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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 CITY OF LOS ANGELES,) Case No. **24STCP00648**
13 Petitioner,)
14 vs.)
15 UNITED FIREFIGHTERS OF LOS)
16 ANGELES CITY, IAFF LOCAL 112, and) [Filed concurrently with Appendix of Evidence
17 KENNETH PEREA, ARBITRATOR, IN HIS) in Support of Petition to Vacate Arbitration
18 OFFICIAL CAPACITY,) Award]
19 Respondents.)
20) (Exempt from filing fees pursuant to Gov.
21) Code, § 6103.)

22 Petitioner, City of Los Angeles (“City” or “Petitioner”), brings this Petition to Vacate Arbitration
23 Award (“Petition”) against Respondent, United Firefighters of Los Angeles City, IAFF Local 112
24 (“UFLAC”), and Respondent, Arbitrator Kenneth Perea.

25 **INTRODUCTION**

26 1. On or about September 27, 2019, the City and UFLAC entered into a memorandum of
27 understanding (“MOU 23”), effective July 1, 2019 – June 29, 2024. (See MOU 23, a true and correct
28 copy of which is attached hereto as **Exhibit 1** and incorporated by reference.) Article 2.1 of MOU 23

1 sets forth the parties' grievance and arbitration procedures, including certain limitations thereof. (**Exhibit**
2 **1.**) Article 2.1, Section II, specifies that the grievance arbitration procedures do not cover "matters for
3 which an administrative remedy is provided under Section 1060 of the City Charter." (**Exhibit 1.**) Also,
4 in accordance with Article 2.1, Section III, the arbitrator's decision "shall not add to, subtract from, or
5 otherwise modify the terms and conditions" of the MOU. (**Exhibit 1.**)

6 2. This action arises out of a class grievance filed by UFLAC on or about December 13, 2021, on
7 behalf of Aaron Brownell and all other affected UFLAC members represented in MOU 23. (See Formal
8 Statement of Grievance, dated December 13, 2021, a true and correct copy of which is attached hereto as
9 **Exhibit 2** and incorporated by reference.) The grievance alleged, in pertinent part, that the City violated
10 past practice when it placed such UFLAC members on leave without pay before the members could select
11 a Board of Rights. (**Exhibit 2.**)

12 3. The Arbitrator, Kenneth A. Perea, held an evidentiary hearing on the grievance. On or about
13 November 21, 2023, Arbitrator Perea issued his Findings and Award, ERB Case No. ARB 4035
14 ("Award"), which concluded, in pertinent part, that the City "violated an established past practice under
15 MOU No. 23 when it placed certain LAFD Officers and Firefighters on unpaid leaves who were alleged
16 to be in violation of Ordinance No. 187134 before establishment of their Board of Rights and confirmed
17 dates of administrative proceedings thereof pursuant to Los Angeles City Charter Section 1060." (See
18 Arbitrator's Findings and Award, November 21, 2023, a true and correct copy of which is attached hereto
19 as **Exhibit 3** and incorporated by reference.)

20 **PARTIES**

21 4. Petitioner City is a duly chartered city located within the State of California. The City is the
22 employer of the employee-members represented by UFLAC.

23 5. Respondent UFLAC is now, and at all times herein mentioned was, a recognized employee
24 organization and is the exclusive representative of firefighters and fire captains employed by the City at
25 the Los Angeles Fire Department ("LAFD" or "Department").

26 6. Arbitrator Kenneth Perea is, and at all times herein mentioned was, an arbitrator chosen by the
27 parties to arbitrate this dispute between the City of Los Angeles, on the one hand, and UFLAC, on the
28 other hand, from a list provided by the City of Los Angeles Employee Relations Board. Pursuant to

1 California Code of Civil Procedure Section 1286.4, all parties to an arbitration should have adequate
2 notice that a court may vacate an award and have an opportunity to respond. (*Law Finance Group v. Key*
3 (2023), 14 Cal. 5th 932, 956.)

4 **JURISDICTION AND VENUE**

5 7. This Court has jurisdiction over this action pursuant to Code of Civil Procedure section 1285 *et*
6 *seq.*

7 8. Los Angeles County is an appropriate venue because the events that are the subject of this action
8 occurred within the County of Los Angeles, and the memorandum of understanding upon which this
9 action is based was entered into and has been performed in the County of Los Angeles.

10 **FACTUAL ALLEGATIONS**

11 9. On or about September 2, 2020, the City adopted a resolution formally declaring a fiscal state of
12 emergency resulting from the COVID-19 pandemic (“September 2nd Resolution”). (See Official Action
13 of the Los Angeles City Council, Council File No. 20-0600, with attachments, a true and correct copy of
14 which is attached hereto as **Exhibit 4** and incorporated by reference.)

15 10. On or about August 18, 2021, the City adopted Ordinance No. 187134 (“the Ordinance”),
16 requiring all City employees to be fully vaccinated for COVID-19, or request an exemption, and report
17 their vaccination status no later than October 19, 2021. (See Ordinance No. 187134, a true and correct
18 copy of which is attached hereto as **Exhibit 5** and incorporated by reference.) These requirements
19 became conditions of employment for all employees, effective October 20, 2021, unless an employee
20 was approved for a qualifying exemption. (**Exhibit 5.**)

21 11. On or about October 26, 2021, the City adopted a resolution implementing consequences for
22 non-compliance with the Ordinance (“October 26th Resolution”). (See Official Action of the Los
23 Angeles City Council, Council File No. 21-0921, with attachments, a true and correct copy of which is
24 attached hereto as **Exhibit 6** and incorporated by reference.) The October 26th Resolution further stated,
25 in pertinent part, as follows: “[T]he City would be subjected to a significant financial burden if it had to
26 provide a weekly testing option for all unvaccinated City employees, or place all unvaccinated City
27 employees on paid leave, while simultaneously paying overtime to cover staffing shortages resulting
28 from their absence. Either option would seriously compromise the City’s ability to meet its ongoing

1 financial obligations and adequately provide essential public services to the public . . .” (**Exhibit 6**.)

2 12. Pursuant to the foregoing, the City directed all departments to take various actions, including
3 placing all non-compliant employees off duty, without pay, beginning on December 19, 2021, pending
4 subsequent due process proceedings. (See Memorandum, dated October 28, 2021, without attachments,
5 a true and correct copy of which is attached hereto as **Exhibit 7** and incorporated by reference.)

6 13. The City decided to place all noncompliant workers on unpaid leave given the significant
7 potential financial cost to the City. (See City’s Closing Brief, a true and correct copy of which is attached
8 hereto as **Exhibit 8** and incorporated by reference, at 5:2-9.) As AFLAC admitted at the hearing, LAFD
9 would have to backfill every position for noncompliant members who were placed off work. (**Exhibit 8**
10 at 5:7-9.) This would total approximately 300 positions for which the City would have been required to
11 backfill *and* pay extra compensation, while simultaneously paying the non-compliant members who were
12 not working—all within one department at a time of financial decline. (**Exhibit 8** at 5:9-11; see also
13 Transcript of Proceedings, a true and correct copy of which is attached hereto as **Exhibit 14** and
14 incorporated by reference, at 70:12-20, 126:13-128:3.) As such, noncompliant AFLAC members were
15 served with a notice placing them off duty without pay pending their Board of Rights hearing for failing
16 to meet a condition of employment. (**Exhibit 8** at 5:11-13; see also Draft Notice of Non-Compliance
17 with City Ordinance and Vaccine Policy, a true and correct copy of which is attached hereto as **Exhibit**
18 **9** and incorporated by reference.)

19 14. The City’s placing employees on unpaid leave for failing to comply with the Ordinance has been
20 upheld administratively and in court under the same emergency situation. (See Ruling on Demurrer to
21 Plaintiff’s Second Amended Complaint, *Firefighters4Freedom v. City of Los Angeles*, Super. Ct. Los
22 Angeles County, 2022, No. 21STCV34490, a true and correct copy of which is attached hereto as **Exhibit**
23 **10** and incorporated by reference; see also Decision and Award, ERB Case No. ARB 4004, April 7, 2023,
24 a true and correct copy of which is attached hereto as **Exhibit 11** and incorporated by reference.)

25 15. On or about December 13, 2021, AFLAC filed a group grievance on behalf of its firefighters with
26 the City /LAFD pursuant to MOU 23, Article 2.1, Section 5. MOU 23 is the contractual agreement
27 between the City/LAFD and AFLAC which serves as the basis for the underlying arbitration in this
28 matter. (**Exhibit 1.**)

1 16. The group grievance filed by UFLAC asserts a violation of LAFD Rules and Regulations based
2 on the following allegations: (1) LAFD violated a requirement that service of process for disciplinary
3 actions must be in person or by registered mail and (2) LAFD violated “lawful past practice by imposing
4 disciplinary action and/or placing unit members on leave without pay and benefits.” (**Exhibit 2.**)

5 17. Under MOU 23, Article 2.1, “[a]rbitration of a grievance hereunder shall be limited to the formal
6 grievance filed by the employee to the extent that said grievance has not been satisfactorily resolved.”

7 (**Exhibit 1.**)

8 18. While the Award initially appears to indicate the arbitrator understood the scope of his authority,
9 the Award thereafter goes on a tangent to reinterpret Los Angeles City Charter Section 1060, eventually
10 finding the parties had a “mutual intent to integrate” Charter Section 1060 into their longstanding MOU.

11 (**Exhibit 3, at p. 17**)

12 19. The Los Angeles City Charter (“Charter”) is the governing document of the City of Los Angeles,
13 and can only be added to, modified, or altered through a majority vote of the citizens of the City of Los
14 Angeles. (Cal. Const., art. XI, § 3(a); Elec. Code , § 9225(a)(1), (2), and (3).)

15 20. Charter Section 1060 sets forth the due process procedure for discipline of firefighters in the
16 City, including selection of a Board of Rights, composition of a Board of Rights, and time and place of
17 hearing, and provides the Fire Chief may temporarily remove any member (firefighter) from duty pending
18 a Board of Rights.

19 21. The group grievance in this matter does not mention Charter Section 1060 or City Personnel
20 Policy Section 33.1 as the bases of the group grievance.

FIRST CAUSE OF ACTION

(Petition to Vacate Arbitration Award, Code Civ. Proc., § 1286.2 – Violation of Public Policy)

22 22. Petitioner hereby reincorporates and realleges each of the foregoing allegations set forth in
23 paragraphs 1 to 21 as though fully set forth herein.

25 23. A petition to vacate an arbitration award shall be filed and served not later than 100 days after
26 service of the arbitration award. (Code Civ. Proc., § 1288.) Here, this Petition is timely because one
27 hundred (100) days have not elapsed from the date on which City was served with a signed copy of the
28 Award.

1 24. The Court must vacate and set aside the Award because Arbitrator Perea exceeded his authority,
2 and the Award cannot be corrected without affecting the merits of the decision upon the controversy
3 submitted. (Code Civ. Proc., § 1286.2(a)(4).) Arbitrators exceed their authority if they issue an award
4 that violates public policy or a statutory right. (*Board of Education v. Round Valley Teachers*
5 *Assn.* (1996) 13 Cal.4th 269, 272; *City of Palo Alto v. Service Employees Internat. Union* (1999) 77
6 Cal.App.4th 327, 338–340; *Department of Human Resources v. International Union of Operating*
7 *Engineers* (2020) 58 Cal.App.5th 861, 877.)

8 25. First, the Award violates public policy because it infringes on the City’s police powers under the
9 California Constitution and the Charter of the City (“City Charter”). The state constitution grants the
10 City broad police powers to promulgate and enforce ordinances and regulations. (Cal. Const., art. XI, §
11 71; *Higgins v. City of Santa Monica* (1964) 62 Cal.2d 24, 30–31.) Additionally, as a charter city, the City
12 has exclusive authority over municipal affairs and may exercise all powers not expressly limited by the
13 Charter or the California Constitution. (Cal. Const., art. XI, § 5; *Miller v. City of Sacramento* (1977) 66
14 Cal.App.3d 863, 867-868.) The City has broad authority in exercising its police powers and determining
15 what is reasonable to protect public safety, health, morals, and general welfare. (*Carlin v. City of Palm*
16 *Springs* (1971) 14 Cal.App.3d 706, 711.) Such powers cannot be surrendered or delegated to an
17 arbitrator. (*San Francisco Fire Fighters v. City and County of San Francisco* (1977) 68 Cal.App.3d 896,
18 901-902.)

19 26. The City exercised its police power pursuant to its broad authority when promulgating the
20 Ordinance and effectuating the subsequent enforcement actions. This included, specifically, ensuring the
21 Department placed non-compliant employees off duty, without pay, within the prescribed timelines.
22 Placing non-compliant members on unpaid leave was, therefore, an inextricable component of the
23 Ordinance itself and the City’s related police powers. Consistent with the September 2nd Resolution and
24 October 26th Resolution, the City’s decision to place employees on unpaid leave was also justified based
25 on the City’s well-founded concerns for health and safety, as well as the intricately related financial
26 concerns surrounding the pandemic. Given the importance of maintaining its financial resources during
27 public health emergencies, the City had a duty to safeguard its economic well-being in order to protect
28 the health and safety of its employees and citizens. The Department was directly vulnerable to these

1 financial concerns, as it provides essential services and would have been forced to backfill all of the
2 positions of the non-compliant employees out on leave.

3 27. Irrespective of his interpretation of the MOU or any other related personnel policies, Arbitrator
4 Perea was not, and cannot be, in a position to determine whether and to what extent placing non-compliant
5 members on unpaid leave was necessary or otherwise prudent as a matter of City policy and governance,
6 particularly during a worldwide pandemic. The City retains exclusive rulemaking authority to manage
7 municipal affairs and address such issues based on the relevant circumstances. Importantly, the City's
8 exercise of police powers in the subject dispute was not expressly limited by the state constitution nor
9 City Charter, and Arbitrator Perea completely lacked any authority to limit such powers. Thus, by
10 concluding the City was prohibited from taking the critical responsive actions at issue, Arbitrator Perea
11 rendered an Award which violated public policy and exceeded his authority.

12 28. Second, the Award violates public policy because it infringes on the City's duty to protect health
13 and safety. "There is no public policy more important or more fundamental than the one favoring the
14 effective protection of the lives and property of citizens. [Citation.]" (*General Dynamics Corp. v.*
15 *Superior Court* (1994) 7 Cal.4th 1164, 1183.) Relatedly, workplace safety statutes express an explicit
16 public policy requiring employers to take reasonable steps to provide a safe and secure workplace. (Lab.
17 Code, §§ 6400(a), 6401; *Bonner v. Workers' Comp. Appeals Bd.* (1990) 225 Cal.App.3d 1023, 1034; *City*
18 *of Palo Alto v. Service Employees Internat. Union* (1999) 77 Cal.App.4th 327, 336.)

19 29. To protect health and safety, the City must safeguard its financial well-being and resources,
20 especially during emergencies, and must maintain the discretion and latitude to take timely and decisive
21 actions in furtherance of this goal. These public policy considerations directly supported the City's lawful
22 Ordinance and the related resolutions and actions. Notwithstanding, Arbitrator Perea concluded
23 incorrectly that the City cannot place non-compliant firefighters on unpaid leave, even during a pandemic.
24 Not only does such a requirement infringe on the City's police powers, but it would also have a
25 detrimental impact on health and safety, particularly in future emergencies with similarly dire
26 consequences. Arbitrator Perea disregarded such considerations by substituting the City's judgment with
27 his own. In doing so, he violated public policy regarding public safety and exceeded his authority.

1 30. Based on the foregoing, Petitioner is entitled to an order vacating and setting aside Arbitrator
2 Perea's Findings and Award in ERB Case No. ARB 4035.

3 **SECOND CAUSE OF ACTION**

4 **(Petition to Vacate Arbitration Award, Code Civ. Proc., § 1286.2 –
5 Exceeding Scope of Contractual Authority)**

6 31. Petitioner hereby reincorporates and realleges each of the foregoing allegations set forth in
7 paragraphs 1 to 30 as though fully set forth herein.

8 32. The Court must vacate and set aside the Award because Arbitrator Perea exceeded his authority,
9 and the Award cannot be corrected without affecting the merits of the decision upon the controversy
10 submitted. (Code Civ. Proc., § 1286.2(a)(4).) The scope of arbitration is a matter of agreement between
11 the parties, and the authority of an arbitrator derives from, and is limited by, the agreement to arbitrate.
12 (*Moncharsh v. Heily & Blasé* (1992) 3 Cal.4th 1, 8.) Arbitrators exceed such authority when they act
13 outside the scope of their contractually delegated authority by (a) deciding an issue which was not before
14 them, and/or (b) issuing an award that amounts to a re-writing of the parties' agreement. (*Blue Cross of*
15 *California v. Jones* (1993) 19 Cal. App. 4th 220, 227.)

16 33. First, Arbitrator Perea acted outside the scope of his contractually delegated authority by deciding
17 an issue not before him. The applicable issue was whether the City violated an established past practice
18 by placing noncompliant members on unpaid leave pending their selection of a Board of Rights. (**Exhibit**
19 **3** at p. 2.) Arbitrator Perea asserted that Charter Section 1060, along with City Personnel Policy Section
20 33.1, is integrated within the grievance arbitration procedure under Article 2.0 of MOU 23, and as such,
21 he suggested that he was required to construe Charter Section 1060 to decide the aforementioned issue.
22 (**Exhibit 3** at pp. 17-18.) However, by further suggesting that Charter Section 1060 is ambiguous on the
23 issue presented, Arbitrator Perea decided multiple different issues that were not before him, including (i)
24 whether past practice can and should be analyzed for purposes of Charter Section 1060, (ii) whether there
25 is an accepted, binding past practice between the parties regarding Charter Section 1060, and (iii) whether
26 the City's placement of members on unpaid leave violated such past practice under Charter Section 1060.
27 (**Exhibit 3** at pp. 18-24.)

1 34. Even if Charter Section 1060 was vague and ambiguous, which it is not, the City Charter is not a
2 collective bargaining agreement or memorandum of understanding for purposes of applying any
3 purported past practice as “an aid for contractual interpretation.” Rather, the City Charter and its
4 underlying provisions represent the supreme law of the City, as adopted by a vote of the people, and can
5 only be amended or supplemented through a vote of the people. The City accordingly did not and could
6 not agree to arbitrate the issue of whether it violated any alleged past practice under Charter Section 1060.

7 35. Additionally, Arbitrator Perea stated Fire Department members “who were removed from duty
8 without pay due to their non-compliance with the Ordinance have the right to seek redress through
9 procedures of City Charter Section 1060,” which he believed supported his conclusion that placing
10 UFCAC members on unpaid leave was a form of discipline. (**Exhibit 3** at pp. 22, emphasis added.)
11 Importantly, however, the parties’ grievance arbitration procedures exclude “matters for which an
12 administrative remedy is provided under Section 1060 of the City Charter.” (**Exhibit 1**, Article 2.1,
13 Section II.) The fact is that Los Angeles Charter Section 1060 governs the Board of Rights process itself,
14 which was not at issue here. Instead, the issue here – and the arbitrator’s authority – was pursuant to a
15 separate arbitration provision under MOU 23. Accordingly, Arbitrator Perea exceeded his authority by
16 deciding whether placing employees on unpaid leave violated Charter Section 1060, as that issue was not
17 arbitrable.

18 36. Second, even assuming, *arguendo*, Charter Section 1060 and/or City Personnel Policy Section
19 33.1 were integrated into MOU 23, the Award shall be vacated if it amounts to a re-writing of the MOU.
20 Consistent with applicable law, MOU 23 expressly prohibits an arbitration award from adding to,
21 subtracting from, or otherwise modifying any of the terms and conditions in the MOU. (**Exhibit 1**,
22 Article 2.1, Section III.)

23 37. Here, Arbitrator Perea improperly concluded that Charter Section 1060 requires the City to keep
24 all UFCAC members on paid leave, irrespective of a public health emergency. However, as UFCAC and
25 Arbitrator Perea both conceded, there is no provision or language under Section 1060 specifying any
26 such requirement. (**Exhibit 3** at p. 4; see also Union’s Post-Hearing Brief, a true and correct copy of
27 which is attached hereto as **Exhibit 12** and incorporated by reference, at 4:17-21.) Even so, Arbitrator
28 Perea unilaterally created and imposed this requirement into Charter Section 1060, thereby re-writing

1 Charter Section 1060 without authorization.

2 38. Further, Arbitrator Perea similarly re-wrote Personnel Policy Section 33.1. It was undisputed that
3 Section 33.1, subdivision (C), authorizes the Department to remove employees from work during an
4 emergency, such as when a weapon is involved or an employee poses a threat to others. (**Exhibit 3** at p.
5 5; **Exhibit 12** at 5:16-20; see also City Personnel Policy Section 33.1, a true and correct copy of which
6 is attached hereto as **Exhibit 13** and incorporated by reference.) However, Arbitrator Perea concluded,
7 without limitation, that Section 33.1 “specifically provides” and “requires” the subject employee be
8 placed ‘off work with pay.’” (**Exhibit 3** at pp. 5, 22.) To reach such an expansive conclusion, which is
9 directly contradicted by the plain language of Section 33.1, Arbitrator Perea improperly modified the
10 express provisions of this policy. Specifically, although he block-quoted almost the entirety of Section
11 33.1, subdivision (C), he specifically and completely omitted the concluding paragraph. As referenced
12 in bold, this omitted paragraph is directly relevant:

13 . . . If the next level supervisor or personnel office are not available, or it is
14 impractical to contact them, the supervisor should take the following actions:

15 • Call 9-1-1 emergency when a weapon is involved or when there is an
16 immediate and direct threat to employees or the public. If the danger is not
17 to this level but assistance is needed, call General Services Security at (213)
978-4670.

18 • Direct the employee to leave the worksite immediately. Place the employee
19 who posed the immediate threat off work with pay.

20 • If possible, have another, higher level supervisor present when directing the
employee’s removal.

21 **If an employee is removed from the worksite under emergency circumstances,
22 the circumstances and rationale for the removal should be carefully
23 documented by the supervisor and/or the employing department’s personnel
24 office and the procedures outlined above should be followed to the extent
25 feasible under the circumstances.**

26 (**Exhibit 13**, subdivision (C), emphasis added; see also **Exhibit 3** at pp. 10-11.)

27 39. As plainly evidenced above, subdivision (C) neither “specifically provides nor “requires” that the
28 City must place all applicable employees off work with pay. Instead, it unequivocally confers discretion
upon the City in that regard, depending on the feasibility under the circumstances.

1 40. Put simply, Arbitrator Perea unilaterally amended material policy language—by adding to,
2 subtracting from, and modifying the terms of Charter Section 1060 and Personnel Policy Section 33.1—
3 while simultaneously manufacturing a non-existent policy of his own. Therefore, Arbitrator Perea
4 exceeded his authority.

5 41. Although the City can acknowledge the general policy in favor arbitration awards, any such policy
6 is entirely outweighed here, considering the extent to which the Award violates multiple public policies
7 and grossly exceeded Arbitrator Perea’s authority. The Award cannot be corrected without affecting the
8 merits of the dispute and must be vacated.

9 42. Based on the foregoing, Petitioner is entitled to an order vacating and setting aside Arbitrator
10 Perea’s Findings and Award in ERB Case No. ARB 4035.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, as remedies for the causes of action asserted above, Petitioner City prays for
13 relief as follows:

14 1. That the Court issue an order vacating and setting aside Arbitrator Perea’s Findings and
15 Award in ERB Case No. ARB 4035;
16 2. For attorneys’ fees and costs of this action, if appropriate; and
17 3. Such other and further relief as the Court deems just and appropriate.

18
19 DATED: February 29, 2024

Respectfully submitted,

20 HYDEE FELDSTEIN SOTO, City Attorney

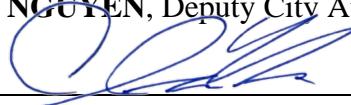
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