



PERB Received
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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

PERB Filed
03/10/21

UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No: SF-CE-1862-M

Date Filed: 03/10/2021

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES If so, Case No _____ NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

- a. Full name: Santa Clara Police Officers' Association
- b. Mailing Address: P.O. Box 223, Santa Clara, CA 95052
- c. Telephone number: (408) 615-4700
- d. Name and title of agent to contact: Peter Hoffmann, Attorney E-mail Address: PHoffmann@RLSlawyers.com
Telephone number: (925) 609-1699 Fax No.: (925) 609-1690
- e. Bargaining Unit(s) involved: Police Officer, Police Sergeant, Police Lieutenant, and Police Recruit

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

- a. Full name: City of Santa Clara
- b. Mailing Address: 1500 Warburton Avenue Santa Clara, CA 95050
- c. Telephone number: (408) 615-2210
- d. Name and title of agent to contact: Deanna J. Santana, City Manager E-mail Address: DSantana@SantaClaraCA.gov
Telephone number: (408) 615-2210 Fax No.:

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

- a. Full name:
- b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

- a. Full name:
- b. Mailing Address:
- c. Agent:

5. GRIEVANCE PROCEDURE

¹An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569
PERB-61 (4/3/2020)

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Contra Costa,
State of California. I am over the age of 18 years. The name and address of my
Residence or business is 2300 Contra Costa Boulevard, Suite 500, Pleasant Hill, CA
94523

On March 10, 2021, I served the Unfair Practice Charge and attached
(Date) (Description of document(s))

Statement of Charge _____ in Case No. n/a
(Description of document(s) continued) PERB Case No., if known)

on the parties listed below by (check the applicable method(s)):

- placing a true copy thereof enclosed in a sealed envelope for collection and
delivery by the United States Postal Service or private delivery service following
ordinary business practices with postage or other costs prepaid;
- personal delivery;
- electronic service - I served a copy of the above-listed document(s) by
transmitting via electronic mail (e-mail) or via e-PERB to the electronic service
address(es) listed below on the date indicated. (May be used only if the party
being served has filed and served a notice consenting to electronic service or has
electronically filed a document with the Board. See PERB Regulation 32140(b).)

(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)

Deanna J. Santana
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct and that this declaration was executed on March 10, 2021,
(Date)
at Pleasant Hill, California
(City) (State)

Tracy Watson

(Type or print name)


(Signature)

6.d Statement of Charge

STATEMENT OF VIOLATION

Charging Party, Santa Clara Police Officers' Association ("Charging Party" or "SCPOA"), is the exclusive representative for employees of the City of Santa Clara ("Respondent" or "City") who work as sworn peace officers in the classifications of Police Officer, Police Sergeant, Police Lieutenant, and Police Recruit. The collective bargaining relationship between the parties is governed by the provisions of the Meyers-Milias-Brown Act ("MMBA"), Government Code section 3500 *et seq.* The SCPOA and the City are parties to a Memorandum of Understanding ("MOU") establishing the wages, hours, and other terms and conditions of employment negotiated by the Parties.

In this charge, SCPOA alleges that Respondent has: (1) interfered with the SCPOA's exercise of its right to organize and represent its members in violation of Government Code section 3503 and PERB Regulation 32603(b); and (2) interfered with SCPOA's members' right to join and participate in the activities of the employee organization of their choosing in violation of Government Code section 3502 and PERB Regulation 32603(a).

I. BACKGROUND

1. The SCPOA is the recognized exclusive employee organization, as that term is defined in Government Code section 3501(b), for City employees of the Santa Clara Police Department ("Department") working in the following classifications: Police Officer; Police Sergeant; Police Lieutenant; and Police Recruit.

2. Sergeant Alex Torke is the elected president of the SCPOA, a position he has held for approximately three (3) years.

3. Respondent is a charter city subject to the MMBA as a public agency as defined in Government Code section 3501(c).

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4. The SCPOA and the City are parties to a Memorandum of Understanding (“MOU”) with a term of December 23, 2018 – December 18, 2021.
5. In or about July of 2020, the City approached all of its employee organizations with a binding memorandum of understanding about the possibility of securing concessions in response to the economic impacts of the coronavirus pandemic.
6. In response to the City’s request, the SCPOA advised the City that it did not have authority to renegotiate its MOU, but agreed to engage in informal discussions to explore the possibility of identifying mutually agreeable terms.
7. As part of the Parties’ informal discussions, the City and the SCPOA each presented conceptual strategies for achieving cost savings that the presenting party would recommend to its constituents.
8. On or about October 1, 2020, the City’s Director of Human Resources sent correspondence to the employee organizations with whom it was seeking concessions during the term of a previously negotiated memorandum of understanding stating in relevant part:

During the late morning of September 29th, our Federal Legislative Consultant informed us that a second round of the HEROES Act was released by the House Democrats, which is anticipated to move forward over the next weeks. As drafted, this Act would provide funding to local agencies, including the City of Santa Clara in the amount of up to approximately \$34.0 million in one-time funds. While the deliberations of this legislative action are still being developed, with changes in final amounts pending, the intent to provide local governments with a sizable allocation is worth pausing Phase 1 of the City’s Budget Balancing action until more information is known. It is anticipated that a decision will be made in the next several weeks.

Since the decision and amount is unknown at this time, during the Council meeting, the City Manager recommended that the budget actions that were before the City Council, be continued for several weeks until we receive further information on the HEROES Act.

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We will provide an update as additional information is released on HEROES Version 2, as well as when the budget actions will be placed on a Council Agenda.

9. After advising the employee organizations of the anticipated federal funding, the City ceased its efforts to secure cost savings from the SCPOA and no further meetings were scheduled to address the City's previously stated fiscal concerns.

10. Pursuant to the terms of their previously negotiated Memoranda of Understanding, the City's employee organizations received their scheduled wage increases.

11. Unlike other employee organizations that received guaranteed increases, pursuant to Section 2.B., of the MOU, employees in SCPOA-represented classifications received a market wage increase in December 2020 to maintain a competitive position in the market for sworn peace officers.

II. THE RESPONDENT'S UNLAWFUL CONDUCT

12. On or about March 2, 2021, the City Council convened for a Stadium Authority and Special City Council Meeting. A video and audio recording of the meeting is available at: <https://www.youtube.com/watch?v=o7h-vle6fkq>.

13. A review of the Council agenda and packet materials demonstrates that neither the SCPOA nor labor relations with the SCPOA was on the City Council's calendar.

14. While considering amendments to the City budget which disproportionately cut resources for public safety and specifically the Santa Clara Police Department, members of the City Council used the platform to disparage and mischaracterize the SCPOA.

15. For example at approximately 3:58:08, after Mayor Lisa Gillmor encourages the City Council to utilize the City's robust Budget Stabilization Reserve in lieu of cutting the

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police budget for training, community service officers, and regional task force operations,

Councilmember Kevin Park stated:

Ya, so, and I hear that. And I also heard Councilmember Hardy's comment which is I mean the police are one of the units that have not bargained with us very well.

Councilmember Park's comments were stated although he was not a member of the City Council during bargaining between the SCPOA and the City. As Councilmember Park's comments run contrary to the fact that the City and the SCPOA successfully negotiated an MOU and the reality that the SCPOA expressed a willingness to work collaboratively with the City several months earlier when the City anticipated a budget shortfall, the clear intent of his comments were to disparage and vilify the SCPOA. Councilmember Park's comments serve to frustrate and impede the SCPOA's ability to effectively represent its members, and raise concerns among members of the activities of the SCPOA.

16. Although cuts to the budget reflect the City Council's priorities, councilmembers thereafter falsely suggested that the cuts to public safety could only be avoided if the SCPOA would agree to reopen its MOU and accept concessions.

17. For example at approximately 4:15:50, after Councilmember Kathy Watanabe joined Mayor Gillmor in encouraging the City Council to utilize the City's Budget Stabilization Reserve in lieu of cutting the police budget for training, community service officers, and regional task force operations, **Councilmember Karen Hardy** stated:

My concern is, I don't see how I can do that if POA is not willing to come back to the table and renegotiate.

After Mayor Gillmor allowed Torke to subsequently correct the Council's mischaracterization of the SCPOA's bargaining efforts (at approximately 4:17:56), Councilmember Hardy suggested that her vote would be swayed if the SCPOA would abruptly forfeit its recent market wage adjustment, stating:

I want ... I should say, as maker of the motion, I'd like to hear that they're willing to give back their 4.7 increase then.

Councilmember Hardy's comments were abruptly cut short by other members of the Council who noted the inappropriate nature of the statements.

RESPONDENT'S FIRST UNFAIR LABOR PRACTICE

Interference with SCPOA's Right to Organize and Represent Its Members

Violation of Government Code § 3503 and PERB Regulation 32603(b)

The City has a statutory obligation to provide "[r]ecognized employee organizations...the right to represent their members in their employment relations with public agencies." (Gov. Code § 3503) Pursuant to PERB Regulation 32603(b), it is an unfair practice for a public agency to deny to employee organizations rights guaranteed to them by Government Code section 3503. In response to the SCPOA's exercise of its statutory right to represent its members, the City has publicly disparaged and mischaracterized the SCPOA in terms that imply that the SCPOA is responsible for the City Council's policy decisions that are likely to adversely impact public safety. These inflammatory statements would tend to discourage an employee organization such as the SCPOA from continuing to exercise its right to represent its members in their employment relations with the City at a time when Respondent has publicly discussed its plan to defund the Santa Clara Police Department. Accordingly, the Respondent's public statements interfere with the SCPOA's right to represent its members in violation of Government Code section 3503 and PERB Regulation 32603(b).

RESPONDENT'S SECOND UNFAIR LABOR PRACTICE

Interference with a Public Employees' Right to Participate in Union Activities

Violation of Government Code § 3502 and PERB Regulation 32603(a)

The City has a statutory obligation to provide "public employees...the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations." (Gov. Code § 3502) Pursuant

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to PERB Regulation 32603(b), it is an unfair practice for a public agency to “interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502” In response to the SCPOA’s exercise of its statutory right to represent its members – including abiding by the terms of a negotiated contractual agreement – the City has publicly disparaged and mischaracterized the conduct of the SCPOA and its individual members. As these statements and misrepresentations would tend to discourage employees from joining or participating in the activities of the employee organization of their choosing, and coerce employees into abandoning their union activities – including forfeiting statutory and contractual rights – Respondent’s public statements interfere with the SCPOA members’ rights in violation of Government Code section 3502 and PERB Regulation 32603(a).

REQUESTED REMEDY

Charging Party requests that PERB grant the following remedies for Respondent’s violations of the MMBA:

1. Find that Respondent City of Santa Clara has interfered with the SCPOA’s right to represent its members in employment relations as provided in Government Code section 3503 and PERB Regulation 32603(b).
2. Find that Respondent City of Santa Clara has interfered with public employees’ right to join and participate in employee organization activities of their choosing for the purpose of representation on all matters of employer-employee relations as provided in Government Code section 3502 and PERB Regulation 32603(a).
3. Order Respondent City of Santa Clara to physically post notice of its unlawful conduct for 30 consecutive days to ensure that the public and all employees affected by the City’s conduct are notified of their rights, with this notice posted at all work locations in the

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City where notices to employees customarily are posted, signed by an authorized agent of the Respondent, indicating that the City will comply with the terms of PERB's Order.

4. Order Respondent City of Santa Clara to electronically post notice of its unlawful conduct for 30 consecutive days to ensure that the public and all employees affected by the City's conduct are notified of their rights, with such electronic notice posted on each electronic message, intranet, internet site, and other electronic means customarily used by the City to communicate with its employees and the community, including a prominent display on all pages of the City of Santa Clara website.

5. Order Respondent City of Santa Clara to include notice of its unlawful conduct on the Council Agenda for a Regular Meeting.

6. Order Respondent City of Santa Clara to cease and desist from any means of interfering with the SCPOA's exercise of its rights under the MMBA.

7. Order Respondent City of Santa Clara to cease and desist from any means of interfering with the rights of SCPOA members under the MMBA.

8. For such other and further relief PERB deems as an appropriate remedy for Respondent's unlawful conduct.