

ABDALAH LAW OFFICES

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EMPLOYMENT, REAL ESTATE, BUSINESS,
CONSTRUCTION,
TRANSACTIONS AND LITIGATION

June 21, 2018

Via Federal Express, Email and First Class Mail
civilservicecommission@santaclaraca.gov

Civil Service Commission
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Attn: Julia Hill

Re: Richard Sandau
Petition for Reconsideration

Dear Commission Members:

I am an attorney representing Richard Sandau in connection with his termination of employment from classified and unclassified employment, without cause, from the City of Santa Clara ("City") on May 22, 2018. I have reviewed the letter sent by the City Attorney's Office, dated June 13, 2018, in which the City states, *inter alia*, that my client has waived his right to a Board of Review hearing under Civil Service Rules and Regulations 7.3.

After reviewing the letters sent to Mr. Sandau by the City of Santa Clara, the City of Santa Clara Charter and the City of Santa Clara Civil Service Rules and Regulations, I have concluded that Mr. Sandau was not provided with sufficient notice of termination and has not waived his right to an appeal. Accordingly, I submit this Petition for Reconsideration under Section 7.4 of the Civil Service Rules and Regulations. I will discuss the basis for this conclusion below.

Background

Mr. Sandau was employed by the City starting in August of 2004. In 2016, Mr. Sandau held the unclassified position of Electric Division Manager. On or about, March 10, 2016, the City agreed to give Mr. Sandau time off to attend law school. For

two years, the City accommodated Mr. Sandau. On May 15, 2018, John Roukema wrote a letter telling Mr. Sandau that his position had been eliminated and he could either resign or be terminated. (See Exhibit "A")

On May 24, 2018, the City sent a letter to Mr. Sandau, changing its position. The letter stated that Mr. Sandau could either resign and take a severance payment or bump down to his prior position, but that he would no longer have a schedule that would permit him to attend law school. The letter did not include a notice that Mr. Sandau had a right to petition the Civil Service Commission for review. (See Exhibit "B")

On June 1, 2018, my office sent a letter to the City disputing the City's actions. (See Exhibit "C") On June 13, 2018, the City sent a letter stating that Mr. Sandau had waived his right to petition the Civil Service Commission because no reference was made to the specific section. (See Exhibit "D")

The purpose of this letter is to (1) appeal Mr. Sandau's termination, (2) appeal the City's position in its letter of May 24, 2018, and (3) appeal the City's refusal to treat the letter of June 1, 2018 as a petition for Civil Service Commission review.

I. The Civil Service Commission Is the Deciding Authority For Petitions

Section 7.4 of the Civil Service Regulations states that "a petition for reconsideration [in any case involving a termination] shall first be presented to the Board wherein . . . lack of jurisdiction is set forth, and verified by the petitioner." Here, the City Manager exceeded her authority by making a decision on Mr. Sandau's petition letter, timely submitted on June 1, 2018.

Section 1011 of Civil Service Commission - Powers and Duties, Part (b), of the Santa Clara City Charter states that the Civil Service Commission is to "act as Board of Review to hear petitions by civil service employees, and applicants for civil service positions, and to grant or deny such petitions."

When the City Manager made a decision on Mr. Sandau's petition, the decision was void on its face because the petition should have been submitted to the Civil Service Commission for decision under Section 1011 of the Santa Clara City Charter. Therefore, a petition for reconsideration due to lack of jurisdiction is proper.

II. Mr. Sandau Was Not Provided With a Proper Notice of Termination

Section 6.6 of the City of Santa Clara Civil Service Rules and Regulations states:

"[W]ritten notice of termination . . . taken by the Appointing Authority under this Section 6, and the specific reasons therefor shall be furnished in writing by 1st class and certified mail to the address on file with the Human Resources Department within three (3) days after such termination . . ."

Furthermore, Section 6.6 states:

"[A]ny permanent employee in the classified service against whom such action is taken may appeal the termination . . . as provided in Section 7 of these rules."

There was no letter sent to Mr. Sandau by certified mail, and the letter sent on May 24, 2018, is deceptive and insufficient to provide proper notice.

The letter sent to Mr. Sandau on May 24, 2018 was not sent by certified mail as required by Section 6.6. Furthermore, the purpose stated in the letter was "to ensure [Mr. Sandau was] aware that there [were] two options available to [him]." These options were Human Resources' attempt to settle Mr. Sandau's wrongful termination claim against the City. Neither of the options presented in the letter indicated that Mr. Sandau had the right to appeal and that he must appeal within 10 days or he would waive his right to do so.

Additionally, pursuant to Section 6.6, the specific reasons (cause) for termination must be stated. Although, the letter does state some reasoning, the reasoning pertains to Mr. Sandau's unclassified position and not the classified position from which Mr. Sandau was wrongfully terminated. Also, the reasoning provided in the letter is insufficient cause for termination from classified service.

In summary, because Mr. Sandau was not provided sufficient notice of termination and insufficient cause was stated for Mr. Sandau's termination, the notice requirements of Section 6.6 were not met. As a result, Mr. Sandau did not waive his right to appeal his termination from classified service.

III. Mr. Sandau Submitted a Timely Petition

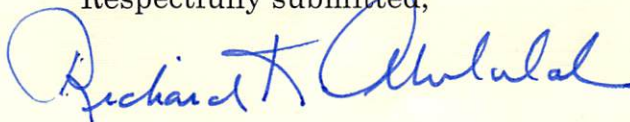
Mr. Sandau responded within 10 days of Julia Hill's May 24, 2018, letter by submitting his formal opposition to the termination and the "options." His petition in opposition provided (1) sufficient notice to the City of Santa Clara that he did not agree with the City's termination, and (2) requested formal action to rectify the situation. This petition was timely submitted within 10 days of Ms. Hill's letter, as would be required by Section 7.3 of the Civil Service Rules and Regulations.

IV. Conclusion

Mr. Sandau was not provided with sufficient notice of termination and has not waived his right to an appeal. We submit this Petition for Reconsideration pursuant to Section 7.4 of the Civil Service Rules and Regulations and hereby request the following:

- A. That the City of Santa Clara provide Mr. Sandau with a notice of termination from classified service that meets the requirements of Section 6.6 so that he may respond to the charges against him;
- B. That this matter be submitted to the Civil Service Commission for review. The items that must reviewed include, but are not limited to, Mr. Sandau's removal without cause from classified service and Mr. Sandau's petition submitted on June 1, 2018; and
- C. That Mr. Sandau be provided with back pay until such formal review is held.

Respectfully submitted,



RICHARD K. ABDALAH
Attorney for RICHARD SANDAU

RKA:dr

Enclosures

cc: Julia Hill (w/enclosures)
Richard Sandau (w/enclosures)

EXHIBIT A



Powering The Center of What's Possible

May 15, 2018

Richard Sandau
3349 Oxford Lane
San Jose, CA 95117

Re: Availability of Position following Personal Leave

Dear Rich:

Your personal leave of absence has an anticipated return date of May 29, 2018. I understand that you intend to attend your third year of law school starting next fall. As indicated in my letter dated August 25, 2017, your at-will unclassified position as Electric Division Manager has been re-evaluated, and it has been determined that the Department does not require a short term special project manager during the Summer of 2018.

Because the City does not have a need for you to return on a full or part time basis this summer, and because we anticipate that you will elect to return to law school on a full-time basis, it appears that we should discuss transitioning you from an unpaid leave status to your resignation or an at-will separation. Following your completion of your degree, you can reapply to an open management position if that is the career path you choose. However, at this time, the City's operational and budgetary needs require that the Electric Department be able to fill the position that you hold.

Please contact me no later than end of business on Wednesday, May 23, 2018, to advise if you are voluntarily resigning. If I do not hear from you by that date, I will work with the City Manager and Human Resources Department on separation next steps.

I want to thank you for your service and wish you the best of luck in your future endeavors.

Sincerely,

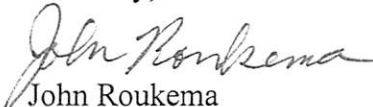

John Roukema
Chief Electric Utility Officer
Silicon Valley Power

EXHIBIT "A"

EXHIBIT B

SANTA CLARA COUNTY



Human Resources

May 24, 2018

Richard Sandau
3349 Oxford Lane
San Jose, CA 95117

Dear Mr. Sandau,

On March 17, 2013, you were appointed to the Unclassified Management position of Electric Division Manager - Generation. Within the appointment letter you were informed that this is an "at will" position serving at the discretion of the City Manager. You acknowledged and signed this appointment letter on March 7, 2013. Immediately prior to that appointment, you held the permanent classified position of Senior Electric Utility Generation Technician.

On March 22, 2018, you and John Roukema, Chief Electric Utility Officer, had a phone conversation regarding your return to work status following your personal leave. You were granted a personal unpaid leave from August 28, 2017, to May 29, 2018, to attend law school full time. Mr. Roukema informed you by letter and email that the Electric Department did not require a short term special project manager this coming summer. Since it is anticipated that you will be completing your third and final year of law school this coming 2018-19 academic year, he explained that the department needed to fill your at-will position. During your conversation, you asked if you were terminated, and Mr. Roukema replied yes. You then emailed me, Mr. Roukema and the City Manager confirming your understanding that you had been terminated.

The purpose of this letter is to ensure you're aware that there are two available options for you. First, pursuant to the City Charter, Section 1102, you may revert to your former position of Sr. Electric Utility Generation Technician without loss of any rights or privileges and upon the same terms and conditions as if you had remained in that position continuously. This would require that you return to that position on a full-time basis. The other available option is to separate from City service, and pursuant to Section 5, Job Security, of the Unit 9 MOU, you are entitled to severance pay in the approximate amount of \$45,819 (forty (40) hours salary per year of service) and any other leave accrual pay outs due at separation.

EXHIBIT "B"

1500 Warburton Avenue
Santa Clara, CA 95050
(408)-615-2080
FAX (408) 985-0667
www.santaclaraca.gov

Please let me know by June 1, 2018, which option you elect. If you have questions regarding this transition please feel free to contact me at jhill@santaclaraca.gov or (408) 615-2161.

Sincerely,

A handwritten signature in black ink, appearing to read "Julia Hill", with a large, stylized loop at the beginning.

Julia Hill
Interim Director of Human Resources

cc: Personnel File
John Roukema, Chief Electric Utility Officer

EXHIBIT C

ABDALAH LAW OFFICES

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EMPLOYMENT, REAL ESTATE, BUSINESS,
CONSTRUCTION,
TRANSACTIONS AND LITIGATION

June 1, 2018

Julia Hill
Interim Director of Human Resources
City of Santa Clara
1500 Warburton Avenue
Santa Clara CA, 95050

Re: Richard Sandau
Wrongful Termination Settlement Offer

Dear Ms. Hill:

I am an attorney representing Richard Sandau in connection with his termination of employment from classified and unclassified employment, without cause, from the City of Santa Clara ("City") on May 22, 2018.

I reviewed your letter, dated May 24, 2018, in which you state there are two available options for Mr. Sandau. After reviewing the two aforementioned options in the context of the applicable Memorandums of Understanding ("MOUs"), the Charter of the City of Santa Clara ("City Charter"), the City of Santa Clara Civil Service Rules and Regulations, and other relevant information and documentation provided by Mr. Sandau, and in light of relevant law, I concluded that neither of the two options offered adequately redresses the injury caused to Mr. Sandau by the City of Santa Clara and its agents for his wrongful termination on May 22, 2018.

First, Mr. Sandau is entitled to Job Security Pay pursuant to Section 5 of the Unit 9 MOU, regardless of whether or not the City provides him with equitable redress

EXHIBIT "C"

through reinstatement into Unit 3 or, in the alternative, redress by payment of pecuniary damages.

Second, appointing Mr. Sandau to his former position of Senior Electric Utility Generation Technician without offering back pay, a flexible work schedule to allow him to complete law school, and reasonable measures to prevent retaliation by the City, is not sufficient to place Mr. Sandau in the position he was in prior to the wrongful termination.

Third, if the City is to provide Mr. Sandau with pecuniary damages as redress for the injury caused by the City, the damages must be sufficient to compensate Mr. Sandau for his actual losses suffered.

I. SUMMARY OF FACTS

On February 24, 2016, Mr. Sandau tendered his resignation (14-day notice) as Generation Division Manager after Ann Hatcher, Assistant Director, who was not in Mr. Sandau's chain of command, exhibited bias toward a classified employee by reprimanding Mr. Sandau, an unclassified management employee, over an alleged procurement procedure violation without conducting a reasonable inquiry into the alleged violation.

On March 10, 2016, prior to Mr. Sandau's planned separation from City employment, Alan Kuratori, Chief Operations Officer, requested a meeting with Mr. Sandau to discuss Mr. Sandau's future with the City. On the same day, Mr. Sandau and Mr. Kuratori met to discuss Mr. Sandau's future. In the meeting Mr. Kuratori expressed concern regarding the Generation Division with Mr. Sandau's departure. Mr. Sandau and Mr. Kuratori then entered into a mutually beneficial agreement whereby Mr. Sandau promised continued employment with the City, and in return Mr. Kuratori promised to transfer Mr. Sandau to a different position within the City that would, *inter alia*, allow him the flexibility to attend law school on the condition that he was accepted.

On March 15, 2016, Mr. Sandau was transferred from the Generation Division to the Resources Division.

On March 24, 2016, Mr. Sandau was accepted into Santa Clara University Law School.

On May 31, 2016, an interoffice memorandum was sent to John Roukema notifying Mr. Roukema of Mr. Sandau's planned attendance to law school, the benefits that law school would provide to the City, and further requesting tuition reimbursement for the classes that would directly benefit the City. Approval was granted and Mr. Sandau began attending law school in the Fall of 2016.

Mr. Sandau and Mr. Roukema had several meetings regarding Mr. Sandau's attendance at law school. During these meetings, Mr. Sandau conveyed that he had sufficient time-off accruals combined with a reduced week schedule to complete the first year of law school. However, following that, Mr. Sandau stated that he would most likely require an unpaid leave of absence to continue to attend law school. Mr. Roukema stated that he was open to that, and both parties agreed to remain in communication regarding Mr. Sandau's continued enrollment in law school.

On August 25, 2017, Mr. Roukema and Mr. Sandau met regarding Mr. Sandau's Request for Personal Leave to attend law school from August 28, 2017 to May 29, 2018. Mr. Roukema stated to Mr. Sandau that his leave was approved, but that the department would determine if there was a need for a short-term project manager during the Summer of 2018. Mr. Sandau then asked whether his bumping rights into his former position remained in effect. Mr. Roukema stated that "all of your employment rights remain in effect" and that the language was not his idea, that Human Resources inserted it to allow a way for Mr. Sandau's leave to be extended should there not be enough short-term work for him during the Summer of 2018.

On May 10, 2018, Mr. Sandau spoke with his immediate supervisor, Steve Hance, about a law school project and, also, whether there were any issues regarding his return to work. Mr. Sandau also stated that his law school load was lighter in the last year and that he could make arrangements to come back to work full time if needed. Mr. Hance stated that he was glad that Mr. Sandau was returning to work and that the only thing he knew was that Ann Hatcher had asked, "Have you talked to Rich?" Mr. Hance replied, "Not lately." Ms. Hatcher then told Mr. Hance that, "John will contact him." Mr. Sandau exhibited concern to Mr. Hance and said that it didn't sound good. Mr. Hance replied, "Don't worry, I'm sure everything is fine." Mr. Hance advised Mr. Sandau to contact John Roukema. Mr. Sandau did not contact Mr. Roukema immediately because he did not think there was an issue with his return. He was just finishing his law school final exams and preparing to leave on vacation on May 18th.

On May 21, 2018, after not hearing from Mr. Roukema, Mr. Sandau left a voicemail on Mr. Roukema's cell phone inquiring about his return. On May 22, 2018, Mr. Roukema returned Mr. Sandau's call. The conversation went as follows:

Mr. Roukema: Did you get the letter we sent?

Mr. Sandau: No, I've been on vacation.

Mr. Roukema: Have you checked your work email?

Mr. Sandau: No, I don't have access.

Mr. Roukema: We'll, we've discussed it and there is no position for you to come back to. We talked about it and we've decided that, no matter what, we don't want you back.

Mr. Sandau: I had options . . . I could come back full time because my law school schedule is lighter in the last year. Plus I have bumping rights into my old position.

Mr. Roukema: This is best.

Mr. Sandau: So . . . am I fired, yes or no?

Mr. Roukema: Yes!

Mr. Sandau acknowledged his termination via email.

II. LEGAL ANALYSIS

A. Mr. Sandau Is Entitled to Job Security Pay Regardless of Whether the Remedy Is Reinstatement or Payment of Damages.

As a member of Unit 9 prior to termination, Mr. Sandau is entitled to job security as a matter of contract. Section 5 of the Unit 9 MOU ("Job Security") states in pertinent part as follows:

"Represented members will be compensated . . . should they be terminated from employment for reasons other than cause . . ."

As the City has acknowledged, Mr. Sandau was terminated from his employment with the City "without cause". This contract only applies to Unit 9 members, and all of the requirements of the contract provision have been met. The City may have an argument that this section does not apply if Mr. Sandau is reinstated into Unit 9; however, that is not the case here. Mr. Sandau's offer from the City is reinstatement into Unit 3, which operates under a separate contract, with its own distinct terms and conditions.

The Job Security clause assigns a value to the employer's right to discharge "at will" based upon the employee's years of service. When an employer discharges an employee without cause, the employer has, in effect, purchased the right to discharge at will and, upon discharge, that amount immediately becomes due to the discharged employee. The purpose of this term is to provide some incentive for an employer not to arbitrarily and capriciously terminate an employee, such as in the case at hand.

B. Equitable Redress Requires that Mr. Sandau Be Placed Back In the Position He Held Prior To the Wrongful Termination.

Placing Mr. Sandau back in the position he was in prior to the wrongful termination requires that he be provided with an unconditional offer of reinstatement to employment with the City and be compensated for any lost wages due to the wrongful termination.

By terminating Mr. Sandau's employment with the City without cause, Mr. Roukema has effectively eliminated Mr. Sandau's right to return to his former classified position with the City, as required by Section 1102 of the City Charter.

Because of this violation, Mr. Sandau was deprived of the due process afforded to other classified employees at the City. Furthermore, Mr. Sandau is unable to appeal because a hearing would be required to determine if the cause for termination was adequate. Here, there is no cause stated, thus, there is nothing to appeal.

The City has offered to reinstate Mr. Sandau to his Unit 3 position of Sr. Electric Utility Generation Technician on the condition that he return to full-time status. Prior to his wrongful termination, Mr. Sandau had an agreement with the City to allow him a flexible schedule and sufficient time off to attend law school. This agreement was made between Mr. Sandau and Mr. Kurotori. It was further ratified by Mr. Roukema when Mr. Sandau was transferred to the Resources Division, and later when his interoffice memorandum was approved to attend law school. Further evidence of the agreement is exhibited by the fact that Mr. Sandau has completed two years of law school with a flexible schedule during the first year and a leave of absence during the second year. Additionally, this agreement was made as a condition of employment, not as a condition of a position. In effect, the agreement provides that so long as Mr. Sandau is an employee of the City, the City will allow Mr. Sandau the schedule and sufficient time off to attend law school. Therefore, a reinstatement of employment to Unit 3 requires that the time-off agreement remain in effect. This was not offered to Mr. Sandau in the letter dated May 24, 2018.

By terminating his employment and only allowing him to return to a non-flexible schedule, Mr. Sandau is in effect being coerced into either giving up law school or resigning from the City. Mr. Sandau relied, to his own detriment, on the promise of a flexible work schedule and sufficient time off to complete law school. Justice requires that the City's promise be enforced. Because Mr. Sandau does not have a full law school schedule next year, he will be able to work a substantially greater number of hours than in the past. However, Mr. Sandau still requires a reasonable amount of time off for exams and to study for the bar exam.

An unconditional offer of reinstatement also includes back pay for when Mr. Sandau was scheduled to return to work. Mr. Sandau was scheduled to return from his leave of absence on May 29, 2018. But for the wrongful termination, Mr. Sandau would have returned to work in Unit 3.

One additional concern is whether equitable redress is even possible due to the concern of retaliation. When Mr. Roukema stated that "no matter what we do not want you back," it was implied that there was an ulterior motive for Mr. Sandau's termination, rather than the "operational and budgetary needs" stated in his letter of May 15, 2018.

An unconditional offer of reinstatement would include an explanation of what that phrase meant and assurance that Mr. Sandau would not be retaliated against by City management or employees.

In sum, an equitable offer of reinstatement of employment to Unit 3 should include: (1) adequate time off and a flexible schedule that will allow Mr. Sandau to return to law school; (2) back pay for missed time due to wrongful termination; and (3) an assurance that Mr. Sandau will not be retaliated against by City management or employees for returning to his former position.

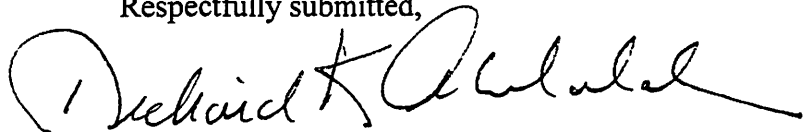
C. If the City Offers Pecuniary Damages In Lieu of Equitable Redress, Then Damages Must Be Adequate to Compensate For Actual Losses.

If the City does not wish to provide Mr. Sandau an unconditional offer of reinstatement to his Unit 3 position, then Mr. Sandau must be adequately compensated for his damages suffered due to wrongful termination. These damages are substantially greater than the \$45,000 offer submitted by the City.

CONCLUSION

Because neither option the City has provided adequately compensates Mr. Sandau for his losses suffered due to the wrongful termination, both offers are hereby rejected. If the City wishes to revise its offer then we expect a response by June 8, 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard K. Abdalah", with a long horizontal flourish extending to the right.

RICHARD K. ABDALAH
Attorney for RICHARD SANDAU

RKA:dr
cc: Richard Sandau

EXHIBIT D



**City of
Santa Clara**
The Center of What's Possible

City Attorney's Office

June 13, 2018

Richard K. Abdalah, Esq.
Abdalah Law Offices
10455 Torre Avenue
Cupertino, CA 95014

Re: Employee Richard Sandau

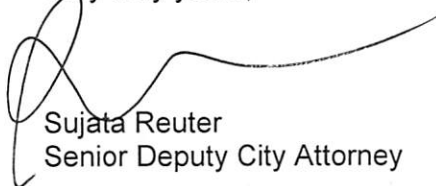
Dear Mr. Abdalah:

This letter responds to yours of June 1, 2018. The City disagrees with your conclusions that: 1. Mr. Sandau is entitled to both severance pay and bumping rights, 2. That Mr. Sandau would be entitled to back pay or other compensation in excess of severance pay, and 3. That in addition to continued employment, the City is required to provide Mr. Sandau with a flexible schedule. The options available to Mr. Sandau were properly set forth in the City's May 24, 2018, correspondence.

Your responsive letter unequivocally rejected the offer to bump back to the classified position. More than ten days have passed since the City's March 24 letter and your client has not requested an administrative appeal date; your client has, therefore, waived his right to a Board of Review hearing under Civil Service Rules and Regulations 7.3. Despite the professed waiver of severance pay, the City encloses herewith a check in the gross amount of \$46,426.10 representing severance pay of \$45,816.00 (forty hours of salary multiplied by thirteen years of service) and accruals of \$607.10, less applicable deductions, in accordance with the City's obligations under the Unit 9 MOU.

Thank you.

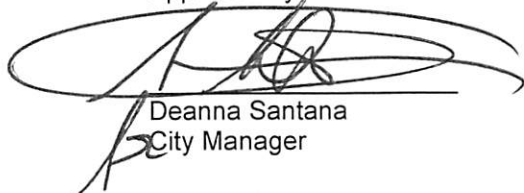
Very truly yours,



Sujata Reuter
Senior Deputy City Attorney

SR:rk
Enclosure

Approved by:



Deanna Santana
City Manager

EXHIBIT "D"