Meoli v. San Diego Civ. Serv. Comm'n

Court of Appeal of California, Fourth Appellate District, Division One

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Reporter
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MICHAEL MEOLI, Plaintiff and Appellant, v. SAN DIEGO CIVIL SERVICE COMMISSION, Defendant and Respondent; CITY OF SAN DIEGO, Real Party in Interest and Respondent.

Opinion

[*1] APPEAL from an order of the Superior Court of San Diego County, Judith F. Hayes, Judge. Affirmed.

Shewry & Saldaña and Christopher Saldaña for Plaintiff and Appellant. Mara W. Elliott, City Attorney, George Schaefer, Assistant City Attorney,

Michael J. McGowan and Tyler Louis Krentz, Deputy City Attorney, Attorneys for Defendant and Respondent and Real Party in Interest and Respondent.

Michael Meoli appeals from an order of the superior court denying his petition for writ of administrative mandate. At all relevant times, Meoli was a firefighter with the San Diego Fire-Rescue Department (Department) of the City of San Diego (City). In February 2012 and January 2013, Meoli was involved in two separate incidents, each of which resulted in a 24-hour suspension for misconduct. Meoli appealed each suspension to the San Diego Civil Service Commission (Commission), which upheld each suspension. The superior court denied Meoli's petition, ruling in relevant part that the Commission did not abuse its discretion in Meoli's administrative appeals.

Based on our independent review of the record and the legal issues Meoli raises in this appeal, Meoli did not meet his burden of establishing trial court [*2] error. Accordingly, we affirm the order denying Meoli's petition for writ of administrative mandate.

I. RECORD ON APPEAL

Before we describe the underlying facts, we must identify what comprises the record on appeal. Meoli designated a clerk's transcript of the superior court proceedings, a reporter's transcript of the July 2018 superior court proceedings, and the record from the April 2015 administrative proceedings before the Commission.1 The proceedings recommenced more than a year later, in June 2016, and concluded in an October 2016 Commission ruling, "[Meoli] was afforded due process and . . . the two 24-hour

1 At the conclusion of the April 2015 proceedings, the City rested its case and

moved its exhibits into evidence.

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suspensions were appropriate, fully warranted, and justified." Meoli did not designate the record from the June 2016 administrative proceedings.

Along with his opening brief on appeal in this court, Meoli filed a motion to take judicial notice of or, in the alternative, to augment the record to include: (1) the reporter's transcript of the April 28, 2015 proceedings before the Commission; (2) the reporter's transcript of the April 29, 2015 [*3] proceedings before the Commission; (3) an uncertified rough draft of a reporter's transcript of the June 9, 2016 proceedings before the Commission; and (4) the reporter's transcript of the June 10, 2016 proceedings before the

Commission. As we explain, we deny the motion in its entirety.

The two reporter's transcripts from the April 2015 proceedings are already before the court. They were exhibits 1 and 2 of Meoli's notice of lodgment in support of his petition in the superior court, and Meoli included this notice in his designation of the record in this appeal.

Since the two transcripts from the June 2016 proceedings were not presented to the trial court, however, we will neither augment the record on appeal to include them nor take judicial notice of them. That is because, " 'when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered.' " (*Vons Companies, Inc. v. Seabest Foods,Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) "Augmentation does not function to supplementthe record with materials not before the trial court." (*Ibid*.; see Cal. Rules of Court,

rule 8.155(a)(1)(A) [augmentation limited to documents "filed or lodged in the case in superior court"].) Consistently, [*4] "[r]eviewing courts generally do not take judicial notice 3

of evidence not presented to the trial court." (*Vons Companies*, at p. 444, fn. 3.) As particularly applicable here, reviewing courts will deny a request for judicial notice where it would " 'improperly augment' " the appellate record. (*People v. Waidla* (2000) 22 Cal.4th 690, 703, fn. 1.) Moreover, with regard to judicial notice, Meoli relies on Evidence Code section 452, subdivision (d), which applies to court records; yet there is no indication that either of the June 2016 transcripts is or ever was part of any court record.2 Finally, regardless of the statutory basis of Meoli's request as to the transcript of proceedings on June 9, 2016, we deny it on the basis that Meoli presented-with no disclosure or explanation in the motion or his appellate brief-an unsigned, uncertified, unedited document.3

II. FACTUAL AND PROCEDURAL BACKGROUND Meoli does not challenge the substantiality of the evidence to support the

Commission's findings. Instead, he presents mostly legal issues and arguments based on alleged violations of various federal and state laws, including specifically portions of the

2 In any event, taking judicial notice of a reporter's transcript does not result in acceptance of the statements in the transcript *as evidence*: " 'While [*5] we may take judicial notice of court records . . . , the truth of matters asserted in such documents is not subject to judicial notice.' " (*Coyne v. City and County of San Francisco* (2017) 9 Cal.App.5th 1215, 1223, fn. 3.)

3 The transcript from June 9, 2016 contains no title page and expressly states on the first page that it is an "UNCERTIFIED REALTIME ROUGH DRAFT" and "is not to be

. . . relied upon in whole, or in part, as the official transcript" and "*cannot be used to citein any court proceeding*," since it "has not been reviewed or edited by the certified shorthand reporter for accuracy." (Italics added.)

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Firefighters Procedural Bill of Rights Act (Gov. Code, 3250 et seq.), during the administrative process. For this reason, there is no need to go into much detail in describing the two incidents that resulted in the two 24-hour suspensions.

We summarize the facts based on our review of the evidence in the light most favorable to the superior court's order denying Meoli's petition for writ of administrative mandate. (*Achene v. Pierce Joint Unified School Dist.* (2009) 176 Cal.App.4th 757, 761 [appeal from denial of petition for writ of administrative mandate]; *Getz v. City of WestHollywood* (1991) 233 Cal.App.3d 625, 627 [same].) "In reviewing the evidence, an appellate court must resolve all conflicts in favor of the party prevailing in the superior court and must give that party the benefit of every reasonable inference in support [*6] of the judgment." (*Pasadena Unified School Dist. v. Commission On Professional Competence*

(1977) 20 Cal.3d 309, 314 [same].)

A. *February 2012 Fire Station Incident*

On February 3, 2012, at the request of the Department's professional standards

unit, the chief from a battalion other than the one to which Meoli was assigned served Meoli with a notification of fact-finding. Meoli's in-station captain joined the battalion chief as the chief provided Meoli with a copy of the notification and read it to him. After Meoli signed the notification, he and the battalion chief exchanged a few words before the chief told Meoli that the conversation was over. Meoli continued the

communication, including physical contact with the battalion chief, and concluded with a statement that the chief "took . . . as a verbal threat."

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Because he "felt . . . verbally and physically threatened," the visiting battalion chief called in the shift supervisor on duty and Meoli's battalion chief. When they arrived, the visiting battalion chief explained to the two others what had happened, and the shift commander made the decision to-and did-suspend Meoli immediately based on the City's zero tolerance policy regarding threats.4

By notice of suspension [*7] read and received by Meoli on May 28, 2013, the City suspended Meoli for 24 hours based on his action on February 3, 2012, as summarized above and described in more detail in the notice. The notice also advised Meoli of his right to appeal the suspension.

B. *The January 2013 Dog Park Incident*

In January 2013, Cheryl M., a retired City police officer, was walking her dogs at

Canyonside Community Park in the Rancho Peñasquitos area of San Diego. She had

been at the park for approximately a half hour when she first saw Meoli with his dog off-

leash-i.e., a dog she described as a "very large pit bull" weighing approximately 150

4 In his appellate brief, Meoli describes certain events that followed his suspension.

Because most of these factual contentions are not supported by proper citations to the record, we will " ' "disregard" ' " or " ' "ignore" ' " them. (*Fierro v. Landry's RestaurantInc.* (2019) 32 Cal.App.5th 276, 281, fn. 5 (*Fierro*), citing Cal. Rules of Court,

rule 8.204(a)(1)(C); accord, *McOwen v. Grossman* (2007) 153 Cal.App.4th 937, 947 (*McOwen*) ["Statements of fact that are not supported by references to the record are disregarded by the reviewing court."].)

Likewise, we have disregarded and ignored the *entire* "Statement of Facts and Procedural History" presented by the Commission and the City in their appellate [*8] brief. It does not contain any references to the record on appeal, providing instead only citations to pages in the Appellant's Opening Brief. (*Fierro*, *supra*, 32 Cal.App.5th at p. 281,

fn. 5; *McOwen*, *supra*, 153 Cal.App.4th at p. 947; Cal. Rules of Court, rule 8.204(a)(1)(C).)

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pounds. Cheryl was "on alert" because Meoli was "trying to call [his dog] and get control of it, and it wasn't paying attention."

At that time, Cheryl "ventured way out and looped around . . . to avoid having any contact with [Meoli's] dog" as she attempted to return to her car. As Cheryl continued on her alternate route, Meoli's dog "rushed" her, crossing a ball field "at a full run through the open gate" and coming within inches of her.

The dog remained in front of Cheryl "for maybe a good 30 seconds" before Meoli caught up to them. His dog's hackles were raised-which she understood to mean the dog was " 'angry,' " " 'nervous' " and " 'insecure.' " Cheryl was "frozen," asking Meoli multiple times to leash his dog; but he stayed approximately five yards away, pacing in a semi-circle and telling her to " 'Just relax. Calm down.' " Meoli did nothing to contain his dog, which was "locked right onto" Cheryl, such that each time she made a step, the dog would move with her, not letting her pass.

A man driving a white pickup truck stopped [*9] next to them, saw that Cheryl was "in some sort of trouble," and yelled to Meoli multiple times to leash his dog. Meoli did not leash his dog, instead heading in the direction of the man from the pickup truck. The men argued: The man from the pickup truck told Meoli that, if he (Meoli) did not leash his dog, he (the man from the pickup truck) would call the police-to which Meoli responded, " 'Don't bother. I am the police' "; and the man from the pickup truck asked for Meoli's name and badge number-which, Cheryl testified, a police officer must provide upon request-but Meoli did not respond.

As the two men argued, Cheryl left with her dogs. 7

By notice of suspension received by Meoli on December 6, 2013, the City suspended Meoli for 24 hours based on his action on January 23, 2013, as summarized above and described in more detail in the notice. The notice also advised Meoli of his right to appeal the suspension.

C. *The Commission Proceedings*

Meoli appealed from both notices of suspension, the two appeals were

consolidated in May 2014, and the Commission heard them together on April 28 and 29, 2015, and June 9 and 10, 2016. The Commission president convened the appeal (Hearing Officer), [*10] and he was assisted by an administrative law judge. A senior deputy city attorney and an assistant to the personnel director advised the Commission; a deputy city attorney, a fire chief, and an assistant fire chief were present on behalf of the City; and an attorney represented Meoli.

Meoli, through counsel, submitted a number of motions, the rulings on which will be discussed in the Discussion, *post*, as necessary, as they affect the issues Meoli raises on appeal.

After receiving oral and documentary evidence, the Hearing Officer issued a 19-page ruling with attached exhibits, and the Commission ratified the Hearing Officer's findings and conclusions in October 2016. The Commission concluded that Meoli "was afforded due process and that the two 24-hour suspensions were appropriate, fully warranted, and justified" based in part on the following findings of the Hearing Officer:

• Meoli "was not credible in his explanation of the events" from either of the two incidents.

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• Since Meoli "offered no evidence of bias or a basis for an alleged conspiracy," his "suggestion that there was some sort of conspiracy against him by the Department is unfounded."

• "In both instances leading to discipline, [*11] [Meoli] appears to lack awareness of or take responsibility for his own actions."

• With regard to each 24-hour suspension, "the discipline was warranted under the circumstances, was based on legitimate disciplinary concerns, and was not excessive or extreme based on all the circumstances."5

• In particular, "the discipline issued was warranted under the circumstances based on [Meoli's] conduct."

• The City "met its burden of proof . . . such that the suspensions are upheld."

D. *The Superior Court Action*

Dissatisfied with the Commission's ruling, in January 2017 Meoli filed the

underlying action-i.e., a petition for "a writ of administrative mandate, a traditional writ, or a peremptory writ." In his petition, Meoli alleged that "the [Commission's] decision was not supported by substantial evidence, the Commission's relevant legal interpretations are incorrect, and the Commission hearing did not proceed in a manner required by law." Meoli named the Commission as the respondent and the City as the real party in interest.

Consistent with his petition, in his supporting points and authorities, Meoli argued that "[t]he Commission abused its discretion by unreasonably interpreting the legal authorities [*12] relevant to this matter and misapprehending and misapplying the facts,

5 The Hearing Officer commented that "the Department demonstrated leniency

considering the discipline for his conduct could have, and was initially recommended to be, far worse."

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resulting in objective errors of the law, which prejudiced Petitioner. The Commission's findings are not supported by the evidence." The Commission and the City filed a joint opposition, Meoli filed a reply to the opposition, and the trial court entertained oral argument. By minute order, the court denied Meoli's writ petition. We will present the parties' trial court arguments and the court's specific rulings and analyses, as necessary, in the Discussion, *post*.

Meoli timely appealed from the order denying his writ petition. He filed an opening brief, and the City and the Commission (together Respondents) filed a joint respondents' brief.

III. STANDARD OF REVIEW

The parties' briefs on the standard of review are not helpful. Meoli properly tells us that the superior court's review of an adjudicatory administrative decision is subject to two possible standards, noting that our standard of review is different depending on which of the [*13] two standards the superior court was required to apply. However, he does not suggest, let alone argue, which standard the superior court was supposed to (or did) apply. Respondents' position is less helpful, since Respondents do not cite any cases or present any argument as to the standard of review to be applied in this appeal, citing two pages of Meoli's opening brief

and telling us that they "do not take any issue with" Meoli's presentation.

In his petition, Meoli seeks relief pursuant to Code of Civil Procedure section 1094.5 (which allows for a writ of administrative mandate) or, alternatively,

section 1085 (which allows for a traditional writ of mandate). "Section 1094.5 applies 10

where a writ 'is issued for the purpose of inquiring into the validity of any final administrative *order* or *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.' " (*Stafford v. Attending Staff Assn. of LAC + USC Medical Center* (2019) 41 Cal.App.5th 629, 636, fn. 4 (*Stafford*), quoting Code Civ. Proc., 1094.5, subd. (a).) In contrast, section 1085 provides that a (traditional) writ of mandate "may be issued by any court to any inferior tribunal . . . [or] board . . . to compel the [*14] performance of an 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 . . .

[or] board[.]" (See *Stafford*, at p. 636 [a " 'traditional' writ of mandate under section 1085 is a 'method for compelling a public entity to perform a legal and usually ministerial duty' "].)

A. *Traditional Writ of Mandate (Code Civ. Proc., 1085)*

We are not concerned with the standard of review under Code of Civil Procedure section 1085. In his appeal, Meoli fails to identify either a pertinent act of the Commission "which the law specially enjoins" or a "right . . . to which [he] is entitled" and "unlawfully precluded by" the Commission. (Code Civ. Proc., 1085.) As we discuss in detail at part IV., *post*, Meoli contends only that the Commission abused its discretion by "unreasonably interpreting the legal authorities," "misapprehending and misapplying the facts," and making findings "not supported by the evidence."

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Accordingly, Meoli has forfeited appellate consideration of any potential trial court error associated with the denial of his petition for traditional mandate relief under Code of Civil Procedure section 1085. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 139 ([*15] *Horowitz*) [" 'every brief should contain a legal argument with citation of authorities on the points made' "; and " '[i]f none is furnished on a particular point, the court may treat it as waived, and pass it without consideration' "].)

B. *Administrative Writ of Mandate (Code Civ. Proc., 1094.5)*

Code of Civil Procedure section 1094.5 directs the procedure for obtaining judicial review of a final administrative determination by writ of mandate.

Two subdivisions of section 1094.5 are potentially applicable in cases like Meoli's. Subdivision (b) provides: "[t]he inquiry in such a case shall extend to the questions whether the [Commission] 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 [Commission] 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." Subdivision (c) of section 1094.5 provides: "Where it is claimed that the [Commission's] findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are [*16] not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record."

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For purposes of the trial court's determination whether the agency abused its discretion, Code of Civil Procedure section 1094.5 does not specify which cases are subject to independent judgment review and which cases are subject to substantial evidence review. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811.) Meoli does not advocate for one, rather than the other, standard. To the contrary, he presents both standards and tells us that the appropriate standard depends on whether the petitioner's claim involves "a fundamental vested right"; but he does not discuss what a fundamental vested right is or whether he contends that his claim involves such "a fundamental vested right."

Determination of the issue in this case is straightforward: " 'Discipline imposed on public employees affects their fundamental vested right in employment.' " (*Ochoa v.County of Kern* (2018) 22

Cal.App.5th 235, 245; accord,*Seibert v. City of San Jose*

(2016) 247 Cal.App.4th 1027, 1042 [an individual's "interest in his public employment status implicate[s] a 'fundamental vested right' "].) Likewise, the standard of review in an appeal from a trial court judgment in [*17] an administrative mandate proceeding affecting a fundamental vested right is also straightforward: " '[A]n appellate court must sustain the trial court's factual findings that are supported by substantial evidence. Questions of law are reviewed de novo.' " (*Ochoa*, at p. 246; accord, *Stafford*, *supra*, 41 Cal.App.5th at

p. 636.)

IV. DISCUSSION

"[A] trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court,

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that the trial court committed an error that justifies reversal of the judgment." (*Jamesonv. Desta* (2018) 5 Cal.5th 594, 609 (*Jameson*).)

Meoli summarizes his arguments on appeal as follows: "[T]he Commission abused its discretion by unreasonably interpreting the legal authorities relevant to this matter and misapprehending and misapplying the facts, resulting in objective errors of the law, which prejudiced [Meoli]. The Commission's findings are not supported by the evidence." There are a number of problems with Meoli's approach.

Initially, as we explained at part III., *ante*, we review the decision of the *trialcourt*, not of the *Commission*. Significantly, Meoli focuses on the Commission's rulings, not once suggesting how the trial court, as opposed [*18] to the Commission, might have erred. Although Meoli's appellate brief contains an occasional comment to the effect that the trial court came to the same conclusion as the Commission, Meoli does not discuss the trial court's rulings or any potential lack of substantial evidence in support.6 An appellant "must point out the error specifically showing accurately wherein the lower court's action is deemed erroneous" (*Devers v. Greenwood* (1956) 139 Cal.App.2d 345, 352 (*Devers*) [under former rule 15(a)]); and " 'we need not address contentions not properly briefed' " under this standard (*Winslett v. 1811 27th Avenue, LLC* (2018) 26 Cal.App.5th 239, 248, fn. 6 (*Winslett*)). Accordingly, Meoli has forfeited appellate

6 In preparing his appellate brief, Meoli added these occasional comments about the

trial court, often not even a full sentence, to a *verbatim copy* of what he presented to the trial court-where, in fact, the Commission's rulings were on review.

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review of any findings or rulings as to substantial evidence, since only *the trial court's* rulings are before us for review.7

Moreover, even if Meoli had presented substantial evidence arguments based on *the trial court's* rulings, we necessarily would have had to reject them and affirm the trial court's order. Where, as here, the appellant does not provide the [*19] complete reporter's transcript of the proceedings on appeal, with regard to any evidence-based arguments, "it is presumed that the unreported . . . testimony would demonstrate the absence of error." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.) Because the appellant has the burden of establishing reversible error on appeal, " '[f]ailure to provide an adequate record on an issue requires that the issue be resolved against [the appellant]' " if the issue is based on the adequacy of the evidence presented. (*Jameson*, *supra*, 5 Cal.5th at p. 609.)

However, with regard to *legal* rulings that are not based on factual findings or the substantiality of the evidence-i.e., legal rulings based on an adequate record-we will overlook Meoli's failure to direct his arguments to the superior court's rulings. We will reach the merits of such arguments, as if Meoli had directed them to the court's (as opposed to the Commission's) rulings.8 That is because the court reached the same

7 On any issue for which we conclude Meoli has forfeited appellate review- regardless of the basis of the forfeiture-we express no view as to the merits of the trial court's ruling or the issue on appeal.

8 Respondents are not prejudiced, since, in their appellate brief, they do not argue that Meoli's presentation [*20] is procedurally improper, and they respond on the merits.

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conclusions as the Commission; and, as to legal issues, we review the trial court's *ruling*, not its reasoning

(*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18-19).

On appeal Meoli challenges on legal grounds the rulings on four motions that he presented to the Commission in his appeal of the two suspensions. As we explain, Meoli has not established reversible error with regard to the rulings in any of the four motions- each of which Meoli presented to the Commission in the form of a "brief."9

A. *The Role of the Administrative Law Judge*

In his appellate brief, Meoli tells us that he requested an administrative law judge

(ALJ), as opposed to the Hearing Officer, to preside over the Commission proceedings- i.e., to "take an active role in ruling on evidence, interpreting the law, and determining the final outcome." He further tells us that, at the administrative hearing, the Commission "denied this motion in part and allowed the ALJ to only decide procedural issues implicating the Fire Fighter Bill of Rights [*sic*]," such that "the ALJ did not have any input as to evidentiary or legal matters."

Meoli argues that, by not requiring the ALJ to have input on evidentiary or legal matters, the Commission [*21] violated Government Code section 11512 (which is part of the Administrative Procedure Act, Gov. Code, 11340 et seq.). Meoli quotes from subsections (a) and (b), emphasizing specific language in (b), as follows:

" '(a) Every hearing in a contested case shall be presided over by an administrative law judge. The agency itself shall determine whether

9 Meoli, who designated an administrative record of almost 1,000 pages, has not

provided record references for any of these four motions/briefs or the Commission's rulings on any of these four motions/briefs.

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the administrative law judge is to hear the case alone or whether the agency itself is to hear the case with the administrative law judge.

" '(b) When the agency itself hears the case, the administrative law judge shall **preside at the hearing, rule on the admission andexclusion of evidence, and advise the agency on matters of law**; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. . . .' " (Gov. Code, 11512.)

Based on this statutory language, Meoli contends that "[t]he Commission's decision to

not allow the ALJ to rule on the admission and exclusion of evidence, and advise the

agency on matters [*22] of law was an abuse of discretion"; and for this reason, "any ruling . . .

reached without the input of the ALJ were contrary to law . . . ."10

The trial court rejected this argument. Relying on a statute contained within the

Firefighters Procedural Bill of Rights Act, the court ruled: Government Code

section 3254.5, subdivision (a) expressly allows "the employing department"-here, the

City-to adopt "rules and procedures" for administrative appeals instituted by

10 Meoli also argues that the Commission's rulings, "reached without the input of the

ALJ[,] were . . . guided by counsel to the [Commission], who was also an employee of the City Attorney's Office." Because Meoli provides no examples or record references, for the suggestion that an employee of the City Attorney's Office "guided" the Commission's rulings, he has forfeited appellate consideration of this record-based argument. (*United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 156 (*United Grand*) [" ' "[i]f a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived" ' "].) Meoli also has forfeited appellate consideration of his related contention that "there was a conflict of interest for the City Attorney's Office to be both representing the [*23] [City] and advising the [C]ommission," because he failed to present any authority or legal argument in support of his statement. (*Horowitz*, *supra*, 79 Cal.App.3d at p. 139.)

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firefighters;11 the employing department here adopted such rules and procedures;12 the Commission "elected to conduct the [Meoli] administrative appeal by the rules of the employing department"; and, therefore, the

Commission did not have to comply with Government Code section 11512, subdivision (b)'s requirement that, when the Commission hears an appeal, the ALJ must rule on the admissibility of evidence and advise the Commission on legal matters.

On appeal, Meoli does not mention the trial court's ruling or suggest how the trial court erred. Once again, in his appellate brief Meoli merely repeats verbatim his trial court argument. In doing so, he attacks *only* the *Commission's ruling*, not considering either the City's adoption of rules and procedures pursuant to Government Code

section 3254, subdivision (a), or the effect of those rules and procedures on the requirements of Government Code section 11512. By not addressing the *trial court'sruling*, Meoli necessarily failed to meet his burden of establishing reversible error in that ruling-which we *presume* to be correct. (See *Jameson, supra*, 5 Cal.5th at p. 609.)

11 "An administrative appeal instituted by a firefighter under this chapter shall [*24] be conducted in conformance with rules and procedures *adopted by the employingdepartment* or licensing or certifying agency that are in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2." (Gov. Code,

3254.5, subd. (a), italics added.)

12 The Commission submitted to the trial court exhibit No. 5 from the Commission proceedings. In their brief on appeal, Respondents tell us that this 26-page document contains "the rules and procedures" that the City adopted for a firefighter's administrative appeal under Government Code section 3254.5, subdivision (a). This exhibit provides in part: "The Commission, at its discretion, may appoint one or more of its members to hear the appeal and submit findings of fact and a decision to the Commission. Based on the findings of fact, the Commission may affirm, modify, or overturn the decision . . . ."

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More to the point, where (as here) the appellant fails to specifically identify and explain what he contends to be the trial court's error, the appellant has failed to properly brief the matter, forfeiting appellate review of the issue. (See *Devers*, *supra*, 139 Cal.App.2d 345, 352; *Winslett*, *supra*, 26 Cal.App.5th at p. 248, fn. 6.)

B. *The City's Alleged Violations of Federal and State Law During the City's February 2012 Delivery of the Notice of Fact-Finding [*25]*

The City's February 2012 delivery of the notice of fact-finding (Notice) resulted

initially in Meoli's immediate suspension and ultimately in the May 2013 notice of

suspension. Meoli argues on appeal that, as a result of the City's violations of federal and

state law "which stemmed from" the delivery of the Notice, he is entitled to a new

administrative appeal. The first set of arguments is based on what Meoli describes as the

City's refusal to notify his union of the February 2012 delivery of the Notice, and the

second set of arguments is based on what Meoli contends is the City's violation of

Government Code section 3253 during what he characterizes as the City's "interrogation"

of him when the City delivered the February 2012 Notice. As we explain, neither set of

arguments provides Meoli with a basis for relief on appeal.

1. *The City's Failure to Notify Meoli's Union*

Referring to the February 2012 delivery of the Notice, Meoli contends that the

City's actions directly violated title 29 United States Code section 157,13 which is part of

13 "Employees shall have the right to self-organization, to form, join, or assist labor

organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities [*26] for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring

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the National Labor Relations Act (29 U.S.C. 151 et

seq.), and Government Code section 3253, subdivision (i),14 which is part of the Firefighters Procedural Bill of Rights Act (Gov. Code, 3250 et seq.).

In his brief on appeal, Meoli relies on the following facts to support his argument:

• Unrelated to delivery of the Notice, the Department previously had agreed to notify the union prior to serving Meoli with potentially adverse notices of discipline.

• The hearing panel that was constituted pursuant to *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194 acknowledged this agreement and found that the City failed to honor it when delivering the Notice.

• During the incident, Meoli requested the presence of a local union representative, but was told that union representation had nothing to do with the issuance of an immediate suspension.

• When Meoli received the immediate suspension (based on the City's zero tolerance policy regarding threats), he again requested the presence of a local union representative.

According to Meoli, because the City failed to abide by its agreement to notify the union

before the City served [*27] Meoli with any notice of discipline, the trial court erred in

upholding the Commission's decision. Since the Department (i.e., the City) should not

membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title." (29 U.S.C. 157.)

14 "When any firefighter is under investigation and subjected to interrogation by his

or her commanding officer, or any other member designated by the employing department or licensing or certifying agency, that could lead to punitive action, the interrogation shall be conducted under the following conditions: [¶] . . . [¶] (i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that may result in punitive action against any firefighter, that firefighter, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. . . ." (Gov. Code, 3253.)

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have proceeded without giving notice to Meoli's union, Meoli's argument continues, the Commission should have excluded the evidence of any facts following the delivery of the Notice. On this basis, Meoli suggests the following remedy: We should either "overturn[]" [*28] the discipline (i.e., the 24-hour suspension), or vacate the Commission's ruling and remand the matter to the Commission "with instructions to re-hear the case without this evidence" of what occurred after delivery of the Notice.

Once again, on a number of bases, Meoli forfeited appellate review of the issue. First, Meoli provided no record references for the above-described "facts"

underlying his claim. (*United Grand*, *supra*, 36 Cal.App.5th at p. 156.) Moreover, substantial evidence for the predicate fact-namely, that the Department had agreed to notify the union prior to serving Meoli with an adverse notice of discipline-is lacking. To the contrary, the battalion chief who delivered the Notice testified, according to the Commission, that he "was not aware of any agreement between the . . . Department and Local 145 that a union representative be present any time [Meoli] is issued discipline-related documents." (See *Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1245 ["We do not review the evidence to see if there is substantial evidence to support the losing party's version of events, but only to see if substantial evidence exists to support the verdict in favor of the prevailing party."].)

Second, the trial court ruled that, for purposes of title 29 United States Code section 157 (see fn. 13, *ante*) and Government Code section 3253, subdivision (i) (see fn. [*29] 14, *ante*), the Department's service of *the Notice* was neither an "interrogation" as required for an application of section 157 nor an "investigation" or "disciplinary action"

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as required for an application of section 3253, subdivision (i). Rather, according to the trial court, the Notice only "notified [Meoli] that an investigation and interrogation *willtake place in the future*." (Italics added.) Meoli does not mention the trial court's ruling, let alone argue why or how the court erred; and on this basis, Meoli forfeited appellate consideration of his argument related to the City's purported obligation to notify Meoli's union. (*Winslett*, *supra*, 26 Cal.App.5th at p. 248, fn. 6; *Horowitz*, *supra*, 79 Cal.App.3d at p. 139.) Moreover, Meoli does not suggest that the court's finding-namely,

that the Notice notified Meoli that an investigation and interrogation would take place *in thefuture*-is not supported by substantial evidence.15

Finally, by not presenting any legal authority in support of the argument that his remedy for a violation of either title 29 United States Code section 157 or Government Code section 3253, subdivision (i), is a reversal of the discipline or a new hearing before the Commission at which the City would be precluded from presenting any evidence of the incident after delivery of the Notice, Meoli forfeited appellate consideration of the remedy. (*Winslett*, *supra*, 26 Cal.App.5th at p. 248, fn. 6; *Horowitz*, *supra*, 79 Cal.App.3d at p. 139.)

For these reasons, [*30] Meoli has not demonstrated that the trial court erred in ruling that, at the time the City presented him the Notice, he was entitled to union assistance

15 Nor could he. As we introduced *ante*, where (as here) Meoli's legal argument is

based on the evidence in support of his position, because Meoli failed to provide a

complete reporter's transcript on appeal, we must resolve the issue against him; i.e., we assume that the unreported proceedings contain substantial evidence to support the finding at issue. (*Jameson*, *supra*, 5 Cal.5th at p. 609.)

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under either 29 United States Code section 157 or Government Code section 3253,

subdivision (i).

2. *Other Alleged Violations of Government Code Section 3253*

Government Code section 3253 deals with a firefighter's rights when he or she "is

under investigation and subjected to interrogation." Meoli argues that City violated

subdivisions (b), (g), and (h) of section 3253 during the February 2012 incident at the fire

station.16

As we explained *ante*, the trial court found that the delivery of the Notice communicated to Meoli that an investigation and interrogation would take place in the

future. Although Meoli acknowledges this ruling by the trial court, he argues that it was

"not supported by the law or any reasoned analysis of the applicable statute[]." However,

Meoli does not explain this alleged error, [*31] since he fails to discuss the trial court's rulings,

the applicable standard, or the evidence to support a violation of the applicable standard.

By this insufficient showing, Meoli forfeited appellate consideration of these alleged

16 "When any firefighter is under investigation and subjected to interrogation by his

or her commanding officer, or any other member designated by the employing

department or licensing or certifying agency, that could lead to punitive action, the interrogation shall be conducted under the following conditions: [¶] . . . [¶]

"(b) . . . All questions directed to the firefighter under interrogation shall be asked by and through no more than two interrogators at one time. [¶] . . . [¶]

"(g) The complete interrogation of a firefighter may be recorded. . . . The firefighter being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

"(h) If, prior to or during the interrogation of a firefighter, it is contemplated that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights." (Gov. Code, 3253.)

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violations of Government Code section 3253. (*Winslett*, *supra*, 26 Cal.App.5th at p. 248,

fn. 6; *Horowitz*, *supra*, 79 Cal.App.3d at p. 139.)

Furthermore, [*32] for purposes of establishing a violation of subdivision (b)

(questioning limited to "no more than two interrogators at a time") and subdivision (h)

(contemplation of "a criminal offense" requires disclosure of "constitutional rights") of

Government Code section 3253, Meoli asks us to consider not just the delivery of the

Notice, but also "what followed." According to Meoli, what followed was "the

confluence of four people having discussions with Mr. Meoli after phoning the police

(and clearly, then, alleging to the police department that Mr. Meoli is potentially involved

in a criminal violation) and later utilizing those observations as the basis for Meoli's 24-

hour suspension." Meoli then presents his legal argument, which reads in full: "If that's

not an interrogation, it is difficult to discern what could possibly so qualify." Once again,

Meoli's factual presentation lacks record references,17 and his argument lacks legal

authority. For these reasons, Meoli forfeited appellate consideration of his contention

that the City violated subdivision (b) or subdivision (h) of Government Code

section 3253. (*United Grand*, *supra*, 36 Cal.App.5th at p. 156; *Winslett*, *supra*, 26

Cal.App.5th at p. 248, fn. 6; *Horowitz*, *supra*, 79 Cal.App.3d at p. 139.)

17 Elsewhere in his brief, Meoli tells us-with a record reference-that two people

presented [*33] the Notice and that two additional people were called in due to safety concerns. However, Meoli does not provide record references for, and our independent review of the administrative record does not confirm, Meoli's representations either (1) that any of the four individuals who were with Meoli called the police, or (2) that any of the observations from any of the four individuals was a basis of the discipline that followed the Notice.

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C. *The City's Alleged Violations of the Federal and State Privacy Laws During the January 2013 Incident at the Dog Park*

Meoli argues that, during the January 2013 incident at the dog park, the City

violated the Driver's Privacy Protection Act of 1994 (DPPA), 18 United States Code section 2721 et seq., and Vehicle Code section 1808, subdivision (e). According to Meoli, during the incident, Cheryl "obtained Meoli's license plate number by photographing it" and "then utilized her previous experience with the SDPD to phone a former colleague who provided her with [Meoli's] name and occupation[.]"

Based on this evidence, Meoli contends that, because the City's police department participated in this process in violation of the DPPA, the exclusionary rule requires suppression of all evidence the City obtained. Meoli's legal argument provides [*34] as follows: "The federal Driver's Privacy Protection Act ('DPPA'), 18 U.S.C. 2721, *etseq*. prohibits the disclosure of personal identifying information without the express consent of the person to whom such information applies . . . . The Department of Motor Vehicles is also precluded from delivering information on drivers when the provision of that information would violate the DPPA. Cal. Vehicle Code 1808(e). . . . [¶] In situations such as these, 4th Amendment's exclusionary rule (borrowed criminal law and procedure) has been applied in administrative matters. *Dyson v. California StatePersonnel Bd.* (1989) 213 Cal.App.3d 711 [(*Dyson*)]." (*Sic*.)

The DPPA is found at chapter 123 ("Prohibition on Release and Use of Certain Personal Information From State Motor Vehicle Records") of title 18 ("Crimes and Criminal Procedure") of the United States Code. The DPPA contains four statutes, each

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of which contains subsections. (18 U.S.C. 2721-2724.) "The DPPA generally

prohibits a state DMV, 'and any officer, employee, or contractor thereof' from knowingly

disclosing or otherwise making available an individual's personal information obtained

by the DMV in connection with a motor vehicle record. . . . The penalty for

noncompliance with the DPPA is a civil penalty of up to $5,000 a day for each day of

substantial noncompliance, as well as [*35] criminal fines and possible liability in private

causes of action by the drivers personally." (*County of Los Angeles v. Superior Court*

(2015) 242 Cal.App.4th 475, 487.) Notably, Meoli does not identify which provision(s)

of the DPPA he contends the City violated; nor does he seek a remedy provided by the

DPPA.

For these reasons, Meoli again forfeits appellate review by having failed to present

an argument with citation to and application of legal authorities. (*Horowitz*, *supra*, 79

Cal.App.3d at p. 139.) In particular, we will not speculate which statutory provision

within the DPPA Meoli contends the City violated.

Further, without discussion, argument, or additional authorities, Meoli cites

Dyson, *supra*, 213 Cal.App.3d 711, in support of his statement that the exclusionary

rule-based on a violation of the Fourth Amendment of our federal Constitution18-

18 The Fourth Amendment provides in full: "The right of the people to be secure in

their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (U.S. Const., 4th Amend.) "The Fourth Amendment to the United States Constitution *prohibits the government from conducting unreasonablesearches and seizures [*36] of private property*." (*People v. Smith* (2020) 46 Cal.App.5th 375,

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applies in this case. Without more, Meoli has not presented an argument supported by applicable legal authority, especially in light of our Supreme Court's limiting statement more than 25 years ago (and almost four years after *Dyson*): "It is settled that the exclusionary rule does not apply to all administrative hearings. (E.g., *Emslie v. State Bar*

(1974) 11 Cal.3d 210, 229 [attorney disciplinary proceeding]; *Finkelstein v. StatePersonnel Bd.* (1990) 218 Cal.App.3d 264 [franchise tax board employee disciplinaryproceeding] . . . .)" (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 859 [administrative proceedings to suspend driver's license].) In any event, *Dyson* is not as broad as Meoli implies by his one sentence argument quoted above. The *Dyson* court held only that the appointing authority which presided over the administrative appeal (there, the State Personnel Board) "is collaterally estopped to deny the constitutional invalidity of the search" as determined in prior criminal proceedings in which the evidence was excluded and the prosecution dismissed. (*Dyson*, at p. 714.) The present case does not involve a criminal prosecution, the seizure of property, or a potential Fourth Amendment violation. Finally, Meoli presents no authority for an application of the exclusionary rule-as opposed to the remedies contained within [*37] the DPPA-in his administrative appeal, based on what he contends was an alleged violation of the DPPA by the City during the incident at the fire station.

382, italics added.) Meoli does not suggest how the City may have violated the Fourth Amendment by providing Meoli's name and occupation following Cheryl's request based on an automobile license plate number.

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D. *Meoli's Request for a Dismissal of the Suspension Following the February 2012 Fire Station Incident*

During the 18-month interval between the two sessions before the Commission

(Apr. 2015 - Oct. 2016), Meoli filed a motion to reverse and dismiss the 24-hour

suspension that followed the February 2012 incident at the fire station. According to

Meoli, the incident is alleged to have occurred on February 3, 2102; the Department

delivered the notice of suspension more than 15 months later on May 28, 2013; and

Government Code section 3254, subdivision (d) requires all disciplinary investigations to

be completed within one year of the incident.19

Meoli tells us that the superior court failed to reverse the Commission's decision,

but does not mention the court's reasoning or analysis and fails to cite to or discuss the

Commission's ruling on Meoli's motion. In fact, the superior court ruled that the

[*38] investigation was "completed" within the one-year period for purposes of Government

Code section 3254, subdivision (d), based on the court's related ruling that the

November 30, 2012 advance notice of suspension-i.e., not the May 2013 notice of

19 "Punitive action or denial of promotion on grounds other than merit shall not be

undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of discovery by the employing fire department or licensing or certifying agency. . . . If the employing department or licensing or certifying agency determines that discipline may be taken, it shall complete its investigation and notify the firefighter of its proposed disciplinary action within that year[.]" (Gov. Code, 3254, subd. (d).)

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suspension, as suggested by Meoli-provided the requisite notice of the proposed disciplinary action.20

The issue is one of statutory interpretation, which we decide de novo. (*Flethez v.San Bernardino County Employees Retirement Assn.* (2017) 2 Cal.5th 630, 639 [administrative mandate proceedings].) We must determine, therefore, when-for purposes of Government Code section 3254, subdivision (d)-"the investigation of the allegation [of misconduct] is . . . completed." The trial court ruled that the investigation was completed on November 30, 2012, when Meoli was given [*39] a copy of the advance notice of suspension.21 Meoli does not suggest how or why the superior court's ruling

20 More specifically, the court ruled: "It is undisputed that the one-year limitation period began on February 3, 2012 . . . . [The] Advance Notice of Suspension dated November 30, 2012, spells out the proposed suspension and informs [Meoli] of the opportunity to appeal the recommended action. *The investigation was completed byNovember 30, 2012, within the one-year period*. While [Meoli] challenged the recommendation and had a meeting on February 25, 2013, regarding the recommended action, *the investigation had been completed by November 30, 2012*, and [Meoli] was notified of the 'proposed disciplinary action' " as required by Government Code section 3254, subdivision (d). (Italics added.)

21 This advance notice is seven typewritten pages and contains eight printed attachments. It is addressed to Meoli; it is entitled "Advance Notice of 48-Hour Suspension"; the first sentence notifies Meoli that he is being recommended for a 48-hour suspension; the second paragraph notifies Meoli that the suspension is being recommended based on his threatening behavior on February 3, 2012; the next two paragraphs describe the threatening behavior; [*40] the remainder of the notice contains 25 separately numbered paragraphs, each describing an independent basis for the suspension; the notice concludes by advising Meoli that he has the opportunity "to respond and appeal this recommended action," but that he will be deemed to have waived the opportunity if he fails to timely respond; and the eight attachments are copies of "all documents upon which these charges are based."

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was wrong, arguing only that "[t]he fact-finding regarding th[e Notice] incident was convened on February 25, 2013-more than a year after the incident."

Once again, with no explanation of *what* "fact-finding . . . convened on February 25, 2013"-including a description of the event(s) with record references- Meoli has forfeited appellate consideration of his argument. (*Winslett*, *supra*, 26 Cal.App.5th at p. 248, fn. 6; *Horowitz*, *supra*, 79 Cal.App.3d at p. 139; *United Grand*, *supra*, 36 Cal.App.5th at p. 156.) Indeed, Meoli mentions the February 25, 2013 fact-finding date only once in his appellate brief, and we have quoted his entire argument at the end of the immediately preceding paragraph.

Meoli has not met his burden of establishing reversible error. V. DISPOSITION

The July 27, 2018 minute order denying Meoli's petition is affirmed. Respondents are entitled to their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

IRION, J.

WE [*41] CONCUR:

McCONNELL, P. J.

AARON, J.

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