STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ALFONSO GARCIA, Charging Party, v. CITY & COUNTY OF SAN FRANCISCO, Respondent.	Case No. SF-CE-1683-M PERB Decision No. 2757-M March 3, 2021

Appearances: Law Office of Anthony J. Sperber by Anthony J. Sperber, Attorney, for Alfonso Garcia; Office of the City Attorney by Lisa Berkowitz, Deputy City Attorney, for City & County of San Francisco.

Before Banks, Chair; Shiners and Paulson, Members.

DECISION

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by the City & County of San Francisco (City) to an administrative law judge's (ALJ) proposed decision. The complaint alleged that the City violated the Meyers-Milias-Brown Act (MMBA) and PERB Regulations by retaliating against Alfonso Garcia for his union activities and interfering with his exercise of MMBA-protected rights.[1] Without requesting leave to file a late answer or submitting a declaration establishing good cause for doing so, the City filed its answer to the complaint over four months after it was due. Finding no good cause to excuse

[1] The MMBA is codified at Government Code section 3500 et seq. All further statutory references are to the Government Code. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

the late filing, the ALJ concluded the City waived its right to a hearing, deemed the allegations in the complaint and underlying unfair practice charge to be true, and issued a proposed remedial order. Based on our review of the proposed decision, the entire record, and relevant legal authority in light of the parties' submissions,[2] we affirm the proposed decision and issue a modified order for the following reasons.

BACKGROUND

Garcia's unfair practice charge alleged that the City retaliated against him for his union activities by placing him on paid administrative leave and then reassigning him to a new worksite, along with a number of allegations that the City interfered with protected rights. The City filed a position statement after receiving an extension of time to file. Garcia then filed a first amended charge, which requested that he be assigned back to his former worksite as a remedy. The City did not file a position statement in response to the first amended charge.

On December 6, 2019, PERB's Office of the General Counsel (OGC) issued the complaint, alleging that:

> "1. Charging Party is a public employee within the meaning of Government Code section 3501(d) and within PERB's jurisdiction.
>
> "2. Respondent is a public agency within the meaning of Government Code section 3501(c) and PERB Regulation 32016(a).

[2] The City's exceptions and Garcia's response were accompanied by declarations containing factual allegations about the City's reassignment of Garcia to a different worksite. Those facts are also recited in the parties' briefs. In light of our finding that the ALJ properly deemed true the allegations in the complaint and unfair practice charge, we did not consider the content of the declarations in rendering this decision.

"3. Charging Party has exercised rights guaranteed by the Meyers-Milias-Brown Act by the following conduct: (a) serving as an active steward for Service Employees International Union, Local 1021 [SEIU]; (b) in November 2018, questioning Respondent's agent, Marvin McGregor (McGregor), about meeting and conferring with SEIU; and (c) on or about February 8, 2019, filing a grievance on behalf of SEIU.

"4. On or about March 4, 2019, Respondent took adverse action against Charging Party by placing him on administrative leave.

"5. Respondent took the actions described in paragraph 4 because of the employee's activities described in paragraph 3, and thus violated Government Code sections 3506 and 3506.5(a), and committed an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(a).

"6. On or about April 29, 2019, Respondent took adverse action against Charging Party by reassigning him from the Family Health Center to the Maxine Hall Health Center.

"7. On or about November 15, 2018, Respondent, acting through its agents Rhonda Simmons and Denise Fisher (Fisher), informed employees, including Charging Party, that employees would be fired if SEIU continued filing grievances against management.

"8. By the acts and conduct described in paragraph 7, Respondent interfered with employee rights guaranteed by the Meyers-Milias-Brown Act in violation of Government Code sections 3506 and 3506.5(a), and committed an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(a).

"9. On or about June 18, 2019, Respondent, acting through its agent, Fisher, directed Charging Party not to

communicate with employees at his former worksite, Family Health Center.

"10. By the acts and conduct described in paragraph 9, Respondent interfered with employee rights guaranteed by the Meyers-Milias-Brown Act in violation of Government Code sections 3506 and 3506.5(a), and committed an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(a).

"11. On or about June 18, 2019, Charging Party was required to meet with Respondent's agent, Fisher, to discuss allegations of misconduct by Charging Party. Charging Party had a reasonable belief that the interview would result in disciplinary action or, in the alternative, the interview posed highly unusual circumstances. Charging Party was accompanied by his union representative, Daniel Becker (Becker).

"12. During the meeting, Respondent, acting through its agent, Fisher, ordered Becker to leave the meeting.

"13. By the acts and conducts described in paragraphs 11 and 12, Respondent denied the employee's right to be represented by his employee organization in violation of Government Code sections 3502 and 3506.5(a), and committed an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(a)."

The complaint was served on the City's counsel by mail, with a proof of service stating it was mailed through the United States Postal Service on December 6, 2019. The cover letter to the complaint explained that PERB Regulation 32644 required the City to file an answer within twenty calendar days from the date the complaint was served.

Also on December 6, 2019, OGC issued complaints in two companion cases: *Sandeep Lal v. City & County of San Francisco*, PERB Case No. SF-CE-1682-M, and

Alfonso Garcia v. City & County of San Francisco, PERB Case No. SF-CE-1693-M.[3] That same day, OGC dismissed four additional charges Lal filed against the City,[4] and four additional charges Garcia filed against the City.[5] The City filed answers to the complaints in Case Nos. SF-CE-1682-M and SF-CE-1693-M on December 26, 2019, but did not file an answer in this case at that time.

The City's counsel participated in an informal settlement conference for all three companion cases on February 10, 2020, but the matters were not resolved.[6]

On April 30, the City filed a motion to dismiss the complaints in all three companion cases, contending the complaint allegations had already been resolved through binding arbitration in accordance with the collective bargaining agreement between SEIU and the City. In its motion, the City explicitly acknowledged that the complaint in this case alleged the City retaliated against Garcia for his protected activities "by placing him on administrative leave starting March 4, 2019, and by thereafter reassigning him to a different clinic."

On May 8, the City filed an answer to the complaint in this case. The answer included affirmative defenses that the allegations in the complaints had already been arbitrated and were subject to collateral estoppel. The filing did not include a request

---

[3] PERB may take official notice of matters in its own files and records. (*Bellflower Unified School District* (2017) PERB Decision No. 2544, p. 6, fn. 4.)

[4] PERB Case Nos. SF-CE-1654-M, SF-CE-1716-M, SF-CE-1717-M, and SF-CE-1736-M.

[5] PERB Case Nos. SF-CE-1655-M, SF-CE-1718-M, SF-CE-1719-M, and SF-CE-1735-M.

[6] All further dates are in 2020, unless otherwise indicated.

for leave to file a late answer, or a declaration establishing good cause for filing a late answer. A week later, Garcia filed his opposition to the motion to dismiss, which included an argument that the City's answer and motion were untimely.[7]

On July 6, the ALJ asked the City's counsel to provide good cause, including a declaration, as to why the City's late answer should be excused. In response, the City's counsel provided a declaration stating in pertinent part:

> "2. I filed a late Answer in Case No. 1683-M because I had not previously realized an Answer had not been filed in that case. As soon as I realized Respondent had not filed an Answer in this matter, I drafted and filed the Answer.
>
> "3. Respondent should not be penalized for the filing of the late Answer on the following grounds:
>
> "• The Charge in this matter is almost exactly the same as the Charge in SF-CE-1682-M regarding Charging Party Lal. The City did file a timely Answer in that matter. Thus, Charging Parties were put on timely notice of the City's position in regards to essentially the same allegations of [SF-CE-]1683-M. Charging Parties are thus not prejudiced by the late filing. Indeed, Charging Parties did not bring to PERB's attention that the City had not timely filed an Answer until months into the litigation of [SF-CE-]1683-M, and after the informal conference in that case.
>
> "• Charging Parties initially filed—I believe—a dozen PERB charges all written within a short time period. To say keeping all of these charges straight was challenging is an understatement. Eventually, PERB dismissed some of these charges and filed Complaints on three of the charges. I must have mistakenly thought that [SF-CE-]1683-M was

[7] At this time, Garcia and Lal's counsel was unaware that timely answers had been filed in the other two companion cases.

> also dismissed. I think this is excusable neglect[8] with so many overlapping charges.
>
> "• My colleague Deputy City Attorney Jennifer Stoughton handled filing the Answers in the companion cases on December 29, 2020 [sic] because I was overwhelmed with preparing for four San Francisco Superior Court jury trials in a row starting January 13, 2020 and lasting through May 2020. And I was scheduled to leave for a week in Hawaii on New Year's Day. In handing the files to Jennifer to cover for me, as well as trying to prepare for my trial, I must have mistakenly overlooked filing an Answer in [SF-CE-]1683-M."

At a July 14 prehearing conference, the parties discussed a number of issues, including the late filing of the answer and whether the City's excuse constituted good cause. The City's counsel reiterated that the failure to timely file an answer was an oversight and there was no prejudice to Garcia.

On October 29, the ALJ issued the proposed decision. The ALJ first found the City failed to establish good cause to excuse the late filing of its answer and thereby waived its right to a hearing. The ALJ then deemed the allegations in the complaint and underlying unfair practice charge to be true, and issued a proposed remedial order. The City filed timely exceptions to the proposed decision, and Garcia filed a response to the exceptions.

---

[8] Under Code of Civil Procedure section 473, subdivision (b), excusable neglect is one of the grounds for excusing a late filing that results in a judgment, dismissal, or order. But PERB has declined to interpret the "good cause" requirement in Regulation 32136 as incorporating section 473, subdivision (b)'s grounds for excuse. (*Calipatria Unified School District* (1990) PERB Order No. Ad-217, p. 9.)

DISCUSSION

When resolving exceptions to a proposed decision, the Board applies a de novo standard of review. (*County of Santa Clara* (2019) PERB Decision No. 2629-M, p. 6.) Under this standard, we review the entire record and are free to make different factual findings and reach different legal conclusions than those in the proposed decision. (*City of Milpitas* (2015) PERB Decision No. 2443-M, p. 12.)

PERB Regulation 32644, subdivision (c) provides: "If the respondent fails to file an answer as provided in this section, the Board may find such failure constitutes an admission of the truth of the material facts alleged in the charge and a waiver of respondent's right to a hearing." A "respondent's failure to answer a PERB complaint effectively results in an admission of the matters alleged therein, as well as those alleged in the charge," and precludes the assertion of any affirmative defenses. (*Regents of the University of California* (2018) PERB Decision No. 2601-H, p. 14 (*Regents*).) Thus, a respondent's failure to establish good cause to excuse a late answer may result in a default judgment. (*Id.* at p. 19.)

Applying this authority, the ALJ found the City waived its right to a hearing by failing to establish good cause to excuse its late answer, deemed the allegations in the complaint and underlying unfair practice charge to be true, and issued a proposed remedial order. The City argues the ALJ erred by (1) finding no good cause to excuse the City's late answer, (2) construing the complaint to include an allegation that the City reassigned Garcia to the Maxine Hall Health Center because of his protected activities, and (3) ordering an overbroad remedy. We address each argument in turn.

I. The City's Late Answer

The City contends it established good cause to excuse its late answer. We disagree.

PERB Regulation 32136 provides:

> "A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations."

"'[G]ood cause' is a flexible standard, defined and constrained by considerations of fairness and reasonableness." (*Trustees of the California State University* (2016) PERB Order No. Ad-432-H, p. 7.) In general, good cause to excuse a late filing exists where the delay is of short duration and based on circumstances that were either unanticipated or beyond the party's control. (*Regents*, *supra*, PERB Decision No. 2601-H, p. 15; *Trustees of the California State University*, *supra*, PERB Order No. Ad-432-H, p. 8; *State of California (Department of Corrections)* (2006) PERB Decision No. 1806-S, p. 7; *United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325, p. 4.) Regardless of the particular reason(s) given, the party must provide sufficient factual detail to establish a "reasonable and credible" explanation for its untimely filing or show that it at least made a conscientious effort to comply with the filing deadline. (*Trustees of the California State University*, *supra*, PERB Order No. Ad-432-H, p. 8; *Newport-Mesa Unified School District* (2008) PERB Order No. Ad-373, p. 3.)

"[W]hile the lack of prejudice resulting from a late filing is an important consideration in deciding whether to excuse a late filing for good cause, it is not, in and of itself, the determinative factor." (*Calipatria Unified School District*, *supra*, PERB

Order No. Ad-217, p. 13) Thus, even where no prejudice to the other party is apparent, we must determine whether good cause exists. (*Bellflower Unified School District* (2017) PERB Order No. Ad-447, p. 5.)

The City argues that, despite being filed over four months late, its answer should be deemed timely because the City's counsel filed it as soon as she discovered no answer had been filed and the delay did not prejudice Garcia because a hearing had not yet been scheduled. We need not decide whether the delay prejudiced Garcia because we find that City counsel's failure to realize a complaint had issued in this case because PERB simultaneously issued complaints and dismissals in several related charges does not constitute good cause to excuse the late answer because parties have an obligation to carefully review case documents from PERB. (*San Leandro Unified School District* (2007) PERB Order No. Ad-366, p. 2.) We also agree with the ALJ that City counsel's heavy caseload at the time the complaint issued does not provide good cause to excuse the late answer. Simply put, the City's counsel could have filed the answer on time had she exercised reasonable diligence in reviewing the case documents received from PERB, and her heavy caseload at that time provides no excuse for failing to do so.

We also note that, while the proposed decision broadly observes that "[t]he Board has not found good cause in situations where the party's attorney was directly responsible for the late filing," the Board has never adopted a categorical rule that an attorney's conduct can never constitute good cause to excuse a late filing. In the cases cited by the ALJ in support of his observation, the Board found no good cause where the party's attorney failed to follow or misconstrued PERB's filing regulations.

(*Lake Elsinore Unified School District* (2017) PERB Order No. Ad-446, pp. 10-11; *State of California (Department of Corrections)* (2003) PERB Order No. Ad-328-S, pp. 3-5; *State of California (Water Resources Control Board)* (1999) PERB Order No. Ad-294-S, pp. 5-6.) In contrast, in *Barstow Unified School District* (1996) PERB Order No. Ad-277, the Board found good cause to excuse a late-filed response to exceptions where the attorney who prepared the proof of service failed to notice that it listed the wrong PERB office. (*Id.* at pp. 4-5.) Thus, good cause to excuse a late filing does not depend on whether the responsible person was an attorney but on whether the late filing was occasioned by circumstances that were either unanticipated or beyond the person's control, whether the responsible person provided a reasonable and credible explanation for their failure to comply, or made a conscientious effort to comply with the filing deadline. (*Regents*, *supra*, PERB Decision No. 2601-H, pp. 15-17; *Trustees of the California State University*, *supra*, PERB Order No. Ad-432-H, p. 8.)

II. The Retaliatory Reassignment Allegation

The City argues the ALJ improperly added to the complaint an allegation that the City reassigned Garcia from the Family Health Center to the Maxine Hall Health Center because he exercised MMBA-protected rights. We find nothing improper about the ALJ's interpretation of the complaint, which accords with how the City interpreted the complaint in its motion to dismiss.

Paragraph 6 of the complaint alleges: "On or about April 29, 2019, Respondent took adverse action against [Garcia] by reassigning him from the Family Health Center to the Maxine Hall Health Center." Unlike paragraph 5, which alleges that Garcia was

placed on administrative leave because of his protected activities, the complaint does not expressly allege that the City reassigned Garcia because of his protected activities. Despite this omission, the City explicitly acknowledged in its motion to dismiss that the complaint in this case alleged the City retaliated against Garcia for his protected activities "by placing him on administrative leave starting March 4, 2019, *and by thereafter reassigning him to a different clinic*." (Italics added.)

PERB Regulation 32645 says the "[t]he Board may disregard any error or defect in the original or amended charge, complaint, answer or other pleading which does not affect the substantial rights of the parties." The motion to dismiss shows the City understood the complaint to encompass the retaliatory reassignment allegation. Interpreting the complaint as including such an allegation thus does not affect the City's substantial rights. Consequently, the absence of a paragraph in the complaint explicitly alleging that Garcia was reassigned to the Maxine Hall Health Center because of his protected activity is a minor error that can be disregarded in accordance with PERB Regulation 32645.

III. Appropriate Remedy

The City's remaining exceptions challenge the ALJ's proposed remedial order. MMBA section 3509, subdivision (b) authorizes PERB to order "the appropriate remedy necessary to effectuate the purposes of this chapter." This includes the authority to order an offending party to take affirmative actions designed to effectuate the purposes of the MMBA. (*Omnitrans* (2010) PERB Decision No. 2143-M, p. 10.) A "properly designed remedial order seeks a restoration of the situation as nearly as

possible to that which would have obtained but for the unfair labor practice." (*Modesto City Schools* (1983) PERB Decision No. 291, pp. 67-68.)

The City argues the ALJ's proposed remedy is overbroad in three ways. First, the City contends—without any citation to legal authority—that an order to post a notice at all work locations where notices to bargaining unit employees are customarily posted is "burdensome and unnecessary" because the City "employs thousands of Union members at numerous locations in and outside the City," and the case before us is limited to a single employee. The City thus asserts the posting requirement should be limited to Garcia's work location.

In rejecting this same argument in *City & County of San Francisco* (2020) PERB Decision No. 2698-M, we observed:

> "PERB's traditional remedy for an employer's unfair practice includes a notice posting requirement on a unit-wide basis. (*Los Angeles Unified School District* (2001) PERB Decision No. 1469, p. 7.) 'The purpose of posting a notice incorporating the terms of the order is educational for the represented employees. It is to notify employees of the conduct that was found to be unlawful, assure all employees affected by the decision of their rights and PERB's conclusions, and inform employees that the controversy is now resolved and the employer is ready to comply with the remedy ordered.' (*Trustees of the California State University (East Bay)* (2015) PERB Decision No. 2408-H, adopting proposed decision at p. 51.) As we have previously explained, the posting requirement also serves the purpose of 'prevent[ing] the recurrence of the prohibited conduct on a unit-wide basis.' (*Los Angeles Unified School District*, *supra*, PERB Decision No. 1469, p. 8.)"

(*Id.* at pp. 12-13.) These considerations apply equally in this case, and we therefore affirm the ALJ's notice posting order.

Second, the City argues the proposed cease and desist order is "overbroad and burdensome" because it prohibits reprisal, discrimination, and interference against all employees, not just Garcia. The purpose of a cease and desist order is to prohibit the respondent from engaging in similar unlawful conduct in the future. (*William S. Hart Union High School District* (2018) PERB Decision No. 2595, pp. 13-14; *Jurupa Unified School District* (2015) PERB Decision No. 2458, p. 7.) To serve that purpose, PERB commonly uses broad language referring to all employees, even when the unlawful conduct was directed at only one employee. (E.g., *William S. Hart Union High School District*, *supra*, PERB Decision No. 2595, p. 14; *Jurupa Unified School District*, *supra*, PERB Decision No. 2458, p. 29.) The proposed cease and desist order thus is not overbroad or burdensome.

Finally, the City argues a make whole remedy is not warranted "because Garcia has not suffered any financial losses and has no right to choose his assignment."[9] As to the first point, an unfair practice finding creates a presumption that employees suffered some financial loss as a result of the employer's unlawful conduct. (*Bellflower Unified School District* (2019) PERB Order No. Ad-475, p. 10; *Desert Sands Unified School District* (2010) PERB Decision No. 2092, pp. 31-32.) Consistent with the presumption, it is appropriate to give Garcia an opportunity to establish in compliance proceedings that he suffered a financial loss due to his placement on administrative leave and his subsequent reassignment from the Family Health Center to the Maxine

[9] To the extent the City argues Garcia's reassignment was not an adverse action because it resulted in no financial loss to him, the City forfeited that argument by failing to file a timely answer to the complaint.

Hall Health Center.[10] (See, e.g., *Desert Sands Unified School District*, *supra*, PERB Decision No. 2092, pp. 31-32 [allowing charging party an opportunity to establish in compliance proceedings that bus drivers actually lost pay because of the district's unlawful contracting out of field trip work when the record did not contain information demonstrating a financial impact].)

As to the second point, "even when an employer has a managerial, statutory, or contractual right to take an employment action, its decision to act cannot be based on an unlawful motive, intent, or purpose." (*City of San Diego* (2020) PERB Decision No. 2747-M, p. 29.) In previous cases where an employee was involuntarily transferred to another worksite because they engaged in statutorily protected conduct, PERB has ordered the employee restored to his or her prior position, even when the transfer was effectuated in accordance with existing procedures. (See, e.g., *Mountain Empire Unified School District* (1998) PERB Decision No. 1298, pp. 3, 5 [district ordered to rescind retaliatory transfer of teacher even though transfer was made under the emergency transfer provisions of the collective bargaining agreement].) The City's authority to reassign its employees to particular worksites thus does not foreclose an order requiring the City to offer Garcia reinstatement to his former position, or a

[10] We note that the circumstances of this case are unusual because the make whole order is based on a default judgment and therefore lacks a full record. Nonetheless, this does not alter longstanding PERB precedent providing that the respondent carries the burden of demonstrating compliance with the Board's remedial order (*Hacienda La Puente Unified School District* (1998) PERB Decision No. 1280, adopted proposed decision at pp. 8-9) and resolving any uncertainty as to whether compliance has been fully achieved against the respondent (*Bellflower Unified School District*, *supra*, PERB Order No. Ad-475, pp. 10-11; *Fresno County Office of Education* (1996) PERB Decision No. 1171, p. 2, adopted proposed decision at p. 4).

substantially similar position, at the Family Health Center. For these reasons, we affirm the proposed make whole order, and modify it to include Garcia's placement on administrative leave.

ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the Public Employment Relations Board (PERB) finds that the City and County of San Francisco (City) violated the Meyers-Milias Brown Act (MMBA), Government Code sections 3502, 3506, 3506.5, subdivision (a), and PERB Regulation 32603, subdivision (a), by placing Alfonso Garcia (Garcia) on administrative leave on March 4, 2019, and reassigning him from the Family Health Center to the Maxine Hall Health Center on April 29, 2019, in retaliation for his exercise of protected rights under the MMBA. The City also interfered with Garcia's exercise of protected rights by informing him on November 15, 2018, that employees would be fired if his exclusive representative continued filing grievances against the City; directing Garcia on June 18, 2019, not to communicate with employees at his former worksite; and, also on June 18, 2019, ordering Garcia's union representative to leave a meeting in which Garcia was entitled to have a union representative present.

Pursuant to Government Code sections 3509, subdivision (b), and 3541.3, it is hereby ORDERED that the City, its governing body, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Imposing reprisals and/or discriminating against employees because of their exercise of protected rights under the MMBA.

2. Interfering with employees' exercise of rights granted by the MMBA.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Rescind Garcia's administrative leave notice dated March 4, 2019, and remove all originals and copies of the notice and any accompanying documents from Garcia's personnel file.

2. Make Garcia whole for any financial losses suffered as a result of his placement on administrative leave. Compensation shall be augmented by interest at a rate of 7 percent per annum.

3. Rescind Garcia's reassignment notice dated April 29, 2019, and remove all originals and copies of the notice and any accompanying documents from Garcia's personnel file.

4. Offer Garcia reinstatement to his former position at the Family Health Center or to a substantially similar position at the Family Health Center.

5. Make Garcia whole for any financial losses suffered as a result of his reassignment to the Maxine Hall Health Center, from the date of the reassignment until the date the reinstatement offer is made. Compensation shall be augmented by interest at a rate of 7 percent per annum.

6. Within 10 workdays after this decision is no longer subject to appeal, post at all work locations where notices to employees in bargaining units represented by Service Employees International Union Local 1021 (SEIU) customarily are posted, copies of the Notice attached hereto as an Appendix. In addition to physical posting, the Notice shall be posted by electronic means customarily used by the City to communicate with employees in the bargaining units represented by SEIU. The Notice must be signed by an authorized agent of the City, indicating that it will comply with

the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.[11]

7. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board or the General Counsel's designee. The City shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on Garcia.

Chair Banks and Member Paulson joined in this Decision.

[11] In light of the ongoing COVID-19 pandemic, Respondent shall notify PERB's Office of the General Counsel (OGC) in writing if, due to an extraordinary circumstance such as an emergency declaration or shelter-in-place order, a majority of employees at one or more work locations are not physically reporting to their work location as of the time the physical posting would otherwise commence. If Respondent so notifies OGC, or if Charging Party requests in writing that OGC alter or extend the posting period, require additional notice methods, or otherwise adjust the manner in which employees receive notice, OGC shall investigate and solicit input from all parties. OGC shall provide amended instructions to the extent appropriate to ensure adequate publication of the Notice, such as directing Respondent to commence posting within ten workdays after a majority of employees have resumed physically reporting on a regular basis; directing Respondent to mail the Notice to all employees who are not regularly reporting to any work location due to the extraordinary circumstance, including those who are on a short term or indefinite furlough, are on layoff subject to recall, or are working from home; or directing Respondent to mail the Notice to those employees with whom it does not customarily communicate through electronic means.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After proceedings in Unfair Practice Case No. SF-CE-1683-M, *Alfonso Garcia v. City & County of San Francisco*, in which all parties had the right to participate, it has been found that the City & County of San Francisco (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. and PERB Regulations by retaliating against Alfonso Garcia (Garcia) for his exercise of protected rights by placing him on administrative leave on March 4, 2019, and reassigning him from the Family Health Center to the Maxine Hall Health Center on April 29, 2019. The City also interfered with Garcia's protected rights under the MMBA by informing Garcia on November 15, 2018, that employees would be fired if his exclusive representative continued filing grievances against the City; directing Garcia on June 18, 2019, not to communicate with employees at his former worksite; and ordering Garcia's union representative to leave a meeting in which he was entitled to have a union representative present on June 18, 2019.

As a result of this conduct, we have been ordered to post this Notice and will:

A. CEASE AND DESIST FROM:

1. Imposing reprisals and/or discriminating against employees because of their exercise of protected rights under the MMBA.

2. Interfering with employees' exercise of rights granted by the MMBA.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Rescind Garcia's administrative leave notice dated March 4, 2019, and remove all originals and copies of the notice and any accompanying documents from Garcia's personnel file.

2. Make Garcia whole for any financial losses suffered as a result of his placement on administrative leave. Compensation shall be augmented by interest at a rate of 7 percent per annum.

3. Rescind Garcia's reassignment notice dated April 29, 2019, and remove all originals and copies of the notice and any accompanying documents from Garcia's personnel file.

4. Offer Garcia reinstatement to his former position at the Family Health Center or to a substantially similar position at the Family Health Center.

5. Make Garcia whole for any financial losses suffered as a result of his reassignment to the Maxine Hall Health Center, from the date of the reassignment until the date the reinstatement offer is made. Compensation shall be augmented by interest at a rate of 7 percent per annum.

Dated: _____ CITY & COUNTY OF SAN FRANCISCO

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 30 CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.