No. 24-

IN THE

Supreme Court of the United States

JEANNINE BEDARD,

Petitioner,

v.

CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, AND MICHEL MOORE, IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

California Labor Code Sections 2802 and 2804 govern the indemnification of employees for necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Section 2802 requires the employer to indemnify the employee for all such necessary expenditures, while Section 2804 deems null and void any contract or agreement, express or implied, made by the employee to waive any right or remedy to which that employee is entitled under California state law. This Court has repeatedly found that public employees enjoy vested property interests in their continued employment.

The question presented, which raises a significant question regarding the scope of the federal due process and the protections afforded to public employees with vested property interests in their employment, is as follows:

Did the state courts, including the California Supreme Court, violate the Due Process Clause of the Fourteenth Amendment by failing to rule on substantive state labor law that voids a new condition of employment imposed on petitioner, thereby depriving her of a vested substantial property right in her government office as a police officer?

RELATED CASES

- *Bedard v. City of Los Angeles et al.*, No. 22STCP03008, Superior Court of the State of California, County of Los Angeles, Central District. Judgment entered May 11, 2023.

- *Bedard v. City of Los Angeles et al.*, No. B331062, Court of Appeal of the State of California, Second Appellate District, Division Three. Judgment entered Nov. 21, 2024.

- *Bedard v. City of Los Angeles et al.*, No. S288254, Supreme Court of California. Judgment entered Jan. 15, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jeannine Bedard ("Petitioner") respectfully petitions for a writ of certiorari to review the judgment of the California Supreme Court.

DECISION BELOW

The decision of the California Supreme Court is published at 2025 Cal. LEXIS 69 and is reproduced at Pet. App. 1a.

Petitioner timely filed a petition for writ of mandate challenging the termination of her employment with the California Superior Court in the County of Los Angeles on August 10, 2022 (Pet. App. 122a). The Trial Court issued its opinion on May 11, 2023, granting the petition in part. The opinion is not reported and reproduced at Pet. App. 30a. A notice of appeal was timely filed. The California Second District Court of Appeal issued its opinion denying the appeal on October 31, 2024. The opinion is reported at 106 Cal. App. 5th 442 and reproduced at Pet. App. 2a. A petition for rehearing was timely filed (Pet. App. 102a). The California Second District Court of Appeal denied the petition for rehearing on November 21, 2024. The opinion is not reported and reproduced at Pet. App. 92a. A petition for review was timely filed (Pet. App. 93a). The California Supreme Court denied the petition for review on January 15, 2025. The decision is published at 2025 Cal. LEXIS 69 and reproduced at Pet. App. 1a.

JURISDICTION

The California Supreme Court entered judgment on January 15, 2025. See Pet. App. 1a. Justice Elena Kagan extended the time in which to file this Petition until June 14, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. XIV, Section I provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, a tenured police officer with the Los Angeles Police Department, was terminated from her government office for refusing to agree to a newly-imposed condition of employment that required Petitioner to pay for employer-mandated virus testing. Petitioner contends that this new condition is void under substantive state labor law, specifically California Labor Code Sections 2802 and 2804, barring termination from her employment for refusing the new condition.

A) Factual background

At all times relevant, Petitioner was a member of Respondent's civil service system. She was employed as a sworn officer with the Los Angeles Police Department since April 1998.

On August 16, 2021, Respondent, the City of Los Angeles, passed Ordinance Number 187134 ("Ordinance"), which added Article 12 to Chapter 7 of Division 4 of the *Los Angeles Administrative Code.* The Ordinance required each City employee, in essence, to be vaccinated against COVID-19, or to request a medical or religious exemption by October 19, 2021.

Notwithstanding that the City Ordinance provided for virus testing at City expense, Respondents subsequently required employees who requested a medical or religious exemption to agree to have $260 deducted from their bi-weekly paychecks, or to be invoiced, for employer mandated COVID-19 testing while awaiting their exemption or appeal determination, as a condition of employment.

A substantial number of City employees, including Petitioner, and their unions, including Petitioner's union, pushed back and questioned the City's tactics to force employees to be vaccinated. The City then moved the deadline to comply to December 18, 2021, and imposed penalties for non-compliance thereafter.

On November 5, 2021, Petitioner was given a Notice stating what she had to do to "comply" with the City's vaccination policy. First, she was told that she had to sign

an agreement to (a) be fully vaccinated by December 18, 2021, (b) submit to and pay for testing twice a week on her own time, by a vendor of the City's choosing, and (c) reimburse the City $260 per bi-weekly pay period (over $560 per month) for the cost of testing. Second, she was told if she did not sign the agreement in the next two days she would be fired.

Petitioner refused to agree to the Notice's new conditions of employment, some terms of which conflicted with the City's Ordinance. She declined to sign the Notice. Petitioner was ultimately fired from her position.

Prior to her termination, Petitioner was given a notice of proposed discipline, which only provided her with five days to respond, and not the full thirty 30 days required by the Memorandum of Understanding between LAPD and Petitioner's union, the Los Angeles Police Protective League ("LAPPL").

B) Procedural background

Petitioner raised this issue that the new condition was void under substantive state labor law, barring her termination for refusing to agree to it, in state court proceedings at every level, including before the California Supreme Court, as follows:

I. Issue Raised at California Superior Court

Petitioner filed a Petition for Writ of Mandate in which she raised the issue of application of the California Labor Code, and specifically, Section 2804, which provides that "[a]ny agreement or contract made by an employee which waives the benefits of Article 2, or any part, therefore, is

null and void." The trial court granted the petition in part without ruling expressly on the application of the Labor Code issue to void the required agreement.

II. Appeal to the California Court of Appeal

Petitioner filed an appeal in the California Court of Appeal, in which she requested that the Court answer the question, "[w]as it unlawful for Respondents to condition Jeannine Bedard's continued employment on her signing an agreement containing an unenforceable covenant and illegal provision?" The Court denied the Appeal without ruling on Petitioner's question.

III. Petition for Rehearing at California Court of Appeal

Petitioner filed a Petition for Rehearing, in which she asked the California Court of Appeal to "amend its Opinion by including a discussion and decision on the applicability of the Labor Code to the facts of Appellant's case." The Court denied the Petition for Rehearing.

IV. Petition for Review to California Supreme Court

Petitioner filed a Petition for Review in the California Supreme Court, in which she raised, among the issues for review, the question "[i]s the City of Los Angeles subject to the terms of California Labor Code Sections 2802 and 2804, [and] if so, did the City violate Labor Code Sections 2802 and 2804 when it fired Petitioner, Los Angeles Police Sergeant Jeannine Bedard, for failing to sign and comply with the City's "Notice" which sought Petitioner's agreement as a "condition of employment" to submit to

COVID-19 tests on her own time with a virus-testing contractor of the City's choosing and to reimburse the City over $560 a month for that testing?" Footnote 1 associated with this issue provided Respondents' claim that Petitioner "failed to sign and/or comply with the requirements of the Notice of Mandatory COVID-19 Vaccination Policy Requirements, a condition of employment," which was Respondents' justification to terminate Petitioner from her employment. The Court denied the Petition for Review.

Petitioner asserts that this failure deprived her of her vested substantial property right in her government office, in violation of the Due Process Clause of the Fourteenth Amendment. The Petitioner further contends that the California Supreme Court's refusal to address whether the Labor Code applies to the new condition of employment and whether its application would void that condition has left unresolved critical questions of law that directly impact her constitutional rights.

REASONS FOR GRANTING THE PETITION

A) Clarification is Needed From This Court as to Whether a State Supreme Court's Failure to Rule on a Substantive State Law Issue Affecting a Substantial Vested Property Right Constitutes a Violation of the Due Process Clause of the Fourteenth Amendment

There can be no dispute that Petitioner had a vested property right of which she could not be deprived without due process. This Court has addressed various aspects of due process violations, including those involving property rights and state court decisions. However, this Court has

not explicitly ruled on whether a State Supreme Court's failure to rule on a substantive state law issue affecting a substantial vested property right constitutes a due process violation. Therefore, clarification from this Court is needed on this significant federal question.

The following Opinions of this Court are indicative of the significance of due process violations involving property rights:

I. Plaintiff must be accorded Due Process in the primary sense

In *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673 (1930), this Court held that the Plaintiff must be "accorded due process in the primary sense, [and specifically], … an opportunity to present its case and be heard in its support." *Id.* at 681. This Court continued, "while it is for the state courts to determine the adjective [procedural] as well as the substantive law of the State, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." *Id.* at 682.

This Court emphasized that while state courts in most cases have the final say on the meaning of state law, the federal Constitution does not permit state courts to refuse to exercise that function. *Id.* Ceteris paribus, it violates Due Process for a state court to refuse to hear and decide a state-court plaintiff's claim, and if a state court refuses to hear a claim, it must have a legitimate reason.

In *Brinkerhoff-Faris*, the state court violated Due Process by refusing to hear the claim because of a putative failure to exhaust an alternative remedy that was not in fact available. In the instant case, the state court violated Due Process by simply ignoring the claim entirely and not deciding it at all. Indeed, the deprivation here is arguably worse than in *Brinkerhoff-Faris*, because at least the state court in *Brinkerhoff-Faris* said something in response to the plaintiff's claim.

Here, by contrast, the state court was just an empty void into which the Petitioner's words, claims, and arguments vanished without a trace. That cannot satisfy Due Process.

II. A tenured employee's property interest in continued employment is protected by the Due Process Clause

In *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, (1985), this Court held that a tenured employee's property interest in continued employment is protected by the Due Process Clause of the Fourteenth Amendment, and the state cannot deprive the employee of this property interest without due process, which includes notice and an opportunity to be heard before termination. This Court has also recognized that a property interest in continued employment arises when there is a legitimate claim of entitlement to it, such as through tenure or contractual provisions, and that such interests are safeguarded by procedural due process. *Bd. of Regents v. Roth*, 408 U.S. 564 (1972).

More recently, in *Gilbert v. Homar*, 520 U.S. 924 (1997), this Court reiterated that procedural due process

protections apply when a government employee has a constitutionally protected property interest in his or her employment, and the government must provide adequate procedural safeguards before depriving the employee of that interest.

In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), this Court held that an employee's claim under the Illinois Fair Employment Practices Act (FEPA) was constitutionally protected by the Due Process Clause. The state supreme court's interpretation that the Commission's failure to act within a statutory deadline deprived it of jurisdiction was found to misunderstand the nature of Due Process. This Court emphasized that state-created property interests, such as the right to use FEPA adjudicatory procedures, cannot be destroyed without appropriate procedural safeguards.

This Court has also ruled in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985) that classified civil servants had a property interest in continued employment, which could not be defined solely by the procedures provided for its deprivation. This Court held that due process required a pre-termination opportunity to respond to charges, even if post-termination administrative proceedings were available. The employees were entitled to this procedural safeguard before being deprived of their property interest in employment.

In *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702 (2010), this Court addressed whether a judicial decision could effect a taking of property without due process. While the Court unanimously held that there was no taking in this case, it recognized that the

Due Process Clause imposes substantive and procedural limitations on judicial actions that eliminate established property rights – *i.e.*, that under certain facts, a judicial decision could be found to have effected a taking of property without due process.

Here, the State Courts' failure to rule on the substantive state labor law issue undermines the fundamental guarantee of due process, as Petitioner was not afforded a meaningful opportunity to challenge the validity of the new condition of employment.

Granting the writ of certiorari will allow this Court to clarify whether the scope of the Due Process Clause requires a State Supreme Court to rule on a substantive state law issue affecting a substantial vested property right.

III. The Ninth Circuit has Held That A Party is Entitled To A Ruling From The Court On A Legitimate Issue Raised By That Party

This Court should hold, clearly and definitively, that the constitutional guarantee of due process requires that appellate courts rule on substantive legal issues raised by litigants, instead of ignoring such arguments when they are raised and omitting any discussion of those arguments in the appellate decision and order. The right to be heard entails that a litigant's argument is actually heard and addressed, and the right to appeal requires that lower courts make rulings on arguments raised by litigants.

Here, Petitioner raised a valid and likely meritorious statutory claim. The lower court ignored it entirely and

never ruled on it. In our government, the judicial branch is the branch of reasoned decision-making, the branch that explains its decisions and actions. Due Process, if it means anything, should mean that when a litigant makes a non-frivolous, substantive, potentially dispositive argument to an appellate court, that court must address that argument. The court may address it cursorily, even summarily—but it cannot simply ignore it.

Twelve years ago, the Ninth Circuit articulated this principle in a widely cited case, *United States v. Hernandez-Meza*, 720 F.3d 760, 767-68 (9th Cir. 2013) (vacating conviction):

In *Hernandez-Meza*, the Ninth Circuit found that defense counsel had raised a legitimate issue and was entitled to a ruling from the district court, and explicitly stated that:

> Giving an explanation for significant rulings is an important component of due process. It lets the adversely affected party know that the judge has heard and understood its argument, and that the judge's ruling is based on the facts and the law. An explanation also allows the judge to confirm that his ruling is correct. If he is unable to articulate a plausible rationale for his ruling, he may think better of it. Finally, and not least, by failing to give any indication that he applied the correct legal standard, the district judge made appellate review difficult. *See Hinkson,* 585 F.3d at 1261–62; *cf. United States v. Taylor*, 487 U.S. 326, 336–37, 108 S.Ct. 2413, 101 L.Ed.2d 297 (1988) ("[A] district court

> must ... clearly articulate [its reasoning] in order to permit meaningful appellate review.").

Each of these factors, as identified by the Ninth Circuit, afflicted Petitioner's case. Here, Petitioner raised a serious issue. It was an issue that likely would have proved dispositive in her favor if it had been considered—or, if addressed and rejected in an opinion, served as the basis for a meritorious petition for review to the California Supreme Court. But the lower court simply ignored the issue entirely. Unfortunately, lower courts all too often simply ignore litigants' arguments. It is high time that this Court announced, in a clear ruling providing guidance and direction to lower courts, that the Due Process Clause requires that all courts, and all tribunals in which Due Process rights apply, acknowledge, address, and rule on all non-frivolous, substantive, and potentially dispositive arguments raised by litigants.

IV. This Court Has Jurisdiction to Review this Case As It Has Raised An Important Question of Federal Law Which Requires Clarification

This Court has jurisdiction to review the California Supreme Court's decision, which failed to address the state's procedural and substantive labor law as to Petitioner's rights and protections relevant to her employment, as that failure pertains to a violation of federal procedural due process. 28 U.S.C. § 1257(a).

Petitioner's case presents a significant question regarding the scope of the Due Process Clause and the protections it affords to public employees with vested property interests in their employment.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari, vacate the California Supreme Court's decision, and remand the case for the California Supreme Court to rule on whether the Labor Code applies to the new condition of employment and, if so, whether application of the Labor Code would void the new condition of employment requiring Petitioner's reinstatement to her office as a police sergeant.

Respectfully submitted,

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APPENDIX A — DENIAL OF REVIEW OF THE SUPREME COURT OF CALIFORNIA, FILED JANUARY 15, 2025

Court of Appeal, Second Appellate District,
Division Three - No. B331062

IN THE SUPREME COURT OF CALIFORNIA

S288254

En Banc

JEANNINE BEDARD,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES *et al.*,

Defendants and Respondents.

The petition for review is denied.

GUERRERO
Chief Justice

APPENDIX B — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE, FILED OCTOBER 31, 2024

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

B331062

(Los Angeles County
Super. Ct. No. 22STCP03008)

JEANNINE BEDARD,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES *et al.*,

Defendants and Respondents.

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Because plaintiff Jeannine Bedard refused to comply with the City of Los Angeles's (the City) COVID-19 vaccination mandate and sign a "Notice of Mandatory COVID-19 Vaccination Policy Requirements" (the Notice) enforcing the mandate, the Chief of Police sought to terminate her employment as a Los Angeles Police Department (LAPD) officer. The LAPD Board of Rights

(the Board) reviewed the Chief's proposed discipline, found Bedard guilty of failing to comply with conditions of employment, and upheld the decision to discharge Bedard. The Board also found the City failed to provide Bedard sufficient time to respond to the charges in violation of *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 [124 Cal. Rptr. 14, 539 P.2d 774] (*Skelly*)[1] and awarded her backpay. However, the City did not subsequently pay Bedard the backpay.

Bedard filed a petition for writ of mandate in the trial court, arguing the disciplinary action was procedurally and legally invalid, and seeking reinstatement and backpay. The trial court found the termination was justified, but the City violated Bedard's due process rights by giving her insufficient time to respond to the allegations. The trial court awarded her backpay.

Bedard appeals, arguing her termination was improper because it (1) was entirely based on her failing to sign the Notice, which was an illegal contract; (2) was too harsh a penalty under the circumstances; and (3) violated *Skelly*. We affirm.

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1. *Skelly* held, with respect to a permanent civil servant, that due process requires the employee be given, prior to termination, notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond to the authority initially imposing discipline. (*Skelly, supra*, 15 Cal.3d at p. 215.)

Appendix B

FACTUAL AND PROCEDURAL BACKGROUND

I. City Ordinance Mandating Vaccination or Exemption

In March 2020, the City declared an emergency due to the spread of COVID-19. In August 2021, the Los Angeles City Council passed ordinance No. 187,134 (Ordinance 187,134), which required that all City employees be vaccinated against COVID-19 or request an exemption by October 19, 2021, "[t]o protect the City's workforce and the public that it serves." The ordinance stated City employees must receive their first dose of a COVID-19 vaccine by September 7, 2021, and the second dose by October 5, 2021. Alternatively, an employee could request an exemption by September 7, 2021. "Employees with medical conditions/restrictions or sincerely held religious beliefs, practices, or observances that prevent them from receiving a COVID-19 vaccine shall qualify for COVID-19 vaccine exemption, upon approval of documentation provided by the employee to the appointing authority or designee." An exempted employee was subject to weekly testing during work hours at no cost.

The ordinance explained: "The City's goal is to have a vaccinated workforce. As such, employees will not have the option to 'opt out' of getting vaccinated and become subject to weekly testing. Only those with a medical or religious exemption and who are required to regularly report to a work location are eligible for weekly testing." The ordinance contained an "Urgency Clause," declaring that the ordinance "is required for the immediate protection of the public peace, health and safety."

The City then engaged in negotiations with its labor organizations, including Bedard's Union, the Los Angeles Police Protective League (LAPPL), about the consequences for noncompliance with the mandatory vaccination conditions of employment. After negotiations failed, the City issued its "Last, Best and Final Offer" (LBFO) on October 14, 2021. The LBFO stated the City would issue a notice to its unvaccinated, nonexempt employees, instructing each employee to be vaccinated or found to be exempt from the vaccination requirement by December 18, 2021. The LBFO stated that prior to full vaccination, the employee would pay for the interim testing that was to occur between October 20 and December 18, 2021, and that testing would not occur during work time. If an employee did not comply with this mandate, she would not be fulfilling a condition of employment, and she would be subject to "appropriate and immediate corrective action." An employee terminated for noncompliance with the COVID-19 vaccine mandate could seek "reemployment" with the City, subject to the COVID-19 vaccination requirements. Alternatively, an employee could resign or retire, then after the vaccination order is lifted, they would be eligible for rehire.

On October 26, 2021, the City Council adopted a resolution implementing "consequences" for failing to comply with Ordinance 187,134. The resolution stated that an emergency existed; the City and its labor organizations, including the LAPPL, had reached a "stalemate" in negotiations. It explained that because the COVID-19 pandemic had created a "catastrophic public health emergency" and a "compelling need for … unilateral action," the terms and conditions of the LBFO

were effective immediately. The resolution also stated: "compulsory immunization has long been recognized as the gold standard for preventing the spread of contagious diseases" and "vaccination is the most effective way to prevent the spread of COVID-19 and to limit COVID-19 hospitalizations and deaths."

On October 28, 2021, the mayor issued a memorandum to all City department heads regarding the LBFO. The memorandum declared that COVID-19 had created "a catastrophic public health emergency," and the vaccination mandate was "critical to protecting the health and safety of our workforce and the Angelenos we serve." The memorandum directed all City departments to implement the LBFO and issue a notice to every unvaccinated employee, wherein the employee was to acknowledge the deadline for becoming vaccinated and the testing requirements. Employees were required to sign the notice within 24 to 48 hours. Employees who refused to sign the notice were to "be placed off duty without pay," and sworn employees were to "be subject to applicable Board of Rights proceedings."

II. Bedard's Failure To Comply with the Vaccine Mandate

Bedard never submitted documentation showing she had been vaccinated or had applied for an exemption and would be tested. On November 5, 2021, Bedard's supervisor, Deputy Chief (then-Commander) Donald Graham, gave Bedard a "Notice of Mandatory COVID-19 Vaccination Policy Requirements." The Notice stated: "To protect the City's workforce and the public it serves,

Appendix B

City of Los Angeles Ordinance 187134 ('COVID-19 Vaccination Requirement For All Current and Future City Employees') was enacted on August 24, 2021, requiring all employees be fully vaccinated for COVID-19 by October 20, 2021, or request a medical or religious exemption, and report their vaccination status by October 19, 2021. To maximize compliance with the Ordinance, the City is affording a final opportunity for current City employees to become fully vaccinated by December 18, 2021, prior to appropriate corrective action being taken." The Notice requested Bedard to sign a statement certifying that she would be fully vaccinated for COVID-19 by December 18, 2021, and in the interim, she would undergo biweekly COVID-19 testing at her own cost and on her own time until December 18, 2021. It further stated, "I understand I must begin the vaccination process as soon as possible so as to be fully vaccinated no later than December 18, 2021, and I will report my progress to the City after receiving my first and second vaccination dose." The Notice further required Bedard to certify: "I understand that if I do not follow all of the terms and conditions herein, including showing proof of being fully vaccinated by December 18, 2021, I will immediately be placed off duty without pay pending pre-separation due process procedures (Skelly) and I will be served with a written notice of proposed separation from City employment for failing to meet a condition of employment." Bedard would not sign the Notice and she instead had Commander Graham write "refused" on the signature line.

Two days later, on November 7, 2021, Bedard sent an e-mail to Commander Graham and others, stating that she would not be vaccinated. Bedard explained that she was

refusing the vaccine because her daughter had an adverse reaction to it. Bedard did not mention any religious or medical reason for a vaccination exemption.

On November 10, 2021, the City served Bedard with a "Complaint Adjudication Form" and "Notice of Proposed Disciplinary Action" for failing to comply with the ordinance's requirements. The notice of proposed discipline gave Bedard until November 15, 2021, to respond orally or in writing.

On November 16, 2021, LAPD served Bedard with a complaint and relief from duty, alleging, "On or about November 7, 2021, you, while on duty, failed to sign and/or comply with the requirements of the Notice of Mandatory COVID-19 Vaccination Policy Requirements, a condition of employment." She was "temporarily relie[ved] from duty" effective November 17, 2021, pending a hearing before the Board.

III. The Board Hearing

At Bedard's Board hearing, Bedard testified that she had been a police officer since April 1998 and her last assignment was in the Transit Services Bureau. On November 5, 2021, then-Commander Graham served her with the Notice. Bedard testified that she understood what the Department was asking of her in the Notice. Bedard stated the testing was "the main issue" for her. She did not understand why she was being charged for the COVID-19 testing. She told Graham to write "refused" on

the signature line because she objected to paying for the testing and giving her personal information to Bluestone, the company the City contracted with to perform testing. She understood that becoming vaccinated, paying for testing, and providing her information to Bluestone were conditions of employment.

Bedard testified that she e-mailed Graham and others, indicating she would not get vaccinated because of the reaction her daughter had to the vaccine. Bedard stated she did not apply for a medical exemption since it was her daughter who had the adverse reaction, not Bedard. Bedard testified that she also did not apply for a religious exemption because she would still have to pay for the testing. After pointing out that the LAPD's policies were evolving regarding the frequency and type of testing, Bedard stated "[t]here's a lot of different things that are happening that I can't believe I'm in this position. I have no problem complying and following the rules when they make sense to me." She testified that she did not sign the vaccination policy because "what is the point of my signature on something that I don't really agree with." Bedard understood that she could be rehired by the Department if she were vaccinated.[2] Bedard's counsel argued that the contract was illegal because Labor Code

2. Others also testified, including Deputy Chief Donald Graham, the City analyst who tracks employee vaccination statuses, the City investigator responsible for the investigation of Bedard, and a detective supervisor for the Officer Representation Section.

section 2802[3] prevented the City from making her pay for testing.

On July 13, 2022, the Board unanimously found, after giving "exhaustive consideration to all of the evidence and the law," that Bedard failed to comply with the ordinance. The Board stated that Ordinance 187,134, which had the "full force and effect of the law," required all City employees to obtain a COVID-19 vaccine. Since Bedard did not apply for a vaccination exemption and did not work remotely, Bedard was obliged to become vaccinated or seek an exemption and regular testing, which she did not do. The Board explained that her daughter's adverse reaction to the vaccine was not a valid medical reason for an exemption. The Board also concluded Bedard's refusal to sign the Notice was a violation of a condition of her employment. The Board rejected Bedard's argument that section 2802 prevented the City from making her pay for testing. The Board reasoned that section 2802 was inapplicable as it applied to private employers, not public entities.

The Board stated it had reviewed Bedard's personnel file and that she was a highly qualified and excellent

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3. All undesignated statutory references are to the Labor Code.

Section 2802, subdivision (a), states: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

employee. It nonetheless found that Bedard's willful refusal to comply with the ordinance required the Board to uphold her termination.

Lastly, the Board concluded Bedard had not been given sufficient time to respond to the charges, in violation of *Skelly*. The Board awarded her backpay from the date of her discipline (Nov. 10, 2021) to the time the discipline was validated (July 13, 2022).

The Chief of Police subsequently found that the Board did not have jurisdiction to award Bedard backpay. On the Board's findings, the chief of police wrote he "will not comply" with the backpay order.

IV. Bedard's Petition for Writ of Mandate in the Trial Court

In August 2022, Bedard filed a petition for writ of mandate, seeking to "(1) set aside her termination and restore her position with backpay; (2) set aside the Board of Rights'[s] finding of guilt; and (3) remove the record of this charge or penalty from her record." She also sought attorney fees and costs.

On April 18, 2023, in a detailed 13-page decision, the trial court affirmed the LAPD's decision to terminate Bedard, but found she was entitled to backpay for the *Skelly* violation. The court found: "[T]he Vaccination Notice had three conditions of continued employment: (1) Bedard's signature on the Vaccination Notice; (2) her agreement to be fully vaccinated by December 18, 2021;

and (3) her agreement to testing with Bluestone in the interim before December 18 with her reimbursing the City's testing expense through paycheck deductions. The undisputed facts show that Bedard did not sign the Vaccination Notice and did not become fully vaccinated by December 18, 2021. There also is no evidence that she tested, either through Bluestone or any other vendor."

Without deciding the issue, the court assumed section 2802 barred the City from requiring its employees to pay for their own COVID-19 testing.[4] Given this assumption, the trial court found that Bedard's refusal to test in accordance with the City's requirements did not violate the conditions of her employment. However, the court concluded Bedard still violated the two remaining conditions of employment: refusing to be vaccinated and refusing to sign the Notice. The trial court explained:

"Bedard's refusal to agree to be vaccinated by December 18, 2021 violated her conditions of employment. She did not seek a medical or religious exemption.

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4. The trial court later stated, "The City also is correct (Opp. at 9-10) that the express language of section 2802 only creates a duty for an employer to indemnify an employee for costs; it does not require that costs be advanced or made available for free. See *Edwards* [*v. Arthur Andersen LLP* (2008) 44 Cal.4th 937,] 952 [81 Cal. Rptr. 3d 282, 189 P.3d 285] (section 2802 codifies policy that favors indemnification of employees for claims and liabilities from the employees' acts within the course and scope of their employment). Under the plain language of section 2802, the City can mandate employees to periodically test and then be required to indemnify their cost. Bedard presents no evidence that she intended to or did incur any testing costs before December 18, 2021."

Instead, on November 7, 2021, Bedard emailed Graham that she had decided not to take the vaccine. AR 712. She explained that her daughter suffered an adverse reaction to the Pfizer vaccine, and she did not want to take the same risk. AR 712. This email was a direct violation of her conditions of employment. As the City argues (Opp. at 5), Bedard opposed [the] vaccination policy to 'make a stand' based upon her personal opinions and her actions were insubordinate.

"Bedard's refusal to sign the Vaccination Notice also violated her conditions of employment. Graham discussed the contents of the Vaccination Notice with Bedard, and she understood them. AR 351-52. She understood that taking the vaccine, paying for testing, and putting her information into a Bluestone account all were conditions of employment. AR 357. Yet, she refused to sign. AR 352.

"Bedard testified that Bedard did not agree to that which was asked in the Vaccination Notice, primarily the payment for testing. AR 352. She was being asked to sign a document with which she knew LAPPL had issues. AR 352. The testing was the main issue for her, and she could not understand why she would be charged $560 for testing if LAPD was offering free testing to everyone else. AR 352-53, 359.

"Bedard also testified that she had Graham write 'refused' because she objected to paying for testing and submitting the tests to Bluestone, not signing the Vaccination Notice itself. AR 353-55. If the [N]otice said that she would not be charged for testing or submit

information into a third-party vendor, she would have agreed to the Vaccination Notice. AR 354, 356.

"The court concludes that Bedard could not have meant this last point in her testimony—that she would have signed the Vaccination Notice if she were not charged for testing. Doing so would mean that she would agree to be vaccinated by December 18, 2021, which is completely inconsistent with her rationale for not being vaccinated, both in her email to Graham and her testimony. Bedard could only have meant that she would not dispute the Vaccination Notice's testing requirement if she could have free testing. But Bedard would not have signed the Vaccination Notice even in that circumstance because she would be agreeing to be vaccinated.

"As the City contends (Opp. at 6-7), Bedard made plain in her testimony that her attitude toward the City's policy was about the vaccination, not testing costs. She testified that she has, 'no problem complying and following the rules when they make sense to me,' implying that she will not follow rules with which she does not agree. AR 363. She emphasized that she 'took a stance by the grace of God,' and stated that 'not to tout that I am this saint, [but] what I am saying is that we can't all just go along to get along, sometimes we have to bring some commonsense back in.' AR 631. This testimony was all about vaccination, not testing.

"Although she does not so argue, Bedard could contend that the illegality of the testing requirement infected the rest of the Vaccination Notice and permitted her to refuse

to sign it. However, the court believes that Bedard seized on [the] section 2802 issue in her testimony before the Board of Rights as a matter of convenience. Tellingly, she did not object to Graham on November 5, 2021 that she did not want to pay for testing, and her November 7, 2021 email to Graham says nothing about the cost of testing. It makes no sense for Bedard to make a personal choice that she did not want to be vaccinated and then rely on the cost of testing as the reason she did not sign the Vaccination Notice. The court concludes that Bedard's testimony about the cost of testing was a *post hoc* makeweight that was not her real reason for refusing to sign the Vaccination Notice on November 5, 2021." (Fns. omitted.)

The court then addressed Bedard's contention that her dismissal was an excessive and disproportionate penalty for her failure to sign the Notice given her excellent employment record. The court found: "Bedard mischaracterizes the reasons for her discharge, which are that she refused to be vaccinated and refused to sign the Notice of Vaccination, both of which were conditions of employment. Because they were conditions of her employment, any analysis of Bedard's performance or qualifications as an employee is irrelevant. She did not meet the conditions and could not remain an employee. [¶] Additionally, an analysis of the abuse of discretion issue weighs in favor of discharge. The City promulgated the vaccination policy as a means to deal with the COVID-19 pandemic. The harm to public service by an employee who refuses to vaccinate is self-evident. Her decision puts all other public employees, and the members of the public who deal with them, at risk." The court also explained,

"there is a likelihood that such conduct will recur in the event of a renewed COVID pandemic, or another health pandemic where Bedard does not agree with the City's remedy. While the City's use of the same Vaccination Notice is unlikely, it is likely that the City would require employee vaccination. Yet, there is no reason to believe that Bedard would change her mind and be vaccinated."

The trial court also agreed with the Board that the City violated Bedard's *Skelly* rights by giving her only five days to respond to the notice of proposed discipline, not the full 30 days required by the Memorandum of Understanding between LAPD and LAPPL. The trial court found Bedard was "entitled to backpay from December 17, 2021, to July 20, 2022," i.e., from the date she was "taken off the payroll until due process [wa]s satisfied through affirmance of discharge by administrative appeal."

The trial court entered judgment on May 11, 2023, and Bedard timely appealed on May 17, 2023.

DISCUSSION

Bedard asserts we should reverse her termination because it was entirely based on failing to sign the Notice, which was void because it violated section 2802, and termination was too harsh a penalty under the circumstances and thus she should be reinstated. She also contends she is entitled to reinstatement, not just backpay, for the *Skelly* violation. We address each issue in turn.

Appendix B

I. Standard of Review

Administrative mandamus is available to obtain judicial review of a public agency "decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer." (Code Civ. Proc., § 1094.5, subd. (a).) In a proceeding for administrative mandate, the judicial inquiry extends to whether the public agency "has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." (Code Civ. Proc., § 1094.5, subd. (b).) An abuse of discretion is established if the public agency "has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (*Ibid.*) "'[R]arely, if ever, will a board determination be disturbed unless the petitioner is able to show a jurisdictional excess, a serious error of law, or an abuse of discretion on the facts.'" (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 814 [85 Cal. Rptr. 2d 696, 977 P.2d 693] (*Fukuda*); see *Mason v. Office of Admin. Hearings* (2001) 89 Cal.App.4th 1119, 1130–1131 [108 Cal. Rptr. 2d 102].)

The trial court reviews the administrative decision de novo but affords the administrative findings "a strong presumption of correctness." (*Fukuda, supra*, 20 Cal.4th at p. 817.) "[T]he party challenging the administrative decision bears the burden of convincing the court that

the administrative findings are contrary to the weight of the evidence." (*Ibid.*)

"'"When an appeal is taken from the trial court's determination, it is given the same effect as any other judgment after trial rendered by the court: the only question is whether the *trial court's* (not the administrative agency's) findings are supported by substantial evidence. [Citation.] Conflicts in the evidence must be resolved in favor of the judgment and where two or more inferences can be reasonably drawn from the facts, the reviewing court must accept the inferences deduced by the trial court." [Citation.]['] ... [¶] '"Evidence is substantial if any reasonable trier of fact could have considered it reasonable, credible and of solid value." [Citation.] Additionally, a reviewing court "may look to the findings in [the administrative agency's] decision for guidance in determining whether the trial court's judgment is supported by substantial evidence." [Citation.]'" (*Green v. Board of Dental Examiners* (1996) 47 Cal.App.4th 786, 796 [55 Cal. Rptr. 2d 140]; see *Fukuda, supra*, 20 Cal.4th at p. 824.) "However, we are not bound by any legal interpretations made by the administrative agency or the trial court; rather, we make an independent review of any questions of law." (*Rand v. Board of Psychology* (2012) 206 Cal.App.4th 565, 575 [142 Cal. Rptr. 3d 288] (*Rand*).)

We also "review de novo whether the agency's imposition of a particular penalty on the petitioner constituted an abuse of discretion by the agency. [Citations.] But we will not disturb the agency's choice of penalty absent "'an arbitrary, capricious or patently

abusive exercise of discretion"' by the administrative agency." (*Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 627–628 [163 Cal. Rptr. 3d 346] (*Cassidy*).)

II. Substantial Evidence Supports the Trial Court's Conclusion That Bedard's Termination Was Based on Her Refusal To Become Vaccinated, Not Just Her Refusal To Sign the Notice

Bedard contends she was terminated solely for her failure to sign the Notice, which she urges violated section 2802 because it required her to pay for the interim COVID-19 testing that was to occur between November 7 and December 18, 2021.[5] She contends this clause of the Notice rendered the entire agreement void, citing section 2804.[6] She therefore argues her termination was unlawful. We disagree.

First, we conclude that Bedard forfeited her argument that she was not terminated for violating the

5. At oral argument before this court, Bedard's counsel argued that violating the ordinance was not sufficient to show Bedard violated a condition of her employment because the complaint against Bedard did not reference the ordinance. Counsel asserted "the ordinance is a side issue … and the City mushed the two [issues of the Notice and the ordinance] together."

6. Section 2804 states: "Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

ordinance and that she instead was solely terminated for her failure to sign the Notice because she did not make this argument in the Board proceedings or before the trial court. (*Rand, supra*, 206 Cal.App.4th at p. 587 [contention not raised at the administrative hearing or in the trial court is forfeited]; *Doe v. University of Southern California* (2018) 28 Cal.App.5th 26, 41 [238 Cal. Rptr. 3d 856] [argument not presented to trial court during administrative appeal is forfeited].) Notably, at the Board hearing, the City argued in its closing argument that the ordinance required Bedard and all City employees to vaccinate or file an exemption, and that her failure to do either was a violation of her conditions of employment. The City argued: "this hearing comes down to one thing and only one thing. It is black and white. The City of Los Angeles lawfully passed a legal ordinance requiring all City employees to become vaccinated against COVID-19 or request an exemption and follow the testing procedures. These are conditions of employment for a City employee to keep their job. Sergeant Bedard did neither of these." Bedard's counsel did not counter the City's argument that compliance with the ordinance was a condition of Bedard's employment or that her noncompliance with it was a cause of her termination. Instead, Bedard's counsel argued that the Notice was illegal and that her due process was violated.[7] The trial court likewise stated that one "issue

7. We also observe that during the administrative hearing, the City's counsel asked Bedard: "At the time, did you understand that refusing to sign this document was a condition of employment?" In response, Bedard testified: "So what I understood is, refusing to agree to paying for the testing, to putting my information into the Bluestone account, to actually not receiving the vaccine, was a condition of employment, he explained that to me. Not the actual

with respect to termination is … whether then Sergeant Bedard refused to be vaccinated pursuant to the City's ordinance." The trial court subsequently found Bedard's failure to vaccinate defied the ordinance and thus was cause for termination. At this juncture too, Bedard's counsel failed to argue that her noncompliance with the *ordinance* was not a basis for her termination.

Second, substantial evidence supports the trial court's finding that Bedard was not terminated just for failing to sign the Notice but also because she refused to comply with the vaccine mandate set forth in the ordinance. The complaint charged Bedard with failing to "sign and/or *comply* with the requirements of the Notice of Mandatory COVID-19 Vaccination Policy Requirements." (Italics added.) The Notice itself expressly stated its purpose was to give noncompliant employees one last opportunity to comply with Ordinance 187,134 by becoming vaccinated by December 18, 2021. The Notice described the condition of employment at issue as: "the condition of employment to be fully vaccinated."

Bedard did not apply for a religious or medical exemption and she expressly told her commanding officer in an e-mail that she would not be vaccinated for personal reasons. This refusal alone clearly violated the ordinance's vaccination requirement and the Notice's requirements enforcing the ordinance. To the extent Bedard asserts that her termination was solely based on her refusal to sign the Notice because she "was relieved of duty and

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physical signing, which I think we are splitting hairs but." Based on Bedard's testimony, it appears signing the Notice was beside the point.

facing termination just days after refusing to sign the Notice," she ignores that this disciplinary action also occurred *just days* after she sent her commanding officer and other superiors the e-mail stating that she would not be vaccinated.

Substantial evidence further supports the trial court's conclusion that Bedard's "testimony about the cost of testing was a *post hoc* makeweight that was not her real reason for refusing to sign the Vaccination Notice." As the trial court explained, Bedard would not have signed the Notice even if testing were free because "[d]oing so would mean that she would agree to be vaccinated by December 18, 2021, which is completely inconsistent with her rationale for not being vaccinated, both in her email to Graham and her testimony." Bedard's e-mail to her superiors and her testimony illustrated that her decision not to sign was really about vaccination, not the cost of testing.

In the e-mail, which did not mention anything about the cost of testing, she wrote: "I had a lengthy conversation with my family and based on the fact my daughter suffered an adverse reaction from the Pfizer vaccine, I could not voluntarily take this vaccine. … [¶] I believe in my heart this is the right decision, as you believe in your heart you are doing the right thing by following orders and serving officers with these documents."

She testified that she has "no problem complying and following the rules when they make sense to" her. She described her decision not to vaccinate as taking "a stance by the grace of God" because she was "given

the opportunity to be able to stand strong in what [she] believe[s]." She explained, "we can't all just go along to get along, sometimes we have to bring some commonsense back in."

On appeal, Bedard conspicuously avoids addressing the substantial evidence that she violated the vaccination condition of her employment. We note that Bedard's brief also does not discuss the substantial evidence standard of review.[8] Although a statement of the standard of review is not a technical requirement of an appellate brief, "[f]ailure to acknowledge the proper scope of review is a concession of a lack of merit." (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465 [126 Cal. Rptr. 3d 301].) This is because "'[a]rguments should be tailored according to the applicable standard of appellate review.'" (*Ibid.*)

Here, the crucial question that Bedard avoids addressing is whether there was substantial evidence to support the trial court's conclusion that Bedard violated her employment conditions. As explained above, ample evidence supported the trial court's conclusion that she violated the vaccination condition. We need not decide whether the condition requiring her to pay for the interim testing violated section 2802,[9] or that signing the Notice

8. Bedard solely mentions that we review de novo the penalty imposed.

9. Without deciding the issue, the trial court assumed section 2802 barred the City from requiring its employees to pay for their own COVID-19 testing. Therefore, the trial court found that Bedard's refusal to test with Bluestone did not constitute a violation of an

was not a valid condition of employment, because (1) Bedard never intended to become vaccinated and thus no interim testing was necessary, and (2) there is substantial evidence that Bedard violated the ordinance's vaccination mandate. Her refusal to vaccinate without an exemption, standing alone, supported the City's disciplinary action.

III. The Board Did Not Abuse Its Discretion by Terminating Bedard for Failing To Comply with the Vaccination Policy

Bedard asserts that termination of her employment was too harsh a penalty under the circumstances and that she "is entitled to a remand to the trial court for an award of reinstatement to her position with back pay and benefits."[10]

"A review of disciplinary action involves consideration of '"the extent to which the employee's conduct resulted in, or if repeated is likely to result in, '[h]arm to the public service' … , the circumstances surrounding the misconduct and the likelihood of its recurrence."'" (*Noguchi v. Civil*

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employment condition. However, the trial court also stated later in its decision that because the express language of 2802 only creates a duty for an employer to indemnify the employee for costs, "the City can mandate employees to periodically test and then be required to indemnify their cost."

10. Bedard is correct that we review de novo the trial court's assessment of the penalty. However, as mentioned above, we review whether the Board's "imposition of a particular penalty on the petitioner constituted an abuse of discretion by the [Board]." (*Cassidy, supra*, 220 Cal.App.4th at p. 627.)

Service Com. (1986) 187 Cal.App.3d 1521, 1545 [232 Cal. Rptr. 394].) "Of these three factors, harm to the public service is the 'overriding consideration.'" (*Ibid.*)

Here, the Board acknowledged that the ordinance stated the vaccination and reporting requirements were conditions of employment and "'a minimum requirement for all employees.'" The Board noted that despite Bedard's awareness of this, she neither became vaccinated nor filed for an exemption. As either vaccination or an exemption was a minimum requirement for Bedard's employment, the Board found her termination was the appropriate penalty.

We conclude the Board did not abuse its discretion in finding that termination was the appropriate remedy. The vaccination requirement's objective was to "[t]o protect the City's workforce and the public that it serves" from a dangerous illness during a global pandemic. The City's resolution observed that "compulsory immunization has long been recognized as the gold standard for preventing the spread of contagious diseases" and "vaccination is the most effective way to prevent the spread of COVID-19 and to limit COVID-19 hospitalizations and deaths." At the Board hearing, a senior personnel analyst for the LAPD testified that the ordinance was implemented to make "the workplace and the City safer." Bedard's refusal to vaccinate placed Bedard, her coworkers, and the public with whom she interacted while on duty at a significant risk of harm. Bedard offers no argument otherwise in her briefs on appeal. Since Bedard expressed in the e-mail her intention to not become vaccinated, the Board could

reasonably infer that at the point in time it was making its decision, the public harm would be recurring.[11]

Bedard cites *Skelly, supra*, 15 Cal.3d 194, for the principle that the severity of the disciplinary action must reflect the severity of the misconduct. Yet, Bedard does not explain how her conduct was not severe and does not cite a case illustrating that the refusal to vaccinate against a deadly disease warrants lesser discipline than termination. (See *Estate of Cairns* (2010) 188 Cal. App.4th 937, 949 [115 Cal. Rptr. 3d 735] [failure to provide argument or authority forfeits contention].) She does not describe how harm from her refusal to vaccinate could be eliminated or mitigated.

As explained above, the Board did not abuse its discretion in concluding that termination was appropriate given that Bedard's refusal to become vaccinated placed

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11. At oral argument, Bedard's counsel argued that statements made by the police chief during a podcast from November 2022 that both vaccinated and unvaccinated people can contract and transmit the virus, and the City's June 2024 amendment to the Administrative Code ending the vaccination requirement, show that no public harm would come from Bedard's refusal to vaccinate. Yet, as the trial court pointed out, the podcast discussed after-the-fact events that had no bearing on the Board's July 2022 decision. The same is true for the recent amendment ending the vaccination requirement—it has no bearing on the Board's decision. We also conclude that because Bedard's opening brief and reply brief failed to brief this issue, it is forfeited on appeal. (*United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 146, 153 [248 Cal. Rptr. 3d 294] [brief must contain reasoned argument and legal authority or the court may treat contention as forfeited]; Cal. Rules of Court, rule 8.204(a)(1)(B).)

the public and her coworkers at risk of harm on a daily basis.

IV. The *Skelly* Violation Did Not Require Reinstatement

As mentioned above, the trial court agreed with the Board that the City violated Bedard's *Skelly* rights by failing to afford her the full 30 days to respond to the charges against her. The court awarded her backpay to remedy the due process violation. Bedard argues, as her counsel did below, that backpay was an insufficient remedy for the *Skelly* violation. She asserts that had she been given the full 30 days to respond to the charge against her, there was a reasonable probability she would have avoided being terminated and that she is entitled to reinstatement, rather than just backpay, for the *Skelly* violation.

In *Barber v. State Personnel Bd.* (1976) 18 Cal.3d 395 [134 Cal. Rptr. 206, 556 P.2d 306] (*Barber*), the Supreme Court held that the appropriate remedy when a permanent civil service employee is denied a *Skelly* hearing prior to termination "is to award backpay for the period of wrongful discipline." (*Id.* at p. 402.) The court explained: "The constitutional infirmity of the disciplinary procedures used in the present case was the imposition of discipline prior to affording the employee notice of the reasons for the punitive action and an opportunity to respond. [Citation.] This infirmity is not corrected until the employee has been given an opportunity to present his arguments to the authority *initially* imposing discipline. [Citation.] Under the procedures applied to [the] plaintiff, the constitutional vice existed until the time the board

rendered its decision. Prior to that time, the discipline imposed was invalid." (*Id.* at p. 403.) The Supreme Court went on to conclude that the employee's termination was not wrongful (*id.* at p. 404), but the employee was entitled to backpay from the time of his dismissal to the date the State Personnel Board's decision was filed based on the *Skelly* violation (*id.* at p. 405).

Recently, an appellate court noted that, "*Barber* makes clear that whether the employer had a legitimate basis to terminate the employee's employment and whether the employee is entitled to reinstatement are questions entirely distinct from whether the employee is entitled to backpay for the period during which the discipline was invalid. *Barber* establishes without caveat that the employee is entitled to 'back pay for the period of wrongful discipline' (*Barber v. State Personnel Board, supra*, 18 Cal.3d at p. 402); what makes the discipline 'wrongful' has nothing to do with whether the employer had a legitimate basis for terminating the employment. The discipline was wrongful solely because it was imposed in violation of the employee's right to due process." (*Economy v. Sutter East Bay Hospitals* (2019) 31 Cal.App.5th 1147, 1162 [243 Cal. Rptr. 3d 495].)

Bedard asserts there was a reasonable probability she would have been able to avoid termination had she had the full 30 days to respond to the charges. In light of Bedard's testimony indicating that she would not vaccinate and did not fall under a religious or medical exemption, she offers no credible explanation of how termination could have been avoided. Moreover, she fails to cite any law to

support her contention that reinstatement is an available remedy for the due process violation. (See *Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 743 [124 Cal. Rptr. 3d 555] ["Every argument presented by an appellant must be supported by both coherent argument and pertinent legal authority. [Citation.] If either is not provided, the appellate court may treat the issue as waived."].) Since *Barber* established that the only remedy for the violation of an employee's due process is backpay when her discharge is justified, we affirm on this ground as well.

DISPOSITION

The judgment is affirmed. Respondent City of Los Angeles is awarded its costs on appeal.

CERTIFIED FOR PUBLICATION

/s/ Edmon
EDMON, P.J.

We concur:

/s/ Egerton
EGERTON, J.

/s/ Adams
ADAMS, J.

APPENDIX C — OPINION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, CENTRAL DISTRICT, FILED MAY 11, 2023

SUPERIOR COURT OF THE STATE
OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

Case No: 22STCP03008
THE HONORABLE JAMES C. CHALFANT
~~**PROPOSED**~~ **JUDGMENT**
OSC (re: Judgment)
Date: May 25, 2023
Time: 9:30 AM
Dept.: 85

JEANNINE BEDARD,

Petitioner/Plaintiff,

v.

CITY OF LOS ANGELES, A MUNICIPAL CORPORATION AND CHARTER CITY WITHIN THE STATE OF CALIFORNIA, MICHEL MOORE IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE, AND DOES 1 THROUGH 10 INCLUSIVE,

Respondents/Defendants.

Appendix C

TO RESPONDENTS AND TO THEIR ATTORNEYS OF RECORD, THE LOS ANGELES CITY ATTORNEY:

On April 18, 2023, the noticed hearing on the Petition for Peremptory Writ of Mandate was held in the above-captioned matter in Department 85 of the Los Angeles County Superior Court, the Honorable James C. Chalfant, Judge, presiding.

Gregory G. Yacoubian, Esq., appeared as Counsel for Petitioner, and Deputy City Attorney John Nam appeared on behalf of Respondents. The Court reviewed and considered all documents filed in the matter, including Petitioner's moving papers, Respondents' opposition papers, Petitioner's reply papers, and the Administrative Record. The Court then adopted its Tentative Decision filed on April 18, 2023, attached as Exhibit-1, as the Court confirmed in its Minute Order, attached as Exhibit-2, that the Petition for Writ of Mandate is GRANTED IN PART, but denied in all other respects, as its final decision. Order to Show Cause re: Judgment was scheduled for May 25, 2023, at 9:30 AM in Department 85.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

The Petition for Writ of Mandate is GRANTED IN PART, and a WRIT SHALL ISSUE ordering that Respondents are to:

1. Pay Petitioner Bedard back pay and benefits for the period of December 19, 2021, until July 20, 2022;

2. Take such further action as is required by law and consistent with this Court's decision to effectuate the Court's Judgment as it related to Petitioner;

3. Pay Petitioner Bedard her timely submitted and court-approved costs in the amount of $ _____; and

4. File a Return to the Writ of Mandate within 90 days of the service of the Writ

IT IS SO ORDERED.

Dated: 05/11/2023

/s/ James C. Chalfant
James C. Chalfant/Judge
The Honorable James C. Chalfant
Judge of the Superior Court

Appendix C

EXHIBIT - 1

Jeannine Bedard v. City of Los Angeles and Michel Moore. 22STCP03008

~~Tentative~~ decision on petition for writ of mandate: granted in part

Petitioner Jeannine Bedard ("Bedard") seeks a writ of mandate compelling Respondents City of Los Angeles ("City") and Los Angeles Police Department ("LAPD" or "Department") Chief of Police Michel Moore ("Chief of Police") to set aside her termination from the restore her position with backpay, and remove the disciplinary penalty from her record.

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

1. First Amended Petition

Petitioner Bedard filed the Petition against Respondents on August 10, 2022. The operative pleading is the Frist Amended Pleading ("FAP") filed on December 8, 2022, alleging causes of action for traditional and administrative writ of mandate. The FAP alleges in pertinent part as follows.

Bedard was a Sergeant II with 24 years of service with LAPD. On August 26, 2021, the City passed Ordinance Number 187134 (the "Ordinance") which

required every City employee to either vaccinate against COVID-19 or request medical or religious exemption by October 19, 2021. During meet and confer sessions with the Los Angeles Police Protective League ("LAPPL"), Respondents proposed that employees who claim an exemption either agree to a S260 bi-weekly salary cut or be invoiced for employer-mandated COVID-19 testing while awaiting their exemption or appeal determination.

On October 28, 2021, Respondents unilaterally imposed their "Last, Best and Final Offer Over Outcomes for Non-Reporting and Non-Compliance" ("LBFO") on LAPPL and its members/employees. The next day, LAPPL filed a verified complaint and petition for writ of mandate in LASC 21 STCV39987 ("LAPPL Lawsuit"). The LAPPL Lawsuit alleged violations of Labor Code section 2802 ("section 2802") and Government ("Govt.") Code section 3500, *et seq.*, because the City withheld necessary information about its testing contractor during the meet and confer process. LAPPL sent this petition to all its members and Bedard relied on its analysis of the legal issues in her Petition.

On November 10, 2021, Respondents served Bedard with a Complaint Adjudication Form and Notice of Proposed Disciplinary Action for failure to conform with the Ordinance's requirements. Although the form gave Bedard until November 15, 2021 to respond, the Chief of Police signed a Complaint and Relief from Duty, Proposed Removal, Suspension, or Demotion form ("Complaint") directing Bedard to a Board of Rights hearing. The Complaint alleged failure to comply with the requirements

of the new Ordinance and identified termination as the proposed penalty.

After a hearing on July 13, 2022, the Board of Rights found Bedard guilty of the charge. The Board of Rights also found that Bedard had not been given enough time to respond to the charges and ordered that LAPD award her backpay. On July 20, 2022, Moore signed the order finalizing Bedard's termination, but a handwritten note stated that LAPD would not award backpay as the Board of Rights ordered.

The trial court in the LAPPL Lawsuit ruled that the Ordinance's requirement that employees must pay for employer-mandated COVID-19 testing violates section 2802(a). Labor Code section 2804 invalidates provisions of an agreement that waive employee protections such as those under section 2802(a).

Govt. Code section 12940(a) also prohibits discharge of an employee, or discrimination in compensation, because of religious creed. The City discriminated against Bedard and other unvaccinated employees with medical concerns or religious beliefs when it required COVID-19 testing for unvaccinated employees but not vaccinated employees. LAPD also only gave Bedard 48 hours to comply with the change of employment conditions, which was unreasonable.

Bedard did not receive an investigatory interview pursuant to Memorandum of Understanding ("MOU") 24-22 section 10.0, Article 10.2, and was not advised of

the nature of the investigation. Bedard was also denied due process and 30 days to file a written response. These actions violated *Skelly v. State Personnel Board of Rights*, ("*Skelly*") (1975), 15 Cal.3d 194, and Govt. Code section 3306.

Bedard seeks a writ of mandate compelling the City to (1) set aside her termination and restore her position with backpay; (2) set aside the Board of Rights' finding of guilt; and (3) remove the record of this charge or penalty from her record. Bedard also seeks attorney's fees and costs.

2. Course of Proceedings

On August 12, 2022, Bedard served Respondents City and the Chief of Police with the Petition and Summons.

On November 29, 2022, the court sustained Respondents' demurrer to the Petition with leave to amend.

On December 8, 2022, Bedard filed the FAP and electronically served both Respondents.

B. Standard of Review

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, ("*Topanga*") (1974) 11 Cal.3d 506, 514-15.

Appendix C

CCP section 1094.5 does not on its face specify which cases are subject to independent review, leaving that issue to the courts. *Fukuda v. City of Angels*, ("*Fukuda*") (1999) 20 Cal.4th 805, 811. In cases reviewing decisions which affect a vested, fundamental right the trial court exercises independent judgment on the evidence. *Bixby v. Piemo*, ("*Bixby*") (1971) 4 Cal.3d 130, 143; *see* CCP § 1094.5(c). The independent judgment standard of review applies to administrative co findings on guilt in cases involving a law enforcement officer's vested property interest in his employment. *Barber v. Long Beach Civil Service Comm'n*, (1996) 45 Cal.App.4th 652, 658.

Under the independent judgment test, "the trial court not only examines the administrative record for errors of law but also exercises its independent judgment upon the evidence disclosed in a limited trial de novo." *Bixby*, *supra*, 4 Cal.3d at 143. The court must draw its own reasonable inferences from the evidence and make its own credibility determinations. *Morrison v. Housing Authority of the City of Los Angeles Board of Rights of Board of Rightsers*, (2003) 107 Cal.App.4th 860, 868. In short, the court substitutes its judgment for the agency's regarding the basic facts of what happened, when, why, and the credibility of witnesses. *Guymon v. Board of Rights of Accountancy*, (1976) 55 Cal.App.3d 1010, 1013-16.

"In exercising its independent judgment, the trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings

are contrary to the weight of the evidence." *Fukuda*, *supra*, 20 Cal.4th at 817. Unless it can be demonstrated by petitioner that the agency's actions are not grounded upon any reasonable basis in law or any substantial basis in fact, the courts should not interfere with the agency's discretion or substitute their wisdom for that of the agency. *Bixby*, *supra*, 4 Cal.3d 130, 150-51; *Bank of America v. State Water Resources Control Board of Rights*, (1974) 42 Cal. App.3d 198, 208.

The agency's decision must be based on a preponderance of the evidence presented at the hearing. *Board of Rights of Medical Quality Assurance v. Superior Court*, (1977) 73 Cal.App.3d 860, 862. The hearing officer is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. *Topanga*, *supra*, 11 Cal. 3d 506, 514-15. Implicit in CCP section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. *Id.* at 115.

An agency is presumed to have regularly performed its official duties (Evid. Code §664), and the petitioner therefore has the burden of proof. *Steele v. Los Angeles County Civil Service Board of Rights*, (1958) 166 Cal. App.2d 129, 137. "[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion. *Afford v. Piemo*, (1972) 27 Cal.App.3d 682, 691.

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The propriety of a penalty imposed by an administrative agency is a matter in the discretion of the agency, and its decision may not be disturbed unless there has been a manifest abuse of discretion. *Lake v. Civil Service Board of Rights*, (1975) 47 Cal.App.3d 224, 228. In determining whether there has been an abuse of discretion, the court must examine the extent of the harm to the public service, the circumstances surrounding the misconduct, and the likelihood that such conduct will recur. *Skelly*, *supra*, 15 Cal.3d at 217-18. The penalty should be upheld if there is "any reasonable basis to sustain it". *County of Los Angeles v. Civil Service Com, of County of Los Angeles*, (2019) 40 Cal.App.5th 871, 877. "Only in an exceptional case will an abuse of discretion be shown because reasonable minds cannot differ on the appropriate penalty." *Ibid.* Neither an appellate court nor a trial court is free to substitute its discretion for that of the administrative agency concerning the degree of punishment imposed. *Nightingale v. State Personnel Board of Rights*, (1972) 7 Cal.3d 507, 515. The policy consideration underlying such allocation of authority is the expertise of the administrative agency in determining penalty questions. *Cadilla v. Board of Rights of Medical Examiners*, (1972) 26 Cal.App.3d 961.

Appendix C

C. Governing Law[1]

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1. Bedard requests judicial notice of (1) the trial court's statement of decision in the LAPPL Lawsuit (RJN Ex. A), and (2) a letter from the City Administrative Officer ("CAO") to the City Council, dated January 19, 2023, with a proposed resolution to discontinue COVID-19 testing requirements for unvaccinated employees pursuant to the Ordinance (RJN Ex. B). In reply, Bedard asks the court to judicially notice City Council File No. 21-0921, reflecting a resolution passed on February 14, 2023 to discontinue COVID-19 testing requirements for unvaccinated employees pursuant to the Ordinance (RJN Ex. C).

The City objects that RJN Exhibit A is not a final judgment on the merits for purposes of collateral estoppel, is not dispositive of any of the issues in this case and is irrelevant. RJN Obj. at 7-8. This is true. However, the statement of decision is relevant to the City's subsequent actions. *See post*. The request for judicial notice is granted. Evid. Code §452(d).

The City objects to the CAO's letter (RJN Ex. 2) under Evid. Code section 452(h) because Bedard misstates its contents, fails to provide sufficient information to be able to take judicial notice, and it is irrelevant because it was generated after the Board of Rights' decision on July 13, 2022, and after Bedard filed her Petition. RJN Obj. at 9.

The CAO's letter is relevant because it discusses whether the Ordinance violates Labor Code section 2802. However, the CAO's letter is not an official act unless it is part of the legislative history for subsequent City Council action. The City Council's February 14, 2023 Resolution (RJN Ex. C) is that action. Therefore, both Exhibits 2 and C are judicially noticed. Evid. Code §452(b).

The City also moves to strike the Declaration of Jeannine Bedard. Traditional mandamus is unavailable where there has been a hearing required by law and administrative mandamus applies. Additionally, the City is correct that the declaration does not adequately authenticate the podcast of Chief Moore. The motion to strike the declaration is granted.

Appendix C

1. POBRA

POBRA is located at Govt. Code section 3300 *et seq* and sets forth a list of basic rights and protections which must be afforded to all peace officers by the agencies that employ them. *Bagett v. Gates*, (1982)32 Cal.3d 128, 135. The various procedural protections of POBRA "balance the public interest in maintaining the efficiency and integrity of the police force with the police officer's interest in receiving fair treatment." *Jackson v. City of Los Angeles*, (2003) 111 CaLApp.4th 899, 909.

"No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal." Govt. Code §3304(b). A "'punitive action' means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment." Govt. Code §3303. The administrative appeal instituted by a public safety officer under POBRA shall be conducted in conformance with rules and procedures adopted by the local public agency. Govt. Code §3304.5.

Govt. Code section 3304(b)'s limited purpose is to afford peace officers subject to punitive action an

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The City also moves to strike portions of Bedard's opening brief. Bedard's brief consists of argument and the court need not address whether the argument is supported by evidence. The City's motion to strike portions of Bedard's brief is denied.

opportunity to establish a formal record of circumstances surrounding his or her discipline and attempt to convince the employing agency to reverse its decision through evidence that the charges are false or through mitigating circumstances. *Binkley v, City of Long Beach*, (1993) 16 Cal.App.4th 1795, 1806. While the precise details of the procedure required by Govt. Code section 3304(b) are left to local law enforcement, the administrative appeal requires at a minimum an "independent re-examination" of an order or decision made, conducted by someone who has not been involved in the initial determination. *Caloca v. County of San Diego*, (2002) 102 Cal.App.4th 433, 443-44.

2. Suspension, Demotion, and Termination

Generally, LAPD officers cannot be suspended, demoted, or removed from service except for good cause upon a showing of guilt before a Board of Rights. City Charter § 1070(a). An exception to this rule permits the Chief of Police to demote a police officer or suspend him or her for up to 22 days following appropriate pre-disciplinary procedures. City Charter § 1070(b). Any such action is subject to pre-disciplinary procedures required by law and a Board of Rights hearing if sought by the police officer. *Id.* This procedure, where the police officer elects to have a Board of Rights hearing, is commonly referred to as an "opted" hearing. A Board of Rights hearing occurring after the Chief of Police demotes or imposes less than a 22-day suspension satisfies the requirement of an administrative appeal under Govt. Code section 3304(b). *Jackson v. City of Los Angeles*, (1999) 69

Cal.App.4th 769, 780; *Holcomb v. City of Los Angeles*, (1989) 210 Cal.App.3d 1560, 1566.

If the Chief of Police intends a penalty greater than a 22-day suspension, including termination, the matter is automatically referred to a Board of Rights hearing. This procedure, where the police officer has no choice in the referral decision, is commonly called an "ordered" Board of Rights hearing. There is a one-year limitations period for termination, suspension, and demotion. City Charter § 1070(d).

Whether the Board of Rights hearing is opted or ordered, it is a *de novo* evidentiary hearing. City Charter § 1070(f). The Board of Rights consists of two officers with the rank of captain or above and one civilian. City Charter § 1070(h). LAPD has the burden of prove by a preponderance of evidence. City Charter §1070(1). Upon a finding of guilt, the Board of Rights recommends discipline, ranging from reprimand to removal. City Charter §1070(n). The Chief of Police has discretion to impose a lesser penalty than recommended, but not a greater penalty. City Charter § 1070(p). The officer can ask the Chief of Police for a rehearing at any time within three years. City Charter §1070(t).

3. Labor Code

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of

the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. §2802(a). The purpose of this provision is to protect employees from suffering expenses in direct consequence of doing their jobs. *Edwards v Arthur Anderson*, ("*Edwards*") (2008), 44 Cal.4th 937, 952-52. It shows a legislative intent that duty-related losses ultimately fall on the business enterprise, not on the individual employee. *Id.* at 952 (citation omitted).

Any contract or agreement, express or implied, made by any employee to waive such benefits is null and void, and this article of the Labor Code shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State. Labor Code §2804.

4. The MOU

The *Skelly*, or Employee Investigation Review, process is the last opportunity for an employee to discuss an investigation against her, rebut the charges, or present additional evidence before the commanding officer submits recommendations for disposition of a personnel complaint. AR 1098 (MOU §10.3). The employee shall be given a reasonable time to consider and prepare a *Skelly* response. AR 1098 (MOU § 10.3). The employee shall have 30 calendar days from service of the Employee Investigation Review to submit a response if the employee so chooses. AR 1098 (MOU §10.3).

5. Los Angeles Administrative Code

The City's Mayor has the power to declare the existence of a local emergency or disaster when he finds that any of the circumstances described in Los Angeles Administrative Code ("LAAC") section 8.22 exist or a disaster or local emergency is declared by the President of the United States or the Governor of California. LAAC §8.27. The General Manager of the Emergency Management Department shall prepare, with the assistance of the City Attorney, a resolution ratifying the existence of a local emergency and the need for continuing the state of local emergency. LAAC §8.27. The resolution shall be submitted by the Mayor to the City Clerk for presentation to the City Council. LAAC §8.27. The City Council shall approve or disapprove the resolution within seven days from the date of the original declaration by the Mayor and at least every ten regular City Council meeting days, but no longer than 30 calendar days, thereafter unless the state of local emergency is terminated sooner. LAAC §8.27.

a. The Ordinance

On August 16, 2021, the City passed the Ordinance, which added Article 12 to LAAC Chapter 7, Division 4, AR 691-696, 741-746 (LACC §4.700 *et seq*). The Mayor approved the Ordinance on August 18, 2021, and it became legally effective on August 24, 2021 . AR 746, 753.

The Ordinance states that, to protect the City's workforce and the public, all employees must be fully

vaccinated for COVID-19, or request an exemption, and report their vaccination status in accordance with the City's Workplace Safety Standards, no later than October 19, 2021. AR 692, 742 (LAAC §4.70 1(a)). The Ordinance makes vaccination a condition of City employment and a minimum requirement for all employees unless an employee is approved for an exemption as a reasonable accommodation for a medical condition or restriction or sincerely held religious beliefs. AR 742 (LAAC §4.70 1(b)). An employee who qualifies for an exemption must still report their vaccination status. AR 742 (LAAC §4.70 1(b)).

Employees with medical conditions or restrictions or sincerely held religious beliefs that prevent them from receiving the vaccine shall qualify for an exemption upon approval of documentation provided by the employee to the appointing authority or designee. AR 743 (LAAC §4.702(a)). Employees with such exemptions who are required to regularly report to a City worksite shall be subject to weekly COVID-19 tests, to be provided at no cost to the employees during their work hours following a process and timeline determined by the City. AR 743 (LAAC §4.702(b)). Those with exemptions who work remotely shall be subject to ad hoc COVID-19 testing when asked to report to a worksite on an as-needed basis. AR 743 (LAAC §4.702(b)(l)). Because the goal is to have a vaccinated workforce, the City will not allow anyone who does not qualify for an exemption to opt out of vaccination in favor of testing. AR 743 (LAAC §4.702(b)).

b. The Resolution

On October 14, 2021, the City adopted a resolution entitled "Resolution Implementing Consequences For Non-Compliance With the Requirements of Ordinance No. 187134" (the "Resolution"). AR 752-55. The Resolution explained that the City had declared a local emergency due to COVID-19 since March 4, 2020. AR 700, 722. Compulsory vaccination has long been recognized as the gold standard for preventing the spread of contagious diseases. AR 700, 722. As of October 18, 2021, out of a total of 53,168 City employees, 37,524 employees reported their status as "fully vaccinated," 1,250 as "partially vaccinated," 4,872 as "not vaccinated," and 1,839 as "decline to state." AR 753. The remaining 7,683 employees had not reported their status. AR 753.

A total of 5,388 City employees had filed Notices of Intent to request a medical or religious exemption from the mandatory vaccination requirement. AR 753. The City would be subject to significant financial burden if it had to provide a weekly testing option for all unvaccinated City employees or place all unvaccinated City employees on paid leave while paying other employees overtime to cover labor shortages. AR 754.

Between August 18 and October 18, 2021, the CAO met and conferred with City labor organizations over the negotiable impacts of the Ordinance, including the consequences for noncompliance with the mandatory reporting and vaccination conditions of employment. AR

753. These negotiations had reached a stalemate, and the City could not wait to address the imminent threat to public health and safety. AR 755. The City therefore implemented the terms and conditions in the City's LBFO for the consequences of non-compliance with the Ordinance. AR 755.

Under the LBFO, any employee who is not fully vaccinated and does not submit proof of vaccination or request for exemption by October 20, 2021 is non-Compliant. AR 705, 757. That employee will be issued a Notice of Mandatory COVID-19 Vaccination Policy Requirements ("Vaccination Notice"). AR 705. The Vaccination Notice will instruct the employee to submit proof of full compliance, meaning full vaccination, by December 18, 2021. AR 705. The employee must sign the Vaccination Notice and must test for COVID-19 twice per week on their own time, administered by the City or a vendor of the City's choosing. AR 705, The employee shall reimburse the City $260 per pay period for four tests at $65 each via payroll deduction. AR 706, 758.

On October 28, 2021, the Mayor issued a memorandum to all department heads to implement the LBFO. AR 697-98. They were directed to issue the Vaccination Notice to all unvaccinated employees who had not filed for an exemption. AR 698. The employee would have either 24 or 48 hours to review the Vaccination Notice, depending on whether the employee asked for time to review it with a union representative. AR 698. If the employee signs the Vaccination Notice, the mandatory testing as outlined in the LBFO shall begin immediately after the Personnel

Department distributes the protocols, with testing currently scheduled to begin during the week of November 7, 2021. AR 698. Any employee who refused to sign the Vaccination Notice would be placed off duty without pay pending service of a *Skelly* package with a Notice of Proposed Separation. AR 698. Sworn employees would be subject to applicable Board of Rights proceedings. AR 698.

D. Statement of Facts

1. Background

On September 24, 2021, the City contracted with PPS Health, LLC ("Bluestone") to track the health status of employees who had applied for exemptions from the vaccination requirement on medical or religious grounds. AR 762-827. The contract identified Pejman Salimpour, MD ("Salimpour") as Bluestone's representative for formal service and communication. AR 767-68.

On October 28, 2021, LAPPL sent the CAO and the City a formal demand that the City not issue a notice of impasse as to negotiations over how the City should implement the Ordinance and the consequences for noncompliance with it. AR 833. LAPPL explained that it recently received information that the contract between the City and Bluestone reflected either a conflict of interest or criminal and unethical conduct. AR 833. This led LAPPL to believe that the City did not negotiate in good faith which COVID-I9 testing company would be the sole authorized vendor of mandatory testing for unvaccinated employees. AR 833. Additionally, LAPPL demanded that

the City cease and desist from unilateral implementation of the Ordinance without exhausting collective bargaining impasse procedures because it could not demonstrate an emergency within the meaning of Govt. Code section 3504.5(b) and/or LAAC section 4.850(b). AR 834. Further, the City's requirement for twice weekly testing at the employee's expense violated section 2802. AR 834.

2. The Vaccination Notice

On November 5, 2021, LAPD Commander Donald Graham ("Graham") served Bedard with the Vaccination Notice. AR 709-11. The Vaccination Notice afforded a final opportunity for City employees to become fully vaccinated by December 18, 2021 prior to appropriate corrective action being taken against them. AR 709. It required Bedard to certify that she is not fully vaccinated and has not filed an intent to seek medical or religious exemption to the Ordinance's vaccination mandate. AR 709. In signing the Vaccination Notice, she agreed to be fully vaccinated by December 18, 2021. AR 709. Prior to the deadline, she agreed that she would undergo COVID-19 testing twice a week through the City's vendor on her own time and would reimburse the City $260 per pay period for four $65 tests. AR 709.

If Bedard did not follow these conditions and was not fully vaccinated by December 18, 2021, the City would immediately place her off-duty without pay pending pre-separation due process procedures. AR 709. It would also serve her with written notice of proposed separation from City employment. AR 709. The City would abide by all

applicable City Charter provisions if she proceeded to a Board of Rights hearing for lack of fitness for duty due to failure to meet the condition of employment to be fully vaccinated. AR 709.

In lieu of vaccination, Bedard could choose to resign or retire from LAPD. AR 710. If she became vaccinated or the vaccination order was lifted after her resignation or separation, Bedard could be eligible for rehiring in the same classification as she was before separation, provided that she passed all required reinstatement background processes. AR 710.

The Vaccination Notice also started that if Bedard failed to sign or disagreed with any part of it, LAPD would place her off-duty without pay pending pre-separation due process procedures. AR 710. The Department also would serve her with written notice of proposed separation from City employment. AR 710. Bedard did not sign and caused Graham to write "Refused" in the signature block. AR 355, 711.

On November 7, 2021, Bedard emailed Graham that she had decided not to take the vaccine. AR 712. She explained that her daughter suffered an adverse reaction to the Pfizer vaccine, and she did not want to take the same risk. AR 712.

3. The Disciplinary Action

On November 10, 2021, Chief Woodyard served Bedard with a Complaint Adjudication Form and Notice

of Proposed Disciplinary Action ("Notice of Proposed Discipline"). AR 366, 994-95. The Notice of Proposed Discipline gave Bedard until November 15, 2021 to respond orally or in writing. AR 995. It also stated that a signature only meant that Bedard received the materials, not that she agreed with the proposed discipline. AR 995. Bedard caused Chief Woodyard to write "Refused" in the signature block. AR 366-67, 995. However, she did acknowledged by initialing the Notice of Proposed Discipline that she had received a copy of investigation materials, was informed of her right to representation, and intended to submit a response. AR 995.

On November 16, 2021, LAPD served Bedard with a Complaint and Relief from Duty ("Complaint") alleging as follows: On or about November 7, 2021, you, while on duty, failed to sign and/or comply with the requirements of the [Vaccination Notice], a condition of employment." AR 1. Bedard was temporarily relieved from duty, effective November 17, 2021, pending a Board of Rights hearing. AR 1.

4. The Administrative Hearing

At the December 27, 2021 hearing, the Board of Rights denied as irrelevant Bedard's offer of a November 22, 2021 LAPPL letter to the City's Personnel Department that voiced concerns about the contract with Bluestone for COVID testing. AR 646, 648. The Board of Rights also rejected a November 15, 2021 LAPPL letter to the City Ethics Commission on the same subject. AR 648-49. It agreed with LAPD that any connection between the

COVID testing contract Bedard's case was a stretch. AR 645. The Board of Rights further rejected a supplementary declaration filed in the LAPPL Lawsuit. AR 650.

Pertinent testimony from the hearing is as follows.

a. Brian Taft

Brian Taft ("Taft") is a Senior Personal Analyst II with six years at LAPD. AR 103 . LAPD and the City use a "Snow" system to track the vaccination status of employees. AR 120-121. The Snow system in turn takes information from the Bluestone system into which LAPD employees enter their results from biweekly tests. AR 120. Bluestone forwards any vaccination documents to Snow. AR 120.

Per section 4.703(d) of the City's policy, the CAO monitors status reports and progress of reported vaccination statuses and discusses such information with labor organizations. AR 121. The CAO updates the policy as necessary to achieve the City's goal of a fully vaccinated workforce. AR 121.

Taft's office has received 300 requests for medical exemptions and 2,600 requests for religious exemptions, but it has not yet processed any. AR 187. The office is still accepting exemption requests. AR 188.

Even though vaccinated, City employees still have contracted COVID-19. AR 191.

b. Graham

Graham was Commander of the Transit Services Group at the relevant time. AR 238. Because several officers were on long-term sick leave from COVlD-1 9, the secretary of the Transit Services Group Captain was responsible for tracking vaccination status in the division. AR 238.

Graham was asked to go visit the secretary's desk and give his own vaccination card to her to record. AR 238. LAPD's central support team, possibly the Personnel Division, received an updated roster on a regular basis. AR 238. The roster would also show which employees claimed they were not vaccinated, including Bedard. AR 240. He learned through meetings with the Chief of Police and senior staff that vaccination is a condition of employment. AR 244-45.

Bedard did not sign her Vaccination Notice. AR 242. Graham did not ask why, and they just left it as Bedard having personal reasons not to sign. AR 242-43. Bedard understood that she had a religious or medical exemption as an option and the City would evaluate her request for either exemption. AR 242-43. If it was denied, she could appeal to the Chief of Police as the City department head. AR 243.

Bedard later sent Graham an email explaining that she would not take the vaccine because of her daughter's distress after she took the Pfizer vaccine. AR 244.

c. Season Nunez

Season Nunez ("Nunez") was responsible for the investigation of Bedard. AR 331. LAPD commanding officers met with the City Attorney to discuss how to conduct investigations into employee non-compliance with the City's vaccination requirements. AR 331-32. The investigators received direction that employees who fail to comply would be assigned to their home pending due process procedures. AR 332-33.

There were two notices. AR 332. The first told employees that, if they did not apply for exemptions, they must vaccinate by December 18, 2021, which was the LBFO. AR 332. The second notice applied to those who applied for an exemption. AR 32. Flow charts were created for command to help with what was going to happen and how to serve the notices. AR 332.

The direction to investigators was that they would not interview employees served with the notices because the notices were clear on what was required. AR 332. Nunez simply would draft complaints to send to commanding officers for adjudication. AR 332.

Nunez was not present for conversations between Graham and Bedard. AR 335. She only received the Vaccination Notice showing that Graham signed that he had served Bedard on November 5, 2021 at 1:00 p.m. AR 335. This notice would have told Bedard that she had until December 18, 2021 to be vaccinated per the LBFO. AR 341-42.

On February 14, 2022, the Bluestone testing requirements for unvaccinated employees changed from twice a week to once a week. AR 347.

d. Bedard

Bedard has been a LAPD officer since April 1998. AR 348-49. Her last assignment was as a LAPD Liaison Transit Officer, acting as LAPD's liaison with the Metropolitan Transit Authority. AR 349.

On October 29, 202 1, LAPPL sent an Bedard and other employees an email recommending that they not submit documentation to Bluestone until further notice. AR 373-75. Bedard explained that testing was not an issue for her, but the vaccination was. AR 374.

On November 5, 2021, Graham served Bedard with the Vaccination Notice. AR 350. She reviewed it and understood the requirements listed in the document. AR 351-52. The Vaccination Notice said that Bedard agreed to abide by all terms and conditions therein and authorize the City to deduct $260 from her paycheck per pay period for testing. AR 380. Although Graham presented Vaccination Notice's terms as conditions of employment, Bedard could not accept them until she "went through what I needed to go through" because of what she heard from the LAPPL. AR 351.

Graham gave her the option not to sign and have him write "refused" instead. AR 352. Bedard did not agree to what was being asked in the Vaccination Notice, primarily

the payment for testing. AR 352. She was being asked to sign a document that she knew LAPPL had issues with. AR 352. She also already knew from emails and her own research that there were issues as well. AR 352. The testing was the main issue for her, and she could not understand why she would be charged $560 for testing if LAPD was offering free testing to everyone else. AR 352-53, 359.

Graham explained that if Bedard had him write "refused," it meant that she refused the contents of the document but was still served. AR 353-54. She had him write "refused" because she objected to paying for testing and submitting the tests to Bluestone, not signing the Vaccination Notice itself. AR 353-55. If the notice said that she would not be charged for testing or submit information into a third-party vendor, she would have agreed to the Vaccination Notice. AR 354, 356. She understood that taking the vaccine, paying for testing, and putting her information into a Bluestone account were conditions of employment. AR 357.

When one of her four daughters received the vaccine and had an adverse effect, Bedard started paying to have her see a specialist. AR 359. These visits continued through March 2022. AR 360. When offered a chance to file a medical exemption, Bedard chose not to because it was her adult daughter who had a physical medical condition and not Bedard herself. AR 362. She did not apply for a religious exemption because even with either exemption, she would still have to pay for testing. AR 362, 641. If LAPD had said that Bedard would not have to pay

for the testing if she had a medical or religious exemption, she would have given more thought to applying for one of them. AR 362.

When Bedard received the Notice of Proposed Discipline (AR 994-95), Chief Woodyard gave her the option to have him write "refused" in the employer's signature block on the second page. AR 366. She told him to do it because this was the same process as the Vaccination Notice. AR 366. In her mind, there was no point signing something with which she did not agree. AR 366. Chief Woodyard said that the decision to write "refused" would not affect anything. AR 366-67.

Sergeant Ron Pickering ("Pickering"), an LAPD representative at the hearing, served Bedard with the Complaint relieving her of duty. AR 620. She relinquished her weapon, badge, and identification. AR 624. Her last paycheck was on December 29, 2021. AR 624.

Bedard is two years away from being eligible to collect a full pension. AR 361, 393. If the Board of Rights sustains her removal, her pension goes down to 47%. AR 361. She has had a stellar career, and her boss has said he would rehire her in a heartbeat if necessary. AR 361.

Bedard knows of a lot of unvaccinated people who are not being tested. AR 361. LAPD tried to charge her and other non-vaccinated employees for testing that everyone now gets for free. AR 363-64. To date, no employee has been charged for testing. AR 364. If that was the case when Bedard received the Vaccination Notice, she

could have stayed at her job. AR 371. After they found out that it was illegal to charge for testing, and no one had been charged, she requested to come back to work multiple times and every request was denied. AR 626. Employees now need only test once a week with no medical supervision. AR 363.

She has no problem following rules when they make sense to her, and she would never violate a law if she believed it was actual law that she would be comfortable following. AR 363, 391. As a supervisor, her training has taught her that she should bring something that seems wrong or illegal to someone's attention instead of staying quiet. AR 626. She would hope that LAPD rewards that attitude, but it did not in her case. AR 626. She did not try to cause trouble. AR 631. She only tried to raise an issue on which every supervisor privately agreed with her. AR 631.

The choice LAPD gave unvaccinated employees was to sign the Vaccination Notice or go home. AR 631. When employees are put in a corner over their livelihood, Bedard does not consider that a real choice. AR 631. There are times when superiors cannot expect everyone to get along and an employee has to introduce commonsense into the situation. AR 631.

As a sergeant, Bedard has conducted hundreds of personnel investigations herself. AR 381. She has never heard of an investigation that directed an employee to a Board of Rights hearing without any interviews or without interviewing the accused employee. AR 382. During

Graham s communications with Bedard, he never told her that LAPD intended to use her responses to questions in a punitive manner. AR 383. No one informed her of her right to representation or that she was the subject of an investigation. AR 383.

The Vaccination Notice includes a section that states that if the unvaccinated employee becomes vaccinated, or the vaccination order is lifted, after the employee resigns or separates from City employment, the employee could be eligible for rehiring in the same classification as prior to the separation. AR 401-02. This applies to a sworn employee like Bedard only if the employee passes all required reinstatement background processes. AR 403.

The Board of Rights asked if Bedard would do anything differently now given the changes with respect to the ability to go to an independent vendor for testing. AR 642. Bedard replied that if she could do use her own insurance, she would go back to work, test, and continue to wear a mask. AR 642-43.

e. Edward Yoon

Detective Edward Yoon ("Yoon") has been an employee of LAPD for 28 years. AR 413. He is a Detective Supervisor with the Officer Representation Section ("ORS") since 2013. AR 413. ORS represents employees in disciplinary matters and related Internal Affairs interviews. AR 413. It also assists employees with disciplinary processes such as the *Skelly* process and appeals. AR 413-14. ORS is part of LAPD, and Yoon often has to correct other officers'

perceptions that ORS employees is part of LAPPL. AR 462, 465.

Yoon has handled a few hundred cases while at ORS. AR 414. Yoon also teaches procedural policy as part of the officer representation portion of the month-long supervisor school that all LAPD officers or detectives must attend before promotions to a supervisor role. AR 454. The Board of Rights accepted Yoon as an expert witness. AR 459.

LAPD will frame some type of allegation based on the complaint and let the employee know the complaint against him or her before any interview. AR 421. Based on the interview, LAPD then reframes the allegation based on the interview for review by the employee's watch commander. AR 422. The watch commander, who did not partake in the investigation, will review the statements, allegations, and evidence to decide what the proposed penalty should be. AR 422.

The watch commander drafts a letter of transmission which goes to the captain. AR 422. The captain receives the letter of transmission and usually agrees and signs it. AR 422. The captain or the employee's supervisor will let the employee know about the allegation and proposed penalty. AR 422. The employee receives the *Skelly* package, which includes all the documents LAPD used to adjudicate the recommendation. AR 422, 424. This includes the investigation, the letter of transmission, any interviews, videos, and other evidence used to recommend the penalty. AR 424.

The employee has 30 days to review the investigation and provide a written or oral response. AR 422. The employee's response can be what things the investigation missed, whether the paraphrased statement is wrong, or what the employee admits he or she did wrong. AR 423. Although due process and *Skelly* itself may not provide a 30-day period, the MOU between LAPD and LAPPL does. AR 426, 428. The only time he has seen the response period shortened is when LAPD is too close to the one-year statute of limitations to adjudicate the complaint and provide the final penalty. AR 429.

After the response period ends, the captain sends the letter of transmission to the Bureau, and the Bureau sends it to the chief. AR 422.

Bedard's Notice of Proposed Discipline gave her until November 15, 2021, or only five days, to provide a *Skelly* response. AR 435. Nothing in the record supports this shorter timeline. AR 435. The Chief of Police made up his mind and submitted and signed his final adjudication on the same day, November 10, 2021, that LAPD provided the *Skelly* material to Bedard. AR 435. Her November 7, 2021 email could not qualify as a *Skelly* response because LAPD did not provide her with the investigation materials until November 10, 2021. AR 470, 510.

When asked if an employee need not be interviewed, Yoon said that he could not fathom such a scenario. AR 468-69. LAPD interviews an accused employee even when there is video evidence of the allegation. AR 469.

When an employee is temporarily relieved from duty pending a Board of Rights hearing, the employee shall not lose compensation until 30 days after service of the charge. AR 520-21. That is the same period in which the employee can provide a *Skelly* response. AR 521. If the Department stops pay before the employee's receipt of the *Skelly* package, that would violate City Charter section 1070. AR 522.

f. Pickering

The LAPD is constantly updating policies. AR 632. An email dated May 17, 2022 is not relevant to a termination that occurred six months earlier. AR 632. As an example, although LAPD has disallowed use of force techniques over time, it does not revisit cases prior to those changes and recategorize the use of force in them as out of policy. AR 632. The relevant law is the policy that was in effect at the time that LAPD framed the allegations against Bedard. AR 632.

g. The Board of Rights' Decision

On July 13, 2022, the Board of Rights deliberated and made findings. AR 673. The City Council passed the Ordinance on August 18, 2021. AR 674. Common sense and Black's Law Dictionary both dictate that a City ordinance has the full force and effect of law once lawfully passed. AR 674. The Board of Rights did not have jurisdiction to determine if the Ordinance was valid. AR 674.

Appendix C

The Board of Rights unanimously found that Bedard failed to comply with the mandated requirements of the Ordinance. AR 674. The only exemptions are for medical reasons or religious beliefs. AR 674. Employees who qualify for medical or religious exemptions may be subject to weekly testing, unless they are working remotely. AR 674.

Bedard did not apply for an exemption and did not work remotely, so she either had to get vaccinated or seek an exemption and submit to regular testing. AR 675. She did neither. AR 675.

The Mayor directed that a City employee who refuses to sign the Vaccination Notice shall be placed off-duty without pay pending service of a *Skelly* package with notice of proposed separation. AR 675. When Bedard chose not to sign the Vaccination Notice, she violated a condition of employment. AR 675-76.

Bedard asserted that she was unwilling to be vaccinated because her daughter had an adverse reaction to the vaccine, and that she also might have an adverse reaction. AR 676. There was no evidence suggesting that the risk for Bedard would constitute a medical exemption. AR 676.

As for Bedard's assertion that she refused to bear the cost of testing, section 2802 only applies to prevent private and not public entities from charging employees for mandatory testing. AR 676. Therefore, it was inapplicable to her case. AR 676.

Bedard also argued that the Bluestone testing contract was an unlawful no-bid contract and that the cost of testing was prohibitive and burdensome. AR 676. These were issues in the LAPPL Lawsuit but were beyond the Board of Rights' jurisdiction. AR 677.

Although the issue of testing reimbursement has changed, the Board of Rights' only concern is the policy in effect at the time of the violation. AR 677.

The Board of Rights agreed with Bedard that LAPD violated her *Skelly* due process rights when it removed her from her position on November 17, 2021 without an opportunity to respond to the charge. AR 677.

As to discipline, Bedard had over a hundred commendations through her career. AR 679. A lot of these were from citizens who, unlike LAPD, do not give commendations as a routine matter. AR 679-80. Her only negative record was a traffic collision during a car chase in December 2006. AR 680. Bedard explained that they were chasing a bad guy and clipped a wall. AR 680.

While these commendations showed that she was an excellent employee, the facts of the case were clear. AR 686. Bedard was aware of the mandated vaccination requirements for all City employees but chose not to vaccinate or file for an exemption. AR 686. When her commanding officer presented those requirements and the Vaccination Notice, she declined to adhere to the order and would not even sign the Vaccination Notice. AR 686. The Ordinance is unambiguous that this is a minimum

requirement for all City employees. AR 686-87. The Board of Rights had no choice but to uphold the termination of Bedard's employment. AR 687.

Because there was merit to Bedard's argument that LAPD violated her *Skelly* due process rights, the Board of Rights awarded backpay from the November 10, 2021 discipline to the date the decision became final after the Board of Rights hearing. AR 687-88.

The Board of Rights' July 13, 2022 written decision reiterated that Bedard was guilty of the single count against her but that she was owed backpay due to *Skelly* violations. AR 1168. The Board of Rights imposed Bedard's discipline as removal from her position, effective December 17, 2021. AR 1168.

5. The Chief of Police's Decision

On July 20, 2022, LAPD sent a modified order to Bedard signed by the Chief of Police. AR 1168. The modified order retained the part of the Board of Rights' order that removed Bedard from her position as a LAPD Sergeant, effective December 17, 2021. AR 1168. It also had a handwritten notation that the Board of Rights did not have the authority to order backpay, and that LAPD would not comply. AR 1168.

6. The LAPPL Lawsuit

On September 30, 2022, the trial court in the LAPPL Lawsuit filed its statement of decision. RJN Ex. A. The statement of decision explained that on October 28, 2021

LAPPL sent a written demand to the City to refrain from declaring an impasse in the negotiations. Ex. A. LAPPL also asked the City not to implement the consequences for non-compliance with the Ordinance until the City exhausted statutory impasse procedures. Ex. A. The City nonetheless filed a notice of impasse and implemented the Resolution. Ex. A.

Pursuant to the LBFO, the Vaccination Notice sent by the City to unvaccinated employees requires them to acknowledge that, if they did not show proof of vaccination within the listed time frame, they would be placed off-duty without pay pending pre-separation due process procedures. Ex. A. The Vaccination Notice also said that the employees must undergo twice weekly COVID-19 testing through the City or its chosen vendor and would reimburse the City $260 per pay period for four $65 tests. Ex. A. The City and LAPD began deducting the cost of those tests from the paychecks of unvaccinated employees without an exemption. Ex. A.

The City argued that section 2802 does not apply to a chartered city like itself because the state constitution gives charter cities plenary authority over the compensation of municipal employees. Ex. A. The trial court rejected this argument because the reimbursement was not substitute for something the employees would otherwise need to acquire with personal resources. Ex. A. The City made a contract with a provider for exclusive services for testing and results reporting and this was a cost the City incurred to protect its workforce without negotiation with the employees at issue. Ex. A.

Employees necessarily incurred the cost of testing insofar as they had to either pay it, undergo vaccination, or apply for a medical or religious exemption as part of employment. Ex. A. The imposition of this fee violated section 2802. Ex. A.

The court would issue a writ of mandate enjoining the City from imposing the cost of required COVID-19 testing on unvaccinated employees. Ex. A. The writ would also compel the City to indemnify and reimburse unvaccinated employees who have paid such costs and hold them harmless for any costs of future testing Ex. A.

E. Analysis

Petitioner Bedard seeks a writ of mandamus compelling the City and LAPD to reinstate her to her position of sergeant and award her backpay or, in the alternative, award her backpay for a *Skelly* violation.

1. Bedard Violated Her Conditions of Employment

On July 13, 2022, the Board of Rights ruled that it had no jurisdiction to adjudicate the validity of the Ordinance requirement that all City employees to be vaccinated against COVID. The Board of Rights also ruled that the Notice of Vaccination's requirement that Bedard pay for the testing did not violate section 2802, which applies to private entities, not public entities. AR 676. Finally, Bedard's defense that the City's testing contract with Bluestone was an unlawful no-bid contract and the cost of testing was prohibitive were the subject of the LAPPL

Lawsuit and beyond the Board's jurisdictional boundaries. AR 677.

The Board of Rights found Bedard guilty of the charge that, on or about November 7, 202 1, Bedard, while on duty, failed to sign and/or comply with the Vaccination Notice. AR 674. Not only did Bedard refuse to be vaccinated or tested or seek an exemption, she chose not to sign the Notice of Vaccination. In doing so, she violated a condition of her employment. AR 675-76.

a. The City's Change in Policy Is Irrelevant

Bedard argues that the cost of City-mandated testing was a condition of the Vaccination Notice. AR 359. Yet, the CAO now has acknowledged that this requirement violated section 2802 and proposed that all City employees who used their own time and money to be tested under the compulsion of the Mayor's October 28. 2021 directive be reimbursed. RJN Ex. B. Pet. Op. Br. at 14-15.

On May 17, 2022, LAPD's Communications Division informed employees via email that unvaccinated employees could test with a third party if they first notified the Vaccination Mandate Task Force. AR 1158, The employee must upload PCR test results onto LAPD's self-service portal within 72 hours of the test. AR 1158. Employees that chose to use a third-party vendor must test on their own time, are accountable for any cost, and are solely responsible for uploading their results. AR 1158.

On January 18, 2023, the CAO sent a memorandum to the City Council recommending a resolution to

discontinue the COVID-19 testing requirements implemented pursuant to the Ordinance. RJN Ex. B. The CAO memorandum noted that, on February 11, 2022, the City's EERC relaxed the LBFO's testing requirements to address cost constraints. Ex. B. Although a decision was made to reduce the frequency of testing from twice to once a week, the City still spent millions to cover to cost of testing unvaccinated employees. Ex. B.

The CAO memorandum stated that, on October 1, 2022, the County stopped its surveillance-testing requirement for unvaccinated employees and replaced it with testing for exposure and when a symptomatic employee returns to work. Ex. B. EERC recommended that the City eliminate its own requirement and replace it with the County's new testing infrastructure. Ex. B. The proposed Resolution's recitals referred to the change in County policy to eliminate mandatory weekly COVID-19 surveillance testing requirements and acknowledged that the ruling in the LAPPL Lawsuit prohibited the City from charging employees for the costs of required co COVID-19 testing. Ex. B.

The CAO memorandum's proposed Resolution would end the LBFO's mandatory testing requirements for unvaccinated City employees, even as modified by the trial court's statement of decision on the LAPPL Lawsuit. Ex. B. The proposed Resolution stated that the City reserved the right to reimpose the requirements if the COVID-19 situation evolved. Ex. B. The proposed Resolution would also reimburse any City employee who incurred costs for

mandatory testing or used their own time to undergo required testing. Ex. B.

On February 14, 2023, the City Council adopted a Resolution ending the mandatory testing requirements for unvaccinated City employees. RJN Ex. C. The recitals and provisions of the Resolution are almost identical to the CAO's proposed Resolution. Ex. C. The only difference is that, while the Resolution stated that the City would reimburse any City employee who incurred costs related to the LBFO's mandatory testing requirements, it did not state that employees would be compensated for the use of their own time to undergo required testing. Ex. C.

The fact that the City has now stopped mandatory testing of unvaccinated employees is irrelevant to this case. The policies of government agencies concerning COVID have evolved over time as the pandemic has changed and as new health information is provided to them. As the Board of Rights found (AR 677), the only issue is whether Bedard was guilty of violating her conditions of employment on the November 7, 2021 date charged.

b. Merits

The Ordinance provides that all employees must be fully vaccinated for COVID-19, or request an exemption, and report their vaccination status no later than October 19, 2021. AR 692, 742 (LAAC §4.701(a)). The Ordinance makes vaccination a condition of City employment unless

the employee is approved for a medical or religious exemption. AR 742 (LAAC §4.70 1(b)).

Bedard apparently reported her vaccination status by October 19, 2021, that she was unvaccinated and did not apply for a medical or religious exemption. AR 240.

The City Council's October 14, 2021 Resolution implemented the terms and conditions in its LBFO for the consequences of nor-compliance with the Ordinance. AR 700, 722, 755. Under the Resolution, any employee who is act fully vaccinated and does not submit proof of vaccination or request for exemption by October 20, 2021 is non-compliant. AR 705, 757. That employee will be issued a Vaccination Notice instructing the employee to submit proof of full vaccination by December 18, 2021, which he or sue must sign. AR 705.

Graham served Bedard with the Vaccination Notice on November 5, 2021. AR 709-11. The Vaccination Notice afforded Bedard a final opportunity to become fully vaccinated by December 18, 2021. AR 709. It required Bedard to certify that she is not fully vaccinated, has not filed an intent to seek medical or religious exemption, and that she would be fully vaccinated by December 18, 2021. AR 709. Prior to the December 18 deadline, she would undergo COVID-19 testing twice a week through the City's vendor on her own time and would reimburse the City $260 per pay period for four S65 tests. AR 709. If she did not follow these conditions and was not fully vaccinated by December 18. 2021, or if she failed to sign or disagreed with any part of the Vaccination Notice,

LAPD would place her off-duty without pay pending pre-separation due process procedures. AR 710. It would also serve her with written notice of proposed separation from City employment. AR 710. Bedard did not sign the Vaccination Notice and asked Graham to write "Refused" in the signature block. AR 354-55, 711.

Bedard contends that the City had a duty to refrain from violating its obligations under section 2802 and from refusing to indemnify its employees for the cost of testing as a necessary expenditure incurred as a direct consequence of its directions. As a result, the City unlawfully made Bedard's continued employment contingent upon her written agreement in the Vaccination Notice to pay for COVID testing, which is illegal. In fact, any agreement to waive rights protected by section 2802 is void under Labor Code section 2804. Therefore, mandamus lies to compel the City to set aside her discharge. Pet. Op. Br. at 5.

Bedard notes that she testified that she did not sign the Vaccination Notice presented to her on November 5, 2021 because it required her to pay for testing. She was being asked to pay for her own testing at work "where I know no one else was being charged for testing.... So it just didn't make any sense to me, it really didn't." AR 359. Bedard had been paying for her daughter's treatment for an adverse COVID vaccination from June 2021 to the present. AR 359-61. If returned to work, she would be okay with testing if she were not required to pay for it. AR 371. Pet. Op. Br. at 12.

Bedard also testified that she objected to providing information to Bluestone. AR 354, 356. She was aware that LAPPL had issues with Bluestone. AR 356.[2] By the date of the hearing, the City had withdrawn its requirement that COVID testing be done by Bluestone and Bedard said that she would agree to be tested using her own insurance if she were allowed to return to work. AR 642-43. Pet. Op. Br. at 12.

The City argues that Bedard's reliance on section 2802 is meritless. In *Stoetzl v. Dept. of Human Resources*, (2019) 7 Cal.5th 718, 752, the California Supreme Court reaffirmed that "[g]enerally... provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees." (citations omitted). Opp. at 9. The City is a public entity and section 2802 does not expressly include public entities. The City therefore is not subject to section 2832. The City also argues that the trial court's statement of decision in the LAPPL Lawsuit is not binding and not a citable authority. Furthermore, a city can require costs of material to be borne by the employees. *In re Work Uniform Cases v.*

2. On October 28, 2021, LAPPL, the union representing LAPD employees of the rank of sergeant and lieutenant, sent a letter to the City objecting to the contract with Bluestone due to issues of conflicts of interest and criminal or unethical conduct involving City officials. AR 833. In a follow-up letter, LAPPL voiced objection to the no-bid contract, noting that Bluestone's "representative" was Dr. Pejman Salimpour, a Fire and Police Pension Board of Rights Commissioner. AR 768. Pet. Op. Br at 8. These facts are irrelevant to this case. Bedard makes no showing that she objected to Bluestone before her termination or that the City's contract with Bluestone was unlawful.

State of California, (2005) 133 Cal.App.4th 328. Opp. at 9, n. 30pp. at 9.

Bedard replies that the City, despite knowing about the trial court's September 30, 2022 decision in the LAPPL Lawsuit, inexplicably claims that Bedard's reliance on section 2802 is misplaced. To Bedard's knowledge, the City has not challenged the trial court's statement of decision. In fact, the CAO has proposed a City Council Resolution discontinuing mandatory COVID testing for unvaccinated employees that essentially confirms that section 2802 applies to the City.[3] As such, it is Inequitable, and perhaps misleading, for the City to assert otherwise. Reply at 4-5.

As Graham testified (AR 245), the Vaccination Notice had three conditions of continued employment: (1) Bedard's signature on the Vaccination Notice; (2) her agreement to be fully vaccinated by December 18, 2021; and (3) her agreement to testing with Bluestone in the interim before December 18 with her reimbursing the City's testing expense through paycheck deductions. The undisputed facts show that Bedard did not sign the Vaccination Notice and did not become fully vaccinated by December 18, 2021. There also is no evidence that she tested, either through Bluestone or any other vendor.

The court agrees with Bedard that the City Council appears to have at least acquiesced to the reasoning of the trial court in the LAPPL Lawsuit. See R.IN Ex. C. The court will assume that section 2802 bars the City

3. As stated *ante*, the City Council adopted the CAO's recommendation in a February 14, 2023 Resolution.

from requiring its employees to pay for their own COV ID- 19 testing in compliance with the Ordinance and the LBAFO. This means that Bedard's refusal to test with Bluestone twice weekly and reimburse the City $260 per pay period for four $65 tests did not violate her conditions of employment. However, the illegality under section 2802 does not affect the Vaccination Notice's other two conditions of employment. *See* AR 709.

Bedard's refusal to agree to be vaccinated by December 18, 2021 violated her conditions medical or religious exemption. Instead, on November 7, 2021, Bedard emailed Graham that she had decided not to take the vaccine. AR 712. She explained that her daughter suffered an adverse reaction to the Pfizer vaccine, and she did not want to take die same risk. AR 712. This email was a direct violation of her conditions of employment. As the City argues (Opp. at 5), Bedard opposed vaccination policy to "make a stand" based upon her personal opinions and her actions were insubordinate.

Bedard's refusal to sign the Vaccination Notice also violated her conditions of employment. Graham discussed the contents of the Vaccination Notice with Bedard, and she understood them. AR 351-52. She understood that taking the vaccine, paying for testing, and putting her information into a Bluestone account all were conditions of employment. AR 357. Yet, she refused to sign. AR 352.[4]

4. The City also relies on Bedard's refusal to sign the Complaint on November 10, 2021. Opp. at 5. Unlike the Vaccination Notice, Bedard's signature on the Complaint was not a condition of employment.

Bedard testified that Bedard did not agree to that which was asked in the Vaccination Notice, primarily the payment for testing. AR 352. She was being asked to sign a document with which she knew LAPPL had issues. AR 352. The testing was the main issue for her, and she could not understand why she would be charged $560 for testing if LAPD was offering free testing to everyone else. AR 352-53, 359.

Bedard also testified that she had Graham write "refused" because she objected to paying for testing and submitting the tests to Bluestone, not signing the Vaccination Notice itself. AR 353-55. If the notice said that she would not be charged for testing or submit information into a third-party vendor, she would have agreed to the Vaccination Notice. AR 354, 356.

The court concludes that Bedard could not have meant this last point in her testimony — that she would have signed the Vaccination Notice if she were not charged for testing. Doing so would mean that she would agree to be vaccinated by December 18, 2021, which is completely inconsistent with her rationale for not being vaccinated, both in her email to Graham and her testimony. Bedard could only have meant that she would not dispute the Vaccination Notice's testing requirement if she could have free testing. But Bedard would not have signed the Vaccination Notice even in that circumstance because she would be agreeing to be vaccinated.

As the City contends (Opp. at 6-7), Bedard made plain in her testimony that her attitude toward the City's policy

was about the vaccination, not testing costs. She testified that she has, "no problem complying and following the rules when they make sense to me," implying that she will not follow rules with which she does not agree. AR 363. She emphasized that she "took a stance by the grace of God," and stated that "not to tout that I am this saint, [but] what I am saying is that we can't all just go along to get along, sometimes we have to bring some commonsense back in." AR 631. This testimony was all about vaccination, not testing.[5]

Although she does not so argue, Bedard could contend that the illegality of the testing requirement infected the rest of the Vaccination Notice and permitted her to refuse to sign it. However, the court believes that Bedard seized on section 2802 issue in her testimony before the Board of Rights as a matter of convenience. Tellingly, she did not object to Graham on November 5, 2021 that she did not want to pay for testing, and her November 7, 2021 email to Graham says nothing about the cost of testing. It makes no sense for Bedard to make a personal choice that she

5. The court agrees with the City that, if the only dispute was the cost of testing as Bedard now claims, the prudent way to handle the situation would have been to cooperate by getting vaccinated and following the testing protocol while the issue of costs was being negotiated and litigated. Opp. at 6. Bedard replies that nothing was being negotiated with LAPPL as negotiations had ceased once an impasse was reached. That was the reason why the issue was being litigated in the LAPPL Lawsuit. Reply at 5. True, but Bedard could have agreed to be vaccinated and then followed the testing requirement while objecting to the deduction from her paycheck.

did not want to be vaccinated and then rely on the cost of testing as the reason she did not sign the Vaccination Notice. The court concludes that Bedard's testimony about the cost of testing was a *post hoc* makeweight that was not her real reason for refusing to sign the Vaccination Notice on November 5, 2021.

The City also is correct (Opp. at 9-10) that the express language of section 2802 only creates a duty for an employer to indemnify an employee for costs; it does not require that costs be advanced or made available for free.[6] *See Edwards*, *supra*, 44 Cal.4th at 952 (section 2802 codifies policy that favors indemnification of employees for claims and liabilities from the employees' acts within the course and scope of their employment). Under the plain language of section 2802, the City can mandate employees to periodically test and then be required to indemnify their cost. Bedard presents no evidence that she intended to or did incur any testing costs before December 18, 2021.

Bedard violated her conditions of employment on November 7, 2021 when she refused to sign the Vaccination Notice and refused to be vaccinated. Because the court assumes the mandatory testing requirement was illegal, she did not violate the conditions of her employment by refusing to be tested and reimburse the City through her paycheck.

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6. It is possible under California's labor policy that an appellate court has held that a city must advance costs and not merely reimburse them under section 2802, but Bedard cites no authority for that proposition.

2. The Penalty

In considering the penalty, the Board of Rights found that Bedard was a "highly qualified and excellent employee." AR 686. It reviewed Bedard's personnel records, noting that she had received over a hundred commendations, many of which were from citizens. The only negative thing in her file was an on-duty vehicle accident in December 2006, which she said occurred "when we were chasing a bad guy." AR 679-80. Because she had not complied with the vaccine mandate, the Board of Rights concluded that it was "left with no alternative but to uphold her removal from employment with the Department." AR 687.

In determining whether there has been an abuse of discretion, the court must examine the extent of the harm to the public service, the circumstances surrounding the misconduct, and the likelihood that such conduct will recur. *Skelly*, *supra*, 15 Cal.3d at 217-18.

Bedard contends that the penalty of dismissal was excessive and disproportionate to her conduct in declining to agree to the City's illegal requirement to pay for City-mandated testing to keep her job. Reply at 8. She argues that her conduct was her failure to sign the Vaccination Notice that had not been negotiated with her and contained at least one illegal provision. There is no evidence that her conduct resulted in harm to the public service. Nor is it likely that her conduct would be repeated because it is unlikely that the City's Vaccination Notice with its illegal provision would ever be presented to her again. Pet. Op. Br. at 15.

Appendix C

Bedard mischaracterizes the reasons for her discharge, which are that she refused to be vaccinated and refused to sign the Notice of Vaccination, both of which were conditions of employment. Because they were conditions of her employment, any analysis of Bedard's performance or qualifications as an employee is irrelevant. She did not meet the conditions and could not remain an employee.

Additionally, an analysis of the abuse of discretion issue weighs in favor of discharge. The City promulgated the vaccination policy as a means to deal with the COVID-19 pandemic. The harm to public service by an employee who refuses to vaccinate is self-evident. Her decision puts all other public employees, and the members of the public who deal with them, at risk.

The City also points out that Bedard refused to vaccinate because she had a personal objection to the City s policy. She testified: "[I]t's a choice they say we were given, sign the document or be sent home, to me, that's not really a choice...so to be put in the corner like that, that's not a choice, that's their livelihood. I took a stance by the grace of God. I was given the opportunity to be able to stand strong in what I believe." AR 631.

The City notes that Bedard cannot pick and choose which laws or work rules to follow based upon her own personal opinions, especially because she was a supervisor. This attitude is likely "to have a deleterious effect upon public service," and is likely to cause "impairment or disruption of public service." *Blake*, *supra*. 25 Cal. App. 3d at 550-51. Her actions simply were insubordinate. Opp. at 8.

Finally, there is a likelihood that such conduct will recur in the event of a renewed COVID pandemic, or another health pandemic where Bedard does not agree with the City's remedy. While the City's use of the same Vaccination Notice is unlikely, it is likely that the City would require employee vaccination. Yet, there is no reason to believe that Bedard would change her mind and be vaccinated.

3. The *Skelly* Issue.[7]

The essence of due process is notice and the opportunity to be respond. *Horn v. County of Ventura*, (1979) 24 Cal.3d 605, 612. The Board of Rights hearing satisfies the administrative appeal requirements set forth in POBRA. *See Gonzalez v. City of Los Angeles*, (2019) 42 Cal.App.5th 1034, 1047. As for pre-disciplinary due process, *Skelly* holds that the minimum pre-discipline safeguards are written notice of the proposed disciplinary action, the reasons therefor, a copy of the charges and written material upon which the action is based, and the right to respond within a reasonable period of time. 15 Cal.3d at 194.

Yoon's undisputed expert testimony was that, after an investigation, the watch commander, who did not partake in the investigation, reviews the statements,

7. Per the Chief of Police's order, Bedard could not raise a *Skelly* violation before the Board of Rights. Even if the Chief of Police was correct, and the *Skelly* issue is not part of administrative mandamus, Bedard has made a traditional mandamus claim which addresses the issue.

allegations, and evidence to decide that the proposed penalty should be. AR 422. The watch commander drafts a letter of transmission which goes to the captain. AR 422. The captain usually agrees and signs the letter of transmission. AR 422.

The captain or the employee's supervisor lets the employee know about the allegation and proposed penalty. AR 422. The employee receives the "*Skelly* package," which includes all the documents used to adjudicate the recommendation. AR 422, 424. This includes the investigation, the letter of transmission, any interviews, videos, and other evidence used to come to a recommendation for the penalty. AR 424.

The employee then has 30 days to review the investigation and provide a written or oral response. AR 422. Although due process and *Skelly* may not provide a 30-day period, the MOU between LAPD and LAPPL does. AR 426, 428. After the response period ends, the captain sends the letter of transmission to the Bureau and the Bureau sends it to the chief. AR 422.

Yoon opined that the Notice of Proposed Discipline served by Chief Woodyard on November 10, 2021 gave Bedard until November 15, 2021, or only five days, to provide a *Skelly* response. AR 435, 994-95. Nothing in the record supports this shorter timeline. AR 435. On the form, Bedard checked that she had received a copy of the investigative materials, was informed of her right to representation, and intended to provide a response. AR 995. Bedard's November 7, 2021 email to Graham

could not qualify as a *Skelly* response because LAPD did not provide her with the investigation materials until November 10, 2021. AR 470, 510. On the same day, the Chief of Police signed his final adjudication of the Complaint and directing Bedard to a Board of Rights hearing. AR 435. Bedard was served with the Complaint on November 16, 2021 and temporarily relieved of duty effective the next day, November 17, 2021. ARI.

The Board of Rights found that the Department violated Bedard's *Skelly* rights because the Department removed her from her position on November 17, 2021 without an opportunity to respond to the charge. AR 677, 687.[8]

The City argues that Bedard was afforded notice of the City's vaccination policy and had a chance to respond,

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8. Yoon also testified that LAPD frames an allegation based on the complaint and lets the employee know about the complaint before any interview. AR 421. Based on the interview, LAPD then reframes the allegation for review by the watch commander. AR 422. He could not fathom a scenario in which a Department employee was not interviewed. AR 468-69. LAPD interviews an accused employee even when there is video evidence of the allegation. AR 469. Bedard also testified that she has conducted hundreds of personnel investigations herself and has never heard of an investigation that directed an employee to a Board of Rights hearing without interviewing the accused employee. AR 381-82.

There is no due process or Department requirement that Bedard was entitled to an interview as part of the disciplinary process. Bedard cites no statute, case law, MOU, or a Department rule that requires an investigative interview. There was no due process violation on this issue.

and her response was non-compliance. She was given the Notice of Proposed Discipline and then the Complaint with an opportunity to challenge the disciplinary action in the Board of Rights hearing. Opp. at 10.

This is insufficient. *Skelly* requires that the employee have the right to respond within a reasonable period after receiving written notice of the proposed disciplinary action, the reasons therefor, a copy of the charges and written material upon which the action is based. 15 Cal.3d at 194. Assuming that Bedard received these materials with the Notice of Proposed Discipline – she denies that she did[9] – she did not have sufficient time to respond. She was given only five days not the 30 days required by the MOU. In fact, she did not even have five days. The Chief of Police directed her to a Board of Rights hearing on the same day, November 10, 2021 that she Proposed Discipline. As Bedard points out, City Charter section 1070(b) permits the Chief of Police to relieve an officer from duty after "pre-disciplinary procedures otherwise required by law". Reply at 6.

All due process violations are subject to a harmless error analysis. *People v. Woodward*, (1992) 4 Cal.4th

9. Bedard testified that she had conducted hundreds of personnel complaint investigations and was not aware of any in which the accused officer was not advised that he was under investigation, that his statements could be used against him, and of his right to representation, before being ordered to face a Board of Rights. She received none of these rights. AR 381, 383. Bedard's testimony is partly inconsistent with her initials on the Notice of Proposed Discipline that she had been informed of her right to representation.

376, 387; *Krontz v. City of San Diego*, (2006) 136 Cal. App.4th 1126 1141 (delay in notice and opportunity to be heard requires prejudice). "Reversible error requires demonstration of prejudice arising from the reasonable probability the party 'would have obtained a better outcome' m the absence of the error". *Fisher v. State Personnel Bd.*, (2018) 25 Cal App.5th 1, 20. A reviewing court need not reverse an employer's disciplinary decision for violation of its own internal procedures unless it resulted in actual prejudice to the employee. *El-Attar v. Hollywood Presbyterian Medical Ctr.*, (20 13) 56 Cal. 4th 976, 990-91 Opp. at 8.

The *Skelly* violation was not harmless error. The California Supreme Court has made plain that a constitutional vice lies in the imposition of discipline without complying with *Skelly* procedure. *Barber v. State Personnel Board of Rights*, ("*Barber*") (1976) 18 Cal.3d 395, 402. The nature of such a violation makes any analysis of harmless error speculative, and probably unnecessary. It is sufficient for Bedard to show that the City violated her *Skelly* rights. In any event, had Bedard been given an opportunity to respond, there is a reasonable probability that she could have addressed the section 2802 issue, negotiated free testing or testing on work time or even applied for an exemption.

The remedy for a violation of *Skelly* rights is back pay from the date that she the employee taken off the payroll until due process is satisfied through affirmance of discharge by administrative appeal. *Barber*, *supra*, 18 Cal.3d at 402. The Board of Rights ruled that Bedard

was entitled to backpay from the date of her removal, November 10, 2021, to the time "discipline is validated by a full hearing and the decision becomes final." AR 687-88.

The Board of Rights was wrong about the initial date. Although she was removed from duty effective November 17, 2021, she was still paid for some period. Bedard testified that her last paycheck was on December 29, 2021. AR 624. The court assumes that this paycheck date is for an earlier pay period as is customary for City and County employees. Bedard argues that she is entitled to backpay from December 17, 2021, to July 20, 2022. Pet. Op. Br. at 13. Absent objection from the City that these dates are wrong, the court agrees.[10]

---

10. Bedard also argues that the Chief of Police imposed a greater penalty than ordered by the Board of Rights in violation of City Charter section 1070(p), which states: "Within ten days of delivery of a certified copy of the decision of a Board of Rights of Rights to the Chief of Police, the Chief shall either uphold the Recommendation of the Board of Rights of Rights or may, at his or her discretion, impose a penalty less severe than that ordered by the Board of Rights of Rights but may not impose a greater penalty." Based on this provision, Bedard asks the court to find that the due process violation continues to the present day and to award her back pay consistent with that finding. Reply at 7.

The court cannot do so. The Chief of Police stated that the Board of Rights did not have authority to award *Skelly* relief and Bedard does not show that the Chief of Police was wrong. Even if he was wrong, and he imposed a greater penalty than the Board of Rights, the remedy is still an award of backpay through the final decision upholding her discharge.

F. Conclusion

Petitioner Bedard was properly discharged but the City violated her *Skelly* rights. A writ will issue directing the City to provide her with backpay from December 17, 2021, to July 20, 2022. In all other respects the Petition is denied.

Bedard's counsel is ordered to prepare a proposed judgment and writ, serve them on Respondents counsel for approval as to form, wait ten days after service for any objections meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections An OSC re: judgment is set for May 25, 2023 at 9:30 a.m.

Appendix C

EXHIBIT - 2

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
Civil Division
Central District, Stanley Mosk Courthouse,
Department 85

22STCP03008
JEANNINE BEDARD vs CITY OF LOS ANGELES,
A MUNICIPAL CORPORATION AND CHARTER
CITY WITHIN THE STATE OF CALIFORNIA,,
et al.

April 18, 2023
1:30 PM

Judge: Honorable James C. Chalfant
Judicial Assistant: J. De Luna
Courtroom Assistant; C. Del Rio

CSR: T. Dyrness, CSR #12323 (Pro Tempore)
ERM: None
Deputy Sheriff: None

APPEARANCES:
For Petitioner(s): Gregory G. Yacoubian (X)
For Respondent(s): John W Nam (X)

NATURE OF PROCEEDINGS: Hearing on Petition for Writ of Mandate

Appendix C

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Tracy Dyrness, CSR #12323, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The court's tentative ruling is published to all parties via posting on the court's website.

The matter is called for hearing.

The Administrative Record is admitted in evidence.

After argument of counsel, the court rules in accordance with its tentative filing which is filed and adopted as the final ruling of the court and incorporated herein by reference.

Summary of the court's ruling;

Petitioner Jeannine Bedard ("Bedard") seeks a writ of mandate compelling Respondents City of Los Angeles ("City") and Los Angeles Police Department ("LAPD" or "Department") Chief of Police Michel Moore ("Chief of Police") to set aside her termination from the, restore her position with backpay, and remove the disciplinary penalty from her record.

The court has read and considered the moving papers, opposition, and reply, and renders the following decision.

Appendix C

Petitioner Bedard was properly discharged but the City violated her *Skelly* rights. A writ will issue directing the City to provide her with backpay from December 17, 2021, to July 20, 2022.

In all other respects the Petition is denied.

Bedard's counsel is ordered to prepare a proposed judgment and writ, serve them on Respondents' counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections.

The Administrative Record is ordered returned forthwith to the party who lodged it, to be preserved unaltered until a final judgment is rendered in this case and is to be forwarded to the court of appeal in the event of an appeal.

Order to Show Cause Re: Judgment is scheduled for 05/25/2023 at 09:30 AM in Department 85 at Stanley Mosk Courthouse.

Notice is waived.

APPENDIX D — ORDER OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION 3, FILED NOVEMBER 21, 2024

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 3

B331062

(Los Angeles County
Super. Ct. No. 22STCP03008)

JEANNINE BEDARD,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES,

Defendant and Respondent.

THE COURT:

Appellant Jeannine Bedard's petition for rehearing, filed November 14, 2024, is denied.

/s/ Edmon	/s/ Egerton	/s/ Adams
EDMON, P.J.	EGERTON, J.	ADAMS, J.

APPENDIX E — EXCERPTS OF PETITION FOR REVIEW IN THE SUPREME COURT OF THE STATE OF CALIFORNIA, FILED DECEMBER 9, 2024

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Case No. S_____

JEANNINE BEDARD,

Petitioner and Appellant,

v.

CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, AND MICHEL MOORE, IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE,

Defendants and Respondents.

PETITION FOR REVIEW

From a Published Decision of the Court of Appeal
Second Appellate District, Division 3
Civil No. B331062
Reviewing the Judgment of the
Los Angeles County Superior Court
Honorable James C. Chalfant
LASC No. 22STCP03008

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Attorney for Petitioner, JEANNINE BEDARD

Appendix E

* * *

ISSUES PRESENTED FOR REVIEW

1. Is the City of Los Angeles subject to the terms of California Labor Code Sections 2802 and 2804?

2. If so, did the City violate Labor Code Sections 2802 and 2804 when it fired Los Angeles Police Sergeant Jeannine Bedard for failing to sign and comply with the City's "Notice" which sought Petitioner's agreement as a "condition of employment" to submit to COVID-19 tests on her own time with a virus-testing contractor of the City's choosing and to reimburse the City over $560 a month for that testing?[1]

3. Are the subjective reasons why Petitioner Jeannine Bedard did not sign the agreement relevant to the question of whether the Labor Code allowed or disallowed the City to fire her for not signing it?

4. Is Petitioner Jeannine Bedard entitled to reinstatement to her employment as a Sergeant in the Los Angeles Police Department with back pay and benefits?

5. If the issues presented above are resolved in Petitioner's favor, is she entitled to recover attorney fees and costs on appeal?

---

1. Bedard was found "guilty" of the following charge: "On or about November 7, 2021, you, while on duty, failed to sign and/or comply with the requirements of the Notice of Mandatory COVID-19 Vaccination Policy Requirements, a condition of employment."

Appendix E

INTRODUCTION

Petitioner Sergeant Jeannine Bedard was a tenured sworn employee of the Los Angeles Police Department ("LAPD"). Petitioner was relieved of duty and terminated after she refused to sign an agreement (termed a "Notice") requiring her to reimburse the City for its mandated virus testing with the City's contractor.

At her administrative hearing with LAPD (termed a "Board of Rights"), Petitioner raised Labor Code Sections 2802 and 2804 as a defense to her refusal to agree to the City's new "condition of employment" that she "reimburse" the City for her virus testing. The Board found those sections only apply to the private sector, not to the public sector. While the Board found that Petitioner's right to Due Process had been violated and awarded her back pay, the Board recommended Petitioner be terminated for failing to comply with the Notice. Respondent Police Chief Moore adopted the "termination" recommendation but struck the Board's award of back pay.

Petitioner filed a Petition for Writ of Mandate. At the hearing on her Petition, the Trial Court found that even if Labor Code Sections 2802 and 2804 applied, voiding the City's requirement that Petitioner "reimburse" the City for Petitioner's virus testing, the remaining terms of the City's Notice were enforceable. Based on this analysis, the Trial Court upheld Petitioner's termination. The Trial Court agreed that Respondents violated Petitioner's right to Due Process and awarded her back pay and benefits.

Petitioner appealed, again raising the issue of the application of Labor Code Sections 2802 and 2804 to her facts. Petitioner also filed a Notice of Related Cases with the Court of Appeal as to other LAPD officers who were terminated based on same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.

In its published Decision, the Court of Appeal affirmed the Trial Court's Judgment. However, the Court of Appeal did not rule on the Labor Code Sections 2802 and 2804 issue.

Petitioner's Petition for Rehearing, asking the Court of Appeal to rule on the Labor Code Sections 2802 and 2804 issue, was denied.

Petitioner turns now to this Court to resolve this important legal issue which is of statewide concern.

THIS COURT SHOULD GRANT REVIEW OF THIS CASE TO CLARIFY WHETHER LABOR CODE SECTIONS 2802 AND 2804 APPLY TO EMPLOYERS AND EMPLOYEES IN THE PUBLIC SECTOR AND, IF SO, WHETHER RESPONDENTS VIOLATED THOSE SECTIONS WHEN THEY DISCHARGED PETITIONER

Clarification is needed on the applicability of Labor Code Sections 2802 and 2804 to local governmental entities and their employees, which is a statewide

concern. Additionally, there are four other cases that are related as they arise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact for which Petitioner filed a Notice of Related Cases.

In a private sector employment case, *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, this Court held that an employer may not require, as a condition of employment, an employee to waive the protection of Labor Code Section 2802, which this Court described as "nonwaivable." See, also *D'Sa v. Playhut, Inc.* (2000) 85 Cal.App.4th 927, another private sector employment case.

In the *Edwards* case, this Court held that Labor Code Section 2802 codifies California's "strong public policy" which favors the indemnification of employees by their employers for claims and liabilities resulting from the employees' acts within the course and scope of their employment. *Edwards*, at 952.

In public sector employment cases, the answer is less clear.

In *In re Work Uniform Cases* (2005) 133 Cal.App.4th 328, the Court considered whether Labor Code Section 2802 required the employer of law enforcement officers to pay the cost of obtaining, maintaining and replacing work uniforms. The court found that Labor Code Section 2802 did not apply to the facts of that case because "payment for uniforms is compensation" (Id.at 337-338) and because

"payment for uniforms is not a statewide concern." (Id.at 338.) The court acknowledged that Labor Code Sections 2802 and 2804 apply to a local public agency (e.g., City of Los Angeles) and "that Section 2804 invalidates any contract that waives the benefits of the Labor Code article that includes section 2802." (Id. at 344, fn14.)

Notably, review by this Court was sought but not granted in *In re Acknowledgement Cases* (2015) 239 Cal. App.4th 1498. In that case this Court let stand a decision based on Labor Code Sections 2802 and 2804 that barred the City of Los Angeles from enforcing its reimbursement provisions in contracts signed by police recruits. The contract, which the City called an acknowledgement, had required police recruits to agree to reimburse the City for a portion of the cost of their training should they leave the City's employ and accept a position with another law enforcement agency. The Court of Appeal found the contract / acknowledgement to be entirely void under Labor Code Section 2802. Indeed, directing attention to the *Edwards* case and cases cited therein, the Court of Appeal found that it is established that the broad purpose of Labor Code section 2802 is to require an employer to bear all of the costs inherent in conducting its business and to indemnify employees from costs incurred in the discharge of their duties for the employer's benefit. *In re Acknowledgement Cases* at 1506.

Finally, although his decision was not expressed in a judgment, the Honorable Rupert A. Byrdsong sitting in Department 28 of the Los Angeles County Superior Court enjoined the City from requiring unvaccinated

employees to pay for the cost of COVID testing, finding the requirement violated Labor Code Section 2802.

Labor Code Sections 2802 and 2804 appear in "Article 2, Obligations of Employer." Section 2802(a) provides:

> "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

Section 2804 provides:

> "Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

Because Section 2804 applies to "any employee," Respondents may not cite the home rule provisions of the California Constitution, Article XI, Sec 5, which gives chartered cities the right to "make and enforce all ordinances and regulations in respect to municipal affairs." "As to matters which are of statewide concern, however, home rule charter cities remain subject to

and controlled by general state laws regardless of the provisions of their charters." *Baggett v. Gates* (1982) 32 Cal.3d 128, 135.

Petitioner Jeannine Bedard asks this Court to find that the City of Los Angeles is subject to and controlled by Labor Code Sections 2802 and 2804. If so, she asks for a finding that the contract she was fired for not signing was "null and void" from the outset. Finally, she asks for a finding that she should not lose her job over refusing or failing to perform a void act.

These questions were resolved against Petitioner in the trial court and on appeal in part on the grounds that, at the time she refused to sign the Notice, she gave reasons other than its legality under Labor Code Sections 2802 and 2804. The Court of Appeal faulted Sergeant Bedard for not raising the Labor Code issue at her administrative hearing (her Board of Rights) or in the trial court. Opinion at page 17. This, as Bedard pointed out in her Petition for Rehearing (denied without modification of the published opinion on November 21, 2024), is incorrect as a matter of fact. As Respondents acknowledged in the course of this litigation Sergeant Bedard "bases her request for mandamus relief on Labor Code Sections 2802, 2804 and 1102.5 . . . " Clerk's Transcript (hereafter "C.T.") at page C.T. 62.

BACKGROUND AND STATEMENT OF THE CASE

COVID-19 was first detected in China in December 2019. On March 4, 2020, the Mayor of the City of Los

Angeles declared a "Local Emergency." Administrative Record (hereafter "A.R.") at p, 700.

On August 18, 2021, the Los Angeles City Council passed Ordinance No. 187134 which required City employees to become "fully vaccinated" by October 19, 2021. Employees who were approved by the City for an exemption based on a medical condition or sincerely held religious belief were excused from the vaccination requirement but were subject to virus testing on City time and at no cost to the employees. A.R. 693, 697, 743.

On October 26, 2021, after negotiations with the City's labor organizations failed to result in an agreement on implementation of the

* * *

APPENDIX F — EXCERPTS OF APPELLANT'S PETITION FOR REHEARING IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION 3, FILED NOVEMBER 14, 2024

IN THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 3

2d Civil No. B331062 LASC No. 22STCP03008

JEANNINE BEDARD,

Petitioner and Appellant,

vs.

CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, AND MICHEL MOORE, IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE,

Respondents.

Appeal from the Superior Court
of the County of Los Angeles
The Honorable James C. Chalfant

Appendix F

APPELLANT'S PETITION FOR REHEARING

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Attorney for Petitioner and Appellant,
JEANNINE BEDARD

* * *

Does Labor Code Section 2802 Apply to the Facts of this Case?

Los Angeles City Ordinance No. 187134 required all City employees to be fully vaccinated for COVID-19 by October 20, 2021, or request a medical or religious exemption by October 19, 2021.

A substantial number of City employees, including Appellant, and their unions, including Appellant's union, pushed back and questioned the City's tactics to force employees to be vaccinated. In fact, Appellant was among thousands of other City employees who declined the COVID-19 vaccination. Administrative Record (hereafter "A.R.") 701. The City then moved the deadline to December 18, 2021, to comply, and imposed penalties for non-compliance thereafter.

Appendix F

Respondents' Notice that Appellant was given demanded that she agree to be fully vaccinated by the City's December 18, 2021, deadline. If Appellant declined to be vaccinated, she was required to submit a medical or religious exemption, **and** to undergo twice-weekly testing by Bluestone on her own time, **and** to reimburse the City $260 per pay period for the cost of virus testing. A.R. 709.

Appellant refused to agree to the Notice's new conditions of employment, some terms of which conflicted with the City's Ordinance. "Bedard did not agree to what was being asked in the Vaccination Notice, primarily the payment for testing." A.R. 352; Clerk's Transcript (hereafter "C.T.") 244. Bedard explained, "I'm being asked to pay for my own testing at work where I know nobody else was being charged for testing." A.R. 359. She had no issue with testing so long as she was not charged. A.R. 371.

Sergeant Bedard was charged with misconduct:

> "On or about November 7, 2021, you, while on duty, failed to sign and/or comply with the requirements of the Notice of Mandatory COVID-19 Vaccination Policy Requirements, a condition of employment." A.R. 1.

The view of this Court, citing the Trial Court, was that Appellant was charged with violating the City Ordinance. Opinion at page 18. Based on the actual charge against her, this is not correct. Appellant was not accused of violating Los Angeles City Ordinance No. 187134. Rather,

Appendix F

Appellant was charged with failing to sign and/or comply with the terms of the *Notice* (A.R. 709-711), which differ significantly from the Ordinance (A.R. 691-696) and which, she contends, are unlawful under Labor Code Sections 2802 and 2804.

Nothing in the Ordinance required City employees to pay for testing. In fact, the Ordinance stated that "[t]esting will be provided to the employees at no cost during their work hours. . .". A.R. 693.

To be clear, Appellant did not submit a religious or medical exemption because she would have **also** had to agree to pay for virus testing and to test on her own time.

* * *

APPENDIX G — EXCERPTS OF APPELLANT'S OPENING BRIEF IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION 3, FILED NOVEMBER 22, 2023

IN THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 3

2d Civil No. B331062
LASC No. 22STCP03008

JEANNINE BEDARD,

Petitioner and Appellant,

vs.

CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, AND MICHEL MOORE, IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE,

Respondents.

Appeal from the Superior Court of the
County of Los Angeles
The Honorable James C. Chalfant

Filed November 22, 2023

Appendix G

APPELLANT'S OPENING BRIEF

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Attorney for Appellant, JEANNINE BEDARD

* * *

The City Charter requires that such actions by the Chief of Police be heard by a Board of Rights. In this case, a Board of Rights found Bedard guilty of the Chief's allegation and upheld his decision to discharge Bedard. However, the Board found that the Chief had not given her the 30 days to which she was entitled to respond to the notice of proposed disciplinary action. The Board found Bedard should be given back pay as a remedy. The Chief of Police adopted the Board's guilty finding but rejected the award of back pay.

Bedard filed a petition for writ of mandate pursuant to Code of Civil Procedure Sections 1085 and 1094.5, arguing the disciplinary action was procedurally and legally invalid. She sought reinstatement and back pay.

The trial court found that Respondents violated Bedard's right to due process but did not order her to be reinstated with back pay based on its finding that she

was guilty of the charge against her. Instead, the court awarded her back pay and benefits for the period of time between her relief from duty without pay to the time the Chief of Police adopted the finding of the Board of Rights that she was guilty.

The court acknowledged that the portion of the Notice which required Bedard to agree to reimburse the City for the cost of testing was unlawful under Labor Code Section 2802, but that discharge was an appropriate penalty for her failure to agree with the other terms of the Notice such as becoming fully vaccinated by a date certain and submitting to testing in the interim.

Bedard contends she was not free to agree to parts of the Notice and disagree with other parts. The Notice did not contain a "severability" clause. In any event, Bedard contends the unlawful provision of the Notice renders the entire document invalid. She did not commit misconduct when she refused to sign it.

Bedard also contends that Respondents' violation of her right to due process was so deliberate, intentional, and harmful as to warrant reinstatement, the remedy ordered in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.

Bedard asks the Court to find the penalty of termination was too harsh under the circumstances. Other than an accident occurring during the chase of a suspect in 2006, her 24 years of service were unblemished. There is no likelihood of recurrence of this misconduct because, as shown below, the City no longer mandates COVID vaccination as a condition of employment.

Appendix G

ISSUES ON APPEAL

1. Was it unlawful for Respondents to condition Jeannine Bedard's continued employment on her signing an agreement containing an unenforceable covenant and illegal provision?

2. Is Jeannine Bedard entitled to reinstatement to her employment as a Sergeant in the Los Angeles Police Department with back pay and benefits as a remedy for the violation of her right to Due Process?

3. Is Jeannine Bedard entitled to reinstatement to her employment as a Sergeant in the Los Angeles Police Department with back pay and benefits on the grounds that termination of her employment was too harsh a penalty under the circumstances?

* * *

ARGUMENT

1. It was unlawful for Respondents to condition Jeannine Bedard's continued employment on her signing an agreement that contained an unenforceable covenant and illegal provision.

As discussed above, on November 5, 2021, Jeannine Bedard was given a Notice stating what she had to do to "comply" with the City's vaccination policy. First, she was told that she had to sign an agreement to (a) be fully vaccinated by December 18, 2021, (b) submit to and pay

for testing twice a week on her own time, by a vendor of the City's choosing, and (c) reimburse the City $260 per bi-weekly pay period (over $560 per month) for the cost of testing. A.R. 709-711. Second, she was told if she did not sign the agreement in the next two days she would be fired. A.R. 491, 698.

Labor Code Section 2802(a) provides:

> "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions believed them to be unlawful."

The trial court agreed with Bedard and assumed that Labor Code Section 2802 bars the City from requiring its employees to pay for their own COVID-19 testing, making the City's mandatory testing requirement illegal. Therefore, the trial court found that Bedard did not violate her conditions of employment for her refusal to test with Bluestone (the City's vendor) and agree to reimburse the City for that testing. C.T. 252, 253.

However, the trial court found that the illegality under Section 2802 doesn't affect the Notice's other two conditions of employment. Therefore, the trial court found that Bedard violated her conditions of employment on November 7, 2021, when she refused to sign the Notice and

refused to agree to be vaccinated by December 18, 2021, which warranted termination of her employment. C.T. 252.

The agreement, namely the Notice (A.R. 709-711), proposed between the City and Bedard included no "severability" provision, as contained in the Ordinance (A.R. 695), that would provide for the enforcement of parts of that agreement that do not violate the law. Additionally, the Notice was presented to Bedard, including the provision requiring her to pay for virus testing, as an "all or nothing" contract. A.R. 46, 85, 176, 709-711.

Labor Code Section 2804 is clear on this point.

> "Any contract or agreement, express or implied, made by any employee to waive the benefits of this article of any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." Labor Code Section 2804. C.T. 238.

Significantly, the City's Ordinance required the City to provide its mandated virus testing at "no cost" to employees and that the testing would be done on "City time" – provisions that were codified under Los Angeles Administrative Code Section 4.702. A.R. 693. The Board found that the Ordinance had the "full force and effect of the law." A.R. 1160. Yet, the terms of the City's proposed contract (its Notice) required Bedard to "reimburse" the City "$260 per pay period" for the City's required virus testing and that Bedard would have to "test on [Bedard's]

own time, i.e., not on paid work time." A.R. 693. As such, the Notice also violated the City's local law (e.g., the Ordinance).

Bottom line: the whole contract – the Notice – is null and void, not just the portion requiring the employee to cover the cost of the mandated testing. In *D'Sa v. Playhut, Inc.* (2000) 85 Cal.App,4th 927, the Court said the question "is whether defendants can make plaintiff's acceptance of the agreement a condition of his continued employment by firing him when he refused to sign it." The Court said the answer is "no," the "law will protect him from a termination of his employment brought on by his refusal to sign an agreement containing the illegal covenant." *D'Sa* at 931-932.

In the present case, the sole reason stated for Bedard's termination was: "On or about November 7, 2021, you, while on duty, failed to sign and/or comply with the requirements of the Notice of Mandatory COVID-19 vaccination policy requirements, a condition of employment." A.R. 226.

In that Bedard was relieved of duty and facing termination just days after refusing to sign the Notice, *it was her failure to sign*, not a failure to comply with the Notice, that was the "condition of employment" which underlay her termination. Such termination violates public policy (*D'sa*, supra, 85 Cal.App.4th at 930). Bedard asks the Court to find there was no other reason stated for terminating her employment, and the stated reason was unlawful.

Therefore, Bedard is entitled to reinstatement to her employment as a Sergeant in the Los Angeles Police Department with back pay and benefits as a remedy for her wrongful termination.

2. Jeannine Bedard is entitled to reinstatement to her employment as a Sergeant in the Los Angeles Police Department with back pay and benefits as a remedy for the violation of her right to due process.

The Board of Rights found that the Chief of Police violated Bedard's right to due process by not allowing her sufficient time to respond to the charge against her before taking her off the payroll. A.R. 687. This violation cannot be laid only at the feet of the Chief of Police. He was acting under a directive from the Mayor which stated:

"The employee will have 24 hours to review the notice or 48 hours if they request time to consult with a union representative. If the employee refuses to sign the notice, then the employee shall be placed off duty without pay pending service of a Skelly package that includes a Notice of Proposed Separation. Sworn employees shall be subject to

* * *

APPENDIX H — PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, CENTRAL DISTRICT, DATED APRIL 18, 2023

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

Case No. 22STCP03008

JEANNINE BEDARD,

Petitioner/Plaintiff,

v.

CITY OF LOS ANGELES, A MUNICIPAL CORPORATION AND CHARTER CITY WITHIN THE STATE OF CALIFORNIA, MICHEL MOORE IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE, AND DOES 1 THROUGH 10 INCLUSIVE,

Respondents/Defendants.

HONORABLE JAMES C. CHALFANT

PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE

Date: April 18, 2023
Time: 1:30 p.m.
Department 85

Appendix H

LEGAL BASIS FOR PETITION FOR WRIT OF MANDATE

Code of Civil Procedure § 1094.5

Code of Civil Procedure §1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.

The inquiry under §1094.5 extends to the questions of whether the respondent has proceeded without or in excess of jurisdiction, whether there was a fair trial and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. The independent judgment test is applied to review decisions that affect an employee's vested property interest in her employment. *Barber v. Long Beach Civil Service Commission* (1996) 45 Cal.App.4th 652, 658.

In this case, Respondent Police Chief Moore terminated Sergeant Jeannine Bedard's employment after she was found "guilty" of not signing a contract agreeing to a new "condition of employment" which Respondents sought to impose on her after 24 years of unblemished service. Specifically, she was required to agree to be tested for Covid with the City's chosen contractor, and to

pay for that testing through payroll deduction. Because Bedard had a vested property interest in her employment, the Court should exercise its independent judgment and find that the evidence does not justify termination of her employment and/or find that Respondents did not proceed in the manner required by law.

***Code of Civil Procedure* § 1085**

Code of Civil Procedure §1085(a) authorizes the Court to issue a traditional writ of mandate to any "inferior tribunal, corporation, board or person, to compel the performance of [a ministerial] act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board or person."

Code of Civil Procedure §1087 states: "The writ may be either alternative or peremptory. The alternative writ must command the party to whom it is directed immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a time and place then or thereafter specified by court order why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done as commanded must be omitted."

An act is ministerial when a public officer is required to perform it in a prescribed manner. *Kavanaugh v. West*

Sonoma County Union High School (2003) 29 Cal. 4th 911, 916.

Mandate is also "employed to restrain a public official from the unlawful performance of a duty." *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal. App.3d 245, 263.

Here, the City had a clear, present, and ministerial duty to refrain from violating its obligations under *Labor Code* §2802 and from failing and/or refusing to indemnify its employees for necessary expenditures incurred as a direct consequence of obedience of employees to the directions of the employer. These provisions authorize the Court to find that Respondents unlawfully made Sergeant Bedard's continued employment contingent upon her written agreement to pay for Covid testing, which is illegal under California statutes. In fact, any "agreement" to waive rights protected by §2802 is void under *Labor Code* §2804. Mandate lies to compel compliance with *Labor Code*. CCP §1085(a).

Therefore, Sergeant Bedard is entitled to reinstatement to her employment in the Los Angeles Police Department with back pay.

Detective Yoon testified that the Department's failure to give Bedard a "reasonable period of time" to respond to the charge against her indicated to him that the Chief of Police had already made up his mind. A.R. 435.

At her Board of Rights, Bedard testified she did not sign the contract presented to her on November 5, 2021, because it required her to pay for testing. She was paying to take her daughter to a specialist and now she was being asked to pay for her own testing at work "where I know no one else was being charged for testing . . . So it didn't make any sense to me, it really didn't." A.R.359. Bedard testified that she had been paying for her daughter's treatments from June 2021 to the present. A.R. 361. She said she would be okay with testing if she were not required to pay for it. A.R. 371.

Sergeant Bedard also objected to providing information to a third-party vendor. A.R. 354, 356. And, she was aware that the Los Angeles Police Protective League had issues with Bluestone. A.R. 356. See Petitioner's Request for Judicial Notice of the "Statement of Decision" in Los Angeles Superior Court Case Number 21STCV39987, filed herewith under separate cover, wherein, on September 30, 2022, following a bench trial on July 13, 2022, the Court enjoined the City from requiring unvaccinated employees to bear the cost of City-required testing.

Sergeant Bedard also testified that she had been just two years away from being eligible for a full pension. A.R. 393. Now, she was eligible only for a 47% pension. A.R. 361, 393.

On May 17, 2022, LAPD's Communications Division announced that unvaccinated officers could use a third-party vendor, other than Bluestone. Such testing had to be done on the officer's own time and at the officer's expense. A.R. 1158.

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Under questioning from the Board of Rights, noting that the Department had withdrawn its requirement that Covid testing had to be done by Bluestone, Bedard said that she would agree to be tested using her own personal insurance, if she were allowed to return to work. A.R. 642-643.

On July 13, 2022, the Board of Rights, claiming that it was beyond their jurisdiction to adjudicate the validity of the ordinance requiring all present and future City employees to be vaccinated against Covid, found Bedard guilty of failing to comply with it. A.R. 674. "Sergeant Bedard not only refused to be vaccinated or tested or seek an exemption, she chose not to sign the notice. In doing so, she violated a condition of her employment." A.R. 675-676.

The Board of Rights also rejected Bedard's argument that requiring her to pay for the testing mandated by the City violated *Labor Code* § 2802, concluding that law applied only to private entities not public entities. A.R. 676. Moreover, the Board found this defense was beyond its "jurisdictional boundaries." A.R. 677.

In considering what the penalty should be, the Board reviewed Bedard's personnel records, noting that she had received over a hundred commendations, many of which were from citizens. The only negative thing in her file related to an on-duty vehicle accident in December 2006, which Sergeant Bedard said occurred "when we were chasing a bad guy." A.R. 679-680.

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The Board of Rights found that Bedard was a "highly qualified and excellent employee." A.R. 686. However, because Sergeant Bedard had not complied with the vaccine mandate "we are left with no alternative but to uphold her removal from employment with the Department." A.R. 687.

The Board did find that the Department violated Sergeant Bedard's rights under *Skelly v. State Personnel Board*, supra. A.R. 677, 687. The Board said the remedy was backpay from the date of her removal, November 10, 2021, to the time "discipline is validated by a full hearing and the decision becomes final." Therefore, Sergeant Bedard "shall be awarded backpay for the period of time as set forth in the applicable *Skelly* provisions." A.R. 687-688. An employee whose pre-disciplinary rights *Skelly* rights have been violated will be entitled to back pay, if she was taken off the payroll, until *Skelly* due process rights are met. *Barber v. State Personnel Board* (1976) 18 Cal.3d 395, 302. This would entitle Bedard to backpay from December 17, 2021, to July 20, 2022.

On July 20, 2022, the Chief of Police signed an order removing Bedard from her employment effective December 17, 2021. The Chief of Police decided the Board of Rights had no authority to order an award of backpay and said the Department would not comply with this part of the Board's decision. A.R. 1168.

On January 20, 2023, while Petitioner was preparing this Memorandum of Points and Authorities, she learned the City Administrative Officer (CAO) submitted to

the Los Angeles City Council a proposed Resolution to discontinue immediately the Covid-19 surveillance testing requirements of unvaccinated employees which had been imposed pursuant to Ordinance No. 187134. The City Administrative Officer acknowledged that requiring City employees to bear the cost of testing had been found to violate *Labor Code* § 2802. The proposed resolution provided that all City employees who incurred costs related to the mandatory testing requirements or were required to use their own time to undergo required testing "shall be reimbursed for such costs and/or time." The CAO reported that, to date, the City's contract with Bluestone for testing unvaccinated employees had cost the City "approximately $6.5MM." See Petitioner's Request for Judicial Notice, filed concurrently.

PETITIONER IS ENTITLED TO REINSTATEMENT WITH BACK PAY

Deputy Chief Graham testified that getting vaccinated was a condition of employment. A.R. 245. Persons who refused to be vaccinated, or who refused to sign a contract agreeing to pay an outside vendor for twice weekly tests until they were vaccinated, were subject to being fired. Police officers who actually got Covid simply took sick leave. A.R. 238.

Petitioner was served with the proposed agreement on November 5, 2021. She declined to sign it on November 7, 2021. On November 10, 2021, she was ordered to face charges at a Board of Rights. On December 29, 2021, she received her last paycheck.

APPENDIX I — EXCERPTS OF VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE; MEMORANDUM OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, CENTRAL DISTRICT, FILED AUGUST 10, 2022

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

Case No. 22ST CP03008

JEANNINE BEDARD,

Petitioner/Plaintiff,

v.

CITY OF LOS ANGELES, A MUNICIPAL CORPORATION AND CHARTER CITY WITHIN THE STATE OF CALIFORNIA, MICHEL MOORE IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE, AND DOES 1 THROUGH 10 INCLUSIVE,

Respondents/Defendants

**[Code of Civil Procedure §§ 1085 and 1094.5;
Labor Code §§ 2802, 2804, and 1102.5;
Los Angeles City Charter § 1070]**

Filed August 10, 2022

Appendix I

VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner Jeannine Bedard ("Bedard" or "Petitioner") respectfully moves this court for Peremptory Writ of Mandate, or other appropriate relief, and by this Verified Petition alleges:

1. At all times herein relevant, Petitioner was employed by Respondent, City of Los Angeles ("City"), as a tenured Police Officer, at the rank of Sergeant II, with 24 years of service with the Los Angeles Police Department ("LAPD" or "Department").

2. At all times herein relevant, Respondent, City of Los Angeles, was and is a municipal corporation operating under the laws of the State of California, as a chartered city.

3. At all times herein relevant, Respondent, Michel Moore ("Moore"), was and is the current Chief of Police ("COP") of Respondent City of Los Angeles.

4. The true names and capacities whether individual, corporate, associate or otherwise of Respondents are presently unknown to Petitioner. Petitioner will amend her Petition when the true names of Does 1 through 10 have been ascertained.

5. Respondents terminated Petitioner's employment with the LAPD for allegedly failing to comply with

changed conditions of employment pertaining to the new employer-mandated vaccination requirement Respondents imposed on Petitioner. A brief timeline of events follows:

6. On August 16, 2021, Respondent City of Los Angeles passed Ordinance Number 187134 ("Ordinance"), which added Article 12 to Chapter 7 of Division 4 of the *Los Angeles Administrative Code.* The Ordinance required each City employee, in essence, to be vaccinated against COVID-19, or request a medical or religious exemption by October 19, 2021. Respondents engaged in the meet and confer process with the Los Angeles Police Protective League ("LAPPL"), regarding the effects of the changes on the conditions of employment for the LAPPL's represented employees, including Petitioner. Respondents' changes to conditions of employment required employees who requested a medical or religious exemption to agree to have $260 deducted from their bi-weekly paychecks, or to be invoiced, for employer-mandated COVID-19 testing while awaiting their exemption or appeal determination.

* * *

15. On July 20, 2022, Chief Michel Moore signed the "Execution of the Order" ("EO") Form 1.73.00, confirming his final decision to remove Petitioner from her position as a Sergeant with the Los Angeles Police Department, yet based on a hand-written note on the EO, it appears the Department "will not comply" with the Board's Order awarding backpay for the Skelly and Due Process violations. Respondents served Petitioner the EO via US Mail on July 22, 2022.

16. Petitioner seeks a Peremptory Writ of Mandate overturning her termination and reinstating her to her position as a Police Officer with the Los Angeles Police Department with backpay, or other appropriate relief.

17. Petitioner has no plain, speedy or adequate legal remedy available except for this action. Petitioner has exhausted her administrative remedies.

18. At all times relevant, Petitioner was a member of Respondents civil service system. As such, Petitioner was entitled to the protections under the *Los Angeles City Charter* § 1070 and under the Public Safety Officers' Procedural Bill of Rights Act, *California Government Code* § 3300, et seq.

19. Per *Los Angeles City Charter* § 1070(f) and (1), a Board of Rights is a *de novo* hearing, where the Department has the burden of proving each charge by a preponderance of the evidence.

20. The *California Labor Code* § 2804 bars employers from requiring their employees to waive their right to such reimbursements. Even if an employment agreement has a term purporting to avoid the employer's responsibility, under *California Labor Code* § 2802(a), that term is null and void and will not be enforced in court. Additionally, employers who fire employees because they invoke their rights under California law can be liable for wrongful termination.

21. The *California Labor Code* §1102.5(c) bars employers from retaliating against employees who refuse to participate in an activity that would result in

a violation of state or federal statute. Here, Petitioner refused to pay for employer-mandated COVID-19 testing, where the City/employer is in violation of *California Labor Code* § 2802(a) as determined by the court in *Los Angeles Police Protective League v. City of Los Angeles,* No. 21STCV39987, Los Angeles County Superior Court (July 13, 2022). Petitioner has been retaliated against in the form of termination, for failing to "agree" to pay for the employer-mandated COVID-19 testing, an agreement which is a violation of state statute. The aforementioned case is pending in the Superior Court of California for the County of Los Angeles, and Petitioner intends to request judicial notice of the Court's file on this case in the future.

22. Under *California Government Code* § 12940(a), it is unlawful for an employer to discharge an employee because of their religious creed, or to discriminate against an employee "in compensation or in terms, conditions, or privileges of employment." Here, the employer, Respondent City of Los Angeles, has discriminated against unvaccinated employees who have medical concerns and / or sincerely held religious beliefs by modifying the conditions of their employment to require testing for COVID-19, while vaccinated employees are not required to test for COVID-19.

23. Petitioner was notified that she was under investigation, however, she was not afforded an investigatory interview pursuant to Memorandum of Understanding ("MOU") 24-22 § 10.0, Article 10.2, and was not advised of the nature of the investigation. Respondents gave Petitioner only 48-hours

* * *