SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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Case Number: CPF-16-515408

Filing Date: Dec-27-2016 3:53

Filed by: ERICKA LARNAUTI

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ORDER

IN RE: SAN FRANCISCO POLICE OFFICERS' ASSOCIATION

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

FILED
San Francisco County Superior Court
DEC 27 2016
CLERK OF THE COURT
BY: Deputy Clerk

SAN FRANCISCO POLICE OFFICERS' ASSOCIATION,

Plaintiff and Petitioner,

vs.

SAN FRANCISCO POLICE COMMISSION, CITY AND COUNTY OF SAN FRANCISCO, *et al.*,

Defendants and Respondents.

Case No. CPF-16-515408

ORDER DENYING PRELIMINARY INJUNCTIVE RELIEF

The San Francisco Police Officers' Association seeks to enjoin the City and County of San Francisco from implementing changes to its police department's use of force policy. The police union contends injunctive relief is needed so it can exercise rights to arbitration and impasse resolution. The City contends it is not required to arbitrate, confer or consult with the union because a use of force policy is a managerial decision and not primarily a matter of wages, hours or working conditions.

Two factors govern whether preliminary injunctive relief should be granted in a given case: "The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued." (*Metro Traffic Control, Inc. v. Shadow Traffic Network* (1994) 22 Cal.App.4th 853, 858.) Both factors favor the City here.

First, the police union is unlikely to prevail on the merits at trial. The Meyers-Milias-Brown Act (MMBA: Govt. Code §§3500-3510) distinguishes between "wages, hours and other terms and conditions of employment" (about which a local government must confer with its unions) and a "fundamental managerial or policy decision" (about which it need not). (*Id.* at §§3504, 3505; *Claremont Police Officers Ass'n. v. City of Claremont* (2006) 39 Cal.4th 623, 628-32.)[1]

It has long been California law that a "use of force policy is as closely akin to a managerial decision as any decision can be in running a police department." (*San Jose Peace Officer's Ass'n. v. City of San Jose* (1978) 78 Cal.App.3d 935, 946.) "[T]he safety of the policeman, as important as it is, is so inextricably interwoven with important policy considerations relating to basic concepts of the entire system of criminal justice that we cannot say that the use of force policy concerns 'primarily' a matter of wages, hours or working conditions." (*Id.*)

Since *San Jose Peace Officer's* was decided, the California Supreme Court has repeatedly confirmed its holding when applying the MMBA. (*Claremont Police Officers,* 39 Cal.4th at 632-33 ("fundamental managerial or policy decisions include changing the policy regarding a police officer's use of deadly force"); *Bldg. Material & Constr. Teamsters' Union v. Farrell* (1986) 41 Cal.3d 651, 664 (regarding changes to use of force policies, the "burden of requiring an employer to confer about such fundamental decisions clearly outweighs the benefits to employer-employee relations that bargaining would provide").) Because these authorities have already determined that use of force policies are managerial decisions, no further test need be applied.

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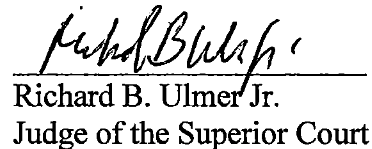
[1] This same MMBA "scope of representation" applies to the San Francisco City Charter (§ A8.590-4) and to the memorandum of understanding between the City and the police union (§I(4)(A)).

Second, the balancing of "interim harm" also favors the City. (*See Metro Traffic,* 22 Cal.App.4th at 858.) The police union asserts that "its standing in the eyes of its members will be diminished if it cannot protect their bargaining rights" and that those rights will be "irreparably harmed." On the other hand, the City urges "that every day the use of force policy is not in place, officers and citizens are denied best practices regarding use of force."

The application for a temporary restraining order is DENIED. The application for an order to show cause regarding a preliminary injunction is also DENIED. Should plaintiff wish to move for a preliminary injunction it may do so.

Dated: December 27, 2016



Richard B. Ulmer Jr.
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
County of San Francisco

SAN FRANCISCO POLICE OFFICERS' ASSOCIATION,

Petitioner,

vs.

SAN FRANCISCO POLICE COMMISSION, CITY AND COUNTY OF SAN FRANCISCO, et al.,

Respondents.

Case Number: CPF-16-515408

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On December 27, 2016, I served the attached ORDER DENYING PRELIMINARY INJUNCTIVE RELIEF by placing a copy thereof in a sealed envelope, addressed as follows:

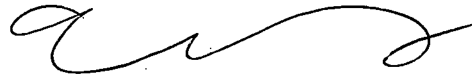
Gregg Adam
MESSING ADAM & JASMINE LLP
235 Montgomery St., Suite 828
San Francisco, Ca. 94104

Katharine Porter
OFFICE OF THE CITY ATTORNEY
1390 Market Street, Fifth Floor
San Francisco, Ca. 94102

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: December 27, 2016

T. Michael Yuen, Clerk

By: 

Ericka Larnauti, Deputy Clerk