


RESOLUTION NUMBER R- 299360

ADOPTED ON JUN 21 2004

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is hereby authorized and directed to execute for and on behalf of the City of San Diego the settlement agreement [Agreement], attached hereto as Exhibit A , in complete settlement of each and every claim against the City of San Diego, its agents and employees, in *San Diego Police Officers Association v. City of San Diego*, San Diego Superior Court Case No. GIC 814284.

BE IT FURTHER RESOLVED, that the City Manager and City Attorney are hereby authorized and directed to take such and further actions as may be necessary or appropriate to implement the intent and purposes of this resolution and the Agreement.

APPROVED: CASEY GWINN, City Attorney

By   
\_\_\_\_\_  
Christopher S. Morris  
Head Deputy City Attorney

CSM:smf  
06/03/04  
Or.Dept: CityAtty  
R-2004-1274

## SETTLEMENT AGREEMENT

### 1.0. RECITALS

Whereas, San Diego Police Officers Association [SDPOA] has initiated litigation against the City of San Diego [City] and various of its officials, contending that certain of its promotional practices in the Police Department should be adjusted in light of changes in the law; and

Whereas, City disputes the validity of SDPOA's claims that past practices violate any rules, but agrees that various modifications in the future will best serve the needs of the City and SDPOA members; and

Whereas, the parties hereto desire to avoid the costs and uncertainties of litigation, and to reach instead a compromise of disputed claims,

NOW, THEREFORE, the parties to the Action described below agree, effective on the dates of signature set forth below, to settle all matters at issue in the Action on the terms set forth herein, in order to bring to a final conclusion the matters at issue in the Action and avoid the costs and uncertainties of litigation.

### 2.0. DEFINITIONS

The following terms as used herein shall have the following meanings:

- 2.1. "Action" as used herein refers to that case entitled *SDPOA v. City of San Diego*, Superior Court Case No. 814284, pending in the County of San Diego, State of California.
- 2.2. "Sergeants" refers to those persons applying for consideration for promotion to the rank of Sergeant.
- 2.3. "Lieutenants" refers to those persons applying for consideration for promotion to the rank of Lieutenant.
- 2.4. "Detectives" refers to those persons applying for consideration for promotion to the rank of Detective.
- 2.5. "Pass point" means the score determined by the Personnel Department of the City to be the minimum passing grade on an examination.
- 2.6. "SDPOA" as used herein refers to the non-profit collective bargaining association recognized under the Meyers-Milias-Brown Act (Government Code §§ 3500 *et seq.*) as the employee association for certain police officer employees, numbering about 2,000, in the San Diego Police Department. SDPOA is duly authorized to act in a representative capacity on behalf of all of its members.
- 2.7. "Entity Defendant" as used herein refers to the City of San Diego, and its Police Department and Civil Service Commission.
- 2.8. "Individual defendants" as used herein refers to those individuals named and/or served in the Action.
- 2.9. "Agreement" as used herein refers to the terms and conditions of this settlement agreement document.

### 3.0. PROCEDURES FOR PROMOTION

3.1.1 Term. The Procedures set forth herein shall apply for the term of five years following the effective date of the Agreement. However, if during the five-year period the City becomes aware of any significant detrimental results or disparate impact through its own monitoring efforts, the City may propose to the Civil Service Commission changes to the components of this Agreement that may have caused or contributed to the detrimental results or disparate impact and may amend such process as the Commission may approve, provided that any such changes are subject to the City and/or the Commission's meeting any meet and confer obligations required by law regarding the proposed changes prior to the adoption and implementation of any such changes. At the end of the initial five-year term, this Agreement shall automatically self renew for successive one-year terms, unless either party serves the other party a written proposal for any modification through the meet and confer process to the extent required by law.

3.1.2. Scope. The Procedures set forth herein shall apply to the promotion procedures to the Civil Service Classifications of Sergeant and Lieutenant. The Procedures set forth herein shall also apply to the Civil Service Classification of Detective when such a Classification is established.

#### 3.2. Procedures.

3.2.1. Examination Procedures. Examinations will be administered according to City regulations and practices, except as expressly modified herein.

3.2.2. Request for promotion list. The process will begin by the SDPD requesting a list and Personnel determining whether a new exam will be necessary to create a list. If a new exam is required, it will be constructed and administered as set forth in this section. The SDPD will fill vacancies whenever possible within fiscal and administrative considerations in a timely fashion. In general, it is the desire of the SDPD to request certification to currently existing vacancies at six months intervals. In the event fiscal or administrative considerations make it appropriate, certification may be more frequent than six-month intervals. It will not be the practice of the SDPD to accumulate vacancies or project vacancies for certification purposes.

#### 3.3. Phase One: Written examination.

3.3.1. Exam content. The Personnel Director shall solicit input from San Diego Police Officers Association in the development of the content (what questions to be included in the exam) and substance (what skills or attributes the questions are designed to elicit) of the examination. It is understood and agreed that the Personnel Director shall be responsible for the final content and substance of the examination based upon the input from San Diego Police Officers Association and the job analysis conducted by the Personnel Director.

3.3.2. Announcement. Announcement of the exam shall be accomplished according to normal City guidelines and practices.

3.3.3. Personal Identification Number. The Personnel Director shall establish and maintain a system by which a Personal Identification Number [PIN] is assigned to each candidate who submits an application to take the promotion examination. The PIN number shall be assigned in a manner

that does not reveal any element of the candidate's identity. The candidate shall be notified of his or her individual PIN in writing. The Personnel Director shall maintain a list of the candidates' names and their assigned PINs. The list shall be kept in the same manner the City keeps all other confidential information. The candidates shall be identified only by their PIN numbers throughout the promotion process, except for the list of candidates certified by the Personnel Director and submitted to the Chief of Police for final selection for promotion, which shall disclose the names of the candidates and their categories based on the total scores.

- 3.3.4. Exam key. City shall prepare a key for the exam. Examinees may review any question of their test against the key during the five day review period following the examination, and exercise the right to protest an item as provided under current practice. If, after considering any information brought forth on any such protest or it otherwise appearing that the key is incorrect, the City determines that one or more answers in the key should be amended, or one or more questions modified or deleted, it shall advise all candidates and SDPOA of the changes and the basis for the changes.
- 3.3.5. Observer. San Diego Police Officers Association may, but is not required to, designate an observer to be present during the administration of the written examination. The SDPOA may elect to appoint an observer to be present during the oral interview process only when the oral interview panel is comprised of employees (or former employees) of the SDPD. The observer shall not be an employee of the City of San Diego, and the observer appointed by the SDPOA shall be approved by the City. The observer will be allowed to observe the interviews themselves, and shall not observe the deliberations and scoring following any interview. The observer must be present for every interview conducted. The observer will be required to communicate his/her findings in writing. Such findings shall be distributed to both the City and SDPOA. If the observer disrupts or interferes in any way with the interview process, or does not comply as outlined above, SDPOA will no longer be entitled to have an observer present during the interview process.
- 3.3.6. Promotion Seminar. At least once a year, the San Diego Police Department and the San Diego Police Officers Association shall jointly provide a seminar discussing the promotion process. Such a seminar shall discuss all aspects of the promotion process, including, but not limited to, the areas of skills, abilities, and knowledge subject to testing, the scoring system, and any other subjects relevant to the promotion process to allow the candidates to evaluate the areas in which they need to work on in order to compete for the promotion. The City and SDPD will work to provide areas of training and resources that are equally available to all candidates to assist in their preparation for the exam.
- 3.3.7. Scoring. The exam will then be scored and the scores will be normalized as determined by the Personnel Director. "Normalized" refers to the process by which the scores are weighted so as to equalize their value when combined with the other portions of the exam. Typically, the Personnel Director will assign the highest possible score a value of one-hundred, and the lowest passing score the value of seventy. The remaining scores will be assigned their relative value.

- 3.3.8. Pass Point. The Personnel Director will determine the pass point for the written portion of the exam.
- 3.3.9. Weight of Written Examination. The weight of the results of the written examination shall be 45% of the total score.
- 3.4. Phase Two: Oral examination.
- 3.4.1. Eligibility. All examinees scoring at or above the passing point on the written exam shall be eligible to advance to the oral examination phase.
- 3.4.2. Data sheets. The Personnel Director and the San Diego Police Department shall solicit input from the San Diego Police Officers Association in developing a form for the Data Sheet, which shall have a standardized length and format. The Data Sheet will be used for summarizing a candidate's experience and qualifications. Each candidate who passes the written examination and advances to the oral examination phase shall complete a Data Sheet and submit it to the Personnel Director. The San Diego Police Department shall validate the data, and forward it to the interview panel.
- 3.4.3. Service Credits. Based on the information in the data sheet, a candidate will be given up to five percentage points based on his or her experience as a police officer. These service credit points apply only to candidates who pass the written examination, i.e., whether or not a candidate advances to Phase II is determined solely on the candidate's performance on the written examination. A Sergeant candidate will be given ½ point for every year of service after eight years as a Police Officer II, with a maximum of five total points for service credit. A Lieutenant candidate will be given ½ point for every year of service as a sergeant, after five years of service as a sergeant, with a maximum of five total points for service credit. The Personnel Director shall develop equivalent criteria applicable to "laterals."
- 3.4.4. Interview questions. SDPOA shall be given the right to give input as to the substance of the interview questions. The questions will be designed to identify a set of desirable qualities (e.g., leadership, problem solving, etc.) of an officer holding the rank to which the candidate is considered. The interviewers may ask additional questions based on information contained in the Data Sheet.
- 3.4.5. Interview panels. The interview of candidates shall be conducted by interview panels that consist of at least two interviewers per panel. It is the intent of both parties that the interview panelists will come from outside the City. If the City is unable to convene outside panelists, the City shall meet with the SDPOA before making the decision to use internal panelists. If this occurs, the City will solicit input from the SDPOA prior to selecting panelists, submit a list of the proposed panelists to the SDPOA, and evaluate and respond in writing to any written objection to a proposed panel member. Final panel selection decisions will remain with the City. The interview panels will be monitored for consistency of scoring.
- 3.4.6. Simulation and other selection criteria. If the Personnel Director and/or San Diego Police Department wish to implement a performance

simulation or other selection criteria (either in addition to or in place of the oral interview) in the promotion process, the Personnel Director and San Diego Police Department shall solicit input from the San Diego Police Officers Association prior to implementing such selection criteria. The combined weights of such simulation or other selection criteria and the oral examination shall be 50% of the total score of each candidate.

3.4.7. Scoring of the oral interview. Each interviewer will rate the performance of each candidate on a written sheet. At the end of the exam, scores will be tabulated. The maximum number of points available on the second phase of the exam shall equal 50.

3.5. Phase Three: Total Scoring.

3.5.1. Scoring. Scores for Phase One and Phase Two shall be added, and each candidate will be assigned a total score equal to his or her combined performance on Phase One and Phase Two. The total combined score will then be placed on a scale with 100 being the highest score possible. The highest possible total score a candidates can receive is 100, consisting of the following: up to 45 points for written examination, up to 5 points for Service Credits, and up to 50 points for oral interview and other selection criteria.

3.5.2. The Eligible List. The Personnel Director shall publish a list of candidates showing their Personal Identification Numbers (without disclosing any element of their identity) in the order of their total scores. Each Eligible List shall be effective for a period of two years. Any promotion during the two-year period must be made from the list in effect at the time.

3.5.3. Banding. A candidate's score shall be rounded to the nearest whole number and the candidates shall be ranked in the order of their scores and placed into thirty-one, one-point bands. Candidates with the same whole number score shall be placed in the same band.

3.5.4. Request for Certification. Upon determining the number of vacancies to be filled, the San Diego Police Department will request that a list of candidates be certified to the Department for promotion. The number of candidates to be certified ("Optimum Number") shall be determined as follows: (a) if there are five or less vacancies to be filled, the number of candidates shall be three times the number of vacancies; and (b) if there are six or more vacancies to be filled, the number of candidates shall be ten plus the number of vacancies.

3.5.5. Order of Certification. The Personnel Department shall certify the candidates in the order of the categories starting from the highest category to successively lower categories until the number of candidates equals the Optimum Number. Candidates in a given category shall be treated as equals for the purpose of certification. If reaching the next lower category would cause the number of candidates to exceed the Optimum Number, whether or not that lower category is to be certified shall be determined as follows: (a) if the difference between the number of candidates with that category included and the Optimum Number is greater than the difference between the number of candidates without that category included and the Optimum Number, then that lower category shall not be certified; and (b) if the difference between the number of candidates with that category included and the Optimum

Number is smaller than the difference between the number of candidates without that category included and the Optimum Number, then that lower category shall be certified. The resulting total will be the number of candidates certified to the SDPD. The candidates will then be ranked in order of their categories. If the variance between two categories is the same, the additional category shall be certified.

- 3.5.6. Promotions. The Chief of Police may select for promotion any of the candidates certified by the Personnel Director. The Chief of Police shall consider the candidates' performance on the written examination, oral interview, and any other selection criteria, including experience, leadership, communication skills, and the needs of the Department and community.

#### 4.0. APPEAL PROCEDURE

- 4.1 Meet and Confer. The parties agree to reopen the appeal procedures described in Article 41.V.C of the current MOU ("Denial of Promotion on Grounds Other than Merit"). The parties agree that the purported appeal procedures described in Article 41.V.C of the current MOU shall be deemed set aside by the parties and not applicable. The parties agree to meet and confer to develop an administrative appeal process for any denial of promotion on grounds other than merit. The City agrees that the administrative appeal process shall conform to the requirements of due process and Government Code, section 3304(b).

#### 5.0. EFFECTIVE DATE

This Agreement is effective upon its execution by the authorized representatives of the parties hereto.

#### 6.0. CONSIDERATION

- 6.1. Consideration to SDPOA.
- 6.1.1. Procedures for promotion. In lieu of the present operating practices for promotions of Sergeants and Lieutenants, the promotions process will be accomplished using the Procedures referred to in section 3.0, *infra*.
- 6.2. Consideration to Defendants.
- 6.2.1. Dismissal with prejudice. In consideration of the promises contained herein, upon execution of this Agreement SDPOA shall dismiss the Action with prejudice. A form of dismissal is attached hereto as Exhibit A which, after execution by SDPOA or its attorneys, may be filed with the Court forthwith.
- 6.2.2. Release of claims. SDPOA agrees that by this settlement it releases and discharges Entity and Individual defendants from all loss, liability, or claims of any kind whatsoever relating to or growing out of the facts, issues and events referred to in the Action taking place up to the date of this Agreement. SDPOA expressly acknowledges and agrees that the releases contained in this Agreement include a waiver of all rights under Section 1542 of the California Civil Code, which reads as follows:

*A general release does not extend to claims which the creditor does not know of or suspect to exist in his*

*favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.*

SDPOA acknowledges that it has read all of this Agreement, including the above Civil Code section, and that it fully understands both the Agreement and the quoted Civil Code section. SDPOA waives any benefits and rights granted to it pursuant to Civil Code section 1542.

**7.0. ATTORNEYS' FEES**

The City agrees to pay reasonable attorneys' fees and costs. In the event of a dispute over the amount of attorneys' fees and costs, that dispute shall be determined by the court which shall fix the amount of fees pursuant to section 1021.5 of the Code of Civil Procedure.

**8.0. NO ADMISSIONS**

By entering into this Agreement, neither party admits that it or he or she has engaged in, or is now engaging in, any unlawful conduct or employment practice. It is understood and agreed that this Agreement is not an admission of liability by any party, and that the Entity and Individual defendants specifically deny liability in the Action. The parties agree that it is their mutual intention to compromise past disputed claims and establish agreed protocols for the next round of promotions.

**9.0. NOT MEET AND CONFER**

The parties' efforts in negotiating this agreement are for the sole purpose of reaching an amicable resolution of this dispute and are not intended as a "meet and confer" process as that term is used for purposes of collective bargaining. The parties do not intend to relinquish any of their mutual rights either retained or achieved in prior collective bargaining sessions. By seeking the input of SDPOA in certain aspects of the promotions process, the parties agree that the City has not relinquished its "management rights," if any, in these areas.

**10.0. SEVERABILITY**

Should it be determined by a court that any term of this Agreement is unenforceable, that term shall be deemed to be deleted. However, the validity and enforceability of the remaining terms shall not be affected by the deletion of the unenforceable terms.

**11.0. COOPERATION**

The parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement. In the spirit of this clause the parties also agree not to engage in any conduct that is contrary to or inconsistent with the purposes of this agreement.

**12.0. COUNTERPARTS**

This Agreement may be executed in counterparts, and a faxed copy of a signature on a copy of the signature page hereto shall be deemed to be effective. The execution of a signature page of this Agreement shall constitute the execution of the Agreement, and the Agreement shall be binding on each party upon that party's signing of such a counterpart.

**13.0. ADVICE OF COUNSEL**

The parties declare and represent that they are executing this Agreement with full advice from



their respective legal counsel, except as to tax matters, and that they intend that this Agreement shall be complete and shall not be subject to any claim of mistake, and that the releases herein express a full and complete release and, regardless of the adequacy or inadequacy of the consideration, each intends the releases herein to be final and complete.

**14.0. APPROVAL OF CITY AND CSC**

This agreement shall be presented to the CSC and City Council for approval, and shall become effective when signed by the parties and approved by the Entity defendants.

Wherefore the parties have executed this Agreement effective on the dates set forth below:

**Consent by the San Diego Police Officers Association:**

Dated: \_\_\_\_\_  
Its authorized representative

Approved as to form: Castle, Petersen & Krause:

Dated: \_\_\_\_\_  
Gregory G. Petersen, Esq.

Consent by the Entity Defendants (City of San Diego and its constituent departments or agencies):

Dated: \_\_\_\_\_  
Their authorized representative

Consent by the Individual Defendants:

Dated: \_\_\_\_\_  
Raul David Bejarano

Dated: \_\_\_\_\_  
William Lansdowne

Dated: \_\_\_\_\_  
Jeannette Lapota

Dated: \_\_\_\_\_  
Cathy Lexin

Dated: \_\_\_\_\_  
Cheryl Meyers

Dated: \_\_\_\_\_

\_\_\_\_\_  
Rich Snapper

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael Uberuaga

Dated: \_\_\_\_\_

\_\_\_\_\_  
John Welter

Approved as to form: Paul, Plevin, Sullivan & Connaughton, LLP

Dated: \_\_\_\_\_

\_\_\_\_\_  
Richard A. Paul, Esq.