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April 16, 2018

Harold Schaitberger
General President
International Association of
Fire Fighters
1750 New York Ave., N.W.
Washington, D.C. 20006

Re: Favorable Decision in Guardian Policy Case of Owen "Cliff" Snider v. City of South Pasadena, CA

Dear Harold:

This is a more detailed summary of the favorable decision of the PERB Administrative Law Judge (ALJ).

As background, the City of South Pasadena terminated Local 3675 President Cliff Snider, in retaliation for his union leadership activities. Specifically, he was enforcing the right to bargain over changes in working conditions, first by requesting to bargain, and later by filing an Unfair Labor Practice (ULP) charge over the City's refusal to bargain. After an earlier back injury, and while he was on paid sick leave, Snider participated in an 8-mile "Spartan Race". Chief Mario Rueda terminated Snider on the asserted grounds of dishonesty, abuse of sick leave, bad faith, and failure to notify a supervisor that he felt well enough to return to duty.

The City's action in discharging President Snider was especially egregious given the undisputed timing in this case. On May 11 and 19, 2016, Snider and Local 3657 requested the City to bargain over the assignment of light duty. The City refused. Snider filed a ULP charge with the PERB on June 8, 2016 regarding the City's refusal to bargain; seven days later, on June 16, the City began its investigation into Snider's conduct (participating in the Spartan Race that occurred four months earlier), and placed him on administrative leave. PERB issued a ULP Complaint on September 28, 2016 alleging that the City improperly refused to bargain; five days later, the City proposed Snider for termination (which became effective on December 7, 2016).

After you approved this matter for Guardian Policy assistance and representation, we filed a ULP charge claiming that President Snider was terminated for exercising his union leadership activities in violation of the state's Meyer's-Milias Brown Act.

An evidentiary hearing was conducted before the PERB ALJ on January 22-23, 2018, and following the filing of briefs, the ALJ found that the City's termination decision was unlawfully based on Snider's union activity.

Specifically, the ALJ found that the timing of the City's investigation and termination of Snider supported a finding of retaliation because the City hired its investigator less than a month after Snider began his protected conduct, and that the formal investigation began less than one week after Snider filed the failure to bargain ULP charge. He further found that the City's timing in issuing the notice of intent to terminate less than a week after the filing of the PERB Complaint involving the City's refusal to bargain showed that "the City took steps toward terminating Snider's employment soon after significant developments" in the bargaining requests and related ULP filings, and that this "strongly supported" Snider's retaliation claim.

The PERB ALJ further found that the City conducted a "cursory investigation" because the City's decision maker, Chief Mario Rueda, admitted in his testimony at the hearing that neither the investigator nor the City itself made any attempt to speak with Snider's physician, or review Snider's medical records, and that this was problematic because "understanding what activities, if any, Snider's doctor's considered appropriate seems to be not only an obvious, but a critical component of the City's investigation." In addition, he found the "City's assertions that Snider committed a serious transgression rings hollow when it took no action to investigate those transgressions until months later."

Moreover, the ALJ found that the City engaged in disparate treatment and administered a disproportionate penalty in light of the City's past practice of handling disciplinary matters "in house" through informal discussion, especially in light of undisputed testimony that the City previously did not seek to discipline another employee for known abuse of sick leave.

Also, the PERB ALJ determined that the City could not rebut the evidence of retaliation because the City did not demonstrate that Snider engaged in misconduct that Chief Rueda alleged in the termination documents. He found there was no requirement that Snider report his doctor's instructions regarding exercise to the City, and the City made no efforts to ascertain the extent of Snider's physical limitations while on leave. Finally, the ALJ found that Chief Rueda did not dispute that Snider never denied or tried to conceal his participation in the Spartan Race, despite the City having cited the alleged "concealment" as a reason for the termination.

In sum, the PERB ALJ concluded that the City did not adequately establish that Local President Snider engaged in the misconduct he was accused of, and it failed to support its asserted reasons for the discharge. Consequently, as the hearing evidence demonstrated, the City was held accountable for violating President Snider's rights and committing an unfair labor practice by terminating him.

As a remedy, the ALJ ordered all the relief requested:

1. Rescind the termination
2. Expunge Snider's record;
3. Immediately reinstatement Snider to the position of Engineer;
4. Make President Snider whole for all financial losses, including backpay, plus 7% interest; and
5. Post a notice for 30 days (attached) stating that the City's actions violated the law, and that it will cease and desist retaliating against Snider because of his protected activities.

Harold Schaitberger
General President
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Chief Mario Rueda turned out to be one of our best witnesses with his testimony at the hearing. Frank will find this particularly satisfying because when Rueda was a chief in Los Angeles City Fire Department, he engaged in retaliation towards Frank and other Local 112 leaders.

The City has the right to file exceptions with the PERB. However, in light of the factually supported and well-reasoned decision of the ALJ, any exceptions should be rejected.

With the leverage of this decision, we will explore a favorable settlement to see if the City wishes to promptly reinstate President Snider, expunge his records, and award him the monetary relief he is due.

Sincerely,

WOODLEY & MCGILLIVARY, LLP

A handwritten signature in black ink, appearing to read "Tom", is written over the printed name of Thomas A. Woodley.

Thomas A. Woodley
IAFF General Counsel

CC: Frank Lima, 10th District Vice President
Jim Lee, Chief of Staff to the General President
Teresa Valenzuela, Executive Assistant to the General President