STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021, Charging Party, v. CITY & COUNTY OF SAN FRANCISCO, Respondent.	Case No. SF-CE-1653-M PERB Decision No. 2698-M February 24, 2020

Appearances: Weinberg, Roger & Rosenfeld by Katharine R. McDonagh, Attorney, for Service Employees International Union, Local 1021; Rafal Ofierski, Deputy City Attorney, for City & County of San Francisco.

Before Shiners, Krantz, and Paulson, Members.

DECISION

PAULSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Service Employees International Union, Local 1021 (SEIU) and cross-exceptions by the City and County of San Francisco (City), to the attached proposed decision of an administrative law judge (ALJ). The ALJ found that the City violated the Meyers-Milias-Brown Act (MMBA)[1] and PERB Regulations[2] by: (1) refusing to provide SEIU with a timely and minimally redacted version of an investigation report for use in its representation of a bargaining unit

[1] The MMBA is codified at Government Code section 3500 et seq. Unless otherwise stated, all statutory references herein are to the Government Code.

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

employee in a disciplinary grievance; and (2) failing to meet and confer with SEIU over privacy concerns relating to material in the investigation report.

Based on our review of the proposed decision, the entire record, and relevant legal authority, we conclude that the record supports the ALJ's factual findings and that his conclusions of law are well-reasoned and consistent with applicable law. We therefore adopt the proposed decision as the decision of the Board itself, with one modification, subject to the discussion below.[3]

BACKGROUND

The ALJ's procedural history and findings of fact can be found in the attached proposed decision. We briefly summarize those findings to provide context for our discussion of the parties' exceptions.

[3] Despite prevailing at the formal hearing, SEIU filed exceptions to the proposed decision and requested that the Board designate the decision as precedential. Absent good cause, we will dismiss initial exceptions by a prevailing party unless the Board's ruling on the exceptions would change the outcome of the decision. (*Fremont Unified School District* (2003) PERB Decision No. 1528, p. 3 (*Fremont*); *Mount San Jacinto Community College District Faculty Association* (2018) PERB Decision No. 2604, p. 1.) Here, SEIU excepts only to alleged clerical errors and otherwise seeks to uphold the proposed decision. (See *Fremont*, *supra*, PERB Decision No. 1528, pp. 2-3.) Its response to the City's cross-exceptions urges the same outcome. We therefore decline to consider SEIU's exceptions.

The City filed two cross-exceptions and argued that the Board should not designate the proposed decision as precedential, citing PERB Regulation 32320, subdivision (d). That regulation applies only to decisions on appeals of dismissals, which this case is not. (See PERB Reg. 32635.) In any instance, the City's cross-exceptions are narrowly framed and leave most of the proposed decision undisturbed. The ALJ's conclusions to which neither party excepted are not before the Board on appeal and are therefore binding only on the parties. (*County of Orange* (2018) PERB Decision No. 2611-M, p. 2, fn. 2, citing PERB Regs. 32215, 32300, subd. (c).)

SEIU is the exclusive representative of a unit of miscellaneous City employees, including Employee A,[4] an employee of the City's Ethics Commission (Commission). At all relevant times, SEIU and the City were parties to a collective bargaining agreement (CBA).[5] The CBA enumerated a four-step grievance procedure, including a provision stating that "[o]nly the Union shall have the right on behalf of a disciplined or discharged employee to grieve the discipline or discharge action." The CBA did not contain any provisions regarding requests for employer information or the handling of such requests.

The subject of the parties' current dispute is a September 17, 2018 investigation report relating to Employee A's alleged use of obscene hand gestures while employed with the Commission. The investigation report was 17 pages long and consisted of the following sections: Background, Policy, Summary of Interviews, Additional Summaries of Witness Statements, Witness Credibility, and Conclusion. Generally, the report concluded that Employee A's conduct violated City policy.

On October 10, 2018, a written warning for "disruptive behavior and inappropriate workplace conduct" was issued to Employee A by the Commission's Executive Director, LeAnn Pelham (Pelham). On October 31, 2018, SEIU filed a grievance on behalf of Employee A to challenge the written warning. SEIU advanced the grievance to step two of the grievance procedure on November 2, 2018.

[4] To protect the employee's privacy, we continue the ALJ's practice of using this designation in place of a name.

[5] The parties' CBA was effective July 1, 2014 – June 30, 2019.

On November 9, 2018, SEIU field representative Dennis Wong (Wong) e-mailed Pelham a "formal" request for information pertaining to Employee A's grievance. Wong specifically requested "a copy of interview questions to all witnesses named in the written warning . . . a copy of the interview answers of all witnesses of [*sic*] the written warning . . . [and] [a]ny other evidence, such as notes, internal complaints, email communications, etc.," noting that the information was needed to "investigate the grievance." After sending this e-mail, Wong received a notification that Pelham was out of the office. That same day, Wong forwarded his e-mail to Waylen Leopoldino (Leopoldino), a senior human resources consultant at the Department of Human Resources. On November 20, 2018, Leopoldino sent Wong a copy of the investigation report with a total of seven pages redacted. Leopoldino did not offer any explanation for the redactions.

On December 19, 2018, SEIU field supervisor XiuMin Li (Li) e-mailed Leopoldino requesting a description of the redacted information and the City's reasoning for the redactions. On the same day, Leopoldino e-mailed Li and stated that "[t]he redacted information was not used in the determination of the Written Reprimand and not related." Leopoldino did not provide any further explanation or a summary of the redacted content.

On December 21, 2018, Li e-mailed Leopoldino and requested an unredacted, "full version" of the investigation report. Li stated that SEIU needed this information to conduct its own investigation and make its own assessment about the Commission's disciplinary action. Leopoldino responded the same day, advising that the report

belonged to the City Attorney's Office and that he had forwarded Li's request to them. He stated that he would apprise Li of the City Attorney's response.

On January 7, 2019, Li sent an e-mail to several addressees including Pelham, asking for an update regarding obtaining a copy of the full investigation report as previously requested. Having received no response to its request, SEIU filed the unfair practice charge in the instant matter on February 28, 2019. SEIU advanced the grievance to step four on March 15, 2019.[6]

On March 20, 2019, Adam Romoslawski (Romoslawski), another senior human resources consultant at the Department of Human Resources, e-mailed Li a copy of the investigation report. This version of the report reflected five fewer pages of redactions—specifically, the entirety of the Additional Summaries of Witness Statements section was no longer redacted. Romoslawski stated: "We are producing this section on a non-precedent setting basis, after carefully weighing the privacy interest of the witnesses. We have maintained the redactions in the Background section because the redacted information pertains to another investigation that is not the subject of this discipline, and [unredacting] it would violate the privacy interest of another employee." At no point in the e-mail did Romoslawski offer to meet and confer with SEIU over the redactions or otherwise indicate that the City would be willing to negotiate over them.

On May 16, 2019, PERB's Office of the General Counsel issued the underlying complaint in this matter.

[6] The proposed decision does not reference the date SEIU advanced the grievance to step three, nor could we find such a date in the record.

DISCUSSION

The City's exceptions are twofold: first, that SEIU's request for information did not trigger any meet and confer requirements under the MMBA; and second, that the ALJ's remedial order requiring a notice posting was overbroad. We address each in turn.

1. Request for Information

Under the MMBA and other statutes that PERB administers, an exclusive representative is entitled to all information that is necessary and relevant to its right to represent bargaining unit employees regarding mandatory subjects of bargaining. (*Sacramento City Unified School District* (2018) PERB Decision No. 2597, p. 8, citing other authority (*Sacramento City*); *Contra Costa Community College District* (2019) PERB Decision No. 2652, pp. 5, 16-17 (*Contra Costa*); *County of Solano* (2014) PERB Decision No. 2402-M, p. 11; *Los Rios Community College District* (1988) PERB Decision No. 670, p. 10.) The terms "necessary" and "relevant" are interchangeable; thus, a charging party can meet its burden by showing its request meets one prerequisite or the other. (*Contra Costa*, *supra*, PERB Decision No. 2652, pp. 5-6.) Information pertaining to mandatory subjects of bargaining is presumed relevant, and the employer must provide such information unless it can show that the information is plainly irrelevant or provide adequate reasons why it cannot supply the information. (*County of Los Angeles v. Los Angeles County Employee Relations Commission* (2013) 56 Cal.4th 905, 917; *Contra Costa*, *supra*, PERB Decision No. 2652, p. 16; *Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, pp. 17-18 (*Petaluma*).) PERB uses a liberal, discovery-type

standard to determine relevance. (*Sacramento City*, *supra*, PERB Decision No. 2597, p. 8.)

The employer's duty to provide information abides even where third party privacy rights are concerned, because "a union's unique representational functions gives it a right to arguably private information." (*Sacramento City*, *supra*, PERB Decision No. 2597, p. 11.) When a union seeks information that implicates "significant privacy rights of third parties," the employer may not simply refuse to provide the information but must instead "meet and negotiate in good faith to accommodate all legitimate competing interests." (*Id.* at p. 12; *Contra Costa*, *supra*, PERB Decision No. 2652, pp. 18-19; *County of San Bernardino (Office of the Public Defender)* (2015) PERB Decision No. 2423-M, p. 50; *Minnesota Mining & Mfg. Co.* (1982) 261 NLRB 27, 32 [parties must bargain in good faith to accommodate countervailing interests where a union's request for information raises confidentiality concerns]; *Piedmont Gardens* (2015) 362 NLRB 1135, 1137 [same].)[7] Meeting and conferring over privacy concerns allows the employer and union to address all aspects of the issue and find mutually agreeable accommodations. (*Sacramento City*, *supra*, PERB Decision No. 2597, pp. 12-13.)

Additionally, when a union requests information relevant to a potential disciplinary grievance, the employer must raise any privacy concerns in a timely fashion so the parties can negotiate over accommodating those concerns before the

[7] When interpreting the statutes within its jurisdiction, PERB may take guidance from federal private sector authority to the extent it comports with the purposes of the statutes we enforce. (See *City of Sacramento* (2013) PERB Decision No. 2351-M, p. 21.)

union's time to file a grievance has expired. (See *State of California (Department of State Hospitals)* (2018) PERB Decision No. 2568-S, pp. 14-15 [employer's untimely assertion of confidentiality concern as basis for withholding requested information "deprived [the union] of the ability to negotiate over accommodating privacy interests in time to receive the information before the last day to file a complaint"].)[8]

Here, the ALJ concluded that the City's failure to meet and confer over redactions to the investigation report violated MMBA sections 3503, 3506, and 3507.[9] The City contends that none of these sections creates a meet and confer requirement,[10] and that the MMBA thus cannot be interpreted to require employers to bargain whenever they withhold information from unions on privacy, privilege, or other grounds. As to MMBA section 3507, which empowers public agencies to adopt reasonable local rules for the administration of employer-employee relations, the City is correct. That section neither directly nor indirectly establishes a meet and confer requirement, and it appears the ALJ's citation to it was a clerical error. We therefore do not adopt the portions of the proposed decision finding that the City violated section 3507.

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[8] Although *State of California (Department of State Hospitals)*, *supra*, PERB Decision No. 2568-S, is currently on appeal to the Fifth District Court of Appeal, the appeal is limited to challenging one aspect of PERB's remedial order. The remainder of the decision is no longer subject to judicial review.

[9] The ALJ also found violations of PERB Regulation 32603, subdivisions (a), (b), and (c), and MMBA section 3506.5, subdivisions (a), (b), and (c).

[10] Although the City concedes that it is obligated under MMBA section 3503 to furnish information to SEIU, it disputes that such duty also entails a requirement to meet and confer.

The City's assertions otherwise fail. While the MMBA does not expressly provide for an exclusive representative's right to information, the Board has repeatedly recognized that an exclusive representative's statutory right to represent employees (MMBA, § 3503) carries with it ancillary rights, including the right to obtain necessary and relevant information and to bargain with the employer over any alleged privacy concerns. (See *Contra Costa*, *supra*, PERB Decision No. 2652, pp. 5, 16-17; *Sacramento City*, *supra*, PERB Decision No. 2597, p. 8; *Petaluma*, *supra*, PERB Decision No. 2485-E, p. 17.) Conversely, the MMBA prohibits employers from interfering with bargaining unit employees' right to be represented by their exclusive representative (MMBA, § 3506), which by extension precludes interference with an exclusive representative's right to necessary and relevant information.

Although neither section 3503 nor section 3506 explicitly contains a meet and confer obligation, the duty to meet and confer under MMBA section 3505 extends to requests for information during the contractual grievance process. In *City of Burbank* (2008) PERB Decision No. 1988-M, the city argued that because the disciplinary grievance process is an adversarial proceeding, not a negotiation, section 3505 does not create a bargaining obligation over information requests in that context. (*Id.* at p. 8.) The Board rejected the argument, relying on well-established precedent holding that:

> "The employer's duty to furnish information, like its duty to bargain, 'extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement.' [Citation.] This includes information needed to police and administer an existing CBA, including grievance processing. (Chula Vista City School District (1990) PERB Decision No. 834; Modesto

> City Schools and High School District (1985) PERB Decision No. 479; [NLRB v.] Acme Industrial [Co. (1967) 385 U.S. 432].)"

(*Id.* at p. 9, quoting *Hacienda La Puente Unified School District* (1997) PERB Decision No. 1184.) In a subsequent decision also arising under the MMBA, the Board held that when an employer believes providing requested information would implicate employee privacy rights, "the employer must affirmatively assert its concerns, and then both parties must bargain in good faith to ameliorate those concerns." (*County of San Bernardino (Office of the Public Defender)*, *supra*, PERB Decision No. 2423-M, p. 50.)

More recently, in *Sacramento City*, *supra*, PERB Decision No. 2597, the Board considered a union's request for information under circumstances similar to this case. There, the union represented a bargaining unit custodial employee in termination appeal proceedings pursuant to a collective bargaining agreement. The union requested specified documents to assess a potential disparate treatment defense. The employer refused on the grounds that the documents were not necessary and relevant, and also contained arguably confidential information. When the employer eventually furnished the requested documents to the union, one of the documents included a number of redactions that the employer had unilaterally made. The Board found that by unilaterally redacting the document, the employer violated its duty to meet and negotiate in good faith over its privacy and confidentiality concerns.

Similarly here, SEIU requested the investigation report as part of its representation of Employee A in her disciplinary grievance pursuant to the parties' collective bargaining agreement. Just like the employer in *Sacramento City*, *supra*,

PERB Decision No. 2597, the City provided a redacted version of the investigation report to SEIU without first raising its asserted privacy concerns and then meeting and conferring with SEIU over those concerns.

The City does not acknowledge this precedent, much less provide a compelling reason for overruling it or not following it in this case. Accordingly, we conclude the City was obligated to meet and confer with SEIU over the redactions in the investigation report, and that its failure to do so violated the MMBA.[11]

The City argues that, in any event, it was absolved of any duty to meet and confer with SEIU over the redactions because SEIU never made such a request. According to the City, SEIU "simply demanded a fully unredacted copy [of the investigation report], and when the City declined, [SEIU] filed its charge." The City's argument is unavailing. Following SEIU's original request for information and receipt of the heavily-redacted investigation report, SEIU next attempted to obtain clarification regarding the redactions. The City responded in a conclusory manner stating that the City did not use any of the redacted information in formulating the written warning, and that the information was unrelated. Thereafter, on December 21, 2018 and January 7, 2019, SEIU requested a full, unredacted copy of the investigation report. Almost three months to the date after the December 21, 2018 request, the City provided a copy of the

[11] Because discipline is a negotiable subject and unions have a right to represent employees in non-contractual disciplinary settings, the *Contra Costa* majority found that union informational rights, including the right to bargain over confidentiality issues, extend to all such disciplinary representation. (*Contra Costa*, *supra*, PERB Decision No. 2652, pp. 7-17.) Member Shiners dissented from that conclusion but joins in the instant decision because the disciplinary proceedings at issue here arise from a collective bargaining agreement.

investigation report with fewer redactions. In all instances the City solely determined what information to redact, thereby "converting the applicable procedure from a two-way negotiation to a unilateral decision." (*Sacramento City*, *supra*, PERB Decision No. 2597, p. 13.) Although these follow-up efforts clarified the dispute, they were not a necessary element to proving the City's violation; a union has no duty to request to meet and confer if an employer has unilaterally determined what information to redact and presented its decision as a fait accompli rather than as a proposal. (*Ibid*.; *City of Palo Alto* (2017) PERB Decision No. 2388a-M, p. 49; *County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 24; see *City of Burbank*, *supra*, PERB Decision No. 1988-M, pp. 10-11 [an information request need not "'invoke' Section 3505 or request to meet and confer"].)

2. Notice Posting

Without any citation to legal authority, the City argues that the ALJ's notice posting requirement was overbroad 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 therefore contends that the posting requirement should be limited to Employee A's work location at the Commission.

We reject the City's exception. Unless the Board limits the posting requirement, 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.) Thus, we uphold the ALJ's notice posting remedy.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the City and County of San Francisco (City) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505, and 3506, and PERB Regulation 32603, subdivisions (a), (b), and (c), by refusing to provide Service Employees International Union, Local 1021 (SEIU) with a timely and minimally redacted version of an investigation report which was necessary and relevant for it to represent a bargaining unit employee concerning a disciplinary grievance and failing to meet and confer with SEIU over privacy concerns relating to material in the investigation report.

Pursuant to MMBA section 3509, subdivision (b), it is hereby ORDERED that the City, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to provide necessary and relevant information to SEIU.

2. Failing to meet and confer in good faith with SEIU to accommodate any legitimate privacy concerns with respect to requests for information.

3. Interfering with bargaining unit employees' right to be represented by SEIU.

4. Denying SEIU the right to represent bargaining unit employees in their employment relations with the City.

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

1. Upon request, provide SEIU with a version of the September 17, 2018 investigation report which excludes the following portions of the investigation report from redaction: Background section, paragraph one, first and second sentences; Background section, paragraph two, first sentence; Background section, paragraph three, first sentence; and the term "PRIVILEGED AND" in the header of every page of the investigation report.

2. Within 10 workdays of the date this decision is no longer subject to appeal, post at all work locations where notices to SEIU bargaining unit employees are customarily posted, copies of the Notice attached hereto as an Appendix. 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. The Notice shall also be posted to all SEIU bargaining unit employees by electronic message,

intranet, internet site, or other electronic means customarily used by the City to communicate with SEIU bargaining unit employees.

3. 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 SEIU.

Members Shiners and Krantz joined in this Decision.

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-1653-M, *Service Employees International Union Local 1021 v. City & County of San Francisco*, in which all parties had the right to participate, it has been found that the City and County of San Francisco (City) violated the Meyers-Milias Brown Act (MMBA), Government Code section 3500 et seq, by refusing to provide Service Employees International Union, Local 1021 (SEIU) with a timely and minimally redacted version of an investigation report which was necessary and relevant for it to represent a bargaining unit employee concerning a disciplinary grievance and failing to meet and confer with SEIU over privacy concerns relating to material in the investigation report.

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

A. CEASE AND DESIST FROM:

1. Failing to provide necessary and relevant information to SEIU.
2. Failing to meet and confer in good faith with SEIU to accommodate any legitimate privacy concerns with respect to requests for information.
3. Interfering with bargaining unit employees' right to be represented by SEIU.
4. Denying SEIU the right to represent bargaining unit employees in their employment relations with the City.

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

1. Upon request, provide SEIU with a version of the September 17, 2018 investigation report which excludes the following portions of the investigation report from redaction: Background section, paragraph one, first and second sentences; Background section, paragraph two, first sentence; Background section, paragraph three, first sentence; and the term "PRIVILEGED AND" in the header of every page of the investigation report.

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.`

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021, Charging Party, v. CITY AND COUNTY OF SAN FRANCISCO, Respondent.	UNFAIR PRACTICE CASE NO. SF-CE-1653-M PROPOSED DECISION (September 6, 2019)

Appearances: Weinberg, Roger & Rosenfeld, by Katharine R. McDonagh, Attorney, for Service Employees International Union Local 1021; Rafal Ofierski, Deputy City Attorney, for the City and County of San Francisco.

Before Shawn P. Cloughesy, Chief Administrative Law Judge.

INTRODUCTION

In this case, an exclusive representative alleges that a public agency employer violated the Meyers-Milias Brown Act (MMBA) and PERB Regulation when it failed and refused to provide requested employer information needed to represent a bargaining unit employee who received a written warning.[1] The public agency denies any violation of the MMBA or PERB Regulation.

PROCEDURAL HISTORY

On April 28, 2019, Service Employees International Union Local 1021 (Local 1021) filed an unfair practice charge against the City and County of San Francisco (City). On May 22, 2019, the PERB Office of the General Counsel issued a complaint alleging that the City violated MMBA sections 3503, 3505, 3506, and 3506.5, subdivisions (a), (b) and (c), and

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

PERB Regulation 32603, subdivisions (a), (b), and (c), by failing to provide employer information needed for Local 1021's representation of Employee A[2] regarding a written warning, by not timely providing a completely unredacted September 17, 2018 personnel investigation report and not meeting and conferring with Local 1021 over privacy/relevancy concerns in providing a partially redacted investigation report.

On June 13, 2019, the City submitted its answer to the complaint, denied any violation of the MMBA and PERB Regulation, and asserted affirmative defenses.

An informal conference was scheduled for July 22, 2019. Local 1021 informed the PERB regional attorney that it would not attend. Neither party appeared for the informal conference, even though the PERB regional attorney had not cancelled the informal conference.

A formal hearing was scheduled for August 20, 2019. On that day, both parties provided the Administrative Law Judge (ALJ) with a stipulated record which included a listing of stipulated facts and joint exhibits which were to be accepted in lieu of conducting an evidentiary hearing.[3] (PERB Reg. 32207.) Additionally, pursuant to Government Code section 11425.20, the ALJ sealed from public inspection Joint Exhibits 5 and 6, and ALJ Exhibit 1–the various redacted and unredacted versions of the September 17, 2018 personnel investigation report of Employee A, who is not a party to this action, to protect her privacy.

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[2] To protect the employee's privacy, the employee will be referred to as Employee A.

[3] The stipulation of record included 14 paragraphs of stipulated facts and seven joint exhibits. All joint exhibits are admitted for all purposes of this proceeding and the stipulated facts are deemed to be appropriate. The City also provided the ALJ with a copy of the unredacted investigation report (ALJ Exhibit 1) which was to be reviewed in-camera in order to determine whether any further redacted portions of the investigation report should be disclosed to Local 1021. Both parties agreed to the submission of the unredacted investigation report to the ALJ that an in-camera review be conducted.

Additionally, the full name of Employee A will be redacted from Joint Exhibits 3, 4, and 7, to protect the employee's privacy.

The parties filed simultaneous closing briefs on August 28, 2019, at which point the matter was submitted for proposed decision.

FINDINGS OF FACT

Local 1021 is an employee organization, within the meaning of MMBA section 3501, subdivision (a), and an exclusive representative of a bargaining unit of public employees, within the meaning of PERB Regulation 32016, subdivision (b). The City is a public agency within the meaning of MMBA section 3501, subdivision (c). Employee A is a City employee, an administrative analyst, which is a classification exclusively represented by Local 1021.

Local 1021 represents a unit of miscellaneous City employees, including Employee A, an employee of the City's Ethics Commission (Commission). LeeAnn Pelham (Pelham) is the Executive Director of the Commission.

Collective Bargaining Agreement

Local 1021 and the City are parties to a Collective Bargaining Agreement (CBA), effective July 1, 2014 to June 30, 2019. Pertinent sections of the CBA include:

> ARTICLE IV – GRIEVANCE PROCEDURE & PERSONNEL FILES
>
> A. GRIEVANCE PROCEDURE

Definition

569.[4] A Grievance shall be defined as any dispute which involves the interpretation or application of, or compliance with this Agreement, discipline or discharge.

[¶ . . . ¶]

Procedure

[¶ . . . ¶]

575. Only the Union shall have the right on behalf of a disciplined or discharged employee to grieve the discipline or discharge action.

[¶ . . . ¶]

Steps of the Grievance Procedure
Informal Discussion with Immediate Supervisor

583. An employee having a grievance may first discuss it with the employee's immediate supervisor, . . .

Step I Immediate Supervisor

584. If a solution to the grievance, satisfactory to the employee and the immediate supervisor is not accomplished by informal discussion, the Union may pursue the grievance further.

585. The Union shall submit a written statement of the grievance to the immediate supervisor within fifteen (15) calendar days of the facts or event giving rise to the grievance, or within (15) calendar days from such time as the employee or the Union should have known of the occurrence thereof. . . .

586. The immediate supervisor will make every effort to arrive at a prompt resolution by investigating the issue. He/she shall respond in writing within five (5) calendar days.

Step II Department Head/Designee

587. If the grievance is not satisfactorily resolved in Step I, the written grievance shall be advanced, containing a specific description of the basis for the claim and the resolution desired, and submitted to the department head or his/her

[4] "569" is a reference to paragraph 569 of the CBA.

designee within fifteen (15) calendar days of receipt of the Step I response. The parties shall meet within fifteen (15) calendar days, unless a mutually agreed upon alternative is established. The department head/designee shall, within fifteen (15) calendar days of receipt of the written grievance, or within ten (10) calendar days of the date the meeting is held, whichever comes later, respond in writing to the grievant and the Union, specifying his/her reason(s) for concurring with or denying the grievance.

Step III Director, Employee Relations/Designee

588. If the decision of the department head, designee is unsatisfactory, the Union may, within fifteen (15) calendar days after receipt of the Department's decision, submit the grievance in writing to the Employee Relations Director [ERD].

589. The Director or designee shall have fifteen (15) calendar days after receipt of the written grievance and respond in writing.

[¶ . . . ¶]

Step IV Final and Binding Arbitration (except termination grievances)

591. Should there be no satisfactory resolution at Step III, the Union has the right to submit and advance the grievance to final and binding arbitration within thirty (30) calendar days of receipt of the Step III response. . . .

[¶ . . . ¶]

600. The City and the Union must commence selecting the arbitrator and scheduling the arbitration within thirty (30) calendar days of ERD's receipt of the Union's arbitration request. . . .

[¶ . . . ¶]

Expedited Arbitration

618. Suspensions up to and including fifteen (15) days and written warnings shall be processed through an expedited arbitration proceeding . . . At least one day each month will be used for these grievances. The expedited arbitration shall be before an arbitrator to be mutually selected by the parties who shall serve until the parties

> agree to remove him/her [] for twelve (12) months, whichever comes first . . . The parties shall not use briefs. Every effort shall be made to have bench decisions followed up by written decisions. These decisions will be final and binding, and shall not be used in any other cases except those of the grievant involved. Transcription by a certified court reporter shall be taken but shall be transcribed only at the direction of the arbitrator.
>
> [¶ . . . ¶]
>
> Rights of Individuals
>
> 621. An employee may not be disciplined or discharged without just cause and without written notice of the intended action. The City agrees to follow the principles of progressive discipline.

The CBA does not contain a section regarding the resolution of Local 1021's requests for employer information or whether Local 1021 has a right to request employer documentary information in its duty to investigate a grievance on behalf of a bargaining unit employee.

September 17, 2018 Personnel Investigation Report

On September 17, 2018, City Senior Investigator Cheri Toney issued a Commission Investigation Report or Memorandum (investigation report) to Deputy City Attorney Cecilia Mangoba regarding its investigation into Employee A's use of obscene hand gestures (displaying the middle finger) while employed with the Commission. The investigation report was 17 pages long and was separated into the following sections: Background, Policy, Summary of Interviews,[5] Additional Summaries of Witness Statements, Witness Credibility, and Conclusion. The following was contained in these sections:

[5] This section actually was entitled "Summary of Interviews and Conclusion," but the section only covered a summary of the interviews. The Conclusion section had its own section at the end of the report.

1. Background Section

The Background section covered the first page of the report. Specifically, the first paragraph of the section recounted an October 2017 complaint filed by Employee A against Employee B[6] and how the investigation of the complaint revealed a petty, unproductive working relationship between the two employees and how both employees poorly managed their working relationship. Finally, the last two sentences of the first paragraph revealed the results of the investigation.

The second paragraph revealed how the City investigated Employee B regarding a domestic partnership issue and the results of that investigation. The second sentence of the second paragraph specifically revealed the results of the investigation. The first sentence of third paragraph revealed how during this investigation that Employee B alleged that Employee A had directed an obscene hand gesture toward him.

2. Policy Section

The Policy section of the investigation report cited the City policy that Employee A allegedly violated.

3. Summary of Interviews Section

The Summary of Interviews section of the investigation report set forth that Employee B had first alleged that Employee A had used an obscene hand gesture at the conclusion of the interview of Employee B during the domestic partnership issue investigation.[7] The rest of the Summary of Interviews section set forth a summary of the

[6] Employee B is not a party to this proceeding and his name is not used to protect his privacy. He is also an employee of the Commission.

[7] This portion of the investigation report was never redacted by the City when the various redacted versions of the investigation report were produced to Local 1021.

interviews of seven commission employees, including Employees A and B, and the dates of those seven witnesses were interviewed. The summaries included quotations as to what was said during these interviews, including specific questions and the exact answers given in response to those questions.

4. Additional Summaries of Witness Statements Section

The Additional Summaries of Witness Statements section did not include statements as to whether or not Employee A used an obscene hand gesture, but gave context to the dates the witnesses worked for the commission, the duties of these witnesses, the working relationship of the witnesses especially in relation to Employee A and B, and other incidents during the same period of time which provided context to the obscene hand gesture allegation. The additional summaries of witness statements were of the same seven employees interviewed in the Summary of Interviews section.

5. Witness Credibility and Conclusion Sections

The Witness Credibility section set forth a brief evaluation of the credibility of Employee A and B. The Conclusion section set forth the investigator's conclusion as to whether Employee A used an obscene hand gesture on multiple occasions.

October 10, 2018 Written Warning and Grievance of Written Warning

On October 10, 2018, Executive Director Pelham issued a written warning to Employee A for "Disruptive Behavior and Inappropriate Workplace Conduct." In short, Pelham stated that Employee A had been observed using an obscene hand gesture (displaying her middle finger) after being verbally counselled to cease such behavior on a prior occasion (January 10, 2018). Specifically, Pelham wrote in one section of the written warning:

> ***The written warning is based on the following incidents and shall be placed in your Official Employee Personnel File:***
>
> Three credible witnesses gave independent accounts describing you making an obscene gesture with your middle finger in the office after you and I spoke[,] in January through May 2018 as they walked by your desk or encountered you in an office hallway.

(Emphasis included in quotation.)

On October 31, 2018, Local 1021 filed a grievance on behalf of Employee A challenging the written warning. On November 2, 2018, Local 1021 advanced the grievance to Step II of the grievance procedure.

Request for Information regarding Written Warning and Responses to those Requests

On November 9, 2018, Local 1021 Field Representative Dennis Wong (Wong) e-mailed Executive Director Pelham and made a "formal" request for information regarding the written warning grievance. Wong requested the following information in order to "investigate the grievance:"

- [T]he Union requests a copy of interview questions to all witnesses named in the written warning.
- The Union requests a copy of the interview answers of all witnesses of the written warning[.]
- Any other evidence, such as notes, internal complaints, e[-]mail communications, etc.

After Wong sent the e-mail, he received notification that Executive Director Pelham was going to be out of the office. Wong then forwarded his e-mail on the same day to Department of Human Resources Senior Human Resources Consultant Waylen Leopoldino (Leopoldino).

On November 20, 2018, Leopoldino sent Wong a copy of the September 17, 2018 investigation report. The first two paragraphs and the beginning of the first sentence of the

third paragraph of the Background section were redacted. Additionally, the Additional Summary of Witness Statements section on pages 10 through 15 of the investigation report was redacted.[8]

On December 19, 2018, Local 1021 Field Supervisor XiuMin Li (Li) e-mailed Leopoldino requesting clarification of the redacted portions of the investigation report and asked additional questions. Specifically, Li asked Leopoldino to provide what the redacted information contained and the reasons why those sections were redacted.[9] At no time thereafter in the record did Li or any other Local 1021 renew its request for the specific items set forth in the November 9, 2018 request or state that providing the investigation report did not satisfy this request.

On the same day, Leopoldino answered Li's question that the redacted information was not related to the written warning and was not used in its determination.

On December 21, 2018, Li sent another e-mail to Leopoldino, which stated:

> Regarding the investigation report, the Union respectfully requests an [unredacted], full version of the report, since this report is in its entirety related to [Employee A]. While the Department may not have made its disciplinary decision based on the [information] or assessed the [information] contained to be irrelevant, the Union must have the [information] in order to make our own assessment and conduct our own investigation.

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[8] Also partially redacted was a header at the top of each page of the investigation report. The unredacted version stated "MEMORANDUM PRIVILEGED AND CONFIDENTIAL." The redacted versions stated, "MEMORANDUM [redacted] CONFIDENTIAL." No justification was given (privacy or evidentiary privilege) which would explain redacting the words "PRIVILEGED AND." The word "PRIVILEGED AND" should not have been redacted from the header.

[9] Although not part of the complaint, Li asked how many people worked at the Commission and which employees had some degree of contact with Employee A. Li also asked for the names of these employees. Leopoldino responded to the request. The adequacy, or lack thereof, of Leopoldino's response to these questions were not part of the allegations set forth in the complaint and will therefore not be considered.

> Please let me know if and when you can provide the full [unredacted] report.

On that same day, Leopoldino responded to Li that the report belongs to the City Attorney's office and he forwarded Li's request to that office.

On January 7, 2019, Li sent another e-mail to a number of recipients including Executive Director Pelham asking for an update for her request for the "full" report.[10]

On February 28, 2019, Local 1021 filed the instant unfair practice charge.

Post-Unfair Practice Charge Events

On March 15, 2019, Local 1021 moved the written warning grievance to Step IV of the grievance process.

On March 20, 2019, Senior Human Resources Consultant Adam Romoslawski (Romoslawski) sent an e-mail to Li responding to her request for an unredacted investigation report. The e-mail provided:

> I am the Senior HR Consultant for the Ethics Commission. I have taken over for Waylen Leopoldino, who is no longer with our office. I apologize for the delay in responding to your request.
>
> Attached is a copy of the investigation report, with an additional five[-]page section [unredacted]. We are producing this section on a non-precedent setting basis, after carefully weighing the privacy interest of the witnesses. We have maintained the redactions in the Background section because the redacted information pertains to another investigation that is not the subject of this discipline, and [unredacting] it would violate the privacy interest of another employee.
>
> Please let me know if you have any questions.

[10] Leopoldino was not included as an e-mail recipient.

On May 16, 2019, the PERB Office of the General Counsel issued the instant complaint.

August 7, 2019 Letter from Maisy Sylvan

On August 7, 2019, City Employee Relations Representative Maisy Sylvan (Sylvan) wrote Local 1021 Field Representative Wong regarding Employee A's written warning grievance. Specifically, Sylvan stated that the City refused to hold the grievance in abeyance pending the resolution of the instant PERB case after Local 1021 cancelled the expedited arbitration hearing scheduled on July 23, 2019. Sylvan closed the letter by stating:

> Effective today, August 6, 2019, the Union has thirty (30) calendar days to submit and advance the grievance to Step IV Expedited Arbitration. If I do not hear from you by that date, this division will assume that the Union has withdrawn its request to arbitrate and the grievance file will be considered closed.

ISSUES

1. Did the City violate the MMBA by either failing, refusing or untimely providing an unredacted version of the investigation report?

2. Did the City violate the MMBA by providing a redacted version of the investigation report and not meeting and conferring over its privacy/relevancy concerns?

3. Should the issue of determining the level of redaction of the investigation report be deferred to an arbitrator?

CONCLUSIONS OF LAW

Request for Employer Information

An exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty to represent bargaining unit employees. (*Stockton Unified School District* (1980) PERB Decision No. 143, p. 13.) PERB uses a liberal standard, similar

to a discovery-type standard, to determine the relevance of the requested information. (*Trustees of the California State University* (1987) PERB Decision No. 613-H.) The requested information need not itself be admissible or dispositive of the issues in dispute. Rather, it is considered relevant if reasonably calculated to lead to the discovery of such information. (*Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, p. 17.) An employer's failure or refusal to provide such information violates the duty to bargain in good faith, unless the employer proves the information is "plainly irrelevant" or raises a valid defense to production of the information. (*Stockton Unified School District, supra*, PERB Decision No. 143, p. 13; *State of California (Departments of Personnel Administration and Transportation)* (1997) PERB Decision No. 1227-S, p. 28.)

The duty to supply information turns upon the circumstances of the particular case, though generally it requires the same diligence and thoroughness as is exercised in other business affairs of importance. (*Petaluma City Elementary School District/Joint Union High School District, supra*, PERB Decision No. 2485, p. 19.) Once relevant information has been requested, the employer must either supply the information or timely and adequately explain its reasons for not complying with the request. (*Ibid*.) An unreasonable delay in providing requested information is tantamount to a failure to provide the information, even if that information is provided at a later date. (*Id*. at p. 20; *Chula Vista City School District* (1990) PERB Decision No. 834.) A delay becomes unreasonable when it prejudices the union's ability to represent its members. (*Saddleback Valley Unified School District* (2013) PERB Decision No. 2333, adopted proposed decision, pp. 23-24.) For example, in *City of Burbank* (2008) PERB Decision No. 1988-M, pp. 18-19, PERB found that the employer's delayed

response was found to be a violation of the MMBA, as it interfered with and was prejudicial to the union's preparation for an arbitration.

An employer has the duty to provide, upon request, necessary and relevant information related to collective bargaining and administration of the contract, including grievance processing. (*Chula Vista City School District*, *supra*, PERB Decision No. 834; *Hacienda La Puente Unified School District* (1997) PERB Decision No. 1184.) PERB has upheld an exclusive representative's right to request employer information in order to represent a member at a disciplinary arbitration of a three-day suspension set forth in the collective bargaining agreement (*City of Burbank*, *supra*, PERB Decision No. 1988-M), to explore suspected pretextual reasons as to why an employee was transferred from one location to another (*Newark Unified School District* (1991) PERB Decision No. 864, p. 18), or to explore a defense of disparate treatment of a bargaining unit employee's disciplinary action hearing even if that defense was not allowed subsequently by the disciplinary hearing officer (*Sacramento City Unified School District* (2018) PERB Decision No. 2597).

If an exclusive representative's request for information would lead to unduly burdensome costs, infringe on legitimate privacy interests, or otherwise pose a need for clarification or discussion, an employer must bargain in good faith with the exclusive representative and seek to negotiate an appropriate accommodation. (*Sacramento City Unified School District*, *supra*, PERB Decision No. 2597 at p. 12.) When this bargaining occurs over privacy concerns, the exclusive representative and the employer can address the various levels of redaction and whether such redaction might frustrate the union's ability to carry out its representational function. (*Id.* at pp. 12-13.)

1. Failing to Provide an Unredacted Report

On November 20, 2018, Leopoldino sent Wong a copy of the investigation report which had paragraphs one and two and part of the first sentence of third paragraph redacted as well as the entire Additional Summaries of Witness Statements section. Li later sought clarification of the redactions and was informed that the redacted information was not related to the written warning and was not used in the City's determination. Clearly, the Additional Summaries of the Witness Statements section is relevant and necessary for Local 1021 to discharge its duty to represent Employee A, especially when relevance is defined as reasonably calculated to lead to the discovery of information relevant to the written warning. This section may not discuss whether someone physically observed Employee A use an obscene hand gesture, but it gives important relational and background information of those witnesses who did. As this information was relevant, redacting this section constituted a violation of MMBA sections 3503, 3506, and 3507; and PERB Regulation 32603, subdivisions (a), (b), and (c); and is also an unfair labor practice under MMBA section 3506.5, subdivisions (a), (b), and (c).

The information redacted in the Background section requires a closer examination than the information in the Additional Summaries of Witness Statements section. The first paragraph and first sentence of this section speaks of an investigation of an October 2017 complaint filed by Employee A against Employee B. The second sentence speaks to the working relationship of Employee A and B during a time period immediately before the written warning was issued. The third and fourth sentences discussed the result of the investigation of Employee A's complaint. The fact that Employee A filed a complaint against Employee B prior to the obscene hand gesture investigation is relevant to the instant investigation in that it may reveal a retaliatory motive on behalf of Employee B in the current

investigation. Additionally, the finding that both employees had a poor working relationship bleeds over into the current investigation and is likewise relevant as to a motive that Employee A may have in using an obscene hand gesture towards Employee B. Both of these sentences should have been unredacted. However, the third and fourth sentences, which discuss the actual results of this prior investigation, should remain redacted. Employee B's privacy interests outweigh any relevancy argument that Local 1021 can posture. The results of this earlier investigation are inconsequential to determining an improper motive for Employee B, as her complaint alone is enough to argue an improper motive inference.

The second paragraph of the Background sections discusses a second investigation against Employee B. The first sentence of the third paragraph reveals how it was during this second investigation that Employee B revealed that Employee A directed obscene hand gestures toward him on more than one occasion. This second investigation was again mentioned later in the investigation report in an unredacted portion of the Summary of Interviews section. The genesis of Employee B's accusation against Employee A is relevant to this matter in measuring the credibility of Employee B. As such, the fact that there was a prior investigation into Employee B and how the obscene hand gesture accusation came forward could be relevant in determining whether Employee B was actually offended or not, or whether the accusation did not come forward independently from Employee B's second investigation. As stated earlier, the actual results of the second investigation are not relevant when balanced against Employee B's privacy interests in keeping the results of an unrelated investigation confidential. Therefore, the last two sentences of paragraph one of the Background section and the last sentence of paragraph two should remain redacted and the rest of the redactions should be disclosed to Local 1021. Over-redacting information in the Backgrounds section

constituted a violation of MMBA sections 3503, 3506, and 3507; and PERB Regulation 32603, subdivisions (a), (b), and (c); and is also an unfair labor practice under MMBA section 3506.5, subdivisions (a), (b), and (c).

On March 20, 2019, Romoslawski sent a lesser redacted copy of the investigation report which unredacted the Additional Summaries of Witness Statements section, but continued to redact the same portions of the Background section. Romoslawski maintained that the redactions in the Background section were justified as they concerned another investigation and it protected the privacy interest of another employee. As stated earlier, the City's over-redaction of the Background section constituted a violation of MMBA sections 3503, 3506, and 3507; and PERB Regulation 32603, subdivisions (a), (b), and (c); and is also an unfair labor practice under MMBA section 3506.5, subdivisions (a), (b), and (c).

2. Failing to Provide a Timely Report

While Leopoldino provided his redacted report only eleven days after Wong's request, Romoslawski sent his lesser redacted version of the investigation report approximately two to three months after Li sent a subsequent request for a further report. In light of the deadlines set forth in CBA grievance procedure (15 calendar days per most of the grievance steps), Romoslawski's response is untimely and would prejudice Local 1021 in its attempt to investigate the grievance and timely file or augment the grievance at the various grievance steps. As such, the City untimely response of the lesser redacted version of the investigation report constituted a violation of MMBA sections 3503, 3506, and 3507; and PERB Regulation 32603, subdivisions (a), (b), and (c); and is also an unfair labor practice under MMBA section 3506.5, subdivisions (a), (b), and (c).

3. Failing to Meet and Confer over Privacy/Relevancy Concerns

It is undisputed that when the City presented redacted versions of the investigation report on November 20, 2018 and March 20, 2019, it did not offer to meet and confer with Local 1021 over its concerns which caused the City to redact large portions of the investigation report even though Local 1021 had challenged the City assertions for redactions. The failure to meet and confer constituted a violation of MMBA sections 3503, 3506, and 3507; and PERB Regulation 32603, subdivisions (a), (b), and (c); and is also an unfair labor practice under MMBA section 3506.5, subdivisions (a), (b), and (c).

Deferral of Request for Information to Arbitration

The City argues that the arbitrator at the upcoming arbitration proceeding over the issuance of the written warning should be the one who decides what portions of the investigation report should be provided to Local 1021 during an in-camera inspection of the investigation report and that PERB should defer this request for employer information issue to this arbitrator. However, as the CBA does not contain a section providing for the resolution of Local 1021's request for employer investigation or whether Local 1021 has a right to request employer documentary information in its duty to investigate a grievance, the issue cannot be deferred to arbitration (*Ventura County Community College District* (2009) PERB Decision No. 2082, pp. 3-5.) In this case, the allegation setting forth a denial of Local 1021's statutory rights under the MMBA does not also constitute a separate violation under the CBA and therefore deferral is not proper.

Additionally, to limit Local 1021's resolution of the redaction of an investigation report to an arbitrator would deprive Local 1021 the right to conduct an investigation of a grievance and assess its merits before it decides whether to pursue the matter to arbitration. (*Hacienda*

La Puente Unified School District, supra, PERB Decision No. 1184, adopted proposed decision, p. 14.) Such information would be useful to allow a union to determine whether to file a grievance or the information may facilitate a later resolution of the dispute, short of formal action. (*State of California (Department of Veterans Affairs)* (2004) PERB Decision No. 1686-S, adopted proposed decision, p. 9.) The City argument for deferral to an arbitrator is therefore rejected.

REMEDY

MMBA Section 3509, subdivision (b), authorizes PERB to order "the appropriate remedy necessary to effectuate the purposes of this chapter." (*Omnitrans* (2010) PERB Decision No. 2143-M, p 8.) This includes an order to cease and desist from conduct that violates the MMBA. (*Id*. at p. 9.) Such a cease and desist order is appropriate in this case and will be ordered.

Additionally, PERB's remedial authority includes the power to order an offending party to take affirmative action(s) to effectuate the purposes of the MMBA. (*City of Redding* (2011) PERB Decision No. 2190-M, pp. 18-19.) The appropriate remedy in cases involving the failure to provide information typically includes an order to provide the requested information upon the charging party's request. (*Trustees of the California State University, supra*, PERB Decision No. 613-H, adopted proposed decision, p. 22.) Most of the investigation report has already been provided. However, the City will be ordered to provide, upon Local 1021's request, a less redacted version of the September 17, 2018 investigation report which excludes from redaction: Background section, paragraph one, first and second sentences; Background section, paragraph two, first sentence; Background section, paragraph three, first sentence; and the term "PRIVILEGED AND" in the header of every page of the investigation report..

It is also appropriate to direct the City to post a notice of this order, signed by an authorized representative. It effectuates the purposes of the MMBA to inform employees that the City has acted in an unlawful manner, is required to cease and desist from such conduct, and will comply with the order. (*City of Selma* (2014) PERB Decision No. 2380-M, adopted proposed decision, pp. 14-15.) The notice posting shall include both a physical posting of paper notices at all places where members of Local 1021 are customarily placed, as well as a posting by "electronic message, intranet, internet site, and other electronic means customarily used by the [City] to communicate with its employees in the bargaining unit[s]." (*Centinela Valley Union High School District* (2014) PERB Decision No. 2378, pp. 11-12, citing *City of Sacramento* (2013) PERB Decision No. 2351-M.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the City and County of San Francisco (City) violated Meyers-Milias Brown Act (MMBA), Government Code sections 3503, 3506, and 3507; and PERB Regulation 32603, subdivisions (a), (b), and (c); and is also an unfair labor practice under MMBA section 3506.5, subdivisions (a), (b), and (c). The City violated the MMBA and PERB Regulation by refusing to provide Service Employees International Local 1021 (Local 1021) with a timely and less redacted version of an investigation report which was necessary and relevant for it to represent a bargaining unit employee concerning a disciplinary grievance and failing to meet and confer with Local 1021 over any privacy/relevancy concerns over the redacted portions of the investigation report.

Pursuant to MMBA section 3509, subdivision (b), it hereby is ORDERED that the City, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to provide necessary and relevant information to Local 1021.

2. Failing to bargain in good faith to ameliorate asserted privacy/relevancy concerns.

3. Interfering with bargaining unit employees' right to be represented by Local 1021.

4. Denying Local 1021 the right to represent bargaining unit employees in their employment relations with the City.

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

1. Upon request, provide Local 1021 with a less redacted version of the September 17, 2018 investigation report which excludes the following portions of the investigation report from redaction: Background section, paragraph one, first and second sentences; Background section, paragraph two, first sentence; Background section, paragraph three, first sentence; and the term "PRIVILEGED AND" in the header of every page of the investigation report.

2. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to Local 1021 bargaining unit employees are customarily posted, copies of the Notice attached hereto as an Appendix. 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 thirty (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. The Notice shall also be posted to all Local 1021

bargaining unit employees by electronic message, intranet, internet site, or other electronic means customarily used by Local 1021 bargaining unit employees.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent 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 Local 1021.

Right to Appeal

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-9425
E-FILE: PERBe-file.Appeals@perb.ca.gov

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet or received by electronic

mail before the close of business, which meets the requirements of PERB Regulation 32135, subdivision (d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090, 32091 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)