any bearing on the proper harmonization of the MMBA's procedural bargaining requirement with substantive charter provisions, as set forth in *Seal Beach*.

c. PERB's Decisions Are Also Inapposite

The PERB decisions cited by PERB and MAA are likewise inapposite because they do not apply the MMBA's procedural bargaining requirements to a substantive Charter provision.

SEIU Local 1021 v. City and County of San Francisco (2017) PERB Decision No. 2536-M concerned a prohibition on strikes under Charter section A8.346. PERB characterized that provision as a "limited" quid pro quo for the unions' right to invoke binding interest arbitration under the agreement the City and the unions struck in 1995, memorialized in Charter section A8.409 et seq. (See *id.* at pp. 8, 10 fn. 10; see also *id.* at pp. 20, 25.) When asked to enjoin the City from enforcing this arrangement against "sympathy strikes," PERB declared the provision unenforceable on the ground that it conflicted with public employees' right to strike conferred by the MMBA. Applying a substantive preemption analysis, PERB ruled that the MMBA conferred right to strike prevailed over the City's authority to regulate its municipal affairs. (See *id.* at pp. 17-24, citing *Vista*, *supra*, 54 Cal.4th 547.) PERB later extended this ruling to apply to economic strikes as well as "sympathy" strikes.

(See *IFPTE Local 21 v. City and County of San Francisco* (2023) PERB Decision No. 2867-M. pp. 2-3). But the MMBA does not confer any right to binding interest arbitration to resolve bargaining impasses, and therefore the "statewide concern" preemption analysis that PERB relied on in those decisions doesn't apply here. Moreover, there is no basis to find that municipal attorneys' employment status is even remotely a "statewide concern" in the first place. (See *Vista*, *supra*, 54 Cal.4th at p. 566 [state prevailing wage law presents "no statewide concern" justifying preemption of wages the City pays to public project contractors'].)

In another case, *SEIU Local 1021 v. City and County of San Francisco* (2020) PERB Decision No. 2691-M, the union sought and obtained from PERB relief from another part of the binding interest arbitration bargain. In particular, the union challenged City budget-related deadlines under Charter sections A8.409-4 and 8A.104 for submitting proposed collective bargaining agreements to the Board of Supervisors for approval. PERB declared the deadlines unenforceable on the ground that they violated the MMBA by tilting *the bargaining process* in favor of the City. (*Id.* at pp. 2-3.) Because it concerned a MMBA *procedural* bargaining requirement as opposed to a *substantive* "home rule" charter provision, that case too is irrelevant.

Transport Workers Union Local 250 v. City and County of San Francisco (2019) PERB Decision No. 2540-M involved Charter section 8A.104, which adopted binding interest arbitration specifically for City transit employees. The union

challenged various bargaining procedures set in that section, including provisions requiring a threshold justification for union bargaining proposals affecting transit service. PERB declared most of the challenged provisions invalid on the ground that they conflicted with the MMBA's required bargaining procedures. (See *ibid.*) The Court of Appeal reversed PERB's ruling in large part in an unpublished opinion. (*City and County of San Francisco v. Public Employment Relations Bd.* (2019) WL 3296947, at *1 [reversing PERB with respect to six of the eight sentences at issue].) PERB's surviving finding in that case is irrelevant, since it did not pertain to any substantive Charter provision at all. (See *Transport Workers Union Local 250 v. City and County of San Francisco* (2020) PERB Decision No. 2540a-M.)

Finally, PERB recites its decisions that "discipline" related matters are bargainable. (See PERB's Brief, p. 30.) The City does not dispute that, but none of these decisions is relevant because PERB's notion that section 10.104 limits bargaining in any way is a fiction. Proposals for "job protections" including disciplinary procedures that do not conflict with 10.104 are bargainable through bargaining under the Charter process, and proposals that do conflict with 10.104, such as MAA's "just cause" proposal, are bargainable under *Seal Beach* as proposed Charter amendments. In the end, PERB's purported "harmonization" analysis devolves into the same untenable "statewide concern" preemption analysis that PERB's ALJ wrongly applied and PERB supposedly corrected. Where the ALJ ruled that section 10.104's

"at-will" mandate is null and void, PERB concludes that it is "irrelevant" because it would be "unlawful" if its plain language were given effect. (PERB's Brief, p. 31, fn. 5; see also *id.* at pp. 51-53.) The ALJ's proposed decision and PERB's final decision are just two sides of the same bad penny, and both clearly erroneous.

d. *Seal Beach* Bargaining Is Not "Optional"

Strikingly, PERB also attempts to sidestep the governing *Seal Beach* harmonization analysis by claiming that, under *Seal Beach*, proposing a charter amendment to the voters is merely an "option" for resolving bargaining over terms set in a charter. PERB's basis for this assertion is that *Seal Beach* does not explicitly hold that a proposed charter amendment must be presented to the voters. (PERB's Brief, pp. 49-50.) But that is because the voters' exclusive "home rule" authority over the issue subject to bargaining in *Seal Beach* was a fundamental undisputed premise of the Supreme Court's decision, and the only issue in the case was whether the city was required to bargain with the union before the voters exercised that authority. Indeed, the Supreme Court observed in *Seal Beach* that the MMBA's bargaining mandate could not be used to "mount[] an attack" on voters' control over the substance of the proposed charter amendment at issue. (See *Seal Beach*, *supra*, 33 Cal.3d at p. 599.) Yet that is exactly what PERB has done here, contravening established Supreme Court precedent.

3. PERB's Remaining Arguments Are Frivolous

PERB attaches great significance to the "job protections" the City affords to at-will physicians, who are also exempt and thus at will under section 10.104. But the due process protections for physicians are irrelevant because they are advisory, do not alter physicians' at-will status in any way, and thus do not conflict with section 10.104. (See PERB's Brief, pp. 43-44 [choice of severance or limited process]; see also MAA's Brief, p. 47 [attorneys severance].) MAA retorts that "nothing in the text of ... section 10.104 or the case law ... supports such a differentiation" between advisory process and just cause rights (MAA Brief, p. 47), which does not pass the straight-face test. PERB also refers to Alameda County's labor agreement to provide "just cause" rights to attorneys (PERB's Brief, p. 44), but it fails to acknowledge that the Alameda County Charter is not comparable because it does not mandates that attorneys serve "at the pleasure of the appointing officer"—i.e., at-will—as the San Francisco Charter does. (See 4AR 2423-2428 [charter civil service provisions].) PERB's misconstruction of section 10.104 has no legal basis whatsoever.

III. Section 10.104 Forecloses Any Finding That Attorneys' At-Will Status Is Subject To Binding Interest Arbitration Under Section A8.409 Et Seq.

As discussed in the City's Opening Brief, Charter section 10.104's plain language is dispositive on the issue of whether attorneys' at-will status is arbitrable under Charter section

A8.409, specifically subsections A8.409-3 and A8.409-4. Consistent with the section 10.104 mandate, section A8.409-3's civil service carveout from the Charter bargaining process expressly encompasses the "designation of positions as exempt, temporary, limited tenure, part-time, seasonal or permanent." Attorneys' "exempt" designation expressly falls within that carveout. Because that designation is not subject to bargaining under section A8.409-3, it is not subject to section A8.409-4's binding interest mechanism for resolving impasses in bargaining under the preceding section. Moreover, section 10.104 would control even if sections A8.409-3 and A8.409-4 presented any conflict, because Charter section 16.116 dictates that the body of the Charter prevails over the Appendix.

As with section 10.104 itself, interpreting sections A8.409-3 and A8.409-4 to exclude attorneys' exempt, at-will status from bargaining and arbitration under the Charter does not impair MAA's rights under the MMBA in any way. As recognized in section A8.409-3, civil service matters carved out from bargaining under that section are still bargainable to the extent required by state law. In this case, the MMBA-required bargaining is *Seal Beach* bargaining, which MAA simply chose not to engage in. As for interest arbitration, the MMBA does not confer any right to it all. PERB and MAA have no viable argument to the contrary.

A. Section A8.409-3 Defines What Is Bargainable And Subject To Binding Arbitration Under The Charter

The Charter Appendix provisions concerning bargaining and binding interest arbitration have a logical order. Section A8.409-3 first specifies the matters subject to bargaining under section A8.409 and defines the parties' bargaining obligations. (See Charter, § A8.409-3.) In a following clause, the section sets an express carveout or exclusion from that bargaining obligation: "provided, however, that except insofar as they affect compensation, those matters within the jurisdiction of the civil service commission which establish, implement and regulate the civil service merit system *shall not be subject to bargaining under this part*," i.e., under entire section A8.409. (*Ibid.*, emphasis added.)

Section A8.409-4 provides for the second step of the bargaining process under A8.409, which is impasse resolution procedures, and sets binding interest arbitration for disputes unresolved after "bargaining" between the City and the unions. (Charter, § A8.409-4(a).) Read in conjunction with section A8.409-3, as it must be given the structure of the whole of section A8.409, section A8.409-4's arbitration provision applies solely to matters that are within section A8.4098-3's scope of bargaining in the first place. (See *Don't Cell Our Parks*, *supra*, 21 Cal.App.5th a p. 350 [related charter provisions must be construed together and given "reasonable and commonsense" interpretations].) Attorneys' "exempt" and "at-will" status is carved out from

bargaining under section A8.409-3; it remains carved out from the impasse resolution process for that bargaining and therefore not subject to binding interest arbitration under section A8.409-4.

B. Section A8.409-3's Civil Service Carveout, On Its Face, Applies To Attorneys' Status As "Exempt" Civil Service Appointees

The civil service matters expressly carved out from bargaining under Charter section A8.409-3 include "the designation of positions as exempt…." (Charter, § A8.409-3.) Attorney positions are designated as "exempt" by section 10.104 and implementing Civil Service Rule 114.25. (See Charter, § 10.104; 2AR 632.) On its face, section A8.409-3's civil service bargaining carveout applies to that designation. (See Charter, § A8.409-3.)

The meaning of civil service "exempt" under section 10.104 and Rule 114.25 also is clear. Exempt positions are positions "exempt from competitive selection, appointment, and removal procedures," not from the entire civil service system.[1] (See

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[1] In its heyday, civil service was an advanced concept—that employment would be based on merit, ascertained through examinations. Those selected based upon examinations after serving a probationary period (which was considered part of the testing process) would attain a property right in their employment. But those not selected through the merit system would not attain that right. Therefore, as applied here, because attorneys are not elected through an examination process, they serve at the pleasure of their appointing officers. As appointing officers are elected, they are entitled to select a team in whom they have confidence.

Charter, § 10.104; 2AR 632.) Consistent with the language of section 10.104, the Commission exercised jurisdiction over attorneys' employment by establishing civil service classified attorney positions, which are subject to various generally applicable civil service rules except those related to appointment and dismissal. (See 5AR 2891 [listing civil service classifications of MAA-represented attorneys]; 3219-3220 [Commission policy with respect to exempt appointments].) Because the Commission is the agency charged with implementing section 10.104, its longstanding interpretation and practice that attorneys designated as "exempt" employees are civil service employees is entitled to deference. (*Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 350.)

Unlike the Commission, PERB has no authority or special competency with respect to civil service regulation, and its purported analysis of the exempt designation carveout does not survive scrutiny. PERB recites its finding that "exempt" means attorneys are excluded from the civil service system altogether, and that as a result the carveout does not apply to them. (PERB's Brief, pp. 34-35; see also MAA's Brief, pp. 41-44 [same].) As discussed in the Opening Brief, however, PERB has no viable basis for that conclusion.

First, the former Commission Executive Director Kate Favetti and the current City Human Resources Carol Isen never testified in conflict with the Commission's interpretation and administration of attorneys' exempt status at any point during the PERB proceedings. (See Opening Brief, pp. 60-64.) For

example, Isen never "noted that the Commission plays no role with respect to MAA-represented attorneys," as PERB falsely claims. (PERB's Brief, p. 16, citing 3AR 2248-2250.) At the point in the hearing cited by PERB, MAA's attorney asked, "do you know if in 1990 the Civil Service Commission had established a Civil Service Merit System for the attorneys," and Isen's only response to this murky question was, "I don't know if they did that or not." (3AR 2250-2251.) PERB's attempts to attribute inconsistent views to the Commission have no factual basis in the record.

The absence of Commission representatives at the 2024 bargaining table has no significance, because there was no requirement for the Commission to participate in bargaining where MAA effectively demanded a Charter revision but through the interest arbitration process, rather than through the proper *Seal Beach* and Charter amendment route. (See Opening Brief, p. 62.)

The fact that section A8.409-3 mandates bargaining for matters including "agreements to provide binding arbitration if discipline and discharge" is another red herring because, as discussed, the scope of bargaining under that section is subject to the civil service carveout provision which follows immediately after in the same section and qualifies that scope. The mere title of section 10.104, which is "Exclusions from Civil Service Employment," also is no way sufficient to overcome section 10.104's plain language, which specifically exempts attorneys from the civil service selection, appointment and removal

procedures only. In concluding that the carveout does not apply in this case, PERB ignored the plain language of both the at-will mandate under section 10.104 and the carveout for "the designation of positions as exempt, temporary, limited tenure, part-time, seasonal or permanent" under section A8.409-3. If the carveout only applied to permanent civil service employees, then there would be no need to list the other appointment types in this carveout language. PERB has effectively written out the words "exempt, temporary, limited tenure, part-time, seasonal" and failed to give meaning to plain statutory language. By failing to follow the Charter's clear language adopted by the voters, PERB violated the fundamental principle of statutory construction (see *Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 349), without articulating any viable basis for overriding the voters' apparent intent.

Ultimately, PERB's findings with respect to attorneys' civil service standing and the application of the carveout would not affect the outcome of the Charter analysis in this case even if they had any basis. That is because attorneys' at-will status derives from the explicit mandate of section 10.104, not from their regulatory designation as exempt appointees in the civil service system. PERB acknowledged this point in its decision and does so again here. (See 2AR 1830 [Rule 114.25 "simply relies on that pre-existing [Charter] exemption"]; PERB's Brief, pp. 36-37 [the exempt designation "is set by paragraph 13 of section 10.104"].) Further, section 10.104 has primacy over section A8.409 et seq., because it is in the body of the Charter rather

than the Appendix. (See Charter, § 16.116.) Because section 10.104 is dispositive, attorneys' at-will status would not be subject to bargaining under section A8.409-3, or to binding interest arbitration under section A8.409-4, even if the attorneys' civil service exempt designation were not encompassed by the civil service carveout, which it is.

C. The Additional Carveouts Under Sections A8.409-4 and A8.590-5 Have No Bearing On The Section A8.409-3's Civil Service Carveout

Under PERB's analysis, the controlling Charter mandate is the binding interest arbitration provision under section A8.409-4. (PERB's Brief, p. 31 [claiming that "other" Charter provisions—i.e. sections 10.104 and A8.409-3—are "ultimately inapplicable"].) PERB's asserted basis for this startling conclusion is that section A8.409-4 generally requires binding interest arbitration for resolving bargaining impasses, and the several miscellaneous arbitration carveouts under that section do not include attorney "discipline" or "terminations." (*Id*. at pp. 32-33.)

As already discussed, PERB ignores the fact that section A8.409-4's arbitration requirement applies only to subjects that are bargainable under section A8.409-3 in the first place. (See Charter, §§ A8.409-3 and A8.409-4.) Attorneys' exempt and at-will status is not bargainable under section A.809-3 because they fall within the civil service carveout of that section, and,

ultimately, under section 10.104. [2] Thus, any carveout under section A8.409-4 would be redundant. The additional miscellaneous section A8.409-4 carveouts for matters such as consent decrees are no basis to sideline the section A8.409-3 carveout, let alone section 10.104's at-will mandate. PERB cannot avoid this result by constantly pretending that this case somehow broadly involves matters of "discipline" and "job protections" as opposed to MAA's specific proposal that is at issue.

PERB's attempt to attach significance to the carveout for "safety" employee disciplinary matters under section A8.590-5 is equally meritless. As discussed in the Opening Brief, that

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[2] Since PERB found section 10.104 facially valid, it is deeply inconsistent to say that section 10.104's at-will mandate is bargainable and "just cause" rights can be negotiated or awarded. As explained in the City's Opening Biref, the MMBA recognizes that "[n]othing contained here shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rule of local public agencies that establish and regulate a merit or civil service system." (Gov. Code, § 3500(a).) Consistent with this language and language in similar statutes under PERB's purview, PERB has recognized that matters otherwise falling within the scope of representation may be rendered impermissible subjects of bargaining by external law, including provisions in a city or county charter. (See *American Fed. of State, County and Mun. Employees, Local 101 v, City of San Jose* (2013) PERB Decision No. 2341-M, pp. 43-44; *Jefferson Classroom Teachers Assn. v. Jefferson School Dist.* (1980) PERB Decision No. 133, pp. 8-9.) In those cases, the duty to bargain is "superseded" where an inflexible standard set by external law would be "replaced, set aside or annulled" by a proposal. (See *San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 864-865.)

carveout reflects the fact that the Charter separately sets forth a disciplinary process specifically for those employees, where a civilian oversight commission is the final discipline decisionmaker. (See Charter, § A8.341-6.) PERB ignored this simple explanation in its decision, and it again refuses to acknowledge it here. PERB also ignores the fact that the Charter excludes various other bargainable matters from the impasse resolution procedure under section A8.409-4, reserving the decision-making authority over those matters for the voters or a designated City body. PERB's finding that section A8.409-4 controls in this case—the avowed centerpiece of PERB's entire decision—does not have an even colorable basis.

D. The 1991 Charter Amendments Harmonize With Section 10.104 Instead Of Effecting Any Implied Repeal

All the Charter provisions at issue here must be construed together and harmonized "to the extent possible." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 736; see also *Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 349.) As discussed in the City's Opening Brief, the Charter provisions for bargaining and binding interest arbitration work in harmony when section A8.409-3's carveout is properly construed to encompass attorneys' exempt (at-will) status mandated by section 10.104. This generally effectuates the bargaining and interest arbitration provisions without nullifying the at-will mandate. Neither the bargaining nor the binding interest arbitration provisions under the 1991 Charter can be construed to repeal or otherwise override

the more than century old at-will mandate absent "an express declaration of legislative intent" to do so. (*Isaak v. Superior Court* (2022) 73 Cal.App.5th 792, 801.) The 1991 Charter amendments contain no such declaration, and the last time the issue was presented to the voters, as it always ought to be, they voted against changing attorneys' at-will status by a wide margin. (See City's Request for Judicial Notice, Ex. 2.)

PERB repeatedly declares that the ballot materials associated with the 1991 Charter amendments do not show that "any matter related to attorney job protections or discipline would be exempt from interest arbitration." (PERB's Brief, pp. 17, 46-47, 51-53.) This argument fails in two respects. One, yet again, the sole issue here is arbitrability of attorneys' at-will status, as opposed to any "job protection" abstractions. Two, intent to repeal may be inferred only from an express declaration, not from mere silence. (*Isaak*, *supra*, 73 Cal.App.5th at p. 801.)

The failure of the MAA-sponsored 1976 ballot measure to grant "just cause" rights to attorneys directly speaks to the intent of City voters. PERB does not acknowledge that failed measure at all, and MAA steps in only to oppose the City's request that the Court take judicial notice of it. (See MAA's RJN Opp., filed 11/10/2025.) MAA's request that the Court look away is not well-founded. (See City's concurrently-filed Reply to MAA's RJN Opp.) Regardless, there would be no basis to find that the 1991 Charter amendments repealed section 10.104 even if PERB and MAA could sweep the best direct evidence of voters' intent under the rug.

E. Excluding Attorneys' At-Will Status From Bargaining And Binding Interest Arbitration Under Section A8.409 Et Seq Is Not "Unreasonable" Under The MMBA

PERB found and still maintains that the City's interpretation of Charter sections A8.409-3 and A8.409-4 "amounted to an unreasonable local rule" in violation of the MMBA. (2AR 1840; PERB's Brief, pp. 16, 38-39.) As the City discussed in the Opening Brief, however, the MMBA's reasonableness requirement is not implicated here, because while the MMBA requires bargaining, it does not displace the voters' constitutional power as the sole decisionmakers over matters reserved to the voters. (See Gov. Code, §§ 3504, 3505; *Seal Beach*, *supra*, 36 Cal.3d at pp. 594-595, 600-601; *Boling*, *supra*, 5 Cal.5th at p. 904.) Nor does the MMBA require the City to adopt any particular bargaining impasse resolution procedure, much less require the City to submit attorneys' Charter-mandated "at-will" status to binding interest arbitration. (See Gov. Code, § 3507(a).) Finally, it is surprising that PERB apparently concludes that the *Seal Beach* bargaining process set by the Supreme Court is an unreasonable alternative for MAA to negotiate its just cause proposal; that conclusion is clearly erroneous under controlling law. Nonetheless, PERB simply repeats its meritless finding without addressing this fundamental point in any way.

PERB likewise mechanically repeats that its own "harmonization" of sections A8.409-3 and A8.409-4 with the

MMBA bargaining requirement is consistent with "the rule [that] the Commission must bargain topics within the scope of representation that fall under its jurisdiction." (PERB's Brief, p. 38, citing *Farrell*, *supra*, 41 Cal.3d at pp. 665-667, and *Los Angeles County Civil Service Comm. v. Superior Court* (1978) 23 Cal.3d 55, 63-65.) As the City discussed, however, neither of PERB's purported authorities remotely support PERB's contention that the Civil Service Commission is required to engage in the section A8.409 bargaining process over a matter the Charter excludes from bargaining under that process. (See *Farrell*, 41 Cal.3d at p. 688 [civil service reorganization subject to MMBA bargaining over union work reassignments]; *Los Angeles County Civil Service Comm.*, *supra*, 23 Cal.3d at pp. 65-67 [commission may not hold public hearing in lieu of MMBA bargaining].) As with section 10.104, PERB's use of the MMBA to justify rewriting sections A8.409-3 and A8.409-4 is an indefensible misapplication of the statute.

IV. PERB's Result-Oriented Decision Violates The City's Constitutional Powers Of Self-Governance

PERB's decision effectively delegates the voters' authority to change a substantive employment term mandated by the Charter to unelected and unaccountable arbitrators. As discussed in the Opening Brief and reiterated here, this violates the California Constitution in two fundamental respects. First, the "home rule" doctrine reserves the authority to amend or repeal section 10.104's at-will mandate solely to the voters. (See

Seal Beach, *supra*, 36 Cal.3d at pp. 594-595, 600-601; *Boling*, *supra*, 5 Cal.5th at p. 904.) Additionally, the doctrine of separation of powers prohibits PERB from empowering arbitrators to revise the Charter without voter approval by de facto legislative action. (See *City of Palo Alto v. Public Employment Relations Board* (2016) 5 Cal.App.5th 1271, 1313-1316 [an administrative agency cannot compel legislative action].)

PERB went out its way to reach this doubly unconstitutional result by refusing to recognize the controlling constitutional law and precedent, including *Seal Beach*, and the cardinal distinction the law establishes between procedural labor law regulation and substantive employment regulation. In addition, PERB ignored the plain language of the Charter and its unambiguous legislative history. In doing so, PERB misused its legislative mandate. In the analogous federal context, the United States Supreme Court observed that the National Labor Relations Board "has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important [c]ongressional objectives." (*Hoffman Plastic*, *supra*, 535 U.S. at p. 143, quoting *Southern S.S. Company v. National Labor Relations Bd.* (1942) 316 U.S. 31, 47).) Here, PERB seemingly seeks to effectuate the MMBA's procedural bargaining requirement so single-mindedly that it wholly ignored not just another state legislative objective, but the fundamental constitutional authority of City voters to set

the terms for appointing and removing City employees including attorneys.

As discussed in the Opening Brief, PERB's unconstitutional decision creates a precedent and risk for future "harmonization" based rulings impairing the substantive authority the Charter reserves in various matters either to the voters or to specifically designated officials or government bodies such as the Civil Service Commission, the San Francisco Employees Retirement System and the San Francisco Health Commission. (See Opening Brief, pp. 15, 28, 66.) PERB's prior decisions already show a seeming determination to upend Charter provisions unprotected by the "home rule" doctrine. (See *id.* at pp. 66-67 [decisions voiding various Charter provisions mutually negotiated by the City and the unions].) Here PERB has crossed constitutional lines, and its unlawful and fundamentally undemocratic decision must be vacated.

V. Refusing To Bargain In Violation Of The Charter Is Not "Bad Faith" Bargaining Under MMBA

It is axiomatic that the City cannot act in conflict with its Charter. (*Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at p. 349.) Thus, the City could not accept MAA's take-it-or-leave it demand for full "just cause" rights, or allow an arbitrator to decide that issue, as the Charter expressly mandates that attorneys "shall" serve at-will. And even if the City had given in to MAA's demands at the bargaining table or voluntarily submitted MAA's just cause proposal to binding interest arbitration, any resulting

change in the at-will status would have been a nullity. (See *ibid.*) This point is dispositive because, as noted *supra*, a proposal barred by external law is a "prohibited, 'illegal' or nonnegotiable subject of bargaining." (See *City of San Jose*, *supra*, PERB Decision No. 2341-M at p. 44, citing *San Mateo City School Dist.*, *supra*, 33 Cal.3d at pp. 864-865.) Therefore, the City's refusal to consider MAA's demand in the context of Charter-based bargaining, as opposed to *Seal Beach* bargaining, cannot constitute a violation of the MMBA requirement to bargain in good-faith, as a matter of law. (See *ibid.*; see also *Healdsburg Union High School Dist.* (1980) PERB Decision No. 132, p. 7 ["any review of the parties' conduct for evidence of good or bad faith participation necessarily presupposes that an obligation to bargain exists"].)

As with the rest of its decision, PERB based its bad-faith finding on the erroneous premise that the City refused to negotiate about "MAA's job protection proposals," rather than analyzing the City's bargaining position on MAA's only actual proposal that the City agree to "just cause" rights, even though those contravene the Charter's express at-will mandate. (See 2 AR 1841.) PERB's incorrect account of the parties' 2024 bargaining is not a legitimate basis to find that the City did not bargain in good faith. PERB never comes to grips with the actual facts in this case and instead argues at length that it was appropriate to hold the City liable for bad-faith bargaining based on a theory unalleged in the complaint that PERB's General Counsel issued against the City. (See PERB's Brief, pp. 54-58.)

As the City has explained, PERB in fact has held that a complaint must set forth each allegedly pertinent theory (see Opening Brief, p. 69), but in the end that issue does not determine the outcome in this case. Refusing to submit a substantive employment term categorically mandated by the Charter to the A8.409 bargaining process from which it is carved out does not constitute bad-faith bargaining as a matter of law, be it under the "refusal to bargain" standard invoked in the complaint, the "totality of circumstances" standard PERB purported to apply instead, or under any other conceivable concept of "bad-faith" conduct. (See *City of San Jose*, *supra*, PERB Decision No. 2341-M, at p. 44; *Healdsburg*, *supra*, PERB Decision No. 132, at p. 7.) And again, MAA declined to bargain its proposal outside the A8.409 process, even though PERB should agree that bargaining under the MMBA's procedures, including the *Seal Beach* process, is reasonable and good faith bargaining. PERB's decision must be vacated along with its underlying misinterpretation of the Charter.

VI. PERB's "Make Whole" Order Serves No Remedial Purpose Even If There Any Grounds For City Liability

PERB ordered the City to "[m]ake MAA whole" for "extra bargaining costs" and "any wasted or diverted resources" caused by the City's purported violation of the Charter, other than costs of litigating this case. (2AR 1842-1843.) As discussed in the Opening Brief, PERB's own authorities provide no precedent for such monetary relief to a union on facts anything like those

present here. (See Opening Brief, pp. 71-73.) Again, PERB has only awarded union expenses as part of a "make whole" remedy to compensate for litigation costs incurred in other forums or where an employer engaged in conduct inherently likely to have directly caused the union to waste resources or otherwise suffer harm. (*Ibid.*) Neither of these circumstances are present here. Since MAA never wavered from its take-or-leave-it demand that the City unlawfully compromise the Charter's "at-will" mandate, and the City declined to do so at the outset, there was no related "extra" bargaining resulting in any "economic loss" to MAA. Indeed, MAA never tried to make any such case, and it would have no legitimate factual basis to do so in any putative future "compliance proceeding," as PERB suggests. (See, e.g. *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 CaL.3d 506, 515 [recognizing principles of fairness and due process require that administrative decisions "bridge the gap" between evidence in the record and whether particular remedy is warranted].)

PERB's remedial authority is broad, but it is limited to orders reasonably necessary to effectuate the MMBA's purposes. (Gov. Code, § 3509)(b); see also *Boling v. Public Employment Relations Bd.* (2019) 33 Cal.App.5th 376, 388.) This precludes orders that are "fairly classified as punitive and not remedial." (*Superior Farming Company, Inc. v. Agricultural Labor Relations Bd.* (1984) 151 Cal.App.3d 100, 123; see also *Boling*, *supra*, 33 Cal.App.5th at p. 388.) PERB's purported "make whole" remedy here serves no remedial purpose, and PERB has not identified

one—let alone made any factual findings or otherwise articulate a rationale for why this remedy was appropriate. PERB's awarded "make whole" remedy is therefore unjust and punitive in nature as applied in this case. As a result, it would have to be vacated even if the City had violated its bargaining obligations in any way, which it did not.

CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court grant its Petition for Extraordinary Relief, issue a peremptory writ directing PERB to vacate its entire Decision, and grant any other relief the Court deems proper.

Respectfully submitted,

Dated: January 20, 2026 RENNE PUBLIC LAW GROUP

By: _____

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CERTIFICATION OF WORD COUNT

(California Rules of Court, Rule 8.204(c)(1))

The foregoing brief contains 10,004 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word word processing program used to generate the brief.

Dated: January 20, 2026 RENNE PUBLIC LAW GROUP

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PROOF OF SERVICE

Case Name: CITY AND COUNTY OF SAN FRANCISCO v. PUBLIC EMPLOYMENT RELATIONS BOARD

Case No.: A173302

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On January 20, 2026, I served the following document(s):

PETITIONER CITY AND COUNTY OF SAN FRANCISCO'S CONSOLIDATED REPLY BRIEF

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upon the addressees designated by said attorney(s) for that purpose by depositing the number of copies indicated above, of same, in the manner(s) listed below, as indicated for each addressee on the attached service list.

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I declare, under penalty of perjury that the foregoing is true and correct. Executed on January 20, 2026, in San Francisco, California.

Bobette T. Bramer

Exhibit B

EX.B

City of San Jose

Deputy City Attorney I (Unclassified)

CLASS CODE	2151	SALARY	$121,795.18 - $142,554.62 Annually
ESTABLISHED DATE	January 01, 2012		

CLASS SUMMARY

Positions in these classifications provide the City professional legal services for matters of moderate difficulty under general direction and supervision of Senior Management in the Office of the City Attorney. Perform related work as required.

DISTINGUISHING CHARACTERISTICS

Incumbents in these positions may be appointed full-time or part-time, and benefited or unbenefitted. Positions are appointed "at-will" with no property rights to contfnued employment. Incumbents may terminate employment with or without notice or cause, and the City has the same right.

This is a four level flexibly-staffed series, designed to encompass positions with a wide range of skills and experience. Distinction between levels within this series is at the discretion of the City Attorney and may be based upon a number of factors including, but not limited to: the overall scope of the incumbent's job duties and responsibilities, complexity of assignments, initiative, ability to exercise independent judgment, level of expertise in assigned areas of law, and ability to effectively communicate with City officials and staff, colleagues, and outside parties.

These classifications differ from the Associate Deputy City Attorney classification in that Associate Deputy City Attorney incumbents perform basic legal services under close supervision, and initial employment does not require experience. These classifications differ from the Senior Deputy City Attorney classifications in that Senior Deputy City Attorney incumbents work more independently in providing legal services of greater complexity requiring the highest levels of experience, specialization and professional expertise.

Designation as Deputy City Attorney I, 11,or Ill does not require that the attorney be promoted in sequential order, or limit the City Attorney's ability to promote the attorney to a higher level within the Deputy City Attorney series or to a Senior Deputy City Attorney I, II, III, or IV position based upon the attorney's skills and experience.

MINIMUM QUALIFICATIONS

Minimum Qualifications

Education and Experience

Successful completion of a Juris Doctor Degree from an accredited law school and one (1) year of experience as an attorney.

Required Licensing (such as driver's license, certifications, etc.)
Member in good standing of the California State Bar.

OTHER QUALIFICATIONS

(Incumbents may be required to have different combinations of the listed qualifications, or more specific job-related qualifications depending on the position.)

Basic Knowledge, Skills and Abilities
(Needed at entry into the job in order to perform the essential duties.)

- Knowledge of municipal, state and federal laws, ordinances and codes affecting City government.
- Knowledge of civil and criminal court procedures.
- Knowledge of local court rules and procedures.
- Knowledge of rules of evidence and general statutory case law.
- Knowledge of governmental organization.
- Ability to interpret and apply various government codes and ordinances.
- Ability to perform legal research and prepare sound legal opinions.
- Ability to analyze and prepare a wide variety of legal documents.
- Ability to prepare for and present cases in court and administrative hearings.
- Ability to communicate effectively, both orally and in writing.
- Ability to establish and maintain effective working relationships with a variety of people, including City officials, City staff, opposing counsel, and the public.
- Ability to prioritize workload to efficiently meet deadlines in a timely manner.
- Ability to resolve problems in difficult and complex interpersonal situations.

Desirable Qualifications
(Knowledge, skills and abilities; licenses, certificates, education, experience that is more position specific and/or likely to contribute to more successful job performance.)

- Ability to thoroughly investigate and analyze legal issues, including municipal law matters, and proactively develop creative solutions that contemplate practical implications.
- Ability to exercise independent judgment, making decisions when appropriate and seeking guidance/direction when necessary.
- Ability to maintain confidential information and to exercise discretion.
- Ability to provide complete and accurate legal advice and counsel.
- Ability to produce a quality written work product and orally communicate in a manner that is organized, clear, concise, thorough, accurate, persuasive and with appropriate tone.
- Ability to make effective oral presentations in various public venues, including the courtroom, administrative hearings, training seminars, and City Council meetings.
- Ability to set forth persuasive written and oral arguments.
- Ability to negotiate settlements and contract terms.
- Knowledge of City organization, charter, policies and procedures.
- Knowledge of statutes and case law.
- Knowledge of industry standards/practices in assigned specialty areas.

TYPICAL CLASS ESSENTIAL DUTIES

DUTY NO.	**TYPICAL CLASS ESSENTIAL DUTIES: (These duties and estimated frequency are a representative sample; position assignments may vary depending on the business needs of the department.) Duties may include, but are not limited to, the following:**	FREQUENCY*
1.	Investigate claims and complaints by and against the City.	Continuous
2.	Prepare pleadings, briefs, discovery and other litigation documents.	Continuous
3.	Prepare and try cases by and against the City at state, federal and appellate courts.	Continuous
4.	Prosecute misdemeanor violations of City ordinances.	Continuous
5.	Participate in or prepare cases for administrative and quasi-judicial hearings.	Continuous
6.	Prepare and draft legal opinions, ordinances, permits, resolutions, contracts, deeds, leases and other legal documents.	Continuous
7.	Provide legal advice and counsel to Mayor, City Council, Council Appointees, and City departments.	Continuous
8.	Act in an advisory capacity at meetings of the City Council, boards, commissions, committees and other governmental bodies.	Frequently
9.	Represent the City and the City Attorney at officials, City staff or outside parties.	Frequently
10.	Analyze and interpret legislation and court decisions.	Frequently
11.	Perform legal research.	As Required
12.	Provide staff training on legal issues.	As Required
13.	departments in establishing policies and procedures to ensure compliance with the law; recommend changes in City policies or procedures to meet legal requirements.	As Required
14.	Respond to citizen complaints and requests for information.	As Required

*Frequency defined as %, (totaling 100%) *or* "Continuous" (daily or approximately 20%+), "Frequent"(weekly or approximately 15%+), "Occasional"(monthly or approximately 10%+), "As Required"(Intermittent or 5% or less)

City of San Jose

Deputy City Attorney I, Senior (Unclassified)

CLASS CODE	2195	**SALARY**	$155,442.04 - $185,231.54 Annually

ESTABLISHED DATE January 01, 2012

CLASS SUMMARY

Positions in these classifications provide the City professional legal services for matters of considerable complexity under general direction and supervision of Senior Management in the Office of the City Attorney. These positions require the highest levels of experience, specialization and professional expertise; as well as the ability to exercise independent judgment. Perform related work as assigned.

DISTINGUISHING CHARACTERISTICS

Incumbents in these positions may be appointed full-time or part-time, and benefited or unbenefitted. Positions are appointed "at-will" with no property rights to continued employment. Incumbents may terminate employment with or without notice or cause, and the City has the *same* right.

This is a four level flexibly-staffed series, designed to encompass positions with a wide range of skills and experience. Distinction between levels within this series is at the discretion of the City Attorney and may be based upon a number of factors including, but not limited to: the overall scope of the incumbent's job duties and responsibilities, complexity of assignments, initiative, ability to exercise independent judgment, level of expertise in assigned areas of law, and ability to effectively communicate with City officials and staff, colleagues, and outside parties.

These classifications differ from the Deputy City Attorney classifications in that Deputy City Attorney incumbents perform work of more moderate scope and difficulty and may receive greater guidance. This class differs from the Chief Deputy City Attorney classification in that incumbents in that classification are responsible for supervision of attorneys in the Office of the City Attorney.

Designation as Senior Deputy City Attorney I, II, or III d?es not require that the attorney be promoted in sequential order, or limit the City Attorney's ability to promote the attorney to a higher level within the Senior Deputy City Attorney series or to a Chief Deputy City Attorney position based upon the attorney's skills and experience.

MINIMUM QUALIFICATIONS

Education and Experience

Successful completion of a Juris Doctor Degree from an accredited law school and four (4) years of experience as an attorney.

Required Licensing (such as driver's License, certifications, etc.)

Member in good standing of the California State Bar.

OTHER QUALIFICATIONS

(Incumbents may be required to have different combinations of the listed qualifications, or more specific job-related qualifications depending on the position.)

Basic Knowledge, Skills and Abilities

(Needed at entry into the job in order to perform the essential duties.)

- Knowledge of municipal, state, and federal laws, ordinances and codes affecting City government.
- Knowledge of civil and criminal court procedures.
- Knowledge of local court rules and procedures.
- Knowledge of rules of evidence and general statutory case law.
- Knowledge of governmental organization.
- Ability to interpret and apply various government codes and ordinances.
- Ability to perform legal research and prepare sound legal opinions.
- Ability to analyze and prepare a wide variety of legal documents.
- Ability to prepare for and present cases in court and administrative hearings.
- Ability to communicate effectively, both orally and in writing.
- Ability to establish and maintain effective working relationships with a variety of people, including City officials, City staff, opposing counsel, and the public.
- Ability to prioritize workload to efficiently meet deadlines in a timely manner.
- Ability to resolve problems in difficult and complex interpersonal situations.

Desirable Qualifications

(Knowledge, skills and abilities; licenses, certificates, education, experience that is more position specific and/or likely to contribute to more successful job performance.)

- Ability to thoroughly investigate and analyze legal issues, including municipal law matters, and proactively develop creative solutions that contemplate practical implications.
- Ability to exercise independent judgment, make decisions when appropriate and seek guidance/direction when necessary.
- Ability to maintain confidential information and to exercise discretion.
- Ability to provide complete and accurate legal advice and counsel.
- Ability to produce a quality written work product and orally communicate in a manner that is organized, clear, concise, thorough, accurate, persuasive and with appropriate tone.
- Ability to make effective oral presentations in various public venues, including the courtroom, administrative hearings, training seminars, and City Council meetings.
- Ability to set forth persuasive written and oral arguments.
- Ability to negotiate settlements and contract terms.
- Knowledge of City organization, charter, policies and procedures.
- Knowledge of statutes and case law.
- Knowledge of industry standards/practices in assigned specialty areas.

TYPICAL CLASS ESSENTIAL DUTIES

DUIY NO.	IYPICAL CLASS ESSENTIAL DUTIES: (These duties and estimated frequency are a representative sample; position assignments may vary depending on the business needs of the department.) Duties may include, but are not limited to, the following:	FRE-QUENCY*
1.	Investigate claims and complaints by and against the City.	Continuous
2.	Prepare pleadings, briefs, discovery and other litigation documents.	Continuous
3.	Prepare and try cases by and against the City at state, federal and appellate courts.	Continuous
4.	Prosecute misdemeanor violations of City ordinances.	Continuous
5.	Represent the City at administrative and quasi-judicial hearings.	Continuous
6.	Prepare and draft legal opinions, ordinances, permits, resolutions, contracts, deeds, leases and other legal documents.	Continuous
7.	Provide legal advice and counsel to Mayor, City Council, Council Appointees, and City departments.	Continuous
8.	Act in an advisory capacity at meetings of the City Council, boards, commissions, committees and other governmental bodies.	Frequently
9.	Represent the City and City Attorney at meetings involving City officials, City staff or outside parties.	Frequently
10.	Analyze and interpret legislation and court decisions.	Frequently
11.	Perform legal research.	As Required
12.	Provide staff training on legal issues.	As Required
13.	Assist City departments in establishing policies and procedures to ensure compliance with the law; recommend changes in City policies or procedures to meet legal requirements.	As Required
14.	Respond to citizen complaints and requests for information	As Required

*Frequency defined as%, (totaling 100%) or"Continuous" (daily or approximately 20%+), "Frequent''(weekly or approximately 15%+), "Occasional"(monthly or approximately 10%+), "As Required"(Intermittent or 5% or less)

City of San Jose

Deputy City Attorney II (Unclassified)

CLASS CODE	2152	**SALARY**	$135,426.72 - $163,314.06 Annually
ESTABLISHED DATE	January 01, 2012		

CLASS SUMMARY

Positions in these classifications provide the City professional legal services for matters of moderate difficulty under general direction and supervision of Senior Management in the Office of the City Attorney. Perform related work as required.

DISTINGUISHING CHARACTERISTICS

Incumbents in these positions may be appointed full-time or part-time, and benefited or unbenefitted. Positions are appointed "at-will" with no property rights to continued employment. Incumbents may terminate employment with or without notice or cause, and the City has the same right.

This is a four level flexibly-staffed series, designed to encompass positions with a wide range of skills and experience. Distinction between levels within this series is at the discretion of the City Attorney and may be based upon a number of factors including, but not limited to: the overall scope of the incumbent's job duties and responsibilities, complexity of assignments, initiative, ability to exercise independent judgment, level of expertise in assigned areas of law, and ability to effectively communicate with City officials and staff, colleagues, and outside parties.

These classifications differ from the Associate Deputy City Attorney classification in that Associate Deputy City Attorney incumbents perform basic legal services under close supervision, and initial employment does not require experience. These classifications differ from the Senior Deputy City Attorney classifications in that Senior Deputy City Attorney incumbents work more independently in providing legal services of greater complexity requiring the highest levels of experience, specialization and professional expertise.

Designation as Deputy City Attorney I, II, or III does not require that the attorney be promoted in sequential order, or limit the City Attorney's ability to promote the attorney to a higher level within the Deputy City Attorney series or to a Senior Deputy City Attorney I, II, III, or IV position based upon the attorney's skills and experience.

MINIMUM QUALIFICATIONS

Minimum Qualifications

Education and Experience

Successful completion of a Juris Doctor Degree from an accredited law school and one (1) year of experience as an attorney.

Required Licensing (such as driver's license, certifications, etc.)

Member in good standing of the California State Bar.

OTHER QUALIFICATIONS

(Incumbents may be required to have different combinations of the listed qualifications, or more specific job-related qualifications depending on the position.)

Basic Knowledge, Skills and Abilities

(Needed at entry into the job in order to perform the essential duties.)

- Knowledge of municipal, state and federal laws, ordinances and codes affecting City government.
- Knowledge of civil and criminal court procedures.
- Knowledge of local court rules and procedures.
- Knowledge of rules of evidence and general statutory case law.
- Knowledge of governmental organization.
- Ability to interpret and apply various government codes and ordinances.
- Ability to perform legal research and prepare sound legal opinions.
- Ability to analyze and prepare a wide variety of legal documents.
- Ability to prepare for and present cases in court and administrative hearings.
- Ability to communicate effectively, both orally and in writing.
- Ability to establish and maintain effective working relationships with a variety of people, including City officials, City staff, opposing counsel, arid the public.
- Ability to prioritize workload to efficiently meet deadlines in a timely manner.
- Ability to resolve problems in difficult and complex interpersonal situations.

Desirable Qualifications

(Knowledge, skills and abilities; licenses, certificates, education, experience that is more position specific and/or likely to contribute to more successful job performance.)

- Ability to thoroughly investigate and analyze legal issues, including municipal law matters, and proactively develop creative solutions that contemplate practical implications.
- Ability to exercise independent judgment, making decisions when appropriate and seeking guidance/direction when necessary.
- Ability to maintain confidential information and to exercise discretion.
- Ability to provide complete and accurate legal advice and counsel.
- Ability to produce a quality written work product and orally communicate in a manner that is organized, clear, concise, thorough, accurate, persuasive and with appropriate tone.
- Ability to make effective oral presentations in various public venues, including the courtroom, administrative hearings, training seminars, and City Council meetings.
- Ability to set forth persuasive written and oral arguments.
- Ability to negotiate settlements and contract terms.
- Knowledge of City organization, charter, policies and procedures.

- Knowledge of statutes and case law.
- Knowledge of industry standards/practices in assigned specialty areas.

TYPICAL CLASS ESSENTIAL DUTIES

DUTY NO.	TYPICAL CLASS ESSENTIAL DUTIES: (These duties and estimated frequency are a representative sample; position assignments may vary depending on the business needs of the department.) Duties may include, but are not limited to, the following:	FREQUENCY"
1.	Investigate claims and complaints by and against the City.	Continuous
2.	Prepare pleadings, briefs, discovery and other litigation documents.	Continuous
3.	Prepare and try cases by and against the City at state, federal and appellate courts.	Continuous
4.	Prosecute misdemeanor violations of City ordinances.	Continuous
5.	Participate in or prepare cases for administrative and quasi-judicial hearings.	Continuous
6.	Prepare and draft legal opinions, ordinances, permits, resolutions, contracts, deeds, leases and other legal documents.	Continuous
7.	Provide legal advice and counsel to Mayor, City Council, Council Appointees, and City departments.	Continuous
8.	Act in an advisory capacity at meetings of the City Council, boards, commissions, committees and other governmental bodies.	Frequently
9.	Represent the City and the City Attorney at meetings.involving City officials, City staff or outside parties.	Frequently
10.	Analyze and interpret legislation and court decisions.	Frequently
11.	Perform legal research.	As Required
12.	Provide staff training on legal issues.	As Required
13.	Assist City departments in establishing policies and procedures to ensure compliance with the law; recommend changes in City policies or procedures to meet legal requirements.	As Required
14.	Respond to citizen complaints and requests for information.	As Required

*Frequency defined as %, (totaling 100%) *or* "Continuous" (daily or approximately 20%+), "Frequent"(weekly or approximately 15%+), "Occasional"(monthly or approximately 10%+), "As Required"(Intermittent or 5% or less)

City of San Jose

Deputy City Attorney II, Senior (Unclassified)

CLASS CODE	2197	**SALARY**	$176,301.58 - $215,021.04 Annually
ESTABLISHED DATE	January 01, 2012		

CLASS SUMMARY

Positions in these classifications provide the City professional legal services for matters of considerable complexity under general direction and supervision of Senior Management in the Office of the City Attorney. These positions require the highest levels of experience, specialization and professional expertise; as well as the ability to exercise independent judgment. Perform related work as assigned.

DISTINGUISHING CHARACTERISTICS

Incumbents in these positions may be appointed full-time or part-time, and benefited or unbenefitted. Positions are appointed "at-will" with no property rights to continued employment. Incumbents may terminate employment with or without notice or cause, and the City has the same right.

This is a four level flexibly-staffed series, designed to encompass positions with a wide range of skills and experience. Distinction between levels within this series is at the discretion of the City Attorney and may be based upon a number of factors including, but not limited to: the overall scope of the incumbent's job duties and responsibilities, complexity of assignments, initiative, ability to exercise independent judgment, level of expertise in assigned areas of law, and ability to effectively communicate with City officials and staff, colleagues, and outside parties.

These classifications differ from the Deputy City Attorney classifications in that Deputy City Attorney incumbents perform work of more moderate scope and difficulty and may receive greater guidance. This class differs from the Chief Deputy City Attorney classification in that incumbents in that classification are responsible for supervision of attorneys in the Office of the City Attorney.

Designation as Senior Deputy City Attorney I, II, or III does not require that the attorney be promoted in sequential order, or limit the City Attorney's ability to promote the attorney to a higher level within the Senior Deputy City Attorney series or to a Chief Deputy City Attorney position based upon the attorney's skills and experience.

MINIMUM QUALIFICATIONS

Education and Experience

Successful completion of a Juris Doctor Degree from an accredited law school and four (4) years of experience as an attorney.

Required Licensing (such as driver's license, certifications, etc.)
Member in good standing of the California State Bar.

OTHER QUALIFICATIONS

(Incumbents may be required to have different combinations of the listed qualifications, or more specific job-related qualifications depending on the position.)

Basic Knowledge, Skills and Abilities
(Needed at entry into the job in order to perform the essential duties.)

- Knowledge of municipal, state, and federal laws, ordinances and codes affecting City government.
- Knowledge of civil and criminal court procedures.
- Knowledge of local court rules and procedures.
- Knowledge of rules of evidence and general statutory case law.
- Knowledge of governmental organization.
- Ability to interpret and apply various government codes and ordinances.
- Ability to perform legal research and prepare sound legal opinions.
- Ability to analyze and prepare a wide variety of legal documents.
- Ability to prepare for and present cases in court and administrative hearings.
- Ability to communicate effectively, both orally and in writing.
- Ability to establish and maintain effective working relationships with a variety of people, including City officials, City staff, opposing counsel, and the public.
- Ability to prioritize workload to efficiently meet deadlines in a timely manner.
- Ability to resolve problems in difficult and complex interpersonal situations.

Desirable Qualifications
(Knowledge, skills and abilities; licenses, certificates, education, experience that is more position specific and/or likely to contribute to more successful job performance.)

- Ability to thoroughly investigate and analyze legal issues, including municipal law matters, and proactively develop creative solutions that contemplate practical implications.
- Ability to exercise independent judgment, make decisions when appropriate and seek guidance/direction when necessary.
- Ability to maintain confidential information and to exercise discretion.
- Ability to provide complete and accurate legal advice and counsel.
- Ability to produce a quality written work product and orally communicate in a manner that is organized, clear, concise, thorough, accurate, persuasive and with appropriate tone.
- Ability to make effective oral presentations in various public venues, including the courtroom, administrative hearings, training seminars, and City Council meetings.
- Ability to set forth persuasive written and oral arguments.
- Ability to negotiate settlements and contract terms.
- Knowledge of City organization, charter, policies and procedures.
- Knowledge of statutes and case law.
- Knowledge of industry standards/practices in assigned specialty areas.

TYPICAL CLASS ESSENTIAL DUTIES

DUTY NO.	**TYPICAL CLASS ESSENTIAL DUTIES: (These duties and estimated frequency are a representative sample; position assignments may vary depending on the business needs of the department.) Duties may include, but are not limited to, the following:**	FRE-QUENCY*
1.	Investigate claims and complaints by and against the City.	Continuous
2.	Prepare pleadings, briefs, discovery and other litigation documents.	Continuous
3.	Prepare and try cases by and against the City at state, federal and appellate courts.	Continuous
4.	Prosecute misdemeanor violations of City ordinances.	Continuous
5.	Represent the City at administrative and quasi-judicial hearings.	Continuous
6.	Prepare and draft legal opinions, ordinances, permits, resolutions, contracts, deeds, leases and other legal documents.	Continuous
7.	Provide legal advice and counsel to Mayor, City Council, Council Appointees, and City departments.	Continuous
8.	Act in an advisory capacity at meetings of the City Council, boards, commissions, committees and other governmental bodies.	Frequently
9.	Represent the City and City Attorney at meetings involving City officials, City staff or outside parties.	Frequently
10.	Analyze and interpret legislation and court decisions.	Frequently
11.	Perform legal research.	As Required
12.	Provide staff training on legal issues.	As Required
13.	Assist City departments in establishing policies and procedures to ensure compliance with the law; recommend changes in City policies or procedures to meet legal requirements.	As Required
14.	Respond to citizen complaints and requests for information	As Required

*Frequency defined as%, (totaling 100%) or"Continuous" (daily or approximately 20%+), "Frequent"(weekly or approximately 15%+), "Occasional"(monthly or approximately 10%+), "A Required"(Intermittent or 5% or less)

City of San Jose

Deputy City Attorney III (Unclassified)

CLASS CODE 2191

SALARY $155,148.24 - $184,073.50 Annually

ESTABLISHED DATE January 01, 2012

CLASS SUMMARY

Positions in these classifications provide the City professional legal services for matters of moderate difficulty under general direction and supervision of Senior Management in the Office of the City Attorney. Perform related work as required.

DISTINGUISHING CHARACTERISTICS

Incumbents in these positions may be appointed full-time or part-time, and benefited. or unbenefitted. Positions are appointed "at-will" with no property rights to continued employment. Incumbents may terminate employment with or without notice or cause, and the City has the same right.

This is a four level flexibly-staffed series, designed to encompass positions with a wide range of skills and experience. Distinction between levels within this series is at the discretion of the City Attorney and may be based upon a number of factors including, but not limited to: the overall scope of the incumbent's job duties and responsibilities, complexity of assignments, initiative, ability to exercise independent judgment, level of expertise in assigned areas of law, and ability to effectively communicate with City officials and staff, colleagues, and outside parties.

These classifications differ from the Associate Deputy City Attorney classification in that Associate Deputy City Attorney incumbents perform basic legal services under close supervision, and initial employment does not require experience. These classifications differ from the Senior Deputy City Attorney classifications in that Senior Deputy City Attorney incumbents work more independently in providing legal services of greater complexity requiring the highest levels of experience, specialization and professional expertise.

Designation as Deputy City Attorney I, 11,or III does not require that the attorney be promoted in sequential order, or limit the City Attorney's ability to promote the attorney to a higher level within the Deputy City Attorney series or to a Senior Deputy City Attorney I. II, III, or IV position based upon the attorney's skills and experience.

MINIMUM QUALIFICATIONS

Minimum Qualifications

Education and Experience

Successful completion of a Juris Doctor Degree from an accredited law school and one (1) year of experience as an attorney.

Required Licensing (such as driver's license, certifications, etc.)
Member in good standing of the California State Bar.

OTHER QUALIFICATIONS

(Incumbents may be required to have different combinations of the listed qualifications, or more specific job-related qualifications depending on the position.)

Basic Knowledge, Skills and Abilities
(Needed at entry into the job in order to perform the essential duties.)

- Knowledge of municipal, state and federal laws, ordinances and codes affecting City government.
- Knowledge of civil and criminal court procedures.
- Knowledge of local court rules and procedures.
- Knowledge of rules of evidence and general statutory case law.
- Knowledge of governmental organization.
- Ability to interpret and apply various government codes and ordinances.
- Ability to perform legal research and prepare sound legal opinions.
- Ability to analyze and prepare a wide variety of legal documents.
- Ability to prepare for and present cases in court and administrative hearings.
- Ability to communicate effectively, both orally and in writing.
- Ability to establish and maintain effective working relationships with a variety of people, including City officials, City staff, opposing counsel, and the public.
- Ability to prioritize workload to efficiently meet deadlines in a timely manner.
- Ability to resolve problems in difficult and complex interpersonal situations.

Desirable Qualifications
(Knowledge, skills and abilities; licenses, certificates, education, experience that is more position specific and/or likely to contribute to more successful job performance.)

- Ability to thoroughly investigate and analyze legal issues, including municipal law matters, and proactively develop creative solutions that contemplate practical implications.
- Ability to exercise independent judgment, making decisions when appropriate and seeking guidance/direction when necessary.
- Ability to maintain confidential information and to exercise discretion.
- Ability to provide complete and accurate legal advice and counsel.
- Ability to produce a quality written work product and orally communicate in a manner that is organized, clear, concise, thorough, accurate, persuasive and with appropriate tone.
- Ability to make effective oral presentations in various public venues, including the courtroom, administrative hearings, training seminars, and City Council meetings.
- Ability to set forth persuasive written and oral arguments.
- Ability to negotiate settlements and contract terms.
- Knowledge of City organization, charter, policies and procedures.

- Knowledge of statutes and case law.
- Knowledge of industry standards/practices in assigned specialty areas.

TYPICAL CLASS ESSENTIAL DUTIES

DUTY NO.	**TYPICAL CLASS ESSENTIAL DUTIES: (These duties and estimated frequency are a representative sample; position assignments may vary depending on the business needs of the department.) Duties may include, but are not limited to, the following:**	**FREQUENCY***
1.	Investigate claims and complaints by and against the City.	Continuous
2.	Prepare pleadings, briefs, discovery and other litigation documents.	Continuous
3.	Prepare and try cases by and against the City at state, federal and appellate courts.	Continuous
4.	Prosecute misdemeanor violations of City ordinances.	Continuous
5.	Participate in or prepare cases for administrative and quasi-judicial hearings.	Continuous
6.	Prepare and draft legal opinions, ordinances, permits, resolutions, contracts, deeds, leases and other legal documents.	Continuous
7.	Provide legal advice and counsel to Mayor, City Council, Council Appointees, and City departments.	Continuous
8.	Act in an advisory capacity at meetings of the City Council, boards, commissions, committees and other governmental bodies.	Frequently
9.	Represent the City and the City Attorney at meetings.involving City officials, City staff or outside parties.	Frequently
10.	Analyze and interpret legislation and court decisions.	Frequently
11.	Perform legal research.	As Required
12.	Provide staff training on legal issues.	As Required
13.	Assist City departments in establishing policies and procedures to ensure compliance with the law; recommend changes in City policies or procedures to meet legal requirements.	As Required
14.	Respond to citizen complaints and requests for information.	As Required

*Frequency defined as%, (totaling 100%) or"Continuous" (daily or approximately 20%+), "Frequent"(weekly or approximately 15%+), "Occasional"(monthly or approximately 10%+). "As Required"(Intermittent or 5% or less)

City of San Jose

Deputy City Attorney III, Senior (Unclassified)

CLASS CODE	2137	**SALARY**	$204,270.04 - $244,810.54 Annually

ESTABLISHED DATE January 01, 2012

CLASS SUMMARY

Positions in these classifications provide the City professional legal services for matters of considerable complexity under general direction and supervision of Senior Management in the Office of the City Attorney. These positions require the highest levels of experience, specialization and professional expertise; as well as the ability to exercise independent judgment. Perform related work as assigned.

DISTINGUISHING CHARACTERISTICS

Incumbents in these positions may be appointed full-time or part-time, and benefited or unbenefitted. eosjt,ions are appointed "at-will" with no property rights to continued employment. Incumbents may terminate employment with or without notice or cause, and the City has the same right.

This is a four level flexibly-staffed series, designed to encompass positions with a wide range of skills and experience. Distinction between levels within this series is at the discretion of the City Attorney and may be based upon a number of factors including, but not limited to: the overall scope of the incumbent's job duties and responsibilities, complexity of assignments, initiative, ability to exercise independent judgment, level of expertise in assigned areas of law, and ability to effectively communicate with City officials and staff, colleagues, and outside parties.

These classifications differ from the Deputy City Attorney classifications in that Deputy City Attorney incumbents perform work of more moderate scope and difficulty and may receive greater guidance. This class differs from the Chief Deputy City Attorney classification in that incumbents in that classification are responsible for supervision of attorneys in the Office of the City Attorney.

Designation as Senior Deputy City Attorney I, II, or III does not require that the attorney be promoted in sequential order, or limit the City Attorney's ability to promote the attorney to a higher level within the Senior Deputy City Attorney series or to a Chief Deputy City Attorney position based upon the attorney's skills and experience.

MINIMUM QUALIFICATIONS

Education and Experience

Successful completion of a Juris Doctor Degree from an accredited law school and four(4) years of experience as an attorney.

Required Licensing (such as driver's license, certifications, etc.)

Member in good standing of the California State Bar.

OTHER QUALIFICATIONS

(Incumbents may be required to have different combinations of the listed qualifications, or more specific job-related qualifications depending on the position.)

Basic Knowledge, Skills and Abilities
(Needed at entry into the job in order to perform the essential duties.)

- Knowledge of municipal, state, and federal laws, ordinances and codes affecting City government.
- Knowledge of civil and criminal co,urt procedures.
- Knowledge of local court rules and procedures.
- Knowledge of rules of evidence and general statutory case law.
- Knowledge of governmental organization.
- Ability to interpret and apply various government codes and ordinances.
- Ability to perform legal research and prepare sound legal opinions.
- Ability to analyze and prepare a wide variety of legal documents.
- Ability to prepare for and present cases in court and administrative hearings.
- Ability to communicate effectively, both orally and in writing.
- Ability to establish and maintain effective working relationships with a variety of people, including City officials, City staff, opposing counsel, and the public.
- Ability to prioritize workload to efficiently meet deadlines in a timely manner.
- Ability to resolve problems in difficult and complex interpersonal situations.

Desirable Qualifications
(Knowledge, skills and abilities; licenses, certificates, education, experience that is more position specific and/or likely to contribute to more successful job performance.)

- Ability to thoroughly investigate and analyze legal issues, including municipal law matters, and proactively develop creative solutions that contemplate practical implications.
- Ability to exercise independent judgment, make decisions when appropriate and seek guidance/direction when necessary.
- Ability to maintain confidential information and to exercise discretion.
- Ability to provide complete and accurate legal advice and counsel.
- Ability to produce a quality written work product and orally communicate in a manner that is organized, clear, concise, thorough, accurate, persuasive and with appropriate tone.
- Ability to make effective oral presentations in various public venues, including the courtroom, administrative hearings, training seminars, and City Council meetings.
- Ability to set forth persuasive written and oral arguments.
- Ability to negotiate settlements and contract terms.
- Knowledge of City organization, charter, policies and procedures.
- Knowledge of statutes and case law.
- Knowledge of industry standards/practices in assigned specialty areas.

TYPICAL CLASS ESSENTIAL DUTIES

DUTY NO.	TYPICAL CLASS ESSENTIAL DUTIES: (These duties and estimated frequency are a representative sample; position assignments may vary depending on the business needs of the department.) Duties may include, but are not limited to, the following:	FRE-QUENCY*

1.	Investigate claims and complaints by and against the City.	Continuous
2.	Prepare pleadings, briefs, discovery and other litigati?n documents.	Continuous
3.	Prepare and try cases by and against the City at state, federal and appellate courts.	Continuous
4.	Prosecute misdemeanor violations of City ordinances.	Continuous
5.	Represent the City at administrative and quasi-judicial hearings.	Continuous
6.	Prepare and draft legal opinions, ordinances, permits, resolutions, contracts, deeds, leases and other legal documents.	Continuous
7.	Provide legal advice and counsel to Mayor, City Council, Council Appointees, and City departments.	Continuous
8.	Act in an advisory capacity at meetings of the City Council, boards, commissions, committees and other governmental bodies.	Frequently
9.	Represent the City and City Attorney at meetings involving City officials, City staff or outside parties.	Frequently
10.	Analyze and interpret legislation and court decisions.	Frequently
11.	Perform legal research.	As Required
12.	Provide staff training on legal issues.	As Required
13.	Assist City departments in establishing policies and procedures to ensure compliance with the law; recommend changes in City policies or procedures to meet legal requirements.	As Required
14.	Respond to citizen complaints and requests for information	As Required

*Frequency defined as%, (totaling 100%) or "Continuous" (daily or approximately 20%+), "Frequent"(weekly or approximately 15%+). "Occasional"(monthly or approximately 10%+), "As Required"(Intermittent or 5% or less)

City of San Jose

Deputy City Attorney IV (Unclassified)

CLASS CODE	2192	**SALARY**	$174,869.76 - $204,832.94 Annually

ESTABLISHED DATE January 01, 2012

CLASS SUMMARY

Positions in these classifications provide the City professional legal services for matters of moderate difficulty under general direction and supervision of Senior Management in the Office of the City Attorney. Perform related work as required.

DISTINGUISHING CHARACTERISTICS

Incumbents in these positions may be appointed full-time or part-time, and benefited or unbenefitted. Positions are appointed "at-will" with no property rights to continued employment. Incumbents may terminate employment with or without notice or cause, and the City has the same right.

This is a four level flexibly-staffed series, designed to encompass positions with a wide range of skills and experience. Distinction between levels within this series is at the discretion of the City Attorney and may be based upon a number of factors including, but not limited to: the overall scope of the incumbent's job duties and responsibilities, complexity of assignments. initiative, ability to exercise independent judgment, level of expertise in assigned areas of law, and ability to effectively communicate with City officials and staff, colleagues, and outside parties.

These classifications differ from the Associate Deputy City Attorney classification in that Associate Deputy City Attorney incumbents perform basic legal services under close supervision, and initial employment does not require experience. These classifications differ from the Senior Deputy City Attorney classifications in that Senior Deputy City Attorney incumbents work more independently in providing legal services of greater complexity requiring the highest levels of experience, specialization and professional expertise.

Designation as Deputy City Attorney I, II, or III does not require that the attorney be promoted in sequential order, or limit the City Attorney's ability to promote the attorney to a higher level within the Deputy City Attorney series or to a Senior Deputy City Attorney I, 11,111,or IV position based upon the attorney's skills and experience.

MINIMUM QUALIFICATIONS

Minimum Qualifications

Education and Experience

Successful completion of a Juris Doctor Degree from an accredited law school and one (1) year of experience as an attorney.

Required Licensing (such as driver's license, certifications, etc.)

Member in good standing of the California State Bar.

OTHER QUALIFICATIONS

(Incumbents may be required to have different combinations of the listed qualifications, or more specific job-related qualifications depending on the position.)

Basic Knowledge, Skills and Abilities

(Needed at entry into the job in order to perform the essential duties.)

- Knowledge of municipal, state and federal laws, ordinances and codes affecting City government.
- Knowledge of civil and criminal court procedures.
- Knowledge of local court rules and procedures.
- Knowledge of rules of evidence and general statutory case law.
- Knowledge of governmental organization.
- Ability to interpret and apply various government codes and ordinances.
- Ability to perform legal research and prepare sound legal opinions.
- Ability to analyze and prepare a wide variety of legal documents.
- Ability to prepare for and present cases in court and administrative hearings.
- Ability to communicate effectively, both orally and in writing.
- Ability to establish and maintain effective working relationships with a variety of people, including City officials, City staff, opposing counsel, and the public.
- Ability to prioritize workload to efficiently meet deadlines in a timely manner.
- Ability to resolve problems in difficult and complex interpersonal situations.

Desirable Qualifications

(Knowledge, skills and abilities; licenses, certificates, education, experience that is more position specific and/or likely to contribute to more successful job performance.)

- Ability to thoroughly investigate and analyze legal issues, including municipal law matters, and proactively develop creative solutions that contemplate practical implications.
- Ability to exercise independent judgment, making decisions when appropriate and seeking guidance/direction when necessary.
- Ability to maintain confidential information and to exercise discretion.
- Ability to provide complete and accurate legal advice and counsel.
- Ability to produce a quality written work product and orally communicate in a manner that is organized, clear, concise, thorough, accurate, persuasive and with appropriate tone.
- Ability to make effective oral presentations in various public venues, including the courtroom, administrative hearings, training seminars, and City Council meetings.
- Ability to set forth persuasive written and oral arguments.
- Ability to negotiate settlements and contract terms.
- Knowledge of City organization, charter, policies and procedures.

- Knowledge of statutes and case law.
- Knowledge of industry standards/practices in assigned specialty areas.

TYPICAL CLASS ESSENTIAL DUTIES

DUTY NO.	**TYPICAL CLASS ESSENTIAL DUTIES: (These duties and estimated frequency are a representative sample; position assignments may vary depending on the business needs of the department.) Duties may include, but are not limited to, the following:**	**FREQUENCY"**
1.	Investigate claims and complaints by and against the City.	Continuous
2.	Prepare pleadings, briefs, discovery and other litigation documents.	Continuous
3.	Prepare and try cases by and against the City at state, federal and appellate courts.	Continuous
4.	Prosecute misdemeanor violations of City ordinances.	Continuous
5.	Participate in or prepare cases for administrative and quasi-judicial hearings.	Continuous
6.	Prepare and draft legal opinions, ordinances, permits, resolutions, contracts, deeds, leases and other legal documents.	Continuous
7.	Provide legal advice and counsel to Mayor, City Council, Council Appointees, and City departments.	Continuous
8.	Act in an advisory capacity at meetings of the City Council, boards, commissions, committees and other governmental bodies.	Frequently
9.	Represent the City and the City Attorney at meetings.involving City officials, City staff or outside parties.	Frequently
10.	Analyze and interpret legislation and court decisions.	Frequently
11.	Perform legal research.	As Required
12.	Provide staff training on legal issues.	As Required
13.	Assist City departments in establishing policies and procedures to ensure compliance with the law; recommend changes in City policies or procedures to meet legal requirements.	As Required
14.	Respond to citizen complaints and requests for information.	As Required

*Frequency defined as%, (totaling 100%) or"Continuous" (daily or approximately 20%+), "Frequent"(weekly or approximately 15%+), "Occasional"(monthly or approximately 10%+), "As Required"(Intermittent or 5% or less)

City of San Jose

Deputy City Attorney IV, Senior (Unclassified)

CLASS CODE	2193	**SALARY**	$232,570.00 - $274,602.64 Annually

ESTABLISHED DATE January 01, 2012

CLASS SUMMARY

Positions in these classifications provide the City professional legal services for matters of considerable complexity under general direction and supervision of Senior Management in the Office of the City Attorney. These positions require the highest levels of experience, specialization and professional expertise; as well as the ability to exercise independent judgment. Perform related work as assigned.

DISTINGUISHING CHARACTERISTICS

Incumbents in these positions may be appointed full-time or part-time, and benefited or unbenefitted. Positions are appointed "at-will" with no property rights to continued employment. Incumbents may terminate employment with or without notice or cause, and the City has the same right.

This is a four level flexibly-staffed series, designed to encompass positions with a wide range of skills and experience. Distinction between levels within this series is at the discretion of the City Attorney and may be based upon a number of factors including, but not limited to: the overall scope of the incumbent's job duties and responsibilities, complexity of assignments, initiative, ability to exercise independent judgment, level of expertise in assigned areas of law, and ability to effectively communicate with City officials and staff, colleagues, and outside parties.

These classifications differ from the Deputy City Attorney classifications in that Deputy City Attorney incumbents perform work of more moderate scope and difficulty and may receive greater.guidance. This class differs from the Chief Deputy City Attorney classification in that incumbents in that classification are responsible for supervision of attorneys in the Office of the City Attorney.

Designation as Senior Deputy City Attorney I, II, or III does not require that the attorney be promoted in sequential order, or limit the City Attorney's ability to promote the attorney to a higher level within the Senior Deputy City Attorney series or to a Chief Deputy City Attorney position based upon the attorney's skills and experience.

MINIMUM QUALIFICATIONS

Education and Experience

Successful completion of a Juris Doctor Degree from an accredited law school and four (4) years of experience as an attorney.

Required Licensing (such as driver's license, certifications, etc.)

Member in good standing of the California State Bar.

OTHER QUALIFICATIONS

(Incumbents may be required to have different combinations of the listed qualifications, or more specific job-related qualifications depending on the position.)

Basic Knowledge, Skills and Abilities
(Needed at entry into the job in order to perform the essential duties.)

- Knowledge of municipal, state, and federal laws, ordinances and codes affecting City government.
- Knowledge of civil and criminal court procedures.
- Knowledge of local court rules and procedures.
- Knowledge of rules of evidence and general statutory case law.
- Knowledge of governmental organization.
- Ability to interpret and apply various government codes and ordinances.
- Ability to perform legal research and prepare sound legal opinions.
- Ability to analyze and prepare a wide variety of legal documents.
- Ability to prepare for and present cases in court and administrative hearings.
- Ability to communicate effectively, both orally and in writing.
- Ability to establish and maintain effective working relationships with a variety of people, including City officials, City staff, opposing counsel, and the public.
- Ability to prioritize workload to efficiently meet deadlines in a timely manner.
- Ability to resolve problems in difficult and complex interpersonal situations.

Desirable Qualifications
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- Ability to exercise independent judgment, make decisions when appropriate and seek guidance/direction when necessary.
- Ability to maintain confidential information and to exercise discretion.
- Ability to provide complete and accurate legal advice and counsel.
- Ability to produce a quality written work product and orally communicate in a manner that is organized, clear, concise, thorough, accurate, persuasive and with appropriate tone.
- Ability to make effective oral presentations in various public venues, including the courtroom, administrative hearings, training seminars, and City Council meetings.
- Ability to set forth persuasive written and oral arguments.
- Ability to negotiate settlements and contract terms.
- Knowledge of City organization, charter, policies and procedures.
- Knowledge of statutes and case law.
- Knowledge of industry standards/practices in assigned specialty areas.

TYPICAL CLASS ESSENTIAL DUTIES

DUTY NO.	**TYPICAL CLASS ESSENTIAL DUTIES: (These duties and estimated frequency are a representative sample; position assignments may vary depending on the business needs of the department.) Duties may include, but are not limited to, the following:**	FRE-QUENCY*
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2.	Prepare pleadings, briefs, discovery and other litigation documents.	Continuous
3.	Prepare and try cases by and against the City at state, federal and appellate courts.	Continuous
4.	Prosecute misdemeanor violations of City ordinances.	Continuous
5.	Represent the City at administrative and quasi-judicial hearings.	Continuous
6.	Prepare and draft legal opinions, ordinances, permits, resolutions, contracts, deeds, leases and other legal documents.	Continuous
7.	Provide legal advice and counsel to Mayor, City Council, Council Appointees, and City departments.	Continuous
8.	Act in an advisory capacity at meetings of the City Council, boards, commissions, committees and other governmental bodies.	Frequently
9.	Represent the City and City Attorney at meetings involving City officials, City staff or outside parties.	Frequently
10.	Analyze and interpret legislation and court decisions.	Frequently
11.	Perform legal research.	As Required
12.	Provide staff training on legal issues.	As Required
13.	Assist City departments in establishing policies and procedures to ensure compliance with the law; recommend changes in City policies or procedures to meet legal requirements.	As Required
14.	Respond to citizen complaints and requests for information	As Required

*Frequency defined as %, (totaling 100%} or "Continuous" (daily or approximately 20%+}. "Frequent"(weekly or approximately 15%+}. "Occasional"(monthly or approximately 10%+), "As Required"(Intermittent or 5% or less)