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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES**

15 CITY OF LOS ANGELES,) **Case No. 24STCP00648**
16)
17 Petitioner,) **PETITION TO VACATE ARBITRATION**
18) **AWARD**
19 vs.)
20) (Code Civ. Proc., § 1285 *et seq.*)
21 UNITED FIREFIGHTERS OF LOS)
22 ANGELES CITY, IAFF LOCAL 112, and) [Filed concurrently with Appendix of Evidence
23 KENNETH PEREA, ARBITRATOR, IN HIS) in Support of Petition to Vacate Arbitration
24 OFFICIAL CAPACITY,) Award]
25)
26 Respondents.) (Exempt from filing fees pursuant to Gov.
27) Code, § 6103.)
28

29 Petitioner, City of Los Angeles (“City” or “Petitioner”), brings this Petition to Vacate Arbitration
30 Award (“Petition”) against Respondent, United Firefighters of Los Angeles City, IAFF Local 112
31 (“UFLAC”), and Respondent, Arbitrator Kenneth Perea.

32 **INTRODUCTION**

33 1. On or about September 27, 2019, the City and UFLAC entered into a memorandum of
34 understanding (“MOU 23”), effective July 1, 2019 – June 29, 2024. (See MOU 23, a true and correct
35 copy of which is attached hereto as **Exhibit 1** and incorporated by reference.) Article 2.1 of MOU 23

1 sets forth the parties' grievance and arbitration procedures, including certain limitations thereof. (**Exhibit**
2 **1.**) Article 2.1, Section II, specifies that the grievance arbitration procedures do not cover "matters for
3 which an administrative remedy is provided under Section 1060 of the City Charter." (**Exhibit 1.**) Also,
4 in accordance with Article 2.1, Section III, the arbitrator's decision "shall not add to, subtract from, or
5 otherwise modify the terms and conditions" of the MOU. (**Exhibit 1.**)

6 2. This action arises out of a class grievance filed by UFLAC on or about December 13, 2021, on
7 behalf of Aaron Brownell and all other affected UFLAC members represented in MOU 23. (See Formal
8 Statement of Grievance, dated December 13, 2021, a true and correct copy of which is attached hereto as
9 **Exhibit 2** and incorporated by reference.) The grievance alleged, in pertinent part, that the City violated
10 past practice when it placed such UFLAC members on leave without pay before the members could select
11 a Board of Rights. (**Exhibit 2.**)

12 3. The Arbitrator, Kenneth A. Perea, held an evidentiary hearing on the grievance. On or about
13 November 21, 2023, Arbitrator Perea issued his Findings and Award, ERB Case No. ARB 4035
14 ("Award"), which concluded, in pertinent part, that the City "violated an established past practice under
15 MOU No. 23 when it placed certain LAFD Officers and Firefighters on unpaid leaves who were alleged
16 to be in violation of Ordinance No. 187134 before establishment of their Board of Rights and confirmed
17 dates of administrative proceedings thereof pursuant to Los Angeles City Charter Section 1060." (See
18 Arbitrator's Findings and Award, November 21, 2023, a true and correct copy of which is attached hereto
19 as **Exhibit 3** and incorporated by reference.)

20 **PARTIES**

21 4. Petitioner City is a duly chartered city located within the State of California. The City is the
22 employer of the employee-members represented by UFLAC.

23 5. Respondent UFLAC is now, and at all times herein mentioned was, a recognized employee
24 organization and is the exclusive representative of firefighters and fire captains employed by the City at
25 the Los Angeles Fire Department ("LAFD" or "Department").

26 6. Arbitrator Kenneth Perea is, and at all times herein mentioned was, an arbitrator chosen by the
27 parties to arbitrate this dispute between the City of Los Angeles, on the one hand, and UFLAC, on the
28 other hand, from a list provided by the City of Los Angeles Employee Relations Board. Pursuant to

1 California Code of Civil Procedure Section 1286.4, all parties to an arbitration should have adequate
2 notice that a court may vacate an award and have an opportunity to respond. (*Law Finance Group v. Key*
3 (2023), 14 Cal. 5th 932, 956.)

4 JURISDICTION AND VENUE

5 7. This Court has jurisdiction over this action pursuant to Code of Civil Procedure section 1285 *et*
6 *seq.*

7 8. Los Angeles County is an appropriate venue because the events that are the subject of this action
8 occurred within the County of Los Angeles, and the memorandum of understanding upon which this
9 action is based was entered into and has been performed in the County of Los Angeles.

10 FACTUAL ALLEGATIONS

11 9. On or about September 2, 2020, the City adopted a resolution formally declaring a fiscal state of
12 emergency resulting from the COVID-19 pandemic (“September 2nd Resolution”). (See Official Action
13 of the Los Angeles City Council, Council File No. 20-0600, with attachments, a true and correct copy of
14 which is attached hereto as **Exhibit 4** and incorporated by reference.)

15 10. On or about August 18, 2021, the City adopted Ordinance No. 187134 (“the Ordinance”),
16 requiring all City employees to be fully vaccinated for COVID-19, or request an exemption, and report
17 their vaccination status no later than October 19, 2021. (See Ordinance No. 187134, a true and correct
18 copy of which is attached hereto as **Exhibit 5** and incorporated by reference.) These requirements
19 became conditions of employment for all employees, effective October 20, 2021, unless an employee
20 was approved for a qualifying exemption. (**Exhibit 5.**)

21 11. On or about October 26, 2021, the City adopted a resolution implementing consequences for
22 non-compliance with the Ordinance (“October 26th Resolution”). (See Official Action of the Los
23 Angeles City Council, Council File No. 21-0921, with attachments, a true and correct copy of which is
24 attached hereto as **Exhibit 6** and incorporated by reference.) The October 26th Resolution further stated,
25 in pertinent part, as follows: “[T]he City would be subjected to a significant financial burden if it had to
26 provide a weekly testing option for all unvaccinated City employees, or place all unvaccinated City
27 employees on paid leave, while simultaneously paying overtime to cover staffing shortages resulting
28 from their absence. Either option would seriously compromise the City’s ability to meet its ongoing

1 financial obligations and adequately provide essential public services to the public . . .” (**Exhibit 6.**)

2 12. Pursuant to the foregoing, the City directed all departments to take various actions, including
3 placing all non-compliant employees off duty, without pay, beginning on December 19, 2021, pending
4 subsequent due process proceedings. (See Memorandum, dated October 28, 2021, without attachments,
5 a true and correct copy of which is attached hereto as **Exhibit 7** and incorporated by reference.)

6 13. The City decided to place all noncompliant workers on unpaid leave given the significant
7 potential financial cost to the City. (See City’s Closing Brief, a true and correct copy of which is attached
8 hereto as **Exhibit 8** and incorporated by reference, at 5:2-9.) As UFLAC admitted at the hearing, LAFD
9 would have to backfill every position for noncompliant members who were placed off work. (**Exhibit 8**
10 at 5:7-9.) This would total approximately 300 positions for which the City would have been required to
11 backfill *and* pay extra compensation, while simultaneously paying the non-complaint members who were
12 not working—all within one department at a time of financial decline. (**Exhibit 8** at 5:9-11; see also
13 Transcript of Proceedings, a true and correct copy of which is attached hereto as **Exhibit 14** and
14 incorporated by reference, at 70:12-20, 126:13-128:3.) As such, noncompliant UFLAC members were
15 served with a notice placing them off duty without pay pending their Board of Rights hearing for failing
16 to meet a condition of employment. (**Exhibit 8** at 5:11-13; see also Draft Notice of Non-Compliance
17 with City Ordinance and Vaccine Policy, a true and correct copy of which is attached hereto as **Exhibit**
18 **9** and incorporated by reference.)

19 14. The City’s placing employees on unpaid leave for failing to comply with the Ordinance has been
20 upheld administratively and in court under the same emergency situation. (See Ruling on Demurrer to
21 Plaintiff’s Second Amended Complaint, *Firefighters4Freedom v. City of Los Angeles*, Super. Ct. Los
22 Angeles County, 2022, No. 21STCV34490, a true and correct copy of which is attached hereto as **Exhibit**
23 **10** and incorporated by reference; see also Decision and Award, ERB Case No. ARB 4004, April 7, 2023,
24 a true and correct copy of which is attached hereto as **Exhibit 11** and incorporated by reference.)

25 15. On or about December 13, 2021, UFLAC filed a group grievance on behalf of its firefighters with
26 the City /LAFD pursuant to MOU 23, Article 2.1, Section 5. MOU 23 is the contractual agreement
27 between the City/LAFD and UFLAC which serves as the basis for the underlying arbitration in this
28 matter. (**Exhibit 1.**)

1 16. The group grievance filed by UFLAC asserts a violation of LAFD Rules and Regulations based
2 on the following allegations: (1) LAFD violated a requirement that service of process for disciplinary
3 actions must be in person or by registered mail and (2) LAFD violated “lawful past practice by imposing
4 disciplinary action and/or placing unit members on leave without pay and benefits.” **(Exhibit 2.)**

5 17. Under MOU 23, Article 2.1, “[a]rbitration of a grievance hereunder shall be limited to the formal
6 grievance filed by the employee to the extent that said grievance has not been satisfactorily resolved.”
7 **(Exhibit 1.)**

8 18. While the Award initially appears to indicate the arbitrator understood the scope of his authority,
9 the Award thereafter goes on a tangent to reinterpret Los Angeles City Charter Section 1060, eventually
10 finding the parties had a “mutual intent to integrate” Charter Section 1060 into their longstanding MOU.
11 **(Exhibit 3, at p. 17)**

12 19. The Los Angeles City Charter (“Charter”) is the governing document of the City of Los Angeles,
13 and can only be added to, modified, or altered through a majority vote of the citizens of the City of Los
14 Angeles. (Cal. Const., art. XI, § 3(a); Elec. Code , § 9225(a)(1), (2), and (3).)

15 20. Charter Section 1060 sets forth the due process procedure for discipline of firefighters in the
16 City, including selection of a Board of Rights, composition of a Board of Rights, and time and place of
17 hearing, and provides the Fire Chief may temporarily remove any member (firefighter) from duty pending
18 a Board of Rights.

19 21. The group grievance in this matter does not mention Charter Section 1060 or City Personnel
20 Policy Section 33.1 as the bases of the group grievance.

21 **FIRST CAUSE OF ACTION**

22 **(Petition to Vacate Arbitration Award, Code Civ. Proc., § 1286.2 – Violation of Public Policy)**

23 22. Petitioner hereby reincorporates and realleges each of the foregoing allegations set forth in
24 paragraphs 1 to 21 as though fully set forth herein.

25 23. A petition to vacate an arbitration award shall be filed and served not later than 100 days after
26 service of the arbitration award. (Code Civ. Proc., § 1288.) Here, this Petition is timely because one
27 hundred (100) days have not elapsed from the date on which City was served with a signed copy of the
28 Award.

1 24. The Court must vacate and set aside the Award because Arbitrator Perea exceeded his authority,
2 and the Award cannot be corrected without affecting the merits of the decision upon the controversy
3 submitted. (Code Civ. Proc., § 1286.2(a)(4).) Arbitrators exceed their authority if they issue an award
4 that violates public policy or a statutory right. (*Board of Education v. Round Valley Teachers*
5 *Assn.* (1996) 13 Cal.4th 269, 272; *City of Palo Alto v. Service Employees Internat. Union* (1999) 77
6 Cal.App.4th 327, 338–340; *Department of Human Resources v. International Union of Operating*
7 *Engineers* (2020) 58 Cal.App.5th 861, 877.)

8 25. First, the Award violates public policy because it infringes on the City’s police powers under the
9 California Constitution and the Charter of the City (“City Charter”). The state constitution grants the
10 City broad police powers to promulgate and enforce ordinances and regulations. (Cal. Const., art. XI, §
11 71; *Higgins v. City of Santa Monica* (1964) 62 Cal.2d 24, 30–31.) Additionally, as a charter city, the City
12 has exclusive authority over municipal affairs and may exercise all powers not expressly limited by the
13 Charter or the California Constitution. (Cal. Const., art. XI, § 5; *Miller v. City of Sacramento* (1977) 66
14 Cal.App.3d 863, 867-868.) The City has broad authority in exercising its police powers and determining
15 what is reasonable to protect public safety, health, morals, and general welfare. (*Carlin v. City of Palm*
16 *Springs* (1971) 14 Cal.App.3d 706, 711.) Such powers cannot be surrendered or delegated to an
17 arbitrator. (*San Francisco Fire Fighters v. City and County of San Francisco* (1977) 68 Cal.App.3d 896,
18 901-902.)

19 26. The City exercised its police power pursuant to its broad authority when promulgating the
20 Ordinance and effectuating the subsequent enforcement actions. This included, specifically, ensuring the
21 Department placed non-compliant employees off duty, without pay, within the prescribed timelines.
22 Placing non-compliant members on unpaid leave was, therefore, an inextricable component of the
23 Ordinance itself and the City’s related police powers. Consistent with the September 2nd Resolution and
24 October 26th Resolution, the City’s decision to place employees on unpaid leave was also justified based
25 on the City’s well-founded concerns for health and safety, as well as the intricately related financial
26 concerns surrounding the pandemic. Given the importance of maintaining its financial resources during
27 public health emergencies, the City had a duty to safeguard its economic well-being in order to protect
28 the health and safety of its employees and citizens. The Department was directly vulnerable to these

1 financial concerns, as it provides essential services and would have been forced to backfill all of the
2 positions of the non-compliant employees out on leave.

3 27. Irrespective of his interpretation of the MOU or any other related personnel policies, Arbitrator
4 Perea was not, and cannot be, in a position to determine whether and to what extent placing non-complaint
5 members on unpaid leave was necessary or otherwise prudent as a matter of City policy and governance,
6 particularly during a worldwide pandemic. The City retains exclusive rulemaking authority to manage
7 municipal affairs and address such issues based on the relevant circumstances. Importantly, the City's
8 exercise of police powers in the subject dispute was not expressly limited by the state constitution nor
9 City Charter, and Arbitrator Perea completely lacked any authority to limit such powers. Thus, by
10 concluding the City was prohibited from taking the critical responsive actions at issue, Arbitrator Perea
11 rendered an Award which violated public policy and exceeded his authority.

12 28. Second, the Award violates public policy because it infringes on the City's duty to protect health
13 and safety. "There is no public policy more important or more fundamental than the one favoring the
14 effective protection of the lives and property of citizens. [Citation.]" (*General Dynamics Corp. v.*
15 *Superior Court* (1994) 7 Cal.4th 1164, 1183.) Relatedly, workplace safety statutes express an explicit
16 public policy requiring employers to take reasonable steps to provide a safe and secure workplace. (Lab.
17 Code, §§ 6400(a), 6401; *Bonner v. Workers' Comp. Appeals Bd.* (1990) 225 Cal.App.3d 1023, 1034; *City*
18 *of Palo Alto v. Service Employees Internat. Union* (1999) 77 Cal.App.4th 327, 336.)

19 29. To protect health and safety, the City must safeguard its financial well-being and resources,
20 especially during emergencies, and must maintain the discretion and latitude to take timely and decisive
21 actions in furtherance of this goal. These public policy considerations directly supported the City's lawful
22 Ordinance and the related resolutions and actions. Notwithstanding, Arbitrator Perea concluded
23 incorrectly that the City cannot place non-compliant firefighters on unpaid leave, even during a pandemic.
24 Not only does such a requirement infringe on the City's police powers, but it would also have a
25 detrimental impact on health and safety, particularly in future emergencies with similarly dire
26 consequences. Arbitrator Perea disregarded such considerations by substituting the City's judgment with
27 his own. In doing so, he violated public policy regarding public safety and exceeded his authority.

1 30. Based on the foregoing, Petitioner is entitled to an order vacating and setting aside Arbitrator
2 Perea's Findings and Award in ERB Case No. ARB 4035.

3 **SECOND CAUSE OF ACTION**

4 **(Petition to Vacate Arbitration Award, Code Civ. Proc., § 1286.2 –**
5 **Exceeding Scope of Contractual Authority)**

6 31. Petitioner hereby reincorporates and realleges each of the foregoing allegations set forth in
7 paragraphs 1 to 30 as though fully set forth herein.

8 32. The Court must vacate and set aside the Award because Arbitrator Perea exceeded his authority,
9 and the Award cannot be corrected without affecting the merits of the decision upon the controversy
10 submitted. (Code Civ. Proc., § 1286.2(a)(4).) The scope of arbitration is a matter of agreement between
11 the parties, and the authority of an arbitrator derives from, and is limited by, the agreement to arbitrate.
12 (*Moncharsh v. Heily & Blasé* (1992) 3 Cal.4th 1, 8.) Arbitrators exceed such authority when they act
13 outside the scope of their contractually delegated authority by (a) deciding an issue which was not before
14 them, and/or (b) issuing an award that amounts to a re-writing of the parties' agreement. (*Blue Cross of*
15 *California v. Jones* (1993) 19 Cal. App. 4th 220, 227.)

16 33. First, Arbitrator Perea acted outside the scope of his contractually delegated authority by deciding
17 an issue not before him. The applicable issue was whether the City violated an established past practice
18 by placing noncompliant members on unpaid leave pending their selection of a Board of Rights. (**Exhibit**
19 **3** at p. 2.) Arbitrator Perea asserted that Charter Section 1060, along with City Personnel Policy Section
20 33.1, is integrated within the grievance arbitration procedure under Article 2.0 of MOU 23, and as such,
21 he suggested that he was required to construe Charter Section 1060 to decide the aforementioned issue.
22 (**Exhibit 3** at pp. 17-18.) However, by further suggesting that Charter Section 1060 is ambiguous on the
23 issue presented, Arbitrator Perea decided multiple different issues that were not before him, including (i)
24 whether past practice can and should be analyzed for purposes of Charter Section 1060, (ii) whether there
25 is an accepted, binding past practice between the parties regarding Charter Section 1060, and (iii) whether
26 the City's placement of members on unpaid leave violated such past practice under Charter Section 1060.
27 (**Exhibit 3** at pp. 18-24.)

1 34. Even if Charter Section 1060 was vague and ambiguous, which it is not, the City Charter is not a
2 collective bargaining agreement or memorandum of understanding for purposes of applying any
3 purported past practice as “an aid for contractual interpretation.” Rather, the City Charter and its
4 underlying provisions represent the supreme law of the City, as adopted by a vote of the people, and can
5 only be amended or supplemented through a vote of the people. The City accordingly did not and could
6 not agree to arbitrate the issue of whether it violated any alleged past practice under Charter Section 1060.

7 35. Additionally, Arbitrator Perea stated Fire Department members “who were removed from duty
8 without pay due to their non-compliance with the Ordinance have the right to seek redress through
9 procedures of City Charter Section 1060,” which he believed supported his conclusion that placing
10 UFLAC members on unpaid leave was a form of discipline. (**Exhibit 3** at pp. 22, emphasis added.)
11 Importantly, however, the parties’ grievance arbitration procedures **exclude** “matters for which an
12 administrative remedy is provided under Section 1060 of the City Charter.” (**Exhibit 1**, Article 2.1,
13 Section II.) The fact is that Los Angeles Charter Section 1060 governs the Board or Rights process itself,
14 which was not at issue here. Instead, the issue here – and the arbitrator’s authority – was pursuant to a
15 separate arbitration provision under MOU 23. Accordingly, Arbitrator Perea exceeded his authority by
16 deciding whether placing employees on unpaid leave violated Charter Section 1060, as that issue was not
17 arbitrable.

18 36. Second, even assuming, *arguendo*, Charter Section 1060 and/or City Personnel Policy Section
19 33.1 were integrated into MOU 23, the Award shall be vacated if it amounts to a re-writing of the MOU.
20 Consistent with applicable law, MOU 23 expressly prohibits an arbitration award from adding to,
21 subtracting from, or otherwise modifying any of the terms and conditions in the MOU. (**Exhibit 1**,
22 Article 2.1, Section III.)

23 37. Here, Arbitrator Perea improperly concluded that Charter Section 1060 requires the City to keep
24 all UFLAC members on paid leave, irrespective of a public health emergency. However, as UFLAC and
25 Arbitrator Perea both conceded, there is no provision or language under Section 1060 specifying any
26 such requirement. (**Exhibit 3** at p. 4; see also Union’s Post-Hearing Brief, a true and correct copy of
27 which is attached hereto as **Exhibit 12** and incorporated by reference, at 4:17-21.) Even so, Arbitrator
28 Perea unilaterally created and imposed this requirement into Charter Section 1060, thereby re-writing

1 Charter Section 1060 without authorization.

2 38. Further, Arbitrator Perea similarly re-wrote Personnel Policy Section 33.1. It was undisputed that
3 Section 33.1, subdivision (C), authorizes the Department to remove employees from work during an
4 emergency, such as when a weapon is involved or an employee poses a threat to others. (**Exhibit 3** at p.
5 5; **Exhibit 12** at 5:16-20; see also City Personnel Policy Section 33.1, a true and correct copy of which
6 is attached hereto as **Exhibit 13** and incorporated by reference.) However, Arbitrator Perea concluded,
7 without limitation, that Section 33.1 “specifically provides” and “requires” the subject employee be
8 placed ‘off work with pay.’” (**Exhibit 3** at pp. 5, 22.) To reach such an expansive conclusion, which is
9 directly contradicted by the plain language of Section 33.1, Arbitrator Perea improperly modified the
10 express provisions of this policy. Specifically, although he block-quoted almost the entirety of Section
11 33.1, subdivision (C), he specifically and completely omitted the concluding paragraph. As referenced
12 in bold, this omitted paragraph is directly relevant:

13 . . . If the next level supervisor or personnel office are not available, or it is
14 impractical to contact them, the supervisor should take the following actions:

- 15 • Call 9-1-1 emergency when a weapon is involved or when there is an
16 immediate and direct threat to employees or the public. If the danger is not
17 to this level but assistance is needed, call General Services Security at (213)
18 978-4670.
- 19 • Direct the employee to leave the worksite immediately. Place the employee
20 who posed the immediate threat off work with pay.
- If possible, have another, higher level supervisor present when directing the
employee’s removal.

21 **If an employee is removed from the worksite under emergency circumstances,**
22 **the circumstances and rationale for the removal should be carefully**
23 **documented by the supervisor and/or the employing department’s personnel**
24 **office and the procedures outlined above should be followed to the extent**
25 **feasible under the circumstances.**

26 (**Exhibit 13**, subdivision (C), emphasis added; see also **Exhibit 3** at pp. 10-11.)

27 39. As plainly evidenced above, subdivision (C) neither “specifically provides nor “requires” that the
28 City must place all applicable employees off work with pay. Instead, it unequivocally confers discretion
upon the City in that regard, depending on the feasibility under the circumstances.

1 40. Put simply, Arbitrator Perea unilaterally amended material policy language—by adding to,
2 subtracting from, and modifying the terms of Charter Section 1060 and Personnel Policy Section 33.1—
3 while simultaneously manufacturing a non-existent policy of his own. Therefore, Arbitrator Perea
4 exceeded his authority.

5 41. Although the City can acknowledge the general policy in favor arbitration awards, any such policy
6 is entirely outweighed here, considering the extent to which the Award violates multiple public policies
7 and grossly exceeded Arbitrator Perea’s authority. The Award cannot be corrected without affecting the
8 merits of the dispute and must be vacated.

9 42. Based on the foregoing, Petitioner is entitled to an order vacating and setting aside Arbitrator
10 Perea’s Findings and Award in ERB Case No. ARB 4035.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, as remedies for the causes of action asserted above, Petitioner City prays for
13 relief as follows:

- 14 1. That the Court issue an order vacating and setting aside Arbitrator Perea’s Findings and
15 Award in ERB Case No. ARB 4035;
- 16 2. For attorneys’ fees and costs of this action, if appropriate; and
- 17 3. Such other and further relief as the Court deems just and appropriate.
- 18

19 DATED: February 29, 2024

Respectfully submitted,
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23 By 
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26 Attorneys for Petitioner City of Los Angeles

27

28

EXHIBIT 1

EXHIBIT 1

**MEMORANDUM OF UNDERSTANDING
FOR JOINT SUBMISSION
TO THE CITY COUNCIL
REGARDING THE
FIREFIGHTERS AND FIRE CAPTAINS
REPRESENTATION UNIT
(MOU #23)**

**THIS MEMORANDUM OF UNDERSTANDING made and entered into
this 27th day of September, 2019
and as amended on this 1st day of April, 2021**

BY AND BETWEEN

THE CITY OF LOS ANGELES

AND THE

UNITED FIREFIGHTERS OF LOS ANGELES CITY, LOCAL 112, IAFF, AFL-CIO-CLC

July 1, 2019 – June 29, 2024

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1.0 UNION RECOGNITION AND GENERAL PROVISIONS

ARTICLE 1.1 RECOGNITION

The City of Los Angeles ("City") hereby recognizes the United Firefighters of Los Angeles City, Local 112, IAFF, AFL-CIO-CLC, ("UFLAC" or "Union") as the exclusive representative of employees in the Firefighters and Fire Captains Unit ("Unit") for which the Union was certified as majority representative by the Employee Relations Board on November 13, 1972.

The term "employee" or "employees," as used herein, shall refer only to employees in the classifications listed in Appendix A as well as such classes as may be added hereafter by the City's Employee Relations Board.

ARTICLE 1.2 IMPLEMENTATION OF MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") constitutes a joint recommendation of the City Administrative Officer ("CAO"), as the authorized management representative of the City Council, and the Union. It shall not be binding in whole or in part on the parties unless and until:

1. The Union has notified the CAO in writing that it has approved this MOU in its entirety.
2. The City Council has approved this MOU in the manner required by law.
3. The administrative heads of those departments, offices, or bureaus represented herein have approved this MOU in the manner required by law.

Where resolutions, ordinances or amendments to applicable codes are required, those Articles of this MOU which require such resolutions, ordinances or amendments will become operative on the effective date of the resolution, ordinance or amendment unless otherwise specified.

ARTICLE 1.3 PARTIES TO MEMORANDUM OF UNDERSTANDING

This MOU is entered into by the CAO and the authorized management representatives of the Fire Department ("Management" or "Department"), and authorized representatives of UFLAC.

ARTICLE 1.4 PROVISIONS OF LAW AND SEPARABILITY

If any provision of this MOU or the application of such provision to any person or circumstance is ruled unlawful or in any way contrary to law by any Federal or State Court or duly authorized agency, the remainder of the MOU or the application of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 1.5 NON-DISCRIMINATION

The parties mutually reaffirm their respective policies of non-discrimination in the treatment of any employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, Acquired Immune Deficiency Syndrome (AIDS) – acquired or perceived, military and veteran status, political beliefs, union activity, LGBT identity, or retaliation for having filed a discrimination complaint.

ARTICLE 1.6 TERM

The term of this MOU shall commence on the date when the terms and conditions of its effectiveness, as set forth in Article 1.2, Implementation of Memorandum of Understanding, are fully met, but in no event shall said MOU become operative prior to 12:01 a.m. on July 1, 2019. This MOU shall expire and otherwise be fully terminated at 11:59 p.m. on June 29, 2024, except where specifically noted.

Notwithstanding the above, the provisions of this MOU shall remain in effect until a successor MOU is implemented or impasse proceedings are completed.

ARTICLE 1.7 CALENDAR FOR SUCCESSOR MEMORANDUM OF UNDERSTANDING

A written request to commence meet and confer sessions for a successor MOU shall be submitted by the requesting party during the period between February and April of the year in which the MOU expires, pursuant to the expiration date listed in Article 1.6, Term. Meet and confer sessions shall begin by mutual agreement of both parties.

ARTICLE 1.8 UNIT MEMBERSHIP LIST

Management will provide the Union in writing and on electronic medium, within thirty (30) calendar days from the effective date of this MOU and each thirty (30) calendar days thereafter, an accurate and updated alphabetized list of employee names subject to this MOU, their employee number, class title, home address, primary phone number, union membership status, work location and assignment. The list shall also identify employees not on the payroll and the reasons therefore.

ARTICLE 1.9 PAYROLL DEDUCTIONS AND DUES

Payroll deductions as may be properly requested and lawfully permitted will be deducted from each employee’s pay check by the Controller biweekly, in twenty-four (24) increments annually from the salary of each employee in the unit where the Union has provided in writing to the Controller a list or individual notice of those individuals from whom Union-related deduction(s) should be lawfully taken. This list or notice shall constitute certification by the Union that the Union has and will maintain an authorization

signed by the individual employee or employees from whose salary or wages the deductions are to be taken. Any amendment may be made by the Union in a complete list or individually.

Remittance of the aggregate amount of all dues and other proper deductions made from the salaries of employees hereunder shall be made to the Union by the City Controller within thirty (30) work days after the conclusion of the payroll period in which said dues and/or deductions were deducted. For each pay period, the City Controller shall provide the Union with an electronic report itemizing each deduction for each employee.

A fee of nine cents (\$.09) per deduction may be assessed by the City Controller for the processing of each payroll deduction taken. The City Controller will deduct the aggregate amount of said fees on a biweekly basis. Such fee shall not be applicable to health benefits provided by UFLAC or the Los Angeles Firemen's Relief Association or to dental, life insurance and long-term disability insurance benefits provided by UFLAC.

Except for errors caused by the City, the Union agrees to indemnify and hold harmless the City for any loss or damages arising from the operation of this Article.

ARTICLE 1.10 ACTIONS BY THE EMPLOYEE RELATIONS BOARD

It is mutually understood that should any action(s) by the Employee Relations Board prior to the expiration of this MOU result in any significant changes to the composition of this Unit, the parties to this MOU will meet as soon as possible thereafter to consider any revisions or amendments hereto that may be required to insure that the interests of newly acquired employees of this representation unit are protected.

ARTICLE 1.11 MANUAL OF OPERATIONS, RULES AND REGULATIONS, BULLETINS AND OTHER RULES AND CONDITIONS OF EMPLOYMENT

The Department shall maintain up-to-date versions of the Manual of Operations, the Rules and Regulations, bulletins and other rules and conditions of employment on the Department portal.

At least three (3) business days prior to the effective date of any changes to the Manual of Operations, the Rules and Regulations, bulletins, or other rules affecting personnel practices or other conditions of employment, the Department shall provide the Union with electronic notification of the change(s). The Department shall make the notice to a UFLAC email address dedicated for this purpose. The President of the Union or his/her designee shall provide an electronic acknowledgement of receipt of the notice.

Nothing in this Article affects management's obligation to meet and confer with the Union on wages, hours, and other terms and conditions of employment as required by the Employee Relations Ordinance including those changes subject to impact bargaining only.

The Department shall issue a notice on the Department Intranet to alert employees when negotiated changes are made.

The Department shall remove the hard copy Manual of Operations, Rules and Regulations, bulletins and other rules and conditions of employment from each work location and shall provide each work location access to the current Manual of Operations, Rules and Regulations, bulletins and other rules and conditions of employment in electronic form.

ARTICLE 1.12 BULLETIN BOARDS

The Department will provide a bulletin board or dedicated space for posting official UFLAC business at each Department facility. All official communications from UFLAC shall be posted in the space provided. UFLAC shall cause a removal date to be placed on all posted material. If a notice is believed to be inappropriate for placement in the workplace, the Employee Relations Officer shall resolve all conflicts. The Department will also provide a link on the Department's Intranet to UFLAC's website.

ARTICLE 1.13 SURVEYS

Any survey received by the Department which requests input of employees must be forwarded to the Employee Relations Officer ("ERO") for evaluation and approval. If the ERO disapproves of the survey, no further action is required. If the ERO believes that the survey complies with Department policy, he/she shall discuss further processing of the survey with UFLAC prior to its dissemination.

ARTICLE 1.14 DEFINITION OF "BUSINESS DAY"

The term "business day" as used in this MOU shall mean Monday through Friday, excluding Saturdays, Sundays, and Holidays.

2.0 PERSONNEL AND GRIEVANCE MATTERS

ARTICLE 2.1 GRIEVANCE PROCEDURE

Section I – Definition

A grievance is defined as any dispute concerning the interpretation or application of this MOU, the Manual of Operations, departmental rules and regulations, bulletins, personnel practices, other rules, conditions of employment, or working conditions. The following items are not grievable:

1. An impasse in meeting and conferring upon the terms of a proposed MOU.
2. Probationary employee terminations.

A grievant is defined as an employee or the Union when the grievance affects a class or group of employees.

Section II – Responsibilities and Rights

1. Nothing in this grievance procedure shall be construed to apply to matters for which an administrative remedy is provided under Section 1060 of the City Charter. Where a matter within the scope of this grievance procedure is alleged to be both a grievance and an unfair employee relations practice under the jurisdiction of the Employee Relations Board, the employee may elect to pursue the matter under either the grievance procedure herein provided, or by action before the Employee Relations Board. The employee's election of either procedure shall constitute a binding election of the remedy chosen and a waiver of the alternative remedy.
2. No grievant shall lose his/her right to process his/her grievance because of Management imposed limitations in scheduling meetings.
3. The grievant has the responsibility to discuss his/her grievance informally with his/her immediate supervisor. The immediate supervisor will, upon a specific request of a grievant, discuss the grievance with him/her at a mutually satisfactory time. The grievant may be represented by a representative of his/her choice in the informal discussion with his/her immediate supervisor and in all formal review levels.
4. The steps and time limits between steps of the grievance procedure provided herein may be extended or waived only by mutual agreement.
5. The Department shall notify the Union in writing of any formal grievance filed by an employee and shall schedule the grievance meeting at a date and time that is mutually convenient to the Department, the Union and the grievant within the prescribed time limits. The Union shall have the right to be present in each formal review level. The Union will be notified of the filing and resolution of all formal grievances.
6. Settlements, withdrawals, or other resolutions of grievances shall be non-precedent setting unless mutually agreed upon in writing by the Union and the Department.

Section III – Procedure

Notwithstanding Section 4.865 of the Los Angeles Administrative Code ("LAAC"), the grievance procedure shall be as follows:

Step 1 - Informal Discussion

The grievant shall discuss his/her grievance with his/her immediate supervisor on an informal basis in an effort to resolve the grievance. Said grievance shall be considered waived if not so presented to the immediate supervisor within fifteen (15) calendar days following the day during which the event upon which the grievance is based occurred or the day that the grievant reasonably should have had knowledge of the event.

The immediate supervisor shall notify the grievant and process the appropriate documentation within fifteen (15) calendar days following his/her meeting with the grievant. A copy of the written decision and statement of facts shall be provided to the Union President and to the designated Union representative, if one has been designated. Failure of the immediate supervisor (or in his/her absence, the next supervisor in the Chain of Command) to respond within such time limit shall entitle the grievant to process his/her grievance at the next step.

Step 2 - Chief Officers' Level of Review

If the grievance is not settled at Step 1 (Informal Discussion), the grievant may serve written notice of the grievance on a form provided by the Department (F-226B or a form deemed to be the equivalent by the Department). Forms shall be delivered to the lowest ranking Chief Officer in the employee's chain of command for routing to appropriate persons. It shall be the responsibility of that Chief Officer to date and indicate the time of receipt of all forms.

All forms shall contain clear and concise statements of pertinent information, with no attempt to expand or conceal facts.

This form must be completed and served on said Chief Officer within fifteen (15) calendar days of the receipt of the grievance response at Step 1. Failure of the grievant to serve such written notice shall constitute a waiver of the grievance.

If such written notice is served, the designated Chief Officer shall meet with the grievant and his/her representative, if any, within fifteen (15) calendar days from the date of service. Following the meeting, the designated Chief Officer will discuss the merits of the grievance with his/her Chief Officer and a joint written decision and statement of the facts (Form-226C or a form deemed to be the equivalent by the Department) on behalf of both Chief Officers shall be rendered and provided to the grievant within fifteen (15) calendar days of the meeting with the grievant. A copy of the written decision and statement of facts shall be provided to the Union President and to the designated Union representative, if one has been designated. Failure of Management to respond within such time limit shall entitle the grievant to process his/her grievance at the next level of review.

Step 3 - Fire Chief's Level of Review

If the grievance is not settled at Step 2 (Chief Officers' Review), the grievant may, within fifteen (15) calendar days following (a) receipt of the written response at Step 2 or (b) the last day of the response period provided for in Step 2, serve a written appeal on Form F-226B (or a form deemed to be the equivalent by the Department) to the Employee Relations Officer, who shall forward it to the Fire Chief or designee. Failure of the grievant to serve such written notice shall constitute a waiver of the grievance. If such written notice is served, the Fire Chief or designee shall meet with the grievant, and his/her representative, if any, within fifteen (15) business days from the date of service. A written decision and statement of facts (Form-226C or a form deemed to be the equivalent by the Department) shall be rendered and provided to the grievant within fifteen (15) business days from the date of the grievance meeting. A copy of the written decision and statement of facts shall be provided to the Union President and to the designated Union representative, if one has been designated. Failure of Management to respond within such time limit shall entitle the grievant to process his/her grievance to the next level.

Step 4 - Mediation (optional)

If the grievance is not settled at Step 3 (Fire Chief's Review), the grievant and Union may request mediation by letter to the Employee Relations Officer. This step is optional. Either the Union or the Department may waive mediation and proceed directly to arbitration. Within fifteen (15) calendar days of receipt of a request for mediation, the Employee Relations Officer shall either return the request without action or request that the Employee Relations Board appoint a mediator. The Employee Relations Board shall attempt to obtain the services of a mediator from the State Mediation and Conciliation Service. If a State mediator is unavailable, the Union and the Department may jointly agree to a mediator selected by the Executive Director of the Employee Relations Board. The fees of such mediator shall be shared equally by the Union and the Department.

The role of the mediator should be to assist the parties in settling the grievance in a mutually satisfactory fashion. The mediation procedure shall be informal. Court reporters shall not be allowed, the rules of evidence shall not apply, and no record shall be made. The mediator shall determine whether witnesses are necessary in the conduct of the proceedings.

If settlement is possible, the mediator may be requested to provide the parties with an immediate oral opinion as to how the grievance would be decided if it went to arbitration. Such opinion shall be advisory only. Upon mutual agreement of the parties, the mediator may be requested to furnish such opinion in writing, along with a brief statement of the reasons for the opinion. Such opinion as well as anything said by parties during mediation shall not be used during any subsequent arbitration. Notwithstanding the above, and Section 4.865 of the Employee

Relations Ordinance, the parties may, upon mutual agreement, agree to accept the opinion of the mediator as binding, in lieu of arbitration.

Step 5 - Arbitration

If the written decision at Step 3 or mediation does not settle the grievance, the grievant and the Union jointly may file a written request for arbitration with the Employee Relations Board with a copy to the Fire Chief or his/her designee. The request for arbitration must be filed with the Employee Relations Board within fifteen (15) calendar days following the date of receipt of the Step 3 grievance response or completion of the mediation process. Failure of the grievant and the Union to jointly serve such written request within said period shall constitute a waiver of the grievance.

If such notice is served, the Union and the Department shall meet for the purpose of selecting an arbitrator from a list of seven arbitrators furnished by the Employee Relations Board, within seven (7) calendar days following receipt of said list.

- a. Arbitration of a grievance hereunder shall be limited to the formal grievance as originally filed by the employee to the extent that said grievance has not been satisfactorily resolved. The proceedings shall be conducted in accordance with applicable rules and procedures specified by the Employee Relations Board, unless the Union and the Department hereto agree to other rules or procedures for the conduct of such arbitration. The fees and expenses of the arbitrator shall be shared equally by the Union and the Department, it being mutually understood that all other expenses including, but not limited to, fees for witnesses, transcripts, and similar costs incurred by the Union and the Department during such arbitration, will be the responsibility of the party incurring same.
- b. The decision of an arbitrator resulting from any arbitration of a grievance hereunder shall be binding upon the parties.
- c. The decision of an arbitrator resulting from any arbitration of a grievance hereunder shall not add to, subtract from, or otherwise modify the terms and conditions of this MOU.

Section IV – Procedure Following a Board of Rights

Notwithstanding LAAC Section 4.865, a grievance filed following a decision by a Board of Rights may be submitted for arbitration. The request for arbitration must be filed within fifteen (15) calendar days following the decision of the Board of Rights. Failure of the grievant to serve such written notice within such time period shall constitute waiver of the grievance.

Section V – Procedure for Grievances Affecting a Class or Group of Employees

The Union may file a grievance affecting a class or group of employees. In these cases, at least one affected member of the class or group of employees shall be named as a grievant.

The Union shall file the grievance in writing with the Fire Chief, or designee, within fifteen (15) business days following the day during which the event upon which the grievance is based occurred or the day the Union reasonably should have had knowledge of the event.

The Fire Chief, or designee, shall provide written notification to the Employee Relations Division of the CAO of the receipt of the grievance. The Fire Chief, or designee, shall meet with the Union within fifteen (15) business days of receipt of the grievance. The Fire Chief, or designee, shall prepare a written response within fifteen (15) business days of the meeting.

If the written decision from the Fire Chief, or designee, does not settle the grievance, the agreed upon procedure as set forth under Step 5 of Section III of this Article shall apply.

Section VI – Procedure for Expedited Arbitration

By mutual agreement, the parties may submit any grievance which has reached the arbitration level to expedited arbitration. The selection of the arbitrator shall be conditioned on the arbitrator's ability to schedule the arbitration within sixty (60) calendar days and submit a written ruling to the parties within forty-eight (48) hours from the close of the hearing. There shall be no transcript of the hearing. If the arbitrator who is selected by the parties is unable to agree to comply with these conditions, the parties shall select another arbitrator from a new list of seven arbitrators provided by the Employee Relations Board. This procedure shall be repeated until an arbitrator agrees to comply with the conditions.

ARTICLE 2.2 GRIEVANCE REPRESENTATION

The Union may designate a reasonable number of grievance representatives and will provide the Department with a current list of such representatives.

The Department recognizes the right of each employee to represent himself/herself, or to be represented by a representative of his/her choice in the presenting of a grievance in the informal discussion with his/her immediate supervisor and in all review levels.

The grievant and his/her representative may have a reasonable amount of paid time off for this purpose. However, said representative will receive paid time off only if he/she is a member of the same Union as the grievant and has been designated as a grievance representative.

Time spent on grievances outside of regular work hours of the employee or his/her representative shall not be counted as work time for any purpose. Whenever a grievance

is to be presented during the work hours of the grievant and/or his/her representative, only that amount of time necessary to bring about a prompt disposition of the grievance will be allowed.

ARTICLE 2.3 PERSONNEL FOLDERS

A. Adverse Comments/Performance Evaluations

1. No adverse comments shall be entered into an employee's personnel folder unless the employee has been given a copy and the employee has signed an acknowledgement that he/she has read the comment. However, if the employee refuses to sign it, the comment shall be entered in the employee's personnel folder and shall state that the employee refused to sign it.
2. An employee may file a response to any adverse comment or performance evaluation entered in his/her personnel folder within thirty (30) calendar days. The written response shall be attached to and shall accompany the adverse comment.
3. The term "personnel folder" shall be defined pursuant to the Firefighters Procedural Bill of Rights, California Government Code Sections 3255 through 3256.5.
4. The parties agree that any disputes over the definition of the term "personnel folder" under the Firefighters Procedural Bill of Rights, California Government Code Sections 3255 through 3256.5, shall not be subject to the grievance process.

B. Review of Personnel Folder

1. An employee, without loss of pay, shall be entitled to review the contents of his/her Department personnel folder, upon request, during hours when the Department's Personnel Office is normally open for business. Such review shall not interfere with the normal business of the Department.
2. An employee may designate a representative to review his/her Department personnel folder, under the conditions outlined above, by signing a Designation and Release From Liability Form that will be provided by the Department.
3. If, after examination of his/her official Department personnel folder, an employee believes that any portion of the material is mistakenly or unlawfully placed in the folder, the employee may request that the mistaken or unlawful portion be corrected or deleted. The request must be in writing. Any request made pursuant to this provision shall include a statement by the employee describing the corrections or deletions from the personnel

folder requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this provision shall become part of the personnel folder. The Department shall notify the employee of its decision within thirty (30) calendar days of receipt of the request.

C. Obtaining Copies of Documents in Personnel Folder

1. An employee shall be provided a copy of documents, free of charge, before such documents are forwarded for inclusion in his/her Department personnel folder.
2. An employee may make a request to the Department's Personnel Office for copies of documents in his/her official Department personnel folder. The Personnel Office shall provide copies to the employee while the employee is present in the Personnel Office. However, if the Personnel Office is unable to do so, the Personnel Office shall provide the copies to the employee within a reasonable time period based on the workload of the Personnel Office at the time of the request. The employee shall pay the copying charges.

D. Notification to Employee

If the Department receives an outside request for disclosure of records from an employee's official Department personnel folder, the Department shall provide the employee notice of the request within three (3) business days of the Department's receipt of the request.

ARTICLE 2.4 INVESTIGATION NOTIFICATION

Section I – Notice of Investigation

The Department shall immediately notify an employee who is the subject of an investigation or a witness in an investigation in confidential written form and shall inform the employee of the nature of the investigation, unless the Fire Chief has determined that the charge is of such a nature and seriousness that it warrants placing the employee under investigation without such notification being made. It is intended that instances of investigation without notification will not become common practice.

Section II – Right to Representation

Prior to conducting any investigatory interview with an employee, the Department shall inform the employee of his/her right to representation. It is the employee's responsibility to secure the attendance of his/her chosen representative at the interview. If he/she is unable to do so, the employee should select another representative so that the interview may proceed.

The investigatory interview shall be conducted at a date and time that is mutually convenient to the Department, the Union, and the employee within twenty-one (21) calendar days from the date the Department electronically transmits the PSD Interview Notification to the employee and the Union via Department email. The Notification shall include at least three **proposed** dates for the interview. There shall be no telephonic contact between the Department investigator and the employee during this twenty-one (21) day period unless the employee notifies the Department that he/she will not be represented by the Union at the interview. Any extension of the twenty-one (21) day period must be agreed to in writing by the representatives for the Department and the Union. Whenever practicable, investigatory interviews shall be conducted during the employee's normal work hours without loss of pay.

In the event the Department determines that the matter is "time sensitive" and an investigatory interview of an employee is necessary, the employee shall be provided ninety (90) minutes to secure a representative. The Department may extend that ninety (90) minute period to secure a representative at its discretion, balancing its need for the interview. If the employee is unable to obtain representation of his/her choice within ninety (90) minutes and the employee chooses to be represented by UFLAC, the Department shall detail the on duty employee designated by UFLAC as the On Call UFLAC Representative. At the request of the employee, the Department may detail an available representative of the employee's choice to provide representation to the employee. For the purposes of this paragraph, the term "time sensitive" includes, but is not limited to, significant traffic accidents, in-custody deaths, wrongful deaths, firefighter fatalities, or serious injuries and incidents where there is a high likelihood of litigation.

Section III – Search and Seizure Procedures

Any locker, desk or other locked storage place used exclusively by an employee shall not be searched without the presence or consent of the employee, except that:

- a. A search may be conducted without the employee's presence provided that the employee was given reasonable notice;
- b. An employee may authorize a representative to be present as a witness if the employee is unable to be present;
- c. A search may be conducted without the employee's presence if the employee refuses or fails to be present during said search;
- d. The employee must be informed prior to the search as to the purpose of the search.

ARTICLE 2.5 NO-SMOKING

Employees hired as Firefighters during the term of this MOU shall be required to remain non-smokers throughout their employment as an employee of the Fire Department.

A non-smoker shall not smoke or use any tobacco product either on or off-duty while employed.

An affidavit signed on a periodic basis by the employee shall be used to verify continued non-smoking status.

3.0 TIME OFF

ARTICLE 3.1 HOLIDAYS

A. An employee shall receive thirteen (13) days off in lieu of holidays each calendar year. These days off will be scheduled in accordance with existing practice.

Note: For calendar year 2010 only, four holidays were moved to a separate bank immediately upon implementation of the MOU in accordance with Article 1.2. These days are frozen and may not be used by the employee. These banked days will be cashed out by the City at the employee's straight time rate as soon as budgetarily feasible; however, the precise manner and date of payback will be determined by the City in consultation with the Union. If the banked days are not paid out or returned prior to the date an employee separates from City service, the days shall be paid out at separation at the employee's straight time rate in effect on the date of separation.

B. Employees regularly assigned to a 4/10 work schedule shall receive, in addition to the above, an additional one-half day holiday Christmas Eve (a.m.), and an additional one-half day holiday New Year's Eve (a.m.).

C. An employee who works on one of the holidays specified below shall receive, in addition to the employee's regular compensation for that day, \$7.50 for each hour worked:

Thanksgiving	Christmas Day
Christmas Eve	New Year's Eve

D. Whenever a special holiday is declared by proclamation of the Mayor with concurrence of the Council, the Fire Chief is hereby authorized to grant to each employee a day off with full pay. Such day off shall be in addition to any other day off authorized and granted each employee under the provisions of this MOU and may be allowed either on the same day that is declared a special holiday by the Mayor and the Council or on any subsequent day at the discretion of the Fire Chief.

ARTICLE 3.2 VACATIONS

A. An employee shall be entitled to sixteen (16) work days' vacation annually with full pay. An employee, upon the completion of ten (10) years of service in the aggregate, shall be entitled to twenty-four (24) work days' vacation annually with

full pay, and an employee, upon the completion of thirty (30) years of service in the aggregate, shall be entitled to twenty-five (25) work days annually with full pay. On January 1 of each year, vacation time accrued during the previous year shall be credited to an employee.

- B. An employee shall be permitted to defer vacation, thereby accumulating unused vacation time to total not more than the equivalent of three years of vacation credit commensurate with their years of service.
- C. The following provisions shall apply for the purpose of computing years of service in the aggregate in determining eligibility for vacation accrual:
 - 1. An employee shall be deemed to have been in the service of the Department during any period of military service performed by the employee if the employee was entitled to reinstatement as an employee of the Department after such military service and was, in fact, so reinstated.
 - 2. Service of an employee prior to service retirement shall be counted if the employee is reactivated pursuant to any Charter Section providing for return to active duty of a retired employee.
 - 3. Service of an employee prior to resignation from the Department shall be counted if the employee is re-employed by the Department and is not eligible for a pension under the provisions of any applicable Fire and Police Pension Plans contained in the City Charter or the Administrative Code.
- D. Employees regularly assigned to a 4/10 work schedule may elect to work and receive cash payment for up to one hundred sixty (160) hours of accrued vacation time during a calendar year. The election by an employee to receive such cash payment shall be subject to the availability of budgeted funds of the Department.
- E. Employees called into active military service (other than temporary military leave) shall continue to accrue vacation during their military service, subject to the same maximum accrual requirements as other employees. In order to avoid reaching a maximum accrual during an extended leave, an employee may request cash payment of accrued but unused vacation time as of the date of the commencement of his/her military leave. The request may be for all accrued time or a portion of his/her accrued time. The request for cash payment must be made prior to the employee's first day of leave of absence and verified by military orders or other evidence of call-up into the armed forces of the United States.

ARTICLE 3.3 SICK LEAVE

- A. Employees entering City service shall accrue one (1) day of sick leave and one (1) additional day at the end of each subsequent month worked until the pay period which includes January 1 following the date of hire. Such accrual will be

on the first day of the pay period in which the employee's anniversary date falls. Beginning the pay period which includes January 1 following the date of hire, employees shall accrue twelve (12) work days of 100% sick leave, five (5) work days of 75% sick leave, and five (5) work days of 50% sick leave.

- B. Employees who are absent on military leave shall continue to accrue sick leave.
- C. Employees who become separated from the service by reason of retirement or death will be compensated for any remaining balance of unused accumulated 100% sick leave at the date of separation. Such compensation will be paid to the individual or his/her estate by cash payment at 50% of the employee's salary rate current at the date of separation, except however, accumulated 100% sick leave hours shall be computed on a Platoon Duty basis for employees in ranks for which a Platoon Duty rate has been established. Effective January 1, 2021, if any employee becomes separated from the service of the Department by reasons of retirement or death, any balance of accumulated sick leave at full pay remaining unused at the time of separation shall be compensated to the employee, or in the event of separation due to the death of the employee, to the employee's estate, by cash payment of 100% of the employee's salary rate current at such date of separation.
- D. Between July 1, 2019, and December 31, 2020, notwithstanding the above provision, the City Council may, by resolution, authorize cash payment to the legal beneficiaries of an employee who suffers a duty-related death, for the balance of the employee's accumulated 100% sick leave at 100% of the employee's salary rate on the date of his/her death. In no instance shall an employee or his/her beneficiaries be compensated more than once for accumulated sick leave upon retirement and/or death of the employee.
- E. Employees shall be allowed to accumulate a maximum of one hundred thirty-six (136) work days of 100% sick leave. Payment for any unused 100% sick leave will be made for hours in excess of one hundred thirty-six (136) work days. The amount of payment will be by cash payment at 50% of the employee's salary rate current at the date of payment. Such payment for any unused sick leave that exceeds one hundred thirty-six (136) work days shall be computed on a Platoon Duty basis for employees in ranks for which a Platoon Duty rate has been established. Effective January 1, 2021, any 100% sick leave remaining unused at the end of each calendar year, which, if added to an employee's accumulated 100% sick leave will exceed 136 work days, shall, as soon as practicable, be paid in cash at the rate of 100%.
- F. Employees regularly assigned to a 4/10 work schedule may be allowed to use 100% sick leave not to exceed an aggregate of ninety-six (96) hours in any one calendar year for the purpose of securing preventive medical treatment.

- G. Employees shall use all accrued sick leave with full pay (100%) prior to using sick leave at partial pay (75% then 50%).

ARTICLE 3.4 FAMILY ILLNESS

Each employee shall be entitled to the following family illness leave provisions:

- A. Each employee who is absent from work by reason of the illness or injury of a member of his/her immediate family, and who has accrued sick leave, shall be allowed a leave of absence with pay at the appropriate rate (100%, 75% or 50%) not to exceed in the aggregate twelve (12) work days in any one calendar year.
- B. Each employee shall furnish, if required by the Fire Chief, satisfactory documentation to sufficiently justify the absence.
- C. "Immediate Family" shall include the father, father-in-law, mother, mother-in-law, brother, sister, spouse, child, foster child, stepchild, grandchild, current stepparent, domestic partner of the employee or other dependent residing in the employee's household and the following relatives of an employee's domestic partner: child, grandchild, mother, father.
- D. Any employee claiming a domestic partner for purposes of this Article shall complete a confidential affidavit to be filed in the Employee Benefits Office, Personnel Department, which shall be signed by the City employee and the domestic partner, declaring the existence of a domestic partnership with a named domestic partner. No affidavit is required to secure family illness benefits arising from the illness or injury of a household member.

ARTICLE 3.5 BEREAVEMENT LEAVE

- A. An employee regularly assigned to a 4/10 work schedule shall be entitled to three (3) work days leave of absence of ten (10) hours per day with full pay for a death in the employee's immediate family. An employee regularly assigned to Platoon Duty shall be entitled to two (2) twenty-four (24) hour shifts leave of absence with full pay for such deaths. The days do not have to be consecutive, but must be taken within one (1) year from the date of the death. Each employee shall furnish, if required by the Fire Chief, a death certificate or other satisfactory proof of the death to justify the absence.
- B. An employee regularly assigned to a 4/10 work schedule may, at his/her option, take off two (2) additional work days of ten (10) hours, and another two (2) work days of ten (10) hours if it is necessary for the employee to travel out of state (for a total of four [4] additional days), in conjunction with bereavement leave. In the case of simultaneous, multiple family deaths, an employee may also take up to an additional six (6) work days of leave in conjunction with bereavement leave. Such additional days of leave may be banked overtime or vacation leave at the

employee's option. If neither banked overtime nor vacation leave is available, the employee may use available sick leave.

- C. An employee regularly assigned to Platoon Duty may, at his/her option, take off one (1) additional twenty-four (24) hour shift, and one (1) additional twenty-four (24) hour shift if it is necessary for the employee to travel out of state (for a total of two [2] additional twenty-four [24] hour shifts), in conjunction with bereavement leave. In the case of simultaneous, multiple family deaths, an employee may also use up to an additional three (3) twenty-four (24) hour shifts of leave in conjunction with bereavement leave. Such additional days of leave may be banked overtime or vacation leave at the employee's option. If neither banked overtime nor vacation leave is available, the employee may use available sick leave.
- D. Employees shall not be required to find a guarantor to take bereavement leave or the additional days of leave in conjunction with bereavement leave.
- E. "Immediate family" shall include the father, father-in-law, mother, mother-in-law, brother, sister, spouse, child, foster child, stepchild, current stepparent, grandparents, grandchildren, domestic partner of the employee or any dependent or any relative who resided in the employee's household immediately prior to death, and the following relatives of an employee's domestic partner: child, grandchild, mother, and father. Simultaneous, multiple family deaths will be considered as one occurrence.
- F. An employee claiming a domestic partner for purposes of this Article shall complete a confidential affidavit to be filed in the Employee Benefits Office, Personnel Department, which shall be signed by the City employee and the domestic partner, declaring the existence of a domestic partnership with a named domestic partner.

ARTICLE 3.6 JURY DUTY

Employees who are duly summoned to attend any court for the purpose of performing jury service, or nominated and selected to serve on the Grand Jury, shall, for those days on which they are scheduled to work, be released from duty with pay for the period of time necessary to perform the jury service. Reasonable travel time will be permitted for the employee to travel to and from his/her place of assignment and the location of the jury service.

Any jury attendance fees received by the employee, except for those fees received for jury service performed on a regular day off, shall be paid to the City and deposited in the General Fund. Transportation fees paid by the court will be retained by the employee.

If an employee becomes involved in an extended trial of thirty (30) days or more, or is nominated and selected to serve on the Grand Jury and requests to be assigned to administrative detail, the Department shall assign him/her to an administrative detail. If

an employee becomes involved in an extended trial of five (5) days or more and requests to be assigned to an administrative detail, the Fire Chief may assign him/her to an administrative detail.

ARTICLE 3.7 TIME OFF FOR UNION REPRESENTATIVES

A. Full Time UFLAC Board Members

1. UFLAC may designate up to four (4) UFLAC board members to take full time off with pay equal to the total amount the employee is earning at the time the leave begins to conduct Union business. The parties acknowledge that full time UFLAC board members so assigned are exempt from Fair Labor Standards Act overtime provisions due to the executive and administrative nature of their assignment; however, full time UFLAC board members on release under this Article shall be compensated for overtime pursuant to Article 6.2., subsection II. (Overtime Compensation for Employees Regularly Assigned to a 4/10 Work Schedule). UFLAC board members so designated shall be assigned to a Special Duty schedule and shall not be required to perform any other duties for the Department.
2. Beginning July 7, 2019, UFLAC shall be credited with 100 hours per pay period for each, but no more than two, full-time release position(s) that are left unfilled. For example, in pay period 1 of FY2019-20, if two of the four full-time positions are unfilled, then the City shall credit UFLAC with 200 hours of paid time off. UFLAC shall be allowed to accumulate the time off during the term of this MOU. Upon the expiration of this MOU, any unused time shall be forfeited by UFLAC. Time off under this subsection must be approved by the President of UFLAC or his/her designee.
3. The Department shall notify UFLAC of the EMT re-certification status of all full-time board members and provide an updated list of recertification opportunities for these board members.

B. As-Needed Board Members and Other Employees

In addition to the above, other UFLAC members shall be allowed to take time off with pay, in hourly increments, to conduct Union business. UFLAC acknowledges that any such work is not to be considered hours of work for the City. Such time off may not exceed an aggregate total of 5,000 hours annually. UFLAC will select and provide a rank for rank replacement, to the extent possible, for all Platoon Duty members taking such time off outside of Scheduled Overtime Duty (SOD) procedures. If no replacement is provided, no time off shall be allowed. UFLAC shall pay the City 100% of the salary rate of the replacement. Employees regularly assigned to a 4/10 work schedule shall be allowed to take time off in hourly increments to conduct Union business subject to the operational needs of the

Department. UFLAC shall pay the City the straight time salary rate of the employee.

Permission for time off must be arranged at least 72 hours in advance; however, time off may be granted without this advance notice under circumstances which could not be anticipated, subject to the approval of the Fire Chief.

Payment shall be made to the City at the end of the term of the MOU. The failure of the City to receive reimbursement as stated above, within 45 days of the due date, shall result in the immediate cessation of obligations under this Article and the immediate reassignment of the board members to regular duties for their class and pay level. At the time such payment is received, the obligations under this Article will become fully operative.

The release time described in this Article represents all release time allowed for this Unit with the exception of time off taken pursuant to provisions of State or City law or under other provisions of the MOU.

C. Union Release

In the event a UFLAC member is elected to the Executive Board of the International Association of Firefighters (IAFF), is elected to the Executive Board of the California Professional Firefighters (CPF), and/or serves as a staff member or employee of the IAFF or the CPF (no more than one person at a time may serve as a staff member or employee), that employee will be authorized for full-time release pursuant to this Article regardless of his/her status as a UFLAC board member, with the exception that such release shall not count as one of the four (4) board members authorized in Article 3.7 A.1. of this MOU. Such employee shall be assigned to the Fire Chief's Office for timekeeping purposes and will be paid on an 80-hour per pay period basis. The employee shall be paid full compensation, with the exception of Hazard Pay. The parties acknowledge that members to whom this type of release time provision applies are exempt from Fair Labor Standards Act overtime provisions due to the executive and administrative nature of their assignment.

ARTICLE 3.8 WITNESS DUTY

Any employee who is served with a subpoena by a court of competent jurisdiction that compels his/her presence as a witness during his/her normal work hours shall be granted time off with pay in the amount of the difference between the employee's regular earnings and any amount he/she receives for such appearance. This Article is not applicable to appearances for which the employee receives compensation in excess of his/her regular earnings or when the employee is a party to the litigation unless the employee has been sued for something related to his/her work.

A court of competent jurisdiction is defined as a court within the county in which the employee resides or, if outside the county of residence, the place of appearance must be within one hundred fifty (150) miles from the county of the employee's residence.

If an employee is subpoenaed by a court of competent jurisdiction outside of the location limits noted in the paragraph above, he/she shall be eligible to receive compensation under this Article if the court appearance is the result of the employee's actions as a licensed paramedic or EMT within the scope of practice as defined by the licensing/certifying authority for the Department.

ARTICLE 3.9 CONTINUING EDUCATION

Licensed paramedics shall attend continuing education courses on an on- or off-duty basis. Employees who successfully renew their State license and Los Angeles County accreditation shall be paid an amount equivalent to the minimum required hours of continuing education as established by the State of California for all hours where attendance was off duty. Employees will also be paid for any off-duty time required to attend any additional training which shall be required by Los Angeles County to maintain accreditation.

Compensation will be made in a lump sum payment at the employee's current straight time rate. Such payment shall be made within thirty (30) days of notification by the State of California and the County of Los Angeles of successful renewal of State licensure and local accreditation.

ARTICLE 3.10 FAMILY AND MEDICAL LEAVE

Provisions of the Family and Medical Leave Act (FMLA) are specified in Appendix F.

ARTICLE 3.11 BLOOD AND BONE MARROW DRIVES

Employees regularly assigned to a 4/10 work schedule shall be allowed to attend and participate in all City-sponsored blood drives up to two hours on City time. All employees may take time off with pay to donate bone marrow in accordance with LAAC Section 4.118.

ARTICLE 3.12 ORAL AND WRITTEN PROMOTIONAL EXAMINATIONS

Employees shall be granted reasonable time off with pay for the purpose of taking oral and written promotional examinations (including advanced pay grade selection) when such examinations are given by the City and scheduled during the employee's regular work hours; provided, however, that each employee entitled to such time off with pay shall give reasonable advance notice to the employee's supervisor. Such time off with pay may include travel time. Under no circumstances shall employees be granted overtime or adjusted time for participating in an oral promotional process or travel time related thereto which occurs prior to or after an employee's regular work hours.

The Department agrees that any employee who may be assigned to work on a day that a written promotional examination is administered by the Personnel Department, and for which an employee has applied, shall be given priority in the scheduling of days off for that day. In the event that the Department is unable, due to staffing needs, to accommodate the requests of all employees who applied to take a written promotional examination, it is the responsibility of each employee not accommodated to arrange with the Personnel Department for a delayed administration of the examination.

ARTICLE 3.13 OTHER EXAMINATIONS/CERTIFICATION COURSES

- A. Employees regularly assigned to a 4/10 work schedule shall be granted time off with pay for taking examinations/certification courses under the following conditions:
 - 1. The examination/certification is a condition of employment for the employee's current work assignment;
 - 2. The examination/certification course is scheduled during the employee's regular work hours; and
 - 3. The employee has no input or influence over the scheduling of such exam/certification course.
- B. Employees shall obtain advance approval for such time off from their supervisor.
- C. Employees shall not be granted overtime for taking examinations/certification courses.
- D. The Department shall pay for the examinations/certification courses for employees.

ARTICLE 3.14 HONOR GUARD

The Community Liaison Office (CLO) is responsible for receiving requests for Honor Guard appearances. The CLO will determine the actual number of employees selected to serve as Honor Guard in accordance with the provisions below. The composition of Honor Guards for appearances not specifically mentioned in this Article will be at the discretion of the CLO.

- A. California Firefighters Memorial ("California Memorial") and International Association of Firefighters' Memorial ("IAFF Memorial")
 - 1. Employees who have been selected to serve as Honor Guard for a Memorial shall be provided with three (3) days' pay of ten (10) hours per day. The three (3) days shall be for the day of the Memorial, one travel day before the Memorial and one travel day after the Memorial.

2. If an employee is regularly scheduled to work during the three (3) days, the employee shall be provided paid time off for the entire shift.
3. There shall be a minimum of six (6) employees for each Honor Guard that is leading the procession.
4. There shall be a minimum of two (2) employees for each Department employee who is presented to the California Memorial wall or the IAFF Memorial wall.
5. There shall be a minimum of four (4) additional employees for other Honor Guard duties as agreed upon by the Department and Union.

B. Funerals for active Department Employees

1. Employees who have been selected to serve as Honor Guard for a funeral of an active Department employee shall be paid for actual hours worked.
2. If an employee is regularly scheduled to work on the day of the funeral, the employee shall be detailed, on duty, for the duration of the funeral plus reasonable travel time.
3. There shall be a minimum of six (6) employees for each Honor Guard.

4.0 INSURANCE

ARTICLE 4.1 HEALTH INSURANCE

- A. Effective July 1, 2018, the City provided a monthly subsidy not to exceed \$1,460.00 per month toward the cost of any UFLAC, Los Angeles Firemen’s Relief Association (LAFRA) or City-sponsored insurance plan approved by the City and the Union. Effective July 1, 2018, the City provided a monthly subsidy not to exceed \$985.00 for employee-only coverage. The monthly subsidy amounts in subsequent years shall be in accordance with the table, below:

Effective Date	Employee + Spouse-Family	Employee Only
July 1, 2019	\$1,508.18	\$1,017.51
July 1, 2020	\$1,557.95	\$1,051.09
July 1, 2021	\$1,609.36	\$1,085.78

- B. Beginning in January 2022 and again in January 2023, the parties shall meet and confer to establish the monthly subsidy amount for the next fiscal year beginning July 1st. In no case shall the subsidy amount be lowered from the prior year level.
- C. The City will apply the subsidy first to the employee's coverage. Any remaining balance will be applied toward the coverage of the employee's dependents under the plan. The definition of a dependent shall include the domestic partner of an

employee and the dependents of such domestic partner. Any employee claiming a domestic partner and/or dependents of such domestic partner shall complete a confidential affidavit to be filed with the Employee Benefits Office, Personnel Department, which shall be signed by the employee and the domestic partner, declaring the existence of that domestic partnership.

- D. Employees who are enrolled in the UFLAC high deductible health care plan and have established a health savings account under that plan will have \$100 per month deposited into his/her health savings account by the City. The \$100 contribution shall not increase the maximum subsidy amounts established above. Effective July 1, 2018, these employees will have an additional \$200.00 per month deposited in their health savings account under the plan if they get a physical examination under the Wellness Program under Article 9.3 of this MOU. For employee-only coverage, the City will contribute up to the contribution limit authorized under federal law. The additional \$200.00 per month will commence the month after the plan confirms to the City in writing that the employee got the physical examination under the Wellness Program and will continue for a total of 12 months. Employees may qualify for the additional \$200.00 per month for 12 months thereafter if they get annual physical examinations under the Wellness Program.
- E. An employee, who can prove health insurance coverage under a spouse or domestic partner with an adequate plan, may opt out of health insurance coverage as provided by this Article, and receive a sum of \$100 monthly which is not to be considered wages. To be eligible for this opt-out benefit, the employee must comply with the rules and procedures established by the Personnel Department.
- F. The City shall provide funds to subsidize the cost of health plan premiums for the spouse, minor dependents and dependent children of any employee who dies while on active duty from injuries incurred while performing his or her job duties or who dies as a direct cause of such injuries. The maximum amount of the subsidy shall not exceed the amount provided to active employees covered by this MOU. These provisions are not applicable to employees who are not on duty or who have not completed Drill Tower training at the time of the injury which results in their death. For minor dependents the subsidy shall cease upon their attaining the age of 26 years; or dependent children who are disabled when they cease to be dependent as defined in Charter Section 1406. Only a spouse and/or dependents covered under an employee's plan at the time of death shall be eligible for the subsidy. Upon application by a spouse or dependent for this benefit, a Committee comprised of representatives of the Personnel Department, UFLAC, and the Fire Department shall jointly determine whether the circumstances of the employee's death qualify the employee's spouse and/or dependents for the benefit provided under this Section. The decision of this Committee shall be final and binding, and not subject to further appeal.

G. The City will retain all duties and responsibilities it has had for the administration of the City's Health Insurance Plans. UFLAC hereby agrees to defend, indemnify and hold harmless the City and its departments, officers, employees and agents from and against all suits and causes of action, claims, losses, demands, and expenses, including attorney's fees and costs of litigation, damage or liability of any nature that may arise out of or result from the payment made by the City pursuant to this MOU or for any action or failure to act by the Los Angeles Firemen's Relief Association or any other carrier regarding or related to the coverage or services provided by such carrier described by the agreement between the carrier and its members.

H. Health Plan Subsidy - Retirees

1. For those employees who retire after July 1, 1988, such employee shall receive the following benefit based upon years of service, age, and pension:

a. **Basic Benefit:** The following benefit and eligibility requirements pertain to all employees who retired after July 1, 1988, on a service pension unless applicable eligibility requirements have been changed or the benefit improved in Paragraphs b. or c. below:

<u>Years of Service</u>	<u>Benefit</u>
20 – 24	\$75 per month
25 – 29	\$150 per month
30 & over	\$225 per month

<u>Pension Plan</u>	<u>Age for Subsidy Eligibility</u>
Articles 17 & 18	58
Article 35	55

b. **Eligibility Expansion:** Employees who retire after July 1, 1994, with either a service or a service-connected disability pension shall be eligible for the retiree health plan subsidy at age 55, upon the effective date of the enabling ordinance.

c. **Benefit Improvement:** Employees who retire after July 1, 1996, with either a service or a service-connected disability pension shall receive the following benefit at age 55:

<u>Years of Service</u>	<u>Benefit</u>
20 – 24	\$150 per month
25 – 29	\$225 per month
30 & over	\$300 per month

2. This benefit subsidy amount shall not in any case exceed the cost of the health plan option selected by the retiree.
 3. To receive this subsidy, the retiree must be in a City-approved health plan and cannot receive this subsidy if such retiree, after retirement from the Fire Department, has accepted a City job and is receiving a City health insurance subsidy through that job.
 4. The subsidy for retirees shall be administered through the Pension Department and will be governed by the rules and regulations of the City health insurance plan subsidy for active employees. The benefits provided herein do not affect or repeal any other benefit provided for retirees. See, e.g., Los Angeles Administrative Code Section 4.1150, et seq.
 5. The benefit will begin in the first month after adoption of the enabling Ordinance and the dollar subsidy will not be retroactive.
 6. The parties agree that any change in this benefit must first be negotiated by the City Administrative Officer and UFLAC as part of the meet and confer process and any change made through any other process shall not be recognized by the City.
 7. The parties agree to implement a cash in lieu of health insurance subsidy on a reimbursement basis for retired sworn employees who reside in an area where they cannot access a City sponsored or approved Managed Care Health Plan (HMO). Details for plan administration need to be worked out prior to implementation. The effective date of this program will be when the parties have completed all necessary procedures to affect this benefit. This benefit is not retroactive.
- I. Should either State or Federal statute(s) mandate that the parties to this agreement participate in a national or state health care plan or system, the parties agree that the level of health care benefits currently provided to the employees covered by this agreement will not be diminished nor will the employee's cost for the maintenance of those benefits be increased beyond that provided in this agreement.
 - J. For an employee on Family or Medical Leave under the provisions of Appendix F, Management shall continue the City's medical plan subsidy for employees who are enrolled in an authorized health plan prior to the beginning of such leave. However,

for any unpaid portion of Family or Medical Leave, the health plan subsidy shall be continued for a maximum of nine (9) pay periods except while an employee is on a Pregnancy Disability Leave (PDL) absence [nine pay periods (720 hours)], Management shall continue the City's subsidy for her pregnancy health coverage (medical plan subsidy) in compliance with the provisions of Government Code Section 12945.

ARTICLE 4.2 DENTAL INSURANCE

Employees shall receive dental coverage exclusively through the dental plans provided by the UFLAC Dental Trust ("the UFLAC Dental Plan") or the City sponsored dental plan ("the City Dental Plan").

A. The UFLAC Dental Plan

1. Effective July 1, 2018, the City expended up to \$82.00 per month or the full cost of employee only coverage, whichever is less, for employees enrolled in the UFLAC Dental Plan. The monthly amounts in subsequent years shall be in accordance with the table, below:

Effective Date	Monthly Amount
July 1, 2019	\$84
July 1, 2020	\$86
July 1, 2021	\$88

2. The amount expended by the City will first be applied to the employee's coverage. Any remaining balance will be applied toward the coverage of the employee's dependents, if any. The definition of a dependent shall include the domestic partner of an employee and the dependents of such domestic partner. Any employee claiming a domestic partner and/or dependents of such domestic partner shall complete a confidential affidavit to be filed with the Employee Benefits Office, Personnel Department, which shall be signed by the employee and the domestic partner, declaring the existence of that domestic partnership.
3. If the employee is receiving a subsidy on the operative date of this MOU, the employee will continue to receive the subsidy, unless the employee submits a new payroll deduction card.
4. The City subsidy for employees who enroll for the first time in the UFLAC Dental Plan will be applied in the first payroll period following the employee's enrollment.
5. The City will remit to the Union, at an address to be specified by the Union, an aggregate amount equal to the sum of the subsidy paid for those employees enrolled in the UFLAC Dental Plan who are on the payroll during

each payroll period for which the subsidy is paid, together with a list of those employees for whom the subsidy is paid during said payroll period. Remittance of this aggregate amount will be made within thirty (30) calendar days after the conclusion of the payroll period in which the subsidy was paid.

6. For those employees enrolled in the UFLAC Dental Plan, who authorize the City Controller to make a payroll deduction to cover any additional costs of the UFLAC Dental Plan, the City will remit to the Union a separate amount and an appropriate deduction list at an address to be specified by the Union, in accordance with the provisions of Article 1.9, Payroll Deductions and Dues.
7. The City shall provide funds to subsidize the cost of dental premiums for the spouse, minor dependents and dependent children of any employee who dies while on active duty from injuries incurred while performing his/her job duties or who dies as a direct cause of such injuries. The maximum amount of the subsidy shall not exceed the amount provided to active employees. These provisions are not applicable to employees who are not on duty or who have not completed Drill Tower training at the time of the injury which results in their death. For minor dependents the subsidy shall cease upon their attaining the age of 26 years; or dependent children who are disabled when they cease to be dependent as defined in Charter Section 1406. Only a spouse and/or dependents covered under the UFLAC Dental Plan at the time of death shall be eligible for the subsidy. Upon application by a spouse or dependent for this benefit, a Committee comprised of representatives of the Personnel Department, UFLAC, and the Department shall jointly determine whether the circumstances of the employee's death qualify the employee's spouse and/or dependents for the benefit provided under this Section. The decision of this Committee shall be final and binding, and not subject to further appeal.
8. The City shall not be responsible for, nor expected to provide any additional accounting, administrative, bookkeeping, clerical, or other services except as provided for in this Article, and that the Union assumes all responsibility for any services which may arise out of the administration of the UFLAC Dental Plan.
9. The Union shall indemnify, defend and hold the City harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or result from any action taken by the City for purposes of complying with this Article, or failure of the Union or its dental carriers to provide the coverage and services agreed to between the Union and the carriers.

- B. The City Dental Plan
 - 1. The City shall provide dental coverage under the City Dental Plan to those employees who file the appropriate documentation with the City. The full cost of employee only coverage shall be paid by the City.
 - 2. The City will retain all duties and responsibilities it has had for the administration of the City Dental Plan.
- C. For an employee on Family or Medical Leave under the provisions of Article 3.10, the City shall continue the City's dental subsidy for employees who are enrolled in the UFLAC Dental Plan or the City Dental Plan prior to the beginning of such leave. However, for any unpaid portion of Family or Medical Leave, the dental subsidy shall be continued for a maximum of nine (9) pay periods.

ARTICLE 4.3 LIFE INSURANCE

- A. The City will expend up to \$25.00 per month for employees toward the cost of the UFLAC Life Insurance plan. This subsidy shall be available to all employees, regardless of UFLAC membership or affiliation.
- B. Management will provide continuation of the Life Insurance policy issued on the life of the spouse or domestic partner of any employee killed in the line of duty, provided such policy is issued through UFLAC. This subsidy shall be provided only if said employee had a Life Insurance policy in effect, through UFLAC, at the time of the employee's death.

Any employee claiming a domestic partner for purposes of this Article shall complete a confidential affidavit to be filed in the Employee Benefits Office, Personnel Department, which shall be signed by the City employee and the domestic partner, declaring the existence of that domestic partnership.

- C. The City will provide the subsidy for the UFLAC Life Insurance plan in twenty-four (24) biweekly increments annually. The City will remit to the Union an aggregate amount equal to the sum of the subsidy paid for those employees enrolled in said plan who are on active payroll status, together with a list of those employees who qualify for the subsidy during each payroll period. Remittance of this aggregate amount will be made within thirty (30) business days after the conclusion of the payroll period in which the subsidy was paid.
- D. The City subsidy for employees who enroll for the first time in the UFLAC Life Insurance plan will be applied toward premiums scheduled for payroll deduction in the first payroll period following the employee's enrollment.
- E. For those employees enrolled in the UFLAC Life Insurance plan who authorize the City Controller to make a payroll deduction to cover any additional costs of UFLAC

Life Insurance plan, the City will remit to the Union a separate amount and appropriate deduction list in accordance with established policy and procedures.

- F. The City is not responsible for nor expected to provide any additional accounting, administrative bookkeeping, clerical or other services except for employer required taxation calculation and reporting and as provided for in this Article. The Union shall assume all other responsibility for any services which may arise out of the administration of the UFLAC Life Insurance plan.
- G. The Union shall indemnify, defend and hold the City harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or result from any action taken by the City for purposes of complying with this Article, or by failure of the Union or its Life Insurance carriers to provide the coverage and services agreed to between the Union and the carriers.

ARTICLE 4.4 EMPLOYEE ASSISTANCE PROGRAM

- A. The City and the Union recognize that an employee or members of an employee's family can develop personal problems, not directly associated with the employee's job functions, that may adversely affect the employee's job performance and efficiency. These problems may be successfully resolved provided they are identified early and referral is made to the appropriate care and treatment facility. Such problems may involve substance dependency, including alcohol, tobacco, drugs or chemicals; mental or emotional distress; marital or familial problems; or financial or legal problems.
- B. The City and the Union support an Employee Assistance Program (EAP) to aid in identifying such problems and to provide the appropriate referral to a resource able to successfully treat the identified problem. The Union is responsible for providing an EAP for its members and their families. Upon request, the Union is also responsible for providing the City with information on the number of persons the program has assisted and the types of problems for which referrals were made.
- C. The City shall pay the Union \$138,970.00 in July, October, January and April of fiscal years 2019/20, 2020/21, and 2021/22. The above payments to be made by the City shall constitute the City's total commitment to the EAP for the Unit.
- D. The Union agrees to indemnify, defend and hold harmless the City against all claims, demands, suits, including costs of suits and reasonable attorney fees, and/or other forms of liability arising from the implementation of these provisions and the operation of the EAP.

ARTICLE 4.5 FUNERAL EXPENSES

The City shall expend a sum not to exceed \$30,000 for funeral expenses to the heirs of any employee who dies while on active duty from injuries incurred while performing his or

her job or who dies as a direct cause of such injuries. This amount includes the amount already available for this purpose in accordance with California State Labor Code Section 4701.

ARTICLE 4.6 TAX SAVINGS ACCOUNTS (HEALTH CARE, DEPENDENT CARE, TRANSPORTATION, PARKING, AND OTHER FLEXIBLE SPENDING ACCOUNTS)

The City agrees to maintain a Tax Savings Account(s), qualified under the Internal Revenue Code, for active employees who are members of the Fire and Police Pension system, provided that sufficient enrollment of City employees is maintained to continue to make the Tax Savings Account(s) available. Enrollment in the Tax Savings Accounts is at the discretion of each employee. All contributions into the Tax Savings Account(s) and related administrative fees shall be paid by employees who are enrolled in the plan. The Tax Savings Account plan(s) shall be administered according to the rules and regulations specified for such plans by the Internal Revenue Service. Since these Tax Savings Accounts are subject to the Civilian Flex Benefits Committee, the Union and Tax Savings Account Participants must abide by any policies established by the Committee for management of the Tax Savings Accounts.

ARTICLE 4.7 INJURED ON DUTY PAY

- A. Disability claims shall be paid as provided for in LAAC Section 4.177. Employees may elect to use their accrued sick leave, accrued vacation time, or banked overtime to supplement the Workers' Compensation State Rate benefit in order to receive up to the equivalent of their regular salary. In accordance with Workers' Compensation law, employees who are temporarily disabled and eligible for the State Rate benefit cannot use accrued leave or banked overtime before, or instead of, receiving the State Rate benefit.
- B. An employee who is absent from work as a result of an illness or injury arising out of the course and scope of employment, and who qualifies for the benefits available under Labor Code Section 4850, shall be entitled to the salary he or she would have received but for the absence, including, but not limited to, all bonuses, incentives, hazard pay, special pay, and premium pay.

5.0 UNIFORM ALLOWANCE

ARTICLE 5.1 UNIFORM ALLOWANCE

During the term of this MOU, the City shall continue to provide a uniform allowance in the sum of \$51.00 biweekly to be used by employees for the acquisition and maintenance of uniform items.

6.0 HOURS OF WORK AND OVERTIME

ARTICLE 6.1 HOURS OF WORK

- A. An employee assigned to Platoon Duty shall work nine (9) twenty-four (24) hour periods on duty in each twenty-seven (27) day period, account being taken, however, of duly authorized leaves of absence with pay.
- B. An employee regularly assigned to a 4/10 work schedule shall work forty (40) hours in each seven (7) day period, account being taken, however, of duly authorized leaves of absence with pay. The work day shall consist of a ten (10) hour shift including lunch.

The hours of work under this Article do not include overtime hours worked under Article 6.2.

- C. The City agrees that there will be no mandatory furloughs of Unit employees during the term of this MOU.

ARTICLE 6.2 OVERTIME

The following overtime provisions shall be operative during the term of this MOU: Employees shall be treated as if covered by the Fair Labor Standards Act (FLSA), except as noted in Article 3.7 herein, without prejudice to the parties' position regarding exemptions which may be legally available.

I. Platoon Duty Overtime Compensation

The City declares a 7(k) exemption under the FLSA for all eligible employees who are assigned to Platoon Duty. The City shall pay employees assigned to Platoon Duty who are not eligible for a 7(k) exemption under 7(a) of the FLSA.

A. 7(k) Exempt Employees

1. Work Period

The work period for employees covered by the 7(k) exemption shall be nine (9) twenty-four (24) hour shifts in each twenty-seven (27) day work period.

2. Hours Worked - Defined

Only hours worked shall be credited toward computation of overtime. Hours paid but not worked (e.g. holiday, sick, jury duty, IOD) shall not be considered hours worked. Vacation leave time shall be credited toward hours worked.

3. Hours Worked In Excess of Regular Schedule Under Two Hundred Four (204) Hours

When total hours worked in the work period are two hundred four (204) or less, the hours worked in excess of the regular schedule shall be compensated at the rate of one hour for each hour worked. Such hours shall be compensated by cash, or banked overtime at the employee's option.

4. Hours Worked Over Two Hundred Four (204) Hours

Hours worked in excess of two hundred four (204) hours, whether or not included in the regular schedule, shall be compensated at one and one half (1½) times the regular rate, as defined by the FLSA.

The method of compensation shall be as follows:

- a. Cash or banked overtime at the employee's option for all hours worked in excess of the regular schedule during the work period shall be compensated at the rate of one hour for each hour worked *plus*
- b. At the conclusion of the work period, cash for the hours over two hundred four (204) shall be paid at half (½) times the regular rate, except hours which have already been compensated at one and one half (1½) time (i.e., emergency recalls and court time).

5. Overtime Authorization

No employee shall work unauthorized overtime. Under no circumstances may the employee record or maintain hours worked in an informal manner commonly referred to as "TP Time" (informal timekeeping method) or any method inconsistent with established Department policies and procedures. Employees may not work outside of scheduled work hours without prior approval of a supervisor consistent with Department policy. Failure to secure prior approval may result in discipline.

6. Banked Overtime

Employees shall be allowed to accrue banked overtime up to a maximum of four hundred thirty-two (432) hours at the end of any pay period. At the end of the fiscal year, the Department may cash out banked overtime in excess of two hundred sixteen (216) hours.

In accordance with the FLSA, no employee shall lose banked overtime. Employees shall be permitted to take banked overtime upon request unless granting such time would “unduly disrupt” the operations of the Department.

7. Notwithstanding the above, compensation for off-duty court appearances and emergency recalls shall be paid by cash payment at one and one half (1½) times the regular rate of compensation for each hour worked regardless of the number of hours worked in the work period.

B. 7(a) Employees

Employees assigned to Platoon Duty who do not qualify for a FLSA exemption under 7(k) shall be paid under 7(a) of the FLSA.

1. Work Period

The work period for those employees paid under 7(a) shall be forty (40) hours in a seven (7) day work week.

2. Hours Worked – Defined

Only hours worked shall be credited toward computation of overtime. Hours paid but not worked (e.g. holidays, vacation, sick, jury duty, IOD, etc.) shall not be considered hours worked.

3. Hours Worked in Excess of Regular Schedule Under Forty (40) Hours

When total hours worked in the seven (7) day work period are forty (40) or less, the hours worked in excess of the regular work schedule shall be compensated at the rate of one hour for each hour worked, in cash or banked overtime, at the employee’s option.

4. Hours Worked Over Forty (40) Hours

Hours worked in excess of forty (40) shall be compensated at one and one half (1½) times the regular rate as defined by the FLSA.

The method of compensation shall be as follows:

- a. Cash or banked overtime at the employee’s option for all hours worked in excess of the regular schedule during the work period shall be compensated at the rate of one (1) hour for each hour worked *plus*;

- b. At the conclusion of the work period, cash for the hours over forty (40) shall be paid at half ($\frac{1}{2}$) times the regular rate, except hours which have already been compensated at one and one half ($1\frac{1}{2}$) time (i.e. emergency recalls and court time).

5. Overtime Authorization

No employee shall work unauthorized overtime. Under no circumstances may the employee record or maintain hours worked in an informal manner commonly referred to as "TP Time" (informal timekeeping method) or any method inconsistent with established Department policies and procedures. Employees may not work outside of scheduled work hours without prior approval of a supervisor consistent with Department policy. Failure to secure prior approval may result in discipline.

6. Banked Overtime

Employees shall be allowed to accrue banked overtime up to a maximum of four hundred thirty-two (432) hours at the end of any pay period. At the end of the fiscal year, the Department may cash out banked overtime in excess of two hundred sixteen (216) hours.

In accordance with the FLSA, no employee shall lose banked overtime. Employees shall be permitted to take banked overtime upon request unless granting such time would "unduly disrupt" the operations of the Department.

- 7. Notwithstanding the above, compensation for off-duty court appearances and emergency recalls shall be paid by cash payment at one and one half ($1\frac{1}{2}$) times the regular rate of compensation for each hour worked regardless of the number of hours worked in the work period.

II. Overtime Compensation for Employees Regularly Assigned to a 4/10 Work Schedule

Employees who are regularly assigned to a 4/10 work schedule will be compensated under the provisions of 7(a) of the FLSA.

A. Work Period

- 1. The work period for employees shall be forty (40) hours in a seven (7) day period.

2. The Department may require employees to change their work schedules [work hours, regular day off (RDO)] within the same seven (7) day period during emergencies (e.g. EOC activation) or unforeseen circumstances. The intent of the process described above is to provide operational effectiveness for emergencies or unforeseen circumstances.

B. Compensation

1. Hours Worked - Defined

Only hours worked shall be credited toward computation of overtime. Hours paid but not worked (e.g. holiday, sick, jury duty, IOD) shall not be considered hours worked. Vacation leave time shall be credited toward hours worked.

2. Hours Worked in Excess of Regular Schedule Under Forty (40) Hours

When total hours worked in the work period are forty (40) or less, the hours worked in excess of the regular schedule shall be compensated at the rate of one (1) hour for each hour worked. Such hours shall be compensated by cash or banked overtime at the employee's option.

3. Hours Worked Over Forty (40) Hours

Hours worked in excess of forty (40) shall be compensated at one and one-half (1½) times the regular rate, as defined by the FLSA.

The method of compensation shall be as follows:

- a. Cash or banked overtime at the employee's option for all hours worked in excess of the regular schedule during the work period shall be compensated at the rate of one (1) hour for each hour worked *plus*;
- b. At the conclusion of the work period, cash for the hours over forty (40) shall be paid at half (½) times the regular rate, except hours which have already been compensated at one and one-half (1½) time (e.g., emergency recalls and court time).

4. Authorized Overtime

No employee shall work unauthorized overtime. Under no circumstances may the employee record or maintain hours worked in an informal manner commonly referred to as "TP Time" (informal timekeeping method) or any method inconsistent with established Department policies and procedures. Failure to secure prior approval may result in discipline.

5. Emergency Inspections

Whenever an Inspector, at the request of the public, is required to perform an emergency inspection outside of the Inspector's regular work hours, such Inspector shall receive a minimum payment of four (4) hours at the overtime rate. No employee's work hours shall be reduced if the employee performs an emergency inspection on a day that he/she is scheduled to work unless the employee arrives late to or leaves early from work because of the emergency inspection, and then the employee's work hours shall only be reduced by the time that the employee arrives late or leaves early.

6. Employees Working SOD Days

Employees who work a SOD day on Platoon Duty shall be paid at the Platoon Duty rate for all such hours worked, including FLSA overtime hours, except hours which have already been compensated at one and one-half (1½) time (e.g. emergency recalls and court time). This overtime amount shall be paid by cash payment only.

7. Notwithstanding the above, compensation for off-duty court appearances, emergency recalls and emergency overtime for purposes which could not be anticipated or scheduled in advance, shall be paid by cash payment at one and one-half (1½) times the regular rate of compensation for each hour worked, regardless of number of hours worked in the work period.

C. Banked Overtime

1. Employees shall be allowed to accrue banked overtime up to a maximum of two hundred forty (240) hours at the end of any pay period. At the end of the fiscal year, the Department may cash out banked overtime in excess of one hundred twenty (120) hours. Banked overtime includes, without limitation, V hours and RDO hours that an employee chooses to bank.

2. In accordance with the FLSA, no employee shall lose banked overtime. Employees shall be permitted to take banked overtime upon request unless granting such time would “unduly disrupt” the operations of the Department.

D. Regular Days Off

Employees shall have a designated RDO. Temporary changes to RDOs may be permitted subject to the staffing needs of the Department. It is intended that the RDO process provide flexibility to allow the Department and employees the ability to administer and participate in Safety Watches and the SOD system. Employees must obtain prior approval of a supervisor to change or work their RDO consistent with F-351 instructions in the Manual of Operation. Failure to secure prior approval may result in discipline.

- E. Supervisors shall ensure that not later than sixty (60) days prior to an employee’s anticipated return to Platoon Duty all banked overtime accrued while on a non-Platoon Duty schedule are taken off, consistent with the F-351 instructions of the Manual of Operation. However, based on the needs of the Department and with Bureau Commander approval, employees may receive either cash compensation for banked overtime, or carry their balance of hours to a Platoon Duty assignment. Employees transferring to Platoon Duty may not be extended or detailed back to non-Platoon Duty for the purpose of having the employee exhaust his/her banked overtime.

- III. Effective January 1, 2020, a member who exchanges time with another member (trades time) shall be credited with hours worked for the purpose of computing MOU overtime when the member works on the working half of the trade. Only traded time that is actually worked will be counted as work time for the purpose of calculating MOU-related overtime. Traded time taken off will no longer be counted as hours worked.

IIV. Employee Request for Conversion of Banked Overtime

Employees may request conversion of banked overtime to cash at any time during the year. Such conversion shall be granted subject to the availability of budgeted funds.

Such compensation shall be paid at the regular rate at the time such payment is made. It will not be made during any period in which the regular rate is increased due to special compensation (e.g., court standby or non-regularly assigned bonuses).

V. Minimum Overtime Payment

Cash payment for overtime, when authorized, will be allowed for an initial period of six (6) minutes or more.

ARTICLE 6.3 COURT TIME

The following provisions will apply for compensation for court appearances outside of the regular work hours of employees:

A. Basic Compensation

An employee may, at the employee's option, report to court when subpoenaed or remain on call. If the employee chooses to remain on call, it is the employee's responsibility to notify the person designated by the employee's supervisor of where he/she can be reached. The employee does not need to remain at home, but must be reachable by telephone.

1. If the employee reports to court or is called into court while on call, the employee shall receive a minimum of two (2) hours compensation at 1½ times the regular rate of pay and time and one-half pay thereafter for each additional hour of actual attendance at court.

Note: An employee shall not receive court on-call compensation and court appearance compensation for the same time period.

2. If an employee remains on call and is not required to report to court, the employee shall receive three (3) hours of compensation at 1½ times the regular rate of compensation. Unless notified that their designated on call is terminated, on call hours shall be from 0800 hours to 1600 hours. Such time shall be considered uncontrolled standby time and therefore not hours worked. Payment for such time shall be included when calculating the regular rate of pay for overtime purposes.

B. Exception to the Two (2) Hour Minimum for Court Appearances

Notwithstanding the above provisions, the two (2) hour minimum will not apply in the following situations:

1. Court appearances or on-call status commencing two (2) hours or less before the employee's assigned shift.
2. Court appearances commencing two (2) hours or less after the employee's assigned shift.

3. Court appearances or on-call status that begins during an employee's assigned shift and terminate after the assigned shift.

Compensation for the three (3) conditions listed above will be as follows:

Condition - Amount of Compensation

- B.1. Compensation for the actual time between the commencement of the court appearance or on-call status and the beginning of the employee's assigned shift.
- B.2. Compensation for the actual time between the end of the employee's assigned shift and the termination of the court appearance.
- B.3. Compensation for the actual time between the end of the employee's assigned shift and the termination of the court appearance or on-call status.

C. Compensation for Appearances

Whenever an employee is required to appear before a Board of Rights or State or local Administrative Board, or arbitration outside of his/her regular work hours, such employee shall receive compensation at 1½ times the regular rate of pay for a minimum of three (3) hours and for each additional hour of actual attendance before the Board.

ARTICLE 6.4 OFF-DUTY SAFETY WATCHES

In accordance with Section 7(p)(l) of the FLSA, off-duty safety watches are not hours worked for the City. Payments made by the City to its employees for the convenience of independent employers do not affect the rate of pay for purposes of computing overtime worked for the City.

Safety watches shall be paid at 1½ times the rates of compensation in the appropriate Appendix for each hour worked except, however, an employee who reports for a scheduled safety watch shall receive a minimum payment of four (4) hours at such rate. No employee's work hours shall be reduced if the employee performs an off-duty safety watch on a day that he/she is scheduled to work unless the employee arrives late to or leaves early from work because of the safety watch, and then the employee's work hours shall only be reduced by the time that the employee arrives late or leaves early.

An employee who is scheduled for an off-duty safety watch and is notified of the cancellation of the safety watch prior to reporting for duty but less than four (4) hours prior to the commencement of the safety watch shall receive two (2) hours of pay at 1½ times the rates of compensation in the appropriate Appendix.

ARTICLE 6.5 SHOW-UP PAY

Whenever an employee reports to duty either from home or another work location for overtime duty that has been canceled, he/she shall receive a minimum payment of four (4) hours of straight time compensation, unless previously notified of the cancellation. (Cancellation phone calls should normally be at least four (4) hours in advance and not normally be made between 2230 and 0630 hours).

Payment under this Article shall not be counted as hours worked nor affect the regular rate of pay.

7.0 ARSON SECTION

ARTICLE 7.1 ARSON SECTION

- A. The Fire Chief, at his sole discretion, may decide which Investigators assigned to the Arson Section will be assigned to Special Duty and which Investigators will be assigned to Platoon Duty work schedules. Investigators assigned to Special Duty will normally be assigned to a 4/10 work schedule, subject to the staffing needs of the Section. The Fire Chief may not completely eliminate either Special or Platoon Duty work schedules.

- B. Employees in the classes of Firefighter or Fire Captain who are assigned to the Arson Section, in addition to any other compensation authorized herein, shall receive additional compensation each month conditional upon qualifying in pistol or revolver shooting in accordance with the rules adopted by the Department. Upon certification, any such employee shall be entitled to receive additional compensation as set forth below:

<u>GRADE</u>	<u>RANGE</u>	<u>SCORE</u>	<u>BONUS</u>
MARKSMAN	SHERIFF'S	240 - 259	\$ 4.00 biweekly
	LAPD	300 - 339	\$ 4.00 biweekly
SHARPSHOOTER	SHERIFF'S	260 - 274	\$ 8.00 biweekly
	LAPD	340 - 379	\$ 8.00 biweekly
<u>GRADE</u>	<u>RANGE</u>	<u>SCORE</u>	<u>BONUS</u>
EXPERT	SHERIFF'S	275 - 287	\$16.00 biweekly
	LAPD	380 - 400	\$16.00 biweekly
DISTINGUISHED EXPERT	SHERIFF'S	290 - 300	\$32.00 biweekly
	LAPD	385 avg. for 6 mos.	\$32.00 biweekly

Such additional compensation shall be continued only while such employee is assigned to the Arson Section, but shall not extend beyond a period of one year following the date of qualification and shall then cease, provided that after a lapse of one year from the date of qualification, an employee shall be allowed to re-qualify and receive additional compensation accordingly. An employee who qualifies in a lower grade may re-qualify at any time in a higher grade and be paid accordingly. No employee shall at any time receive additional compensation for more than one grade.

C. Notwithstanding Article 6.2, Overtime, members of the Arson Section who have been determined by the Department of Labor to be law enforcement personnel in accordance with 29 C.F.R. Sec. 553.211(a) shall be subject to the following overtime practices.

1. Platoon Duty Overtime Compensation

Work Period - The work period for employees assigned to Platoon Duty shall be nine (9) shifts in twenty-seven (27) days.

Overtime Defined - When total hours worked in this period are 165 or less, the hours in excess of the regular work schedule shall be compensated at the rate of one hour for each hour worked, in cash or banked overtime, at the employee's option.

Only hours worked shall be credited toward computation of overtime, Hours paid but not worked (e.g. holiday, vacation, sick, jury duty, IOD etc.) shall not be considered hours worked.

Hours worked in excess of 165 hours shall be compensated at 1½ times the regular rate as defined by the FLSA.

2. Special Duty Overtime Compensation

The provisions of Article 6.2 pertaining to Special Duty employees shall be applicable to employees assigned to the Arson Section, with the following exceptions: (1) employees who work a SOD day on Platoon Duty shall receive, in addition to the applicable straight time rate, one-half of the Platoon Duty hourly rate of pay for all such SOD hours worked during the work period in excess of an aggregate total of 171 hours of work; and (2) hours paid but not worked, (e.g. holiday, vacation, sick, jury duty, IOD etc.) shall not be considered hours worked.

All employees of the Arson Section shall continue to be governed by the provisions of Article 6.2 concerning methods of compensation, compensation for off-duty court appearances, emergency recalls and emergency overtime, accrual limitations, and conversion of banked overtime.

- D. In addition to any other compensation to which they are entitled, employees assigned as dog handlers in the Arson Section shall be entitled to an additional ten (10) hours of compensation per pay period for the purposes of feeding and care of the city-owned dog(s). Payment under this provision shall not be considered hours worked.

8.0 SALARIES

ARTICLE 8.1 SALARY STEP PLACEMENT UPON REVERSION

Whenever an employee reverts to one of the Civil Service classes in the Fire series, if at the time the employee last occupied that class the employee was receiving compensation at the highest salary step, that employee shall again be assigned to the highest salary step upon reversion. Nothing herein shall preclude the Department from removing that employee from the highest salary step through the normal procedures if that employee's service subsequent to the reversion is unsatisfactory.

ARTICLE 8.2 SALARY ADVANCEMENT UPON PROMOTION OR ASSIGNMENT TO HIGHER PAY GRADE

Any employee promoted to a higher class or assigned to a higher pay grade shall be advanced to the lowest rate of the salary schedule for the higher class or pay grade, or the rate of compensation next higher to that received by him/her prior to such promotion, whichever is the greater. If the employee is entitled to a step advancement on the same day as such promotion or assignment, the step advancement shall be considered to have occurred prior to such promotion or assignment. If such employee prior to promotion or assignment is regularly assigned to receive Special or Hazard Pay as provided in Article 8.3 of this MOU, or any other regularly assigned bonus or premium amount, his/her salary rate prior to promotion or assignment shall be deemed to be the rate which he/she is receiving including such salary premium.

ARTICLE 8.3 SPECIALIST PAY

Whenever the Fire Chief assigns employees in the following described classes and pay grades to those duties set forth below, the employees shall receive an additional increment of salary while so assigned. Such additional increment of salary, over and above the compensation attached to the class and pay grade, shall be paid only while an employee is regularly assigned, unless otherwise indicated. All rates are effective July 7, 2019 unless otherwise specifically noted.

I. SPECIAL PAY (Pension Based)

A. Emergency Medical Technician

Employees shall be assigned the responsibility of acting as primary responders to emergency medical incidents on either an ambulance or fire

apparatus. An employee shall be expected to be trained and certified, and to maintain at minimum a local accreditation and State certification as an EMT-1. Employees who satisfactorily maintain a local accreditation and State license as EMT/Paramedics shall be exempt from this requirement.

Each eligible Firefighter III shall receive premium pay in the amount of \$140.00 biweekly, and every other eligible employee shall receive \$130.00 biweekly for maintenance of the EMT-1 or EMT-P certification. Effective the first full pay period after Council Adoption, each eligible Firefighter III shall receive premium pay of 5.75% of Step 6 of Schedule 2 and every other eligible employee shall receive premium pay in the amount of 4.25% of Step 6 of Schedule 2 for maintenance of the EMT-1 or EMT-P certification.

Effective January 12, 2020, each eligible Firefighter III shall receive premium pay of 0.5% of Step 6 of Schedule 2 and every other eligible employee shall receive premium pay in the amount of 0.05% of Step 6 of Schedule 2 for maintenance of the EMT-1 or EMT-P certification.

The Department will provide primary certification and re-certification training to all employees. Should any employee fail the primary EMT certification or EMT re-certification test, the EMT premium shall be withheld or discontinued immediately until such time as he/she obtains certification. Additionally, any employee who allows his/her EMT certification to expire (excluding employees off long-term due to illness/injury or as a result of class cancellation by the Department) shall have the EMT premium terminated at the beginning of the pay period following the certificate's expiration date. The premium will be reinstated at the beginning of the pay period following the date of re-certification.

Employees off long-term shall obtain EMT certification or re-certification within two months of the return to duty date. Failure to obtain EMT certification or re-certification within two months will result in the loss of the EMT premium. Note: Extensions to the two-month period shall be granted by the Employee Relations Officer as required in the event that training classes are cancelled or are not available.

B. Language

In accordance with LAAC Section 4.170, whenever the Fire Chief assigns an employee to duties requiring that they converse fluently in a language other than English, the employee shall receive bilingual premium pay at the rate of 2.75% of salary.

In accordance with LAAC Section 4.170, whenever the Fire Chief assigns an employee to duties requiring that they converse, interpret and write a

language other than English, the employee shall receive bilingual premium pay at the rate of 5.5% of salary.

In lieu of the above, employees assigned to Metro Fire Communications who communicate with the public in a language other than English shall receive premium pay of 7.4% of salary.

C. Paramedic

1. Employees in the following classes and pay grades who are required to maintain a Paramedic license and are regularly assigned to an authorized paramedic position shall receive additional compensation as follows:

2112-2	Firefighter II	Schedule 4
2112-3	Firefighter III	Schedule 5

Should any employee who is receiving the paramedic premium under this section fail to maintain his/her paramedic certification and local accreditation, the above compensation shall be withheld until such time as he/she obtains certification and local accreditation and is reassigned to an authorized paramedic position.

2. Firefighters who are not regularly assigned to an authorized paramedic position shall receive premium pay of \$5.00 per hour for actual hours worked in a paramedic position.
3. Each June 30 during the term of this MOU, licensed Paramedics in ranks other than Firefighter who have maintained a Paramedic license and local accreditation during the preceding year shall receive a \$600 bonus as long as they have been compensated for no more than 288 hours under paragraph 2 above.
4. Fire Captains (2142), when regularly assigned to a position requiring a Paramedic license, shall receive premium pay of 4.25% of Step 6 of Schedule 8. These employees shall not be eligible for the \$600 bonus specified in paragraph 3 above.
5. Fire Captains who are regularly assigned as EMS Battalion Captains or EMS Geographic Bureau Captains, regardless of whether they are dual function or single function paramedics, shall be compensated under Schedule 9.

D. Additional regularly assigned premiums

1. Firefighter III (2112-3)

a.	Disaster Response	4.3% of Step 6 of Schedule 2
b.	EMT Instructor (licensed paramedic only)	14.2% of Step 6 of Schedule 2
c.	EMT Instructor with 2 or more years continuous service	16.6% of Step 6 of Schedule 2
d.	Hydrant Planning	4.3% of Step 6 of Schedule 2
e.	Metro Fire Communications Dispatcher (less than 2 years continuous service)*	2.2% of Step 6 of Schedule 2
f.	Metro Fire Communications Dispatcher (2 or more years continuous service)*	4.3% of Step 6 of Schedule 2
g.	Metro Fire Communications Dispatcher (4 or more years continuous service)*	6.7% of Step 6 of Schedule 2
h.	Public Service Officer	8% of Step 6 of Schedule 2
i.	Recruitment Unit	4.3% of Step 6 of Schedule 2
j.	Safety Education	4.3% of Step 6 of Schedule 2
k.	SCUBA (regularly assigned or detailed)	4.3% of Step 6 of Schedule 2
l.	SCUBA back-up (assigned to FS 49 or 112 only)	2.2% of Step 6 of Schedule 2
m.	Emergency Incident Technician	5.4% of Step 6 of Schedule 2

*An employee who leaves an assignment as a Metro Fire Communications Dispatcher and returns to such assignment within five years shall be restored to the salary premium level occupied when previously assigned. Employees placed in accordance with this provision must complete a continuous two-year period to qualify for the next applicable premium level.

2. **Apparatus Operators, Engineers, and Fireboat Mates** 5.5% of Step 6 of Schedule 5
 - a. Any Apparatus Operator, Engineer, or Fireboat Mate (excluding Fireboat Mate Supervising Officers) who has 10 years or more of service in rank on July 5, 2020 shall receive premium pay as long as he/she holds said rank. Upon promotion, demotion, or reassignment to another rank, the employee shall no longer receive the premium pay.
 - b. Any other Apparatus Operator, Engineer, or Fireboat Mate (excluding Fireboat Mate Supervising Officers) who completes the Department training course on or after July 1, 2019, shall receive the premium pay effective the first day of the pay period after course completion or July 5, 2020, whichever is later. The training courses shall be agreed upon by the Department and the Union. The Department shall encourage employees to sign up in July 2019 for the training courses and shall schedule employees for the training courses in order of seniority beginning with the employees who sign up in July 2019. Employees who are scheduled for the training courses may trade their time with other employees with the approval of their Captains.
 - c. If the Department is unable to schedule an employee for training, the employee may take the same training courses offered by the Department through another agency, in which case the Department shall reimburse the employee for tuition expenses once the employee submits receipts for such tuition. The Department shall provide the training based on need.
3. **Engineer (2131)**
Test Pit 4.6% of Step 6 of Schedule 5

4. **Fireboat Mate (5125)**

Supervising Officer 9.1% of Step 6 of Schedule 5

5. **Captain I (2142-1)**

a. Metro Fire Communications (less than 2 years continuous Service at MFC)* 1.25% of Step 6 of Schedule 8

b. Metro Fire Communications (2 or more years of service at MFC)* 2.25% of Step 6 of Schedule 8

c. Metro Fire Communications (4 or more years of service at MFC)* 4.25% of Step 6 of Schedule 8

d. Medical Liaison 2.35% of Step 6 of Schedule 8

*An employee who leaves an assignment as a Metro Fire Communications Captain and returns to such assignment within five years shall be restored to the salary premium level occupied when previously assigned. Employees placed in accordance with this provision must complete a continuous two-year period to qualify for the next applicable premium level.

6. **Captain II (2142-2)**

a. Emergency Operations Liaison Officer 4.4% of Step 6 of Schedule 9

b. Planning Section 4.4% of Step 6 of Schedule 9

c. Medical Liaison Unit 4.4% of Step 6 of Schedule 9

d. Drill Masters/Recruit Training Officer 4.4% of Step 6 of Schedule 9

e. Public Information Officer 2.2% of Step 6 of Schedule 9

7. **Multiple Classifications**

Drill Tower Instructors 4.3% of Step 6 of
Schedule 2*

*Captains who receive Drill Masters' premium pay shall not also receive the Drill Tower Instructors' premium pay.

II. **HAZARD PAY (Pension Based)**

A. **Hazardous Materials**

An employee who has been trained and certified as a Hazardous Materials Specialist and/or Technician and who is assigned to a Hazardous Materials Response Unit, or is assigned to the CBRNE/WMD Unit on a full-time basis to provide Hazardous Materials training and oversight, shall receive premium pay of 5.4% of Step 6 of Schedule 2.

B. **Technical Rescue**

An employee working on a US&R Company, or assigned to a US&R Task Force, or is assigned to the US&R Unit and provides US&R training and oversight on a full-time basis, or is assigned to the Heavy Rescue who is certified in Confined Space Rescue Operational, Trench Rescue, Technical Rope Rescue and Rescue Systems and/or courses mandated by the State and/or NFPA 1670, shall receive premium pay of 5.4% of Step 6 of Schedule 2.

C. **Helitac**

An employee who is Helitac certified and regularly assigned to Helitac duties shall receive premium pay of 5.4% of Step 6 of Schedule 2.

D. **Aircraft Rescue Firefighters**

An employee who is ARFF certified and assigned to Fire Station 80, or an employee who is ARFF certified to the same requirements as employees at Fire Station 80 and assigned to an ARFF apparatus at Fire Station 114, shall receive premium pay of 5.4% of Step 6 of Schedule 2.

E. **CUPA SECTION**

An employee assigned to the CUPA Section who meets the minimum educational requirements of California Code of Regulations Title 27, Division 1, Subdivision 4, Article 5, Section 15260, shall receive a premium of 5.2% of Step 6 of Schedule 6.

F. Additional regularly assigned premiums

Firefighter III (2112-3)

1.	Arson Trainee	4.3% of Step 6 of Schedule 2
2.	Arson Investigator (1 or more years of continuous service)	9.4% of Step 6 of Schedule 2 Effective July 1, 2021: 12.4% of Step 6 of Schedule 2
3.	Arson Investigator (2 or more years of continuous service)	16.6% of Step 6 of Schedule 2 Effective July 1, 2021: 19.6% of Step 6 of Schedule 2
4.	Arson Investigator - Dog Handler (2 or more years of continuous service)	22.2% of Step 6 of Schedule 2 Effective July 1, 2021: 25.2% of Step 6 of Schedule 2
5.	Heavy Tractor Operator	14.2% of Step 6 of Schedule 2
6.	Senior Arson Investigator	22.2% of Step 6 of Schedule 2 Effective July 1, 2021: 25.2% of Step 6 of Schedule 2
7.	Network Staffing Assistant	.5% of Step 6 of Schedule 2

III. SPECIAL PAY (Non-pension based)

A. Incident Management Team Premium

Incumbents in the class of Firefighter, Apparatus Operator, Engineer or Captain, who are assigned to Special Duty and an Incident Management Team (IMT), and were receiving the IMT premium on April 9, 2007, will continue to receive additional compensation under this provision. As of April 9, 2007, employees who are assigned to an IMT and have successfully completed classroom instruction in Intermediate ICS (I-300) and Advanced

ICS (I-400) **or** three (3) NWCG classes (300-level or higher) in the Plans Section and/or Logistics Section disciplines shall receive a premium of 3.1% of Step 6 of Schedule 2.

B. Field Incident Management Team Premium

Effective the first pay period after adoption of this MOU, employees who are assigned to a Field Incident Management Team (FIMT) shall receive a premium of 4.1% of Step 6 of Schedule 2.

C. Canine Search Specialists

Employees assigned as dog handlers shall be entitled to an additional ten (10) hours of compensation per pay period at the straight time rate for the purpose of feeding and care of the dog(s). Payment under this provision shall not be considered hours worked.

D. Tactical Emergency Medical Support (TEMS)

Firefighter/Paramedics who are qualified TEMS Specialists and active members of the TEMS Program, as designated by the Commander of the Homeland Security Division, shall receive a premium of 2.75% of Step 6 of Schedule 2.

IV. HOURLY ASSSIGNMENT PAY (Non-pension based)

1. Swift Water Rescue - Up to 16 employees per 12-hour shift who are assigned to Swift Water Rescue Teams during predicted storms shall receive an additional \$2.00 per hour during such assignment. Additional compensation of \$2.00 per hour shall be paid to any employee who is required to enter the water to perform a rescue and shall receive the additional compensation for the entire shift in which such rescue occurs.
2. **Unmanned Aerial System (UAS)**

Employees who are Department qualified and active UAS operators in the Department UAV program shall receive an additional \$2.00 per hour during the time the employee is attached to an incident or is working V-hours during which the employee participates in a UAV deployment.

ARTICLE 8.4 SALARIES

The operative dates of the salaries in the Appendices are as follows:

- Appendix A-1 July 1, 2019
- Appendix B-1 July 7, 2019
- Appendix C-1 October 13, 2019

Appendix D-1 January 5, 2020
Appendix E-1 July 5, 2020
Appendix F-1 June 21, 2021
Appendix G-1 January 1, 2023

ARTICLE 8.5 LONGEVITY PAY

- A. Any Firefighter III (2112-3) shall be eligible for longevity pay based upon the aggregate number of years of service as a sworn employee of the Department. Service of one or more years as a Paramedic (2307) employed by the Department immediately prior to employment as a Firefighter shall be included in the calculation of years of service for the purpose of determining eligibility for longevity pay. Longevity pay is subject to the conditions under this article.

- B. Upon the certification to the Controller by the Department that an employee has completed the prescribed number of aggregate years of service as a sworn employee of the Department, the employee shall receive the following premium pay:
 - 1. Upon completion of ten years and until the completion of 15 years of aggregate service, an employee shall receive premium pay of 2.75% of the salary of a Firefighter III at Step 6.
 - 2. Upon completion of 15 years and until the completion of 20 years of aggregate service, an employee shall receive additional premium pay of 5.5% of the salary of a Firefighter III at Step 6.
 - 3. Upon completion of 20 years of aggregate service, an employee shall receive premium pay of 8.25% of the salary of a Firefighter III at Step 6.

- C. Longevity pay shall be pension based and paid on a biweekly basis.

- D. A Firefighter will be allowed to continue to receive longevity pay for a period of six (6) months following an initial notice of unsatisfactory service. If during the six-month period, the Firefighter does not achieve a satisfactory standard of service, the Fire Chief shall certify to the City Controller that the employee's service is unsatisfactory and the payment of longevity pay for the employee will cease until such time as the Fire Chief again certifies that the employee has achieved a satisfactory standard of service.

ARTICLE 8.6 EDUCATION INCENTIVE

- A. **1% - Associate's Degree or Certificate**
 - 1. Employees receiving a 1% educational incentive prior to July 1, 2007, will continue to receive the incentive.

2. Employees who were not receiving an educational incentive prior to July 1, 2007, will be eligible to receive the 1% educational incentive upon presentation of an Associate's (AA or AS) Degree from a recognized educational institution or presentation of a certificate of completion in one of the following categories:
 - Completion of the requisite course work and receipt of a California State Fire Marshal Certification for "Plans Examiner" or "Fire Officer."
 - Completion of the requisite course work and practical experience per NWCG, CWGG or NFPA and receipt of a "Red Card" certification as an Incident Command System "Unit Leader" or "Section Chief."
 - Valid paramedic license and local accreditation (upon completion of probation only).

Note: Loss of a paramedic license or local accreditation, causing the employee to be unable to provide paramedic service (excluding employees off long-term due to illness/injury), shall immediately terminate the 1% education bonus until such time as the employee's license and/or local accreditation are restored. Employees off long-term due to illness/injury shall obtain certification within six months of the return to duty date. Failure to obtain certification within six months will result in the loss of the education incentive.

B. 3% - Bachelor's Degree

1. Employees receiving a 3% educational incentive prior to July 1, 2007, will continue to receive the incentive.
2. Employees who were not receiving an educational incentive prior to July 1, 2007, will be eligible to receive the 3% educational incentive upon presentation of a Bachelor of Arts (BA) or Bachelor of Sciences (BS) degree from a recognized educational institution.

The effective date of the bonus shall be the beginning of the subsequent payroll period following proof of the degree or certification being submitted to the Department by the employee.

Note: The 1% or 3% educational incentive shall be calculated on regular base pay (as listed in Appendices A-1 through G-2) **plus** any Special or Hazard Pay listed in Article 8.3 I.C., I.D., II.A. II.B., II.C., II.D., II.E. II.F., III.A., III.B., III.C., and III.D. only.

ARTICLE 8.7 ACTING PAY ASSIGNMENTS

Absence at Higher Level Position (Employees Regularly Assigned to a 4/10 Work Schedule Only)

Whenever the Department assigns an employee to perform the full range of duties of a higher level position due to the temporary absence of the higher level incumbent, such employee shall become eligible for additional compensation upon completion of a qualifying period of ten (10) consecutive work days in such assignment at his/her regular rate of compensation. The Department shall not divide or alternate the assignment of higher level duties during the qualifying period for the purpose of avoiding additional pay. Such additional compensation, as described in this Article, shall begin on the eleventh (11th) consecutive work day in such assignment.

Approved leave time off taken during a qualifying period shall extend the qualifying period by the length of absence. All other absences shall constitute a disqualifying break in the qualifying period requirement, necessitating the initiation and completion of a new qualifying period.

Each subsequent acting assignment following the employee's return to his/her regular assignment, shall require completion of a new qualifying period, except when the Department reassigns the same employee to the same acting assignment due to the absence of the regular incumbent within the same fiscal year. In such cases, the employee shall become eligible for such compensation on the first day of the reassignment.

Vacant Higher Level Position

Whenever the Department assigns an employee on a temporary basis to perform the full range of duties of a vacant higher level position, such employee shall become eligible for additional compensation on the first day of said assignment. In the event that said assignment exceeds thirty (30) consecutive calendar days, the Department shall initiate action to appoint a qualified employee to said position.

Compensation

An employee qualifying for additional compensation as stated above shall receive salary at 5.5% above the appropriate step rate of the salary range prescribed for his/her class, for each day on duty (present for 50% or more of the work day) in an acting assignment. However, the maximum pay rate for such duty shall be limited to the top step of the salary range that has been established as compensation for the higher level position to which the employee has been assigned.

The selection and/or de-selection of employees to serve in an "acting" capacity shall be final and conclusive and shall not be subject to the grievance procedure herein.

ARTICLE 8.8 EFFECTIVE DATE OF PAY INCREASES OR DECREASES

When anniversary dates for step raises and other pay increases under Section 8 of this MOU fall within a payroll period, the pay increase shall be effective at the beginning of the payroll period within which the date falls. When hazard, special pay or assignment pay is decreased within a payroll period, the decrease shall be effective at the beginning of the following payroll period.

9.0 HEALTH AND SAFETY

ARTICLE 9.1 MANDATORY INCIDENT REVIEWS

The Department shall conduct a timely and thorough incident review any time there is a serious injury, near-miss, or death of an employee at work. The term “serious injury” is defined as an injury requiring hospital admission (for other than observation), loss of a body part, or a serious, permanent disfigurement. The term “near-miss” is defined as an event that occurs in the work environment and reasonably could have, but did not, result in a death or serious injury due to good fortune and/or proper operation of safety devices or equipment.

The Department and UFLAC have agreed that the group of individuals who conduct the incident reviews shall be referred to as the Serious Incident Review Team (SIRT).

A Union representative designated by UFLAC shall be immediately incorporated as a full member of the SIRT. The Union representative shall be detailed to the SIRT until the review and report have been completed with no loss of compensation.

The Department and UFLAC agree to prescribe to a “Just Culture” where employees are encouraged to report honest mistakes in order for the SIRT to determine what happened. The SIRT will produce an unbiased, factual report based on the collection of evidence and interview of witnesses, to ultimately prevent a similar occurrence from happening in the future.

ARTICLE 9.2 PERSONAL EXPOSURE REPORTING

Tracking exposure is an important part of employee wellness, fitness, and longevity. The Department and UFLAC shall enroll employees annually in the Personal Exposure Recording (PER) system provided by the California Professional Firefighters (CPF).

Annual funding for the program shall be drawn from the Department’s California Firefighter Joint Apprenticeship Committee (CFF-JAC) account as the first and only obligatory expenditure. If there are not sufficient funds in the CFF-JAC account to make the annual payment, the Department and UFLAC shall meet and confer on how to maintain the program.

All other CFF-JAC expenditures shall be agreed upon by the Department and UFLAC in writing and shall be made in accordance with current and long standing CFF-JAC procedures.

ARTICLE 9.3 WELLNESS

- A. The City and UFLAC recognize that through early detection and treatment, injuries and illnesses can be reduced with a corresponding reduction in costs to the City. Therefore, the City and UFLAC agree to establish a cooperative work group to discuss a Wellness Program. The cooperative work group shall include an equal number of representatives from the City and UFLAC chosen by the respective parties.

- B. At a minimum, the Wellness Program shall include the following provisions:
 - 1. Participation in the Wellness Program, or any part of the Wellness Program, shall be optional for employees.

 - 2. Medical Examinations:
 - a. The medical examination portion of the Wellness Program shall continue in accordance with the Amendment to the Letter of Understanding on Wellness executed by the City on January 13, 2015, and by UFLAC on January 14, 2015.

 - b. The City shall continue to pay any costs not covered by an employee's health insurance for comprehensive annual medical examinations.

 - c. The results of the medical examinations shall be confidential. The only information provided to the City shall be non-identifiable summaries of medical and fitness data.

 - d. Prior to June 20, 2021, an employee shall be granted four (4) hours per year of time off with pay to get the physical examination under the Wellness Program. For employees on Platoon Duty, the Department has the discretion to instead grant the employee the equivalent of four (4) hours straight time pay. Effective June 20, 2021, the Department has the discretion to detail on-duty employees for up to four (4) hours if the employee cannot schedule the Annual Examination during off-duty hours. Such details shall not adversely affect Department staffing.

 - e. In order to encourage more employees to complete the Annual Fitness-for-Life Medical Examination provided by Westchester Medical Group Center for Heart and Health ("Annual Examination")

or equivalent facility as mutually agreed to by UFLAC and Management, an employee who completes the Annual Examination shall receive up to a pensionable 1.5% premium for a twelve (12) month period after the Annual Examination is completed, but beginning no earlier than June 20, 2021. Employees who complete the Annual Examination, in accordance with f, below, within the twelve (12) month period prior to June 20, 2021, shall receive the premium pay commencing on June 20, 2021. Employees shall receive the premium pay for an additional twelve (12) month period commencing on June 19, 2022, if they complete a second Annual Examination, in accordance with f, below, within the twelve (12) month period prior to June 19, 2022. Employees who do not complete the Annual Examination within the twelve (12) month period prior to June 20, 2021, shall receive the premium pay commencing on the first day of the full pay period after they complete the Annual Examination. Premium pay shall be in accordance with C., below.

- f. To qualify for the premium pay, employees must complete the Annual Examination and submit qualifying documentation on Department approved forms each year between the 1st day of the month immediately preceding the employee’s birthday month and the last day of the month immediately following the employee’s birthday month.

Example:

Birthdate	Complete Exam and Submit Documentation:	Premium Paid:
August 13	July 1 – September 30	1 year following submission of documentation

- g. Employees who are on leave due to an injury during the sixty (60) day period under f, above, may take the Annual Examination within ninety (90) days after they return from leave.

3. Requirements to Qualify for Wellness Premium

1. One-half (0.5) Percent Premium

- a. Annually complete 12 hours of Department approved Wellness online continuing education.
- b. Annually complete an Annual Examination provided by Westchester Medical Group Center for Heart and Health.

2. One (1) Percent Premium
 - a. Complete all items in 1 above.
 - b. Annually complete a physical fitness assessment provided by Westchester Medical Group Center for Heart and Health and achieve the following targets:

PUSH UPS

Male		Female	
Age	Reps in 60 sec	Age	Reps in 60 sec
18-29	41	18-29	32
30-39	34	30-39	26
40-49	27	40-49	21
50+	24	50+	18

CRUNCHES

Male		Female	
Age	Reps in 60 sec	Age	Reps in 60 sec
18-29	45	18-29	37
30-39	38	30-39	34
40-49	30	40-49	28
50+	27	50+	23

In lieu of crunches, employees (male and female) may alternately meet the following targets:

PLANK

Male & Female	
Age	Time to hold
18-29	150 sec
30-39	120 sec
40-49	105 sec
50+	60 sec

3. One and one-half (1.5) Percent Premium
 - a. Complete all items in 1 and 2 above.

b. Annually complete an aerobic test and achieve a VO₂ Max as follows:

Male


Age	Gerkin	Bruce	VO₂
18-39	12:00	12:27	~44.2 ml/kg/min
40-49	11:30	11:46	~42.4 ml/kg/min
50+	10:30	11:00	~39.9 ml/kg/min

Female

Age	Gerkin	Bruce	VO₂
18-39	11:30	12:12	~42.6 ml/kg/min
40-49	10:30	10:50	~39.5 ml/kg/min
50+	9:30	9:43	~36.4 ml/kg/min

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Memorandum of Understanding the day, month and year above written.

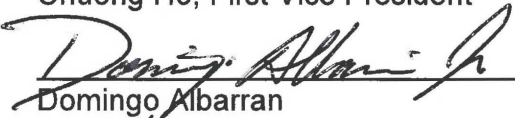
FOR THE UNION:



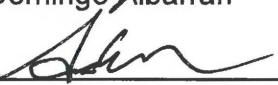
Freddy Escobar, President
UFLAC, Local 112
Date: 9/26/2019



Chuong Ho, First Vice President



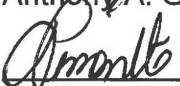
Domingo Albarran




Adam Walker



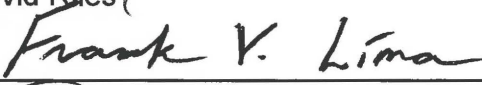
Anthony A. Gamboa



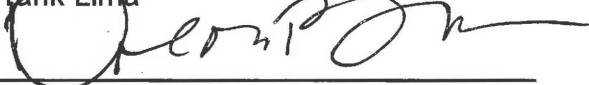
David N. Pimentle



David Riles



Frank Lima



Dreon Brown

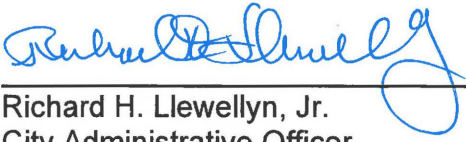


Scott Lazar



Christopher Thyfault

FOR THE CITY:



Richard H. Llewellyn, Jr.
City Administrative Officer
Date: 9/27/19



Ralph M. Terrazas, Fire Chief

Approved as to Form:




Office of the City Attorney

Date: 9/26/19

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Memorandum of Understanding the day, month and year above written.

FOR THE UNION:




Freddy Escobar, President
UFLAC, Local 112


4/1/2021
Date



Chuong Ho, First Vice President

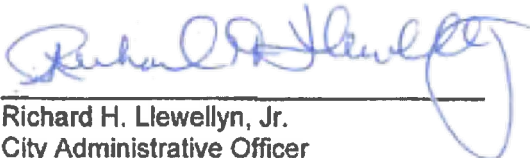


Domingo Albarran



Adam Walker

FOR THE CITY:



Richard H. Llewellyn, Jr.
City Administrative Officer

4/1/21
Date

Ralph M. Terrazas, Fire Chief

Approved as to Form and Legality:



Office of the City Attorney

4/1/21
Date

APPENDIX A
Operative July 1, 2019

Notwithstanding LAAC Section 4.159, the following salary provisions shall apply to employees in this Unit:

- A. The following classes of positions and pay grades are authorized to be paid at the salary schedules indicated below:

<u>Code</u>	<u>Class and Pay Grade</u>	<u>Schedule</u>
2121	Apparatus Operator	5
2131	Engineer Fire Department	5
5125	Fireboat Mate	5
5127	Fireboat Pilot	8
2112-1	Firefighter I	A
2112-2	Firefighter II	1
2112-3	Firefighter III	2
2112-4	Firefighter III	5
2112-5	Firefighter III	5
2112-6	Firefighter III	5
3563-1	Fire Helicopter Pilot I	5
3563-2	Fire Helicopter Pilot II	6P
3563-3	Fire Helicopter Pilot III	8P
3563-4	Fire Helicopter Pilot IV	9P
3563-5	Fire Helicopter Pilot V	10P
2128-1	Fire Inspector I	6
2128-2	Fire Inspector II	7
2142-1	Fire Captain I	8
2142-2	Fire Captain II	9
2142-3	Fire Captain I	8

This does not include any premium pay to which these classes are entitled under Article 8.3.

- B. Initial appointment in the Fire Service of any person hired under temporary training provisions established by the Civil Service Commission (CSC Rule 5.30) for the class of Firefighter (Code 2112) shall be to Firefighter I, Schedule A. Any Firefighter I, who completes training, shall be advanced to Firefighter II at the first step of Schedule 1, except as hereinafter provided.

1. Any person appointed to Firefighter II, who has completed 60 semester units (or 90 quarter units) of credit from an accredited college or university pertinent to the occupation involved, upon recommendation of the appointing authority and approval of the General Manager of the Personnel

Department, shall receive salary at the second step of the salary range for Schedule 1.

2. Any Firefighter I appointed to Firefighter II, who has had acceptable service in the Fire Department of another public agency, or who is re-appointed to the class of Firefighter and has had previous acceptable service as a sworn employee of the Fire Department, shall receive a salary at a step rate of Schedule 1 determined in accordance with the foregoing Sections plus one step for each two years of such service, but not higher than the fourth step of Schedule 1. To be acceptable, such service must be approved by the General Manager of the Fire Department and the General Manager of the Personnel Department.
3. Any Firefighter II who completes an initial six months of active service as a Firefighter II shall be advanced in pay to the next higher step in the range for Schedule 1. Such advancement shall occur at the beginning of the pay period during which such completion occurs.
4. Any Firefighter II who completes each additional twelve months of active service after the step advancement in Paragraph 3 above shall be advanced to the next higher step in the range for Schedule 1 until salary is received at the maximum step rate. Such advancement shall occur at the beginning of the pay period during which such completion occurs.
5. Any Firefighter II who completes six months of active service after the completion of probation as a Firefighter II shall be advanced in pay grade to Firefighter III. Such advancement shall occur at the beginning of the pay period following the completion of the six month period. Any Firefighter II advanced to Firefighter III shall be placed on the step rate of Firefighter III that provides compensation equal to that received prior to such advancement. Assignment and/or performance bonuses shall not be considered in the determination of salary step placement.
6. Except as provided in Paragraphs 3-5 above, advancement in the salary rate of an employee shall be made automatically at the beginning of the pay period during which completion of one year of aggregate active service at each step rate occurs until salary is received at the maximum step rate within the salary schedule prescribed for the employee's class and pay grade.

D. Effective July 1, 1990, Step 6 shall be considered as the merit step.

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: July 1, 2019

SCHEDULE				1	2	3	4	5	6
A	Firefighter I 2112-1	Regular Pay	BW	\$ 2,560.80					
			MO	\$ 5,569.74					
			YR	\$ 66,836.88					
1	Firefighter II 2112-2	Regular Pay	BW	\$ 2,696.80	\$ 2,841.60	\$ 3,004.00	\$ 3,164.00	\$ 3,352.00	\$ 3,544.80
			MO	\$ 5,865.54	\$ 6,180.48	\$ 6,533.70	\$ 6,881.70	\$ 7,290.60	\$ 7,709.94
			YR	\$ 70,386.48	\$ 74,165.76	\$ 78,404.40	\$ 82,580.40	\$ 87,487.20	\$ 92,519.28
2	Firefighter III 2112-3	Regular Pay	BW		\$ 3,004.00	\$ 3,164.00	\$ 3,352.00	\$ 3,544.80	\$ 3,739.20
			MO		\$ 6,533.70	\$ 6,881.70	\$ 7,290.60	\$ 7,709.94	\$ 8,132.76
			YR		\$ 78,404.40	\$ 82,580.40	\$ 87,487.20	\$ 92,519.28	\$ 97,593.12
4	Firefighter II Paramedic 2112-2	Regular Pay	BW		\$ 3,352.00	\$ 3,544.80	\$ 3,739.20	\$ 3,945.60	\$ 4,168.00
			MO		\$ 7,290.60	\$ 7,709.94	\$ 8,132.76	\$ 8,581.68	\$ 9,065.40
			YR		\$ 87,487.20	\$ 92,519.28	\$ 97,593.12	\$ 102,980.16	\$ 108,784.80
5	Firefighter III 2112-4 2112-5 2112-6 Apparatus Op. 2121 Engineer 2131 Helicopter Pilot I 3563-1 Fireboat Mate 5125	Regular Pay	BW			\$ 3,739.20	\$ 3,945.60	\$ 4,168.00	\$ 4,403.20
			MO			\$ 8,132.76	\$ 8,581.68	\$ 9,065.40	\$ 9,576.96
			YR			\$ 97,593.12	\$ 102,980.16	\$ 108,784.80	\$ 114,923.52

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: July 1, 2019

SCHEDULE				1	2	3	4	5	6
6	Fire Inspector I 2128-1	Regular Pay	BW				\$ 4,168.00	\$ 4,403.20	\$ 4,651.20
			MO				\$ 9,065.40	\$ 9,576.96	\$ 10,116.36
			YR				\$ 108,784.80	\$ 114,923.52	\$ 121,396.32
6P	Helicopter Pilot II 3563-2	Regular Pay	BW				\$ 4,196.00	\$ 4,433.60	\$ 4,682.40
			MO				\$ 9,126.30	\$ 9,643.08	\$ 10,184.22
			YR				\$ 109,515.60	\$ 115,716.96	\$ 122,210.64
7	Fire Inspector II 2128-2	Regular Pay	BW				\$ 4,403.20	\$ 4,651.20	\$ 4,910.40
			MO				\$ 9,576.96	\$ 10,116.36	\$ 10,680.12
			YR				\$ 114,923.52	\$ 121,396.32	\$ 128,161.44
8	Fire Captain I 2142-1 2142-3 Fireboat Pilot 5127	Regular Pay	BW				\$ 4,651.20	\$ 4,910.40	\$ 5,184.00
			MO				\$ 10,116.36	\$ 10,680.12	\$ 11,275.20
			YR				\$ 121,396.32	\$ 128,161.44	\$ 135,302.40
8P	Helicopter Pilot III 3563-3	Regular Pay	BW				\$ 4,882.40	\$ 5,156.00	\$ 5,443.20
			MO				\$ 10,619.22	\$ 11,214.30	\$ 11,838.96
			YR				\$ 127,430.64	\$ 134,571.60	\$ 142,067.52
9	Fire Captain II 2142-2	Regular Pay	BW				\$ 4,910.40	\$ 5,184.00	\$ 5,466.40
			MO				\$ 10,680.12	\$ 11,275.20	\$ 11,889.42
			YR				\$ 128,161.44	\$ 135,302.40	\$ 142,673.04
9P	Helicopter Pilot IV 3563-4	Regular Pay	BW				\$ 5,138.40	\$ 5,424.80	\$ 5,720.80
			MO				\$ 11,176.02	\$ 11,798.94	\$ 12,442.74
			YR				\$ 134,112.24	\$ 141,587.28	\$ 149,312.88
10P	Helicopter Pilot V 3563-5	Regular Pay	BW				\$ 5,293.60	\$ 5,582.40	\$ 5,890.40
			MO				\$ 11,513.58	\$ 12,141.72	\$ 12,811.62
			YR				\$ 138,162.96	\$ 145,700.64	\$ 153,739.44

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: July 1, 2019

	PREMIUM DESCRIPTION	AMOUNT (biweekly unless noted)
ELIGIBLE UNIT MEMBERS (see MOU provisions for eligibility)	Aircraft Rescue	\$ 200.00
	Bilingual Bonus - speaking	2.75%
	Bilingual Bonus - speaking, reading	5.50%
	CUPA Section	\$ 240.00
	Drill Tower Bonus	\$ 160.00
	Education Bonus 1%	1.00%
	Education Bonus 3%	3.00%
	Field Incident Management Team	\$ 150.00
	Hazardous Materials	\$ 200.00
	Incident Management Team	\$ 115.00
	Marksmanship - Marksman	\$ 4.00
	Marksmanship - Sharpshooter	\$ 8.00
	Marksmanship - Expert	\$ 16.00
	Marksmanship - Distinguished Expert	\$ 32.00
	MFC Bilingual	7.40%
	Network Staffing Assistant	\$ -
	Swift Water Rescue Team	\$ 2.00 /HR
	Swift Water Rescue Team - Water Entry	\$.00 /HR
	Technical Rescue	\$ 200.00
	TEMS Specialist	\$ -
	Uniform Allowance	\$ 51.00
	Unmanned Aerial System	\$.00 /HR
	Wellness - Medical Exam & Online Training	0.00%
Wellness - Physical Fitness	0.00%	
Wellness - Aerobic Test	0.00%	
FIREFIGHTER II 2112-2	Emergency Medical Technician	\$ 130.00
	Paramedic	Schedule 4
FIREFIGHTER III 2112-3	Arson Dog Handler 2 or more years	\$ 830.00
	Arson Investigator 1 or more years	\$ 350.00
	Arson Investigator 2 or more years	\$ 620.00
	Arson Investigator Trainee	\$ 160.00
	Disaster Response	\$ 160.00
	Emergency Incident Technician	\$ 200.00
	Emergency Medical Technician	\$ 140.00
	EMT Instructor	\$ 530.00
	EMT Instructor 2 or more years	\$ 620.00
	Heavy Equipment Operator	\$ 530.00
	Helitac Certified and Assigned	\$ 200.00
	Hydrant Planning	\$ 160.00
	Longevity 10 years	\$ 100.00
	Longevity 15 years	\$ 200.00
	Longevity 20 years	\$ 300.00
	MFC Dispatcher less than 2 years	\$ 80.00
	MFC Dispatcher 2 or more years	\$ 160.00
	MFC Dispatcher 4 or more years	\$ 250.00
	Paramedic	Schedule 5
	Public Service Officer	\$ 300.00
	Recruitment Unit	\$ 160.00
	Safety Education	\$ 160.00
	SCUBA - Regularly Assigned or Detailed	\$ 160.00
SCUBA - Back Up	\$ 80.00	
Senior Arson Investigator	\$ 830.00	
FIREFIGHTER III 2112-4	Emergency Medical Technician	\$ 140.00

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: July 1, 2019

PREMIUM DESCRIPTION		AMOUNT (biweekly unless noted)
FIREFIGHTER III 2112-5	Emergency Medical Technician	\$ 140.00
FIREFIGHTER III 2112-6	Emergency Medical Technician	\$ 140.00
APPARATUS OPERATOR 2121	Driver	\$ -
	Emergency Medical Technician	\$ 130.00
	Helitac Certified and Assigned	\$ 200.00
ENGINEER 2131	Driver	\$ -
	Emergency Medical Technician	\$ 130.00
	Helitac Certified and Assigned	\$ 200.00
	Test Pit	\$ 200.00
INSPECTOR I 2128-1	Emergency Medical Technician	\$ 130.00
INSPECTOR II 2128-2	Emergency Medical Technician	\$ 130.00
FIREBOAT MATE 5125	Driver	\$ -
	Emergency Medical Technician	\$ 130.00
	Supervising Officer	\$ 400.00
FIREBOAT PILOT 5127	Emergency Medical Technician	\$ 130.00
FIRE HELICOPTER PILOT 3563-1 thru 3563-5	Emergency Medical Technician	\$ 130.00
CAPTAIN I 2142-1 & 2142-3	Emergency Medical Technician	\$ 130.00
	EMS Battalion or EMS Geographic Bureau	Schedule 9
	Helitac Certified and Assigned	\$ 200.00
	Medical Liaison	\$ 120.00
	MFC less than 2 years	\$ -
	MFC 2 or more years	\$ 115.00
	MFC 4 or more years	\$ 220.00
Paramedic	\$ 220.00	
CAPTAIN II 2142-2	Drill Master / Recruitment Training Officer	\$ 240.00
	Emergency Medical Technician	\$ 130.00
	Emergency Operations Liaison Officer	\$ 240.00
	Helitac Certified and Assigned	\$ 200.00
	Medical Liaison	\$ 240.00
	Paramedic	\$ -
	Planning Section	\$ 240.00
Public Information Officer	\$ -	

* The premiums are listed in Article 8.3. Under Article 8.3, the biweekly premiums are percentages or schedules. In this Premium Summary, the AMOUNT column is a flat rate calculation of the percentage bonuses. However, if there is any disparity between the percentage bonuses under Article 8.3 and the amount in the Premium Summary, the percentages under Article 8.3 shall prevail. Additionally, the City and UFLAC agree that, by listing the premiums as flat rates in the Premium Summary, the parties do not intend to modify the percentage premiums under Section 8.3.

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: July 7, 2019

SCHEDULE				1	2	3	4	5	6
A	Firefighter I 2112-1	Regular Pay	BW	\$ 2,612.80					
			MO	\$ 5,682.84					
			YR	\$ 68,194.08					
1	Firefighter II 2112-2	Regular Pay	BW	\$ 2,751.20	\$ 2,899.20	\$ 3,064.80	\$ 3,228.00	\$ 3,420.00	\$ 3,616.80
			MO	\$ 5,983.86	\$ 6,305.76	\$ 6,665.94	\$ 7,020.90	\$ 7,438.50	\$ 7,866.54
			YR	\$ 71,806.32	\$ 75,669.12	\$ 79,991.28	\$ 84,250.80	\$ 89,262.00	\$ 94,398.48
2	Firefighter III 2112-3	Regular Pay	BW		\$ 3,064.80	\$ 3,228.00	\$ 3,420.00	\$ 3,616.80	\$ 3,815.20
			MO		\$ 6,665.94	\$ 7,020.90	\$ 7,438.50	\$ 7,866.54	\$ 8,298.06
			YR		\$ 79,991.28	\$ 84,250.80	\$ 89,262.00	\$ 94,398.48	\$ 99,576.72
4	Firefighter II Paramedic 2112-2	Regular Pay	BW		\$ 3,420.00	\$ 3,616.80	\$ 3,815.20	\$ 4,025.60	\$ 4,252.80
			MO		\$ 7,438.50	\$ 7,866.54	\$ 8,298.06	\$ 8,755.68	\$ 9,249.84
			YR		\$ 89,262.00	\$ 94,398.48	\$ 99,576.72	\$ 105,068.16	\$ 110,998.08
5	Firefighter III 2112-4 2112-5 2112-6 Apparatus Op. 2121 Engineer 2131 Helicopter Pilot I 3563-1 Fireboat Mate 5125	Regular Pay	BW			\$ 3,815.20	\$ 4,025.60	\$ 4,252.80	\$ 4,492.80
			MO			\$ 8,298.06	\$ 8,755.68	\$ 9,249.84	\$ 9,771.84
			YR			\$ 99,576.72	\$ 105,068.16	\$ 110,998.08	\$ 117,262.08

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: July 7, 2019

SCHEDULE				1	2	3	4	5	6
6	Fire Inspector I 2128-1	Regular Pay	BW				\$ 4,252.80	\$ 4,492.80	\$ 4,745.60
			MO				\$ 9,249.84	\$ 9,771.84	\$ 10,321.68
			YR				\$ 110,998.08	\$ 117,262.08	\$ 123,860.16
6P	Helicopter Pilot II 3563-2	Regular Pay	BW				\$ 4,280.80	\$ 4,524.00	\$ 4,777.60
			MO				\$ 9,310.74	\$ 9,839.70	\$ 10,391.28
			YR				\$ 111,728.88	\$ 118,076.40	\$ 124,695.36
7	Fire Inspector II 2128-2	Regular Pay	BW				\$ 4,492.80	\$ 4,745.60	\$ 5,010.40
			MO				\$ 9,771.84	\$ 10,321.68	\$ 10,897.62
			YR				\$ 117,262.08	\$ 123,860.16	\$ 130,771.44
8	Fire Captain I 2142-1 2142-3 Fireboat Pilot 5127	Regular Pay	BW				\$ 4,745.60	\$ 5,010.40	\$ 5,289.60
			MO				\$ 10,321.68	\$ 10,897.62	\$ 11,504.88
			YR				\$ 123,860.16	\$ 130,771.44	\$ 138,058.56
8P	Helicopter Pilot III 3563-3	Regular Pay	BW				\$ 4,981.60	\$ 5,260.80	\$ 5,553.60
			MO				\$ 10,834.98	\$ 11,442.24	\$ 12,079.08
			YR				\$ 130,019.76	\$ 137,306.88	\$ 144,948.96
9	Fire Captain II 2142-2	Regular Pay	BW				\$ 5,010.40	\$ 5,289.60	\$ 5,577.60
			MO				\$ 10,897.62	\$ 11,504.88	\$ 12,131.28
			YR				\$ 130,771.44	\$ 138,058.56	\$ 145,575.36
9P	Helicopter Pilot IV 3563-4	Regular Pay	BW				\$ 5,242.40	\$ 5,535.20	\$ 5,836.80
			MO				\$ 11,402.22	\$ 12,039.06	\$ 12,695.04
			YR				\$ 136,826.64	\$ 144,468.72	\$ 152,340.48
10P	Helicopter Pilot V 3563-5	Regular Pay	BW				\$ 5,400.80	\$ 5,696.00	\$ 6,009.60
			MO				\$ 11,746.74	\$ 12,388.80	\$ 13,070.88
			YR				\$ 140,960.88	\$ 148,665.60	\$ 156,850.56

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: July 7, 2019

	PREMIUM DESCRIPTION	AMOUNT (biweekly unless noted)
ELIGIBLE UNIT MEMBERS (see MOU provisions for eligibility)	Aircraft Rescue	\$ 206.40
	Bilingual Bonus - speaking	2.75%
	Bilingual Bonus - speaking, reading	5.50%
	CUPA Section	\$ 246.40
	Drill Tower Bonus	\$ 164.00
	Education Bonus 1%	1.00%
	Education Bonus 3%	3.00%
	Field Incident Management Team	\$ 156.80
	Hazardous Materials	\$ 206.40
	Incident Management Team	\$ 118.40
	Marksmanship - Marksman	\$ 4.00
	Marksmanship - Sharpshooter	\$ 8.00
	Marksmanship - Expert	\$ 16.00
	Marksmanship - Distinguished Expert	\$ 32.00
	MFC Bilingual	7.40%
	Network Staffing Assistant	\$ 19.20
	Swift Water Rescue Team	\$ 2.00 /HR
	Swift Water Rescue Team - Water Entry	\$ 2.00 /HR
	Technical Rescue	\$ 206.40
	TEMS Specialist	\$ 104.80
	Uniform Allowance	\$ 51.00
	Unmanned Aerial System	\$ 2.00 /HR
	Wellness - Medical Exam & Online Training	0.00%
	Wellness - Physical Fitness	0.00%
Wellness - Aerobic Test	0.00%	
FIREFIGHTER II 2112-2	Emergency Medical Technician	\$ 130.00
	Paramedic	Schedule 4
FIREFIGHTER III 2112-3	Arson Dog Handler 2 or more years	\$ 847.20
	Arson Investigator 1 or more years	\$ 358.40
	Arson Investigator 2 or more years	\$ 633.60
	Arson Investigator Trainee	\$ 164.00
	Disaster Response	\$ 164.00
	Emergency Incident Technician	\$ 206.40
	Emergency Medical Technician	\$ 140.00
	EMT Instructor	\$ 541.60
	EMT Instructor 2 or more years	\$ 633.60
	Heavy Equipment Operator	\$ 541.60
	Helitac Certified and Assigned	\$ 206.40
	Hydrant Planning	\$ 164.00
	Longevity 10 years	\$ 104.80
	Longevity 15 years	\$ 209.60
	Longevity 20 years	\$ 314.40
	MFC Dispatcher less than 2 years	\$ 84.00
	MFC Dispatcher 2 or more years	\$ 164.00
	MFC Dispatcher 4 or more years	\$ 256.00
	Paramedic	Schedule 5
	Public Service Officer	\$ 305.60
	Recruitment Unit	\$ 164.00
	Safety Education	\$ 164.00
	SCUBA - Regularly Assigned or Detailed	\$ 164.00
	SCUBA - Back Up	\$ 84.00
Senior Arson Investigator	\$ 847.20	
FIREFIGHTER III 2112-4	Emergency Medical Technician	\$ 140.00

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: July 7, 2019

PREMIUM DESCRIPTION		AMOUNT (biweekly unless noted)
FIREFIGHTER III 2112-5	Emergency Medical Technician	\$ 140.00
FIREFIGHTER III 2112-6	Emergency Medical Technician	\$ 140.00
APPARATUS OPERATOR 2121	Driver	\$ 247.20
	Emergency Medical Technician	\$ 130.00
	Helitac Certified and Assigned	\$ 206.40
ENGINEER 2131	Driver	\$ 247.20
	Emergency Medical Technician	\$ 130.00
	Helitac Certified and Assigned	\$ 206.40
	Test Pit	\$ 206.40
INSPECTOR I 2128-1	Emergency Medical Technician	\$ 130.00
INSPECTOR II 2128-2	Emergency Medical Technician	\$ 130.00
FIREBOAT MATE 5125	Driver	\$ 247.20
	Emergency Medical Technician	\$ 130.00
	Supervising Officer	\$ 408.80
FIREBOAT PILOT 5127	Emergency Medical Technician	\$ 130.00
FIRE HELICOPTER PILOT 3563-1 thru 3563-5	Emergency Medical Technician	\$ 130.00
CAPTAIN I 2142-1 & 2142-3	Emergency Medical Technician	\$ 130.00
	EMS Battalion or EMS Geographic Bureau	Schedule 9
	Helitac Certified and Assigned	\$ 206.40
	Medical Liaison	\$ 124.00
	MFC less than 2 years	\$ 66.40
	MFC 2 or more years	\$ 119.20
	MFC 4 or more years	\$ 224.80
Paramedic	\$ 224.80	
CAPTAIN II 2142-2	Drill Master / Recruitment Training Officer	\$ 245.60
	Emergency Medical Technician	\$ 130.00
	Emergency Operations Liaison Officer	\$ 245.60
	Helitac Certified and Assigned	\$ 206.40
	Medical Liaison	\$ 245.60
	Paramedic	\$ 224.80
	Planning Section	\$ 245.60
Public Information Officer	\$ 122.40	

* The premiums are listed in Article 8.3. Under Article 8.3, the biweekly premiums are percentages or schedules. In this Premium Summary, the AMOUNT column is a flat rate calculation of the percentage bonuses. However, if there is any disparity between the percentage bonuses under Article 8.3 and the amount in the Premium Summary, the percentages under Article 8.3 shall prevail. Additionally, the City and UFLAC agree that, by listing the premiums as flat rates in the Premium Summary, the parties do not intend to modify the percentage premiums under Section 8.3.

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: October 13, 2019

SCHEDULE				1	2	3	4	5	6
A	Firefighter I 2112-1	Regular Pay	BW	\$ 2,612.80					
			MO	\$ 5,682.84					
			YR	\$ 68,194.08					
1	Firefighter II 2112-2	Regular Pay	BW	\$ 2,751.20	\$ 2,899.20	\$ 3,064.80	\$ 3,228.00	\$ 3,420.00	\$ 3,616.80
			MO	\$ 5,983.86	\$ 6,305.76	\$ 6,665.94	\$ 7,020.90	\$ 7,438.50	\$ 7,866.54
			YR	\$ 71,806.32	\$ 75,669.12	\$ 79,991.28	\$ 84,250.80	\$ 89,262.00	\$ 94,398.48
2	Firefighter III 2112-3	Regular Pay	BW		\$ 3,064.80	\$ 3,228.00	\$ 3,420.00	\$ 3,616.80	\$ 3,815.20
			MO		\$ 6,665.94	\$ 7,020.90	\$ 7,438.50	\$ 7,866.54	\$ 8,298.06
			YR		\$ 79,991.28	\$ 84,250.80	\$ 89,262.00	\$ 94,398.48	\$ 99,576.72
4	Firefighter II Paramedic 2112-2	Regular Pay	BW		\$ 3,420.00	\$ 3,616.80	\$ 3,815.20	\$ 4,025.60	\$ 4,252.80
			MO		\$ 7,438.50	\$ 7,866.54	\$ 8,298.06	\$ 8,755.68	\$ 9,249.84
			YR		\$ 89,262.00	\$ 94,398.48	\$ 99,576.72	\$ 105,068.16	\$ 110,998.08
5	Firefighter III 2112-4 2112-5 2112-6 Apparatus Op. 2121 Engineer 2131 Helicopter Pilot I 3563-1 Fireboat Mate 5125	Regular Pay	BW			\$ 3,815.20	\$ 4,025.60	\$ 4,252.80	\$ 4,492.80
			MO			\$ 8,298.06	\$ 8,755.68	\$ 9,249.84	\$ 9,771.84
			YR			\$ 99,576.72	\$ 105,068.16	\$ 110,998.08	\$ 117,262.08

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: October 13, 2019

SCHEDULE				1	2	3	4	5	6
6	Fire Inspector I 2128-1	Regular Pay	BW				\$ 4,252.80	\$ 4,492.80	\$ 4,745.60
			MO				\$ 9,249.84	\$ 9,771.84	\$ 10,321.68
			YR				\$ 110,998.08	\$ 117,262.08	\$ 123,860.16
6P	Helicopter Pilot II 3563-2	Regular Pay	BW				\$ 4,280.80	\$ 4,524.00	\$ 4,777.60
			MO				\$ 9,310.74	\$ 9,839.70	\$ 10,391.28
			YR				\$ 111,728.88	\$ 118,076.40	\$ 124,695.36
7	Fire Inspector II 2128-2	Regular Pay	BW				\$ 4,492.80	\$ 4,745.60	\$ 5,010.40
			MO				\$ 9,771.84	\$ 10,321.68	\$ 10,897.62
			YR				\$ 117,262.08	\$ 123,860.16	\$ 130,771.44
8	Fire Captain I 2142-1 2142-3 Fireboat Pilot 5127	Regular Pay	BW				\$ 4,745.60	\$ 5,010.40	\$ 5,289.60
			MO				\$ 10,321.68	\$ 10,897.62	\$ 11,504.88
			YR				\$ 123,860.16	\$ 130,771.44	\$ 138,058.56
8P	Helicopter Pilot III 3563-3	Regular Pay	BW				\$ 4,981.60	\$ 5,260.80	\$ 5,553.60
			MO				\$ 10,834.98	\$ 11,442.24	\$ 12,079.08
			YR				\$ 130,019.76	\$ 137,306.88	\$ 144,948.96
9	Fire Captain II 2142-2	Regular Pay	BW				\$ 5,010.40	\$ 5,289.60	\$ 5,577.60
			MO				\$ 10,897.62	\$ 11,504.88	\$ 12,131.28
			YR				\$ 130,771.44	\$ 138,058.56	\$ 145,575.36
9P	Helicopter Pilot IV 3563-4	Regular Pay	BW				\$ 5,242.40	\$ 5,535.20	\$ 5,836.80
			MO				\$ 11,402.22	\$ 12,039.06	\$ 12,695.04
			YR				\$ 136,826.64	\$ 144,468.72	\$ 152,340.48
10P	Helicopter Pilot V 3563-5	Regular Pay	BW				\$ 5,400.80	\$ 5,696.00	\$ 6,009.60
			MO				\$ 11,746.74	\$ 12,388.80	\$ 13,070.88
			YR				\$ 140,960.88	\$ 148,665.60	\$ 156,850.56

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: October 13, 2019

	PREMIUM DESCRIPTION	AMOUNT (biweekly unless noted)
ELIGIBLE UNIT MEMBERS (see MOU provisions for eligibility)	Aircraft Rescue	\$ 206.40
	Bilingual Bonus - speaking	2.75%
	Bilingual Bonus - speaking, reading	5.50%
	CUPA Section	\$ 246.40
	Drill Tower Bonus	\$ 164.00
	Education Bonus 1%	1.00%
	Education Bonus 3%	3.00%
	Field Incident Management Team	\$ 156.80
	Hazardous Materials	\$ 206.40
	Incident Management Team	\$ 118.40
	Marksmanship - Marksman	\$ 4.00
	Marksmanship - Sharpshooter	\$ 8.00
	Marksmanship - Expert	\$ 16.00
	Marksmanship - Distinguished Expert	\$ 32.00
	MFC Bilingual	7.40%
	Network Staffing Assistant	\$ 19.20
	Swift Water Rescue Team	\$ 2.00 /HR
	Swift Water Rescue Team - Water Entry	\$ 2.00 /HR
	Technical Rescue	\$ 206.40
	TEMS Specialist	\$ 104.80
	Uniform Allowance	\$ 51.00
	Unmanned Aerial System	\$ 2.00 /HR
	Wellness - Medical Exam & Online Training	0.00%
Wellness - Physical Fitness	0.00%	
Wellness - Aerobic Test	0.00%	
FIREFIGHTER II 2112-2	Emergency Medical Technician	\$ 162.40
	Paramedic	Schedule 4
FIREFIGHTER III 2112-3	Arson Dog Handler 2 or more years	\$ 847.20
	Arson Investigator 1 or more years	\$ 358.40
	Arson Investigator 2 or more years	\$ 633.60
	Arson Investigator Trainee	\$ 164.00
	Disaster Response	\$ 164.00
	Emergency Incident Technician	\$ 206.40
	Emergency Medical Technician	\$ 219.20
	EMT Instructor	\$ 541.60
	EMT Instructor 2 or more years	\$ 633.60
	Heavy Equipment Operator	\$ 541.60
	Helitac Certified and Assigned	\$ 206.40
	Hydrant Planning	\$ 164.00
	Longevity 10 years	\$ 104.80
	Longevity 15 years	\$ 209.60
	Longevity 20 years	\$ 314.40
	MFC Dispatcher less than 2 years	\$ 84.00
	MFC Dispatcher 2 or more years	\$ 164.00
	MFC Dispatcher 4 or more years	\$ 256.00
	Paramedic	Schedule 5
	Public Service Officer	\$ 305.60
	Recruitment Unit	\$ 164.00
	Safety Education	\$ 164.00
	SCUBA - Regularly Assigned or Detailed	\$ 164.00
SCUBA - Back Up	\$ 84.00	
Senior Arson Investigator	\$ 847.20	
FIREFIGHTER III 2112-4	Emergency Medical Technician	\$ 219.20

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: October 13, 2019

PREMIUM DESCRIPTION		AMOUNT (biweekly unless noted)
FIREFIGHTER III 2112-5	Emergency Medical Technician	\$ 219.20
FIREFIGHTER III 2112-6	Emergency Medical Technician	\$ 219.20
APPARATUS OPERATOR 2121	Driver	\$ 247.20
	Emergency Medical Technician	\$ 162.40
	Helitac Certified and Assigned	\$ 206.40
ENGINEER 2131	Driver	\$ 247.20
	Emergency Medical Technician	\$ 162.40
	Helitac Certified and Assigned	\$ 206.40
	Test Pit	\$ 206.40
INSPECTOR I 2128-1	Emergency Medical Technician	\$ 162.40
INSPECTOR II 2128-2	Emergency Medical Technician	\$ 162.40
FIREBOAT MATE 5125	Driver	\$ 247.20
	Emergency Medical Technician	\$ 162.40
	Supervising Officer	\$ 408.80
FIREBOAT PILOT 5127	Emergency Medical Technician	\$ 162.40
FIRE HELICOPTER PILOT 3563-1 thru 3563-5	Emergency Medical Technician	\$ 162.40
CAPTAIN I 2142-1 & 2142-3	Emergency Medical Technician	\$ 162.40
	EMS Battalion or EMS Geographic Bureau	Schedule 9
	Helitac Certified and Assigned	\$ 206.40
	Medical Liaison	\$ 124.00
	MFC less than 2 years	\$ 66.40
	MFC 2 or more years	\$ 119.20
	MFC 4 or more years	\$ 224.80
Paramedic	\$ 224.80	
CAPTAIN II 2142-2	Drill Master / Recruitment Training Officer	\$ 245.60
	Emergency Medical Technician	\$ 162.40
	Emergency Operations Liaison Officer	\$ 245.60
	Helitac Certified and Assigned	\$ 206.40
	Medical Liaison	\$ 245.60
	Paramedic	\$ 224.80
	Planning Section	\$ 245.60
Public Information Officer	\$ 122.40	

* The premiums are listed in Article 8.3. Under Article 8.3, the biweekly premiums are percentages or schedules. In this Premium Summary, the AMOUNT column is a flat rate calculation of the percentage bonuses. However, if there is any disparity between the percentage bonuses under Article 8.3 and the amount in the Premium Summary, the percentages under Article 8.3 shall prevail. Additionally, the City and UFLAC agree that, by listing the premiums as flat rates in the Premium Summary, the parties do not intend to modify the percentage premiums under Section 8.3.

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: January 12, 2020

SCHEDULE				1	2	3	4	5	6
A	Firefighter I 2112-1	Regular Pay	BW	\$ 2,731.20					
			MO	\$ 5,940.36					
			YR	\$ 71,284.32					
1	Firefighter II 2112-2	Regular Pay	BW	\$ 2,875.20	\$ 3,030.40	\$ 3,203.20	\$ 3,373.60	\$ 3,574.40	\$ 3,780.00
			MO	\$ 6,253.56	\$ 6,591.12	\$ 6,966.96	\$ 7,337.58	\$ 7,774.32	\$ 8,221.50
			YR	\$ 75,042.72	\$ 79,093.44	\$ 83,603.52	\$ 88,050.96	\$ 93,291.84	\$ 98,658.00
2	Firefighter III 2112-3	Regular Pay	BW		\$ 3,203.20	\$ 3,373.60	\$ 3,574.40	\$ 3,780.00	\$ 3,988.00
			MO		\$ 6,966.96	\$ 7,337.58	\$ 7,774.32	\$ 8,221.50	\$ 8,673.90
			YR		\$ 83,603.52	\$ 88,050.96	\$ 93,291.84	\$ 98,658.00	\$ 104,086.80
4	Firefighter II Paramedic 2112-2	Regular Pay	BW		\$ 3,574.40	\$ 3,780.00	\$ 3,988.00	\$ 4,207.20	\$ 4,444.80
			MO		\$ 7,774.32	\$ 8,221.50	\$ 8,673.90	\$ 9,150.66	\$ 9,667.44
			YR		\$ 93,291.84	\$ 98,658.00	\$ 104,086.80	\$ 109,807.92	\$ 116,009.28
5	Firefighter III 2112-4 2112-5 2112-6 Apparatus Op. 2121 Engineer 2131 Helicopter Pilot I 3563-1 Fireboat Mate 5125	Regular Pay	BW			\$ 3,988.00	\$ 4,207.20	\$ 4,444.80	\$ 4,696.00
			MO			\$ 8,673.90	\$ 9,150.66	\$ 9,667.44	\$ 10,213.80
			YR			\$104,086.80	\$ 109,807.92	\$ 116,009.28	\$ 122,565.60

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: January 12, 2020

SCHEDULE				1	2	3	4	5	6
6	Fire Inspector I 2128-1	Regular Pay	BW				\$ 4,444.80	\$ 4,696.00	\$ 4,960.00
			MO				\$ 9,667.44	\$ 10,213.80	\$ 10,788.00
			YR				\$ 116,009.28	\$ 122,565.60	\$ 129,456.00
6P	Helicopter Pilot II 3563-2	Regular Pay	BW				\$ 4,474.40	\$ 4,728.80	\$ 4,993.60
			MO				\$ 9,731.82	\$ 10,285.14	\$ 10,861.08
			YR				\$ 116,781.84	\$ 123,421.68	\$ 130,332.96
7	Fire Inspector II 2128-2	Regular Pay	BW				\$ 4,696.00	\$ 4,960.00	\$ 5,236.80
			MO				\$ 10,213.80	\$ 10,788.00	\$ 11,390.04
			YR				\$ 122,565.60	\$ 129,456.00	\$ 136,680.48
8	Fire Captain I 2142-1 2142-3 Fireboat Pilot 5127	Regular Pay	BW				\$ 4,960.00	\$ 5,236.80	\$ 5,528.80
			MO				\$ 10,788.00	\$ 11,390.04	\$ 12,025.14
			YR				\$ 129,456.00	\$ 136,680.48	\$ 144,301.68
8P	Helicopter Pilot III 3563-3	Regular Pay	BW				\$ 5,206.40	\$ 5,498.40	\$ 5,804.80
			MO				\$ 11,323.92	\$ 11,959.02	\$ 12,625.44
			YR				\$ 135,887.04	\$ 143,508.24	\$ 151,505.28
9	Fire Captain II 2142-2	Regular Pay	BW				\$ 5,236.80	\$ 5,528.80	\$ 5,829.60
			MO				\$ 11,390.04	\$ 12,025.14	\$ 12,679.38
			YR				\$ 136,680.48	\$ 144,301.68	\$ 152,152.56
9P	Helicopter Pilot IV 3563-4	Regular Pay	BW				\$ 5,479.20	\$ 5,785.60	\$ 6,100.80
			MO				\$ 11,917.26	\$ 12,583.68	\$ 13,269.24
			YR				\$ 143,007.12	\$ 151,004.16	\$ 159,230.88
10P	Helicopter Pilot V 3563-5	Regular Pay	BW				\$ 5,644.80	\$ 5,953.60	\$ 6,281.60
			MO				\$ 12,277.44	\$ 12,949.08	\$ 13,662.48
			YR				\$ 147,329.28	\$ 155,388.96	\$ 163,949.76

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: January 12, 2020

	PREMIUM DESCRIPTION	AMOUNT (biweekly unless noted)
ELIGIBLE UNIT MEMBERS (see MOU provisions for eligibility)	Aircraft Rescue	\$ 215.20
	Bilingual Bonus - speaking	2.75%
	Bilingual Bonus - speaking, reading	5.50%
	CUPA Section	\$ 257.60
	Drill Tower Bonus	\$ 171.20
	Education Bonus 1%	1.00%
	Education Bonus 3%	3.00%
	Field Incident Management Team	\$ 163.20
	Hazardous Materials	\$ 215.20
	Incident Management Team	\$ 124.00
	Marksmanship - Marksman	\$ 4.00
	Marksmanship - Sharpshooter	\$ 8.00
	Marksmanship - Expert	\$ 16.00
	Marksmanship - Distinguished Expert	\$ 32.00
	MFC Bilingual	7.40%
	Network Staffing Assistant	\$ 20.00
	Swift Water Rescue Team	\$ 2.00 /HR
	Swift Water Rescue Team - Water Entry	\$ 2.00 /HR
	Technical Rescue	\$ 215.20
	TEMS Specialist	\$ 109.60
	Uniform Allowance	\$ 51.00
	Unmanned Aerial System	\$ 2.00 /HR
	Wellness - Medical Exam & Online Training	0.00%
	Wellness - Physical Fitness	0.00%
Wellness - Aerobic Test	0.00%	
FIREFIGHTER II 2112-2	Emergency Medical Technician	\$ 1.60
	Paramedic	Schedule 4
FIREFIGHTER III 2112-3	Arson Dog Handler 2 or more years	\$ 885.60
	Arson Investigator 1 or more years	\$ 375.20
	Arson Investigator 2 or more years	\$ 662.40
	Arson Investigator Trainee	\$ 171.20
	Disaster Response	\$ 171.20
	Emergency Incident Technician	\$ 215.20
	Emergency Medical Technician	\$ 20.00
	EMT Instructor	\$ 566.40
	EMT Instructor 2 or more years	\$ 662.40
	Heavy Equipment Operator	\$ 566.40
	Helitac Certified and Assigned	\$ 215.20
	Hydrant Planning	\$ 171.20
	Longevity 10 years	\$ 109.60
	Longevity 15 years	\$ 219.20
	Longevity 20 years	\$ 328.80
	MFC Dispatcher less than 2 years	\$ 88.00
	MFC Dispatcher 2 or more years	\$ 171.20
	MFC Dispatcher 4 or more years	\$ 267.20
	Paramedic	Schedule 5
	Public Service Officer	\$ 319.20
	Recruitment Unit	\$ 171.20
	Safety Education	\$ 171.20
	SCUBA - Regularly Assigned or Detailed	\$ 171.20
	SCUBA - Back Up	\$ 88.00
Senior Arson Investigator	\$ 885.60	
FIREFIGHTER III 2112-4	Emergency Medical Technician	\$ 20.00

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: January 12, 2020

PREMIUM DESCRIPTION		AMOUNT (biweekly unless noted)
FIREFIGHTER III 2112-5	Emergency Medical Technician	\$ 20.00
FIREFIGHTER III 2112-6	Emergency Medical Technician	\$ 20.00
APPARATUS OPERATOR 2121	Driver	\$ 258.40
	Emergency Medical Technician	\$ 1.60
	Helitac Certified and Assigned	\$ 215.20
ENGINEER 2131	Driver	\$ 258.40
	Emergency Medical Technician	\$ 1.60
	Helitac Certified and Assigned	\$ 215.20
	Test Pit	\$ 216.00
INSPECTOR I 2128-1	Emergency Medical Technician	\$ 1.60
INSPECTOR II 2128-2	Emergency Medical Technician	\$ 1.60
FIREBOAT MATE 5125	Driver	\$ 258.40
	Emergency Medical Technician	\$ 1.60
	Supervising Officer	\$ 427.20
FIREBOAT PILOT 5127	Emergency Medical Technician	\$ 1.60
FIRE HELICOPTER PILOT 3563-1 thru 3563-5	Emergency Medical Technician	\$ 1.60
CAPTAIN I 2142-1 & 2142-3	Emergency Medical Technician	\$ 1.60
	EMS Battalion or EMS Geographic Bureau	Schedule 9
	Helitac Certified and Assigned	\$ 215.20
	Medical Liaison	\$ 129.60
	MFC less than 2 years	\$ 68.80
	MFC 2 or more years	\$ 124.00
	MFC 4 or more years	\$ 235.20
Paramedic	\$ 235.20	
CAPTAIN II 2142-2	Drill Master / Recruitment Training Officer	\$ 256.80
	Emergency Medical Technician	\$ 1.60
	Emergency Operations Liaison Officer	\$ 256.80
	Helitac Certified and Assigned	\$ 215.20
	Medical Liaison	\$ 256.80
	Paramedic	\$ 235.20
	Planning Section	\$ 256.80
Public Information Officer	\$ 128.00	

* The premiums are listed in Article 8.3. Under Article 8.3, the biweekly premiums are percentages or schedules. In this Premium Summary, the AMOUNT column is a flat rate calculation of the percentage bonuses. However, if there is any disparity between the percentage bonuses under Article 8.3 and the amount in the Premium Summary, the percentages under Article 8.3 shall prevail. Additionally, the City and UFLAC agree that, by listing the premiums as flat rates in the Premium Summary, the parties do not intend to modify the percentage premiums under Section 8.3.

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: July 5, 2020

SCHEDULE				1	2	3	4	5	6
A	Firefighter I 2112-1	Regular Pay	BW	\$ 2,861.60					
			MO	\$ 6,223.98					
			YR	\$ 74,687.76					
1	Firefighter II 2112-2	Regular Pay	BW	\$ 3,012.00	\$ 3,175.20	\$ 3,356.00	\$ 3,534.40	\$ 3,744.80	\$ 3,960.00
			MO	\$ 6,551.10	\$ 6,906.06	\$ 7,299.30	\$ 7,687.32	\$ 8,144.94	\$ 8,613.00
			YR	\$ 78,613.20	\$ 82,872.72	\$ 87,591.60	\$ 92,247.84	\$ 97,739.28	\$ 103,356.00
2	Firefighter III 2112-3	Regular Pay	BW		\$ 3,356.00	\$ 3,534.40	\$ 3,744.80	\$ 3,960.00	\$ 4,178.40
			MO		\$ 7,299.30	\$ 7,687.32	\$ 8,144.94	\$ 8,613.00	\$ 9,088.02
			YR		\$ 87,591.60	\$ 92,247.84	\$ 97,739.28	\$ 103,356.00	\$ 109,056.24
4	Firefighter II Paramedic 2112-2	Regular Pay	BW		\$ 3,744.80	\$ 3,960.00	\$ 4,178.40	\$ 4,408.00	\$ 4,656.80
			MO		\$ 8,144.94	\$ 8,613.00	\$ 9,088.02	\$ 9,587.40	\$ 10,128.54
			YR		\$ 97,739.28	\$ 103,356.00	\$ 109,056.24	\$ 115,048.80	\$ 121,542.48
5	Firefighter III 2112-4 2112-5 2112-6 Apparatus Op. 2121 Engineer 2131 Helicopter Pilot I 3563-1 Fireboat Mate 5125	Regular Pay	BW			\$ 4,178.40	\$ 4,408.00	\$ 4,656.80	\$ 4,920.00
			MO			\$ 9,088.02	\$ 9,587.40	\$ 10,128.54	\$ 10,701.00
			YR			\$ 109,056.24	\$ 115,048.80	\$ 121,542.48	\$ 128,412.00

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: July 5, 2020

SCHEDULE				1	2	3	4	5	6
6	Fire Inspector I 2128-1	Regular Pay	BW				\$ 4,656.80	\$ 4,920.00	\$ 5,196.80
			MO				\$ 10,128.54	\$ 10,701.00	\$ 11,303.04
			YR				\$ 121,542.48	\$ 128,412.00	\$ 135,636.48
6P	Helicopter Pilot II 3563-2	Regular Pay	BW				\$ 4,688.00	\$ 4,954.40	\$ 5,232.00
			MO				\$ 10,196.40	\$ 10,775.82	\$ 11,379.60
			YR				\$ 122,356.80	\$ 129,309.84	\$ 136,555.20
7	Fire Inspector II 2128-2	Regular Pay	BW				\$ 4,920.00	\$ 5,196.80	\$ 5,486.40
			MO				\$ 10,701.00	\$ 11,303.04	\$ 11,932.92
			YR				\$ 128,412.00	\$ 135,636.48	\$ 143,195.04
8	Fire Captain I 2142-1 2142-3 Fireboat Pilot 5127	Regular Pay	BW				\$ 5,196.80	\$ 5,486.40	\$ 5,792.80
			MO				\$ 11,303.04	\$ 11,932.92	\$ 12,599.34
			YR				\$ 135,636.48	\$ 143,195.04	\$ 151,192.08
8P	Helicopter Pilot III 3563-3	Regular Pay	BW				\$ 5,454.40	\$ 5,760.80	\$ 6,081.60
			MO				\$ 11,863.32	\$ 12,529.74	\$ 13,227.48
			YR				\$ 142,359.84	\$ 150,356.88	\$ 158,729.76
9	Fire Captain II 2142-2	Regular Pay	BW				\$ 5,486.40	\$ 5,792.80	\$ 6,108.00
			MO				\$ 11,932.92	\$ 12,599.34	\$ 13,284.90
			YR				\$ 143,195.04	\$ 151,192.08	\$ 159,418.80
9P	Helicopter Pilot IV 3563-4	Regular Pay	BW				\$ 5,740.80	\$ 6,061.60	\$ 6,392.00
			MO				\$ 12,486.24	\$ 13,183.98	\$ 13,902.60
			YR				\$ 149,834.88	\$ 158,207.76	\$ 166,831.20
10P	Helicopter Pilot V 3563-5	Regular Pay	BW				\$ 5,914.40	\$ 6,237.60	\$ 6,581.60
			MO				\$ 12,863.82	\$ 13,566.78	\$ 14,314.98
			YR				\$ 154,365.84	\$ 162,801.36	\$ 171,779.76

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: July 5, 2020

	PREMIUM DESCRIPTION	AMOUNT (biweekly unless noted)
ELIGIBLE UNIT MEMBERS (see MOU provisions for eligibility)	Aircraft Rescue	\$ 225.60
	Bilingual Bonus - speaking	2.75%
	Bilingual Bonus - speaking, reading	5.50%
	CUPA Section	\$ 270.40
	Drill Tower Bonus	\$ 180.00
	Education Bonus 1%	1.00%
	Education Bonus 3%	3.00%
	Field Incident Management Team	\$ 171.20
	Hazardous Materials	\$ 225.60
	Incident Management Team	\$ 129.60
	Marksmanship - Marksman	\$ 4.00
	Marksmanship - Sharpshooter	\$ 8.00
	Marksmanship - Expert	\$ 16.00
	Marksmanship - Distinguished Expert	\$ 32.00
	MFC Bilingual	7.40%
	Network Staffing Assistant	\$ 20.80
	Swift Water Rescue Team	\$ 2.00 /HR
	Swift Water Rescue Team - Water Entry	\$ 2.00 /HR
	Technical Rescue	\$ 225.60
	TEMS Specialist	\$ 115.20
	Uniform Allowance	\$ 51.00
	Unmanned Aerial System	\$ 2.00 /HR
	Wellness - Medical Exam & Online Training	0.00%
	Wellness - Physical Fitness	0.00%
Wellness - Aerobic Test	0.00%	
FIREFIGHTER II 2112-2	Emergency Medical Technician	\$ 2.40
	Paramedic	Schedule 4
FIREFIGHTER III 2112-3	Arson Dog Handler 2 or more years	\$ 928.00
	Arson Investigator 1 or more years	\$ 392.80
	Arson Investigator 2 or more years	\$ 693.60
	Arson Investigator Trainee	\$ 180.00
	Disaster Response	\$ 180.00
	Emergency Incident Technician	\$ 225.60
	Emergency Medical Technician	\$ 20.80
	EMT Instructor	\$ 593.60
	EMT Instructor 2 or more years	\$ 693.60
	Heavy Equipment Operator	\$ 593.60
	Helitac Certified and Assigned	\$ 225.60
	Hydrant Planning	\$ 180.00
	Longevity 10 years	\$ 115.20
	Longevity 15 years	\$ 229.60
	Longevity 20 years	\$ 344.80
	MFC Dispatcher less than 2 years	\$ 92.00
	MFC Dispatcher 2 or more years	\$ 180.00
	MFC Dispatcher 4 or more years	\$ 280.00
	Paramedic	Schedule 5
	Public Service Officer	\$ 334.40
	Recruitment Unit	\$ 180.00
	Safety Education	\$ 180.00
	SCUBA - Regularly Assigned or Detailed	\$ 180.00
	SCUBA - Back Up	\$ 92.00
Senior Arson Investigator	\$ 928.00	
FIREFIGHTER III 2112-4	Emergency Medical Technician	\$ 20.80

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: July 5, 2020

PREMIUM DESCRIPTION		AMOUNT (biweekly unless noted)
FIREFIGHTER III 2112-5	Emergency Medical Technician	\$ 20.80
FIREFIGHTER III 2112-6	Emergency Medical Technician	\$ 20.80
APPARATUS OPERATOR 2121	Driver	\$ 270.40
	Emergency Medical Technician	\$ 2.40
	Helitac Certified and Assigned	\$ 225.60
ENGINEER 2131	Driver	\$ 270.40
	Emergency Medical Technician	\$ 2.40
	Helitac Certified and Assigned	\$ 225.60
	Test Pit	\$ 226.40
INSPECTOR I 2128-1	Emergency Medical Technician	\$ 2.40
INSPECTOR II 2128-2	Emergency Medical Technician	\$ 2.40
FIREBOAT MATE 5125	Driver	\$ 270.40
	Emergency Medical Technician	\$ 2.40
	Supervising Officer	\$ 448.00
FIREBOAT PILOT 5127	Emergency Medical Technician	\$ 2.40
FIRE HELICOPTER PILOT 3563-1 thru 3563-5	Emergency Medical Technician	\$ 2.40
CAPTAIN I 2142-1 & 2142-3	Emergency Medical Technician	\$ 2.40
	EMS Battalion or EMS Geographic Bureau	Schedule 9
	Helitac Certified and Assigned	\$ 225.60
	Medical Liaison	\$ 136.00
	MFC less than 2 years	\$ 72.80
	MFC 2 or more years	\$ 130.40
	MFC 4 or more years	\$ 246.40
Paramedic	\$ 246.40	
CAPTAIN II 2142-2	Drill Master / Recruitment Training Officer	\$ 268.80
	Emergency Medical Technician	\$ 2.40
	Emergency Operations Liaison Officer	\$ 268.80
	Helitac Certified and Assigned	\$ 225.60
	Medical Liaison	\$ 268.80
	Paramedic	\$ 246.40
	Planning Section	\$ 268.80
Public Information Officer	\$ 134.40	

* The premiums are listed in Article 8.3. Under Article 8.3, the biweekly premiums are percentages or schedules. In this Premium Summary, the AMOUNT column is a flat rate calculation of the percentage bonuses. However, if there is any disparity between the percentage bonuses under Article 8.3 and the amount in the Premium Summary, the percentages under Article 8.3 shall prevail. Additionally, the City and UFLAC agree that, by listing the premiums as flat rates in the Premium Summary, the parties do not intend to modify the percentage premiums under Section 8.3.

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: June 20, 2021

SCHEDULE				1	2	3	4	5	6
A	Firefighter I 2112-1	Regular Pay	BW	\$ 2,861.60					
			MO	\$ 6,223.98					
			YR	\$ 74,687.76					
1	Firefighter II 2112-2	Regular Pay	BW	\$ 3,012.00	\$ 3,175.20	\$ 3,356.00	\$ 3,534.40	\$ 3,744.80	\$ 3,960.00
			MO	\$ 6,551.10	\$ 6,906.06	\$ 7,299.30	\$ 7,687.32	\$ 8,144.94	\$ 8,613.00
			YR	\$ 78,613.20	\$ 82,872.72	\$ 87,591.60	\$ 92,247.84	\$ 97,739.28	\$ 103,356.00
2	Firefighter III 2112-3	Regular Pay	BW		\$ 3,356.00	\$ 3,534.40	\$ 3,744.80	\$ 3,960.00	\$ 4,178.40
			MO		\$ 7,299.30	\$ 7,687.32	\$ 8,144.94	\$ 8,613.00	\$ 9,088.02
			YR		\$ 87,591.60	\$ 92,247.84	\$ 97,739.28	\$ 103,356.00	\$ 109,056.24
4	Firefighter II Paramedic 2112-2	Regular Pay	BW		\$ 3,744.80	\$ 3,960.00	\$ 4,178.40	\$ 4,408.00	\$ 4,656.80
			MO		\$ 8,144.94	\$ 8,613.00	\$ 9,088.02	\$ 9,587.40	\$ 10,128.54
			YR		\$ 97,739.28	\$ 103,356.00	\$ 109,056.24	\$ 115,048.80	\$ 121,542.48
5	Firefighter III 2112-4 2112-5 2112-6 Apparatus Op. 2121 Engineer 2131 Helicopter Pilot I 3563-1 Fireboat Mate 5125	Regular Pay	BW			\$ 4,178.40	\$ 4,408.00	\$ 4,656.80	\$ 4,920.00
			MO			\$ 9,088.02	\$ 9,587.40	\$ 10,128.54	\$ 10,701.00
			YR			\$ 109,056.24	\$ 115,048.80	\$ 121,542.48	\$ 128,412.00

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: June 20, 2021

SCHEDULE				1	2	3	4	5	6
6	Fire Inspector I 2128-1	Regular Pay	BW				\$ 4,656.80	\$ 4,920.00	\$ 5,196.80
			MO				\$ 10,128.54	\$ 10,701.00	\$ 11,303.04
			YR				\$ 121,542.48	\$ 128,412.00	\$ 135,636.48
6P	Helicopter Pilot II 3563-2	Regular Pay	BW				\$ 4,688.00	\$ 4,954.40	\$ 5,232.00
			MO				\$ 10,196.40	\$ 10,775.82	\$ 11,379.60
			YR				\$ 122,356.80	\$ 129,309.84	\$ 136,555.20
7	Fire Inspector II 2128-2	Regular Pay	BW				\$ 4,920.00	\$ 5,196.80	\$ 5,486.40
			MO				\$ 10,701.00	\$ 11,303.04	\$ 11,932.92
			YR				\$ 128,412.00	\$ 135,636.48	\$ 143,195.04
8	Fire Captain I 2142-1 2142-3 Fireboat Pilot 5127	Regular Pay	BW				\$ 5,196.80	\$ 5,486.40	\$ 5,792.80
			MO				\$ 11,303.04	\$ 11,932.92	\$ 12,599.34
			YR				\$ 135,636.48	\$ 143,195.04	\$ 151,192.08
8P	Helicopter Pilot III 3563-3	Regular Pay	BW				\$ 5,454.40	\$ 5,760.80	\$ 6,081.60
			MO				\$ 11,863.32	\$ 12,529.74	\$ 13,227.48
			YR				\$ 142,359.84	\$ 150,356.88	\$ 158,729.76
9	Fire Captain II 2142-2	Regular Pay	BW				\$ 5,486.40	\$ 5,792.80	\$ 6,108.00
			MO				\$ 11,932.92	\$ 12,599.34	\$ 13,284.90
			YR				\$ 143,195.04	\$ 151,192.08	\$ 159,418.80
9P	Helicopter Pilot IV 3563-4	Regular Pay	BW				\$ 5,740.80	\$ 6,061.60	\$ 6,392.00
			MO				\$ 12,486.24	\$ 13,183.98	\$ 13,902.60
			YR				\$ 149,834.88	\$ 158,207.76	\$ 166,831.20
10P	Helicopter Pilot V 3563-5	Regular Pay	BW				\$ 5,914.40	\$ 6,237.60	\$ 6,581.60
			MO				\$ 12,863.82	\$ 13,566.78	\$ 14,314.98
			YR				\$ 154,365.84	\$ 162,801.36	\$ 171,779.76

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: June 20, 2021

	PREMIUM DESCRIPTION	AMOUNT (biweekly unless noted)
ELIGIBLE UNIT MEMBERS (see MOU provisions for eligibility)	Aircraft Rescue	\$ 225.60
	Bilingual Bonus - speaking	2.75%
	Bilingual Bonus - speaking, reading	5.50%
	CUPA Section	\$ 270.40
	Drill Tower Bonus	\$ 180.00
	Education Bonus 1%	1.00%
	Education Bonus 3%	3.00%
	Field Incident Management Team	\$ 171.20
	Hazardous Materials	\$ 225.60
	Incident Management Team	\$ 129.60
	Marksmanship - Marksman	\$ 4.00
	Marksmanship - Sharpshooter	\$ 8.00
	Marksmanship - Expert	\$ 16.00
	Marksmanship - Distinguished Expert	\$ 32.00
	MFC Bilingual	7.40%
	Network Staffing Assistant	\$ 20.80
	Swift Water Rescue Team	\$ 2.00 /HR
	Swift Water Rescue Team - Water Entry	\$ 2.00 /HR
	Technical Rescue	\$ 225.60
	TEMS Specialist	\$ 115.20
	Uniform Allowance	\$ 51.00
	Unmanned Aerial System	\$ 2.00 /HR
	Wellness - Medical Exam & Online Training	0.50%
Wellness - Physical Fitness	0.50%	
Wellness - Aerobic Test	0.50%	
FIREFIGHTER II 2112-2	Emergency Medical Technician	\$ 2.40
	Paramedic	Schedule 4
FIREFIGHTER III 2112-3	Arson Dog Handler 2 or more years	\$ 928.00
	Arson Investigator 1 or more years	\$ 392.80
	Arson Investigator 2 or more years	\$ 693.60
	Arson Investigator Trainee	\$ 180.00
	Disaster Response	\$ 180.00
	Emergency Incident Technician	\$ 225.60
	Emergency Medical Technician	\$ 20.80
	EMT Instructor	\$ 593.60
	EMT Instructor 2 or more years	\$ 693.60
	Heavy Equipment Operator	\$ 593.60
	Helitac Certified and Assigned	\$ 225.60
	Hydrant Planning	\$ 180.00
	Longevity 10 years	\$ 115.20
	Longevity 15 years	\$ 229.60
	Longevity 20 years	\$ 344.80
	MFC Dispatcher less than 2 years	\$ 92.00
	MFC Dispatcher 2 or more years	\$ 180.00
	MFC Dispatcher 4 or more years	\$ 280.00
	Paramedic	Schedule 5
	Public Service Officer	\$ 334.40
	Recruitment Unit	\$ 180.00
	Safety Education	\$ 180.00
	SCUBA - Regularly Assigned or Detailed	\$ 180.00
SCUBA - Back Up	\$ 92.00	
Senior Arson Investigator	\$ 928.00	
FIREFIGHTER III 2112-4	Emergency Medical Technician	\$ 20.80

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: June 20, 2021

PREMIUM DESCRIPTION		AMOUNT (biweekly unless noted)
FIREFIGHTER III 2112-5	Emergency Medical Technician	\$ 20.80
FIREFIGHTER III 2112-6	Emergency Medical Technician	\$ 20.80
APPARATUS OPERATOR 2121	Driver	\$ 270.40
	Emergency Medical Technician	\$ 2.40
	Helitac Certified and Assigned	\$ 225.60
ENGINEER 2131	Driver	\$ 270.40
	Emergency Medical Technician	\$ 2.40
	Helitac Certified and Assigned	\$ 225.60
	Test Pit	\$ 226.40
INSPECTOR I 2128-1	Emergency Medical Technician	\$ 2.40
INSPECTOR II 2128-2	Emergency Medical Technician	\$ 2.40
FIREBOAT MATE 5125	Driver	\$ 270.40
	Emergency Medical Technician	\$ 2.40
	Supervising Officer	\$ 448.00
FIREBOAT PILOT 5127	Emergency Medical Technician	\$ 2.40
FIRE HELICOPTER PILOT 3563-1 thru 3563-5	Emergency Medical Technician	\$ 2.40
CAPTAIN I 2142-1 & 2142-3	Emergency Medical Technician	\$ 2.40
	EMS Battalion or EMS Geographic Bureau	Schedule 9
	Helitac Certified and Assigned	\$ 225.60
	Medical Liaison	\$ 136.00
	MFC less than 2 years	\$ 72.80
	MFC 2 or more years	\$ 130.40
	MFC 4 or more years	\$ 246.40
Paramedic	\$ 246.40	
CAPTAIN II 2142-2	Drill Master / Recruitment Training Officer	\$ 268.80
	Emergency Medical Technician	\$ 2.40
	Emergency Operations Liaison Officer	\$ 268.80
	Helitac Certified and Assigned	\$ 225.60
	Medical Liaison	\$ 268.80
	Paramedic	\$ 246.40
	Planning Section	\$ 268.80
Public Information Officer	\$ 134.40	

* The premiums are listed in Article 8.3. Under Article 8.3, the biweekly premiums are percentages or schedules. In this Premium Summary, the AMOUNT column is a flat rate calculation of the percentage bonuses. However, if there is any disparity between the percentage bonuses under Article 8.3 and the amount in the Premium Summary, the percentages under Article 8.3 shall prevail. Additionally, the City and UFLAC agree that, by listing the premiums as flat rates in the Premium Summary, the parties do not intend to modify the percentage premiums under Section 8.3.

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: January 1, 2023

SCHEDULE				1	2	3	4	5	6
A	Firefighter I 2112-1	Regular Pay	BW	\$ 2,991.20					
			MO	\$ 6,505.86					
			YR	\$ 78,070.32					
1	Firefighter II 2112-2	Regular Pay	BW	\$ 3,148.00	\$ 3,318.40	\$ 3,508.00	\$ 3,694.40	\$ 3,914.40	\$ 4,139.20
			MO	\$ 6,846.90	\$ 7,217.52	\$ 7,629.90	\$ 8,035.32	\$ 8,513.82	\$ 9,002.76
			YR	\$ 82,162.80	\$ 86,610.24	\$ 91,558.80	\$ 96,423.84	\$ 102,165.84	\$ 108,033.12
2	Firefighter III 2112-3	Regular Pay	BW		\$ 3,508.00	\$ 3,694.40	\$ 3,914.40	\$ 4,139.20	\$ 4,367.20
			MO		\$ 7,629.90	\$ 8,035.32	\$ 8,513.82	\$ 9,002.76	\$ 9,498.66
			YR		\$ 91,558.80	\$ 96,423.84	\$ 102,165.84	\$ 108,033.12	\$ 113,983.92
4	Firefighter II Paramedic 2112-2	Regular Pay	BW		\$ 3,914.40	\$ 4,139.20	\$ 4,367.20	\$ 4,607.20	\$ 4,867.20
			MO		\$ 8,513.82	\$ 9,002.76	\$ 9,498.66	\$ 10,020.66	\$ 10,586.16
			YR		\$102,165.84	\$108,033.12	\$ 113,983.92	\$ 120,247.92	\$ 127,033.92
5	Firefighter III 2112-4 2112-5 2112-6 Apparatus Op. 2121 Engineer 2131 Helicopter Pilot I 3563-1 Fireboat Mate 5125	Regular Pay	BW			\$ 4,367.20	\$ 4,607.20	\$ 4,867.20	\$ 5,142.40
			MO			\$ 9,498.66	\$ 10,020.66	\$ 10,586.16	\$ 11,184.72
			YR			\$113,983.92	\$ 120,247.92	\$ 127,033.92	\$ 134,216.64

FIREFIGHTERS UNIT - SALARY SCHEDULES

Operative on: January 1, 2023

SCHEDULE				1	2	3	4	5	6
6	Fire Inspector I 2128-1	Regular Pay	BW				\$ 4,867.20	\$ 5,142.40	\$ 5,432.00
			MO				\$ 10,586.16	\$ 11,184.72	\$ 11,814.60
			YR				\$ 127,033.92	\$ 134,216.64	\$ 141,775.20
6P	Helicopter Pilot II 3563-2	Regular Pay	BW				\$ 4,900.00	\$ 5,178.40	\$ 5,468.80
			MO				\$ 10,657.50	\$ 11,263.02	\$ 11,894.64
			YR				\$ 127,890.00	\$ 135,156.24	\$ 142,735.68
7	Fire Inspector II 2128-2	Regular Pay	BW				\$ 5,142.40	\$ 5,432.00	\$ 5,734.40
			MO				\$ 11,184.72	\$ 11,814.60	\$ 12,472.32
			YR				\$ 134,216.64	\$ 141,775.20	\$ 149,667.84
8	Fire Captain I 2142-1 2142-3 Fireboat Pilot 5127	Regular Pay	BW				\$ 5,432.00	\$ 5,734.40	\$ 6,054.40
			MO				\$ 11,814.60	\$ 12,472.32	\$ 13,168.32
			YR				\$ 141,775.20	\$ 149,667.84	\$ 158,019.84
8P	Helicopter Pilot III 3563-3	Regular Pay	BW				\$ 5,700.80	\$ 6,020.80	\$ 6,356.80
			MO				\$ 12,399.24	\$ 13,095.24	\$ 13,826.04
			YR				\$ 148,790.88	\$ 157,142.88	\$ 165,912.48
9	Fire Captain II 2142-2	Regular Pay	BW				\$ 5,734.40	\$ 6,054.40	\$ 6,384.00
			MO				\$ 12,472.32	\$ 13,168.32	\$ 13,885.20
			YR				\$ 149,667.84	\$ 158,019.84	\$ 166,622.40
9P	Helicopter Pilot IV 3563-4	Regular Pay	BW				\$ 6,000.00	\$ 6,335.20	\$ 6,680.80
			MO				\$ 13,050.00	\$ 13,779.06	\$ 14,530.74
			YR				\$ 156,600.00	\$ 165,348.72	\$ 174,368.88
10P	Helicopter Pilot V 3563-5	Regular Pay	BW				\$ 6,181.60	\$ 6,519.20	\$ 6,879.20
			MO				\$ 13,444.98	\$ 14,179.26	\$ 14,962.26
			YR				\$ 161,339.76	\$ 170,151.12	\$ 179,547.12

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: January 1, 2023

	PREMIUM DESCRIPTION	AMOUNT (biweekly unless noted)
ELIGIBLE UNIT MEMBERS (see MOU provisions for eligibility)	Aircraft Rescue	\$ 236.00
	Bilingual Bonus - speaking	2.75%
	Bilingual Bonus - speaking, reading	5.50%
	CUPA Section	\$ 282.40
	Drill Tower Bonus	\$ 188.00
	Education Bonus 1%	1.00%
	Education Bonus 3%	3.00%
	Field Incident Management Team	\$ 179.20
	Hazardous Materials	\$ 236.00
	Incident Management Team	\$ 135.20
	Marksmanship - Marksman	\$ 4.00
	Marksmanship - Sharpshooter	\$ 8.00
	Marksmanship - Expert	\$ 16.00
	Marksmanship - Distinguished Expert	\$ 32.00
	MFC Bilingual	7.40%
	Network Staffing Assistant	\$ 21.60
	Swift Water Rescue Team	\$ 2.00 /HR
	Swift Water Rescue Team - Water Entry	\$ 2.00 /HR
	Technical Rescue	\$ 236.00
	TEMS Specialist	\$ 120.00
	Uniform Allowance	\$ 51.00
	Unmanned Aerial System	\$ 2.00 /HR
	Wellness - Medical Exam & Online Training	0.50%
Wellness - Physical Fitness	0.50%	
Wellness - Aerobic Test	0.50%	
FIREFIGHTER II 2112-2	Emergency Medical Technician	\$ 2.40
	Paramedic	Schedule 4
FIREFIGHTER III 2112-3	Arson Dog Handler 2 or more years	\$ 1,100.80
	Arson Investigator 1 or more years	\$ 541.60
	Arson Investigator 2 or more years	\$ 856.00
	Arson Investigator Trainee	\$ 188.00
	Disaster Response	\$ 188.00
	Emergency Incident Technician	\$ 236.00
	Emergency Medical Technician	\$ 21.60
	EMT Instructor	\$ 620.00
	EMT Instructor 2 or more years	\$ 724.80
	Heavy Equipment Operator	\$ 620.00
	Helitac Certified and Assigned	\$ 236.00
	Hydrant Planning	\$ 188.00
	Longevity 10 years	\$ 120.00
	Longevity 15 years	\$ 240.00
	Longevity 20 years	\$ 360.00
	MFC Dispatcher less than 2 years	\$ 96.00
	MFC Dispatcher 2 or more years	\$ 188.00
	MFC Dispatcher 4 or more years	\$ 292.80
	Paramedic	Schedule 5
	Public Service Officer	\$ 349.60
	Recruitment Unit	\$ 188.00
	Safety Education	\$ 188.00
	SCUBA - Regularly Assigned or Detailed	\$ 188.00
SCUBA - Back Up	\$ 96.00	
Senior Arson Investigator	\$ 1,100.80	
FIREFIGHTER III 2112-4	Emergency Medical Technician	\$ 21.60

FIREFIGHTERS UNIT - PREMIUM SUMMARY*

Operative on: January 1, 2023

	PREMIUM DESCRIPTION	AMOUNT (biweekly unless noted)
FIREFIGHTER III 2112-5	Emergency Medical Technician	\$ 21.60
FIREFIGHTER III 2112-6	Emergency Medical Technician	\$ 21.60
APPARATUS OPERATOR 2121	Driver	\$ 283.20
	Emergency Medical Technician	\$ 2.40
	Helitac Certified and Assigned	\$ 236.00
ENGINEER 2131	Driver	\$ 283.20
	Emergency Medical Technician	\$ 2.40
	Helitac Certified and Assigned	\$ 236.00
	Test Pit	\$ 236.80
INSPECTOR I 2128-1	Emergency Medical Technician	\$ 2.40
INSPECTOR II 2128-2	Emergency Medical Technician	\$ 2.40
FIREBOAT MATE 5125	Driver	\$ 283.20
	Emergency Medical Technician	\$ 2.40
	Supervising Officer	\$ 468.00
FIREBOAT PILOT 5127	Emergency Medical Technician	\$ 2.40
FIRE HELICOPTER PILOT 3563-1 thru 3563-5	Emergency Medical Technician	\$ 2.40
CAPTAIN I 2142-1 & 2142-3	Emergency Medical Technician	\$ 2.40
	EMS Battalion or EMS Geographic Bureau	Schedule 9
	Helitac Certified and Assigned	\$ 236.00
	Medical Liaison	\$ 142.40
	MFC less than 2 years	\$ 76.00
	MFC 2 or more years	\$ 136.00
	MFC 4 or more years	\$ 257.60
Paramedic	\$ 257.60	
CAPTAIN II 2142-2	Drill Master / Recruitment Training Officer	\$ 280.80
	Emergency Medical Technician	\$ 2.40
	Emergency Operations Liaison Officer	\$ 280.80
	Helitac Certified and Assigned	\$ 236.00
	Medical Liaison	\$ 280.80
	Paramedic	\$ 257.60
	Planning Section	\$ 280.80
Public Information Officer	\$ 140.80	

* The premiums are listed in Article 8.3. Under Article 8.3, the biweekly premiums are percentages or schedules. In this Premium Summary, the AMOUNT column is a flat rate calculation of the percentage bonuses. However, if there is any disparity between the percentage bonuses under Article 8.3 and the amount in the Premium Summary, the percentages under Article 8.3 shall prevail. Additionally, the City and UFLAC agree that, by listing the premiums as flat rates in the Premium Summary, the parties do not intend to modify the percentage premiums under Section 8.3.

APPENDIX H

FAMILY AND MEDICAL LEAVE

It is the intent of the parties that the provisions and administration of this Article be in compliance with the Family and Medical Leave Act (FMLA) of 1993, the California Family Rights Act (CFRA) of 1993, and the Pregnancy Disability Leave (PDL) provisions of the California Fair Employment and Housing Act (FEHA). The following family leave provisions shall be operative during the term of the MOU:

A. Authorization for Leave

Up to four (4) months (nine pay periods) of family or medical leave shall be provided for the purpose of childbirth, adoption or foster care of a child, or serious health condition of an immediate family member as defined in Article 3.4, upon the request of the employee or designation by Management in accordance with applicable Federal or State law, notwithstanding any other provisions of this MOU or the (LAAC) to the contrary.

An employee may take leave under the provisions of this Article if the employee has a serious health condition that makes him/her unable to perform the functions of the employee's position.

Leave under the provisions of this Article shall be limited to four (4) months (nine pay periods [720 hours]) during a twelve (12) month period, regardless of the number of incidents. A twelve (12) month period shall be measured forward from the first day of leave for each individual taking a leave. The next twelve (12) month period will begin the first day of leave taken under the provisions of this Article after completion of the previous twelve (12) month period.

Exception: Under the provisions of this Article, a pregnant employee may be eligible for up to four (4) months (nine pay periods [720 hours]) for childbirth disability and up to an additional four (4) months (nine pay periods [720 hours]) for the purpose of bonding. (See Sections D.1 and D.6 of this Appendix).

B. Definitions

1. Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in this State.
2. Domestic partner means a named domestic partner in a confidential affidavit declaring the existence of said domestic partner and signed by the City employee, which is on file in the Employee Benefits Office, Personnel Department.

3. Parent means a biological, step, adoptive or foster parent, an individual who stands or stood in *loco parentis* to an employee, or legal guardian. This term does not mean parents-in-law. Persons who are *in loco parentis* include those with day-to-day responsibilities to care for or financially support a child, or in the case a parent of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
4. Child means a biological, adopted, or foster child, a stepchild, a legal ward or child of a person standing *in loco parentis*, who is either under age eighteen (18) or age eighteen (18) or older and incapable of self-care because of a mental or physical disability.

C. Eligibility

1. The provisions of this Article shall apply to employees who have been employed by the City for at least twelve (12) months and who have worked at least 1,250 hours during the twelve (12) months immediately preceding the beginning of the leave.

Exception: In accordance with PDL under the California FEHA, on the first day of employment with the City, pregnant employees are eligible for up to four (4) months (nine pay periods [720 hours]) of leave if disabled due to pregnancy.

2. Parents (including those who are domestic partners) who both work for the City may each individually take leave under the provisions of this Article at the same time to care for a new child by birth or adoption, or foster care of a child, or to care for a sick parent. Each employee must notify his/her employing department at the time the leave is requested of the name and department of the second family member who is requesting leave for the same incident. Such notification must include the starting and ending dates of the time period for which each employee is requesting leave.

The time limitations described above do not apply to leave taken by one spouse or one domestic partner to care for the other who is seriously ill, or to care for a child with a serious health condition.

D. Conditions

1. Pregnancy - A leave for a pregnant employee shall start at the beginning of the period of disability that a health care provider certifies as necessary. Leave for the non-disability portion of childbirth ("bonding") may be taken before or after delivery.

In accordance with the PDL under the California FEHA, employees who are disabled due to pregnancy, childbirth, or related medical conditions are eligible for up to four (4) months (nine pay periods [720 hours]) of leave with medical certification certifying the employee is unable to work due to a pregnancy-related condition. PDL may be taken before or after the birth of a child, shall run concurrently with pregnancy leave under the federal FMLA, and must be concluded within one year of the child's birth.

Employees (each parent individually) are also eligible for family leave ("bonding") under the CFRA, which shall be limited to four months (nine pay periods [720 hours]) and must be concluded within one year of the child's birth. Whereas bonding leave for the pregnant employee may be taken before or after delivery, bonding leave for the non-pregnant employee shall be taken on or after the anticipated delivery or placement date of the child except as may be necessary under Subsection D.2 of this Article. (The administration of such leave shall be in accordance with Subsection C.2 of this Appendix).

2. Adoption - The start of a family leave for adoption or foster care of a child shall begin on a date reasonably close to the date the child is placed in the custody of the employee. Leave may also be granted prior to placement for adoption or foster care of a child if an absence from work is required (i.e., counseling, court appearance, consultation with an attorney, physical examination, etc.).
3. Family Illness/Injury -The start of a family leave for a serious health condition of a family member shall begin on the date requested by the employee or, if none is requested, on a day designated by Management.
4. Employee's Own Illness/Injury - The start of a personal medical leave for the employee's own serious health condition shall begin on the date requested by the employee or, if none is requested, on a day designated by Management. Serious health conditions occurring during the course and scope of employment activities shall not apply to this Section.
5. A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:
 - a. Any period of incapacity or treatment connected with inpatient care in a hospital, hospice or residential medical care facility; or
 - b. Any period of incapacity requiring an absence of greater than three (3) calendar days involving continuing treatment by or under the supervision of a health care provider; or

- c. Any period of incapacity (or treatment resulting there from) due to a chronic or serious health condition; or
 - d. Any period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective; or
 - e. Any absences to receive multiple treatments (including any period of recovery there from) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three (3) consecutive days if left untreated; or
 - f. Any period of incapacity due to pregnancy or for prenatal care.
6. All leave granted under this Article shall normally be for a continuous period of time for each incident. However, an employee may be permitted to take intermittent leave or work on a reduced schedule to take care of a family member with a serious health condition or for his/her own serious health condition when it is medically necessary. Employees needing intermittent leave or leave on a reduced schedule must attempt to schedule their leave so as not to disrupt the Department's operations. Management may require the employee to transfer temporarily to an available alternative position (with equivalent pay and benefits) for which the employee is qualified and that accommodates recurring periods of leave better than the employee's regular position.

In accordance with the CFRA, leave for the birth, adoption or foster care placement of a child of an employee ("bonding" leave) does not have to be taken in one continuous period of time. Under CFRA, the minimum duration of "bonding" leave is two (2) weeks, and on any two (2) occasions an employee is entitled to such "bonding" leave for a time period of not less than one (1) day but less than two (2) weeks' duration. Any other form of intermittent leave, or work on a reduced schedule, for the purpose of "bonding" leave shall only be permitted at the discretion of Management. "Bonding" leave must be concluded within one (1) year of the birth or placement of the child.

7. If any employee requires another leave for a separate incident under the provisions of this Article during the same twelve (12) month period, a new request must be submitted.
8. Management has the right to request and verify certification of a serious health condition by a health care provider for a leave under the provisions of this Article. Management shall allow employees at least fifteen (15) calendar days to obtain the medical certification.

9. A personal leave of absence beyond the four (4) month (nine pay period [720 hours]) leave provided in this Article may be requested, subject to the approval of the appointing authority and, if required, the Personnel Department, as provided under other City leave provisions.

E. Notice Requirements

1. Employee

When an employee requests family or medical leave, he/she must state the reason for the requested leave (e.g., childbirth, to care for an immediate family member with a serious health condition, etc.). When the necessity for a leave is foreseeable, the employee must provide at least thirty (30) calendar days' notice. However, if the leave must begin in less than thirty (30) calendar days, the employee must provide as much advance notice as is practicable.

2. Management

In response to an employee's request for family or medical leave, Management shall indicate whether or not the employee is eligible for such leave, if such leave will be counted against the employee's annual family or medical leave entitlement, and any requirement for the employee to furnish medical certification. Management shall also notify an employee if it designates leave, paid or unpaid, taken by an employee as family or medical leave-qualifying, regardless of whether or not the employee initiates a request to take family or medical leave.

F. Applicable Time Off

Employees who are granted family leave in accordance with this Article shall take time off in the following order:

1. Childbirth (Mother)

- a. Accrued sick leave (100%, 75%, 50%) or vacation for the entire period of disability that a health care provider certifies is necessary, (including prenatal care or the mother's inability to work prior to the birth) may be taken at the employee's discretion.
- b. For the non-disability portion of childbirth leave (before or after delivery - "bonding"), accrued vacation time shall be used prior to the use of time under c., d., and e. below.
- c. Accrued sick leave; all 100% sick leave shall be used first, followed by the use of all 75% sick leave, followed by the use of all 50% sick

leave. The use of sick leave under this subsection is at the employee's discretion.

- d. Unpaid leave.
- e. Accrued compensatory time off may be used at the employee's discretion, with Management approval, after exhaustion of 100% sick leave. In accordance with the final Department of Labor Regulations, which became effective January 16, 2009, and govern the federal FMLA, any use of accrued compensatory time off under this Section shall be counted against the employee's annual family and medical leave entitlement.

2. Childbirth (Father or Domestic Partner), Adoption, Foster Care or Family Illness

- a. Annual family illness sick leave up to twelve (12) work days may be used at the employee's discretion. Such leave may be taken before or after the vacation described in b. below.
- b. Accrued vacation time. Such time must be used prior to the use of time under c., d., and e. below.
- c. Accrued sick leave; all 100% sick leave shall be used first, followed by the use of all 75% sick leave, followed by the use of all 50% sick leave. The use of sick leave under this subsection is at the employee's discretion.
- d. Unpaid leave.
- e. Accrued compensatory time off may be used at the employee's discretion, with Management approval, after exhaustion of 100% sick leave. In accordance with the final Department of Labor Regulations, which became effective January 16, 2009, and govern the federal FMLA, any use of accrued compensatory time off under this Section shall be counted against the employee's annual family and medical leave entitlement.

3. Personal Medical Leave

- a. Accrued sick leave (100%, 75%, 50%) may be used at the employee's discretion. Such leave may be taken before or after the vacation time off described in b. below.
- b. Accrued vacation time. Such time must be used prior to the use of time under c. and d. below.

- c. Unpaid leave.
- d. Accrued compensatory time off may be used at the employee's discretion, with Management approval, after exhaustion of 100% sick leave. In accordance with the final Department of Labor Regulations, which became effective January 16, 2009, and govern the federal FMLA, any use of accrued compensatory time off under this Section shall be counted against the employee's annual family and medical leave entitlement.

G. Sick Leave Rate of Pay During Family Leave

Payment for sick leave usage under F.1, 2, and 3, above shall be at the regular accrued rate of 100%, 75% or 50%, as appropriate.

H. Medical Subsidies During Family and Medical Leave

For those employees who are on family or medical leave under the above provisions of this Article, Management shall continue the City's health and dental plan subsidies. Employees shall be eligible for such continued subsidies while on a family or medical leave in accordance with the provisions of this Article. However, for any unpaid portion of family or medical leave, health and/or dental plan subsidies shall be continued for a maximum of nine (9) pay periods except while an employee is on a PDL absence (up to four (4) months [9 pay periods/720 hours]), Management shall continue the City's subsidy for her pregnancy health coverage (medical plan subsidy) in compliance with the provisions of Government Code Section 12945. The employee must have been enrolled in a health or dental plan authorized in accordance with Article 4.1 and 4.2 of this MOU prior to the beginning of the leave to be eligible for such subsidy continuation.

I. Monitoring

Management shall maintain such records as are required to monitor the usage of family leave as defined in this Article. Such records are to be made available to the Union upon request.


LETTER OF AGREEMENT
2019-2022 MEMORANDUM OF UNDERSTANDING NO. 23

SALARY AND BENEFITS

The parties agree to the following in conjunction with the 2019-2022 Memorandum of Understanding (MOU):

- If the City enters into an MOU with the Los Angeles Police Protective League (LAPPL) and/or the Los Angeles Fire Department Chief Officers Association (COA) subsequent to the ratification of this agreement which provides compensation increases to the majority of members of LAPPL and/or the COA that are effective during the term of this MOU that exceed the compensation increases provided by this MOU, the City will provide these additional compensation increases to MOU 23 employees on the same effective date.
- In addition, if such agreement with the LAPPL and/or COA provides health, dental, life insurance subsidies or other benefits during the term of this MOU that exceed the subsidies and/or benefits provided by this MOU, the City agrees to provide the additional health, dental, life insurance subsidies and/or other benefits to MOU 23 employees on the same effective date.

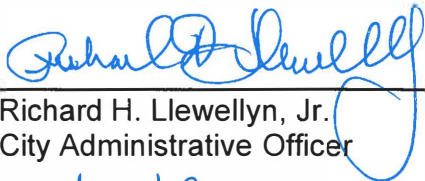
FOR THE UNION:



Freddy Escobar, President
UFLAC, Local 112

9/26/2019
Date

FOR THE CITY:



Richard H. Llewellyn, Jr.
City Administrative Officer

9/27/19
Date

Approved as to Form and Legality:



Office of the City Attorney

9/26/19
Date

LETTER OF AGREEMENT
2019-2022 MEMORANDUM OF UNDERSTANDING NO. 23


COOPERATIVE WORK GROUPS

The parties agree that during the term of this Memorandum of Understanding, the Los Angeles Fire Department and UFLAC will establish cooperative work groups for the purpose of discussing the following issues:

- Inspector Overtime Opportunity System
- SOD Opportunity System (based on running totals of overtime hours worked)
- 48/96 Work Schedule
- Cadet Program
- Drivers' License Requirement

The work groups shall be comprised of three (3) Department representatives and three (3) UFLAC representatives and meet on a quarterly basis or at other times mutually agreed to by the parties. The Department representatives shall not be members of UFLAC's bargaining unit. Each party shall have the responsibility of selecting its own participants, and may opt to change and/or replace participants each quarter.

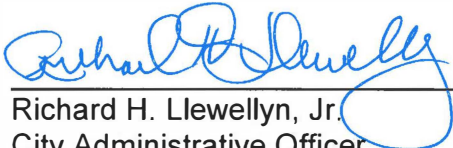
FOR THE UNION:



Freddy Escobar, President
UFLAC, Local 112


9/26/2019
Date

FOR THE CITY:



Richard H. Llewellyn, Jr.
City Administrative Officer

9/27/19
Date



Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department

9/26/19
Date

LETTER OF AGREEMENT
2019-2022 MEMORANDUM OF UNDERSTANDING NO. 23

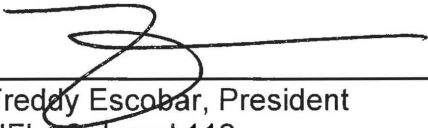
CUPA (Certified Unified Program Agency) SECTION

The parties agree to the following regarding the CUPA Section:

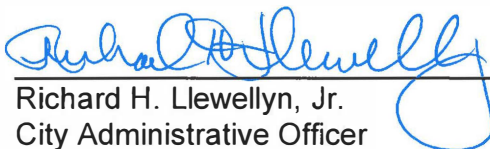
1. Employees assigned to the CUPA Section shall have six (6) months from the effective date of assignment to obtain International Code Council California Underground Storage Tank Inspector Certification. Any employee who fails to obtain this certification within the six (6) month time period will be transferred out of the CUPA Section.
2. Employees assigned to the CUPA Section who meet the minimum educational requirements of California Code of Regulations Title 27, Division 1, Subdivision 4, Article 5, Section 15260(a)(1)(A), shall receive a biweekly premium in accordance with Article 8.3 of the 2019-2022 MOU.

FOR THE UNION:

FOR THE CITY:



Freddy Escobar, President
UFLAC, Local 112



Richard H. Llewellyn, Jr.
City Administrative Officer

9/26/2019
Date

9/27/19
Date



Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department

9/26/19
Date

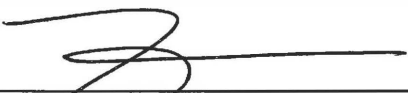
LETTER OF AGREEMENT
2019-2022 MEMORANDUM OF UNDERSTANDING NO. 23

GRIEVANCE PROCEDURE


The parties agree that the definition of a grievance specified in Article 2.1 of the MOU includes the issuance of an official reprimand and the removal of bonus pay.

FOR THE UNION:

FOR THE CITY:



Freddy Escobar, President
UFLAC, Local 112



Richard H. Llewellyn, Jr.
City Administrative Officer

9/26/2019
Date

9/27/19
Date



Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department

9/24/19
Date

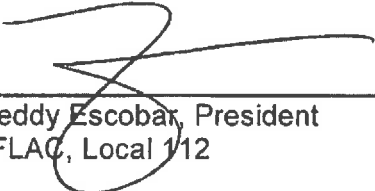
LETTER OF AGREEMENT
2019-2024 MEMORANDUM OF UNDERSTANDING NO. 23

BUDGET AND FINANCES

The parties agree to the following regarding the City's budget and financial condition:

During the term of this MOU, the parties shall meet and consult within a week of the release of the CAO's financial status report regarding the City's budget with the purpose of sharing information, and conferring regarding restoring the July 4, 2021 deferred salary increase, and/or identifying additional economic increases and/or increasing staffing. The first such meeting shall take place the last week of July 2021. However, if the City receives a substantial amount of state and/or federal government funds that can be used to offset the decline in revenue that serves as the basis for reopening the MOU, the City will immediately notify UFLAC of this event and the parties will meet and confer over the use of such funds.

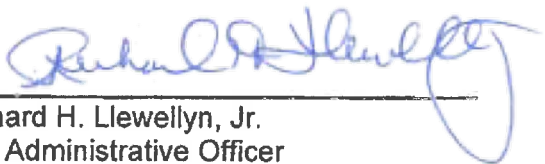
FOR THE UNION:



Freddy Escobar, President
UFLAC, Local 112

4/1/2021
Date

FOR THE CITY:



Richard H. Llewellyn, Jr.
City Administrative Officer

4/1/21
Date

Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department

Date

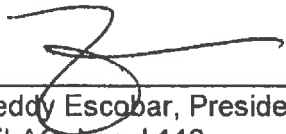
LETTER OF AGREEMENT
2019-2024 MEMORANDUM OF UNDERSTANDING NO. 23

MODIFIED COVERAGE

The parties agree to the following regarding the Los Angeles Fire Department's resource deployment plan:

During the term of the current MOU, the Department agrees to not implement any deployment modification which involves scheduled Field Resource closures, commonly known as "Brown-outs", any long-term Field Resource closures, or any variation of scheduled closures. As used in this agreement, the term "Field Resource" is defined as any front-line emergency response company or unit assigned to one of the four Geographic Bureaus with personnel assigned to it on a full-time basis and has authorized position authorities assigned to it. This agreement shall not apply to variably-staffed or augmented resources and shall not prohibit the Department from closing field resources on a day-to-day basis when daily staffing levels fall below the minimum number required to keep said resources open. This agreement is entered into on a non-precedent setting basis. The Parties agree that this agreement shall not be considered, cited or used in future disputes as establishing past precedent or a past employment practice.

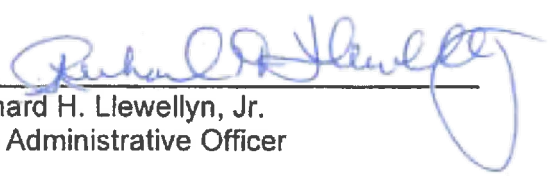
FOR THE UNION:



Freddy Escobar, President
UFLAC, Local 112

4/1/2021
Date

FOR THE CITY:



Richard H. Llewellyn, Jr.
City Administrative Officer

4/1/21
Date

Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department

Date


LETTER OF AGREEMENT
2019-2024 MEMORANDUM OF UNDERSTANDING NO. 23

JOINT LABOR MANAGEMENT COMMITTEE ON DAILY CLOSURES

The parties agree to the following regarding the Los Angeles Fire Department's process for daily closures:

The parties agree that, beginning the first week of February 2021, representatives of UFLAC and the Los Angeles Fire Department shall meet and consult regarding the procedure relevant to field resource closures resulting from daily staffing levels falling below the minimum number required to keep those resources open. The term "field resource" is defined as any front-line emergency response company or unit assigned to one of the four Geographic Bureaus with personnel assigned to it on a full-time basis and has authorized position authorities assigned to it.


FOR THE UNION:



Freddy Escobar, President
UFLAC, Local 112

4/1/2021
Date

FOR THE CITY:



Richard H. Llewellyn, Jr.
City Administrative Officer

4/1/21
Date

Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department

Date

LETTER OF AGREEMENT
2019-2024 MEMORANDUM OF UNDERSTANDING NO. 23

RETIREMENT INCENTIVE PAY

The parties agree to the following:

1. From July 4, 2021 to December 31, 2022, inclusive, a bargaining Unit member who certifies with the CAO that he or she will enroll in the Deferred Retirement Option Plan (DROP) on a date certain or retire from City service without entering DROP shall be eligible to receive Retirement Incentive Pay (RIP) equal to 4.5% of the member's biweekly schedule step salary rate for up to 26 pay periods as indicated below. This additional pay shall be treated as an Adds to Rate and shall be pensionable.
2. To qualify for RIP, the Unit member must complete a certification, as prescribed by the CAO, that specifies the date that the member will enter DROP or retire from City service without entering DROP. If the member who indicates an intention to enter DROP or retire from City service does neither within six months from the date identified on the certification to the CAO the member shall be required to repay the full RIP amount that was paid to the member from July 4, 2021, to December 31, 2022, inclusive, as calculated by the CAO, upon request by the CAO on behalf of the City.
3. Once the member enters DROP, the member shall no longer qualify for the RIP.
4. A bargaining Unit member who entered DROP prior to July 4, 2021, shall be eligible to receive RIP during his or her final pay period of City employment.
5. No employee shall be eligible for RIP prior to July 4, 2021, nor after December 31, 2022. A member who qualifies for and enrolls in the RIP program shall be paid for (1) 26 pay periods or (2) the number of pay periods between the date that he or she enrolls in the RIP and the pay period ending with December 31, 2022, whichever is less.

LETTER OF AGREEMENT
2019-2024 MEMORANDUM OF UNDERSTANDING NO. 23

RETIREMENT INCENTIVE PAY

FOR THE UNION:

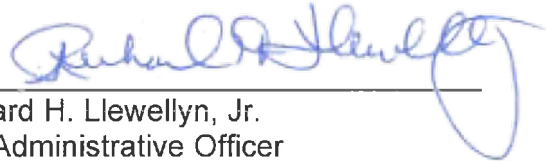


Freddy Escobar, President
UFLAC Local 112

4/1/2021

Date

FOR THE CITY:



Richard H. Llewellyn, Jr.
City Administrative Officer

4/1/21

Date

Approved as to Form and Legality:



Office of the City Attorney

4/1/21

Date

**LETTER OF AGREEMENT
MEMORANDUM OF UNDERSTANDING NO. 23
FIREFIGHTERS AND FIRE CAPTAINS
TIME OFF FOR UNION REPRESENTATIVES**

The Memorandum of Understanding (MOU) between the City of Los Angeles (City) and the United Firefighters of Los Angeles City (UFLAC) provides release time for UFLAC board members to conduct union business (Article 3.7 – Time Off For Union Representatives).

This Letter of Agreement specifies that in the event a UFLAC member is elected to the Executive Board of the International Association of Firefighters (IAFF), that employee will be authorized for full-time release pursuant to Article 3.7 of the MOU regardless of his/her status as a UFLAC board member, with the exception that such release shall not count as one of the four (4) board members authorized in paragraph A.1. of Article 3.7. Such employee shall be assigned to the Fire Chief's Office for timekeeping purposes and will be paid on an 80-hour per pay period basis. The employee shall be paid full compensation, with the exception of Hazard Pay.

This Letter of Agreement may not be modified without the mutual agreement of Frank Lima and the City Administrative Officer.



Frank Lima
UFLAC

Date:

3/17/16



Miguel A. Santana
City Administrative Officer

Date:

3/17/16.

EXHIBIT 2

EXHIBIT 2

CITY OF LOS ANGELES FIRE DEPARTMENT
FORMAL STATEMENT OF GRIEVANCE

**DATE:** 12/13/2021**PART I**

GREIVANT: Firefighter III, Aaron Brownell and all other affected UFLAC bargaining unit members/classifications represented in MOU 23.

REPRESENTATIVE: Freddy Escobar

TITLE: President

ADDRESS: 1571 Beverly Blvd. Suite 201, Los Angeles, CA 90026

Fire Chief Level of Review (Group/Class Grievance)

PART II – GRIEVANCE

The Los Angeles City Fire Department (LAFD) has violated LAFD Rules & Regulations, Section (17)(f) which provides that the service of any notice or process required by reason of disciplinary action shall be made either by handing the member a copy thereof personally, or by forwarding such copy by registered mail to his or her last known address of the Department record.

The LAFD also violated the lawful past personnel practice by imposing disciplinary action and/or placing unit members on leave without pay and benefits.

PART III – GRIEVANT'S STATEMENT

Beginning on or about November 28, 2021, members from this bargaining unit were sent emails, with an attached letter stating that they were being placed off duty, Leave Without Pay (LW). The members' immediate supervisors were also sent emails that directed them to place the members off duty in the Network Staffing System. The Department failed to serve these notices in compliance with the Rules and Regulations Section 17(f).

Further, the Department has violated past practice by placing unit members on LW. Specifically, the Department has failed and refused to provide bargaining unit members the well-established due process and has failed and refused to follow the well-established procedures that by practice have been afforded to unit members before being disciplined, before being deprived of wages and benefits and/or before selecting a Board of Rights. UFLAC bargaining unit members have lost wages and benefits due to the Department's breach.

In addition, some members were erroneously placed on Leave Without Pay and were in fact compliant with the relevant requirements. In some instances these members had proof of compliance, yet were ordered to leave work locations because recordings from Personnel stated they were non-compliant.

UFLAC asserts that the Department's actions violated the Rules and Regulations and past personnel practices.

PART IV – REMEDY

- 1) All affected bargaining unit members shall either be:
 - a. placed back on duty and made whole for lost wages and benefits, including lost overtime and CTO; or,
 - b. properly placed on paid administrative leave and made whole for lost wages and benefits, including lost overtime and CTO.
- 2) All members placed on LW in error and since returned to duty shall be made whole, including lost overtime and CTO.
- 3) UFLAC shall be provided with a list of all members who were sent emails with said notice and proof they were made whole. UFLAC reserves the right to review and dispute the list if inaccurate.
- 4) The Department shall send written notice to all bargaining unit members notifying them of the violation and corrective actions taken by the Department.
- 5) The Department shall cease and desist from further unlawful actions.

SIGNATURE: 	DATE: 12/17/21
---	-----------------------

Date Time Received by Reviewer

EXHIBIT 3

EXHIBIT 3

VOLUNTARY LABOR ARBITRATION TRIBUNAL

BEFORE

IMPARTIAL ARBITRATOR KENNETH A. PEREA

In the Matter of Arbitration)	
)	
Between)	
)	
LOS ANGELES CITY)	IMPARTIAL ARBITRATOR’S
FIRE DEPARTMENT)	
)	FINDINGS
And)	
)	AND
UNITED FIREFIGHTERS OF)	
LOS ANGELES CITY, LOCAL)	AWARD
NO. 112, IAFF, AFL-CIO-CLC)	
)	
Re: Class Grievance of)	ERB Case No. ARB 4035
Firefighter Brownell, et al.)	
_____)	

The above-entitled matter is conducted pursuant to the provisions of Memorandum of Understanding No. 23 (“MOU No. 23”) effective 12:01 a.m. on July 1, 2019, and terminating 11:59 p.m. on June 29, 2024, by and between The City of Los Angeles (“City”) and United Firefighters of Los Angeles City, Local No. 112, IAFF, AFL-CIO-CLC (“UFLAC”). The parties agree the matters at issue are properly submitted before Impartial Arbitrator Kenneth A. Perea for final and binding adjudication.

I. THE HEARING

This dispute was heard at the offices of Bush Gottlieb, a Law Corporation, 801 North Brand Boulevard, Suite 950, Glendale, CA 91203-1260, on June 27, 2023. Throughout the course of the hearing, both parties were afforded full opportunity to present sworn testimony, cross-examine witnesses and introduce documentary evidence into the record. A verbatim transcript of the proceedings was thereafter prepared by Tracy M. Fox, CSR, Express Deposition Services. The matter was thereafter submitted upon receipt of post-hearing briefs.

II. THE APPEARANCES OF COUNSEL

UFLAC was represented at the hearing by Dana S. Martinez (with Dexter Rappleye on the post-hearing brief), Attorneys at Law, Bush Gottlieb, 801 North Brand Boulevard, Suite 950, Glendale, CA 91203-1260. The appearance on behalf of the City and Los Angeles City Fire Department (“LAFD”) was made by Erika Lynn Johnson-Brooks and Travis T. Hall, Deputy City Attorneys, City of Los Angeles, Office of the City Attorney, 200 North Main Street, 800 City Hall East, Los Angeles, CA 90012-4131.

III. THE MATTERS AT ISSUE

The issues presented for adjudication in the above-entitled matter may be stated in the following terms:

1. Did City willfully violate its rules and regulations when it served notices of leave without pay on employees deemed non-compliant with its vaccine Ordinance No. 187134 by email rather than by personal service or registered mail pursuant to LAFD Rule No. 17?
2. If the answer to Issue No. 1 above is in the affirmative, what shall be the remedy?
3. Did City violate a past practice when placing employees on unpaid leaves before establishment of their Board of Rights panel pursuant to Los Angeles City Charter Section 1060?
3. If the answer to Issue No. 3 above is in the affirmative, what shall be the remedy?

IV. THE FINDINGS OF FACT

A. *Background to the Dispute*

Pursuant to City’s Employee Relations Ordinance,¹ UFLAC has served for over half a century as the exclusive bargaining agent for a bargaining unit composed of all Firefighters and

¹ City of Los Angeles Administrative Code Division 4, Chapter 8, effective February 1971 (as amended through April 14, 2014).

Captains employed by LAFD. UFLAC and the City are parties to MOU No. 23, upon which this contractual dispute is focused, effective from July 1, 2019 through June 29, 2024.

When LAFD receives a complaint or is otherwise informed of alleged misconduct by a member of its personnel, it commences an internal investigation by assigning an investigator to review the allegation. The assigned investigator then gathers evidence, interviews witnesses including the employee who is the subject of the complaint and prepares a written report which is submitted to LAFD's Fire Chief, Professional Standards Division ("PSD"). PSD then reviews the prepared investigative report and makes a decision whether to commence discipline based upon the written findings and recommendations set forth therein.

If PSD concludes corrective disciplinary action is warranted, a "*Skelly* packet,"² including (1) evidence gathered by the investigator supporting discipline, (2) the specific disciplinary action that is proposed be taken, and (3) all supporting documentation is prepared and served upon the subject employee. Following service of the *Skelly* packet, the subject employee is thereafter provided an opportunity to present "his side of the story", with UFLAC representation, by responding to the accusations and supporting evidence.³ Following consideration of the employee's response to the charges, LAFD advises the employee whether it will revoke, reduce or sustain the proposed disciplinary action.

If, after meeting to consider the employee's "side of the story" pursuant *Skelly, infra*, LAFD concludes that discipline *greater than a reprimand* is required under the circumstances presented, pursuant to City Charter Section 1060, the subject employee is then permitted to request "a Board of Rights," a panel composed of three LAFD Battalion Chiefs, to conduct an administrative hearing to review the matter and determine what, if any, discipline is warranted

²"*Skelly*" refers to the California Supreme Court's seminal decision in *Skelly v. State Personnel Board*, 15 Cal 3d 194 (1975).

³ *Skelly, supra*.

under the circumstances. The right to administrative review before a Board of Rights is codified at City Charter Section 1060, Rights and Due Process Procedures, and provides in relevant part:

...

- (a) . . . No member of the Fire Department shall be suspended, removed, or otherwise separated from the service of the Fire Department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges assigned as cause or causes after a full, fair and impartial hearing before a Board of Rights except as provided in subsection (b) and (h) of this section.

...

Furthermore, City Charter Section 1060 (b) permits, but does not require, LAFD to “temporarily relieve from duty any member pending a hearing before and decision by a Board of Rights” The latter City Charter provision is ambiguous, however, as to whether an employee’s temporary relief from duty should be with or without pay.

In cases where LAFD has proposed discipline of less than 30-days suspension, City Charter Section 1060 provides the employee with the option to request a Board of Rights hearing to contest the proposed discipline. In such cases, however, LAFD’s consistent practice is to allow the subject employee to remain on duty with pay throughout the Board of Rights process, both before and after a Board of Rights panel has been composed.

When LAFD proposes discipline greater than 30-days suspension, pursuant to City Charter Section 1060 a Board of Rights hearing is mandatory. In such instances, LAFD’s standard practice is for the subject employee to either remain on duty with pay or be “detailed to the Professional Standards Division,” where they remain in paid status until a Board of Rights panel has been established, following which the employee is then placed on leave without pay.

Based upon the foregoing undisputed evidence, it is found that during at least the previous 15 years, never before the events giving rise to the subject grievance have employees been placed on unpaid leave prior to composition of a Board of Rights which will consider their

proposed discipline. Uncontested testimony presented in arbitration thus establishes LAFD's consistent past practice pursuant to City Charter Section 1060 (b), as quoted above, is that when employees are temporarily relieved from duty pending composition of their Board of Rights thereunder, they remain in paid status until receipt of notification their Board of Rights' panels have been established and the dates scheduled for administrative review thereby are confirmed.⁴

City Personnel Policy 33.1 provides the Department [LAFD] may depart from normal disciplinary procedures in certain instances when "genuine emergency situations" arise. More specifically, City Personnel Policy 33.1 C. permits the Department [LAFD] to "remove [an] employee from [a] work situation" when "management believes there is a significant risk in allowing the employee to remain on the job." In such instances, however, City Personnel Policy 33.1 C. specifically provides the subject employee posing an immediate threat will be placed "off work with pay."

Once a Board of Rights is composed, and a bargaining unit member is placed on unpaid leave, LAFD issues the employee a Form F-502 notice. LAFD's standard practice is to serve the Form F-502 notice at the same time as a Form F-503 notice is served advising the bargaining unit member their Board of Rights panel members have been selected, listing the Battalion Chiefs who will be serving on the Board of Rights and the date calendared for its administrative proceedings. The foregoing practice has been followed in every disciplinary case administered by LAFD since at least 2008.

B. Ordinance No. 187134, Mandating Employees, Including LAFD's Firefighters and Captains, Undergo COVID-19 Vaccination

In August 2021, Los Angeles City Council ("City Counsel") promulgated Ordinance No. 187134 ("Ordinance") requiring all City employees verify they have received vaccination against COVID-19. The Ordinance furthermore exempts employees who can demonstrate a religious or

⁴ In certain cases, LAFD permits bargaining unit members who are facing discipline to remain on duty with pay while awaiting composition of their Board of Rights.

medical basis for not becoming vaccinated. The Ordinance, however, did not prescribe specific consequences for those City employees who failed to comply with the foregoing vaccination requirements.

When UFLAC was advised of the terms of the City's proposed Ordinance, it immediately demanded to bargain regarding what the effects of its terms would be on non-compliant employees, including any potential disciplinary action therefor. UFLAC, with the other labor organizations representing City employees, then engaged in "effects bargaining" with the City. Captain Chuong Ho ("Captain Ho") and LAFD Apparatus Operator Adam Walker ("AO Walker") served on UFLAC's bargaining team during effects bargaining with the City concerning the Ordinance. In turn, LAFD Battalion Chief Eric Talamantes ("Chief Talamantes") was among the members of the City's negotiating team regarding the effects of the Ordinance.

After attempting to negotiate the effects of the Ordinance without achieving agreement, the City declared impasse, ceased further effects negotiations and issued UFLAC (and the other labor organizations at the bargaining table) its Last, Best, and Final Offer ("LBFO"). The City's LBFO included "procedures" for "corrective action for violations of Ordinance No. 187134," clarifying that employees may be "terminated for non-compliance with the City's COVID-19 vaccination requirement," and allows such terminated employees to reapply for their positions with the City once becoming compliant.

The City's LBFO also provided that "[i]f an employee does not show proof of full compliance by the close of business on December 18, 2021, the employee will be subject to corrective action." The City's LBFO furthermore clarified that, "[f]or sworn employees employed by [LAFD] who proceed to a Board of Rights, the City will abide by all applicable Charter and other legal requirements." During effects negotiations, UFLAC requested the City clarify the intended definition of "corrective action." In response, the City's Chief Negotiator from the Office of the City Administrative Office explained that "corrective action" meant

discipline and signifying that “if members didn’t comply with the [C]ity[’s] ordinance, the discipline could lead to termination [from employment].”

When UFLAC, among others, declined to accept the City’s LBFO, City Council passed Resolution No. 187134 entitled “Resolution Implementing Consequences for Non-Compliance with the Requirements of Ordinance No. 187134” expressing intent to implement the City’s LBFO. According to Ordinance No. 187132, effective immediately the City’s Mayor, through the appointing authorities, “shall implement the terms and conditions set forth in the City’s October 14, 2021 LBFO regarding consequences for non-compliance with the Mandatory Reporting and Vaccine conditions of employment.”

Following City Council’s passage of Resolution No. 187134, LAFD began suspending certain members of the bargaining unit represented by UFLAC for non-compliance with the Ordinance. Pursuant to the terms of Resolution No. 187134, some employees applied for exemption on religious or medical grounds and were permitted to continue working while LAFD evaluated their claimed exemptions from mandatory vaccination requirements. For those employees (a) whose exemption requests were untimely, (b) whose exemption requests were denied, or (c) who failed to timely prove they received required vaccinations against COVID-19, the City provided 48 hours’ notice before issuing them notification they would be removed from duty without pay. Specifically, both LAFD’s emails to non-compliant employees and attached letters stated the employees were “hereby placed off duty without pay until further notice pending disciplinary review for non-compliance with the City’s Ordinance and Vaccine Policy, and for failure to meet a condition of employment.” The foregoing notices were issued to all non-compliant LAFD employees including Firefighters Aaron Brownell, Nicholas Watkins, Jeff Ochoa and other bargaining unit members included in the subject UFLAC class grievance.

LAFD’s Rule 17(f) of its Rules and Regulations specifically requires as follows:

The services of any notice, order, or process required by reason of disciplinary action shall be made either by handing the member a

copy thereof personally or by forwarding such copy by registered mail to his or her last known address of Department record.

Moreover, LAFD's standard practice in matters of discipline is to serve all notices thereof either by personal service to the bargaining unit member or U.S. mail delivery thereto. In this instance, however, all notices to bargaining unit members found non-compliant with the Ordinance by LAFD were sent by email only.

Each employee placed on unpaid leave due to alleged failure to comply with the Ordinance was also provided a *Skelly* notice and allowed to request a Board of Rights hearing pursuant to City Charter Section 1060. At the time of being provided notice they were being placed on unpaid leave, however, the subject bargaining unit members had not yet been provided an opportunity to request a Board of Rights hearing and no such Board of Rights panels had yet been established.

UFLAC timely initiated the subject "class" grievance in ERB Case No. ARB 4035 pursuant to MOU Article 2.1 Section V contesting LAFD's placement of bargaining unit members on unpaid leave while awaiting establishment of their Board of Rights panels. LAFD, in turn, denied the grievance asserting its placement of bargaining unit members on unpaid leave while awaiting notification of their Board of Rights panels' compositions was not "disciplinary" in nature and alternatively was done due to bargaining unit members' failures to "meet a condition of employment" by receiving vaccinations against COVID-19.

Absent resolution of UFLAC's class grievance and following exhaustion of the grievance procedure of MOU No. 23, the matter was referred for final and binding adjudication before Impartial Arbitrator Kenneth A. Perea.

**V. RELEVANT CITY CHARTER, PERSONNEL POLICY, ORDINANCE
AND MOU No. 23 PROVISIONS**

City Charter Section 1060. Rights and Due Process Procedures.

(a) Applicability: Rights. For purposes of this section, the term “member” refers to all officers and firefighters of the Fire Department. This section shall not apply to any member of the department who has not completed the period of probation in his or her entry position as provided in Section 1011(a). Members not covered by this section who are otherwise entitled by law to a hearing or appeal with regard to proposed or imposed discipline shall be provided a hearing or appeal under rules promulgated by the Fire Chief.

The right of a member of the Fire Department, except the Fire Chief and any other member in a position exempt from civil service, to hold his or her office or position and to receive compensation attached to the office or position is hereby declared to be a substantial property right of which the holder shall not be deprived arbitrarily or summarily, nor other than as provided in this section. No member of the Fire Department shall be suspended, removed, or otherwise separated from the service of the Fire Department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges assigned as cause or causes after a full, fair and impartial hearing before a Board of Rights except as provided in subsection (b) and (h) of this section. The charged must be filed within one year of the department’s discovery of the act committed or omitted by a member and in no event later than two years from the date of the act or omission. No case of suspension with loss of pay shall be for a period exceeding six months.

(b) Temporary Relief from Duty: Suspension. After following predisciplinary procedures otherwise required by law, the Fire Chief may:

- (1) temporarily relieve from duty any member pending a hearing before a decision by a Board of Rights on any charge or charges pending against the member; or
- (2) suspend the member for a total period not to exceed 30 days with loss of pay and with or without reprimand, subject to the right of the member to a hearing before a Board of Rights. In the event the member files an application for a hearing before a Board of Rights as provided in this section, the suspension shall automatically become a temporary relief from duty pending hearing and decision by the Board of Rights. In the event that the member fails to apply for a hearing within the period

prescribed, he or she shall be deemed to have waived the hearing and the suspension shall remain effective, unless the Fire Chief requires that a hearing be held.

- (3) cancel such temporary relief from duty, or following such relief from duty, restore the member to duty with or without restrictions pending a hearing before a Board of Rights.

...

BOOK 3 RULES AND REGULATIONS

Section 17

Discipline:

...

f. The services of any notice, or, or process required by reason of disciplinary action shall be made either by handing the member a copy thereof personally or by forwarding such copy by registered mail to his or her last known address of Department record.

...

POLICIES OF THE PERSONNEL DEPARTMENT CITY OF LOS ANGELES

Section 33

Disciplinary Action: Policy and Procedures (Revised 6/23/05)

33.1

...

C. Conducting the Investigation – Emergency Circumstances

Administrative Leave Policy:

Circumstances may occur where it is necessary to remove the employee from the work situation before final decisions can be reached regarding any disciplinary action to be taken. Removal of the employee should take place only when management believes there is a significant risk in allowing the employee to remain on the job.

In such cases, the supervisor should immediately notify the next level supervisor, as well as the employing department's personnel office or other designated office concerning this action. If the next

level supervisor or personnel office are not available, or it is impractical to contact them, the supervisor should take the following actions:

- Call 9-1-1- emergency when a weapon is involved or when there is an immediate and direct threat to employees or the public. If the danger is not to this level but assistance is needed, call General Services Security at (213) 978-4670.
- Direct the employee to leave the worksite immediately. Place the employee who posed the immediate threat off work with pay.
- If possible, have another, higher level supervisor present when directing the employee's removal.

...

VI. THE PARTIES' CONTENTIONS

A. The Union's Contentions

This case arises from LAFD's implementation of City's August 2021 Ordinance No. 187134, passed in August of 2021, which required City employees obtain vaccinations against COVID-19. However, this case does not involve any challenge to the Ordinance itself or City's/LAFD'S decision to remove employees from duty who fail to comply with the vaccination requirements. Rather, this "class" grievance challenges only LAFD's refusal to pay employees while off duty during the initial stages of the disciplinary process, consistent with LAFD's practice in all other disciplinary cases, including cases where employees are accused of far more egregious misconduct. When the Ordinance passed in 2021, UFLAC demanded to bargain over the effects the City and LAFD would impose on employees who did not comply with the Ordinance's vaccination requirements. The City quickly ended the negotiations by declaring impasse and presenting UFLAC with its LBFO, which provides that employees who do not demonstrate compliance with the vaccine Ordinance by a particular date will be subject to "corrective action" up to and including termination from employment.

City Council then formally adopted the provisions of the LBFO. When LAFD began implementing the LBFO and taking corrective actions, UFLAC fully expected LAFD would generally follow its procedures for disciplinary cases, including notifying employees they were being placed on leave due to failing to comply with the requirements of the Ordinance and LBFO, and providing these employees with both *Skelly* and “Board of Rights” hearings, which are required in disciplinary cases pursuant to City Charter Section 1060. The City, however, failed to follow its normal procedures in two important respects: (1) it placed all employees found non-compliant with the vaccine Ordinance on immediate leave without pay, whereas in all other cases employees facing disciplinary action continue to receive their normal compensation until they select the panelists for their Board of Rights hearing; and (2) it served all notices of non-compliance with the vaccine Ordinance, and corrective action including immediate unpaid leave, via email, whereas LAFD’s rules and regulations require such notices be served either personally or by certified mail.

The evidence at hearing established the violations alleged in the grievance. Two witnesses with years of experience handling disciplinary cases within LAFD testified there is an unambiguous and long-established past practice of continuing to pay employees facing disciplinary charges until their Board of Rights panel has been selected. Notably, LAFD did not submit any evidence to the contrary.

LAFD’s primary defense is that the corrective action taken against employees found non-compliant with the vaccine Ordinance is actually “not discipline” but is merely a penalty for failure to comply with “a condition of employment.” But LAFD did not submit any testimony indicating that this distinction has ever been recognized by either party, or any other evidence showing a basis for the distinction. Moreover, both the language of City’s LBFO, and statements from City’s negotiating representatives at the bargaining table, confirm that “corrective action” means discipline. Finally, LAFD has been following discipline procedures, including providing

for Board of Rights, which only apply to cases where LAFD seeks to take disciplinary action against an employee.

LAFD's other argument mentioned during the hearing is that the COVID-19 emergency excused them from ignoring past practice and applicable Rules and Regulations, which specifically allowed for the immediate removal of non-compliant employees from duty. However, the subject grievance is not challenging LAFD's removal of officers from service, only LAFD's refusal to pay employees while on leave until their Board of Rights are selected. LAFD has not presented any evidence suggesting the COVID-19 pandemic made it impossible for them to continue paying employees while on leave consistent with the established past practice, or that the pandemic had any impact on their finances and ability to pay. Finally, the remedy for LAFD's violations must include, at minimum, payment to all affected employees in the amount they would have earned had they remained in paid status until their Board of Rights panel was selected, or will be selected.

B. The City's Contentions

UFLAC challenges City's consequences for all City employees who failed to comply with Ordinance No. 187134 mandating all City employees be vaccinated against the COVID-19 virus. ("Vaccine Mandate"). Specifically, during the emergency COVID-19 pandemic, after providing time to comply with the Vaccine Mandate, City removed unvaccinated/non-compliant employees from the workplace during the health emergency and placed them on leave without pay in order to protect the health and safety of other City employees and the public they serve. Indeed, it is uncontroverted that removing unvaccinated firefighters from duty during the height of the pandemic was particularly exigent given that firefighters are first responders who regularly interact with the public, including its most vulnerable members and are housed together in LAFD firehouses during active working hours. UFLAC argues, however, that this removal from the workplace during a once-in-a-lifetime pandemic should have been governed

the exact same way as if it were disciplinary action against a member for misconduct on the job. UFLAC is mistaken.

Rather, the removal of a member for failing to comply with the Vaccine Mandate is due to the employee's failure to meet a condition of employment, similar to a situation where a member fails to maintain a proper driver's license and can no longer operate a fire engine. In both instances, the member has time to come into compliance and meet the condition of employment. However, once a member is found to have failed to meet the condition of employment, only then does LAFD move to terminate the non-compliant employee through the disciplinary process.⁵ This distinction is critical because an action taken by LAFD for a member's failure to meet a condition of employment versus an action taken as part of the disciplinary process governs when the appropriate LAFD rules and regulations apply. These actions are indisputably not the same. Here, the two issues before the Impartial Arbitrator are as follows: (1) Did LAFD willfully violate its rules and regulations when it served UFLAC members who were non-compliant with the Vaccine Mandate notice of leave without pay by email (during a pandemic emergency); and (2) Did LAFD violate past practice when it placed UFLAC members who were non-compliant with the Vaccine Mandate on leave without pay before the members were afforded an opportunity to select a Board of Rights? Both issues must be answered in the negative.

As to the first issue, UFLAC argues City allegedly violated Rule 17(f) of the LAFD Rules and Regulations requiring City to provide notice to the member either by hand-service or by registered mail when LAFD intends to terminate one of its members and initiate the Board of Rights process. This argument lacks merit because, as discussed in detail below, LAFD Rule 17(f) only applies in the context of discipline, not when a member is initially placed off duty for

⁵ The disciplinary process is controlled by the member's right to a Board of Rights under City Charter Section 1060, which may result in a finding of "not guilty" where the member is returned to work, or a finding of "guilty" where the member may face a suspension or termination by a panel of three chief officers chosen by the member.

failure to meet a condition of employment. Accordingly, LAFD Rule 17(f) does not apply in this context and LAFD did not violate this Rule by serving the pertinent notices by email.

Second, UFLAC contends that under past practice LAFD has continued to pay its members their full salary even when members are placed on leave pending composition of a Board of Rights. Essentially, UFLAC argues a purported *Skelly* violation under the guise of alleging LAFD's decision to place non-compliant members on unpaid leave pending their Board of Rights hearing violates past practice. However, the legal issue of whether LAFD can place non-compliant members on unpaid leave prior to receiving a *Skelly* hearing/Board of Rights hearing has been upheld both in court and in arbitration. In both forums, the City's decision was upheld, finding that in the context of an ongoing emergency, the City was justified in removing unvaccinated employees from the workplace prior to a formal *Skelly* hearing in order to protect the health and safety of other City employees and the public they serve and that no erroneous deprivation of due process rights occurred. Moreover, City Personnel Policy Section 33.1 specifically recognizes that in emergency circumstances, management may postpone the normal pre-disciplinary due process procedures when there is a significant risk in allowing the employee to remain on the job. City's procedure for removing unvaccinated employees swiftly from the workplace prior to receiving a formal *Skelly* hearing thus complies with Personnel Policy Section 33.1 where, as here, there were emergency circumstances present that justified employees' immediate removal. As such, there was no violation of past practice under the circumstances.

Accordingly, LAFD respectfully requests the Impartial Arbitrator find the evidence and applicable law demonstrate LAFD has not violated any of its rules and procedures in this emergency context by swiftly serving UFLAC members with notice of leave without pay via email for failing to meet a condition of employment and by placing those members on unpaid leave pending their Board of Rights hearings. LAFD therefore respectfully requests that UFLAC's grievance be denied in its entirety.

VII. DISCUSSION AND CONCLUSIONS

A. Introduction

The above-entitled matter concerns UFLAC's "class" grievance on behalf of LAFD's Officers and Firefighters who were placed off duty without pay pending composition of their Board of Rights for purposes of contesting discipline due to alleged non-compliance with Ordinance No. 187134's requirement that all City employees be vaccinated against COVID-19 unless exempted for medical or religious reasons. UFLAC's grievance asserts, pursuant to the parties' past practice, that its bargaining unit members must first be placed on paid leaves until their respective Board of Rights have been composed and a date set for administrative proceedings for purposes of adjudicating whether "good and sufficient cause" exists for discipline.

The City, in turn, argues that placement of such bargaining unit members on unpaid leave pending composition of their Board of Rights consisting of three LAFD Battalion Chiefs, was not discipline but rather was due to the affected bargaining unit members' failure to "meet a condition of employment" by becoming vaccinated against COVID-19.

There is no dispute LAFD properly exercised its managerial authority pursuant to MOU No. 23 to remove Officers and Firefighters from the workplace who were non-compliant with Ordinance No. 187134's vaccination requirements for the health and safety of the public they serve as well as fellow bargaining unit members. The question presented, however, is whether LAFD's action in removing non-compliant Officers and Firefighters *without pay* before either (a) their Board of Rights had been composed and (b) dates had been set for Board of Rights administrative proceedings, was in accordance with the parties' MOU No. 23, Article 2.0.

B. The Nexus Between MOU No. 23's Article 2.0 and City Charter Section 1060

As noted above, MOU No. 23, Article 2.0 provides an agreed upon system for adjudication of disputes, including proposals for discipline. A grievance under the foregoing dispute resolution system is broadly defined as:

. . . any dispute concerning the . . . application of this MOU, the Manual of Operations, departmental rules and regulations, bulletins, personnel practices, other rules, conditions of employment, or working conditions. . . .

It is therefore clear City Personnel Policy 33.1, governing “genuine emergency situations,” as well as City Charter Section 1060, applicable to disciplinary procedures for LAFD’s Officers and Firefighters, are encompassed within MOU No. 23, Article 2.0’s broad phrase, “personnel practices, other rules, conditions of employment, or working conditions.”

It is furthermore undisputed that during negotiations, the City advised UFLAC’s bargaining team that pursuant to the City’s LBFO, “[f]or sworn employees employed by [LAFD] who proceed to a Board of Rights, the City will abide by all applicable Charter and other legal requirements.”

Finally, it is noted MOU No. 23, Article 2.1, Section IV, entitled “Procedure Following a Board of Rights,” provides:

Notwithstanding LAAC Section 4.865, a grievance filed following a decision by a Board of Rights may be submitted for arbitration. The request for arbitration must be filed within fifteen (15) calendar days following the decision of the Board of Rights. Failure of the grievant to serve such written notice within such time period shall constitute waiver of the grievance.

The foregoing provisions, when read harmoniously, are indicative of the parties’ mutual intent to integrate the above-quoted provisions of City Charter Section 1060, City Personnel Policy Section 33.1 and MOU No. 23, Article 2.0 in order to provide an orderly and effective system for the adjudication of disputes concerning proposed discipline of LAFD’s Officers and Firefighters.

The Impartial Arbitrator must therefore construe the foregoing provisions of City Charter Section 1060 to the question presented of whether, once removed from duty, LAFD's Officers and Firefighters choosing to proceed before Board of Rights must remain in paid status pending composition thereof and confirmation of those proceedings.

C. The Parties' Past Practice Pursuant to City Charter Section 1060

The provisions of City Charter Section 1060 are ambiguous on the question of whether an employee who is suspended pending Board of Rights administrative proceedings should be placed on unpaid or paid leave status. Due to the foregoing ambiguity, it becomes imperative for the Impartial Arbitrator to consider whether a past practice of the parties, pursuant to City Charter Section 1060, sheds light on its intent.⁶

It is well-established arbitral precedent that in order to find that a past practice exists, as an aid to contractual interpretation of ambiguous terms such a practice must be "(1) unequivocal, (2) clearly enunciated and acted upon, and (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both Parties." (*Celanese Corp. of Am.*, 24 LA 168, 172 (Justin, 1954).)

As found above, based upon the undisputed evidence presented, during at least the past 15 years, LAFD employees against whom disciplinary charges have been alleged have consistently remained in *paid* leave status pending composition of their Board of Rights, and have never before within that time been placed on *unpaid* leave prior to both the selection of their Board of Rights and confirmation of administrative proceedings before them.

⁶ ". . . custom and past practice of the parties constitutes one of the most significant evidentiary considerations in labor-management arbitration." (Elkouri & Elkouri, *How Arbitration Works*, Chapter 12, Kenneth May Ed., BNA 2016 8th Edition, p. 12-1.)

D. The City’s Argument Non-Compliant Bargaining Unit Members Were Not “Disciplined” But Were Removed From Service Without Pay Due to Their Failure to Meet a Condition of Employment

As noted above, the City argues that following City Council’s passage of the Ordinance, non-compliant LAFD employees were removed from service without pay due to their “failure to meet a condition of employment” by receiving vaccinations against COVID-19 and were therefore not “disciplined.” According to the City, Charter Section 1060 and City Personnel Policy 33.1 were intended to apply only in cases involving “discipline” and thus are inapplicable to the present circumstance.

Following the Impartial Arbitrator’s careful deliberations, however, the foregoing arguments of the City must respectfully be found unconvincing for the following reasons.

(1) The Terms the City’s LBFO

The Ordinance at Section 4.701 provides:

- (a) To protect the City’s workforce and the public it serves, all employees must be fully vaccinated for COVID-19, or request an exemption, and report their vaccination status in accordance with the City’s Workplace Safety, Standards, no later than October 19, 2021.

...

The City’s LBFO implementing the foregoing Ordinance provisions (a) included “procedures” for “*corrective action* for violations of Ordinance No. 187134,” (b) clarified that employees may be “*terminated* for non-compliance with the City’s COVID-19 vaccination requirement,” and (c) allows such *terminated* employees to reapply for their positions once they become compliant with the Ordinance. (Emphasis added.)

Also, the City’s LBFO stated:

... [i]f an employee does not show proof of full compliance by the close of business on December 18, 2021, the employee will be subject to *corrective action*. (Emphasis added.)

The City's LBFO furthermore added:

[f]or sworn employees employed by [LAFD] who proceed to a Board of Rights, the City will abide by all applicable Charter and other legal requirements.

In addressing the City's contentions, it is first noted "discipline," as generally understood in the labor-management community, refers to an employer's actions in response to alleged misconduct by an employee, such as a failure to follow its directives. Discipline may include progressive steps such as warnings, letters of reprimand, suspensions without pay and ultimately termination from employment. Such measures are intended to progressively discipline and thereby modify employee workplace behavior in order to deter future infractions of an employer's rules.

In this instance, the City's actions in suspending non-compliant Officers and Firefighters were implemented to modify future workplace behavior of non-compliant Officers and Firefighters by indefinitely suspending them *without pay* until such time as they complied with the Ordinance's mandatory vaccination requirements. Just as with any form of progressive discipline, City's action in suspending *without pay* was therefore intended to modify the behavior of non-compliant Officers and Firefighters and was disciplinary in its purpose and intent as unequivocally expressed by the City to UFLAC at the bargaining table.

A "condition of employment," on the other hand, is a specification within a job classification which an employer deems necessary for an employee's satisfactory performance of a position's duties. That portion of the Ordinance which required employees must undergo mandatory vaccination against COVID-19 was therefore a valid condition of employment necessary in order to remain on duty.

But the City's expressed intent in its LBFO before implementing the Ordinance did more than simply require non-compliant bargaining unit members be removed from the workplace. It furthermore indefinitely *suspended without pay* all LAFD Officers and Firefighters who failed

to comply with its terms by becoming vaccinated. As found above, this latter action was a matter of discipline intended to prospectively correct the behavior of those Officers and Firefighters who refused to undergo vaccination against COVID-19. Due to its expressed intended purpose of behavior modification by suspending non-compliant employees without pay until they became vaccinated against COVID-19, the City's LBFO implementing the Ordinance went beyond a condition of employment and was disciplinary in its intent and purpose.

The provisions of City Charter Section 1060 and City Personnel Policy 33.1, intended by the parties as found above to be integrated into MOU No. 23, thus became applicable to City's suspensions without pay of LAFD's Officers and Firefighters who were alleged to be non-compliant with the Ordinance.

(2) The City's Oral Expressions to UFLAC at the Bargaining Table

Second, during effects bargaining, including presentation of City's LBFO, non-compliance with the Ordinance was discussed. At that time, UFLAC's bargaining team was advised by the City that employees would be subject to "discipline" up to and including termination from employment should they fail to comply with its terms. Also, during discussions at the bargaining table, the term "termination" was often used by the City. "Termination" in the context of an employment relationship is commonly understood in the labor-management community to mean the most serious form of discipline available to an employer by removing an employee from its workforce.

It is a well-accepted tenant of contractual interpretation that parties' expressions across the bargaining table negotiations should have the same meaning as the resulting terms ultimately adopted.⁷

⁷*Schnucks Mkts.*, 107 LA 739 (Cipolla, 1996); *Copper & Brass Sales*, 105 LA 730 (Nelson, 1995).

(3) The Issues Addressed Before a City Charter Section 1060 Board of Rights

Third, it is undisputed that bargaining unit members represented by UFLAC who were removed from duty without pay due to their non-compliance with the Ordinance have the right to seek redress through procedures of City Charter Section 1060, which includes a hearing before a Board of Rights, a system indisputably designed to adjudicate questions of whether an employee has been *disciplined* “for good and sufficient cause.”

For the foregoing reasons, it is concluded that by suspending without pay non-compliant LAFD Officers and Firefighters, the City was implementing a form of discipline and not a condition of employment.⁸

E. The City’s Argument Its Actions Must be Excused Due to an “Emergency”

Finally, the City argues it acted due to an “emergency” created by the COVID-19 Pandemic and its actions must accordingly be excused.

As explained above, while LAFD’s removals from service of UFLAC bargaining unit members who were non-compliant with the Ordinance was in accordance with its managerial authority under MOU No. 23, City Charter Section 1060 and City Personnel Rule 33.1, the latter provision, while clearly permitting removals from service due to an “emergency” due to an immediate and direct threat to employees or the public, furthermore requires the employee be placed “off work *with pay*.” (Emphasis added.)

Furthermore, no showing has been presented establishing that removal of non-compliant Officers and Firefighters from service while remaining in paid status would have created an “emergency” in this instance.

⁸ Because it has also been found in Subsection D. above that the City’s placement of non-compliant LAFD Officers and Firefighters off duty without pay constituted “disciplinary action,” the City furthermore violated LAFD’s unambiguous Rule 17(f) when failing to serve notice thereof by personal service or USPS registered mail. City shall accordingly be ordered to cease and desist from future violations of LAFD Rule 17(f).

F. The City's Argument It Complied with Applicable Precedent

The City furthermore argues that precedent between the parties pursuant to both Superior Court litigation as well as arbitration proceedings has established that it did not deprive bargaining unit members of the procedural due process rights by removing them from service without pay prior to composition of their Board of Rights and notices of those hearings.

The City's cited precedent, however, is clearly inapplicable to the present contractual dispute which does not concern the issue of whether pre-disciplinary due process safeguards pursuant to *Skelly, infra*, were violated. The present dispute presents a question of whether the City violated MOU No. 23 (including City Charter Section 1060 and City Personnel Rule 33.1 as integrated therein), upon suspending bargaining unit members without pay who failed to be vaccinated against COVID-19.

G. Conclusions

For the reasons explained above, it has been concluded the City violated MOU No. 23 upon removing LAFD's Officers and Firefighter *without pay* due to their alleged non-compliance with the Ordinance.

The matter shall be remanded to the parties for mutual formulation of an appropriate remedy. The Impartial Arbitrator retains jurisdiction regarding the remedy for the contractual violation found above.

AWARD

1. City willfully violated its rules and regulations when it served notice of leave without pay on LAFD Officers and Firefighters whom it deemed to be non-compliant with its vaccine mandate in Ordinance No. 187134 by email rather than by personal service or USPS registered mail pursuant to LAFD Rule No. 17(f).

2. For the contractual violation found in Paragraph No. 1 above, the City shall CEASE AND DESIST from future violations of LAFD Rule No. 17(f) due to service of notices of disciplinary action by email rather than by personal service or USPS registered mail.
3. The City violated an established past practice under MOU No. 23 when it placed certain LAFD Officers and Firefighters on unpaid leaves who were alleged to be in violation of Ordinance No. 187134 before establishment of their Board of Rights and confirmed dates of administrative proceedings thereof pursuant to Los Angeles City Charter Section 1060.
4. For the contractual violation found in Paragraph No. 3 above, the matter is hereby remanded to the parties for purposes of their mutual determination of the appropriate remedy with the Impartial Arbitrator retaining jurisdiction regarding the remedy for the contractual violation found.
5. The Impartial Arbitrator hereby retains jurisdiction to resolve any disputes between the parties concerning the remedy awarded in Paragraph No. 4 above to be exercised upon the written email request of either party.

Dated: November 21, 2023
Del Mar, California

Kenneth A. Perea

**KENNETH A. PEREA
IMPARTIAL ARBITRATOR**

EXHIBIT 4

EXHIBIT 4

HOLLY L. WOLCOTT
CITY CLERK

City of Los Angeles
CALIFORNIA

OFFICE OF THE
CITY CLERK

PETTY F. SANTOS
EXECUTIVE OFFICER



Council and Public Services Division
200 N. SPRING STREET, ROOM 395
LOS ANGELES, CA 90012
GENERAL INFORMATION - (213) 978-1133
FAX: (213) 978-1040

Eric Garcetti
MAYOR

PATRICE Y. LATTIMORE
DIVISION MANAGER

CLERK.LACITY.ORG

When making inquiries relative to
this matter, please refer to the
Council File No.: [20-0600-S74](#)

OFFICIAL ACTION OF THE LOS ANGELES CITY COUNCIL

September 2, 2020

Council File No.: [20-0600-S74](#)

Council Meeting Date: September 02, 2020

Agenda Item No.: 41

Agenda Description: COMMUNICATION FROM THE CITY ADMINISTRATIVE OFFICER (CAO) and RESOLUTION relative to the proposed Declaration of Fiscal Emergency.

Council Action: COMMUNICATION FROM THE CITY ADMINISTRATIVE OFFICER AND RESOLUTION - ADOPTED FORTHWITH

Council Vote:

YES	BLUMENFIELD	YES	KORETZ	YES	PRICE
YES	BONIN	YES	KREKORIAN	YES	RODRIGUEZ
YES	BUSCAINO	YES	LEE	ABSENT	RYU
YES	CEDILLO	YES	MARTINEZ	ABSENT	VACANT
YES	HARRIS-DAWSON	YES	O'FARRELL	YES	WESSON

HOLLY L. WOLCOTT
CITY CLERK

Pursuant to Charter/Los Angeles Administrative Code Section(s): 341

FILE SENT TO MAYOR:

LAST DAY FOR MAYOR TO ACT:

APPROVED

 ***DISAPPROVED**

 ***VETO**

09/03/2020

Mayor

DATE SIGNED

Adopted Report(s)

Title

Attachment to Report dated 08/27/2020 - Resolution
Report from City Administrative Officer

Date

08/27/2020
08/27/2020

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: August 27, 2020

C.F. #20-0600

To: The Honorable City Council

From: Richard H. Llewellyn, Jr., City Administrative Officer



Subject: **DECLARATION OF FISCAL EMERGENCY**

Recommendation

That the City Council adopt the attached Proposed Declaration of Fiscal Emergency.

Discussion

Exhibit H of the proposed budget directs the City Administrative Officer to prepare a Declaration of Fiscal Emergency resulting from increased expenditures due to the City's response to COVID-19 as well as decreased revenues in light of COVID-19. We attach the proposed Declaration.

Fiscal Impact

The adoption of the Declaration of Fiscal Emergency is one action necessary to implement the proposed budget. There is no additional fiscal impact.

RHL:MBG:Z/20-21BUDGETdeclaration

Attachment

**RESOLUTION DECLARING A STATE OF EMERGENCY
BASED ON FISCAL CIRCUMSTANCES RESULTING FROM THE COVID-19
PANDEMIC**

WHEREAS, under the City's Charter, the Mayor is required to propose a balanced budget for the next fiscal year by April 20, and the City Council is required to adopt a balanced budget by June 1; and

WHEREAS, on March 4, 2020, the Mayor declared a local emergency due to the arrival of the novel coronavirus pandemic (COVID-19) in the City of Los Angeles and the resulting threat posed to the public health and safety of City residents and visitors, which was initially ratified by the City Council on March 6, 2020, and most recently renewed and extended on August 25, 2020; and

WHEREAS, on March 15, 2020, in an effort to slow the spread of COVID-19 in the City, the Mayor issued an order curtailing large public gatherings, temporarily closing many government facilities; closing theaters, bars and entertainment venues; prohibiting restaurants from serving to dine-in customers while permitting take-out, delivery and drive-thru; and banning evictions of residential and commercial tenants who cannot pay rent due to the financial impact of COVID-19; and

WHEREAS, on March 19, 2020, in an effort to mitigate the threat to public health and safety, the Mayor issued a Safer At Home (SAH) Order limiting City residents' activities outside of their homes other than essential tasks, which is currently in effect and will remain in place for the duration of the local emergency, unless otherwise amended or rescinded; and

WHEREAS, the SAH Order has curtailed economic activity within the City and, as a result, has slowed the generation of economically sensitive General Fund revenue, as well as revenue generated by City administered operations such as the Los Angeles Zoo and El Pueblo Historical Monument; and

WHEREAS, on March 19, 2020, due to concerns regarding the economic impacts of COVID-19, the Mayor instituted a hiring and promotion freeze, and ordered the suspension of the execution of new contracts and contract extensions, subject to limited exceptions for contracts which are essential to public health and safety, revenue generating, or legally mandated; and

WHEREAS, in order to strengthen the City's Reserve Fund, the Mayor also directed the expedited repayment of currently outstanding Reserve Fund loans by the end of the fiscal year, the evaluation of prior year General Fund encumbrances, the suspension of non-essential re-

appropriations, the recovery of all related cost reimbursements from special funds and grants, and the transfer of idle fund balances to the General Fund; and

WHEREAS, COVID-19 has had and continues to have an adverse impact on the City's financial situation, as a result of both the City's unbudgeted spending on COVID-19 related protection and services necessary for the health and safety of City residents, employees and visitors, and the concurrent reduction of City revenues caused by COVID-19 related closures; and

WHEREAS, on April 20, 2020, the Mayor released a 2020-21 Proposed Budget which, upon the advice of the City Administrative Officer (CAO), projects that the General Fund receipts will, in fact, fall more than \$108 million below the 2019-20 Adopted Budget amount; and

WHEREAS, based on estimates by the City Administrative Officer (CAO) at the end of June 2019 that were the basis of the City's public disclosure on August 18, 2020, the City's 2019-20 General Fund revenues are likely to fall as much as \$98 million below the previous revised estimate, which is \$206 million below the 2019-20 Adopted Budget; and,

WHEREAS, the City is authorized to fully backfill this revenue shortfall using a transfer from the Reserve Fund to the General Fund, which based on the estimated revenue shortfall could be for up to \$206 million ; and,

WHEREAS, if this full transfer is required, Reserve Fund will drop to \$243 million, or 3.6 percent of the General Fund Budget as of July 1, 2020, which is below the five percent minimum threshold established by the City's Administrative Code; and

WHEREAS, this will be the first time the City has faced the prospect of an adopted budget with a projected non-compliance with the five percent minimum threshold since 2012-13 and the lowest projected Reserve Fund percent since 2010-11; and

WHEREAS, the City's cumulative General Fund reserves are projected to fall to 5.9 percent of General Fund revenues, which is considerably below the 10 percent threshold established by the City's Financial Policies and the lowest level of cumulative General Fund reserves since 2012-13; and

WHEREAS, the 2020-21 Proposed Budget projects overall General Fund revenue growth at 1.8 percent or \$118 million above the 2019-20 Adopted Budget (as compared to the average growth of \$273 million during each of the past eight years), which is the lowest rate and amount of growth since 2011-12; and

WHEREAS, the 2020-21 Proposed Budget assumes that economically sensitive General Fund revenues will grow at under 0.3 percent, which is \$191 million less than if they grew at the 20-year average of 4.3 percent; and

WHEREAS, the hardest hit revenues include the tourism-driven Transient Occupancy Tax, which is projected to be down 25 percent, and the activity-driven Parking Occupancy Tax, which is projected to be down 16 percent, which combined equate to over \$100 million below the 2019-20 Adopted Budget amounts; and

WHEREAS, 2020-21 Sales Tax is projected to be 5% below 2019-20 revised receipts, and 2020-21 non-cannabis Business Tax is projected to be 7% below 2019-20 revised receipts; and

WHEREAS, there may be significant downside risk to the economically sensitive revenue projections in the 2020-21 Proposed Budget as illustrated by the Office of Finance's May 7, 2020, report that projected that the General Fund tax receipts it processes will be lower than those included in the 2020-21 Proposed Budget by between \$45 million to \$400 million; and

WHEREAS, City operations that are supported by attendance-based revenues have been and will continue to be negatively impacted by COVID-19 related closures and attendance decreases, which are projected to reduce General Fund revenues from the Los Angeles Zoo and El Pueblo Historical Monument by an additional \$16 million; and

WHEREAS, while the revenue assumptions in the 2020-21 Proposed Budget recognize the economic situation, there is further downside potential for revenue sources including property-based taxes, which assume that the recession will not spill over into the housing market, and departmental receipts, which assume that the City will be able to restore full operations; and

WHEREAS, although it is premature to estimate whether these 2020-21 revenue risks will be realized, based on July 2020 revenue data, many revenue sources are falling short of the estimates on which the 2020-21 Budget's revenue was based, including the Transient Occupancy Tax, Parking Occupancy Tax, Parking Fines, and Documentary Transfer Tax; and

WHEREAS, the 2020-21 Proposed Budget requires \$325 million in additional funding to continue the current level of City Services, of which approximately \$206.7 million represents obligatory employee related costs including, but not limited to, increases in the costs of salaries and benefits; and

WHEREAS, these ongoing costs cannot be fully paid by the projected overall General Fund revenue growth of only \$118 million; and

WHEREAS, the 2020-21 Proposed Budget includes approximately \$231 million in proposed General Fund cost reductions required to achieve a balanced budget, including: \$80.8 million in savings from implementing furloughs for civilian City employees; curtailing hiring and maintaining the hiring and promotion freeze throughout 2020-21 at a savings of \$46 million, reducing capital expenditures from the 2019-20 base budget by \$29 million, reducing funding for extraordinary liabilities by \$20 million, reducing general expense accounts by \$15 million, and reducing the debt program by \$11 million; and

WHEREAS, the 2020-21 Proposed Budget also includes actions to shift costs from the General Fund to special funds including shifting over \$20 million funded by the General Fund and the subsidized Gas Tax to SB-1, and shifting 22 positions from the subsidized Storm water Pollution Abatement Fund to Measure W; and

WHEREAS, the 2020-21 Proposed Budget, consistent with the City's Financial Policies, also seeks to relieve the General Fund by increasing special fund and other reimbursements to the General Fund by \$118 million, driving the growth in the departmental receipt revenue category; and

WHEREAS, there is significant uncertainty regarding the path COVID-19 will take in the City and thus also uncertainty about what actions the City may be required to take, as well as the extent and duration of such actions, to continue to address the threat of COVID-19; and

WHEREAS, in the absence of certainty regarding what future expenditures the City may be required to incur in order to continue to combat the threat posed by COVID-19, and with no guarantee of federal or state reimbursement, it is impossible to accurately predict the full economic impact of COVID-19 on the City, which highlights the importance of maintaining sufficient levels of General Fund reserves; and

WHEREAS, the City possesses the authority to declare an emergency and to take appropriate and targeted measures to preserve essential public services; and

WHEREAS, immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the City are not jeopardized and public health and safety are preserved; and

WHEREAS, as proposed in the 2020-21 Proposed Budget, a furlough program of one day per pay period for most civilian City employees would generate approximately \$80.8 million in General Fund savings, \$58.3 million in special fund savings, and \$11 million in General Fund revenues through increased special fund related cost reimbursements and immediately ensure the City's ability to fund essential services of the City; and

WHEREAS, the 2020-21 Proposed Budget became the operative 2020-21 Budget, effective June 1, 2020, pursuant to the City Charter Section 313; and

WHEREAS, the City Council and Mayor approved interim adjustments to the 2020-21 Budget, effective on July 1, 2020, that designated \$40 million in reductions from the Police Department to be used to offset the need for furloughs, thereby reducing the number of furlough days required to balance the budget from 26 to 18 days; and

WHEREAS, the City also entered into a Separation Incentive Program agreement, in consultation with City unions, in an attempt to achieve some savings as a means to offset the need for furloughs but, nonetheless, furloughs are still necessary to achieve the cost-savings as identified in the 2020-21 Budget; and

WHEREAS, to address the fiscal emergency, the City is continuing to seek to identify other economic, scheduling, and staffing reforms sufficient to achieve necessary cost-savings as identified in the 2020-21 Budget without implementing furloughs for civilian City employees, and is currently meeting and conferring with the affected City employee labor unions; and

WHEREAS, the City is bargaining with the affected City employee labor unions on both the proposed decision to impose a furlough program, and the effects of that decision, in an effort to eliminate or reduce the need for furloughs days, and will continue to engage in bargaining even if furloughs must be implemented on an emergency basis.

NOW, THEREFORE, the City Council of the City of Los Angeles, by virtue of the power vested in it by the City Charter and the City Administrative Code, does hereby adopt the foregoing recitals as findings and does hereby determine and declare that an emergency pursuant to Government Code section 3504.5 and Los Angeles Administrative Code section 4.850 (b) exists, and issues this Order to become effectively immediately;

IT IS RESOLVED that the Mayor, through the appointing authorities, adopt a plan effective October 11, 2020 through June 20, 2021 to implement a furlough of civilian employees for up to 18 days per year, to be effective July 1, 2020, absent the City identifying and implementing other reforms sufficient to achieve the necessary cost-savings. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective October 11, 2020 through June 20, 2021, all City agencies and departments are prohibited from entering into any new personal services or consulting contracts to perform work that would have been performed by City employees subject to the furloughs, layoffs, or other position reduction measures. A limited exemption process shall be included.

EXHIBIT 5

EXHIBIT 5

ORDINANCE NO. 187134

An ordinance adding Article 12 to Chapter 7 of Division 4 of the Los Angeles Administrative Code to require COVID-19 vaccination for all current and future city employees.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS**

Section 1. A new Article 12 is added to Chapter 7, Division 4 of the Los Angeles Administrative Code to read as follows:

ARTICLE 12

**COVID-19 VACCINATION REQUIREMENT FOR ALL CURRENT AND FUTURE
CITY EMPLOYEES**

Sec. 4.700. Definitions.

The words and terms defined in this section shall have the following meanings as used in this article.

(a) "COVID-19" means the Novel Coronavirus disease 2019, the disease caused by the SARS-CoV-2 virus and that resulted in a global pandemic.

(b) "Employees" includes, full, part-time and as-needed City employees regardless of appointment type, volunteers, interns, hiring hall, appointed officers, board members and commissioners, 120-day retired employees, elected officials and at-will appointees of elected officials.

(c) "COVID-19 Vaccine": A COVID-19 vaccine satisfies the requirement of this policy if the U.S. Food and Drug Administration (FDA) has issued Emergency Use Authorization (EUA) or full Licensure for the COVID-19 Vaccine. Vaccines that currently meet this requirement include Moderna or Pfizer-BioNTech (two-dose COVID-19 vaccine series) and Johnson & Johnson/Janssen (single-dose COVID-19 vaccine).

(d) "Fully vaccinated" means 14 days or more have passed since an employee received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen).

This definition may be expanded should booster shots for the COVID-19 vaccines be required in accordance with guidance provided by the U.S. Centers for Disease Control (CDC), FDA, Los Angeles County Department of Public Health and/or any other medical entity that provides health and safety guidance.

(e) “Partially Vaccinated” means employees who have received at least one dose of a COVID-19 vaccine, but do not meet the definition of fully vaccinated as defined herein.

(f) “Unvaccinated” means employees who have not received any doses of COVID-19 vaccine or whose status is unknown.

Sec. 4.701. Vaccination and Reporting Requirement.

(a) To protect the City’s workforce and the public that it serves, all employees must be fully vaccinated for COVID-19, or request an exemption, and report their vaccination status in accordance with the City’s Workplace Safety Standards, no later than October 19, 2021.

(b) As of October 20, 2021, the COVID-19 vaccination and reporting requirements are conditions of City employment and a minimum requirement for all employees, unless approved for an exemption from the COVID-19 vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely held religious beliefs. Any employee that has been approved for an exemption must still report their vaccination status.

(c) Vaccination Requirements.

(1) Employees must receive their first dose of a two-dose COVID-19 vaccine no later than September 7, 2021; second dose no later than October 5, 2021, of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech).

(2) Employees must receive their single dose of a single-dose COVID-19 vaccine (Johnson & Johnson/Janssen) no later than October 5, 2021.

(3) Requests for exemption from the COVID-19 vaccination must be submitted no later than September 7, 2021.

(4) Effective October 20, 2021, any new contract executed by the City shall include a clause requiring employees of the contractor and/or persons working on their behalf who interact with City employees, are assigned to work on City property for the provision of services, and/or come into contact with the public during the course of work on behalf of the City to be fully vaccinated.

(d) **Reporting Requirements.**

(1) The City shall continue to collect and regularly report employees' vaccination status as long as such data is deemed necessary and useful. The City will collect data in accordance with the City's Workplace Safety Standards.

(2) Booster shots for the COVID-19 vaccines may be required in accordance with guidance provided by the CDC, FDA, Los Angeles County Department of Public Health and/or any other medical entity that provides health and safety guidance.

a. Employees will be required to report their COVID-19 booster status to the appointing authority should the City determine that COVID-19 boosters are required in conformity with being fully vaccinated.

b. The Personnel Department will be responsible for maintaining COVID-19 booster status in accordance with the method outlined in subsection (b), above.

Sec. 4.702. Qualified Exemptions.

All current and future City employees shall have the right to petition for a medical or religious exemption to be evaluated on a case-by-case basis, consistent with City procedures for reasonable accommodation requests. Documentation prescribed by the City shall be required.

(a) Employees with medical conditions/restrictions or sincerely held religious beliefs, practices, or observances that prevent them from receiving a COVID-19 vaccine shall qualify for COVID-19 vaccine exemption, upon approval of documentation provided by the employee to the appointing authority or designee. Employees who qualify for the medical or religious exemptions may be subject to weekly testing, as provided in (b)(1), below.

(b) Employees with medical or religious exemptions and who are required to regularly report to a City worksite shall be subject to weekly COVID-19 tests. Testing will be provided to the employees at no cost during their work hours following a process and timeline determined by the City.

(1) Employees with medical or religious exemptions who are telecommuting or teleworking shall be subject to ad hoc COVID-19 testing when they are asked to report to a worksite on an as-needed basis.

The City's goal is to have a vaccinated workforce. As such, employees will not have the option to "opt out" of getting vaccinated and become subject to weekly testing.

Only those with a medical or religious exemption and who are required to regularly report to a work location are eligible for weekly testing.

Sec. 4.703. Other Requirements.

(a) **Health Orders.** Nothing in this ordinance precludes the City from following any order issued by local, state, or county health officers regarding mask mandates or physical distancing. If any order the City has adopted is anticipated to change, the City shall alert labor organizations of the potential change at the earliest opportunity so as to begin impact bargaining over the potential change.

(b) **Masks and Physical Distancing.** Employees who are unvaccinated, partially vaccinated, or have an unreported status for any reason shall, in compliance with City standards and notwithstanding public policy guidelines, continue to wear masks and adhere to physical distancing protocols while present at any City worksite or facility or interacting with members of the public, except where it would be physically hazardous to do so due to the type of work performed.

(c) **COVID-19 Vaccine Training.** Beginning October 5, 2021, any Employee (as defined herein) who is not fully vaccinated shall be required to complete an online vaccination training course administered by the Personnel Department. The City will continuously assess the need for such training.

(d) **Policy Status.** The CAO will monitor status reports and progress of reported vaccination statuses and discuss such information with labor organizations on an ad hoc basis to determine the progress and update the policy as necessary toward achieving the City's goal of a fully vaccinated workforce. All data will be kept confidential, consistent with directions issued by the Personnel Department, outlined herein.

Sec. 4.704. Limitations on Promotions, Transfers, and Appointments.

(a) All candidates and applicants seeking initial City employment, promotions, or transfers, including regular appointments, emergency appointments, temporary appointments, intermittent appointments, limited appointments, exempt full-time and half-time and hiring hall employment, must meet the minimum qualification of being fully vaccinated or receive an exemption and report their vaccination status prior to the appointment, promotion, or transfer.

(1) All fully vaccinated employees that have reported their status to the appointing authority are eligible immediately for any promotion, or transfer.

(2) All employees whose vaccination status is unvaccinated, partially vaccinated, or unreported shall be ineligible to promote or transfer until the employee has reported to the appointing authority that they have been fully vaccinated.

(b) This section regarding the limitations on promotions and transfers shall become effective subject to the completion of the bargaining process with affected unions.

Sec. 4.705. Severability.

If any term or provision of this section is found to be in conflict with any City, State, or Federal law, the City will suspend said section as soon as practicable and the remainder of this Ordinance shall not be affected thereby.

Sec. 2. Urgency Clause. The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reasons: According to the Center for Disease Control, and the Los Angeles County Department of Public Health, COVID-19 continues to pose a significant public health risk, especially as cases surge with the highly infectious spread of the Delta variant. Vaccination is the most effective way to prevent transmission and limit COVID-19 hospitalizations and deaths. The City must provide a safe and healthy workplace, consistent with COVID-19 public health guidance and legal requirements, to protect its employees, contractors and the public as it reopens services and more employees return to the workplace. Unvaccinated employees are at a greater risk of contracting and spreading COVID-19 within the workplace, and risk transmission to the public that depends on City services. For all these reasons, the ordinance shall become effective upon publication pursuant to Los Angeles Charter Section 253.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 
VIVIENNE SWANIGAN
Assistant City Attorney

Date August 16, 2021


File No. 21-0921

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The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than three-fourths** of all its members.

CITY CLERK

MAYOR





Ordinance Passed August 18, 2021

Approved 08/20/2021

Ordinance Published: 08-25-21
Ordinance Effective Date: 08-25-21

EXHIBIT 6

EXHIBIT 6

HOLLY L. WOLCOTT
CITY CLERK

PETTY F. SANTOS
EXECUTIVE OFFICER

City of Los Angeles
CALIFORNIA



ERIC GARCETTI
MAYOR

OFFICE OF THE
CITY CLERK

Council and Public Services Division

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PATRICE Y. LATTIMORE
DIVISION MANAGER

October 26, 2021

CLERK.LACITY.ORG

OFFICIAL ACTION OF THE LOS ANGELES CITY COUNCIL

Council File No.: 21-0921

Council Meeting Date: October 26, 2021

Agenda Item No.: 22

Agenda Description: COMMUNICATION FROM THE CITY ADMINISTRATIVE OFFICER (CAO) and RESOLUTION relative to a mandatory COVID-19 vaccination policy for all current and future City employees.

Council Action: COMMUNICATION FROM THE CITY ADMINISTRATIVE OFFICER AND RESOLUTION - ADOPTED FORTHWITH

Council Vote:

YES	Blumenfield	YES	Bonin	ABSENT	Buscaino
YES	Cedillo	YES	de León	YES	Harris-Dawson
YES	Koretz	YES	Krekorian	YES	Lee
YES	Martinez	YES	O'Farrell	YES	Price
YES	Raman	YES	Rodriguez		

HOLLY L. WOLCOTT
CITY CLERK

- Adopted Report(s)Title
- Attachment to Report dated 10-19-21 - Attachment 2
- Report from City Administrative Officer dated 10-19-21
- Attachment to Report dated 10-19-21 - Attachment 1
- Attachment to Report dated 10-19-21 - Attachment 3
- Attachment to Report dated 10-19-21 - Attachment 4
- Attachment to Report dated 10-19-21 - Attachment 5

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

C.F. #21-0921

Date: October 19, 2021

To: The City Council

From: Matthew W. Szabo, City Administrative Officer

Subject: **ENABLING RESOLUTION FOR ORDINANCE 187134 (“COVID-19 VACCINATION REQUIREMENT FOR ALL CURRENT AND FUTURE CITY EMPLOYEES”)****RECOMMENDATIONS**

The City Administrative Officer (CAO) recommends the following actions by the City Council:

1. Adopt the attached enabling resolution, approved as to form and legality by the City Attorney, providing for implementation of the provisions contained in Ordinance 187134 and as detailed in the City’s last, best, and final offer issued on October 14, 2021; and,
2. Authorize the City Controller and City Administrative Officer to correct any clerical errors, or, if approved by the City Attorney, any technical errors in the above ordinance.

SUMMARY

On July 28, 2021, the City Council passed a resolution directing this Office, the Chief Legislative Analyst, the Personnel Department, and the City Attorney, in consultation with labor organizations, to report back within 15 days on a proposed policy to require all City employees and contractors, as a condition of employment, (1) to be fully vaccinated from the COVID-19 virus, and (2) to report their COVID-19 vaccination status to the appropriate City department.

On August 5, 2021, the Executive Employee Relation Committee (EERC) convened to further discuss the development of a mandatory COVID-19 vaccination policy, as directed by the City Council, with the goal of protecting the City’s workforce and the public that it serves by requiring all employees to be fully vaccinated for COVID-19. The EERC instructed this Office to prepare a mandatory vaccination policy and to begin meet and confer negotiations on the impacts of such a policy. Negotiations were initiated on August 6th with labor organizations, and the input and feedback from those discussions was communicated and discussed with the EERC. The result was a recommendation to the full City Council, which adopted Ordinance

187134 ("COVID-19 VACCINATION REQUIREMENTS FOR ALL CURRENT AND FUTURE CITY EMPLOYEES").

The Ordinance, which was adopted on August 18th and became legally effective August 24th, requires all current and future City employees, as a condition of City employment, to report their vaccination status no later than October 19, 2021, and to be fully vaccinated for COVID-19 or request an exemption for medical or religious reasons by October 19, 2021 (the "Mandatory Reporting and Vaccination conditions of employment"). Between the passage of the Ordinance and October 18th, this Office continued to meet and confer with labor organizations over the ongoing impacts of the Ordinance provisions, including the consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment

On October 1st, the City made a proposal to labor organizations on a set of proposed consequences for non-compliance with Ordinance requirements as part of the meet and confer process. The City's October 1st proposal is attached to this report. Counter proposals were received, discussed, and portions used as the basis of revised recommendations made by this Office to the EERC to modify the City's October 1st proposal. At a special meeting on Tuesday, October 12th, the EERC considered alternatives and continued its ongoing consideration of proposals, input, and feedback from labor organizations regarding the implementation of potential consequences of non-compliance with the Mandatory Reporting and Vaccination conditions of employment.

The EERC recessed its October 12th meeting to give this Office an opportunity to meet that same day with all labor principals and provide them with an update on the EERC's deliberations, and to provide counter proposals, as instructed by the EERC, to organizations that countered the City's October 1st proposal. The City's October 12th counter proposal is attached to this report. The all-labor principals meeting was also conducted to solicit input from unions who had not yet provided counter proposals and to encourage them to do so and schedule meetings as soon as possible.

After the all-principals meeting, further counter proposals, input, and feedback were solicited and received by the CAO, and the City's October 12th counter proposal was further altered to address some of the concerns and issues raised by labor organizations. In consideration of the information solicited and received, the CAO prepared and presented yet another set of revised recommendations to the EERC, which reconvened its recessed October 12th meeting on October 14th to give final consideration to the information provided and solicited.

Given the entirety of the bargaining process and the EERC's deliberations, the City believes it has done its best to incorporate as much feedback as possible that allows the City to move in the desired direction as stated in the Ordinance, and protect the City's workforce and the public that it serves through a fully vaccinated workforce while giving all due consideration to the myriad points and concerns raised by the City's responding union partners, and that the attached document provides the most latitude possible while achieving the City's stated objectives. As such, a last, best, and final offer was made to all labor groups on October 14th, which is attached to this report for the Council's consideration.

FISCAL IMPACT

The fiscal impact of the City's last, best, and final offer that will implement provisions of Ordinance 187134 are unknown at this time.

MWS:PAG:0722042

Attachments

**RESOLUTION IMPLEMENTING CONSEQUENCES FOR
NON-COMPLIANCE WITH THE REQUIREMENTS OF ORDINANCE NO.
187134 (“COVID-19 VACCINATION REQUIREMENT FOR ALL
CURRENT AND FUTURE CITY EMPLOYEES”)**

WHEREAS, on March 6, 2020, the Los Angeles City Council ratified the Mayor’s Declaration of Local Emergency, dated March 4, 2020, wherein he declared that conditions of disaster or extreme peril to the safety of persons have arisen both internationally and within the United States, including in the City of Los Angeles, as a result of the introduction of the novel coronavirus (“COVID-19”), a novel communicable disease first detected in Wuhan City, Hubei Province, China in December 2019;

WHEREAS, the City Council has repeatedly renewed the Mayor’s March 4, 2020 Declaration of Local Emergency, most recently on September 21, 2021;

WHEREAS, extensively during the period of this local emergency, the Mayor of Los Angeles has exercised his emergency authority under the Los Angeles Administrative Code Section 8.29 by issuing Public Orders and Directives to City Departments in furtherance of the ongoing need to preserve life and property of individuals living and working in the City;

WHEREAS, the COVID-19 pandemic continues to change and evolve, and such emergency orders and directives will continue to be necessary;

WHEREAS, on July 28, 2021, the City Council adopted a motion directing the City Administrative Officer (CAO), the Chief Legislative Analyst, the City Personnel Department, and the City Attorney, in consultation with labor representatives, to report back on a proposed policy to require that all City employees and contractors, as a condition of employment, (1) be fully vaccinated for COVID-19; and (2) report their COVID-19 vaccination status to the appropriate City department, with the goal of protecting the City’s workforce and the public it serves;

WHEREAS, compulsory vaccination during a public health emergency falls squarely within the City’s police powers under Article XI, Section 7 of the California Constitution;

WHEREAS, compulsory immunization has long been recognized as the gold standard for preventing the spread of contagious diseases;

WHEREAS, vaccination is the most effective way to prevent the spread of COVID-19 and to limit COVID-19 hospitalizations and deaths;

WHEREAS, on August 5, 2021, the City Council’s Executive Employee Relations Committee (“EERC”) convened to discuss the development of a mandatory COVID-19 vaccination policy, instructing the CAO to prepare a mandatory vaccination policy and to

begin meeting and conferring with City labor organizations on the negotiable impacts of such a policy;

WHEREAS, on August 6, 2021, the CAO initiated negotiations with the City labor organizations, and the input and feedback from those discussions was communicated and discussed with the EERC, and taken into consideration in a recommendation to the full City Council which, on August 18, 2021, adopted Ordinance 187134 ("COVID-19 VACCINATION REQUIREMENTS FOR ALL CURRENT AND FUTURE CITY EMPLOYEES");

WHEREAS, the Ordinance, which became legally effective August 24, 2021, requires all current and future City employees, as a condition of City employment, to report their vaccination status no later than October 19, 2021, and to be fully vaccinated for COVID-19 or request an exemption for medical or religious reasons by October 20, 2021 (the "Mandatory Reporting and Vaccination conditions of employment");

WHEREAS, as of October 18, 2021, out of a total of 53,168 City employees, 37,524 employees have reported their status as "fully vaccinated", 1,250 employees have reported their status as "partially vaccinated", 4,872 employees have reported their status as "not vaccinated", 1,839 employees have reported their status as "decline to state", and 7,683 employees have failed to report their status;

WHEREAS, as of October 18, 2021, 5,388 City employees have filed Notices of Intent to request a medical or religious exemption from the mandatory vaccination requirement;

WHEREAS, employees who fail to report their vaccination status by October 19, 2021, including those employees who report their status as "decline to state", will be treated as unvaccinated;

WHEREAS, between August 18, 2021 and October 18, 2021, the CAO has continued to meet and confer with City labor organizations over the negotiable impacts of the Ordinance, including the consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment;

WHEREAS, on October 1, 2021, as part of the meet and confer process, the City made a written proposal to City labor organizations on a set of proposed consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment;

WHEREAS, counter proposals from various labor organizations were received, discussed, and portions used as the basis of revised recommendations made by the CAO to the EERC to modify the City's October 1, 2021 proposal;

WHEREAS, on October 12, 2021, at a special meeting, the EERC considered alternatives and continued its ongoing consideration of proposals, input, and feedback

from labor organizations regarding the implementation of potential consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment;

WHEREAS, the EERC recessed its October 12, 2012 special meeting to give the CAO an opportunity to meet that same day with all labor principals and provide them with an update on the EERC's deliberations, and to provide counter proposals, as instructed by the EERC, to labor organizations that had countered the City's October 1, 2021 proposal;

WHEREAS, after the EERC recessed its October 12, 2021 meeting, the CAO issued the City's written counter-proposals to the various labor organizations that had countered the City's October 1, 2021 proposal;

WHEREAS, at the October 12, 2021 all-labor principals meeting, the CAO continued to solicit input from labor organizations who had not yet provided counter proposals and to encourage them to do so and schedule meetings as soon as possible;

WHEREAS, following the October 12, 2021 all-labor principals meeting, further counter proposals, input, and feedback were solicited and received by the CAO, and the City's October 12, 2021 counter proposals were further modified by the CAO to address concerns and issues raised by labor organizations;

WHEREAS, on October 14, 2021, the EERC reconvened its recessed meeting to give final consideration to the CAO's further revised set of recommendations, which incorporated additional information/recommendations solicited and received from City labor organizations, and to issue final bargaining instructions;

WHEREAS, given the entirety of the bargaining process and the EERC's deliberations, the EERC believes it has done its best to incorporate as much feedback as possible that allows the City to move in the desired direction as stated in the Ordinance, and to protect the City's workforce and the public that it serves through a fully vaccinated workforce while giving all due consideration to the myriad points and concerns raised by the City's responding labor organization partners;

WHEREAS, the City would be subjected to a significant financial burden if it had to provide a weekly testing option for all unvaccinated City employees, or place all unvaccinated City employees on paid leave, while simultaneously paying overtime to cover staffing shortages resulting from their absence. Either option would seriously compromise the City's ability to meet its ongoing financial obligations and adequately provide essential public services to the public;

WHEREAS, on October 14, 2021, at the EERC's direction, the CAO issued to the labor organizations the City's Last, Best and Final Offer ("October 14, 2021 LBFO") regarding consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment, which is attached as Attachment 1; and

WHEREAS, various City labor organizations have entered into agreements with the CAO acknowledging and/or agreeing that: (1) during the development and after the adoption of the Ordinance, the parties engaged in the meet and confer process over the impacts of the Ordinance and the implementing procedures; (2) the parties have concluded the meet and confer process in good faith; and (3) the City will implement the terms and conditions set forth in its October 14, 2021 LBFO.

NOW, THEREFORE, the Los Angeles City Council, RESOLVES that:

1. An emergency pursuant to Government Code section 3504.5 and Los Angeles Administrative Code Section 4.850 (b) exists and therefore this Order shall become effective immediately;
2. The City and its labor organizations have reached a stalemate in negotiations on the consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment, and therefore the CAO, in consultation with the City Attorney, is instructed to file a Notice of Impasse with the City's Employee Relations Board;
3. The City cannot wait for exhaustion of collective bargaining impasse procedures (which take up to a year to complete) to address the imminent threat to public health and safety and workplace safety posed by allowing unvaccinated City employees to remain in the workplace and to continue to interact with the public and other City employees;
4. The ongoing COVID-19 pandemic, with new variants, including those yet to emerge in the City, has created a catastrophic public health emergency beyond the City's control sufficient to excuse the City from its normal duty to complete the meet and confer process prior to acting on its decision to impose consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment, as set forth in the City's October 14, 2021 LBFO;
5. There is a compelling need for such unilateral action to protect public health and safety and workplace safety, especially with regard to the City's unvaccinated first responders who regularly interact with vulnerable members of the public while performing their duties; and
6. Effective immediately, the Mayor through the appointing authorities shall implement the terms and conditions set forth in the City's October 14, 2021 LBFO regarding consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment.

COVID-19 Mandatory Vaccination Ordinance

Proposal Over Outcomes for Non-Reporting and Non-Compliance

As discussed prior to and presented on October 1, 2021

Failure to Report

On the employee's first scheduled workday after October 19, 2021, any employee who has reported a vaccination status of "Decline to State" or who has not reported a vaccination status and has thereby failed to follow a direct work order to report a vaccination status shall be granted a period of 24 hours to update their status to (1) fully vaccinated, (2) partially vaccinated or (3) not vaccinated.

If an employee does not update their status within 24 hours from the employee's first scheduled workday after October 20, 2021, they will be charged with insubordination and will be suspended for five days.

Non-Compliance

Employees shall be deemed non-compliant with the vaccination mandate if they have failed to become fully vaccinated **and** have not filed an intent to seek a medical or religious exemption by October 20, 2021. If an employee does not update their status to show full compliance within 24 hours from the employee's first scheduled workday after October 20, 2021, they will be charged with insubordination and will be suspended for five days.

Employees found to be non-compliant with the vaccination mandate on or after October 20, 2021, shall be charged with a separate charge of insubordination and/or failure to meet a condition of employment and shall be served with a five day suspension.

Any employee returning to work from a five-day suspension for non-compliance with the vaccination mandate, without having made substantial progress towards compliance, will be served with a Notice of Proposed Termination and provided with a Skelly hearing. Employees receiving a Notice of Proposed Termination will be placed on unpaid leave pending the Skelly hearing and any subsequent due process proceeding to which the employee is entitled. For sworn employees who proceed to a Board of Rights, the employee will remain on unpaid leave through the duration of the Board of Rights process.

Exemptions

The deadline to submit exemption paperwork to a Department Personnel Officer (DPO) or HR Director is twenty (20) business days after issuance of the forms to the employees.

Exemption Approval: An approved exemption may be based on a disability, medical condition or a sincerely held religious belief. An approved deferral exemption may be based on a recent COVID-19 diagnosis or treatment. If an employee's exemption is approved, the employee must register with Bluestone for testing at (a website to be

COVID-19 Mandatory Vaccination Ordinance

Proposal Over Outcomes for Non-Reporting and Non-Compliance

As discussed prior to and presented on October 1, 2021

provided) and adhere to the City's COVID-19 Workplace Safety Standards. In addition, the employee must adhere to all workplace screening requirements and safety protocols when in a City facility or work location and/or when in contact with other City employees or members of the public while working. They must also comply with any reasonable accommodations that result from good faith, interactive discussions, as applicable.

Exemption Denial: If an employee's exemption request is denied, the employee may appeal the determination to the employee's appointing authority within five (5) business days of the date of the notice of the denial. The employee may amend their application to address written reasons for the denial. The appointing authority will review and decide on the appeal request, which will be sent without identifying information that would lead to the identity of the employee.

If an employee does not file an appeal within five (5) business days of the date of the denial, the employee will have fourteen (14) calendar days from the notice of denial of their exemption or expiration date of their deferral to submit proof that they have received the first dose of a two-dose COVID-19 vaccine or a single dose of a one-dose COVID-19 vaccine. This proof of vaccination must include the date that the employee received the vaccination. The employee will have until twenty-eight (28) calendar days from the date of the first dose of a COVID-19 vaccine to receive the second shot of a two-dose vaccine regimen. The employee will then have until five (5) calendar days from the date of the second shot of a two-dose vaccine regimen to submit proof that the employee received a complete dosage of a vaccine against COVID-19. If either of the dates above falls on a weekend or observed holiday, the deadline for providing the required proof is due on the next business day.

Any employee who does not adhere to the exemption procedures outlined above will be deemed non-compliant with the vaccination mandate, shall be charged with insubordination and/or failure to meet a condition of employment, and shall be served with a five (5) day suspension.

Any employee returning to work from a five-day suspension for non-compliance with the vaccination mandate, without having made substantial progress towards compliance, will be served with a Notice of Proposed Termination and provided with a Skelly hearing. Employees receiving a Notice of Proposed Termination will be placed on unpaid leave pending the Skelly hearing and any subsequent due process proceeding to which the employee is entitled. For sworn employees who proceed to a Board of Rights, the employee will remain on unpaid leave through the duration of the Board of Rights process.

Expiration of Exemption or Deferral: If an employee's exemption or deferral approval has an end date and the employee no longer qualifies for exemption, the employee will have fourteen (14) calendar days from the expiration date of their exemption or deferral to

COVID-19 Mandatory Vaccination Ordinance

Proposal Over Outcomes for Non-Reporting and Non-Compliance

As discussed prior to and presented on October 1, 2021

submit proof that the employee has received the first dose of a two-dose COVID-19 vaccine or a single dose of a one-dose COVID-19 vaccine. This proof of vaccination must include the date that the employee received the vaccination. Then the employee will have until twenty-eight (28) calendar days from the date of the first dose of a COVID-19 vaccine to receive the second shot of a two-dose vaccine regimen. The employee will then have until five (5) calendar days from receiving the second shot of a two-dose vaccine regimen to submit proof that the employee received a complete dosage of a vaccine against COVID-19. If either of the dates above falls on a weekend or observed holiday, the deadline for providing the required proof shall be due on the next business day.

Any employee who does not adhere to the procedures outlined above will be deemed non-compliant with the vaccination mandate, shall be charged with insubordination, and shall be served with a five (5) day suspension.

Any employee returning to work from a five-day suspension for non-compliance with the vaccination mandate, without having made substantial progress towards compliance, will be served with a Notice of Proposed Termination and provided with a Skelly hearing. Employees receiving a Notice of Proposed Termination will be placed on unpaid leave pending the Skelly hearing and any subsequent due process proceeding to which the employee is entitled. For sworn employees who proceed to a Board of Rights, the employee will remain on unpaid leave through the duration of the Board of Rights process.

COVID-19 Mandatory Vaccination Ordinance

Counter Proposal Over Outcomes for Non-Reporting and Non-Compliance

Presented October 12, 2021

General Provisions

The procedures described herein shall apply only to corrective action for violations of Ordinance No. 187134 (“COVID-19 Vaccination Requirement For All Current and Future City Employees”) and shall not apply to violations of other City policies or MOU provisions. Any corrective action that results from implementation of these procedures will not be considered in future disciplinary decisions for violations outside of Ordinance No. 187134. Any employee who is terminated for non-compliance with the City’s COVID-19 vaccination requirement shall not be prohibited from seeking reemployment with the City, subject to any COVID-19 vaccination requirement(s).

Failure to Report a Vaccination Status

On October 20, 2021, employees shall be categorized into one of two groups, as defined by Ordinance 187134 (“COVID-19 Vaccination Requirements for All Current and Future City Employees”):

1. “Fully Vaccinated”; or,
2. “Partially Vaccinated” or “Unvaccinated”.

Non-Compliance with the Vaccination Mandate

Employees shall be deemed non-compliant with the vaccination mandate if they have failed to become fully vaccinated **and** have not filed an intent to seek a medical or religious exemption by October 20, 2021.

An employee who does not submit proof of their full vaccination status by October 20, 2021 and has not submitted a request for exemption will be issued a Notice of Mandatory COVID-19 Vaccination Policy Requirements (“Notice”). The Notice will instruct the employee to submit proof of full compliance, i.e., being fully vaccinated, no later than the close of business on Saturday, December 18, 2021. “Full compliance” shall mean having had at least 14 days pass since an employee received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson).

The following terms (1 – 6 below) shall apply to an employee who is not fully vaccinated and who has received a Notice.

1. An employee shall assume responsibility for using their own compensated time to manage an absence from the workplace due to COVID-19 infection or exposure. This does not preclude an employee from filing a claim for workers’ compensation benefits, as appropriate.

COVID-19 Mandatory Vaccination Ordinance

Counter Proposal Over Outcomes for Non-Reporting and Non-Compliance

Presented October 12, 2021

2. The employee must test for COVID-19 twice per week.
3. To facilitate the testing process for the employee and ensure that test results are reported accurately and timely, all testing shall be administered by the City or a vendor of its choosing. The employee shall be required to test through the City or a vendor of its choosing. No third-party tests shall be substituted for tests provided for by the City or the vendor of its choosing.
4. The employee shall reimburse the City \$260 per pay period for four test at \$65 each. Reimbursement shall be made on a biweekly basis through an employee's paycheck, e.g., through a negative deduction.
5. The employee shall test on their own time, i.e., not on paid work time.

If an employee does not show proof of full compliance by the close of business on December 18, 2021, the employee will be subject to disciplinary action. For sworn employees who proceed to a Board of Rights, the City will comply with all applicable Charter and other legal requirements.

At any time during the process an employee decides, in lieu of being vaccinated, to resign, retire, or, in the case of sworn personnel who are currently enrolled in the Deferred Retirement Option Program (DROP), exit DROP, the employee may show proof of filing resignation, retirement, or DROP exit paperwork with a date certain to their appointing authority, at which time they shall remain out of the workplace until such date. From the time that the employee provides proof of intended resignation, retirement, or DROP exit and the date of the actual date of occurrence, the employee may use one of three types of time available to them in order to remain on active payroll, including and limited to: (1) accrued vacation time; (2) compensated time off, e.g., banked overtime; or, (3) Leave Without Pay.

Exemptions from the Vaccination Mandate

Employees who file exemption paperwork on or before October 20, 2021, will be considered compliant with the Ordinance during the pendency of the exemption and accommodation process. Accordingly, the City shall not issue the Notice and/or take employment action against an employee who is duly subject to the exemption and accommodation procedures.

Employees who have reported a vaccination status of "not vaccinated" and who file exemption paperwork and are awaiting the result of the City's evaluation process shall be subject to the same terms applicable to employees who are not fully vaccinated and who

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Presented October 12, 2021

have received a Notice or are not fully vaccinated, including and limited to items 2, 3, 4, and 5 as stated above.

If an employee who reported a vaccination status of “not vaccinated” and who filed for an exemption is ultimately granted that exemption by the City, then the City shall reimburse the employee for the reimbursement costs for testing as required above.

Exemption Approval: An approved exemption may be based on a disability, medical condition or a sincerely held religious belief. An approved deferral exemption may be based on a recent COVID-19 diagnosis or treatment. If an employee’s exemption is approved, the employee must register with Bluestone for testing at (a website to be provided) and adhere to the City’s COVID-19 Workplace Safety Standards. In addition, the employee must adhere to all workplace screening requirements and safety protocols when in a City facility or work location and/or when in contact with other City employees or members of the public while working. They must also comply with any reasonable accommodations that result from good faith, interactive discussions, as applicable.

Employees who are granted a medical deferral based upon on a recent COVID-19 diagnosis or treatment shall be granted up to a ninety (90) day period of time to fully recover prior to being required to be vaccinated or enroll for the twice-weekly testing as stated herein. The ninety (90) day period of time shall begin the day after the first negative test following the initial positive test results.

Exemption Denial: If an employee’s exemption request is denied, the employee may appeal the determination to the employee’s appointing authority within five (5) business days of the date of the notice of the denial. The employee may amend their application to address written reasons for the denial. The appointing authority will review and decide on the appeal request which will be sent without identifying information that would lead to the identity of the employee.

If an exemption appeal is denied or an employee does not file an appeal within five (5) business days of the date of the denial, the employee shall be issued a Notice of Mandatory COVID-19 Vaccination Policy Requirements and may choose to resign, retire, or exit DROP, all in good standing in lieu of discipline (as described above), or comply with the following timelines to be in compliance with the vaccination mandate.

1. Within fourteen (14) calendar days from the notice of denial of their exemption or expiration date of their medical deferral, the employee shall submit proof that they have received the first dose of a two-dose COVID-19 vaccine or a single dose of a one-dose COVID-19 vaccine. During this time, the employee continues to work and shall be required to test twice weekly.

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Presented October 12, 2021

This proof of vaccination must include the date that the employee received the vaccination.

2. The employee will have no more than twenty-eight (28) calendar days from the date of having received the first dose of a COVID-19 vaccine of a two-dose regimen to receive the second dose of a two-dose vaccine regimen.
3. The employee must update their vaccination status within no more than five (5) business days from the date of having received the second dose of a two-dose vaccine regimen by submitting proof that the employee received a complete dosage of a vaccine against COVID-19. If either of the dates above falls on a weekend or observed holiday, the deadline for providing the required proof is due on the next business day.

Expiration of Exemption or Deferral: If an employee's exemption or deferral approval has an end date and the employee no longer qualifies for exemption, the employee shall adhere to the same processes and procedures as outlined above for Exemption Denial.

Separation from City Service

An employee who elects to resign during any time in this process shall do so in good standing in lieu of discipline.

If employees who resign or are terminated become vaccinated for COVID-19 subsequent to their separation from City service or if the mandatory vaccination order is lifted, these employees will be eligible for rehire in the same classification in which they had standing immediately prior to their separation from City service.

Additional Provisions

If the City Council determines that the safety protocols and measures instituted around and to address the COVID-19 pandemic as contained in the Ordinance are no longer necessary to preserve the health, safety, and wellbeing of the City's workforce and the public it serves, the City Council shall suspend the provisions of the Ordinance.

From October 20 through December 18, 2021, the City shall increase efforts to educate the City's workforce on the benefits of the COVID-19 vaccination.

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Last, Best, and Final Offer Over Outcomes for Non-Reporting and Non-Compliance

Consequences Presented October 14, 2021

General Provisions¹

The procedures described herein shall apply only to corrective action for violations of Ordinance No. 187134 (“COVID-19 Vaccination Requirement for All Current and Future City Employees”) and shall not apply to violations of other City policies or MOU provisions.

Any corrective action that results from implementation of these procedures will not be considered in future disciplinary decisions for violations outside of Ordinance No. 187134.

Any employee who is terminated for non-compliance with the City’s COVID-19 vaccination requirement shall not be prohibited from seeking reemployment with the City, subject to any COVID-19 vaccination requirement(s).

For sworn employees employed by the Los Angeles Police Department (LAPD), those employees must also pass all required reinstatement background processes conducted by the City or LAPD and can only be reinstated to a position as governed and permitted by the Civil Service Rules of the City of Los Angeles.

The City shall continue in its efforts to provide fact-based education to all City employees, regardless of vaccination status, about the benefit of the COVID-19 vaccination. The City will undergo all efforts to ensure that information is provided to the entire workforce, including in person informational sessions.

An employee who is on an approved leave of absence prior to and returns to work after October 20, 2021, shall have: 24 hours from the date of their return to work to report their vaccination status if their status had not been reported; and, 10 business days from the date of their return to work to file an intent to seek a medical or religious exemption if they so choose. If an employee fails to report their vaccination status within the 24-hour period or declare an intent to file an exemption within the 10-business day period, they shall be non-compliant with the vaccination mandate.

If the City Council determines that the safety protocols and measures instituted around and to address the COVID-19 pandemic as contained in the Ordinance are no longer necessary to preserve the health, safety, and wellbeing of the City’s workforce and the public it serves, and as a result revokes or rescinds the declared emergency regarding the COVID-19 pandemic, the City Council may (can’t pre-commit future City Council) suspend the provisions of the Ordinance, except that the City shall require all employees hired after that point in time to be vaccinated from COVID-19.

¹ With minor modifications with regard to police sworn to achieve conformity with City Charter provisions applicable only to them.

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Non-Compliance with the Vaccination Mandate

Employees shall be deemed non-compliant with the vaccination mandate if they have failed to become fully vaccinated **and** have not filed an intent to seek a medical or religious exemption by October 20, 2021.

An employee who does not submit proof of their full vaccination status by October 20, 2021 and has not submitted a request for exemption will be issued a Notice of Mandatory COVID-19 Vaccination Policy Requirements ("Notice"). The Notice will instruct the employee to submit proof of full compliance, i.e., being fully vaccinated, no later than the close of business on Saturday, December 18, 2021. "Full compliance" shall mean having had at least 14 days pass since an employee received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen).

Each employee issued a Notice shall be required to sign the Notice and to comply with its terms as outlined above and herein. Failure to sign or comply with the requirements of the Notice shall constitute failure to meet a condition of employment and shall result in appropriate and immediate corrective action.

During the time period between October 20 and December 18, 2021, when an employee is undergoing the vaccination process, they will be responsible for contacting the City to update their vaccination status, i.e., from unvaccinated to partially vaccinated and from partially vaccinated to fully vaccinated.

The following terms (1 – 5 below) shall apply to an employee who is not fully vaccinated and who has agreed to the terms of the Notice.

1. An employee shall assume responsibility for using their own compensated time to manage an absence from the workplace due to COVID-19 infection or exposure. This does not preclude an employee from filing a claim for workers' compensation benefits, as appropriate;
2. The employee must test for COVID-19 twice per week;
3. To facilitate the testing process for the employee and ensure that test results are reported accurately and timely, all testing shall be administered by the City or a vendor of the City's choosing. The employee shall be required to test through the City or its vendor. No third-party tests shall be substituted for tests provided for by the City or its vendor;

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Consequences Presented October 14, 2021

4. The employee shall reimburse the City \$260 per pay period for four tests at \$65 each. Reimbursement shall be made on a biweekly basis through an employee's paycheck, e.g., through a negative payroll deduction; and
5. The employee shall test on their own time, i.e., not on paid work time.

If an employee does not show proof of full compliance by the close of business on December 18, 2021, the employee will be subject to corrective action. For sworn employees employed by the Los Angeles Fire Department who proceed to a Board of Rights, the City will abide by all applicable Charter and other legal requirements. For sworn employees employed by the LAPD who proceed to a Board of Rights to determine their fitness for duty, the City will abide by all applicable Charter and other legal requirements.

At any time on or before December 18, 2021, an employee decides, in lieu of being vaccinated, to resign, retire, or, in the case of sworn personnel who are currently enrolled in the Deferred Retirement Option Program (DROP), exit DROP, the employee may show proof of filing resignation, retirement, or DROP exit paperwork with a date certain to their appointing authority, at which time they shall remain out of the workplace until such date. Proof must be provided to the appointing authority no later than December 18, 2021. From the time that the employee provides proof of intended resignation, retirement, or DROP exit and the date of the actual date of occurrence, the employee may use one of three types of time available to them in order to remain on active payroll, including and limited to: (1) accrued vacation time; (2) compensated time off, e.g., banked overtime; or, (3) Leave Without Pay.

Exemptions from the Vaccination Mandate

Employees who file an intent to seek a medical or religious exemption on or before October 20, 2021, will be considered compliant with the Ordinance during the pendency of the exemption and accommodation process. Accordingly, the City shall not issue the Notice and/or take employment action against an employee who is duly subject to the exemption and accommodation procedures.

Employees who have reported a vaccination status of "not vaccinated" and who file exemption paperwork and are awaiting the result of the City's evaluation process shall be subject to the same terms applicable to employees who are not fully vaccinated and who have received a Notice, including and limited to items 2, 3, 4, and 5 as stated above.

Each employee who is required to test while awaiting the determination by the City of their exemption request shall be required to sign a Notice and to comply with its terms as

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Consequences Presented October 14, 2021

outlined above and herein. Failure to sign and fulfill the conditions of the Notice shall constitute failure to meet a condition of employment and shall result in appropriate and immediate corrective action.

If an employee who reported a vaccination status of “not vaccinated” and who filed for an exemption is ultimately granted that exemption by the City, then the City shall reimburse the employee for the costs for testing as required above.

Exemption Approval: An approved exemption may be based on a disability, medical condition or a sincerely held religious belief. An approved deferral exemption may be based on a recent COVID-19 diagnosis or treatment. If an employee’s exemption is approved the employee must register with Bluestone for testing at (a website to be provided) and adhere to the City’s COVID-19 Workplace Safety Standards. In addition, the employee must adhere to all workplace screening requirements and safety protocols when in a City facility or work location and/or when in contact with other City employees or members of the public while working. They must also comply with any reasonable accommodations that result from good faith, interactive discussions, as applicable. Per the Ordinance, an employee who is granted an exemption must also test for COVID-19 once per week, which shall be paid for by the City and be done on paid time, i.e., not the employee’s time.

Employees who are granted a medical deferral based upon on a recent COVID-19 diagnosis or treatment shall be granted up to a ninety (90) day period of time to fully recover prior to being required to be vaccinated and enroll for the twice-weekly testing as stated herein. The ninety (90) day period of time shall begin the day after the first negative test following the initial positive test results.

Exemption Denial: If an employee’s exemption request is denied, the employee may appeal the determination to the employee’s appointing authority within five (5) business days of the date of the notice of the denial. The employee may amend their application to address written reasons for the denial. The appointing authority will review and decide on the appeal request which will be sent without information that would lead to the identity of the employee.

If an exemption appeal is denied or an employee does not file an appeal within five (5) business days of the date of the denial, the employee shall be issued a Notice of Mandatory COVID-19 Vaccination Policy Requirements and may choose to resign, retire, or exit DROP, all in good standing in lieu of discipline, or comply with the following timelines to be in compliance with the vaccination mandate.

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Consequences Presented October 14, 2021

1. Within fourteen (14) calendar days from the notice of denial of their exemption or expiration date of their medical deferral, the employee shall submit proof that they have received the first dose of a two-dose COVID-19 vaccine or a single dose of a one-dose COVID-19 vaccine. During this time, the employee continues to work and shall be required to test twice weekly consistent with the terms for employees subject to Notice requirements, including and limited to 2, 3, 4, and 5 as stated above. This proof of vaccination must include the date that the employee received the vaccination.
2. The employee will have no more than twenty-eight (28) calendar days from the date of having received the first dose of a COVID-19 vaccine of a two-dose regimen to receive the second dose of a two-dose vaccine regimen.
3. The employee must update their vaccination status within no more than five (5) business days from the date of having received the second dose of a two-dose vaccine regimen by submitting proof that the employee received a complete dosage of a vaccine against COVID-19. If either of the dates above falls on a weekend or observed holiday, the deadline for providing the required proof is due on the next business day.

Expiration of Exemption or Deferral: If an employee's exemption or deferral approval has an end date and the employee no longer qualifies for exemption, the employee shall adhere to the same processes and procedures as outlined above for Exemption Denial.

Separation from City Service

An employee who elects to resign during any time in this process shall do so in good standing in lieu of discipline.

If employees who resign, retire or are terminated become vaccinated for COVID-19 subsequent to their separation from City service or if the mandatory vaccination order is lifted, these employees will be eligible for rehire in the same classification in which they had standing immediately prior to their separation from City service.

For sworn employees employed by the LAPD, those employees must also pass all required reinstatement background processes conducted by the City or LAPD and can only be reinstated to a position as governed and permitted by the Civil Service Rules of the City of Los Angeles.

**LETTER OF AGREEMENT
ORDINANCE 187134
COVID-19 VACCINATION REQUIREMENTS**

CONCLUSION OF THE MEET AND CONFER PROCESS

On August 24, 2021, Ordinance 187134 ("COVID-19 VACCINATION REQUIREMENTS FOR ALL CURRENT AND FUTURE CITY EMPLOYEES") became effective, the goal of which is to protect the City's workforce and the public that it serves by requiring all employees to be fully vaccinated for COVID-19.

During the development and after the adoption of the Ordinance, the parties engaged in the meet and confer process over the impacts of the Ordinance and the implementing procedures, and hereby agree that they have concluded the meet and confer process in good faith. We further acknowledge that the City will implement the terms and conditions set forth in its last, best, and final offer as provided on October 14, 2021.

Claudia Aguilar

Claudia Aguilar, President
Fiscal and Policy Professionals Association

10/18/21

Date



City Administrative Officer

10/18/21

Date



COMPRISED OF
THE POLICE OFFICERS
OF THE CITY
OF LOS ANGELES

LOS ANGELES POLICE PROTECTIVE LEAGUE
A PROFESSIONAL POLICE UNION

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LOS ANGELES, CALIFORNIA 90017
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LETTER OF AGREEMENT
ORDINANCE 187134
COVID-19 VACCINATION REQUIREMENTS

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Craig Lally, President LAPPL

10/18/2021

Date

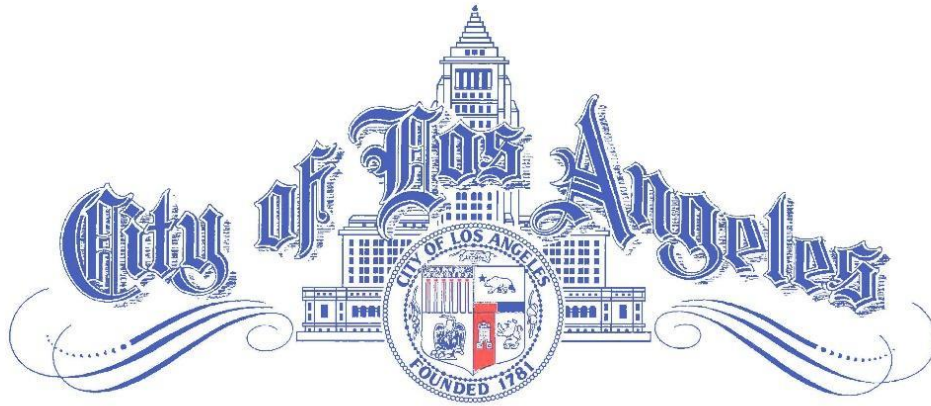
City Administrative Officer

10/18/2021

Date

EXHIBIT 7

EXHIBIT 7



ERIC GARCETTI
MAYOR

MEMORANDUM

To: All City Department Heads

From: Eric Garcetti, Mayor *EG*

Subject: **City of Los Angeles Response to the COVID-19 Pandemic:
Re: Mandatory Implementation of Non-Compliance with the
Requirements of Ordinance No. 187134 (“COVID-19 VACCINATION
REQUIREMENT FOR ALL CURRENT AND FUTURE CITY
EMPLOYEES”)**

Date: October 28, 2021

Taking strong and definitive action to protect the health and safety of our constituents and co-workers is the first and highest responsibility of leaders in the government of the City of Los Angeles.

On August 18, 2021, the City Council adopted Ordinance [187134](#) (“COVID-19 Vaccination Requirement For All Current and Future City Employees”). The Ordinance requires all current and future City employees, as a condition of City employment, to report their vaccination status no later than October 19, 2021, and to be fully vaccinated for COVID-19 or request an exemption for medical or religious reasons by October 19, 2021 (the “Mandatory Reporting and Vaccination conditions of employment”).

On October 26, 2021, the City Council adopted “Resolution Implementing Consequences for Non-Compliance with the Requirements of Ordinance No. 187134,” attached hereto as **Exhibit A** (see also Council File No.: 21-0921), which provides for the implementation of the provisions contained in Ordinance 187134 and as detailed in the City’s last, best and final offer (“LBFO”) issued on October 14, 2021, including requiring that all City employees be fully vaccinated or submit an exemption no later than

December 18, 2021. A copy of the LBFO is attached hereto as **Exhibit B** (see also Council File No.: 21-0921).

Implementing the City's employee vaccination mandate is critical to protecting the health and safety of our workforce and the Angelenos we serve. The ongoing COVID-19 pandemic has created a catastrophic public health emergency. Unvaccinated City employees who remain in the workplace and interact with the public and fellow City employees pose an imminent threat to public health and workplace safety.

Pursuant to Section 231(a) of the Los Angeles City Charter and the October 26, 2021 Council Resolution, **I hereby direct as follows:**

Effective immediately, all Department Heads as appointing authorities, including all Board and Commission members, General Managers, Directors and Administrators of Departments, Offices, Bureaus and Agencies shall:

- Immediately implement the terms and conditions of the City's October 14, 2021 LBFO regarding consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment. The LBFO is attached hereto as **Exhibit B** (see also Council File No.: 21-0921).
- Issue a *Notice of Mandatory COVID-19 Vaccination Policy Requirements*¹ to each employee who is unvaccinated and has not filed an exemption form. The employee will have 24 hours to review the notice or 48 hours if they request time to consult with a union representative.
 - If the employee signs the notice, then the mandatory COVID-19 testing protocols Nos. 1-5, as outlined in the LBFO, shall begin immediately after the Personnel Department distributes information and protocols. The mandatory COVID-19 testing protocols are currently scheduled to begin the week of November 7, 2021.
 - If the employee refuses to sign the notice, then the employee shall be placed off duty without pay pending service of a Skelly package that includes a Notice of Proposed Separation. Sworn employees shall be subject to applicable Board of Rights proceedings.
- Issue a *Notice of Mandatory COVID-19 Vaccination Policy Requirements -- While Awaiting an Exemption/Appeal Determination*² to each employee who is unvaccinated and has filed an exemption form. The employee will have 24 hours

¹ A copy of this Notice will be circulated by the Personnel Department on October 28, 2021.

² A copy of this Notice will be circulated by the Personnel Department on October 28, 2021.

to review and sign the notice or 48 hours if they request time to consult with a union representative.

- If the employee signs the notice, the mandatory COVID-19 testing protocols Nos. 2-5, as outlined in the LBFO, shall begin immediately after the Personnel Department distributes information and protocols. The mandatory COVID-19 testing protocols are currently scheduled to begin the week of November 7, 2021.
- If the employee refuses to sign the notice, then the employee shall follow the same testing regimen as outlined in the COVID-19 testing protocols Nos. 2-5 outlined in the LBFO. Employees in this category shall test on paid time and at City expense, except that the City shall issue an invoice for the cost of testing.
- On December 19, 2021, or the first business day thereafter, immediately begin the corrective action process outlined in the LBFO for each employee who remains non-compliant as of the end of the day on December 18, 2021. An employee that remains out of compliance shall be placed off duty without pay pending service of a Skelly package that includes a Notice of Proposed Separation. Sworn employees shall be subject to applicable Board of Rights proceedings.

EXHIBIT 8

EXHIBIT 8

1 HYDEE FELDSTEIN SOTO, City Attorney
2 VIVIENNE A. SWANIGAN, Assistant City Attorney (SBN 120256)
3 **ERIKA JOHNSON-BROOKS**, Deputy City Attorney (SBN 210908)
4 **TRAVIS T. HALL**, Deputy City Attorney (SBN 301755)
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6 Los Angeles, California 90012-4131
7 Telephone: (213) 978-7140
8 E-mail: *erika.johnsonbrooks@lacity.org*; *travis.t.hall@lacity.org*

9 Attorneys for City of Los Angeles Fire Department

10
11
12 **CITY OF LOS ANGELES**
13 **BEFORE ARBITRATOR KENNETH PEREA**
14

15 UNITED FIREFIGHTERS OF LOS) **Arb. No. 4035**
16 ANGELES CITY, IAFF LOCAL 112,)
17) **RESPONDENT’S CLOSING BRIEF**
18 Union,)
19 vs.)
20)
21 CITY OF LOS ANGELES FIRE)
22 DEPARTMENT,)
23)
24 Respondent,)
25)
26 (Class Grievance of Firefighter Brownell))
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1 **I. INTRODUCTION**

2 The United Firefighters of Los Angeles City (“UFLAC”) challenges the City of Los Angeles’
3 (“City”) consequences for all City employees who fail to comply with Ordinance No. 187134 mandating
4 all City employees be vaccinated against the COVID-19 virus. (“Vaccine Mandate”). **Employer**
5 **Exhibit 2.** Specifically, during the emergency COVID-19 pandemic, after providing time to comply
6 with the Vaccine Mandate, the City removed unvaccinated/noncompliant employees from the workplace
7 during the health emergency and placed them on leave without pay in order to protect the health and
8 safety of other City employees and the public they serve. Indeed, it is uncontroverted that removing
9 unvaccinated firefighters from duty during the height of the pandemic was particularly exigent given
10 that firefighters are first responders who regularly interact with the public, including its most vulnerable
11 members and are housed together in firehouses during active work hours. UFLAC argues, however,
12 that this removal from the workplace during a once-in-a-lifetime pandemic should have been governed
13 the exact same way as if it were disciplinary action against a member for misconduct on the job. UFLAC
14 is mistaken.

15 Rather, the removal of a member for failing to comply with the Vaccine Mandate is a failure to
16 meet a *condition of employment*, similar to a situation where a member fails to maintain a proper driver
17 license and can no longer operate a fire engine. In both instances, the member has time to come into
18 compliance and meet the condition of employment. However, once a member is found to have failed to
19 meet the condition of employment, only *then* does the Los Angeles Fire Department (“LAFD”) move to
20 terminate the noncompliant employee through the disciplinary process¹. This distinction is critical
21 because an action taken by LAFD for a member’s failure to meet a condition of employment versus an
22 action taken as part of the disciplinary process governs when the appropriate LAFD rules and regulations
23 apply. These actions are indisputably not the same.

24 Here, the two issues before the Arbitrator are as follows: (1) Did LAFD willfully violate its rules
25 and regulations when it served UFLAC members who were noncompliant with the Vaccine Mandate
26

27 ¹ The disciplinary process is controlled by the member’s right to a Board of Rights under City Charter Section 1060, which
28 may result in a finding of “not guilty” where the member is returned to work, or a finding of “guilty” where the member may
face a suspension or termination by a panel of three chief officers chosen by the member. **Union Exhibit 3.**

1 notice of leave without pay by e-mail (during a pandemic emergency); and (2) Did LAFD violate past
2 practice when it placed UFLAC members who were noncompliant with the Vaccine Mandate on leave
3 without pay before the members were afforded an opportunity to select a Board of Rights?

4 As to the first issue, UFLAC argues that the City allegedly violated Rule 17(f) of the LAFD
5 Rules and Regulations requiring the City to provide notice to the member either by hand-service or by
6 registered mail when LAFD intends to terminate one of its members and initiate the Board of Rights
7 process. **Union Exhibit 8.** This argument lacks merit because, as discussed in detail below, Rule 17(f)
8 only applies in the context of discipline, not when a member is initially placed off duty for failure to
9 meet a condition of employment. Accordingly, Rule 17(f) does not apply in this context and LAFD did
10 not violate this Rule by serving these notices by e-mail.²

11 Second, UFLAC contends that under past practice, LAFD continues to pay its members their full
12 salary even when members are placed on leave pending a Board of Rights. Essentially, UFLAC argues
13 a purported *Skelly* violation under the guise of alleging LAFD's decision to place noncompliant members
14 on unpaid leave pending their Board of Rights hearing violates past practice. However, the legal issue
15 of whether LAFD can place noncompliant members on unpaid leave prior to receiving a *Skelly* hearing /
16 Board of Rights hearing has been upheld in court and at arbitration. In both forums, the City's decision
17 was upheld finding that in the context of an ongoing emergency, the City was justified in removing
18 unvaccinated employees from the workplace prior to a formal *Skelly* hearing in order to protect the health
19 and safety of other City employees and the public they serve and that no erroneous deprivation occurred.
20 **Employer Exhibits 5, 6.** Moreover, City of Los Angeles Personnel Policy Section 33.1 specifically
21 recognizes that in emergency circumstances, management may postpone the normal pre-disciplinary due
22 process procedures when there is a significant risk in allowing the employee to remain on the job.
23 **Employer Exhibit 4.** The City's procedure for removing unvaccinated employees swiftly from the
24 workplace prior to receiving a formal *Skelly* hearing³ complies with Section 33.1 where, as here, there
25

26 _____
27 ² It is important to note, and UFLAC does not contest, once LAFD moved to terminate the non-compliant member for failure
28 to meet a condition of employment, all procedures including Rule 17 were followed pursuant to Charter Section 1060. **RT
118:15 – 119:10.**

³ The procedure included a specified period of time for the employee to provide proof of vaccination or the filing of an
exemption to the Vaccine Mandate *prior to* being placed on unpaid leave.

1 were emergency circumstances present that justified their immediate removal. As such, there was no
2 violation of past practice.

3 Accordingly, LAFD respectfully requests that the Arbitrator find the evidence and applicable law
4 demonstrate LAFD has not violated any of its rules and procedures in this emergency context by serving
5 UFLAC members with notice of leave without pay via e-mail for failing to meet a condition of
6 employment and by placing those members on unpaid leave pending their Board of Rights hearing.
7 LAFD respectfully requests that UFLAC’s grievance be dismissed in its entirety.

8 **II. STATEMENT OF FACTS**

9 On March 6, 2020, the City Council ratified the Mayor’s Declaration of Local Emergency, dated
10 March 4, 2020, in which he declared that conditions of extreme peril to the safety of persons had arisen
11 both internationally and within the United States, including within the City, as a result of the introduction
12 of COVID-19 into the population at large. **Employer Exhibit 3.**

13 On August 18, 2021, the Los Angeles City Council adopted Ordinance No. 187134. The
14 Ordinance requires all City employees to report their vaccination status no later than October 19, 2021
15 and be fully vaccinated for COVID-19 –or request an exemption—by October 20, 2021. The COVID-
16 19 vaccination and reporting requirements became conditions of employment for all City employees on
17 October 20, 2021. Exemptions to the vaccination requirement are available to accommodate medical
18 conditions or religious beliefs. **Reporter’s Transcript (“RT”) 113:25 – 114:24; Employer Exhibit 2.**

19 The Ordinance includes an “Urgency Clause,” which states in part: “The City Council finds and
20 declares this ordinance is required for the immediate protection of the public peace, health, and safety for
21 the following reasons: According to the Center for Disease Control, and the Los Angeles County
22 Department of Public Health, COVID-19 continues to pose a significant public health risk, especially as
23 cases surge with the highly infectious spread of the Delta variant. Vaccination is the most effective way
24 to prevent transmission and limit COVID-19 hospitalizations and deaths. The City must provide a safe
25 and healthy workplace, consistent with COVID-19 public health guidance and legal requirements, to
26 protect its employees, contractors and the public as it reopens services and more employees return to the
27 workplace. Unvaccinated employees are at a greater risk of contracting and spreading COVID-19 within
28 the workplace, and risk transmission to the public that depends on City services.” **Employer Exhibit 2,**

1 **§ 4.705, Sec. 2.**

2 Under these emergency and unprecedented circumstances, the City and LAFD rightfully found
3 it necessary to immediately remove unvaccinated firefighters from the workforce due to the fact they
4 engaged actively with, and provided medical care to, members of the public who may have had COVID
5 or were at risk of getting COVID. **RT 123:21 – 124:19.** Additionally, the decision by the City as a
6 whole to immediately remove all noncompliant workers and place them on unpaid leave was made in
7 consideration of the significant potential financial cost to the City – as UFLAC admitted at the hearing
8 – that LAFD would have to backfill every position for noncompliant members who UFLAC argued
9 should have been placed on leave *with* pay. **RT 70:12 – 71:10.** Such an action would amount to
10 approximately 300 positions that needed to be backfilled just in one City department at a time of
11 financial decline. **RT 126:13-20.** Accordingly, noncompliant UFLAC members were served with a
12 notice placing them off duty without pay pending their Board of Rights hearing for failure to meet a
13 condition of employment. **RT 116:23 – 119:10; Employer Exhibit 1.**

14 The decision to place members off duty without pay pending their Board of Rights hearing was
15 the result of an unprecedented widespread pandemic and the magnitude of the COVID-19 impact on the
16 health of the workers and the public alike. LAFD and the City were legitimately concerned with the
17 health and safety of its employees and the public firefighters and other City employees serve, and could
18 not allow unvaccinated workers to remain on duty. Past practice, even if there were one under these
19 circumstances, could not be applied under emergency conditions. In fact, the Union even admitted at
20 arbitration that prior to 2021 there was no past practice as to how to remove employees for failure to be
21 vaccinated in the midst of a global pandemic. **RT 67:4-24.**

22 Importantly, the members who received a notice of being placed off duty without pay were not
23 being removed from duty for any disciplinary reasons, but rather their removal was for failure to meet a
24 condition of employment. **RT 119:11-17.** In fact, further demonstrating this initial removal was not
25 discipline, a noncompliant member placed off duty was able to return to work immediately if they
26 became vaccinated or otherwise became compliant with the Vaccine Mandate. By contrast, in no
27 disciplinary context can a member placed off work awaiting their Board of Rights hearing return to
28 work. **RT 71:23 – 72:25; 103:4-16.**

1 **III. LEGAL ARGUMENT**

2 **A. LAFD Did Not Violate its Rules and Regulation by E-Mailing Its Noncompliant**
3 **Members Notice of Leave Without Pay as They Were Placed on Leave for Failure to**
4 **Meet a Condition of Employment Not Discipline**

5 Upon the determination a member was noncompliant with the Vaccine Mandate, LAFD
6 immediately served that member with a notice placing them on unpaid leave pending their Board of
7 Rights hearing. The decision to place the member on unpaid leave was not made under the normal
8 disciplinary process that occurs when LAFD moves to suspend or terminate a member for misconduct
9 on the job, but rather to address what has expressly been defined as a condition of employment under
10 extraordinary circumstances in the City’s Ordinance itself. **Employer Exhibit 2, Section 4.701** (“As of
11 October 20, 2021, the COVID-19 vaccination and reporting requirements are conditions of City
12 employment and a minim requirement for all employees . . . “). Although these notices were admittedly
13 e-mailed to noncompliant members, there was no governing rule mandating such notices be provided by
14 hand-service or registered mail, particularly in light of a rapidly spreading viral pandemic.

15 UFLAC argues Rule 17(f) in the LAFD’s Rules and Regulations applies these notices, but, as the
16 header of Rule 17 makes clear, the requirement that service be effectuated by either hand-delivery or
17 registered mail only applies in the context of “Discipline.” **Union Exhibit 8.** Failing to meet a condition
18 of employment is not discipline. Accordingly, Rule 17 does not apply to violations of conditions of
19 employment. **RT 120:21-24.**

20 As noted above, removing an employee from the workforce for failure to comply with the Vaccine
21 Mandate is analogous to when an operator of a fire engine must maintain a valid driver license as a
22 condition of employment. Those members have time to come into compliance to meet the condition of
23 employment by obtaining the requisite driver’s license or, in the present context, becoming vaccinated
24 or requesting an exemption to the Vaccine Mandate. Thus, it is only *after* the member is given time and
25 fails to come into compliance that the department opts to resort to termination under the Board of Rights
26 process (Charter Section 1060). It is only at then that the matter then turns into a normal “disciplinary
27 proceeding.”

1 Accordingly, LAFD was under no obligation to follow Rule 17(f) when initially placing a
2 noncompliant member off-duty for failing to meet a condition of employment since, at that point, the
3 action was not disciplinary.

4 **B. LAFD Did Not Violate Past Practice by Placing Noncompliant Members on Unpaid**
5 **Leave Pending their Board of Rights as Past Practice Does Not Govern in an Emergency**
6 **Context**

7 1. No Violation of Past Practice Occurred

8 LAFD’s procedure for removing unvaccinated employees from the workplace and placing them
9 on unpaid leave prior to receiving their Board of Rights hearing, consistent with the procedure applied
10 by all City departments, was not a violation of past practice because it was done in conformity with
11 existing City policy – namely, City of Los Angeles Personnel Policy Section 33.1. **Employer Exhibit**
12 **4.** Moreover, UFLAC cannot establish any past practice relating to the practice of placing employees off
13 work in an unprecedented worldwide pandemic, as the UFLAC witnesses fully admitted at hearing. **RT**
14 **67:4-24.**

15 Nonetheless, UFLAC takes issues with the nature of the leave being unpaid, essentially arguing
16 the procedure utilized was a break from past practice where typically the member remained on paid leave
17 consistent with *Skelly* due process protections. However, as Section 33.1 shows, and as the Los Angeles
18 Superior Court and administrative officers have determined, due process protections are a flexible
19 concept that can be altered in emergency circumstances. In the context of the unprecedented health
20 pandemic here, the City postponed normal due process procedures, consistent with its existing policy -
21 Section 33.1.

22 Section 33.1 specifically addresses pre-disciplinary procedures and states: “If a discharge or a
23 suspension is being considered for an employee who has completed probation, the courts have ruled that
24 a pre-discipline procedure is necessary (*Skelly v State Personnel Board*).” However, the pre-disciplinary
25 due process requirements discussed in Section 33.1, by the specific terms of the Section, **apply only in**
26 **non-emergency circumstances** and thus are not authority for the issue presented here which involved
27 an ongoing *and unprecedented* public health emergency due to COVID-19. In fact, the clear provisions
28 of Section 33.1 expressly recognize that in emergency circumstances, “when management believes there

1 is a significant risk in allowing the employee to remain on the job,” the need for prompt action may
2 justify postponing the “normal” procedure until after the employee’s initial removal from the workplace.
3 (Section 33.1 (C) (D).)

4 This truth is supported by the language of the Last, Best, and Final Offer as well. As testified to
5 by the Union’s witnesses, Paul Girard explained at the bargaining table that “corrective action” meant if
6 members did not comply with the Vaccine Mandate there would be “appropriate and immediate action”
7 and noncompliance “could” result in discipline that leads to termination. **RT 60:12 - 61:21; 86:27 - 89:2.**
8 That “appropriate and immediate action,” as demonstrated by the testimony at the hearing, was the
9 placement of employees off work while at the same time providing them with the time and opportunity
10 to become compliant, which most did.

11 LAFD’s procedure for removing unvaccinated employees swiftly from the workplace and placing
12 them on unpaid leave prior to receiving their Board of Rights hearing complies with Section 33.1 where,
13 as here, emergency circumstances exist. LAFD, and the City as a whole, in late 2021, reasonably
14 concluded there was a significant risk to the health and safety of the workplace and the public by allowing
15 unvaccinated employees to remain in the workplace. This was a legitimate interest supported by the
16 science available at the time, and the City was justified under the policy in taking action to remove
17 unvaccinated workers from the workplace as swiftly as possible.

18 2. The Practice of Placing Noncompliant Employees on Unpaid Leave Pending Their
19 Due Process Hearing Has Been Upheld Administratively and in Court Under The
20 Emergency Situation Applicable Here

21 Furthermore, the City’s due process procedures in the context of immediately removing
22 unvaccinated employees and placing them on unpaid leave prior to receiving a *Skelly* hearing, followed
23 by LAFD in removing members prior to their Board of Rights, have been upheld both administratively
24 and by the Los Angeles Superior Court.

25 In *Firefighters4Freedom v. City of Los Angeles*, Los Angeles County Superior Court Case No.
26 21STCV34490, a group of City employees filed a lawsuit in Los Angeles County Superior Court
27 challenging the validity of the City’s Vaccine Mandate, specifically challenging the due process
28 procedures by which an employee was placed off work on unpaid leave for noncompliance without first

1 receiving a formal *Skelly* hearing. In its ruling upholding the City’s process, the Court noted: “Post-
2 *Skelly*, the ‘California Supreme Court and the United States Supreme Court have repeatedly recognized
3 that due process is a flexible concept,’ and ‘calls for such procedural protections as the particular
4 situation demands.’ [citations omitted.] ‘An important governmental interest, accompanied by
5 substantial assurance that the deprivation is not baseless or unwarranted, may in limited cases demand
6 prompt actions justifying postponing the opportunity to be heard [until] after the initial deprivation.’
7 (*Bostean v. Los Angeles Unified School District* (1998) 63 Cal.App 4th 95, 112-113, citations and
8 quotation marks omitted.) In granting the City’s demurrer in its entirety with prejudice, the Court held
9 as follows:

10 The Court finds that *Skelly* does not entitle municipal firefighters to a
11 hearing before an adverse employment action during an emergency
12 situation. Rather, *Skelly* and subsequent cases afford the firefighters a
13 framework to determine whether a post-deprivation adverse employment
14 action complied with the employee’s due process rights . . . It is a
15 misstatement of law to assert that ‘notice and an opportunity to challenge
16 the action’ must occur before the City suspends a firefighter’s pay. . .
17 Plaintiff essentially pleads that even during an emergency, due process
18 equates to notice and a hearing before any adverse employment actions take
19 effect. This is not the law.

16 **Employer Exhibit 5a⁴.**

17 Likewise, the City prevailed at arbitration in a challenge to the City’s decision to place
18 noncompliant employees on unpaid leave pending a formal *Skelly* hearing. In *Engineers and Architects*
19 *Association v. City of Los Angeles Dept. of Recreation and Parks*, City of Los Angeles Arb. No. 4004,
20 the union argued a *Skelly* violation when the City immediately removed a noncompliant employee from
21 the workplace on unpaid leave. In finding for the City, the Arbitrator held: “there was no ‘risk of
22 erroneous deprivation’ of [the employee’s due process rights] and in light of the COVID 19 pandemic,
23 the Department had a considerable interest in acting as it did.” **Employer Exhibit 6, p. 7.**

24 Although UFLAC argues a violation in past practice rather than a violation of *Skelly* due process
25 rights, it is the same procedure of placing a noncompliant member on unpaid leave prior to a formal
26

27 ⁴ Although the matter was partially remanded back to the trial court on appeal, the cause of action alleging a *Skelly* violation
28 was never appealed by Plaintiff, and the trial court’s decision dismissing this cause of action remains final. **Employer
Exhibit 5b.**

1 administrative hearing that is being challenged. UFLAC is correct in that under normal circumstances,
2 members facing potential termination are placed on paid leave while awaiting their Board of Rights
3 hearing, but what UFLAC fails to consider is the existence of unprecedented, emergency circumstances
4 which allows LAFD to alter its normal due process protections under Section 33.1 – a process expressly
5 upheld when previously challenged both in court and administratively.

6 Accordingly, the evidence proves that LAFD’s decision to place noncompliant members on
7 unpaid leave pending their Board of Rights is not a violation of past practice, as Section 33.1 specifically
8 contemplates management’s right to postpone normal due process procedures (i.e., placing the member
9 on paid leave while they await their Board of Rights) in emergency circumstances. Furthermore, there
10 simply is no past practice that UFLAC can point to that applies in a worldwide pandemic or emergency
11 as here. Moreover, this procedure has been litigated and heard examined and upheld as meeting due
12 process by both the Los Angeles County Superior Court and an arbitrator

13 3. Even if The Process of Serving Members with Notice of Removal From Work Had
14 Been Disciplinary, the City Complied With *Skelly* Due Process and The Charter
15 Authorizes the Fire Chief to Relieve a Member from Duty Pending a Hearing Before
16 a Board of Rights Once *Skelly* Has Been Complied With

17 Finally, even if the process of providing notice to employee members of UFLAC of their removal
18 from the workplace and placement on unpaid leave had been discipline – which it was not – the time
19 period provided after the initial written notice was served and before removal from the workplace met
20 the notice and an opportunity to be heard provisions of *Skelly*. The member was served with paperwork
21 stating they had failed to meet a condition of employment and then given 48 hours to show compliance
22 or comply. **RT 87:23 - 88:1.** Under these emergency circumstances, this procedure met the flexible due
23 process afforded employers under *Skelly* due to the unusual emergency situation. (*Bostean*, 63 Cal.App
24 at 112-113.) Even if that were not true, members were provided with full *Skelly* procedures at a later
25 point in time. **RT 118:15 – 119:10.**

26 Once a member is provided with their *Skelly* due process, the City Charter – the uncontroverted
27 law of the City – specifically provides that the Fire Chief may, “[a]fter following predisciplinary
28 procedures otherwise required by law,” then ***temporarily remove from duty any member pending a***

1 *hearing before and decision by a Board of Rights on any charge or charges pending against the*
2 *member.” City Charter Section 1060(b)(1).* Testimony provided at the hearing by the union that
3 Section 1060(b)(3) of the Charter “**allows for** the Fire Chief to keep the member on duty with pay” (RT
4 **52:5-17, emphasis added**) and that “in practice the member – again, in practice, the member stays on
5 duty with pay” (RT **51:13 – 52:4, emphasis added**) and that a member “*oftentimes* remains on duty
6 working until his Board of Rights (RT **51:1-10, emphasis added**) simply does not negate the clear
7 provision of the Charter authorizing the Fire Chief to remove a member pending a Board of Rights after
8 complying with *Skelly*, nor establish that the many persons who have held the position of Fire Chiefs of
9 the City of Los Angeles have not previously invoked this provision. Indeed, a genuine search of the
10 transcript in this matter shows that UFLAC offered no actual evidence that LAFD violated a “past
11 practice” when it placed UFLAC members who were noncompliant with the Vaccine Mandate on leave
12 without pay before the members were *afforded an opportunity to select a Board of Rights*. (Issue 2)
13 Why? Because it has none. Instead, the Los Angeles City Charter specifically provides that a Fire Chief
14 may remove a firefighter from duty once *Skelly* due process has been met meaning, even if a violation
15 had occurred, the only remedy would be back pay for the time frame between when the member was
16 placed off duty and when the member received their *Skelly* due process – NOT the date when the member
17 decides to select a Board with the Department.

18 UFLAC’s assertion that there is a “policy” or “practice” that the City ALWAYS allows a member
19 to remain on duty or paid leave is simply not supported by the record before this Arbitrator and is contrary
20 to the clear provisions of the City Charter.


21 ...
22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 **IV. CONCLUSION**

2 Based on the foregoing, as well as the evidence and arguments submitted in the hearing of this
3 matter, the City respectfully requests the Arbitrator find that LAFD did not violate its rules and
4 regulations in serving its notices placing noncompliant members off duty by e-mail, and that LAFD did
5 not violate past practice in placing noncompliant members on unpaid leave pending their Board of Rights
6 hearing, and deny UFLAC's grievance in its entirety.

7
8
9 DATED: September 5, 2023

Respectfully submitted,
HYDEE FELDSTEIN SOTO, City Attorney
VIVIENNE A. SWANIGAN, Assistant City Attorney
ERIKA JOHNSON-BROOKS, Deputy City Attorney
TRAVIS T. HALL, Deputy City Attorney

10
11
12
13
14 By  _____
15 **TRAVIS T. HALL**
16 Deputy City Attorney

17 Attorneys for Respondent City of Los Angeles
18 Fire Department

PROOF OF SERVICE

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 800 City Hall East, 200 North Main Street, Los Angeles, California 90012.

On September 5, 2023, I served the foregoing document(s) described as **ARB 4035 RESPONDENT'S CLOSING BRIEF** on all interested parties in this action by sending an electronic copy to the following parties:

Kenneth Perea, Arbitrator
pereapar@yahoo.com

BY ELECTRONIC SERVICE - I sent the document electronically to the e-mail addresses noted above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 5, 2023 at Los Angeles, California.



MARISOL CONTRERAS

EXHIBIT 9

EXHIBIT 9



LOS ANGELES FIRE DEPARTMENT

RALPH M. TERRAZAS
FIRE CHIEF

November 29, 2021

TO: Draft, Chief
Battalion 10, C Platoon, THROUGH CHANNELS

FROM: Ralph M. Terrazas, Fire Chief

SUBJECT: NON-COMPLIANCE WITH CITY ORDINANCE AND VACCINE POLICY

Pursuant to Ordinance 187134, all employees of the City of Los Angeles are required to be fully vaccinated for COVID-19 as a condition of employment. The City provided you with the Vaccine Policy Requirements on or about October 29, 2021.

The Department subsequently issued you a Notice and Order to comply with the City's requirements within 48-hours. The City's records indicate that you have failed to do so in the allotted time, and you have not provided verified information demonstrating compliance. Accordingly, you are hereby placed off-duty without pay until further notice pending disciplinary review for non-compliance with the City's Ordinance and Vaccine Policy, and for failure to meet a condition of employment. During this period, you may utilize your accrued compensated time off (banked time or VC), but trades are not allowed.

Questions may be directed to your supervisor.



RALPH TERRAZAS
Fire Chief

COMPANY/STATION/UNIT COMMANDER	DATE	EMS BATTALION CAPTAIN	DATE	BATTALION COMMANDER	DATE	DIVISION COMMANDER	DATE
BUREAU COMMANDER		EMERGENCY OPERATIONS COMMANDER	DATE	ADMINISTRATIVE OPERATIONS COMMANDER		DATE	

EXHIBIT 10

EXHIBIT 10

FEB 15 2022

Sherri D. Carter, Executive Officer/Clerk
By Reyna Navarro, Deputy
Reyna Navarro

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FIREFIGHTERS4FREEDOM
FOUNDATION

Plaintiff,

v.

CITY OF LOS ANGELES

Defendant.

CASE NO. 21STCV34490

**RULING ON DEMURRER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

Date: Feb. 15, 2022

Dept: 34

Judge: Michael Paul Linfield

**SUBJECT: Amended Demurrer to Plaintiff's Second Amended Complaint
for Declaratory and Injunctive Relief**

Moving Party: Defendant City of Los Angeles

Resp. Party: Plaintiff Firefighters4Freedom Foundation

The Court SUSTAINS WITHOUT LEAVE TO AMEND Defendant City of Los Angeles'
Amended Demurrer to Plaintiff Firefighters4Freedom's Second Amended Complaint.

1 **I. SUMMARY OF ARGUMENT**

2
3 The Court takes judicial notice that COVID-19 vaccinations are safe and effective in
4 protecting the health and safety of the public. Vaccinations save lives; vaccinations slow the
5 spread of the disease; vaccinated people have fewer and less serious infections. These facts
6 are not reasonably subject to dispute within the medical community.
7

8
9 For more than a century, plaintiffs have filed lawsuits to halt vaccination mandates. For
10 more than a century, our Courts have consistently held that government has the power to
11 require vaccinations to protect the public's health and safety.
12

13
14 This is another in a long line of cases that challenges vaccination mandates. No Court
15 has upheld such a challenge. This case is equally without merit.
16

17 The case is dismissed.
18
19

20 **II. BACKGROUND**

21
22
23 On August 18, 2021, the Los Angeles City Council adopted Ordinance No. 187134,
24 effective August 25, 2021. (Plaintiff's RJN in Support of Plaintiff's Motion for Preliminary
25 Injunction, dated November 16, 2021, Ex. H.) The Ordinance requires all current and future
26 City employees to be fully vaccinated for COVID-19 or request an exemption no later than
27 October 19, 2021. (*Id.*) As of October 20, 2021, these COVID-19 vaccination and reporting
28 requirements became conditions of City employment and a minimum requirement for all City

1 employees. (*Id.*) In compliance with state law, exemptions to the City's Vaccine Mandate are
2 available only to accommodate sincerely held religious beliefs or individual medical conditions.
3 (Plaintiff's RJN in Support of Plaintiff's Motion for Preliminary Injunction, dated November 16,
4 2021, Ex. H; Girard Decl. in Support of Defendant City of Los Angeles' Opposition to Plaintiff's
5 Motion for Preliminary Injunction, dated December 10, 2021, ¶¶ 45-58, Ex. 11.)
6
7

8 On September 24, 2021, the Los Angeles Fire Department (LAFD) emailed all its
9 employees to provide notices concerning the Ordinance's vaccination status reporting
10 requirement. On October 4, 2021 and October 12, 2021, the Fire Chief issued an order on the
11 reporting requirement to all LAFD employees who had yet to report their vaccination status or
12 failed to report their status effectively given the available options. (Muus Decl. in Support of
13 Motion for Preliminary Injunction, dated November 16, 2021, Exs. A, B.) On October 14, 2021,
14 ongoing consultations with the City's various employee unions, including United Firefighters
15 Los Angeles City by the City Administrative Officer culminated in the CAO's release of the
16 City's Last, Best, and Final Offer ("LBFO") regarding Vaccine Mandate non-compliance by City
17 workers. (Girard Decl. in Support of Defendant City of Los Angeles' Opposition to Plaintiff's
18 Motion for Preliminary Injunction, dated December 10, 2021, ¶ 53, Ex. 10.)
19
20
21

22 "[U]nder the LBFO, employees who fail to comply with the vaccine requirement by the
23 October 20, 2021 compliance deadline and are not seeking a medical or religious
24 exemption, will be issued a Notice granting them additional time (until December 18,
25 2021) to comply with the vaccine mandate if they agree to certain conditions, including
26 bi-weekly testing, at their own expense, and employees who fail to show proof of full
27 vaccination by close of business on December 18, 2021 will be subject to corrective
28 action, i.e., involuntary separation from City employment for failure to meet a condition

1 of employment, but employees with pending exemption requests will be exempt from
2 the vaccination requirement until their request is approved or denied.” (Girard Decl. in
3 Support of Defendant City of Los Angeles’ Opposition to Plaintiff’s Motion for
4 Preliminary Injunction, dated December 10, 2021, ¶ 45.)
5

6
7 On October 26, 2021, the Los Angeles City Council adopted a resolution to instruct the
8 mayor to implement the LBFO, and to further support the mayor’s declaration of a public health
9 emergency imposed by the ongoing COVID-19 global pandemic. On October 28, 2021, Mayor
10 Eric Garcetti issued a memorandum to all City department heads to instruct them to implement
11 the terms of the City’s October 14, 2021 LBFO. On October 29, 2021, the City’s Personnel
12 Department emailed all City employees with a Notice of Mandatory COVID-19 Vaccination
13 Policy Requirements (“VPR”), which included a request to agree to its terms within 24 hours.
14 (Muus Decl. in Support of Motion for Preliminary Injunction, dated November 16, 2021, Ex. C.)
15 The VPR’s final paragraph before the signature page reads as follows: “I understand that my
16 failure to sign, or if I disagree to any part of this Notice, will cause me to be placed off duty
17 without pay, pending pre-separation due process procedures and I will be provided written
18 notice of the proposed action of separation, or similar action shall be taken as applicable for
19 sworn employees as provided above.” (*Id.*)
20
21
22

23 From November 9, 2021 to December 9, 2021, 239 LAFD employees (238 sworn and 1
24 civilian) who received the 48-Hour Notice were placed on administrative leave. (Everett Decl. in
25 Support of Defendant City of Los Angeles’ Opposition to Plaintiff’s Motion for Preliminary
26 Injunction, dated December 10, 2021, ¶ 22.) All 239 employees received at least 48-hours to
27 respond to the notice. (*Id.*) As of December 9, 2021, no LAFD employee had been denied a
28 requested medical or religious exemption. (Everett Decl. in Support of Defendant City of Los

1 Angeles' Opposition to Plaintiff's Motion for Preliminary Injunction, dated December 10, 2021,
2 ¶ 28.)

3
4 On September 17, 2021, Plaintiff Firefighters4Freedom, who represents 125 of the 239
5 employees placed on administrative leave, filed a Complaint against Defendant City of Los
6 Angeles alleging a violation of constitutionally protected autonomous privacy rights and ultra-
7 vires legislation. Plaintiff filed a First Amended Complaint on November 3, 2021, adding
8 additional causes of action alleging a violation of Fourteenth Amendment substantive due
9 process, violation of Fourteenth Amendment equal protection, intentional infliction of emotional
10 distress, invasion of privacy, declaratory and injunctive relief under the Americans with
11 Disabilities Act (disparate treatment and failure to accommodate), and violation of due process.
12
13

14
15 On November 16, 2021, Plaintiff Firefighters4Freedom filed a motion for a preliminary
16 injunction.

17
18 On December 21, 2021, the Court denied Plaintiff's motion for preliminary injunction.

19
20 On January 13, 2022, Plaintiff Firefighters4Freedom filed a Second Amended Complaint
21 for Declaratory and Injunctive Relief.
22

23
24 On January 18, 2022, Plaintiff Firefighters4Freedom and Defendant City of Los Angeles
25 filed a Joint Stipulation Regarding the Filing of the Second Amended Complaint, where the
26 parties "stipulated and agreed that Plaintiff shall file its Second Amended Complaint by
27 January 14, 2022, with the amended demurrer kept on calendar. . . ." (Joint Stipulation, p.
28 2:17-19.) Plaintiff drafted a Second Amended Complaint "that addresses recent events

1 surrounding the spread of COVID-19 and the City's COVID-19 vaccine mandate.” (Joint
2 Stipulation, p. 2:7-8.)
3

4
5 On January 18, 2022, Defendant City of Los Angeles filed an amended demurrer to
6 Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief. On January 25,
7 2022, Plaintiff opposed Defendants' demurrer. On January 31, 2022, Defendant filed a reply to
8 Plaintiffs Opposition.
9

10 **III. LEGAL STANDARD ON DEMURRER**

11

12 A demurrer is a pleading used to test the legal sufficiency of other pleadings. (*City of*
13 *Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1008–09; *Blank v. Kirwan* (1985) 39 Cal.3d 311,
14 318.) It raises issues of law, not fact, regarding the form or content of the opposing party's
15 pleading. It is not the function of the demurrer to challenge the truthfulness of the complaint.
16 (*Unruh-Haxton v. Regents of Univ. of California* (2008) 162 Cal.App.4th 343, 365.) For purpose
17 of the ruling on the demurrer, all facts pleaded in the complaint are assumed to be true,
18 however improbable they may be. (CCP §§ 422.10, 589.)
19
20

21 A demurrer can be used only to challenge defects that appear on the face of the
22 pleading under attack, or from matters outside the pleading that are judicially noticeable.
23 (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 311.) No other extrinsic evidence can be considered
24 (i.e., no “speaking demurrers”).
25
26

27 “We also consider matters that may be judicially noticed. Courts may — and, indeed,
28 must — disregard allegations that are contrary to judicially noticed facts and documents.

1 Where an allegation is contrary to law or to a fact of which a court may take judicial notice, it is
2 to be treated as a nullity.” (*Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1141 [cleaned up].)
3

4 A demurrer may be brought under Code of Civil Procedure section 430.10, subdivision
5 (e) if insufficient facts are stated to support the cause of action asserted. A demurrer for
6 uncertainty may be brought pursuant to Code of Civil Procedure section 430.10, subdivision
7 (f). “A demurrer for uncertainty is strictly construed, even where a complaint is in some
8 respects uncertain, because ambiguities can be clarified under modern discovery procedures.”
9 (*Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th 612, 616.) “In general, ‘demurrers
10 for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that
11 a defendant cannot reasonably respond.’” (*Lickiss v. Financial Industry Regulatory Authority*
12 (2012) 208 Cal.App.4th 1125, 1135.)
13
14
15

16 The demurring party must file with the court, and serve on the other party, the: (1)
17 demurrer; (2) notice of hearing; (3) memorandum of points and authorities; and (4) proof of
18 service. (See Cal. Rules of Court, rule 3.1112(a), rule 3.1300(c), rule 3.1320; Code Civ. Proc.,
19 § 1005(b).) “A demurrer shall distinctly specify the grounds upon which any of the objections to
20 the complaint . . . are taken. Unless it does so, it may be disregarded.” (CCP § 430.60.)
21
22

23
24 **IV. ANALYSIS**

25
26 **A. Request for Judicial Notice**
27
28

Defendant City of Los Angeles requests that the Court take judicial notice of the

1 following 11 exhibits filed in connection with Defendant's Amended Demurrer to Plaintiff's
2 Second Amended Complaint:
3
4

- 5 1. Exhibit 1: "Safety of COVID-19 Vaccines," Centers for Disease Control and Prevention,
6 available at [https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html)
7 [vaccines.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html) (last updated Dec. 6, 2021).
8
- 9 2. Exhibit 2: "COVID-19: Vaccines to prevent SARS-CoV-2 Infection," UpToDate, by
10 Kathryn M. Edwards, MD, et al., available at [https://www.uptodate.com/contents/covid-](https://www.uptodate.com/contents/covid-19-vaccines-to-prevent-sars-cov-2-infection)
11 [19-vaccines-to-prevent-sars-cov-2-infection](https://www.uptodate.com/contents/covid-19-vaccines-to-prevent-sars-cov-2-infection) (last updated Dec. 1, 2021).
12
- 13 3. Exhibit 3: "CDC Expands Eligibility for COVID-19 Booster Shots to All Adults," Centers
14 for Disease Control and Prevention, available at
15 <https://www.cdc.gov/media/releases/2021/s1119-booster-shots.html> (last updated
16 November 19, 2021).
17
- 18 4. Exhibit 4: "Interim Public Health Recommendations for Fully Vaccinated People,"
19 Centers for Disease Control and Prevention, available at
20 <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>
21 (updated November 19, 2021).
22
- 23 5. Exhibit 5: "Variant Proportions," Centers for Disease Control and Prevention, available
24 at <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (last updated Dec. 4,
25 2021).
26
- 27 6. Exhibit 6: "New CDC Study: Vaccination Offers Higher Protection than Previous COVID-
28 19 Infection," Centers for Disease Control and Prevention, available at

1 <https://www.cdc.gov/media/releases/2021/s0806-vaccination-protection.html> (Aug. 6,
2 2021).

- 3
- 4 7. Exhibit 7: “Antibody Testing Is Not Currently Recommended to Assess Immunity After
5 COVID-19 Vaccination: FDA Safety Communication,” U.S. Food and Drug
6 Administration, available at [https://www.fda.gov/medical-devices/safety-](https://www.fda.gov/medical-devices/safety-communications/antibody-testing-not-currently-recommended-assess-immunity-after-covid-19-vaccination-fda-safety)
7 [communications/antibody-testing-not-currently-recommended-assess-immunity-after-](https://www.fda.gov/medical-devices/safety-communications/antibody-testing-not-currently-recommended-assess-immunity-after-covid-19-vaccination-fda-safety)
8 [covid-19-vaccination-fda-safety](https://www.fda.gov/medical-devices/safety-communications/antibody-testing-not-currently-recommended-assess-immunity-after-covid-19-vaccination-fda-safety) (May 19, 2021).
- 9
- 10 8. Exhibit 8: “Morbidity and Mortality Weekly Report (MMWR): Laboratory-Confirmed
11 COVID-19 Among Adults Hospitalized with COVID-19-Like Illness with Infection-
12 Induced or mRNA Vaccine-Induced SARS-CoV-2 Immunity – Nine States, January-
13 September 2021,” Centers for Disease Control and Prevention, available at
14 <https://www.cdc.gov/mmwr/volumes/70/wr/mm7044e1.htm> (Nov. 5, 2021).
- 15
- 16 9. Exhibit 9: State Public Health Officer Order of July 26, 2021: “Health Care Worker
17 Protections in High-Risk Settings,” available at
18 [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Unvaccinated-Workers-In-High-Risk-Settings.aspx)
19 [Public-Health-Officer-Unvaccinated-Workers-In-High-Risk-Settings.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Unvaccinated-Workers-In-High-Risk-Settings.aspx) (Jul. 26, 2021).
- 20
- 21 10. Exhibit 10: Resolution Implementing Consequences for Non-Compliance with the
22 Requirements of Ordinance No. 187134, adopted October 26, 2021 by the Los Angeles
23 City Council.
- 24
- 25 11. Exhibit 11: “Omicron Variant: What You Need to Know,” Centers for Disease Control
26 and Prevention, available at [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html)
27 [ncov/variants/omicron-variant.html](https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html) (updated Dec. 20, 2021).
- 28

1
2 Plaintiff opposes the Request for Judicial Notice. Plaintiff argues that “the effectiveness
3 of the COVID-19 vaccines is a disputed factual issue in this case.” (Plaintiff’s Opposition to
4 Request for Judicial Notice, p. 3:10-11.) In essence, Plaintiff argues that “COVID-19 is a novel
5 virus. At some point, there may be a scientific consensus about its origin, treatment, and other
6 issues. No consensus exists now.” (*Id.* at p. 3:25-26.)
7

8
9 Plaintiff’s position is contrary to case law, science, and common sense.

10
11 1. *The Evidence Code*

12 a. Evidence Code Section 451

13 Under Evidence Code section 451, “[j]udicial notice shall be taken of the following:
14

15
16 “(f) Facts and propositions of generalized knowledge that are so universally known that
17 they cannot reasonably be the subject of dispute.” (Ev. Code § 451.)
18

19 The “Comments” to this section indicate that “universally known” in subdivision (f) “does
20 not mean that every man [or woman] on the street has knowledge of such facts. A fact known
21 among person of reasonable and average intelligence and knowledge will satisfy the
22 ‘universally known’ requirement. Cf. *People v. Tossetti* (1930) 107 Cal.App. 7, 12.)”
23

24
25 b. Evidence Code Section 452

26 Under Evidence Code section 452, “[j]udicial notice may be taken of the following
27 matters to the extent that they are not embraced within Section 451:
28

1 “(g) Facts and propositions that are of such common knowledge within the territorial
2 jurisdiction of the court that they cannot reasonably be the subject of dispute.

3
4 “(h) Facts and propositions that are not reasonably subject to dispute and are capable
5 of immediate and accurate determination by resort to sources of reasonably
6 indisputable accuracy.” (Ev. Code § 452.)
7

8
9 The “Comments” to this section state that subdivision (h) includes, “for example, facts
10 which are accepted as established by experts and specialists in the natural, physical, and
11 social sciences, if those facts are of such wide acceptance that to submit them to the jury
12 would be to risk irrational findings.”
13

14
15 2. Case Law Supports Taking Judicial Notice of the Facts Requested by
16 Defendant City

17 Courts have often taken judicial notice of scientific facts. As our Supreme Court stated
18 more than 50 years ago, “[m]atters of scientific certainty are subject to judicial notice.”
19 (*McAllister v. Workmen's Comp. App. Bd.* (1968) 69 Cal.2d 408, 414.)
20

21
22 More importantly, in the case most similar to this one, the Court itself took judicial notice
23 of the efficacy of vaccines. In October 2016, a Los Angeles trial court sustained a demurrer
24 without leave to amend in a case challenging the State’s vaccination requirement for
25 schoolchildren. The trial court’s ruling was upheld on appeal. (*Brown v. Smith* (2018) 24
26 Cal.App.5th 1135.)
27

28 Of particular interest is that the *Brown* court took judicial notice of documents published

1 by the CDC. (*Id.* at p. 1142.)

2
3 Plaintiff's objections to this Court taking judicial notice of the CDC reports on vaccination
4 were raised and dismissed four years ago in *Brown*:

5
6 "Plaintiffs . . . object to the materials on vaccination as hearsay, inadmissible opinion
7 evidence, and 'government propaganda.' Plaintiffs further argue that we cannot take
8 judicial notice of the safety and effectiveness of vaccines. They contend the proposition
9 that 'protection of school children against crippling and deadly diseases by vaccinations
10 is done effectively and safely' is not common knowledge, and is the subject of
11 reasonable dispute. But they cite no authority that supports their contention. The
12 authorities are to the contrary.

13
14
15
16 "More than 90 years ago, a California court observed that: 'Where the issue pertains to
17 medical or surgical treatment, the nature, effect, and result of which are the subjects of
18 common knowledge, such matters are within the rule of judicial knowledge. As for
19 instance, the court will take judicial notice of the nature, purpose, and effects of
20 vaccination.' [Citation.]

21
22
23 "Our courts have also pointed out we may take judicial
24 notice of scientific facts. . . .

25
26 "Accordingly, we conclude judicial notice of the safety
27 and effectiveness of vaccinations is proper." (*Id.* at pp. 1142-1143.)
28

1 Citing *Brown*, Witkin now states that judicial notice can be taken of the “safety and
2 effectiveness of vaccinations” because it is a well-known “medical and scientific” fact. (Witkin,
3 *Evidence*, “Judicial Notice,” §35, 2021 Supplement.)
4

5
6
7 3. Universal Agreement is Not Required Before a Court Can Take Judicial
8 Notice of a Fact

9 In 1980, an Auschwitz survivor, Mel Mermelstein, sued the Institute for Historical
10 Review, an organization that denied that the Holocaust occurred. (*Mermelstein v. Institute for*
11 *Historical Review, etc.* Los Angeles Superior Court Case C36542.) There were – and there still
12 are – numerous people in the United States and throughout the World who deny that the
13 Holocaust occurred.
14

15
16 According to *The Atlantic*, “Seventy years after the liberation of Auschwitz, two-thirds of
17 the world's population don't know the Holocaust happened—or they deny it.” (“The World Is
18 Full of Holocaust Deniers,” *The Atlantic*, May 14, 2014, available at
19 [https://www.theatlantic.com/international/archive/2014/05/the-world-is-full-of-holocaust-](https://www.theatlantic.com/international/archive/2014/05/the-world-is-full-of-holocaust-deniers/370870/)
20 [deniers/370870/.](https://www.theatlantic.com/international/archive/2014/05/the-world-is-full-of-holocaust-deniers/370870/))
21
22

23 A 2020 survey of young Americans showed that “Sixty-three percent of those surveyed
24 did not know that 6 million Jews were murdered in the Holocaust. . . .” (“Survey finds
25 ‘shocking’ lack of Holocaust knowledge among millennials and Gen Z,” available at
26 [https://www.nbcnews.com/news/world/survey-finds-shocking-lack-holocaust-knowledge-](https://www.nbcnews.com/news/world/survey-finds-shocking-lack-holocaust-knowledge-among-millennials-gen-z-n1240031)
27 [among-millennials-gen-z-n1240031.](https://www.nbcnews.com/news/world/survey-finds-shocking-lack-holocaust-knowledge-among-millennials-gen-z-n1240031))
28

1 Holocaust denial and out-and-out anti-Semitism was certainly present in a substantial
2 section of the population 40 years ago. Nonetheless, in 1981, Judge Thomas T. Johnson, the
3 trial judge in *Mermelstein*, took judicial notice of the Holocaust:
4

5 “The Court . . . takes judicial notice of the fact that Jews were gassed to death at the
6 Auschwitz Concentration Camp in Poland during 1944. This is a fact not reasonably
7 subject to dispute, determinable by resort to sources of reasonably indisputable
8 accuracy.” (*Mermelstein v. Institute for Historical Review, etc. et al.*, Los Angeles
9 Superior Court Case C36542 (Notice of Ruling, Oct. 19, 1981
10

11
12 (This Court, on its own motion, takes judicial notice of this ruling pursuant to Ev. Code §452(d)
13 and takes judicial notice of the unattributed facts in the following paragraph pursuant to Ev.
14 Code §452(g) and (h). Judge Johnson’s Order of October 19, 1981, is attached as an exhibit
15 to this opinion.)
16

17
18 Judge Johnson was appointed to the Los Angeles Municipal Court by then-Governor
19 Ronald Reagan in 1971, and he served as Presiding Judge of the Los Angeles Superior Court
20 from 1985-1986. Of course, Judge Johnson’s decision is not binding on this Court. (See, e.g.,
21 *Budrow v. Dave & Buster’s of California* (2009) 171 Cal.App.4th 875, 885 [“A written trial court
22 ruling in another case has no precedential value.”]) In his 18 years on the bench, Judge
23 Johnson had numerous high-profile cases, including disputes involving Billie Jean King, Rudy
24 Vallee and Norton Simon, yet he is most famous for this ruling on the Holocaust. The opening
25 sentence of Judge Johnson’s obituary was that he took taking judicial notice of the Holocaust –
26 a fact that was “not reasonably subject to dispute.” (“Thomas T. Johnson dies at 88; judge
27 ruled that Holocaust was a fact,” *Los Angeles Times*, Dec. 31, 2011, available at
28

1 [https://www.latimes.com/local/obituaries/la-xpm-2011-dec-31-la-me-thomas-johnson-](https://www.latimes.com/local/obituaries/la-xpm-2011-dec-31-la-me-thomas-johnson-20111231-story.html)
2 [20111231-story.html.](https://www.latimes.com/local/obituaries/la-xpm-2011-dec-31-la-me-thomas-johnson-20111231-story.html))

3
4 The issue, as Judge Johnson was aware, is not whether some people dispute the facts
5 that are subject to judicial notice. It is whether there is consensus in the relevant professional
6 or scientific community about the facts asserted.
7

8
9 After all, former President Trump filed and lost at least 63 lawsuits contesting the 2020
10 election. Yet more than 40% of Americans do not believe that President Biden won the 2020
11 election. (“More than 40% in US do not believe Biden legitimately won election – poll,” *The*
12 *Guardian*, Jan. 5, 2022, available at [https://www.theguardian.com/us-](https://www.theguardian.com/us-news/2022/jan/05/america-biden-election-2020-poll-victory)
13 [news/2022/jan/05/america-biden-election-2020-poll-victory.](https://www.theguardian.com/us-news/2022/jan/05/america-biden-election-2020-poll-victory)) Another poll shows that one-third
14 of Americans believe that “Biden’s victory . . . was illegitimate.” (“Poll: A Third of Americans
15 Question Legitimacy of Biden Victory Nearly a Year Since Jan. 6,” *U.S. News*, Dec. 28, 2021,
16 available at [https://www.usnews.com/news/politics/articles/2021-12-28/poll-a-third-of-](https://www.usnews.com/news/politics/articles/2021-12-28/poll-a-third-of-americans-question-legitimacy-of-biden-victory-nearly-a-year-since-jan-6)
17 [americans-question-legitimacy-of-biden-victory-nearly-a-year-since-jan-6.](https://www.usnews.com/news/politics/articles/2021-12-28/poll-a-third-of-americans-question-legitimacy-of-biden-victory-nearly-a-year-since-jan-6)) Yet despite more
18 than 100 million Americans believing this misinformation, a Court could, in the appropriate
19 case, take judicial notice of the fact that Biden legitimately won the last presidential election.
20
21

22
23 In 2019, on the 50th anniversary of the Moon landing, polls showed that between 6%
24 and 20% of Americans believed the moon landing was a hoax. (See, e.g., “Moon landing
25 conspiracy theories,” Wikipedia, available at
26 [https://en.wikipedia.org/wiki/Moon_landing_conspiracy_theories.](https://en.wikipedia.org/wiki/Moon_landing_conspiracy_theories))

27 That translates to some 30 million Americans. Yet the Court can certainly, in the appropriate
28 case, take judicial notice that Neil Armstrong landed on the moon on July 20, 1969.

1
2 According to a 2021 poll conducted by the Public Religion Research Institute, 23% of
3 Republicans believe the QAnon conspiracy theory's central belief that "the government, media,
4 and financial worlds are controlled by a group of Satan-worshipping pedophiles who run a sex-
5 trafficking operation." ("Understanding QAnon's Connection to American Politics, Religion, and
6 Media Consumption," PRRI, May 27, 2021, available at [https://www.prrri.org/research/qanon-](https://www.prrri.org/research/qanon-conspiracy-american-politics-report/)
7 [conspiracy-american-politics-report/](https://www.prrri.org/research/qanon-conspiracy-american-politics-report/); see also "QAnon Now as Popular in U.S. as Some Major
8 Religions, Poll Suggests," *New York Times*, May 27, 2021, available at
9 <https://www.nytimes.com/2021/05/27/us/politics/qanon-republicans-trump.html>.) Certainly, a
10 Court, in the appropriate case, could take judicial notice of the fact that this belief is false.
11
12

13
14 In short, we do not consult the man on the Clapham bus to determine whether a fact is
15 "universally known." Rather, we look to the consensus of scientific, historical or professional
16 opinion.
17

18 Plaintiff argues that the "'facts' the City discusses in the demurrer—primarily statements
19 from other cases and studies regarding the COVID-19 vaccines—cannot be judicially noticed
20 for their truth because they are not indisputably true." (Opposition, p. 2:17-20.) But as
21 indicated above, the fact that some people may believe a falsehood – i.e., that a fact is not
22 "indisputably true" – does not mean that the fact cannot be judicially noticed.
23

24
25 Plaintiff also cites to *Fremont Indemnity Co. v. Fremont General Corp.*, (2007) 148
26 Cal.App.4th 97, 115 for the proposition that a "court ruling on a demurrer cannot decide a
27 question that may depend on disputed facts by means of judicial notice." (Opposition, p. 5:26-
28 27.) But the case cited by Plaintiff is not apposite. In *Fremont Indemnity*, the Court held that it

1 was improper for the trial court to take judicial notice of the proper interpretation and
2 enforceability of a contract. (*Fremont, supra*, 148 Cal.App.4th at p. 115.) *Fremont Indemnity*
3 does not stand for the proposition that it is improper to take judicial notice of U.S. government
4 agency documents which cite facts around which the world scientific community has reached
5 consensus.
6

7
8 4. Conclusion

9 The Court finds the fact that COVID-19 vaccinations are safe and effective in protecting
10 the health and safety of the public. This fact is not reasonably subject to dispute. The Court
11 takes judicial notice of items Nos. 1-11 requested by Defendant.
12

13
14
15 B. The Courts Have Repeatedly Upheld Vaccination Mandates
16

17 Well over a century ago, the United States Supreme Court held that compulsory
18 vaccinations are not unconstitutional. (*Jacobson v. Massachusetts* (1905) 197 U.S. 11, 39.)
19 Fifteen years later, the United States Supreme Court reaffirmed its decision:
20

21
22 “Long before this suit was instituted, *Jacobson v. Massachusetts* . . . had settled that it
23 is within the police power of a state to provide for compulsory vaccination. That case
24 and others had also settled that a state may, consistently with the federal Constitution,
25 delegate to a municipality authority to determine under what conditions health
26 regulations shall become operative. [Citation.] And still others had settled that the
27 municipality may vest in its officials broad discretion in matters affecting the application
28 and enforcement of a health law.” (*Zucht v. King* (1922) 260 U.S. 174, 176.)

1 Even before *Jacobson* and *Zucht*, the California Supreme Court upheld a vaccination
2 mandate for schoolchildren. “The legislature has power to enact such laws as it may deem
3 necessary, not repugnant to the constitution, to secure and maintain the health and prosperity
4 of the state, by subjecting both persons and property to such reasonable restraints and
5 burdens as will effectuate such objects. (See art. 19, sec. 1.)” (*Abeel v. Clark* (1890) 84 Cal.
6 226, 230.)
7

8
9 One year before the U.S. Supreme Court decided this issue in *Jacobson*, our Supreme
10 Court again reaffirmed the constitutionality of vaccine mandates in *French v. Davidson* (1904)
11 143 Cal. 658.) The *French* Court held that the issue “has already been settled”; that the
12 “soundness” of *Abeel* “has never been questioned”; and that *Abeel* “has been frequently cited
13 and the principle of it approved both in this and other states.” (*Id.* at p. 661.)
14

15
16 More recently, plaintiffs in both *Brown v. Smith* and *Love v. Board of Education* sued to
17 halt the vaccination requirements for schoolchildren. (*Brown v. Smith* (2018) 24 Cal.App.5th
18 1135; *Love v. State Department of Education* (2018) 29 Cal.App.5th 980.) Both challenges
19 were tossed out on demurrers. Both are instructive.
20

21
22 In *Brown*, parents of Los Angeles area schoolchildren brought an action to invalidate
23 legislation that required mandatory immunizations for school children. Judge Gregory Alarcon
24 of the Los Angeles Superior Court sustained a demurrer without leave to amend and
25 dismissed the complaint.
26

27
28 “In 1890, the California Supreme Court rejected a constitutional challenge to a
‘vaccination act’ that required schools to exclude any child who had not been vaccinated

1 against smallpox. In dismissing the suggestion that the act was 'not within the scope of
2 a police Regulation," the court observed that, '[w]hile vaccination may not be the best
3 and safest preventive possible, experience and observation ... dating from the year
4 1796 ... have proved it to be the best method known to medical science to lessen the
5 liability to infection with the disease.'" [quoting *Abeel v. Clark, supra*, at pp. 227-228,
6 230.]
7

8
9 "More than 125 years have passed since *Abeel*, during which many federal and state
10 cases, beginning with the high court's decision in *Jacobson v. Massachusetts* . . . have
11 upheld, against various constitutional challenges, laws requiring immunization against
12 various diseases. This is another such case, with a variation on the theme but with the
13 same result.
14

15
16 "We affirm the trial court's order dismissing plaintiffs' challenge" (*Brown, supra*, 24
17 Cal.App.5th at p. 1138.)
18

19
20
21 Plaintiff states that *Brown* was the only case involving a "challenge to state
22 immunization requirements for schoolchildren" that was decided on a demurrer. (Opposition, p.
23 8:13-15.) Plaintiff is incorrect.

24
25 The same year that *Brown* was decided, an almost identical challenge to the school
26 vaccination mandate was dismissed on a demurrer in *Love v. State Department of Education*
27 (2018) 29 Cal.App.5th 980. Plaintiffs in both *Brown* and *Love* challenged the same State law
28 that required all schoolchildren to be vaccinated against at least 10 different childhood

1 diseases – diphtheria, hepatitis B, Haemophilus influenzae type b, measles, mumps, pertussis,
2 poliomyelitis, rubella, tetanus and varicella – and “any other disease deemed appropriate by
3 the department.” (*Brown, supra*, 24 Cal.App.5th at p. 1138p. 1139, fn. 1.)
4

5
6 “It is well established that laws mandating vaccination of school-aged children promote
7 a compelling governmental interest of ensuring health and safety by preventing the spread of
8 contagious diseases.” (*Love, supra*, at p. 990.)
9

10 This is because “routine vaccination is one of the most spectacularly effective public
11 health initiatives this country has ever undertaken. But these gains are fragile and even a brief
12 period when vaccination programs are disrupted can lead to children's deaths.” (*Bruesewitz v.*
13 *Wyeth LLC* (2011) 562 U.S. 223, 246 (conc. opn. of Breyer, J. [cleaned up].)
14

15
16 Ordinances mandating a certificate of vaccination prior to allowing school attendance do
17 not violate substantive due process rights because it is “settled that it is within the police power
18 of a state to provide for compulsory vaccination.” (*Zucht v. King, supra*, 260 U.S. at p. 176.)
19 “That interest exists regardless of the circumstances of the day, and is equally compelling
20 whether it is being used to prevent outbreaks or eradicate diseases.” (*Love, supra*, 29
21 Cal.App.5th at p. 990.)
22

23
24 The *Love* Court found Plaintiffs’ arguments to be either unconvincing or without merit.
25 (*Love, supra*, 29 Cal.App.5th at pp. 993, 994.) Not surprisingly, the *Love* Court also upheld the
26 dismissal of the action challenging the vaccination mandate.
27
28

1
2 C. Ultra Vires Legislation
3

4 *Ultra vires* legislation refers to legislation adopted by a governmental body beyond the
5 body's legal authority. *Ultra vires* is an adjective defined by Black's Law Dictionary as
6 "unauthorized; beyond the scope of power allowed or granted by a corporate charter or by
7 law." ("Ultra Vires," Black's Law Dictionary (10th ed. 2014.) Plaintiff in its Second Amended
8 Complaint alleges that Defendant "acted in its capacity as an employer, not the sovereign"
9 when it altered the employment conditions for municipal workers and adopted the Vaccine
10 Mandate. (SAC, ¶ 28.) Plaintiff claims that the City of Los Angeles lacks the authority, as the
11 firefighter's employer, "to unilaterally change the conditions of employment for city firefighters,
12 who are represented by a labor union and whose employment is governed by a Memorandum
13 of Understanding between the City and the union. (*Id.*) In the alternative, the Second Amended
14 Complaint argues that "if the City does possess the authority under the police power to adopt
15 the Vaccine Mandate, the mandate is not reasonably related to promoting public health and
16 that the means used is not reasonably appropriate under the circumstances." (SAC, ¶ 29.)
17
18
19
20

21 Defendant City of Los Angeles argues that the Vaccine Mandate's statutory language
22 contradicts the firefighters' employer capacity argument because the City's stated objective
23 constitutes an act of sovereignty: "To protect the City's workforce and the public that it serves,
24 all employees must be fully vaccinated for COVID-19, or request an exemption, and report
25 their vaccination status in accordance with the City's Workplace Safety Standards, not later
26 than October 19, 2021." (SAC, Ex. B, § 4.701(a); Motion, MPA, p. 3:8-11.) Defendant also
27 argues that Plaintiff lacks standing to claim that the Vaccine Mandate constitutes a change in
28 employment conditions for City firefighters because Plaintiff Firefighters4Freedom is not a

1 party to the Memorandum of Understanding and does not represent City firefighters in
2 employee relations with the City. (Motion, MPA, p. 3:12-17.) Defendant's main argument is that
3 the Vaccine Mandate presents "a valid exercise of the City's police powers and is reasonably
4 related to promoting the public health and safety" of both the City's workforce and the general
5 public. (Motion, MPA, p. 3:21-23.)
6

7
8 The California Constitution vests the City with the authority to "make and enforce within
9 its limits all local, police, sanitary, and other ordinances and regulations" so long as they do not
10 "conflict with general laws." (Cal. Const., art. XI, § 7.) "An ordinance so enacted will ordinarily
11 be upheld if 'it is reasonably related to promoting the public health, safety, comfort, and
12 welfare, and if the means adopted to accomplish that promotion are reasonably appropriate to
13 the purpose.'" (*Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal.3d 64,
14 72.)
15

16
17 "Municipal police power extends to objectives in furtherance of the public peace, safety,
18 morals, health and welfare. It is not a circumscribed prerogative but rather is elastic." (*Loska v.*
19 *Superior Court* (1986) 188 Cal.App.3d 569, 575, citing *Fisher v. City of Berkeley* (1984) 37
20 Cal.3d 644, 676.) "Nor does the fourteenth amendment, or any other part of the federal
21 constitution, interfere with the power of the state to prescribe regulations to promote the health
22 and general welfare of the people. 'Special burdens are often necessary for general benefits.'"
23 (*French v. Davidson, supra*, 143 Cal. at p. 662.)
24

25
26 Courts have consistently held that compulsory vaccination mandates are a permissible
27 use of state power to combat public health emergencies. (See, e.g., *Abeel, supra*, 84 Cal. at p.
28 230; *French, supra*, 143 Cal. at p. 662; *Jacobson, supra*, 197 U.S. at p. 39; *Zucht, supra*, 260

1 U.S. at p. 176.) “It has been settled since 1905 in *Jacobson* . . . that it is within the police
2 power of a State to provide for compulsory vaccination.” (*Brown, supra*, 24 Cal.App.5th at pp.
3 1143–1144.)
4

5
6 Like the school vaccines at issue in *Brown*, there is no reasonable dispute over the
7 effectiveness of vaccines in combating COVID-19. (RJN Exs. 2, 6.) The overwhelming
8 consensus of scientific opinion supports the conclusion that COVID-19 vaccines are safe and
9 effective at both combating the spread of, and the severity of illness from, COVID-19. (RJN
10 Exs. 1-8.) “COVID-19 vaccines were evaluated in tens of thousands of participants in clinical
11 trials. The vaccines met the Food and Drug Administration’s (FDA’s) rigorous scientific
12 standards for safety, effectiveness, and manufacturing quality needed to support emergency
13 use authorization.” (RJN Ex. 1: “Safety of COVID-19 Vaccines,” Centers for Disease Control
14 and Prevention, available at [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html)
15 [ncov/vaccines/safety/safety-of-vaccines.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html) (last updated Dec. 6, 2021).) Data from the
16 Centers for Disease Control “further indicate that COVID-19 vaccines offer better protection
17 than natural immunity alone and that vaccines, even after prior infection, help prevent
18 reinfections.” (RJN Ex. 6: “New CDC Study: Vaccination Offers Higher Protection than
19 Previous COVID-19 Infection,” Centers for Disease Control and Prevention, available at
20 <https://www.cdc.gov/media/releases/2021/s0806-vaccination-protection.html> (Aug. 6, 2021).)
21
22

23
24 Plaintiff does not have a cognizable cause of action for Ultra Vires Legislation.
25 Compulsory vaccination is a valid exercise of state police power. There is consensus in the
26 medical and scientific community that COVID-19 vaccines are a reasonable method to lessen
27 the spread of COVID-19 during the present global pandemic.
28

1 Defendant City of Los Angeles' demurrer to Plaintiff Firefighters4Freedom's First Cause
2 of Action for Declaratory and Injunctive Relief re: Ultra Vires Legislation is SUSTAINED
3 WITHOUT LEAVE TO AMEND (CCP ¶ 430.10(e).)
4
5
6

7 D. Right of Privacy
8

9 To allege an invasion of privacy in violation of the state constitutional right, a plaintiff
10 "must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable
11 expectation of privacy in the circumstances; and (3) conduct by defendant constituting a
12 serious invasion of privacy." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39–
13 40.) Defendants may prevail by negating any element or "by pleading and proving, as an
14 affirmative defense, that the invasion of privacy is justified because it substantively furthers
15 one or more countervailing interests. Plaintiff, in turn, may rebut a defendant's assertion of
16 countervailing interests by showing there are feasible and effective alternatives to defendant's
17 conduct which have a lesser impact on privacy interests." (*Id.* at p. 40.) "Actionable invasions
18 of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to
19 constitute an egregious breach of the social norms underlying the privacy right." (*Id.* at p. 37.)
20
21
22

23 Plaintiff's Second Cause of Action for Declaratory and Injunctive Relief under Article I,
24 section 1 of the California Constitution in the Second Amended Complaint alleges that the *Hill*
25 standard has been met because (1) City firefighters possess a legally protected privacy
26 interest in their bodily integrity, (2) the firefighters' privacy expectation is reasonable given the
27 unparalleled nature compulsory vaccinations for City firefighters, and (3) the City Vaccine
28 Mandate amounts to a serious invasion of the firefighters' rights. (SAC, ¶¶ 38-40.) Plaintiff

1 further alleges that “feasible and effective alternatives” to the City’s Vaccine Mandate with
2 reduced impact on privacy interests exist, calling into question City’s Vaccine Mandate
3 compelling interest rationale.
4

5
6 Defendant City argues that when a statute “primarily concerns health and safety, no
7 fundamental right to privacy is at stake,” citing *Wilson v. California Health Facilities Com.*
8 (1980) 110 Cal.App.3d 317, 322. (Motion, MPA, p. 6:5-7.) The City notes that the California
9 Constitution allows compulsory vaccination. (*Abeel, supra*, 84 Cal. at 230; Motion, MPA, p.
10 6:11.) Numerous courts have upheld the compelling governmental interest in compulsory
11 vaccination as a disease-prevention measure. (See, e.g., *Love v. State Dept. of Education*,
12 *supra*, 29 Cal.App.5th at p. 990; *Brown, supra*, 24 Cal.App.5th at p. 1146; *Abeel, supra*, 84
13 Cal. at pp. 230-231.) The State has an important interest in safeguarding its residents’ health;
14 such legislation is presumed to be constitutionally valid and will be upheld if there is a rational
15 basis for its enactment. (*Love, supra*, 29 Cal.App.5th at p. 993.)
16

17
18 The City suggests that its Vaccine Mandate survives rational basis review because (1)
19 the Mandate addresses the “legitimate and compelling objective” of reducing COVID-19
20 workplace and public transmission risk, (2) evidence of COVID-19 vaccine efficacy and safety
21 “establishes that the Vaccine Mandate is rationally related to the City’s legitimate interests,”
22 and (3) insofar as the firefighters dispute the scientific rationale for City’s measure, “the Court
23 doesn’t intervene” so long as City engages a rational process in pursuit of public health.
24 (Motion, MPA, p. 7:10-17, p. 7:28—8:4 [and cases cited therein].)
25
26

27
28 Plaintiff argues that its Second Amended Complaint adequately pleads all elements of
the *Hill* standard and argues that City’s arguments lack merit. (Opposition, p. 10:18-23.)

1 Plaintiff raises *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 530-532 to argue that
2 competent adults have the right to refuse medical treatment, a right rooted in the constitutional
3 right of privacy under the California Constitution. Further, Plaintiff argues that the issue of
4 whether affected firefighters have a reasonable expectation of privacy is a mixed question of
5 law and fact, inappropriate for decision through a demurrer. (*Hill, supra*, 7 Cal.4th at p. 40;
6 *Mathews v. Becerra* (2019) 8 Cal.5th 756; see Opposition, p. 11:15-24.)
7

8
9 In *Mathews*, plaintiffs were licensed marriage and family therapists and a certified
10 alcohol and drug counselor who treated patients with sexual disorders, addictions, and
11 compulsions. (*Mathews, supra*, 8 Cal.5th at 760.) Many patients admitted to downloading or
12 electronically viewing child pornography but did not present in plaintiffs' professional judgment
13 a serious risk of child sexual contact. (*Id.* at p. 761.) Plaintiffs contended that the confidentiality
14 granted by the psychotherapist-patient privilege applied to such admissions and legislation that
15 required mandatory reporting of such patients to law enforcement and child welfare institution
16 violated their patients' rights to privacy under both the California Constitution, article I, section
17 1, and the Fourteenth Amendment to the United States Constitution. (*Id.*) *Mathews* holds that
18 "for purposes of demurrer, plaintiffs have established that their patients have a reasonable
19 expectation of privacy in admissions during voluntary psychotherapy that they have viewed or
20 possessed child pornography." (*Id.* at pp. 776-777.)
21
22

23
24 However, *Mathews* does not address municipal actions during a global pandemic that
25 produces public safety threats. (RJN Ex. 11: "Omicron Variant: What You Need to Know,"
26 Centers for Disease Control and Prevention, available at
27 <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html> (updated Dec. 20,
28 2021) "Persons infected with the Omicron variant can present with symptoms similar to

1 previous variants. The presence and severity of symptoms can be affected by COVID-19
2 vaccination status, the presence of other health conditions, age, and history of prior infection.”
3 (*Id.*) The Court finds that the challenged action clearly implicates public health and safety and
4 does not affect a fundamental right to privacy. (*Wilson, supra*, 110 Cal.App.3d at p. 324.) The
5 firefighters represented by Plaintiff do not enjoy a reasonable expectation of privacy sufficient
6 to overrule a demurrer because the firefighters’ privacy interests are not implicated; even if
7 they were, the ongoing global COVID-19 public health emergency poses a countervailing state
8 interest sufficient to render the firefighters’ privacy expectations unreasonable.
9

10
11 It is important to note at this point that no firefighter is being forced to be vaccinated.
12 Even under the vaccination mandate, any firefighter can choose whether or not to be
13 vaccinated against COVID-19. The government is not compelling a person to be vaccinated. It
14 is simply saying that a person may not continue to work as a firefighter unless they are
15 vaccinated (or they have been granted a medical or religious exemption from vaccination).
16

17
18 Plaintiff’s Second Amended Complaint asserts misinformation on COVID-19 vaccine
19 efficacy to argue that the City’s Vaccine Mandate “does not serve its stated purpose.” (SAC, ¶
20 41.) As stated above, the scientific consensus on data accumulated on available COVID-19
21 vaccines clearly supports their use to combat the spread of SARS-CoV-2 among the general
22 population. (RJN Ex. 3: “COVID-19: Vaccines to prevent SARS-CoV-2 Infection,” UpToDate,
23 by Kathryn M. Edwards, MD, et al., available at [https://www.uptodate.com/contents/covid-19-
24 vaccines-to-prevent-sars-cov-2-infection](https://www.uptodate.com/contents/covid-19-vaccines-to-prevent-sars-cov-2-infection) (last updated Dec. 1, 2021).) Plaintiff fails to plead a
25 legally protected privacy interest or a reasonable expectation of privacy because the health
26 and welfare of the City’s workforce and the general public present countervailing state interests
27 that support the City’s Vaccine Mandate over bodily integrity protests. Given the overwhelming
28

1 scientific evidence in favor of COVID-19 vaccine use coupled with the choices available to
2 employees under the City's Vaccine Mandate, the Court concludes that the firefighters' privacy
3 concerns are not reasonable.
4

5
6 The vaccine mandate at issue in *Love* and *Brown* was stricter than the City Ordinance
7 challenged here, forbidding a child to attend school unless immunized against at least "10
8 specific diseases and any other disease deemed appropriate," with no exemption for personal
9 religious beliefs. (*Love, supra*, 29 Cal.App.5th at p. 865.) Both *Brown* and *Love* found that the
10 vaccination requirement for schoolchildren did not violate California's Right to Privacy. (*Brown,*
11 *supra*, 24 Cal.App.5th at p. 1146; *Love, supra*, 29 Cal.App.5th at pp. 993-994.) In 2018, the
12 Court stated that "[w]e are aware of no case holding mandatory vaccination statutes violate a
13 person's right to bodily autonomy." (*Love, supra*, 29 Cal.App.5th at p. 991.)
14
15

16 Now, four years after *Brown* and *Love*, we have yet another constitutional challenge to
17 vaccination mandates. This case is equally without merit.
18

19
20 Plaintiff's privacy argument fails. Plaintiff argues that firefighters have a right not to be
21 vaccinated and that "the right to refuse medical treatment [is] 'basic and fundamental' and . . .
22 cannot be 'overridden by medical opinion.'" (Opposition, p. 11:2-3, citing *Conservatorship of*
23 *Wendland, supra*, 26 Cal.4th at p. 532.) That may well be true, but that is not the issue before
24 the Court. Defendant City has not passed a law that requires everyone to be vaccinated. The
25 City simply passed a law saying that if a firefighter is not vaccinated – and the firefighter has
26 not been given a religious or medical deferral from the vaccination – they cannot continue to
27 work and be paid as a City employee. Any firefighter may choose not to get the vaccine. That
28 is their choice. They may remain unvaccinated and seek other employment with an employer

1 that does not require its employees to be vaccinated.

2
3 As this Court stated when it denied Plaintiff's request for a Preliminary Injunction on
4 December 20, 2021, "The Court does not find a privacy violation under the California
5 Constitution." (12/20/21 Minute Order.)
6

7
8 This Court finds that the City's Vaccination Mandate does not violate the firefighters'
9 right to privacy. Plaintiff's complaint does not state a cause of action for violation of privacy.
10

11 Defendant City of Los Angeles' demurrer to the Second Cause of Action for Declaratory
12 and Injunctive Relief under Article I, section 1 of the California Constitution of Plaintiff
13 Firefighters4Freedom's Second Amended Complaint is SUSTAINED WITHOUT LEAVE TO
14 AMEND. (CCP ¶ 430.10(e).
15
16
17

18 E. Skelly Hearings
19

20 Under *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 207 when a person has a
21 legally enforceable right to receive a government benefit provided certain facts exist, this right
22 constitutes a property interest protected by due process. While some form of notice and a
23 hearing must precede a final deprivation of property in accordance with due process, "the
24 timing and content of the notice and the nature of the hearing will depend on an appropriate
25 accommodation of the competing interests involved." (*Id.* at p. 209.) Competing interests
26 include "whether pre-deprivation safeguards minimize the risk of error in the initial taking
27 decision, whether the surrounding circumstances necessitate quick action, whether the post-
28

1 deprivation hearing is sufficiently prompt, whether the interim loss incurred by the person
2 affected is substantial, and whether such person will be entitled to adequate compensation in
3 the event the deprivation of his property interest proves to have been wrongful.” (*Id.*) Pre-
4 removal due process safeguards under *Skelly* must include “notice of the proposed action, the
5 reasons therefor, a copy of the charges and materials upon which the action is based, and the
6 right to respond, either orally or in writing, to the authority initially imposing discipline.” (*Id.* at p.
7 215.)
8

9
10 Post-*Skelly*, the “California Supreme Court and the United States Supreme Court have
11 repeatedly recognized that due process is a flexible concept,” and “calls for such procedural
12 protections as the particular situation demands.” (*Gilbert v. City of Sunnyvale* (2005) 130
13 Cal.App.4th 1264, 1276, citing *Civil Service Assn. v. City and County of San Francisco* (1978)
14 22 Cal.3d 552, 561; *Gilbert v. Homar* (1997) 520 U.S. 924, 930; *Morrissey v. Brewer* (1972)
15 408 U.S. 471, 481.) “An important government interest, accompanied by a substantial
16 assurance that the deprivation is not baseless or unwarranted, may in limited cases
17 demanding prompt action justify postponing the opportunity to be heard until after the initial
18 deprivation.” (*Bostean v. Los Angeles Unified School Dist.* (1998) 63 Cal.App.4th 95, 112–
19 113.) To identify specific due process requirements, the Court considers (1) the private interest
20 affected by the official action, (2) the risk the procedures used will erroneously deprive that
21 interest, and (3) “the Government's interest, including the function involved and the fiscal and
22 administrative burdens that the additional or substitute procedural requirement would entail.”
23 (*Mathews v. Eldridge* (1976) 424 U.S. 319, 335.)
24
25
26

27
28 Plaintiff alleges that under the Due Process Clause and *Skelly*, the City “must provide
the firefighters with notice and an opportunity to challenge the action before it stops paying

1 them.” (SAC, ¶ 49.) Further, Plaintiff alleges that the City “cannot take any adverse
2 employment action against city firefighters without providing them with the rights they have
3 under the state law Firefighter Bill of Rights.” (SAC, ¶ 50.) In its demurrer, the City argues that
4 the firefighters’ Second Amended Complaint fails to allege sufficient facts to show a *Skelly*
5 violation. (Motion, MPA, p. 9:19-21.) Defendant City argues that Plaintiff did not allege facts to
6 show that its members failed to receive a notice of the Vaccine Mandate and an opportunity to
7 respond prior to being placed off duty without pay. (Motion, MPA, p. 9:27—10:1.) Further, the
8 City asserts that the Second Amended Complaint does not allege facts to establish *Skelly*’s
9 applicability, as *Skelly* “evolved from a nonemergency situation and cannot be considered
10 direct authority for the issue raised here.” (*Mitchell v. State Personnel Bd.* (1979) 90
11 Cal.App.3d 808, 812.) The City cites their October 26, 2021 Emergency Resolution for recitals
12 that discuss the City’s rationale for its emergency declaration, and the City contends that the
13 Second Amended Complaint lacks facts that suggest that its emergency resolution abused its
14 discretion. (Motion, MPA, p. 11:2-3; RJN Ex. 10.) Lastly, the City states that no specific
15 violation of the Firefighter Bill of Rights has been alleged in the Second Amended Complaint.
16 (Motion, MPA, p. 11:6-15.)

17
18
19
20
21 In opposition, Plaintiff argues that the City’s post-deprivation hearing arguments “are
22 factual ones that go to the merits of this claim,” rather than pleading defects in the Second
23 Amended Complaint. (Opposition, p. 16:8-9.) Plaintiff argues that it is entitled to show following
24 discovery that City violated the Due Process Clause. (Opposition, p. 16:10-16.)

25
26 The Court finds that *Skelly* does not entitle municipal firefighters to a hearing before an
27 adverse employment action during an emergency situation. Rather, *Skelly* and subsequent
28 cases afford the firefighters a framework to determine whether a post-deprivation adverse

1 employment action complied with the employee's due process rights. Plaintiff fails to plead
2 facts that show how the events that led to adverse employment actions illustrate a due process
3 violation under *Skelly*. Factors that involve pre-deprivation safeguards or post-deprivation
4 hearing promptness are not discussed. It is a misstatement of law to assert that "notice and an
5 opportunity to challenge the action" must occur before the City suspends a firefighter's pay.
6 (SAC, ¶ 49.) Even in normal times, due process requires flexibility; an emergency situation
7 arguably requires more. The Second Amended Complaint does not challenge the City's
8 determination that it navigated an emergency; rather Plaintiff essentially pleads that even
9 during an emergency, due process equates to notice and a hearing before any adverse
10 employment actions take effect. This is not the law.
11
12

13
14 Plaintiff's due process arguments plead insufficient facts to state a claim under *Skelly*
15 and do not contend with the emergency situation within which the City operates today. The
16 Court finds that the Plaintiff fails to state a claim under *Skelly*.
17

18 Defendant City of Los Angeles' demurrer to the Third Cause of Action for Declaratory
19 and Injunctive Relief under Due Process Clause/Skelly/Firefighter Bill of Rights of Plaintiff
20 Firefighters4Freedom's Second Amended Complaint is SUSTAINED WITHOUT LEAVE TO
21 AMEND. (CCP ¶ 430.10(e).)
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V. CONCLUSION

The Court SUSTAINS WITHOUT LEAVE TO AMEND Defendant City of Los Angeles's Amended Demurrer to Plaintiff Firefighters4Freedom's Second Amended Complaint.

DATED: FEB 15 2022



MICHAEL LINFIELD
MICHAEL PAUL LINFIELD
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 88

Date: **October 19, 1981**

HONORABLE **THOMAS T. JOHNSON** JUDGE

S. Pearcy DEPUTY CLERK

HONORABLE JUDGE PRO TEM

None Reporter

Deputy Sheriff (Parties and counsel checked if present)

1

C 356 542

Mel Kermelstein

Counsel for Plaintiff **Mr. Cox**

vs. Institute for Historical Review, etc., et al.

Counsel for Defendant **Richard Fusilier**

NATURE OF PROCEEDINGS: **NOTICE OF RULING**

Matter having been taken under submission on October 9, 1981, the Court now rules as follows:

Defendant's request to take judicial notice is denied.

Defendant Carto's motion for summary Judgment is treated by the Court as a motion for judgment on the pleadings, and the Court grants ~~only~~ as follows: As to the 1st, 2d, and 6th Causes of action, no cause of action is stated; no alter ego facts alleged; no facts to show this defendant acted in an individual capacity. Otherwise, off calendar. 30 days leave to amend, if desired.

Motion of Defendants Legion, Institute, Montide, Carto, and Brandon for Summary Judgment is denied; questions of fact exist. The Court ~~does~~ find that Defendant Brandon was Director of Defendant Institute.

Motion of plaintiff for Summary Judgment is denied; questions of fact exist, including those concerning the nature of any contract or agreement.

Request for Priority is off calendar (woot).

The Court, pursuant to Evidence Code Section 452(h), takes judicial notice of the fact that Jews were gassed to death at the Auschwitz Concentration Camp in Poland during 1944. This is a fact not reasonably subject to dispute, determinable by resort to sources of reasonably indisputable accuracy. Otherwise, request to take judicial notice is denied. Plaintiff to give notice as to all motions.

- IT IS STIPULATED that Commissioner may hear this matter as Judge PRO TEM.
- TRANSFERRED TO/FROM DEPARTMENT Court disqualifies itself 170.6 CCP affidavit filed
- OFF CALENDAR On court's own motion No Appearance At request of moving party By stipulation
- CONTINUED TO IN DEPT. AT AM PM
 - On court's own motion Stip. to be filed On oral/written stipulation
 - REQUEST OF Moving party Respondent(s)
 - TRO to remain in full force and effect TRO dissolved
- NOTICE: Waived By moving party By respondent
- PETITIONER(S) IS/ARE SWORN AND TESTIFIES/TESTIFY
- PETITION IS GRANTED (AS AMENDED) DECREE IS SIGNED AND FILED.

Counsel for plff. notified by US Mail this date.

MINUTES ENTERED
1 DEPT 88
Oct. 19, 1981
COUNTY CLERK

EXHIBIT 11

EXHIBIT 11

In the Matter of the Arbitration Between)
)
 CITY OF LOS ANGELES DEPT.)
 OF RECREATION AND PARKS)
)
 - and -)
)
 ENGINEERS AND ARCHITECTS)
 ASSOCIATION)
 _____)
)
 Alleged denial of *Skelly* rights)
 _____)

DECISION AND AWARD

ERB Case No. ARB 4004

April 7, 2023

Appearances: Vivienne A. Swanigan, Asst. City Attorney, Erika Johnson-Brooks, Dep. City Attorney and Travis T. Hall, Dep. City Attorney, for Department of Recreation and Parks; Adam N. Stern, Esq. and Justin M. Crane, Esq., the Myers Law Group, for Engineers and Architects Association

Before: Robert Bergeson, Impartial Arbitrator

BACKGROUND

On March 4, 2020, City of Los Angeles (City) Mayor Eric Garcetti declared a local emergency as a result of the COVID-19 pandemic. On August 18, 2021, the City Council adopted Ordinance No. 187134, referred to hereafter as the “Vaccine Mandate.”¹ That ordinance required among other things that all employees of the City, including those who had been telecommuting to work, were required to report their vaccination status by October 19 and to either be fully vaccinated for the COVID virus or to request either a religious or medical exemption from such vaccination by October 20. Although complying with those requirements became a condition of continued employment, employees were given a notice which, if signed, would have committed them to become fully vaccinated by December 18 or to apply for an exemption by that date. On October 28, employees who had not indicated they were vaccinated or had not applied for an exemption were notified that if they failed to submit a signed notice within 48 hours they would be placed off work without pay pending service of a “*Skelly*” package which would include a notice of proposed termination.

1

All dates hereafter refer to calendar year 2021 unless specified otherwise.

By November 17, Sr. Management Analyst I Jennifer Sapone (Grievant), who worked and continues to work for the Department of Recreation and Parks (Department), had not advised her Department that she had been vaccinated nor had she filed for an exemption. Accordingly, on that date Sapone received from the Department a notice which stated, *inter alia*, the following.

Effective December 18, 2021, you are being placed off duty without pay pending pre-separation due process procedures (i.e., an administrative disciplinary hearing or Skelly hearing). During such time as due process procedures are pending, you may utilize available compensated time off as appropriate.

On or about December 14, EAA filed a group grievance on behalf of Grievant Sapone and similarly-situated employees claiming that the City's action was a violation of their rights under *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 (*Skelly*) and its progeny. Although other EAA-represented employees later withdrew participation in the grievance, Grievant continued to object to her subsequent placement on an involuntary unpaid leave which ended through the filing of a religious exemption on Friday, December 17, with Grievant returning to work on December 20. As Grievant had done since April of 2021 pursuant to an agreement with the City, when she returned to work she continued to remotely perform her duties.

Ultimately, no *post hoc* hearing was held over what proved to be the equivalent of a 30-day suspension nor does the record reflect that Grievant ever requested one.

When the December 14 grievance was not resolved at lower steps of the contractual procedure, EAA moved the dispute to arbitration and the parties subsequently chose the undersigned to preside over the matter.

ISSUE

By stipulation of the parties, the issue to be decided is whether the Department violated Grievant's *Skelly* rights and, if so, what the appropriate remedy should be for that violation.²

2

The Union argues that if it is found that a *Skelly* violation occurred, the remedy should be back pay pursuant to the holding in *Barber v. State Personnel Board* (1976) 18 Cal.3d 395. Because the relevant cases persuade that the grievance must be denied, that point is moot.

DISCUSSION

On this record, it is determined that the action at issue did not deprive Jennifer Sapone of the due process rights accorded under *Skelly*. However, it bears stating at the outset of this analysis that insofar as the Department's position can be interpreted to include the contention that Mayor Garcetti's declaration of an emergency in and of itself justified the Department so acting, California law appears to be to the contrary.³

To quote from its brief, EAA's position begins with the following.

In *Skelly*, the California Supreme Court set forth certain notice requirements that a public employer must fulfill to satisfy an employee's pre-removal due process rights.

At a minimum, these pre-removal safeguards must include notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action was based, and the right to respond either orally or in writing to the authority initially imposing discipline.

Unlike the full-blown evidentiary hearing that must generally precede final disciplinary action (*ibid.*), the safeguards that precede initial action need only "include [(1)] notice of the proposed [disciplinary] action, the reasons therefor, [(2)] a copy of the charges and materials upon which the action is based, and [(3)] the right to respond, either orally or in writing, to the authority initially imposing discipline" "before a reasonably impartial, noninvolved reviewer" who has the authority to recommend a final disposition. [Citations omitted.]

The case in *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, is

3

The Department's position here is premised to large extent on *Firefighters4Freedom Foundation v. City of Los Angeles* (2022), Los Angeles Superior Court Case No. 21STCV34490 (*F4F Foundation*). The following comment by Judge Linfield therein exudes his similar belief that the mere declaration of a valid emergency does not itself dispose of cases like this: "Even in normal times, due process requires flexibility; an emergency situation arguably requires more."

It should also be pointed out that in anticipation of the Union's reliance thereon, the Department's brief also expends some effort in asserting that Section 33.1(A)(2) of Department of Personnel Rules does not apply here. Given that the Union's position as expressed in its brief does not allude to such rules, no further mention will be made of them within this decision and award.

illustrative of the *Skelly* requirements. “The tenured public employee is entitled to oral or written notice of the charges against him, *an explanation of the employer’s evidence*, and an opportunity to present his side of the story. [Italics by EAA.] *Id.* at 1277. *Gilbert* also discusses the requirement of “the right to be informed not only of the nature of the charges but also of the substance of the relevant supporting evidence.” *Id.* at 1278.

The court stated that the reason for this is to “apprise the affected individual of, and permit adequate preparation for, an impending “hearing.” *Id.* at 1279. In other words, the [employee] must be told of the charges and the substance of the Department’s evidence, so he can be permitted “adequate preparation” at the post-discipline hearing. Without this, the Department has an “unacceptable risk of erroneous decisions.” *Id.* at 1278.

The Union goes on to point out that *Skelly’s* progeny make clear the procedural protections established within that seminal decision are not limited to terminations nor, for that matter, to disciplinary action but instead include “actions of government that work a deprivation of interests enjoying the stature of ‘property’ within the meaning of the Due Process Clause” and that *Skelly* rights are accordingly a function of state law. Citing *Coleman v. Department of Personnel Administration* (1991) 52 Cal.3d 1102 at pp. 1112 and 1114.

Moreover, asserts EAA in quoting from *Nichols v. County of Santa Clara* (1990) 223 Cal.App. 3d 1236, 1242, “The greater the interest and protection accorded an interest by such substantive law, the more reasonable is the holder in expecting to continue to enjoy it and in making decisions in reliance upon [it] and the less reasonable it is for the state to interfere directly with that enjoyment without according a fair opportunity to the holder to contest that interference.” Hence, says EAA in reliance on *Stiesberg v. State of California* (9th Cir. 1996) 870 F.3d 353, 356, “a reasonable expectation of entitlement is ‘determined largely by the language of the statute and the extent to which the entitlement is couched in mandatory terms [so that] [a]lthough procedural requirements ordinarily do not transform a unilateral expectation into a protected property interest, such an interest is created if the procedural requirements are intended to be a significant substantive restriction on . . . decision making.”

Here, argues EAA, Grievant was not informed until receipt of the Department’s November 18 memo that she was to be placed on unpaid leave on November 19. Accordingly, asserts the Union, “There was no opportunity for a *Skelly* hearing or a chance to respond prior to the November

19 ‘deprivation’ date.” As such, says EAA, the instant matter is “similar to” *Bostean v. Los Angeles Unified School District* (1998) 63 Cal.App. 4th 95 where “[t]he appellate court ruled that the employee was entitled to ‘notice and an opportunity to respond prior to the imposition of the unpaid leave of absence’,” and “the employee was entitled to a predeprivation hearing as contemplated [in] *Skelly*.”

Although the Union’s brief does not mention *F4F Foundation*, it was the understanding of this arbitrator at hearing that is because it is an opinion of a Superior Court judge which has gone up to the appellate court on appeal which appeal is still pending. As the Union avers, *Bostean* can be contrasted by the fact it is a published decision of the Second District Court of Appeal which district court has jurisdiction over the City of Los Angeles.⁴

Turning to EAA’s arguments, as stated in *Bostean*, the test for determining “what process is due” an employee similarly situated to Grievant is, “First, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest.” Citing *Mathews v. Eldridge* (1976) 424 U.S. 319, 335. The *Bostean* court further stated as follows (citations omitted).

It is now well established that “‘due process,’” unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.’ ‘Due process is flexible and calls for such procedural protections as the particular situation demands.’ This Court has recognized on many occasions, that where a State must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process satisfies the requirements of the Due Process Clause.

The Court of Appeal further noted that “In determining what process is due, account must be taken of the length and finality of the deprivation . . .” Also to be considered are whether “the income lost is relatively insubstantial, compared with termination” and whether a “suspended

4

Much of Judge Linfield’s opinion is beyond the scope of the issue herein. The issue of judicial notice is irrelevant and EAA does not argue that the City’s vaccine requirement violated employees’ constitutional right to privacy nor that the statute which so required was *ultra vires*. The Department has understandably not cited *F4F Foundation* in asserting issue preclusion. Even assuming *arguendo* that the issue here is identical to that then at bar, it is unclear *F4F Foundation* was fully litigated and EAA was not a party to that matter.

employee's" fringe benefits and health insurance were maintained.⁵

As the Union points out, in applying those considerations to the facts before them, the justices overturned the trial court's denial of Bostean's request for a writ of mandate and ordered the school district to make him whole for lost salary and benefits. However, although EAA is correct that the *Bostean* case is similar to the present matter in certain ways, as the Department argues, it is also considerably dissimilar.

In *Bostean*, there were several factors not present here.

For one thing, LAUSD had "informally accommodated" Bostean's medical restrictions for some time and notwithstanding no material change to his condition, the school district simply decided to involuntarily place him on an unpaid leave of absence during which he eventually lost health insurance coverage. Further, without notifying Bostean, the district began using information obtained by his supervisor from his physician related to unhealthy working conditions alleged in a grievance as a means of obtaining additional information about his medical condition which information precipitated placing him on the unpaid leave of absence. Moreover, "The risk of miscommunication, misinterpretation, and factual errors [was] extremely great . . . [as] evidenced by the fact that Doi and other supervisors . . . had great difficulty interpreting" the most recent report from Bostean's physician. Also considerably different were the length of time Bostean was off work in comparison to Grievant, i.e., seven months versus a single month, resulting in a loss of seven times as much pay. Related to that is there is no evidence on this record that Grievant was denied health insurance while on leave whereas Bostean was without it for some portion of his involuntary leave.

The Union nevertheless argues that, as was the case in *Bostean*, nothing in this record suggests that allowing Sapone to continue to work remotely without being vaccinated would have had "any immediate threat to [her] health and safety or to that of any other person." While that may be true, absence of the factors above distinguish this matter from *Bostean*.

The Union's emphasis on a single phrase from a single sentence in *Gilbert* is also unavailing.

5

Bodean exemplifies various cases which hold that, for purposes of due process pursuant to *Skelly*, there is no legal difference between a disciplinary suspension and an involuntary leave of absence grounded on medical issues.

Although ignored by EAA, further up in the paragraph from which it quotes, the *Gilbert* court stated, “[I]n circumstances providing for a full hearing posttermination, the pretermination hearing ‘should be an initial check against mistaken decisions . . .’” As the Department points out, Grievant acknowledged during her arbitration testimony that she received notice of the vaccination requirement, the need to inform the Department of whether she had complied and that she understood the ramifications of failing to do so, including that her continued employment was conditioned upon it and she was afforded what appears to the undersigned to have been an ample opportunity to respond. In such circumstances, errors of fact seem inconceivable. Indeed, even now after the fact the Union omits to indicate what “evidence” the Department failed to “explain” to Grievant.⁶ Finally, prior to being placed on leave, Grievant was provided a notice informing her she was deemed to be noncompliant with the vaccine mandate and she was offered a 48-hour opportunity to tell the Department that conclusion was mistaken and that in fact she had been vaccinated.

Additionally relevant is that, as also pointed out by the Department, neither *Skelly* nor *Bostean* and other published cases cited by the parties involved a bona fide emergency. In that regard, to quote Judge Linfield, “[*Skelly*] does not entitle [similarly-situated employees] to a hearing *before* employment action during an emergency situation. [Instead], *Skelly* and subsequent cases afford [such employees] a *framework* to determine whether a post-deprivation adverse employment action complied with the employee’s due process rights.” (My emphases.) The evidence produced herein makes apparent the contested action was consistent with such a framework. Or to put it another way, the “private interest” herein involved was relatively minimal, there was no “risk of erroneous deprivation” of that interest and in light of the COVID pandemic, the Department had a considerable interest in acting as it did.

6

EAA also states the following. “Nearly one year [after filing for the religious exemption], Ms. Sapone was informed [that] exemption was granted. The approved date for the religious exemption was June 16, 2022, but she was [not] informed that her exemption [request] was approved [until] November 18, 2022.” EAA further states that “[Sapone] received the copy of the memo placing her off work in person [from] Brenda Aguirre who was not a supervisor of hers.”

Perhaps such Department actions were in error. But even so assuming, the Union presents no argument, much less any showing, as to the relevance of such imperfections are relevant here nor, if relevant, how they may have prejudiced Grievant.

In light of the above, it cannot be said the Department violated Grievant Sapone's *Skelly* rights and the grievance will therefore be denied.

AWARD

The grievance is denied.

DATED: April 7, 2023

Respectfully submitted,



Robert Bergeson
Impartial Arbitrator

EXHIBIT 12

EXHIBIT 12

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14 BEFORE ARBITRATOR KENNETH A. PEREA

15 In re:
16 UNITED FIREFIGHTERS OF LOS
17 ANGELES CITY, IAFF LOCAL 112,
18
19 Union,
20
21 and
22
23 LOS ANGELES CITY FIRE
24 DEPARTMENT,
25
26 Employer Respondent.
27
28 (Brownell Class Grievance Arbitration)

ARB Case No. 4035

UNION'S POST-HEARING BRIEF

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1 **I. INTRODUCTION**

2 This case arises from the Los Angeles Fire Department’s (“LAFD” or the
3 “Department”) implementation of the City of Los Angeles’s (“City”) August 2021
4 Ordinance No. 187134 (the “Ordinance”), passed in August of 2021, which required City
5 employees to obtain vaccinations against COVID-19. However, this case does *not* involve
6 any challenge to the Ordinance itself or the City’s and/or the Department’s decision to
7 remove employees from duty who fail to comply with the vaccination requirements.
8 Rather, the grievance challenges only the Department’s refusal to *pay* employees while off
9 duty during the initial stages of the disciplinary process, consistent with the Department’s
10 practice in all other disciplinary cases, including cases where employees are accused of far
11 more egregious misconduct.

12 When the Ordinance passed in 2021, United Firefighters of Los Angeles City, IAFF
13 Local 112 (“UFLAC” or the “Union”) demanded to bargain over the consequences that the
14 City and Department would impose on employees who do not comply with the
15 Ordinance’s vaccination requirements. The City quickly ended the negotiations by
16 declaring impasse and presenting UFLAC with its Last, Best, and Final Offer (“LBFO”),
17 which provides that employees who do not demonstrate compliance with the vaccine
18 Ordinance by a particular date will be subject to “corrective action” up to and including
19 termination.

20 The City Council then formally adopted the provisions of the LBFO. When the
21 Department began implementing the LBFO and taking corrective action, UFLAC fully
22 expected that the Department would generally follow its procedures for disciplinary cases,
23 including notifying employees that they were being placed on leave for failing to comply
24 with the requirements of the Ordinance and LBFO, and providing these employees with
25 *Skelly* hearings and “Board of Rights” hearings, which are required in disciplinary cases
26 pursuant to Section 1060 of the City Charter. However, the City failed to follow its normal
27 procedures in two important respects: (1) it placed all employees found non-compliant
28 with the vaccine Ordinance on immediate leave *without pay*, whereas in all other cases

1 employees facing disciplinary action continue to receive their normal compensation until
2 they select the panelists for their Board of Rights hearing; and (2) it served all the notices
3 of non-compliance with the vaccine Ordinance, and corrective action including immediate
4 unpaid leave, via *email*, whereas the Department’s rules and regulations require such
5 notices to be served by mail.

6 The evidence at hearing established the violations alleged in the Grievance. Two
7 witnesses with years of experience handling disciplinary cases testified that there is a clear
8 and long established past practice of continuing to pay employees facing disciplinary
9 charges until their Board of Rights panel has been selected, and the Department did not
10 submit *any* evidence to the contrary.

11 The Department’s primary defense seems to be that the corrective action taken
12 against employees found non-compliant with the vaccine Ordinance is “not discipline,” as
13 it is merely a penalty for failure to comply with “a condition of employment.” But the
14 Department did not submit any testimony indicating that this distinction has ever been
15 recognized by either party, or any other evidence showing a basis for the distinction.
16 Moreover, both the language of the LBFO, and statements from the City’s negotiating
17 representatives at the bargaining table, confirm that “corrective action” means discipline.
18 Finally, the Department has been following discipline procedures, including providing
19 Board of Rights, which only apply to cases where the Department seeks to take
20 disciplinary action.

21 The Department’s other argument mentioned at the hearing is that the COVID-19
22 emergency excused them in ignoring past practice and applicable Rules and Regulations,
23 which specifically allowed the immediate removal of non-compliant employees from duty.
24 However, the Grievance is not challenging the Department’s removal of officers from
25 service, only their refusal to *pay* employees while on leave until their Board of Rights is
26 selected. The Department has not presented any evidence suggesting that the COVID-19
27 pandemic made it impossible for them to continue paying employees while on leave
28 consistent with past practice, or that the pandemic had *any* impact on their finances and

1 ability to pay.

2 Finally, the remedy for the Department’s violations must include, at a minimum,
3 payment to all affected employees in the amount they would have earned had they
4 remained in paid status until their Board of Rights panel was selected, or will be selected.

5 **II. ISSUES PRESENTED**

6 The Parties stipulated to the following statement of the issues presented in this
7 Arbitration:

8 1. Did LAFD willfully violate its rules and regulations when it served notices
9 of leave without pay to employees deemed noncompliant with the vaccine Ordinance by
10 email? If so, what is the remedy? Hearing Transcript, page 9, lines 18-24 (“9:18-24”).

11 2. Did LAFD violate past practice by placing employees on unpaid leave before
12 allowing them the opportunity to select a Board of Rights? If so, what is the remedy?
13 10:2-10.

14 **III. STATEMENT OF FACTS**

15 UFLAC has been the exclusive representative of a bargaining unit including
16 Firefighters and Fire Captains employed by LAFD since 1972. Union Exhibit (“UX”) 1 at
17 5 (MOU Article 1.1). UFLAC and LAFD are parties to an MOU in effect from July 1,
18 2019 through June 29, 2024. *Id.* at 1.

19 **A. LAFD’s Policies and Practices in Disciplinary Cases.**

20 The Union submitted undisputed testimony from two witnesses, both of whom have
21 extensive experience in handling employee grievances and all manner of disciplinary
22 proceedings. 42:4-21; 44:24-46:3; 79:3-83:1. They testified that LAFD follows similar
23 procedures in all cases where it intends to take disciplinary action against an employee.

24 When LAFD receives a complaint or is otherwise informed of facts indicating that
25 some misconduct or violation may have occurred, they open an investigation and assign a
26 Department investigator. 46:16-24. The investigator then gathers evidence, including
27 interviews with the subject and any other potential witnesses, and writes a report, which is
28 submitted to the Chief of the Professional Standards Division (“PSD”). 46:25-47:2. PSD

1 then makes the decision whether to take disciplinary action based on the facts laid out in
2 the report. 48:8-10.

3 If PSD decides to impose discipline, it serves the employee with a “*Skelly* packet”
4 that includes the evidence against the member and the specific disciplinary action
5 proposed. 47:11-6. The member is then given an opportunity to respond to the
6 accusations and evidence, and the Department informs the member if they are willing to
7 change the recommended discipline. 47:22.

8 If after the *Skelly* meeting the Department decides to impose discipline greater than
9 a reprimand, the employee is permitted to request “a Board of Rights,” which is an
10 administrative trial conducted before a panel of three randomly-selected fire chiefs. 47:23-
11 48:8. The Board of Rights process is established under Section 1060 of the City Charter.

12 Section 1060, subsection (a) of the Charter provides: “No member of the Fire
13 Department shall be suspended, removed, or otherwise separated from the service of the
14 Fire Department (other than by resignation), except for good and sufficient cause shown
15 upon a finding of guilty of the specific charge or charges assigned as cause or causes after
16 a full, fair and impartial hearing before a Board of Rights except as provided in subsection
17 (b) and (h) of this section.” Subsection (b) permits, but does not require, the Department
18 to “temporarily relieve from duty any member pending a hearing before and decision by a
19 Board of Rights”

20 Section 1060 does not specify whether an employee’s temporary relief from duty
21 will be with or without pay. However, the uncontested testimony showed that the
22 Department’s practice is to leave employees *in paid status* until they receive notification
23 that their Board of Rights panelists have been selected, and advising them of their hearing
24 dates. *See* 51:6-55:2; 98:2-102:10.

25 In some cases, LAFD will allow an employee facing disciplinary charges to *remain*
26 *on duty* while waiting for a Board of Rights to be selected. 51:6-7. In general, once the
27 chiefs who will serve on the Board of Rights panel have been selected, the employee will
28 be “placed off duty without pay.” 51:8-10.

1 In cases where the Department wishes to impose less than a 30-day suspension, the
2 Charter gives the employee the *option* to request a Board of Rights to contest the
3 discipline. In these cases, LAFD’s standard practice is to leave the employee on duty and
4 receiving full pay through the entire Board of Rights process, i.e., both before and after the
5 Board panelists have been selected. 51:25-52:4.

6 By contrast, a Board of Rights hearing is *mandatory* where the Department wishes
7 to impose discipline greater than a 30-day suspension. 52:21-53:3. In these cases, the
8 Department’s standard practice is for the member to either remain on-duty or be “detailed
9 out of the field to the Professional Standards Division,” where they will *continue to be*
10 *paid* until the point when the Board of Rights panelists are selected, after which time the
11 member is placed on leave without pay. 53:5-55:2; 98:10-15.

12 Based on the undisputed evidence, at least within the last 15 years the Department
13 has always left employees in paid status, and has *never* before placed members on unpaid
14 leave prior to the selection of the Board of Rights panelists who will adjudicate a
15 disciplinary issue. 53:16-22; 55:5-21; 102:9-10.

16 The City’s Personnel Policy 33.1 provides that the Department may depart from
17 normal disciplinary procedures in certain respects only in “genuine emergency situations.”
18 Employer’s Exhibit (“EX”) 4 at 6.¹ More specifically, the Policy allows the Department to
19 “remove [an] employee from [a] work situation” only when “management believes there is
20 a significant risk in allowing the employee to remain on the job.” *Id.* at 5. In such cases,
21 however, the Policy specifically provides that the employee should be placed “off work
22 *with pay.*” *Id.* at 6 (emphasis added).

23
24 ¹ The City introduced Exhibit 4 at the outset of the arbitration hearing, but did not lay any
25 foundation for its authenticity or relevance, and the City’s sole witness did not refer to the
26 Exhibit once. While UFLAC did not dispute the *authenticity* of the document, the
27 document is undated, and there is no evidence in the record establishing that this policy
28 was actually in effect at any particular time. Accordingly, the arbitrator can disregard this
Exhibit entirely. Regardless, the document supports the Union’s position in all material
respects, as detailed herein.

1 Once the Board of Rights is selected, and a unit member is placed on unpaid leave,
2 the Department sends them a form notice called the F-502 notice. The Department’s
3 standard practice is to serve the F-502 at the same time as the F-503, which is the form
4 notifying the member that their Board has been selected, and listing the chiefs selected to
5 serve on the Board and the date selected for the hearing. 100:1-102:1; *see also* UX 10 (F-
6 502 and F-503 notices, both dated May 16, 2023). This practice has been followed in
7 *every* disciplinary case since 2008 at the latest. 55:5-21.

8 **B. The City Passed an Ordinance Mandating that City Employees Get**
9 **Vaccinated Against COVID-19.**

10 In August of 2021, the City promulgated Ordinance No. 187134 (the “Ordinance”).
11 UX 4. The Ordinance requires that all City employees show that they have received the
12 COVID-19 vaccine. The Ordinance exempts employees who can show a religious or
13 medical reason for not taking the vaccine. UX 4; 56:10-13. The Ordinance does not
14 prescribe specific consequences for employees who do not comply. UX 4; 57:6-7.

15 When UFLAC learned of the Ordinance, it demanded to bargain with LAFD over
16 the consequences for noncompliant employees, including potential discipline. 57:13-17.
17 UFLAC then engaged in negotiations with the City. 57:18-23. Capt. Chuong Ho and
18 Apparatus Operator Adam Walker served on the Union’s bargaining team in the
19 negotiations. 43:4-44:20; *see also* 84:4-14 (stipulation as to who served on both parties’
20 bargaining teams). Chief Eric Talamantes was part of the City’s negotiating team.² 58:14-
21 15.

22 The City ultimately ended the negotiations, declared impasse, and issued its LBFO.
23 58:24-59:2; UX 5 (LBFO). The LBFO sets out “procedures” for “corrective action for
24 violations of Ordinance No. 187134.” UX 5 at 1. It clarifies that employees may be
25 “terminated for non-compliance with the City’s COVID-19 vaccination requirement,”
26 though it allows employees who are terminated to reapply for their positions if they are no

27 ² Chief Talamantes was present as the Department representative for the entire arbitration
28 hearing.

1 longer non-compliant. *Id.*

2 The LBFO provides that “[i]f an employee does not show proof of full compliance
3 by the close of business on December 18, 2021, the employee will be subject to corrective
4 action.” *Id.* at 2. The next sentence clarified that, “[f]or sworn employees employed by
5 [LAFD] who proceed to a Board of Rights, the City will abide by all applicable Charter
6 and other legal requirements.” *Id.* at 3.

7 During negotiations, the Union asked the City to clarify the intended meaning of the
8 term “corrective action.” 60:2; 86:21-87:4. The City’s bargaining representatives, in
9 particular Paul Girard from the City Administrative Office, explained that “corrective
10 action” meant discipline, signifying that “if members didn’t comply with the city
11 ordinance, the discipline could lead to termination.” 60:12-20; 87:14-15.

12 When UFLAC declined to accept the terms of the City’s LBFO, the City Council
13 passed a Resolution entitled the Resolution Implementing Consequences for Non-
14 Compliance with the Requirements of Ordinance No. 187134 (the “Resolution”), which
15 was intended to implement the LBFO the City had presented during bargaining. 63:9-11;
16 UX 6 at 4 (“Effective immediately, the mayor, through the appointing authorities, shall
17 implement the terms and conditions set forth in the City’s October 14, 2021 Last, Best, and
18 Final offer regarding consequences for noncompliance with the mandatory reporting and
19 vaccine conditions of employment.”).

20 After the Resolution passed, LAFD began to discipline members for noncompliance
21 with the ordinance. 87:22. Some employees have applied for exemptions, and have all
22 been permitted to work while the Department evaluated their claimed exemptions. 75:7-
23 11. For employees who did not timely request an exemption, or whose exemption requests
24 were denied, and who failed to show that they have obtained the required vaccinations, the
25 City provided those employees with 48 hours’ notice, and then issued them a notice
26 indicating that they were being removed from duty without pay. 87:24-88:6; 89:2-12; UX
27 7 & 9. More specifically, both the Department’s emails to non-compliant employees, and
28 the attached letters, stated that the employees were “hereby placed off duty without pay

1 until further notice pending disciplinary review for non-compliance with the City’s
2 Ordinance and Vaccine Policy and for failure to meet a condition of employment.” UX 7
3 at 1-2, UX 9 at 1-2. These notices were issued to employees including Aaron Brownell,
4 Nicholas Watkins, and Jeff Ochoa, among others.³ 88:9-12; 97:19-22; UX 7, 9.

5 Rule 17(h) of the Department’s Rules and Regulations specifically requires that
6 “[t]he services of any notice, order or process required by reason of disciplinary action
7 shall be made either by handing the member a copy thereof personally or by forwarding
8 such copy by registered mail to his or her last known address of Department record.” UX
9 8. Moreover, the Department’s normal practice in disciplinary cases is to send all notices
10 in disciplinary cases via hand delivery or U.S. mail. 91:1-3. In this case, however, all of
11 the notices sent to employees found noncompliant with the vaccine Ordinance were sent
12 by email only. UX 7; 90:4-25.

13 Each employee who was placed on unpaid leave for failure to comply with the
14 vaccine Ordinance has been provided with a *Skelly* notice and was allowed to request a
15 Board of Rights hearing. 71:16. When they received the notices indicating that they were
16 being placed on unpaid leave, however, they had not yet been given an opportunity to
17 request a Board of Rights hearing, and their Board of Rights panelists had not yet been
18 selected. 94:24-25; 97:13-14.

19 **C. The Department’s Witness Failed to Rebut the Union’s Evidence.**

20 LAFD’s only witness was Deputy Chief David Perez. 112:18-22. He has no
21 experience with negotiations or with disciplinary matters. Indeed, he seemed to be
22 unfamiliar with the concept of an LBFO, a commonly used concept in any labor
23 negotiations. *See* 119:5-6 (“But I believe that’s in the—what do they call it? ‘Last, Best,
24 Final offer.’”). His only experience relevant to the facts of this case is as the employee
25 who would “search various databases and compare them to find those members who were

26 _____
27 ³ The emails and notices submitted as evidence are representative samples and not an
28 exhaustive collection of all relevant notices. 97:19-23. UFLAC subpoenaed all such
notices, and the Department failed to produce responsive documents.

1 vaccinated and those who were not.” 115:21-24.

2 Deputy Chief Perez testified that vaccination “became a condition of employment”
3 as of October 20, 2021, the deadline for employees to obtain the vaccination under the
4 ordinance. 114:24. He similarly testified that the “purpose” of the notice sent to
5 noncompliant employees was “to tell the individual that they had failed to meet the
6 condition of employment as listed in . . . the mandate,” and that “they were being placed
7 off duty without pay pending becoming compliant.” 117:13-24. He opined that this act of
8 placing employees off duty without pay was “not a disciplinary action”; rather, it was “just
9 simply the failure to comply with the department ordinance.” 119:15-17. He further
10 opined that there is a difference between discipline and failure to meet a condition of
11 employment, because “discipline typically deals with the misdeed that . . . violates a rule
12 and regulation of the department and goes through the entire disciplinary process,”
13 whereas failure to comply with the vaccination requirement “was very specific and even
14 written in the ordinance that it was a failure to meet a condition of employment, which . . .
15 does not go through the . . . disciplinary process.” 124:23-125:7.

16 Deputy Chief Perez similarly testified that Rule 17(f) applies when an employee is
17 removed from duty “for disciplinary reasons,” but “does not” apply when the member is
18 removed from duty “for failure to meet a condition of employment.” 120:117-24. He
19 acknowledged, however, that members found non-compliant were still provided with
20 *Skelly* hearings and Board of Rights hearings under Section 1060 of the Charter. 119:1-10.
21 And he himself described Section 1060 as a provision that “applies to essentially our entire
22 **disciplinary** process.” 123:4-5 (emphasis added).

23 Deputy Chief Perez testified about the Department’s justification for quickly
24 removing non-compliant officers from the field under the circumstances of the COVID-19
25 pandemic. 124:2-19. But he did not testify at all about any exigencies related to the
26 pandemic that bear on the Department’s ability to *continue paying* those employees while
27 they are on leave, consistent with its practice in other disciplinary matters.

28 ///

1 Deputy Chief Perez testified that members placed on leave for noncompliance with
2 the vaccine mandate can “use compensated time off or vacation time” to obtain some
3 compensation while on leave, whereas members placed off duty pending a Board of Rights
4 hearing cannot. 125:21-22. The City did not establish any foundation or offer any
5 corroboration for these statements offered by Deputy Chief Perez.

6 Deputy Chief Perez further testified that there were “about 180” officers “max” on
7 leave for noncompliance with the vaccine mandate “at any one time,” and noted that there
8 were “close to 200” or 300 members in total who have been found noncompliant. 126:17-
9 20. The City asked him to compare that number to the number of employees “going
10 through the disciplinary process at a given time” for reasons other than noncompliance
11 with the vaccine mandate, but Perez responded that he “d[id]n’t know how many people
12 would be going through [the] disciplinary process.” 126:21-127:4. He then stated—in
13 response to leading questions—that it would be “somewhere probably 20 to 30” employees
14 at a time. 127:13-14.

15 Deputy Chief Perez further testified that if a non-compliant employee was “found
16 guilty through the board-of-rights process and ultimately terminated from their
17 employment,” that would *still* not constitute discipline because the Department “is doing
18 this through the condition of employment part.” 138:8-23. But even Deputy Chief Perez
19 specifically acknowledged that the Board of Rights process “by its nature” is “a
20 disciplinary process.” 138:5-7.

21 **IV. ARGUMENT**

22 For the reasons set forth below, the evidence proves that the Department violated
23 past practice when it placed employees on unpaid leave for non-compliance with the
24 vaccine Ordinance and refused to pay each employee up through the selection of the
25 panelists for each employee’s Board of Rights hearing. Additionally, the evidence proves
26 that the Department violated Rule 17(n) of its Rules and Regulations when it served
27 notices informing them they were being placed on unpaid leave via email only. Finally, as
28 a remedy for its violations, the Department should be ordered to make all affected

1 employees whole by paying them what they would have earned had the Department
2 continued to pay each employee up through the selection of their Board of Rights panel.

3 A. **LAFD Violated a Binding Past Practice By Placing Employees Found**
4 **Noncompliant with the Vaccine Ordinance on Unpaid Leave Pending**
5 **the Selection of their Board of Rights Panelists.**

6 The evidence at the hearing establishes that the Department violated past practice⁴
7 as alleged in the Grievance.

8 First, two Union witnesses credibly testified that the Department has always abided
9 by its practice of continuing to pay employees facing disciplinary charges up through the
10 selection of their Board of Rights, and the Department did not produce any evidence to the
11 contrary.

12 Second, the Arbitrator should reject the Department’s contention that this is not
13 discipline, but merely a failure to abide by a condition of employment. The record does
14 not support that there is any distinction between disciplinary penalties and the corrective
15 action imposed for violation of the vaccine Ordinance. Moreover, the unrebutted
16 testimony shows that the Department stated at the bargaining table that this corrective
17 action *is* discipline, and they should be bound by that representation. Finally, both the
18 language of Section 1060 and the Department’s own witness confirm that Board of Rights
19 hearings are only available in disciplinary cases, the Department’s LBFO specifically
20 provides that such hearings will be available to challenge this corrective action, and the
21 Department has in fact been providing Board of Rights hearings to the employees found
22 non-compliant with the vaccine Ordinance.

23 Third, to the extent that the COVID-19 pandemic constituted an emergency, the
24 Department cannot rely on it as a justification for its violation of past practice in this case,
25 because it has not submitted any evidence showing that the circumstances of the pandemic
26 prevented it from being able to pay employees their regular compensation while on

27 ⁴ As explained more fully below, the Union has a particularly strong basis to rely on past
28 practice here because the Parties’ MOU specifically allows the Union to grieve violations
of past practices. *See* UX 1 at 8.

1 administrative leave pending the selection of their Board of Rights panel.

2 Finally, the court and arbitration decisions the Department has placed in the record
3 do not support the Department’s position. Those decisions deal only with the question of
4 whether the City’s actions in taking corrective action against employees found non-
5 compliant with the vaccine Ordinance deprived employees of a constitutionally-protected
6 property interest without due process, and have no relevance to the issues of whether the
7 Department violated past practice or its Rules and Regulations.

8 1. The Evidence Establishes a Binding Past Practice of Maintaining
9 Employees in Paid Status through the Initial Stages of the
Disciplinary Process

10 Arbitrators hold that a past practice can constitute an enforceable implied term of a
11 collective bargaining agreement so long as it is “(1) unequivocal; (2) clearly enunciated
12 and acted upon; [and] (3) readily ascertainable over a reasonable period of time as a fixed,
13 and established practice accepted by both Parties.” Elkouri & Elkouri, *How Arbitration*
14 *Works* (“Elkouri”) § 12.2 (quoting *Celanese Corp. of Am.*, 24 LA 168, 172 (Justin,
15 1954)). In another formulation, an enforceable past practice arises “when a company
16 responds to a recurring situation in the same way over an extended period of time and its
17 response is mutually accepted by the company and union, either explicitly or implicitly, as
18 the appropriate response.” *Id.* (citing *3M Co.*, 135 LA 980, 988 (Bognanno, 2015)); *see*
19 *also Lake Erie Screw Corp.*, 108 LA 15, 19 (Feldman, 1997) (“It is simple a past practice
20 is the parties’ response to an event as that event occurs on a sporadic but continuing
21 basis.”).

22 Moreover, the Union has a particularly strong basis to rely on the District’s past
23 practice in the instant case, because the parties’ MOU has an unusually broad definition of
24 grievances which specifically permits the Union to grieve violations of past practices.
25 Specifically, the MOU defines a grievance as “any dispute concerning the interpretation or
26 application of this MOU, the Manual of Operations, departmental rules and regulations,
27 bulletins, personnel practices, other rules, conditions of employment, or working
28 conditions.” UX 1 at 8. Thus, the Union is entitled to require the District to abide by its

1 past practices in disciplinary cases.

2 Here, the Union has submitted testimony from two witnesses with long records of
3 experience representing employees at all stages of the disciplinary process. 41:24-42:21;
4 80:3-81:17. Both witnesses testified that there is a generally understood and followed past
5 practice between the parties whereby employees facing disciplinary action continue to
6 receive their normal compensation, either while remaining on duty or while on leave, until
7 they receive notification that the panelists for their Board of Rights hearing have been
8 selected, at which point they will generally be placed on unpaid leave until their discipline
9 is adjudicated. 53:16-22; 55:5-21; *See* 51:6-55:2; 98:2-102:10. Both witnesses testified
10 that the Department has followed this practice in *all* cases where it has taken disciplinary
11 action against an employee. 53:16-22; 55:5-21; 102:9-10.

12 In contrast to the testimony of these two qualified witnesses, the Department
13 submitted *no contrary evidence* whatsoever. Their sole witness, Deputy Chief Perez, did
14 not state one way or the other whether the Department follows a past practice of leaving
15 employees in paid status until their Board of Rights is selected. Without any contrary
16 evidence, the Department cannot dispute the existence of the past practice described by
17 Captain Ho and A.O. Walker. *See* Elkouri § 8.9.E (“Once a party bearing the burden of
18 persuasion presents sufficient evidence, or a prima facie case, the burden shifts to the
19 opposing party to rebut the presentation.”).

20 Thus, the record establishes that the parties had an enforceable past practice of
21 leaving employees facing disciplinary charges in paid status until their Board of Rights
22 panelists are selected.

23 2. The City’s “Corrective Action” Against Employees Found Non-
24 Compliant with the COVID-19 Vaccine Ordinance Constitutes
Discipline.

25 The Department argues that its actions in indefinitely removing employees from
26 duty, and imposing additional penalties up to and including termination, for non-
27 compliance with the vaccine Ordinance “is not discipline.” 32:8. This argument lacks
28 merit. The evidence does not support any distinction between a “failure to meet a

1 condition of employment” and other kinds of violations by employees that warrant
2 disciplinary action. Moreover, the Department itself acknowledged in negotiations that the
3 “corrective action” taken against employees found non-compliant with the vaccine
4 Ordinance is a form of disciplinary action, and in implementing the Ordinance, the
5 Department has followed procedures that only apply to disciplinary action.

6 While the term “discipline” is not specifically defined in the parties’ MOU or the
7 Department’s Rules and Regulations, witnesses for both parties generally agreed that
8 disciplinary matters are governed by Section 1060 of the Charter, and by Rule 17 of the
9 Department’s Rules and Regulations. *See* 49:23-15; 123:4-5. The first paragraph of
10 Section 1060(a) refers to hearings and appeals “with regard to proposed or imposed
11 discipline.” Thus, the existence and language of Section 1060 supports that the parties
12 understand the term “discipline” to refer to actions the Department wishes to take against
13 an employee for which the employee is entitled to a Board of Rights hearing pursuant to
14 the City Charter.

15 The second paragraph of subsection (a) of Section 1060 provides that “[t]he right of
16 a member of the Fire Department . . . to hold his or her office or position and to receive
17 compensation attached to the office or position is hereby declared to be a substantial
18 property right of which the holder shall not be deprived arbitrarily or summarily, nor other
19 than as provided in this section.” It further provides that Section 1060’s protections apply
20 whenever an LAFD employee is to be “suspended, removed, or otherwise separated from
21 the service of the Fire Department (other than by resignation).” This language shows that
22 the Department takes *disciplinary* action against an employee whenever it removes an
23 employee from their office or position or otherwise interferes with an employee’s
24 compensation, or in other words, which includes all cases in which the Department
25 suspends, removes, or otherwise takes an employee out of service involuntarily.

26 The language of the LBFO itself strongly supports a finding that the term
27 “corrective action” means *disciplinary* action for which members are entitled to a hearing
28 under Charter Section 1060. Immediately after the sentence providing that employees will

1 be subject to “corrective action” if they do not demonstrate compliance by December 18,
2 2021, the LBFO provides that “[f]or sworn employees employed by [LAFD] who proceed
3 to a Board of Rights, the City will abide by all applicable Charter and other legal
4 requirements.” *Id.* at 3. This sentence confirms that LAFD employees who are subject to
5 “corrective action” are entitled to a Board of Rights hearing—a process that only applies in
6 cases involving *discipline*.

7 The construction of “corrective action” in the City’s LBFO as referring to discipline
8 is also supported by the City’s own statements at the bargaining table. “Where the
9 meaning of a term is in dispute, it will be deemed, if there is no evidence to the contrary,
10 that the parties intended it to have the same meaning as that given it during the
11 negotiations leading up to the agreement.” Elkouri § 9.3.A.ii. The record shows that the
12 parties actively bargained over “the consequences” for non-compliance with the vaccine
13 Ordinance. 57:13-17 (UFLAC demanded to bargain over “the consequences of
14 noncompliance, what happens to you, the discipline if you do not become vaccinated
15 and/or do not get an exemption approved”). These negotiations culminated in the City
16 issuing an LBFO that detailed the “corrective action” LAFD would be imposing on non-
17 compliant employees. UX 5. The Union submitted testimony from two witnesses who
18 participated in the negotiations, both of whom testified that the City’s negotiator, Paul
19 Girard, made clear that “corrective action” meant “discipline.” 60:2; 86:21-87:17.

20 While the Department refused to stipulate to what Girard said at the bargaining
21 table, it again failed to introduce *any* evidence to contradict the testimony of Captain Ho
22 and A.O. Walker. Not only did Mr. Girard not testify, the Department did not call one
23 witness who actually participated in the negotiations. They did not even call Chief
24 Talamantes, who participated in the negotiations and who was *present during the hearing*.
25 This failure to rebut Captain Ho’s and A.O. Walker’s account of what the City told the
26 Union in negotiations amounts to an admission that their account is true. Elkouri § 8.4.1
27 (“The failure of a party to call as a witness a person who is available to it and who should
28 be in a position to contribute informed testimony may permit the arbitrator to infer that had

1 the witness been called, the testimony adduced would have been adverse to the position of
2 that party.”).

3 The fact that the LBFO specifically references *Skelly* hearings and Board of Rights
4 hearings—proceedings that are only provided in disciplinary cases—shows that the
5 corrective action taken against employees who do not comply with the Ordinance is
6 discipline just like any other.

7 To support their implausible argument that the actions taken against firefighters
8 who fail to comply with the Ordinance constitutes a special kind of penalty that is
9 somehow different from other forms of “discipline,” the City relies exclusively on the
10 *opinion* testimony of Deputy Chief Perez, who asserted that “discipline typically deals
11 with the misdeed that . . . violates a rule and regulation of the department and goes through
12 the entire disciplinary process,” whereas failure to comply with the vaccination
13 requirement “was very specific and even written in the ordinance that it was a failure to
14 meet a condition of employment, which . . . does not go through the . . . disciplinary
15 process.” 124:23-125:7. This testimony should be given little to no weight, for several
16 reasons.

17 First, Deputy Chief Perez’s testimony is too vague and general in nature to show
18 that the parties had any past practice of distinguishing between different kinds of penalties
19 for employees who violate different kinds of Department rules. As detailed above, the
20 Union submitted un rebutted testimony that the Department has a uniform past practice of
21 maintaining employees in paid status until their Board of Rights is selected, and has
22 followed this practice in all cases where the Department took disciplinary action such as
23 suspension or termination against employees. By contrast, Deputy Chief Perez simply
24 asserted that the Department’s actions against non-compliant employees were “not
25 discipline.” He did not identify any basis in the parties’ MOU, the City Charter, the
26 LBFO, or the Ordinance for this distinction. He did not cite any examples of other kinds
27 of violations that the Department views as mere failures to comply with a condition of
28 employment, and for which the Department may remove an officer from duty or impose a

1 suspension or termination without following the standard practice for disciplinary matters.
2 Nor did he cite an example of any situation other than a disciplinary matter where the
3 Department gives an employee a *Skelly* hearing and a Board of Rights. Without this kind
4 of context and supporting detail, Deputy Chief Perez’s bare assertion that this corrective
5 action is not discipline is insufficient to rebut the Union’s evidence. *See* Elkouri § 12.2
6 (“In order to prove a practice, a party must reconstruct events for the neutral. . . . An
7 arbitrator will not be impressed . . . by general witness testimony to the effect that ‘the
8 company always does this or that.’”).

9 Second, there is no evidence that Deputy Chief Perez has any relevant experience
10 that would enable him to give an informed opinion on what kinds of corrective action
11 constitute “discipline” for purposes of assessing the Department’s compliance with past
12 practice. Both of the Unions’ witnesses testified as to their extensive experience
13 representing employees at all stages of the Department’s disciplinary process, as well as
14 negotiating and interpreting the parties’ MOU and rules and regulations, and both
15 participated in the negotiations over penalties for noncompliance with the vaccine
16 mandate. By contrast, Deputy Chief Perez did not testify that he has any experience
17 whatsoever in dealing with the Department’s disciplinary process, or in interpreting MOU
18 language or rules and regulations. The Department’s *only* evidence regarding Deputy
19 Chief Perez’s qualifications or experience is his testimony that he would “search various
20 databases and compare them to find those members who were vaccinated and those who
21 were not.” 115:21-24. This testimony does not provide a basis for Deputy Chief Perez to
22 opine on the general nature of the Department’s disciplinary processes or a supposed
23 distinction between offenses warranting discipline and failures to comply with conditions
24 of employment, especially where the Union’s position is supported by testimony from two
25 employees with extensive experience in disciplinary matters. *See* Elkouri § 8.7.A (“Before
26 permitting expert testimony, a foundation showing such expertise, subject to cross-
27 examination, must be provided.”).

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1 Third, Deputy Chief Perez’s testimony is self-contradictory. He testified that the
2 distinction between discipline and other kinds of corrective action for failures to comply
3 with a condition of employment depends on whether the Department and employee “go
4 through the disciplinary process” in each case. 124:23-125:7 (asserting that “discipline
5 typically deals with the misdeed that . . . goes through the entire disciplinary process,”
6 whereas a failure to meet a condition of employment, “does not go through the . . .
7 disciplinary process”). He further testified, in agreement with the Union’s witnesses, that
8 the “disciplinary process” includes the *Skelly* procedure and the Board of Rights
9 procedure. *See* 123:4-5 (acknowledging that Section 1060 “applies to essentially our
10 entire disciplinary process”). But he admitted that employees found noncompliant with the
11 vaccine mandate *are all receiving* both *Skelly* hearings and Board of Rights. 119:1-10. So
12 even by Deputy Chief Perez’s own definition of what constitutes “discipline,” LAFD is
13 indeed issuing discipline to employees found non-compliant with the vaccine Ordinance.

14 3. The COVID-19 Emergency Did Not Excuse LAFD’s Failure to
15 Comply With the Past Practice

16 The Department will likely argue that the COVID-19 pandemic constituted an
17 emergency that absolved the Department of its obligation to leave employees in paid status
18 until their Board of Rights is selected. This argument lacks merit.

19 The fact that an emergency exists does not automatically grant an employer license
20 to ignore and violate all contractual requirements. Rather, at most, an emergency only
21 grants employers the right to deviate from the contract *to the extent necessary* to deal with
22 the exigencies of that specific emergency. *See* Elkouri § 13.13.E (discussing arbitral
23 authority holding that even where a genuine emergency exists, “[a]ny violation or
24 suspension of contractual agreements must be *unavoidable* . . .”) (citing *Virginia-Carolina*
25 *Chem. Co.*, 42 LA 237, 240 (Kesselman, 1964)).

26 For example, in *NCR-Worldwide Service Parts Center*, 74 LA 224, 234–35
27 (Mathews, 1980), the arbitrator concluded that “while an emergency may have existed
28 overall,” its impact did not reach the “particular situation” involved in the grievance and

1 thus the emergency could not justify the course of action being challenged by the
2 grievance. *See also Central Pa. Water Supply Co.*, 101 LA 873 (Talarico, 1993) (even
3 where specific CBA language gave employer “broad discretionary powers to act in
4 emergency situations,” employer still has obligation to act reasonably and not arbitrarily,
5 and to explain its reasoning to the union, when taking emergency measures).

6 Here, the Department emphasized at the hearing that in light of the COVID-19
7 pandemic, they had no choice but to remove non-compliant officers from duty without
8 delay in order to protect public safety. *See, e.g.*, 124:2-19 (explaining the justification for
9 removing non-compliant officers from duty). UFLAC does not dispute this fact here.
10 Indeed, the Union’s grievance is not challenging the City’s removal of employees from
11 service; rather, the grievance arises from the City’s *failure to pay* firefighters while on
12 leave pending the selection of their Board of Rights, consistent with past practice. LAFD
13 did not prove that the pandemic interfered in any way with its ability to abide by that past
14 practice. In fact, LAFD did not submit *any* evidence of the pandemic’s impact on their
15 finances.

16 LAFD attempted to elicit testimony from Deputy Chief Perez regarding the
17 “average” number of employees on paid leave at any given time, as compared to the
18 number of employees placed on paid leave for non-compliance with the vaccine
19 Ordinance. *See* 126:17-127:14. However, the witness testified that he did not know.
20 127:2-4. In response to leading questions asking him to “guess” how many employees are
21 typically out of service—and suggesting specific numbers for him to use in his answers—
22 Deputy Chief Perez guessed that there might be 20 to 30 members on paid leave at a
23 particular time. 127:5-14. But the Department laid no foundation for this testimony, as
24 there is no evidence that Deputy Chief Perez has any experience whatsoever in handling
25 disciplinary cases for the Department. Thus, the Department has not shown that having to
26 pay employees found noncompliant with the vaccine mandate would impose *any* financial
27 burden, much less the kind of insurmountable burden that would permit them to disregard
28 their obligations under the MOU and past practice.

1 terms of an MOU, a past practice, or rules and regulations. The Arbitrator denied the
2 grievance, holding that the City did not violate *Skelly* for similar reasons to those cited by
3 the judge in *Firefighters4Freedom*. *See id.* at 6-8.

4 Unlike the *Firefighters4Freedom* and EAA cases, the Grievance at issue here does
5 *not* allege that the Department violated employees’ *Skelly* rights. The term “*Skelly* rights”
6 refers to the due process requirements that public employers must meet in order to
7 terminate a public employee without violating their constitutionally-protected property
8 interest in their employment. *See Gilbert v. City of Sunnyvale*, 130 Cal.App.4th 1264,
9 1275-81 (2005) (discussing constitutional requirements established under *Skelly* and other
10 cases). By contrast, the Grievance here alleges only violations of past practice and LAFD
11 rules and regulations. Nothing in either the *Firefighters4Freedom* or EAA decisions has
12 any bearing on whether the Department violated past practice in its treatment of employees
13 found non-compliant with the vaccine Ordinance, or on whether those violations were
14 justified by the specific exigencies of the COVID-19 pandemic.

15 **B. LAFD Violated Rule 17(h) of Its Rules and Regulations**

16 Rule 17 of the Department’s Rules and Regulations establishes certain procedural
17 requirements in disciplinary cases. Subsection h of Rule 17 provides that “[t]he services of
18 any notice, order or process required by reason of disciplinary action shall be made either
19 by handing the member a copy thereof personally or by forwarding such copy by
20 registered mail to his or her last known address of Department record.” UX 8. The
21 evidence at hearing established that the Department served all notices of “corrective
22 action” sent to employees found non-compliant with the vaccine Ordinance by email only.
23 Therefore, the Department violated Rule 17(h) when it served each of those notices.

24 The only argument the Department advanced at the hearing for why it did not
25 comply with Rule 17(h) in serving the notices was their contention that Rule 17 does not
26 apply here because the act of taking employees out of paid service for non-compliance
27 with the vaccine Ordinance “is not discipline,” because the employee at issue only failed
28 “to comply with the condition of employment.” 32:8-10. As argued *supra* Section IV.A.2,

1 however, the Department did not introduce any evidence to support their claimed
2 distinction between disciplinary action and penalties for failures to comply with a
3 condition of employment. Nor did they rebut the Union’s evidence that the Department
4 specifically clarified in negotiations that the penalties for non-compliance with the vaccine
5 Ordinance *are* disciplinary in nature.

6 Thus, the evidence shows that Rule 17(h) did apply to the notices sent to non-
7 compliant employees, and that the Department violated that Rule when it served notices to
8 all non-compliant employees via email only.

9 **V. THE REMEDY SHOULD INCLUDE A PROSPECTIVE ORDER AND**
10 **BACKPAY**

11 Arbitrators are entitled to “flexibility” in crafting remedies, so long as the award
12 “draws its essence from the collective bargaining agreement.” *Steelworkers v. Enterprise*
13 *Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). Where a contract violation is established,
14 “arbitrators have inherent power under a contract to award monetary damages to place the
15 parties in the position they would have been in had there been no violation.” Elkouri §
16 18.3.A.i.

17 Here, the Department violated past practice by failing to pay employees their
18 regular compensation from the date they received their notices of noncompliance with the
19 vaccine Ordinance through the date the employees were notified that their Board of Rights
20 panelists had been selected. In order to restore the status quo ante, the Department must
21 make each affected employee whole by paying them what they would have earned in that
22 window of time, with interest, had the Department complied with past practice.


23 **VI. CONCLUSION**

24 For the foregoing reasons, UFLAC respectfully requests that the Arbitrator sustain
25 the Grievance, and grant the relief requested.
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DATED: September 5, 2023

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EXHIBIT 13

EXHIBIT 13

PERSONNEL POLICY 33.1

**POLICIES OF THE PERSONNEL DEPARTMENT
CITY OF LOS ANGELES**

Section 33

Disciplinary Action: Policy and Procedures (Revised 6/23/05)

33.1

A. General

Fundamentally, the basis of the employment relationship is that, in exchange for salary and other benefits, employees will perform duties for which they are hired in accordance with the standards set for operational efficiency and effectiveness. Employees are expected to consistently report to work on time, carry out assigned duties, and cooperate with the public, co-workers, supervisors, and management to complete the work assigned to their organization. This Policy provides the framework for the implementation of corrective disciplinary action for situations in which employees fail to adhere to the requirements for proper job performance.

It is equally important that recognition be given to the employee who does a job exceptionally well or even goes beyond the normal demands of the job.

Management is encouraged to give recognition to such employees by using the Notice of Commendation, Form General 79.

This policy and procedure is a guide to constructive, progressive discipline to be used in deciding on corrective action for improper conduct by employees after discussion and oral reprimands have failed.

It is also designed to ensure fair treatment to all employees; to prevent impulsive and unreasonable punishment for improper conduct. The rights of the individual must be protected. However, this does not give any employee the right to disobey rules, to fail to be productive, to be insubordinate, to be discourteous, to endanger others, or to engage in conduct unbecoming a City employee.

Initial problems may be minor and not easily definable offenses. This behavior should not be overlooked, as it can grow more serious with time. A private conference can often resolve the problem and give the individual an opportunity to correct the behavior. **Recognition should be given to the employee who has received discipline and has demonstrated that the problem has been corrected.**

The primary goal of this disciplinary policy is to correct employee behavior or performance. To achieve that goal requires a mutual understanding among City management, employees, and the Civil Service Commission that the following criteria apply:

- (1) Behavior and performance standards must relate to the duties of the job, and management must make employees aware of them;
- (2) Employees are expected to adhere to standards of reasonable and prudent conduct;
- (3) Employees will be subject to corrective action when they violate those standards;
- (4) Penalties must be appropriate for the type and seriousness of the offense, while employees who commit serious offenses, or who show a pattern of offenses after successive efforts at corrective action, must not remain in City service. When it is suspected that a violation of a performance standard has occurred, and before deciding whether corrective actions is necessary, department management should conduct a thorough, objective investigation and get all available facts, including the employee's side of the story. If the investigation shows that an offense occurred, the actions required by the department's discipline procedures and policies should be taken. However, if management determines that an offense did not occur, or that the allegation is lacking in substance, a record of the incident should not be placed in the employee's file where it might prejudice future actions.

1. Probationary Termination although a pre-discipline procedure is not required for a probationary termination, it is advisable that such actions be documented. Management should utilize the probationary period as the working test period of fitness to perform the duties of the job and meet the standards of performance.

A probationary employee should receive periodic counsel regarding their job performance during the probationary period. Such counseling should be documented by the supervisor in a memo to the supervisor's file. A probationary termination should not come as a surprise to an employee. If an employee has not met satisfactory performance standards in all areas by the end of the month of probation, management should make a decision regarding the retention of the employee. If termination is appropriate, management should initiate the termination process as soon as practical.

2. Discharge or Suspension

If a discharge or a suspension is being considered for an employee who has completed probation, the courts have ruled that a pre-discipline procedure is necessary (*Skelly v State Personnel Board*).

This is the case even when an appeal procedure including a post discharge evidentiary hearing is available. The purpose of this procedure is to "minimize the risk of error" in the manager's initial decision. The

procedure enables the employee to receive notice of the charges and a copy of the materials upon which the proposed discipline is based, to provide his or her version of the facts surrounding the proposed discipline, and gives the Department an opportunity to reevaluate the proposed decision before it is irreversibly made.

3. Offenses During Off-Duty Hours

The following guidelines are provided for conduct that occurs off-duty:

- a. Corrective actions taken should be related to the job performed by the employee, the effect of the offense on the conduct of departmental operations, and should be consistent with any other applicable policies and directives.
- b. For offenses that result in the employee being unable to perform his/her job duties (detention and booking or incarceration for a period of time, loss of driver's license, etc.), periods of absence from work should initially be treated as an unauthorized absence (AW). In cases which are neither felonies nor serious misdemeanors, nor related to the job performed by the employee, the employing department may consider the propriety of granting authorized time off (vacation, overtime, leave without pay) for the employee to consult with an attorney, to appear in court, or to otherwise resolve the problem.

4. Option of Resigning to Avoid Discharge In some circumstances, such as inability to perform satisfactorily, the employee, without coercion, may be afforded the option of resigning to avoid discharge. The decision to resign in lieu of discharge must be voluntary and the employee should be allowed a full working day in which to exercise the option.

The department representative, while explaining the alternative of resignation in lieu of discharge, must notify to the employee in writing of the consequences of resignation: that the resignation will result in the loss of the right of appeal of the discharge to the Civil Service Commission; that the separation will be coded as "resignation in lieu of discharge" in official City records; that the resignation cannot be withdrawn after acceptance by the appointing authority; that restoration of the employee's name to the eligible list may not be recommended; and that future re-employment by the City cannot be guaranteed.

5. Suspension of Exempt (Salaried) Employee

Under applicable City policies and provisions of the Fair Labor Standards Act, a FLSA exempt (salaried) City employee, as defined in Division 4, Chapter 2, Article 8, Section 4.114 of the Los Angeles Administrative Code, shall not be subject to disciplinary suspension for a period of less than a workweek (seven days; half of the biweekly pay) unless the discipline is based on violations of a safety rule of major significance or misconduct.

6 Taking Disciplinary Action

The appropriate steps for any supervisor, administrator or manager to follow in taking disciplinary action are outlined in Sections A through F. Note: For advice and guidance on any questions related to this procedure and in emergencies, supervisors should contact the employing department's Personnel Office.

B. Conducting the Investigation-Non-Emergency Circumstances:

The purpose of the investigation is to ensure that the supervisor has considered all relevant facts through:

- (1) Reviewing any written documentation related to the incident(s) including police reports and citizen complaints;
- (2) Interviewing supervisors, other employees, or citizens who may have knowledge of the incident(s);
- (3) Determining the work rules, practices, job-performance standards, or general standards of behavior involved and the extent to which the employee should reasonably have been expected to know and follow them;
- (4) Reviewing the employee's total work record, including records of past performance, conduct, and attendance;
- (5) Interviewing, when appropriate, the employee to verify facts and obtain a preliminary statement of what happened from the employee's perspective. This interview should be in private, informal, and conducted in accordance with the employing department's rules. The interview may include the employee's representative. (The employee has a right to representation in an investigative meeting that could result in discipline of that employee. Should the employee request a representative, allow the employee a reasonable amount of time to obtain representation.

Note: Employees do not have an entitlement to representation if management is not investigating the employee for possible discipline.) During the interview, the supervisor should avoid argument, and refrain from making statements that could later be used to suggest that a fair investigation was not conducted. The supervisor should make notes documenting what occurred in the interview.

C. Conducting the Investigation- Emergency Circumstances:

Administrative Leave Policy:

Circumstances may occur where it is necessary to remove the employee from the work situation before final decisions can be reached regarding any disciplinary action to be taken. Removal of the employee should take place only when management believes there is a significant risk in allowing the employee to remain on the job.

In such cases, the supervisor should immediately notify the next level supervisor, as well as the employing department's personnel office or other designated office concerning this action. If the next level supervisor or personnel office are not available, or it is impractical to contact them, the supervisor should take the following actions:

- Call 9-1-1 emergency when a weapon is involved or when there is an immediate and direct threat to employees or the public. If the danger is not to this level but assistance is needed, call General Services Security at (213) 978-4670.
- Direct the employee to leave the worksite immediately. Place the employee who posed the immediate threat off work with pay.
- If possible, have another, higher level supervisor present when directing the employee's removal.

If an employee is removed from the worksite under emergency circumstances, the circumstances and rationale for the removal should be carefully documented by the supervisor and/or the employing department's personnel office and the procedures outlined above should be followed to the extent feasible under the circumstances. If the next level supervisor or the employing department's personnel office are not available at the time of the employee's initial removal, the supervisor must notify them as soon as possible after the immediate emergency situation has been addressed.

D. Due Process Requirements:

Departmental discipline procedures should be followed for all cases except genuine emergency situations. In emergency situations, steps must be taken as soon as practical to provide any due process rights to which the employee is entitled.

- Give the employee written notice of the proposed action by department letterhead, memorandum or other appropriate form, such as an unsigned copy of Form General 77. The notice must include the reasons disciplinary action is being proposed. The reasons constituting the cause of action should be sufficiently specific to allow the employee to respond. The notice must also advise the employee of the right to representation of choice in responding to management's proposed disciplinary action.
- Provide the employee with copies of the documents or materials upon which the disciplinary action is based. Where the action being considered is subject to appeal under Charter Section 112, and where the appointing authority intends, in accordance with Civil Service Rule 12.11d, to present evidence that the employee is not fit and suitable to perform the duties of the position, that added evidence should be specified and presented to the employee.
- After being given a reasonable opportunity to review the above documents and materials, the employee may respond, either orally, in writing, or through a representative (at the employee's option). If a meeting is held to allow the employee to respond, it should not be an adversarial proceeding. Such a meeting

does not require calling or cross-examining witnesses or formally presenting a case supporting the proposed discipline.

- A reasonably impartial and uninvolved reviewer, who possesses the authority to recommend a final disposition of the matter, reviews both sides of the case and makes a recommendation to the appointing authority. The reviewer should not be the same person who investigated the incident(s) which form the basis for the proposed discipline.

NOTE: Personnel with Peace Officer status have additional statutory protections under the California Peace Officer Bill of Rights (Government Code section 3300, et seq.). These protections include the Lybarger admonition (Lybarger v. City of Los Angeles). Departments employing personnel with Peace Officer status should incorporate into their disciplinary procedures the appropriate requirements to ensure full compliance with the Peace Officer Bill of Rights.

E. Implementing Progressive Disciplinary Action:

In most cases corrective actions should be administered as outlined below, with time to assess whether the employee has corrected the deficiencies. Some infractions, however, may require proceeding directly to more severe levels of discipline.

1. Oral Warning
 - (a) Give in private
 - (b) Conduct on a one-to-one basis between the supervisor and the employee. Explain to the employee, the employing department's standards and requirements, what is expected in the future, and the possible consequences if the behavior or performance is not corrected, and prepare a memorandum to the supervisor's file documenting the conversation. In some cases, a memorandum to the employee summarizing the discussion, including what was agreed upon, may be in order.
2. Written Notice
 - (a) Use a memo or the "Notice to Correct Deficiencies" (Form Gen. 78). It must contain a full statement of the reason for issuing the notice.
 - (b) Serve the memo or Notice to Correct Deficiencies to the employee in private. Explain to the employee the employing department's standards and requirements, what is expected in the future, and the possible consequences if the behavior or performance in question is not corrected.
 - (c) Send a copy of the Notice to Correct to the departmental personnel office to be placed in the employee's personnel file. If a memo is issued instead of a Notice to Correct Deficiencies, a copy may be sent to the personnel office for inclusion in the employee's

personnel file. **Whatever document is placed in the employee's personnel file must be given to the employee first.**

3. Suspension or Discharge

- (a) After completion of a thorough investigation and compliance with due process (Skelly) procedures, prepare a "Notice of Discharge, Suspension or Probationary Termination" (Form General 77). Be sure a full statement of the reason for the action is included.
- (b) Obtain approval and signature of the appointing authority.
- (c) Obtain the effective date(s) of the suspension or termination.
- (d) Give a copy of the Form General 77 to the employee in person.
- (e) A suspension should be discussed when the notice is served. Explain to the employee the reasons for the suspension, what is now expected, and what further disciplinary action might result from lack of compliance.
- (f) A discharge notice should be served personally, unless after a diligent search, the employee cannot be found. (If the employee cannot be personally served, document the efforts made to serve the notice on the reverse of the form. Return the form to the employing department's Personnel Office, which will then send the form by certified mail to the employee's last known home address.)
- (g) Certify that the notice was served on the employee and return the original form as soon as possible to the departmental personnel office, which will then forward the original form to the Civil Service Commission.

F. Last Chance Agreements:

A Last Chance Agreement is a tool to bring finality to efforts to resolve behavior or performance problems with an employee that have resulted in repeated disciplinary problems. These agreements can be drafted to reflect the particular issues and circumstances of individual disciplinary cases. Such agreements should only be utilized in cases where management believes progressive disciplinary steps have been fully exhausted and discharge is the only available corrective action remaining. Violation of a Last Chance Agreement should result in discharge unless significant mitigating circumstances are present.

EXHIBIT 14

EXHIBIT 14

In the Matter Of:

United Firefighters of Los Angeles City and Los Angeles City Fire Department

Transcript of Proceedings

June 27, 2023

Job No. 10648, Arbitration

Express Deposition Services

A Legal Support Network Company

1 A R B I T R A T I O N

2

3 In re:) CASE NO.:
) 4035
 4 United Firefighters of Los Angeles)
 City, IAFF Local 112,)
 5) ARBITRATOR:
 Union,) KENNETH PEREA
 6) (Presiding)
 and)
 7)
 Los Angeles City Fire Department,)
 8)
 Employer Respondent.)
 9)
 (Brownell Class Grievance Arbitration))
 10)

11

12

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 A R B I T R A T I O N

15 TUESDAY, JUNE 27, 2023

16 10:00 A.M. - 3:00 P.M.

17 801 NORTH BRAND BOULEVARD

18 SUITE 950

19 GLENDALE, CALIFORNIA

20

21

22 CERTIFIED SHORTHAND REPORTER:
 TRACY M. FOX, CSR NO. 10449
 23 (SUPERIOR COURT APPROVED REPORTER)

24 JOB NO.: 10648

25 PAGES: 1 - 145

Page 2

1 A R B I T R A T I O N
2
3 IN RE:) CASE NO.:
) 4035
4 United Firefighters of Los Angeles)
City, IAFF Local 112,)
5) ARBITRATOR:
Union,) KENNETH PEREA
6) (Presiding)
and)
7)
Los Angeles City Fire Department,)
8)
Employer Respondent.)
9)
(Brownell Class Grievance Arbitration)
10 _____)
11
12 R E P O R T E R ' S T R A N S C R I P T
13
14 ARBITRATION PROCEEDINGS, "IN RE: UNITED
15 FIREFIGHTERS OF LOS ANGELES CITY, IAFF LOCAL 112,
16 AND LOS ANGELES CITY FIRE DEPARTMENT," ON TUESDAY,
17 JUNE 27, 2023, FROM 10:00 A.M. TO 3:00 P.M., AT
18 801 NORTH BRAND BOULEVARD, SUITE 950, GLENDALE,
19 CALIFORNIA, STENOGRAPHICALLY REPORTED BEFORE
20 CERTIFIED SHORTHAND REPORTER, TRACY M. FOX, C.S.R.,
21 CERTIFICATE NUMBER 10449, IN AND FOR THE STATE OF
22 CALIFORNIA, COUNTY OF LOS ANGELES, SUPERIOR COURT
23 APPROVED REPORTER.
24
25

Page 3

1 BEFORE ARBITRATOR KENNETH A. PEREA, (PRESIDING)
2
3 APPEARANCES OF COUNSEL:
4
5 FOR UNION UNITED FIREFIGHTERS OF LOS ANGELES
6 CITY, IAFF LOCAL 112:
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8 BY: DANA S. MARTINEZ, ESQ.
9 801 North Brand Boulevard
10 Suite 950
11 Glendale, California 91203-1260
12 (818) 973-3200
13 dmartinez@bushgottlieb.com
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Page 4

1 BEFORE ARBITRATOR KENNETH A. PEREA, (PRESIDING)
2
3
4 APPEARANCES OF COUNSEL:
5
6
7 FOR EMPLOYER REPENDENT LOS ANGELES CITY FIRE
8 DEPARTMENT:
9
10 OFFICE OF THE LOS ANGELES CITY ATTORNEY
11 BY: ERIKA LYNN JOHNSON-BROOKS, ESQ.
12 TRAVIS T. HALL, ESQ.
13 200 North Main Street
14 Floor Eight
15 Los Angeles, California 90012-4133
16 (213) 978-7156
17 erika.johnsonbrooks@lacity.org
18 travis.t.hall@lacity.org
19 I N D E X
20
21 ALSO PRESENT:
22 Battalion Chief Eric J. Talamantes
23 (L.A. Fire Department)
24 Adam Walker, Secretary
25 Chuong Ho, U.F.L.A.C. 1st Vice President

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1 I N D E X
2 JUNE 27, 2023
3 * * *
4
5 OPENING STATEMENTS
6 BY MS MARTINEZ 21
7 BY MS. JUOHNSON-BROOKS 32
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9
10 INDEX OF WITNESS:
11 WITNESS: PAGE:
12 CAPTAIN CHUONG HO:
13 DIRECT BY MS. MARTINEZ 39
14 CROSS BY MS. JOHNSON-BROOKS 66
15 REDIRECT BY MS. MARTINEZ 73
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18 DIRECT BY MS. MARTINEZ 77
19 CROSS BY MS. JOHNSON-BROOKS 103
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21 DEPUTY CHIEF DAVID PEREZ:
22 DIRECT BY MR. HALL 112
23 CROSS BY MS. MARTINEZ 129
24 REDIRECT BY MR. HALL..... 136
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 2 JUNE 27, 2023
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Page 8

1 GLENDALE, CALIFORNIA
 2 TUESDAY, JUNE 27, 2023
 3 10:00 A.M.
 4 * * *
 5
 6 MORNING SESSION
 7
 8 (WHEREUPON, THE ARBITRATION PROCEEDINGS
 9 COMMENCED AS FOLLOWS:
 10
 11 - P R O C E E D I N G S -
 12
 13 ARBITRATOR PEREA: All right, then.
 14 We are on the record.
 15 And good morning, ladies and
 16 gentlemen.
 17 We are present in the matter of
 18 arbitration between United Firefighters of
 19 Los Angeles City, I.A.F.F. Local 112; and the
 20 Los Angeles City Fire Department.
 21 This is entitled "The Class
 22 Grievance of Firefighter Brownell."
 23 "Brownell"?
 24 MS. MARTINEZ: Brownell.
 25 ARBITRATOR PEREA: "Brownell"?

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1 I N D E X
 2 JUNE 27, 2023
 3 * * *
 4
 5 INDEX OF EXHIBITS
 6
 7 EMPLOYER'S: IDENTIFIED: ADMITTED:
 8 1 16 20
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 12 5 17 20
 13 6 17 20
 14 7 18 20
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Page 9

1 Okay. Brownell.
 2 MS. MARTINEZ: Okay.
 3 ARBITRATOR PEREA: B-R-O-W-N-E,
 4 double "L."
 5 Welcome and good morning.
 6 ARBITRATOR PEREA: Let's take care
 7 of a few housekeeping matters.
 8 First, as to the Statement of the
 9 Issues. Counsel Martinez has provided a
 10 written proposed statement of the issues, and
 11 that's been shared with counsel for the City.
 12 And I understand that there is no objection.
 13 So do you want to read that into
 14 the record, Counsel, please?
 15 MS. MARTINEZ: Sure.
 16 The Union proposes the following
 17 issue statements:
 18 Number 1, did the Los Angeles Fire
 19 Department violate willfully L.A.F.D. rules
 20 and regulations when it served U.F.L.A.C.,
 21 which is U-F-L-A-C, bargaining unit members
 22 who are deemed noncompliant with the COVID
 23 vaccine mandate notice of leave without pay
 24 by e-mail?
 25 If so, what is the remedy?

<p style="text-align: right;">Page 10</p> <p>1 ARBITRATOR PEREA: Thank you. 2 MS. MARTINEZ: Issue Number 2, did 3 the Los Angeles Fire Department violate past 4 practice when it placed U.F.L.A.C. bargaining 5 unit members who were deemed noncompliant 6 with the COVID vaccine mandate on leave 7 without pay before the unit members were 8 afforded an opportunity to select a board of 9 rights? 10 If so, what is the remedy? 11 ARBITRATOR PEREA: All right. 12 Thank you. 13 And does the City agree with that 14 proposed Statement of the Issues? 15 MS. JOHNSON-BROOKS: Yes. 16 ARBITRATOR PEREA: Thank you both 17 very much for your cooperation. 18 All right. So I should actually 19 have begun by asking counsel to state their 20 appearances for the record. 21 Let's begin with the City, please. 22 MS. JOHNSON-BROOKS: Yes. 23 Erika Johnson-Brooks on behalf of 24 the State and L.A.F.D. 25 ARBITRATOR PEREA: Thank you,</p>	<p style="text-align: right;">Page 11</p> <p>1 Ms. Brooks. 2 MR. HALL: And Travis Hall, 3 co-counsel. 4 ARBITRATOR PEREA: And both 5 Ms. Johnson-Brooks and Mr. Hall are deputy 6 city attorneys, Labor Relations Division? 7 MS. JOHNSON-BROOKS: Correct. 8 MR. HALL: Yes. 9 ARBITRATOR PEREA: Correct. 10 And also, Chief, would you identify 11 yourself for the record? 12 THE WITNESS: Battalion Chief Eric 13 Talamantes, T-A-L-A-M-A-N-T-E-S, rep -- 14 representative of the fire department. 15 ARBITRATOR PEREA: Okay. Thank you 16 both very much. 17 And let's start on the other side 18 of table on behalf of the Union, please. 19 MS. MARTINEZ: On behalf of the 20 Union, Dana Martinez of Bush Gottlieb. 21 ARBITRATOR PEREA: Thank you, 22 Ms. Martinez. 23 And with you? 24 MR. WALKER: It's Adam Walker, 25 U.F.L.A.C. secretary.</p>
<p style="text-align: right;">Page 12</p> <p>1 ARBITRATOR PEREA: Very good. 2 MR. HO: Chung Ho, U.F.L.A.C. 3 1st Vice President. 4 ARBITRATOR PEREA: Very good. 5 Thank you, sir. All right. 6 The arbitrator is Ken Perea. 7 So we've identified the issues. 8 We have some exhibits to identify. 9 And I understand they're not in controversy, 10 so let me begin with the Employer's Exhibit 11 list. 12 Ms. Johnson-Brooks, would you 13 please identify proposed Exhibits 1 through 14 6. 15 MS. JOHNSON-BROOKS: Yes. 16 Exhibit 1 is a November 29th, 2021, 17 Noncompliance with City Ordinance and Vaccine 18 Policy. 19 Exhibit 2 is 8-25-21 City Council 20 Ordinance Number 187134. 21 Exhibit 3, November 10th, '21, 22 Mayor's Declaration of Local Emergency. 23 Exhibit 4, 6-23-05 Personnel 24 Policy 33.1. 25 Exhibit 5A is 2-15-22</p>	<p style="text-align: right;">Page 13</p> <p>1 Firefighters4Freedom Foundation v. City of 2 Los Angeles Demurrer Order. 3 Exhibit 5B is 2-15-23 4 Firefighters4Freedom Foundation v. City of 5 Los Angeles Agreement to Dismiss Count 3 on 6 Appeal. 7 And Exhibit 4 is a -- 8 THE COURT REPORTER: It's 6? 9 ARBITRATOR PEREA: Exhibit 6. 10 MS. JOHNSON-BROOKS: I'm sorry? 11 THE COURT REPORTER: Exhibit 6. 12 You said "4." 13 MS. JOHNSON-BROOKS: Exhibit 6? 14 THE COURT REPORTER: Uh-huh. 15 MS. JOHNSON-BROOKS: Exhibit 6 - is 16 a April 7th, 2023, E.A.A. Arbitration 4004 17 Decision and Award. 18 ARBITRATOR PEREA: All right. 19 Thank you for identifying those 20 exhibits. 21 (Whereupon, Employer's Exhibit 1, 2, 22 3, 4, 5, and 6 were identified.) 23 ARBITRATOR PEREA: I understand 24 that the Union has no objection to City's 25 Exhibits 1 through 4, and therefore --</p>

<p style="text-align: right;">Page 14</p> <p>1 MS. MARTINEZ: Well, 1 through 3. 2 4 is not yet clear what the relevance is. 3 But as far as authentication, we don't object 4 to 1 through 4. 5 ARBITRATOR PEREA: I see. All 6 right. 7 All right. Well, let me just 8 indicate this. 9 If there is a problem with the 10 personnel policy 33.1, which has been 11 identified as City Exhibit 4, let me know. 12 Otherwise, I'll assume that there's not. 13 So you can take your time during 14 the course of the proceedings to verify that 15 everything is in order. 16 MS. MARTINEZ: Okay. 17 ARBITRATOR PEREA: I will just 18 indicate, I'll receive Exhibits 1 through 4. 19 (Whereupon, Employer's Exhibits 20 1, 2, 3, and 4 were admitted.) 21 ARBITRATOR PEREA: Exhibits 5A, 5B, 22 and 6 are not really exhibits in the form of 23 evidence. 24 They're decisions from various 25 tribunals, but I will just take arbitral</p>	<p style="text-align: right;">Page 15</p> <p>1 notice, shall we say, of what we identified 2 as 5A, 5B, and 6. 3 ARBITRATOR PEREA: All right. 4 Let's turn now, then, to the 5 Union's proposed exhibits, 6 Those have been shared with 7 Ms. Johnson-Brooks. 8 And I understand that there's no 9 objection for the record to receipt of what 10 we've identified as 1 through 10. 11 But perhaps, just for the sake of 12 being complete, Ms. Johnson-Brooks, would you 13 please identify 1 through 10 for the record. 14 MS. JOHNSON-BROOKS: Of theirs? Of 15 their exhibits? 16 ARBITRATOR PEREA: I'm sorry. This 17 is -- I'm sorry. 18 MS. JOHNSON-BROOKS: Okay. 19 ARBITRATOR PEREA: I misspoke. I 20 got my binder switched. 21 MS. JOHNSON-BROOKS: That's okay. 22 ARBITRATOR PEREA: It's all right. 23 All right. Yes. Counsel for the 24 Union. 25 MS. MARTINEZ: Yes. Would you like</p>
<p style="text-align: right;">Page 16</p> <p>1 me to briefly describe each? 2 ARBITRATOR PEREA: Yes, please. 3 MS. MARTINEZ: Okay. So Exhibit 4 Number 1 is the Controlling Memorandum of 5 Understanding between the Los Angeles Fire 6 Department and the Union. And what we 7 included was an extract, which is the 8 grievant's procedure. 9 Here (indicating). 10 We didn't -- we included the table 11 of contents and the signature page but 12 nothing else. 13 (Whereupon, Union's Exhibit 1, 14 was marked for identification.) 15 ARBITRATOR PEREA: All right. 16 MS. MARTINEZ: And Exhibit 2, we 17 included the grievance and the formal 18 response from the Department. 19 (Whereupon, Union's Exhibit 2 was 20 marked for identification.) 21 MS. MARTINEZ: And Exhibit Number 4 -- 22 sorry. 23 Number 3 is the L.A. City Charter 24 Section 1060. 25 Section 1060 is a section in the</p>	<p style="text-align: right;">Page 17</p> <p>1 L.A. City Charter that applies uniquely to 2 discipline with regard to L.A. City 3 firefighters. 4 (Whereupon, Union's Exhibit 3 5 was marked for identification.) 6 MS. MARTINEZ: And then Exhibit Number 4 is 7 the same exhibit as the City's Number 2 -- Exhibit 2, 8 which is the COVID-19 Vaccine Mandate Ordinance. 9 ARBITRATOR PEREA: Uh-huh. 10 (Whereupon, Union's Exhibit 4 11 was marked for identification.) 12 MS. MARTINEZ: Exhibit Number 5 is 13 the Last, Best, and Final Offer with regard 14 to consequences for not complying with the 15 COVID-19 vaccine ordinance. 16 (Whereupon, Union's Exhibit 5 17 was marked for identification.) 18 MS. MARTINEZ: And Exhibit 6 is the City 19 resolution that implements the Last, Best, and Final 20 as the enforceable consequences of noncompliance with 21 the COVID-19 vaccine mandate. 22 ARBITRATOR PEREA: Thank you. 23 (Whereupon, Union's Exhibit 6 24 was marked for identification.) 25 MS. MARTINEZ: And Exhibit 7 -- so</p>

<p style="text-align: right;">Page 18</p> <p>1 behind Exhibit 7 is one of the examples that 2 is relevant to our subpoena duces tecum. 3 The first page is the e-mail. The 4 second page is the attachment to the e-mail. 5 And this appears to be the same 6 as -- is this the same as the City Exhibit 1? 7 No? Well, the second page is. 8 (Whereupon, Union's Exhibit 7 9 was marked for identification.) 10 MS. JOHNSON-BROOKS: That's the 11 template. 12 MS. MARTINEZ: Yes. Oh, that's 13 that. Yeah, that's the template. And so 14 it's similar. 15 MS. JOHNSON-BROOKS: Right. 16 MS. MARTINEZ: And so that is one 17 of the examples that we'll ask for a 18 stipulation. 19 And then Union Exhibit 8, Rules and 20 Regulations. 21 One of the allegations is that 22 there was a violation of rule and regulation 23 section 17(f), so we included the cover page 24 for the rule and regs, and the second page is 25 section 17, which sets forth the alleged</p>	<p style="text-align: right;">Page 19</p> <p>1 violation which is under (f). 2 (Whereupon, Union's Exhibit 8 3 was marked for identification.) 4 MS. MARTINEZ: And then our second example, 5 relevant to the Subpoena Duces Tecum, is Union 6 Exhibit 9. 7 The first page is the e-mail, and 8 then the e-mail has an attachment. The 9 attachment to that e-mail is the second page. 10 And, again, it's the same verbiage as the 11 template of City's Exhibit 1. 12 (Whereupon, Union's Exhibit 9 13 was marked for identification.) 14 MS. MARTINEZ: And then Union Exhibit 10 is 15 a notification of the Board-of-Rights hearing. When 16 a member is subject to discipline beyond reprimand, 17 they have the right -- an option to go to board of 18 rights to have a final decision. 19 So this is just a example of a 20 notice where a member elects to go to a board 21 of rights. 22 And the page behind that is 23 notification that when a member selects to go 24 to -- or selects the actual board of right 25 members, they are placed on leave without</p>
<p style="text-align: right;">Page 20</p> <p>1 pay. 2 (Whereupon, Union's Exhibit 10 3 was Marked for identification.) 4 ARBITRATOR PEREA: Oh, okay. Thank 5 you. 6 (Interruption in proceedings.) 7 ARBITRATOR PEREA: All right. So 8 we are still on the record. 9 So you described the Union's 10 Exhibits 1 through 10. 11 And the City, I think, at an 12 earlier time has indicated there was no 13 objection. 14 So Exhibits 1 through -- 15 MS. JOHNSON-BROOKS: Right. No 16 objection, but we'll reserve the right to 17 argue as to relevance. 18 ARBITRATOR PEREA: Of course. 19 MS. JOHNSON-BROOKS: Yes. 20 ARBITRATOR PEREA: Okay. So 1 21 through 10 are received. 22 (Whereupon, Union's Exhibits 1 23 through 10 were admitted.) 24 MS. MARTINEZ: Uh-huh. 25 ARBITRATOR PEREA: All right.</p>	<p style="text-align: right;">Page 21</p> <p>1 MS. MARTINEZ: Okay. 2 ARBITRATOR PEREA: Any other 3 housekeeping? 4 If not, then we'll turn to 5 Ms. Martinez, please, for an opening 6 statement. 7 8 9 OPENING STATEMENT 10 (FOR THE UNION) 11 * * * 12 13 MS. MARTINEZ: All right. Good 14 morning. 15 ARBITRATOR PEREA: Good morning. 16 MS. MARTINEZ: As I already 17 noticed, this is a class-action grievance 18 pursuant to M.O.U. Article 2.1, Section V. 19 This case is about the Los Angeles 20 City Fire Department's breach of rules and 21 regulations and longstanding past practice 22 related to discipline procedures. 23 Specifically, when disciplining 24 bargaining unit members of the United 25 Firefighters of Los Angeles City or</p>

Page 22

1 U.F.L.A.C. for failure to comply with the
 2 City's COVID vaccine mandate, the fire
 3 department, number 1, failed to serve
 4 disciplinary-related notices in conformance
 5 with the department rules and regulations.
 6 And Number 2, the department failed
 7 to follow well-established past practice when
 8 it was -- when it placed bargaining unit
 9 members on indefinite leave without pay.
 10 It is important to note what this
 11 case is not about. This case is not about
 12 challenging the vaccine mandate.
 13 The underlying grievance does not
 14 dispute the validity or constitutionality of
 15 the vaccine mandate. Rather, the grievance
 16 accepts the City's intent to terminate the
 17 employment of employees who fail to comply
 18 with the vaccine mandate.
 19 However, when the department
 20 intends to terminate or discipline U.F.L.A.C.
 21 unit members for noncompliance of the
 22 mandate, it still had the obligation to
 23 follow fixed and customary rules and
 24 procedures.
 25 In August 2021, the City of Los

Page 24

1 By way of imposition, the City
 2 adopted the resolution implementing
 3 consequences for noncompliance with the
 4 requirements of the ordinance.
 5 As the evidence will show and
 6 relevant to this matter, the Last, Best, and
 7 Final includes a specific provision only
 8 applicable to sworn members of L.A.F.D.
 9 including U.F.L.A.C. unit members.
 10 The specific provision states in
 11 part, "In instituting discipline, the
 12 department must abide by all applicable city
 13 charter and other legal requirements."
 14 MS. JOHNSON-BROOKS: Okay.
 15 MS. MARTINEZ: As the evidence will
 16 show, section 1060 of the Los Angeles City
 17 Charter sets forth the specific procedure and
 18 right to a board of rights.
 19 This is the procedure that must be
 20 followed when a U.F.L.A.C. unit member is
 21 subject to intended discipline.
 22 This procedure requires that before
 23 discipline can be imposed, the U.F.L.A.C.
 24 bargaining unit member must first be afforded
 25 the opportunity to have their matter heard by

Page 23

1 Angeles adopted an ordinance that requires
 2 all City employees to be vaccinated against
 3 COVID-19.
 4 Only those employees who were
 5 granted medical or religious exemptions were
 6 excused from the vaccine requirement.
 7 Notably, as the evidence will show,
 8 the City did not include any consequences for
 9 noncompliance in the ordinance.
 10 Upon adoption of the vaccine
 11 mandate, U.F.L.A.C. demanded to bargain over
 12 the consequences of noncompliance. The City
 13 agreed, and the parties bargained over the
 14 consequences.
 15 During bargaining, the City
 16 insisted that the consequences from employees
 17 who did not comply with the mandate was
 18 discipline up to termination.
 19 So U.F.L.A.C. pushed for other
 20 consequences such as testing and
 21 mask-wearing.
 22 Ultimately, as the evidence will
 23 show, the City declared impasse and imposed
 24 its Last, Best, and Final proposal, which
 25 included discipline for noncompliance.

Page 25

1 a board of rights.
 2 A board of rights is comprised of
 3 three fire chiefs who oversee an evidentiary
 4 hearing and who are charged with making a
 5 decision as to whether a U.F.L.A.C. member
 6 should be disciplined, and if so, the
 7 penalty.
 8 This is where the relevant past
 9 practice comes into play.
 10 As the evidence will show, it is a
 11 well-established practice that when
 12 U.F.L.A.C. unit members face discipline that
 13 implicates a board of rights, they continue
 14 to be paid their salary until the point when
 15 they select the three chiefs who will sit on
 16 their board of rights.
 17 This has even been true when unit
 18 members have been placed on leave, pending a
 19 board of rights.
 20 While on leave, they have continued
 21 to be paid their salary before they pick a
 22 board.
 23 In the incident matter, when a
 24 U.F.L.A.C. unit member failed to comply with
 25 the vaccine mandate and failed to secure an

<p style="text-align: right;">Page 26</p> <p>1 exemption, the department placed them on 2 leave, pending their board of rights. 3 However, as the evidence will show, 4 in a stark breach of past practice, the 5 department did not continue to pay these unit 6 members. 7 Whereas the affected unit members 8 were allowed to use accrued leave, they were 9 not getting paid their regular salary, which 10 is what they normally receive, pending 11 selection of the board of rights. 12 The department will likely argue 13 that placing unit members on unpaid leave, in 14 fact, is consistent with past practice. 15 The department will likely assert 16 that the vaccine mandate is a condition of 17 employment, and that there's an established 18 practice that relates to failure to comply 19 with the condition of employment. 20 Specifically, the -- the department 21 will contend that when U.F.L.A.C. unit member 22 fails to comply with a condition of 23 employment, they are placed on leave without 24 pay and are allowed to use accrued benefit 25 time, just like they treated those not</p>	<p style="text-align: right;">Page 27</p> <p>1 compliant with the vaccine mandate. 2 The department's defense, however, 3 will fail. 4 There's no dispute that the vaccine 5 mandate is a condition of employment. It 6 specifically said so in the ordinance. 7 There's also no dispute that there are 8 other conditions of employment that apply to 9 U.F.L.A.C. bargaining unit members. 10 As the evidence will show, however, 11 the vaccine mandate is uniquely distinct from 12 other conditions of employment in critical 13 ways. 14 First and most importantly, the 15 Last, Best, and Final and implementing 16 resolution are the controlling documents that 17 provide for the specific consequences that 18 shall apply to those who are not compliant 19 with the vaccine mandate condition of 20 employment. 21 As the evidence will show, neither 22 the Last, Best, and Final nor the resolution 23 provide that noncompliant employees may be 24 placed on leave without pay for any amount of 25 time.</p>
<p style="text-align: right;">Page 28</p> <p>1 Further, as already noted and as 2 the evidence will show, the Last, Best, and 3 Final specifically requires that the 4 department must comply with the city charter 5 and related board of rights procedures as 6 part of implementing the consequences for 7 noncompliance. 8 As the evidence will show, there is 9 nothing in the relevant city charter 10 provision or board of rights procedures that 11 allows the department to place U.F.L.A.C. 12 unit members on leave without pay for an 13 indefinite amount of time. 14 Moreover, as mentioned, the 15 evidence will show that the past practice 16 relevant to employees headed towards a board 17 of rights is that they continue to be paid 18 until they select a board. 19 As the evidence will show, the 20 Last, Best, and Final, and the resolution do 21 not apply to other conditions of employment. 22 They are unique to the vaccine mandate 23 condition of employment and thus are 24 distinguishable. 25 Also, the evidence will show the</p>	<p style="text-align: right;">Page 29</p> <p>1 consequences associated with other conditions 2 of employment applicable to U.F.L.A.C. unit 3 members were not a product of collective 4 bargaining as were the consequences of the 5 vaccine mandate. 6 And lastly, the evidence will show 7 that not all of the other conditions of 8 employment result in or require that a 9 noncompliant employee be placed on leave 10 without pay or be subject to the disciplinary 11 procedure. 12 With regard to the second issue, 13 which is whether the department violated its 14 own rules and regulations in the manner in 15 which it served the noncompliant U.F.L.A.C. 16 unit members with notice that they are being 17 placed on leave without pay. 18 As the evidence will prove, the 19 department served the notice improperly. 20 As the evidence will show, the 21 applicable rule requires that any notice 22 provided to U.F.L.A.C. unit members, relevant 23 to discipline, must be served on a unit 24 member in one of two ways: Either by 25 hand-delivery to the unit member or by</p>

<p style="text-align: right;">Page 30</p> <p>1 registered mail. 2 As set forth in the Last, Best, and 3 Final, noncompliant employees are to be 4 disciplined. 5 Accordingly, any notice of 6 consequence for noncompliance necessarily 7 regards discipline which requires personal 8 service or service by registered mail. 9 The department violated this 10 requirement. 11 Specifically, as the evidence will 12 show, the Department notified noncompliant 13 U.F.L.A.C. unit members that they were being 14 placed on leave without pay by serving the 15 notice via e-mail in direct violation of the 16 relevant rules. 17 The department may argue that 18 placing U.F.L.A.C. unit members on leave 19 without pay is somehow not part of the 20 discipline procedure. This assertion is 21 wholly without support. 22 Indeed, there's no interim 23 nondisciplinary status procedure in the last, 24 best, or final or the resolution. Rather, 25 there's only one step. If the employee's</p>	<p style="text-align: right;">Page 31</p> <p>1 noncompliant, they are subject to discipline. 2 At the end of the arbitration, it 3 will be abundantly clear that by placing 4 U.F.L.A.C. bargaining unit members on unpaid 5 leave prior to the selection of the board of 6 rights, the Los Angeles City Fire Department 7 violated longstanding past practice. 8 And by notifying unit members of 9 this leave by e-mail, the Los Angeles Fire 10 Department violated the department's own 11 rules and regulations. 12 Accordingly, U.F.L.A.C. 13 respectfully requests that you, 14 Mr. Arbitrator, grant the grievance in its 15 entirety. 16 ARBITRATOR PEREA: Thank you for 17 the Union's opening statement, Ms. Martinez. 18 All right. Would the City like to 19 make an opening statement at this time? 20 MS. JOHNSON-BROOKS: Yes. 21 ARBITRATOR PEREA: Please do so. 22 /// 23 /// 24 /// 25</p>
<p style="text-align: right;">Page 32</p> <p>1 OPENING STATEMENT 2 (FOR THE CITY/EMPLOYER) 3 * * * 4 5 MS. JOHNSON-BROOKS: So the 6 evidence will show -- and Ms. Martinez is 7 correct in asserting -- that the City will 8 show that this is not discipline. 9 This is a failure to comply with 10 the condition of employment. 1060 does not 11 apply. It's not a suspension. 17(f) does 12 not apply. It's not disciplinary. 13 These circumstances arise with the 14 declaration of a local emergency. 15 Past practice does not guide during 16 an unprecedented health emergency. 17 And the evidence will show that the 18 City was justified in swiftly removing 19 employees from the workplace. 20 And just for context, I know that 21 we are now in a different place with COVID. 22 But we need to go back and look in 2021 with 23 a local -- local emergency declared, 24 businesses being closed. 25 These are our first responders.</p>	<p style="text-align: right;">Page 33</p> <p>1 And those procedures have been upheld in 2 court and in arbitration as satisfying due 3 process requirements. 4 Briefly, for example, in the 5 "Firefighters4Freedom" case overturned on 6 other grounds but not due-process grounds. 7 That decision upheld the City's due-process 8 procedures specifically during COVID and 9 emergency. 10 The court noted that post-Skelly, 11 which is the due-process procedure, the 12 California Supreme Court and the United 13 States Supreme Court have repeatedly 14 recognized that due process is a flexible 15 concept. It calls for flexibility as the 16 particular situation requires, demands. 17 This Court found that Skelly due 18 process did not entitle the Los Angeles City 19 firefighters. 20 There were 435 of them 21 approximately who challenged being put -- 22 being put off duty without alleged due 23 process. 24 And the Court found that it did 25 not entitle these firefighters to a hearing</p>

<p style="text-align: right;">Page 34</p> <p>1 before an adverse employment action during an 2 emergency situation. 3 It is a misstatement of law to 4 assert that notice and an opportunity to 5 challenge the action must occur before the 6 City suspends a firefighter's pay. 7 And so even during -- Plaintiff 8 essentially pleads in this case, 9 Firefighters4Freedom, that even during an 10 emergency, due process equates to notice and 11 a hearing before any adverse employment 12 actions take effect, and that is not the law. 13 Similarly, in a recent group 14 grievance arbitration on this identical 15 issue, members or employees being placed off 16 duty without pay, Arbitrator Robert Bergeson 17 held that neither Skelly nor the cases cited 18 by the E.A.A. post-Skelly involved a 19 bona-fide emergency, and that in light of the 20 COVID-19 pandemic, the department had a 21 considerable interest in acting as it did. 22 In these cases, arguments could be 23 made, for example, in "Firefighters4Freedom," 24 that this deviated from a longstanding past 25 practice as in E.A.A.</p>	<p style="text-align: right;">Page 35</p> <p>1 Any of those arguments could have 2 been made, but they were dealing with the 3 COVID-19 emergency and removing employees 4 swiftly from the workplace who were not 5 vaccinated, did not intend to become 6 vaccinated, and posed a risk to the public 7 and -- and the employees who they work with. 8 So on October 28th, 2021, the mayor 9 instructed all department heads to issue a 10 notice to each employee who was unvaccinated 11 and had not filed an exemption to receive and 12 review the notice in 24 hours or 48 hours if 13 they requested time to consult with their 14 Union representative. 15 Employees placed off work were 16 provided with the prerequisite due process 17 Skelly notice because they received the 18 notice informing them of their department's 19 intention to place them off work for 20 noncompliance with the City's vaccine mandate 21 while providing them an opportunity up to 22 48 hours to respond, stating their intention 23 to become vaccinated or to file an exemption 24 over the next two months. 25 The City allowed firefighters --</p>
<p style="text-align: right;">Page 36</p> <p>1 all City employees to say, "By December 18th, 2 I will" -- it became a condition of 3 employment in October, but they were given 4 additional time to say that they intended to 5 become vaccinated. 6 So, again, the entire point is of 7 Skelly and due process is to avoid an 8 erroneous deprivation. 9 And so in this emergency situation, 10 the employees are given notice, "Our records 11 show that you're unvaccinated and not in 12 compliance with the mandate." 13 The employee has an opportunity to 14 respond. They can say, "Yes, it's 15 erroneous," or "I'm vaccinated," or "I intend 16 to take the additional two months to become 17 vaccinated." 18 And, again, at that time, in 2021, 19 the epicenter of the pandemic, unvaccinated 20 employees had to be sent home because of the 21 risk of potential spread to other employees 22 and the public that they serve. 23 And, again, I know that U.F.L.A.C. 24 is not disputing the vaccine mandate, the 25 importance of the vaccine mandate, especially</p>	<p style="text-align: right;">Page 37</p> <p>1 during that time, but I just want to take us 2 back to that time. 3 There will also be evidence to show 4 why when the employees were placed off work 5 that it was fiscally not feasible to then pay 6 the employees to be off -- off work and 7 backfill their positions while they're off 8 work for failing to comply with the condition 9 of employment. 10 And for these reasons -- and the 11 evidence will show -- that the grievance be 12 denied in its entirety. 13 ARBITRATOR PEREA: All right. 14 Thank you very much. 15 Ms. Martinez, would you like to 16 call the Union's first witness? 17 MS. MARTINEZ: Yes. I would like 18 to call Captain Chuong Ho. 19 ARBITRATOR PEREA: You know, it 20 occurs to me that as long as you keep your 21 voice elevated and as long as -- 22 MS. MARTINEZ: No. 23 ARBITRATOR PEREA: No? No. Not 24 going to work. 25 (Conversation held off the record.)</p>

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1 (Whereupon, Captain Chuong Ho took
 2 the witness stand.)
 3 ARBITRATOR PEREA: All right. All
 4 right. So we are on the record.
 5 Would you please state your name
 6 and spell both first and last names.
 7 THE WITNESS: Yes, sir.
 8 Chuong, C-H-U-O-N-G. Last name,
 9 Ho, H-O.
 10 ARBITRATOR PEREA: Thank you, sir.
 11 And if you would please raise your
 12 right hand.
 13 Do you swear to tell the truth, the
 14 whole truth, and nothing but the truth?
 15 THE WITNESS: Yes, I do.
 16 ARBITRATOR PEREA: Thank you.
 17 What is your position? You're a
 18 firefighter, or do you have --
 19 THE WITNESS: I'm a Captain II.
 20 ARBITRATOR PEREA: Captain II, very
 21 good, Captain.
 22 Forgive me, I'm not responsible for
 23 any promotions or demotions that occur during
 24 the course of a year.
 25 THE WITNESS: Oh, yeah.

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1 by L.A.F.D.?
 2 A This upcoming February will be my
 3 20th year.
 4 Q And starting with your first, what
 5 ranks have you held and, if you can recall,
 6 the length of time for each?
 7 A So back in 2004, I was hired with
 8 the Los Angeles Fire Department, I believe,
 9 as a recruit.
 10 I believe I held the rank of
 11 Firefighter II. I kept that rank for about
 12 18 months after my hire date until I advanced
 13 to Firefighter III.
 14 I stayed Firefighter III all the
 15 way up until 2014 when I promoted to
 16 captain -- Captain I.
 17 In 2017, I promoted to Captain II,
 18 and that's my current rank.
 19 Q Okay. Are you a member of
 20 U.F.L.A.C.?
 21 A Yes, I am.
 22 Q And for how long?
 23 A For the same amount of time, so
 24 about 20 years -- coming up on 20 years.
 25 Q Okay. Have you held any

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1 ARBITRATOR PEREA: If you're
 2 promoted, it only lasts until we walk out the
 3 door. It's like Cinderella. All right.
 4 THE COURT REPORTER: And is that a
 5 Roman II or the number 2?
 6 THE WITNESS: It's a II.
 7 THE COURT REPORTER: Thank you.
 8 ARBITRATOR PEREA: Very good.
 9 All right. Please proceed.
 10 MS. MARTINEZ: Okay.
 11
 12
 13 CHUONG HO,
 14 called as a witness by the Union, and sworn
 15 in by the Arbitrator, was examined and
 16 testified as follows:
 17
 18 DIRECT EXAMINATION
 19 * * *
 20 BY MS. MARTINEZ:
 21 Q Captain Ho, by whom are you
 22 employed?
 23 A I am -- I am employed by the Los
 24 Angeles City Fire Department.
 25 Q And how long have you been employed

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1 representative positions with U.F.L.A.C.?
 2 A Yes, I have.
 3 In 2008, I was elected a director
 4 of the Union. I held that position for, I
 5 believe, six years, and then I took over as
 6 the 2nd Vice President.
 7 I held the 2nd Vice President spot
 8 for, I believe, four years until I became the
 9 1st Vice President.
 10 I am currently the 1st Vice
 11 President, and I believe this is my fifth
 12 year.
 13 Q Okay. As 1st Vice President, what
 14 are your general duties?
 15 A Really to oversee all aspects of
 16 the Union, to make sure that it's running
 17 properly, to be the right-hand man for the
 18 president.
 19 I deal with and meet with our
 20 City's electeds, our command staff, to
 21 negotiate, discuss the policies, practices,
 22 and procedures of the Los Angeles City Fire
 23 Department.
 24 I represent members, member
 25 services, employee assistance program with

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1 really whatever problems they may have, even
 2 their personal problems through the
 3 employee's assistance program.
 4 I represented members in the
 5 grievance process when they have issues with
 6 their wages, hours, or working conditions.
 7 In the grievance process, I
 8 represented members at all levels from the
 9 first level informal all the way up to and
 10 through the arbitration.
 11 I represented members in the
 12 discipline process.
 13 Since 2008 to now, I think I've
 14 represented -- I know I've represented
 15 members in every single type of discipline
 16 proceeding you can be on while you worked for
 17 the fire department from the initial intake
 18 interview to witness interviews to settlement
 19 meetings to liberty interest hearings to
 20 Skelly hearings, board of rights, and the
 21 arbitration after that.
 22 Q Okay. In your capacity as 1st Vice
 23 President, have you ever participated in
 24 bargaining with the department?
 25 A Yes, I have.

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1 equitable.
 2 We have letters of agreements on
 3 bonuses and what you need to do before you
 4 can -- before you get a bonus for specialized
 5 assignments.
 6 We have letters of agreements on
 7 how you get into those specialized
 8 assignments, what classes you need to take,
 9 and the list goes on and on.
 10 Q And have you ever participated in
 11 bargaining over the full M.O.U.?
 12 A Yes, I have.
 13 When I was first elected in 2008 as
 14 a director, I was also elected on the
 15 U.F.L.A.C. negotiating team. The -- the
 16 negotiating team, in essence, their main item
 17 to bargain is the M.O.U.
 18 Since 2008 to current, I -- I've
 19 been on every single U.F.L.A.C. negotiating
 20 team with the exception of maybe one.
 21 Q Okay. How long have you been
 22 representing members who are subject to
 23 discipline?
 24 A Since 2008.
 25 Q Okay. And are you also familiar

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1 Q And can you please explain in a
 2 little bit of detail what your experience has
 3 been.
 4 A I've always been able, as a
 5 U.F.L.A.C. board member, to provide my input.
 6 In the last six to eight years, I've been
 7 designated the lead for U.F.L.A.C. when it
 8 comes to bargaining and negotiating letters
 9 of agreements.
 10 All members of the U.F.L.A.C.
 11 executive board provide input, and all of
 12 that input then comes through me to the
 13 department.
 14 And so I've -- again, for the last
 15 six years, I've been the lead for U.F.L.A.C.,
 16 basically bargaining letters of agreements,
 17 letters of agreements that concern really the
 18 specific -- more specific policies and
 19 practices that either the manual of
 20 operations or M.O.U. doesn't address, or
 21 are -- or just needs some clarity.
 22 So, for example, we have letters of
 23 agreements on how members should be promoted.
 24 We have letters of agreements on how overtime
 25 should be shared so that it's fair and

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1 with discipline matters that are handled by
 2 other U.F.L.A.C. representatives?
 3 A Yes, I am.
 4 Q And how is that?
 5 A All throughout, the U.F.L.A.C.
 6 executive board members, we kind of vet
 7 things out with cases we're handling to kind
 8 of get advice, share ideas, and really to get
 9 assistance on how best to maneuver a
 10 particular case.
 11 Now, as the 1st Vice President and
 12 the most senior member on the executive
 13 board, the other board members come to me
 14 quite often for assistance, for guidance.
 15 And it doesn't go to just now, but back
 16 in 2008 when I first started on the executive
 17 board, people came to me at that point in
 18 time also because of my background as a
 19 lawyer.
 20 I guess the firefighters figured
 21 that, hey, if there's also a lawyer on the
 22 job, you know, we'd rather go to him, or the
 23 other representatives would -- would seek my
 24 advice.
 25 So I am familiar with not only the

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1 cases I handled but the cases -- all the
 2 cases, really, that go on around the fire
 3 department because people come to me.
 4 Q Okay. So I want to ask you
 5 questions about discipline procedures for
 6 anything beyond a reprimand.
 7 A Okay.
 8 Q I'm not going to ask you about the
 9 disciplinary procedures for a reprimand.
 10 A Okay.
 11 Q So are you familiar of any
 12 procedures that are relevant to discipline
 13 beyond a reprimand?
 14 A Yes.
 15 Q And what is that procedure?
 16 A The procedures for imposing
 17 discipline on a firefighter in the City of
 18 Los Angeles basically is the department is
 19 first made aware through a complaint, or --
 20 or they're just made aware of some violation,
 21 some misconduct.
 22 They assign that -- they open a
 23 case. They assign that case to a department
 24 investigator.
 25 The investigator then gathers the

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1 rights.
 2 Q What is a board of rights?
 3 A A board of rights is basically the
 4 department's version of an administrative
 5 trial.
 6 There's three chiefs who serve on
 7 the board who are randomly selected. They
 8 are the ultimate decider, the department.
 9 And it's the department versus the
 10 member and the member is -- is represented by
 11 a Union rep oftentimes. There's opening and
 12 closing statements.
 13 Witnesses are called.
 14 Evidence is presented. It's a --
 15 I'd say kind of similar to this, just a
 16 different venue.
 17 Q Okay. And where is the right to a
 18 board of rights set forth?
 19 A Members are afforded the right to a
 20 board of rights pursuant to 1060 of the city
 21 charter.
 22 Q Okay. I would like to direct your
 23 attention to the exhibit binder in front of
 24 you, which is Union's exhibits. I'd like you
 25 to turn to Union Exhibit 3.

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1 evidence, interviews witnesses, interviews
 2 the subject.
 3 Once the investigator's complete
 4 with his investigation, he paraphrases what
 5 everybody says into a report. That report is
 6 then submitted to the chiefs at the
 7 Professional Standards Division.
 8 The chiefs at the Professional
 9 Standards Division then determine whether or
 10 not discipline is warranted.
 11 If discipline is warranted, they
 12 serve the member with the discipline in what
 13 is known as a Skelly packet. That Skelly
 14 packet has essentially the evidence against
 15 the member as well as the proposed
 16 discipline.
 17 The member at that time has the
 18 opportunity to respond to the Skelly packet,
 19 and then the Skelly officer, after the
 20 response, then makes a determination as to
 21 whether or not he's going to change the
 22 proposed discipline or keep it the same.
 23 After that decision is made, the
 24 member then has the opportunity, if he's
 25 still not happy, to request a board of

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1 (Witness complied.)
 2 BY MS. MARTINEZ:
 3 Q And when you're there, take a
 4 moment to look through the three-page
 5 document, and when you're done, please let me
 6 know.
 7 A Oh, jeez. This is like an 8.5.
 8 Okay. Give me all of them.
 9 ARBITRATOR PEREA: It doesn't get
 10 any better, I'll tell you that --
 11 MR. HALL: That's new.
 12 ARBITRATOR PEREA: -- as you get
 13 older.
 14 (Document reviewed by the witness.)
 15 THE WITNESS: Okay.
 16 BY MS. MARTINEZ:
 17 Q Okay. Are you familiar with this
 18 document?
 19 A Yes, I am.
 20 Q And what is this document?
 21 A It's section 1060 of the city
 22 charter.
 23 Q Okay. And where does it address
 24 the procedure requirements before discipline
 25 can be imposed?

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1 A If you look -- 1060, Section (a),
 2 the second paragraph where it reads:
 3 "No member of the fire
 4 department shall be suspended,
 5 removed, or otherwise
 6 separated from the service of
 7 the fire department other
 8 than by resignation except
 9 for good and sufficient cause
 10 shown upon a finding of guilty
 11 of any specific charge or
 12 charges assigned as cause
 13 or causes after a full, fair,
 14 and impartial hearing before a
 15 board of rights."
 16 Q Okay. Thank you.
 17 Would you -- I apologize.
 18 Look at section 1060(b), "B" as
 19 in "boy," where it says "Temporary Relief
 20 from Duty."
 21 Do you see that?
 22 A Yes.
 23 Q Okay. I would like you to explain.
 24 Looking at (b)(1) --
 25 A Okay.

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1 in practice, the member stays on duty. And
 2 even after he selects, stays on duty with
 3 pay. And even after he selects his chiefs,
 4 he remains getting paid.
 5 Q Okay. And please look at
 6 1060(b)(3).
 7 And in practice, how has this
 8 section been implemented?
 9 A In practice, (b)(3) basically
 10 allows for the fire chief to keep the member
 11 on duty with pay, as I stated, with regards
 12 to (b)(2) for member-opted board of rights.
 13 So basically for member-opted board
 14 of rights, members stay on duty after they
 15 pick their chiefs --
 16 Q Okay.
 17 A -- and with pay.
 18 Q All right. In practice, does
 19 (b)(1) apply when the intended discipline is
 20 over 30 days?
 21 A Yes. The department cannot give
 22 proposed discipline in excess of 30 days. If
 23 they want anything more severe than that,
 24 then the proposed discipline is a board of
 25 rights.

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1 Q -- in practice, how has this
 2 section been implemented?
 3 (Document reviewed by the witness.)
 4 THE WITNESS: So this is when a
 5 member is waiting for his board of rights.
 6 He oftentimes remains on duty working until
 7 his board of rights.
 8 Once he picks his board of rights,
 9 selects -- actually selects the chiefs, the
 10 member is then placed off duty without pay.
 11 BY MS. MARTINEZ:
 12 Q Okay. And look at 1060(b)(2).
 13 In practice, how has this section
 14 been implemented?
 15 A This is a little different than (1)
 16 where -- (1) is when the department proposes
 17 a board of rights. In (2), this is known as
 18 a "member-opted board of rights."
 19 When the department proposes
 20 30 days or less for suspension and if the
 21 member is not okay with that, if he would
 22 like to try to challenge that, then the
 23 member has the opportunity to request a board
 24 of rights, and he's given a board of rights.
 25 In practice, the member -- again,

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1 And then you go to a board of
 2 rights, you have your hearing, and then the
 3 three chiefs decide what the outcome is.
 4 Q Thank you.
 5 Is there a point in the discipline
 6 procedure when the department has, by
 7 practice, placed the member off duty without
 8 pay?
 9 A Without -- yes.
 10 Q And when is that?
 11 A When you're going through your
 12 board of rights and you select the chiefs,
 13 you -- you finally actually select the
 14 chiefs, and you know who will be presiding
 15 over your case.
 16 Q Okay. And except for the
 17 underlying grievance -- so put this aside --
 18 is there a practice where the department
 19 places unit members off duty without pay
 20 anytime before the unit member selects a
 21 board?
 22 A No.
 23 Q Are bargaining unit members ever
 24 placed off-duty as early as the beginning of
 25 an investigation?

<p style="text-align: right;">Page 54</p> <p>1 A Technically, they're not placed 2 off-duty at the beginning of an 3 investigation. 4 For more severe allegations -- so, 5 for example, if there's allegations that a 6 member committed a felony, something 7 severely -- something serious where the 8 department believes that the public could be 9 in jeopardy if the member continues to serve 10 the public in his normal capacity, that 11 member, he's not placed off-duty, he's 12 detailed out of the field to the Professional 13 Standards Division, which is our version of 14 the internal affairs. 15 On the Professional Standards 16 Division, more often than not, probably, 17 like, 99 percent of the time in those severe 18 cases, we'll just tell the member to stay at 19 home. 20 He is required to call in, report 21 in every morning by a certain time and needs 22 to be able to get to basically the 23 Professional Standards Division within 24 30 minutes of a phone call. 25 During this entire time, when the</p>	<p style="text-align: right;">Page 55</p> <p>1 member is basically detailed home, he still 2 remains paid. 3 Q Oh, okay. That was my next 4 question. 5 Is the procedure you just described 6 when a member is -- well, the -- the big 7 procedure about 1060 as it applies to 8 discipline, that procedure, is that always 9 followed when a member is subject to 10 suspension or termination? 11 A Yes. 12 Q And how long has this been the 13 practice? 14 A As far as firsthand knowledge, 15 since 2008, since I was first elected on the 16 U.F.L.A.C. executive board. I'm sure things 17 did not change the first day I stepped into 18 office in 2008. 19 So I'm sure it was that case before 20 that, but all I can speak of is from 2008 21 forward, that has been the practice. 22 Q Okay. I'm going to ask you some 23 questions about the COVID-19 vaccine mandate. 24 A Okay. 25 Q By way of background, in or around</p>
<p style="text-align: right;">Page 56</p> <p>1 August 2021, the City passed an ordinance 2 regarding COVID-19 requiring vaccination of 3 all employees. 4 Are you familiar with that 5 ordinance? 6 A Yes, I am. 7 Q And can you just give a very brief 8 summary of your understanding of the import 9 of the ordinance. 10 A The -- the ordinance basically says 11 all City employees need to be vaccinated 12 against COVID-19 or get an approved exemption 13 for religious or medical reasons. 14 Q Okay. I would like to direct your 15 attention to Union Exhibit 4. Please review 16 it. And when you're done, please let me 17 know. Okay? 18 (Document reviewed by the witness.) 19 THE WITNESS: I'm done. 20 BY MS. MARTINEZ: 21 Q Okay. Are you familiar with what's 22 been marked as Union Exhibit 4? 23 A I am. 24 Q And what is this? 25 A That is the city ordinance that</p>	<p style="text-align: right;">Page 57</p> <p>1 requires City employees to become vaccinated 2 against COVID-19 or get an exemption. 3 Q Okay. And are you aware of whether 4 or not there are any terms in the ordinance 5 that regard consequences for noncompliance? 6 A I am aware, and there are no 7 consequences listed in the ordinance. 8 Q Okay. And did U.F.L.A.C. demand a 9 bargain relevant to the ordinance? 10 A Yes, we did. 11 Q And what did U.F.L.A.C. demand to 12 bargain over? 13 A We demanded to bargain over the 14 consequences of noncompliance, what happens 15 to you, the discipline if you do not become 16 vaccinated and/or do not get a exemption 17 approved. 18 Q Okay. And did the sitting 19 U.F.L.A.C., in fact, engage in this 20 bargaining? 21 A Yes, we did. 22 Q How do you know? 23 A I was part of that negotiations. 24 Q And who else bargained on behalf of 25 the Union?</p>

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1 A President Freddy Escobar, Adam
 2 Walker, Domingo Albarran, and you as well,
 3 Dana Martinez.
 4 Q And do you recall who bargained on
 5 behalf of the department?
 6 A Yes, I do.
 7 Q And who is that?
 8 A Paul Gerard from the City
 9 administrative office was the lead. Tara
 10 Messina was also there.
 11 There was another gentleman who
 12 came in here and there. I don't know his
 13 full name, and I believe his first name was
 14 Sky. And then Chief Talamantes was also
 15 there.
 16 Q And what was the focus of the
 17 bargaining?
 18 A Basically on the consequences, the
 19 discipline of what happens to our members if
 20 they're not in compliance with the city
 21 ordinance.
 22 Q And what was the outcome of
 23 bargaining?
 24 A The City walked away from the
 25 table. They -- they declared impasse, and

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1 Q Who was that?
 2 A Paul Gerard.
 3 Q Okay. And I'd like you to look at
 4 the first line under "general provisions."
 5 It says:
 6 "This -- the procedures
 7 described herein shall apply
 8 only to corrective action."
 9 Do you see that phrase "corrective
 10 action"?
 11 A Yes, I do.
 12 Q And did Mr. Gerard explain what was
 13 meant by "corrective action"?
 14 A Yes, he did.
 15 Q What do you recall he said?
 16 A Basically, it was discipline.
 17 And if members didn't comply with
 18 the city ordinance, the discipline could lead
 19 to termination.
 20 Q Okay. Is it your understanding
 21 that the Last, Best, and Final is applicable
 22 to all City employees?
 23 A Yes.
 24 Q All right. And what are the
 25 consequences for noncompliance in the Last,

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1 then they unilaterally implemented their
 2 Last, Best, and Final offer.
 3 Q All right. I would like you to
 4 turn to Union Exhibit 5.
 5 (Witness complied.)
 6 BY MR. WAGNER:
 7 Q Please take a moment to look
 8 through this five-page document, and let me
 9 know when you're done.
 10 (Document reviewed by the witness.)
 11 THE WITNESS: I'm done.
 12 BY MR. WAGNER:
 13 Q Are you familiar with this
 14 document?
 15 A Yes, I am.
 16 Q And what is it?
 17 A It's the City's Last, Best, and
 18 Final offer.
 19 Q Okay. And was this proposal made
 20 to U.F.L.A.C.?
 21 A Yes, it was.
 22 Q And did anybody on the City
 23 bargaining team explain the provisions to
 24 U.F.L.A.C.?
 25 A Yes.

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1 Best, and Final?
 2 A Immediate corrective action.
 3 Q Where does it state that?
 4 A It states it in a couple of spots.
 5 (Document reviewed by the witness.)
 6 THE WITNESS: If you go to page 2,
 7 paragraph 3, second sentence where it reads:
 8 "Failure to sign or comply
 9 with the requirements of the
 10 notice shall constitute failure
 11 to meet a condition of employment
 12 and shall result in appropriate
 13 and immediate corrective action.
 14 On page 3, the first full
 15 paragraph, the first sentence where it reads:
 16 "If an employee does not
 17 show proof of full compliance
 18 by the close of business on
 19 December 18th, 2021, the
 20 employee will be subject to
 21 corrective action."
 22 BY MS. MARTINEZ:
 23 Q Okay. Are there any provisions
 24 that apply uniquely to U.F.L.A.C. as far as
 25 implementing corrective action?

<p style="text-align: right;">Page 62</p> <p>1 A Yes.</p> <p>2 Q And where are -- can you show us</p> <p>3 where that is?</p> <p>4 A Same paragraph, page 3, first full</p> <p>5 paragraph, the very next sentence where it</p> <p>6 reads:</p> <p>7 "For sworn employees</p> <p>8 employed by the Los Angeles</p> <p>9 Fire Department to proceed to</p> <p>10 a board of rights, the City will</p> <p>11 be -- the City will abide by</p> <p>12 all applicable charter and other</p> <p>13 legal requirements."</p> <p>14 Q Are all members of U.F.L.A.C.</p> <p>15 sworn?</p> <p>16 A Yes.</p> <p>17 Q And did the City implement its</p> <p>18 Last, Best, and Final?</p> <p>19 A Yes, they did.</p> <p>20 Q I would like to direct your --</p> <p>21 oops, excuse me.</p> <p>22 Please turn to Union Exhibit 6.</p> <p>23 (Document reviewed.)</p> <p>24 BY MS. MARTINEZ:</p> <p>25 Q Please look at this document, and</p>	<p style="text-align: right;">Page 63</p> <p>1 when you're done, please let me know.</p> <p>2 (Document reviewed by the witness.)</p> <p>3 THE WITNESS: Done.</p> <p>4 BY MS. MARTINEZ:</p> <p>5 Q Are you familiar with this</p> <p>6 document?</p> <p>7 A Yes, I am.</p> <p>8 Q And what is this document?</p> <p>9 A It's the city council resolution</p> <p>10 that implements the Last, Best, and Final</p> <p>11 offer.</p> <p>12 Q And where does it say that?</p> <p>13 A If -- if you turn to the very last</p> <p>14 page, so page 4, the very last paragraph,</p> <p>15 paragraph 6, it reads:</p> <p>16 "Effective immediately,</p> <p>17 the mayor, through the</p> <p>18 appointing authorities, shall</p> <p>19 implement the terms and</p> <p>20 conditions set forth in the</p> <p>21 City's October 14th, 2021, Last,</p> <p>22 Best, and Final offer regarding</p> <p>23 consequences for noncompliance</p> <p>24 with the mandatory reporting and</p> <p>25 vaccination conditions of</p>
<p style="text-align: right;">Page 64</p> <p>1 employment."</p> <p>2 Q Thank you.</p> <p>3 Now -- sorry -- I'm going back up</p> <p>4 one question with regard to the Last, Best,</p> <p>5 and Final.</p> <p>6 Is there any provision in the Last,</p> <p>7 Best, and Final that proposes to place</p> <p>8 employees on unpaid leave as a consequence of</p> <p>9 noncompliance?</p> <p>10 A No.</p> <p>11 Q Now, with regard to the resolution,</p> <p>12 is there any provision in the resolution that</p> <p>13 places employees on unpaid leave as a</p> <p>14 consequence for noncompliance?</p> <p>15 A No, there is not.</p> <p>16 Q Thank you.</p> <p>17 MS. MARTINEZ: Mr. Arbitrator, I</p> <p>18 have no more questions.</p> <p>19 Should I ask to -- I don't know --</p> <p>20 are the exhibits already admitted, or do I</p> <p>21 need to ask for the ones we've reviewed so</p> <p>22 far to be admitted?</p> <p>23 ARBITRATOR PEREA: I think we've</p> <p>24 taken care of that. All documents have been</p> <p>25 received.</p>	<p style="text-align: right;">Page 65</p> <p>1 MS. MARTINEZ: Oh, received? Okay.</p> <p>2 Then I have no further questions</p> <p>3 for the witness.</p> <p>4 ARBITRATOR PEREA: All right. Do</p> <p>5 you need a short break?</p> <p>6 MS. JOHNSON-BROOKS: Yeah, we will</p> <p>7 take a short break.</p> <p>8 ARBITRATOR PEREA: Oh, sure, yes.</p> <p>9 Off the record, then.</p> <p>10 MS. MARTINEZ: Oh, yeah. I'll take</p> <p>11 it --</p> <p>12 MS. JOHNSON-BROOKS: Okay. All</p> <p>13 right.</p> <p>14 THE COURT REPORTER: Off the</p> <p>15 record?</p> <p>16 ARBITRATOR PEREA: Yes, we're off</p> <p>17 the record.</p> <p>18 I'm sorry.</p> <p>19 (Whereupon, a recess was held</p> <p>20 from 11:10 a.m. to 11:23 a.m.)</p> <p>21 ARBITRATOR PEREA: All right. We</p> <p>22 are back on the record.</p> <p>23 Cross-exam, please.</p> <p>24 MS. JOHNSON-BROOKS: Yes.</p> <p>25 ///</p>

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1 CROSS-EXAMINATION
 2 * * *
 3 BY MS. JOHNSON-BROOKS:
 4 Q Right.
 5 And, Captain Ho, do you acknowledge
 6 that the COVID-19 pandemic was unprecedented
 7 in your experience? Correct?
 8 (Whereupon, a discussion held off
 9 the record.)
 10 ARBITRATOR PEREA: Are you okay?
 11 THE COURT REPORTER: No. No, it's
 12 okay. Yeah. It's okay. I just didn't
 13 realize he sat behind you, and I went to
 14 look.
 15 MS. JOHNSON-BROOKS: Oh, sorry.
 16 THE COURT REPORTER: That's okay.
 17 I was looking down and working. I didn't
 18 know where he moved. I couldn't see him at
 19 all.
 20 MS. JOHNSON-BROOKS: Did you hear
 21 the question?
 22 THE COURT REPORTER: I was like,
 23 "Oh, my, No."
 24 MS. JOHNSON-BROOKS: Sorry.
 25 THE COURT REPORTER: It's fine now.

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1 And now, you testified earlier that
 2 in a typical disciplinary investigation,
 3 there's interviews, there's a report, Skelly
 4 packet, the member can respond, and this
 5 process can take up to a year; is that right?
 6 A Yes.
 7 Q Okay. And so are you -- is it your
 8 proposal that the unvaccinated firefighters
 9 remain on duty through this process you
 10 described?
 11 MS. MARTINEZ: I'm just going to
 12 object to vague as to "your proposal."
 13 BY MS. JOHNSON-BROOKS:
 14 Q Is it your position --
 15 MS. MARTINEZ: Okay. I'm going to
 16 object --
 17 MS. JOHNSON-BROOKS: -- as a --
 18 MS. MARTINEZ: -- to the relevance.
 19 MS. JOHNSON-BROOKS: Okay.
 20 MS. MARTINEZ: Oh, can I finish?
 21 MS. JOHNSON-BROOKS: Oh, yeah,
 22 sorry.
 23 MS. MARTINEZ: Oh, yeah. The
 24 relevance of his position, I'm just a little
 25 confused.

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1 Sorry.
 2 Go ahead.
 3 BY MS. JOHNSON-BROOKS:
 4 Q All right. So I said, Captain Ho,
 5 do you acknowledge that the COVID-19 pandemic
 6 was unprecedented in your experience?
 7 A Yes.
 8 Q And in your extensive experience
 9 since 2008, have you represented a member
 10 while a declaration of local emergency was in
 11 effect?
 12 A I can't tell you for sure, but, no,
 13 I don't think so.
 14 Q Okay. All right. But not with a
 15 global pandemic --
 16 A No.
 17 Q -- in your -- okay.
 18 A Correct.
 19 Q All right. And prior to 2021,
 20 there was no past practice for how to remove
 21 employees for failure to be vaccinated in the
 22 midst of a global pandemic; is that right?
 23 A If you frame the question that
 24 specific, yes.
 25 Q Okay. Great.

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1 ARBITRATOR PEREA: All right. You
 2 can rephrase the question --
 3 MS. JOHNSON-BROOKS: Yes.
 4 ARBITRATOR PEREA: -- to clarify
 5 it.
 6 MS. JOHNSON-BROOKS: Yes.
 7 BY MS. JOHNSON-BROOKS:
 8 Q In -- in -- in your long history
 9 that you described of representing members,
 10 do you believe that members should --
 11 unvaccinated firefighters should have
 12 remained on -- at work during the process I
 13 just described --
 14 MS. MARTINEZ: Relevance.
 15 MS. JOHNSON-BROOKS: -- the
 16 disciplinary process.
 17 MS. MARTINEZ: Oh, relevance of his
 18 personal opinion.
 19 MS. JOHNSON-BROOKS: You can
 20 answer.
 21 ARBITRATOR PEREA: In your capacity
 22 as --
 23 MS. JOHNSON-BROOKS: Yes.
 24 ARBITRATOR PEREA: -- a Union
 25 official.

<p style="text-align: right;">Page 70</p> <p>1 THE WITNESS: As a Union official?</p> <p>2 MS. JOHNSON-BROOKS: Yes.</p> <p>3 ARBITRATOR PEREA: Yes, please.</p> <p>4 THE WITNESS: I believe, yes, they</p> <p>5 could have remained on work -- at work.</p> <p>6 BY MS. JOHNSON-BROOKS:</p> <p>7 Q Okay. And although they were</p> <p>8 unvaccinated during the pandemic?</p> <p>9 A Yes, it -- again, the Union</p> <p>10 position was paid -- if you test and wear a</p> <p>11 mask, you should remain on duty.</p> <p>12 Q Okay. All right. And the members</p> <p>13 that were sent home without pay, is it also</p> <p>14 your position as a Union official that those</p> <p>15 members should have been paid while at home?</p> <p>16 A Yes.</p> <p>17 Q Okay. And would those positions --</p> <p>18 those positions would have to be backfilled,</p> <p>19 right, because they're at home?</p> <p>20 A Yes, as it -- always the case with</p> <p>21 all discipline cases.</p> <p>22 Q Okay. And an estimation of</p> <p>23 approximately how many firefighters would be</p> <p>24 at home without pay? Do you know that?</p> <p>25 A With regards to the vaccine mandate</p>	<p style="text-align: right;">Page 71</p> <p>1 or --</p> <p>2 Q Yes, with the vaccine mandate.</p> <p>3 A I could guess. I'm not sure if you</p> <p>4 want me to guess.</p> <p>5 Q No, I don't want you to guess.</p> <p>6 A Okay.</p> <p>7 Q And then any idea as to the City,</p> <p>8 why having thousands of employees at home</p> <p>9 unpaid -- any idea of the cost to the City?</p> <p>10 A No idea.</p> <p>11 Q Okay. All right. And your members</p> <p>12 are getting a board of rights; is that</p> <p>13 correct?</p> <p>14 The unvaccinated members who failed</p> <p>15 to comply with the condition of employment --</p> <p>16 A Yes.</p> <p>17 Q -- they are getting a board of --</p> <p>18 A Yes.</p> <p>19 Q -- rights; right?</p> <p>20 And so -- and they can pick their</p> <p>21 three chief officers; is that correct?</p> <p>22 A Yes.</p> <p>23 Q All right. And the firefighters</p> <p>24 that are placed off-duty for failing to</p> <p>25 comply with the mandate, they can return if</p>
<p style="text-align: right;">Page 72</p> <p>1 they get vaccinated; correct?</p> <p>2 A Yes.</p> <p>3 Q And if they file an exemption, they</p> <p>4 can return; is that correct?</p> <p>5 A I believe so, yes.</p> <p>6 Q Okay. And so in your -- in the</p> <p>7 other disciplinary cases you described, is</p> <p>8 there any mechanism where members can return</p> <p>9 to work while waiting for their boards of --</p> <p>10 board of rights?</p> <p>11 A Can you repeat the question.</p> <p>12 Q Okay. Yes.</p> <p>13 A I don't understand.</p> <p>14 Q So you just testified that members</p> <p>15 who are placed off duty for failing to comply</p> <p>16 with the vaccine mandate, they can simply</p> <p>17 return to work if they get vaccinated or file</p> <p>18 an exemption.</p> <p>19 So my question is, in your</p> <p>20 experience with all the disciplinary cases</p> <p>21 you've described that you've handled, is</p> <p>22 there any other time an employee facing</p> <p>23 discipline can be returned to work while</p> <p>24 waiting for their board of rights?</p> <p>25 A If they are -- no.</p>	<p style="text-align: right;">Page 73</p> <p>1 MS. JOHNSON-BROOKS: All right. I</p> <p>2 think that's all. Okay.</p> <p>3 No further questions.</p> <p>4 ARBITRATOR PEREA: All right.</p> <p>5 Redirect?</p> <p>6</p> <p>7</p> <p>8 REDIRECT EXAMINATION</p> <p>9 * * *</p> <p>10 BY MS. MARTINEZ:</p> <p>11 Q I'll start with that last question.</p> <p>12 You gave testimony about the city</p> <p>13 charter section 1060, and you gave testimony</p> <p>14 about experience representing members where</p> <p>15 the department intended to -- to impose</p> <p>16 discipline less than 30 days.</p> <p>17 Do you recall that testimony?</p> <p>18 A Yeah. Yes.</p> <p>19 Q And for those employees, are they</p> <p>20 allowed to return to work --</p> <p>21 A Yes.</p> <p>22 Q Let me finish. I'm sorry.</p> <p>23 -- pending the board of rights?</p> <p>24 A Yes, they are.</p> <p>25 Q Okay. Thank you.</p>

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1 Now, are you aware of when there
 2 are not any U.F.L.A.C. bargaining members who
 3 were not vaccinated who were allowed to
 4 continue to work?
 5 MS. JOHNSON-BROOKS: Objection;
 6 relevance, calls for speculation.
 7 ARBITRATOR PEREA: Overruled
 8 But can you clarify the question. I'm not quite
 9 clear --
 10 MS. MARTINEZ: Okay. Yeah.
 11 ARBITRATOR PEREA: -- as to what
 12 you're referring to.
 13 MS. MARTINEZ: Well, it stems from
 14 the direct examination where whether or not
 15 non-vaccinated employees were allowed to
 16 work.
 17 BY MS. MARTINEZ:
 18 Q Let me ask you a more directed
 19 question.
 20 Are you aware of any U.F.L.A.C. Bargaining
 21 unit members who are not vaccinated, but who the
 22 department allowed to continue to work being
 23 unvaccinated?
 24 A Only if they have an approved
 25 exemption letter; otherwise, they're not

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1 ARBITRATOR PEREA: Captain, thank
 2 you very much.
 3 THE WITNESS: Thank you.
 4 ARBITRATOR PEREA: I appreciate it.
 5 (Whereupon, Captain Chuong Ho was
 6 excused and stepped down from the
 7 witness stand.)
 8 ARBITRATOR PEREA: You can call the next
 9 witness.
 10 MS. MARTINEZ: Our next witness is
 11 Adam Walker.
 12 ARBITRATOR PEREA: Good morning,
 13 sir.
 14 (Whereupon, Adam Walker took the
 15 witness stand.)
 16 ARBITRATOR PEREA: Could you please
 17 state your name, spell both the first and
 18 last names for the record.
 19 THE WITNESS: Adam, A-D-A-M.
 20 Walker, W-A-L-K-E-R.
 21 ARBITRATOR PEREA: Thank you.
 22 And if you'd raise your right and
 23 swear to tell the truth, the whole truth, and
 24 nothing but the truth.
 25 THE WITNESS: Yes, sir.

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1 allowed to return.
 2 Q So are you aware if there's any
 3 members who had approved exemptions?
 4 A I am not.
 5 Q Are you aware of any members who
 6 applied for exemptions?
 7 A Yes.
 8 Q And were they allowed to work
 9 during the time when their exemption
 10 application was being processed?
 11 A Yes.
 12 Q Did you participate in bargaining
 13 with any other City union?
 14 A In bargaining with other City
 15 unions?
 16 Q Yeah.
 17 A No.
 18 Q Okay. And are you aware of what
 19 the past practice as far as discipline for
 20 other City unions are?
 21 A I am not.
 22 MS. MARTINEZ: No further
 23 questions.
 24 ARBITRATOR PEREA: Anything else?
 25 MS. JOHNSON-BROOKS: Nope.

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1 ARBITRATOR PEREA: Thank you, sir.
 2
 3 ADAM WALKER,
 4 called as a witness by the Union, and sworn
 5 in by the Arbitrator, was examined and
 6 testified as follows:
 7
 8 DIRECT EXAMINATION
 9 * * *
 10 BY MS. MARTINEZ:
 11 Q Mr. Walker, by whom are you
 12 employed?
 13 A The Los Angeles Fire Department.
 14 Q And how long have you been employed
 15 by L.A.F.D.?
 16 A Just over 15 years.
 17 Q Starting with the first, what ranks
 18 have you held and, if you can recall, the
 19 length of time you held each rank?
 20 A During the drill tower, I was
 21 Firefighter I and became Firefighter II after
 22 the drill tower.
 23 Altogether with the drill tower
 24 time, it was 18 months in those two ranks,
 25 promoted to Firefighter III.

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1 And then I promoted to Apparatus
 2 Operator in 2016.
 3 Q Are you currently an apparatus
 4 officer?
 5 A Operator.
 6 Q Operator?
 7 A Yes, ma'am. Yes, ma'am.
 8 Q Sorry.
 9 A.O. Walker, are you a member of
 10 the U.F.L.A.C.?
 11 A Yes, ma'am.
 12 Q And for how long?
 13 A 15 years.
 14 Q Have you held any representative
 15 positions with U.F.L.A.C.?
 16 A Yes, ma'am.
 17 Q And may you list the positions
 18 you've held?
 19 A Yes.
 20 For four years, I -- I participated
 21 as a Union steward. I was elected on the
 22 board for the first time in 2016 or at the
 23 end of 2015 as a director. And I was a
 24 director for four years, and I became the
 25 secretary.

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1 disciplinary matters?
 2 A Yes, ma'am.
 3 Q Can you please explain what your
 4 experience has been?
 5 A Yes.
 6 Typically, members will reach out
 7 for representation upon being notified that
 8 they're under investigation, or we'll get
 9 notification from the office staff that a
 10 member's reached out to the office for
 11 representation, so we get in contact with the
 12 member.
 13 They share their notification with
 14 us, we assist them with setting up the
 15 interview with Professional Standards
 16 Division.
 17 And the same goes for if -- if
 18 somebody's notified as a witness, they --
 19 they're provided representation as well.
 20 Pretty much with them and corresponding for
 21 them throughout the procedure as far as the
 22 interviews, and things like that.
 23 And then we're included in the --
 24 what the decision or the proposed action is
 25 after it's been adjudicated at P.S.D., where

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1 And this is the -- heading into the
 2 fourth year as a secretary.
 3 And then I was also elected on the
 4 negotiations team for all of those terms.
 5 Q Okay. So you have experience with
 6 collective bargaining; is that correct?
 7 A Yes, ma'am.
 8 Q And can you generally describe what
 9 your experience has been participating in
 10 bargaining?
 11 A Negotiating the contracts.
 12 There's been two in that tenure
 13 that I described, the 2016 contract or the
 14 full M.O.U. and the 2019 full M.O.U. as well
 15 as in recent past two re-openers for the
 16 current contract and M.O.U.
 17 Q Have you ever participated in
 18 bargaining over letters of agreement?
 19 A Yes, ma'am.
 20 Q And for how long?
 21 A Throughout my tenure on -- on the
 22 board.
 23 Q Okay. As a Union representative,
 24 do you have any experience representing
 25 bargaining unit members relevant to

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1 they also provide the representative a Skelly
 2 packet, and we review that with the member.
 3 We set up a hearing within that
 4 packet, there's a date.
 5 And so we participate in the Skelly
 6 hearing with them.
 7 And then, you know, if it's all the
 8 way up to a board, for example, the members
 9 are then served their -- we call it the final
 10 part of Skelly, but it's this -- the decision
 11 after the fire chief hears from the Skelly
 12 officer.
 13 And then if it's a board of rights,
 14 for example, we just wait to hear from the
 15 department when they would like to arrange a
 16 meeting to select the board. All the way up
 17 to the board and then even arbitration.
 18 Q Okay. When you were testifying,
 19 you kept saying "we."
 20 What you just testified to, is that
 21 based on your personal experience?
 22 A My personal experience with
 23 members, yes.
 24 Q Okay. And have you represented
 25 members going through the board of rights

<p style="text-align: right;">Page 82</p> <p>1 procedure? 2 A Yes. 3 Q And for how long? 4 A Throughout my tenure on the board. 5 Q Okay. 6 A Seven years. 7 Q Seven years? 8 A Yes. 9 Q Okay. And are you also familiar 10 with discipline matters that are handled by 11 other representatives? 12 A Yes. 13 Q And how are you familiar? 14 A As a board, we're -- you know, we 15 work as a team and we collaborate at 16 executive board meetings to discuss matters 17 that are currently going on, things to learn 18 from. 19 There's always the ability to 20 learn, you know. 21 We get new members on the board, so 22 it's -- it's kind of an open discussion that 23 we obviously keep private within the board, 24 but we definitely take advantage of, you 25 know, being able to learn from each other and</p>	<p style="text-align: right;">Page 83</p> <p>1 discuss different cases. 2 Q All right. Are you familiar with 3 the L.A. City vaccine mandate? 4 A Yes, ma'am. 5 Q And did you participate in 6 bargaining over the consequences of 7 noncompliance? 8 A Yes, ma'am. 9 MS. JOHNSON-BROOKS: Objection; 10 just cumulative. 11 Will he be testifying to the exact 12 same thing that Captain Ho did? 13 MS. MARTINEZ: There's going to be 14 some evidence that serves for the purpose of 15 corroboration, but we are going to cover 16 other issues. 17 MS. JOHNSON-BROOKS: Okay. Because 18 I was just going to say we could stipulate to 19 certain facts that Captain Ho has already 20 testified about the ordinance and the 21 bargaining. And I know Chief Talamantes was 22 there. There's been an unfair about 23 bargaining. 24 So just to the extent that we can 25 streamline it, happy to do so.</p>
<p style="text-align: right;">Page 84</p> <p>1 MS. MARTINEZ: Okay. So let me try 2 this, then. 3 MS. JOHNSON-BROOKS: Okay. 4 MS. MARTINEZ: Do you stipulate to 5 Captain Ho's testimony as about who 6 participated in bargaining on the Union 7 committee? 8 MR. HALL: Yes. 9 MS. JOHNSON-BROOKS: Yes. 10 MS. MARTINEZ: And do you stipulate 11 to who participated in bargaining on behalf 12 of the City? 13 MS. JOHNSON-BROOKS: Right. I 14 believe it was in Paul Gerard, yes. Yes. 15 MR. HALL: Uh-huh. And his team -- 16 MS. JOHNSON-BROOKS: And his team, 17 yes. 18 MS. MARTINEZ: Okay. And do you 19 stipulate that the outcome of the bargaining 20 was that the City declared impasse and 21 implemented their "Last, Best, and Final"? 22 MS. JOHNSON-BROOKS: Yes. 23 MS. MARTINEZ: Okay. And do you 24 stipulate that during bargaining, Paul Gerard 25 explained that corrective action means</p>	<p style="text-align: right;">Page 85</p> <p>1 discipline? 2 MS. JOHNSON-BROOKS: I wasn't -- 3 no, I -- no, I don't stipulate to that. 4 MS. MARTINEZ: Okay. So maybe I'll 5 pick it up from there. 6 MS. JOHNSON-BROOKS: Okay. 7 ARBITRATOR PEREA: All right. 8 MS. JOHNSON-BROOKS: Right. 9 ARBITRATOR PEREA: Let's try that. 10 MS. JOHNSON-BROOKS: Great. 11 ARBITRATOR PEREA: Thank you. 12 MS. MARTINEZ: Thank you. 13 ARBITRATOR PEREA: Thank you. 14 BY MS. MARTINEZ: 15 Q Okay. So we just did some 16 speed-dating, and as where we are now, I'm 17 going to ask you some questions about the 18 Last, Best, and Final. 19 So before I do that, I just want to 20 make sure that you're familiar with it. 21 So will you please look at Union 22 Exhibit 5. 23 (Document reviewed by the witness.) 24 THE WITNESS: Okay. 25 ///</p>

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1 BY MR. WAGNER:
 2 Q Okay. Are you familiar with this
 3 document?
 4 A Yes, ma'am.
 5 Q Okay. And how are you familiar
 6 with this document?
 7 A I received it as far as being on
 8 the bargaining committee. I've read it
 9 several times.
 10 And my understanding of it is that
 11 it's based on the consequences that were
 12 imposed relevant to the vaccine ordinance.
 13 Q Okay. Look at the first line under
 14 general provisions where it says:
 15 "The procedures described
 16 herein shall apply only to
 17 corrective action."
 18 Do you see the term "corrective
 19 action"?
 20 A Yes, ma'am.
 21 Q When you were in bargaining, did
 22 anyone from the City's bargaining committee
 23 explain what was meant by "corrective
 24 action"?
 25 A Yes, ma'am.

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1 placing members off duty, leave without pay.
 2 Q And how do you know this?
 3 A I started receiving calls from
 4 members --
 5 Q And --
 6 A -- for representation. Sorry.
 7 Q And who came to you? Do you
 8 remember their names?
 9 A I remember some of them. I know I
 10 wouldn't be able to cite all of them. Aaron
 11 Brownell was one of them. Hayes, Jeff Ochoa.
 12 There was -- there were several.
 13 Q Okay. Then I will move on.
 14 And with regard to those who you can recall,
 15 what is it they told you when they came to you?
 16 ARBITRATOR PEREA: I don't want to
 17 generalize here. I don't know what each
 18 individual member told you.
 19 Can you recall a commonality in
 20 what was told to you by any of these
 21 individuals?
 22 THE WITNESS: Yes.
 23 ARBITRATOR PEREA: Okay. Let's
 24 talk about that, please. Tell us what they
 25 said that's in common with one and other,

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1 Q And first of all, who do you recall
 2 explained what that term means?
 3 A It was Paul Gerard from the C.O.'s
 4 office.
 5 Q And what do you recall how Paul
 6 Gerard explained during bargaining what was
 7 meant by "corrective action"?
 8 MS. JOHNSON-BROOKS: Objection;
 9 hearsay.
 10 ARBITRATOR PEREA: No, it would be
 11 an exception if he's simply testifying as to
 12 what was said in bargaining. Now, that's the
 13 question.
 14 What was said by Paul Gerard in
 15 bargaining?
 16 THE WITNESS: He made it clear that
 17 it was discipline.
 18 BY MS. MARTINEZ:
 19 Q Okay. And did the department
 20 actually begin to discipline noncompliant
 21 unit members -- bargaining unit members?
 22 A Yes.
 23 Q And what did the department do?
 24 A They provided members 48-hour
 25 notice and -- some point thereafter and

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1 please.
 2 THE WITNESS: They were all placed
 3 off-duty, leave without pay.
 4 BY MS. MARTINEZ:
 5 Q And did they provide to you any
 6 paperwork?
 7 A Yes.
 8 Q Sorry. Strike that. Let me try
 9 again.
 10 Did they provide to you paperwork
 11 relevant to being placed off duty without pay?
 12 A Yes.
 13 Q Okay. I would like to direct your
 14 attention to the exhibit binder before you.
 15 And one moment.
 16 If you can look at Union Exhibit 7.
 17 (Brief pause in proceedings.)
 18 BY MR. WAGNER:
 19 Q Please take a moment to look
 20 through the two pages, and when you're done,
 21 please let me know.
 22 (Document reviewed by the witness.)
 23 THE WITNESS: Okay.
 24 BY MS. MARTINEZ:
 25 Q All right. First of all, are you

<p style="text-align: right;">Page 90</p> <p>1 familiar with the document that's been marked 2 as Union Exhibit 7? 3 A Yes. 4 Q And what is it? 5 A It's a copy of an e-mail that was 6 sent to Firefighter Brownell for the L.A.F.D. 7 Valley Bureau with an attachment of a letter 8 that's notifying him that he's being placed 9 off-duty, leave without pay -- 10 Q Okay. 11 A -- in part. 12 Q And what is Mr. Brownell's rank? 13 A At this time, he was a firefighter. 14 Q And did Firefighter Brownell 15 provide you with the document that's been 16 marked as Union Exhibit 7? 17 A Yes. 18 Q Did you review this e-mail and -- 19 sorry, the e-mail and the attachment? 20 A Yes. 21 Q And did you draw any conclusions? 22 A Yes. 23 Q And what were your conclusions? 24 A One was that it wasn't -- it was -- 25 it was e-mailed, so that was an issue. It</p>	<p style="text-align: right;">Page 91</p> <p>1 wasn't hand-delivered or sent by mail, so 2 that it was not in the normal past practice 3 that I'm accustomed to. 4 And it was not consistent with the 5 Last, Best, and Final offer. 6 Q All right. I'm going to break 7 those down individually. 8 Let's first discuss the -- you 9 identified that it was e-mailed. 10 What was the issue with the fact 11 that it was e-mailed? 12 A According to the rules and regs of 13 the Los Angeles Fire Department, any notice 14 of disciplinary that's related to discipline 15 is to be delivered by hand or by certified 16 mail. 17 Q And are you familiar with the 18 L.A.F.D. rules and regulations? 19 A Yes. 20 Q How are you familiar with them? 21 A Other than being familiar with them 22 as my duty and being obedient to them, I am 23 into reading into them a lot more as a Union 24 representative for when members are 25 disciplined and seeing what the charges are,</p>
<p style="text-align: right;">Page 92</p> <p>1 as well as making sure that all members are 2 abiding by them. 3 Q All right. I would like to direct 4 your attention to the Union exhibit binder, 5 Union Exhibit 8. 6 Take a moment to look what's been 7 marked as Union Exhibit 8, and let me know 8 when you're done. 9 (Document reviewed by the witness.) 10 THE WITNESS: Okay. 11 MS. MARTINEZ: And I guess I'll 12 offer a stipulation that this is a -- not a 13 complete volume of the rules and regulations, 14 rather it's only an excerpt of section 17. 15 ARBITRATOR PEREA: Okay. I'm fine 16 with that. 17 MS. JOHNSON-BROOKS: Yes. 18 ARBITRATOR PEREA: Okay. 19 BY MS. MARTINEZ: 20 Q A.O. Walker, what is this document 21 that's been marked as Union Exhibit 8? 22 A The Los Angeles Fire Department 23 rules and regulations. 24 Q Okay. And, generally, what are the 25 rules and regulations?</p>	<p style="text-align: right;">Page 93</p> <p>1 A They are a set of policies and 2 procedures that govern the fire department, 3 and they're overseen by the board of fire 4 commissioners. 5 Q Okay. And may you turn the page to 6 section 17. 7 And do you identify a provision in 8 here that is relevant to reviewing the notice 9 and e-mail that was provided to Firefighter 10 Brownell? 11 A Yes. 12 Q And where is that? 13 A F, subsection (f). It's: 14 "Service of any notice, 15 order, or process required by 16 reason of disciplinary action 17 shall be made either by handing 18 the member a copy thereof 19 personally or by forwarding 20 such copy by registered mail 21 to his or her last known address 22 of department record." 23 Q Okay. Thank you. 24 You also mentioned, in reviewing 25 the e-mail and attachment, that you noticed</p>

<p style="text-align: right;">Page 94</p> <p>1 that normal past practices -- a normal past 2 practice was not followed. 3 Can you explain what past practice 4 you identified? 5 A Well, the -- the past practice of 6 would -- how members are -- are -- are placed 7 off-duty, and essentially that doesn't take 8 place until after they select the board is 9 the past practice that I'm aware of. 10 Q And what do you mean by being 11 "placed off-duty"? 12 A Without pay. 13 Q Okay. And at the time that you 14 received the notice from 15 Firefighter Brownell, were you aware of 16 whether or not Firefighter Brownell had 17 selected a board of rights? 18 A When I received the e-mail from 19 him? 20 Q Correct. 21 A I was not aware of that -- of 22 whether or not he had, but I became aware. 23 Q And what did you become aware of? 24 A That had he had not selected a 25 board.</p>	<p style="text-align: right;">Page 95</p> <p>1 Q You also mentioned that, in 2 reviewing the e-mail and attachment, that 3 it -- I can't read my writing, but I believe 4 you said it was not consistent with the Last, 5 Best, and Final; is that your testimony? 6 A Yes. 7 Q And how is that? 8 A Last, Best, and Final talked about 9 immediate corrective action and then 10 specifically talked about the fire department 11 or sworn members of the fire department and 12 police department respectively and our -- the 13 relevant sections of the city charter, as 14 well as all other loss as far as procedures. 15 Q I'm sorry. I'm a little unclear. 16 When you read the e-mail and the 17 attachment, how did that relate to the Last, 18 Best, and Final? 19 A Well, it was related to past 20 practice. But, I mean, nothing in there said 21 that members would be placed off-duty, leave 22 without pay. 23 Q Okay. Are you aware of whether 24 other members were served with this notice 25 and then placed off duty without pay before</p>
<p style="text-align: right;">Page 96</p> <p>1 selecting a board of rights? 2 A Yes. 3 Q Okay. I'm going to show you 4 another example. 5 May you please turn to Union 6 Exhibit 9. 7 (Witness complied.) 8 BY MR. WAGNER: 9 Q Take a moment to review what's been 10 marked as Union's Exhibit 9, and let me know 11 when you're done. 12 (Document reviewed by the witness.) 13 THE WITNESS: Okay. 14 BY MR. WAGNER: 15 Q Are you familiar with what's been 16 marked as Union Exhibit 9? 17 A Yes. 18 Q And how are you -- oh, sorry, 19 strike that. 20 What is Union Exhibit 9? 21 A It is an e-mail to Engineer Watkins 22 from L.A.F.D. Central Bureau with an 23 attachment, and that attachment is notifying 24 him of noncompliance and that he is being 25 placed off duty without pay until further</p>	<p style="text-align: right;">Page 97</p> <p>1 notice, pending disciplinary review. 2 Q Did you receive a copy of what's 3 been marked as Union Exhibit 9? 4 A Yes. 5 Q How? 6 A From the member. 7 Q Engineer Watkins? 8 A Yes, ma'am. 9 Q Okay. And are you aware of whether 10 or not when Engineer Watkins received this 11 e-mail, whether Engineer Watkins had selected 12 a board of rights? 13 A He had not selected a board of 14 rights. 15 MS. MARTINEZ: So I'm going to try 16 and formulate a stipulation relevant to the 17 subpoena duces tecum at this time as we 18 discussed at the beginning. 19 Offer that Union Exhibits 7 and 9 are 20 representative samples of the notification that 21 was sent via e-mail to all of the class members 22 and the grievants. 23 MS. JOHNSON-BROOKS: So stipulated. 24 ARBITRATOR PEREA: Thank you. 25 MS. MARTINEZ: All right. Thank</p>

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1 you.

2 BY MS. MARTINEZ:

3 Q In your practice representing

4 members and discipline procedures, what is

5 the practice as far as how does a department

6 notify members that they will be off duty

7 without pay?

8 A They're provided notice in person

9 or by certified mail.

10 Q Okay. And in your experience, at

11 what point are members notified that they're

12 being placed off duty without pay and

13 specifically what point in the disciplinary

14 procedure?

15 A After they select the board.

16 Q Okay. Are they provided notice at

17 that time?

18 A Yes.

19 Q And are the notices -- I know the

20 fire department has numbers assigned to

21 certain notices.

22 Are there certain numbered notices

23 that are provided by practice by the

24 department when a member is placed on leave

25 without pay?

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1 included in here? What is the notice of

2 what?

3 A It's a notice of that the -- a

4 board was selected. It has the

5 three battalion chiefs in this case that were

6 selected, and it schedules the hearing date

7 and time.

8 Q All right.

9 A In the future.

10 Q And can you tell, by looking at

11 this document, what date the member selected

12 the three chiefs?

13 A It was May 16th 2023.

14 Q Okay. Thank you.

15 Please turn the page to the second

16 page under Union Exhibit 10.

17 Are you familiar with this

18 document?

19 A Yes, I am.

20 Q And what is this document?

21 A This is the notification of

22 temporary relief from duty, and it's telling

23 the member that they're on leave without pay.

24 Q Okay. Is this the form 502?

25 A Yes, ma'am.

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1 A Yes.

2 Q And what are those numbers?

3 A The notice of leave without pay is

4 form -- it's F-502.

5 Q Okay. I'm going refer your

6 attention to what's been marked Union

7 Exhibit 10.

8 A That's 503.

9 Q There's two pages in Union 10, if

10 you could look through both pages.

11 A Got it.

12 Sorry.

13 Q Okay. First of all, are you

14 familiar with the two documents that are

15 behind Union Exhibit 10?

16 A Yes.

17 Q Okay. Let's talk about the first

18 document.

19 Are you familiar with the first

20 document?

21 A Yes.

22 Q And what is it?

23 A It's a notification of a

24 board-of-rights hearing, form 503.

25 Q And what -- what information is

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1 Q And where is that indicated?

2 A In the upper left corner.

3 Q Okay. And by looking at this

4 notice, can you tell what date the member was

5 relieved from duty?

6 A Yes, it's also May 16th, 2023 at

7 the same time.

8 Q The same time of what?

9 A When they were served to the

10 member.

11 THE COURT REPORTER: "When they

12 were served...?"

13 I couldn't hear you.

14 THE WITNESS: When they were served

15 with the form.

16 THE COURT REPORTER: Just kind of

17 keep your voice up. Thanks.

18 THE WITNESS: Sorry.

19 THE COURT REPORTER: Uh-huh.

20 BY MS. MARTINEZ:

21 Q Now, looking at form 503 and 502,

22 are these just representative samples of the

23 types of notices that are provided to all

24 U.F.L.A.C. bargaining unit members when they

25 select a board and are placed off-duty?

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1 A Yes.
 2 Q Thank you.
 3 I think that was a little unclear,
 4 so let me say it in a different way.
 5 Do all unit members whose
 6 discipline proceeds to a board of rights and
 7 who are placed off-duty received both of
 8 these notices?
 9 A If they're placed off -- yes, if
 10 they're placed off-duty.
 11 Q Okay. Thank you.
 12 MS. MARTINEZ: Okay. I have no
 13 further questions at this time.
 14 ARBITRATOR PEREA: Need a break or
 15 cross?
 16 MR. HALL: Five minutes.
 17 ARBITRATOR PEREA: Five minute
 18 break. All right. We're off the record.
 19 (Whereupon, a recess was held
 20 from 12:05 p.m. to 12:15 p.m.)
 21 ARBITRATOR PEREA: We're back on
 22 the record.
 23 ARBITRATOR PEREA: Okay.
 24 Cross-examination.
 25 ///

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1 9 -- okay. I'll -- I'll go with seven.
 2 Exhibit 7, it states that the
 3 member was being placed off-duty for failure
 4 to meet a condition of employment; correct?
 5 A Yes.
 6 Q And Exhibit 9, it also states that
 7 the members being placed off-duty for failure
 8 to meet a condition of employment; correct?
 9 It's in the first paragraph.
 10 A Yes, both of those say for failure
 11 to meet a condition of employment as well as
 12 disciplinary review.
 13 Q Review, yes. It does not mention
 14 any misconduct.
 15 Either one of those doesn't mention
 16 misconduct; correct?
 17 (Document reviewed by the witness.)
 18 THE WITNESS: I'm just reviewing
 19 it.
 20 BY MS. JOHNSON-BROOKS:
 21 Q Okay. Take your time.
 22 A I would say that it -- it does.
 23 Q That it mentions misconduct and not
 24 a --
 25 A So it does say, "Records indicate

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1 CROSS-EXAMINATION
 2 * * *
 3 BY MS. JOHNSON-BROOKS:
 4 Q Okay. All right. A.O. Walker,
 5 members that you've talked to -- that you
 6 talk to and complained about being placed
 7 off-duty with no pay, they could return to
 8 work if they were vaccinated; right?
 9 A Yes.
 10 Q Okay. And they could return if
 11 they filed for an exemption?
 12 A Yes.
 13 Q All right. And, in fact, Brownell
 14 was brought back to work shortly after he
 15 filed an exemption; is that right?
 16 A Yes.
 17 Q All right. And you referenced past
 18 practice of members placed off-duty, no pay.
 19 Have you ever represented a member
 20 for failure to become vaccinated in a global
 21 pandemic in the past?
 22 A Aside from this?
 23 Q Yes.
 24 A No.
 25 Q Okay. And Union Exhibits 7 and

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1 that you have failed to do so in the allotted
 2 time, and you have not provided verified
 3 information demonstrating compliance."
 4 Q As a condition of employment;
 5 correct?
 6 A That's not what it says.
 7 Q Sorry. Which one are you referring
 8 to?
 9 A (Indicating.)
 10 Q 9 or 7?
 11 A This is 9. I believe it's the same
 12 letter.
 13 Q 9. Okay.
 14 You're talking about the second
 15 one?
 16 A 9, second one.
 17 Q Second page, okay.
 18 And you're required to be fully
 19 vaccinated for COVID-19 as a condition of
 20 employment.
 21 So you're saying that that is
 22 stating that it's a -- a misconduct that
 23 that -- that that member -- in your
 24 experience, that that member has committed
 25 misconduct?

<p style="text-align: right;">Page 106</p> <p>1 MS. MARTINEZ: And I'm going object 2 that misstates his testimony. He read a 3 different sentence. He did not read the 4 sentence that ends with "condition of 5 employment." 6 MS. JOHNSON-BROOKS: Okay. 7 ARBITRATOR PEREA: Right. 8 MS. JOHNSON-BROOKS: But he did say 9 that he views that as misconduct, and that is 10 my question to him. 11 ARBITRATOR PEREA: Well, let's -- 12 for the record, let's rephrase the question 13 and specifically refer the witness to the 14 page you're looking at. 15 MS. JOHNSON-BROOKS: Right. I was 16 looking at Exhibit 9. 17 ARBITRATOR PEREA: Okay. 18 MS. JOHNSON-BROOKS: The first 19 page, that says in the first paragraph, "for 20 failure to meet a condition of employment," 21 and I asked if that was correct, that this 22 states that it is failure to meet a condition 23 of employment. 24 ARBITRATOR PEREA: It's actually 25 the second page you're looking at, isn't it?</p>	<p style="text-align: right;">Page 107</p> <p>1 MS. JOHNSON-BROOKS: Exhibit 9, 2 first page. 3 ARBITRATOR PEREA: First page 4 Am I looking at the right thing? 5 MS. JOHNSON-BROOKS: Yeah. Okay. 6 MR. HALL: Yes, I think he 7 referenced something else. 8 ARBITRATOR PEREA: Yes. 9 MS. MARTINEZ: Yeah. He was 10 reading from the second page. 11 MS. JOHNSON-BROOKS: Okay. 12 MS. MARTINEZ: So now you're going 13 back to the first page. 14 MS. JOHNSON-BROOKS: I was always 15 on the first page. 16 MS. MARTINEZ: That's the 17 confusion. 18 BY MS. JOHNSON-BROOKS: 19 Q Okay. That states on the first 20 page: 21 "For failure to meet a 22 conditions of employment." 23 That's what I was -- and you're 24 still on the second page, and I'm referring 25 to the first one.</p>
<p style="text-align: right;">Page 108</p> <p>1 A Yeah, I think what you asked me 2 was: Was this notification of any -- any 3 misconduct or you were asking to rule that 4 out. And so I was reading through them both. 5 Q Okay. 6 A And I cited on the second page 7 in -- 8 Q Uh-huh. 9 A -- the 225 or the memo from the 10 fire chief in the second paragraph -- 11 Q Yes. 12 A -- in the second sentence where 13 essentially it states or it does state: 14 "The City's records 15 indicate that you have failed 16 to do so in the allotted time, 17 and you have not provided 18 verified information demonstrating 19 compliance." 20 Q Yes. 21 ARBITRATOR PEREA: So that the 22 record is clear, based upon the second 23 page -- 24 MS. JOHNSON-BROOKS: That's what 25 he's answered.</p>	<p style="text-align: right;">Page 109</p> <p>1 ARBITRATOR PEREA: -- for that 2 portion you just read, you concluded that 3 this was... 4 BY MS. JOHNSON-BROOKS: 5 Q That you're concluding this is 6 misconduct under -- this is misconduct? 7 A Yes. 8 Q Yes, it's misconduct. Okay. All 9 right. 10 No further questions. 11 ARBITRATOR PEREA: Any redirect? 12 MS. MARTINEZ: No. 13 ARBITRATOR PEREA: All right. 14 Thank you very much. 15 All right. We're going to break at 16 this time. 17 We're off the record, please. 18 (Whereupon, Mr. Walker stepped down 19 about the witness stand.) 20 ARBITRATOR PEREA: Just for the 21 record, we'll update that the Union has 22 rested its case in chief, and no pun 23 intended. 24 THE COURT REPORTER: Off the 25 record?</p>

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1 ARBITRATOR PEREA: We're off the
 2 record.
 3 (Whereupon, a recess was held
 4 from 12:20 p.m. to 12:22 p.m.)
 5 ARBITRATOR PEREA: We are back on
 6 the record.
 7 THE COURT REPORTER: Uh-huh.
 8 ARBITRATOR PEREA: I think when
 9 we --
 10 THE COURT REPORTER: One second.
 11 ARBITRATOR PEREA: Just before we
 12 broke, the Union has indicated it rested its
 13 case.
 14 THE COURT REPORTER: Then, off the
 15 record?
 16 ARBITRATOR PEREA: Yes. Okay.
 17 We're off.
 18 (Whereupon, a luncheon recess was
 19 held from 12:23 p.m. to 1:05 p.m.)
 20 ///
 21 ///
 22 ///
 23
 24
 25

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1 (Witness complied.)
 2 ARBITRATOR PEREA: Do you swear to tell the
 3 truth, the whole truth, and nothing but the truth?
 4 THE WITNESS: I do.
 5 ARBITRATOR PEREA: Thank you, sir.
 6 MS. JOHNSON-BROOKS: Counsel.
 7 MR. HALL: Thank you.
 8
 9
 10 DEPUTY CHIEF DAVID PEREZ,
 11 called as a witness by the City/Employer,
 12 and was sworn in by the Arbitrator, was
 13 examined and testified as follows:
 14
 15 DIRECT EXAMINATION
 16 * * *
 17 BY MR. HALL:
 18 Q Chief Perez, what is your current
 19 employment?
 20 A I'm fire deputy chief with the
 21 Los Angeles Fire Department. I'm assigned as
 22 the fire marshal.
 23 Q And how long have you been with the
 24 Los Angeles Fire Department?
 25 A 34 1/2 years.

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1 GLENDALE, CALIFORNIA
 2 TUESDAY, JUNE 27, 2023
 3 1:05 P.M.
 4 * * *
 5
 6 AFTERNOON SESSION
 7
 8 (WHEREUPON, THE ARBITRATION PROCEEDINGS
 9 RECOMMENCED AS FOLLOWS:
 10
 11 - P R O C E E D I N G S - (RESUMED)
 12
 13 ARBITRATOR PEREA: All right, then.
 14 We are back on the record.
 15 So we are beginning now with the
 16 Department's case.
 17 (Whereupon, Deputy Chief David Perez took
 18 the witness stand.)
 19 ARBITRATOR PEREA: And, sir, would you
 20 state your name for the record and spell both first
 21 and last names.
 22 THE WITNESS: Yes, sir. My name is
 23 David Perez. D-A-V-I-D, P-E-R-E-Z.
 24 ARBITRATOR PEREA: All right. If
 25 you could raise your right hand, please.

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1 Q And what was your -- what was your
 2 position with L.A.F.D. as of August 2021?
 3 A I was a battalion chief in commend
 4 of the planning section.
 5 Q And how long were you in that
 6 position for?
 7 A Approximately six years.
 8 Q Okay. And when -- when did you
 9 move out of becoming a battalion chief?
 10 A In August of 2022.
 11 Q Okay. I'd like to introduce to you
 12 Employer Exhibit 2 in the folder there.
 13 THE COURT REPORTER: 2?
 14 MR. HALL: 2.
 15 THE COURT REPORTER: Thank you.
 16 MS. SPEAKER: Thank you so much.
 17 ARBITRATOR PEREA: Go ahead.
 18 MR. HALL: Thank you.
 19 BY MR. HALL:
 20 Q Have you seen this document before?
 21 A Yes, sir.
 22 Q And are you familiar with the City
 23 of Los Angeles's vaccine mandate?
 24 A I am.
 25 Q I'd like to turn your attention to

<p style="text-align: right;">Page 114</p> <p>1 page 2 of the ordinance and specifically 2 section 4.701, which has the header 3 "Vaccination and Reporting Requirements." 4 If you could please review 5 subsections A and B, and then I'll have a 6 couple of questions for you. 7 (Document reviewed by the witness.) 8 THE WITNESS: Okay. 9 BY MR. HALL: 10 Q Okay. Under the express terms of 11 the ordinance, was it your understanding that 12 all city employees be vaccinated against 13 COVID-19 or request an exemption no later 14 than October 19th, 2021? 15 A Yes, that's correct. 16 Q And do you know what type or types 17 of exemptions a member could apply for? 18 A Either medical condition or 19 sincerely-held religious belief. 20 Q And did vaccination against 21 COVID-19 become a condition of employment to 22 work for the City of Los Angeles as of 23 October 20, 2021? 24 A Yes, it did. 25 Q Okay. Flipping now to Exhibit 3,</p>	<p style="text-align: right;">Page 115</p> <p>1 which is the next tab. 2 (Witness Complied.) 3 BY MR. HALL: 4 Q And if you could just flip through 5 it, and let me know when you're done. 6 (Document reviewed by the witness.) 7 BY MR. HALL: 8 Q Okay. Have you seen this document 9 before? 10 A Yes, I have. 11 Q And can you briefly describe what 12 it is? 13 A This is the counsel's acceptance of 14 mayor's declaration of local emergency. 15 Q Okay. Thank you. 16 And in your role as battalion chief 17 back in the late summer into fall of 2021, 18 what were your responsibilities as they 19 relate to making sure L.A.F.D.'s members 20 complied with the City's vaccine mandate? 21 A My role was to search various 22 databases and compare them to find those 23 members who were vaccinated and those who 24 were not. 25 Q Okay. And, you know -- so you</p>
<p style="text-align: right;">Page 116</p> <p>1 wanted to determine which members were and 2 were not in compliance. 3 You said you had to search various 4 databases? 5 A Yes. 6 Q Okay. And following October 19th 7 of 2021 -- and again, focusing only on those 8 members who were unvaccinated and had not 9 applied for an exemption -- those names would 10 come up in the database you were searching; 11 is that correct? 12 A Well, the various databases, they 13 would actually show up as -- as non -- 14 they'd -- they'd show up as missing, 15 essentially -- 16 Q Okay. 17 A -- because they weren't in any of 18 the vaccination ordinance exemption lists. 19 Q Okay. So there was a specific list 20 designed for members who were neither 21 vaccinated nor had applied for an exemption? 22 A Correct. 23 Q Okay. now, let's turn to Exhibit 24 Number 1. 25 (Witness complied.)</p>	<p style="text-align: right;">Page 117</p> <p>1 BY MR. HALL: 2 Q Just review it to yourself, and let 3 me know when you're done. 4 (Document reviewed by the witness.) 5 THE WITNESS: Okay. 6 BY MR. HALL: 7 Q Have you seen this notice before? 8 A I've seen the draft of this notice 9 before. 10 Q Okay. And is this specific 11 document a draft or a template? 12 A Yes, it is. 13 Q Okay. Can you describe the purpose 14 of the notice? 15 A The purpose of this notice was to 16 tell the individual that they had failed to 17 meet the condition of employment as listed in 18 the -- in the mandate, and that we had 19 provided them with notices to come into 20 compliance. 21 Since they had still not come into 22 compliance, therefore, they were being placed 23 off duty without pay pending becoming 24 compliant. 25 Q Okay. And to be clear, you were</p>

<p style="text-align: right;">Page 118</p> <p>1 still in the battalion chief role as of 2 November 29th, 2021? 3 A Yes, I was. 4 Q And can you describe your duties as 5 it relates to ensuring this notice would be 6 sent to the appropriate members? 7 A So pulling from the list of people 8 identified in the various database searches, 9 we would send that list to either the 10 emergency operations commander or to the 11 operation -- the administrator of operations 12 commander, and then they would, in turn, see 13 to it that this letter was sent to the 14 member. 15 Q Okay. And after a member received 16 this notice from their operations commander, 17 what would happen next? 18 A They would be placed off-duty, and 19 they had the ability to use bank time or 20 vacation time for their time off or they were 21 placed off-duty with leave -- on leave 22 without pay. 23 Q And as they were placed off-duty, 24 would they still be entitled to a Skelly 25 hearing?</p>	<p style="text-align: right;">Page 119</p> <p>1 A Yes, they were entitled to a Skelly 2 at some point. 3 Q Okay. 4 A I don't know when that occurred. 5 But I believe that's in the -- what do they 6 call it? "Last, Best, Final offer." 7 Q Okay. And how about a 8 board-of-rights hearing, would they still be 9 entitled to that? 10 A Yes. 11 Q And the members who received this 12 notice and were removed from the workplace 13 without pay, were they removed for any 14 disciplinary reasons? 15 A No, it was not a disciplinary 16 action. It was just simply the failure to 17 comply with the department ordinance. 18 Q And that's the vaccine -- 19 A Or the city -- city ordinance. I'm 20 sorry. 21 Q All right. And that's the vaccine 22 mandate we looked at in Exhibit 2? 23 A Correct. 24 Q Are you familiar with L.A.F.D. 25 rules and regulations, rule 17?</p>
<p style="text-align: right;">Page 120</p> <p>1 A Yes, I am. 2 Q Okay. In the white binder in front 3 of you, if you flip to Exhibit 8, you should 4 have the white binder in front of it you. 5 (Witness complied.) 6 THE WITNESS: Okay. 7 BY MR. HALL: 8 Q Have you seen this section 17 rule 9 before? 10 A Yes, I have. 11 Q Okay. And can you just briefly 12 describe the purpose of section 17? 13 A Section 17 is one of the sections 14 in our rules and regulations that govern 15 the -- the behavior of members in the fire 16 department. 17 Q Okay. Does section 17 apply when 18 the department removes a member for 19 disciplinary reasons? 20 A Yes, it does. 21 Q Does section 17 apply when the 22 department removes a member for failure to 23 meet a condition of employment? 24 A No, 17 does not. 25 Q Okay. And are you familiar with</p>	<p style="text-align: right;">Page 121</p> <p>1 charter section 1060? 2 A I'm familiar with it, yes. 3 Q Okay. Section -- or sorry. Tab 3 4 in the binder will have that for you. 5 (Witness complied.) 6 THE WITNESS: Okay. 7 BY MR. HALL: 8 Q Okay. Did charter 1060 guide the 9 procedures for how the department issues 10 discipline to its members? 11 A Yes, it does. 12 Q Okay. And would section 1060 apply 13 in a situation where a member was being 14 removed not for disciplinary reasons but for, 15 as you described, failure to meet a condition 16 of employment under the ordinance? 17 MS. MARTINEZ: I'm going to just 18 interject a little bit. I understand the 19 rules are flexible. But this is a direct 20 witness and almost every question has been 21 leading. 22 ARBITRATOR PEREA: Right. 23 MS. MARTINEZ: So I'm going object 24 to the continuation of leading questions. 25 ARBITRATOR PEREA: All right. I'll</p>

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1 just remind counsel that certainly, leading
 2 questions are perfectly fine in establishing
 3 fundamental matters, you know, what time of
 4 day is it, whatever, but when we get into the
 5 true issues -- and this is that area -- I
 6 would like to just ask the witness his or her
 7 opinion in an open-ended fashion.
 8 MR. HALL: Okay.
 9 ARBITRATOR PEREA: And not lead the
 10 witness.
 11 MR. HALL: Okay.
 12 ARBITRATOR PEREA: Thank you.
 13 MR. HALL: Understood.
 14 BY MR. HALL:
 15 Q In your opinion, would section 1060
 16 apply if a member was being removed for
 17 failure to meet a condition of employment?
 18 MS. MARTINEZ: I think that's still
 19 leading. It's asking for a yes-or-no answer.
 20 ARBITRATOR PEREA: All right.
 21 We're -- we're getting there, but I think a
 22 more non-leading question would be to simply
 23 tell us what this disciplinary procedure
 24 provides.
 25 MR. HALL: Okay.

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1 Q And why is that?
 2 A For a variety of reasons.
 3 One, it was what was in the
 4 mandate, said that members who were not
 5 compliant had to be removed from duty and
 6 applied to all city employees, not just
 7 within the fire department.
 8 Also, two, because the very nature
 9 of the job that some of our members do, where
 10 they are engaged actively, providing medical
 11 care to members of the public who may have,
 12 themselves, had COVID or maybe at risk of
 13 getting COVID and having a higher morbidity
 14 rate if they do get COVID, to have our
 15 people, even if they weren't necessarily
 16 sick, they could potentially become carriers
 17 and exposing the patients to -- to the virus,
 18 we felt it was particularly important to not
 19 have them on duty.
 20 Q Okay. And in your opinion, is
 21 there a difference between discipline and
 22 failure to meet a condition of employment?
 23 A Yes, because discipline typically
 24 deals with the misdeed that, you know,
 25 violates a rule and regulation of the

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1 BY MR. HALL:
 2 Q Under what circumstances would
 3 section 1060 apply?
 4 A 1060 applies to essentially our
 5 entire disciplinary process. It covers
 6 everything from, you know, what we do, how we
 7 run the Skelly process, and -- and everything
 8 through terminating a member for disciplinary
 9 cause.
 10 Q In -- in your role as battalion
 11 chief and ensuring L.A.F.D.'s members'
 12 compliance with COVID-19 and -- and issuing
 13 this note -- notice to the appropriate
 14 operations command, is section 1060 a section
 15 that the department needed to consult in
 16 determining how a member would be removed?
 17 A Not for the purposes of this COVID
 18 mandate because this was not -- that was not
 19 a disciplinary matter. It was a
 20 condition-of-employment matter.
 21 Q Okay. Did the department feel it
 22 was important to remove its -- its
 23 unvaccinated members prior to receiving their
 24 board-of-rights hearing?
 25 A Yes.

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1 department and goes through the entire
 2 disciplinary process.
 3 This was very specific and even
 4 written in the ordinance that it was a
 5 failure to meet a condition of employment,
 6 which not -- does not go through the -- the
 7 disciplinary process.
 8 Q Okay. And I think you touched on
 9 this a little earlier.
 10 But upon being placed off-duty and
 11 awaiting their board-of-rights hearing, were
 12 members free to use their accrued time to
 13 compensate them during this period?
 14 A Yes, they could use compensated
 15 time off or vacation time. They had that
 16 available.
 17 Q Do members going through the
 18 disciplinary process outside of COVID have
 19 the opportunity to use their accrued time
 20 while awaiting their board-of-rights hearing?
 21 A Once they -- they've been placed
 22 off-duty, no.
 23 Q For unvaccinated members who were
 24 removed from the workplace, did the
 25 department have to then backfill those

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1 positions?
 2 A Yes, in most cases.
 3 Q Okay. And were those individuals
 4 selected to backfill the positions paid for
 5 their services?
 6 MS. MARTINEZ: I think we're -- so
 7 we're still getting into the leading.
 8 ARBITRATOR PEREA: The last
 9 question was leading. Rephrase.
 10 MR. HALL: Okay. You know, I'll
 11 just strike the question.
 12 BY MR. HALL:
 13 Q Do you know approximately how many
 14 members in total were placed off work by the
 15 department for noncompliance with the vaccine
 16 mandate?
 17 A In total, it was probably close to
 18 200 and -- actually closer to 300 total. But
 19 at any one time, it was probably about 180
 20 would have been the max.
 21 Q Okay. And outside of noncompliance
 22 with the COVID vaccine mandate, do you know
 23 approximately at a given time -- and I
 24 understand it varies -- how many members are
 25 going through the disciplinary process at a

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1 So go ahead and answer, please.
 2 THE WITNESS: Yes, the backfilled
 3 positions are paid overtime.
 4 BY MR. HALL:
 5 Q Okay. Thank you.
 6 MR. HALL: I don't have any further
 7 questions.
 8 ARBITRATOR PEREA: All right.
 9 Counsel Martinez, I gave the courtesy to
 10 counsel for the department.
 11 Would you like to take a short
 12 recess before cross-examining the witness?
 13 MS. MARTINEZ: Yeah. Maybe just
 14 five minutes, please.
 15 ARBITRATOR PEREA: Okay. Let's
 16 take a five-minute recess.
 17 Off the record.
 18 (Whereupon, a recess was held
 19 from 1:56 p.m. to 2:10 p.m.)
 20 ARBITRATOR PEREA: Counsel Martinez
 21 MS. MARTINEZ: Thank you.
 22 ARBITRATOR PEREA: Cross-exam,
 23 please.
 24 We're on the record.
 25 ///

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1 given time?
 2 A I would have to guess. I don't
 3 know how many people would be going through
 4 disciplinary process.
 5 It -- it would be -- a guess is --
 6 is that what you're looking for?
 7 Q I -- I don't -- I don't want to you
 8 guess. I guess I can rephrase it.
 9 Do you think it would be more than
 10 50 members at a given time?
 11 A No.
 12 Q Okay. How about more than 20?
 13 A I would say somewhere probably 20
 14 to 30.
 15 Q Okay. Thank you.
 16 When -- when a position is
 17 backfilled because a member was placed off
 18 for noncompliance, is that backfilled
 19 position paid?
 20 A Yes.
 21 MS. MARTINEZ: Still -- sorry, just
 22 we need to stop the leading.
 23 ARBITRATOR PEREA: All right.
 24 Well, I'll make an exception with the last
 25 question. It's pretty apparent.

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1 CROSS-EXAMINATION
 2 * * *
 3 BY MS. MARTINEZ:
 4 Q Hi, good afternoon, Chief Perez.
 5 My name is Dana Martinez. I think we've met
 6 before.
 7 A We have, yes.
 8 Q Okay. I'm just going to ask you
 9 some questions about your testimony today. I
 10 just wanted to recap a little bit.
 11 You testified that those
 12 individuals who were not compliant with the
 13 mandate are still entitled to Skelly; is that
 14 correct?
 15 A Yes, ma'am.
 16 Q And they're still entitled to a
 17 board of rights; is that correct?
 18 A That is correct, yes.
 19 Q Okay. And isn't it correct that
 20 1060 does apply to noncompliance relevant to
 21 the vaccine mandate?
 22 A No.
 23 Q 1060 does not apply to
 24 noncompliance?
 25 A No, it's because 1060 applies to

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1 the disciplinary side of things.
 2 This is not a disciplinary -- the
 3 actions that are taken to put a member off
 4 for the noncompliance with the vaccine,
 5 that's failure to meet -- meet a condition of
 6 employment.
 7 That's different from discipline.
 8 Q But it's your testimony that
 9 they're entitled to a board of rights; is
 10 that correct?
 11 A Yes, they are entitled to a board
 12 of rights and a Skelly hearing, but not
 13 because of 1060, because the ordinance or the
 14 Last, Best, and Final offer said that
 15 firefighters are sworn members of the fire
 16 department would be subject to the Skelly,
 17 but it -- that was not our impression that
 18 it's because of 1060.
 19 Q And where is the right to a board
 20 of rights found?
 21 A In this case, it's found in the
 22 ordinance.
 23 I know 1060 does refer to a board
 24 of rights, but that's not exclusive to my
 25 knowledge.

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1 BY MS. MARTINEZ:
 2 Q Are you familiar with the document
 3 behind Tab 5?
 4 A Yes, ma'am.
 5 Q And what is this?
 6 A This is the Last, Best, and Final
 7 offer that the City made to the labor unions
 8 regarding how we would enforce the vaccine
 9 mandate.
 10 Q And this was eventually
 11 implemented; is that correct?
 12 A Yes, ma'am.
 13 Q Okay. Please look at page 3. Look
 14 at the first full paragraph.
 15 I'll read the second sentence to
 16 you:
 17 "For sworn employees
 18 employed by the Los Angeles
 19 Fire Department who proceed to a
 20 board of rights, the City will abide
 21 by all applicable charter and
 22 other legal requirements."
 23 Do you see that?
 24 A Yes, ma'am.
 25 Q So 1060 is part of the city

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1 Q And it's your testimony that 1060
 2 of the city charter does not apply for cases
 3 of individuals who are noncompliant with the
 4 vaccine mandate?
 5 A 1060 does not apply for these
 6 vaccine mandate cases, that is correct.
 7 Q And 1060 is part of the city
 8 charter; is that correct?
 9 A Yes, it is.
 10 Q Okay. I'd like you to look at the
 11 binder, and I'd like you to look at Tab 5.
 12 Are you familiar with this
 13 document?
 14 A Yes, ma'am.
 15 THE COURT REPORTER: Hang on.
 16 ARBITRATOR PEREA: Okay. Hold on.
 17 THE COURT REPORTER: something
 18 unplugged. I think something hit right here.
 19 Okay? Yeah.
 20 "Are you familiar with..."?
 21 Sorry.
 22 BY MS. MARTINEZ:
 23 Q Are you familiar with -- well, I'll
 24 rephrase it.
 25 THE COURT REPORTER: Okay.

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1 charter; is that correct?
 2 A Yes, ma'am, it is.
 3 Q Okay. Thank you.
 4 You testified that the -- well, is
 5 it your testimony that somewhere in the
 6 mandate it says that a noncompliant employee
 7 will be removed from duty?
 8 A Yes, ma'am.
 9 Q Okay. Where is that document you
 10 are referring to?
 11 A I'm referring to the ordinance.
 12 Q Okay. So let's look at the -- it's
 13 also in this binder that you're looking at.
 14 So will you look at tab 4.
 15 Is this the ordinance that you're
 16 referring to?
 17 A Yes, ma'am.
 18 Q And will you please show us where
 19 it says that a noncompliant member will be
 20 removed from duty.
 21 (Document reviewed by the witness.)
 22 THE WITNESS: I'm sorry. It's
 23 not -- I don't see it in here. It may have
 24 been in the last -- Last, Best, and Final.
 25 BY MR. WAGNER:

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1 Q Okay. Let's look at the that. The
 2 Last, Best, and Final is found under Tab 5.
 3 A I'm not sure where it is, ma'am.
 4 Q Did you just read the Last, Best,
 5 and Final?
 6 A Yes, ma'am, I did.
 7 Q And you did not find such language;
 8 is that correct?
 9 A That is correct.
 10 Q Thank you.
 11 Now, you testified that failure to
 12 comply with the vaccine mandate -- oh, strike
 13 that.
 14 Those who failed to comply with the
 15 vaccine mandate are not subject to discipline
 16 procedure; is that correct?
 17 A I'm sorry, say that again.
 18 Q Is it your testimony that the
 19 employees who failed to comply with the
 20 vaccine mandate are not subject to the
 21 discipline procedure?
 22 A Correct.
 23 Q Okay. Isn't it true that members
 24 of the fire department have been found to be
 25 noncompliant with the vaccine mandate?

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1 30, I think you were talking about the number
 2 of individuals who normally go through
 3 disciplinary process.
 4 Do you remember that testimony?
 5 A Yes, ma'am.
 6 Q And you testified that it would be
 7 a guess if you gave a number; is that
 8 correct?
 9 A Yes, ma'am.
 10 Q Were you referring to all L.A.F.D.
 11 employees?
 12 A Yes, ma'am.
 13 Q So not just U.F.L.A.C. employees;
 14 is that correct?
 15 A That's correct.
 16 Q And is 20 and 30 -- do you have a
 17 specific recall that that's the exact number,
 18 or is that a guess?
 19 A No, it's a -- it's a guess.
 20 Q Okay. Thank you.
 21 I have no further questions.
 22 ARBITRATOR PEREA: Redirect.
 23 MR. HALL: Yes, thank you.
 24 ///
 25 ///

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1 A Yes.
 2 Q And isn't it true that those
 3 members have, in fact, been subject to a
 4 board of rights proceeding?
 5 A Yes, they have.
 6 Q Thank you.
 7 You were asked about numbers, total
 8 numbers of employees who were placed
 9 off-duty.
 10 Clear to me who you were referring to.
 11 Are you referring to all L.A.F.D.
 12 employees?
 13 A Yes, ma'am.
 14 Q So that included non-U.F.L.A.C.
 15 members like chiefs --
 16 A Yes, ma'am.
 17 Q -- is that correct?
 18 A Yes, ma'am.
 19 Q Do you know how many U.F.L.A.C.
 20 members were placed off-duty for
 21 noncompliance? And we don't want to you
 22 guess.
 23 A No, I don't know the exact number.
 24 Q Okay. And when you were asked
 25 about a number and you finally fell on 20 to

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1 REDIRECT EXAMINATION
 2 * * *
 3 BY MR. HALL:
 4 Q For a member who's removed from the
 5 workplace for failure to meet a condition of
 6 employment, can they then be disciplined
 7 through the board-of-rights process?
 8 A I'm sorry. Can you ask that again?
 9 Q Sure.
 10 For a memb- --
 11 MS. MARTINEZ: And if we can try to
 12 make it in a non-leading way. If we can
 13 start --
 14 ARBITRATOR PEREA: I don't think
 15 the last question was leading. Let's try it
 16 one more time, anyway.
 17 MS. MARTINEZ: It seemed to ask for
 18 a "yes" or "no," that's why.
 19 ARBITRATOR PEREA: Okay.
 20 MS. MARTINEZ: But that's my
 21 objection.
 22 BY MR. HALL:
 23 Q For a member placed off work for
 24 noncompliance with the vaccine mandate, can
 25 the department then discipline that member

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1 through the board-of-rights process?
 2 A The member would go through the
 3 board-of-rights process, yes, if they had not
 4 become compliant.
 5 Q And is the board-of-rights process,
 6 by its nature, a disciplinary process?
 7 A By it's nature, yes.
 8 Q Okay. So for a member that
 9 ultimately was found to be guilty through the
 10 board-of-rights process and ultimately
 11 terminated from their employment, would that
 12 constitute discipline?
 13 A I'm not sure, because if we're
 14 doing this, the -- the department is doing
 15 this through the condition of employment
 16 part, then I don't think -- even though it's
 17 going through this disciplinary style of
 18 procedure, I don't know that you can actually
 19 extend that logic out that the termination
 20 itself is disciplinary.
 21 It's separation from the City
 22 because they had continued to fail to meet
 23 the condition of employment.
 24 Q Okay. Let me try asking it in
 25 maybe a different way.

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1 pull the board, and we went through the
 2 board-of-rights process, if we're saying at
 3 that time we went from condition of
 4 employment to discipline, I don't know.
 5 If that's the case, then that's
 6 where it would have been.
 7 Q Okay. Can -- can a member be
 8 disciplined for failure to meet a condition
 9 of employment rather than misconduct?
 10 A I don't know if those two processes
 11 are mutually exclusive --
 12 Q Okay.
 13 A -- or not.
 14 Q I understand.
 15 Okay. I have no further questions.
 16 ARBITRATOR PEREA: Any Recross?
 17 MS. MARTINEZ: No.
 18 ARBITRATOR PEREA: All right.
 19 Chief, thank you very much for your
 20 testimony.
 21 (Whereupon, Chief Perez stepped
 22 down from the witness stand.)
 23 ARBITRATOR PEREA: Do you want to take a
 24 moment?
 25 MS. JOHNSON-BROOKS: Oh, yeah.

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1 Can the disciplinary process kick
 2 in at a later point in the process even if
 3 the member isn't initially removed from the
 4 workplace for a disciplinary reason?
 5 MS. MARTINEZ: I'm going to object
 6 to "kick in later into the process." It's
 7 vague.
 8 ARBITRATOR PEREA: All right. We
 9 can -- I understand the question --
 10 MR. HALL: Okay.
 11 ARBITRATOR PEREA: -- but I would
 12 prefer you --
 13 MR. HALL: Yeah.
 14 ARBITRATOR PEREA: -- restate it.
 15 MR. HALL: Yeah. Sure.
 16 BY MR. HALL:
 17 Q Can the disciplinary process be
 18 initiated, let's say, at a later stage even
 19 if the member was not initially removed from
 20 the workplace for a disciplinary reason?
 21 A I'm not sure what the actual legal
 22 answer to that is.
 23 I mean, if we're saying that
 24 because at some point we -- we went through
 25 the Skelly process, we directed the member to

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1 ARBITRATOR PEREA: All right.
 2 We're off the record.
 3 Thank you.
 4 THE COURT REPORTER: Off the
 5 record.
 6 (Whereupon, a recess was held
 7 from 2:22 p.m. to 2:32 p.m.)
 8 ARBITRATOR PEREA: We're back on
 9 the record.
 10 Does the Department or the City
 11 wish to call any additional testimony today?
 12 MR. HALL: No, we don't.
 13 We rest our case.
 14 ARBITRATOR PEREA: All right. Very
 15 good.
 16 Okay. Then I have to go back to
 17 Ms. Martinez.
 18 Do you have any rebuttal that you
 19 would like to present today?
 20 MS. MARTINEZ: We do not.
 21 ARBITRATOR PEREA: All right. Then
 22 we'll go off the record again, and we can set
 23 the date.
 24 THE COURT REPORTER: Are we off?
 25 ARBITRATOR PEREA: We're off the

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1 record.
 2 (Whereupon, a brief discussion was
 3 held off the record.)
 4 ARBITRATOR PEREA: Okay. So my
 5 understanding is the parties are going to be
 6 requesting our capable court reporter for the
 7 transcript.
 8 They will divide the cost of an
 9 original plus two copies. The third copy for
 10 the arbitrator. And they're going to divide
 11 the cost of that between them equally.
 12 All right?
 13 THE COURT REPORTER: Yes, noted.
 14 ARBITRATOR PEREA: And then we've
 15 agreed that once the transcript comes to
 16 Counsel Martinez, that she will either send
 17 an e-mail or call either Mr. Hall or
 18 Ms. Johnson-Brooks and confer and say, "You
 19 know, I'm getting back from Honolulu next
 20 week, but, you know, we can agree upon such
 21 and such a date."
 22 MR. HALL: Uh-huh.
 23 ARBITRATOR PEREA: Okay? I'm being
 24 facetious.
 25 But you agree upon the date.

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1 All right, you guys.
 2 THE COURT REPORTER: And if you
 3 ever change your mind, you can just let me
 4 know.
 5 ARBITRATOR PEREA: You guys are,
 6 you know, with the times, and you're very,
 7 very kind to trees. All right.
 8 So I thank everyone for their
 9 courtesy. I've never experienced a more
 10 courteous and efficient group of counsel and
 11 their clients. And I thank you all.
 12 Obviously, you do wonderful work
 13 and counsel do wonderful work and obviously
 14 your clients do wonderful work as well. And
 15 I thank you all. I do mean that.
 16 So thank you very much.
 17 MS. MARTINEZ: Thank you.
 18 MS. JOHNSON-BROOKS: Well, thank
 19 you.
 20 ARBITRATOR PEREA: Thank you.
 21 We're off the record.
 22 * * *
 23 (WHEREUPON, THE ARBITRATION PROCEEDINGS
 24 WERE CONCLUDED AT 3:00 P.M.)
 25 -- 000 --

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1 And then send your post-hearing
 2 briefs electronically to the Arbitrator, and
 3 just to the Arbitrator.
 4 Once I get them, I exchange between
 5 counsel and you know I've got everything, and
 6 then that starts my clock going. Okay?
 7 MS. JOHNSON-BROOKS: Okay. Yes.
 8 MS. MARTINEZ: Yes.
 9 ARBITRATOR PEREA: All right. And
 10 the other thing was I would like, Ms. Fox, I
 11 would like a mini, please, hard copy. And I
 12 think that's all I need.
 13 THE COURT REPORTER: No e-tran?
 14 ARBITRATOR PEREA: No, I don't need
 15 it. I don't need it.
 16 THE COURT REPORTER: Okay. All
 17 right.
 18 And you want it electronically;
 19 right?
 20 MS. MARTINEZ: Yes, thank you.
 21 THE COURT REPORTER: Okay.
 22 MS. JOHNSON-BROOKS: Electronic.
 23 MS. MARTINEZ: Electronic.
 24 THE COURT REPORTER: Okay.
 25 ARBITRATOR PEREA: Both electronic.

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1 REPORTER'S CERTIFICATE
 2 A R B I T R A T I O N
 3 IN RE:) Case No.
 4) 4035
 5 United Firefighters of Los Angeles)
 6 City, IAFF Local 112,) ARBITRATOR
 7 UNION,) KENNETH PEREA
 8) (Presiding)
 9)
 10 and)
 11)
 12 Los Angeles City Fire Department,)
 13 EMPLOYER RESPONDENT.)
 14 (Brownell Class Grievance Arbitration))
 15 _____)
 16 I, Tracy M. Fox, CSR, Certified Shorthand
 17 Reporter, Certificate Number 10449, in and for the
 18 State of California, Superior Court Approved
 19 Reporter, hereby certify:
 20 The foregoing proceedings were taken before me
 21 at the time and place therein set forth;
 22 The proceedings were recorded stenographically
 23 by me and were thereafter transcribed:
 24 The foregoing transcript is a true/correct
 25 transcript of my stenographic notes so taken;
 I further certify that I am neither counsel for,
 nor related to any party to said action.
 DATED: THIS 18TH DAY OF JULY, 2023.
 23
 24 *Tracy M. Fox*
 25 TRACY M. FOX, CSR NO. 10449
 CERTIFIED SHORTHAND REPORTER
 (Superior Court Approved Reporter)

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