



**CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

**LONDON N. BREED
MAYOR**

Sent via Electronic Mail

November 22, 2023

NOTICE OF CIVIL SERVICE COMMISSION MEETING

Danny Hui

**SUBJECT: REQUEST FOR A HEARING BY DANNY HUI, TRANSIT SUPERVISOR (9139)
MUNICIPAL TRANSPORTATION AGENCY ON THEIR FUTURE
EMPLOYMENT RESTRICTION WITH THE CITY AND COUNTY OF SAN
FRANCISCO.**

Dear Danny Hui:

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 **December 4, 2023, 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.sf.gov/CivilService under "Meetings" no later than end of day on Wednesday, November 29, 2023. 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, please submit **one hardcopy 3-hole punch, double-sided and numbered at the bottom of each page to the CSC Office at 25 Van Ness Ave., Suite 720 and email a PDF version to the Civil Service Commission's email at civilservice@sfgov.org by 5:00 p.m. on Tuesday, November 28, 2023**, 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.

Attendance by you or an authorized representative is recommended. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. Where applicable, the Commission has the authority to uphold, increase, reduce, or modify any restrictions recommended by the department. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance.

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

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG
Executive Officer

Attachment

Cc: Jeffrey Tumlin, Municipal Transportation Agency
Kimberly Ackerman, Municipal Transportation Agency
Romika Williams, Municipal Transportation Agency
Shana Dines, Municipal Transportation Agency
David Garcia, Municipal Transportation Agency
Brent Jones, Municipal Transportation Agency
Leroy Wilson, TWU Local 200
Thomas Mc Queen, TWU Local 200
Commission File
Commissioners' Binder
Chron

NOTICE OF COMMISSION HEARING POLICIES AND PROCEDURES

A. Commission Office

The Civil Service Commission office is located at, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. The telephone number is (628) 652-1100. The fax number is (628) 652-1109. The email address is civilservice@sfgov.org and the web address is www.sfgov.org/civilservice/. Office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

B. Policy Requiring Written Reports

It is the policy of the Civil Service Commission that except for appeals filed under Civil Service Commission Rule 111A Position-Based Testing, all items appearing on its agenda be supported by a written report prepared by Commission or departmental staff. All documents referred to in any Agenda Document are posted adjacent to the Agenda, or if more than one (1) page in length, available for public inspection and copying at the Civil Service Commission office. Reports from City and County personnel supporting agenda items are submitted in accordance with the procedures established by the Executive Officer. Reports not submitted according to procedures, in the format and quantity required, and by the deadline, will not be calendared.

C. Policy on Written Submissions by Appellants

All written material submitted by appellants to be considered by the Commission in support of an agenda item shall be submitted to the Commission office, no later than 5:00 p.m. on the fourth (4th) business day preceding the Commission meeting for which the item is calendared (ordinarily, on Tuesday). An original copy on 8 1/2-inch X 11 inch paper, three-hole punched on left margin, and page numbered in the bottom center margin, shall be provided. Written material submitted for the Commission's review becomes part of a public record and shall be open for public inspection.

D. Policy on Materials being Considered by the Commission

Copies of all staff reports and materials being considered by the Civil Service Commission are available for public view 72 hours prior to the Civil Service Commission meeting on the Civil Service Commission's website at <https://sf.gov/civilservice> and in its office located at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. If any materials related to an item on this agenda have been distributed to the Civil Service Commission after distribution of the agenda packet, those materials will be available for public inspection at the Civil Service Commission's during normal office hours (8:00 a.m. to 5:00 p.m. Monday through Friday).

E. Policy and Procedure for Hearings to be Scheduled after 5:00 p.m. and Requests for Postponement

A request to hear an item after 5:00 p.m. should be directed to the Executive Officer as soon as possible following the receipt of notification of an upcoming hearing. Requests may be made by telephone at (628) 652-1100 and confirmed in writing or by fax at (628) 652-1109.

A request for a postponement (continuance) to delay an item to another meeting may be directed to the Commission Executive Officer by telephone or in writing. Before acting, the Executive Officer may refer certain requests to another City official for recommendation. Telephone requests must be confirmed in writing prior to the meeting. Immediately following the "Announcement of Changes" portion of the agenda at the beginning of the meeting, the Commission will consider a request for a postponement that has been previously denied. Appeals filed under Civil Service Commission Rule 111A Position-Based Testing shall be considered on the date it is calendared for hearing except under extraordinary circumstances and upon mutual agreement between the appellant and the Department of Human Resources.

F. Policy and Procedure on Hearing Items Out of Order

Requests to hear items out of order are to be directed to the Commission President at the beginning of the agenda. The President will rule on each request. Such requests may be granted with mutual agreement among the affected parties.

G. Procedure for Commission Hearings

All Commission hearings on disputed matters shall conform to the following procedures: The Commission reserves the right to question each party during its presentation and, in its discretion, to modify any time allocations and requirements.

If a matter is severed from the *Consent Agenda* or the *Ratification Agenda*, presentation by the opponent will be for a maximum time limit of five (5) minutes and response by the departmental representative for a maximum time limit of five (5) minutes. Requests by the public to sever items from the [*Consent Agenda* or] *Ratification Agenda* must be provided with justification for the record.

For items on the *Regular Agenda*, presentation by the departmental representative for a maximum time of five (5) minutes and response by the opponent for a maximum time limit of five (5) minutes.

For items on the *Separations Agenda*, presentation by the department followed by the employee or employee's representative shall be for a maximum time limit of ten (10) minutes for each party unless extended by the Commission.

Each presentation shall conform to the following:

1. Opening summary of case (brief overview);
2. Discussion of evidence;
3. Corroborating witnesses, if necessary; and
4. Closing remarks.

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

H. Policy on Audio Recording of Commission Meetings

As provided in the San Francisco Sunshine Ordinance, all Commission meetings are audio recorded in digital form. These audio recordings of open sessions are available starting on the day after the Commission meeting on the Civil Service Commission website at www.sfgov.org/civilservice/.

I. Speaking before the Civil Service Commission

Speaker cards are not required. The Commission will take in-person public comment on all items appearing on the agenda at the time the item is heard. The Commission will take public comment on matters not on the Agenda, but within the jurisdiction of the Commission during the "Requests to Speak" portion of the regular meeting. Maximum time will be three (3) minutes. A subsequent comment after the three (3) minute period is limited to one (1) minute. The timer shall be in operation during public comment. Upon any specific request by a Commissioner, time may be extended. People who have received an accommodation due to a disability (as described below) may provide their public comments remotely. The Commission will also allow public comment from members of the public who choose to participate remotely. It is possible that the Commission may experience technical challenges that interfere with the ability of members of the public to participate in the meeting remotely. If that happens, the Commission will attempt to correct the problem, but may continue the hearing so long as people attending in-person are able to observe and offer public comment.

J. Public Comment and Due Process

During general public comment, members of the public sometimes wish to address the Civil Service Commission regarding matters that may come before the Commission in its capacity as an adjudicative body. The Commission does not restrict this use of general public comment. To protect the due process rights of parties to its adjudicative proceedings, however, the Commission will not consider, in connection with any adjudicative proceeding, statements made during general public comment. If members of the public have information that they believe to be relevant to a matter that will come before the Commission in its adjudicative capacity, they may wish to address the Commission during the public comment portion of that adjudicative proceeding. The Commission will not consider public comment in connection with an adjudicative proceeding without providing the parties an opportunity to respond.

K. Policy on use of Cell Phones, Pagers and Similar Sound-Producing Electronic Devices at and During Public Meetings

The ringing and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Information on Disability Access

The Civil Service Commission normally meets in Room 400 (Fourth Floor) City Hall, 1 Dr. Carlton B. Goodlett Place. However, meetings not held in this room are conducted in the Civic Center area. City Hall is wheelchair accessible. The closest accessible BART station is the Civic Center, located 2 ½ blocks from City Hall. Accessible MUNI lines serving City Hall are 47 Van Ness Avenue, 9 San Bruno and 71 Haight/Noriega, as well as the METRO stations at Van Ness and Market and at Civic Center. For more information about MUNI accessible services, call (415) 923-6142. Accessible curbside parking has been designated at points in the vicinity of City Hall adjacent to Grove Street and Van Ness Avenue.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week. For American Sign Language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the Commission office to make arrangements for the accommodation. Late requests will be honored, if possible.

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 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: soft@sfgov.org, or on the City's website at www.sfgov.org/bdsupvrs/sunshine.

San Francisco Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code Section 2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 25 Van Ness Ave., Suite 220, San Francisco, CA 94102, telephone (415) 252-3100, fax (415) 252-3112 and web site <https://sfethics.org/>.



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22MTA) Applicable to Municipal Transportation Agency Service-Critical Classes

Refer to Civil Service Commission Procedure for Staff - Submission of
Written Reports MTA for Instructions on completing and processing this Form

1. Civil Service Commission Register Number: 0100 - 21 - 7
2. For Civil Service Commission Meeting of: December 04, 2023
3. Check One:

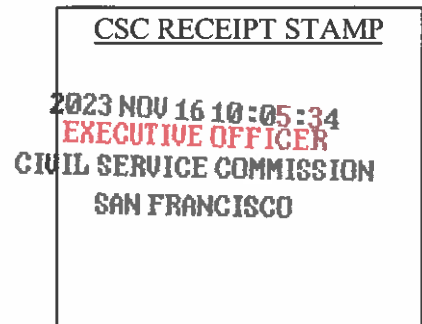
Ratification Agenda	_____
Consent Agenda	_____
Regular Agenda	_____ x _____
4. Subject: Request by Danny Hui regarding Restriction on Future Employability
5. Recommendation: Adopt the findings, deny the appeal, and approve the future employability restrictions
6. Report prepared by: David Garcia Telephone number: 415-646-4841
7. Notifications: (Attach a list of the person(s) to be notified in the format described in IV.
Commission Report Format -A)
8. Reviewed and approved for Civil Service Commission Agenda:

Municipal Transportation Agency Director: Kimberly Ackerman, for the SFMTA Transit Director

Date: ^{Ackerman, Kimberly} November 15, 2023
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 ACSC RECEIPT STAMP box to the right using the time-stamp in the CSC Office.



Attachment

NOTIFICATIONS

Danny Hui



Jeffrey Tumlin -Director of Transportation
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London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

MEMORANDUM

Date: November 16, 2023

To: The Civil Service Commission

Through: Kimberly W. Ackerman
Chief People Officer, SFMTA

From: David Garcia, Labor Relations Manager, SFMTA

Subject: Appeal of Future Employability Restrictions by Danny Hui (Appellant) – Probationary 9139 Transit Supervisor (Register No. 0100-21-7)

The Appellant appeals the SFMTA’s “Future Employability Recommendation” for the position of Transit Supervisor (Job Code 9139). Under the Civil Service Rules, the SFMTA submits this staff report for the Commission’s consideration.

BACKGROUND

The Appellant began his employment with SFMTA in 2003 as a 9163 Bus Operator, and in 2009, began operating light rail vehicles with no change to his civil service classification. Starting in 2013, the Appellant became a 9139 Transit Supervisor and instructor for the SFMTA’s Light Rail Vehicle (LRV) Training Program until his termination on June 19, 2021.

EXHIBIT A.

On December 13, 2018, another instructor (complainant) complained about a hostile work environment due to the Appellant’s behavior. The complainant alleged that the Appellant abused his position as the lead instructor by taking bribes and intimidating other instructors to pass students who did not demonstrate qualifications to operate LRVs. He noted that many students were buying meals for the Appellant and requested that the “right thing” be done. **EXHIBIT B.**

The City Attorney’s Office initiated an investigation into the allegations and found that the Appellant pressured other instructors to pass students who did not pass written

examinations, he gave selected students answers to test questions, directed other instructors to cover up students' mistakes, and accidents, went to meal breaks with students and did not pay for his meals, requested that a student perform construction on his home. He gave false and misleading answers during the City Attorney's investigation. **EXHIBIT C.** The investigation led to the Appellant's termination.

The matter progressed through all steps of the grievance process before an arbitrator issued a final decision to uphold the Appellant's termination.

ISSUES

Is it reasonable to preclude the Appellant from future employment?

Is it reasonable to cancel current examinations and eligibility status positions citywide?

AUTHORITY AND STANDARDS

Pursuant to the Parties' MOU at paragraph 54, the SFMTA may discipline its employees for cause.

According to the City and County of San Francisco Employee Handbook, permanent civil service employees terminated for cause receive written notice of the grounds for discharge, the basis for the charge, and the proposed discipline. All permanent civil service employees must receive an opportunity to respond, with the assistance of a representative of their choosing before a final decision.

According to the City and County of San Francisco Employee Handbook, no employee may use nor allow any other person to use City resources for any non-city business purpose. The use of city resources for personal, political, employee organization, or other non-city business is strictly prohibited. City resources include but are not limited to, facilities, equipment, devices, telephones, computers, copiers, fax machine e-mail, internet access, supplies, and time for which an employee receives compensation. Inappropriate use of City resources may result in discipline, up to and including termination of employment.

Pursuant to Civil Service Commission Rule 422, Article 1, persons terminated from employment with restrictions on their future employment may appeal those restrictions to the Civil Service Commission for review.

FINDINGS

From January 8, 2011, until January 7, 2012, the Appellant was an instructor in a Promotional Temporary Exempt 9139 position (one year). He returned to his Permanent Civil Service Position (PSC) on January 7, 2012, and served in that position until he received a promotion to the 9139 Transit Supervisor position on July 6, 2013. The Appellant remained employed as a 9139 Transit Supervisor until his termination, effective June 19, 2021. **EXHIBIT A.**

On January 11, 2021, the SFMTA issued a Notice of Proposed Disciplinary Action for the Appellant's dismissal based on a City Attorney investigation that concluded the Appellant abused his authority as a Transit Supervisor and Lead Trainer in the SFMTA's training unit that he violated the SFMTA Training Instructor Manual, that he compromised the safety of the public and SFMTA operators, and that the Appellant was dishonest. **EXHIBIT D.**

On January 27, 2021, the SFMTA held a Skelly meeting in a remote format over Microsoft Teams so that the Appellant could respond to charges contained in the Notice of Dismissal issued to the Appellant on January 11, 2021. The Skelly Officer responded and upheld the termination on February 3, 2021. The Appellant did not refute the charges during his Skelly meeting and said he would reserve his response for grievance procedures. **EXHIBIT E.**

On March 2, 2021, the Appellant, through his Union, Transport Workers Union of America, Local 200 (TWU-Local 200), requested a Step 1 grievance and alleged that the City Attorney's investigation and findings were based upon illegal and surreptitious recordings. The Union asserted collective bargaining agreement (MOU) violations of the parties' MOU at paragraphs 42, 54, and 60. **EXHIBIT F.**

On March 31, 2021, the SFMTA issued a Step 1 response and said there were no MOU violations as alleged. **EXHIBIT G.**

On April 14, 2021, the Appellant, through TWU-Local 200, requested a Step 2 grievance and alleged that charges were based on "legally inadmissible information contained in the

City Attorney’s Investigative Summary. The Union asserted collective bargaining agreement (MOU) violations of the parties’ MOU at paragraphs 43 and 54. **EXHIBIT H.**

On June 7, 2021, the SFTMA Labor Relations Office and Human Resources Director denied the Step 2 Grievance and noted that witnesses were interviewed as part of an investigative process. The Human Resources Director found significant evidence to support the alleged violations and subsequent dismissal. **EXHIBIT I.**

On June 9, 2021, TWU-Local 200 made a request to arbitrate and alleged violations of due process and cause provisions of the parties’ MOU. The Union asserted MOU violations at paragraphs 54 and 60. **EXHIBIT J.**

On June 10, 2021, the SFTMA referred TWU-Local 200 to the City Attorney’s Office to initiate arbitration proceedings and to select an arbitrator. **EXHIBIT K.**

On June 18, 2021, the SFMTA issued a Notice of Dismissal to the Appellant. The SFMTA considers the Appellant’s release “disciplinary” and permanently restricts his future employability. Specifically, the SFMTA and the City and County of San Francisco should cancel any current examination and eligibility status for positions citywide and preclude the Appellant from future employment citywide. **EXHIBIT L.**

On June 24, 2021, the Appellant sent a request for appeal to the Civil Service Commission. The Appellant did not include his reasons for appealing the proposed future employment restrictions and only referenced that the matter was pending arbitration. See Appeal to the Civil Service Commission, June 25, 2021 (Register No. 0100-21-7; Form CSC-12). **EXHIBIT M.**

Meanwhile, on September 11, 2023, Arbitrator Catherine Harris denied the Appellant’s grievance and found that the SFMTA had cause to terminate the Appellant. **EXHIBIT N.**

Arbitrator Harris found that the discipline record “clearly and convincingly establishes that the Grievant has not only admitted serious misconduct but also that he steadfastly refuses to acknowledge any wrongdoing [...] and that the [Appellant] Grievant can no longer be trusted to treat trainees in a fair and even-handed manner; or to provide truthful information during the course of an investigation into his conduct.” *Id.*

On September 11, 2023, Arbitrator Catherine Harris made findings that support termination, and the SFMTA concurs with the Arbitrator's findings:

- 1) The Grievant (Appellant) provided false and misleading statements during his interview.
- 2) The Grievant (Appellant) abused his position as a Transit Supervisor by favoring at least two members of his dinner group.
- 3) The Grievant (Appellant) knew or should have known that his participation in the dinner group gave the appearance of favoritism.
- 4) The Grievant (Appellant) engaged in inappropriate personal relationships with trainees.
- 5) Termination is the only appropriate level of discipline.
- 6) Penal Code section 632 does not preclude termination.

DISCUSSION AND ANALYSIS

The Appellant's acts were improper when he intervened to protect two LRV students who were in his dinner group from an "increased likelihood that they would be washed out" [failing the Light Rail Vehicle Training] of the LRV training program. These individuals needed to achieve passing scores on written exams, and they made errors while operating coaches that should have disqualified them. Protecting employees who should have otherwise failed the program was an abuse of the Appellant's authority.

The Appellant's actions violated the public trust and created a substantial risk to public safety because unqualified individuals were permitted to operate LRVs and serve the public. During an investigation, the Appellant gave dishonest and evasive statements. His false responses amount to an irreparable breach of trust that ordinarily exists between a supervisory employee and management.

The Union argued that California Penal Code section 632 precludes using tape recordings obtained without consent. However, the substantial evidence the Arbitrator relied on did not include these recordings or the transcripts. Nor did the SFMTA include these recordings or transcripts in the Skelly charging letter, and the Arbitrator reached her conclusions based on the Appellant's admissions, text messages, witness testimony, and other documentary evidence presented during arbitration. The SFMTA business records also showed LRV disqualification criteria for road evaluations and employee conference forms that recorded each trainees' performance during LRV training. The Arbitrator found cause termination.

It is reasonable to preclude the Appellant from employment because of the serious and egregious nature of the Appellant's behavior. His behavior violated the public trust and created a substantial safety risk when unqualified operators passed the LRV training program despite driving errors these operators made while operating coaches and not achieving passing scores.

It is reasonable to cancel the Appellant's current examinations and eligibility status because the SFMTA consistently recommends this action in similar circumstances where egregious misconduct violates the public trust and creates a serious risk of harm to the public.

The Appellant's future employability with the SFMTA or the City and County of San Francisco should include the following restrictions:

- 1) A citywide restriction against future employability.
- 2) Cancel current examination and eligibility status for safety-sensitive positions.

CONCLUSION

Based on the information provided to Employee and Labor Relations, we conclude the Appellant was dishonest, violated the public trust, and created a serious risk of harm to the public. His conduct warrants a work restriction against future employment with the City and County of San Francisco. These are standard restrictions at the SFMTA for similar egregious misconduct.

RECOMMENDATION

Adopt the report, deny the appeal, and approve the future employability restrictions.

Attachments:

- Exhibit A: Appellant's Appointment Summary
- Exhibit B: E-mail from Mustafa Mohamed, December 13, 2023
- Exhibit C: City Attorney Report of Investigation
- Exhibit D: Skelly Notice -NOI
- Exhibit E: Skelly Response
- Exhibit F: Step 1 Grievance Request

Exhibit G: Step 1 Response
Exhibit H: Step 2 Request
Exhibit I: Step 2 Response
Exhibit J: Request for Arbitration
Exhibit K: Appeal to Arbitrate Letter
Exhibit L: Notice of Separation & Notice of Future Employment Restrictions
Exhibit M: Notice of Appeal, 2023 – Register No: 0100-21-7
Exhibit N: Arbitration Decision
Exhibit O: City Charter Article 8A

EXHIBIT A

Job Data

CCSF Job Appointment Summary

Danny Chi Hong Hui (Danny Chi Hong) Emp ID Empl Record 0

Job Appointment Summary

Personalize | Find | View All | First 1-10 of 10 Last

Eff Date	Appt Date	Action	Description	Payroll Status	Job Code	Union Code	Empl Class	Exempt Cat	FullPart Time	Elig Lists	Rank	POS #	Cont San Date	Dept	Location	Cert Date	Ctywd Snty Date	Company Seniority Date	Vacation Anniversary Date	Sick Anniversary Date	
06/19/2021	07/06/2013	TER	Dismissal of Permanent Employee	Terminated	9139	200	PCS	NA	F		34.00		03/12/2013	MTA	MTA001	03/12/2013	03/12/2013	10/14/2003	10/14/2003	10/14/2003	
07/01/2017	07/06/2013	POS	Position Data Update	Active	9139	200	PCS	NA	F		34.00		03/12/2013	MTA	MTA001	03/12/2013	03/12/2013				
07/06/2013	07/06/2013	DTA	Job Code Change	Active	9139	200	PCS	NA	F		34.00		03/12/2013	MTA	MTA001	03/12/2013	03/12/2013				
08/17/2012	01/07/2012	DTA	Data Conversion	Active	9163	253	PCS	NA	F		25.00		08/22/2003	MTA	MTA001	08/22/2003	08/22/2003				
01/07/2012	01/07/2012	DTA	Resignation	Active	9163	253	PCS		F		25.00		08/22/2003	MTA	MTA001	08/22/2003	08/22/2003				
01/07/2012	01/07/2012	DEM	Demotion - to Perm Civil Serv	Active	9163	253	PCS		F		25.00		08/22/2003	DPT	DPT001	08/22/2003	08/22/2003				
07/01/2011	01/08/2011	RAS	Department Request	Active	9139	200	TEX		F		0.00			MTA	MTA001						
01/08/2011	01/08/2011	PRO	Prom - Temporary Exempt	Active	9139	200	TEX		F		0.00			MTA	MTA001						
07/02/2010	10/14/2003	DTA	Resignation	Active	9163	253	PCS		F		25.00		08/22/2003	MTA	MTA001	08/22/2003	08/22/2003				
10/14/2003	10/14/2003	HIR	New - Permanent Civil Service	Active	9163	253	PCS		F		25.00		08/22/2003	DPT	DPT001	08/22/2003	08/22/2003				

Save Return to Search Notify

D

EXHIBIT B



From: Mohamed, Mustafa

Sent: Thursday, December 13, 2018 7:10 PM

To: Vavia-Johnson, Salina <Salina.Johnson@sfmta.com>

Cc: Reiskin, Ed <Ed.Reiskin@sfmta.com>; Mohamed, Mustafa <Mustafa.Mohamed@sfmta.com>; Wallace, Shelia <Shelia.Wallace@sfmta.com>

Subject: Hostile Work Environment

Importance: High

Mrs. Johnson, I am in urgent need of help. I recently went to my training manager Ken Anderson about an issue in the rail training department. We have an instructor who is taking bribes and using his position as the lead instructor to intimidate other instructors to pass operators that are not qualified to operate the LRV's. I along with another instructor detailed everything that was going on at the rail training department. I have proof of the intimidation in the form of texts and I have recordings of operators admitting that they had to go to the lead instructor's house and perform manual labor while they are in training. Other departments have also noticed that students are constantly buying him dinner. In my meeting with Ken Anderson he admitted that he has received multiple complaints about this same instructor about receiving bribes. Mr. Anderson stated that an investigation was performed but they had no proof. I told Mr. Anderson that I would provide him with the proof but after leaving the meeting my immediate manager Barry Chown was notified. Barry Chown who is close friends with this lead instructor Danny Hui, immediately notified Danny creating a very hostile environment at the office. I tried reporting to a different office and was told by Barry that I must report to the main training office where Danny is located. While in my meeting with Mr. Anderson I requested and was denied a transfer to a different department. Because of management's decision to share the details of the meeting with Danny Hui I no longer trust giving them the evidence. They will in turn share it with Danny and he will have the time to craft an explanation to their liking. Since my meeting with Mr. Anderson Barry Chown was observed holding secret meetings with Danny Hui in the parking lot. He was heard telling Danny on the phone to wait in the parking lot so they can discuss this issue off of the property. I also started receiving my orders in writing in the form of an email. I believe they are trying to set me up for discipline to discredit me. I have been in the training department for four and a half years and have always received high marks. I have been resisting the advice of my coworkers to take this to the press in hopes that this will stay within the agency and the right thing will be done.

Mustafa Mohamed

Rail Training Instructor
Green/MME Division



San Francisco Municipal Transportation Agency
425 Geneva Avenue, Rm. #241
San Francisco, CA 94112
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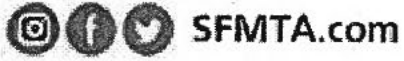


EXHIBIT C



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CONFIDENTIAL MEMORANDUM

DATE: September 24, 2020

TO: Kimberly Ackerman
SFMTA Director of Human Resources

FROM: Shawn P. Kelly 
Senior Investigator

RE: SFMTA LRV Bribery Investigation 1900316

Report of Investigation

I. SUMMARY OF INVESTIGATIVE FINDINGS

On December 17, 2018, I was assigned to investigate allegations made by San Francisco Municipal Transportation Agency (“MTA” or “Agency”) employee Mustafa Mohamed (“Mohamed”), an instructor with the training division for Light Rail Vehicle (“LRV”) operators. Mohamed, a 9139 Transit Supervisor, alleged that the lead instructor for the evening training classes, Danny Chi Hong Hui (“Hui”), also a 9139 Transit Supervisor, had taken bribes from students in exchange for passing them – or inducing other instructors to pass them – as LRV operators. Mohamed also claimed that his allegations had been ignored for years by management officials.

Following an investigation: I made the following findings:

- **In 2017, Hui pressured instructors to pass student Thanh Pham.**

In June and early July of 2017, Hui took a vacation to China. Upon his departure, he told instructors to “take care” of student Thanh Pham in his absence, and specifically told Mohamed “not to worry about” Pham’s written tests. While Hui was away, Mohamed gave Pham a “conference” for having run a stop signal twice in a single training evaluation. This put Pham on “Last Chance” status for the rest of his training. Upon his return, Hui attempted to induce other instructors to overlook Pham’s continuing driving errors. . See pages 7 - 16 for a full discussion of Hui’s selective assistance for Pham.

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- **In July 2017, Hui gave selected students the answers to tests and directed instructors to cover up student mistakes and accidents.**

Mohamed credibly asserted that Hui, and other instructors, including Mohamed, gave selected students test answers, and falsified the written records of their original answers, at Hui's direction. This finding is backed by transcripts of surreptitiously recorded conversations. See pages 16 - 19 for a full discussion of assistance given to other students and cover-ups of their mistakes.

- **Hui went out for meals at restaurants with students during class breaks and may not have paid for all of his own meals.**

By his own admission, Hui made a practice of going to restaurants with students during breaks between classroom instruction and field training. The last known time was in the summer of 2018. Hui said that the students were his "friends." Hui and the students who ate with him took turns paying for the meals of the entire group, although there seems to have been only an informal system of keeping track of payments. One student, Henry Lu, said that Hui would often be skipped over when it was his time to pay. The other students and Hui deny that Hui was ever skipped over when it was his turn to pay. See pages 19 - 22 for a full discussion of Hui's practice of eating meals with students.

- **Hui asked Paul Wai C. Wong to perform unpaid construction work on his home while Wong was a student in the LRV training program, presenting the appearance of a conflict of interest.**

Wong stated that he has performed construction work at Hui's home, including during the period when he was a student in the LRV operator's class. He said that Hui did not compensate him for the work, but that Hui did work on Wong's car. Hui conceded that Wong had done "a little bit" of construction work for him but did not remember whether it was when Wong was a student in the LRV class. See pages 22 - 23 for a full discussion of Wong's construction work for Hui.

- **Hui made false and misleading answers in his interview.**

Despite being admonished at the beginning of his disciplinary interview to answer questions truthfully and to the best of his ability, Hui gave several demonstrably untrue responses and was evasive throughout. See pages 24 - 28 for a full discussion of Hui's untrue responses.

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INVESTIGATIVE PROCEDURE**A. Complaint**

Mohamed's allegations were referred to our office through an e-mail he sent on December 13, 2018 to Salina Vavia-Johnson ("Vavia-Johnson"), then a 1231 EEO Senior Specialist with MTA.¹ In his e-mail, Mohamed said that Hui had been "using his position as the lead instructor to intimidate other instructors to pass operators that are not qualified to operate the LRV's [sic]." Mohamed said that the bribery took the form of students performing manual labor at Hui's home and buying him dinner over the course of several years.

Mohamed said that he and another instructor had recently met with then-Training Division Manager Ken Anderson² and told him about Hui's alleged bribery schemes and other instances of misconduct. That meeting took place on December 4, 2018.

See **Exhibit 1** for a copy of Mohamed's e-mail to Vavia-Johnson.

B. Investigative Steps**1. Interviews**

I interviewed 14 individuals, including Mohamed, whom I interviewed twice. All interviews were recorded. The interviewees were:

Mustafa Mohamed – 12/19/18 (**Exhibit 2**) and 08/08/19 (**Exhibit 3**)
Sheila Wallace ("Wallace") – 02/08/19 (**Exhibit 4**)
Belinda Jones ("Jones") – 02/28/19 (**Exhibit 5**)
Ravinder Warraich ("Warraich") – 03/01/19 (**Exhibit 6**)
Andy Rodney ("Rodney") – 03/05/19 (**Exhibit 7**)
Tinisha Bishop ("Bishop") – 03/14/19 (**Exhibit 8**)
Sienna Dunn ("Dunn") – 04/19/19 (**Exhibit 9**)
Cynthia Thomas ("Thomas") – 04/24/19 (**Exhibit 10**)
Henry Lu ("Lu") – 04/25/19 (**Exhibit 11**)
Paul Wong ("Wong") – 05/08/19 (**Exhibit 12**)
Liao Liang Situ ("Situ") – 05/16/19 (**Exhibit 13**)

¹ Vavia-Johnson's employment with MTA ended on 3/9/19.

² SFMTA reassigned Anderson from his position on June 1, 2019.

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Simon Zeng (“Zeng”) – 05/16/19 (**Exhibit 14**)
Kenneth C. Anderson – 07/16/19 (**Exhibit 15**)
Danny Hui – 07/23/19 (**Exhibit 16**).

2. Relevant Documents**a. SFMTA Bus Operator Training Instruction Manual (2014)**

The only document provided by the Agency that sets down guidelines for the conduct of instructors is the SFMTA Bus Operator Training Instruction Manual (2014). It is included as **Exhibit 17**.

b. E-mails

I examined the City e-mail accounts of Mohamed, Hui, and Barry Chown. I found nothing that further informed my investigation.

c. Text messages provided by Mohamed

At his initial interview, Mohamed provided copies of text messages between Hui, Rodney, and himself. The relevant text messages are referenced at the appropriate point in this report.

d. Transcripts of conversations recorded by Mohamed

Mohamed provided me with unverified transcripts of surreptitious recordings he made with other individuals: students, instructors, and managers. Not relying on the accuracy of those transcripts, I re-interviewed Mohamed to get his best recollection of the conversations. The secretly recorded conversations are referenced at the appropriate places in this report.

e. Training and accident records

I reviewed the training records of several LRV operator students: Than Pham, Liao Liang Sito, Henry Lu, Paul Wai Wong, Simon Zeng, and Pei Yu Zhang. I also reviewed accident records for Than Pham and Pei Yu Zhang. Relevant documents are referenced at the appropriate point in this report.

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II. BACKGROUND OF THE LRV TRAINING PROGRAM

Students in the LRV training program are already employed by the Agency as surface, or “rubber tire,” operators.³ SFMTA conducts LRV training classes on day and night shifts. Mohamed worked as a night instructor from 2014 to 2020 and his complaint primarily focuses on the night program from 2017 – 2019.

The Chief Instructor for all LRV training from 2014 – 2019 was Barry Chown (“Chown”). I was unable to interview Chown because he was on extended leave at the time I conducted this investigation. Chown worked during the day shift and a lead instructor was in charge of the LRV training program at night. Hui was the lead instructor at night. The LRV training was conducted Monday through Friday for both the day and evening classes. While Hui’s role as lead instructor at night gave him administrative responsibilities, he held the same civil service rank as Mohamed and the other instructors. Chown supervised all other lead instructors, including Mohamed and Hui.

The lead instructor performs administrative tasks for the LRV training program, including grading papers. The lead instructor also occasionally acts as field instructor or fills in as a classroom instructor if needed. The lead instructors hold the same Civil Service position as the other instructors, 9139 Transit Supervisor, although with a slightly enhanced compensation.⁴

The structure of the evening training program is that classes begin at 5:00 p.m., the first two hours are classroom instruction, everyone takes a “lunch” break from 7:00 – 8:00 p.m., and then students are put in the field for hands-on training with instructors. According to witnesses, Hui did not usually go out into the field with the students.

There are various thresholds for how many mistakes students may make on written tests. In field training, instructors evaluate students on a scale of 1 (Poor) to 5 (Excellent) in the performance of their driving skills. Students are allowed to make two mistakes on any critical task before they are given a “Last Chance” conference. In the Last Chance conference, a lead instructor warns them that they will fail the LRV training program if they make any additional errors on that task.

³ This is different from SFMTA’s training program for new bus operators, who are often training for their first Agency job.

⁴ Anderson interview, Exhibit 15, pp. 5-6.

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SFMTA does not have a specific manual for LRV instructors. The most current (2014) edition of the SFMTA “Bus Operator Training Instructor Manual” (See **Exhibit 17**) states:

Personal relationships between Instructors and new trainees are inappropriate and unprofessional.

Instructors must not engage in personal relationships with new operator trainees.

Instructors should never give gifts or gratuities of any kind to trainees.

Instructors should never accept gifts or gratuities of any kind from trainees.

Instructors must not offer rides to/from work to trainees.

Instructors must not receive rides to/from work from trainees.

Transit Supervisors should always use sound judgment when working as a professional trainer so as not to create even "an appearance" of impropriety.

Accepting any gift or favor from a trainee can be interpreted as an attempt by the trainee to improperly influence an instructor's decisions with respect to the trainee successfully passing the New Operator Training Program. Giving or receiving gifts or gratuities might also be perceived as an attempt by the instructor to gain favor from a trainee with the condition they would pass the program. This would constitute the instructor engaging in unlawful discrimination and/or harassment.

Although there is not a specific Instructor Training Manual for the LRV Training Program, the same admonitions apply to all LRV instructors and are consistent with general City employee conflict of interest policies.

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III. FINDINGS**A. Finding 1: In 2017, Hui pressured instructors to pass student Thanh Pham.**

1. Hui's made affirmative and concerted efforts to protect Pham prior to going on vacation.

The summer LRV training class in 2017 included a student named Thanh Pham, who started the class on May 22, 2017. According to Hui, he and Pham had been friends for some time and had been in each other's homes over the years.⁵

Among his allegations, Mohamed claimed that Hui had pressured him and other instructors to protect and pass Pham.⁶ Mohamed confirmed these allegations in his witness interview. He also provided a series of text messages and evidence of other communications with Hui that, combined with Pham's field examination records, all confirm Mohamed's allegations that Hui protected Pham to ensure that he would pass the program,.

In his interview, Mohamed explained that he asked Hui how to handle two students while Hui was away. Mohamed specifically told him that Pham was not performing well. "This was right before he left for his trip to China," Mohamed said. "So I wanted him to lay it out for me what I was--what was required of me to do while he was gone."⁷]

Mohamed said that Hui told Mohamed "not to worry about the tests" that would be given to Pham while Hui was away. Mohamed also said that Hui gave Pham a copy of the answer key to the written tests that would be administered while he was on vacation.

MOHAMED: My understanding of that conversation was that the student was being provided with test keys. And that was what he meant by "don't worry about the test". My understanding was that he had already taken care of that.

SR. INV. KELLY: I see. So that he's already given the answers in advance to Thanh Pham for him to be able to succeed on the written test.

⁵ Hui interview, Exhibit 16, pp. 49-50.

⁶ Mohamed 8/8/19 interview, Exhibit 3, page 14.

⁷ Mohamed 8/8/19 interview, Exhibit 3, page 14.

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MOHAMED: That's correct.⁸

Mohamed also provided a transcript of a recording he made between himself and Hui on June 9, 2017, shortly before Hui was about to go on vacation to China. Mohamed used the transcript to refresh his recollection during his interview. This transcript confirms Mohamed's recitation of the events. The transcript confirms that Hui told Mohamed not to put Pham's mistakes on road tests on his evaluations "if it's not too serious," and not to "worry about the [written] test" that Mohamed would administer during the classroom exams.

At his interview, Hui said that he did not remember telling Mohamed that.⁹

2. Hui Continued to Pressure Mohamed to Protect Pham While Hui Was on Vacation

According to Mohamed's recollection, Hui went on vacation to China on June 12, 2017.¹⁰ The next day, on June 13, 2017, Mohamed evaluated Pham in his field driving practice, and determined that Pham ran stop signs twice during the run. Mohamed documented Pham's performance on his "Operator Evaluation & Compliance Check Form. In the comments section, Mohamed noted "OPERATOR IS UNSAFE AND WAS NOT ALLOWED TO OPERATE." (Capitalized in the original.) He noted that "the first thing that he [Pham] does is run through stop sign at Church/Duboce IB [In-bound]. After operator was told that he ran the stop sign he continued moving and ran through the XX-BAR at the Mind yard IB. Operator was cautioned."

See **Exhibit 18** for a copy of Mohamed's 6/13/17 evaluation of Pham.

The next day, June 14, 2017, Mohamed and fellow instructor Andy Rodney had a "conference" with Pham regarding his mistakes from the day before. As a result, they administered a "last chance" counseling session with Pham. In the comments section, Mohamed cited the mistakes and either he or Rodney wrote, "THE OPERATOR IS GIVEN (1) ONE MORE CHANCE." (All capital letters in the original.)

See **Exhibit 19** for a copy of Pham's 6/14/17 conference report form.

⁸ Mohamed 8/8/19 interview, Exhibit 3, page 14.

⁹ Hui interview, Exhibit 16, page 76.

¹⁰ Hui interview, Exhibit 16, page 52.

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In his interview, Mohamed explained what happened:

MOHAMED: Now, we were able to give him that conference because Danny was on vacation. If Danny was at work, he would not have allowed us to give him that conference. We gave him what's called a last chance conference, meaning that if he messes up, no matter how minor, he was out of the training program and back to operating buses only.

SR INV KELLY: And this is for Mr. Thanh, T-h-a-n-h, Pham?

MOHAMED: Thanh Pham.

While on vacation, Hui continued to check up on Pham's progress, and had the following undated (the phone number indicates an international connection) text message exchange with Mohamed:

Hui: 2:00 AM – My boys ok?

Hui: 6:56 PM – My boy got last chance conference? Damn thought u gonna take care of them.

See **Exhibit 20** for the text messages from Hui to Mohamed.

Mohamed continued to note performance problems for Pham over the next few weeks while Hui was on vacation. Most notably, on June 26, 2017, Mohamed wrote, Pham “continued through the intersection without a permissive signal requiring instructor intervention. Student is not retaining what he is taught. Student not allowed to continue operating.”¹¹

Mohamed said that, since Pham had been given a “last chance” notice following two previous incidents of having run stop signals or signs, he should have failed out of the training program automatically.

“It wasn't my call to make,” Mohamed said in his interview. “I made my recommendation to Danny Hui and then he makes the final call. I put it in the Evaluation, knowing that Danny Hui would not read my evaluations. He never reviews them. Now when I

¹¹ See June 26, 2017 performance evaluation at Exhibit 21.

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went [later] to Danny Hui and asked him to do a conference report, which would then mean a disqualification, he refused.”¹²

See **Exhibit 21** for negative driving evaluations of Pham by Mohamed in June 2017 including the June 26, 2017 evaluation.

In his interview, Hui recalls that he returned from China on June 28, 2017, but did not return to work until July 5, 2017.¹³ During that period, he had the following text message exchange with Rodney:

Hui: “How’s my boy doing? ...Man, you scared me giving him Last Chance Conference.”

Rodney: “Thanh is really bad,”

Hui: “How bad? He told me he’s doing good.”

Rodney: Not remembering procedure and violating signals. Still having problems with key up and key down.”

Hui: That’s not what he told me. He told me he’s doing good. “Did he get any other conference beside that xx bar and stop sign?”

Rodney: Pulling in the yard twice he set the switch for the outer loop and then went and set the switch on the inner loop locked Keys in subways in auto in the pocket. No other conferences.”

Hui: “Good”

Rodney: “It’s bad and the other students are asking questions”

Hui: What are they asking?

Rodney: How many violations are they allowed before a conference.”

Hui: “Because of Thanh?”

¹² Mohamed 8/8/29 interview, Exhibit 3, page 7.

¹³ Hui interview, Exhibit 16, page 52.

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Rodney: “Yes because of him there’s a long list of things not on the Evaluations.”

* * *

Rodney: “This is bad he’s not remembering. And cannot read switches if the switch is wrong he’ll go the wrong way.”

Hui: “Let him deal with it line training.”

Rodney: “How can we do that. It will make us look really bad.”

Hui: “Thanh is very shy and chicken! For the most part he’s nervous with instructor next to him. When he went with me he felt more comfortable and relaxed, and performed well.”

See **Exhibit 22** for the undated text messages between Hui and Rodney.

In a similar undated text message exchange, Hui directed Mohamed what to do regarding mistakes made by Pham and a student named “Henry”:

Mohamed: Henry and Thanh both opened doors with steps in the wrong position. How do you want me to put it on the evaluation.

Hui: Where at?

Mohamed: Thanh at 3rd/Marin and Henry in the yard after pull in.

Hui: Reinstruct them

Mohamed: Ok. So it won’t be on the eval then.

Hui: To remember every time before they access the door switch; to check the step confirmation light on main annunciator

Hui: No

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See **Exhibit 23** for this undated text message exchange between Mohamed and Hui. It is unclear whether it was before or after Hui returned from vacation.

I asked Hui what he meant by saying that the mistake wouldn't be on the evaluation if Mohamed reinstructed Pham. At first, his response was that he thought the message thread had been edited, but finally said, "Yeah, I don't know."¹⁴

Mohamed reviewed transcripts of recordings he had made with Rodney and others in a series of conversations on July 3, 2017 regarding what to do about a written test that five of the class members, including Pham, had failed. The transcripts reflect that Rodney, who was apparently unable to contact Chown, called Hui to ask him what to do. In the end, according to Mohamed, the entire class was allowed to take that test again, but Pham failed it a second time even though he had been given the answer key in advance.

MOHAMED: Thanh Pham failed that test, including the re-test, which would have met the criteria for disqualification. And Danny's instructions to Andy [Rodney] was that we don't count today's test, that Danny will re-instruct and re-test on his--upon his return.

SR. INV. KELLY: Okay. Did the other students, when they took the re-test, pass the test?

MOHAMED: Yes.

SR. INV. KELLY: Okay.

MOHAMED: Yes, they did.

SR. INV. KELLY: Okay, so--so the only person who failed the test--

MOHAMED: Was—

SR. INV. KELLY: The second time was Thanh Pham.

MOHAMED: Yes.

¹⁴ Hui interview, Exhibit 16, page 66.

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SR. INV. KELLY: And it was at that point that Danny made the decision that he was going to re-administer the classroom lecture and then re-test after that because--on the basis that Ravinder had not taught the class properly.

MOHAMED: That's correct.¹⁵

3. Hui Continued Protecting Pham When He Returned to Work

Mohamed claims that he spoke with Hui about Pham's negative evaluations when Hui returned, but Hui refused to act on it. "Multiple times," Mohamed said of Hui, "he'd say that we need to protect him. We need to stop documenting his errors. And things of that nature."¹⁶

Hui's claim of ignorance about Pham's poor performance while he was away is contradicted in part by the text message exchange Hui had with Rodney, noted above at **Exhibit 22**.

In his interview, Mohamed recalled further details about having told Hui about Pham's poor performance following Hui's return from vacation. "And when I put that in the Evaluation," Mohamed said, "Danny wants to explain it why--I made him nervous by asking what is he waiting for? I went on to say that this is Day 39 [July 18, 2017] of a 40-day training course and I shouldn't have to ask him at that point."¹⁷

The transcript of an extended conversation between Mohamed and Hui on July 18, 2017, supports Mohamed's recollection. Mohamed discussed with Hui various mistakes that Pham had made, including mistakes made at a VETAG (an imbedded antenna in the track switch that communicates with the LRV). Hui argued with Mohamed offering excuses for Pham's performance.

This conversation, apparently, is about the same dispute that is captured in another undated thread of text messages between Hui and Mohamed.

Mohamed: "Your boy messed up."

Hui: "What he did?"

¹⁵ Mohamed 8/8/19 interview, Exhibit 3, pp. 17-18

¹⁶ Mohamed 8/8/19 interview, Exhibit 3, page 7.

¹⁷ Mohamed 8/8/19 interview, Exhibit 3, page 22.

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Mohamed: “He didn’t realize he did not press the VETAG. And was just sitting there then he was about to move in the wrong direction and when I told him to stop he released the T stick. Well it was in coast/deadman.”

Hui: Where at?

Mohamed: Pulling in at third and 15th

Hui: On eval?

Mohamed: It’s up to you

Hui: Told u t stop before they mess up

Mohamed: I tried he let go of the t stick and it was I coast

Finally, after Mohamed explained exactly what had happened, Hui said, “Oh, I will c what he say about it tomoro. Leave that out.”

See **Exhibit 24** for this undated text message thread between Mohamed and Hui.

During Hui’s interview, his explanation for this exchange was to say, “I don’t know what exactly happened,” and “I don’t know.”¹⁸

Mohamed described a conversation he had with Hui and Rodney on July 20, 2017, discussing how to cover up mistakes Pham had made on his final day of training, by giving him a “fake conference.”

MOHAMED: Okay. So any time somebody makes a mistake on the road, they have a conference. We fill out a conference report form that goes into their file. For this particular instance, when they wanted to have a fake conference, which is basically pulling them into the office. We’ll chit-chat for five minutes and pretend we did all the necessary paperwork. Nothing actually goes into his

¹⁸ Hui interview, Exhibit 16, pp. 69-70.

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file. Just to make it look good that we actually had a conference with him.

SR. INV. KELLY: Is it because other students are aware that a mistake has been made and--

MOHAMED: It was because I took on that extra student, Rachel Perez, from the day class.

SR. INV. KELLY: Yes.

MOHAMED: And she was a witness to the issues on that train.¹⁹

Mohamed gave his recollection of the continuation of the conversation. “So further along in this conversation, I remember this clearly. I’m not quite sure what page. We got to a discussion of an upcoming written test. And Andy makes a comment to Thanh Pham that “if you don’t know the answer, leave it blank and I’ll take care of it.”²⁰

Mohamed’s recollection is supported in the transcript of the conversation. In it, Hui said that they would have to do a conference with Pham. Rodney said, “we are going to do a fake conference. Don’t worry.” Hui tells Pham not to fail the next day’s test, and Rodney added, “Don’t mark shit on it. You bring it to me. ... You can’t turn it in with shit scratched out. It looks bad.”

Hui denied ever having used the expression “fake conference” and said that he “did not remember” ever having said that he would give a “fake conference” to any student.²¹

In the end, Thanh Pham passed the class and became an LRV driver.

¹⁹ Mohamed 8/8/19 interview, Exhibit 3, pp. 28-29.

²⁰ Mohamed 8/8/19 interview, Exhibit 3, page 29.

²¹ Hui interview, Exhibit 16, pp. 22, 76.

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B. Finding 2: Hui gave selected students the answers to tests and directed instructors to cover up student mistakes and accidents

Mohamed credibly alleged that Hui also arranged to have selected students pass a written test.

MOHAMED: Okay. So this is--most of the class had failed the test and Danny, to pass certain people, allowed them to take it as a group where he would ask the question and they answered as a group, then fill out the written portion of it. One student particular failed anyway, even though they did it as a group, and she was allowed to come to the office and correct her mistake.

SR. INV. KELLY...So who were the two tests for?

MOHAMED: Anthony and the female student referenced in the beginning. Because there was so many corrections that they had to make to the original test, I was made to go print out a new copy and then they filled it out in the office with Danny's instruction.

SR. INV. KELLY: I see. So who--so Anthony is sitting there in the office with Danny.

MOHAMED: Hm-hmm.

SR. INV. KELLY: Danny is giving him the answers to correct on the piece of paper he's already filled out. But then it looks like this giant mess, you know?

MOHAMED: Exactly.

SR. INV. KELLY: Where he's crossing out--not this but that, you know, and circling different things or it's false, not true, and you know, crossing stuff out and say, "It just looks like a mess. Go print out two fresh copies so we can get clean"--

MOHAMED: That's correct.

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SR. INV. KELLY: Answers. Was the woman in the office with Danny at that point as well?

MOHAMED: Oh, no. I believe he put the--he took them in separately.

SR. INV. KELLY: Okay.²²

Mohamed's recollection above is supported by the transcript of a recording he made among himself, Hui and Rodney. Mohamed recorded the conversation at 6:35 PM on July 6, 2017. The transcript reflects that Hui let class members who had failed a test re-take it as a group. Nonetheless, two students, an unnamed woman and a male named "Anthony" had failed the re-test and Hui wanted Rodney and Mohamed to let them "fix" their answers on new tests.

After seeing the resulting cross-outs and changes on the 'fixed' tests, however, Hui asked Mohamed to print out two new copies of the tests for the students to fill out cleanly.

A transcript of a conversation from about 15 minutes later indicates that Mohamed came back with the new tests and Hui directed him to give them to Rodney who would "take care of them."

For his part, Rodney denied ever knowing about Hui giving some students the answers to tests in advance. "So I have not witnessed anything. But we have certain--questions about it. You know, some people would pass a test one day and then the next day you ask them a question and it takes them a few minutes to figure out what you are talking about. So it seemed kind of suspicious."²³

Hui denied having done this or said that he could not recall having done so.²⁴

Mohamed presented another undated text message thread that discussed an incident in which a student identified as Tri, whom Hui later said was a friend of his, Tri Duong.²⁵ Duong had a "train to train accident" in which she rolled her vehicle into the rear of another vehicle and "coupled up her train." Ravinder Warraich apparently was an instructor on the train that was rear-ended, and Hui and Mohamed discuss whether she will report the incident. Hui wrote

²² Mohamed 8/8/19 interview, Exhibit 3, pp. 19-20.

²³ Rodney interview, Exhibit 7, page 10.

²⁴ Hui interview, Exhibit 16, pp. 70-71.

²⁵ Hui interview, Exhibit 16, page 72.

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“Make it so that the student won’t get in trouble. But if u tell Barry, he might pull the tape n have u gut write an accident report. N the student might get DQ for avoidable accident,” and that the incident is “CPUC reportable.”

Hui’s final instruction to Mohamed in this text chain was how to report it to Chown. “Well tell Barry that when ur student park, he actually coupled up to the train in front. Don’t make it sound like ur student hit the train in front.”

In the text message thread, Mohamed previewed what he was going to write to Chown. Hui wrote, “No. U make it really sound like an accident. ...U shouldn’t need to say that detail. Instead of saying putting in full power, reword it.” He and Mohamed continue to revise the wording of his report to disguise what happened.

See **Exhibit 25** for the text message thread regarding this incident.

Early in his interview, I asked Hui if he had ever directed an instructor not to report an accident because it would be “CPUC reportable.” Hui denied having done so. After reviewing the text message thread regarding Duong, Hui said that he had only been informed that the cars had only been “lightly coupled up.”²⁶ This, despite the plain evidence of the text thread information and Hui’s concern that the event was, indeed, “CPUC reportable.”

C. Finding 3: Hui went out for meals at restaurants with students during class breaks and may not always have paid for all his own meals, giving the appearance of a conflict of interest.

In his initial e-mail to Vavia-Johnson, Mohamed alleged that, “that students are constantly buying him [Hui] dinner,” and that he had presented that information to Anderson in their meeting on December 4, 2018.²⁷

Mohamed, who was accompanied to the meeting by shop steward and fellow instructor Sheila Wallace, reported Anderson as having said that “he’s heard these allegations before,” but that “[t]hey instructed Barry to tell Danny to cut it out, and Danny’s response has always been, “They’re my friends.”²⁸

²⁶ Hui interview, Exhibit 16, page 73.

²⁷ Mohamed 12/13/18 e-mail to Vavia-Johnson, Exhibit 1.

²⁸ Mohamed 12/19/18 interview, Exhibit 2, page 24.

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Wallace confirmed not only that she and Mohamed brought this matter to Anderson's attention in their December 4, 2018, meeting, but that she had told him about it in a prior meeting a year or more before. "At that particular time," Wallace said, "the information that I brought to him was that Danny was carpooling with students to work and also that he was going out to lunch with students every night."²⁹

Other instructors and MTA employees confirmed Hui's practice, and said that they had cautioned him about it. Rodney, for example, said, "He used to. For the past year and a half he has not been. I spoke to him about it and he told me, 'Well, those are my friends from long time,' and I said, 'It does not look good. You are friends when you are at home, not when you come to work.'"³⁰

Operator Henry Lu was a student in the LRV class in the spring of 2018. Lu said that, early in his time as a student, he went to dinner in various near-by restaurants with Hui, and two other students, Liao Liang Situ and Simon Zeng. Lu said that one person would pay the bill, in rotation, but that sometimes Hui would be skipped over in the payment cycle. "So you the student first," Lu explained. "You pay. You pay for everybody food. Everybody orders own food. But you pay for everybody. And then next time is my turn. Everybody order food. I pay for everybody. Four people. I pay for four people. And next time the students pay for four people, too. And then suppose to the instructor turn, but he not paying."³¹

After a period of time, Lu said, he quit going to dinner with Hui and the others.³² Situ³³ and Zeng³⁴ denied that Hui was ever skipped over his time to pay.

Hui defended his practice of going out to meals with students.

HUI: Okay. I have been--I have been told by Instructor that it doesn't look good because I'm eating with my friends.

SR. INV. KELLY: Okay.

²⁹ Wallace interview, Exhibit 4, page 10.

³⁰ Rodney interview, Exhibit 7, page 6.

³¹ Lu interview, Exhibit 11, page 9.

³² Lu interview, Exhibit 11, page 11.

³³ Situ interview, Exhibit 13, page 7.

³⁴ Zeng interview, Exhibit 14, page 7.

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HUI: And I told them, yes, these are my friend but they are not my student. I don't train them on the road. I don't train them.

SR. INV. KELLY: But you are in a position of authority over the structure of the classroom. That's right, isn't?

HUI: Whoever give the class is in charge. Not me.

SR. INV. KELLY: But sometimes you go out on the road with students, isn't that right?

HUI: Sometimes.³⁵

For his part, Anderson defended Hui's practice and said that the ethical guidelines for Trainers in the Bus Operator Instructor Training Manual should not apply to Hui or the other LRV instructors.

SR. INV. KELLY: And do you recall--well, let me ask you. Do you believe that that is appropriate for an Instructor to do, to go to share meal in a break with students?

ANDERSON: Initially I thought it was inappropriate. And then later I dismissed it. And I'll tell you why. Because it was brought to my attention at the time that you got to remember, these aren't brand-new employees. So it's one thing on the Rubber Tire side of the house. You're brand-new off the street. You just got a job as a prospective Transit Operator and now you're going through training and then now we look and see your instructor taking you to lunch and all that kind of stuff. Yeah, that's a problem. And, yes, that's inappropriate. In the case of the Rail instructor, these are long time tenured employees with the Agency. And a lot of them actually may have come to work at the same time you did, or may have even been in the same class with you. And we also knew that they were friends just as everybody--and the other thing about working here, I'm a lone Anderson here at MUNI but it's amazing to me how many people are related to one another. And

³⁵ Hui interview, Exhibit 16, pp. 35-36.

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so at the time that was brought to my attention, I go, “Oh, well, I can’t tell a guy not to go to lunch or not to go with his friend.” I mean, in other words, I didn’t know how I as a Training Manager had the right to dictate something at that level.³⁶

Anderson conceded that he never inquired as to how payment arrangements were made for Hui’s meals with students, but he said no one ever told him that Hui had favored any student because of their meal-sharing experiences.³⁷

For his part, Hui denied ever having skipped paying, but conceded that he didn’t keep track of exactly how many times each person paid. “I don’t keep track,” he said.³⁸

Despite the lack of written rules for LRV instructors against the practice of going out for meals during class breaks with students, it is clear that at least one student, Lu, thought that Hui favored other students, and other instructors cautioned him against the practice because a perception of favoritism.

D. Finding 4: Hui asked Paul Wai C. Wong to perform unpaid construction work on his home while Wong was a student, presenting at least the appearance of a conflict of interest.

The investigation also found that Hui asked one student, Paul Wai C. Wong, to do construction work on his home while Wong was a student in the class in the fall of 2016.

In his initial interview, Mohamed reported that one student, Paul Wai C. Wong, had performed construction work on Hui’s home at Hui’s request.

SR INV KELLY: Okay. Do you recall any one student who told you that he had been somebody who went over and worked on Danny’s property?

MOHAMED: Paul Wong Wei, either W-a-y or e-i.

³⁶ Anderson interview, Exhibit 15, page 13.

³⁷ Anderson interview, Exhibit 15, pp. 13-14.

³⁸ Hui interview, Exhibit 16, page 43.

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Mohamed subsequently elaborated on the topic and provided a transcript that he had made of a conversation with Wong about the subject on October 6, 2016:

MOHAMED: Well, it was a known fact amongst all the instructors, Danny made it known that he was having Paul Wong Wai pour concrete in his back yard while he was training. So I went into this conversation already knowing what he was doing.

SR. INV. KELLY: Right. And that was the point of this conversation, where--including this transcript and in this packet of materials you gave me, to show evidence that this is what he was doing while a student in his class.

MOHAMED: That's correct.

SR. INV. KELLY: And then at the end of it, you say, "Well, the hard work was all worth it. You passed the class, right?" And Paul laughed, and said, "Yeah, right." Did you believe that Paul would not have passed the class if he hadn't been doing construction work for Danny?

MOHAMED: I don't know. At that point I didn't want to get involved. He wasn't my student.³⁹

Wong confirmed that he had poured concrete and done other work for Hui at his home over the years, including when he was a student in 2016. He said, however, that in a reciprocal fashion, Hui had done car repairs for Wong over the years.⁴⁰

Hui confirmed that Wong has done construction work for him, although he couldn't recall whether Wong had ever done so while a student.⁴¹

³⁹ Mohamed 8/8/19 interview, Exhibit 3, page 11.

⁴⁰ Wong interview, Exhibit 12, page 8.

⁴¹ Hui interview Exhibit 16, page 47.

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E. Finding 5: Hui was not truthful during his interview

At the beginning of my interview with Hui, I admonished him to be honest and complete in his answers.

SR. INV. KELLY: I'm admonishing you that you should do these things. This is a confidential investigation so other than your Rep, you should not discuss any of the matters that we come up here, the questions that I ask you. Do you understand that?

HUI: Yeah.

SR. INV. KELLY: Okay. And you need to answer my questions truthfully and to the best of your ability. Do you understand that?

HUI: Sure.

SR. INV. KELLY: And failure to keep this confidential or to answer my questions truthfully could be grounds for discipline up to and including termination. You understand?

HUI: Yeah.⁴²

Despite that, Hui denied things that were not only reported by Mohamed, backed up with actual recordings of conversations, but which Hui, himself, plainly had written.

For example, Hui denied that he had ever tried to prevent the report of an accident because it was "CPUC reportable," a serious offense.

SR. INV. KELLY: I'm asking you, have you ever on any occasion told an Instructor not to report an accident because it would be CPUC-reportable?

⁴² Hui interview, Exhibit 16, page 3.

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HUI: Not--not an accident.

SR. INV. KELLY: Okay.

HUI: I wasn't aware of any accident.⁴³

This directive was documented in Hui's own text message (See **Exhibit 25**).

Similarly, Hui denied that he had ever suggested that a student's poor performance could be corrected in "line training":

SR. INV. KELLY: Right. That's what I mean. They're out there on the road. Did you ever tell anyone, another instructor, that you could deal with a student's deficiencies in line training rather than correcting it in the--your Training Division Program? Did you ever say, "Well, he can correct his mistakes in Line Training"?

HUI: No.⁴⁴

This is belied by the undated text exchange between Hui and Rodney (**Exhibit 22**).

SR. INV. KELLY: So my question is, when you say--you say, "Let him deal with it in Line Training," I asked you previously whether or not you had ever told an Instructor to allow a student's problems to be addressed in Line Training, and you said that you had not. Isn't that what you're telling Mr. Rodney to do there?

HUI: Well, I didn't remember if I ever said that.

SR. INV. KELLY: Okay. Well, didn't you write--you're not denying that you wrote that, are you? You're not denying that you wrote that, are you? Mr. Hui?

HUI: [UNINTELLIGIBLE] I'm not denying that I wrote that.

⁴³ Hui interview, Exhibit 16, page 32.

⁴⁴ Hui interview, Exhibit 16, page 33.

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SR. INV. KELLY: Okay. So when I asked you previously whether or not you had ever told an Instructor to let mistakes by a student be taken up in Line Training and you said you had not, that wasn't true, was it?

HUI: Oh, I don't know.

SR. INV. KELLY: Okay.⁴⁵

Likewise, Hui denied that he had ever told instructors not to put student mistakes on evaluations. Yet the Hui/Rodney text exchange (**Exhibit 22**) makes clear that this is exactly what Hui told Rodney to do.

SR. INV. KELLY: Okay. Well, you--here you have Mr. Rodney telling you that there was a long list of things that he did not put on the evaluation. And that--you ask, "How were the other students--how did the other students know? Were they on the same car?" So is there a reason that you didn't tell Mr. Rodney that he needed to document Mr. Pham's errors on the evaluation?

HUI: I don't know.

SR. INV. KELLY: Okay.⁴⁶

Hui tried to excuse the conversation by claiming that the mistakes may have been made in the first two weeks of the class,⁴⁷ a time that he claimed would allow for more leniency, but it is clear from the context of the text message that these mistakes happened well into the instruction period.

In the same vein, Hui tried to explain away his undated text message to Mohamed (**Exhibit 23**):

⁴⁵ Hui interview, Exhibit 16, page 63.

⁴⁶ Hui interview, Exhibit 16, pp. 63-64.

⁴⁷ Hui interview, Exhibit 16, page 64.

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SR. INV. KELLY: Okay. So I want to show you another set of text messages. And these I believe are between you and Mr. Mohammad, although I can't say for sure. And this starts with today, 12:26 a.m. "Henry and Pham both open doors with steps in the wrong position. How do you want me to eval--how do you want me to put it on the evaluation?" "Where at?" "Pham at Third and Marin, and Henry in the yard after [pulling them]." "Re-instruct them." Mr. Mohammad, "Okay, so it won't be on the evaluation then?" And you say, "Remember every time before they access the door switch to check the step confirmation light on the main enunciator? No." And he says, "I already re-instructed." So when I asked you earlier whether or not you ever told an instructor not to put mistakes on the student's evaluations, and here you are telling Mr. Mohammad not to put it on their evaluations. That wasn't true, what you told me before. Is that right?

HUI: Looks like this might be edited. Some message might be deleted.

SR. INV. KELLY: So where are you claiming that a message was deleted? It's not a very long message. Where do you claim that it was edited? Mr. Mohammad tells you that, "So it won't--this mistake won't be on the evaluation then?" And you say, "To remember every time before they access the door switch, to check the step confirmation light on the main enunciator? No. It will not be on the evaluations." And that's what your message means. Isn't that right?

HUI: Yeah, I don't know.⁴⁸

There is no evidence that the message had been "edited" as Hui claimed.

⁴⁸ Hui interview, Exhibit 16, page 66.

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Finally, although it is not reflected in the transcript, Hui often took an inordinate amount of time to answer yes or no questions. Based on my experience and training, this indicates that Hui tried to fabricate plausible answers when the truth would reflect negatively on his behavior.




VI. CONCLUSION




While this investigation regarded the conduct of Hui, the evidence also shows that other instructors, including Rodney and Mohamed himself, went along with Hui's efforts to falsify records and take other measures to graduate students who were favored by Hui. Rodney also appears not to have been truthful in all his answers.

It should also be noted that permissive management oversight, particularly from Anderson, contributed to an atmosphere in the night classes that gave Hui undue latitude in socializing with students and cheating to protect those whom he favored.

Mohamed admitted to have gone along with Hui's regime of allowing favored students to pass despite their poor performance. It is also worth noting, however, that none of this information would have become known had Mohamed not come forward with his allegations in the first place.

###

●●○○ Verizon  1:30 AM  51% 

Danny Hui

Today 1:06 AM

Off yet?

Yes what's up

How's the students

Your boy messed up

What he did?

He didn't realize he he did not press the VETAG And was just sitting there then he was about to move in the wrong direction and when I told him to stop he released the T stick Well it was in coast/deadman

Where at?

Pulling in at third and 25th

On eval?

It's up to you

Told u to stop before they mess up.

EXHIBIT D



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Cheryl Brinkman, Director

Steve Heminger, Director
Sharon Lai, Director

Jeffrey Tumlin, Director of Transportation

Via US Regular & email: [REDACTED]

January 11, 2021

Danny Chi Hong Hui
[REDACTED]

Re: Notice of Proposed Disciplinary Action – Dismissal
9139 Transit Supervisor

Dear Danny Chi Hong Hui:

This is to advise you that I am proposing that you be dismissed from your position as a 9139 Transit Supervisor.

My recommendation for the disciplinary action is based on the following charges.

- Misuse use of authority as a Transit Supervisor and a Lead in the Training unit.
- Violation of Training Instructor Manual
- Compromising the safety of the public and other SFMTA drivers
- Dishonesty

Summary of Charges

The Office of the City Attorney (CAO) investigated regarding an allegation made by San Francisco Transportation Agency in the SFMTA's Training Unit in December 2018. The investigation determined that you used your position as a Lead Instructor in the Training Department to influence other 9139 Transit Supervisors to falsify LRV Trainees records; you exhibited favoritism towards friends and associates; and compromised the safety of the public and other SFMTA operators. In addition, the investigation also determined that you were not honest, complete, or forthcoming during the investigatory interview and you provided convoluted or evasive answers. The following was determined:

1. You pressured instructors to pass student Thanh Pham.

In June and early July of 2017, you took a vacation to China, upon your departure, you told instructors to "take care" of student Thanh Pham in your absence, and specifically told Mohamed Mustafa, Transit Supervisor, in the Training Unit, "not to worry about" Thanh Pham's written tests. You gave Pham a copy of the answer key to the written test that would be administered while you would be on vacation. While you were away, Mohamed gave Pham a "conference" for having run a stop signal twice in a single



training evaluation. This put Pham on "Last Chance" status for the rest of his training. Upon your return, you attempted to induce other instructors to overlook Pham's continuing driving errors. Pham violated signals, running stop signs, violated XX bars, key up and down, incorrectly setting the switch, including VETAG, locked keys in subways, opening doors with steps in the wrong position. You pressured instructors to protect and pass student Pham, you made affirmative and concerted efforts to protect Pham prior to going on vacation, to ensure he would pass the training program. You had the entire class take the test again, but Pham failed a second time even though you provided the answer key in advance. You continued to protect Pham when you returned from vacation asking instructors not to document Pham. (**See Exhibits 3, 16, 18, 19, 21, 22, 23**)

You misused your authority as the Transit Supervisor – Lead Trainer in the training unit by favoring your friends and associates. You also violated the Instructor Training Manual and the Safety of the public and other SFMTA drivers.

2. In July 2017, you gave selected students the answers to tests and directed instructors to cover up student mistakes and accidents.

Mohamed credibly asserted that you, and other instructors, including Mohamed, gave selected students test answers, and falsified the written records of their original answers, at your direction. You gave answers in advance to Pham for him to be able to succeed on the written test. You specifically asked the Instructors not to put Pham's mistake on road tests on his evaluation. You allowed students to come into the office and correct their errors. You made sure that students don't get into trouble for accidents and make it look like trains coupled instead, so that it does not get reported to CPUC. You made students re-take the test on clean copies so that errors were not visible. (**See exhibits 3, 7, 16, 25**)

You created a potential safety issue for the public and other SFMTA drivers who would have otherwise not passed the training class. You misused your authority as a Lead Trainer.

3. You went out for meals at restaurants with students during class breaks and may not have paid for all of your own meals.

By your own admission, you made a practice of going to restaurants with students during breaks between classroom instruction and field training. The last known time was in the summer of 2018. You said that the students were your "friends." You and the students who ate with you took turns paying for the meals of the entire group, although there seems to have been only an informal system of keeping track of payments. One student, Henry Lu, said that you would often be skipped over when it was your time to pay. The other students and you deny that you were ever skipped over when it was your turn to pay. (**See exhibits 1, 2, 4, 7, 11, 13, 14, 15, 16**)



You violated the Training Instructor Manual by engaging in personal relationships with trainees and students, you accepted gifts in the form of having students buy you lunches very often.

4. You asked Paul Wai C. Wong to perform unpaid construction work on your home while Wong was a student in the LRV training program, presenting the appearance of a conflict of interest.

Wong stated that he has performed construction work at your home (poured concrete and done other work over the years), including during the period when he was a student in the LRV operator's class. He said that you did not compensate him for the work, but that you did work on Wong's car. You conceded that Wong had done "a little bit" of construction work for you but did not remember whether it was when Wong was a student in the LRV class. Paul Wong in the end passed the class. **(See exhibits 3, 12, 16)**

You violated the Training Instructor Manual by accepting favors from trainees and students.

5. You made false and misleading answers in your interview.

The CAO investigator admonished you prior to your interview to answer questions truthfully and completely. You gave several demonstrably untrue responses and was evasive throughout the investigative process. You were not truthful during your interview. You not only denied things that were reported by Mohamed you also denied what you had written. You denied that you ever tried to prevent the report of an accident because it was CPUC reportable, a serious offense. You also denied that you ever suggested that a student's poor performance could be corrected in line training. You denied ever instructing not to put student mistakes on evaluations. **(See exhibit 16, 22, 25)**

You not only violated the safety of the public and other drivers you were also dishonest during the investigative process.

Conclusion

In summary, your actions indicates the following conduct:

- Your improper use of your authority as a Lead Transit Supervisor in the Training Unit;
- Your favoritism towards your friends and associates;
- Your actions created a potential safety issue for the public and other SFMTA drivers who would have otherwise not passed the training class;
- Your dishonesty, and lack of forthcoming in your testimony and changed your answers when confronted with evidence.



Materials upon which charge are based:

- Summary of Investigative Findings
- Exhibits 1 – 25

Right to Response:

You have the right to provide a response to this proposed recommended action. Your response may be written or oral. If you choose to respond in writing, your written response should be directed to Yashika Holmes Yashika.Holmes@sfmta.com. Your response must be received no later than 5:00 pm on January 14, 2021.

For an oral response the Department has scheduled a remote Skelly Meeting for January 15, 2021, at 10:00 a.m., to discuss the charges. A Microsoft Teams meeting invitation will be sent to you at a later date, before January 15, 2021.

You are not entitled to a formal hearing with the examination of witnesses, nor a court reporter, nor a transcript of the process. However, you are entitled to bring a representative of your choosing with you to the hearing. Your Union Representative is Jasmin Charles, she may be reached at 415-646-4153 or at Jasmin.Charles@sfmta.com.

Sincerely,

Brent Jones

Brent E. Jones, Chief Transportation Officer
Transit Division

Attachments:

Summary of Investigative Report & Exhibits 1 - 25

1. Exhibit #1 Mohamed complaint
2. Exhibit #2 Mohamed interview #1
3. Exhibit #3 Mohamed interview #2
4. Exhibit #4 Wallace interview
5. Exhibit #5 Jones interview
6. Exhibit #6 Warraich interview
7. Exhibit #7 Rodney interview
8. Exhibit # 8 Bishop interview
9. Exhibit # 9 Dunn interview
10. Exhibit #10 Thomas interview
11. Exhibit #11 Lu interview
12. Exhibit #12 Wong interview
13. Exhibit #13 Situ interview
14. Exhibit #14 Zeng interview



15. Exhibit #15 Anderson interview
16. Exhibit #16 Hui interview
17. Exhibit #17 Training manual
18. Exhibit #18 Pham evaluation (this has test scores and comments pertinent to the evaluation of student Tranh Pham)
19. Exhibit #19 Pham conference paperwork (This is counseling for student Tranh Pham)
20. Exhibit #20 Hui to Mohamed texts
21. Exhibit #21 June 2017 Pham evaluations (pertinent to the performance of student Tranh Pham)
22. Exhibit #22 Hui to Rodney texts
23. Exhibit #23 Mohamed to Hui texts
24. Exhibit #24 Hui to Mohamed texts
25. Exhibit # 25 Mohamed – Hui CPUC texts.

Cc: Emily Williams, Transit Administration
Michael Johnson, Training, Transit Operations
Lanair Haynes, Transit Services
Yashika Holmes, Employee & Labor Relations
Jasmin Charles, TWU Local 200
Chron File

EXHIBIT E



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Cheryl Brinkman, Director

Steve Heminger, Director
Sharon Lai, Director

Jeffrey Tumlin, Director of Transportation

SKELLY DECISION

Via Email: [Redacted]

Date: February 3, 2021

Danny Hui
[Redacted]

**Re: Skelly Decision for Danny Hui
9139 Transit Supervisor**

Dear Danny Hui:

You received a Skelly letter proposing that you be dismissed from your position as a 9139 Transit Supervisor for your misuse of authority as a Transit Supervisor and lead in the Training unit, violation of the Training Instructor Manual, compromising the safety of the public and other SFMTA drivers and for dishonesty on January 11, 2021.

Hearing:

A remote hearing was held via Teams on Wednesday, January 27, 2021. Present were you, your union representatives, Gregory Pitts and Jasmin Charles, and myself.

Union Representative Comments:

The union made two technical arguments regarding the investigation that was conducted. The union argued that the report relied on surreptitious record conversation, which is a violation of California Penal Code 632 section c and d and should not be used during the grievance procedure. The union also stated that the bus training manual only refers to new bus operators and the employees Danny Hui was working with were veteran operators.

Hearing Officer's Comments:

Danny Hui did not offer any comments and the union stated he will reserve comments for further in the grievance process. Neither the union nor Danny Hui refuted the allegations made in the Skelly letter but harken on the fact that Danny Hui was recorded without his knowledge. The California Penal Code 632 is outside of the realm of SFMTA and may be pursued by individuals as they deem. Furthermore, in reviewing the report the actual recordings were not used by the witness or investigator. Transcripts of the conversations were used by the witness to aid in recollecting events during the



investigative interview. Regarding the issue of new versus veteran operators, while the Instructor Training Manual does not specifically address the LRV training program or their trainees, the same admonish applies to LRV instructors as well.

Hearing Officer's Decision

Based on the abundance of evidence and the lack of compelling argument of why the agency should not proceed with the dismissal, it is my decision to uphold the dismissal.

Recommended by:

Yaya Holmes

Yaya Holmes

Employee & Labor Relations Analyst

Cc: Brent Jones, Chief Transportation Officer
LaNair Haynes, Senior Operations Manager,
Julie Zeigler, Employee & Labor Relations Manager
TWU, Local 200
Jasmin Charles, President, TWU Local 200
Gregory Pitts, TWU Local 200
Personnel File

EXHIBIT F



Transport Workers Union of America

Local 200

Affiliated with American Federation of Labor and Congress of Industrial Organizations
1508 Fillmore Street (Suite 211) • San Francisco, CA 94115
Tel. 415-922-9428 • Fax 415-922-9415 • e-mail: local200twu@sbcglobal.net

March 2, 2021

Jasmin Charles
President

Ja'mazz Fisher
Executive Vice President

Jose T. Alvarez
Secretary Treasurer

Sienna Dunn
Recording Secretary

Thomas McQueen
1st Vice President

Greg Pitts
2nd Vice President

Nichelle Flentroy
3rd Vice President

Shelia Wallace
Member at Large

Opeiu-153

Attn: Lanair Haynes, Senior Operations Manager Transit Services
601 25th Street, Rm 280
San Francisco, CA 94107

Attn: Yashika Holmes, Labor Relations Analyst ELR
1 South Van Ness Avenue, 6th Floor
San Francisco, CA 94123

Subject: Skelly Decision Grievance/Step Meeting Request, Re: Danny Hui

Attn, Mr. Haynes,

Pursuant to Article 1F, Sec. A, Paragraph 42 of the current Collective Bargaining Agreement between SFMTA and TWU Local 200, we (Local 200) have determined to file this grievance of the Skelly decision rendered on February 3, 2021 by Ms. Yaya Holmes for the pending proposed termination of 9139 Transit Supervisor Danny Hui.

Local 200 does not agree with the decision rendered by Ms. Holmes, as we submit that the decision contains violations of the aforementioned Collective Bargaining Agreement, including Article 1F, Sec. C, Paragraph 54 as it pertains to "investigations of multiple employees", and to "law enforcement 'reports'", as well as Paragraph 60 of the Due Process subsection of Article 1F in reference to "the materials upon which the action is based", and the "charges" which are based upon those "materials".

Local 200 objects to the Agency's charges for discipline in the matter of Mr. Hui, as they are wholly based upon City Attorney Investigator Shawn Kelly's **Summary of Investigative Findings** dated September 24, 2020 and submitted on that date to SFMTA HR Director Kimberly Ackerman. Local 200 posits that the City Attorney's Investigation of Mr. Hui was wholly precipitated by, and its findings based upon, surreptitiously recorded conversations recorded in violation of California State Penal Code Sec. 632 in its entirety, and of State Penal Code Sec. 632(c) in particular. The Law Offices of Stimmel, Stimmel & Roeser has written extensively on this topic, and on consequences subject to violations of Sec 632. In their articles titled **American Litigation** and **Hard Drive Discovery** they advise "Put simply, absent consent of all parties, they (surreptitious recordings) are not only not admissible into evidence, but a crime to obtain and allow the "injured party" to sue". And "...the statutes provide for a multiplier of damages...and further, given the cost of litigation and the fact that the act is a crime, the exposure can be significant". "A violation of Penal Code Sec. 632 can lead to a fine of up to \$2,500 and/or imprisonment of up to a year (misdemeanor). In addition, the violator may be subject to civil liability in the amount of \$5,000 or three times the amount of any actual damages sustained as a result". Additionally, a violation of Penal Code Sec. 632 results in any evidence obtained being inadmissible in any judicial, administrative, legislative or other proceeding. That includes any disciplinary proceedings by SFMTA, including the Skelly hearing itself (as well as any subsequent step hearings in the disciplinary process).

City Attorney Investigator Kelly made no fewer than fourteen (12) references to these illegally obtained surreptitiously recorded conversations in **his 27 page Investigative Summary**, which recordings were provided to him by the original complainant, Mustafa Mohamed, and covered conversations surreptitiously recorded with multiple individuals, on multiple dates, and which Mr. Kelly knew were illegally obtained. The use of which is also illegal. Throughout Mr. Kelly's "Investigative Summary" he cites Mr. Mohamed's 'recollection of the events' and, indeed, his own "findings" (first section of page 2 of the "Investigative Summary") as being "confirmed" (page 8, first section of "Investigative Summary") or "supported by" (page 13, paragraph 5) the illegally obtained surreptitious recordings. This happens again in the second paragraph of page 15 of the "Investigative Summary", where "Mohamed's recollection is "supported" in the "transcript of the conversation". And again, in the first and third paragraphs of page 17 of Mr. Kelly's "Investigative Summary". Reliance on the surreptitiously recorded conversations permeate Mr. Kelly's "investigation", and, indeed, the recordings themselves precipitated subsequent interviews of individuals identified as a result of these illegal recordings. The entire City Attorney's Investigator's investigation, its findings, and the "Investigative Summary itself, is tainted, and was generated and pursued through the commission of a crime.

When Local 200 raised our concerns with the use of materials and information obtained through violation of Penal Code 632 with Ms. Holmes at Mr. Hui's Skelly hearing, it was her position, and was dismissed in her decision, that "The California Penal Code 632 is outside of SFMTA and may be pursued by individuals as they deem". What it appears that Ms. Holmes is not grasping is that the charges proposed against Mr. Hui, and the Agency's proposed termination of his employment with SFMTA, is based wholly on the findings of the City Attorney's investigation as contained in the City Attorney's Investigative Summary, which, itself is tainted by, supported by, and precipitated by illegally obtained information. In fact, by the commission of a crime. Therefore, the Summary of the Investigation must be dismissed/vacated in its entirety, and the disciplinary charges against Mr. Hui, which are based on the tainted 'investigation' and summary submitted by Mr. Kelly, must also be vacated, with prejudice. To do otherwise, SFMTA would itself be suborning violation of the law, and suborning the commission of illegal acts in the pursuit of investigating and imposing harsh discipline on its own employees.

Please schedule a Step 1 meeting for Mr. Hui with the appropriate Senior Operations Manager, or Designee, as prescribed in Paragraph 42 of our Collective Bargaining Agreement.

Proposed Resolution: The charges for discipline against Mr. Hui should be vacated in their entirety, as they are based on illegally obtained information.

Gregory Pitts
TWU Local 200

Cc: Julie Zeigler, Manager ELR
Cc: Yaya Holmes, Labor Relations Analyst
Cc: Jasmin Charles, President TWU Local 200
Cc: TWU Local 200
Cc: Danny Hui, 9139 Transit Supervisor
Cc: Benjamin Lunch; Neyhart, Anderson, Flynn & Grosboll

EXHIBIT G



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Cheryl Brinkman, Director
Steve Heminger, Director

Fiona Hinze, Director
Sharon Lai, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

March 31, 2021

Via Email: local200twu@sbcglobal.net

Jasmine Charles
TWU Local 200 President
150 Fillmore Street, Suite 211
San Francisco, CA 94115

**RE: Step 1 DECISION for Danny Hui
Transportation, Job Code 9139**

Dear Jasmin Charles,

On March 15, 2021, in accordance with the Collective Bargaining Agreement (CBA) between the San Francisco Municipal Transportation Agency (SFMTA or Agency) and the Transport Workers' Union, Local 200, a Step 1 grievance was filed on behalf of Danny Hui. The Union claims that SFMTA violated Article State Penal Code Sec. 632 (c) on the use of recordings by the City Investigator assigned to this case.

Background:

On Tuesday, March 2, 2021, your grievance claims that Local 200 does not agree with the decision rendered by Ms. Holmes, as you submit that the decision contains violations of the aforementioned Collective Bargaining Agreement, including Article 1F, Sec. C, Paragraph 54 as it pertains to “investigations of multiple employees”, and to “law enforcement ‘reports’”, as well as Paragraph 60 of the Due Process subsection of Article 1F in reference to “the materials upon which the action is based”, and the “charges” which are based upon those “materials”.

Unions Response/Settlement Desired

The union proposes that the charges for discipline against Mr. Hui should be vacated in their entirety, as they are biased as prescribed in Paragraph 42 of the Local 200 Collective Bargaining Agreement.

Decision:

After reviewing all the facts brought forth, concerning the allegation that the agency violated the aforementioned Collective Bargaining Agreement, including Article 1F, Sec. C, Paragraph 54 as it pertains to “investigations of multiple employees”, and to “law enforcement ‘reports’”, as well as Paragraph 60 of the Due Process subsection of Article 1F in reference to “the materials upon which the action is based”, and the “charges” which are based upon those “materials”. It has been determined that the Agency did not violate the CBA as alleged.

The information provided indicated that while the investigator referred to the transcripts as part of his final report, he also interviewed the witnesses who provided the same testimony during their in-person interview as the transcripts previously provided. Note that the Step 1 Skelly office is to only rely its decision on the documentation provided. The union did not wish to add anything to the overall case other than contending the violation of Penal code 632. Therefore, the grievance is denied.

Sincerely,

Leda Rozier

Leda M. Rozier
Senior Operations Manager
Transit Management

cc: LaNair Haynes, Transit Services
Michael Johnson, Transit Services
Julie Kirschbaum, Transit
Brent Jones, Transit
Julie Zeigler, HR, Employee & Labor Relations
Yashika Holmes, HR, Employee & Labor Relations
Jasmine Charles, TWU Local 200
Chron File

EXHIBIT H



**Transport Workers Union of America
Local 200**

Affiliated with American Federation of Labor and Congress of Industrial Organizations
1508 Fillmore Street (Suite 211) • San Francisco, CA 94115
Tel. 415-922-9428 • Fax 415-922-9415 • e-mail: local200twu@sbcglobal.net

April 14, 2021

Jasmin Charles
President

Ja'mazz Fisher
Executive Vice President

Jose T. Alvarez
Secretary Treasurer

Sienna Dunn
Recording Secretary

Thomas McQueen
1st Vice President

Greg Pitts
2nd Vice President

Nichelle Flentroy
3rd Vice President

Shelia Wallace
Member at Large

Opeiu-153

Attn: JP Zeigler, Manager, Employee and Labor Relations
Attn: Yaya Holmes, Labor Relations Analyst

Subject: Step 1 Decision Grievance/Request for Step 2 Meeting. Re: Danny Hui

Attn Ms. Zeigler and Ms. Holmes,

Pursuant to Article 1F, Sec. B, Paragraph 43 of the current Collective Bargaining Agreement between SFMTA and TWU Local 200, Local 200 is requesting that a Step 2 meeting be scheduled in the matter concerning 9139 Transit Supervisor Danny Hui.

Local 200 does not agree with the March 31, 2021 Step 1 decision rendered by Ms. Yashika Holmes, as we believe that the decision has been issued in violation of provisions that are set forth in our CBA, including – but not limited to – the 'Just Cause' provision of Paragraph 54 as it pertains to "Investigations conducted by non-SFMTA personnel (Re: the non-viable and legally compromised City Attorney's Investigative Summary).

Proposed Resolution: Local 200 proposes that the disciplinary charges and recommendation against Mr. Hui should be vacated in their entirety, with prejudice, as the charges are based, as stated in SFMTA's initial charging letter, on legally inadmissible information contained in the City Attorney's Investigative Summary. In addition, documents used to support substantial portions of those investigative findings, such as confidential employee personnel files, employee evaluations, training files, internal exam scores, training evaluations, which cannot even be obtained through RFI or FOIA, were surreptitiously spirited out of the SFMTA Training Department personnel training files by a disgruntled employee, and, in turn, turned over to the City Attorney's investigator, who was aware that the materials were obtained unlawfully, as well as the non-consensual surreptitious audio recordings gained in violation of California Penal Code, Sec. 632.

Sincerely,
Gregory Pitts
TWU Local 200

Cc: Danny Hui
Cc: Jasmin Charles, President TWU Local 200
Cc: Brent Jones, SFMTA Chief Transit Officer
Cc: TWU Local 200
Cc: Ben Lunch, Attorney at Law; Neyhart, Anderson, Flynn & Grosboll

EXHIBIT I



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Cheryl Brinkman, Director
Steve Heminger, Director

Fiona Hinze, Director
Sharon Lai, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

June 7, 2021

TWU, Local 200
Attn: Jasmin Charles
1508 Fillmore Street, Ste 211
San Francisco, CA 94115

Re: Step 2 Decision – Danny Hui
9139 Transit Supervisor

Dear Ms. Charles:

On April 14, 2021, the TWU, Local 200 filed a Step 2 Grievance on behalf of Danny Hui, Job Code 9139, to appeal the Step 1 decision issued on March 31, 2021 upholding a proposed dismissal for misuse use of authority as a Transit Supervisor and as a Lead in the Training unit, violation of Training Instructor Manual, compromising the safety of the public and other SFMTA drivers, and dishonesty. In accordance with the Collective Bargaining Agreement (CBA) between the San Francisco Municipal Transportation Agency (SFMTA) and the Transport Workers Union (TWU), Local 200, a Step 2 meeting was virtually held on May 5, 2021, via Microsoft Teams.

In attendance at this meeting were:

Gregory Pitts	TWU, Local 200
Danny Hui	Grievant
Michael Johnson	SFMTA, Training, Transit Operations
Omozele Biggins	SFMTA, Training, Transit Operations
Yaya Holmes	SFMTA, Employee & Labor Relations
Christine Cayabyab	Step 2 Hearing Officer

Background:

The SFMTA is proposing Mr. Hui be dismissed from his position for using his role as a Lead Instructor in the Training Department to influence other 9139 Transit Supervisors to falsify LRV Trainees records; exhibiting favoritism towards friends and associates; and compromising the safety of the public and other SFMTA operators. Mr. Hui was also dishonest.

Union’s Arguments:

The Union stated it is obvious that the Agency is not clear on the law regarding transcripts of a recording being illegal, and an investigative summary being based on information gathered from a recording. The Agency used personnel file information and training evaluations which is confidential and cannot even be obtained by the Union through a public records request, but the Agency was privileged to use the information obtained through the City Attorney’s Office. The



Union argued that no one can get confidential information from personnel files and make copies to turn over to someone else, and that the City Attorney's Office should have subpoenaed the confidential file.

The Union was not arguing if the incident in question had merit or not but emphasized that the due process was done incorrectly and illegally basing the charges on an investigative summary in violation of California State Penal Code, Section 632.

Agency's Arguments:

The Agency acknowledge that the Union believes due process for this case was done incorrectly and that the Agency should not be able to use transcripts. As for the allegations of the case, the Agency rest on the papers.

Remedy sought by the Union:

The Union requested that the disciplinary charges and recommendation against Mr. Hui be dismissed, since the charges are based on legally inadmissible information contained in the City Attorney's Investigative Summary. Addition, documents used to support substantial portions of those investigative findings as well as audio recordings, were obtained unlawfully, and in violation of California Penal Code, Section 632.

Conclusions:

In reviewing the Skelly Decision and Step 1 Decision, the Step 2 Hearing was not much different. The grievant, Mr. Hui did not offer any comment and the Union emphasized their arguments on the technicality of the illegal use of transcripts to base the proposed discipline in violation of California Penal Code, Section 632 which is outside of the realm of SFMTA. Individuals may pursue this further as they deem fit. As indicated in the in the Skelly packet, witnesses were interviewed as part of the investigation for the charges as stated above in which transcripts were referenced. The results of the new investigation provided the same information that was provided in the transcripts; no new discovery was found.

After listening to all arguments, reviewing all facts brought forth, and reviewing all information provided concerning the allegations against the grievant, I have determined that there is significant evidence of the alleged violations to support the proposed dismissal from employment, and deny the grievance.

The decision is specific only to this employee and only to the above-stated grievance and cannot be used or cited for any other purpose.



Recommended by:

Approved by:

Christine Cayabyab

Kimberly W Ackerman

Christine Cayabyab
Step 2 Hearing Officer

Kimberly W. Ackerman
Human Resources Director

cc: Brent Jones, Transit Division
LaNair Haynes, Transit Services
Michael Johnson, Training, Transit Operations
Danny Hui, Grievant
Julie "JP" Zeigler, Manager, Employee and Labor Relations
Yaya Holmes, Employee and Labor Relations
Employee File

EXHIBIT J



**Transport Workers Union of America
Local 200**

Affiliated with American Federation of Labor and Congress of Industrial Organizations
1508 Fillmore Street (Suite 211) • San Francisco, CA 94115
Tel. 415-922-9428 • Fax 415-922-9415 • e-mail: local200twu@sbcglobal.net

June 9, 2021

Jasmin Charles

President

Ja'Mazz Fisher

Executive Vice President

Jose T. Alvarez

Secretary Treasurer

Sienna Dunn

Recording Secretary

Thomas McQueen

1st Vice President

Greg Pitts

2nd Vice President

Nichelle Flentroy

3rd Vice President

Shelia Wallace

Member at Large

Opeiu-153

Attn: JP Zeigler, Manager Employee and Labor Relations

Attn: Yaya Holmes, ELR Labor Relations Analyst

Subject: Step 2 Decision Grievance/Request for Arbitration Re: Danny Hui

TWU Local 200 is not in agreement with the June 7, 2001 Step 2 decision rendered by Christine Cayabyab. Local 200 maintains that the Due Process and Just Cause provisions in our Collective Bargaining Agreement were violated by SFMTA with the pursuit of an illegally prosecuted investigation by the City Attorney's Office Investigator, Sean Kelly (Article 1F, Sec. C, Paragraphs 54 and 60).

TWU Local 200 hereby requests that an arbitrator be agreed upon, and an arbitration date be set, pursuant to Paragraph 44 of our Collective Bargaining Agreement.

Respectfully,
Gregory Pitts
TWU Local 200

EXHIBIT K



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair

Cheryl Brinkman, Director
Steve Heminger, Director

Jeffrey Tumlin, Director of Transportation

Via e-mail local200twu@sbcglobal.net

June 10, 2021

Jasmin Charles, President
Transport Worker's Union, Local 200
1508 Fillmore Street #211
San Francisco, CA 94115

Re: Appeal to Arbitrate – 9139 Danny Hui, Dismissal
San Francisco Municipal Transportation Agency / TWU, Local 200

Dear Jasmin Charles:

The San Francisco Municipal Transportation Agency (SFMTA) is in receipt of your letter dated June 9, 2021, moving the above-referenced grievance to arbitration.

Please contact Deputy City Attorney Cecilia Mangoba at (415) 554-3927 within thirty (30) calendar days of the date of this letter regarding arbitrator selection. If the Union fails to contact Ms. Mangoba within the 30-day period, the SFMTA/City will consider this matter closed with prejudice.

Please be advised that the SFMTA/City reserves all rights it may have regarding this matter, including but not limited to, procedural issues and arbitrability. The City Attorney's Office (CAO) will review the file and make the final determination of these issues.

Sincerely,

Christine Cayabyab

Christine Cayabyab
SFMTA, Employee & Labor Relations

cc: Kimberly W. Ackerman, SFMTA, HR
Julie Kirschbaum, Transit Division
Brent Jones, Transit Division
Emily Williams, Transit Administration
JP Zeigler, SFMTA, Employee & Labor Relations
Cecilia Mangoba/Sylvia Angelo, CAO
Ben Lunch, Union's Attorney

EXHIBIT L



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Cheryl Brinkman, Director
Steve Heminger, Director

Fiona Hinze, Director
Sharon Lai, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

U.S. Certified Mail, U.S. Regular Mail

7020 1810 0001 9128 9849

June 18, 2021

Danny Hui

RE: Notice of Dismissal
Transit Supervisor, Job Code 9139 – Permanent Civil Service (PCS)

Dear Danny Hui:

In her decision dated June 7, 2021, the Step 2 Hearing Officer, Christine Cayabyab upheld the proposed dismissal from your position, Transit Supervisor, Job Code 9139, as proposed by the division. (See attached)

After a thorough review of all the facts and Christine Cayabyab's decision, it is my decision to dismiss you from your permanent position.

This letter is to notify you that you are being dismissed from your permanent civil service appointment as a Transit Supervisor, Job Code 9139, with the San Francisco Municipal Transportation Agency (SFMTA), effective 6/19/2021.

The SFMTA is recommending to the Civil Service Commission that your future employment be restricted as follows:

- No Future employment with the City and County of San Francisco.
- Cancel any current examination and eligibility status.

If you have any questions regarding this matter, please contact Employee & Labor Relations at 415.701.5050.

Sincerely,

A handwritten signature in black ink that reads "Kimberly W. Ackerman".

Kimberly W. Ackerman,
Director, Human Resources

Enclosures: Separation Report, Notice of Separation from Employment, Notice of Future Employment Restrictions & Step 2 Decision

cc: Julie Kirschbaum/ Leda Rozier/Michael Johnson, Transit Operations
Operations Unit
Julie Zeigler, Employee & Labor Relations Unit
Rie Butler, DHR
Payroll MTAEB
Grievance File/Chron File





INSTRUCTIONS: Please complete the Separation Report to:

- 1. Document internal departmental processes. Please do not send to DHR.
- 2. Document that the employee separation is not a complete separation from City service, Separation Report must be completed by the sending department and submitted to the receiving department to be attached to the AP ESR.
- 3. To process a layoff. Please send to the DHR layoff coordinator.
- 4. To administer a settlement agreement involving the separation of the employee-submit documentation to your Client Services Representative. (Reference TER_RZA)*

Date of Request: June 18, 2021

Department Contact: Employee & Labor Relations Email: Yashika.Holmes@sfmta.com Phone: (415) 646-4276

SECTION I: PERSONAL AND JOB INFORMATION

Name (Last, First, M.I.): Hui, Danny Employee I.D.: [REDACTED]

Job Code: 9139 Job Title: Transit Supervisor

Position Number: [REDACTED] Hourly Rate: [REDACTED] Step: 5 Effective Date: 6/19/21

Empl. Class: PCS Work Schedule: Full-Time

Is the employee serving a probationary period at the time of the separation? Yes No

Is this a complete separation from City and County Service? Yes No

If no, continuing in:
Department Code: (Select One) Status: _____ Job Code: _____ Effective Date: _____

Is employee granted leave pursuant to Civil Service Rule 120.31? Yes No

If no, is employee a transfer? No Yes, type of Transfer: (Select One)

SECTION II: SEPARATION INFORMATION

Resignation

Satisfactory Services (TER_RSS)

Unsatisfactory Services (TER_RUS)
(Form DHR 1-13 must be on file)

By the appointee: I hereby freely and voluntarily resign from the above position. I request approval of this resignation as of the effective date with the full understanding that once approved, I may acquire another position in this class only as provided in the rules of the Civil Service Commission (see employee copy and CSC Rules 114&119).

Employee Signature _____ Date _____

Lay-off

Involuntary Leave (PCS_LIL) Elective Involuntary Leave (PCS_EIL)

Involuntary Lay-off (PCS_LIO) Voluntary Lay-off (PCS_LVO)

(PV & EX Only): (Select One)

Reason for lay-off: (Select One)

Employee acknowledges receipt of the DHR information leaflet.

Employee Signature _____ Date _____

DEPARTMENT USE ONLY

Termination

Settlement Agreement (TER RZA)
*(Separation Report and Settlement Agreement must be forwarded to Client Services Rep.)

Release from appointment:

Release from probation:

Dismissal:

Terminated for cause (TFC) (TPV,NCS, & Exempts only)

Automatic Resignation (ARS)

Never Reported to Work (DSH)

Death of an employee (DEA)

Other (Specify): _____

Retirement:

DEPARTMENT CERTIFICATION

The Appointing Officer/Authorized Designee named below hereby certifies that the information provided on this Separation Report is accurate, complete, and in compliance with applicable CCSF rules and policies.

Kimberly W. Ackerman
Appointing Officer/Authorized Designee Signature Telephone

Name/Title: Kimberly Ackerman, Director of Human Resources

Department Number: 68 Department Name: SFMTA

Personnel File Forwarded? Yes No

Forwarded to:
Department: _____ Contact: _____

DHR USE ONLY

Action Pending? Yes No

Analyst Name Telephone

SR Ref Number: _____ Holdover Canvass: _____

Reference Number used for layoff actions: _____

**CITY AND COUNTY OF SAN FRANCISCO
NOTICE OF SEPARATION FROM EMPLOYMENT**

Via Certified Mail

Hui, Danny
NAME OF EMPLOYEE

June 18, 2021
MAILING DATE

[REDACTED]
ADDRESS

SFMTA
DEPARTMENT/DIVISION

[REDACTED]
CITY STATE ZIP CODE

PCS
TYPE OF APPOINTMENT

Dismissal
TYPE OF SEPARATION
(Do not use for release from probation.)

This notice is to inform you that you are separated from your employment in Class: 9139, Title: Transit Supervisor, effective 6/19/2021. For the reasons outlined in the attached document(s).

You may request a hearing before the Civil Service Commission on your future employability with the civil service system of the City and County of San Francisco. The Civil Service Commission has the authority to remove restrictions or impose additional restrictions on your future employability. However, the Commission CANNOT reverse the department's decision to terminate your employment.

You may request a hearing for review of any restrictions on your future employability with the Civil Service Commission within 20 calendar days of the mailing date of this notice or from the date of separation, whichever is later. The request must be submitted in writing to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102 by 7/9/2021. Requests received after this date will not be considered and your right to a hearing will be forfeited. If you do not request a hearing or file an appeal, the Human Resources Director will take final administrative action and the restriction(s) recommended, if any, will be in effect.

The items checked below are the recommendations made by the department on your future employability for positions covered by the San Francisco civil service system:

<input type="checkbox"/>	No restrictions on future employability.	<input checked="" type="checkbox"/>	Cancel any current examination and eligibility status.
<input type="checkbox"/>	Accept the resignation as certified.	<input type="checkbox"/>	No future employment with this Department.
<input type="checkbox"/>	Dismiss from City and County service.	<input type="checkbox"/>	Return name to the eligible list from which appointed to this position.
<input type="checkbox"/>	Approve the separation.	<input checked="" type="checkbox"/>	No future employment with the City and County of San Francisco.
<input type="checkbox"/>	Other (specify):		

If this matter is subject to the Code of Civil Procedures (CCP) Section 1094.5, the time by which judicial review must be sought is set forth in CCP Section 1094.6.

SEE REVERSE SIDE

MUST BE COMPLETED BY DEPARTMENT:

Rank: [REDACTED] List # [REDACTED]
SSN: N/A

Employee Organization TWU, Local 200

METHOD OF SERVICE:
Certified Mail X Hand Delivered _____
Certified Mail # 7020 1810 0001 9128 9849

Attachment(s) Notice of Dismissal, Separation Report

Kimberly W. Ackerman
SIGNATURE OF APPOINTING OFFICER

NAME Kimberly W. Ackerman

TITLE Director, Human Resources

INFORMATION FOR FORMER EMPLOYEE FOLLOWING SEPARATION

1. This document serves as official notice of the separation to the former employee, the Civil Service Commission, and the Department of Human Resources.
2. A separated employee may request a hearing before the Civil Service Commission only for review of any recommended restrictions on their future employability with the City and County of San Francisco.
3. Such appeals or requests for hearing must be in writing and received from the employee or the employee's representative within twenty (20) calendar days from the mailing date of this notice, or the effective date of the separation, whichever is later. The request must be submitted to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.
4. An employee who requests a hearing within the time limits is entitled to:
 - a. Representation by an attorney or authorized representative of her/his own choice.
 - b. Notification of date, time, and place of hearing at a reasonable time in advance.
 - c. Inspection by the employee's attorney or authorized representative of those records and materials on file with the Civil Service Commission which relate to the separation.
5. Any interested party may request that the hearing be continued (postponed).
6. The decision of the Civil Service Commission is final and not subject to reconsideration.
7. In the absence of a timely request for a hearing as provided above, no later request for a hearing will be considered.



NOTICE OF FUTURE EMPLOYMENT RESTRICTIONS

Danny Hui
 Employee Name

 Street Address

 City State Zip

June 18, 2021
 Mailing Date
 SFMTA
 Department/Division
 PCS
 Type of Appointment

This notice is to inform you that a future employment restriction is being imposed along with your separation action, or with the action of automatic resignation, reported to the Department of Human Resources separating you from your position in Class 9139 Title Transit Supervisor, effective 6/19/21, for the reasons outlined in the attached document(s).

The items checked below are the restrictions made by the department on your future employability for positions covered by the San Francisco civil service system:

<input type="checkbox"/> No Restrictions on Employment <input checked="" type="checkbox"/> Permanent Restriction <input type="checkbox"/> Conditional Restriction	<input checked="" type="checkbox"/> Citywide <input type="checkbox"/> Department(s): _____ <input type="checkbox"/> DOT/SAPP <input type="checkbox"/> Job Code(s): _____ <input checked="" type="checkbox"/> Cancel Current Examination & Eligibility Status
---	--

Conditional restrictions may be lifted by proving you have satisfactorily met the following requirements:

Requirement Type	Description:	Level of Measurement:	Measurement Value:
CER: Certification			
EXP: Work Experience			
LIC: Licensure			
SAP: Substance Abuse Program			
Other:			

In addition to the noted conditional restrictions, you are also restricted from specific attributes of a job class and/or department until you satisfactorily prove you meet the requirements to lift the restriction(s) as noted below:

Future Employment Restrictions	Description:	Level of Measurement:	Measurement Value:
001: Vehicle/Heavy Machinery			
002: Vulnerable Populations			
003: Face to Face Contact w/Public			
004: Contact w/Animals			
005: Signing/Approving City Docs			
006: Financial Instruments			
007: Confidential/Privileged Information			
008: IT Infrastructure			
009: Means of Entry to Living Spaces			
010: Pharmaceutical/Drug Inventory			
011: CDC Defined Toxins			
012: Weapons/Explosives			
013: City Property Valued > \$100			

You may request a hearing before the Civil Service Commission on your future employability with the City and County of San Francisco. The Civil Service Commission has the authority to remove restrictions or impose additional restrictions on your future employability. You may request a hearing for review of any restrictions on your future employability with the Civil Service Commission within 7/9/21 calendar days of the mailing date of this notice or from the date of separation, whichever is later. The request must be submitted in writing to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102 by 7/9/21. Requests received after this date will not be considered and your right to a hearing will be forfeited. If you do not request a hearing or file an appeal, the Human Resources Director will take final administrative action to confirm the restriction(s) in effect on the date of separation (Note: Future Employment Restriction(s) effective immediately).

If this matter is subject to the Code of Civil Procedures (CCP) Section 1094.5, the time by which judicial review must be sought is set forth in CCP Section 1094.6. (SEE BELOW)

List #: <u> </u>	Rank #: <u> </u>	<input checked="" type="checkbox"/> Pending	<input type="checkbox"/> Final	Status of Action
DSW: <u> </u>				
Emp Organization: <u> </u>	<u> </u>	<u> </u>		
METHOD OF SERVICE:		<u> </u>		
<input type="checkbox"/> Hand Delivered		<u> </u>		
<input checked="" type="checkbox"/> Certified Mail	<u> </u>	<u> </u>		
		<u> </u>		

INFORMATION FOR FORMER EMPLOYEE FOLLOWING SEPARATION

1. This document serves as an official notice of future employment restrictions imposed with the Notice of Automatic Resignation from Employment to the former employee or with a Separation Action that is subject to the provisions of a collective bargaining agreement, to the Civil Service Commission, and the Department of Human Resources.
2. A separated employee may request a hearing before the Civil Service Commission only for review of any restrictions on their future employability with the City and County of San Francisco.
3. Such appeals or requests for hearing must be in writing and received from the employee or the employee’s representative by the date specified on this notice, or within twenty (20) calendar days from the mailing date of this notice, or the effective date of the separation, whichever is later. The request must be submitted to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.
4. An employee who requests a hearing within the time limits is entitled to:
 - a. Representation by an attorney or authorized representative of the employee's own choice.
 - b. Notification of date, time, and place of hearing at a reasonable time in advance.
 - c. Inspection by the employee’s attorney or authorized representative of those records and materials on file with the Civil Service Commission which relate to the restrictions on future employability.
5. Any interested party may request that the hearing be continued or postponed.
6. The decision of the Civil Service Commission is final and not subject to reconsideration.
7. In the absence of a timely request for a hearing as provided above, no later request for a hearing will be considered.

DEPARTMENT INSTRUCTIONS FOR COMPLETING FORM DHR 1-13E

- Refer to related provisions of appropriate collective bargaining agreements
- Refer to CSC Rule 122, Article VI: Absence From Duty Without Leave (Misc)
- Refer to CSC Rule 222, Article IV: Absence From Duty Without Leave (UPPD)
- Refer to CSC Rule 322, Article VI: Absence From Duty Without Leave (UPFD)

Use this form when:

The appointing officer or Human Resources Director has taken action of automatic resignation on an employee on the basis of abandonment of position, regardless of employment status; and/or the separation action is subject to the provisions of the collective bargaining agreement.

Complete the information on the top section of the form: Name, Address, City, State, Zip, Mailing Date, Department/Division, Type of Appointment, Type of Separation.

In the first paragraph of the notice, enter the Class Number, Title and effective date of the separation.

If there are no restrictions imposed with the separation, the box “*no restrictions on future employability*,” must be checked to indicate this action, and attach applicable documents, e.g., a settlement agreement.

Indicate the restrictions on future employability by checking the appropriate boxes. If the restrictions are conditional, you must complete the section on the requirements needed to lift the restrictions, including the level of measurement (entry, journey, etc.) and values (length of time in months, years, etc.) of the requirements.

If Future Employment Restrictions are included, complete that section including details on the requirements needed to lift the restrictions. Attach a copy of all separation-related letters and supporting documentation. Documentation must provide justification and the rationale for the imposed restrictions.

The separated employee may request a hearing for review of any restrictions on future employability. Indicate the date by which the appeal must be filed in the space provided. Consistent with the separation action, count twenty (20), or thirty (30), calendar days from the mailing date of the notice or the effective date of release, whichever is applicable. When counting the days, count the day after the mailing date as the first day.

Complete the information on the bottom section of the form: Rank, List#, DSW#, and Employee Organization. Check the method of service used and tracking # if applicable.

Indicate status of action:

- Select “Pending” if Notice of Future Employment Restrictions is subject to the provisions of a collective bargaining agreement
- Select “Final” if the status is not subject to the provisions of a collective bargaining agreement, or to update a previously reported “Pending” action.

Type in the name and title of the appointing officer. The appointing officer must sign the form.

Send the *original* Notice of Future Employment Restrictions along with the *original* Notice of Automatic Resignation from Employment (DHR 1-48a) to the employee. Make two sets of copies of the notices; send one set of *copy* to DHR - Client Services along with the *original* Separation Report (DHR Form 1-67); and retain the other set of *copy* in the Official Employee Personnel Folder.

Reminder: Imposed restrictions on future employability are effective immediately, and must be reported to DHR – Client Services concurrent with the departmental notice to separate the employee. This will enable timely and appropriate updates to DHR systems and other dependent programs, such as exams, adoptions of eligible lists, citywide recruitments, and certifications/referrals.

EXHIBIT M



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF RECEIPT OF APPEAL

DATE: June 25, 2021

REGISTER NO.: 0100-21-7

APPELLANT: DANNY HUI

Jeffrey Tumlin
Director of Transportation
Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Dear Mr. Tumlin:

The Civil Service Commission has received the attached letter from Danny Hui, requesting a hearing on his future employability with the City and County of San Francisco. 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 at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. CSC Form 13 is available on the Civil Service Commission's website at www.sfgov.org/CivilService under "Forms."

In the event that Danny Hui'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 9, 2021** so that it may be heard by the Civil Service Commission at its meeting on September 20, 2021. If you will be unable to transmit the staff report by the September 9th deadline, or if required departmental representatives will not be available to attend the September 20th 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: Danny Hui
June 25, 2021
Page 2 of 2

You may contact me at 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.

Sincerely,

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG
Executive Officer

Attachment

Cc: Kimberly Ackerman, Municipal Transportation Agency
Romika Williams, Municipal Transportation Agency
Julie "JP" Zeigler, Municipal Transportation Agency



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

Sent via Email

June 25, 2021

Danny Hui



Subject: Register No. 0100-21-7: Request for Hearing on Future Employment Restrictions with the City and County of San Francisco.

Dear Danny Hui:

This is in response to your appeal submitted to the Civil Service Commission on June 24, 2021, requesting a hearing on your future employment restrictions with the City and County of San Francisco. Your appeal has been forwarded to the Municipal Transportation Agency 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. 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 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.

Sincerely,

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG
Executive Officer

Appeal for Future Employment Restrictions - Danny Hui

Danny Hui [REDACTED]

Thu 6/24/2021 1:23 PM

To: Eng, Sandra (CSC) <sandra.eng@sfgov.org>; CivilService, Civil (CSC) <civilservice@sfgov.org>

Cc: TWULocal200 <local200twu@sbcglobal.net>

 2 attachments (7 MB)

Danny Hui_CSC Appeal Form.pdf; Danny Hui_Notice of Future Employment Restrictions.pdf;

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

Hi Sandra,

Please see the attached:

CSC appeal form
Notice of Future Employment Restrictions

Best Regards,

Danny Hui



CIVIL SERVICE COMMISSION
City and County of San Francisco
 25 Van Ness Avenue, Suite 720
 San Francisco, California 94102-6033
 Executive Officer
 (628) 652-1100

CSC Register No.

 To: _____

 CC: _____

APPEAL TO THE CIVIL SERVICE COMMISSION

<p>INSTRUCTIONS: Submit an original copy of this form to the Executive Officer of the Civil Service Commission at the address above within the designated number of days following the postmarked mailing date or email date (whichever is applicable) of the Department of Human Resources' or Municipal Transportation Agency's notification to the appellant. The appellant's/authorized representative's original signature is required. (E-mail is not accepted.) It is recommended that you include all relevant information and documentation in support of your appeal.</p>	<p>TYPE OF APPEAL: (Check One)</p> <p><input type="checkbox"/> Examination Matters (by close of business on 5th working day)</p> <p><input type="checkbox"/> Employee Compensation Matters (by close of business on 7th working day) - Limited application</p> <p><input type="checkbox"/> Personal Service Contracts (Posting Period)</p> <p><input type="checkbox"/> Other Matters (i.e., Human Resources Director/Executive Officer Action) (30 Calendar days)</p> <p><input checked="" type="checkbox"/> Future Employability Recommendations (See Notice to Employee)</p>
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"During the Shelter Order dated March 17, 2020, we are accepting appeals by email at civilservice@sfgov.org"

Danny Chi Hong Hui
 Full Name of Appellant

9139 Transit Supervisor SFMTA
 Job Code Title Department

Residence Address: _____ City: _____ State: _____ Zip: _____ Home Telephone: _____

TWU Local 700 415-922-9428
 Full Name of Authorized Representative (if any) Telephone Number of Representative (including Area Code)

NOTE: If this is deemed to be a timely and appealable matter, the department will submit a staff report to the Civil Service Commission to request that it be scheduled for hearing. You will be notified approximately one week in advance of the hearing date, at which time you will be able to pick up a copy of the department's staff report at the Commission's offices. If you would instead prefer Commission staff to email you a copy of the meeting notice and staff report, please provide your email address below.

Email: _____

COMPLETE THE BASIS OF THIS APPEAL ON THE REVERSE SIDE. (Use additional page(s) if necessary)

<p>Does the basis of this appeal include new information not previously presented in the appeal to the Human Resources Director? If so, please specify.</p>	<p>Check One: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
--	---

Original Signature of Appellant or Authorized Representative: _____ Date: 6-24-2021

CSC-12 (5/2021) Date Received by Civil Service Commission: _____

State the basis of this appeal in detail. For more information about appeal rights and deadlines, please review the Civil Service Rules located on the Civil Service Commission's website at www.sfgov.org/CivilService.

I am appealing my future employment restrictions recommended by SFMTA. (Pending Arbitration).

City and County of San Francisco
 Carol Isen
 Human Resources Director



Department of Human Resources
 Connecting People with Purpose
 www.sfdhr.org

NOTICE OF FUTURE EMPLOYMENT RESTRICTIONS

Danny Hui
 Employee Name

June 18, 2021
 Mailing Date

[Redacted]
 Street Address

SFMTA
 Department/Division

[Redacted]
 City State Zip

PCS
 Type of Appointment

This notice is to inform you that a future employment restriction is being imposed along with your separation action, or with the action of automatic resignation, reported to the Department of Human Resources separating you from your position in Class 9139 Title Transit Supervisor, effective 6/19/21, for the reasons outlined in the attached document(s).

The items checked below are the restrictions made by the department on your future employability for positions covered by the San Francisco civil service system:

<input type="checkbox"/> No Restrictions on Employment	<input checked="" type="checkbox"/> Citywide	<input type="checkbox"/> Department(s): _____
<input checked="" type="checkbox"/> Permanent Restriction	<input type="checkbox"/> DOT/SAPP	<input type="checkbox"/> Job Code(s): _____
<input type="checkbox"/> Conditional Restriction	<input checked="" type="checkbox"/> Cancel Current Examination & Eligibility Status	

Conditional restrictions may be lifted by proving you have satisfactorily met the following requirements:

Requirement Type	Description:	Level of Measurement:	Measurement Value:
CER: Certification			
EXP: Work Experience			
LIC: Licensure			
SAP: Substance Abuse Program			
Other:			

In addition to the noted conditional restrictions, you are also restricted from specific attributes of a job class and/or department until you satisfactorily prove you meet the requirements to lift the restriction(s) as noted below:

Future Employment Restrictions	Description:	Level of Measurement:	Measurement Value:
001: Vehicle/Heavy Machinery			
002: Vulnerable Populations			
003: Face to Face Contact w/Public			
004: Contact w/Animals			
005: Signing/Approving City Docs			
006: Financial Instruments			
007: Confidential/Privileged Information			
008: IT Infrastructure			
009: Means of Entry to Living Spaces			
010: Pharmaceutical/Drug Inventory			
011: CDC Defined Toxins			
012: Weapons/Explosives			
013: City Property Valued > \$100			

One South Van Ness Avenue, 4th Floor • San Francisco, CA 94103-5413 • (415) 557-4800

014: Electronic Voting Systems			
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You may request a hearing before the Civil Service Commission on your future employability with the City and County of San Francisco. The Civil Service Commission has the authority to remove restrictions or impose additional restrictions on your future employability. You may request a hearing for review of any restrictions on your future employability with the Civil Service Commission within 7/9/21 calendar days of the mailing date of this notice or from the date of separation, whichever is later. The request must be submitted in writing to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102 by 7/9/21. Requests received after this date will not be considered and your right to a hearing will be forfeited. If you do not request a hearing or file an appeal, the Human Resources Director will take final administrative action to confirm the restriction(s) in effect on the date of separation (Note: Future Employment Restriction(s) effective immediately).

If this matter is subject to the Code of Civil Procedures (CCP) Section 1094.5, the time by which judicial review must be sought is set forth in CCP Section 1094.6. (SEE BELOW)

List #: <u> </u>	Rank #: <u> </u>	<input checked="" type="checkbox"/> Pending	<input type="checkbox"/> Final	Status of Action
DSW: <u> </u>				
Emp Organization: <u>TWU Local 200</u>		<u>Kimberly W. Ackerman</u>		
METHOD OF SERVICE:		SIGNATURE		
<input type="checkbox"/> Hand Delivered		<u>Kimberly W. Ackerman</u>		
<input checked="" type="checkbox"/> Certified Mail	<u>7020 1810 0001 9128 9849</u>	NAME		
		<u>SFMTA Human Resources, Director</u>		
		TITLE		

INFORMATION FOR FORMER EMPLOYEE FOLLOWING SEPARATION

1. This document serves as an official notice of future employment restrictions imposed with the Notice of Automatic Resignation from Employment to the former employee or with a Separation Action that is subject to the provisions of a collective bargaining agreement, to the Civil Service Commission, and the Department of Human Resources.
2. A separated employee may request a hearing before the Civil Service Commission only for review of any restrictions on their future employability with the City and County of San Francisco.
3. Such appeals or requests for hearing must be in writing and received from the employee or the employee's representative by the date specified on this notice, or within twenty (20) calendar days from the mailing date of this notice, or the effective date of the separation, whichever is later. The request must be submitted to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.
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 - a. Representation by an attorney or authorized representative of the employee's own choice.
 - b. Notification of date, time, and place of hearing at a reasonable time in advance.
 - c. Inspection by the employee's attorney or authorized representative of those records and materials on file with the Civil Service Commission which relate to the restrictions on future employability.
5. Any interested party may request that the hearing be continued or postponed.
6. The decision of the Civil Service Commission is final and not subject to reconsideration.
7. In the absence of a timely request for a hearing as provided above, no later request for a hearing will be considered.

EXHIBIT N

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IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT OF THE PARTIES

In the matter of a controversy between)
SAN FRANCISCO MUNICIPAL)
TRANSPORTATION AGENCY,)
Employer,)
and)
TRANSPORT WORKERS UNION,)
LOCAL 200,)
Union,)
Re: Termination of Danny Hui.

OPINION AND AWARD
MTA-654-21

This grievance came before Arbitrator Catherine Harris, Esq. who was mutually selected by the parties to render a final and binding decision pursuant to the parties' collective bargaining agreement.

Benjamin K. Lunch, Esq., Neyhart, Anderson, Flynn & Grosboll, LLP, appeared on behalf of **TRANSPORT UNION WORKERS UNION, LOCAL 200** (herein "the Union"), the collective bargaining representative of Danny Hui (herein "the Grievant"). The Grievant was in attendance throughout the hearing.¹

The **SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY** (herein "SFMTA") was represented by Deputy City Attorney Robert Rogoyski.²

A virtual hearing was conducted via ZOOM on December 5 and 6, 2022, and February 3, 2023.³ At the hearing, each party was given the opportunity to present

¹ The Union's 1st Vice-president Devon Anderson was also present on behalf of the Union.

² City Labor Relations Specialist Christine Cayabyab also attended the hearing on behalf of SFMTA.

³ The hearing was transcribed and the record was supplied to the arbitrator.

1 testimonial⁴ and documentary evidence,⁵ to cross-examine the other party's witnesses, and to
2 make argument to the arbitrator.⁶ Upon receipt of both parties' post-hearing briefs, the record
3 was closed on June 20, 2023 and the matter was taken under submission.⁷

4 RELEVANT PROVISIONS OF THE AGREEMENT

5 The parties agree that the relevant agreement for purposes of this dispute is the
6 Collective Bargaining Agreement between the Union and SFMTA for the period July 1, 2019
7 through June 30, 2022 (herein "the CBA") which contains the following provisions:

8 ARTICLE I. F.

9 GRIEVANCE PROCEDURE AND DISCIPLINE PROCESS

10 ...
11 C. **The Discipline Process**

12 54. Discipline for Just Cause. For just cause, SFMTA's Executive Director/CEO or
13 designee may discipline any non-probationary permanent employee. "Discipline" is
14 defined to include disciplinary suspension without pay, or discharge. Changes in
15 assignment and reassignments made for the purpose of improving service or
16 addressing performance problems shall not constitute discipline and shall not be
17 subject to the grievance procedure in this Article I.F. SFMTA shall initiate discipline
no later than twenty-eight (28) working days after SFMTA has knowledge of the
event, conduct, or occurrence on which the discipline is based. This timeline shall be
extended in cases involving any of the following: (1) investigations of multiple
employees; (2) law enforcement response or reports; (3) temporary unavailability of a
witness; (4) language barriers; (5) accidents subject to determination by the TSP;

18 ⁴ SFMTA presented the testimony of the following witnesses: Mustafa Mohamed, Kimberly
19 Ackerman, Denisha Haynes, Henry Lu, Michael Johnson, Tinisha Bishop, Sheila Wallace, Ravinder
20 Waraich, and Shawn Kelly. The Union presented the Grievant's testimony. SFMTA presented no
rebuttal testimony.

21 ⁵ During the course of the hearing, the arbitrator received into evidence various documents
22 marked for identification as City Exhibits "1" through "33" and Union Exhibits "A" through "I" and
23 "T" through "X."

24 ⁶ At the conclusion of the hearing, the parties agreed to file simultaneous post-hearing briefs
electronically on May 17, 2023 with hard copies to be provided to the arbitrator. The parties
25 subsequently agreed to extend the due date for submission of briefs first to June 17 and then to June
26 20. Consistent with the stipulations, both parties' briefs had been received as of June 20.

27 ⁷ At the conclusion of the hearing, the parties agreed that the arbitrator would have 45 days
from the closing of the record in which to issue her opinion and award with an additional 15 days of
28 deliberation time with *each* extension of the parties' briefing schedule. The parties subsequently
agreed to allow the arbitrator an additional 7-day extension, i.e., until September 12, 2023.

1 (6) EEO matters; (7) investigations conducted by non-SFMTA personnel; (8) any other
2 case in which SFMTA and Local 200 mutually agree. SFMTA shall initiate discipline
3 by providing written notice to the employee of the basis for discipline and proposed
4 penalty.

5 **ISSUES PRESENTED**

6 The parties are in agreement that the instant grievance is properly before the arbitrator
7 for final and binding resolution of the following issues:

8 Issue number one, whether there was just cause for the Grievant's termination; and

9 Issue number two, if so, what is the appropriate remedy?

10 The parties also jointly requested, in the event that the Union were to prevail and a remedy
11 were to be ordered, that the arbitrator retain jurisdiction over implementation of the award.

12 **STATEMENT OF THE CASE**

13 **The Grievant's Employment History**

14 The Grievant, began his employment by SFMTA in 2003 as a 9163 bus operator. In
15 approximately 2009, he began operating light rail vehicles with no change in his civil service
16 classification. During the year 2011, the Grievant served in a temporary position as an
17 instructor for one year. After returning to his position as a 9163 for approximately two years,
18 he became a permanent instructor in 2013 with the classification of 9139 Transit Supervisor.
19 The Grievant remained employed as a 9139 Transit Supervisor until his termination effective
20 June 19, 2021. There is no evidence that the Grievant had any prior disciplinary history
21 preceding the termination which is the subject of this proceeding.

22 **The City Attorney's Investigation**

23 Based on allegations made by Mustafa Mohamed,⁸ the City Attorney's Office

24 ⁸ Mohamed, an employee of SFMTA since 2009, has been a training instructor since 2014.
25 Like the Grievant, he served as a bus operator and as a light rail vehicle operator before becoming an
26 instructor. Mohamed is currently classified as a 9136 Training Specialist, i.e., a new classification
27 which allows for testing based on driving skill and experience. After obtaining a meeting with
28 Training Manager Ken Anderson in December of 2018, Mohamed was removed from his usual
duties and assigned "ride-alongs with experienced rail operators." Fearing retaliation, Mohamed then
filed a complaint with the City's EEO which was referred to the City Attorney for investigation.
During an interview by the City Attorney's office, Anderson described the December 2018 meeting as
a complaint that the Grievant was pressuring Mohamed to pass trainees who were not qualified.

1 conducted an investigation into the Grievant's conduct which led to the Grievant's
2 termination. On December 17, 2018, Senior Investigator Shawn Kelly was assigned to
3 investigate allegations being made by Mohamed who was working as a night-shift
4 instructor, i.e., training experienced bus operators seeking to become certified as Light Rail
5 Vehicle (LRV) operators. After interviewing 14 individuals,⁹ including Mohamed,
6 Investigator Kelly concluded that in 2017 the Grievant pressured instructors to pass student
7 Thanh Pham; that in July of 2017, the Grievant gave selected students answers to tests and
8 directed instructors to cover up student mistakes and accidents; that the Grievant went out for
9 meals at restaurants with students during class breaks and *may* not have paid for all of his own
10 meals; that the Grievant asked student Paul Wong to perform unpaid construction work at his
11 house while Wong was in the LRV Training Program; and that the Grievant made false and
12 misleading statements during his interview. Mohamed's allegations pertain to events on the
13 night shift (5:00 p.m. to 1:30 a.m.) of the training division during the period 2017-2019 when
14 the Grievant was the lead instructor.

15 **The LRV Training Program**

16 During times material, the Chief Instructor for all LRV training was Barry Chown who
17 worked the day shift. Since the LRV Training Program included both day and evening
18 training, the Grievant, in his capacity as the lead instructor, was in charge during the night
19 shift. As the lead instructor, the Grievant performed administrative tasks, including assigning
20 students to other instructors, and was rarely in the field with students.¹⁰ Despite his status as
21 the lead instructor, the Grievant held a position at the same level as the civil service
22 classifications of the other instructors in the LRV Training Program. The weight of the
23 evidence establishes that employees, including Mohamed, reasonably believed that Chown
24

25 ⁹ Kelly also reviewed the e-mail accounts of Mohamed, the Grievant and the Grievant's
26 supervisor; text messages provided by Mohamed; and various training and accident records.

27 ¹⁰ There is no evidence that the Grievant was assigned individual students for on-road
28 instruction although the Grievant did participate in teaching classes. This is consistent with what the
Grievant told Kelly, i.e., that he would do road instruction only when someone was absent.

1 and the Grievant were good friends, i.e., they were observed by employees greeting each other
2 with hugs, and that Chown delegated managerial authority to the Grievant to act on his
3 behalf when Chown was not present.

4 LRV training, which lasts approximately 60 days, consists of classroom instruction
5 (prior to the meal break), on-road training (after the meal break), line training by experienced
6 LRV operators, and certification.¹¹ All student-trainees admitted to the training program are
7 experienced bus operators (or operators from the trolley division) and, while successful
8 completion of the program provides opportunities for career advancement,¹² it is not
9 considered a promotion. In his capacity as the lead instructor, the Grievant would assign
10 instructors to teach various topics as part of the classroom training to the entire group (as
11 many as 18-20 students) whereas two to three students would be assigned to a specific
12 instructor for on-road training.

13 Beginning early on in the program, trainees are administered tests some of which
14 require a score of 85% and others which require a perfect score of 100%. While failing a test
15 during the first week or two of the training does not count against a student, any subsequent
16 failure to pass three 85% tests or to pass two 100% tests may result in disqualification. Not
17 only test results but also on-road training is documented by the students' instructors. Two or
18 three critical errors may lead to disqualification from the training program. Among the errors
19 considered critical by instructors are passing a marked XX bar without stopping,¹³ running a
20 stop sign, allowing a train to roll backwards, and any action requiring the instructor to apply
21 the emergency break. Any time that a student fails a written examination or has an on-road
22

23
24 ¹¹ Certification consists of two days of testing and includes two written tests and two road
tests.

25 ¹² Instructor witnesses in this proceeding at the level of Transit Supervisor described having
26 both bus and light rail experience. Some operators may prefer to seek light rail certification because
operating LRVs is perceived by them as less physically strenuous.

27 ¹³ If a student does not stop to confirm the switch position and proceeds through an
28 improperly set switch, this can result in a train derailment.

1 incident or critical error, the student may be given a conference with a member of
2 management which is memorialized with the completion of a “conference form”
3 documenting the incident. Student-trainees may also be given what is called a “last chance
4 conference” at which time the student is informed that another failure to meet expectations
5 will result in disqualification from the training program and a return to driving buses.

6 The record as a whole reflects that the instructor recommends disqualification to the
7 manager (in this case Barry Chown) or his designee (in this case the Grievant). While the
8 Grievant testified that each instructor has the authority to disqualify a student, the Grievant
9 also testified that the disqualification form and the conference form had to be presented to
10 Chown (the training manager) or to the Grievant (the lead instructor).¹⁴ As reflected on the
11 Conference Report Form, the conference is a form of disciplinary action which the student
12 acknowledges when he signs the form which is also signed by both the instructor and a
13 “Program Manager.”

14 Consistent with the Conference Report Form, an SFMTA form entitled
15 “Disqualification Criteria from 2019” clearly provides:

16 The occurrences listed below are the basis for disqualification from Rail Training.
17 **Determinations will be made by one of the following persons: Manager of**
18 **Training and Instruction (T1), Superintendent of TI or Assistant Superintendent**
19 **of TI/Rail Training Manager or his/her designee.”** Emphasis supplied.

20 Upon successful completion of the classroom and on-road training, students are assigned to
21 various senior LRV operators for line training. These on-duty senior operators observe the
22 students while they are in service, i.e., picking up passengers as part of the regular schedule.
23 The senior operators are *not* trainers. Upon successful completion of the line training, the
24 student is entitled to seek certification. In the interest of minimizing the risk of any bias,
25 certification tests of any given student are generally conducted by a trainer who did *not*
26 perform the student’s classroom or on-road training.

27 ¹⁴ Consistent with this interpretation, the Grievant at his interview by the City Attorney’s
28 Office described how he (the Grievant) would hold a conference with both the instructor and the
student.

1 **The Training Manual**

2 Although there is a rule book for light rail, there is no training manual that specifically
3 addresses rail operator training. As explained by Mohamed in his arbitration testimony, there
4 has never been an instructor who was initially hired by SFMTA to provide rail training as all
5 instructors begin with bus operator training.

6 Management witnesses, including LRV training instructor Ravindra Waraich,
7 consistently testified that the Bus Operator Training Instructor Manual is a general resource
8 that applies, not only to bus operator training, but also to LRV training. Section 4.2 (Training
9 Section's Policy on EEO, Discrimination and Harassment) of the Bus Operator Training
10 Manual provides in pertinent part:

11 Instructors must always remain professional and business-like at all times while at the
12 workplace.

13 Personal relationships between Instructors and new trainees are inappropriate and
14 unprofessional. Instructors must not engage in personal relationships with new
15 operator trainees.

16 Instructors should never give gifts or gratuities of any kind to trainees.

17 Instructors should never accept gifts or gratuities of any kind from trainees.

18 Instructors must not offer rides to/from work to trainees.

19 I Instructors must not receive rides to/from work from trainees

20 Transit Supervisors should always use sound judgment when working as a
21 professional trainer so as not to create even "an appearance" of impropriety. Accepting
22 any gift or favor from a trainee can be interpreted as an attempt by the trainee to
23 improperly influence an instructor's decisions with respect to the trainee successfully
24 passing the New Operator Training Program. Giving or receiving gifts or gratuities
25 might also be perceived as an attempt by the instructor to gain favor from a trainee
26 with the condition they would pass the program. This would constitute the instructor
27 engaging in unlawful discrimination and/or harassment.

28 No one can justify an illegal or unethical act – even if one believes that doing so will
benefit the Agency. If you are unsure how to perform your duties in accordance with
these guidelines, you are expected to seek advice or clarification. When in doubt, ask
for help from a Training Manager. Your compliance with these guidelines is expected
and required.

29 In his testimony at arbitration, the Grievant insisted that he applied all of the above-stated
30 principles to new hire bus driver trainees but that the above-quoted language of the manual
31 was *not* applicable to the training of LRV operators. There is no evidence that the Grievant

1 ever sought the assistance of his superiors as to whether the above-referenced guidelines apply
2 to the training of bus operators to serve as light rail operators.

3 Since neither Barry Chown nor Chown's manager Ken Anderson were called as a
4 witness by either party, there is no direct evidence as to whether Chown or Anderson expected
5 the Grievant to apply the above-listed principles from the Bus Operator Manual to students in
6 the LRV Training Program. On the other hand, the Employee Handbook, applicable to all
7 City employees as acknowledged by the Grievant, explicitly provides that "[S]upervisors
8 and managers should avoid any appearance of favoritism or nepotism in the workplace."

9 **The Grievant's Dinner Group**

10 It is undisputed that during times material to this case, the Grievant, an Asian male,
11 routinely went to dinner in the same vehicle with a small group of trainees, i.e., two to three
12 trainees all or most of whom were also Asian males assigned to either Mohamed or another
13 instructor Andy Rodney.¹⁵ According to the Grievant, these dinner companions were friends
14 he had made over the course of his SFMTA employment predating their entry into the LRV
15 Training Program. As previously noted, Mohamed observed that the Grievant typically took a
16 rolled-up page to dinner with him which Mohamed believed to have been a test key that the
17 Grievant had recently taken from the printer prior to leaving for dinner.¹⁶

18 By all accounts, the dinner tab was picked up by members of the group on a rotating
19 basis; however, Henry Lu, who was part of the dinner group and who trained under Andy
20 Rodney, recalled that the Grievant did not always pay when it was his turn. Mohamed further
21 testified that on 7 or 8 occasions, he observed the Grievant accepting unidentified packages in
22

23
24 ¹⁵ Mohamed testified that Chown told him that sharing rides with students was inappropriate.
25 Similarly, the record as a whole reflects that Mohamed was not the only instructor to express an
26 opinion that by taking meal breaks with selected students, the Grievant was giving the appearance of
27 favoritism to other students. This perception was also shared by students such as Tinisha Bishop.

28 ¹⁶ The Grievant denied that he took copies of tests to dinner, i.e., explaining that he routinely
carried a rolled-up schedule or training order with him when leaving the building. There is no reliable
evidence that paperwork carried by the Grievant on his way out to dinner was a test key, an
examination, or answers to examination questions.

1 the parking lot from members of the dinner group which he (Mohamed) assumed to be
2 bottles of wine.¹⁷

3 As reflected in his testimony, the Grievant recognizes that socializing with trainees is
4 *not* permissible when the trainees are newly hired bus operators; however, he draws a sharp
5 distinction between the training of new employees and the training of experienced bus drivers
6 in the LRV training program.¹⁸ In his arbitration testimony, the Grievant continued to express
7 his strongly held opinion that there is nothing inappropriate about having dinner with his
8 friends during a meal break even if these friends are enrolled in a training program under his
9 supervision, i.e., a training program in which he exercises authority to evaluate performance
10 and to administer discipline.

11 **The Test Keys and the Alleged Special Assistance with Tests**

12 At arbitration the Union produced a memorandum, dated on or about May 1, 2016,
13 from the Grievant's manager Barry Chown in which Chown confirms that instructors should
14 "go over the test just before it's administered" (reviewing every question but not in the same
15 order as the questions are numbered on the test). According to Mohamed, the instructors, at
16 some unidentified point in time, received multiple instructions from Chown *not* to review
17 tests with students prior to administering them.¹⁹ Yet, complaints continued from instructors
18 and students that tests were being passed around to selected students, i.e., giving certain
19 students an advantage over other students. In his arbitration testimony, Mohamed highlighted

21 ¹⁷ According to Mohamed, the Grievant had remarked to him that his students were giving
22 him bottles of wine; however, the Grievant testified that he only received wine from students or ex-
23 students while away from work, e.g., when students came to his home for a barbecue. There is no
reliable evidence as to the content of the packages received by the Grievant in the parking lot.

24 ¹⁸ This same distinction was drawn by Training Manager Ken Anderson in his interview with
Investigator Kelly when he stated that when the dinner group was brought to his attention, he decided
25 that he could not tell a guy (referring to the Grievant) that he could or could not go to lunch with his
friends.

26 ¹⁹ The record reflects that there was a time when all of the instructors were reviewing tests
27 prior to administering them, with some instructors paraphrasing and others following the wording of
the questions more closely. According to Lu, this practice eventually stopped after he complained to
28 Chown about both Rodney and the Grievant.

1 one situation in which he was asked by a student how many questions would be on the test
2 and one of the students replied that there were 12 questions.²⁰ At the time of the student's
3 question, Mohamed did not know how many questions would be on the test but, as it turned
4 out, the student, a member of the Grievant's dinner group, had the correct information.
5 Mohamed further testified that selected students were given an opportunity to retest by the
6 Grievant in his office and that the Grievant would then direct Mohamed to shred the failed
7 tests. Mohamed went so far as to state that some students who failed tests were given "fake
8 conferences" at the direction of the Grievant in an effort to provide a pretense of fairness to
9 students who were questioning what they regarded as favoritism.

10 The Union presented evidence that a copy of an LRV final exam was found laying out
11 in the open in the Muni Metro East (MME) gilley room and that it was left out by a manager
12 in rail operations. This required that the exam be rewritten at the direction of Barry Chown.
13 The Grievant additionally testified that when Ravinder Waraich printed an incorrect version of
14 the test, the test was deemed invalid and students were required to retest with the correct
15 version of the test.²¹

16 **The Incidents Involving Thanh Pham**

17 Mohamed testified that he was directed by the Grievant to make sure that a student
18 named Thanh Pham successfully completed the training program. The Grievant has
19 categorically denied (at his interview and in his testimony at arbitration) that he ever asked
20 Mohamed or any other instructor to provide special assistance or any form of protection to
21 students who were his friends. As further explained herein, this denial was discredited by
22 Investigator Kelly based on contemporaneous documentation and the Grievant's own
23

24 ²⁰ Andy Rodney told Investigator Kelly that some people would pass a test one day and the
25 next day you ask them a question and it takes them a few minutes to figure out what you are talking
26 about, i.e., a situation that he described as "suspicious." Instructor Sheila Wallace also provided
27 similar testimony at arbitration, i.e., that even though students were successfully passing tests, they
28 were unable to show their understanding of the material in subsequent verbal discussions with her.

²¹ The Union presented contemporaneous documentation of this event which occurred in
April of 2018.

1 admissions.

2 *Evidence Relating to Pham's Classroom Instruction*

3 During a time when the Grievant was on vacation in China in the summer of 2017, a
4 large number of students, including Thanh Pham, failed a test related to a topic of instruction
5 presented by Instructor Ravinder Waraich. As a result of this event, the Grievant determined
6 that the class and the test would be re-administered.²² As explained by Mohamed during his
7 second interview by Sr. Investigator Kelly and reaffirmed in his testimony at arbitration,
8 Pham had already failed a 100% test such that another failure would expose him to
9 disqualification. Mohamed also reported to Kelly during his second interview that the
10 Grievant instructed Andy Rodney from China that the retest would not be counted and that he
11 (the Grievant) would reinstruct and retest Pham upon his return.

12 *Evidence Related to Pham's On-Road Instruction*

13 In an evaluation dated June 13, 2017, Mohamed rated Pham as poor with respect to
14 defensive driving, mandatory stops/XX bars, and attention to passenger and pedestrian safety.
15 The evaluation specifically notes that:

16 **OPERATOR IS UNSAFE AND WAS NOT ALLOWED TO OPERATE.**

17 Operator took the seat and the first thing that he does is run through the stop sign at
18 Church/Duboce IB. After the operator was told that he ran the stop sign he continued
19 moving and ran through the XX-BAR at the Mint yard IB. Operator was cautioned
20 and reinstructed. Emphasis supplied.

21 The evaluation unequivocally reflects that the observations amounted to two events of such a
22 critical nature that the instructor (Mohamed) removed Pham from driving for safety reasons.

23 At the recommendation of Barry Chown, a last chance agreement was administered to
24 Pham on June 14, 2017 while the Grievant was still on vacation in China. The Last Chance

25 ²² A July 3, 2017 e-mail from the Grievant to Andy Rodney and Barry Chown reflects that
26 half the class failed the 4st/King interlocking test and two students still failed on the retest. The
27 e-mail also notes that what should have been a five-day course was taught by Waraich in 1.5 hours
28 due to an unexpected modification in the training calendar. In the same e-mail, the Grievant
acknowledges that he told Rodney to hold off on the conferences and disqualification. The same
e-mail chain shows that Chown agreed with the Grievant's suggestion to repeat the instruction and the
testing.

1 Conference prompted a text from the Grievant, sent from China to Instructor Rodney, while
2 the Grievant remained on vacation, which states:

3 My boy got last chance conference?

4 Damn thought u gonna take care of them.

5 At arbitration, Mohamed testified that but for the fact that the Grievant was out of the office
6 on vacation, the conference would not have happened. This is consistent with the testimony
7 of Henry Lu who recalled that other members of the dinner group (Situ and Simon) never
8 received conferences after he saw each of them cross the XX bar.²³

9 In his road evaluation dated June 22, 2017, Mohamed continued to reflect poor ratings
10 in the areas of key up/key down procedures, recognizing switch type and orientation, and track
11 iron usage/attention to switch alignment. None of Pham's deficiencies were designated as
12 critical errors even though Pham, for the second time, was setting the tracks on the inner loop
13 after crossing over to the outer loop in the yard. Mohamed's June 23, 2017 road evaluation
14 showed no improvement with a poor rating in key up/key down procedures and two
15 additional poor ratings for subway entry procedures and subway exit procedures. None of
16 Pham's mistakes were specifically designated as critical errors.

17 In an evaluation dated June 26, 2017, Mohamed noted that Pham continued through an
18 intersection without a permissive signal and he received poor ratings for signal indicators,
19 safety, and mandatory stops. At this time, Mohamed specifically noted that Pham was not
20 retaining what he was being taught and again removed him from driving. In his testimony at
21 arbitration, Mohamed was emphatic that Pham, after making the same mistakes night after
22
23
24

25 ²³ Lu also testified that the Grievant threatened him that if he talked to upper management, he
26 would be immediately disqualified. Lu talked to Chown after which the Grievant told him in Chinese
27 that he should not have made a complaint. A review of his statement to Investigator Kelly reveals that
28 Lu was probably confusing Rodney with the Grievant, i.e., a point which was also made by Union
counsel during his cross examination. In any event Lu was reassigned by Chown to a new trainer
(Ahmad Hussein).

1 night, should have been eliminated from the training program.²⁴

2 Pham's deficiencies continued as noted on an evaluation dated June 27, 2017 in which
3 he again received poor ratings in connection with key up/key down procedures, management
4 of doors, and timely raising and lowering of steps. It was noted that Pham raised the steps
5 when he was attempting to open the doors. On June 28, 2017, he received five ratings of
6 "poor" regarding speed adjustments due to conditions, compliance with rules over switches,
7 VETAG switch setting procedures, turns, and knowledge of emergency procedures. Despite
8 so many documented deficiencies, Pham was allowed to continue and eventually became
9 certified as an LRV operator.

10 Screenshots (taken by Mohamed) of text messages between the Grievant and Rodney
11 reflect that, after the last chance conference, the Grievant was concerned about "his boy;" that
12 Pham was telling the Grievant he was "doing good" while Rodney was telling him Pham was
13 "really bad;" that the Grievant stated that it was "good" that Pham had received no other
14 conferences; and that other students were aware of Pham's deficiencies and were questioning
15 his status in the program. The screenshots further reflect that as Rodney continues to catalog
16 Pham's shortcomings, the Grievant sends a text which states: "let him (Pham) deal with it in
17 line training." There is also a text thread between the Grievant and Mohamed in which
18 Mohamed seeks and obtains confirmation from the Grievant that opening doors with steps in
19 the wrong position should be omitted from the evaluations of Thanh Pham and Henry Lu.
20 There is also another text in which the Grievant explicitly tells Mohamed to omit mention of
21 Pham sitting in the VETAG even though there is a signal for him to proceed.

22 **The Incident Involving Tri Duong**

23 This was an incident that occurred during the first two weeks of training when student
24 Tri Duong, was parking the train in the yard and applied full power. Although a train
25 operated by Duong "coupled up" with another train in the yard, there was no damage to
26

27 ²⁴ To his credit, Mohamed also admitted during his testimony that it was inappropriate for him
28 to allow himself to be manipulated by the Grievant and that he should have continued to press for
Pham's disqualification.

1 either train. By the time Mohamed hit the mushroom (the emergency break), it was too late
2 to prevent contact between the two trains. On this occasion, the Grievant asked Mohamed
3 via text to write it up “to make it so that the student won’t get in trouble” and to send it to
4 Barry (Chown) and not to Charles (the superintendent) or Ken (the training manager).²⁵ The
5 text messages also reveal that the Grievant told Mohamed to “ ... tell Barry that when [your]
6 student park, he actually coupled up to the train in front. Don’t make it sound like [your]
7 student hit the train in front.” The Grievant asked Mohamed to delete the text and he agreed to
8 do so.²⁶ Tri Duong, who was also a member of the Grievant’s dinner group, did not
9 successfully complete the training.

10 **The Grievant’s Pre-termination Interview**

11 On July 23, 2019, the Grievant was interviewed by Investigator Kelly in the
12 presence of his representative Gregory Pitts. The Grievant was informed at the start of the
13 interview that failure to keep the matter confidential or to answer any questions truthfully
14 could be grounds for discipline including termination.

15 At the interview, the Grievant denied having any input into what instructors write in
16 their field evaluations except when an instructor specifically requested his input. He also
17 insisted that he did not assign students to specific instructors, i.e., insisting that they were
18 randomly assigned. The Grievant further stated that when friends of his were selected for the
19 training program, he would verbally report his relationship with the student to his manager
20 (Barry Chown),” telling him only that “I know this guy.” The Grievant reported to
21 Investigator Kelly that he was staying in the office after the meal break to prepare for the next
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25 ²⁵ In his testimony at arbitration, the Grievant recalled that he was merely asking that
26 Mohamed report the incident consistent with Mohamed’s initial verbal report to the Grievant.

27 ²⁶ It is unclear if the Grievant wanted the text deleted because of inappropriate remarks he
28 made about Ravindra Waraich, or because he wanted to conceal his suggestions about how to report
the incident involving Tri Duong in a manner that would lesson the student’s culpability.

1 day's class or to schedule line training.²⁷

2 The Grievant admitted that he was told by Chown that having lunch with trainees
3 didn't look good but added that he was never told to refrain from doing it. The Grievant also
4 admitted that students who did not know him may have felt that the Grievant's friends were
5 getting preferential treatment. The Grievant further admitted that he and his students rode
6 together in the same vehicle to and from lunch and that they took turns paying for the entire
7 group. He denied skipping his turn to pay; said he always offered to pay; and admitted that
8 there was no system for keeping track of whose turn it was to pay. The Grievant recalled that
9 Paul Wong did some construction work at his home but could not recall whether he was a
10 student in the LRV class at the time he performed the work.

11 In describing the consequences of a student's critical error during on-road training, the
12 Grievant stated:

13 When the Road Instructor observed them have a critical error, they will put it on the
14 evaluation and then the next day, 'cause I wouldn't know if I'm not on the road with
15 them, on the next day the instructor will tell me, "My student, I have a conference with
16 my student." So, you know, they would tell me what happen. And then **I will hold a
17 conference**, you know, with the instructor and the student, telling them what
18 happened. You know. For example, if they run a stop sign, "How come you didn't see
19 a stop sign?" You know the places that you been to, you need to remember it.²⁸
20 Emphasis supplied.

21 The Grievant went on to state that a subsequent critical error may or may not result in
22 disqualification depending on whether or not the student makes the same mistake twice, i.e.,
23 they do not disqualify a student the first time the student makes a mistake.²⁹ The Grievant
24 also emphasized that instructors give students more leeway during the first two weeks of the
25 training.

26 As the interview progressed, the Grievant was asked if he had ever told an instructor

27 According to the Grievant, he used to ride along on the on-road training but he stopped
28 doing it when he realized that his presence made operators nervous.

29 The Grievant denied ever telling an instructor to hold a fake conference, or that he ever
used the expression "a fake conference" and insisted that every conference is documented.

30 The Grievant also stated that instructors give students up to three chances on running stop
signs.

1 not to hold a conference for a student. The Grievant replied, "No." He also explicitly denied
2 that he ever told an instructor not to describe accurately on an evaluation form some mistake
3 the student made, or not to put a student's mistake on an evaluation form. He also denied
4 ever telling an instructor not to report an accident because it would be CPUC reportable.³⁰
5 Additionally, the Grievant denied that he ever told an instructor that a student's deficiencies
6 could be addressed in line training rather than correcting it during the LRV Training Program.
7 The Grievant insisted that the Bus Operator Training Manual does *not* apply to instructors in
8 the LRV Training Program.

9 In responding to questions about Thanh Pham, the Grievant recalled that he left Andy
10 Rodney in charge as the Lead Instructor while he was on vacation in China. The Grievant did
11 not recall telling Mohamed to look out for any of his students on the road evaluations. He did
12 recall that since Ravinder Waraich had presented a course in a day and a half that should have
13 taken five days, Barry Chown had authorized him to reinstruct and retest students upon his
14 return from vacation.

15 The Grievant specifically denied that he did anything to check Thanh Pham's progress
16 while he was on vacation but admitted that Pham contacted him by text to report that he was
17 being told that he had violated a stop sign. After being shown text messages between him
18 and Rodney, the Grievant then admitted that when his text to Rodney stated "my boy got Last
19 Chance Conference," he was referring to Pham. He stated that he did not know what he
20 meant when he put in the text the words "thought you were going to take care of them." The
21 Grievant stated that Mohamed's road evaluation of Pham dated June 13 was biased but, when
22 pressed, could not explain why he reached that conclusion, i.e., eventually stating that
23 "Mustafa has a tendency always bring student to places they have never been to and expect
24 they know the stuff."

25 Text messages between the Grievant and Rodney further illustrate the discrepancy

27 ³⁰ As explained by Chief People Officer Kimberly Ackerman, the CPUC (California Public
28 Utilities Commission) is the regulatory agency to whom SFMTA has an obligation to make a report of
accidents so that the CPUC can monitor whether accidents could have been prevented.

1 between what the Grievant was stating to Rodney and what he subsequently told the City's
2 investigator as reflected in the following exchange:

3 Sr. Inv. Kelly: So my question is, when you say-- you say, "Let him deal with it in Line
4 Training," I asked you previously whether or not you had ever told an Instructor to
5 allow a student's problems to be addressed in Line Training, and you said that you had
6 not. Isn't that what you're telling Mr. Rodney to do there?

7 Hui: Well, I didn't remember if I ever said that.

8 The Grievant was asked if he denied writing "Let him deal with it in line training" and he did
9 not deny that he wrote it. The Grievant also admitted to Kelly that per the June 26, 2017
10 evaluation, i.e., documenting continuing through an intersection without a permissive signal,
11 Pham should have been disqualified, i.e., blaming the failure to disqualify Pham on
12 Mohamed.

13 With regard to the Tri Duong incident, the Grievant told Kelly that he was okay with
14 the incident not being reported because "he told me that it was only lightly coupled up." He
15 did not deny coaching Mohamad to write up the evaluation so that it did not sound like a
16 reportable accident.

17 **The Notice of Proposed Disciplinary Action**

18 On January 11, 2021, Appellant was served with a Notice of Proposed Disciplinary
19 Action (Dismissal) based on the following charges: misuse of authority as a Transit
20 Supervisor and a Lead in the training unit; violation of the Trainer Instruction Manual;
21 compromising the safety of the public and other SFMTA drivers; and dishonesty.
22 Specifically, the Grievant was alleged to have pressured instructors to pass a student (Thanh
23 Pham), given students the answer to tests, directed instructors to cover up student mistakes
24 and accidents, accepted gifts from students (restaurant meals); engaged in personal
25 relationships with trainees and students, asked Paul Wong to perform construction work at his
26 house while Wong was a student in the LRV Training Program, and made false and
27 misleading statements during his investigatory interview. The Notice of Proposed
28 Disciplinary Action contained a Summary of Investigative Findings with Exhibits 1 through
25 attached and also informed of the Grievant of his right to respond to the proposed

1 disciplinary action.

2 **The Skelly Decision**

3 A remote hearing was held on January 27, 2021. The Grievant, as well as the Union's
4 President Jasmin Charles and 1st Vice President Gregory Pitts, attended the hearing which
5 was held before Employee and Labor Relations Analyst Yaya Holmes. The Union made the
6 following two arguments: 1) that the Bus Operator Training Manual does not govern the
7 training of LRV operators and 2) that the City relied on surreptitious recordings in violation of
8 Penal Code section 632 (c). The Union's arguments with respect to other matters was
9 reserved. In a letter dated February 3, 2021, the Skelly officer rejected both arguments, i.e.,
10 finding that Penal Code section 632 does not limit evidence in arbitration and that, in any
11 event, the actual recordings were not used by the witness or the investigator. The hearing
12 officer also found that the same manual applies to both new and veteran operators, including
13 trainees in the LRV training program (all of whom are seasoned bus operators).

14 **The Decision to Terminate**

15 Director of Human Resources Kimberly W. Ackerman, reviewed the Step 2 Hearing
16 Officer's decision, dated June 2, 2021, and made the decision to terminate the Grievant from
17 his employment as a 9139 Transmit Supervisor. Ackerman also recommended to the Civil
18 Service Commission that the Grievant be barred from any future employment with the City
19 and County of San Francisco and that any current examination or eligibility status be
20 canceled.

21 **The Filing of the Grievance**

22 On March 2, 2021, the Union filed a grievance pursuant to Article 1F, Sec. A,
23 Paragraph 42 of the CBA. The grievance claims that the charges for discipline against the
24 Grievant should be vacated in their entirety, as they are based on illegally obtained
25 information. In a Step 1 Decision dated March 31, 2021, Leda M. Rozier, Senior Operations
26 Manager, Transit Management denied the Step 1 grievance based on the following grounds:

27 The information provided indicated that while the investigator referred to the
28 transcripts as part of his final report, he also interviewed the witnesses who provided
the same testimony during their in-person interview as the transcripts previously

1 provided. Note that the Step 1 Skelly officer is [to] only rely its decision on the
2 documentation provided.

3 The denial of the grievance was based only on management's rejection of the specific
4 arguments raised by the Union.

5 **The Grievant's Testimony at the Arbitration Hearing**

6 In his testimony at the hearing, the Grievant confirmed that if there is no supervisor on
7 a shift, the lead instructor is the acting manager, i.e., if Barry Chown, who worked the day
8 shift, was not present, the Grievant, as lead instructor on the night shift, was the acting
9 manager. The Grievant also explained that during times material he worked seven days a
10 week, i.e., working extra hours outside the training department. He would work in Street
11 Operations monitoring the operations of buses or light rail as he is light rail certified. This is
12 how he met some of the trainees who entered the LRV Training Program. The Grievant
13 claims that half the class that came through light rail training were either friends of his or
14 people that he knew.

15 The Grievant did not believe at the time nor does he believe now that the Bus
16 Operator Training Manual applies to light rail training because the trainees in the LRV
17 Training Program are not new employees but rather existing operators. When he was doing
18 bus operator training, he knew that he was not supposed to share rides or eat lunch with
19 students as this would have been a conflict of interest. The Grievant thought there was no
20 conflict of interest where LRV trainees are not gaining anything but only learning a new piece
21 of equipment. While he admitted accepting some gifts from students who came to his home
22 for a barbecue, he was sure that he never accepted any gifts at work.

23 The Grievant admitted that Thanh Pham was one of the bus operators with whom he
24 became friends while he was working in Street Operations on his days off. The Grievant
25 insisted that when he referred to Pham as "my boy" in a text message, this was just the way
26 that he referred to all of the students, including students who were not part of his dinner
27 group. The Grievant specifically denied that he was asking Mohamed to treat Pham differently
28 than other students. He also admitted that, during the time he was in China, he and Pham

1 were texting and that Pham was telling him that he “was doing good.” The Grievant stated
2 that he had previously rolled with Pham and he (Pham) “ ... wasn’t that bad.” When he texted
3 “Let him deal with it in line training,” he meant that when he (Pham) was being observed by
4 an operator (and not a supervisor), he would no longer be intimidated and make mistakes.
5 Despite agreeing that he made the statements contained in the text messages supplied by
6 Mohamed to Kelly (the Grievant did not deny sending or receiving any of the texts referred to
7 herein), the Grievant insisted that he never told any instructor whether or not to disqualify a
8 student. He also insisted that he never intentionally favored any of the students.

9 With regard to the Tri Duong incident, he recalled receiving a text message from
10 Mohamed that a student had coupled up the trains. When asked when a coupling up is CPUC
11 reportable, he replied, “A coupling is not CPUC reportable, “ indicating that when he actually
12 went downstairs to the yard to view the trains, there were close but not touching. The
13 Grievant admitted that an accident is CPUC reportable but questioned whether the mistake
14 made by Duong should be considered “an accident.” The Grievant did not think that this was
15 an accident because of his belief that a CPUC reportable accident requires damages over a
16 certain number of dollars. The Grievant provided an opinion that if a reportable accident
17 occurs during on-road testing, it is the responsibility of the instructor to call the Operations
18 Center.³¹ According to the Grievant, he was just trying to get Mohamed to write what he
19 (Mohamed) had told him (the Grievant) initially, i.e., that the trainee applied a little too much
20 power and the instructor hit the mushroom but the train slipped and coupled up to the train in
21 front.

22 Regarding Paul Wong, the Grievant stated that he requested to borrow a tool; that
23 Wong brought it over; and that Wong then started helping him pour concrete. The Grievant
24 testified that in return for Wong’s work he washed and detailed Wong’s vehicle (while Wong
25 was performing construction work at his home). Wong received no monetary compensation.

26
27 ³¹ At the time of these events, the Grievant sent a text message that since neither Instructors
28 Mohamed or Waraich had reported the incident to the Operations Center, they both might get in
trouble.

1 **POSITION OF SFMTA**

2 There was just cause to terminate the Grievant. The Grievant's own admissions of
3 misconduct and his dishonesty are a sufficient basis upon which to sustain the termination.
4 The Grievant abused his authority and put public safety at risk by pressuring instructors to
5 prevent his friend Thanh Pham from failing to successfully complete the LRV Training
6 Program. The Grievant's denials are not credible and his defenses do not excuse his
7 misconduct.

8 As a lead training instructor, the Grievant knew or should have known that it was
9 incumbent upon him to take steps to prevent even the appearance of favoritism in the training
10 program. Instead, the Grievant did the opposite and brought discredit to the program in the
11 eyes of both his subordinate instructors and the student-trainees. The Grievant is not shielded
12 from termination based on the fact that his superiors, while not terminated, suffered less
13 severe disciplinary consequences.³²

14 The Grievant also abused his authority by attempting to cover up a train-on-train
15 accident involving Tri Duong. The Grievant also engaged in additional misconduct by
16 participating in dinners and showing favoritism and providing special assistance to students
17 who may have paid for his dinners and may have given him gifts. The Grievant admitted that
18 he allowed student Paul Wong to perform uncompensated construction work, thus creating
19 the appearance of impropriety. The Union's objections to the recordings made by Mohamed
20 do not affect the outcome of this proceeding.

21 **POSITION OF THE UNION**

22 The Grievant did not pressure instructors to pass Thanh Pham. Even the Training
23 Manager Ken Anderson did not believe that the Grievant had any ability to exert pressure on
24 Mohamed. A student's own instructor can disqualify a student. Moreover, any student who
25 completes rail instruction must take a certification test which is administered by another
26

27 _____
28 ³² The record discloses that Anderson and Chown were disciplined, as was Mohamed, in
connection with this controversy.

1 instructor.

2 The case against the Grievant also rests on the unfounded assumption that the Grievant
3 was accepting something of value in exchange for his efforts to pass students. Without any
4 exchange taking place, there is nothing untoward about an instructor concerned with the
5 performance of students in his department. Nor did the Grievant give students answers to
6 tests or direct anyone to cover up mistakes.

7 With regard to Tri Duong, the Grievant had no authority to direct another instructor
8 with respect to reporting incidents. The Grievant wanted Mohamed to avoid describing the
9 incident as more serious than it was. There was no direction to “cover up” anything. Even if
10 the arbitrator believes that the Grievant and Mohamed were engaged in a cover-up, it would
11 be unjust for the Grievant to face punishment for his role in assisting Mohamed’s reporting
12 when he (the Grievant) was asked to help.

13 Going out to lunch with students is not grounds for discipline where SFMTA failed to
14 identify any rule that prevented it. The Bus Operator Training Manual only applied to the
15 training of new employees to become bus operators. Engaging in a round-robin payment
16 method does not amount to a gift or any other financial benefit. Paul Wong’s work at the
17 Grievant’s home is also not grounds for discipline where two friends exchanged work, i.e.,
18 Wong pouring concrete in the Grievant’s yard and the Grievant detailing Wong’s vehicle.

19 **OPINION**

20 As the employer in a termination case, SFMTA has the burden of proving that the
21 Grievant engaged in misconduct of such an egregious nature that he has forfeited any right to
22 continued employment. Upon a thorough review of the evidence and arguments presented by
23 both parties, the arbitrator must find that SFMTA has met its burden. The record herein
24 clearly and convincingly establishes that the Grievant has not only admitted serious
25 misconduct but also that he steadfastly refuses to acknowledge any wrongdoing. The record
26 also establishes that the Grievant can no longer be trusted to treat trainees in a fair and
27 evenhanded manner, or to provide truthful information during the course of an investigation
28 into his conduct.

1 ***The Grievant provided false and misleading statements during his interview.***

2 The record amply supports the conclusion that the Grievant provided false and
3 misleading statements during his interview before being confronted with text messages by
4 Investigator Kelly. Initially, he categorically denied having any input into what instructors
5 write in their on-road evaluations,³³ ever telling an instructor not to accurately describe student
6 errors or mistakes,³⁴ ever telling an instructor *not* to hold a conference,³⁵ ever telling
7 Mohamed to look out for any of his students on road evaluations,³⁶ or doing anything to check
8 Pham's progress while he was on vacation in China.³⁷

9 Lending additional support to the arbitrator's conclusions, the Grievant also flatly
10 denied that he ever told an instructor to allow a student's problems to be addressed in line
11 training, i.e., later claiming, only after being confronted with text messages, that he had
12 forgotten that he made the statement. The Grievant's dubious claim that he was unable to
13 explain what he meant in a text stating "thought u gonna take care of them," is not credible to
14 the arbitrator. Under the circumstances presented here, it is highly improbable that the
15 Grievant would not have recalled being contacted by Pham (while on vacation and out of the
16 country) regarding Pham's concerns about criticism he was receiving from Mohamed
17 regarding his on-road driving skills.

18 _____
19 ³³ This is totally refuted by the Grievant's text message that opening doors with the steps in
20 the wrong position should be omitted from evaluations of two trainees (Pham and Lu).

21 ³⁴ As memorialized in a text message from the Grievant to Mohamed, Mohamed was directed
22 to write up a report of the train coupling "so the student won't get in trouble."

23 ³⁵ This testimony is inconsistent with text messages confirming that it was good that Pham
24 had received no other conferences and asserting that Pham's shortcomings could be addressed in line
25 training conducted by experienced LRV operators (as opposed to training instructors).

26 ³⁶ The arbitrator credits Mohamed's testimony on this point as Mohamed's testimony is
27 corroborated by the statement memorialized in a text message as follows: "My boy got a last chance
28 conference. Damn thought u gonna take care of them."

³⁷ The weight of the evidence clearly establishes that the Grievant responded to Pham's text
messages by initiating contact with his trainers during a time when he was out of the country on
vacation for the specific purpose of monitoring Pham's progress in the training program.

1 In sum, the only plausible interpretation of the record is that the Grievant, believing
2 that it was his word against the word of Mohamed and others and unaware that the
3 investigator was in possession of text messages that would contradict his version of events,
4 provided false and misleading statements during his interview. The Grievant persisted in
5 providing false testimony at the time of the arbitration hearing when he continued to deny that
6 he was asking that Pham be treated any differently than other students, or that he ever
7 intentionally favored any of the trainees. In reaching this conclusion, the arbitrator is mindful
8 of the fact that the Grievant has never explained why he thought it was appropriate to be
9 monitoring Pham's progress while on vacation out of the country, particularly where he had
10 delegated his responsibilities to Andy Rodney. Nor did the Grievant ever provide any
11 credible explanation that would justify directing an instructor to write up a report so that a
12 student does not get in trouble. In the arbitrator's view, the Grievant's lack of credibility,
13 when questioned on matters crucial to the safety and integrity of the LRV Training Program,
14 is a breach of trust that, standing alone, merits termination of his employment.

15 ***There is ample evidence that the Grievant abused his position as a Transit Supervisor by***
16 ***favoring at least two members of his dinner group.***

17 To the extent that the Grievant has attempted to deflect blame onto Mohamed, the
18 arbitrator is *not* persuaded that LRV training instructors were acting independently of any
19 oversight from the training manager or his designee (the Grievant). Based on the totality of
20 the evidence, the arbitrator is persuaded that had the Grievant not interceded on behalf of
21 Pham, he would have been disqualified in accordance with the disqualification criteria in
22 effect during times material. In reaching this conclusion, the arbitrator notes that during his
23 interview by Investigator Kelly, the Grievant admitted that, per Mohamed's June 26, 2019
24 evaluation, i.e., documenting that Pham continued through an intersection without a
25 permissive signal, Pham should have been disqualified. The Grievant's misguided efforts to
26 blame Mohamed for the failure to disqualify Pham are unconvincing where the totality of the
27 evidence, including the SFMTA disqualification criteria form, provide that the Training
28 Manager or his designee are empowered to make the determination to eliminate a trainee from

1 the program. Nor is there any satisfactory explanation as to why a lead instructor would ever
2 be justified in directing an instructor who observed an on-road training session to write a
3 report in a manner that will not get a student in trouble, or to confirm in text messaging with
4 an instructor that an error such as opening doors with steps in the wrong position, should be
5 omitted from an evaluation.

6 The incidents involving Pham and Duong, without more, amount to a serious abuse of
7 the Grievant's position as a supervisor. The Grievant's testimony reflects that he continues to
8 believe that interjecting himself into student on-road evaluations (which were not personally
9 observed by him) was justifiable. He also takes the position that if anyone is to blame, it is
10 the instructor who buckled under the pressure of his influence. Under these circumstances,
11 SFMTA can not be expected to trust the Grievant to maintain the strict standards that
12 guarantee public safety, or the integrity of the LRV Training Program.

13 ***At a minimum, the Grievant knew or should have known that his participation in the
14 dinner group gave the appearance of favoritism.***

15 Despite being told by his manager Barry Chown that having dinner with students did
16 not look good, the Grievant persisted in a routine practice, i.e., traveling to restaurants in a
17 single vehicle and taking meal breaks with selected students, that aroused the legitimate
18 concerns of both students and training instructors. Under the circumstances presented here,
19 the Grievant's purported reliance on the fact that Chown never directly ordered him to
20 refrain from the practice is not a valid defense to misconduct.

21 The principle, i.e., that supervisors and managers should avoid any appearance of
22 favoritism, is explicitly set forth in the Employee Handbook applicable to all employees.
23 This concept was understood and acknowledged by the Grievant, at least with respect to the
24 training of new employees. Assuming arguendo that the Bus Driver Training Manual applies
25 only to *new* employees of SFMTA, the Grievant knew or should have known that, as a lead
26 instructor, it was his fundamental obligation to refrain from any activities that could be
27 interpreted as favoritism or discrimination even in the absence of a manual specific to LRV
28 training. Finally, any perceived ambiguity with regard to the applicability of the Bus Driver

1 Training Manual to the training of existing bus operators seeking LRV certification should
2 have been resolved by the Grievant by asking for guidance from his superiors.

3 ***The Grievant engaged in inappropriate personal relationships with trainees.***

4 Although the Grievant gives lip service to the notion that he treated all the trainees in
5 the same manner, it is obvious that he socialized on a routine basis only with selected trainees
6 whom he considered to be his friends. His routine of typically going to dinner in the same
7 vehicle and the informal sharing of responsibility for the dinner tab was known to students
8 outside the dinner group. As would be expected, the students who were not invited to dinner
9 presumed that the dinner group conferred on its members some form of advantage. The
10 Grievant admitted in his testimony at arbitration that students who did not know him may
11 have felt that they were being treated unfairly. In the arbitrator's judgment, the Grievant knew
12 or should have known that he was engaging in appropriate relationships with trainees who
13 were members of his dinner group. The Grievant's unwillingness to take to heart his
14 manager's admonition that having dinner with students does not look good and his continued
15 insistence that he did nothing wrong, underscores why the Grievant's reinstatement as a lead
16 instructor is untenable.

17 ***There is no proof that the Grievant accepted free dinners from his students in exchange for
18 preferential treatment.***

19 Where, as here, the weight of the evidence supports the conclusion that members of
20 the dinner group took turns picking up the tab for the entire group and that no one kept
21 payment records, there is no solid basis for a finding that the Grievant obtained a financial
22 benefit as a result of the dinner group arrangement, or that members of the dinner group traded
23 free dinners for favored treatment. Nor is there any evidence that the Grievant promised that
24 students who paid for his dinner would not be eliminated from the program.

25 Similarly, there is no concrete evidence that the Grievant received free gifts in return
26 for special favors where the only evidence is that various witnesses reported observing that the
27 Grievant received an unidentified package or bag from unidentified persons on unspecified
28 dates in the parking lot at work. Although the Grievant acknowledges receiving bottles of

1 wine from students or ex-students who were invited to his home, this is insufficient to prove
2 that the Grievant was accepting payment for the granting of special favors during the course of
3 the LRV Training Program.³⁸

4 ***The record is insufficient to support allegations pertaining to testing and retesting.***

5 The record is likewise insufficient to support a finding that the Grievant gave test keys,
6 answers, or copies of tests to students in an inappropriate manner; that he retested students as
7 an alternative to failing them in accordance with disqualification criteria, or that he held
8 private testing sessions to allow students an additional chance to pass. The mere fact that the
9 Grievant printed out testing material shortly before leaving for dinner and was seen carrying a
10 rolled-up paper on the way to dinner does not, without more, establish that he provided
11 answers or special review sessions to the members of the dinner group. Based on the lack of
12 documentation as to the dates and times of the alleged incidents, as well as evidence of
13 retrainings and retests approved by Chown under special conditions, the arbitrator cannot find
14 that the Grievant committed any misconduct related to testing or retesting as it pertains to
15 classroom instruction.

16 ***Termination is the only appropriate level of discipline.***

17 While the arbitrator has found that certain allegations were not proved to her
18 satisfaction, she has also found that the Grievant acted inappropriately when he intervened to
19 protect Thanh Pham and Tri Duong, both members of his dinner group, from any increased
20 likelihood that they would be “washed out” of LRV training. This was a flagrant abuse of
21 the Grievant’s authority as a supervisor. The Grievant was acting in a manner that
22 diminished substantive deficiencies with a real potential to impact public safety. Similarly,
23 the failure of the Grievant to discontinue a practice of going to dinner with selected students,
24 i.e., turning a blind eye to perceptions of favoritism by trainees outside the Grievant’s dinner

25
26 ³⁸ In the same vein, the arbitrator concludes that there is insufficient evidence to establish that
27 the Grievant accepted free construction work from Paul Wong in exchange for preferential treatment
28 in the LRV Training Program. As a threshold matter, there is no reliable evidence as to whether or not
the construction work was performed while Wong was training to become an LRV operator nor is
there any evidence to prove that the construction work was the quid pro quo for special favors.

1 group, is serious misconduct as prohibited by the Employee Handbook, the admonition of the
2 Grievant's supervisor (that this conduct did not look good), and any commonsense
3 understanding of what it means to be a supervisor. Last but not least, providing dishonest
4 statements to the investigator amounts to an irreparable breach of the trust relationship that
5 must exist between a supervisory employee and management.

6 ***Penal Code section 632 does not preclude the termination.***

7 The Union as argued that Penal Code section 632 precludes the use of any evidence
8 obtained as a result of Mohamed's recording of confidential communications. While it is
9 true that Investigator Kelly allowed the use of transcripts of recordings made by Mohamed
10 without the knowledge of the recorded party (for Mohamed to refresh his recollection about
11 the chronology of events), the evidence relied upon by the arbitrator did *not* include the
12 recordings or the transcripts of the recordings. Nor were the recordings or the transcripts of
13 the recordings part of the Skelly package. To the contrary, the arbitrator has relied on the
14 admissions of the Grievant, the text messages alluded to herein, the testimonial and
15 documentary evidence presented at arbitration, and SFMTA business records, e.g., SFMTA
16 disqualification criteria, on-road evaluations, and conference forms, in reaching her
17 conclusion that there was just cause for termination.

18 **AWARD**

19 Based on the foregoing findings and conclusions, the following order is made:

20 The grievance is denied.

21 There was just cause for the termination.

22
23 Dated: September 11, 2023

24 
25 **CATHERINE HARRIS, Arbitrator**

EXHIBIT O

San Francisco Charter

ARTICLE VIIIA: THE MUNICIPAL TRANSPORTATION AGENCY

- Sec. 8A.100. Preamble.
- Sec. 8A.101. Municipal Transportation Agency.
- Sec. 8A.102. Governance and Duties.
- Sec. 8A.103. Service Standards and Accountability.
- Sec. 8A.104. Personnel and Merit System.
- Sec. 8A.105. Municipal Transportation Fund.
- Sec. 8A.106. Budget.
- Sec. 8A.107. Municipal Transportation Quality Review.
- Sec. 8A.108. Fare Changes and Route Abandonments.
- Sec. 8A.109. Additional Sources of Revenue.
- Sec. 8A.110. Planning and Zoning.
- Sec. 8A.111. Citizens' Advisory Council.
- Sec. 8A.112. Parking and Traffic.
- Sec. 8A.113. Parking and Traffic; Governance.
- Sec. 8A.114. Cable Cars.
- Sec. 8A.115. Transit-First Policy.

SEC. 8A.100. PREAMBLE.

(a) An effective, efficient, and safe transportation system is vital for San Francisco to achieve its goals for quality of life, environmental sustainability, public health, social justice, and economic growth. The Municipal Transportation Agency must manage San Francisco's transportation system which includes automobile, freight, transit, bicycle, and pedestrian networks to help the City meet those goals. Through this measure, the voters seek to provide the Municipal Transportation Agency with improved resources and expanded independence and authority in order to create a transportation system that is

among the best in the world.

(b) This article requires the Municipal Transportation Agency to develop clear, meaningful and quantifiable measures of its performance and goals and to regularly publicize those standards. This article also recognizes that the workers of the Municipal Transportation Agency are vital to the success of the Agency and to achieving the improvements voters seek. Therefore, it authorizes incentives for excellence and requires accountability for both managers and employees.

(c) Specifically, San Francisco residents require:

1. Reliable, safe, timely, frequent, and convenient transit service to all neighborhoods;
2. A reduction in breakdowns, delays, over-crowding, preventable accidents;
3. Clean and comfortable transit vehicles and stations, operated by competent, courteous, and well trained employees;
4. Support and accommodation of the special transportation needs of the elderly and the disabled;
5. Protection from crime and inappropriate passenger behavior on the Municipal Railway;
6. Responsive, efficient, and accountable management;
7. Roads that are not gridlocked with congestion;
8. A safe and comprehensive network of bicycle lanes;
9. A safe and inviting environment for pedestrians;
10. Efficient movement of goods and deliveries;
11. A transportation sector that promotes environmental sustainability and does not contribute to global warming; and
12. A well-managed and well-coordinated transportation system that contributes to a livable urban environment.

Through this measure, the voters seek to provide the transportation system with the resources, independence and focus necessary to achieve these goals.

(d) The voters find that one of the impediments to achieving these goals in the past has been that responsibility for transportation has been diffused throughout City government. Accordingly, this Article places within the Municipal Transportation Agency the powers and duties relating to transit now vested in other departments, boards, and commissions of the City and County. This Article further requires that, to the extent other City and County agencies provide services to the Municipal Transportation Agency, those departments must give the highest priority to the delivery of such services.

(e) At the same time, this Article is intended to ensure sufficient oversight of the Municipal Transportation Agency by, among other things, preserving the role of the City's Controller as to

financial matters, the City Attorney as to legal matters, and the Civil Service Commission, as to merit system issues. In addition, this Article requires that outside audits be performed to ensure that required service levels are obtained with a minimum of waste.

(f) Finally, this Article is intended to strengthen the Municipal Transportation Agency's authority to: 1) manage its employees; 2) establish efficient and economical work rules and work practices that maximize the Agency's responsiveness to public needs; and 3) protect the Agency's right to select, train, promote, demote, discipline, layoff and terminate employees, managers, and supervisors based upon the highest standards of customer service, efficiency and competency.

(g) The effective management of traffic flow and parking are vital to the operation of the Municipal Railway. Congestion on city streets causes delays in transit operations. Therefore, the Municipal Transportation Agency must manage parking and traffic flow to ensure that transit vehicles move through City streets safely and efficiently.

(h) In addition, the residents of San Francisco require that the Agency: 1) value and protect the safety of pedestrians and bicyclists; 2) reduce congestion and air pollution through efficient use of the streets; and 3) protect the City's economic health by giving priority to commercial deliveries and access to local businesses.

(i) The voters find that reducing the carbon emissions from San Francisco's transit sector is fundamental to the City's health and wellbeing and shall be among the Agency's policy priorities. Because the Agency has significant influence on San Francisco's transportation sector, which is responsible for fully half of the carbon emissions produced within the City, the voters direct the Agency to develop and implement strategies for substantially reducing those emissions. The voters further affirm the goals of the City's Climate Action Plan.

(j) This Article shall be interpreted and applied in conformance with the above goals.

(Added November 1999; Amended by Proposition A, Approved 11/6/2007)

SEC. 8A.101. MUNICIPAL TRANSPORTATION AGENCY.

(a) There shall be a Municipal Transportation Agency. The Agency shall include a Board of Directors and a Director of Transportation. The Agency shall include the Municipal Railway and the former Department of Parking and Traffic, as well as any other departments, bureaus or operating divisions hereafter created or placed under the Agency. There shall also be a Citizens Advisory Committee to assist the Agency.

(b) The Board of Supervisors shall have the power, by ordinance, to abolish the Taxi Commission created in Section 4.133, and to transfer the powers and duties of that commission to the Agency under the direction of the Director of Transportation or his or her designee. In order to fully integrate taxi-related functions into the Agency should such a transfer occur, the Agency shall have the same exclusive authority over taxi-related functions and taxi-related fares, fees, charges, budgets, and personnel that it has over the Municipal Railway and parking and traffic fares, fees, charges, budgets, and personnel. Once adopted, Agency regulations shall thereafter supercede all previously-adopted ordinances governing motor vehicles for hire that conflict with or duplicate such regulations.

(c) Any transfer of functions occurring as a result of the above provisions shall not adversely affect the status, position, compensation, or pension or retirement rights and privileges of any civil service

employees who engaged in the performance of a function or duty transferred to another office, agency, or department pursuant to this measure.

(d) Except as expressly provided in this Article, the Agency shall comply with all of the restrictions and requirements imposed by the ordinances of general application of the City and County, including ordinances prohibiting discrimination of any kind in employment and contracting, such as Administrative Code Chapters 12B et seq., as amended from time to time. The Agency shall be solely responsible for the administration and enforcement of such requirements.

(e) The Agency may contract with existing City and County departments to carry out any of its powers and duties. Any such contract shall establish performance standards for the department providing the services to the Agency, including measurable standards for the quality, timeliness, and cost of the services provided. All City and County departments must give the highest priority to the delivery of such services to the Agency.

(f) The Agency may not exercise any powers and duties of the Controller or the City Attorney and shall contract with the Controller and the City Attorney for the exercise of such powers and duties.

(Added November 1999; amended by Proposition A, approved 11/6/2007)

Editor's Note:

The Board of Supervisors exercised the power granted under division (b) of this section and abolished the Taxi Commission and transferred its functions, powers, and duties to the Municipal Transportation Agency. See Police Code Art. 16, Sec. 1075.1.

SEC. 8A.102. GOVERNANCE AND DUTIES.

(a) The Agency shall be governed by a board of seven directors appointed by the Mayor and conformed after public hearing by the Board of Supervisors. All initial appointments must be made by the Mayor and submitted to the Board of Supervisors for confirmation no later than February 1, 2000. The Board of Supervisors shall act on those initial appointments no later than March 1, 2000 or those appointments shall be deemed confirmed.

At least four of the directors must be regular riders of the Municipal Railway, and must continue to be regular riders during their terms. The directors must possess significant knowledge of, or professional experience in, one or more of the fields of government, finance, or labor relations. At least two of the directors must possess significant knowledge of, or professional experience in, the field of public transportation. During their terms, all directors shall be required to ride the Municipal Railway on the average once a week.

Directors shall serve four-year terms, provided, however, that two of the initial appointees shall serve for terms ending March 1, 2004, two for terms ending March 1, 2003, two for terms ending March 1, 2002, and one for a term ending March 1, 2001. Initial terms shall be designated by the Mayor. No person may serve more than three terms as a director. A director may be removed only for cause pursuant to Article XV. The directors shall annually elect a chair. The chair shall serve as chair at the pleasure of the directors. Directors shall receive reasonable compensation for attending meetings of the Agency which shall not exceed the average of the two highest compensations paid to the members of any board or commission with authority over a transit system in the nine Bay Area counties.

(b) The Agency shall:

1. Have exclusive authority over the acquisition, construction, management, supervision, maintenance, extension, operation, use, and control of all property, as well as the real, personal, and financial assets of the Agency; and have exclusive authority over contracting, leasing, and purchasing by the Agency, provided that any Agency contract for outside services shall be subject to Charter Sections 10.104(12) and 10.104(15) and that the Agency may not transfer ownership of any of the real property of the City and County without approval from the Board of Directors and the Board of Supervisors;
2. Have exclusive authority to enter into such arrangements and agreements for the joint, coordinated, or common use with any other public entity owning or having jurisdiction over rights-of-way, tracks, structures, subways, tunnels, stations, terminals, depots, maintenance facilities, and transit electrical power facilities;
3. Have exclusive authority to make such arrangements as it deems proper to provide for the exchange of transfer privileges, and through-ticketing arrangements, and such arrangements shall not constitute a fare change subject to the requirements of Sections 8A.106 and 8A.108;
4. Notwithstanding any restrictions on contracting authority set forth in the Administrative Code, have exclusive authority to enter into agreements for the distribution of transit fare media and media for the use of parking meters or other individual parking services;
5. Have exclusive authority to arrange with other transit agencies for bulk fare purchases, provided that if passenger fares increase as a result of such purchases, the increase shall be subject to review by the Board of Supervisors pursuant to Sections 8A.106 and 8A.108;
6. Notwithstanding Section 2.109, and except as provided in Sections 8A.106 and 8A.108, have exclusive authority to fix the fares charged by the Municipal Railway, rates for off-street and on-street parking, and all other, rates, fees, fines, penalties and charges for services provided or functions performed by the Agency;
7. Notwithstanding any provision of the San Francisco Municipal Code (except requirements administered by the Department of Public Works governing excavation, street design and official grade) have exclusive authority to adopt regulations that control the flow and direction of motor vehicle, bicycle and pedestrian traffic, including regulations that limit the use of certain streets or traffic lanes to categories of vehicles and that limit the speed of traffic; and to design, select, locate, install, operate, maintain and remove all official traffic control devices, signs, roadway features and pavement markings that control the flow of traffic with respect to streets and highways within City jurisdiction, provided that:
 - (i) Notwithstanding the authority established in subsection 7, the Board of Supervisors may by ordinance establish procedures by which the public may seek Board of Supervisors review of any Agency decision with regard to the installation or removal of a stop sign or the creation or elimination of a bicycle lane. In any such review, the Agency's decision shall stand unless the Board of Supervisors reverses the decision of the Agency not later than 60 days after submission of a request to the Board of Supervisors.
 - (ii) Nothing in this subsection 7 shall modify the authority of ISCOTT, or any successor body, over the temporary use or occupancy of public streets, or the authority of the Board of Supervisors to hear appeals regarding the temporary use or occupancy of public streets.
 - (iii) Nothing in subsection 7 shall modify the power of the Board of Supervisors to establish

civil offenses, infractions and misdemeanors.

(iv) Notwithstanding the authority established in subsection 7, to the extent state law contemplates that Agency action authorized by subsection 7 be effectuated by ordinance, such action shall be effectuated by resolution of the Board of Directors and shall be subject to referendum in accordance with Article 14, and, if a referendum petition contains the requisite number of signatures, the Board of Supervisors shall have the power to reconsider or repeal the action as provided in Article 14.

8. Have exclusive authority to adopt regulations limiting parking, stopping, standing or loading as provided by state law and to establish parking privileges and locations subject to such privileges for categories of people or vehicles as provided by state law; to establish parking meter zones, to set parking rates, and to select, install, locate and maintain systems and equipment for payment of parking fees, provided that:

(i) Notwithstanding the authority established in subsection 8, the Board of Supervisors may by ordinance establish procedures by which the public may seek Board of Supervisors review of any Agency decision with regard to the creation or elimination of any preferential parking zone, the creation or elimination of any parking meter zone, the adoption of any limitation on the time period for which a vehicle may be parked, or reservation of any parking space for persons with a disability that qualifies for parking privileges under state law. In any review of a decision of the Agency pursuant to this section, the Agency's decision shall stand unless the Board of Supervisors reverses the decision of the Agency not later than 60 days after submission of a request to the Board of Supervisors.

(ii) Nothing in subsection 8 shall modify the power of the Board of Supervisors to establish civil offenses, infractions and misdemeanors.

(iii) Notwithstanding the authority established in subsection 8, to the extent state law contemplates that any Agency action authorized by subsection 8 be effectuated by ordinance, such action shall be effectuated by resolution of the Board of Directors and, if a referendum petition contains the requisite number of signatures, shall be subject to referendum in accordance with Article 14, and the Board of Supervisors shall have the power to reconsider or repeal the action as provided in Article 14.

9. Have exclusive authority to establish policies regarding and procure goods and services for the enforcement of regulations limiting parking, stopping, standing or loading and the collection of parking-related revenues and, along with the Police Department, have authority to enforce parking, stopping, standing or loading regulations;

10. Be responsible for chairing the Interdepartmental Staff Committee on Traffic and Transportation (ISCOTT) or any successor body;

11. Be responsible for cooperating with and assisting the Police Department in the promotion of traffic safety; studying and responding to complaints related to street design, traffic control devices, roadway features and pavement markings; collecting compiling and analyzing traffic data and traffic accident data and planning improvements to improve the safety of the City's roadways; and conducting traffic research and planning;

12. Have exclusive authority to apply for, accept, and expend state, federal, or other public or private grant funds for Agency purposes;

13. To the maximum extent permitted by law, with the concurrence of the Board of

Supervisors, and notwithstanding the requirements and limitations of Sections 9.107, 9.108, and 9.109, have authority without further voter approval to incur debt for Agency purposes and to issue or cause to be issued bonds, notes, certificates of indebtedness, commercial paper, financing leases, certificates of participation or any other debt instruments. Upon recommendation from the Board of Directors, the Board of Supervisors may authorize the Agency to incur on behalf of the City such debt or other obligations provided: 1) the Controller first certifies that sufficient unencumbered balances are expected to be available in the proper fund to meet all payments under such obligations as they become due; and 2) any debt obligation, if secured, is secured by revenues or assets under the jurisdiction of the Agency.

14. Have the authority to conduct investigations into any matter within its jurisdiction through the power of inquiry, including the power to hold public hearings and take testimony, and to take such action as may be necessary to act upon its findings; and

15. Exercise such other powers and duties as shall be prescribed by ordinance of the Board of Supervisors.

(c) The Agency's Board of Directors shall:

1. Appoint a Director of Transportation, who shall serve at the pleasure of the Board. The Director of Transportation shall be employed pursuant to an individual contract. His or her compensation shall be comparable to the compensation of the chief executive officers of the public transportation systems in the United States which the Board of Directors, after an independent survey, determine most closely resemble the Agency in size, mission, and complexity. In addition, the Board of Directors shall provide an incentive compensation plan consistent with the requirements of Section 8A.104(k) under which a portion of the Director's compensation is based on achievement of service standards adopted by the Board of Directors.

2. Appoint an executive secretary who shall be responsible for administering the affairs of the Board of Directors and who shall serve at the pleasure of the Board.

3. In addition to any training that may be required by City, State or federal law, attend a minimum of four hours of training in each calendar year, provided by the City Attorney and the Controller regarding the legal and financial responsibilities of the Board and the Agency.

(d) The Director of Transportation shall appoint all subordinate personnel of the Agency, including deputy directors. The deputy directors shall serve at the pleasure of the Director of Transportation.

(e) Upon recommendation of the City Attorney and the approval of the Board of Directors, the City Attorney may compromise, settle, or dismiss any litigation, legal proceedings, claims, demands or grievances which may be pending for or on behalf of, or against the Agency relative to any matter or property solely under the Agency's jurisdiction. Unlitigated claims or demands against the Agency shall be handled as set forth in Charter Section 6.102. Any payment pursuant to the compromise, settlement, or dismissal of such litigation, legal proceedings, claims, demands, or grievances, unless otherwise specified by the Board of Supervisors, shall be made from the Municipal Transportation Fund.

(f) The Agency's Board of Directors, and its individual members, shall deal with administrative matters solely through the Director of Transportation or his or her designees. Any dictation, suggestion, or interference by a director in the administrative affairs of the Agency, other than through the Director of Transportation or his or her designees, shall constitute official misconduct; provided, however, that nothing herein contained shall restrict the Board of Directors' powers of hearing and inquiry as provided in this Section.

(g) Notwithstanding any provision of Chapter 6 or 21 of the Administrative Code establishing any threshold amount for exercise of executive authority to execute contracts, or any successor provision of the San Francisco Municipal Code, the Agency's Board of Directors may adopt threshold amounts under which the Director of Transportation and his or her designees may approve contracts.

(h) Except provided in this Article, the Agency shall be subject to the provisions of this Charter applicable to boards, commissions, and departments of the City and County, including Sections 2.114, 3.105, 4.101, 4.103, 4.104, 4.113, 6.102, 9.118, 16.100, and A8.346. Sections 4.102, 4.126, and 4.132 shall not be applicable to the Agency.

(Added November 1999; Amended by Proposition A, Approved 11/6/2007)

SEC. 8A.103. SERVICE STANDARDS AND ACCOUNTABILITY.

(a) The Municipal Railway shall provide a level of service measured in service hours which is not less than that provided under the schedule of service published in the April 1996 timetable, although not necessarily in that configuration.

(b) By July 1 of each year, the Agency shall adopt mile-stones toward achievement of the goals specified in subsections (c) and (d). Milestones shall be adopted for each mode of transportation of the Municipal Railway, and for the Municipal Railway as a whole, with the goal of full achievement of the standards set in subsection (c).

(c) The standards for the Agency with respect to the services provided by the Municipal Railway shall include the following minimum standards for on-time performance and service delivery:

1. On-time performance: at least 85 percent of vehicles must run on-time, where a vehicle is considered on-time if it is no more than one minute early or four minutes late as measured against a published schedule that includes time points; and

2. Service delivery: 98.5 percent of scheduled service hours must be delivered, and at least 98.5 percent of scheduled vehicles must begin service at the scheduled time.

(d) The Board of Directors shall adopt Agency rules setting additional measurable standards for system reliability, system performance, staffing performance, and customer service, including:

1. Passenger, public, and employee safety and security;
2. Coverage of neighborhoods and equitable distribution of service;
3. Level of crowding;
4. Frequency and mitigation of accidents and breakdowns;
5. Improvements in travel time, taking into account adequate recovery and lay-over times for operators;
6. Vehicle cleanliness, including absence of graffiti;

7. Quality and responsiveness of customer service;
8. Employee satisfaction;
9. Effectiveness of the preventive maintenance program; and
10. Frequency and accuracy of communications to the public.

11. The Agency's duties related to parking and traffic functions and any other functions that may be added to the Agency's responsibilities.

(e) The Board of Directors shall adopt Agency rules setting forth the methods by which performance shall be measured with respect to each standard established pursuant to subsections (c) or (d) above in accordance with industry best practices to enhance the Agency's ability to compare its performance to that of other comparable transit systems. The Agency shall regularly publish reports documenting the Agency's performance for each standard. Each performance report shall note any changes in the rules governing the methods by which performance is measured so as to inform interpretation of performance trends over time. Nothing herein shall prohibit the Agency from using additional performance measures.

(f) The Agency shall issue a Climate Action Plan to the Board of Supervisors and the Commission on the Environment by January 1, 2009, and every two years thereafter. The plan shall describe measures taken and progress made toward the goal of reducing greenhouse gas emissions from San Francisco's transportation sector to 80% of 1990 levels by 2012 and shall further address progress toward the following goals:

1. Zero greenhouse gas emissions for Municipal Railway transit vehicles;
2. Lowering energy consumption in Agency facilities and by non-transit vehicles;
3. Maximizing waste reduction in Agency operations;
4. Increasing transit trips and reducing private vehicle trips within the City;
5. Increasing the use of bicycling and walking as alternate forms of transportation; and
6. Improving regional transit connections to reduce private vehicle use by commuters.

No later than January 1, 2010, and no less than every ten years thereafter, the Board of Supervisors shall adopt legislation setting goals for reducing greenhouse gas emissions from San Francisco's transportation sector, and other climate action measures set forth above, for periods after 2012.

(Added November 1999; Amended by Proposition A, Approved 11/6/2007)

SEC. 8A.104. PERSONNEL AND MERIT SYSTEM.

(a) The Agency shall establish its own personnel/labor relations office. The Director of Transportation shall appoint a personnel/labor relations manager, who shall serve at the pleasure of the

Director of Transportation and shall establish regular meetings with labor to discuss issues within the scope of representation on terms to be determined through collective bargaining.

(b) Except as otherwise provided in this Section, the Agency shall be governed by the rules of the civil service system administered by the City and appeals provided in civil service rules shall be heard by the City's Civil Service Commission. Unless otherwise agreed by the Agency and affected employee organizations, appeals to the Civil Service Commission shall include only those matters within the jurisdiction of the Civil Service Commission which establish, implement, and regulate the civil service merit system as listed in Section A8.409-3.

(c) Effective July 1, 2000, except for the administration of health services, the Agency shall assume all powers and duties vested in the Department of Human Resources and the Director of Human Resources under Articles X and XI of this Charter in connection with job classifications within the Agency performing "service-critical" functions. Except for the matters set forth in subsection (f), the Department of Human Resources and the Director of Human Resources shall maintain all powers and duties under Articles X and XI as to all other Agency employees.

(d) On or before April 15, 2000, the Agency shall designate "service-critical" classifications and functions for all existing classifications used by the Municipal Railway; provided, however, that employees in classifications designated as "service-critical" shall continue to be covered by any Citywide collective bargaining agreement covering their classifications until the expiration of that agreement.

(e) For purposes of this Article, "service-critical" functions are:

1. Operating a transit vehicle, whether or not in revenue service;
2. Controlling dispatch of, or movement of, or access to, a transit vehicle;
3. Maintaining a transit vehicle or equipment used in transit service, including both preventive maintenance and overhaul of equipment and systems, including system-related infrastructure;
4. Regularly providing information services to the public or handling complaints; and
5. Supervising or managing employees performing functions enumerated above.

The Agency shall consult with affected employee organizations before designating particular job classifications as performing "service-critical" functions. If an employee organization disagrees with the Agency's designation of a particular job classification as "service-critical" pursuant to the above standards, the organization may, within seven days of the Agency's decision, request immediate arbitration. The arbitrator shall be chosen pursuant to the procedures for the selection of arbitrators contained in the memorandum of understanding of the affected employee organization. The arbitrator shall determine only whether the Agency's designation is reasonable based on the above standards. The arbitrator's decision shall be final and binding.

The Agency may designate functions other than those listed above, and the job classifications performing those additional functions, as "service-critical," subject to the consultation and arbitration provisions of this Section. In deciding a dispute over such a designation, the arbitrator shall decide whether the job functions of the designated classes relate directly to achievement of the goals and milestones adopted pursuant to Section 8A.103 and are comparable to the above categories in the extent

to which they are critical to service.

(f) In addition, the Agency shall, with respect to all Agency employees, succeed to the powers and duties of the Director of Human Resources under Article X to review and resolve allegations of discrimination, as defined in Article XVII, against employees or job applicants, or allegations of nepotism or other prohibited forms of favoritism. To the extent resolution of a discrimination complaint or request for accommodation involves matters or employees beyond the Agency's jurisdiction, the Agency shall coordinate with and be subject to applicable determinations of the Director of Human Resources.

(g) The Agency shall be responsible for creating and, as appropriate, modifying Agency bargaining units for classifications designated by the Agency as "service-critical" and shall establish policies and procedures pursuant to Government Code sections 3507 and 3507.1 for creation and modification of such bargaining units. When the Agency creates or modifies a bargaining unit, employees in existing classifications placed in such bargaining unit shall continue to be represented by their current employee organizations.

(h) The Agency may create new classifications of Agency employees. Such classifications shall be subject to the civil service provisions of the Charter unless exempted pursuant to Section 10.104, or subsection (i).

(i) The Agency may create new classifications and positions in those classifications exempt from the civil service system for managerial employees in MTA bargaining units M and EM in addition to those exempt positions provided in Section 10.104; provided, however, that the total number of such exempt managerial positions within the Agency shall not exceed 2.75 percent of the Agency's total workforce, exclusive of the exempt positions provided in Section 10.104. This provision shall not be utilized to eliminate personnel holding existing permanent civil service managerial positions on November 2, 1999.

Persons serving in exempt managerial positions shall serve at the pleasure of the Director of Transportation. Such exempt management employees, to the extent they request placement in a bargaining unit, shall not be placed in the same bargaining units as non-exempt employees of the Agency.

(j) The Civil Service Commission shall annually review both exempt and non-exempt classifications of the Agency to ensure compliance with the provisions of subsections (h) and (i).

(k) Upon the expiration of labor contracts negotiated by the Department of Human Resources and approved by the Board of Supervisors, and except for retirement benefits, the wages, hours, working conditions, and benefits of the employees in classifications within the Municipal Railway designated by the Agency as "service-critical" shall be fixed by the Agency after meeting and conferring as required by the laws of the State of California and this Charter, including Sections A8.346, A8.404 and A8.409. These agreements shall utilize, and shall not alter or interfere with, the health plans established by the City's Health Service Board; provided, however, that the Agency may contribute toward defraying the cost of employees' health premiums. For any job classification that exists both as a "service-critical" classification in the Agency and elsewhere in City service, the base wage rate negotiated by the Agency for that classification shall not be less than the wage rate set in the Citywide memorandum of understanding for that classification.

(l) Notwithstanding subsection (k), the Agency may, in its sole discretion, utilize the City's collective bargaining agreements with any employee organization representing less than 10 percent of

the Agency's workforce.

(m) In addition to the base pay established in collective bargaining agreements, agreements negotiated by the Agency relating to compensation for Agency managers and employees in classifications designated by the Agency as "service-critical" may provide incentive bonuses based upon the achievement of the service standards in Section 8A.103(c) and other standards and milestones adopted pursuant to Section 8A.103. Such agreements may also provide for additional incentives based on other standards established by the Board of Directors, including incentives to improve attendance. The Board of Directors may also establish a program under which a component of the compensation paid to the Director of Transportation and I exempt managers is based upon the achievement of service standards adopted by the Board of Directors. Notwithstanding any other provision of Article 8A, all such incentive programs shall be at the sole discretion of the Agency Board of Directors, subject to any bargaining obligation imposed by state law.

(n) For employees whose wages, hours and terms and conditions of employment are set by the Agency, the Agency shall exercise all powers of the City and County, the Board of Supervisors, the Mayor, and the Director of Human Resources under Sections A8.404 and A8.409. The mediation/arbitration board set forth in Section A8.409-4 shall consider the following additional factors when making a determination in any impasse proceeding involving the Agency: the interests and welfare of transit riders, residents, and other members of the public; the Agency's ability to meet the costs of the decision of the arbitration board without materially reducing service or requiring that the Agency raise fares in a manner inconsistent with Section 8A.108(b); and the Agency's ability to efficiently and effectively tailor work hours and schedules for transit system employees to the public demand for transit service. Notwithstanding the timelines described in Section A8.409-4, to be effective the beginning of the next succeeding fiscal year, all collective bargaining agreements must be submitted to the Board of Directors no later than June 15 for final adoption on or before June 30.

(o) The voters find that for transit system employees whose wages, hours and terms and conditions of employment are set by the Agency, the Agency's discretion in establishing and adjusting scheduling, deployment, assignment, staffing, sign ups, and the use and number of part-time transit system personnel based upon service needs is essential to the effective, efficient, and reliable operation of the transit system. In any mediation/arbitration proceeding under Section 8.409-4 with an employee organization representing transit system employees, the employee organization shall have the burden of proving that any restrictions proposed on the Agency's ability to exercise broad discretion with respect to these matters are justified. To meet this burden, the employee organization must prove by clear and convincing evidence that the justification for such restrictions outweighs the public's interest in effective, efficient, and reliable transit service and is consistent with best practices. The mediation/arbitration board shall not treat the provisions of MOUs for transit system employees adopted prior to the effective date of this provision as precedential in establishing the terms of a successor agreement. The mediation/arbitration board's jurisdiction shall be limited to matters within the mandatory scope of bargaining under state law.

(p) The voters find that unscheduled employee absences adversely affect customer service. Accordingly, not later than January 1, 2001, the agency shall create a comprehensive plan for the reduction of unscheduled absences. In addition, the Agency shall take all legally permitted steps to eliminate unexcused absences. Neither the Agency nor an arbitrator shall have authority to approve or award any memorandum of understanding or other binding agreement which restricts the authority of the Agency to administer appropriate discipline for unexcused absences.

(q) In addition, the voters find that Agency service has been impaired by the existence of side-letters and reliance on "past practices" that have been treated as binding or precedential but have not

been expressly authorized by the Board of Directors or the Director of Transportation, and have not been and are not subject to public scrutiny. Accordingly, for employees whose wages, hours and terms and conditions of employment are set by the Agency, no side-letter or practice within the scope of bargaining may be deemed binding or precedential by the Agency or any arbitrator unless the side-letter or practice has been approved in writing by the Director of Transportation or, where appropriate, by the Board of Directors upon the recommendation of the Director of Transportation and appended to the MOU of the affected employee organization or organizations subject to the procedures set out in this charter. No MOU or arbitration award approved or issued after the November 2010 general election shall provide or require that work rules or past practices remain unchanged during the life of the MOU, unless the specific work rules or past practices are explicitly set forth in the MOU. All side-letters shall expire no later than the expiration date of the MOU.

(r) Before adopting any tentative agreement with an employee organization covering matters within the scope of representation, the Agency shall, at a duly noticed public meeting, disclose in writing the contents of such tentative agreement, a detailed analysis of the proposed agreement, a comparison of the differences between the agreement reached and the prior agreement, an analysis of all costs for each year of the term of such agreement, and whether funds are available to cover these costs. Such tentative agreement between the Agency and employee organization shall not be approved by the Agency until 15 calendar days after the above disclosures have been made.

(Added November 1999; Amended by Proposition A, Approved 11/6/2007; Proposition G, Approved 11/2/2010)

SEC. 8A.105. MUNICIPAL TRANSPORTATION FUND.

(a) There is hereby established a fund to provide a predictable, stable, and adequate level of funding for the Agency, which shall be called the Municipal Transportation Fund. The fund shall be maintained separate and apart from all other City and County funds. Monies therein shall be appropriated, expended, or used by the Agency solely and exclusively for the operation including, without limitation, capital improvements, management, supervision, maintenance, extension, and day-to-day operation of the Agency, including any division subsequently created or incorporated into the Agency and performing transportation-related functions. Monies in the Fund may not be used for any other purposes than those identified in this Section.

(b) Beginning with the fiscal year 2000-2001 and in each fiscal year thereafter, there is hereby set aside to the Municipal Transportation Fund the following:

1. An amount (the "Base Amount") which shall be no less than the amount of all appropriations from the General Fund, including all supplemental appropriations, for the fiscal year 1998-1999 or the fiscal year 1999-2000, whichever is higher (the "Base Year"), adjusted as provided in subsection (c), below, for (1) the Municipal Railway; and (2) all other City and County commissions, departments and agencies providing services to the Municipal Railway, including the Department of Human Resources and the Purchasing Department, for the provision of those services. The Base Amount for the Department of Parking and Traffic and the Parking Authority shall be established in the same fashion but using fiscal years 2000-2001 and 2001-2002 for the services being incorporated into the Agency.

2. Subject to the limitations and exclusions in Sections 4.113, the revenues of the Municipal Railway, and, upon their incorporation into the Agency, the revenues of the Department of Parking and Traffic, and the Parking Authority; and

3. All other funds received by the City and County from any source, including state and federal

sources, for the support of the Agency .

(c) The Base Amount shall initially be determined by the Controller. Adjustments to the Base Amount shall be made as follows:

1. The Base Amount shall be adjusted for each year after fiscal year 2000-2001 by the Controller based on calculations consistent from year to year, by the percentage increase or decrease in aggregate City and County discretionary revenues. In determining aggregate City and County discretionary revenues, the Controller shall only include revenues received by the City which are unrestricted and may be used at the option of the Mayor and the Board of Supervisors for any lawful City purpose. Errors in the Controller's estimate of discretionary revenues for a fiscal year shall be corrected by adjustment in the next year's estimate.

2. An adjustment shall also be made for any increases in General Fund appropriations to the Agency in subsequent years to provide continuing services not provided in the Base Year, but excluding additional appropriations for one-time expenditures such as capital expenditures or litigation judgments and settlements.

(d) The Treasurer shall set aside and maintain the amounts required to be set aside by this Section, together with any interest earned thereon, in the Municipal Transportation Fund, and any amounts unspent or uncommitted at the end of any fiscal year shall be carried forward, together with interest thereon, to the next fiscal year for the purposes specified in this Article.

(e) It is the policy of the City and County of San Francisco to use parking-related revenues to support public transit. To that end, the following parking-related revenues deposited in the Transportation Fund shall be used to support the capital and operating expenses arising from the Agency's transit functions:

1. Revenues from parking meters, except those amounts collected from parking meters operated by the Recreation and Park Department and the Port Commission and except to the extent that they are required by law to be dedicated to other traffic regulation and control functions;

2. Revenues from off-street parking facilities under the jurisdiction of the Agency (excluding facilities owned by the Parking Authority), including facilities leased to private owners and non-profit corporations, except those amounts generated from any parking on or below any land or facilities under the jurisdiction of the Recreation and Park Department and except those amounts obligated by contract executed before 1993 to pay debt service;

3. Revenues from fines, forfeited bail, or penalties for parking violations, except those amounts to be credited to the courthouse construction fund as provided in Administrative Code Section 10.117-35.

(f) In addition, there is hereby set aside from the general revenues of the City and County and deposited in the Transportation Fund to support the Agency's transit services an amount equivalent to 80 percent of the revenues received from the City's tax on occupation of parking spaces. Additional amounts appropriated as a result of this subsection after July 1, 2008 which were not previously available to support transit service shall be used exclusively to:

1. support implementation of the transit service improvements recommended by the Transit Effectiveness Project or any subsequent system-wide route and service evaluation, with first priority

given to the hiring of full time on-going staff and expansion of training for Agency employees, supervisors and managers; and

2. support the creation of a Labor-Management Implementation and Service Improvement Committee consisting of the Director of Transportation and a designated representative of each union representing Agency employees. This committee shall meet quarterly to discuss implementation of this Section and ongoing system challenges.

(Added November 1999; Amended by Proposition A, Approved 11/6/2007)

SEC. 8A.106. BUDGET.

The Agency shall be subject to the provisions of Article IX of this Charter except:

(a) No later than May 1 of each even-numbered year, after professional review, public hearing and after receiving the recommendations of the Citizens' Advisory Council, the Agency shall submit its proposed budget with annual appropriation detail in a form approved by the Controller for each of the next two fiscal years to the Mayor and the Board of Supervisors for their review and consideration. The Agency shall propose a budget that is balanced without the need for additional funds over the Base Amount, but may include fare increases and decreases, and reductions or abandonment of service. The Mayor shall submit the budget to the Board of Supervisors, without change. Should the Agency request additional general fund support over the Base Amount, it shall submit an augmentation request for those funds in the standard budget process and subject to normal budgetary review and amendment under the general provisions of Article IX.

(b) At the time the budget is adopted, the Agency shall certify that the budget is adequate in all respects to make substantial progress towards meeting the performance standards established pursuant to Section 8A.103 for the fiscal year covered by the budget.

(c) No later than August 1, the Board of Supervisors may allow the Agency's budget to take effect without any action on its part or it may reject but not modify the Agency's budget by a seven-elevenths' vote. Any fare change, route abandonment, or revenue measure proposed in the budget shall be considered accepted unless rejected by a seven-elevenths' vote on the entire budget. Should the Board reject the budget, it shall make additional interim appropriations to the Agency from the Municipal Transportation Fund sufficient to permit the Agency to maintain all operations through the extended interim period until a budget is adopted. Any request for appropriation of General Fund revenues in excess of the Base Amount shall be approved, modified, or rejected under the general provisions of Article IX.

(d) No later than May 1 of each odd-numbered year, the Agency shall submit any budget amendment that may be required to increase appropriations over those approved in the two year budget or as may be required by law, provided that such budget amendment shall establish a detailed plan with appropriation detail only for those anticipated revenues and expenditures exceeding those approved in the two year budget or as otherwise required by law. The Agency may submit to the Board of Supervisors such additional budget amendments or modifications during the term of the budget, including but not limited to amendments reflecting fare changes, route abandonments and revenue measures, as may be required in the discretion of the Agency. The Board of Supervisors may allow any budget amendment to take effect without any action on its part or it may reject but not modify the budget amendment by a seven-elevenths' vote taken within 30 days after its submission to the Board of Supervisors.

(e) Notwithstanding any other provisions of this Charter or requirements of the Annual Salary Ordinance, the Controller may authorize the Agency to move funds within its budget and hire personnel without specific Controller approval so long as the Agency's periodic and verifiable projections of spending by the Agency show the Controller that the Agency's spending will be within the approved budget. However, should the projections show that the Agency spending is likely to exceed its budget, the Controller may impose appropriate controls in his or her discretion to keep the Agency within budget.

(Added November 1999; Amended by Proposition A, Approved 11/6/2007)

SEC. 8A.107. MUNICIPAL TRANSPORTATION QUALITY REVIEW.

(a) The Agency shall biennially contract with a nationally recognized management or transportation consulting firm with offices in the City and County for an independent review of the quality of its operations. The contract shall be competitively bid and approved by the Controller and Board of Supervisors. The review shall contain:

1. A detailed analysis of the extent to which the Agency has met the goals, objectives, and performance standards it is required to adopt under Section 8A.103, and the extent to which the Agency is expected to meet those goals, objectives, and performance standards in the two fiscal years for which the review is submitted, and independent verification of the Agency's reported performance under the performance measures adopted pursuant to Section 4 of this measure; and

2. Such recommendations for improvement in the operation of the Agency as the firm conducting the review deems appropriate.

(b) The results of the review shall be presented promptly to the Citizens' Advisory Council, the Agency, the Board of Supervisors, and the Mayor by the reviewing firm; and the Citizens' Advisory Council, the Agency, and the Board of Supervisors shall each promptly hold at least one public hearing thereon.

(Added November 1999)

SEC. 8A.108. FARE CHANGES AND ROUTE ABANDONMENTS.

(a) Except as otherwise provided in this Section, any proposed change in fares or route abandonments shall be submitted to the Board of Supervisors as part of the Agency's budget or as a budget amendment under Section 8A.106, and may be rejected at that time by a seven-elevenths vote of the Board on the budget or budget amendment. Any changes in fares or route abandonments proposed by the Agency specifically to implement a program of service changes identified in a system-wide strategic route and service evaluation such as the Transit Effectiveness Project may only be rejected by a single seven-elevenths' vote of the Board of Supervisors on the budget or budget amendment.

(b) The Agency shall base any proposed change in Municipal Railway fares on the following criteria:

1. The Municipal Railway's need for additional funds for operations and capital improvements

and optimal maintenance of assets.

2. The extent to which the increase is necessary to meet the goals, objectives, and performance standards previously established by the Agency pursuant to Section 8A.103.

3. The extent to which the Agency has diligently sought other sources of funding for the operations and capital improvements of the Municipal Railway.

4. The need to keep Municipal Railway fares low to encourage maximum patronage.

5. The need to increase fares gradually over time to keep pace with inflation and avoid large fare increases after extended periods without a fare increase.

(c) For purposes of this Article, a "route abandonment" shall mean the permanent termination of service along a particular line or service corridor where no reasonably comparable substitute service is offered. If the Agency proposes to abandon a route at any time other than as part of the budget process as provided in Section 8A.106, it shall first submit the proposal to the Board of Supervisors. The Board of Supervisors may, after a noticed public hearing, reject the proposed route abandonment by a seven-elevenths vote of its members taken within 30 days after the proposal is submitted by the Agency.

(Added November 1999; Amended by Proposition A, Approved 11/6/2007)

SEC. 8A.109. ADDITIONAL SOURCES OF REVENUE.

(a) To the extent allowed by law, the Board of Supervisors may, by ordinance, dedicate to the Agency revenues from sources such as gas taxes, motor vehicle licensing taxes or other available motor vehicle-related revenue sources.

(b) The Mayor, the Board of Supervisors, and the Agency diligently shall seek to develop new sources of funding for the Agency's operations, including sources of funding dedicated to the support of such operations, which can be used to supplement or replace that portion of the Municipal Transportation Fund consisting of appropriations from the General Fund of the City and County. Unless prohibited by preemptive state law, the Agency may submit any proposal for increased or reallocated funding to support all or a portion of the operations of the Agency, including, without limitation, a tax or special assessment directly to the electorate for approval, or to the owners of property or businesses to be specially assessed, or to any other persons or entities whose approval may be legally required, without the further approval of the Mayor or the Board of Supervisors. The Agency shall be authorized to conduct any necessary studies in connection with considering, developing, or proposing such revenue sources.

(Added November 1999; Amended by Proposition A, Approved 11/6/2007)

SEC. 8A.110. PLANNING AND ZONING.

The planning and zoning provisions of this Charter and the Planning Code, as they may be amended from time to time, shall apply to all real property owned or leased by the Agency but shall not impede the Agency's exclusive authority to set rates and other charges pursuant to Section 8A.102(b)(5).

(Added November 1999; Amended by Proposition A, Approved 11/6/2007)

SEC. 8A.111. CITIZENS' ADVISORY COUNCIL.

The Agency shall establish a Citizens' Advisory Council of fifteen members which shall consist of one person appointed by each member of the Board of Supervisors and four members appointed by the Mayor. Each member must be a resident of the City and County. No fewer than ten members of the Council must be regular riders of the Municipal Rail-way. At least two members must use the Municipal Railway's paratransit system, and at least three of the members must be senior citizens over the age of 60. The membership of the Council shall be reflective of the diversity and neighborhoods of the City and County. The Council may provide recommendations to the Agency with respect to any matter within the jurisdiction of the Agency and shall be allowed to present reports to the Agency's board of directors. The members of the Council shall be appointed to four-year terms and shall serve at the pleasure of their appointing power. Staggered terms for the initial appointees to the Council shall be determined by lot.

(Added November 1999)

SEC. 8A.112. PARKING AND TRAFFIC

(a) The Municipal Transportation Agency Board of Directors shall succeed to all powers and duties of the former Parking and Traffic Commission, including the power of members to serve ex officio as members of the Parking Authority Commission under Section 32657 of the Streets and Highways Code. The chair of the Agency's board of directors shall designate annually the directors to serve as members of the Parking Authority Commission. Any person may serve concurrently as a member of the Agency's board of directors and as a member of the Parking Authority Commission. It is the policy of the City and County that the Agency exercise all powers vested by State law in the Parking Authority.

(b) It shall be City policy that the offices of Director of Transportation and Parking Authority Executive Director are not incompatible offices, and the Director of Transportation may serve ex officio as Parking Authority Executive Director, but shall not receive any additional compensation for that service.

(Added November 1999; Amended by Proposition A, Approved 11/6/2007)

SEC. 8A.113. PARKING AND TRAFFIC; GOVERNANCE.

(a) The Agency shall be responsible for management of parking and traffic functions within the City, so as to:

1. Provide priority to transit services in the utilization of streets, particularly during commute hours while maintaining the safety of passengers, pedestrians, cyclists and motorists;
2. Facilitate the design and operation of City streets to enhance alternative forms of transit, such as pedestrian, bicycle, and pooled or group transit (including taxis);
3. Propose and implement street and traffic changes that gives the highest priority to public safety and to impacts on public transit, pedestrians, commercial delivery vehicles, and bicycles;

4. Integrate modern information and traffic-calming techniques to promote safer streets and promote usage of public transit;
5. Develop a safe, interconnected bicycle circulation network; and
6. Ensure that parking policies and facilities contribute to the long term financial health of the Agency.

(b) It shall be City policy that the Agency manage the Parking Authority so that it does not acquire or construct new or expanded parking facilities unless the Agency finds that the costs resulting from such acquisition, construction, or expansion and the operation of such facilities will not reduce the level of funding to the Municipal Railway from parking and garage revenues under Section 16.110 to an amount less than that provided for fiscal year 1999-2000, as adjusted by the Controller for inflation; further provided that it shall be City policy that before approving the acquisition, construction or expansion of a parking garage, the Agency's Board of Directors shall make a finding that the operation of the garage will advance or be consistent with the City's Transit First Policy.

(Added November 1999; Amended by Proposition A, Approved 11/6/2007)

SEC. 8A.114. CABLE CARS.

In the conduct of the public transportation system there shall be maintained and operated cable car lines as follows:

1. A line commencing at Powell and Market Streets; thence along Powell Street to Jackson Street; thence along Jackson Street to Mason Street; thence along Mason Street to Columbus Avenue; thence along Columbus Avenue to Taylor Street; thence along Taylor Street to a terminal at Bay Street; returning from Bay and Taylor Streets along Taylor Street to Columbus Avenue; thence along Columbus Avenue to Mason Street; thence along Mason Street to Washington Street; thence along Washington Street to Powell Street; and thence along Powell Street to Market Street, the point of commencement.
2. A line commencing at Powell and Market Streets; thence along Powell Street to Jackson Street; thence along Jackson Street to Hyde Street; thence along Hyde Street to a terminal at Beach; returning from Beach and Hyde Streets along Hyde Street to Washington Street; thence along Washington Street to Powell Street; thence along Powell Street to Market Street, the point of commencement.
3. A line commencing at Market and California; thence along California Street to a terminal at Van Ness Avenue; returning from Van Ness Avenue along California Street to Market Street, the point of commencement.

To fully effectuate the intent of this section, these lines shall be maintained and operated at the normal levels of scheduling and service in effect on July 1, 1971; provided, however, that nothing herein contained shall prevent the increasing of the levels of scheduling and service.

(Amended by Proposition A, Approved 11/6/2007)

Editor's Note:

Formerly Sec. 16.100.

SEC. 8A.115. TRANSIT-FIRST POLICY.

(a) The following principles shall constitute the City and County's transit-first policy and shall be incorporated into the General Plan of the City and County. All officers, boards, commissions, and departments shall implement these principles in conducting the City and County's affairs:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
4. Transit priority improvements, such as designated transit lanes and streets and improved signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.
5. Pedestrian areas shall be enhanced wherever possible to improve the safety and comfort of pedestrians and to encourage travel by foot.
6. Bicycling shall be promoted by encouraging safe streets for riding, convenient access to transit, bicycle lanes, and secure bicycle parking.
7. Parking policies for areas well served by public transit shall be designed to encourage travel by public transit and alternative transportation.
8. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.
9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

(b) The City may not require or permit off-street parking spaces for any privately-owned structure or use in excess of the number that City law would have allowed for the structure or use on July 1, 2007 unless the additional spaces are approved by a four-fifths vote of the Board of Supervisors. The Board of Supervisors may reduce the maximum parking required or permitted by this section.

(Amended by Proposition A, Approved 11/6/2007)

Editor's Note:

Formerly Sec. 16.102.

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