
From: President <president@sanfranciscodsa.com>
Sent: Friday, May 3, 2024 8:53 AM
To: BOS Legislation, (BOS)
Cc: Vice President; Secretary
Subject: File No. 240426

Categories: 240426

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Hello,

I am forwarding you documents, emails, links and reports in regard to this hearing.

Recently, prior to our letter to the Mayor, Sheriff and BOS President. The Mayor's Office gave us TWO FTEs to assign to the background unit during contract negotiations. We didn't ask for it because this is not normally a bargaining issue. Apparently, we were told the Sheriff and Mayors Office were arguing about the lack of hiring Deputies. Each blaming each other, then the Mayor's Office gave us the 2 Background Investigator FTEs to prove its the Sheriff that is not increasing hiring. The Mayors Office said that they are not stopping the hiring the Sheriff is.



Employee Relations

City and County of San Francisco
Department of Human Resources

Background Investigators Side Letter

The Sheriff's Department shall make a request within 9 classification of 8504 Deputy Sheriff by two (2) full-time po to work exclusively in background investigations.

Tentative Agreement:

Mayor Needs to Force Sheriff to Hire

https://url.avanan.click/v2/___https://sanfranciscodsa.com/san-francisco-mayor-needs-to-force-sf-sheriffs-office-to-increase-hiring/___YXAzOnNmZHQyOmE6bzoyNWQ0MjJjNTU4YjkwZjk0ZDRjMWZkNDJhMmM2OWNkMDo2OjY3ZjA6Y2I2MzI3ZTQ3Y2Y5OWMyYjFiOGFkNzUwNmE1NTRmODg5ZTdhMGI5ZWYwYTBkYWMyMGVhMzUwYTVmYjRhYzpw0OIQ

Forced Overtime at SFSO

https://url.avanan.click/v2/___https://sanfranciscodsa.com/forced-overtime-at-san-francisco-sheriffs-office/___YXAzOnNmZHQyOmE6bzoyNWQ0MjJjNTU4YjkwZjk0ZDRjMWZkNDJhMmM2OWNkMDo2OmE0NmY6ZDA0MTRkYmM3YzRmNmRIY2Q3YTQ3YzBiZml0N2YyMjIhMjE5OWJmNzhhNTljNGVIMThlZTQ0NjBiNDQ1ZDBmZjpw0OIQ

Lopsided Budget Effecting Jail

https://url.avanan.click/v2/___https://sanfranciscodsa.com/mayor-london-breeds-strained-relations-with-sheriffs-fuel-taxpayer-costs-and-public-safety-imbalance-in-san-francisco/___YXAzOnNmZHQyOmE6bzoyNWQ0MjJjNTU4YjkwZjk0ZDRjMWZkNDJhMmM2OWNkMDo2OjUzOGQ6YzlkODgzM2U2NDk0MTE3MDE4MzYwNWwRiMGI5ZTQ3Y2Y5OWMyYjFiOGFkNzUwNmE1NTRmODg5ZTdhMGI5ZWYwYTBkYWMyMGVhMzUwYTVmYjRhYzpw0OIQ

Criminal Justice System With Limited Resources

https://url.avanan.click/v2/___https://sanfranciscodsa.com/san-franciscos-criminal-justice-system-a-balancing-act-with-limited-resources-and-the-mayors-funding-failure/___YXAzOnNmZHQyOmE6bzoyNWQ0MjJjNTU4YjkwZjk0ZDRjMWZkNDJhMmM2OWNkMDo2OmMxZWl6NDhkMGJiN2Q4MDhmNGYwNTA2YmI5NTVhYjYyZmZjZDhiNWMxMTkwNjEzNzhjMGI5ZTQ3Y2Y5OWMyYjFiOGFkNzUwNmE1NTRmODg5ZTdhMGI5ZWYwYTBkYWMyMGVhMzUwYTVmYjRhYzpw0OIQ

Inmate Well Being

https://url.avanan.click/v2/___https://sanfranciscodsa.com/heatwave-concerns-inmates-at-san-francisco-downtown-jail-deserve-relief-mayor-london-breeds-approach-raises-concerns-for-incarcerated-individuals/___YXAzOnNmZHQyOmE6bzoyNWQ0MjJjNTU4YjkwZjk0ZDRjMWZkNDJhMmM2OWNkMDo2OjZlNTQ6YWZlYWI0OTBhMWMzMmVmZGExMmU1YzQ1YWU0MTMxZDkxZGM0ODc2MDZmNWZhYzY1OGZhYTk2MThjZmY4NDlkZTpw0OIQ

Jail Headed for Disaster

https://url.avanan.click/v2/___https://sanfranciscodsa.com/sf-jail-headed-for-disaster/___YXAzOnNmZHQyOmE6bzoyNWQ0MjJjNTU4YjkwZjk0ZDRjMWZkNDJhMmM2OWNkMDo2OjcwZWY6MDdlYWl0OTBhMWMzMmVmZGExMmU1YzQ1YWU0MTMxZDkxZGM0ODc2MDZmNWZhYzY1OGZhYTk2MThjZmY4NDlkZTpw0OIQ

We will send you more documents soon.

Best regards,

Ken Lomba
SFDSA President
415-513-8973



Re: Severe Issues

President <president@sanfranciscodsa.com>

Tue 4/9/2024 4:15 PM

To: Miyamoto, Paul (SHF) <paul.miyamoto@sfgov.org>

Cc: Johnson, Katherine (SHF) <katherine.johnson@sfgov.org>

Thanks Sheriff for the offer.

My concern is deputy sheriff staffing.

When it comes to supervisors, that's out of my scope right now.

Best regards,

Ken Lomba

SFDSA President

415-513-8973



From: Miyamoto, Paul (SHF) <paul.miyamoto@sfgov.org>

Sent: Tuesday, April 9, 2024 2:22 PM

To: President <president@sanfranciscodsa.com>

Cc: Johnson, Katherine (SHF) <katherine.johnson@sfgov.org>

Subject: Re: Severe Issues

President Lomba,

Good afternoon and thanks for the follow up. Happy to talk about this separate from table talks right now. Especially to update you on what we are doing with supervisor concerns.

Thanks

PM

Get [Outlook for iOS](#)

From: President <president@sanfranciscodsa.com>

Sent: Tuesday, April 9, 2024 12:53:04 PM

To: Miyamoto, Paul (SHF) <paul.miyamoto@sfgov.org>

Cc: Johnson, Katherine (SHF) <katherine.johnson@sfgov.org>

Subject: Severe Issues

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Sheriff Miyamoto,

Good afternoon,

I'm not sure if you recall, the DSA forecasted several issues and brought them to your attention years ago and they have come to fruition.

1. Short Staffing - deputies leaving, increased workload and the retirement cliff
2. Supervision - in experienced, unskilled supervisors

Both have surfaced and now are colliding.

I'm working on a staffing analysis to provide visual impacts and solutions once ready I will send to you.

The resolution to supervision is not within our scope. But maybe in the future, I can address it.

Best regards,

Ken Lomba
SFDSA President
415-513-8973



Re: Memorialization of our SMS Message Conversion Regarding SFSO's Inadequate Hiring

President <president@sanfranciscodsa.com>

Wed 8/2/2023 8:48 AM

To: Johnson, Katherine (SHF) <katherine.johnson@sfgov.org>; Miyamoto, Paul (SHF) <paul.miyamoto@sfgov.org>
Cc: Sean D. Howell <showell@mastagni.com>; Dan L. Koontz <dikoontz@mastagni.com>; Jayson Wechter <jayson@well.com>

📎 6 attachments (894 KB)

Background Investigations 3 Police.pdf; Background Investigations 3.pdf; Background Investigations 2 39941_-_2223_juv_06072023.pdf; Background Investigations 1 39941_-_2223_juv_06072023.pdf; Background Investigations 6 Probation.pdf; Background Investigations 5 Airport.pdf;

Hi Sheriff,

Good morning,

I have found that it is not an uncommon practice amongst City Departments to outsource some of the workload of background investigations. Our background process is to slow due to a backlog of applicants. It is great that we have a good amount of interest and applicants, but the SFSO's own hiring process is short staffing the department. As you can see in the attachments other City Agencies have contracted out for background investigations including the Police Department and Probation Dept. The SFSO needs to do the same immediately to fill the vacant deputy sheriff positions. The slowdowns in hiring have impacted the staffing levels and is harming existing staff.

Best regards,

Ken Lomba
SFDSA President
415-513-8973



From: Johnson, Katherine (SHF) <katherine.johnson@sfgov.org>**Sent:** Tuesday, August 1, 2023 1:49 PM**To:** President <president@sanfranciscodsa.com>; Miyamoto, Paul (SHF) <paul.miyamoto@sfgov.org>**Cc:** Sean D. Howell <showell@mastagni.com>; Dan L. Koontz <dikoontz@mastagni.com>**Subject:** RE: Memorialization of our SMS Message Conversion Regarding SFSO's Inadequate Hiring

Hi Ken,

I called both numbers listed on the company's website to determine if they are even an authorized City vendor, and to no avail.

Both numbers went through an automated system, but no one answered the phone. I did not leave a message as that would be out of context without a conversation explaining why I was calling.

My question to you since you seem to be advocating for this company is: do you know if they are an authorized City vendor?

Anyway since you were not amenable with the front desk at CJ#3 moving to a cadet position given the pass control duties, I had another idea. I will call you shortly to see if you are available. I am simply trying to mitigate the drafting during peak vacation season coupled against the staffing.

Thanks
Kathy

Katherine Johnson, #1319
Undersheriff
Office: 415-554-7223
Cell: 415-572-2045

From: President <president@sanfranciscodsa.com>
Sent: Sunday, July 30, 2023 9:45 AM
To: Miyamoto, Paul (SHF) <paul.miyamoto@sfgov.org>; Johnson, Katherine (SHF) <katherine.johnson@sfgov.org>
Cc: Sean D. Howell <showell@mastagni.com>; Dan L. Koontz <dkoontz@mastagni.com>
Subject: Memorialization of our SMS Message Conversion Regarding SFSO's Inadequate Hiring

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SMS Message Conversation Beginning Tuesday, July 25th at 1734 hrs.

DSA President: Hi Sheriff & US we are drowning in understaffing yet we have people interested in the job. You need help, please outsource background investigations at least until we catch up.

Police Background Checks, Firefighter Background Checks & More
creativesecurity.com <https://creativesecurity.com/background-services/police-background-checks/>

[Police Background Checks, Firefighter Background Checks & More](https://creativesecurity.com/background-services/police-background-checks/)

Creative Security provides police background checks performed by former police officers. We'll exceed your expectations in both cost and turn-around time.

creativesecurity.com

Wednesday, July 26th 0853 hrs.

Undersheriff: Hi Ken

Even if we outsource this function - it takes months to issue and rfp and go through that process.

I do understand the ask

DSA President: Yes but it would reduce the time delays and increase hiring if backgrounds is expedited. The average background in neighboring departments is taking 6 weeks.

4 background investigators working on deputies is not enough. Plus the new background investigators are not up to speed and cannot produce the same output as the experienced background investigators.

As well as the newly hired background investigators still need to be trained.

This should be the #1 priority to expedite hires.

Sheriff: Also want to Prop F former investigators that are already trained and experienced and plug them in as well.

DSA President: That's a great idea. But that won't be enough. You need to throw some fuel on this. Backgrounds is lagging big time, the learning curve is slow. You need to blitz this and make it more efficient.

Friday, July 28th 1326 hrs.



DSA President: Something is wrong with SFSOs hiring. See PDs recruit class.

Sheriff: We are ongoing. Yes they have 30. They had 26 last class but only graduated I think 10. This is their biggest starting class. We have 6 in 15th week and 10 in pre academy right now. We are trying to bump up but at least maintaining this amount.

The PD also got way more \$\$ than us for recruiting and hiring, plus the incentives the POA got. They are still having trouble recruiting people in even with all of that.

DSA President: copy. But SFSO hiring is not efficient. It needs improvement, outsourcing some of the backgrounds would speed things up.

Sheriff: I understand your frustration but we are working on things to be responsive more immediately, outsourcing is going to take some time

DSA President: That's not good.

Undersheriff: Outsourcing must follow the city rules for RFPs - that portion is out of our ability to effect change.

However we can discuss other options to off set hiring.

DSA President: not interested in other options to offset hiring. Good luck.

Undersheriff: Thank you

Sheriff: To be clear, we are not putting off hiring, still continuing and keeping push strong on recruiting.

DSA President: You are putting off hiring, your system is inefficient.

We have been telling you this since 2018.

Sheriff: We are trying and appreciate your help. Guardian software was purchased and implemented early 2020s we have not paused hiring. I have never put off hiring. I thought you were on the recruiting committee with the AS and her team and thought you were working with them with your recommendations and ideas

DSA President: I was but we found more problems in the background unit.

Which we brought up as the bottle neck in 2018. It is still the bottleneck in the hiring process today. The SFSO is below the industry standard at hiring, it is subpar. It's unacceptable when the short staffing is the fault of the department and city.

Sheriff: Let's discuss this next week. I will request an audit of Background unit in comparison with other agencies. Thanks

DSA President: That's a good start. Thank you.

Next week is fine.

End of SMS Message Friday, July 28th 1637 hrs.

Best regards,

Ken Lomba
SFDSA President
415-513-8973



Re: Increasing lower staff is correlating to increasing long term injury

President <president@sanfranciscodsa.com>

Fri 7/21/2023 1:33 PM

To: Miyamoto, Paul (SHF) <paul.miyamoto@sfgov.org>

Cc: Johnson, Katherine (SHF) <katherine.johnson@sfgov.org>; Carter, Tanzanika (SHF) <tanzanika.carter@sfgov.org>; McConnell, Kevin (SHF) <kevin.mcconnell@sfgov.org>; Dan L. Koontz <dikoontz@mastagni.com>; Vice President <vicepresident@sanfranciscodsa.com>

Dear Sheriff Miyamoto,

I hope this message finds you well. I am writing to urgently draw your attention to our ongoing concerns surrounding your hiring process.

During my meeting with the new hires, it became evident that the hiring process is still experiencing significant delays, despite our previous efforts to address the issue. The timeframe remains exceptionally long, ranging from 1 to 2 years, which is well beyond industry standards.

Given the persistent nature of this problem, I believe it is crucial for us to take a direct and comprehensive look into the hiring process. We must identify the underlying causes and take immediate action to rectify the situation.

The continued delays in the hiring process not only hinder our ability to attract qualified candidates but also impact our organization's reputation and efficiency. It is imperative that we find a solution promptly to avoid further setbacks and ensure a smooth and efficient hiring process.

Thank you for prioritizing this matter and working towards a viable resolution. Your involvement and leadership are critical to resolving this issue and maintaining the trust of both our members and the community we serve.

I kindly request that you provide the necessary resources and support to thoroughly investigate and address the challenges in the hiring process. Please keep me informed of any progress made and the steps being taken to improve the situation.

Thank you for your prompt attention to this matter.

Sincerely,

Ken Lomba
SFDSA President
415-513-8973



From: Miyamoto, Paul (SHF) <paul.miyamoto@sfgov.org>

Sent: Thursday, July 20, 2023 12:41 PM

To: President <president@sanfranciscodsa.com>

Cc: Johnson, Katherine (SHF) <katherine.johnson@sfgov.org>; Carter, Tanzanika (SHF) <tanzanika.carter@sfgov.org>; McConnell, Kevin (SHF) <kevin.mcconnell@sfgov.org>

Subject: RE: Increasing lower staff is correlating to increasing long term injury

President Lomba,

Good afternoon and although you had a meeting with Chief McConnell recently, I want to make sure there is a response to your concern in the email below. We are aware of the numbers and correlation of injuries to our lower staffing numbers and share your concern. There is also the additional impact of short term injuries and leaves due to Covid or other health related issues for members, or the care of their loved ones.

The immediate and long term plans for constant, ongoing recruiting, testing, and hiring are intended to have no breaks in any efforts. I want to commend the members of the DSA who work in the recruiting, personnel and back ground units for the ongoing efforts to expedite the process. In addition, our training staff have also worked hard in support of those in the pre-academy, academy, and Core to get them ready for JTO and jails. Although they are short staffed, they continue to do good work. We continue to support their efforts with the return of Deputy Clive Chu, who will be a part of our administrative team and continue to help the Personnel Unit, as well as making sure that we assign an additional deputy (the announcement closes this week) to replace outgoing staff.

Our living document that outlines and tracks our efforts had not been updated until recently, so I have asked the Assistant Sheriff to provide you with a copy of the briefing sheet on Recruiting, Testing and Hiring. I have specifically asked for inclusion of more detail regarding out of state recruiting and hiring to directly answer your concern of urgency.

Our concern for staff is very real, and manifests not just in shortening hiring processes, but maintaining safe work environments. Training on inmate management, access to safety and emergency equipment, and keeping a vigilant posture on securing access to the jails and introduction of contraband are all parts of the overall strategy. The COD is prioritizing searching for weapons and narcotics and increasing staff awareness and skills on security and officer safety issues. FOD and Community Programs are also structuring efforts to provide more training, info, and awareness on street level enforcement and officer safety issues.

Thank you for sharing your chronological breakdown of the decrease in staffing levels, and for your continued help in recruiting and bringing these levels back to more robust numbers.

Stay safe and be well,
PM

Paul Miyamoto
Sheriff of the City and County of San Francisco
City Hall Room 456
1 Carlton B. Goodlett Place
San Francisco, CA 94102
Office: 415-554-7225

www.sfsheriff.com

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From: President <president@sanfranciscodsa.com>

Sent: Monday, July 17, 2023 2:47 PM

To: Miyamoto, Paul (SHF) <paul.miyamoto@sfgov.org>

Cc: Johnson, Katherine (SHF) <katherine.johnson@sfgov.org>; Carter, Tanzanika (SHF) <tanzanika.carter@sfgov.org>; McConnell, Kevin (SHF) <kevin.mcconnell@sfgov.org>

Subject: Increasing lower staff is correlating to increasing long term injury

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Hi Sheriff Miyamoto,
cc: US, AS, Chief

Good afternoon,

I did some quick research, please read.

Increasing lower staff is correlating to increasing long term injury. Increasing the costs to a high of 26 additional deputies on DP added to long-term leave yearly. Which in essence increased the staffing shortage to 191 modestly, plus the unfunded positions of approximately 13 bring the monthly average to 204 approximately.

Where is the urgency for fast track hiring and fast track out of state hiring? Deputies are getting injured.

June 2023

8304 Current Sworn 607 / Authorized 752
8306 Current Sworn 21 / Authorized 41
-165

Leaves over 90 days: 59

2022 to 2023: -15 FTES reduction

June 2022

8304 Current Sworn 606 / Authorized 765
8306 Current Sworn 23 / Authorized 43
-159

Leaves over 90 days: 60

2021 to 2022: -9 FTES reduction

June 2021

8304 Current Sworn 665 / Authorized 773
8306 Current Sworn 29 / Authorized 44
-123

Leaves over 90 days: 44

2022 to 2023: -5 FTES reduction

June 2020

8304 Current Sworn 699 / Authorized 770
8306 Current Sworn 38 / Authorized 51
-84

Leaves over 90 days: 34

Best regards,

Ken Lomba
SFDSA President
415-513-8973





SAN FRANCISCO DEPUTY SHERIFFS' ASSOCIATION

"Serving the Deputy Sheriffs' of San Francisco since 1952"

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Ken Lomba

VICE-PRESIDENT
Jim Irving

TREASURER
Earl Hays

SECRETARY
Danilo Quintanilla

SERGEANT-AT-ARMS
Kenya Crawford

February 23, 2023

Via Electronic Mail

Sheriff Paul Miyamoto

San Francisco Sheriff
City Hall, Room 456
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
email: paul.miyamoto@sfgov.org

Re: Hiring Process Analysis and Recommendations

Dear Sheriff Miyamoto:

The SFSO's recruitment and hiring processes are in dire need of improvement, especially during a time when hiring is urgently required. Despite receiving recommendations from SFDSA in July 2022, recruitment and hiring processes remain flawed and inefficient. It's not enough for the SFSO to point to national difficulties in hiring law enforcement; urgent action is needed to find solutions.

The situation is critical, and everyday counts. The SFSO recruitment unit is struggling to figure out an efficient process, resulting in a low number of applicants and slow progress. This is unacceptable given the current staffing deficit. Recruiters are performing dual roles as community officers and recruiters, which is not an effective strategy. There is no time to waste, and a better approach is needed.

SFDSA has been proactive in assisting the SFSO, advertising for Deputy Sheriff applicants on social media in December 2022 and January 2023, resulting in a significant increase in applicants. In the first two weeks of February 2023, we advertised to job seekers and produced over 100 applicants for the SFSO. These recent successes were achieved by following the recommendations we provided to the SFSO in July 2022.

The SFSO's testing information system is inadequate, with no practice oral board test, insufficient information on the background investigation process, and no details on disqualifiers and how to resolve common issues in backgrounds.

P.O. Box 77590 San Francisco, CA 94107
Phone: (415) 696-2428 www.SanFranciscoDSA.com Fax: (415) 658-7210



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pg.2 Hiring Process Analysis Sheriff Miyamoto

The recruitment unit's focus appears scattered, attending community events with low applicant turnout and traveling out of state without a streamlined out-of-state hiring process. This approach is not producing results, and urgent action is required.

SFDSA has recommended several suggestions to the SFSO, including condensing testing days, paying for expired CA POST recertification, creating practice oral board tests, being proactive in solving applicant problems, accepting authorized to work in the USA applicants, building a database of applicants to update them on job announcements and practice tests, and removing the recruitment unit from the admin division. These suggestions need to be implemented urgently to produce better results.

The SFSO's recruitment unit needs to refocus its strategy to produce better results, with clear goals and proactive problem-solving measures. Monthly recruitment goals should be set and regularly reviewed, and personnel not meeting the goals should be replaced. Recruiters should have access to the admin area of Smart Recruiter to streamline the process.

In conclusion, urgent action is needed to improve the SFSO's recruitment and hiring processes. The recommendations provided by SFDSA need to be implemented immediately to produce better results. The situation is critical, and there is no time to waste. The SFSO could benefit from implementing a streamlined and proactive recruitment strategy that prioritizes clear goals, a focus on problem-solving, and a targeted outreach effort.

Some possible suggestions for improving the SFSO's recruitment and hiring processes include:

1. Establishing monthly recruitment goals that are reset at the beginning of each month, with consequences for leaders and personnel who fail to meet these goals.
2. Creating a practice oral board test and providing applicants with more information on the background investigation process and disqualifiers, as well as how to resolve common issues in backgrounds.



SAN FRANCISCO DEPUTY SHERIFFS' ASSOCIATION

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pg.3 Hiring Process Analysis Sheriff Miyamoto

3. Developing a database of applicants and past applicants, and keeping them informed of new job announcements and testing dates.
4. Condensing testing days by combining the Written, Physical Agility Test, and Oral Board Test on the same day to make the process more efficient.
5. Being proactive in solving applicant problems by providing support and resources to help them meet the qualifications needed for the job, such as obtaining a GED, repairing their credit, or obtaining the required education or certification. Pay for recertification of expired CA POST applicants.
6. Accepting individuals who are authorized by the Federal Government to work in the US. ie; resident card holders, rather than requiring US Citizenship.
7. Assigning groups of applicants to recruiters to consistently follow up with, and calling job interest leads to focus on taking the interested person to a completed applicant.
8. Removing the three-month penalty when an applicant does not pass a test.
9. Removing the recruitment unit from Admin Division and place it under the Backgrounds Unit, since the applicants end up being processed through the Backgrounds Unit.
10. Providing recruiters with access to the admin area of Smart Recruiter to improve efficiency and streamline the recruitment process.
11. Issue the Personnel History Statement and Medical History Statement with instructions immediately after an application is submitted. This way the applicant can obtain certified documents and complete the forms ready to be submitted/due upon completion of the Oral Board Interview. This will eliminate gaps in time/waiting periods reducing the overall process time.



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pg.4 **Hiring Process Analysis**
Sheriff Miyamoto

12. Background investigations need to be expedited. We recommend using private background investigation companies to assist with background investigations. We need to move faster than any other department.
13. Research the cost to conduct the written test via DHR compared to paying NTN to administer the written test online to each applicant. NTN would also probably give a bulk discount to the department or at wholesale cost. If the research does not prove a savings, then limit paying for out of state testing and/or special circumstances. The SFSO should have a supply of NTN REACT Online Test cost waivers.
14. If recruiting out of state, recruit in states that NTN offers their testing services. Team up with NTN to administer the written test, physical agility test, and request they do the oral board or assist with facilitating the oral board via video conference.

By implementing these or similar measures, the SFSO could create a more effective and efficient recruitment and hiring process that will enable it to fill urgent staffing needs quickly and with a high-quality workforce.

Best regards,

Ken Lomba
SFDSA President
president@sanfranciscodsa.com
Office: (415) 696-2428

Citizen Complaint Form
City and County of San Francisco
Civil Grand Jury

IMPORTANT: The Citizen Complaint Form should be prepared and filed with the Grand Jury **only after all attempts to resolve the issue have been exhausted.** The Grand Jury has no authority to investigate complaints pending before a court of law or disputes between private parties. The Grand Jury does not necessarily investigate all complaints received.

Person or Agency About Which Complaint is Made

Name or Agency:

San Francisco Sheriff's Department

Address:

City Hall, Room 456

1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

Telephone:

415-554-7225

Nature of Complaint

Describe the events in the order they occurred and as concisely as possible:

See attached.

Contacts

List persons or agencies contacted/consulted **prior to** this Grand Jury request.

San Francisco Sheriffs Office Administration, Labor Relations, City Attorney's Office.

Witnesses the Grand Jury may contact for further information:

Kenneth Lomba - President, San Francisco Deputy Sheriffs' Association.

Citizen Complaint Form
City and County of San Francisco
Civil Grand Jury

Who do you believe the Grand Jury should contact about this matter?

Kenneth Lomba – See above
San Francisco Sheriff and administration
Jail commanders and any Jail Staff injured during investigative period.

Action Requested

Describe the action you wish the Grand Jury to take:

See attached.

Citizen Submitting Complaint

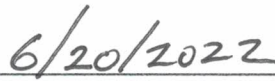
Name: Kenneth Lomba, President San Francisco Deputy Sheriffs' Association

*Address: 35 Gilbert Street San Francisco, California 94103

Telephone 415-696-2428



Signature



Date

*NOTE: Your address is necessary in order for the Civil Grand Jury Foreperson to acknowledge your submission.

- Complaints must be submitted in writing; complaints are not accepted by phone;
- Any exhibits or supporting documents mailed in with this form will not be returned;
- The Civil Grand Jury does not investigate all complaints received. Investigations are at the discretion of the jury;

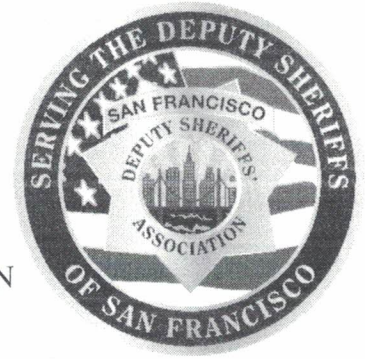
Citizen Complaint Form
City and County of San Francisco
Civil Grand Jury

— Investigation of your complaint will not necessarily be confirmed; all investigations remain confidential until the Civil Grand Jury decides to include the findings in the final report;

— Anonymous complaints may not be responded to if the Civil Grand Jury is unable to contact you for additional information related to the complaint;

— The Civil Grand Jury cannot investigate activities outside their jurisdiction, criminal activity or disputes between private parties.

ATTACHMENT TO GRAND JURY COMPLAINT



To: SAN FRANCISCO CIVIL GRAND JURY

From: SAN FRANCISCO DEPUTY SHERIFFS' ASSOCIATION

Date: JUNE 17, 2022

Re: SAN FRANCISCO COUNTY JAIL—CONTINUED UNDERSTAFFING DANGER

INTRODUCTION

This Grand Jury has exercised its authority given it by the Penal Code to investigate the conditions of the City and County of San Francisco jails (CCSF) several times over the last decade.

In 2014, 2016 and 2017, this Grand Jury conducted investigations of the CCSF jails, issued findings and made recommendations which have not been implemented by the CCSF Sheriff's Office. (Attached hereto as Exhibits A, B and C are the 2014, 2016 and 2017 reports).

This Grand Jury found there to be grave concerns with the safety and security of the inmates, the deputies who serve the community in those jails, and the other non-sworn staff connected with ensuring the safety and security of the inmates and employees.

Specifically, this Grand Jury found the jails were working at minimum staffing but only by requiring the employees to work "excessive amounts of overtime." This was found to be due to the inadequate attempts to recruit and retain enough deputies to fully staff the jails. This Grand Jury found that work-related injuries increased due to the exhaustion the deputies experienced working excessive overtime. This increase in work-related claims resulted in a considerable increase in workers compensation and other personal injury claims, which generally made the jail less safe for those who serve their community there as well as the inmate population.

In 2014, this Grand Jury relied upon an inspection report by the Board of State and Community Corrections. This 8-year-old report warned that continued staffing at minimums, through the use of excessive overtime would, over time, violate Title 15.

This Grand Jury found that because of the dwindling number of total deputies employed by the CCSF, the excessive overtime and shortage of bodies did not allow for the important inmate programs in existence let alone increase the inmate programs that were recommended. Furthermore, the recommended training for deputies could not take place or was inadequate to deal with the mental health and substance abuse as well as many other issues the housed population experiences.

Ultimately, this Grand Jury recommended on three separate occasions in 2014, 2016, and 2017 to "expedite hiring to reduce overtime." The Grand Jury's recommendations have never been followed and the situation has become untenable as the number of deputies is lower now than it was when this Grand Jury made these strong recommendations.

CCSF JAILS ARE NOW FALLING BELOW MINIMUM STAFFING REGULARLY

When this Grand Jury previously inspected and investigated the conditions in the jails, it determined that the jails were just at minimum staffing, through the excessive overtime worked by the deputies.

Between 2015 and 2017, the San Francisco Deputy Sheriffs' Association (SFDSA) filed several grievances against the Sheriff's Office because the minimum staffing was not being met. The Sheriff sets the minimum staffing each year and it is memorialized in the collective bargaining agreement between the CCSF and the SFDSA.

The arbitrator looked at the staffing levels between 2015 and 2017 to make a determination if the CCSF Sheriff's Office was meeting the minimum staffing requirements. The Sheriff's Office admitted in many cases that numerous times the staffing did not comply with the minimum standards. The CCSF Sheriff's Office defended itself by stating that the number of times this occurred was di minimis.

The arbitrator found that in each of the 6 total grievances filed, the CCSF Sheriff's Office failed to meet the minimum staffing levels that itself set. The remedy the arbitrator ordered was to divide the pay of the understaffed work shift amongst the workers who actually worked the shift. For instance, if minimum staffing is 10 and only 8 are scheduled, then the 8 who work will split the pay for the other 2 positions that did not work.

The arbitration award stated that the additional cost to the CCSF for employees who did not even show up to work should provide adequate incentive to the CCSF to meet the minimum staffing requirement. (Attached hereto as Exhibit D is the Arbitration Award.)

It did not.

Just as this Grand Jury found that paying the dwindling number of deputies more money (overtime compensation) does nothing to make the jail safer for the inmates or staff, does nothing to allow for additional or maintenance of inmate programs and does nothing to obtain necessary training for the deputies to assist with the needs of the inmate population, so does the award of the arbitrator do nothing to accomplish these goals.

As this Grand Jury will see, when it investigates the staffing levels in the last few years, the CCSF is consistently and methodically falling below the minimum staffing. The warning given by the Board of State and Community Corrections to this Grand Jury in 2014 of a Title 15 violation may have come to fruition. Since that report, minimum staffing has NOT been met multiple times and this practice continues while the total number of employed deputies falls.

Just days ago, on June 9, 2022, Sheriff Miyamoto issued a memo to all CCSF jail staff identifying his intentions of – operating below minimum staffing – for a period of the next 8-9 months! The CCSF has clearly recognized the futility of giving the appearance of reaching minimum staffing and has now admitted that it cannot exercise its duty to do so. (Attached hereto as Exhibit E is the June 9, 2022 memo from the Sheriff.)

The CCSF is in fierce competition with its neighboring counties, Alameda and San Mateo, for jail staff. Alameda has been under a consent decree to hire more jail staff. It would be a shame for the CCSF to be under similar governmental oversight. The CCSF is capable of expediting the hiring of staff but has not made it a priority, at the expense of the overworked and exhausted jails staff.

COMPLAINT

Accordingly, we request that this Grand Jury once again exercise its authority and duty to investigate the CCSF jails. This Grand Jury should demand answers from the CCSF as to why it has failed to comply with its 3 separate recommendations since 2014.

06/20/2022

Date



Kenneth Lomba, President

San Francisco Deputy Sheriffs' Association



San Francisco Sheriff's Office

INTER-OFFICE CORRESPONDENCE

June 9, 2022

Reference: 2022-063

To: All SFSO Members
From: Sheriff Paul Miyamoto
Re: **Staffing Level Challenges and Updates**

In February I sent an update on plans and intentions to address staffing challenges. While not all proposed plans materialized, we continued to work on filling our open requisitions to increase staffing levels and reduce these burdens. The Mayor increased our budget, giving us the funds needed to fill 75 deputy positions during the remainder of 2022 and beginning of 2023.

We are hopeful that the DSA will work with us to implement what we originally proposed to help equalize the burdens on the Custody Operations Division. **THANK YOU** to everyone who has continued to assist with the constant drafts and involuntary overtime. To improve workplace conditions, effective immediately:

- All Divisions will have set plans to operate below minimum staffing levels for an extended time period while we fill and train the 75 positions. Post assignments have been prioritized to identify which ones can go unassigned at the safest level possible if we have to operate under reduced levels.
- Involuntary draft limit will be reduced from 3 per week to 2 per week for this extended time period until we fill and train the 75 positions (effective the new pay period, June 11).
- Boost the number of issued tasers. COD deputies will be given priority for assigned body cameras and tasers.

The extended time period will initially be 8-9 months. These changes will be reviewed/updated as we move forward during this time. All policies still apply.

The following are updates to the information shared in February:

Immediately staff to safe
operational levels
PACE Plan

We initiated the PACE plan to help offset mandatory overtime and involuntary drafts and proposed the following to the unions:

1. Court Services will change the schedule of **all assigned deputies** to work from 0700 to 1500 hours.

2. Mandatory overtime for all staff for a fixed amount of shifts and/or hours per pay period, based on current staffing data.

- a. All Staff Department wide will be involuntarily drafted on the first day they return from their scheduled RDOs for up to 16 hours total for that day. *For an 8-hour shift this will mean they will be scheduled for an additional 8 hours, for 10 hour shifts an additional 6 hours and for 12 hour shifts an additional 4 hours.*

Results: DSA meet and confer process was delayed by contract negotiations. We have requested to continue meet and confer on these proposals.

Current Plan:

Staffing on involuntary overtime and operating below minimum

Goal: Mitigation plan for operating below minimum for an extended period of time for first quarters of the 2022-23 budget cycle (until hiring and training are completed for the 75 requisitions).

Request increased budget funding
for recruiting, hiring and retention
of members

We requested funding for two recruiters to help expand work on engagement strategies and recruitment activities (\$371,000/year). We are also requesting additional support for non-personnel services (\$1 million) to expand the range of recruitment services currently in use to attract as wide of an applicant pool as we can.

Results: although we did not get funding for incentive bonuses for new hires, the Mayor supports our plan and has proposed an increase in our budget this year reflecting the above requests.

Employee Wellness and Operational Safety

To support deputy wellness and safety, the Department requested budget support for first-responder-specific Employee Assistance Program (EAP) services negotiated by the City's Health Service System (HSS).

Results: The Mayor supports our plan and has proposed an increase in our budget this year reflecting those requests.

For operational safety, the Department requested body-worn camera program support and an increase in available tasers for training and deployment. **Results:** funded and in process of assigning BWCs and tasers.

Thank you to everyone for meeting the challenges of low staffing day after day.

Stay safe, be well, and take care

ALEXANDER COHN
Arbitrator - Mediator
P.O. Box 4006
Napa, CA 94558.
(707) 226-7096

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy

between

**SAN FRANCISCO DEPUTY SHERIFF'S
ASSOCIATION,**

and

**CITY AND COUNTY OF SAN FRANCISCO,
SHERIFF'S DEPARTMENT.**

Involving a dispute over Minimum Staffing
Case No. MIN STAFFING 170761

**ARBITRATOR'S
OPINION AND AWARD**

This Arbitration arises pursuant to Memorandum of Understanding ("MOU") between the SAN FRANCISCO DEPUTY SHERIFF'S ASSOCIATION, hereinafter referred to as the "Association," and the CITY AND COUNTY OF SAN FRANCISCO, SHERIFF'S DEPARTMENT, hereinafter referred to as the "City" and/or "Department," under which ALEXANDER COHN was selected to serve as sole, impartial Arbitrator, whose decision shall be final and binding upon the parties.

Hearing was held on October 6, 2017, in San Francisco, California. The parties were afforded full opportunity for the examination and cross-examination of witnesses, the introduction of relevant exhibits, and for closing argument. Post-hearing briefs were received from the parties on or before December 9, 2017, and the matter was submitted.

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1 APPEARANCES:

2 On behalf of the Association:

3 PETER A. HOFFMAN, Esquire, Rains Lucia,
4 2300 Contra Costa Boulevard, Suite 500,
Pleasant Hill, California 94523.

5 On behalf of the City:

6 JENNIFER S. STOUGHTON, Esquire, Deputy
7 City Attorney, Office of the City Attorney,
1390 Market Street, 7th Floor, San Francisco,
8 California 94102.

9 **ISSUE**

10 Whether the Department violated the minimum staffing
11 provision of the MOU in any and/or all of the six
grievances which are pending; and if so, what shall be the
remedy?

12 **RELEVANT PROVISIONS OF MOU**

13

14 **ARTICLE I**
REPRESENTATION

15 **I.I GRIEVANCE PROCEDURE**

16 53. *Authority of the Arbitrator.* The decision of the arbitrator... shall be final and
17 binding, unless challenged under applicable law. The arbitrator shall have no
authority to add to, ignore, modify or amend the terms of this Agreement.

18 . . .

19 **ARTICLE II**
EMPLOYMENT CONDITIONS
20 **II.D ASSIGNMENT OF WORK**

21 3. *Staffing Levels.* The Sheriff shall **reasonably determine and adjust** minimum
22 staffing for the Custody Operations Division and Court Services in Appendix B.
The minimum staffing levels, listed in Appendix B, reflect **staff levels**
23 **currently understood to be consistent with the post assignments the**
Department has determined will maintain safe and secure operations and
24 comply with the Board State and Community Corrections (BSCC) Minimum
Jail Standards Title 15.¹ (Emphasis added)

25 **FACTS**

26 The salient facts are not in dispute. Between November 1, 2015 and May 23,
27 2017, the Association filed six separate grievances, alleging that on a number of

28 ¹Given the Department's acknowledgment, *infra*, there is no need to set out in detail Appendix B.

1 days during that period staffing levels within the Custody Operations Division and the
2 Field Operations Division (courts) fell below the minimum levels set forth in Appendix
3 B of the MOU.² There were 28 shifts on 10 days in which the minimum staffing
4 requirements were not met at the beginning of the shift. The Department does not
5 dispute that staffing on these days failed to comply with the minimum standards. The
6 Association seeks double time for all members who worked while staffing was below
7 the minimum standards, as well as attorney's fees for time spent prosecuting the
8 grievances.³

9 The first grievance, filed on December 23, 2015, alleged that nine shifts,
10 starting on November 1, had fallen below the minimum staffing levels.⁴ The
11 Department acknowledged that staffing had fallen below the minimums at the start of
12 these shifts, but responded that the staffing shortfalls were *de minimis*, as they
13 represented shortfalls in only 0.007% of shifts.⁵ The Association subsequently filed
14 five additional grievances, alleging three violations on October 30, 2016, four
15 violations on December 18, four violations on December 27, four violations on May
16 13-14, 2017, and three violations on May 19, 21, and 23.⁶ In most of the cases,
17 staffing was one or two employees short of the minimum levels.⁷ However, on
18 December 18, 2016, two divisions were short by four, and one was short by six.⁸ On

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20 ///

21
22 ²JX B-E.

23 ³JX B-E.

24 ⁴JX B1.

25 ⁵JX B2.

26 ⁶JX C1-E1.

27 ⁷AX A-F.

28 ⁸AX C.

1 May 14, 2017, there were shortfalls of seven, four, and eight employees.⁹ In each
2 case, the Department acknowledged that staffing had fallen below the minimum
3 levels.¹⁰ The Department denied all of the grievances, on the basis that it had made
4 good faith efforts to meet the minimum staffing requirements, that the violations were
5 *de minimis*, and that the Department did not have the authority to grant the requested
6 remedy of double time compensation.¹¹

7 In October of 2015, there were 714 sworn personnel represented by the
8 Association.¹² The number increased to 724 in November of 2015.¹³ There were 736
9 sworn personnel October of 2016, 727 in December of 2016, and 737 in May of
10 2017.¹⁴

11 Senior Deputy Eugene Cerbone, Association President, testified that the
12 language in the MOU regarding minimum staffing has stayed essentially the same for
13 many years; that the Department never approached him to seek a modification of the
14 minimum staffing provision; that no proposals were submitted to modify Appendix B,
15 setting forth the minimum staffing levels; and, that there are no exceptions to the
16 minimum staffing levels in the MOU.

17 Chief Deputy Paul Miyamoto is responsible for oversight of the Custody
18 Operations Division (jails) the Classification Unit, the Central Records Unit, and the
19 DNA Collection Unit. He testified that the minimum staffing levels reflected in
20 Appendix B are necessary for compliance with State law; that Association members
21 bid for vacations once a year; that the Department does not take unanticipated sick
22

23 ⁹AX E.

24 ¹⁰JX B4-G4.

25 ¹¹JX B6-G6.

26 ¹²AX B2.

27 ¹³AX A1.

28 ¹⁴AX B2.

1 leave into account when setting schedules; that when a shift falls below the minimum
2 staffing levels, the Department uses volunteers followed by an involuntary draft
3 system to reach full staffing; that employees are drafted in inverse seniority order;
4 that the Department currently has a staffing shortage; that staffing has been reduced
5 in the past six to seven years due to a long period of hiring freezes, related to political
6 disputes between the Mayor and a former Sheriff; and, that staffing is currently being
7 increased; e.g., the Department has run multiple academies in the past two years in
8 an attempt to increase overall staff.

9 Miyamoto also testified that he was responsible for receiving and processing
10 the grievances; that on the days that staffing fell below the minimum, a Watch
11 Commander was required to write an incident report; that he authorized staffing help
12 to the units that fell below minimum; that on December 18, visiting was canceled for
13 the day; that Advanced Officer Training was also canceled; that lockdown was
14 instituted at one of the facilities, so that one Deputy can watch over two pods instead
15 of one; that no abnormal incidents occurred on December 18; that there were
16 significant staffing shortages on December 27; that staffing was brought up to the
17 minimums mid-shift; that staffing was brought up to minimums mid shift on a few of
18 the other dates at issue; that staffing did not reach the minimum on Mother's Day,
19 due to a large number of sick leave usages; that no discipline was issued for any
20 alleged abuse of sick leave; and, that no safety issues arose as a result of any of the
21 days of staffing shortfalls.

22 **POSITION OF ASSOCIATION**

23 The grievances must be sustained because the Department violated the MOU
24 by failing to meet the clearly stated minimum staffing levels necessary to ensure the
25 welfare and safety of sworn personnel, civilians, and inmates. The City's approach to
26 the arbitration was to make a variety of excuses for its undisputed violations.
27 However, the City cannot escape the reality that it repeatedly failed to comply with its
28

1 obligations under the MOU, and it should not be allowed to escape its duty to remedy
2 these repeated failures. The Association therefore requests double time pay for
3 members working on the days in question, and attorneys' fees and costs, due to the
4 City's willful violation of the MOU and refusal to propose any remedy whatsoever to
5 resolve this matter.

6 The MOU imposes a clear and unmistakable obligation on the Department to
7 meet the minimum staffing requirements in Appendix B. The Department has
8 admitted to 28 separate minimum staffing violations. The only issue is therefore the
9 appropriate remedy for these repeated, brazen violations.

10 The Department's "good faith" attempts to comply with the MOU do not
11 excuse the violations. The staffing shortage cited by the Department does not excuse
12 the violation. The number of sworn personnel steadily increased throughout the
13 period in which the grievances were filed, demonstrating the supposed "staffing
14 shortage" is simply a fabricated excuse put forth in a feeble attempt to avert attention
15 from the Department's own administrative shortcomings. The City has also attempted
16 to blame Association membership for the shortfalls, in another inflammatory blame
17 shifting tactic. No discipline was issued to curtail the alleged bad behavior the
18 Department is now using as an excuse. In fact, the Department always has the ability
19 to ensure minimum staffing by involuntarily calling in Deputies. The Department's
20 failure to use its authority to ensure compliance with the MOU should not render
21 provisions of the MOU intended to ensure safe working conditions unenforceable
22 merely because the Department asserts that it acted in good faith.

23 The remedy provided should provide additional compensation to affected
24 Association members and vacate any economic benefit experienced by the
25 Department. The Arbitrator enjoys broad authority in fashioning a remedy. The
26 members deserve additional compensation for suffering through working conditions
27 that unreasonably compromised their safety, and the Department must not
28

1 experience an economic incentive to continue to violate the minimum staffing
2 requirements in the future. While an economic remedy is undoubtedly standard in
3 contractual staffing grievances,¹⁵ the continuous disregard for employee safety the
4 Department has demonstrated in committing 28 separate minimum staffing violations
5 warrant something more than simply directing the City to compensate employees
6 with the value of the overtime costs avoided by the Department. It would diminish the
7 service of Association members working in dangerous conditions to provide
8 additional compensation that consisted of nothing more than a proportional fraction
9 of the overtime cost savings experienced by the Department as a result of operating
10 below minimum staffing. Further, if the only risk to the Department for violating the
11 minimum staffing requirements is the mere possibility that its economic savings
12 would be temporary, the Department would have an incentive to commit further
13 violations. The Association therefore seeks overtime compensation at twice the
14 employees' regular rate of pay for those employees who suffered through the unsafe
15 working environment the Department created.

16 In arbitration, attorney fees are appropriate where one party acts arbitrarily,
17 capriciously, or in bad faith.¹⁶ An award of attorneys' fees is appropriate here. This is
18 a case that should never have necessitated the Association to incur substantial
19 attorneys' fees by resorting to arbitration. The Department acknowledged its
20 repeated violations but nonetheless refused to fashion or offer any proposed remedy,
21 essentially telling the Association that its negotiated working conditions are
22 unenforceable and therefore illusory. This case has been a frivolous and malicious
23 waste of Association resources, and attorneys' fees are therefore appropriate.

24 POSITION OF CITY

25 The grievances must be denied because the Association has not established

26
27 ¹⁵See e.g., *City of Markham Police Department*, 2014 WL 4832265.

28 ¹⁶*City of Mansfield*, 121 LA 1141 (2005).

1 a violation of the MOU. The MOU only requires that the Sheriff "reasonably
2 determine and adjust" minimum staffing levels. There is no dispute that the Sheriff
3 has done so, as reflected in Appendix B. There is no language requiring that the
4 Sheriff maintain staffing levels consistent with Appendix B in every case. Even if the
5 Arbitrator determines that the Department violated the MOU, no monetary remedy is
6 appropriate. There is no basis in any language in the MOU to award the double time
7 sought by the Association, and the Association failed to establish any harm justifying
8 such a remedy.

9 The Department did not violate the MOU. The MOU requires the Sheriff to
10 "reasonably determine and adjust minimum staffing levels" for certain posts listed in
11 Appendix B. The Sheriff indisputably complied with that mandate. The Association
12 asks the Arbitrator to add a requirement to the MOU that the Sheriff comply with the
13 minimum staffing levels at all times. However, the MOU specifically prohibits the
14 Arbitrator from adding to or amending the terms of the MOU. There is no evidence of
15 bargaining history or past practice supporting the Association's interpretation.

16 Even if the Arbitrator determines that the Department violated the MOU, there
17 is no monetary remedy available. The Association seeks overtime compensation at
18 twice the employees' regular rate of pay for all Association members on duty at
19 locations/facilities that fell below minimum staffing during the dates/times identified,
20 and reimbursement for all attorneys' fees and costs incurred by the Association to
21 process the grievances. These draconian remedies are at odds with general
22 principles in labor law, the express provisions of the MOU, and the facts of this case.

23 The MOU does not permit liquidated or punitive damages. The Department
24 already paid the members in question for the shifts they worked. An award of
25 damages would essentially be liquidated or punitive damages. No language in the
26 MOU justifies such an award. In addition, punitive damages require a showing of bad

27 ///

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1 faith that would "shock the conscience of the arbitrator."¹⁷ The evidence here shows
2 that the Department took all the necessary and possible steps to bring staffing levels
3 up to minimum, and, when that was insufficient, took measures to redistribute
4 staffing and closed posts and inmate activities. The City is also currently working to
5 address the staffing shortage including by running multiple academies.

6 The Association also failed to establish any actual harm suffered by its
7 members. There is no evidence of monetary loss by any Deputy. There is likewise no
8 evidence that the staffing shortfalls were undertaken as a cost saving measure. All
9 reasonable steps were taken in an attempt to ensure full staffing. A monetary award
10 would unjustly enrich employees who were already paid in full for time worked, and
11 who caused the problem in the first place through unanticipated sick leave use in
12 large numbers on certain dates. Any harm to the members was *de minimis*. The
13 Department fell below minimum staffing on fewer than fifteen shifts out of almost
14 12,000 during the time period when the grievances were filed. On some of those
15 occasions, the Department brought staffing levels up to the minimum during the shift.

16 Finally, the Arbitrator does not have the authority to award attorneys' fees.
17 There is no evidence of the extreme bad faith that would be the necessary predicate
18 for such an award. There is no evidence of any bad faith whatsoever.

19 **OPINION**

20 Preliminary Matters

21 The Association bears the burden in this contract interpretation case. In such
22 cases, the Arbitrator's first obligation is to determine whether disputed language is
23 clear and unambiguous. If so, he must give the language its plain meaning, even if
24 one party finds the result somewhat harsh or contrary to its initial expectations. If,
25 however, disputed language is found unclear and ambiguous, or sometimes silent,
26 extrinsic evidence (bargaining history, past practice, etc.) may be used to help
27

28 ¹⁷Elkouri & Elkouri, *How Arbitration Works*, 6th Ed. 2003 at 18.3.E.

1 determine the parties' intent. In addition, words and phrases are rarely interpreted on
2 their own. To give force and effect to the entire agreement, words and phrases must
3 be interpreted in context with their paragraph, section, article, and the MOU as a
4 whole.

5 On this record, there is no need to unduly extend the analysis. Without
6 question, there is no dispute that the minimum staffing levels were not met at the
7 beginning of the shifts on the dates alleged in the Association's grievances. The City
8 acknowledged as much in its grievance responses. But, it contends that it did not
9 violate the MOU, arguing that, while Article II.D.3 requires that the Sheriff "reasonably
10 determine and adjust minimum staffing," it does not require that the resulting
11 minimum staffing levels that are set must, in every case, be observed. Clearly, the
12 Sheriff determined minimum staffing levels for the departments in question, as
13 reflected in Appendix B of the MOU. However, the City's argument is not persuasive.
14 The purpose and indeed definition of minimum staffing levels are that staffing levels
15 are not permitted to fall below the minimum; i.e., minimum staffing levels are not
16 staffing targets, they are minimums. The City contractually agreed not to allow
17 staffing to fall below the minimum. Article II.D.3 and the minimum staffing levels
18 reflected in Appendix B would have no meaning if the Department was free to
19 disregard them without consequence. Accordingly, it is concluded that the City
20 violated the MOU on each of the occasions alleged in the grievances.

21 Remedy

22 The more nettlesome question presented is, therefore, what remedy is
23 appropriate, if any. Initially, an order to the City to cease and desist (i.e., injunctive
24 relief) from further violations of the MOU is appropriate. The City is obliged to comply
25 with the terms of the MOU, and failed to do so on numerous occasions, as alleged in
26 the grievances. The Association also seeks overtime compensation at twice the
27 employees' regular rate of pay for all employees who worked during the shifts that
28 did not meet the minimum staffing requirements.

1 For the reasons that follow, this proposed remedy would not be appropriate,
2 as it would amount to punitive damages. The employees in question were
3 compensated for their work on the days in question, albeit under challenging
4 circumstances.¹⁸ There is no basis in traditional labor contract remedies to order
5 applicable overtime and twice their regular rate of pay for all time worked. Such a
6 remedy is not appropriate in this case. As the City notes, the minimum staffing levels
7 were met in the vast majority of shifts during the time period at issue. More
8 specifically, the City made reasonable efforts to comply with minimum staffing levels.
9 An involuntary draft system was in place to bring in employees on days of low
10 staffing. On some of the days at issue, the minimum staffing levels were reached
11 during or by the end of the shift. Further, on some of the days, it appears that the
12 minimum staffing levels were not reached in part due to excessive sick leave usage
13 on Mother's Day, and two days after Christmas. Put simply, the City's MOU violations
14 were not intentional or carried out in bad faith. In these circumstances, a punitive
15 remedy is not justified.

16 Nonetheless, a monetary remedy is appropriate in view of the repeated MOU
17 violations. The City experienced an economic benefit in the form of lower labor costs
18 on the days when the minimum staffing levels were not reached at the beginning of
19 the shift. Allowing the City to maintain this benefit would eliminate an important
20 incentive for it to ensure that the contractual minimum staffing levels are met. In
21 addition, the employees who worked during the understaffed shifts were harmed by
22 the understaffing because their jobs were made more difficult on those days.
23 Accordingly, the employees who worked during the understaffed shifts should be
24 compensated based on the number of unfilled positions on the shifts at issue for the
25 hours the minimums were not reached, corresponding to the City's savings on those
26 ///

27
28 ¹⁸The work of sworn peace officers is not the same as factory, clerical, retail sales work, etc.

1 days.¹⁹

2 The compensation that would have been paid to employees in the unfilled
3 positions will be divided among the employees who actually worked on those days.
4 Thus, during shifts in which a department was understaffed by one, the appropriate
5 daily rate for one employee will divided among the employees who worked during
6 that shift for the understaffed hours. Likewise, for shifts that were understaffed by
7 more than one, the daily rate times the understaffed number for the hours uncovered
8 will be paid out to those who worked. The remedy should provide the City ample
9 incentive to compel it to meet the minimum staffing levels to which it contractually
10 agreed. Repeat offenses could result in steepened costs. The exact remedy due
11 those who worked during understaffed shift hours is remanded to the parties for
12 calculation for sixty (60) calendar days. At the end of that period, either party may
13 invoke the retained jurisdiction of the Arbitrator to resolve any remedy questions.

14 Finally, the Association vigorously argues for an award of attorneys' fees as
15 an additional remedy. Awards of attorneys fees are extremely rare in labor
16 arbitration. As the City notes, in order to justify such a remedy, the party requesting
17 the remedy must establish bad faith on the part of the opposing party that would
18 "shock the conscience" of the Arbitrator. Here, there is no evidence of bad faith on
19 the part of the City that would be necessary for an award of attorneys' fees. The City
20 met the minimum staffing levels for the vast majority of shifts during the past two
21 years. Further, it appears that the City made a good faith effort both to comply with
22 the minimum staffing levels, and to mitigate the impacts on Association members
23 when it was unable to do so. In addition, on this record, there is no reason to
24 conclude that the City's contentions that there was no MOU violation and/or that no
25 remedy was appropriate if there was a violation were put forward in bad faith.

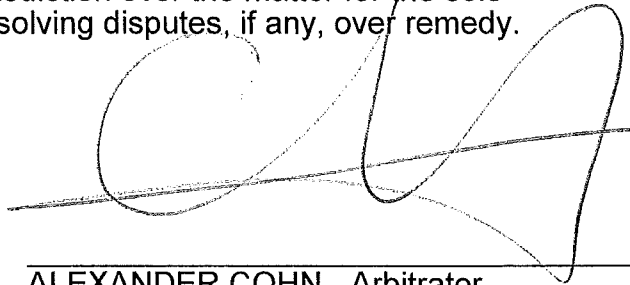
26
27 ¹⁹Apparently, on some shifts, the minimums were met sometime during the shift, although not at the start
28 of the shift. The heart of the remedy is to cover those hours per shift the department operated below the
minimum staffing required at each shift's outset.

1 Accordingly, the grievances are sustained and, as noted below, the remedy is
2 remanded to the parties.

3 **AWARD**

- 4 1. The City violated the minimum staffing provisions of the MOU in
5 all six (6) grievances, which are pending. In accordance with the
6 guidance set out in the above Remedy section of the Opinion,
7 incorporated herein by reference, the Remedy is remanded to
8 the parties for sixty (60) calendar days from the date of this
Award. The parties shall use their best, good faith efforts to
9 resolve the issue. In addition, the City/Department shall cease
10 and desist from violating the minimum staffing provision at issue
11 in this matter.
- 12 2. The Arbitrator retains jurisdiction over the matter for the sole
13 and limited purpose of resolving disputes, if any, over remedy.

14 DATED: January 8, 2017

15 
16 ALEXANDER COHN - Arbitrator



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November 29, 2023

Via Electronic Mail

Sheriff Paul Miyamoto
Sheriff's Office/City Hall
San Francisco, California 94103
email: paul.miyamoto@sfgov.org

Re: Dangerous Working Conditions at CJ3

Dear Sheriff Miyamoto,

I hope this letter finds you well. I am writing to formally express my deep concern and disappointment with the dangerous working conditions at CJ3. Workload has increased there and staffing has been reduced. The minimums have been lowered, positions have been cut and workload has increased. Our members take pride in their work and are vigilant in keeping the peace at CJ3 but it can not be done with the recent thinning of staff while trying to return to pre-covid ways with these unsafe changes. It is essential that we address these matters promptly and collaboratively to ensure the safety and effectiveness of our personnel.

Staffing:

The staffing situation at CJ3 has become a significant challenge, impacting both the safety of our workforce and the operational efficiency of the facility. Notably, minimum staffing levels have been reduced, leading to critical shortages in key positions, such as movement officers and center pod deputies during swing shifts. This situation poses potential risks that require immediate attention.

Follow-up on 2019 Controller's Report:

The findings of the 2019 San Francisco Controller's report, indicating an overreliance on overtime and persistent issues of understaffing and underfunding, continue to be relevant. Despite these concerns, CJ3 has experienced further reductions in staffing, exacerbating the existing workload



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and responsibilities. To this date SFSO has not been able to close the gap to Pre-2020 in the staffing shortage, yet at CJ3 the SFSO has reduced staffing and taken on more work load, increased visiting days and times for public visitors and increased volume of attorney visits. Not only that, additional tasks such as outdoor walk time and now the Annex being staffed and opened.

Fights amongst inmates are increasing attacks on deputies. The Mayor's Office has not taken any initiative to attract more applicants to the Sheriff's Office and matter of fact the Mayor's Office has denied initiatives by the SFDSEA to retain retiring deputies, yet in the same time period gave retention incentives to the dispatchers, child welfare officers, firefighters and police officers.

The Sheriff's Office needs to aggressively hire immediately. Salary and incentives need to be increased to attract more applicants. We also recommend the following changes to be implemented until staffing returns to a safe level.

The Sheriff's Office has prided itself on providing the maximum amount of out of cell time for incarcerated people. Unfortunately, this needs to be reduced to maintain a safe environment. During this time of understaffing, out time must be reduced from the maximum 11 hours out a day to a manageable level similar to San Mateos Sheriff's Office of 6 hours of out time a day. A simple out time management technique would be to allow out time in rotation by upper or lower tier. This is safer and with the small amount of available telephones in the pods more phones would be available to share with a smaller group.

Incarcerated Person Jail Rule Violations:

Requests for Discipline are the main rule of enforcement in the jails. Our members have reported to us that they have completed and issued RFDs, yet supervisors have let the adjudication process lapse and expire resulting in no enforcement action. This takes power and control from the members that are empowered to keep the peace in the pods. A direct order must be issued to all supervisors that RFDs must be adjudicated within the time frame of the RFD process. It does not matter if the supervisor is being paid regular rate, voluntary overtime or involuntary overtime this job function must be done. I have attached an example of a recent fight RFD that was not adjudicated and no inmate was disciplined for fighting. The RFD system has become a "Kangaroo Court."



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Lockdowns:

Lockdowns are a tool to maintain order and safety. When the jail is understaffed, pods should be locked down and movement should be limited. Lockdowns should also be used to maintain safety during and after an excited incident such as a fight or attack on staff. There needs to be a cooling down period after an excited incident. The people in the pods, as you know, have been charged with crimes and many of them have repeatedly stayed in the San Francisco jail. Knowing the environment, once a fight or attack has occurred tensions will be high and there is the possibility of another excited incident. We believe cool down periods are necessary after incidents to mitigate tensions.. You can not simply address the individual in this environment of sophisticated and experienced incarcerated people.

Penal Code Violations:

Criminal charges must be filed for all violations of the law, specifically violations that lead to violence such as jail made weapons and illegal contraband including illegal possession of drugs, illegal drugs and jail made alcohol. Investigations must happen at the deputy level in conjunction with detectives. This means the deputies must properly secure the scene, preserve and collect evidence. A preponderance of evidence solidifies cases, "no stone unturned".

Structural Improvements:

In addition to operational adjustments, consider the following structural improvements:

Increase the amount of telephones for use to the incarcerated people. This would reduce some tension by having more free telephones available.

1. Telecommunications Infrastructure:

Increase the number of telephones available to inmates by converting existing telephone plugins in all pods.

- a. We found additional existing phone line locations in all pods.
- b. Two plugin locations on the lower level pillars
- c. Two plugin locations on the upper level pillars

In the general population these existing and working telephone plugins can be converted to 4 mounted phones in each pod immediately.



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In ad sep rolling phones can be increased. This would be an increase in phones from 4 to 8 totaling 8 available phones per General Population pod. This would be an increase in phones from 2 to 4 totaling 4 available phones per Ad Sep pod.

The phone service needs to program in additional hurdles to make it difficult on any incarcerated person that is manipulating the phone service for profit. Whether it's a limited amount of time per phone card pin such as 15 minutes a day or only two uses per day with each usage separated by a set time. We need to make it difficult on the gang leaders or pod bosses that are using the free phone service to extort money, commissary, or discriminate from others.

2. Handcuffing Ports in Ad-Sep:

Expedite the installation of upper shower doors with handcuffing ports so it can be utilized and complete the installation of handcuffing ports to recreation yard doors. Installing an upper shower door with a handcuffing port would increase safety, comply with handcuffing policy and speed up walk times.

3. Interview Room Safety in Ad-Sep:

Equip interview rooms lacking handcuffing ports with this essential safety feature.

I have advised management that our members are not pleased with how the custody division is managed. As I stated before, a vote of no confidence against the Chief of Custody may be forthcoming. I have also attached a copy of a submitted grievance with 93 deputy signatures. I believe the department is on the verge of a mutiny if the above is not addressed.

Sheriff Miyamoto, I trust that we can collaboratively address these concerns in a manner that ensures the safety of our personnel and the effective operation of CJ3. Your attention to these matters is highly appreciated.

Respectfully,

Ken Lomba
SFDSA President
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June 21, 2022

Via Electronic Mail

San Francisco Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
email: Board.of.Supervisors@sfgov.org

Re: SFDSA Demands Civil Grand Jury Investigate the Sheriff's Office

Dear Board of Supervisors:

Staffing in the San Francisco Jails has become dangerously unsafe with inmates attacking inmates, nurses, sheriff deputies and civilian employees. The San Francisco Sheriff's Office and City and County of San Francisco have understaffed the jails to a dangerously low level, they have not prioritized funding to hire deputies, they have not even prioritized retention of current deputies.

Since 2014 there have been 3 separate reports from the SF Civil Grand Jury warning about the effects of going below minimum staffing levels and to expedite hiring instead of forced overtime. There was even a warning of a possible violation of Title 15 in the future if nothing changes. Unfortunately, the Sheriff's Office has failed to hire the proper number of deputies to create a safe working environment for both the deputies and inmates. The minimum staffing levels have gotten worse, and bottom line: the deputies are exhausted.

In the past reports, the Grand Jury found that because of the dwindling number of total deputies employed by the City and County of San Francisco, the excessive overtime and shortage of bodies did not allow for the important inmate programs in existence let alone increase the inmate programs that were recommended. Furthermore, the recommended training for deputies could not



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take place or was inadequate to deal with the mental health and substance abuse as well as many other issues the housed population experiences.

Ultimately, this Grand Jury recommended on three separate occasions in 2014, 2016, and 2017 to "expedite hiring to reduce overtime." The Grand Jury's recommendations have never been followed and the situation has become untenable as the number of deputies is lower now than it was when this Grand Jury made these strong recommendations.

CCSF JAILS ARE NOW FALLING BELOW MINIMUM STAFFING REGULARLY

Just days ago, on June 9, 2022, Sheriff Miyamoto issued a memo to all City and County of San Francisco jail staff identifying his intentions of – operating below minimum staffing – for a period of the next 8-9 months! The City and County of San Francisco has clearly recognized the futility of giving the appearance of reaching minimum staffing and has now admitted that it cannot exercise its duty to do so.

The City and County of San Francisco is in fierce competition with its neighboring counties, Alameda and San Mateo, for jail staff. Alameda has been under a consent decree to hire more jail staff. It would be a shame for the City and County of San Francisco to be under similar governmental oversight. The City and County of San Francisco can expedite the hiring of staff but has not made it a priority, at the expense of the overworked and exhausted jails staff.

The Civil Grand Jury Complaint against the Sheriff's Office and the City and County of San Francisco was filed on June 20th, 2022. This Grand Jury should demand answers from the San Francisco Sheriff's Office as to why it has failed to comply with its 3 separate recommendations since 2014.

View the complaint here, [Civil Grand Jury Complaint Against SF Sheriff](#)



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Please feel free to contact me if you have any questions.

Best regards,

Ken Lomba
SFDSA President
president@sanfranciscodsa.com
Cell: (415) 696-2428