*** * * JUDICIAL APPEAL PENDING * * ***

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

MUNICIPAL ATTORNEYS ASSOCIATION OF SAN FRANCISCO, TEAMSTERS LOCAL 856, Charging Party, v. CITY AND COUNTY OF SAN FRANCISCO, Respondent.	Case No. SF-CE-2157-M PERB Decision No. 2958-M April 25, 2025

Appearances: Beeson, Tayer & Bodine by Susan K. Garea, Attorney, for Municipal Attorneys Association of San Francisco, Teamsters Local 856; Sloan, Sakai, Yeung & Wong by Timothy G. Yeung and David Kahn, Attorneys, and Renne Public Law Group, by Jonathan V. Holtzman and Arthur A. Hartinger, Attorneys, for City and County of San Francisco.

Before Banks, Chair; Krantz and Krausse, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on both parties' exceptions to a proposed decision issued by an administrative law judge (ALJ). The operative facts arose while Charging Party Municipal Attorneys Association of San Francisco, Teamsters Local 856 (MAA) was negotiating for a new Memorandum of Understanding (MOU) with Respondent City and County of San Francisco (City). MAA proposed MOU language that would require the City to show just cause for terminating MAA-represented attorneys and would further require that attorney layoffs proceed in reverse-seniority order. The City

acknowledged that the job protection proposals involved mandatory subjects of bargaining under the Meyers-Milias-Brown Act (MMBA).[1] But the City refused to agree to the job protection proposals and, critically, refused to submit these issues to binding interest arbitration under the impasse resolution procedures set forth in the San Francisco City Charter (Charter).

MAA filed an unfair practice charge against the City while bargaining was still underway, and PERB's Office of the General Counsel (OGC) issued a complaint alleging multiple MMBA violations. The complaint primarily alleged that the City: (1) refused to bargain over MAA's job protection proposals and refused to submit these proposals to interest arbitration as the Charter requires, thereby violating MMBA sections 3506.5(c) and 3509(b), among other sections; and (2) adopted or enforced an unreasonable local rule that conflicts with the MMBA by failing to allow interest arbitration over MAA's job protection proposals and imposing an unlawful deadline for parties to submit proposals.

MAA did not pursue its claim about the submission deadline. In any event, we addressed the deadline's legality in *City and County of San Francisco* (2020) PERB Decision No. 2691-M (*CCSF I*) and *City and County of San Francisco* (2023) PERB Decision No. 2858-M (*CCSF II*). Accordingly, we do not further discuss that claim.

Among the remaining issues in dispute, the threshold issue is whether the Charter allows or disallows interest arbitration over MAA's job protections proposals. If the Charter affords MAA the right to engage in interest arbitration over its job

[1] The MMBA is codified at Government Code section 3500 et seq. Undesignated statutory references are to the Government Code.

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

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

FACTUAL AND PROCEDURAL BACKGROUND

The City, which is both a charter city and county under California law, is a public agency within the meaning of MMBA section 3501(c). The City Charter establishes, among other City agencies, a Civil Service Commission (CSC). The CSC's primary duty is to oversee the City's civil service merit system.

MAA, an exclusive representative within the meaning of PERB Regulation 32016(b),[2] represents Unit 31, a bargaining unit comprising six attorney classifications working primarily in the City Attorney's Office, the District Attorney's Office, and the Public Defender's Office. More than 80 percent of Unit 31 attorneys fall within title code 8177, which is a "deep class," meaning that attorneys progress annually along a 16-step salary scale rather than moving to higher attorney classifications. Job responsibilities advance as employees progress through the scale.

City appointing authorities (normally department heads) hire and fire attorneys. In this case, the most relevant department heads are three elected officials: the District Attorney, the Public Defender, and the City Attorney.

In 2024, MAA affiliated with Teamsters Local 856. The bargaining unit's primary impetus for affiliation was employees' concern over job protections after a turnover in elected department heads led to a series of terminations that certain employees perceived to be retaliatory and/or political in nature.

In our below factual findings, we cover the most relevant Charter provisions and local rules, the parties' bargaining history over job protections prior to 2024, and finally the 2024 negotiations at issue in this case.

I. Relevant Charter Provisions and CSC Rules

Appendix 8 to the Charter (commonly referred to as "A8"), titled "Employment Provisions," is one of multiple Charter sections that make up the City's local rules regarding employee and labor relations.

[2] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Charter section A8.409-3 states, in relevant part:

> "**A8.409-3 OBLIGATION TO BARGAIN IN GOOD FAITH**
>
> "Notwithstanding any other ordinances, rules or regulations . . . , [the City and unions representing City employees] shall have the mutual obligation to bargain in good faith on all matters within the scope of representation as defined by [MMBA] section 3504, relating to the wages, hours, benefits and other terms and conditions of [City] employment, including . . . agreements to provide binding arbitration of discipline and discharge; provided, however that, except insofar as they affect compensation, those matters within the jurisdiction of the [CSC] which establish, implement and regulate the civil service merit system shall not be subject to bargaining under this part: the authority, purpose, definitions, administration and organization of the merit system and the [CSC]; policies, procedures and funding of the operations of the [CSC] and its staff; the establishment and maintenance of a classification plan including the classification and reclassification of positions and the allocation and reallocation of positions to the various classifications; status rights; the establishment of standards, procedures and qualifications for employment, recruitment, application, examination, selection, certification and appointment; the establishment, administration and duration of eligible lists; probationary status and the administration of probationary periods, except duration; pre-employment and fitness for duty medical examinations . . .; the designation of positions as exempt, temporary, limited tenure, part-time, seasonal or permanent; resignation with satisfactory service and reappointment; exempt entry level appointment of the handicapped; approval of payrolls; and conflict of interest. As to these matters, the [CSC] shall continue to be required to meet and confer pursuant to state law."

Charter section A8.409-4, titled "Impasse Resolution Procedures," provides for mediation and/or binding interest arbitration when the City and a recognized union

reach a bargaining impasse.[3] The parties engage in the mediation and/or arbitration process before a board comprising one member that the City appoints, one member that the union appoints, and a neutral third member, who is typically a labor arbitrator. (*CCSF II*, *supra*, PERB Decision No. 2858-M, p. 3.) We commonly refer to "the arbitrator" as shorthand for the full three-member board, because the neutral arbitrator's vote usually decides all disputed topics. (*Id*. at pp. 3-4.)

If the parties reach impasse and are unable to reach agreement through mediation, the arbitrator must direct each party to submit "a last offer of settlement on each of the remaining issues in dispute." (Charter, § A8.409-4(d).) The arbitrator then resolves each disputed issue based on factors listed in the Charter and need not accept either party's full package of proposals. (*Ibid*.) The arbitrator's decisions are final and binding on the parties. (*Ibid*.)

City voters added sections A8.409-3 and A8.409-4 to the Charter in 1991, when they voted in favor of Proposition B. (*CCSF I*, *supra*, PERB Decision No. 2691-M, p. 8.) Prior to placing Proposition B on the ballot, the City bargained over its terms with a coalition of City unions. (*Ibid*.) The lead negotiators for the union coalition came from the largest City union, which was affiliated with the Service Employees International Union (SEIU).

Charter section 10.101, titled "General Powers and Duties," states that the CSC "shall adopt rules, policies and procedures to carry out the civil service merit system

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[3] For a more complete discussion of the relevant Charter provisions and their history, see *CCSF I*, *supra*, PERB Decision No. 2691-M, pp. 5-11. As noted there, the Charter contains separate sections (including alternate interest arbitration provisions) for transit employees, police officers, deputy sheriffs, and firefighters. (*Id*. at pp. 6, 29.)

provisions of this charter" including rules regarding applications, examinations, eligibility lists, appointments, transfers, layoffs, and other matters concerning the merit system.

Charter section 10.104, titled "Exclusions From Civil Service Appointment," states, in relevant part:

> "All employees of [the City] shall be appointed through competitive examination unless exempted by this Charter. The following positions shall be exempt from competitive civil service selection, appointment and removal procedures, and the person serving in the position shall serve at the pleasure of the appointing authority:
>
> [¶] . . . [¶]
>
> "13. All attorneys, including an attorney to the Sheriff and an attorney for the Tax Collector, City Attorney's and District Attorney's investigators, hospital chief administrators, physicians and dentists serving in their professional capacity (except those physicians and dentists whose duties are significantly administrative or supervisory)[.]"

The CSC maintains a set of rules, which includes Rule 114.25, as follows:

> **"Sec. 114.25 Exclusions from Civil Service Appointment**
>
> "All permanent employees of the City and County shall be appointed through the civil service process by competitive examination unless exempted from the civil service examination and selection process in accordance with Charter provisions. Appointments excluded by Charter from the competitive civil service examination and selection process shall be known as exempt appointments. Any person occupying a position under exempt appointment shall not be subject to civil service selection, appointment,

> and removal procedures and shall serve at the pleasure of the appointing officer."

II. Bargaining History over Requirements for Attorney Terminations

Prior to 2024, the parties had repeatedly bargained, and in certain instances used the Charter's interest arbitration mechanism, regarding proposals to strengthen or relax requirements relating to attorney terminations. In the 1990s or early 2000s, the parties added a Severance Pay article to their MOU. This article imposed two types of requirements regarding attorney terminations. First, it required the City to provide 30 days' notice or 30 days' pay in lieu of notice when terminating an attorney. Second, it specified the levels of severance attorneys would receive upon termination. This portion of the article began by stating:

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

The article then set forth a schedule of severance payments based on years of service.

In the 2005 negotiation cycle, the parties submitted competing proposals to modify the Severance Pay article. The City proposed to add the following new language to the severance article: "Notwithstanding the provisions in this MOU that would otherwise entitle an attorney to severance pay, attorneys shall not be entitled to

severance pay if the termination or change in job code stems from an attorney's misconduct." The City further proposed that "disputes concerning whether misconduct occurred in connection with severance pay may be submitted to expedited arbitration." MAA's 2005 proposal, in contrast, would: (1) excuse the City from paying severance if it afforded an attorney certain due process protections and proved gross misconduct in a neutral, binding hearing; and (2) authorize the hearing officer to order backpay, reinstatement, and expungement of discipline if the hearing record "exonerated" the attorney. After weighing the factors required by the Charter, the interest arbitrator rejected the City's proposal and instead added MAA's proposal to the MOU.

In 2019, the parties again needed an interest arbitrator to resolve a bargaining impasse over dueling proposals to modify the Severance Pay article. In that instance, the City sought to require attorneys to sign a general release in exchange for severance pay, while MAA proposed to retain existing language, which required a release of MOU claims rather than a general release. The arbitrator adopted the City's general release proposal.

In 2022, MAA proposed due process rights and other job protections for bargaining unit attorneys who are subject to termination. In doing so, MAA addressed employee concerns based on a recent change in district attorney leadership and another anticipated change. The City rejected the proposal, and City Chief Negotiator Charles Sakai stated that it was ineligible for interest arbitration. Soon after, discussion turned to meeting the attorneys' concern in other ways, and the parties were able to reach an agreement to enhance severance benefits, leading to a new, two-year MOU.

The Severance Pay article, as modified by the 2005 and 2019 interest arbitration awards, as well as the 2022 enhancement that the parties successfully bargained, remains in the current MOU.

III. The Parties' 2024 Negotiations

In January 2024, the City and MAA began negotiating a successor agreement to replace their expiring two-year MOU.[4] Even before formal bargaining commenced, the parties selected a neutral arbitrator and scheduled dates for mediation and interest arbitration throughout April, in case negotiations reached an impasse.

The parties left most economic issues for separate but simultaneous bargaining between the City and the Public Employees Committee (PEC), a coalition of unions representing City employees. The City and MAA thus bargained over all issues that were not a part of PEC negotiations, meeting by videoconference for nine sessions.

On February 12, at the parties' second session, MAA submitted its Proposal 1, which stated that all discipline must be "for just cause and progressive," and specified procedures, including written advance notice of any proposed suspension, demotion or termination. The proposal also made discipline subject to grievance and binding arbitration, while excluding disciplinary action from the MOU's management rights clause. MAA Chief Negotiator Matt Finnegan explained to the City that Proposal 1 was MAA's top priority, and that MAA was categorically not proposing to place attorneys under the civil service merit system. Rather, Finnegan explained, MAA proposed MOU-based procedures for attorney terminations that were entirely distinct from the

[4] All further dates refer to 2024 unless otherwise stated.

merit system's procedures, which do not cover attorneys. Finnegan further explained that MAA's proposal was like one that Alameda County had recently negotiated for its district attorneys, and that Alameda County's charter is like the City's Charter, in that it exempts from its merit system employees working in the District Attorney's office. The record reflects that Finnegan was correct in these assertions.

When MAA presented Proposal 1, City negotiators were dismissive, stating that it was "happening again," thereby referencing MAA's 2022 proposal. The City told MAA's negotiators that Proposal 1 conflicted with the employees' at-will status and that any matter concerning attorneys' employment status is "carved out" from the Charter's impasse procedures.

On February 28, MAA e-mailed the City a memo from its attorney, Susan Garea, titled "Legal Opinion re San Francisco Attorneys." The memo asserted that under the City's interpretation, the Charter would violate the MMBA.

The parties discussed Proposal 1 again at their seventh bargaining session on March 11. Sakai acknowledged that the proposal fell within the MMBA's scope of bargaining, but he claimed it was ineligible for interest arbitration under the Charter. Also on March 11, Sakai e-mailed the City's response to the legal memo MAA had provided on February 28. This response stated, in part, that:

> "The City has not taken the position that Proposal #1 is outside the scope of bargaining under the MMBA, nor has the City refused to bargain Proposal #1. Instead, as the City has done any time MAA has raised just cause rights in the past, and as is permitted under the MMBA, the City has rejected Proposal #1 and proposed instead that the parties maintain the status quo."

Sakai's response further explained the City's view that attorneys' ethical and professional obligations made them unique and "that attorneys have a special relationship with their appointing authorities and clients that warrants their exempt, i.e., at[-]will, appointment status." Sakai also urged that MAA "should respect the will of the voters expressed in Section 10.104" and argued that "internal and external comparability data will not support just cause rights for the City's attorneys, and certainly would not support just cause rights and a severance benefit."

Critically for this case, Sakai then stated the following position:

> "While the City will negotiate Proposal #1 in good faith consistent with all processes under the MMBA, please be advised that the City will not submit any proposal that would alter the attorneys' exempt/at-will status to the impasse resolution procedures under Charter Section A8.409-4. Section A8.409 establishes City policy and procedures for bargaining between the City and the recognized employee organizations representing City employees on matters within the scope of representation under the MMBA. This City-specific bargaining process is a layer on top of bargaining requirements under the MMBA, and includes impasse resolution procedures involving mediation and then binding interest arbitration. *See* Charter §A8.409-4. The MMBA's mandatory impasse resolution procedures culminate in advisory fact-finding. The MMBA does not require binding interest arbitration for impasse resolution. Thus, interest arbitration as an impasse resolution mechanism is solely available as provided in the City's Charter."

On March 21, the parties met for a bargaining session regarding Proposal 1. Sakai reiterated that the City would bargain over MAA's proposal but would not agree to submit it to the Charter's impasse resolution procedures. Rather, Sakai asserted that if the parties reached impasse over Proposal 1, MAA had the right to require the

City to engage in non-binding fact-finding under MMBA section 3505.4. MAA responded that the City had an obligation both to bargain over job protections and, if needed, to engage in interest arbitration over job protection issues.

On March 26, Finnegan e-mailed Sakai to address his argument that attorneys have professional obligations that warrant at-will status, and Sakai's expectation that "internal and external comparability data would not support just cause rights for the City's attorneys." To counter both arguments, Finnegan forwarded Sakai the results of a comparability study MAA performed, demonstrating that many public attorneys at comparable California cities and counties have job protections via civil service merit systems or negotiated MOU provisions.

By March 29, PEC bargaining had reached an agreement on economic terms. However, Proposal 1 remained in dispute between the City and MAA, as did certain other non-economic issues. In a series of e-mail messages, the parties continued to disagree whether Proposal 1 was eligible for interest arbitration. The parties also disagreed over MAA's Proposal 14, which sought to add seniority-based layoff protections, among other provisions. As with Proposal 1, the City acknowledged that Proposal 14 fell within the MMBA's scope of bargaining but stated that it was ineligible for interest arbitration.

Sakai offered to submit Proposals 1 and 14 (collectively, the job protection proposals) to a "separate but concurrent" mediation before Paul Roose, the interest arbitrator. However, Sakai made clear that the City would not agree to engage in binding interest arbitration over the job protection proposals. Finnegan disagreed and reiterated that MAA was not proposing to place Unit 31 attorneys under the civil

service merit system. Sakai stated that while the City rejected Proposal 1, it would "look forward to any modifications that the MAA wishes to make."

For issues in dispute other than the job protection proposals, the parties submitted their competing proposals to Roose. On April 25, the parties reached agreement on those issues, obviating the need for an interest arbitration decision. The agreement explicitly left open the dispute over job protection proposals, as follows:

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

At no point in the parties' negotiations did the City offer to make the CSC, or a representative thereof, available for bargaining over MAA's job protection proposals. Sakai admits that he never spoke with any of the CSC's commissioners, or any other representative of the CSC, about those proposals.

IV. Procedural History

MAA filed this unfair practice charge against the City on April 1. After OGC issued a complaint, the City filed an answer denying the material allegations and asserting multiple affirmative defenses. The parties engaged in a virtual formal hearing before the ALJ, and thereafter the ALJ granted the City's unopposed request to take official notice of, inter alia, the city charters for the City of Oakland and the City of San

Jose. The ALJ received two rounds of briefing from each party before issuing the proposed decision on October 24. This appeal ensued.[5]

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.) However, to the extent that a proposed decision has adequately addressed issues raised by certain exceptions, the Board need not further analyze those exceptions. (*Ibid*.) The Board also need not address alleged errors that would not affect the outcome. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.)

Part I below addresses the threshold question of whether the City complied with its Charter. We find that the City failed to do so. Part II addresses the complaint's bad faith bargaining claim, and Part III discusses the proper remedy.

I. Violation of MMBA Section 3509(b) by Failure to Follow Charter

Under the MMBA, a local agency may adopt reasonable rules and regulations about resolution of collective bargaining disputes. (§ 3507(a)(5).) Charter section A8.409-4, which provides for interest arbitration, is such a local agency rule on resolution of bargaining disputes. Indeed, the Court of Appeal noted as much in *City*

[5] With its exceptions, the City asked us to take official notice of the CSC's rules and language from MOUs covering other employees who "serve at the pleasure" of the appointing authority and do not fall within the merit system, such as physicians. We grant this unopposed request pursuant to the standards set forth in Evidence Code section 452. The City has also requested oral argument. We typically deny such requests when the record before us is adequate, the parties availed themselves of the opportunity to brief all pertinent issues, and the briefs are sufficiently clear as to make oral argument unnecessary. (*CCSF I*, *supra*, PERB Decision No. 2691-M, p. 3, fn. 4.) Applying this standard, we deny the City's oral argument request.

and County of San Francisco v. International Union of Operating Engineers, Local 39 (2007) 151 Cal.App.4th 938, 944 ["The City concedes that section A8.409-4 is a rule adopted by a public agency within the meaning of section 3507"] (*CCSF v. Operating Engineers*).

MMBA section 3509(b) makes it unlawful to violate a reasonable local rule adopted under section 3507, and section 3509(b) further provides that PERB shall process any such claim as an unfair practice charge. This means that a party must normally use PERB's unfair practice process to challenge any alleged violation of a local rule adopted under section 3507. (*CCSF v. Operating Engineers*, *supra*, 151 Cal.App.4th at p. 944.) A party seeking to enforce a local rule cannot eschew filing an unfair practice charge in favor of filing a lawsuit in superior court. (*Id*. at pp. 944-950.) Thus, in *CCSF v. Operating Engineers*, when the City filed a petition to compel arbitration against a union for refusing to engage in interest arbitration and thereby allegedly violating Charter section A8.409-4, the superior court lacked jurisdiction to adjudicate the claim. (*Ibid*.) This was true even though the City's petition did not frame its claim as an unfair practice and did not mention the MMBA. (*Id*. at p. 945 [PERB's exclusive jurisdiction derives from the conduct at issue rather than how a party chooses to describe or challenge such conduct].)[6]

[6] One year after *CCSF v. Operating Engineers*, *supra*, 151 Cal.App.4th 938, the Legislature amended the MMBA to add section 3509(e)—later redesignated as section 3509(f)—which vested superior courts with jurisdiction over actions involving interest arbitration between a local agency and a union representing firefighters. (See Stats. 2008, ch. 712, § 2; *City of San Jose v. International Assn. of Firefighters, Local 230* (2009) 178 Cal.App.4th 408, 419 [discussing amendment to transfer jurisdiction to courts for interest arbitration matters involving firefighters]; see also Stats. 2024, ch. 242, § 1 [adding new subdivision to section 3509 and redesignating three existing

The threshold claim in this case is that the City, by refusing to submit job protection proposals to interest arbitration, violated its Charter and thereby violated MMBA section 3509(b). The City concedes that the job protection proposals are a mandatory bargaining topic under the MMBA. However, citing three Charter sections, the City contends that the Charter nonetheless excludes these proposals from interest arbitration.

In *San Francisco Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653 (*Fire Fighters v. CCSF*), the California Supreme Court held that when interpreting the Charter to discern whether it exempts a proposal from interest arbitration, the "primary guide" is the Charter's "plain meaning." (*Id*. at p. 671.) We apply this approach, examining the three Charter sections upon which the City relies.

A. Charter Section A8.409-4

Charter section A8.409-4, titled "Impasse Resolution Procedures," details the interest arbitration mechanism applicable to employee groups other than police officers, deputy sheriffs, firefighters, and transit employees. Pursuant to subsection A8.409-4(a), the interest arbitration mechanism broadly covers "disputes pertaining to wages, hours, benefits, or other terms and conditions of employment which remain unresolved after good faith bargaining," while two other subsections set forth exceptions. Specifically, subsection A8.409-4(h) states that interest arbitration does not apply to "any proposal pertaining to the right to strike," while subsection A8.409(g) excludes "any rule, policy, procedure, order or practice which relates or pertains to the

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subdivisions].) Because the current case does not involve a union representing firefighters, PERB has exclusive jurisdiction.

purpose, goals or requirements of a consent decree, or which is necessary to ensure compliance with Federal, State or local laws, ordinances or regulations."

The Charter's analogous dispute resolution mechanism for police officers, deputy sheriffs, and firefighters, found in section A8.590-5, contains three exceptions to interest arbitration. First, subsection A8.590-5(g)(1) excludes disputes regarding crowd control policies. Second, subsection A8.590-5(g)(2) excludes procedures or practices related to citizens' complaints, as well as matters relating to "disciplinary procedures that apply to disciplinary actions involving members of the San Francisco Police Department and Fire Department." Third, subsection A8.590-5(g)(3) details an exception relating to compliance with external laws and consent decrees, making it akin to the above-described exception in subsection A8.409-4(g).[7]

The City fails to recognize the import of Charter subsections A8.409-4(g)-(h) and A8.590-5(g)(1), (2), and (3). These explicit, narrow exceptions to interest arbitration show that Charter drafters were fully aware how to remove matters from interest arbitration, and in fact did so for a limited set of disciplinary matters—those related to police officers, deputy sheriffs, and firefighters. Yet there is no exclusion for attorney discipline. Indeed, while section A8.409-4 is quite lengthy—detailing interest arbitration provisions over the course of 13 paragraphs comprising 1650 words—it

[7] Charter subsection A8.590-5(g)(3) was the exception at issue in *Fire Fighters v. CCSF*, *supra*, 38 Cal.4th 653. The decision does not indicate any dispute over whether a superior court action was jurisdictionally appropriate to resolve whether the exception applied. We express no opinion on that question, other than to note that while Charter subsection A8.409-4(g) indicates that questions regarding the exception are subject to litigation "in a court of competent jurisdiction," the comparable exception in Charter subsection A8.590(g)(3) contains no such language.

includes only two narrow exceptions to the broad definition of covered topics found in subsection (a). Neither exception excludes MAA's job protection proposals from interest arbitration.

Perhaps recognizing that the Charter's interest arbitration provisions afford the City no colorable basis for its argument, the City relies more heavily on two other Charter sections related to labor and employment. We consider each of those provisions in turn.

B. Charter Section A8.409-3

As noted above, when considering alleged exceptions to an interest arbitration provision, plain meaning is our primary guide. (*Fire Fighters v. CCSF*, *supra*, 38 Cal.4th at p. 671.) The plain language of Charter section A8.409-3 broadly declares that the City must "bargain in good faith on all matters within the scope of representation as defined by [MMBA] section 3504, relating to the wages, hours, benefits and other terms and conditions of [City] employment, including . . . agreements to provide binding arbitration of discipline and discharge." (Emphasis supplied.) There is a carve-out, however, as follows:

> "Except insofar as they affect compensation, those matters within the jurisdiction of the [CSC] which establish, implement and regulate the civil service merit system shall not be subject to bargaining under this part: the authority, purpose, definitions, administration and organization of the merit system and the [CSC]; policies, procedures and funding of the operations of the [CSC] and its staff; the establishment and maintenance of a classification plan including the classification and reclassification of positions and the allocation and reallocation of positions to the various classifications; status rights; the establishment of standards, procedures and qualifications for employment, recruitment, application, examination, selection, certification and

> appointment; the establishment, administration and duration of eligible lists; probationary status and the administration of probationary periods, except duration; pre-employment and fitness for duty medical examinations . . .; the designation of positions as exempt, temporary, limited tenure, part-time, seasonal or permanent; resignation with satisfactory service and reappointment; exempt entry level appointment of the handicapped; approval of payrolls; and conflict of interest. As to these matters, the [CSC] shall continue to be required to meet and confer pursuant to state law."

(Charter, § A8.409-3 (emphasis supplied).)

Section A8.409-3—both in its broad inclusion and specific CSC carve-out—undercuts the City's position in multiple respects. First, even for employees who fall under the civil service merit system, the broad inclusion explicitly covers "agreements to provide binding arbitration of discipline and discharge." And while the carve-out reserves to the CSC the duty to bargain over matters that "establish, implement and regulate the civil service merit system," the lengthy list of such matters that follows includes very few termination-related topics, even for employees under the merit system. For instance, the CSC has the duty to bargain over matters related to "conflict of interest," "probationary status and the administration of probationary periods," "resignation with satisfactory service," and "the designation of positions as exempt, temporary, limited tenure, part-time, seasonal or permanent." (Charter, § A8.409-3.) These matters touch on termination but do not exclude the explicitly included topic of "binding arbitration of discipline and discharge." Thus, even if attorneys fell within the merit system, the City could not argue that there was a carve-out for MAA's job protection proposals.

In any event, attorneys have never been subject to the civil service merit system, and MAA has never proposed adding attorneys to that system. Indeed, the City's own witness, CSC Commissioner Kate Favetti, agreed that "the rules that the [CSC] establishes with respect to all of the various carve-outs listed are not applicable to attorneys." Similarly, a 2018 memo from the CSC to department heads explicitly discusses attorneys, noting that that the CSC "play[s] no role with respect to these appointments."

The City notes that the carve-out covers "status rights" and "the designation of positions as exempt." (Charter, § A8.409-3.) But exemptions or other status issues under the civil service merit system are different from MOU-based arbitration of discipline and discharge. The City's position is akin to arguing that the merit system preempts any MOU-based job protections. That is not true even for employees within the merit system, and it is even less true for employees who fall outside the merit system.

The City also cites to CSC Rule 114.25. The City waived any such argument by not raising it before the ALJ. (*Los Angeles County Superior Court* (2018) PERB Decision No. 2566-C, p. 12 [noting well-established rule that the Board will not normally review a matter never raised before the ALJ].) Even had the City not waived its argument, we would still reject it on the merits. It is the Charter that has exempted attorneys from the civil service merit system, since at least 1932. CSC Rule 114.25 simply relies on that pre-existing Charter exemption, as Favetti acknowledged. The CSC has no power to change attorneys' exemption from the merit system, and Rule 114.25 does not suddenly make binding arbitration of attorney discipline a carved-out

issue. Rather, as explained above, MAA's proposal for MOU-based job protections are entirely distinct from the merit system and its exemptions.

The plain language of section A8.409-3 also poses a third, independent problem for the City's argument. Specifically, while the City admits its duty to bargain over MAA's job protection proposals and posits that section A8.409-3 excludes those proposals from interest arbitration, section A8.409-3 is not the portion of the Charter that contains actual exceptions to interest arbitration; as noted above, those exceptions are found in Charter subsections A8.409-4(g) and (h). Section A8.409-3, rather than defining what topics are ineligible for interest arbitration, broadly defines the duty to bargain while stating that the CSC must handle bargaining as to certain topics pertaining to the merit system. This is evident from the section's language and from how the section's title ("Obligation to Bargain in Good Faith") differs from the title of section A8.409-4 ("Impasse Resolution Procedures").

There is yet another fatal flaw in the City's reasoning: its representatives failed to take the actions that would be proper if, for the sake of argument, the CSC carve-out actually applied to MAA's job protection proposals. Specifically, the final sentence of the CSC carve-out states that the CSC is the bargaining entity for those matters falling under the carve-out. (Charter, § A8.409-3 ["As to these matters, the [CSC] shall continue to be required to meet and confer pursuant to state law"].) This sentence comports with statute and precedent. (See MMBA, § 3500(a) [MMBA does not "supersede" local civil service systems and is, rather, intended to "strengthen" such systems]; *Los Angeles County Civil Service Com. v. Superior Court* (1978) 23 Cal.3d 55, 62-65 [civil service commission must bargain about matters

under its jurisdiction].) But the City never referred any proposals to the CSC for bargaining or suggested that MAA do so. Sakai also admitted that the City's bargaining team did not consult with the CSC before bargaining over MAA's job protection proposals. Rather, the City's negotiators bargained over the job protection proposals. This evidence further confirms that the job protection proposals do not fall within the CSC carve-out.

In each of the above respects, the City's argument is at odds with the Charter's language. The City thus faced a substantial burden to prove that, contrary to the Charter's plain meaning: (1) the CSC carve-out covers the specific topics found in MAA's proposals (binding arbitration of discipline and discharge, as well as layoff in seniority order); (2) the carve-out covers these topics even for employees who do not fall within the merit system, and who are seeking MOU-based job protections wholly apart from the merit system; (3) if the carve-out somehow could apply to MAA's job protection proposals, it nevertheless vests the City with the bargaining duty rather than reserving it to the CSC; and (4) the carve-out makes the job protection proposals ineligible for interest arbitration under Charter section A8.409-4, even though that section contains specific, narrow exceptions that simply do not apply, and section A8.409-3 is explicitly about defining what areas are reserved to the CSC for bargaining rather than about interest arbitration exceptions.

The City has not carried any, much less all, of these burdens. Part of its effort to do so involved calling two witnesses with at least limited knowledge of Proposition B and its 1991 enactment. The first witness was Favetti, but as noted above, she

confirmed that CSC rules on the various carve-out functions do not apply to attorneys.[8]

The second witness was Carol Isen. In 1991, Isen represented International Federation of Professional and Technical Engineers Local 21 in negotiations between the City and the SEIU-led union coalition. Isen later began working for the City in 2003, and she currently serves as the City's Human Resources Director. Isen supported one of the City's arguments—that the CSC carve-out was an exception to interest arbitration. However, even if this were the correct view of the carve-out, it would not help the City overcome any of the other respects in which its argument contravenes the Charter's plain language. In fact, on cross examination Isen testified in MAA's favor, agreeing that there is no carve-out for binding arbitration of discipline and discharge.

Isen also significantly undercut the City's position in another way, by testifying that the carve-out's purpose was to preserve certain aspects of the CSC's role prior to Proposition B. Notably, the CSC never had any role with respect to discipline or discharge of Unit 31 attorneys. It would be nonsensical to surmise that the parties who bargained over Proposition B, and the voters who enacted it, "preserved" something that never existed in the first place.

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[8] In testimony that conflicted with both parties' arguments to a degree, Favetti interpreted Charter section 10.104 to mean that the City has no authority to bargain over job protections for attorneys. This view contradicted the City's position that it has authority to bargain over MAA's job protection proposals. In any event, as discussed at pages 26-31, *post*, we do not read section 10.104 the same way, and indeed it says nothing about either bargaining or interest arbitration.

Moreover, to the extent that we go beyond the Charter's plain meaning and consider Isen's testimony as part of the early 1990s history of Proposition B, there is significant other evidence to analyze as well: materials the City sent to voters before they passed Proposition B. These documents show no intent to carve-out discipline and discharge for any employees, much less for attorneys who are not part of the merit system. Moreover, the materials show an extremely broad intent to allow interest arbitration to resolve bargaining disputes, thereby discouraging strikes, without any hint that job protection proposals (or any other matter related to attorney terminations or discipline) would be exempt from interest arbitration.[9]

For the above reasons, Charter section A8.409-3 does not exclude MAA's job protection proposals from interest arbitration.

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[9] Describing the CSC carve-out, the voter materials merely stated: "Proposition B would not affect the civil service provisions on hiring and promotions." (emphasis supplied.) Meanwhile, numerous provisions in the voter materials broadly stated the right to interest arbitration as a means to reduce strikes, including: "If parties could not reach agreement through collective bargaining, each side would submit a final offer on disputed issues to an arbitration board"; "Proposition B requires binding arbitration for peaceful resolution of labor disputes"; "Proposition B will preclude strikes through the use of the peaceful method of arbitration"; "Proposition B requires that disputes be resolved by arbitration, not strikes"; and "Proposition B will bring San Francisco in line with other Bay Area cities and counties who already allow their workers to negotiate through collective bargaining and binding arbitration." The City's theory would contravene these statements in every respect. Indeed, under the City's theory, even though MAA chose to avail itself of interest arbitration, it would simultaneously have retained the right to strike over its job protection proposals. (See *City and County of San Francisco* (2023) PERB Decision No. 2867-M, p. 33 [Charter section A8.409-4(a) requires union to choose between interest arbitration and economic striking in a single negotiation cycle] [judicial appeal pending].)

C. Charter Section 10.104

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

Having conceded that section 10.104 leaves the City discretion to negotiate over job protections, it would be fanciful for the City to suggest that section 10.104 carves out such protections from interest arbitration. Indeed, section 10.104 does not mention interest arbitration. Moreover, as discussed *ante*, the Charter's interest arbitration provisions broadly cover bargaining disputes as to mandatory bargaining topics, subject only to specifically enumerated exceptions that are plainly not applicable here. Looking primarily at the "plain meaning" of the Charter (*Fire Fighters v. CCSF*, *supra*, 38 Cal.4th 671), section 10.104 does not support the City's position.

In any event, serving "at the pleasure" of management has no single, uniform meaning, as it leaves open what protections management may adopt relative to the positions in question. Thus, while employees serving at the pleasure of management normally have no property interest giving rise to constitutional due process, they are fully able to avail themselves of job protections that may be in place by MOU or by any other lawful policy. (*Bishop v. Wood* (1976) 426 U.S. 341, 345 [employee who "held his position at the will and pleasure" of a local agency had "no right to continued employment," but employee's removal was conditioned on compliance with procedures set out in the local agency's procedures]; *Mervin v. Federal Trade Commission* (D.C. Cir. 1978) 591 F.2d 821, 828-830 [government attorney who "served at the pleasure of his superiors," had "no property right to continued employment cognizable under the due process clause," but had the right to pursue administrative remedies to enforce protections afforded under an administrative manual and a regulation regarding layoff order.]; accord *Bogacki v. Bd. of Supervisors* (1971) 5 Cal.3d 771, 775-777 [employees who served "at the pleasure of their department heads" were, nonetheless, afforded certain dismissal appeal procedures].)

As the above precedent illustrates, the fact that employees serve at the employer's pleasure nonetheless means that the employer can establish protections. In fact, the City has conceded not only that it has the power to agree to just cause protections in bargaining, but also that it has the power to delegate to an arbitrator discretion over such issues. As the City wrote in a brief to the ALJ:

> "[T]o the extent MAA seeks contractual 'job protections'—such as just cause rights—the City has the ability (but not the duty) to voluntarily agree to certain changes. (*See Taylor v. Crane* (1979) 24 Cal.3d 442 [holding that

> notwithstanding Charter provision vesting employee hiring and removal in the city manager, city could delegate its discretion to an arbitrator].) So, under the Charter 'carveout' as well as state law while the City could agree in the first instance to delegate its discretion to a third party arbitrator over this issue, any such delegation of that discretionary authority cannot be imposed on the City."

This concession helps to illustrate that, in truth, the City's position turns entirely on its unsupported assumption that the CSC carve-out excludes MAA's job protection proposals from interest arbitration. With that assumption disproven, section 10.104 adds no support to the City's claim that the Charter makes attorney job protections ineligible for interest arbitration.

The City's bargaining history with MAA is one example of how an employer can negotiate certain protections for employees who serve at the pleasure of the appointing authority. Those protections—which focus on severance—are just one formulation. Indeed, the City's chief negotiator conceded that looking at comparable entities might reveal that those who have better just cause protections may receive less severance, and vice versa.

Similarly, the City's MOU covering physicians—who also "serve at the pleasure of the appointing authority" pursuant to Charter section 10.104—further illustrates the range of protections that are subject to negotiation and/or interest arbitration. Specifically, the physicians' MOU includes provisions that: (1) afford terminated physicians a choice between receiving severance or receiving specified due process procedures; and (2) require the City to consider seniority and performance in deciding

upon physicians to be laid off, while specifying that such decisions are subject to the MOU's grievance procedure.[10]

The physicians' example also highlights the extent to which section 10.104 covers a wide variety of employee categories. For that reason, it is not surprising that "serving at the pleasure" of the appointing authority will involve different specifics for distinct groups. Indeed, the title of section 10.104 ("Exclusions from Civil Service Employment") confirms that its purpose is to exclude employees from civil service merit protections rather than to specify what alternate job protections may result from bargaining and interest arbitration, or from policy determinations for unrepresented employees.

We therefore reverse the ALJ's conclusion that Charter section 10.104 is facially unlawful. Another factor leads us to the same conclusion: California Supreme Court precedent, like PERB precedent, requires harmonizing the Charter with the MMBA wherever possible. (*Building Material & Construction Teamsters' Union v. Farrell* (1986) 41 Cal.3d 651, 665 [noting important goal of harmonizing the San Francisco City Charter with the MMBA, if possible]; accord *CCSF I*, *supra*, PERB Decision No. 2691-M, pp. 31, 43; *City and County of San Francisco* (2017) PERB

[10] While the City argued that other local agency examples show that attorneys must be at will, such comparators help MAA, not the City. The record includes evidence of local agency attorneys in comparable California cities and counties, including certain attorneys who benefit from civil service merit protections, and others who are exempt from such protections and instead benefit from collectively bargained just cause protections. Notably, Charter subsection A8.409-4(d) requires the interest arbitrator to consider specified factors, including "terms and conditions of employment of employees performing similar services," and further requires that the arbitrator "shall issue written findings on each and every one of the above factors as they may be applicable to each and every issue determined in the award."

Decision No. 2540-M, p. 15, fn. 7.) As we proceed to discuss, the ALJ erred in not harmonizing the Charter and the MMBA.

The ALJ correctly noted that a local rule cannot define the scope of bargaining in a manner that conflicts with the MMBA (*Huntington Beach Police Officers' Assn. v. City of Huntington Beach* (1976) 58 Cal.App.3d 492, 499-503), and that "both the procedures and the criteria for imposing discipline" are mandatory bargaining topics. (*Healdsburg Union High School District and Healdsburg Union School District/San Mateo City School District* (1984) PERB Decision No. 375, p. 69.) This includes proposals that require employers to show cause for imposing discipline. (*Id.* at pp. 69-70; accord *Cerritos Community College District* (2022) PERB Decision No. 2819, pp. 27-29; *City of Davis* (2016) PERB Decision No. 2494-M, pp. 28-30; *Fairfield-Suisun Unified School District* (2012) PERB Decision No. 2262, p. 12.) Indeed, investigatory and disciplinary procedures "lie at the core of traditional labor relations" and are "particularly amenable to collective bargaining." (*County of Sonoma* (2023) PERB Decision No. 2772a-M, p. 24.)

Here, Charter section 10.104 can exist in harmony with the MMBA principle that disciplinary procedures and criteria fall within the scope of bargaining. As explained above, having attorneys serve at the appointing authority's pleasure nonetheless means that the City can establish protections by regulation, policy, or MOU, including provisions negotiated with MAA or directed as part of the Charter's broad interest arbitration mechanism for resolving bargaining disputes.[11]

[11] Because Charter section 10.104 is facially valid, we do not address the City's home rule defense, other than to note that the home rule doctrine "does not alter the fact that a city's charter must be consistent with the MMBA." (*CCSF I*, *supra*, PERB

Lastly, we are mindful that when interpreting a local agency's charter providing for interest arbitration to resolve bargaining disputes, we must normally "require arbitration on the full range of negotiable issues." (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 623.) Failure to do so "would not only erroneously curtail arbitration but would invite the very labor strife which the charter provisions seek to prevent." (*Ibid.*) A local agency seeking to exempt a matter from interest arbitration under its charter should draft the exemption with this principle in mind, as well as the principle that we normally look to the charter's plain meaning in assessing an alleged exemption. While the Charter features clear examples of such exemptions (see pages 17-19, *ante*), there is simply no Charter provision that exempts MAA's job protection proposals from interest arbitration.

For the foregoing reasons, MAA's job protection proposals were eligible for interest arbitration under the City Charter. Therefore, the City violated its Charter and MMBA section 3509(b) by refusing to engage in interest arbitration over the job protection proposals. This conduct also derivatively violated MMBA sections 3506.5(a), (b), and (e), and amounted to an unreasonable enforcement of a local rule in violation of PERB Regulation 32603(g). We concur with the ALJ that there is no need to decide whether the MMBA permits a local agency to establish an interest arbitration mechanism that excludes job protection proposals, because the Charter does not exclude such proposals from interest arbitration.

Decision No. 2691-M, p. 21, fn. 18; see also *City and County of San Francisco*, *supra*, PERB Decision No. 2867-M, p. 42 [judicial appeal pending]; *City and County of San Francisco* (2017) PERB Decision No. 2536-M, pp. 22-25.)

II. Bad Faith Bargaining Claim

Finally, we consider the complaint's bad faith bargaining allegation and the City's countervailing argument that it engaged in lawful "hard bargaining." Notably, this argument fails if the totality of the circumstances shows that the respondent's bargaining conduct manifested bad faith. (*Consolidated Irrigation District* (2024) PERB Decision No. 2905-M, p. 28.) The ultimate question is whether the respondent's conduct, when viewed in its totality, was sufficiently egregious to frustrate negotiations. (*Ibid*.)

Here, the City engaged in bad faith bargaining when it repeatedly and preemptively stated that MAA's job protection proposals would be ineligible for interest arbitration. These statements were misrepresentations and amounted to an unsupportable and unilaterally announced ground rule that frustrated negotiations by artificially separating job protection proposals from all the other issues under discussion. (Cf. *County of Ventura* (2021) PERB Decision No. 2758-M, pp. 36-37 [county's material misrepresentation evidenced bad faith bargaining]; *City of Arcadia* (2019) PERB Decision No. 2648-M, p. 40 [employer may not unilaterally establish ground rules]; *City of San Jose* (2013) PERB Decision No. 2341-M, pp. 19-20 [insistence on fragmented or "piecemeal" bargaining evidences bad faith because it arbitrarily limits the range of possible compromises].) In these circumstances, we reject the City's claim that it engaged in lawful hard bargaining and instead conclude that the City bargained in bad faith in violation of MMBA section 3506.5(c).

III. Remedy

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

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

ORDER

Based upon the foregoing findings, the Public Employment Relations Board (PERB) finds that Respondent City and County of San Francisco (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq., during negotiations with Charging Party Municipal Attorneys Association of San Francisco, Teamsters Local 856 (MAA). Specifically, the City violated and unreasonably applied its Charter, failed to bargain and participate in impasse resolution procedures in good faith, and interfered with protected union and employee rights, thereby violating MMBA sections 3509(b) and 3506.5(a), (b), (c), and (e).

Pursuant to MMBA section 3509, we hereby ORDER that the City, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to allow MAA to submit job protection proposals to interest arbitration under the City Charter's impasse resolution procedures.

2. In any other way engaging in bad faith conduct in bargaining or impasse resolution with respect to job protection proposals.

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

1. (a) Within 90 days after this decision is no longer subject to appeal, reopen bargaining with MAA on the issue of job protections; and (b) bargain in good faith for a period of 30 days unless the parties agree otherwise.

2. Absent an agreement reached by the close of negotiations undertaken pursuant to paragraph B(1), participate with MAA in the impasse resolution procedures set forth in the City Charter, in a manner consistent with this decision. Unless the parties agree otherwise, Paul Roose shall serve as the neutral arbitrator/mediator.

3. (a) Make MAA whole for extra bargaining costs and any wasted or diverted resources (other than the costs of litigating this case) that the City's MMBA violations caused in substantial part; and (b) augment any monetary relief owed with daily compound interest, at an annual rate of seven percent, accrued from the date of harm until payment.

4. Within 10 workdays after this decision is no longer subject to appeal, post at all work locations where notices to MAA-represented employees are posted, copies of the Notice attached hereto as an Appendix. An authorized agent of the City must sign the Notice, indicating that the City will comply with the terms of this

Order. The City shall maintain the posting for a period of 30 consecutive workdays. The City shall take reasonable steps to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material. In addition to physically posting this Notice, the City shall communicate it by electronic message, intranet, internet site, and other electronic means the City uses to communicate with employees in Unit 31.[12]

5. Notify OGC of the actions the City has taken to follow this Order by providing written reports as directed by OGC and serving such reports on MAA.

Chair Banks and Member Krausse joined in this Decision.

[12] Either party may ask PERB's Office of the General Counsel (OGC) to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice. Upon receipt of such a request, OGC shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice.

APPENDIX

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

After a hearing in Unfair Practice Case No. SF-CE-2157-M, *Municipal Attorneys Association of San Francisco, Teamsters Local 856 v. City and County of San Francisco*, in which all parties had the right to participate, the Public Employment Relations Board (PERB) found that Respondent City and County of San Francisco (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq., during negotiations with Charging Party Municipal Attorneys Association of San Francisco, Teamsters Local 856 (MAA). Specifically, PERB concluded that we violated and unreasonably applied our Charter, failed to bargain and participate in impasse resolution procedures in good faith, and interfered with protected union and employee rights.

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

A. CEASE AND DESIST FROM:

1. Refusing to allow MAA to submit job protection proposals to interest arbitration under the City Charter's impasse resolution procedures.

2. In any other way engaging in bad faith conduct in bargaining or impasse resolution with respect to job protection proposals.

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

1. (a) Within 90 days after PERB's decision is no longer subject to appeal, reopen bargaining with MAA on the issue of job protections; and (b) bargain in good faith for a period of 30 days unless the parties agree otherwise.

2. Absent an agreement reached by the close of negotiations undertaken pursuant to paragraph B(1), participate with MAA in the impasse resolution procedures set forth in the City Charter, in a manner consistent with PERB's decision. Unless the parties agree otherwise, Paul Roose shall serve as the neutral arbitrator/mediator.

3. (a) Make MAA whole for extra bargaining costs and any wasted or diverted resources (other than the costs of litigating this case) that our MMBA violations caused in substantial part; and (b) augment any monetary relief owed with

daily compound interest, at an annual rate of seven percent, accrued from the date of harm until payment.

Dated: _____ City and 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.