



# CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

*Sent via Electronic Mail*

October 27, 2022

## NOTICE OF CIVIL SERVICE COMMISSION MEETING

Robert Moore  
[REDACTED]

**SUBJECT: APPEAL BY ROBERT MOORE OF THE HUMAN RESOURCES  
DIRECTOR'S DETERMINATION TO ADMINISTRATIVELY CLOSE  
APPELLANT'S COMPLAINT OF RETALIATION.**

Dear Robert Moore:

The above matter will be considered by the Civil Service Commission at a hybrid meeting (in-person and virtual) in Room 400, City Hall, 1 Dr. Goodlett Place, San Francisco, California 94102 and through Cisco WebEx to be held on **November 7, 2022, at 2:00 p.m.** You will receive a separate email invite from a Civil Service Commission staff member to join and participate in the meeting.

The agenda will be posted for your review on the Civil Service Commission's website at [www.sfgov.org/CivilService](http://www.sfgov.org/CivilService) under "Meetings" no later than end of day on Wednesday, November 2, 2022. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal is attached to this email.

In the event that you wish to submit any additional documents in support of your appeal, email them to the Civil Service Commission's email at [civilservice@sfgov.org](mailto:civilservice@sfgov.org) and bring one (1) hard copy to 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102 by **5:00 p.m. on Tuesday, November 1, 2022**, please be sure to redact your submission for any confidential or sensitive information that is not relevant to your appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

It is important that you or an authorized representative attend the hearing on your appeal. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance. As a reminder, you are to be honest and forthright during all testimony and in all documentation that you provide to the Civil Service Commission.

You may contact me at (628) 652-1100 or at [Sandra.Eng@sfgov.org](mailto:Sandra.Eng@sfgov.org) if you have any questions.

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG  
Executive Officer

Attachment

Cc: Dennis Herrera, Public Utilities Commission  
Carol Isen, Department of Human Resources  
Wendy Macy, Public Utilities Commission  
Amalia Martinez, Department of Human Resources  
Jennifer Burke, Department of Human Resources  
Mawuli Tugbenyoh, Department of Human Resources  
Deborah Dulay, Department of Human Resources  
Michael Ho, Public Utilities Commission  
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Commission File  
Commissioners' Binder  
Chron

## **NOTICE OF COMMISSION HEARING POLICIES AND PROCEDURES**

### **A. Commission Office**

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Each presentation shall conform to the following:

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The Commission may allocate five (5) minutes for each side to rebut evidence presented by the other side.

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Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call our ADA coordinator at (628) 652-1100 or email [civilservice@sfgov.org](mailto:civilservice@sfgov.org) to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City to accommodate these individuals.

#### **Know your Rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code)**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, or to obtain a free copy of the Sunshine Ordinance, contact Victor Young, Administrator of the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102-4689 at (415) 554-7724, by fax: (415) 554-7854, by e-mail: [sotf@sfgov.org](mailto:sotf@sfgov.org), or on the City's website at [www.sfgov.org/bdsupvrs/sunshine](http://www.sfgov.org/bdsupvrs/sunshine).

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# CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

*Sent via Electronic Mail*

October 26, 2022

## NOTICE OF CIVIL SERVICE COMMISSION MEETING

Angela Cheung  
[REDACTED]

**SUBJECT: APPEAL BY ROBERT MOORE OF THE HUMAN RESOURCES DIRECTOR'S DETERMINATION TO ADMINISTRATIVELY CLOSE APPELLANT'S COMPLAINT OF RETALIATION.**

Dear Angela Cheung:

As you may be aware, Robert Moore filed the above-referenced discrimination complaint with the Department of Human Resources ("DHR"). The Department of Human Resources reviewed Robert Moore's allegations, and the Human Resources Director determined that there was insufficient evidence to establish his claims of harassment and discrimination. Robert Moore has appealed that determination to the Civil Service Commission.

In accordance with the City Charter and Civil Service Rules, the Commission may sustain, modify, or reverse the Human Resources Director's determination; and may effectuate an appropriate remedy in the event that it finds discrimination in the work environment. Any such finding is binding on City departments. The Commission may not impose discipline on an employee, but in an appropriate case may recommend that the department consider discipline.

The Equal Employment Opportunity Division of DHR will present and defend the Human Resources Director's determination on Robert Moore's complaint at the Civil Service Commission at a hybrid meeting (in-person and virtual) in Room 400, City Hall, 1 Dr. Goodlett Place, San Francisco, California 94102 and through Cisco WebEx to be held on **November 7, 2022, at 2:00 p.m.** The Commission will have received the DHR staff report, which reviews the evidence pertaining to the complaint and supports the Human Resources Director's determination, in advance of the meeting. You will have an opportunity to address Robert Moore's allegations at the Commission meeting, if you wish to do so, although you are not required to appear. You will be receiving a meeting invite to join the meeting through Cisco WebEx on your computer or you may listen/respond to the meeting by phone. The Commission will rule on the information previously submitted and any testimony or other evidence provided at its meeting.

The November 7, 2022, meeting agenda will be posted on the Civil Service Commission's website at [www.sfgov.org/CivilService](http://www.sfgov.org/CivilService) under "Meetings" no later than end of day on Wednesday, November 2, 2022.

You may contact me at [Sandra.Eng@sfgov.org](mailto:Sandra.Eng@sfgov.org) or (628) 652-1100 should you have any questions.

Sincerely,

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG  
Executive Officer

Attachment

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Wendy Macy, Public Utilities Commission  
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# CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

## CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

1. Civil Service Commission Register Number: 0089-22-6
2. For Civil Service Commission Meeting of: October 17, 2022
3. Check One:           Ratification Agenda  
                          Consent Agenda  
                          Regular Agenda       ✓  
                          Human Resources Director's Report
4. Subject:             Appeal by Robert Moore of the Human Resources Director's determination to administratively close Appellant's complaint of retaliation.
5. Recommendation:    Adopt the report, uphold the decision of the Human Resources Director, and deny the appeal by Robert Moore.
6. Report prepared by: Deborah Dulay, DHR EEO  
                              Telephone number: (415) 557-4902
7. Notifications:       Please see attached.
8. Reviewed and approved for Civil Service Commission Agenda:

Human Resources Director: Carol Isen

A handwritten signature in blue ink, appearing to read "Carol Isen".

Date: October 6, 2022

9. Submit the original time-stamped copy of this form and person(s) to be notified (see Item 7 above) along with the required copies of the report to:

**Executive Officer  
Civil Service Commission  
25 Van Ness Avenue, Suite 720  
San Francisco, CA 94102**

10. Receipt-stamp this form in the "CSC RECEIPT STAMP" box to the right using the time-stamp in the CSC Office.

**CSC RECEIPT STAMP**

Attachment

**NOTIFICATIONS**

**Robert Moore (Appellant)**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Angela Cheung (Respondent)**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Dennis Herrera**

General Manager  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue  
San Francisco, CA 94102  
DJHerrera@sfgwater.org

**Wendy Macy**

Chief People Officer  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue  
San Francisco, CA 94102  
WMacy@sfgwater.org

**Michael Ho**

Acting Employee & Labor Relations Manager  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue  
San Francisco, CA 94102  
MCHo@sfgwater.org

**Steven Tang**

EEO Programs Manager  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue  
San Francisco, CA 94102  
SMTang@sfgwater.org

**Carol Isen**

Human Resources Director  
Department of Human Resources  
1 South Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
*Carol.Isen@sfgov.org*

**Amalia Martinez**

EEO Director  
Department of Human Resources  
1 South Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
*Amalia.Martinez1@sfgov.org*

**Mawuli Tugbenyoh**

Chief of Policy  
Department of Human Resources  
1 South Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
*Mawuli.Tugbenyoh@sfgov.org*

**Jennifer Burke**

EEO Programs Manager  
Department of Human Resources  
1 South Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
*Jennifer.Burke@sfgov.org*

**Deborah Dulay**

EEO Programs Senior Specialist  
Department of Human Resources  
1 South Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
*Deborah.Dulay@sfgov.org*



## CIVIL SERVICE COMMISSION REPORT

### MEMORANDUM

TO: Civil Service Commission

THROUGH: Carol Isen, Human Resources Director  
Department of Human Resources

THROUGH: Amalia Martinez, EEO Director  
Department of Human Resources

FROM: Deborah Dulay, EEO Programs Senior Specialist  
Department of Human Resources

DATE: October 6, 2022

EEO FILE NO: 3529

REGISTER NO: 0089-22-6

APPELLANT: Robert Moore

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#### **I. AUTHORITY**

The San Francisco Charter, Section 10.103 and Civil Service Commission (CSC) Rule 103 provide that the Human Resources Director shall review and resolve complaints of employment discrimination. Pursuant to CSC Rule 103.3, the CSC shall review and resolve appeals of the Human Resources Director's determinations.

#### **II. BACKGROUND**

On August 9, 2010, Appellant Robert Moore (Appellant) began his employment with the San Francisco Public Utilities Commission (SFPUC), Water Enterprise, Sunol Valley Water Treatment Plant (SVWTP) as a 7341 Stationary Engineer, Water Treatment Plant. On September 17, 2012, Appellant was promoted to a 7343 Senior Stationary Engineer.

##### **A. Appellant's Complaint, EEO File No. 3529**

On April 3, 2020, the San Francisco Public Utilities Commission Equal Employment Opportunity Programs Division (SFPUC EEO) received Appellant's complaint of retaliation. See Exhibit A. On April 10 and 15, 2020, Appellant spoke with Dena Narbaitz (Narbaitz), EEO Programs Senior Specialist with SFPUC. See Exhibit B. Appellant alleged that Angela Cheung (Cheung), Water Supply & Treatment Division Manager, 0942 Manager VII, retaliated against Appellant when in early December 2019, Cheung questioned why Appellant could take time off for Thanksgiving 2019. Appellant further alleged from around January to February 2020, Cheung instructed staff to deny Appellant overtime (OT). Lastly,

starting around November 6, 2019 until April 2020, Appellant alleged Cheung instructed Joe Guerra (Guerra), then-7443 Superintendent Water Treatment Facility, to track Appellant's leave. See Exhibit C.

On May 14, 2020, the SFPUC sent a Department Report of Discrimination Complaint to the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) reporting Appellant's allegations. See Exhibit B.

**B. Human Resources Director's Administrative Closure**

In a letter dated June 7, 2022, the Human Resources Director informed Appellant that the allegations did not meet the standards for retaliation. Accordingly, Appellant's complaint was not investigated further and was administratively closed. See Exhibit C.

**III. ISSUE ON APPEAL TO THE CIVIL SERVICE COMMISSION**

On July 6, 2022, Appellant appealed the Human Resources Director's determination to the CSC. See Exhibit D. The issue on appeal is whether the Human Resources Director appropriately administratively closed Appellant's complaint.

**IV. INVESTIGATIVE STANDARDS AND ANALYSIS**

**A. Moore Did Not Sufficiently Allege a Retaliation Claim**

To warrant further investigation, a complaint of retaliation in violation of the City's EEO Policy must sufficiently allege all of the following: (1) appellant engaged in a protected activity; (2) appellant suffered an adverse employment action; and (3) there was a causal link between the protected activity and the adverse employment action. An adverse employment action is any objectively material adverse action affecting the terms, conditions or privileges of employment. Actions considered materially adverse are those that impair a reasonable employee's job performance or prospects for advancement. Materially adverse actions may also include those acts that would dissuade a reasonable employee from supporting a discrimination complaint.

**1. Appellant Took Time Off for Thanksgiving 2019**

Appellant engaged in a protected activity when he took [REDACTED] from February 1, 2018 until November 6, 2019. However, Appellant did not suffer an adverse employment action because Appellant took time off for Thanksgiving 2019. See Exhibits C and E. Thus, Appellant's retaliation claim cannot be established. Moreover, SFPUC management had legitimate business reasons to verify whether employees accurately document leave requests to ensure compliance with policies and procedures. Cheung and Anthony Scott (Scott), 7245 Chief Stationary Engineer, Water Treatment Plant, discussed whether Appellant's time was coded accurately per the Leave Policy. See Exhibits F and G. Similarly, Cheung and Guerra verified whether Appellant's time off was properly recorded and categorized. See Exhibits I and J. Although [REDACTED] approved Appellant's November 30, 2019 time off as Floating Holiday Pay (FH), Cheung permitted the categorization. Cheung's actions demonstrate forbearance toward Appellant rather than retaliatory animus. To ensure both Scott's and Appellant's continued compliance with the Leave Policy, Cheung asked Guerra to verify Appellant's time off requests [REDACTED], which is a legitimate business interest

unrelated to Appellant's protected activity. See Exhibits I and J. Moreover, SFPUC management identified discrepancies in how Appellant categorized his time off, resulting in additional training for Appellant to ensure compliance with the Leave Policy. See Exhibit K. Lastly, SFPUC management has legitimate business interests to verify Appellant's time off requests given that Appellant has additional employment outside his position with the SFPUC. See Exhibit R. Thus, documentation shows how SFPUC management had the legitimate business interest to ensure Appellant's time off was consistent with the Leave Policy, and Appellant's retaliation claim cannot be established.

On appeal, Appellant states that Cheung disliked that Appellant could take time off even though Appellant [REDACTED]. As explained above, Appellant took time off for Thanksgiving 2019, which does not suggest retaliatory animus on the part of Cheung or anyone in SFPUC management. See Exhibit E. Furthermore, neither Cheung nor Scott recalled an incident when Cheung intensely questioned why Appellant took time off. See Exhibits F and G. Moreover, Scott did not recall Cheung making biased statements about employees taking time off for [REDACTED] nor did Scott recall Cheung commenting about an employee's work performance in the context of taking too much time off. See Exhibit F. Lastly, SFPUC management have legitimate business reasons to ask whether an employee is capable to stand shift alone to verify they are properly trained and updated on newly implemented processes, and the comments attributed to Cheung were insufficient to dissuade a reasonable employee from taking [REDACTED]. See Exhibits F, G, and H. Thus, Appellant's allegation of retaliation cannot be established.

Based on the foregoing, there was insufficient information to support a retaliation claim within EEO jurisdiction because Appellant did not provide facts that demonstrated he suffered an adverse employment action due to taking [REDACTED] and the Human Resources Director correctly administratively closed Appellant's complaint without further investigation.

## 2. Appellant Received More Overtime Compared to Other Employees

Although Appellant alleged that Cheung instructed staff to deny him overtime, documentary evidence show Appellant earned more overtime compared to other employees. See Exhibits B, L, and M. For example, Appellant earned 40 hours of overtime within three and half months, an average of 11.4 hours per month. However, other employees averaged fewer than 10 hours per month. See Exhibits B and M. Moreover, SFPUC management have a legitimate business reason to ensure that other employees had the opportunity for overtime per the Memorandum of Understanding (MOU) for Station Engineers, Local 39. See Exhibit Q. Thus, Appellant did not suffer an adverse employment action, and the allegation of retaliation cannot be established.

On appeal, Appellant alleges he was passed over for overtime that was given to East Bay Field Facilities (EBFF) operators instead of Appellant. See Exhibit D. As described above, Appellant earned more overtime compared to other employees. See Exhibits B and M. Scott offered overtime to EBFF operators for cross-training purposes and to ensure adequate coverage for the SVWTP, which are a non-retaliatory, legitimate business reasons. See Exhibit F. Similarly, Cheung confirmed that operators from both SVWTP and EBFF cover each other's operations when they are short-staffed, and management from SVWTP and EBFF were working on ensuring operators are cross-trained due to operational need. See Exhibits N and G. Thus, SFPUC management had legitimate business reasons to offer overtime to EBFF personnel, and Appellant's retaliation allegation cannot be established.

Although outside the scope of the EEO process, documentary evidence shows Cheung and Michael Ho, 1246 Principal Human Resources Analyst, worked with Stan Eichenberger, Local 39 Business Representative, to interpret the MOU in a way that benefited Appellant. See Exhibits N and Q. Consequently, SFPUC management changed the procedure of how overtime was offered, and they agreed to offer overtime first to employees from SVWTP and then to employees from EBFF. See Exhibit O. As an operator at SVWTP, Appellant benefited from the newly established procedure, and retaliatory animus on the part of Cheung cannot be established. Lastly, documentary evidence shows Cheung directed Scott and Guerra to offer overtime to Appellant, further showing that Cheung did not demonstrate retaliatory animus toward Appellant. See Exhibit P. Therefore, Appellant's allegation of retaliation cannot be established, and Human Resources Director correctly administratively closed Appellant's complaint without further investigation.

3. **SFPUC Management Had Legitimate Business Reasons to Ensure Appellant's Time Off Was Properly Recorded**

As described above in Section IV. A. 1., documentary evidence confirm that Cheung asked Guerra to verify Appellant's time off requests to ensure Scott's and Appellant's compliance with the Leave Policy, which is a non-retaliatory, legitimate business reason. See Exhibit I. On appeal, Appellant alleges that Cheung told Guerra to stop monitoring Appellant's leave after SFPUC Human Resources determined that overtime should be given to SVWTP personnel instead of EBFF personnel. Appellant's newly proffered information does not show Appellant suffered an adverse employment action, and Appellant's retaliation allegation cannot be established. Moreover, Appellant's additional information lacks EEO jurisdiction because the policy change regarding the distribution of overtime as described above in Section IV. A. 2. was achieved through the union grievance process. Thus, there was insufficient information to support a retaliation claim within EEO jurisdiction. Moreover, as described above in Section IV. A. 2., Cheung's actions through the union grievance process does not show retaliatory animus toward Appellant because the resulting policy change benefitted Appellant, and Cheung directed Scott and Guerra to offer Appellant overtime. See Exhibits O and P. Lastly, Guerra and Cheung agreed that Guerra no longer needed to verify the accuracy of Appellant's time off requests, which does not demonstrate retaliatory animus on the part of Cheung. See Exhibit H. Therefore, Appellant's retaliation allegation cannot be established, and the Human Resources Director correctly administratively closed Appellant's complaint without further investigation.

V. **RECOMMENDATION**

For the reasons set forth above, the Human Resources Director's decision should be upheld, and the appeal should be denied.

VI. **APPENDIX/ATTACHMENTS TO THE REPORT**

Attached to this report are the following:

Exhibit A: Appellant's Complaint of Retaliation, April 3, 2020.

Exhibit B: Department Report and Attachments Regarding Appellant's Retaliation Allegations, April 3, 2020.

- Exhibit C: Human Resources Director's Letter of Determination to Appellant, June 7, 2022.
- Exhibit D: Appellant's Appeal to the Civil Service Commission, July 8, 2022.
- Exhibit E: Appellant's Bid Sheet and Timesheet Regarding Thanksgiving 2019 Time Off.
- Exhibit F: Anthony Scott Interview Notes.
- Exhibit G: Angela Cheung Interview Notes.
- Exhibit H: Joe Guerra Interview Notes.
- Exhibit I: E-mails Between Cheung and Guerra Regarding Appellant's Time Off.
- Exhibit J: Leave Policy, 2016.
- Exhibit K: E-mail Regarding Appellant's Time Off and Review of Leave Policy.
- Exhibit L: Appellant Overtime Records.
- Exhibit M: Cheung E-mail Regarding Appellant's Overtime.
- Exhibit N: E-mails Regarding Overtime Distribution.
- Exhibit O: E-mails Regarding Overtime and Risk Management Policy.
- Exhibit P: Cheung E-mail Offering Overtime to Appellant.
- Exhibit Q: Overtime Distribution from Local 39 MOU.
- Exhibit R: Appellant's Additional Employment Request Form.

# **EXHIBIT A**

Appellant's Complaint of Retaliation, April 3, 2020

**From:** [Narbaitz, Dena](#)  
**To:** [Moore, Robert B](#)  
**Subject:** RE: Desperate Treatment  
**Date:** Thursday, September 24, 2020 4:00:00 PM

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Hi-

Yes, I know. I said 2/21 several times.

---

**From:** Moore, Robert B <[RBMoore@sfgwater.org](mailto:RBMoore@sfgwater.org)>  
**Sent:** Thursday, September 24, 2020 3:52 PM  
**To:** Narbaitz, Dena <[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)>  
**Subject:** RE: Desperate Treatment

Hi Dena,

It was actually sent on the 2/21/20. That is why I did not see it.

---

**From:** Narbaitz, Dena <[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)>  
**Sent:** Thursday, September 24, 2020 2:23 PM  
**To:** Moore, Robert B <[RBMoore@sfgwater.org](mailto:RBMoore@sfgwater.org)>; [REDACTED]  
**Cc:** Nelson, Rick <[RANelson@sfgwater.org](mailto:RANelson@sfgwater.org)>  
**Subject:** RE: Desperate Treatment

Hi-

I left you a voicemail message to provide you with an update because we have obtained information from DHR. Can you please call me at [REDACTED] ?

Thanks.

Dena

**[Dena Narbaitz](#)**

EEO Programs Senior Specialist  
SFPUC Human Resource Services  
525 Golden Gate Avenue, 3rd Floor  
San Francisco, CA 94102  
T: 415-554-1661/F: 415-553-4898

[REDACTED]  
[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)

(Pronouns: she, her, hers)

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**From:** Moore, Robert B <[RBMoore@sfwater.org](mailto:RBMoore@sfwater.org)>

**Sent:** Thursday, September 24, 2020 2:18 PM

**To:** Narbaitz, Dena <[DNarbaitz@sfwater.org](mailto:DNarbaitz@sfwater.org)>; [REDACTED]

**Cc:** Nelson, Rick <[RANelson@sfwater.org](mailto:RANelson@sfwater.org)>

**Subject:** RE: Desperate Treatment

Yes, that would be fine.

Thanks again,

Robert

---

**From:** Narbaitz, Dena <[DNarbaitz@sfwater.org](mailto:DNarbaitz@sfwater.org)>

**Sent:** Thursday, September 24, 2020 1:03 PM

**To:** Moore, Robert B <[RBMoore@sfwater.org](mailto:RBMoore@sfwater.org)>; [REDACTED]

**Cc:** Nelson, Rick <[RANelson@sfwater.org](mailto:RANelson@sfwater.org)>

**Subject:** RE: Desperate Treatment

Hi Robert-

I am well; I hope you are too. I have removed Rachel Gardunio and Michael Ho from this email because they do not work in the SFPUC EEO Programs Division; they are in the SFPUC Employee & Labor Relations Division and do not handle EEO complaints (concerning discrimination, harassment and retaliation).

You have good timing with your email because I have been contacting people to give them updates and you were on my list. If you recall, I explained the EEO process and the fact that the City's Department of Human Resources reviews/makes determinations on all complaints concerning discrimination, harassment and retaliation. So, the EEO Programs Division within the SFPUC Human Resource Services, which is where Rick and I work, must submit everything to DHR for review. We submitted your complaint on May 13, 2020 and are waiting for guidance from DHR. In fact, prior to receiving your email, we asked DHR for an update on your complaint.

Once we hear something, I will call you with more information. I am sorry the process is taking some time to complete and will keep you updated on a more regular basis.

In addition, you state in your email that you are not clear on the EEO process. I know we discussed this before, but I am happy to review the process with you. Would you like me to call you to do so?

Sincerely,

Dena



**Dena Narbaitz**

EEO Programs Senior Specialist  
SFPUC Human Resource Services  
525 Golden Gate Avenue, 3rd Floor  
San Francisco, CA 94102  
T: 415-554-1661/F: 415-553-4898

[REDACTED]  
[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)

(Pronouns: she, her, hers)

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**From:** Moore, Robert B <[RBMoore@sfgwater.org](mailto:RBMoore@sfgwater.org)>  
**Sent:** Thursday, September 24, 2020 11:42 AM  
**To:** Narbaitz, Dena <[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)>; [REDACTED]  
**Cc:** Nelson, Rick <[RANelson@sfgwater.org](mailto:RANelson@sfgwater.org)>; Ho, Michael C <[MCHo@sfgwater.org](mailto:MCHo@sfgwater.org)>; Gardunio, Rachel <[RGardunio@sfgwater.org](mailto:RGardunio@sfgwater.org)>  
**Subject:** RE: Desperate Treatment

Hi Dena,

I hope you and your family are doing well with the pandemic and all that it has caused. I am just following up to see where my case is and what has happened if anything? It was April when we last spoke and I was unclear of the process at that time.

Thank you,

Robert

---

**From:** Narbaitz, Dena <[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)>  
**Sent:** Wednesday, April 08, 2020 1:56 PM  
**To:** [REDACTED]  
**Cc:** Moore, Robert B <[RBMoore@sfgwater.org](mailto:RBMoore@sfgwater.org)>; Nelson, Rick <[RANelson@sfgwater.org](mailto:RANelson@sfgwater.org)>  
**Subject:** RE: Desperate Treatment

Great. I just sent you an Outlook invite. I do not think our call will take 2 hours, but I have reserved that time slot.

If you have any documents to share with me, please email them to me.

Thanks. And I will talk with you tomorrow.

Sincerely,

Dena

**Dena Narbaitz**

EEO Programs Senior Specialist  
SFPUC Human Resource Services  
525 Golden Gate Avenue, 3rd Floor  
San Francisco, CA 94102  
T: 415-554-1661/F: 415-553-4898

[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)

(Pronouns: she, her, hers)

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**From:** [REDACTED]

**Sent:** Wednesday, April 8, 2020 1:30 PM

**To:** Narbaitz, Dena <[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)>

**Cc:** Moore, Robert B <[RBMoore@sfgwater.org](mailto:RBMoore@sfgwater.org)>; Nelson, Rick <[RANelson@sfgwater.org](mailto:RANelson@sfgwater.org)>

**Subject:** Re: Desperate Treatment

**CAUTION:** This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you,

Robert

On Wed, Apr 8, 2020, 1:28 PM Narbaitz, Dena <[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)> wrote:

Hi Robert-

Can we set a time to talk tomorrow afternoon? How about 2:00 p.m.? I will call your cell.

Sincerely,

Dena

**Dena Narbaitz**

EEO Programs Senior Specialist

SFPUC Human Resource Services  
525 Golden Gate Avenue, 3rd Floor  
San Francisco, CA 94102  
T: 415-554-1661/F: 415-553-4898

[REDACTED]  
[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)

(Pronouns: she, her, hers)

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**From:** Moore, Robert B <[RBMoore@sfgwater.org](mailto:RBMoore@sfgwater.org)>

**Sent:** Wednesday, April 8, 2020 12:22 PM

**To:** Narbaitz, Dena <[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)>; [REDACTED]

**Cc:** Nelson, Rick <[RANelson@sfgwater.org](mailto:RANelson@sfgwater.org)>

**Subject:** RE: Desperate Treatment

Hi Dena,

Thank you for your quick response. I am available anytime this afternoon. It is a little hectic here so bear with me if I don't answer right away. My cell may be the best way to reach me. The plant phones have been unreliable at best. My number is:

[REDACTED]

Thank you again,

Robert

---

**From:** Narbaitz, Dena

**Sent:** Monday, April 06, 2020 8:00 AM

**To:** Moore, Robert B <[RBMoore@sfgwater.org](mailto:RBMoore@sfgwater.org)>; [REDACTED]

**Cc:** Nelson, Rick <[RANelson@sfgwater.org](mailto:RANelson@sfgwater.org)>

**Subject:** FW: Desperate Treatment

Hi Robert-

I'd like to schedule a telephone intake interview with you regarding your claims below. What is your availability on Wednesday – Friday of this week? I will be off most of today but will respond tomorrow when I hear about your availability. You can also reach me on my cell: [REDACTED] to set-up the interview.

I hope you are well.

Sincerely,

Dena

**Dena Narbaitz**

EEO Programs Senior Specialist  
SFPUC Human Resource Services  
525 Golden Gate Avenue, 3rd Floor  
San Francisco, CA 94102  
T: 415-554-1661/F: 415-553-4898

[DNarbaitz@sfgwater.org](mailto:DNarbaitz@sfgwater.org)

(Pronouns: she, her, hers)

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**From:** Moore, Robert B <[RBMoore@sfgwater.org](mailto:RBMoore@sfgwater.org)>

**Sent:** Friday, April 3, 2020 1:16 PM

**To:** Ho, Michael C <[MCHo@sfgwater.org](mailto:MCHo@sfgwater.org)>

**Subject:** Desperate Treatment

Hi Michael,

Robert Moore here. I have a couple of questions about my treatment since I came back to work in November, 2019. It seems to me that I am being singled out for some reason. There have been several instances of desperate treatment directed at me. When I first got back I received 40 hours of FH leave. So I put in for leave during the Thanksgiving's holiday. A few days later an intense discussion between Angela Cheung and Anthony Scott was overheard by me as I was standing shift in the control room at the Sunol Water Treatment Plant about my being able to use the leave because I had just gotten back off a [REDACTED] [REDACTED]

I had bid for those days off earlier in the year prior to coming back to work. The conversation was so loud that I heard it through a closed door clearly. Then there is the other issue of operators that were being offered overtime that I should have had an opportunity to get but, the MOU was not being followed as it pertains to the fair offering of overtime. When I asked my supervisor, Chief Anthony Scott, why I wasn't being offered overtime I was told that the field operators were given it for "training purposes" which is not in the MOU. After being passed over several times I brought it to the attention of the plant superintendent, Joe Guerra. When Mr. Guerra asked Mr. Scott about why was I not being offered the OT Mr. Scott got very frustrated and asked Mr. Guerra to close his office door and when Mr. Guerra refused, that is when Mr. Scott said that Angela Cheung, the Operations Manager, asked him not to. I contacted our union's business agent, Stan Eichenberger, to have him intervene. Mr. Eichenberger wrote both Anthony Scott & Angela Cheung to ask about the claim I had about not getting offered the OT, it was denied that it had happened. Then, I find out that Angela Cheung asked the superintendent Joe Guerra to track my leave usage. I asked Mr. Guerra why and he did not know why. He hasn't been asked to track anyone else's leave. Why just me? Mr. Guerra asked Ms. Cheung awhile back why he was being asked to track my leave only and got no reply. Mr. Guerra recently asked should he continue to track my leave and was told no by Ms. Cheung.

Mr. Guerra suggested that I voice my concerns to Human Resources or the EEO dept. I am not in any sick leave abuse situation. This seems to be desperate treatment. I am not trying to get anyone in trouble but, I do want to be treated equally. I don't expect this to be addressed given the serious situation we all are in with the Covid-19 virus. Just let me know what to do when time permits.

Thank you for your time,

Robert

## **EXHIBIT B**

Department Report and Attachments, April 3, 2020

**DEPARTMENT REPORT OF EMPLOYMENT DISCRIMINATION COMPLAINT**

\* Report Within Five Working Days of Receipt of Complaint\*

**Return to:** Linda C. Simon, Director, DHR EEO Division, One South Van Ness, 4<sup>th</sup> Floor, San Francisco, CA 94103; linda.simon@sfgov.org

1. Department/Worksite: SFPUC/Water Enterprise, Sunol Valley Water Treatment Plant

2. Complainant: Robert B. Moore DSW: [REDACTED]

Address: [REDACTED] Tel. No. (Work): 925-862-5712

Personal E-mail: [REDACTED] Tel. No. (Home): [REDACTED]

3. Complaint Filing Date: April 3, 2020

4. Complainant's Current Employment Status: Class: 7343 Senior Stationary Engineer

PCS  TPV  PEX  TEX  NOT A CITY EMPLOYEE

5. Basis of Discrimination (specify):
- Race: \_\_\_\_\_
  - Color: \_\_\_\_\_
  - Religion: \_\_\_\_\_
  - Creed: \_\_\_\_\_
  - Sex: \_\_\_\_\_
  - National Origin: \_\_\_\_\_
  - Ethnicity: \_\_\_\_\_
  - Age: \_\_\_\_\_
  - Disability/Medical Condition: \_\_\_\_\_
  - Political Affiliation: \_\_\_\_\_
  - Sexual Orientation: \_\_\_\_\_
  - Ancestry: \_\_\_\_\_
  - Marital or Domestic Partner Status: \_\_\_\_\_
  - Gender Identity: \_\_\_\_\_
  - Parental Status: \_\_\_\_\_
  - Height/Weight: \_\_\_\_\_
  - Other Non-Merit Factors: \_\_\_\_\_
  - Retaliation: From February 1, 2018 to November 6, 2019, Moore [REDACTED]

6. Issue complained of:
- Denial of Employment
  - Denial of Training
  - Denial of Promotion
  - Denial of Reasonable Accommodation
  - Termination
  - Lay-off
  - Constructive Discharge
  - Disciplinary Action
  - Harassment
  - Work Assignment
  - Sexual Harassment
  - Compensation
  - Other (specify): Leave Questioned & Tracked; Denial of OT

**7. Describe the circumstances of the alleged discrimination and include date(s) of adverse employment action(s), provide DSW # for Accused/Respondent(s): (Attach letter of complaint)**

On August 9, 2010, Robert Moore began working for the San Francisco Public Utilities Commission (SFPUC), Water Enterprise, Sunol Valley Water Treatment Plant (Sunol) as a 7341 Stationary Engineer, Water Treatment Plant. On September 17, 2012, Moore was promoted to a 7343 Senior Stationary Engineer. Since October 13, 2014, Moore's supervisor has been Anthony Scott, 7245 Chief Stationary Engineer, Water Treatment Plant. Scott reports to Joe Guerra, 7443 Superintendent Water Treatment Facility. Guerra reports to Angela Cheung, Water Supply & Treatment Division Manager.



On April 3, 2020, Moore sent an email complaint to Michael Ho, Principal Employee Relations Analyst, SFPUC Employee & Labor Relations Division. (Attachment 1.) On April 10 and 15, 2020, Moore spoke with Dena Narbaitz, EEO Programs Senior Specialist, for an intake interview. From February 1, 2018 to November 6, 2019, Moore [REDACTED] Moore alleged that in retaliation for [REDACTED] [REDACTED] Cheung took the following actions against him:

**A. Early December 2019: Cheung Questions Moore's Ability to Take Time-Off Over the Christmas Holiday and to Work after Leave**

At Sunol, the employees bid for vacation time on a calendar year basis. Moore is the second most senior person, so he receives first choice of holidays off under the IUOE Stationary Engineers, Local 39 (Local 39) Memorandum of Understanding (MOU). Moore did not receive a bid sheet in December 2018. In January 2019, Moore bid and was awarded time-off for Thanksgiving 2019 and Christmas 2019. In early December 2019, Moore overheard a conversation between Scott and Cheung in which Cheung questioned Moore's ability to take time off because Moore [REDACTED]

**B. In January/February 2020: Moore Denied Overtime**

Moore alleged that the Local 39 MOU requires Overtime (OT) be offered to Sunol employees on a seniority basis and requires that it be offered to all Sunol employees before being offered to employees based out of other facilities. (*Note: Section 191 of the Local 39 MOU requires that voluntary OT be distributed equitably among all employees within each work unit – it does not say anything about seniority.*) Moore alleged that the Local 39 MOU was violated because OT was offered to employees less senior than him and who work outside Sunol before it was offered to him. He stated that on February 19, 2020, Scott told him that Cheung had been monitoring his OT. Moore contacted Local 39, which confirmed OT was being distributed equally after receiving a graph of OT and speaking with Cheung.

**C. March 2020: Guerra Informed Moore that Cheung is Tracking Moore's Leave**

In the first or second week of March 2020, Guerra told Moore that Cheung instructed Guerra to track Moore's leave. Guerra said he received this instruction from Cheung after Moore returned from his [REDACTED] on November 6, 2019. In early April 2020, Cheung confirmed that Guerra should not track Moore's leave.

8. Has the Complainant filed a grievance or lawsuit regarding this complaint? Yes  No

If yes, please specify: \_\_\_\_\_

9. Is the Complainant represented by a Union or an Attorney? Yes  No

Name: Stan Eichenberger Organization/Firm: IUOE – Stationary Engineers, Local 39

Address: 337 Valencia St., San Francisco, CA 94113 Phone No.: (415) 861-1135

\*10. What steps does the department recommend be taken to address this complaint? (For instance, investigation, alternative dispute resolution, dismissal)

Moore did not suffer an adverse employment action. As Local 39 confirmed to Moore, the SFPUC provided him with OT fairly. Furthermore, Cheung's questioning Moore's leave and asking that it be tracked was in the normal course and scope of her duties as a manager. Two statements questioning Moore's time off are also not likely to dissuade a reasonable person from [REDACTED] No further action by DHR is required.

\*10a. Name, position, and phone number of person who will implement recommended steps:

Dena Narbaitz, EEO Programs Senior Specialist, 415-554-1661

11. Completed by: Dena Narbaitz, EEO Programs Senior Specialist    Date: May 8, 2020  
Address: SFPUC, 525 Golden Gate Ave., 3<sup>rd</sup> Flr., SF, CA 94102    Tel. No.: 415-554-1661

\*12. Please notify DHR/EEO in written form immediately upon resolution of this complaint.

**\*Subject to the Human Resources Director's approval**

**HUMAN RESOURCES DIRECTOR REVIEW**

Complaint is assigned EEO File Number: \_\_\_\_\_

Approve department's recommendations for addressing complaint. Proceed and notify HR Director of actions, findings, and recommendations for resolution.

Complaint is assigned by HR Director to: \_\_\_\_\_  
and/or the following actions are to be taken:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
for Micki Callahan, Human Resources Director

\_\_\_\_\_  
Date

# ATTACHMENT 1

**From:** Ho, Michael C <MCHo@sflower.org>  
**Sent:** Friday, April 3, 2020 1:25 PM  
**To:** Nelson, Rick <RANelson@sflower.org>  
**Cc:** Gardunio, Rachel <RGardunio@sflower.org>  
**Subject:** FW: Desperate Treatment

---

Hi Rick,

I think this is somewhat related to the [REDACTED] and Joe urged Robert to submit a complaint. Let me know if the email below falls under EEO. If not, I will address.

Thanks,

**Michael Ho**

---

Pr. Employee Relations Analyst  
Employee & Labor Relations, HRS  
Office: (415) 554-2452 | [mcho@sflower.org](mailto:mcho@sflower.org)

---

**From:** Moore, Robert B <[RBMoore@sflower.org](mailto:RBMoore@sflower.org)>  
**Sent:** Friday, April 3, 2020 1:16 PM  
**To:** Ho, Michael C <[MCHo@sflower.org](mailto:MCHo@sflower.org)>  
**Subject:** Desperate Treatment

Hi Michael,

Robert Moore here. I have a couple of questions about my treatment since I came back to work in November, 2019. It seems to me that I am being singled out for some reason.

There have been several instances of desperate treatment directed at me. When I first got back I received 40 hours of FH leave. So I put in for leave during the Thanksgiving's holiday. A few days later an intense discussion between Angela Cheung and Anthony Scott was overheard by me as I was standing shift in the control room at the Sunol Water Treatment Plant about my being able to use the leave because I had just gotten back off a [REDACTED] I had bid for those days off earlier in the year prior to coming back to work. The conversation was so loud that I heard it through a closed door clearly. Then there is the other issue of operators that were being offered overtime that I should have had an opportunity to get but, the MOU was not being followed as it pertains to the fair offering of overtime. When I asked my supervisor, Chief Anthony Scott, why I wasn't being offered overtime I was told that the field operators were given it for "training purposes" which is not in the MOU. After being passed over several times I brought it to the attention of the plant superintendent, Joe Guerra. When Mr. Guerra asked Mr. Scott about why was I not being offered the OT Mr. Scott got very frustrated and asked Mr. Guerra to close his office door and when Mr. Guerra refused, that is when Mr. Scott said that Angela Cheung, the Operations Manager, asked him not to. I contacted our union's business agent, Stan Eichenberger, to have him intervene. Mr. Eichenberger wrote both Anthony Scott & Angela Cheung to ask about the claim I had about not getting offered the OT, it was denied that it had happened.

Then, I find out that Angela Cheung asked the superintendent Joe Guerra to track my leave usage. I asked Mr. Guerra why and he did not know why. He hasn't been asked to track anyone else's leave. Why just me? Mr. Guerra asked Ms. Cheung awhile back why he was being asked to track my leave only and got no reply. Mr. Guerra recently asked should he continue to track my leave and was told no by Ms. Cheung. Mr. Guerra suggested that I voice my concerns to Human Resources or the EEO dept. I am not in any sick leave abuse situation. This seems to be desperate treatment. I am not trying to get anyone in trouble but, I do want to be treated equally. I don't expect this to be addressed given the serious situation we all are in with the Covid-19 virus. Just let me know what to do when time permits.

Thank you for your time,

Robert

# Attachment 2

**CONFIDENTIAL**  
**INTAKE INTERVIEW NOTES**

|  |   |
|--|---|
| <b>Complainant:</b> Robert Moore       | <b>EEO File No./Dept.:</b> POT 2020/SFPUC   |
| <b>EEO Investigator:</b> Dena Narbaitz | <b>Date &amp; Time:</b> April 10, 2020, 10:00 a.m. to 2:14 p.m.; April 15, 2020, 1:00 p.m. to 2:05 p.m. |
| <b>Others Present:</b> None            | <b>Location:</b> Via Telephone  |

**I. BACKGROUND INFORMATION**

**A. Work Background**

On August 9, 2010, Robert Moore began working for the San Francisco Public Utilities Commission (SFPUC), Water Enterprise, Sunol Valley Water Treatment Plant (Sunol) as a 7341 Stationary Engineer, Water Treatment Plant. On September 17, 2012, Moore was promoted to a 7343 Senior Stationary Engineer.

Since October 13, 2014, Moore's supervisor has been Anthony Scott, 7245 Chief Stationary Engineer, Water Treatment Plant. Scott reports to Joe Guerra, 7443 Superintendent Water Treatment Facility. Guerra reports to Angela Cheung, Water Supply & Treatment Division Manager. Cheung reports to Steven Ritchie, Assistant General Manager, SFPUC Water Enterprise.

He has always worked at Sunol, which has one Chief Stationary Engineer, five Senior Stationary Engineers, and five or six 7341 Stationary Engineers known as "Operators." The Chief (Scott) works Monday through Friday from 7:00 a.m. to 3:30 p.m. Otherwise, there are five work shifts, which are usually 12 hours long. Moore and an Operator (Michael Murphy, 7341 Stationary Engineer, Water Treatment Plant), work a 10-hour shift. Moore and Murphy received 10-hour shifts through a bid process under the IUOE Stationary Engineers, Local 39 (Local 39) Memorandum of Understanding (MOU). Moore works Wednesday through Saturday, 6 a.m. to 4 p.m. Moore's shift (6:00 a.m. to 4:00 p.m.) overlaps with graveyard (10:00 p.m. to 10:00 a.m.) and day shift (10:00 a.m. to 10:00 p.m.).

Sunol treats water from the Calaveras Reservoir and San Antonio Reservoir and then blends it with the Hetch Hetchy Reservoir water. As a Senior Stationary Engineer, Moore's job is to keep the plant running, including monitor chemicals. In addition, Moore performs administrative work; does a Hazmat business plan; organizes binders so inspections (e.g., from state or county) will go smooth; assists Scott; gives tours; and writes Standard Operating Procedures. Other Senior Stationary Engineers might have responsibilities that Moore does not.



From February 1, 2018 until November 6, 2019, Moore [REDACTED].<sup>1</sup>

**B. Respondents**

1. Angela Cheung

On November 6, 2019, when Moore [REDACTED], he met Cheung for the first time. He did not have any contact with her prior to November 6, 2019; she was not assigned to work at Sunol when [REDACTED]. Cheung does not physically work at the plant; she has an office in the SFPUC Millbrae Office located at 1000 El Camino Real in Burlingame, California.

Moore and Cheung do not work together often, and their interactions are very limited. Moore estimates that he has had contact with Cheung four times. These are set forth below.

On November 6, 2019, [REDACTED], Cheung was at Sunol. He introduced himself; she said “Okay” and then went into Scott’s office. She did not acknowledge him otherwise. Moore stated, “She looked like she was shocked that he was back to work” and she did not know how to respond. This interaction happened in the Control Room. Jeff Clark, 7341 Stationary Engineer, Water Treatment Plant (Prop F employee); and, possibly, Murphy, were present. Clark and Moore looked at each other and said “Okay,” acknowledging that Cheung basically ignored Moore, then Clark and Moore went back to work.

In the afternoon of November 6, 2019, Moore talked to Guerra<sup>2</sup> and said, “I met Angela Cheung and introduced myself; it looked like she saw a ghost. I said ‘hello’ to her and the only thing she said was ‘okay’ and then went into Scott’s office.” Guerra chuckled and responded, “Yeah, she came to question me about you being back; she wanted to know how long you had been back. She also asked why she wasn’t informed you were back to work. I told her that Scott was informed, and Scott should have informed her.”

In January 2020, Cheung was at Sunol for a meeting. She and Moore passed in the hallway and said, “Hello” to each other.

On April 2 and 3, 2020, Moore had an email exchange with Cheung regarding the correct number on a work order. (Exhibit A.)

On April 10, 2020, Cheung called the Sunol Control Room looking for Scott. Moore answered the phone and gave the call to Scott. This was the only interaction during this call.

When asked to describe his relationship with Cheung, Moore stated, “I don’t think I have one.” They do not interact very much. They have not socialized outside of work.

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[REDACTED]

<sup>2</sup> Since August 2010, Moore has worked with Guerra, who was the Sunol Chief at that time and promoted Scott to Chief. Moore interacts with Guerra daily. Moore stated that Guerra is very knowledgeable about the plant and equipment they use. They do not socialize outside of work.

2. Anthony Scott

On August 9, 2010, Moore first met Scott. Scott works Monday through Friday, 7:00 a.m. through 3:30 p.m. Moore and Scott work together Wednesday and Thursday from 7:00 a.m. to 3:30 p.m.

Moore has a good relationship with Scott. They work well together and have no ill-will towards each other. Sometimes they have a difference of opinion, but they discuss and there is no conflict or aggression.

Moore “kind of” considers Scott a friend; They are friendly with one another. They do not socialize outside of work. In April 2019, they saw each other at the wedding of a co-worker, John Camacho, 7341 Stationary Engineer, Water Treatment Plant, but this was not pre-arranged.

Moore stated that Scott “has difficulty communicating with people under him at the plant. His direction is sometimes conflicting; he says one thing but intends for you to do something different. [Scott] does not communicate well and can be slow to respond to requests [e.g., sign-off on purchase orders]. Overall, communication is lacking from Scott.”

## II. RETALIATION

### A. Early December 2019: Cheung Questions Moore’s Ability to Take Time Off Over the Christmas Holiday and to Work after Leave

At Sunol, the employees bid for holidays on a calendar year, not the fiscal year. Every December (usually the last couple of weeks), the employees receive a bid sheet. Moore is the most senior person at Sunol for the 7341 and 7343 classes, so he receives first choice of holidays off under the Local 39 MOU. Then, the next most-senior person would bid and so-on.<sup>3</sup>

Moore did not receive a bid sheet in December 2018; Moore received a call from Camacho about Moore not bidding. Camacho, who the third person with seniority, called Moore’s cell number and asked why Moore had not bid for holidays. Moore responded, “I didn’t get the bid sheet, I’ll call Scott.”

On January 9, 2019, after receiving Camacho’s call, Moore emailed Scott asking about the bid sheet. That same day, Scott provided Moore with the bid sheet. (Exhibit B.) On January 11, 2019, Moore submitted his bid sheet and requested Thanksgiving 2019 week off work. (Exhibit B.)

Sometime in early December 2019, Moore was sitting at the Control Room Desk monitoring the system. Scott was in his office, which is located right across the hall and within 6 feet of the Control Room. (Exhibit C.) Moore heard Scott receive a phone call, and Scott put the call on speaker, so Moore could hear the conversation even though Scott’s office door was closed. Scott said, “Hi Angela.” Then Moore heard Cheung say, “I see that Moore is putting in time for Christmas. Why is he being able to take time off. He just got back to work; how can he take time

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<sup>3</sup> Moore had Floating Holidays for 2018 and 2019 (80 hours); and worked overtime prior to his leave, so Moore knew he would have over 80 hours of time off when he returned to work.

off.” Moore heard Scott struggling to answer Cheung because she was firing questions at Scott. Cheung also said, “Who approved it. This is not acceptable, Tony. Something is not right; this doesn’t sound right. He just got back to work.” Moore overheard Cheung also question Moore’s ability to do his job [REDACTED]. Scott defended Moore about taking time off and his ability to do his job. Scott said, “He put in for [the time],” but Scott could not explain the MOU and sounded like he did not know how to respond to Cheung. Scott said, “I don’t know; I have to get back to you, Angela.” Moore estimates this was a 15-minute telephone conversation.

After the conversation ended, Scott opened his door and Moore went into Scott’s office. Moore asked why Cheung was questioning his leave requests and the ability to do his job. Scott said, “She was just asking how you could take time off [REDACTED] and about your ability to do his job after coming back from [REDACTED]” Moore did not respond to Scott; Moore just dropped the conversation because nothing was going to come of the conversation. Moore left Scott’s office and went back to work. This all happened in the afternoon between 1:00 p.m. and 4:00 p.m.

Either that same day or the next day, Moore relayed the interactions to Guerra. Guerra just listened and said, “Be aware of the conversation and do your job.” This conversation took place in Guerra’s office, which is located outside of the Control Room.

Moore confirmed he has nothing else to add regarding this allegation.

**B. In January/February 2020: Cheung Instructed Her Staff Deny Moore Overtime**

Moore stated that under Article 3 (Paid Benefits: 191-192) of the Local 39 MOU<sup>4</sup>, the Sunol employees are supposed to be offered Overtime (OT) prior to any other employee. The OT should be offered to the Seniors at Sunol, then the Operators.

Moore stated that instead of the Sunol employees being offered OT, the East Bay Field Operators, who work at the Calaveras Facility located near Sunol, were offered OT. Moore stated these employees were: (1) Gilbert Bowman, 7341 Stationary Engineer, Water Treatment Plant; and (2) Aaron Craig, 7341 Stationary Engineer, Water Treatment Plan, who operates like Moore in terms of managing the Calaveras Facility. Bowman and Craig physically work at the Calaveras Facility.

In January 2020 and February 2020, Moore asked Scott for an OT opportunity and Scott said, “I had to offer it to everyone.” Moore got OT for one day. But on other days, Scott filled it with Gilbert and Aaron without asking Moore if he wanted OT. When Moore asked Scott about the OT, Scott said, “They were put into those spots for training.”

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<sup>4</sup> OVERTIME DISTRIBUTION 191. Voluntary overtime shall be offered equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.

192. Mandatory overtime shall be distributed equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.

On either February 13 or 14, 2020, Moore went to Guerra and asked about the conversation he had with Scott. Moore asked if the spots were for training. Guerra responded, "That's not how it is supposed to happen."

On February 19, 2020, Moore believes Guerra sent an email to Scott asking, "How are you issuing OT." Moore believes this because Guerra, Moore and Murphy were in the Control Office when Guerra went to the door and said to Scott, who was in his office, "Why didn't you respond to my email?"<sup>5</sup> Scott asked Guerra to come into Scott's office and close the door. Guerra refused to shut the office door and Moore overheard Guerra ask Scott repeatedly, "Why didn't you answer my email about OT." Scott did not respond at first and then said, "I am trying not to hurt [Moore's] feelings." Then Guerra stormed off.

Moore went into Scott's office and asked, "What do you mean by not trying to hurt my feelings? Hurt my feelings about what? Something does not feel right about this. What is going on? Is my OT being monitored by Angela?" Scott responded, "Yes." Moore said, "That is unfair. That is disparate treatment. Why am I not offered OT like everyone else?" Scott responded, "I should have gotten this straightened out in the beginning." Moore asked, "Who are you talking about?" Scott did not respond, and Moore left Scott's office.

After Moore left Scott's office, he called Stan Eichenberger, Local 39 Business Representative. Eichenberger asked Moore to put his concerns in writing. On February 20, 2020, Moore sent Eichenberger an email summarizing his concerns. (Exhibit D.) Eichenberger responded that he sent Cheung, Scott and the SFPUC Employee & Labor Relations Division an email about Moore's OT concern.

On February 21, 2020, Eichenberger sent Moore an email stating that Cheung provided Eichenberger with a chart reflecting that OT is being distributed equally. Cheung also assured Eichenberger that she would look into Moore's concern regarding OT to make sure Moore is being treated fairly.

Moore confirmed he has nothing else to add regarding this allegation.

**C. March 2020: Guerra Informed Moore that Cheung is Tracking Moore's Leave**

In the first or second week of March 2020, Guerra told Moore that Cheung instructed Guerra to track Moore's leave. Guerra said he received this instruction from Cheung after Moore returned from his [REDACTED] on November 6, 2019. Guerra also told Moore that he had sent an email to Cheung asking why he was tracking Moore's leave, but Cheung did not respond.

In early April 2020, Guerra told Moore that he emailed Cheung and asked, "Do you want to still track Moore's leave?" and Cheung replied, "No."

Moore confirmed he has nothing else to add regarding this allegation.

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<sup>5</sup> When Guerra went to the door, Murphy left the Control Room, so he is not a witness.

III. **REPORTING**

On April 3, 2020, Moore emailed Michael Ho, Principal Employee Relations Analyst, SFPUC Employee & Labor Relations Division, to report his complaint.

IV. **IMPACT**

Moore stated that he is apprehensive about his work situation. He is wondering why he is garnering so much negative attention. He believes there is a stigma against him, and he is not getting a “fair shake.” He does not believe he will get promoted despite doing a good job, which his superiors will support. Also, he believes he has been demeaned and slandered because of the requests to monitor his leave and not being offered OT

Moore has not sought the assistance of a health care provider but has thought about doing so. Moore stated that this situation is on his mind every single day he comes to work.

He has not taken any time off as a result of the alleged conduct.

Moore has nothing else to add regarding how this has impacted him.

V. **REMEDIES**

Moore stated that he does not know how to answer the question of how he would like his complaint resolved. He wants the conduct to stop, but stated, “How do we un-ring this bell?” of how he was treated. Moore does not want this to happen to anyone else and suggested training and discipline.

Moore has nothing else to add regarding remedies.

VI. **MISCELLANEOUS**

Moore provided Narbaitz with his documents; he does not have other documents.

Moore has not filed a grievance or any other complaint (e.g., with the EEOC or DFEH).

Moore confirmed that his contact information is as follows:

Home phone: He does not have one.

[REDACTED]

[REDACTED]

[REDACTED]

**VII. CONCLUSION**

Moore cannot think of anything more that would be relevant to his complaint. He does not have other documents to provide. He does not have other witnesses to identify.

# Exhibit A

**From:** [Moore, Robert B](#)  
**To:** [Narbaitz, Dena](#)  
**Subject:** Cheung Email to Robert Moore  
**Date:** Friday, April 10, 2020 10:50:38 AM  
**Attachments:** [image001.png](#)

---

Hi Dena,

Here is the email train between everyone.

Robert

---

**From:** Moore, Robert B  
**Sent:** Friday, April 03, 2020 8:41 AM  
**To:** Sual, Maria <[MSual@sewater.org](mailto:MSual@sewater.org)>  
**Cc:** Cheung, Angela <[ACheung@sewater.org](mailto:ACheung@sewater.org)>; Scott, Anthony <[AScott@sewater.org](mailto:AScott@sewater.org)>; Guerra, Joe <[jguerra@sewater.org](mailto:jguerra@sewater.org)>  
**Subject:** RE: RQUW 2007-

Hi Maria,

I just spoke with planning and the WO had not been approved last month due to the elevator being OOS. However, WO # 6270108 has been approved now so you can either use it, or use the current WO # 6311081 that is approved also. Sorry for the confusion.

Robert

---

**From:** Moore, Robert B  
**Sent:** Friday, April 03, 2020 7:58 AM  
**To:** Cheung, Angela <[ACheung@sewater.org](mailto:ACheung@sewater.org)>; Scott, Anthony <[AScott@sewater.org](mailto:AScott@sewater.org)>; Guerra, Joe <[jguerra@sewater.org](mailto:jguerra@sewater.org)>  
**Cc:** Sual, Maria <[MSual@sewater.org](mailto:MSual@sewater.org)>  
**Subject:** RE: RQUW 2007-

Good morning Angela,

Please review the attached WO. This is the monthly work order that requires the contractor to perform the maintenance and repairs to the service elevator here at the plant. I discussed this with Chief Scott and he is in agreement that this is the correct WO number for this purchase request. If there are any further instructions or changes required please let us know.

Thank you,

Robert

---



**From:** Cheung, Angela

**Sent:** Thursday, April 02, 2020 8:28 AM

**To:** Moore, Robert B <[RBMoore@sfgwater.org](mailto:RBMoore@sfgwater.org)>; Scott, Anthony <[AScott@sfgwater.org](mailto:AScott@sfgwater.org)>; Guerra, Joe <[jguerra@sfgwater.org](mailto:jguerra@sfgwater.org)>

**Cc:** Sual, Maria <[MSual@sfgwater.org](mailto:MSual@sfgwater.org)>

**Subject:** RQUW 2007-

Hello,

WO 6270108 is not valid for the Kone PR. Please come up with a valid WO #. Copying Pinky so she can correct it in Maximo when you have it. Thanks.

**Angela Cheung**

Water Supply & Treatment Division Manager

Hetch Hetchy Regional Water System

San Francisco Public Utilities Commission

Office: (650) 871-3034

Cell: (408) 313-8085



# Exhibit B

**From:** [REDACTED]  
**To:** [Narbaitz, Dena](#)  
**Subject:** Fwd: Vacation Bid  
**Date:** Friday, April 10, 2020 12:54:35 PM  
**Attachments:** [REDACTED]

**CAUTION:** This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Dena,

Here is the bid sheet for 2019. I am also including the 2020 bid sheet and seniority roster and where I rank.

Robert

----- Forwarded message -----

**From:** [REDACTED]  
**Date:** Fri, Nov 8, 2019 at 1:25 PM  
**Subject:** Fwd: Vacation Bid  
**To:** Anthony Scott <[ascott@sfwater.org](mailto:ascott@sfwater.org)>

Hi Tony,

This is the vacation bid sheet from early this year.

Robert

----- Forwarded message -----

**From:** [REDACTED]  
**Date:** Fri, Jan 11, 2019, 10:58 AM  
**Subject:** Re: Vacation Bid  
**To:** Scott, Anthony <[AScott@sfwater.org](mailto:AScott@sfwater.org)>  
**Cc:** Guerra, Joe <[jguerra@sfwater.org](mailto:jguerra@sfwater.org)>, Scott, Anthony <[AScott@sfwater.org](mailto:AScott@sfwater.org)>

Hi Tony,

Here is my bid.

Thanks,

Robert

On Wed, Jan 9, 2019 at 9:16 AM Scott, Anthony <[AScott@sfwater.org](mailto:AScott@sfwater.org)> wrote:

Robert,

Here you go. I hope all is well please send your (VA) bid within three days. See attachment.

Thanks,

Anthony Scott

SVWTP

Chief Stationary Engineer / WS&TD

Work # 925-862-5719

Work Cell # 925-699-7539

[ascott@sfwater.org](mailto:ascott@sfwater.org)

**From:** [REDACTED]

**Sent:** Tuesday, January 08, 2019 6:16 PM

**To:** Scott, Anthony <[AScott@sfwater.org](mailto:AScott@sfwater.org)>

**Cc:** Guerra, Joe <[jguerra@sfwater.org](mailto:jguerra@sfwater.org)>

**Subject:** Vacation Bid

Hi Tony,

I am writing you because it is time for the vacation bid and I feel that I may have been past up because of the uncertainty of my return which may exist there. I will be returning so remove all doubt of that. Please forward me the bid sheet so I can choose.

Thank you,

Robert

--

*Robert Moore*

[REDACTED]

--

*Robert Moore*

[REDACTED]

■

*Robert Moore*

[REDACTED]

# Exhibit C

**From:** [REDACTED]  
**To:** [Narbaitz, Dena](#)  
**Subject:** Pictures  
**Date:** Friday, April 10, 2020 1:04:38 PM

---

**CAUTION:** This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Dena,

Here are the pictures that show both Scott and Guerra's offices. The closer one is Scott's office.

Thank you,

Robert

# Exhibit D



**From:** [REDACTED]  
**To:** [Narbaitz, Dena](#)  
**Subject:** Fwd: Disparate Treatment  
**Date:** Friday, April 10, 2020 1:00:25 PM

---

**CAUTION:** This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Dena,

This is an email I sent to my union's business agent in regards to the overtime issue.

Robert

----- Forwarded message -----

**From:** Stan Eichenberger <[seichenberger@local39.org](mailto:seichenberger@local39.org)>

**Date:** Fri, Feb 21, 2020 at 3:58 PM

**Subject:** RE: Disparate Treatment

**To:** Moore, Robert B <[RBMoore@sfwater.org](mailto:RBMoore@sfwater.org)>, [REDACTED]  
[REDACTED]

Hi Robert,

I just left a voicemail for you with a brief update.

Here is a brief update:

Angela provided me with a chart that indicated that you are receiving OT and that OT is being distributed equally. I recommended to her that she investigate the concern, to make sure all supervisors and managers, including herself, treat you appropriately and fairly. She assured me that she will be taking action.

Let's see how things pan out. Let's touch base again in a couple weeks.

Regards,

Stan Eichenberger

Business Representative

IUOE - Stationary Engineers, Local 39

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**From:** Stan Eichenberger  
**Sent:** Thursday, February 20, 2020 8:29 PM  
**To:** Moore, Robert B <[RBMoore@sfwater.org](mailto:RBMoore@sfwater.org)> [REDACTED]  
**Cc:** Guerra, Joe <[jguerra@sfwater.org](mailto:jguerra@sfwater.org)>  
**Subject:** RE: Disparate Treatment

Hi Robert,

I sent an inquiry to Angela, and copied Anthony and Labor Relations. I recommended that they provide me with their understanding to the situation, and to correct it ASAP if deemed appropriate. I will let you know what their response is upon receipt.

Regards,

Stan Eichenberger

Business Representative

IUOE - Stationary Engineers, Local 39

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**From:** Moore, Robert B <[RBMoore@sfwater.org](mailto:RBMoore@sfwater.org)>  
**Sent:** Thursday, February 20, 2020 2:49 PM  
**To:** Stan Eichenberger <[seichenberger@local39.org](mailto:seichenberger@local39.org)>  
**Cc:** Guerra, Joe <[jguerra@sfwater.org](mailto:jguerra@sfwater.org)>  
**Subject:** Disparate Treatment

Hi Stan,

Here is the narrative of what has been going on. I met, Angela Cheung, our Operation's manager on my first day back [REDACTED]. She seemed shocked that I was back and

looked to be in disbelief that I was here. I shrugged it off and moved on. Then, a few weeks later I overheard a conversation that Angela and Anthony (Tony) Scott, the plant chief, were having in regards to me and questioning the use of my leave that I earned by working the holidays- She wanted to know how that was possible given the fact that I just got back and if I was able to stand shift? Tony struggled to answer the questions he was being asked at a record pace. This was the first sign that there was a problem. So once I became reacclimated with the plant operations, which took about a month, I was given the green light to stand shift. In December, after hearing that exchange I asked Tony about it and in that discussion between us he said that she was watching my leave usage. When I asked why, I got no relevant answer. So during the holidays there were some overtime opportunities where I was passed over. I was told it was due to the cross-training needed for field personnel. This has never been the way overtime was managed. We had a list with all of the plant operators on it. We started at the top of the list and went down the list until the overtime was accepted. Those who refused the overtime went to the bottom of the list. If no one in the plant was able to cover the shift, then it was offered to the field personnel. I discussed this matter with Joe Guerra, the superintendent, about the situation and he sent an email to Chief Scott asking about the distribution of overtime and if he was following the MOU. Tony wanted to close the door to his office as not to let me hear what his response was going to be. The discussion escalated when Joe did not comply with Tony's request to close the door. I then got up and asked Tony is there an issue with me getting overtime in particular? I also said it seems to me that you are intentionally not offering me overtime under the direction of Angela since she is the one that has taken a special interest in my leave and how I use it. Tony replied, "I am just doing my job". This is not right! I don't understand what I have done to attract so much negative attention. Please help me get to the bottom of this and resolve it. Here is the contact info for both Angela Cheung & Anthony Scott:

Anthony Scott

[ascott@sfwater.org](mailto:ascott@sfwater.org)



Plant Chief

Angela Cheung

[acheung@sfwater.org](mailto:acheung@sfwater.org)



Operations Manager

Thank you,

Robert

--

*Robert Moore*

[REDACTED]

# ATTACHMENT 3

**CONFIDENTIAL**  
**INTERVIEW NOTES**

|  |  |
|--|--|
| <b>Complainant:</b> Angela Cheung      | <b>EEO File No./Dept.:</b> POT 2020/SFPUC                      |
| <b>EEO Investigator:</b> Dena Narbaitz | <b>Date &amp; Time:</b> April 29, 2020, 2:32 p.m. to 3:03 p.m. |
| <b>Others Present:</b> None            | <b>Location:</b> Via Telephone                                 |

**I. BACKGROUND INFORMATION**

**A. Work Background**

On July 2, 2018, Angela Cheung began working for the San Francisco Public Utilities Commission (SFPUC), Water Enterprise as the Water Supply & Treatment (WST) Division Manager. Part of her duties include managing the Sunol Valley Water Treatment Plant (Sunol). Cheung reports to Steven Ritchie, Assistant General Manager, SFPUC Water Enterprise.

Robert Moore is a 7343 Senior Stationary Engineer at Sunol. Moore reports to Anthony Scott, 7245 Chief Stationary Engineer, Water Treatment Plant. Scott reports to Joe Guerra, 7443 Superintendent Water Treatment Facility. Guerra reports to Cheung.

**II. DISCRIMINATION BASED ON DISABILITY**

**A. Early December 2019: Cheung Questions Moore's Ability to Take Time-Off Over the Christmas Holiday and to Work after [REDACTED]**

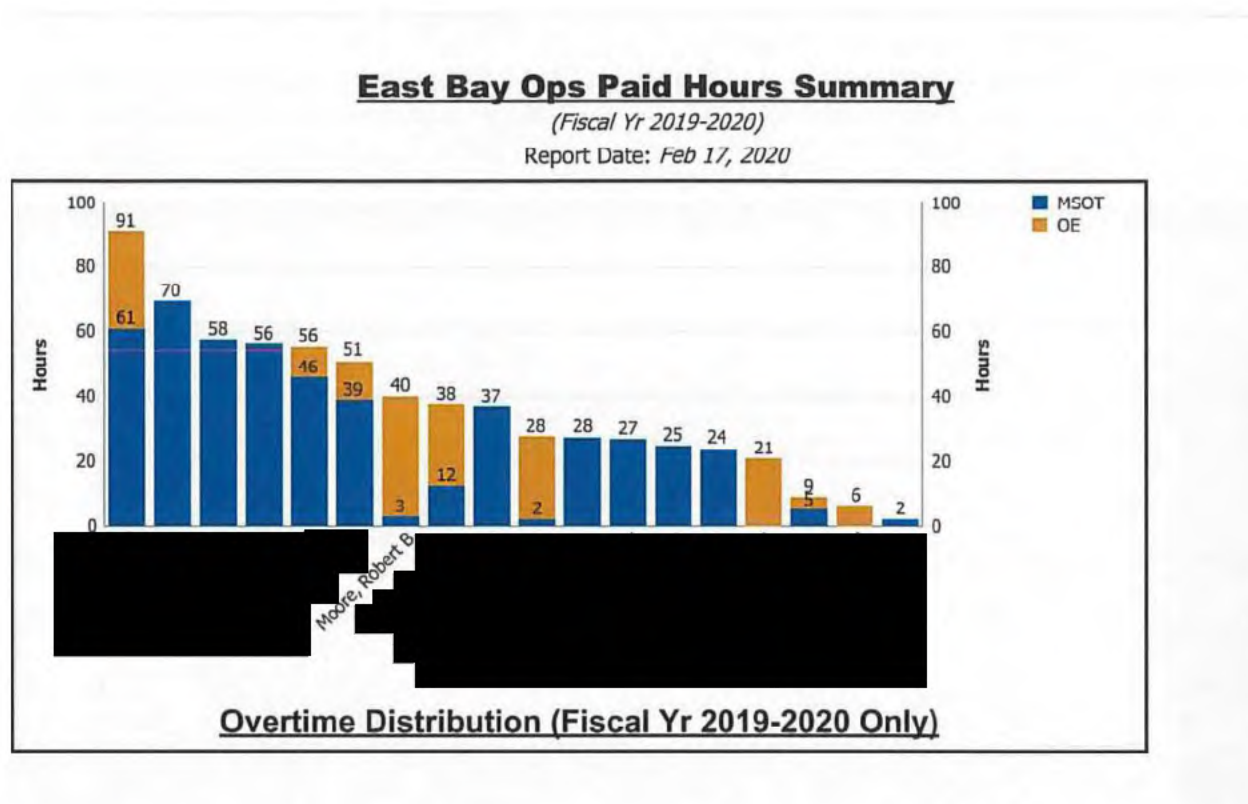
On April 29, 2020, Narbaitz only interviewed Cheung regarding Allegation B: In January/February: Cheung Instructed Her Staff to Deny Moore Overtime (OT), because this was the only information needed for the Department Report of Complaint (DRC).

**B. In January/February 2020: Cheung Instructed Her Staff Deny Moore Overtime**

When provided with OT, WST East Bay Operations employees can choose either to receive the OT in the form of Mandatory Staffing Overtime Time (MSOT), which is paid on their next paycheck, or Overtime Earned (OE), which they bank for later use as time off.

On February 20, 2020, Cheung received an email from Stan Eichenberger, Local 39 Business Representative, asking about OT provided to Moore. Cheung responded to Eichenberger's email attaching a graph of the OT issued in WST East Bay Operations, which includes Sunol, from

July 1, 2019 through February 17, 2020 (OT Graph). (Exhibit A.) An insert of the OT Graph is below.



The number at the top of each employee entry represents the total number of OT hours worked by that employee. The number below represents the number of hours that employee elected to take as MSOT. For example, Moore was provided with 40 hours of OT; he elected to take 3 hours as MSOT and he received 37 hours as OE.

The OT Graph represent the SFPUC Fiscal Year 2019/2020 to the date it was created. In other words, it represents OT from July 1, 2019 through February 17, 2020 – a period of 7.5 months.

Moore was on a leave of absence in the beginning of the 2019/2020 Fiscal Year; he returned to work on November 6, 2019. So, the time on the OT Graph for Moore is 3.5 months, not 7.5 months for the other employees.

The OT Graph reflects that Moore received 40 hours of OT in 3.5 months, an average of 11.4 hours per month. The only employee who averaged more OT hours per month than Moore was Odell Gibbs, 7343 Senior Stationary Engineer, at 12.1 hours per month. All the other employees averaged fewer than 10 hours per month.

On February 21, 2020, Cheung explained the OT Graph to Eichenberger. Cheung did not receive another inquiry from Eichenberger on this issue.

C. **March 2020: Guerra Informed Moore that Cheung is Tracking Moore's Leave**

On April 29, 2020, Narbaitz only interviewed Cheung regarding Allegation B: In January/February: Cheung Instructed Her Staff to Deny Moore Overtime (OT), because this was the only information needed for the DRC.

III. **MISCELLANEOUS**

Cheung's contact information is as follows:

Work phone: 650-871-3034

Work email address: [ACheung@sfwater.org](mailto:ACheung@sfwater.org)

IV. **CONCLUSION**

Cheung does not have anything to add regarding Allegation B: In January/February: Cheung Instructed Her Staff to Deny Moore OT.

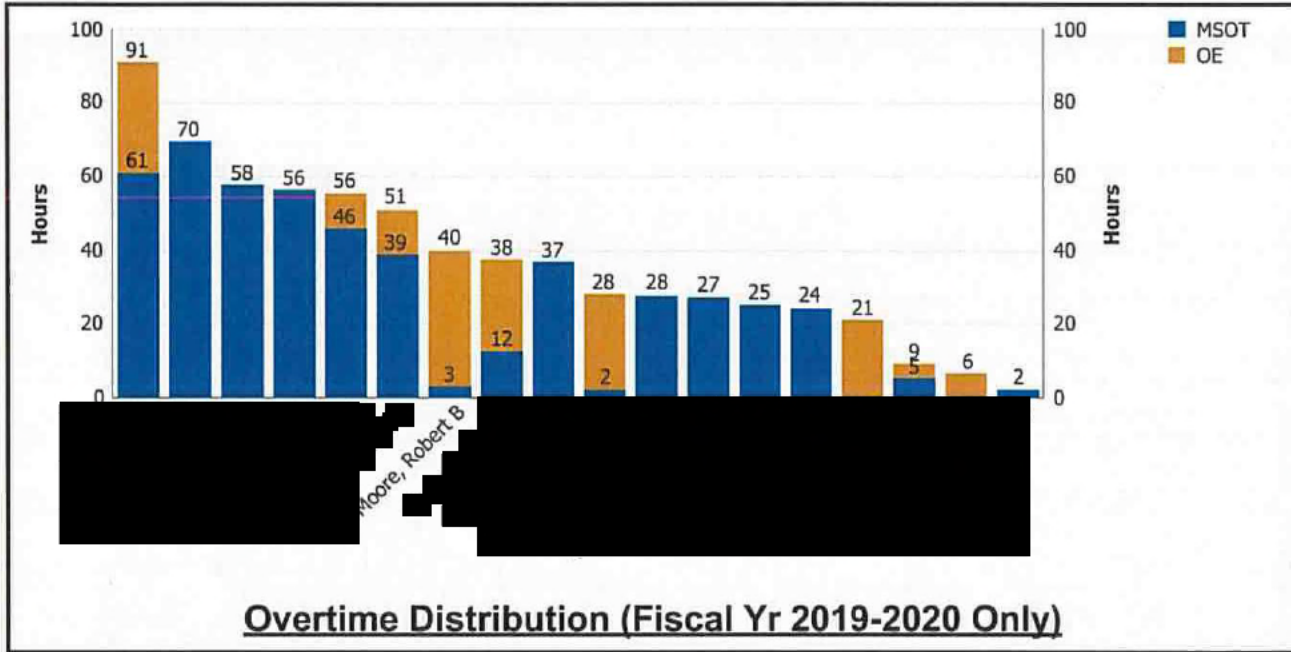


# Exhibit A

# East Bay Ops Paid Hours Summary

(Fiscal Yr 2019-2020)

Report Date: Feb 17, 2020



## **EXHIBIT C**

Human Resources Director's Determination Letter, June 7, 2022



**CONFIDENTIAL**

June 7, 2022

Robert Moore



Via E-Mail



RE: Complaint of Discrimination, EEO File No. 3529

Dear Robert Moore:

The San Francisco Charter, Section 10.103, and Civil Service Rule 103, provide that the Human Resources Director shall review and resolve all complaints of employment discrimination. The Charter defines discrimination as a violation of civil rights on account of race, religion, disability, sex, age, or other protected category. The City and County of San Francisco (City) considers all allegations of discrimination a serious matter.

Thank you for bringing your concerns to my attention, as I appreciate every opportunity to evaluate conduct that impacts employee morale and productivity. I make recommendations for change whenever warranted, even when the facts do not establish a violation of the City's nondiscrimination policies but may violate other policies, or where changes may improve a workplace environment.

The purpose of this letter is to inform you of my determination regarding your complaint, Equal Employment Opportunity (EEO) File No. 3529.

**I. BACKGROUND & ALLEGATIONS**

Since September 17, 2012, you have been a 7343 Senior Stationary Engineer in the SFPUC Water Enterprise, Sunol Valley Water Treatment Plant (Sunol). On October 13, 2014, Anthony Scott (Scott), 7245 Chief Stationary Engineer, Water Treatment Plant, began supervising you. Scott reports to Joe Guerra (Guerra), 7443 Superintendent Water Treatment Facility. Guerra reports to Angela Cheung (Cheung), Water Supply & Treatment Division Manager.

From February 1, 2018 until November 6, 2019, you were on a [REDACTED]. On April 3, 2020, the San Francisco Public Utilities Commission EEO Programs Division (SFPUC EEO) received your complaint against Cheung. On April 10 and 15, 2020, you spoke with Dena Narbaitz (Narbaitz), EEO Programs Senior Specialist with SFPUC, regarding your concerns.

**Retaliation Allegations**

You alleged that in retaliation for taking a [REDACTED] Cheung subjected you to the following:

- (1) In early December 2019, you overheard Cheung question why you were able to take time off during the 2019 Thanksgiving holiday because you had just returned from leave;
- (2) In January and February 2020, you asked Scott about overtime (OT). You believed Cheung instructed her staff to deny you OT. You contacted IUOE Stationary Engineers, Local 39 (Local 39) about your OT under the Memorandum of Understanding (MOU). On February 21, 2020, your Local 39 representative confirmed the OT was issued appropriately; and
- (3) Around November 6, 2019, Cheung asked Guerra to track your leave time but, in April 2020, instructed Guerra to cease doing so.

On May 14, 2020, the SFPUC sent a Department Report of Discrimination Complaint to the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) reporting your allegations.

## **II. ANALYSIS & FINDINGS**

To warrant further investigation, a complaint of retaliation must sufficiently allege all of the following: (1) you engaged in a protected activity; (2) you suffered an adverse employment action; and (3) there was a causal link between the protected activity and the adverse employment action. An adverse employment action is any objectively material adverse action affecting the terms, conditions or privileges of employment. Actions considered materially adverse are those that impair a reasonable employee's job performance or prospects for advancement. Materially adverse actions may also include those acts that would dissuade a reasonable employee from supporting a discrimination complaint.

You engaged in a protected activity when you [REDACTED] February 1, 2018 until November 6, 2019. However, you have not suffered an adverse employment action. You received the leave time for the 2019 Thanksgiving Holiday and two statements about your time off would not dissuade a reasonable employee from engaging in a protected activity. In addition, Local 39 confirmed that you were awarded OT according to the MOU and documentation on file shows that from November 6, 2019 to February 17, 2020, you received 40 hours of OT, averaging the second-highest monthly rate of OT among East Bay Operations. Finally, Cheung's comments about your leave and asking Guerra to track your time off were not a material change to the terms and conditions of your employment because management is permitted to keep track of how much time off their employees take. Accordingly, your allegations will not be investigated further and will be administratively closed.

## **III. DETERMINATION OF THE HUMAN RESOURCES DIRECTOR**

Based on the information you provided, it is my determination that your complaint, EEO File No. 3529, will not be investigated further and will be administratively closed. The decision of the Human Resources Director is final unless it is appealed to the Civil Service Commission and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Room 720, San Francisco, CA, 94102, within 30 calendar days of the date of the email sending this letter.

Please note that you may also file a discrimination complaint with the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing. Contact these agencies for filing requirements and deadlines.

Robert Moore  
EEO File No. 3529  
Page 3 of 3

Please feel free to contact Amalia Martinez, EEO Director, Department of Human Resources, at (415) 557-4932, should you have any questions.

Sincerely,



Carol Isen  
Human Resources Director

c: Dennis Herrera, General Manager, SFPUC  
Wendy Macy, Chief People Officer, SFPUC  
Rachel Gardunio, Employee & Labor Relations Division Manager, SFPUC  
Steven Tang, EEO Programs Manager, SFPUC  
Amalia Martinez, EEO Director, DHR

## **EXHIBIT D**

Appellant's Appeal to the Civil Service Commission, July 8, 2022



# CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

*Sent via Email*

## NOTICE OF RECEIPT OF APPEAL

DATE: July 8, 2022  
REGISTER NO.: 0089-22-6  
APPELLANT: ROBERT MOORE

Carol Isen  
Human Resources Director  
Department of Human Resources  
1 South Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Carol Isen:

The Civil Service Commission has received the attached letter from Robert Moore appealing the Human Resources Director's determination to not further investigate and to administratively close his Complaint of Discrimination, EEO File No. 3529. Your review and action are required.

If this matter is not timely or appropriate, please submit CSC Form 13 "Action Request on Pending Appeal/Request," with supporting information and documentation to my attention by email to [civilservice@sfgov.org](mailto:civilservice@sfgov.org). CSC Form 13 is available on the Civil Service Commission's website at [www.sfgov.org/CivilService](http://www.sfgov.org/CivilService) under "Forms."

In the event that Robert Moore's appeal is timely and appropriate, the department is required to submit a staff report in response to the appeal within sixty (60) days so that the matter may be resolved in a timely manner. Accordingly, **the staff report is due no later than 11 a.m. on September 8, 2022**, so that it may be heard by the Civil Service Commission at its meeting on September 19, 2022. If you will be unable to transmit the staff report by the September 8<sup>th</sup> deadline, or if required departmental representatives will not be available to attend the September 19<sup>th</sup> meeting, please notify me by use of CSC Form 13 as soon as possible, with information regarding the reason for the postponement and a proposed alternate submission and/or hearing date.



Appellant: Robert Moore  
July 8, 2022  
Page 2 of 2

You may contact me at [Sandra.Eng@sfgov.org](mailto:Sandra.Eng@sfgov.org) or (628) 652-1100 if you have any questions. For more information regarding staff report requirements, meeting procedures or future meeting dates, please visit the Commission's website at [www.sfgov.org/CivilService](http://www.sfgov.org/CivilService).

Sincerely,

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG  
Executive Officer

Attachment

Cc: Jeanne Buick, Department of Human Resources  
Kate Howard, Department of Human Resources  
Mawuli Tugbenyoh, Department of Human Resources  
Amalia Martinez, Department of Human Resources  
Wendy Macy, Public Utilities Commission  
Rachel Gardunio, Public Utilities Commission  
Steven Tang, Public Utilities Commission

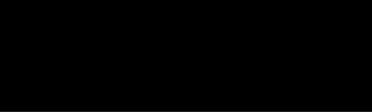


# CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

*Sent via Email*

July 8, 2022

Robert Moore



**Subject: Register No. 0089-22-6: Appealing the Human Resources Director's Determination to Not Further Investigate and to Administratively Close his Complaint of Discrimination, EEO File No. 3529.**

Dear Robert Moore:

This is in response to your appeal submitted to the Civil Service Commission on July 6, 2022, appealing the Human Resources Director's determination to not further investigate and to administratively close your Complaint of Discrimination, EEO File No. 3529. Your appeal has been forwarded to the Department of Human Resources for investigation and response to the Civil Service Commission.

If your appeal is timely and appropriate, the department will submit its staff report on this matter to the Civil Service Commission in the near future to request that it be scheduled for hearing. The Civil Service Commission generally meets on the 1st and 3rd Mondays of each month. You will receive notice of the meeting and the department's staff report on your appeal two Fridays before the hearing date via email, as you have requested on your appeal form.

In the meantime, you may wish to compile any additional information you would like to submit to the Commission in support of your position. The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date by email to [civilservice@sfgov.org](mailto:civilservice@sfgov.org). Please be sure to redact your submission for any confidential or sensitive information (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

You may contact me by email [Sandra.Eng@sfgov.org](mailto:Sandra.Eng@sfgov.org) or by phone at (628) 652-1100 if you have any questions. You may also access the Civil Service Commission's meeting calendar, and information regarding staff reports and meeting procedures, on the Commission's website at [www.sfgov.org/CivilService](http://www.sfgov.org/CivilService).

Sincerely,

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG  
Executive Officer

7/5/2022

Civil Service Commission – City & County of San Francisco  
25 Van Ness Ave #720  
San Francisco, CA 94102

Robert Moore  


Re: Appeal Request to the Complaint of Discrimination, EEO File No. 3529

To Whom It May Concern:

My name is Robert Moore. I wish to file an appeal based on the responses I gave in blue as to the reasons the DHR gave to conclude that my complaint was unfounded with any investigation on the DHR's part. Please reference the above file number.

- (1) In early December 2019, you overheard Cheung question why you were able to take time off during the 2019 Thanksgiving holiday because you had just returned from leave.

Although this is true, but it is not the only reason I had concern about what I overheard. It was the intensity of the questioning. Ms Cheung seemed to hate the fact I had leave available to me and that I had been granted its use. Mr Scott told Ms Cheung that I had also accrued leave through working overtime and converting it to compensation time. Ms Cheung on that same call asked Anthony Scott about my ability to operate the plant which he stated to her that I was very capable of doing. Ms Cheung did not want me to stand a shift alone but when it became necessary for me to do so I did. To me this was the beginning of the desperate treatment. I had bid that time off in December of 2018 as my selection for Thanksgivings 2019 and there should not have been a problem with it.

- (2) January and February 2020, you asked Scott about overtime (OT). You believed Cheung instructed her staff to deny you OT. You contacted IUOE Stationary Engineers, Local 39 (Local 39) about your OT under the Memorandum of Understanding (MOU). On February 21, 2020, your Local 39 representative confirmed the OT was issued appropriately:

I am not aware of any such determination. The reason I filed a complaint with the EEO was because of another conversation that I overheard between Anthony Scott and Angela Cheung about my leave usage. I had been past over for OT that was available to me but given to EBFF personnel. I went in to and talked to Joe Guerra (Superintendent of the West Bay Facilities) about what I had overheard. Mr Guerra then told me that he had been asked by Ms Cheung to track my leave. Mr Guerra and I went in together and confronted Mr Scott about what I overheard and, in that conversation, Mr Scott admitted that Ms Cheung directed him to not give me as much overtime a while back. I expressed that to Dena Narbaitz during our interview.

- (3) Around November 6, 2019, Cheung asked Guerra to track your leave time but, in April 2020, instructed Guerra to cease doing so.

My Guerra was only asked to stop after it was determined by HR that the distribution of overtime that had been given to the EBFF personnel should have in fact, been given to plant personnel, like me. Ms Cheung claim that I was not privileged to the overtime was left wanting.

In conclusion,

After 2 years have past your department arrives at this decision. Dena Narbaitz told me that this would probably be the outcome in 2020. When Ms Narbaitz made that statement, I asked how could anyone reach a conclusion about my claims without questioning anyone involved to either collaborate or discredit them? I got no answer. At the very least, Mr Scott and Mr Guerra should have been asked about my accusations. I asked for the transcripts from my conversations with Ms Narbaitz and was told that she didn't have a transcript. Then how do you know what to ask of anyone? That's right, it seems there was never any intent to investigate. I would like to have this case investigated correctly. I was under no disiplinary action when Mr Guerra was told to track my leave, nor was I being unreasonable to expect a level playing field when it came to the overtime. Instead, I was denied it and then labeled a troublemaker afterwards. A fact that can also be verified by Joe Guerra. Please give my request every consideration.

Sincerely,

Robert Moore





**CONFIDENTIAL**

June 7, 2022

Robert Moore

Via E-Mail

RE: Complaint of Discrimination, EEO File No. 3529

Dear Robert Moore:

The San Francisco Charter, Section 10.103, and Civil Service Rule 103, provide that the Human Resources Director shall review and resolve all complaints of employment discrimination. The Charter defines discrimination as a violation of civil rights on account of race, religion, disability, sex, age, or other protected category. The City and County of San Francisco (City) considers all allegations of discrimination a serious matter.

Thank you for bringing your concerns to my attention, as I appreciate every opportunity to evaluate conduct that impacts employee morale and productivity. I make recommendations for change whenever warranted, even when the facts do not establish a violation of the City's nondiscrimination policies but may violate other policies, or where changes may improve a workplace environment.

The purpose of this letter is to inform you of my determination regarding your complaint, Equal Employment Opportunity (EEO) File No. 3529.

**I. BACKGROUND & ALLEGATIONS**

Since September 17, 2012, you have been a 7343 Senior Stationary Engineer in the SFPUC Water Enterprise, Sunol Valley Water Treatment Plant (Sunol). On October 13, 2014, Anthony Scott (Scott), 7245 Chief Stationary Engineer, Water Treatment Plant, began supervising you. Scott reports to Joe Guerra (Guerra), 7443 Superintendent Water Treatment Facility. Guerra reports to Angela Cheung (Cheung), Water Supply & Treatment Division Manager.

From February 1, 2018 until November 6, 2019, you were on a [REDACTED]. On April 3, 2020, the San Francisco Public Utilities Commission EEO Programs Division (SFPUC EEO) received your complaint against Cheung. On April 10 and 15, 2020, you spoke with Dena Narbaitz (Narbaitz), EEO Programs Senior Specialist with SFPUC, regarding your concerns.

**Retaliation Allegations**

You alleged that in retaliation for taking a [REDACTED] Cheung subjected you to the following:

- (1) In early December 2019, you overheard Cheung question why you were able to take time off during the 2019 Thanksgiving holiday because you had just returned from leave;
- (2) In January and February 2020, you asked Scott about overtime (OT). You believed Cheung instructed her staff to deny you OT. You contacted IUOE Stationary Engineers, Local 39 (Local 39) about your OT under the Memorandum of Understanding (MOU). On February 21, 2020, your Local 39 representative confirmed the OT was issued appropriately; and
- (3) Around November 6, 2019, Cheung asked Guerra to track your leave time but, in April 2020, instructed Guerra to cease doing so.

On May 14, 2020, the SFPUC sent a Department Report of Discrimination Complaint to the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) reporting your allegations.

## **II. ANALYSIS & FINDINGS**

To warrant further investigation, a complaint of retaliation must sufficiently allege all of the following: (1) you engaged in a protected activity; (2) you suffered an adverse employment action; and (3) there was a causal link between the protected activity and the adverse employment action. An adverse employment action is any objectively material adverse action affecting the terms, conditions or privileges of employment. Actions considered materially adverse are those that impair a reasonable employee's job performance or prospects for advancement. Materially adverse actions may also include those acts that would dissuade a reasonable employee from supporting a discrimination complaint.

You engaged in a protected activity when you [REDACTED] February 1, 2018 until November 6, 2019. However, you have not suffered an adverse employment action. You received the leave time for the 2019 Thanksgiving Holiday and two statements about your time off would not dissuade a reasonable employee from engaging in a protected activity. In addition, Local 39 confirmed that you were awarded OT according to the MOU and documentation on file shows that from November 6, 2019 to February 17, 2020, you received 40 hours of OT, averaging the second-highest monthly rate of OT among East Bay Operations. Finally, Cheung's comments about your leave and asking Guerra to track your time off were not a material change to the terms and conditions of your employment because management is permitted to keep track of how much time off their employees take. Accordingly, your allegations will not be investigated further and will be administratively closed.

## **III. DETERMINATION OF THE HUMAN RESOURCES DIRECTOR**

Based on the information you provided, it is my determination that your complaint, EEO File No. 3529, will not be investigated further and will be administratively closed. The decision of the Human Resources Director is final unless it is appealed to the Civil Service Commission and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Room 720, San Francisco, CA, 94102, within 30 calendar days of the date of the email sending this letter.

Please note that you may also file a discrimination complaint with the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing. Contact these agencies for filing requirements and deadlines.

Robert Moore  
EEO File No. 3529  
Page 3 of 3

Please feel free to contact Amalia Martinez, EEO Director, Department of Human Resources, at (415) 557-4932, should you have any questions.

Sincerely,



Carol Isen  
Human Resources Director

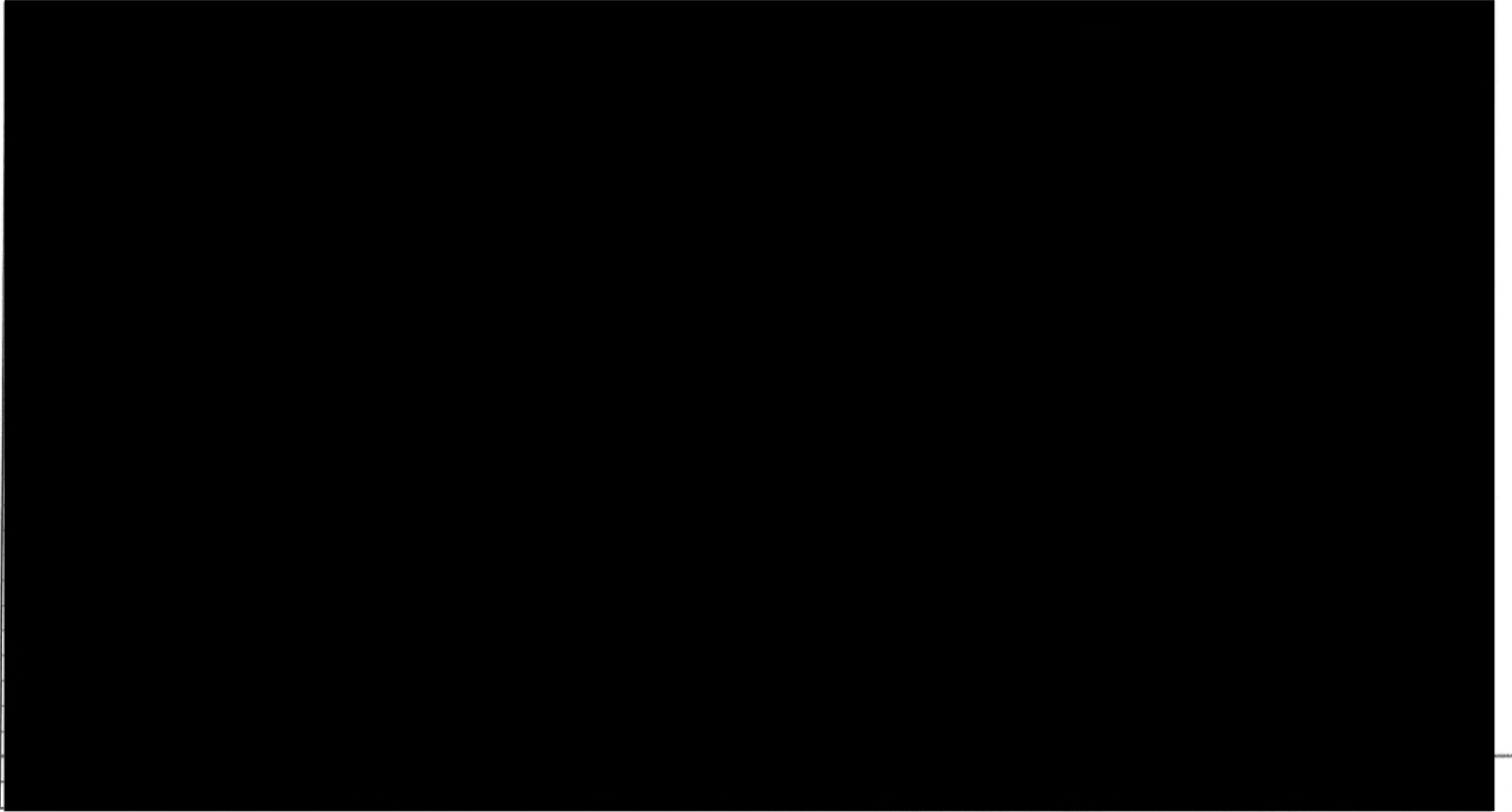
- c: Dennis Herrera, General Manager, SFPUC
- Wendy Macy, Chief People Officer, SFPUC
- Rachel Gardunio, Employee & Labor Relations Division Manager, SFPUC
- Steven Tang, EEO Programs Manager, SFPUC
- Amalia Martinez, EEO Director, DHR

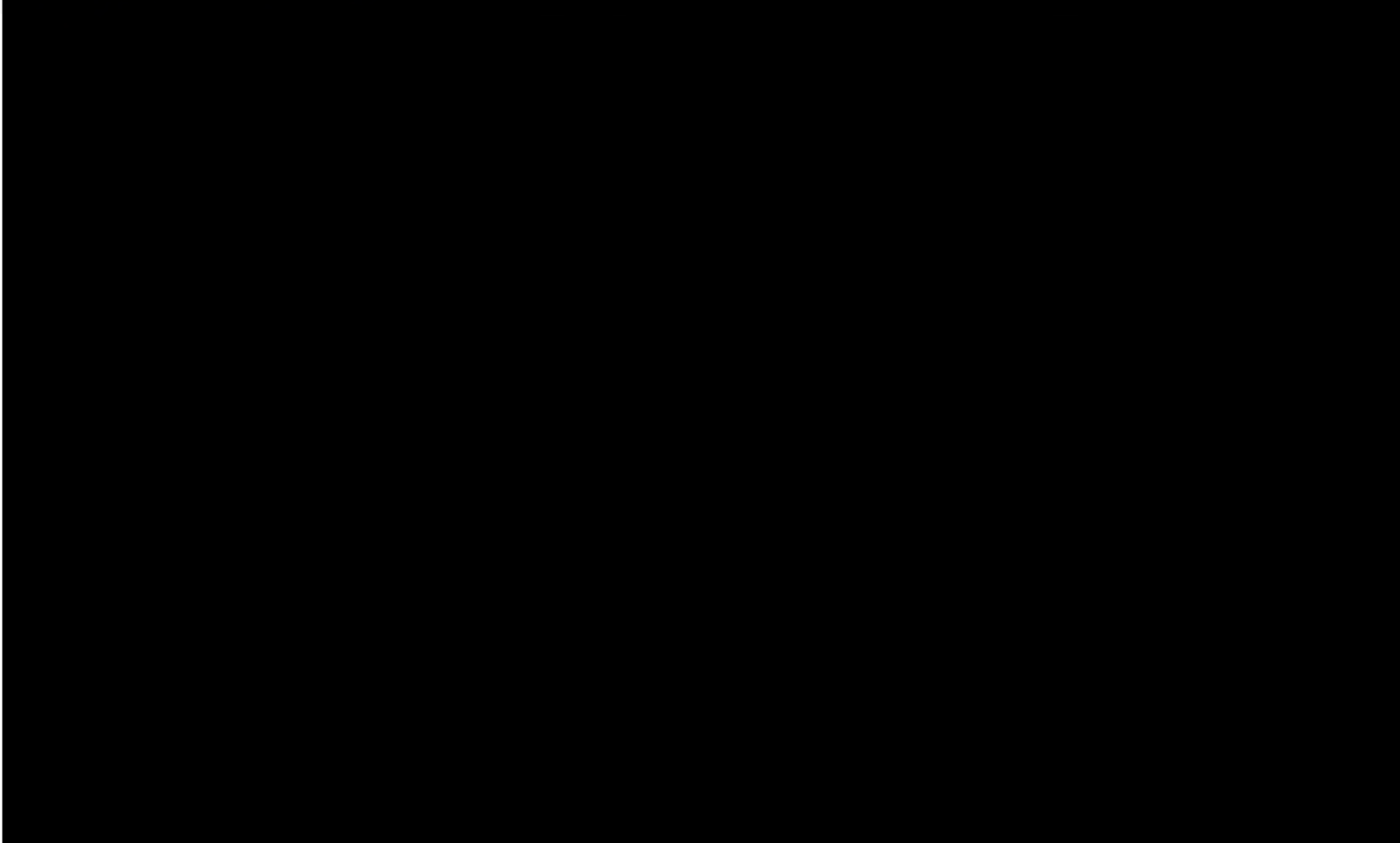
## **EXHIBIT E**

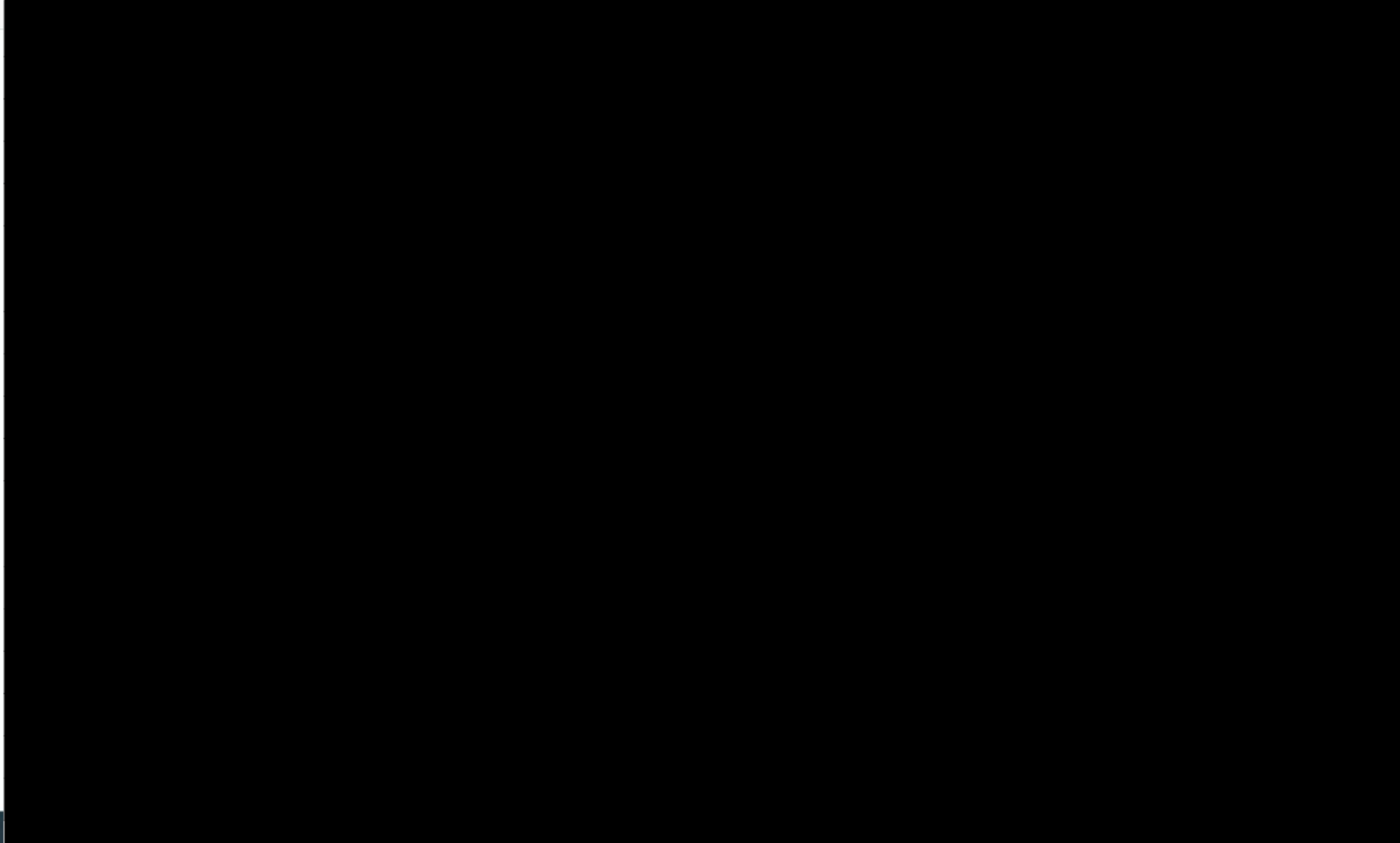
Bid Sheet and Appellant's Timesheet for Thanksgiving 2019



2019 SVWTP Vacation Schedule







# **EXHIBIT F**

Anthony Scott Interview Notes



**CONFIDENTIAL**

**DHR EEO INVESTIGATION OF EMPLOYMENT DISCRIMINATION  
 WITNESS INTERVIEW**

|   |   |
|---|---|
| <b>Witness: Anthony Scott, 7245 Chief Stationary Engineer, Water Treatment Plant</b><br><br><i>Pronouns: he/his/him</i> | <b>Civil Service Commission (CSC) Appeal for Appellant Robert Moore</b><br><b>Register Number: 0089-22-6</b>    |
| EEO Investigator: Deborah Dulay, 1231 EEO Programs Senior Specialist<br><br><i>Pronouns: she/her/hers</i>               | Date & Time: Wednesday, August 17, 2022, 2:18 pm to 3:24 pm. Continued Friday, August 19, 2022, 8 am to 8:32 am |
| Others Present: Latorya King, 1233 EEO Programs Specialist  |   |
| Location: Via MS Teams  | Pages: 8  |

On August 17, 2022, I sent an email to remind Anthony Scott (Scott), 7245 Chief Stationary Engineer, Water Treatment Plant, of the discussion at 2:05pm, and I called Scott at 2:13pm. I explained that the purpose of the discussion was to gather more information regarding a Civil Service Commission (CSC) Appeal for Appellant Robert Moore (Appellant), 7343 Senior Stationary Engineer, Water Treatment Plant. I further explained that other members of San Francisco Public Utilities Commission (SFPUC) management, specifically Angela Cheung (Cheung), 0942 Manager VII, was aware of our discussion today. I also stated that Superintendent Tim Kennedy (Kennedy), 5149 Superintendent of Water Treatment Facilities and Ryan Gabriel (Gabriel), 0941 Manager VI, were aware of Scott’s interview regarding Appellant’s CSC Appeal.

**I. BACKGROUND INFORMATION**

**A. Employment History**

In or around July 1995, Scott started working for the SFPUC. Scott works at the Sunol Valley Water Treatment Plant (SVWTP), which is in the East Bay, in Sunol, California. Scott’s work schedule is Monday through Friday from 7 am to 3:30 pm. As a Chief Stationary Engineer at SVWTP, Scott interacts with contractors as needed, trains employees, and works with first line hires. Scott completes many operational tasks, for example, putting the plant online, offline, and the transition into high rates.

**B. Relationship with Appellant**

About 15 years ago Scott met Appellant at work. Although Scott and Appellant both attended a co-worker's wedding, they do not associate outside of work. Appellant's job duties include administrative work, preventative maintenance, training new staff members, lab work, monitoring the system, and other tasks that help run SVWTP. For example, Appellant looks at incoming alarms from remote sites, oversees alarms, and notifies the appropriate person.

**C. Relationship with Joe Guerra**

In 1995, Scott met Joe Guerra (Guerra), former 5149 Superintendent of Water Treatment Facilities at work. Guerra trained Scott, and before SVWTP, Guerra worked at the East Bay Field Facilities (EBFF). Guerra used to be Scott's boss, but Guerra retired about two years ago.

Over the years, Scott and Guerra had their differences, did not agree on everything, but overall, Scott felt the working relationship with Guerra was okay. Even if things between them got shaky, Scott and Guerra could still work out their differences. Scott clarified that the disagreements he had with Guerra were work-related, sometimes Guerra did not agree with how Scott handled work tasks, and their communication broke down around the time Guerra retired. Despite their differences, Scott and Guerra got the job done.

At one time Scott considered Guerra a work friend, especially when getting the job done, working with upper management, and how operations should run. The professionalism between Scott and Guerra was always there, and they kept the facility ready to go. Scott and Guerra do not associate outside of work.

**D. Relationship with Cheung**

Scott knows Cheung who was previously the Operations Manager and currently manager for the division. Essentially, Cheung is the Manager of Water Supply and Treatment. Scott has known Cheung for about four years.

Scott and Cheung have a great working relationship. Cheung has brought a lot of information to the division, and Scott has learned a lot from Cheung and how Cheung runs the organization. Cheung is always willing to help, addresses Scott's issues, and Cheung's leadership is great. Ultimately, Cheung is Scott's boss, but Scott also considers Cheung a work friend. Scott and Cheung do not associate outside of work.

**II. RETALIATION**

**A. Comment about Appellant taking time off for Thanksgiving 2019**

Scott did not recall having a discussion with Cheung about Appellant taking time off for Thanksgiving 2019. Generally, an issue that comes up is when an employee takes excessive leave. However, they have attendance or call-out policies in place. Sometimes Appellant asked to take time off for medical appointments, which is categorized as sick leave.

How Appellant categorized his time off, including medical appointments, has been an issue several times. When employees ask for time off, they comply with the Memorandum of Understanding (MOU) for the various types of leave. SFPUC management tries to balance everyone's time off requests with mandatory operational need. For example, if coverage is required and at least two people are needed to work, then some leave requests are denied for business reasons. Outside an emergency, SFPUC management usually does not want to see people on the same shift take time off, which would create hardship if someone did not give at least 48 hours' notice. Usually, they can find coverage, however, overtime is not always approved.

#### **Discussion between Scott and Cheung**

Although Appellant described hearing an "intense" discussion between Scott and Cheung, Scott does not recall this incident. Scott recalled that Appellant's name came up when Cheung called him about work issues. However, Scott did not recall an "intense" discussion with Cheung, and Cheung has always been professional. Scott did not get the sense that Cheung was somehow targeting Appellant. Scott recalled Appellant filed union grievances in the past, and SFPUC management addressed Appellant's concerns.

Whether Cheung questioned Appellant's time off, Scott recalled that Cheung got the monthly schedules and looked at all staff member's time off requests. Scott thinks Appellant might be referring to time off requests in general.

Whether Scott told Appellant that Cheung was watching Appellant's leave, Scott recalled that Appellant was concerned about what types of leave he could use or not. For example, Appellant approached Scott about why Appellant could not use a certain type of leave given the situation. Scott recalled that, per the MOU and other policies, they require advance notice. For example, Appellant might have a doctor's appointment, but Appellant wanted to use overtime used or another leave type instead of sick pay. But, per the leave policy, they are supposed to categorize that time off as sick leave. Scott understands the policy better now, can better advise employees on the types of leave they should take, and Appellant did not seem to agree with the leave policy.

Scott further explained that if someone had, for example, a dental appointment, the employee would categorize that time off as sick pay. But, for other types of leave, per the leave policy, SFPUC management require up to 48 hours in advance notice. If someone uses overtime used, Scott will not know what the request was for. But, when someone takes time off the day before, they would need to categorize it as sick pay.

When asked whether Appellant was prevented from taking time off, Scott said that there may have been a couple times when Appellant did not accrue enough time for the type of leave used. For example, Appellant may have wanted to use overtime earned even though the time off even though the request should have been categorized as sick leave.

Scott did not recall speaking with Appellant about his discussion with Cheung, or whether Cheung was tracking Appellant's time off requests. Usually, Scott does not discuss his conversations with uninvolved individuals. Also, Scott did not recall monitoring Appellant's time off other than looking at employees' schedules overall. However, if an employee has questions, Scott will provide the answer, and the employee can take their matter up to a higher level of management if they want.

Scott recalled that Appellant took a lot of time off, and Scott needed to keep accurate records or notes of Appellant's leave. For example, Guerra asked Scott to make note of Appellant's time off, and whether there was a pattern in how the leave was categorized. For example, if Appellant called out sick, then that time off should be categorized as sick pay even though Appellant wanted to use accrued overtime. Also, Scott had to keep record of the times Appellant called out sick.

Whether others' time off was similarly monitored compared to Appellant, Scott said all employees' time off was monitored when giving them performance evaluations or appraisals. There is a part in the performance evaluation where they discuss taking time off or their attendance at work. Scott further explained that they monitor employees' time off to make sure the types of leave were not abused. Sometimes they look at the schedule, and they need to ensure that people provide documentation if they take time off more than five days. At one point, employees needed to provide documentation when they take time off for three days. Lastly, they need to make sure people's time off is consistent with the policy, and they can ensure adequate coverage for operational need.

#### **Did Scott witness examples of Cheung's bias?**

When asked whether Scott observed Cheung showing animus for Appellant taking leave, Scott did not recall an incident that would suggest bias on the part of Cheung. Scott continued, "Basically, [Cheung] gets along with everyone." Every time Cheung visits SVWTP, Scott never saw Cheung have an issue with anyone. Moreover, Scott has never heard Cheung make an inappropriate comment about employees [REDACTED] taking too much time off in general, or discussing an employee's performance in the context of taking time off. Similarly, Cheung has never approached Scott about employees taking excessive time off, and Cheung has never said or done anything against a person who has taken a lot of time off. Lastly, Scott did not recall Appellant saying anything about Cheung showing bias toward him due to his leave or wanting to go after Appellant.



**Appellant's ability to stand shift alone**

Based on Scott's experience working with Cheung and from an operational standpoint, Cheung may have asked general questions about all staff members' ability to stand shift alone. Whether an employee stands shift alone depends on their level of experience, and if they are comfortable doing so. It would be normal for Cheung to ask whether Appellant was capable of standing shift alone because management needs to ensure there were no major incidents. Scott explained that some operators are more experienced than others, and SFPUC management would not want an operator who is still learning to stand shift alone.

Scott told Cheung that Appellant worked at SVWTP a while and can start up the plant. Even though Appellant has made mistakes in the past, Appellant learned from them. Overall, Appellant can start and shut down the plant. Generally, they have three levels to reflect an employee's expertise: one is acceptable, two is good, and three is the highest rating. [REDACTED]

When asked why Cheung would question Appellant's capabilities, Scott said Cheung may have asked the question generally to gauge which operators were competent and get a sense of who can perform certain tasks. From Cheung's point of view, if there were an emergency, Cheung would want to know which employees had the requisite expertise to complete a task. Cheung needs to know employees' capabilities and who is the best person to help given the situation.

Scott further explained that the system must have the right configuration for solo coverage so one operator can be on watch. For solo coverage, the operator needs to respond to unforeseen alarms, may have to respond to remote sites, and have confidence doing so. Employees have learning curves; however, they have a stand-by Chief on Duty as well. Upper management determines which employees are suitable for solo coverage.

Regarding Appellant's job performance, Scott had some concerns, but Appellant has gotten better. [REDACTED]

**B. Whether Appellant was offered overtime**

Scott recalled Appellant asking why he was not offered overtime, but field operators were offered overtime for cross-training purposes. Recently, they implemented an overtime call out list that is supposed to ensure staff are offered overtime in an equitable manner. However, Scott's prior practice was looking at which shifts needed coverage, and Scott would ask people if they were interested in overtime. Sometimes Scott would bring in someone who was a

journeyman, had the basic skills, and have them take an overtime shift. Although Scott believed he was being fair in how he offered overtime, he was making mistakes, and now they have a new procedure. Scott recalled that Appellant and his union representative expressed concerns about the equitable offering of overtime as well. Appellant usually works nights, and the way Scott offered overtime was a concern for employees, including Appellant.

**How is overtime offered to employees?**

Within the past three years, SFPUC management have worked out how overtime is distributed to all the staff members. Specifically, SFPUC management had to modify how they distribute overtime based on fairness given that two people are usually required to work a shift. Similarly, about three years ago, they changed the time off policy as well to satisfy operational need.

Although Scott thought he had distributed overtime fairly to all staff members, it turns out Scott did not. However, SFPUC management corrected the overtime procedure to ensure overtime was distributed fairly, which resulted in an overtime call out list.

[Continuation of interview on Friday, August 19, 2022 at 8 am]

When asked whether Scott offered overtime to field operators, Scott recalled that they changed the overtime procedures after Appellant filed his union grievance. Shortly after Appellant's grievance, they established the overtime call out list. Previously, they offered overtime to SVWTP staff and operators from the EBFF for training purposes. Scott took the lead on offering overtime to EBFF personnel to address operational need. However, after Appellant's union grievance, issues with how Scott offered overtime were corrected so the procedure was compliant with the MOU. Prior to Appellant's union grievance, Scott was not familiar with all aspects of the MOU.

**What was the reason to offer overtime to EBFF operators for cross-training purposes?**

The main goal with offering overtime to EBFF operators for cross-training purposes was for planning purposes and fill-in as a second person if they are familiar with the SVWTP and the field facilities. In other words, the reason for cross-training was to ensure an operator can be assigned to various locations and understand how to operate the equipment.

Other factors are involved when the plant is in stand-by and online, and cross-training gave EBFF operators the opportunity for hands-on training. Also, EBFF operators could build their confidence so they could be the second person running labs, receiving chemicals, spot-checking within the plant, and know where to go and what they should look for. Generally, they are still developing ways to ensure all staff receive training.

**Did Cheung tell Scott not to give Appellant overtime?**

Scott did not recall Cheung telling him not to give overtime to Appellant. There were issues with how Scott offered overtime to all employees, not just Appellant. In other words, Cheung was concerned whether all employees had the opportunity for overtime.

Before the current overtime call out list, they had a list based on seniority, and the decision-making process was not as involved as it is currently. If the overtime shift was during an employee's regular days off or they work the night shift and the employee was interested, Scott would offer that person overtime. In other words, once Scott found an individual who was interested in the overtime shift, Scott would stop the decision-making process there and offer overtime to the interested employee. However, the process would not always work that way, and Scott went through the list of employees to get all the days covered. Scott would also look at the list of employees and verify if the overtime shift conflicted with their regular workday. Employees cannot work over 16 hours per day, and the SVWTP is a 24-hour facility. If someone were interested in working two or three days for overtime and there was an operational need, Scott would give the overtime to that individual. However, later, Scott learned that his decision-making process was inconsistent with the MOU. Scott felt that he was doing his best to maintain coverage.

Currently, overtime is offered based on a call out list, the process is fair for all employees, and Scott no longer gives one employee two to three consecutive days without going through the list to see if someone else is interested in the overtime shift. However, employees still cannot work over 16 hours per day.

When employees are off work for a long time, management will send out emails for volunteers for specific days. The process is based on need and seniority on the call out list. Then, they will assign overtime accordingly, which can be time consuming. However, there are no conflicts with the MOU. They also use eLogger, a computerized system, which is the official documentation for all plant operations for the day, including overtime entries. Now the overtime process includes documentation to verify compliance with the MOU.

**Did Scott speak with Guerra about Appellant's overtime requests?**

No, Scott did not recall speaking with Guerra about Appellant's overtime requests. Scott reiterated that it has been years since the alleged discussion happened, and Guerra has retired. Similarly, Scott did not recall Guerra asking whether Cheung told Scott not to give Appellant overtime. Appellant has been off work on different occasions, and Scott cannot remember every issue that Cheung had regarding Appellant. Scott does not know whether Guerra would remember Appellant's allegations. Scott recalled that all personnel were given overtime, not just Appellant.

**C. Whether Guerra Verified Appellant's Time Off**

Scott did not know whether Cheung asked Guerra to verify whether Appellant documented his time off accurately. Scott would not have been involved in Cheung's conversations with Guerra. Scott recalled that the overtime procedures changed to be consistent with the MOU because Appellant raised concerns to SFPUC management. Also, Scott recalled that they documented whether employees accumulated overtime. Scott and Guerra did discuss giving time off to individuals who requested leave.

Scott recalled that because Appellant was away from work, Appellant's eTime was removed from the payroll system. From Scott's perspective, there were issues with documenting Appellant's timesheets, and for some time, Scott was not approving Appellant's timesheet. Based on Scott's own record keeping system, Scott would document Appellant's leave so Scott was aware when Appellant was away from work. Because Appellant was off work for quite a while, Scott was not always involved with verifying Appellant's timesheet. Scott had other SVWTP tasks other than payroll duties.

**Conclusion**

At the conclusion of the interview, I asked Scott whether he had any questions. Scott's questions whether upper management knew about the interview were already answered. I thanked Scott for taking the time for the interview.

# **EXHIBIT G**

Angela Cheung Interview Notes



**CONFIDENTIAL**

**DHR EEO INVESTIGATION OF EMPLOYMENT DISCRIMINATION  
 WITNESS INTERVIEW**

|   |  |
|---|--|
| <b>Witness: Angela Cheung, 0942 Manager VII</b><br><br><i>Pronouns: she/her/hers</i>                      | <b>Civil Service Commission (CSC) Appeal for Robert Moore</b><br><b>Register Number: 0089-22-6</b> |
| EEO Investigator: Deborah Dulay, 1231 EEO Programs Senior Specialist<br><br><i>Pronouns: she/her/hers</i> | Date & Time: Thursday, August 18, 2022, 9:30 am to 11:49 am.                                       |
| Others Present: Samantha Tarallo, 1233 EEO Programs Specialist  |  |
| Location: Via MS Teams  | Pages: 10  |

I introduced my colleague Samantha Tarallo (Tarallo), 1233 EEO Programs Specialist, and explained to Angela Cheung (Cheung), 0942 Manager VII, that Tarallo was present to observe the interview for training purposes. Cheung recalled that Steven Tang (Tang), 0923 Manager II, introduced us, but Cheung believes Anthony Scott (Scott), 7245 Chief Stationary Engineer, Water Treatment Plant, is the most knowledgeable person regarding any concerns raised by Appellant Robert Moore (Appellant), 7343 Senior Stationary Engineer, Water Treatment Plant.

I explained that I spoke with Scott. I continued that another investigator initially handled Appellant’s concerns, however that person was not available for Appellant’s CSC Appeal. Therefore, I was speaking with Cheung to better understand Appellant’s matter. Although Cheung did not have materials immediately available for the discussion, Cheung said she would try to remember any details related to Appellant.

**I. BACKGROUND INFORMATION**

**A. Employment History**

In July 2018, Cheung started working for San Francisco Public Utilities Commission (SFPUC) as the System Operations Manager. In 2018, Cheung was responsible for the operation of the regional water system that starts in San Joaquin County, goes through Sunol, California, Santa Clara, California, and then San Mateo, California. Then, another division takes over at the border between San Mateo and San Francisco.

In February 2020, around the start of the COVID-19 pandemic, Cheung promoted to Division Manager. Cheung oversees operations, maintenance, and provides support for buildings, grounds, and engineering. In Cheung's new role, the scope of Cheung's duties has expanded.

**B. Relationship with Appellant**

Around November 2019, Cheung met Appellant. However, Cheung did not know Appellant [REDACTED] when Cheung visited the Sunol Valley Water Treatment Plant (SVWTP). Cheung thought management for SVWTP would have notified Cheung about Appellant's return to work prior to her arrival. Cheung's meeting with Appellant surprised her because Cheung was already working for SFPUC for over a year and thought she met everyone. Once they were introduced, Cheung realized that Appellant [REDACTED] but never met since starting her employment with the SFPUC. Cheung's initial meeting of Appellant was short, Cheung was surprised, and their meeting was happenstance because Cheung was at SVWTP for another purpose, which was not uncommon. Cheung usually visits SVWTP once every couple of months although Cheung may have visited with more frequency; Cheung does not remember exactly. In other words, Cheung was scheduled to visit the SVWTP independent of Appellant's return to work. Cheung stated that Appellant is well-spoken, articulate, and advocates for his own interests.

Cheung confirmed she was aware that Appellant [REDACTED] and Cheung heard SVWTP staff members speculate whether Appellant would return to work at all. SVWTP staff members asked Cheung whether they could back-fill Appellant's position. Cheung clarified that both Scott and Joe Guerra (Guerra), former 5149 Superintendent of Water Treatment Facilities at SVWTP, wondered whether Appellant would return to work, and they asked Cheung to fill Appellant's vacancy. Scott and Guerra said they needed help to ensure adequate staffing and questioned whether Appellant was returning to work. [REDACTED] had the greatest impact on Scott who was stretched thin due to the staffing issues at SVWTP.

Appellant is a Senior Engineer, had the 4/10 shift, and is the person who assists the Chief (Scott). With Appellant away for almost two years, Scott was overwhelmed and could not delegate certain tasks. For example, other employees were at the journey-level only, and they could not perform tasks meant for senior-level employees like Appellant. SVWTP is a big facility, and they need a senior-level employee to help Scott achieve operational goals. Cheung felt for Scott and wanted to help him.

Appellant's senior role at SVWTP serves two purposes: to ensure the proper operation of the water system and administrative duties like ordering parts, getting quotes, and helping prepare for regulatory inspections. Cheung reiterated that some of those tasks could not be delegated to a journey-level employee, and Scott had to perform them when Appellant was away from work. [REDACTED] SVWTP went down one senior operator from five, and Scott had to come in at 2 am to work a shift if SVWTP went into high-rate operation. Cheung felt a lot of

compassion for Scott because of the staffing issues at SVWTP, and Scott was invaluable to the operations of SVWTP. Scott has a good sense of the operation and can cover so many bases, however, [REDACTED] SFPUC management must keep track of administrative tasks, which require delegation and follow-through, and those tasks were taxing for Scott. Cheung wanted to help Scott and asked SFPUC Human Resources (HR) whether they could back-fill Appellant's position. However, HR told Cheung they could not do so because Appellant did not vacate the position.

**C. Relationship with Scott**

Around July 2018, Cheung met Scott. Scott is a very genuine, good person, and what you see is what you get. Cheung stated that Scott is salt of the earth, has a military background, and is the type of person someone wants as a neighbor. Scott would give the shift off his back if needed, and Scott means very well. Scott is a good operator, and Scott promoted to Chief. Prior to his promotion, Scott was a senior operator at SVWTP, knows the system very well, and can perform a lot of complex operational tasks. Scott is consistent and knows how to do the job, and not everyone can do the job as well as Scott. Scott is honest, forthcoming, and loyal, almost to a fault. Cheung and Scott do not associate outside of work.

**D. Relationship with Guerra**

Around July 2018, Cheung met Guerra at work. Cheung will always remember meeting Guerra for the first time because they had to deal with a very serious diesel spill that affected the building. Cheung drove to SVWTP because it was a major event, and Cheung spoke to Terry Lindow (Lindow), former 7245 Chief Stationary Engineer, Water Treatment Plant, at the East Bay Field Facilities (EBFF). In the first hour of the incident, Guerra did not talk, complained about many issues, and the incident was memorable because people became dehydrated, starved, but had to convene together for a meeting. Cheung tried to speak with Lindow, however, Guerra had so much to say.

Cheung's working relationship with Guerra was fine for the first three months. [REDACTED]

[REDACTED]



[REDACTED]

---

[REDACTED]

Cheung clarified that Cheung's  
and Guerra's work relationship changed.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## II. RETALIATION

### A. Comment about Moore taking time off for Thanksgiving 2019

Cheung did not recall an “intense” discussion with Scott about Appellant taking time off for Thanksgiving 2019. Scott is the Chief for SVWTP, and Scott approves Appellant’s leave. The leave policy outlines procedures to ensure coverage. If there are coverage issues, they must bring in someone else to cover the shift. Cheung does not recall employee leave issues around the 2019 holidays.

Moreover, Scott or Guerra, not Cheung, would be the manager who could evaluate Appellant’s ability to perform his job duties. Cheung believes Scott may have had questions about Appellant’s work performance. As a licensed operator, they must deliver safe water every shift they work. Therefore, SFPUC management needs to evaluate whether an operator is competent, which is a judgement call for Scott. Usually, they want to err on the side of caution. Because Appellant was away from work for about two years, Cheung speculated that Scott thought Appellant needed more time in the chair before being assigned major duties. Any employee may have forgotten a lot over two years away from work. Cheung has been in business operations for some time, and based on Cheung’s experience, if an employee is away from work for four and a half months, they may need time to acclimate back to work again. From a business perspective, SFPUC management wants to verify that an employee is able to perform their duties after being away from work for so long.

Cheung recalled that Appellant [REDACTED] wanted to work a lot of overtime, which seemed inconsistent. Some operators tend to work their weekly hours, they have family and other obligations, and they do not volunteer for overtime. However, other operators will volunteer for overtime, which makes them helpful to ensure coverage. Cheung speculated that Appellant wanted overtime shifts that worked for Appellant’s schedule. Appellant wanted to work overtime shifts that were convenient for Appellant. However, some employees got the short end of the stick.

Cheung continued that Appellant filed union grievances about overtime distribution. Cheung addressed Appellant’s concerns about overtime and created an overtime system that worked for

everyone. Specifically, they had to define what the term work group meant per the Memorandum of Understanding (MOU) with Local 39.

### **Whether Cheung commented about Appellant taking time off around the 2019 Holidays**

Cheung did not recall commenting on Appellant taking time off around the 2019 Holidays. If people were taking time off and they were approved, then SFPUC management would need to find someone to cover those shifts. Some employees prefer to work around the holidays, and they are not inclined to give up those extra shifts. Cheung reiterated that she did not recall making a comment about Appellant taking time off around 2019 holidays. Cheung recalled speaking with Scott, and it was not uncommon for Cheung to call Scott with work questions. Usually, Cheung spoke with Scott about administrative tasks.

Cheung speculated that there were concerns with how Appellant coded his time off. In terms of policy, the only time to take off without pre-approval was when an employee is sick. If an employee calls out sick, then they do not need approval from Scott. If someone calls out sick, then SFPUC management need to find someone to cover the shift. Cheung recalled Appellant sometimes called out sick, and Appellant wanted to convert overtime to time-and-a-half or overtime used.

Cheung did not recall how well Appellant and Scott worked together. However, Cheung recalled Appellant was the right-hand person for Scott, and it was difficult for Scott when Appellant was not at work. Cheung believes Appellant would cover shifts when other employees called out sick. Consequently, Scott would not offer the overtime to other employees. Thus, Scott did not have incentive to offer overtime to others because Appellant would take those shifts. However, Cheung is not certain whether Appellant covered the overtime shifts without telling Scott or whether Appellant cherry-picked which overtime shifts Appellant wanted. After Appellant filed a complaint with the union, SFPUC management adjusted the way they offered overtime.

### **Whether Cheung questioned Appellant's ability to stand shift alone**

Per standard protocol, Cheung would verify with the Chief whether an employee is fit for certain tasks. In other words, Cheung would ask Scott whether an employee was more experienced or whether they were journey-level. Scott is the person to evaluate whether an employee is ready to stand shift alone, and Cheung would ask Scott if an employee was ready to work alone after being away from work. Cheung believes this is a normal question.

Cheung and Scott may have had such a conversation because SFPUC management needs to know an employees' capabilities. SFPUC has the responsibility of ensuring the safety of drinking water. Because this is a regional water system, every facility operates differently, and each location has nuances. Many things can change after two years, and if an employee were away from work, they may not know of all the changes. If Appellant wanted to work a shift alone, SFPUC management

wants to verify if Appellant has come up to speed with all the changes that happened in the two years Appellant was away from work. Thus, as part of the normal course of business, SFPUC management would evaluate whether an employee is fit to stand shift alone.

Another scenario when SFPUC management will evaluate whether an employee is ready to stand shift alone is when the employee bids across the system. For example, an employee can bid across the bay and work in a new location. SFPUC management will ask whether the employee is familiar with the new facility, and whether they are ready to hit the ground running. Again, it is up to the Chief to make that judgment call.

In Cheung's experience in another organization, they would never allow an employee to assume primary responsibility within the first or second month of working at a new location. So, Cheung comes from a prior organization where verifying an employee's capabilities was normal. Similarly, it would be normal to discuss with Scott whether an employee was ready to stand shift alone. Cheung would rely on Scott's judgement about the employee's performance. Once Scott says yes, the employee is ready, and Cheung accepts Scott's assessment. Similarly, Cheung would likely have a discussion with the Superintendent about an employee's capabilities, and these discussions would not be unique to Appellant.

Per Cheung's understanding, Appellant has stood shift alone, possibly within the first months of returning to work because Appellant is a senior operator. Scott would verify whether Appellant is capable of standing shift alone, and Cheung may verify with the Superintendent. However, Cheung may not have followed-up with Guerra because at the time, Guerra publicly criticized Scott. Instead, Cheung likely spoke with Scott about whether Appellant could stand shift alone, and ultimately, this was a judgment call for Scott. Scott would need to evaluate whether Appellant knew what to do with an alarm and respond accordingly. Usually, operators earn their living by the 5% chance that things go wrong, but most of the time things go right. In the off chance there is an alarm, for example, and the operator is not able to respond, those are precious minutes that drinking water could become unsafe or the system experiences pressure loss. In the operator position, they need to make those types of judgement calls.

Many updates to the system happen over two years. If an employee were away for that long, they would not know all the updates. It takes time for a person to get to know the system again and know what changes occurred. Even when an employee has been an operator for a while, they would need to notice the changes, need more daily experience, and ask questions about the system updates. In other words, an operator needs more time in the seat to see what is going on and relearn the nuances that do not come up very often. Then, SFPUC management will explain the updates to the protocols. Cheung speculates that Appellant may not have know about all the updates after the first two months returning to work.

Cheung reiterated that SFPUC cannot deliver unsafe water, they take their job seriously, and this is the reason why the operators are licensed. Because their operation is important, SFPUC

management needs to ensure they have the right personnel available to work shifts. For example, employees need to know how pumps work, and understand why the system changes over time to ensure proper operations.

**B. Overtime**

Cheung recalled gathering data about Appellant's overtime. Based on the documents, Cheung observed that Scott gave a disproportionate amount of overtime to Appellant compared to other operators. Cheung speculates that Appellant may have taken the overtime shifts without telling Scott, or Scott was too busy to pay attention to details to ensure overtime is offered to all employees. In either case, that is not the proper overtime procedure.

Cheung also confirmed that they offered overtime for cross-training purposes. Each side of the bay have remote facilities, East Bay and West Bay, and each facility has their own Chief. Usually, the facility relies on their own staff members to ensure adequate coverage, however, they may not have enough personnel to do so. Sometimes they may need to implement mandatory overtime to cover all shifts. For those reasons, the facilities need to bring someone from a different location to ensure coverage. For example, personnel from the EBFF work at the SVWTP to satisfy staffing needs. Staff from EBFF working overtime at SVWTP worked well to ensure coverage, and field staff were rising to the occasion. Otherwise, Scott would need to cover shifts, and sometimes Scott came in at 2am to ensure coverage.

Appellant filed union grievances about how overtime was offered per the MOU's provisions. Specifically, SFPUC management needed to clarify what the term work group meant and what procedure ensured equitable distribution of overtime. Due to Appellant's concerns, SFPUC management separated out SVWTP personnel from EBFF personnel when offering overtime, and they implemented mandatory overtime procedures, which upset some staff personnel. Now, SFPUC management offer overtime to SVWTP personnel first and then offer overtime to EBFF personnel. The updated overtime procedure benefits Appellant because Appellant has more opportunities for overtime. However, EBFF personnel have less incentive to take overtime shifts at SVWTP because the remaining shifts are less desirable, which means SFPUC management use the mandatory overtime list to ensure coverage. The updated overtime procedure affects SVWTP personnel when Appellant does not take an overtime shift, and the remaining overtime shifts usually fall to SVWTP personnel to fill via the mandatory overtime list. Mandatory overtime impacts the other SVWTP staff.

Cheung denied telling Scott not to offer overtime to Scott. Cheung recalled that Appellant worked a lot of overtime compared to other employees at SVWTP. Cheung told Scott to distribute out overtime to other employees because Cheung saw how Appellant worked many more overtime hours compared to others. Consequently, other employees may have complained about why they did not get overtime. Cheung reiterated that Cheung likely told Scott to pay more attention about offering overtime to all employees, pointed out that Appellant got many more overtime

hours, and to ensure overtime was distributed evenly. In other words, Cheung did not single out Appellant regarding overtime. Rather, Cheung reminded Scott to distribute overtime to everyone else, not just Appellant. Cheung denied having retaliatory motive toward Appellant, has only met Appellant around November 2019, and Cheung rarely interacts with Appellant.

Guerra said that Scott was supposed to monitor Appellant's leave type. Scott has two objectives: to approve overtime and to make sure time off is coded properly in eTime. [REDACTED]

When asked about whether Appellant's time off was monitored, Cheung recalled that Appellant's time off needed to be coded accurately. For example, if Appellant called out sick, then time off would need to be coded accordingly. The leave policy outlines how leave is supposed to be coded, describes which leaves require pre-approval, and sometimes time off cannot be approved because they do not have enough people to cover shifts. For pre-approved time off, they use a vacation calendar. Cheung reiterated that Appellant needed to use sick leave balances and not vacation or floating holiday pay for sick leave. Also, Appellant would use overtime used instead of sick leave.

Ensuring adequate coverage is important for the operation of SVWTP. Around the holidays, many employees take time off, and only one person is available to work. However, that puts the operation at jeopardy. From Cheung's perspective, SFPUC management needs to protect the entire operation, [REDACTED]

**C. Cheung's Comments About Moore's leave and OT**

Cheung did not recall telling Guerra to track Appellant's leave starting around November 2019. If Cheung and Guerra discussed Appellant's time off, then Guerra likely brought up the issue. Cheung has no issues or history with Appellant. Telling Guerra to review Appellant's time off starting around November 2019 did not make sense to Cheung. Issues with Appellant's time off happened later, likely a month or two after Appellant returned to work.

Cheung wished Guerra told her that Appellant returned to work around November 2019. However, when Appellant returned to work in November 2019, neither Scott nor Guerra told Cheung, Appellant had been back for a few days, and Cheung was blindsided. As a manager, Cheung expected either Guerra or Scott to inform Cheung of Appellant's return so Cheung would have adequate notice. Cheung thought it was odd that neither Guerra nor Scott told Cheung

about Appellant's return. Guerra speculated that Appellant would not return to work at SFPUC. Similarly, Cheung recalled other employees questioned whether Appellant would return to work.

Starting around early 2020, Cheung was busy dealing with the COVID-19 pandemic, and Cheung was so far removed from the daily workplace issues at SVWTP. Cheung would not have a reason to tell Guerra to review Appellant's time off requests.

In Cheung's opinion, Appellant's concerns about equitable overtime distribution and [REDACTED] are unrelated. Regarding Appellant's union grievances, Cheung worked with SFPUC Human Resources, and they investigated Appellant's concerns about overtime. As a result of Appellant's union complaints, SFPUC management updated the overtime distribution policy even though Cheung disagreed with implementing the mandatory overtime list. However, through the union grievance process, they defined what a work group meant within the context of the MOU, which resulted in a mandatory overtime list. Cheung wonders whether the union is aware of how the mandatory overtime list affects its members. In other words, the way overtime is distributed now affects the other SVWTP employees. However, despite Cheung's concerns, Cheung and SFPUC management agreed with the union's approach.

### **III. CONCLUSION**

Cheung did not have any questions and apologized because initially Cheung thought the interview would be short. Cheung will look through emails and forward any relevant information. Some of Appellant's issues on appeal may be mischaracterized. Cheung denied retaliating against Appellant.

Cheung clarified that Tim Kennedy (Kennedy), 5149 Superintendent of Water Treatment Facilities, replaced Guerra as Superintendent. Kennedy has been with SFPUC for about 20 years, became Superintendent for East Bay about one and a half years ago, and Kennedy may know more about Appellant's issues. Kennedy is honest and straightforward, knows operations very well, and Kennedy may be able to fill in the blanks regarding Appellant's concerns about overtime. Kennedy could pull data from the computer system to assist with the investigation. Kennedy directly oversees Scott. I thanked Cheung for taking the time for the interview.

# **EXHIBIT H**

Joe Guerra Interview Notes





**CONFIDENTIAL**

**DHR EEO INVESTIGATION OF EMPLOYMENT DISCRIMINATION  
 WITNESS INTERVIEW**

|   |  |
|---|--|
| <b>Witness: Joe Guerra, former 5149 Superintendent of Water Treatment Facilities</b><br><br><i>Pronouns: he/his/him</i> | <b>Civil Service Commission (CSC) Appeal for Robert Moore</b><br><b>Register Number: 0089-22-6</b> |
| EEO Investigator: Deborah Dulay, 1231 EEO Programs Senior Specialist<br><br><i>Pronouns: she/her/hers</i>               | Date & Time: August 19, 2022, 10 am to 11:40 am.   |
| Others Present: N/A   |  |
| Location: Telephone   | Pages: 9   |

I introduced myself to Joe Guerra (Guerra), former 5149 Superintendent of Water Treatment Facilities. I explained the purpose of the discussion was to gather more information regarding a Civil Service Commission (CSC) Appeal for Appellant Robert Moore (Appellant), 7343 Senior Stationary Engineer, Water Treatment Plant. Guerra recalled that Anthony Scott (Scott), 7245 Chief Stationary Engineer, Water Treatment Plant could not answer some of Appellant’s questions.

**I. BACKGROUND INFORMATION**

**A. Employment History**

In May 1987, Guerra started working for the San Francisco Public Utilities Commission (SFPUC). Guerra stayed with the SFPUC for many years, and the experience was good. As Superintendent, Guerra oversaw operations and was responsible for water treatment. The water system begins in Tracy, California and goes through Tesla Portal and Sunol, California. There are other water pumping stations as well. Guerra coordinated with Chiefs at the respective treatment facilities, worked with regulatory inspectors to satisfy regulatory requirements, and followed-up with Scott about supervisory responsibilities and assignments.

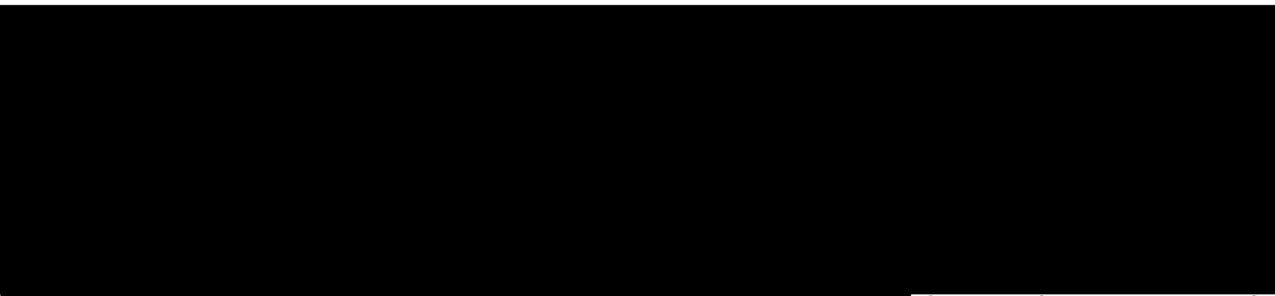
Guerra oversaw water treatment and flow objectives, worked on construction projects, and evaluated how to deal with deficiencies in facilities. Guerra prioritized tasks related to treatment and equipment issues, scheduled maintenance, ensured adequate staffing coverage, and followed-up on personnel issues. Many people take for granted all the tasks that go into ensuring good quality water with adequate pressure, and a lot goes on behind the scenes. On June 30, 2020, Guerra retired from SFPUC.

**B. Relationship with Appellant Robert Moore**

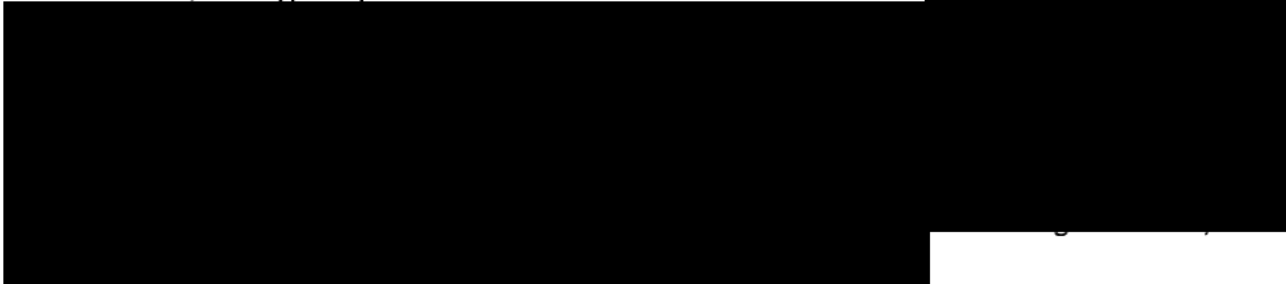
About eight or ten years ago, Guerra met Appellant at work. Appellant is an employee at the Sunol Valley Water Treatment Plant (SVWTP). Appellant and about five or six other employees came to SVWTP from East Bay Municipal Utility District, which was a big recruitment. On one occasion, Appellant told Guerra that Appellant wanted to retire after working at SFPUC for ten years.

**C. Relationship with Angela Cheung**

Guerra knows Angela Cheung (Cheung), 0942 Manager VII. In 2009, Guerra worked in Tracy, California and was reassigned to Sunol, California. In 2012, Guerra first worked with Cheung when Cheung worked for Santa Clara Water District, and they co-managed a pump station in Santa Clara, California. Guerra clarified that he and Cheung did not work directly when Cheung worked at Santa Clara, they worked as a group, and higher management from both SFPUC and Santa Clara interacted with each other. In late 2018 or early 2019, when Cheung started working for SFPUC, Cheung became Guerra's supervisor, and Guerra started to work directly with Cheung.



They work in a unionized environment, and typical practice is to follow the chain of command.



Guerra was a supervisor at SVWTP for ten years, but Cheung was only at SFPUC for a short time.

[REDACTED]

Guerra and Cheung do not associate outside of work.

**D. Relationship with Anthony Scott**

Around the mid-1990s, Guerra met Scott at the SVWTP. Initially, Guerra and Scott had a good working relationship. Scott is a confident worker, did the job, and you could count on Scott. In 2010, Guerra promoted to Chief at SVWTP, Scott became the swing shift supervisor, and their working relationship was good. Guerra could count on Scott. Guerra could trust two or three people, including Scott. In 2014, Guerra's supervisor, Gary Williams (Williams), 5149 Superintendent of Water Treatment Facilities retired, and in 2015, Guerra promoted again. Consequently, Scott back-filled Guerra's position, and Scott promoted as well.

As Chief, Scott learned well, and things started off well.

[REDACTED]

Guerra and Scott do not associate outside of work.

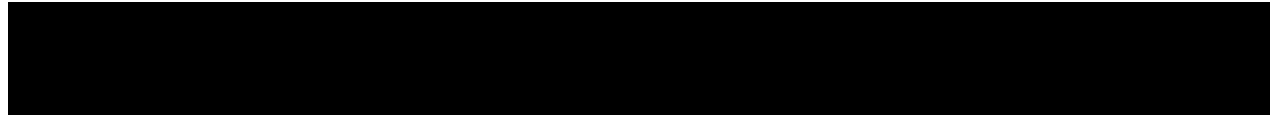
[REDACTED]

**II. RETALIATION**

**A. Comment about Moore taking time off for Thanksgiving 2019**

Cheung would not speak directly with Guerra and preferred to speak with Scott instead. Through Scott, Guerra heard about Appellant's issues. Guerra wondered why Cheung asked Scott when Appellant was off work, Cheung went directly to Scott about Appellant's time off, and Cheung did not follow the chain of command.

[REDACTED]



Appellant asked Guerra if there was an issue taking time off for Thanksgiving 2019. An employee needs to give enough advance notice so the Chief can cover the shift, and the overtime shift needs approval by SFPUC management. At the beginning of the year, there is more flexibility when approving overtime. In summary, SFPUC management can approve time off when overtime shifts are approved. In some cases, SFPUC management may require overtime. Because SVWTP is a 24-hour facility, there are many variables that factor into whether an employee may take time off from work. One person could manage the entire operation if the SVWTP is at the nominal rate. However, they may need two people, or have double duty, in other scenarios. Similarly, they may need employees to cover half a shift depending on operational need. SFPUC management does not usually deny leave unless they have coverage issues. If someone has their vacation approved, SFPUC management will bend over backwards to find adequate coverage.

Appellant had issues coding his time off and selecting the appropriate category like comp time, sick leave, or vacation. If someone takes sick leave, SFPUC management trusts that the employee is honest, and employees cannot use vacation if their leave was unscheduled. When leave is unscheduled, the employee needs to categorize the time off as sick pay. Guerra recalled Appellant would come to him on a Thursday, and ask for time off for Friday, Saturday, and Sunday. But Guerra denied the request because Guerra needed more notice to cover Appellant's shifts. If the SVWTP were at low rates and one person could cover the operation, then Guerra could cover the leave request. However, Guerra needs 48-hour to determine the type of coverage, including whether single coverage is appropriate, or whether double coverage is needed.

Guerra evaluated time off requests as either planned or unplanned. In the case of unplanned, employees categorize the time off as sick leave; for example, when an employee visits the doctor. If an employee is on vacation, they need to categorize the time off as vacation. In other cases, time off is categorized as unpaid leave.

Guerra told Appellant that Appellant needed to be treated the same as everyone else. But Appellant asked to categorize Appellant's time off differently. Essentially, Appellant's questions were as though someone asked for a quarter, and they take fifty cents. In other words, Guerra explained to Appellant that the leave policy could not be bent in Appellant's favor otherwise Guerra needed to do the same for other employees. Put another way, Guerra needed to apply the leave policy consistently among all employees.

Guerra further explained to Appellant that vacation is planned and required pre-approval, and sick pay could not be used for vacation. For example, if an employee wanted to change the leave type, they would need to follow the leave policy. An employee could leave work today for personal reasons and use sick pay. For the next day, the employee could use vacation time if they

gave SFPUC management enough notice. So long as the time off satisfied the leave policy, the days off could be categorized as sick pay and vacation.

Appellant was concerned about his leave accruals. Guerra was not certain whether Scott did not approve Appellant's time off requests or whether Cheung denied the time off requests. Guerra could not recall exactly what Appellant's issue was. However, Appellant told Guerra that Scott said Cheung said Appellant could not take leave because Appellant had just returned to work. In Guerra's opinion, if an employee satisfied the leave policy, then their time off should be approved.

[REDACTED] Guerra recalled that Scott told Appellant that Appellant could not take time off, and Appellant was not happy with Scott's decision.

Appellant told Guerra about Appellant's discussions with Scott. According to Appellant, Cheung told Scott that Appellant could not take time off during the holidays of 2019. Employees bid up to one year in advance to take time off based on leave accruals. Guerra believes Scott did not follow the leave policy if Appellant already bid for time off for the 2019 holidays. Guerra believes Appellant's bid for time off happened while [REDACTED] which created more administrative chaos. Cheung spoke with Guerra about how Appellant was able to bid for time off while Appellant was on leave.

Cheung was upset that Appellant took leave, but Guerra did not believe Cheung hated that Appellant took time off. Cheung wanted to verify if the rules were followed, and Cheung's concerns were not just with Appellant's time off requests. Guerra told Cheung that nothing disqualified Appellant from taking time off. Guerra thinks Cheung may have other concerns with employees taking time off. For example, Cheung may have been concerned about ensuring adequate coverage or whether two people had their leave requests approved at the same time. Guerra did not recall Cheung making unwelcome comments about employees [REDACTED]

Guerra believes Appellant was allowed to bid for time off, and Scott allowed Appellant to bid for time off. [REDACTED] If someone has their leave approved, then SFPUC management will bend over backward to ensure the employee can take the leave. However, other people's time off requests are also affected. For example, employees cannot take four hours off every Friday because SFPUC management must plan around employees' time off requests.

### **Appellant's ability to stand shift alone**

From Guerra's perspective, it does not make sense if Appellant is working his regular hours why he was not competent to work overtime. Guerra understands that Appellant may have felt singled out if Cheung was questioning Appellant's abilities and overtime. However, Guerra also understood why Cheung may have asked whether Appellant could stand shift alone. When an employee returns from leave, they may need additional training or a refresher about the system. Parameters change at the plant, the plant could have new equipment and procedures, and employees need to understand how to start up the system. It is legitimate to ask whether the employee needs additional training on any updates to the system. Moreover, Guerra could see not offering overtime until the employee has additional training for any updates to the system.

Guerra did not recall Cheung questioning whether Appellant could stand shift alone. Guerra thinks Cheung may have asked Scott. However, Guerra did not recall speaking with Cheung about Appellant's performance. Guerra confirmed that Scott would evaluate whether an employee is fit to stand shift alone. Guerra would follow-up with Scott about an employee's capabilities, and if Scott says yes, they are ready, then the employee may stand shift alone.

### **B. Overtime**

Appellant was really bothered about overtime and whether Scott did not want Appellant to work overtime. Guerra got involved in Appellant's issues because Scott could not answer Appellant's questions. Appellant's concerns were policy-related, and Appellant spoke with his union representative about overtime distribution. Different departments have their own discretion to interpret or implement overtime distribution rules. Usually, the person who has not worked overtime hours should be at the top of the list. When a shift is vacant, the person with the fewest overtime hours worked should be offered overtime next. In Guerra's opinion, SFPUC management should document how they offered overtime to employees. In Guerra's opinion, Scott should have offered Appellant overtime, Appellant would have been at the top of the list if Appellant did not work many overtime hours, and Appellant should not be denied overtime.

Ensuring adequate coverage is an issue, and sometimes SFPUC management knows only one day in advance. Therefore, SFPUC management created the leave policy. However, one day is not enough notice to find someone to fill the vacancy. Sometimes it is impossible to fill last-minute vacancies. Finding coverage for employees' vacation for one month is possible because employees must give advance notice.

### **How did Guerra know about Appellant's concerns about overtime?**

Cheung did not talk to Guerra about Appellant's concerns about overtime. When asked how Guerra knew about Appellant's concerns about overtime if Cheung did not tell Guerra, Guerra said he would defend employees if workplace policies and procedures were not followed. Guerra

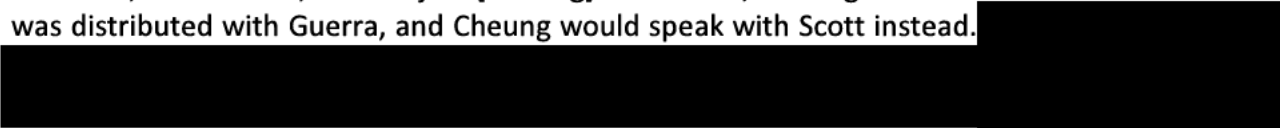
recalled Appellant disagreed with how overtime was distributed, and Appellant filed a grievance with the union. Guerra did not know whether Appellant spoke directly with Cheung about overtime distribution.

Appellant went to Guerra and said Cheung and Scott were discussing Appellant's overtime. Appellant believed he was denied overtime. However, Guerra confirmed Guerra did not witness Cheung and Scott discuss Appellant's overtime. Guerra did not recall when or where Cheung and Scott may have discussed Appellant's overtime. Scott puts telephone calls on conference call. Even though Scott closes his door, due to the acoustics of the office, other people can hear Scott's telephone discussions. Guerra believes Appellant may have overheard Scott speak with Cheung because Scott may have put Cheung on speaker phone. Other employees, like Keith (last name unknown), may have also heard Scott's discussions with Cheung. Guerra reiterated that Appellant reported his concerns about overtime to Guerra. Based on Guerra's understanding, there was nothing in the policy that prohibited Appellant from getting overtime, and Guerra believes Scott should offer Appellant overtime.

Guerra did not recall overtime at the SVWTP used for cross-training purposes. However, Guerra confirmed they bring an operator from another facility to ensure adequate coverage at SVWTP. Previously, overtime was not offered for cross-training purposes. The only time overtime was offered for training purposes was when a vendor came in. For those trainings with the vendor, many people would come in, employees received overtime, and the City was paying for the vendor to give training.

Guerra believes Cheung saying overtime was for cross-training purposes was an excuse not to give Appellant overtime. Then, Appellant questioned Cheung's rationale. If Appellant was at the top of the list, then Appellant should receive overtime. Guerra believes distribution of overtime should start with the person who has yet to receive overtime, and then proceed down the list accordingly. When they exhaust the list, then personnel from the EBFF should have the opportunity for overtime. Otherwise, there could be favoritism in the distribution of overtime.

Guerra believes Cheung is covering up her statements about Appellant not getting overtime. When asked why Guerra believes Cheung gave pretextual reasons for Appellant not getting overtime, Guerra said, "That's just [Cheung]." However, Cheung did not discuss how overtime was distributed with Guerra, and Cheung would speak with Scott instead.



Guerra further confirmed that he did not directly witness Scott and Cheung discussing overtime distribution or whether Appellant should receive overtime. Guerra and Cheung never discussed overtime distribution. Rather, Appellant told Guerra that Appellant did not receive overtime. Guerra continued that some employees do not like working overtime shifts because they have long commutes. It does not make sense for them to drive two or three hours to work a four-hour

shift. When Guerra was Chief, Guerra kept a record of when overtime was offered to employees to ensure fairness. In Guerra's opinion, it was not up to Guerra whether an employee worked the overtime shift. There is a distinction between overtime offered and overtime worked. For Guerra, what mattered most was whether all employees were offered the opportunity for overtime, which was fair. However, when Scott became Chief, [REDACTED] and Scott did not keep track of how overtime was offered.

Guerra did not recall Cheung saying Appellant could not work overtime due to questions about Appellant's capabilities but could work his regular hours. Rather, Appellant told Guerra about his concerns with how overtime was offered. In Guerra's opinion, Appellant should have been offered overtime first because Appellant just returned to work. However, it was more difficult to offer more overtime to Appellant because Appellant returned to work late in the year. However, Cheung did not discuss Appellant's overtime with Guerra.

#### **Offering overtime to EBFF operators**

Guerra and Cheung did not discuss offering overtime to EBFF operators, and Cheung likely discussed the issue with Scott. Guerra had no opportunity to question Cheung's policies because Cheung worked more closely with Scott. Previously, upper management consulted with Guerra and Scott about policies and procedures. However, Cheung handled things differently, and Cheung micromanaged people, which caused chaos. Guerra reiterated that Guerra was not in the loop for a lot of a policy changes. Appellant was also unhappy with how policies were implemented, specifically how overtime was distributed. In Guerra's opinion, if they followed the existing policies, then Appellant would have received overtime and gotten time off. However, the chain of command was not followed, and both Guerra and Appellant had problems with this.

Guerra believes that Cheung told Scott to offer overtime to EBFF personnel. Guerra recalled that [REDACTED] was about how overtime was distributed. However, Guerra did not understand why [REDACTED] when Cheung is Guerra's direct supervisor. Per Guerra's discussion with Scott, Scott confirmed that Cheung said not to give Appellant overtime. Scott did not mention to Guerra that overtime was given to EBFF personnel for cross-training purposes. [REDACTED]

#### **C. Guerra Verified Moore's Leave Requests**

Guerra confirmed that Cheung told Guerra to verify Appellant's leave requests. Even though this was Scott's responsibility, [REDACTED] Even though Guerra questioned how Scott kept track of time off, Cheung made Guerra verify Appellant's leave requests instead. Guerra made sure everything was correct in the timesheets.



After some time, Guerra asked Cheung to stop verifying Appellant's leave requests. For Guerra it did not make sense to verify Appellant's leave requests, especially if Appellant was the only one and other employees' timesheets were not similarly verified. Cheung conceded to Guerra's request, and Cheung said it was okay to stop verifying Appellant's time off requests.

Guerra was not certain why Cheung asked Guerra to verify Appellant's leave. They could always follow-up with payroll with any issues with Appellant's time. Guerra did not know what Cheung was looking for, and Guerra thought verifying Appellant's leave was just more work for Guerra to complete. Initially, Guerra asked Scott about keeping accurate records of employee time off requests, and Guerra copied Scott on emails about accurate recording keeping. [REDACTED]

Guerra verifying Appellant's time off became an extra task for Guerra to complete.

Guerra believes the leave policy was not followed. Guerra wrote the leave policy at the SVWTP to ensure management approved time off consistently. [REDACTED]

[REDACTED] Similarly, Cheung issued an updated leave policy, but it was the same policy Guerra had created previously. The only changes in the new leave policy were a few words and another person's name included in the document. [REDACTED] Guerra concluded that Appellant's complaint was because management was not following procedures.

Initially, Guerra asked Scott about the accuracy of employees' leave requests. Guerra recalled that employees' leave was not being tracked appropriately. Then, Cheung told Guerra to verify Appellant's time off. Guerra felt Cheung gave him this task to stay busy and out of Cheung's way.

Guerra asked Cheung how much longer he needed to verify Appellant's leave because this task took too much of Guerra's time. Cheung conceded to Guerra's request, and Cheung said Guerra could stop verifying Appellant's time.

### III. CONCLUSION

Guerra did not have anything else to add, did not have any questions, and Guerra did not know Appellant had many work issues. Guerra will look through emails to refresh his memory about policies and procedures. Guerra may have documents saved on a flash drive. Any emails between Cheung and Guerra would be saved in the work email system. Guerra confirmed his email address.

# **EXHIBIT I**

E-mails Between Cheung and Guerra Re: Appellant's Time Off

**Dulay, Deborah (HRD)**

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**From:** Cheung, Angela <ACheung@swater.org>  
**Sent:** Thursday, August 18, 2022 1:08 PM  
**To:** Dulay, Deborah (HRD)  
**Subject:** FW: Confidential\_\_\_\_Robert Moore's attendance\_As of 12/10/2019  
**Sensitivity:** Confidential

I was trying to prevent issues when I said monitor, meaning preventing eTime issues before eTime is approved.

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**From:** Cheung, Angela  
**Sent:** Friday, December 13, 2019 8:26 AM  
**To:** Guerra, Joe <jguerra@swater.org>  
**Subject:** RE: Confidential\_\_\_\_Robert Moore's attendance\_As of 12/10/2019  
**Sensitivity:** Confidential

Tony asked Robert Moore about this leave yesterday and apparently Robert gave him a response he found satisfactory which is not the same as the eLogger note. In my opinion, if Tony already expressed that he found Robert's response satisfactory, it's too late to reverse course. These approvals are generally between the Chief and the stationaries.

The focus should be on ensuring the leaves are used properly going forward. SL is the code if Robert needs to take time off for illness and doesn't have SP accrual.

I also don't know why Tony gave Robert more OT last week than anyone else. It was 15 hours last week. No one else at the plant got that many hours. EBFF staff were not offered the opportunities either. I talked to Tony about these inconsistencies yesterday.

Since you have a way to view Robert's eTime, please monitor.

---

**From:** Guerra, Joe  
**Sent:** Friday, December 13, 2019 7:46 AM  
**To:** Cheung, Angela <ACheung@swater.org>  
**Cc:** Guerra, Joe <jguerra@swater.org>  
**Subject:** RE: Confidential\_\_\_\_Robert Moore's attendance\_As of 12/10/2019  
**Sensitivity:** Confidential

There is time to amend the leave, it's your call. I have reviewed and discussed the internal leave policy with Tony [REDACTED] - Joe

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**From:** Cheung, Angela  
**Sent:** Thursday, December 12, 2019 9:14 AM  
**To:** Guerra, Joe <jguerra@swater.org>  
**Subject:** RE: Confidential\_\_\_\_Robert Moore's attendance\_As of 12/10/2019  
**Sensitivity:** Confidential

I am certain he meant he approved it as FH after the fact. It's a done deal now. That's why I am more interested in what the approval process will be next time.


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**From:** Guerra, Joe  
**Sent:** Thursday, December 12, 2019 9:04 AM  
**To:** Cheung, Angela <ACheung@swater.org>  
**Cc:** Guerra, Joe <jguerra@swater.org>

**Subject:** RE: Confidential \_\_\_ Robert Moore's attendance\_As of 12/10/2019  
**Sensitivity:** Confidential

If Tony approved Robert's FH leave for 11/30 – why did Robert call-in sick at 0330 on 11/30? See below. You will need to ask Tony, he did not provide me a reply. – Joe

From eLogger:

|                |   |   |   |
|----------------|---|---|---|
| 11/29/19 22:13 | SVWTP Daily Status Log<br> | <a href="#">Append</a><br><a href="#">Copy</a><br><a href="#">Link To #191845</a> | Location SF Water -> San Antonio Pump facility<br>Crew Operator<br>Shift Graveyard<br>Created By Richard V O'Neill – 11/29/19 22:20<br>Rick & Rich on duty<br><br>Hetch Hetchy - 240 MGD<br>Calaveras Res. - 718.8'<br>San Antonio Res. - 463.9'<br>Pond F3E - 160.7'<br>TWR - 418.2'<br>WWTP - 29.2'<br>SVWTP - Standby<br>HTWTP - 29.2 MGD<br>RWS - Monitor and reads<br>Tesla Treatment Facility - Monitor and reads (Richard V O'Neill, 11/29/19 22:24)<br>0330 - Robert Moore called in sick (Richard V O'Neill, 11/30/19 03:34) |
|----------------|---|---|---|

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**From:** Guerra, Joe  
**Sent:** Wednesday, December 11, 2019 10:59 AM  
**To:** Cheung, Angela <[ACheung@sfgwater.org](mailto:ACheung@sfgwater.org)>  
**Cc:** Guerra, Joe <[jguerra@sfgwater.org](mailto:jguerra@sfgwater.org)>  
**Subject:** Confidential \_\_\_ Robert Moore's attendance\_As of 12/10/2019  
**Sensitivity:** Confidential

I asked Tony to send me all of Robert's work flow leave requests to verify. Now, Tony tells me that I reported Robert's leave for 11/30 incorrectly, he approved Robert's leave for 11/30 as FH. Tony does not understand that such leave must be approved in advance. See below. – Joe

**From:** PUC Workflows <[WorkflowRequests@sfgwater.org](mailto:WorkflowRequests@sfgwater.org)>  
**Sent:** Wednesday, December 04, 2019 9:51 AM  
**To:** Scott, Anthony <[AScott@sfgwater.org](mailto:AScott@sfgwater.org)>  
**Subject:** Leave request for: Robert B. Moore

Leave request for: Robert B. Moore

To add this leave request to your calendar, click on the link(s) below:

-  [11/30/2019 from 6:00 AM-4:00 PM](#)
-  [12/25/2019 from 2:00 PM-4:00 PM](#)
-  [01/01/2020 from 2:00 PM-4:00 PM](#)

Leave/Time-Off Request: "Leave/Time-Off Request For: Robert B. Moore(11/30/2019)" is approved.

| Requester |                 |
|-----------|-----------------|
| Name:     | Robert B. Moore |

| Date       | To Date    | Hours | All Day | From Hour | To Hour | Reason           | For Date Worked | Comment | Submitted Date |
|------------|------------|-------|---------|-----------|---------|------------------|-----------------|---------|----------------|
| 11/30/2019 | 11/30/2019 | 10.00 | True    | 6:00 AM   | 4:00 PM | Floating Holiday |                 |         | 12/04/2019     |
| 12/25/2019 | 12/25/2019 | 2.00  | False   | 2:00 PM   | 4:00 PM | Vacation         |                 |         | 12/04/2019     |
| 01/01/2020 | 01/01/2020 | 2.00  | False   | 2:00 PM   | 4:00 PM | Vacation         |                 |         | 12/04/2019     |


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**From:** Guerra, Joe  
**Sent:** Tuesday, December 10, 2019 10:42 AM  
**To:** Cheung, Angela <[ACheung@sfwater.org](mailto:ACheung@sfwater.org)>  
**Cc:** Guerra, Joe <[jguerra@sfwater.org](mailto:jguerra@sfwater.org)>  
**Subject:** RE: Robert Moore's attendance\_As of 12/10/2019  
**Sensitivity:** Confidential

Angela,  
I checked cLogger and with Tony, Robert did not use any leave time last week. - Joe

---

**From:** Guerra, Joe  
**Sent:** Wednesday, December 04, 2019 10:25 AM  
**To:** Cheung, Angela <[ACheung@sfwater.org](mailto:ACheung@sfwater.org)>  
**Cc:** Guerra, Joe <[jguerra@sfwater.org](mailto:jguerra@sfwater.org)>  
**Subject:** RE: Robert Moore's attendance  
**Sensitivity:** Confidential



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**From:** Cheung, Angela  
**Sent:** Wednesday, December 04, 2019 9:35 AM  
**To:** Guerra, Joe <[jguerra@sfwater.org](mailto:jguerra@sfwater.org)>  
**Subject:** RE: Robert Moore's attendance  
**Sensitivity:** Confidential

Why is the 3.15 hours on 11/21 SP when he was late? That's not proper use of SP.

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**From:** Guerra, Joe  
**Sent:** Wednesday, December 04, 2019 9:29 AM  
**To:** Cheung, Angela <[ACheung@sfwater.org](mailto:ACheung@sfwater.org)>  
**Cc:** Guerra, Joe <[jguerra@sfwater.org](mailto:jguerra@sfwater.org)>  
**Subject:** RE: Robert Moore's attendance  
**Sensitivity:** Confidential

Update, see below. Still not sure why Robert's time was listed as 10 UL on 11/02, he did not officially return to work until 11/04. The 10 SP for 11/30, according to Robert is not SP. Robert submitted for 10 VA that was missed by Tony - TBD. - Joe

**From:** Cheung, Angela  
**Sent:** Monday, December 02, 2019 4:58 PM  
**To:** Guerra, Joe <[juerra@sfwater.org](mailto:juerra@sfwater.org)>  
**Subject:** RE: Robert Moore's attendance  
**Sensitivity:** Confidential

Thanks. Yes, please get the explanations for unexplained leaves and fill in the blanks.

**From:** Guerra, Joe  
**Sent:** Monday, December 02, 2019 3:06 PM  
**To:** Cheung, Angela <[ACheung@sfwater.org](mailto:ACheung@sfwater.org)>  
**Cc:** Guerra, Joe <[juerra@sfwater.org](mailto:juerra@sfwater.org)>  
**Subject:** RE: Robert Moore's attendance  
**Sensitivity:** Confidential

Angela,  
The following leave info was obtained from eTime. I need to talk to Robert about the unexplained leave (\*\*\*) and ask Tony why his leave is not fully recorded into eLogger.-- Joe

| #  | Date  | Hours | Leave Type | Notes:                                     |
|----|-------|-------|------------|--|
| 1  | 11/02 | 10:00 | UL         | *** See above                              |
| 2  | 11/13 | 2:15  | VA         | *** Left early for [REDACTED]              |
| 3  | 11/14 | 0:30  | VA         | *** Left early for [REDACTED]              |
| 4  | 11/15 | 10:00 | FH         | Approved leave by chief [REDACTED]         |
| 5  | 11/16 | 10:00 | UL         | [REDACTED]                                 |
| 6  | 11/21 | 3:15  | SP         | Late to work                               |
| 7  | 11/27 | 10:00 | HI / 2 FH  | Approved leave                             |
| 8  | 11/28 | 10:00 | LH / 2 FH  | Approved leave                             |
| 9  | 11/29 | 10:00 | LH / 2 FH  | Approved leave                             |
| 10 | 11/30 | 10:00 | SP         | Called in sick - eLogger record. See above |

**From:** Cheung, Angela  
**Sent:** Tuesday, November 26, 2019 4:09 PM  
**To:** Guerra, Joe <[juerra@sfwater.org](mailto:juerra@sfwater.org)>  
**Subject:** Robert Moore's attendance  
**Sensitivity:** Confidential

Joe,  
I have heard that Robert Moore has had a number of leaves already since he's been back. I would like to have you compile his leave history and a brief explanation since he's been back at work. Going forward, please provide a weekly report capturing the leaves and the reason for the leaves.

Thanks,

**Angela Cheung, PE**  
System Operations Manager  
Hetch Hetchy Regional Water System  
Water Supply & Treatment Division  
San Francisco Public Utilities Commission

Office: (650) 871-3034  
Cell: (408) 313-8085



## **EXHIBIT J**

Leave Policy, 2016



**System Operations Section  
Interoffice Memorandum**

To: East Bay SYSOPS Staff

From: Joe Guerra

Date: April 27, 2016

**Subject: Policy, Procedure and Documentation for Employee Leave**

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This Memo establishes the internal policy and procedures for submitting leave requests and recording employee leave for the East Bay SYSOPS staff. This memo is not intended to supersede existing CCSF, SFPUC and WSTD leave policies. This memo does not address protected leaves of absence under FMLA / CFRA and PDL.

All requests for leave must be submitted through “Work Flow” and approved by your chief. In general, requests for leave are reviewed on a first come basis with respect to the annual vacation bid.

Except for special cases, requests for leave beyond a 45 day period will not be accepted. Employee leave requests must be submitted at least 48 hours in advance.

**Employee Responsibilities:**

- All employees must submit requests for planned leave through “Work Flow” to their chief for approval.
- Early departures and tardiness must be accurately documented by submitting a leave request through “Work Flow”.
- Submit leave requests at least 48 hours in advance.
- The “Operator of Record” is responsible to record all employee leave into eLogger.
- Cancellation of pre-approved leave must be submitted at least 48 hours in advance.
- Employees requesting leave off hours must obtain approval from the Standby Chief.

**Chief and Supervisor Responsibilities:**

- Review the leave request for completion and accuracy. Notify the employee in a timely manner of the approval or denial of the leave request.
- Ensure and verify that all employee leave, including early departures and tardiness is accurately documented with a leave request and recorded accurately into E-time.
- The chief will update the monthly schedule in a timely manner to record all employee leave.

**Unplanned Leave:**

- Employees must call-in with sufficient notice.
- During normal business hours, employees must communicate with their chief.
- Off hours, the employee must communicate with a supervisor at SVWTP.
- The supervisor or operator receiving the call-in must record the leave into eLogger.
- Employees are responsible to submit a “Work Flow” request upon their return to the work site.
- Tardiness is unplanned leave and must be submitted and recorded as SP/SL or UL.

All East Bay SYSOPS employees are required to comply with this policy and procedures. If you have any questions, please contact either Tony Scott or Wayne Chan.

## **EXHIBIT K**

E-mails re: Appellant's Time Off and Review of Leave Policy

## Dulay, Deborah (HRD)

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**From:** Cheung, Angela <ACheung@swater.org>  
**Sent:** Thursday, August 18, 2022 1:29 PM  
**To:** Dulay, Deborah (HRD)  
**Subject:** FW: Should be SP  
**Attachments:** RM Late eLogger\_Detail\_2020\_11\_02\_11\_04\_28.pdf; Policy\_Procedure and Documentation for Employee Leave\_9-22-2020 (002).doc

**Importance:** High

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

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**From:** Calvo, David <dcalvo@swater.org>  
**Sent:** Tuesday, November 3, 2020 6:56 AM  
**To:** Scott, Anthony <AScott@swater.org>  
**Cc:** Calvo, David <dcalvo@swater.org>; Macaulay, Ryan <RMacaulay@swater.org>  
**Subject:** FW: Should be SP  
**Importance:** High

Tony,

I would like you to provide a training on the proper use of leave and following procedures. Also, please work with Robert to ensure that the SOP for call out is correct and then have all staff sign and post in Elogger under standing orders. This should be completed no later than close of business on Friday, November 13th.

*Dave Calvo*

Acting Superintendent, East Bay Facilities  
SWRCB T5, D4  
SFPUC: Water Supply & Treatment  
Office (925) 862-5717  
Cell (415) 613-0621

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**From:** Calvo, David <[dcalvo@swater.org](mailto:dcalvo@swater.org)>  
**Sent:** Monday, November 02, 2020 1:52 PM  
**To:** Scott, Anthony <[AScott@swater.org](mailto:AScott@swater.org)>  
**Cc:** Calvo, David <[dcalvo@swater.org](mailto:dcalvo@swater.org)>; Macaulay, Ryan <[RMacaulay@swater.org](mailto:RMacaulay@swater.org)>  
**Subject:** FW: Should be SP

Tony, make this change first thing in the morning.

*Dave Calvo*

Acting Superintendent, East Bay Facilities  
SWRCB T5, D4  
SFPUC: Water Supply & Treatment  
Office (925) 862-5717

Cell (415) 613-0621

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**From:** Macaulay, Ryan <[RMacaulay@sfwater.org](mailto:RMacaulay@sfwater.org)>  
**Sent:** Monday, November 02, 2020 11:09 AM  
**To:** Calvo, David <[dcalvo@sfwater.org](mailto:dcalvo@sfwater.org)>  
**Subject:** Should be SP

Dave,

Robert Moore is indicated as "late" on 10/22/2020. Was this pre-approved? If not, then it should be recorded as SP/SL or UL per the policy (unless approved by both Tony and yourself).

--Ryan

**Ryan Macaulay**

Acting System Operations Manager  
SWRCB T5, D4  
SFPUC: Water Supply & Treatment  
Phone: 650-808-3815  
[rmacaulay@sfwater.org](mailto:rmacaulay@sfwater.org)



**System Operations Section  
Interoffice Memorandum**

To: East Bay SYSOPS Staff

From: David Calvo

Date: September 22, 2020

**Subject: Policy, Procedure and Documentation for Employee Leave**

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This Memo establishes the internal policy and procedures for submitting leave requests and recording employee leave for the East Bay SYSOPS staff. This memo is not intended to supersede existing CCSF, SFPUC and WSTD leave policies. This memo does not address protected leaves of absence under FMLA / CFRA and PDL.

All requests for leave must be submitted through “Work Flow” and approved by your chief. In general, requests for leave are reviewed on a first come basis with respect to the annual vacation bid.

Except for special cases, requests for leave beyond a 45 day period will not be accepted. Employee leave requests must be submitted at least 48 hours in advance.

**Employee Responsibilities:**

- All employees must submit requests for planned leave through “Work Flow” to their chief for approval.
- Early departures and tardiness must be accurately documented by submitting a leave request through “Work Flow”.
- Submit leave requests at least 48 hours in advance.
- The “Operator of Record” is responsible to record all employee leave into eLogger.
- Cancellation of pre-approved leave must be submitted at least 48 hours in advance.
- Employees requesting leave off hours must obtain approval from the Standby Chief.

**Chief and Supervisor Responsibilities:**

- Review the leave request for completion and accuracy. Notify the employee in a timely manner of the approval or denial of the leave request.
- Ensure and verify that all employee leave, including early departures and tardiness is accurately documented with a leave request and recorded accurately into E-time.
- The chief will update the monthly schedule in a timely manner to record all employee leave.

**Unplanned Leave:**

- Employees must call-in with sufficient notice.
- During normal business hours, employees must communicate with their chief.
- Off hours, the employee must communicate with a supervisor at SVWTP.
- The supervisor or operator receiving the call-in must record the leave into eLogger.
- Employees are responsible to submit a “Work Flow” request upon their return to the work site.
- Tardiness is unplanned leave and must be submitted and recorded as SP/SL or UL.
- All unplanned leaves must be submitted and recorded as SP/SL or UL. The employee may request to use an alternative form of leave. This must be approved by both the Facility Chief and the EBFF Superintendent.

All East Bay SYSOPS employees are required to comply with this policy and procedures. If you have any questions, please contact either Tony Scott or Justin Sibbring



## **EXHIBIT L**

Appellant's Time and Overtime Records





## **EXHIBIT M**

Cheung E-mail re: Appellant Overtime

## Dulay, Deborah (HRD)

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**From:** Cheung, Angela <ACheung@sewater.org>  
**Sent:** Thursday, August 18, 2022 1:18 PM  
**To:** Dulay, Deborah (HRD)  
**Subject:** FW: Sunol Water Treatment Plant - Overtime Distribution  
**Attachments:** East Bay Ops OT Distribution.pdf

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**From:** Cheung, Angela  
**Sent:** Wednesday, April 29, 2020 12:49 PM  
**To:** Narbaitz, Dena <DNarbaitz@sewater.org>  
**Subject:** FW: Sunol Water Treatment Plant - Overtime Distribution

Hi Dena,  
This is the graph that I sent to Stan Eichenberger of Local 39. The graph represented overtime worked by the various operators in the East Bay from July 1 through February 17. Robert Moore returned to work in November so when this graph was generated, he worked for 3-1/2 months vs. the rest of the employees on that list who were there for 7-1/2 months. Please let me know if I can help explain anything else about the graph.

Angela

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**From:** Cheung, Angela  
**Sent:** Friday, February 21, 2020 1:26 PM  
**To:** Stan Eichenberger <[seichenberger@local39.org](mailto:seichenberger@local39.org)>  
**Subject:** RE: Sunol Water Treatment Plant - Overtime Distribution

Hello Stan,  
I wanted to get the attached graph to you to look at first. I am heading into a meeting at 1:30. When is a good time to follow up once you have had a chance to look at the graph?

Angela

**Angela Cheung, PE**  
System Operations Manager  
Hetch Hetchy Regional Water System  
Water Supply & Treatment Division  
San Francisco Public Utilities Commission

Office: (650) 871-3034

Cell: (408) 313-8085



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**From:** Stan Eichenberger <[seichenberger@local39.org](mailto:seichenberger@local39.org)>  
**Sent:** Thursday, February 20, 2020 5:19 PM  
**To:** Cheung, Angela <[ACheung@sewater.org](mailto:ACheung@sewater.org)>

Cc: Scott, Anthony <[AScott@sfgwater.org](mailto:AScott@sfgwater.org)>; Ho, Michael C <[MCHo@sfgwater.org](mailto:MCHo@sfgwater.org)>

Subject: Sunol Water Treatment Plant - Overtime Distribution

**CAUTION:** This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Angela Cheung,

It has been brought to my attention that Robert Moore is being denied the opportunity to work overtime. This is a direct violation of the collective bargaining unit agreement between Local 39 and CCSF, specifically Article 191/192. These Articles are included below for ease of reference.

OVERTIME DISTRIBUTION

191. Voluntary overtime shall be offered equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.
192. Mandatory overtime shall be distributed equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.

Local 39 would like to address this concern informally. Can you please provide me with your understanding to the situation? If this concern is valid, Local 39 insists that the Department takes immediate action to correct this issue.

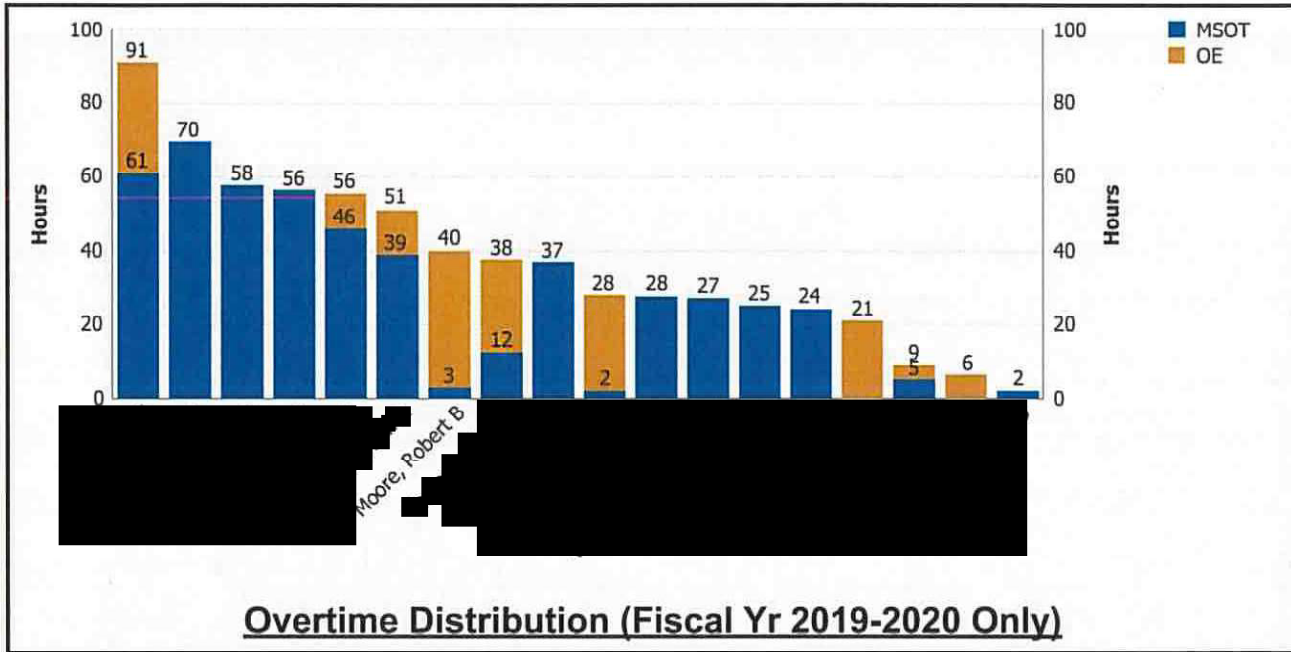
Sincerely,

Stan Eichenberger  
Business Representative  
IUOE - Stationary Engineers, Local 39  
337 Valencia Street.  
San Francisco, CA. 94103  
Office: (415)861-1135  
Fax: (415) 861-5264  
<http://www.local39.org>

# East Bay Ops Paid Hours Summary

(Fiscal Yr 2019-2020)

Report Date: Feb 17, 2020



## **EXHIBIT N**

E-mails re: Overtime Distribution



## Dulay, Deborah (HRD)

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**From:** Cheung, Angela <ACheung@sewater.org>  
**Sent:** Thursday, August 18, 2022 1:21 PM  
**To:** Dulay, Deborah (HRD)  
**Subject:** FW: Further Clarification to OT Distribution

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**From:** Stan Eichenberger <seichenberger@local39.org>  
**Sent:** Monday, May 18, 2020 5:22 PM  
**To:** Ho, Michael C <MCHo@sewater.org>  
**Cc:** Cheung, Angela <ACheung@sewater.org>  
**Subject:** RE: Further Clarification to OT Distribution

**CAUTION:** This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Michael,

I believe your assistance is again needed. Can you please provide your opinion to the following three items? Also, please review my additional comments identified by **[Stan Eichenberger]** contained in the colorful email below.

**Fact #1:** SVWTP and WBFF are two separate units/work locations.

**Fact #2:** SVWTP maintains a minimum of two Operators on schedule at all times (24/7).

**Fact #3:** Historically, EBFF Operators are responsible for the water transfer Pumping/Dichlorination Station during regular EBFF scheduled hours, 06:00 till 17:00.

**Fact #4:** Historically, SVWTP Operators are responsible for the water transfer Pumping/Dichlorination Station during non-EBFF scheduled hours, 17:00 till 06:00.

**Fact #5:** Historically, SVWTP Operators are responsible to monitor, via SCADA, the Pumping/Dichlorination Station 24/7/365, and to notify EBFF of any issues that may arise.

**Fact #6:** L39 does not deny that management maintains the right to assign additional supplemental staff, above what is already scheduled, based on operational needs. With this in mind, management can offer EBFF Operators, for EBFF operations, as supplemental staff; and vice versa.

Remaining Issues:

1. Based on Fact #1-5 above.
  - OT opportunity to backfill an SVWTP Operator absence shall be offered to SVWTP Operators first, and if no one accepts, offer to EBFF Operators to prevent mandatory OT assignments for SVWTP Operators? This is true for normal operations and water transfers.
2. Based on Fact #6 above.
  - Regarding water transfers. If higher staffing levels are determined, above the two scheduled SVWTP Operators during 17:00-06:00, OT shall be distributed based on operational need and in compliance with

Item 1 & 2 contained in the colorful email below. (e.g. - additional staff that may be a subject matter expert)

3. Based on Fact #1 above.

- L39 does not agree that both EBFF and SVWTP operators shall both be included on the same OT Wheel.

Again, I appreciate your assistance. Please feel free to call me to discuss further.

Stan Eichenberger  
Business Representative  
IUOE - Stationary Engineers, Local 39

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**From:** Cheung, Angela <[ACheung@sflower.org](mailto:ACheung@sflower.org)>  
**Sent:** Sunday, May 17, 2020 5:11 PM  
**To:** Stan Eichenberger <[seichenberger@local39.org](mailto:seichenberger@local39.org)>  
**Cc:** Ho, Michael C <[MCHo@sflower.org](mailto:MCHo@sflower.org)>  
**Subject:** RE: Further Clarification to OT Distribution

I am running out of colors to use so the latest response is in **red** below.

Angela

---

**From:** Stan Eichenberger <[seichenberger@local39.org](mailto:seichenberger@local39.org)>  
**Sent:** Thursday, May 14, 2020 7:18 PM  
**To:** Cheung, Angela <[ACheung@sflower.org](mailto:ACheung@sflower.org)>  
**Cc:** Ho, Michael C <[MCHo@sflower.org](mailto:MCHo@sflower.org)>  
**Subject:** RE: Further Clarification to OT Distribution

**CAUTION:** This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Angela,

Thank you for the additional information. I believe our understanding is the same, but I have a couple additional clarifying questions just to confirm. Please refer to my questions noted in **Bold Brown** below.

Thanks again,

Stan Eichenberger  
Business Representative  
IUOE - Stationary Engineers, Local 39

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**From:** Cheung, Angela <[ACheung@sflower.org](mailto:ACheung@sflower.org)>  
**Sent:** Thursday, May 14, 2020 5:15 PM  
**To:** Stan Eichenberger <[seichenberger@local39.org](mailto:seichenberger@local39.org)>; Ho, Michael C <[MCHo@sflower.org](mailto:MCHo@sflower.org)>  
**Subject:** RE: Further Clarification to OT Distribution

Hello Stan,

My responses are in **green** below. Regarding my response to #4 below, one of my key staff offered these additional points.

“There are going to be circumstances where operations staff will be happy to step aside and not take on duties that they may not have the capabilities of performing. In my opinion, these circumstances should not count in the rotation. If they do, it allows some staff to cherry pick easy assignments and creates a cycle of the same guys working the most challenging assignments. So if there could be a way of marking some OT assignments as “emergency” or “specialized” then the operations staff who have worked hard to become the “go to” in challenging situations is rewarded by continuing to be in the normal shift coverage assignments. This would also create an incentive (to those who are worried about OT distribution) to become like their peers. The ones who can be called upon and relied upon to face very challenging situations.

I think it is very important that OT is looked at this way to create a healthy balance of effort put forth by all staff and not by the same few all the time.”

Angela

---

**From:** Stan Eichenberger <[seichenberger@local39.org](mailto:seichenberger@local39.org)>  
**Sent:** Wednesday, May 13, 2020 12:54 PM  
**To:** Ho, Michael C <[MCHo@swater.org](mailto:MCHo@swater.org)>; Cheung, Angela <[ACheung@swater.org](mailto:ACheung@swater.org)>  
**Subject:** Further Clarification to OT Distribution

**CAUTION:** This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Michael and Angela,

Based on prior communications regarding this topic, I have a couple follow-up point I can use some clarification. These items are noted in **Bold Purple** below.

1. For OT at SVWTP, offer the OT to SVWTP operators first and if no SVWTP operators volunteer or are available to work the OT, e.g., schedule conflict, sufficient rest hours between shifts, sick, etc., offer the OT to EBFF operators first before imposing mandatory OT. The same goes for WB facilities. **Rest periods will be determined based on the attached, correct? In general, yes.**
2. For OT at EBFF, offer the OT to EBFF operators first and if no EBFF operators volunteer or are available to work the OT, e.g., schedule conflict, sufficient rest hours between shifts, sick, etc., offer the OT to SVWTP operators first before imposing mandatory OT. The same goes for WB facilities. **Rest periods will be determined based on the attached, correct? In general, yes.**
3. When SVWTP is in standby mode but the water transfer is taking place, the higher staffing level sometimes triggers OT. When that happens, OT will be offered to either EBFF operators or SVWTP operators. **Can you please expand on how this selection is determined? This is not a selection. This is the same as 1 and 2 above except it applies to both groups equally. Think of it as a wheel that includes EBFF and SVWTP. Typically for these transfers, the minimum staff required includes, one SVWTP Operator and one EBFF Operator, correct? If supplemental Operators are needed for SVWTP or EBFF for such transfers, as determined by management, OT will be offered respective to Item 1 & 2 above, correct? Think of it as in a 24 hour day, SVWTP is staffed by 2 operators 24/7. In a 24 hour day, EBFF is staffed by 2 or more operators 10 hours/day. From 0630 to 1700 hours, generally speaking there is no need to cover the water transfer with OT. OT for water transfer happens if SVWTP is down one operator between the hours of 1700 and 0600 or 0630. As soon as either SVWTP or EBFF has anyone reporting to work that meets the 2 operators minimum, OT is no longer required. The operation is considered risky because when something happens, one of the two operators has to respond to the Dechlorination Facility to confirm chlorine reading and do whatever else is needed to either**

shut down the water transfer or restart chemical feed or correct whatever the issue is at the Dechlorination Facility which is an EBFF facility. This operation cannot be completely controlled at the SVWTP operator console if something goes south. Both SVWTP and EBFF operators are supposed to be able to do this. Cross training has to take place for the SVWTP operators to ensure they can do this. EBFF operators have to do rounds at the Dechlorination Facility so they are more familiar with the facility. For this coverage, we are saying they should be offered OT equally. Let's use 4/21 as an example: J.White was one of the scheduled SVWTP Operator from 10:00-22:00 and did not work (FH) leaving a single SVWTP Operator, but there were scheduled EBFF Operators till 17:00 on this day, shouldn't the remainder of J.White's shift between 17:00-22:00 be offered to a SVWTP Operator? Primarily because this shift was scheduled for a SVWTP Operator J.White and EBFF Operators were not on schedule to work between 17:00-22:00. **SVWTP operators primarily serve as SCADA operators for the system and the operation of SVWTP when the plant is online, which is only about 3 months each year in the last 10 years. The third role which only about half of the SVWTP operators can do well unfortunately is responding to EBFF facilities when there's a problem, i.e., the water transfer. This is at least partly because EBFF operators are the ones that work on EBFF facilities and we have used #4 below to schedule someone to cover EBFF facilities when needed. The other reason not every SVWTP operator is familiar with EBFF facilities is seniority shift bidding which moves operators around. I have been thinking that when I have to make OT available to cover the water transfer that I should make it mandatory that it is the operator on OT that has to be the responder to the EBFF facilities if a problem occurs. It goes along with the rationale for #4 below. Management really doesn't care which operator gets the OT. What matters is that the operation is covered adequately, that we don't have people on OT to cover an operation that requires it and still not have the right person who can do the work. The operators who have been at SVWTP for a long time are supposed to be able to respond, yet not all do and some dodge taking up that responsibility even if they are there to cover the water transfer on OT. I will also state once again that we use both SVWTP and EBFF operators to cover the other's operations whenever we are low on staffing. As long as an operator is scheduled to work, a SVWTP operator can be directed to do an EBFF round and vice versa. For all of these reasons, OT coverage for the water transfer should be on a wheel with both EBFF and SVWTP operators. I have already passed word down that cross training SVWTP operators for EBFF operations needs to be done again with all the personnel changes. Since no water transfer is planned for a few more months, I am counting on my EBFF Chief to work with SVWTP Chief to get the cross training done so I can truly rely on a wheel for all of them when the next water transfer begins. The way it is today, the only sure thing for covering the water transfer is with EBFF operators.**

***[Stan Eichenberger] Response to highlighted above: all OT shall be distributed based on Item 1 and 2 above. L39 does not agree that both EBFF and SVWTP operators shall both be included on the same OT Wheel.***

In cases like 4/21, where a SVWTP Operator shift was back-filled to maintain a two operator minimum, it could go either of two ways; 1) these should always be offered to the SVWTP Operators first, as described in #1 above, since this was originally a SVWTP Operator that was scheduled to work, 2) as an alternative in this specific example, EBFF Operator F.Calvo was already on schedule to work till 22:00, therefore OT was not needed for either SVWTP or EBFF Operators. (I don't have EBFF's schedule so please clarify where appropriate) **Frank Calvo is never scheduled to work until 22:00 as a regular schedule. In the case of 4/21, there was a complication that the coverage Frank provided was for both #3 and #4. He has good in depth knowledge of EBFF facilities and can handle an emergency if one were to arise. We have had some instrument issues at SVCF that Frank was the most familiar with. With Frank covering the 4/21 17:00 to 22:00 timeslot, he was covering possible Dechlorination Facility issues (for the water transfer) and possible SVCF issues. No issues came about. We cover for the possibility of issues coming up, not that they would necessarily come up. After the fact, one may look at it as anyone could have done it. But when issues do come up, we know only a few could have done it to save the operation. We need to train our staff more and need the staff to be willing to learn. The fact that I have a Training Chief speaks to management's commitment to training.**

***[Stan Eichenberger] L39 still contends that OT opportunity to backfill SVWTP absence should have been offered to SVWTP Operators first, and if no one accepts, offer to EBFF Operators to prevent mandatory OT assignments for SVWTP Operators (Item 1 above).***

“Higher staffing levels” is additional staff to supplement regular scheduled staff, correct? Based on where the needs are, EBFF Operators will be offered OT for EBFF operations, likewise SVWTP Operators will be offered OT for SVWTP operations. **Yes and no. Yes for anything but the water transfer. For the water transfer, if both SVWTP operators report to work, no additional staffing is necessary. If one SVWTP operator doesn't report to work, particularly from the hours of 17:00 to 06:00, OT would be needed for the second operator during a water transfer. However, SVWTP operator shifts are 10:00 – 22:00 and 22:00 to 10:00, the chance of needing OT from 17:00 – 06:00 is not often. It would be either 17:00 – 22:00 or 22:00 to 06:00.**

*[Stan Eichenberger] If one SVWTP Operator doesn't report to work, L39 still contends that OT opportunity to backfill SVWTP absence should have been offered to SVWTP Operators first, and if no one accepts, offer to EBFF Operators to prevent mandatory OT assignments for SVWTP Operators (Item 1 above). L39 agrees, if additional staff is needed above the two scheduled operators, hence Higher Staffing Levels, management is within their rights to provide additional OT opportunity to the appropriate Operators.*

4. For other departmental operational needs that trigger OT coverage not stated above, Facility Chief, Standby Chief or Superintendent will determine which operator(s) will be offered the OT based on knowledge of the operation.

**Can you please expand on this topic? Perhaps provide a couple of examples? One example I can give involved a chief that wasn't the standby chief. A year or so ago, I got a call at 12:30 am from upcountry that they had an issue and may stop delivering water to our system. I called SVWTP which was in standby mode and asked the operators to prep the plant and start it back up. The senior who answered the call said he had just returned to the plant after being an acting chief, sounded very uncertain that he could pull it off. I asked if it would help that I call Tony Scott to assist and he happily said yes. I called Tony who picked up the phone though he wasn't the standby chief that week and was at the plant within 2 hours. The plant was started up 6 hours later. I didn't even look at the standby chief roster at 12:30 am. We all knew Tony was the only chief who could have done this. This went off normally because no standby chief would file a complaint in a situation like this. Whoever it was was more than happy that he didn't have to respond. Most of the situations we encounter go just like that. A couple of years ago, Tesla UV lamps were breaking and each time it happened, two operators would have to respond quickly to determine the number of lamp breaks and then perform the cleanup. At the time, a combination of 4 SVWTP and EBFF operators self-identify as living close to the facility and knew what needed to be done to respond. The Facility Chief obviously had to agree that these operators had sufficient knowledge to respond because we couldn't miss the mark. This is to accommodate urgent and emergency situations, correct? In these type cases, OT opportunity for operators that may have missed out on these hours will be considered when distributing new OT hour opportunities come-up, correct? Yes to these being urgent and emergency situations typically. To my knowledge, these were considered one offs and did not get counted in the normal OT distribution when new OT opportunities come up. I understand the concept, including the supplemental info you noted in your above email. These, like what you mentioned previously, are “one offs”. I am pretty sure these occurrences are not frequent enough to be a concern. Perhaps, keep what has been in place, in place. We can evaluate each case further only if it becomes a concern.**

5. Facility Chief, Standby Chief or Superintendent will make the call on whether to offer the OT in its entirety, i.e., 10 or 12 hours of shift coverage, or break it into 6-hour, 4-hour increments.

6. To track that OT is offered equitably, HTWTP and SVWTP Ops will log OT offerings in eLogger just like sick calls so OT distribution is transparent to all involved.

We all understand that we can not cover every scenario, but I believe this dialog has provided all parties with a better understanding that may prevent many future concerns. If I am mistaken in anything noted above, please clarify where appropriate.

Thank you both!

Stan Eichenberger  
Business Representative  
IUOE - Stationary Engineers, Local 39  
337 Valencia Street.  
San Francisco, CA. 94103  
Office: (415)861-1135  
Fax: (415) 861-5264  
<http://www.local39.org>

## **EXHIBIT O**

E-mail re: Overtime Distribution and Risk Management Policy

## Dulay, Deborah (HRD)

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**From:** Cheung, Angela <ACheung@swater.org>  
**Sent:** Thursday, August 18, 2022 1:25 PM  
**To:** Dulay, Deborah (HRD)  
**Subject:** FW: Minimum Staffing and OT Distribution  
**Attachments:** SFPUC Fatigue Risk Management Guidance Document for Extended Workhours v.3.docx

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**From:** Cheung, Angela  
**Sent:** Monday, August 17, 2020 5:57 PM  
**To:** Justin Sibbring (JSibbring@swater.org) <JSibbring@swater.org>; Dave Calvo (dcalvo@swater.org) <dcalvo@swater.org>; Scott, Anthony <AScott@swater.org>; Kennedy, Tim <TKennedy@swater.org>; Macaulay, Ryan <RMacaulay@swater.org>; 'Akter, Emrulkayes (eakter@swater.org)' <eakter@swater.org>  
**Subject:** RE: Minimum Staffing and OT Distribution

I am redistributing this email that was distributed a couple of months ago. These written agreements are important to adhere to. I also discussed the language with the Local 39 rep. We will discuss this tomorrow.

I am also including the fatigue time memo from the Health & Safety Program. Keep this handy for when you have to refer to it.

Angela

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**From:** Cheung, Angela  
**Sent:** Friday, June 05, 2020 7:44 AM  
**To:** Scott, Anthony <AScott@swater.org>; Justin Sibbring (JSibbring@swater.org) <JSibbring@swater.org>; Guerra, Joe <jguerra@swater.org>; Macaulay, Ryan <RMacaulay@swater.org>; Kennedy, Tim <TKennedy@swater.org>; Dave Calvo (dcalvo@swater.org) <dcalvo@swater.org>; Sparks, James <JSparks@swater.org>; 'Akter, Emrulkayes (eakter@swater.org)' <eakter@swater.org>  
**Subject:** RE: Minimum Staffing and OT Distribution

Please note changes made to the Minimum Staffing and OT Distribution Policy below. Changes are highlighted in yellow.

Operators that accept an OT assignment will be responsible for performing the full range of duties associated with that OT assignment. OT will be distributed according to the following:

1. For OT at SVWTP, offer the OT to SVWTP operators first and if no SVWTP operators volunteer or are available to work the OT, e.g., schedule conflict, sufficient rest hours between shifts, sick, etc., offer the OT to EBFF operators first before imposing mandatory OT. The same goes for WB facilities.
2. For OT at EBFF, offer the OT to EBFF operators first and if no EBFF operators volunteer or are available to work the OT, e.g., schedule conflict, sufficient rest hours between shifts, sick, etc., offer the OT to SVWTP operators first before imposing mandatory OT. The same goes for WB facilities.
3. When SVWTP is in standby mode and the water transfer is taking place between 1700 to 0600 or 0630 hours, OT will be offered to SVWTP operators first and if no SVWTP operators volunteer or are available to work the OT, e.g., schedule conflict, sufficient rest hours between shifts, sick, etc., offer the OT to EBFF operators first before



**imposing mandatory OT.** ~~the higher staffing level sometimes triggers OT. When that happens, OT will be offered to either EBFF operators or SVWTP operators.~~

4. For other departmental operational needs that trigger OT coverage not stated above, Facility Chief, Standby Chief or Superintendent will determine which operator(s) will be offered the OT based on knowledge of the operation.
5. Facility Chief, Standby Chief or Superintendent will make the call on whether to offer the OT in its entirety, i.e., 10 or 12 hours of shift coverage, or break it into 6-hour, 4-hour increments.
6. To track that OT is offered equitably, HTWTP and SVWTP Ops will log OT offerings in eLogger just like sick calls so OT distribution is transparent to all involved.

#### OVERTIME DISTRIBUTION

191. Voluntary overtime shall be offered equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.
192. Mandatory overtime shall be distributed equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.

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**From:** Cheung, Angela

**Sent:** Thursday, April 30, 2020 9:17 AM

**To:** Scott, Anthony <[AScott@sfwater.org](mailto:AScott@sfwater.org)>; Justin Sibbring (<[JSibbring@sfwater.org](mailto:JSibbring@sfwater.org)> <[JSibbring@sfwater.org](mailto:JSibbring@sfwater.org)>; Guerra, Joe <[jguerra@sfwater.org](mailto:jguerra@sfwater.org)>; Macaulay, Ryan <[RMacaulay@sfwater.org](mailto:RMacaulay@sfwater.org)>; Kennedy, Tim <[TKennedy@sfwater.org](mailto:TKennedy@sfwater.org)>; Dave Calvo (<[dcalvo@sfwater.org](mailto:dcalvo@sfwater.org)> <[dcalvo@sfwater.org](mailto:dcalvo@sfwater.org)>; Sparks, James <[JSparks@sfwater.org](mailto:JSparks@sfwater.org)>

**Subject:** RE: Minimum Staffing and OT Distribution

Please implement the following to be consistent with our past practice and the MOU going forward. The MOU language is copied below.

1. For OT at SVWTP, offer the OT to SVWTP operators first and if no SVWTP operators volunteer or are available to work the OT, e.g., schedule conflict, sufficient rest hours between shifts, sick, etc., offer the OT to EBFF operators first before imposing mandatory OT. The same goes for WB facilities.
2. For OT at EBFF, offer the OT to EBFF operators first and if no EBFF operators volunteer or are available to work the OT, e.g., schedule conflict, sufficient rest hours between shifts, sick, etc., offer the OT to SVWTP operators first before imposing mandatory OT. The same goes for WB facilities.
3. When SVWTP is in standby mode but the water transfer is taking place, the higher staffing level sometimes triggers OT. When that happens, OT will be offered to either EBFF operators or SVWTP operators.
4. For other departmental operational needs that trigger OT coverage not stated above, Facility Chief, Standby Chief or Superintendent will determine which operator(s) will be offered the OT based on knowledge of the operation.
5. Facility Chief, Standby Chief or Superintendent will make the call on whether to offer the OT in its entirety, i.e., 10 or 12 hours of shift coverage, or break it into 6-hour, 4-hour increments.

6. To track that OT is offered equitably, HTWTP and SVWTP Ops will log OT offerings in eLogger just like sick calls so OT distribution is transparent to all involved.

#### OVERTIME DISTRIBUTION

191. Voluntary overtime shall be offered equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.
192. Mandatory overtime shall be distributed equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.

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**From:** Cheung, Angela

**Sent:** Monday, April 27, 2020 8:15 AM

**To:** Calvo, David <[dcalvo@sfgwater.org](mailto:dcalvo@sfgwater.org)>; Guerra, Joe <[jguerra@sfgwater.org](mailto:jguerra@sfgwater.org)>; Kennedy, Tim <[TKennedy@sfgwater.org](mailto:TKennedy@sfgwater.org)>; Macaulay, Ryan <[RMacaulay@sfgwater.org](mailto:RMacaulay@sfgwater.org)>; Scott, Anthony <[AScott@sfgwater.org](mailto:AScott@sfgwater.org)>; Sibbring, Justin <[JSibbring@sfgwater.org](mailto:JSibbring@sfgwater.org)>; Sparks, James <[JSparks@sfgwater.org](mailto:JSparks@sfgwater.org)>

**Subject:** Minimum Staffing and OT Distribution

I would like to discuss minimum staffing and OT distribution with you in our next meeting. In particular, I would like to discuss minimum staffing when Sunol is in standby or plant refreshing mode and water transfer or reliability concerns at one of the EBF facilities is the reason for the additional staffing. Additional staffing triggers OT at times. What is the past and current practice of how OT distribution is made when the 2<sup>nd</sup> person at SVWTP is there for EBF operations.

#### **Minimum Staffing for Normal Operations:**

1. EBFF = 2 operators with one Grade 3 certified operator.
2. SVWTP = 2 operators with one Grade 3 certified operator.
3. WBFF = 2 operators with one Grade 3 certified operator.
4. HTWTP = 2 operators with one Grade 3 certified operator.

#### **Minimum Staffing when in Standby Mode:**

1. SVWTP = 1 Grade 3 certified operator.
2. HTWTP = 1 Grade 3 certified operator.
3. HH Water Transfer = 2 operators with one Grade 3 certified operator.

#### **Angela Cheung**

Water Supply & Treatment Division Manager

Hetch Hetchy Regional Water System

San Francisco Public Utilities Commission

Office: (650) 871-3034

Cell: (408) 313-8085



## SFPUC Fatigue Risk Management Guidance for Extended Workhours

3/29/2017

### What is Fatigue Risk Management?

Fatigue Risk Management is the approach by an employer to address workplace safety concerns arising from extended workhours during regular or emergency work, and/or insufficient employee rest hours. It is well documented that excessive fatigue in the workplace can be a risk to safe operations and to employee well-being. This Fatigue Risk Management Guidance (Guidance) provides a framework for the SFPUC to take pro-active steps to recognize and manage fatigue in the workplace.

This Guidance does not supersede any Federal or State regulation and/or City and County of San Francisco (CCSF) Memorandum of Understanding (MOU) or policy. It presents a strategy to prevent excessive fatigue situations and to provide a structure with which to recognize fatigue and to safely address it.

### Who does this Guidance apply to?

This Guidance applies to all SFPUC employees except employees on rotating or fixed 12-hour shifts.

### What are Extended Workhours?

Extended Workhours means:

1. Working beyond an employee's work day for planned or unplanned overtime,
2. Working several days in a row during which the employee exceeds their scheduled hours. This situation typically occurs during an ongoing emergency response or special projects.

Extended workhours are a significant risk factor for excessive fatigue in the workplace.

### Extended Workhours Guidance

1. When employees are required or choose to work overtime beyond their scheduled work shift, or are called back for overtime work during off-duty hours, the maximum workhours should not exceed 16 hours in a 24-hour period.
2. During ongoing emergency responses or special projects, the maximum work hours should not exceed 12 hours per day. When possible during ongoing emergency responses or special projects, employees should have at least one day off during every 7-day period.
3. Class A and B Truck Drivers must comply with the Hours of Service limits set by the California Department of Motor Vehicles. Refer to the Commercial Driver Handbook.
4. Exceeding the Extended Workhours Guidance should be an exception to standard practice and based on specific operational needs. To the extent possible, all other options should be evaluated before exceeding the Extended Workhours Guidance

### Rest Period Guidance

1. When possible, employees should be allowed 10 consecutive hours off duty after working extended work hours, before they are required to report for their next work shift. If the supervisor/manager believes that this rest period will overlap with the employee's next work shift, the supervisor/manager MUST contact their HRS Employee Relations Analyst at the earliest possible moment in order to navigate the situation.
2. During ongoing emergency responses or special projects, employees may need to be provided with a sleeping area, if they are required or if it is more practical for them to remain at the worksite.

### Assessment of Employee Fatigue

Supervisors/managers should be able to effectively recognize employee fatigue and understand how to take reasonable steps to intervene when an employee objectively appears to be excessively fatigued. If employees are observed to be too fatigued to safely perform their job duties, managers and/or supervisors may end an assignment earlier. If supervisors/managers decide to end an employee's assignment early, the supervisor/manager MUST contact their HRS Employee Relations Analyst at the earliest possible moment in order to navigate the situation.

Employees are responsible for notifying their manager and/or supervisor if they are too fatigued to perform their job duties safely.

### Fatigue Risk Management Training

The Health and Safety Program will develop training related to this Guidance and will give the training and/or provide the training program to managers, supervisors, and employees.

## **EXHIBIT P**

Cheung E-mail Offering Overtime to Appellant

## Dulay, Deborah (HRD)

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**From:** Cheung, Angela <ACheung@swater.org>  
**Sent:** Thursday, August 18, 2022 1:19 PM  
**To:** Dulay, Deborah (HRD)  
**Subject:** FW: OT Offering for Robert Moore

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**From:** Cheung, Angela  
**Sent:** Friday, May 1, 2020 12:38 PM  
**To:** Scott, Anthony <AScott@swater.org>; Guerra, Joe <jguerra@swater.org>  
**Subject:** OT Offering for Robert Moore

Tony, Joe,

Please make sure the next 4 hours of OT at SVWTP is offered to Robert Moore first. Once the OT is offered, whoever that does the offering, whether it is you or one of the SVWTP Ops need to document it in eLogger as any other OT offerings going forward.

Review eLogger regularly to make sure OT is being offered equitably. Solicit other SVWTP operators to help monitor OT offerings if you are too busy to do this yourself. Please let me know if you have any questions.

### Angela Cheung

Water Supply & Treatment Division Manager  
Hetch Hetchy Regional Water System  
San Francisco Public Utilities Commission

Office: (650) 871-3034

Cell: (408) 313-8085



## **EXHIBIT Q**

Overtime Distribution from Local 39 Memorandum of Understanding

**ARTICLE III – PAY, HOURS AND BENEFITS**

181. The proportionate amount of holiday time off shall be taken in the same fiscal year in which the holiday falls. Holiday time off shall be taken at a time mutually agreeable to the employee and the appointing officer.

**FLOATING HOLIDAYS**

182. Eligible employees are granted five (5) floating holidays in each fiscal year to be taken on days selected by the employee subject to the prior scheduling approval of the Appointing Officer or designee. Employees (both full-time and part-time) must complete six (6) months continuous service to establish initial eligibility for the floating holidays. Floating holidays received in one fiscal year but not used may be carried forward to the next succeeding fiscal year. The number of floating holidays carried forward to a succeeding fiscal year shall not exceed the total number of floating holidays received in the previous fiscal year. Floating Holidays may be taken in hourly increments up to and including the number of hours contained in the employee's regular shift.
183. Employees who have established initial eligibility for floating holidays and who subsequently separate from City employment may, at the sole discretion of the appointing authority, be granted those floating holidays to which the separating employee was eligible and had not yet taken.

**III. OVERTIME COMPENSATION**

184. Appointing officers may require employees to work longer than the normal work day or longer than the normal work week. Any time worked under proper authorization of the appointing officer or the appointing officer's designated representative or any hours suffered to be worked by an employee, exclusive of part-time employees, in excess of the regular or normal work day or week shall be designated as overtime and shall be compensated at one-and-one-half times the base hourly rate which may include a night differential if applicable; provided that employees working in classifications that are designated in this agreement as having a normal work day of less than eight (8) hours or a normal work week of less than forty (40) hours shall not be entitled to overtime compensation for work performed in excess of said specified normal hours until they exceed eight (8) hours per day or forty (40) hours per week, provided further, that employees working in a flex-time program or working on an alternative work schedule shall be entitled to overtime compensation as provided herein when required to work more than ten hours per day, forty hours per week, when working a four-day work week, eight or nine hours depending on the schedule for the day, or forty hours per FLSA designated workweek when working the 9/80 schedule. Overtime compensation so earned shall be computed subject to all the provisions and conditions set forth herein.



**ARTICLE III – PAY, HOURS AND BENEFITS**

185. The Department of Human Resources shall determine whether work in excess of eight (8) hours a day performed within a sixteen (16) hour period following the end of the last preceding work period shall constitute overtime or shall be deemed to be work scheduled on the next work day.
186. No appointing officer shall require an employee not designated by a "Z" symbol in the Annual Salary Ordinance to work overtime when it is known by said appointing officer that funds are legally unavailable to pay said employee, provided that an employee may voluntarily work overtime under such conditions in order to earn compensatory time off at the rate of time and one-half, pursuant to the provisions herein.
187. Employees occupying positions determined by the Department of Human Resources as being exempt from the Fair Labor Standards Act and designated by a "Z" shall not be paid for over-time worked, but may be granted compensatory time off at the rate of one hour for hour for time worked in excess of normal work schedules. Employees classified Z-symbol shall not accumulate a balance of compensatory time earned in excess of two hundred forty hours (240) hours.
188. Those employees subject to the provisions of the Fair Labor Standards Act who are required or suffered to work overtime shall be paid in salary unless the employee and the Appointing Officer mutually agree that in lieu of paid overtime, the employee shall be compensated with compensatory time off. Compensatory time shall be earned at the rate of time and one half. Employees occupying non "Z" designated positions shall not accumulate a balance of compensatory time earned in excess of 240 hours calculated at the rate of time and one half. When non- "Z" designated employees promote or transfer from one department to another, the department from which the employee is transferring or promoting shall cash out the employee's compensatory time balance.

**RECORDATION OF OVERTIME**

189. All overtime worked which is authorized by the appointing officer shall be recorded on separate timerolls. Compensation for overtime worked as provided in this Section shall be paid on an hourly basis.
190. When improved methods of payroll processing are implemented and with the approval of the Human Resources Director and the Controller, such overtime may be recorded on the regular timerolls.

**PRE-SCHEDULED OVERTIME**

**ARTICLE III – PAY, HOURS AND BENEFITS**

191. All employees covered by the provisions of this MOU that are pre-scheduled in advance to work overtime on a day off or at a time that does not overlap with their regular shift shall be paid for a minimum of four (4) hours at the overtime rate of time-and-one-half (1-1/2).

**OVERTIME DISTRIBUTION**

192. Voluntary overtime shall be offered equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.
193. Mandatory overtime shall be distributed equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.

**III.J. LEAVES**

194. In accordance with Charter Section A8.409, the Leave of Absence provisions of Civil Service Commission Rule 120, as they exist on the effective date of this Agreement, will be calculated and administered as set forth in said Rule, except as modified herein.
195. The mandatory furlough provisions of CSC Rule 120 shall not apply to covered employees.

**VOLUNTARY TIME OFF PROGRAM**

**1. General Provisions**

196. Upon receipt of a projected deficit notice from the Controller, an appointing officer shall attempt to determine, to the extent feasible and with due consideration for the time constraints which may exist for eliminating the projected deficit, the interest of employees within the appointing officer's jurisdiction in taking unpaid personal time off on a voluntary basis.
197. The Appointing Officer shall have full discretion to approve or deny requests for voluntary time off based on the operational needs of the department and any court decrees or orders pertinent thereto. The decision of the appointing officer shall be final except in cases where requests for voluntary time off in excess of ten (10) working days are denied.

**2. Restrictions of Use of Paid Time Off While On Voluntary Time Off**

198. All voluntary unpaid time off granted pursuant to this section shall be without pay.

**EXHIBIT R**

Appellant's Additional Employment Request Form

Instructions: Complete Section I, have your proposed employer complete Section II, then email or hand this form to your human resources department.

| SECTION I   |   | ADDITIONAL EMPLOYMENT PROPOSAL   |  |   |                                |  |     |  |     |
|---|---|--|--|---|--------------------------------|--|-----|--|-----|
| Employee Name   | Robert Moore  | City Department  | PUC Public Utilities Commission            |   |                                |  |     |  |     |
|   | First Last  |  |  |   |                                |  |     |  |     |
| City Email  | rbmoore@swater.org  | Job Code & Title   | 7343 Senior Stationary Engineer, Water Tre |   |                                |  |     |  |     |
| Duration (1 Year Max)   | 09/17/2020  | Request Type   | <input checked="" type="checkbox"/> New    | <input type="checkbox"/> Change in Conditions | <input type="checkbox"/> Renew |  |     |  |     |
|   | Start Date End Date   | Self-Employed?   | <input checked="" type="checkbox"/> Yes    | <input type="checkbox"/> No                   |                                |  |     |  |     |
| Business Name   | Robert Moore  | Worksite   | [REDACTED]                                 |   |                                |  |     |  |     |
| Employer Type   | Realtor/Broker  |  |  |   |                                |  |     |  |     |
| Set Work Schedule?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Start Time   | Sun  | Mon   | Tue                            | Wed  | Thu | Fri  | Sat |
|   |   | End Time   |  |   |                                |  |     |  |     |
| Job Duties  | Assist Clients in the purchase of sale of a home.                   |  |  |   |                                |  |     |  |     |
|   |   | Amount or value of compensation: \$ Up To 6% <input type="checkbox"/> Hourly <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Commis Other |  |   |                                |  |     |  |     |
| I understand that any additional employment not in accordance with <a href="#">Civil Service Rule 118</a> will be deemed insubordination subject to disciplinary action as provided in <a href="#">Sections A8.341 and A8.342</a> of the Charter. |   |  |  |   |                                |  |     |  |     |
|   |   | Employee's Signature <i>Robert Moore</i>   |  | Date 09/16/2020                               |                                | Immediate Supervisor <i>Anthony R. Smith</i> |     | Bureau/Division Manager <i>Steven R. Ritchie</i> |     |
|   |   |  |  |   |                                | 9/25/20                                      |     | 9/25/20  |     |

| SECTION II  |                     | ACKNOWLEDGMENT |                    |  |  |  |  |
|---|---------------------|----------------|--------------------|--|--|--|--|
| For employees proposing self-employment and for employers that are <b>not</b> another City and County of San Francisco department   |                     |                |                    |  |  |  |  |
| <input checked="" type="checkbox"/> I know that the applicant is regularly employed by the City and County of San Francisco, and that I am employing the applicant subject to compliance with Civil Service Commission Rule 118 and Charter Section C8.105.   |                     |                |                    |  |  |  |  |
| For employers that <b>are</b> another City and County of San Francisco department/agency Department: _____  |                     |                |                    |  |  |  |  |
| <input type="checkbox"/> I know that the applicant is regularly employed by the City and County of San Francisco, and that I am employing the applicant subject to compliance with Civil Service Commission Rule 118 and Charter Section C8.105. (If the additional employment is subject to FLSA overtime requirements, notice will be sent to you after review by DHR.) |                     |                |                    |  |  |  |  |
| Name  | Robert Moore        | Title          | Realtor/Broker     |  |  |  |  |
|   | First Last          |                |                    |  |  |  |  |
| Employer's Signature  | <i>Robert Moore</i> | Date           | 9/16/20            |  |  |  |  |
|   |                     | Email          | rbmoore@swater.org |  |  |  |  |

| SECTION III   |                 | APPOINTING OFFICER APPROVAL |   |  |  |  |  |
|---|-----------------|-----------------------------|---|--|--|--|--|
| I do not believe this additional employment is incompatible with this employee's civil service duties and responsibilities. |                 |                             |   |  |  |  |  |
| Name  | Rachel Gardunio | Title                       | SPUC Employee & Labor Relations Manager |  |  |  |  |
|   | First Last      |                             |   |  |  |  |  |
| Appointing Officer's Signature  |                 | Date                        |   |  |  |  |  |
|   |                 | Email                       | RGardunio@swater.org                    |  |  |  |  |

| SECTION IV  |            | DHR APPROVAL |        |  |  |  |  |
|---|------------|--------------|--------|--|--|--|--|
| I do not believe this additional employment is incompatible with this employee's civil service duties and responsibilities. |            |              |        |  |  |  |  |
| Name  |            | Comment      |        |  |  |  |  |
|   | First Last |              |        |  |  |  |  |
| Director/Designee's Signature   |            | Date         | 000140 |  |  |  |  |

**From:** [Moore, Robert B](#)  
**To:** [Tan, Sherry](#)  
**Cc:** [Cheung, Angela](#); [Stan Eichenberger](#); [Gardunio, Rachel](#)  
**Subject:** RE: Additional Employment Request  
**Date:** Thursday, September 24, 2020 2:16:29 PM  
**Attachments:** [image001.png](#)

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I was asked this question by Chris Nelson a few years ago. My answer is still the same, I have an assistant that responds to emails and such for me every day when I have a deal going. We speak after I am off from as she understands that I have a regular job. Obviously, I can't show homes during work so that takes place almost exclusively on Sundays. Keep in mind that I am not a fulltime realtor. I don't do a lot of business. I don't need to do business while I am at work. Please feel free to contact me with any other concerns.

Thank you,

Robert

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**From:** Tan, Sherry <STan@sfwater.org>  
**Sent:** Thursday, September 24, 2020 1:08 PM  
**To:** Moore, Robert B <RBMoore@sfwater.org>  
**Cc:** Cheung, Angela <ACheung@sfwater.org>; Stan Eichenberger <seichenberger@local39.org>; Gardunio, Rachel <RGardunio@sfwater.org>  
**Subject:** RE: Additional Employment Request

Hi Robert,

As mentioned in the email, the division has a concern with your work schedule. When there is no set work schedule for the additional employment, we need to better understand how you would handle your outside employment in such a way that would not affect your regular City employment. Help us understand how you would handle phone calls and/or emails that may come in during your SFPUC work hours, and how would you handle other commitments from your outside employment that may come up during your work hours. Below is your SFPUC work schedule:

|           |               |
|-----------|---------------|
| Saturday  | 06:00 - 16:00 |
| Sunday    | Day Off       |
| Monday    | Day Off       |
| Tuesday   | Day Off       |
| Wednesday | 06:00 - 16:00 |
| Thursday  | 06:00 - 16:00 |
| Friday    | 06:00 - 16:00 |

Thank you,

**Sherry Tan**

San Francisco Public Utilities Commission  
Water Supply and Treatment Division  
1000 El Camino Real  
Millbrae, CA 94030

Phone: (650) 871-3017

Fax: (650) 872-5984

Email: [Stan@sfwater.org](mailto:Stan@sfwater.org)



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**From:** Moore, Robert B <[RBMoore@sfwater.org](mailto:RBMoore@sfwater.org)>  
**Sent:** Thursday, September 24, 2020 11:28 AM  
**To:** Tan, Sherry <[STan@sfwater.org](mailto:STan@sfwater.org)>  
**Cc:** Cheung, Angela <[ACheung@sfwater.org](mailto:ACheung@sfwater.org)>; Stan Eichenberger <[seichenberger@local39.org](mailto:seichenberger@local39.org)>  
**Subject:** RE: Additional Employment Request

Hi Sherry,

I do not understand the concern that the division has with my business. I have been employed here for 10 years and it has never interfered with any component of my responsibilities to the PUC and nor will it ever. I would just like to know what is of a concern? It is unclear to me what that could be after 10 years. Please let me know.

Robert

---

**From:** Tan, Sherry <[STan@sfwater.org](mailto:STan@sfwater.org)>  
**Sent:** Thursday, September 24, 2020 11:03 AM  
**To:** Moore, Robert B <[RBMoore@sfwater.org](mailto:RBMoore@sfwater.org)>  
**Cc:** Cheung, Angela <[ACheung@sfwater.org](mailto:ACheung@sfwater.org)>  
**Subject:** Additional Employment Request

Hello Robert,

After reviewing your Additional Employment Request form, the division has a concern that your outside employment work schedule may interfere with your regular City employment.

We want to ensure that you are fully aware of the provisions specified in the CSC Rule 118 Conflict of Interest and SFPUC Statement of Incompatible Activities (attached for your reference) and to confirm that you have read and understood these provisions. Specifically,

for Rule 118, section 118.2.3 states that requests to engage in additional employment under the provisions of this Rule will not be approved by the Human Resources Director/Designee unless there is compliance with the following conditions:

- 1) That the employment will not impair the efficiency or interfere in any way with the full and proper performance of the employee's regular civil service employment;
- 2) That the performance of such employment is in no way inconsistent, incompatible or in conflict with assigned civil service duties or responsibilities of the employee's department or appointing officer;
- 3) That the performance of such employment will not be contrary to the interests of the City service generally and will not lead to situations which would reflect discredit on the City service;
- 4) That such employment will not involve any duty whatsoever of the employee during the employee's regular City work schedule; and
- 5) That the employment will not be in a hazardous occupation that would involve a substantial risk of injury to the employee. The Human Resources Director/Designee will determine whether such employment is unduly hazardous and will be guided in making a determination by the Manual of Rules, Classifications and Basic Rates for Workers' Compensation Insurance as published by the California Inspection Rating Bureau.

Please confirm that you have read, understood, and will comply with the rules and conditions stated in these policies. If you are unable to comply with some of the rules and conditions, let us know which one(s) you are unable to comply with.

Please do not hesitate to contact me should you have further questions.

Sincerely,

**Sherry Tan**

San Francisco Public Utilities Commission  
Water Supply and Treatment Division  
1000 El Camino Real  
Millbrae, CA 94030

Phone: (650) 871-3017

Fax: (650) 872-5984

Email: [Stan@sfwater.org](mailto:Stan@sfwater.org)

