LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS **Charging Party,** **vs.** **COUNTY OF LOS ANGELES,** **Respondent.**	)	**UFC No. 018-24**

Hearing Officer	Irene P. Ayala
For Charging Party:	Traci Anderson Will Aitchison Public Safety Labor Group 3021 NE Broadway Portland, OR 97232
For Respondent:	Simone Del Barco Liebert Cassidy Whitmore 6033 W. Century Blvd., 5th Floor Los Angeles, CA 90045
Hearing Dates:	January 28, 2025 April 22, 2025

EXECUTIVE SUMMARY

UFC 018-24

Unfair Employee Relations Practice Charge

Union Position

The Association for Los Angeles Deputy Sheriffs ("ALADS" and "Union") is the certified bargaining representative for Deputy Sheriffs employed by the Los Angeles Sheriff's Department ("LASD" and "Department").

On May 22, 2024, Charging Party, ALADS, filed an amended charge UFC 018-24 against the Los Angeles Sheriff's Department ("LASD" and "Department") and Los Angeles County ("County") alleging that prior to November 21, 2023 the LASD had a consistent past practice of providing investigator logs prepared by Internal Affairs Bureau ("IAB") investigators to ALADS attorneys handling disciplinary appeals, whether through County Counsel, private counsel retained by the Department, or LASD's Advocacy Unit.

The November 21, 2023 request for the IAB investigator log by an ALADS attorney was denied on November 30, 2023 by LASD Chief Bobby Wyche. ALADS maintains the County violated its duty to share information potentially relevant to negotiable subjects, and unilaterally changed a past practice without providing ALADS with notice of and an opportunity to bargain; thus, violating Section 5.04.240(A)(a) and (3) of the Employee Relations Ordinance ("ERO").

Department Position

The Department denies there was a past practice of releasing investigator logs to ALADS members or to their attorneys. It was also asserted the logs are internal documents used to track the progress of a case and to monitor investigator performance. They do not contain relevant information necessary for the defense of Department employees facing disciplinary action.

IAB staff prepares two separate employee investigation files uploaded into its computer system. Staff removes the investigator logs from the investigation packet provided to the LASD decision-maker who will determine whether discipline is merited. The statute of limitations information and a timeline sheet is also excluded from that computer file. The logs are also considered confidential under Government Code section 3303(g).

The Department asserts it did not fail to negotiate a change to an alleged past practice because it had no past practice of producing the investigator logs.

Recommendation

Based on the evidence in this case, it is recommended that the Employee Relations Commission find the County violated Sections 5.04.240(A)(1) and (3) of the Employee Relations Ordinance by (1) unilaterally changing the past practice of providing investigator logs to ALADS members and their attorneys, and (2) failing to provide ALADS with notice of the unilateral change and an opportunity to bargain regarding a mandatory negotiable topic.

It is further recommended that the Employee Relations Commission order the County to restore the past practice of providing the investigator logs to ALADS members under investigation.

ISSUES

1. Did the County's change in the past practice of providing ALADS members and their attorneys with a copy of the investigator log in a disciplinary appeal violate the County's obligation to provide notice and to negotiate with ALADS as set forth in Section 5.04.240(A)(1) and (3) of the Employee Relations Ordinance?

2. Does the County's failure to provide investigator logs violate sections 5.04.240(a)(1) and (3) of the Employee Relations Ordinance by not providing information relevant to a mandatory subject of bargaining?

3. If any such violations occurred, what is the appropriate remedy?

MEYERS-MILIAS-BROWN ACT, PUBLIC EMPLOYMENT RELATIONS BOARD and EMPLOYEE RELATIONS COMMISSION

In 1968, the State enacted the Meyers-Milias-Brown Act ("MMBA") that authorized public employees to bargain with governmental entities and encouraged the entities to negotiate and consult with its employees. The MMBA obligates a public employer to meet and confer with recognized employee representative organizations regarding wages, hours, and other terms and conditions of employment. (Gov. Code Sec. 3505) The Public Employment Relations Board ("PERB") has the jurisdiction to administer the MMBA disputes. Yet, that same year, conforming to the legislative policy of MMBA, the County enacted Ordinance 9646 entitled Employee Relations Ordinance ('ERO"). Section 7 of ERO created the Employee Relations Commission ("ERCOM") to administer MMBA's provisions. AFSCME v. County of Los Angeles (1975) 49 Cal.App.3d 356.

Allegations of unfair labor practices by the County must be brought to ERCOM, not PERB, and ERCOM must exercise its authority in a manner "consistent with and pursuant to" the policies of the MMBA as interpreted and administered by PERB. "The County's ordinance must be construed to avoid any conflict with the MMBA, and decisions from PERB interpreting the MMBA are highly persuasive when interpreting the County's ordinance." County of Los Angeles v. Los Angeles County Employee Relations Com. (2013) 56 Cal.4th 905.

RELEVANT CONTRACT AND POLICY PROCEDURES

Employee Relations Ordinance §5.04.240 – Unfair Employee Relations Practices Designated Corrective Action

A. It shall be an unfair employee relations practice for the County:

1. To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this chapter…

3. To refuse to negotiate with representatives of certified employee organizations on negotiable matters.

Government Code § 3303 – Investigations Interrogations; Conduct, Conditions, Representation; Reassignment

When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions…

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. **The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential…** (Emphasis added)

Government Code §3304 – Peace Officer Bill of Rights Act

(d) (1) Except as provided in this subdivision and subdivision (g), no punitive action… shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct… In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed discipline by a Letter of Intent or Notice of Adverse Action articulating the discipline that year, except as provided in paragraph (2)…

Subsections (d) (1) through (8) list circumstances that require the tolling of the one-year time period.

STATEMENT OF FACTS

Investigator Logs

An investigator log is a form completed by criminal and Internal Affairs Bureau ("IAB") investigators who conduct investigations into allegations of misconduct by Deputy Sheriffs that may lead, among other results, to the imposition of discipline. It is a routine form that documents the activities of the assigned investigator from the initiation of the investigation until it is completed and forwarded to superiors for approval and for decisions how to proceed.

Information listed on the log includes the following:

1. Incident date.
2. Date the Department became aware of the allegation(s).
3. Date sent to the Advocacy Unit.
4. Tolling periods pursuant to Section 3304 (d) that extend the statute of limitations period.

5. Statute beginning and ending date pursuant to Government Code Section 3304(d)(1) (one-year statute of limitations) and relevant tolling period extensions of the period.

Additional information listed on the form will include entries documenting the opening and closing of the investigation, the receipt of electronic and other documents, the review of video and other electronic media, the sending and receipt of email, the making and receipt of phone calls, the drafting of witness questions, witness interviews, the creation of summaries of witness testimony, and other investigative activities. (See attached ex. 13)

Neither the Department nor the Union disputes the significance of the investigator logs. For the Department, the investigator logs are considered internal documents that serve as a road map of the progression of the investigation that supervisors can monitor, and the logs facilitate the transition of a case when there is a change in the investigator assigned to it.

Sergeant Paul Valle has been an investigator with the IAB since April 2016. He stated some information from the investigator logs is also included in an investigative summary. The summary will also include information about witness testimony obtained through witness interviews by IAB. Either written transcripts or audio versions of those interviews are prepared.

Since the Department superior who conducts the Skelly meeting with the employee relies on the information contained in the summary for the decision regarding the appropriate discipline, the summary is provided to the subject employee as part of their disciplinary packet. However, he stated the summary does not include the statute of limitations calculation, nor does it include a timeline sheet that contains the statute of limitations calculations relied upon by the Department.

According to Sgt. Valle, the summary does include the date of the Department's knowledge of the incident that would trigger the beginning time line the one-year statute of limitations begins pursuant to Government Code section 3304(d). Also included is the date the employee receives written notice of the proposed discipline. The formal notice ends the statute of limitations date. He confirmed if the one-year statute of limitations is exceeded without any legitimate statutory exception, the employee cannot be disciplined for his/her conduct.

The representation of ALADS Deputy Sheriffs in disciplinary appeals, either in Civil Service Commission or grievance procedures, is handled by attorneys from private law firms who are retained by ALADS. Derek Hsieh has been the Executive Director of ALADS for ten years and stated the discipline materials provided to the Union did include the investigator's logs as part of the Skelly packet.

Department Past Practice – Investigator Logs

Elizabeth Gibbons

Elizabeth Gibbons is an attorney who has represented deputies and other law enforcement officers for 34 years, initially with the law firm of Greene and Shinee, and in her own law practice for the last 8 years. Thousands of those cases have involved representations in disciplinary proceedings, a number of which included issues with the California Peace Officers Bill of Rights ("POBR").

For the first five years of her defense career, Ms. Gibbons automatically received the investigator log as part of the Skelly package. Thereafter, for the next 30 years she continued to receive the logs upon a request made to the Department or its retained attorneys. The requests were made informally, either orally or by email, or by subpoena. The logs were always provided to her.

There were instances when she sent a letter to the Chief who would be conducting the Skelly meeting to request the log. The Chief would inform her the request was forwarded to IAB and they would respond to the request. She received the logs every time.

At the hearing, Ms. Gibbons provided several emails relating to her representation of Deputy T.T. requesting logs from the Department. On February 6, 2024, she sent an email to Gayane Muradyan, an attorney with a private law firm retained by the Department asking that Ms. Muradyan provide her with copies of the investigator logs that a Department witness had testified about that afternoon at a hearing. Ms. Muradyan's email to Ms. Gibbons dated February 14, 2024 stated, "Attached are the 2 logs." (Ex. 13)

Ms. Gibbons also had personal knowledge that all of the attorneys at the Greene and Shinee firm with whom she worked for the first 28 years of her defense career were also able to obtain the logs for their cases. Moreover, she has represented employees of other law enforcement agencies and has never been denied investigation logs in any of those cases.

Maureen Okwuosa

Maureen Okwuosa is an attorney who has been employed by the law firm Rains Lucia Stern since 2017. She has nine years of experience representing law enforcement officers and labor organizations that include ALADS, San Bernardino Sheriff Department deputies and police officers, Culver City Police Department officers, and Beverly Hills Police Department officers. Her prior employment was with the law firm of Greene and Shinee.

She is familiar with the investigator logs from the ALADS disciplinary appeal work she does. She requests the logs for all of her cases and has received them in hundreds of ALADS cases since 2014. It is common practice for her to request the logs using a subpoena duces tecum and they were routinely provided to her and to the attorneys who work with her.

She stated the logs for San Bernardino County employees are routinely included in the entire investigation packet provided to her for the Skelly meeting.

Department Denial of Investigator Logs

Amy Johnson

In 2014, she worked as an attorney with the Ventura County District Attorney's Office and in January 2016 she was hired by Greene and Shinee. Her primary duties were representing deputies and ALADS. In 2017, she was hired by Rains Lucia Stern where she continued representing ALADS, in addition to a number of other law enforcement agency employees. The law enforcement employees she represents are from the Anaheim Police Department, Oxnard Police Department, the Ventura County Sheriff's Office, and the San Bernardino County Sheriff's Department. She has nine years of experience representing deputies in disciplinary and grievance procedures.

Ms. Johnson stated it is her practice to request Internal Affairs documents when handling a disciplinary appeal, including the logs. Her requests are made by a subpoena duces tecum, or by an email to opposing counsel. The logs were routinely provided to her.

She recalled a specific case where she requested a log on July 26, 2023 for the Deputy K.T. case and she received it on November 28, 2023. The first time she was denied an investigator's log was in the case of Deputy C.R. following her November 21, 2023 written request for the log from Chief Bobby Wyche prior to a Skelly meeting set for December 20, 2023. (Union Ex. 5)

On November 30, 2023, Chief Wyche denied her request stating the log was an "internal document that contains attorney-client privileged summaries." (Union Ex. 6) Ms. Johnson pointed out that just two days earlier, on November 28, 2023, she received an investigator log for the Deputy K.T. case. The request for the K.T. log had been made directly to Warren Williams, a private attorney hired by the Department to handle the disciplinary case. (Union Ex. 14)

Since 2016, she handled ten to twenty ALADS disciplinary cases while at the Greene and Shinee law firm, and she received all the investigator logs in those cases. She had also seen investigator logs received by other attorneys at the Greene and Shinee firm, as well as logs obtained by attorneys at her current employer, Rains Lucia Stern.

Ms. Johnson believed the denial of the Deputy C.R. log was not only a violation of her client's due process rights, but it was also a deviation of the past pattern of practice of the Department in providing the investigator's log to defense attorneys.

Jessica Real

Jessica Real is an Operations Assistant III who has been with the Department's IAB Unit from November 2011 to March 2024. She supervises eight subordinate Operations Assistants in her unit whose duties include preparation of the investigation materials, such as investigation documents, audios, and any exhibits. She stated she has not given investigator logs to any employee who was under investigation, nor to their attorney since 2011.

IAB uses the Performance Record Monitoring System ("PRMS") to maintain records related to an investigation, including the subject of the investigation, witnesses, dates of the investigation, and

any person involved in the investigation. Ms. Real instructs her subordinates to remove the logs and time line sheets from the completed investigation that is uploaded to PRMS.

The time line sheet is a spreadsheet that the investigators use to calculate the statute dates. The sheet lists the incident date, the date the Department had knowledge of the incident, any criminal investigation dates, the date the investigation was completed, and any dates the case was tolled. Since 2011, the time line sheet has never been provided to an employee or an employee representative.

The complete investigation file that includes the investigator log and time line sheet is uploaded into a separate computer file that is accessible to only certain Department employees. The second PRMS file, without the log and time line sheet, is the only one provided to the decision-maker who will review it, determine if discipline is merited, and the level of discipline to impose on an employee.

IAB does not handle requests for investigator logs made by a subpoena duces tecum. The subpoena does not come to her and she did not know how the subpoena was handled. However, to her knowledge anything that is requested by a subpoena is released to the requesting party. IAB has produced investigator logs when under a legal obligation to do so, such as in response to a subpoena that is served.

Susan Young

Susan Young is an Administrative Services Manager II. She worked at the IAB from 2006 to 2008 as an Operations Assistant I. She stated the employee discipline investigation packet provided to the subject employee did not include the investigator's log or the time line sheet. A separate copy of the investigation that did include the log and time line sheet stayed with IAB.

She returned to IAB in 2018 as an Administrative Services Manager I and was promoted to Administrative Services Manager II in August 2019 and managed the functions of the Operations Assistants. Upon her return to IAB in 2018 the scanned PRMS version of the investigation file was provided to the employee and/or an attorney, but the log and time line sheet were not included in that

file. Not producing those documents to the employee or the attorney was the process employed since 2006.

Ms. Young stated she has not personally handled a response to a subpoena for a log, but since 2018 she has seen requests to her unit by County Counsel for the log. An attorney request for the documents would not be made to her, but it may go to the Chief or other superior, and she would not know if that request was granted. If a private attorney did request those documents, it would be relayed to County Counsel, who would provide it to the private attorney. She and her subordinates are not involved in the decision whether to release the log or time frame sheet. If someone within IAB had produced the log, that would have been outside of IAB's recognized policy.

Chris Mouat

Chris Mouat was a Lieutenant at IAB in 2020 and left in 2022. He returned in 2024 as the Captain of IAB and ran the bureau. He would review the investigations and investigator logs. He confirmed the logs showed the progression of work done on a case that also listed confidential information with County Counsel regarding statute of limitation dates, medical information, and other relevant information. Specific documents, such as the log, statute of limitations worksheet, and the check-off sheet were not to be shared outside of IAB. Those excluded documents were uploaded into the PRMS system and were also not provided to the decision-maker handling discipline cases.

It was Captain Mouat's experience that the logs were not released to an employee, and while he was a Lieutenant he never received a request for the log. However, he conceded Risk Management would receive subpoenas for logs and they would comply. Although he agreed the logs were an important document, when asked why an employee did not receive the log he responded, "They never did it." He did not know the reason the log was not given to the employee.
He also conceded it was relevant for an employee to know if the dates on the log are consistent with the statute of limitations timeline required by law. His reply was, "Everyone needs to know if the statute of limitations dates are in compliance, including the employee."

He also confirmed the timeline calculation was not provided in the document packet given to the employee. The critical date when the Department became aware of an incident is discussed in

the summary given to the employee. However, the dates when tolling of the statute takes place is in the log, which is not provided to the employee.

Paul Valle

Paul Valle is a Sergeant who began with IAB in 2016 as an investigator and continues in that assignment to the present time. He prepares the entire investigation packet for each case that is submitted to a superior for review. He also prepares the logs for the case. When questioned at the unfair practice hearing if any confidential information is contained in the logs, his response was, "Not necessarily, no." He acknowledged it was relevant if the Department complied with the requirements of the statute of limitations. The tolling information and periods are also on the log. The spreadsheet showing the Department's calculations of relevant time periods is not provided to the employee, either.

The summaries he prepares that are provided to the employee contain information from the log, such as when events occurred. But, it is very rare for him to refer to the log. His summaries do not show the time periods for the statute of limitations or the tolling dates, nor any information from the spread sheet showing calculations. When asked at the UFC hearing "How would an employee know dates were blown without looking at the log, he replied, "I don't know." He also conceded confidential information contained in the log could be redacted.

Roland Kopperud

Roland Kopperud is the Division Commander at Professional Standards Division. He was assigned to IAB on April 29, 2018. Following several promotions, he received the promotion to Captain in August 2021. When he was hired in 2018 to be the Team Lieutenant he learned the investigator logs were a case management tool used to list investigator activity. The logs have always been deemed confidential pursuant to Government Code section 3303(g).

To his knowledge, there have been instances when a log was released to an employee because the employee had previously received it. While he was in IAB there were a handful of requests by subpoena for the log, perhaps four to six times. The logs were redacted of attorney-

client information between County Counsel and the investigators, and they were then released to the Risk Management Bureau and/or the Advocacy Unit.

He confirmed if IAB receives a subpoena or a court order for an investigator's log it is the general practice that IAB will produce the log with redactions. IAB has also produced an investigator's log in response to a subpoena for a Civil Service Commission hearing. He was not aware the logs were provided to employee attorneys informally.

DISCUSSION

ALADS asserts there has been a past practice of providing investigator logs to its members or to the retained attorneys representing the members in disciplinary proceedings. The logs were provided informally by a request from an employee's defense attorney, or by the submission of a subpoena duces tecum. During the presentation of its case, the Department maintained ALADS failed to meet is burden of proving a past practice ever existed with the **Internal Affairs Bureau** of the Sheriff's Department; thus, there was no duty to negotiate a failure to produce investigator logs.

In the introduction to its closing brief, ALADS pointed out that its Unfair Practice Charge ("UFC") complaint listed the **County**, not IAB, as the responding party. (Ex. 2) It is the County, not IAB, that is party to the Memorandum of Understanding ("MOU") with ALADS. (Ex. 1) Throughout the UFC complaint, ALADS alleged that either the County or the Sheriff's Department violated the law, and never once alleged that IAB owed any bargaining obligations to ALADS. The remedies sought by ALADS were explicitly directed at the County, not IAB.

Even the Motion to Dismiss the UFC complaint filed by Respondent on July 1, 2024 consistently referred in that document to the County as the party at issue in this case as stated in its conclusion:

"Because ALADS has not pled facts demonstrating that the **County's** decisions at issue in its Charge relate to or concern protected activity, it has failed to plead a prima facie case of interference. Additionally, ALADS has failed to plead a prima facie case of an unlawful unilateral change, because it has pled no specific facts demonstrating that the **County** had a binding past practice of providing investigator logs to members' attorneys." (Emphasis added)

ALADS raised an important point because as the evidence unfolded in the UFC case, Respondent's consistent argument regarding the release of investigator logs involved what IAB did and did not do, and IAB's alleged lack of knowledge that the logs were being routinely released in discipline cases. Irrespective of that argument by Respondent, the evidence did establish a long-term past practice of releasing the logs to ALADS defense attorneys by other **County departments** and a unilateral change to that practice.

Prima Facie Case of Unlawful Unilateral Change

To establish a prima facie case of an unlawful unilateral change, the charging party has the burden of proving that: (1) the employer changed or deviated from the status quo; (2) the change or deviation concerned a matter within the scope of representation; (3) the change or deviation had a generalized effect or continuing impact on represented employees' terms or conditions of employment; and (4) the employer reached its decision without providing adequate advance notice of the proposed change to the union and bargaining in good faith over the decision, at the union's request, until the parties reached an agreement or a lawful impasse. Bellflower Unified School District (2021) PERB Decision No. 2796. A unilateral change to a matter within the scope of representation constitutes a per se violation of the duty to meet and negotiate. Id. at p. 9.

There are three primary means of establishing that an employer changed or deviated from the status quo by showing any of the following: (1) deviation from a written agreement or written policy; (2) a change in established past practice; or (3) a newly created policy or application or enforcement of existing policy in a new way. Id. at p. 10.

A binding past practice is one which is "unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period time as a fixed and established practice accepted by both parties, "or which is "regular and consistent" or "historic and accepted." City of Santa Maria Firefighters Association (2020) PERB Decision No. 2736-M, p. 18; County of Orange (2018) PERB Decision No. 2611-M.

However, changes in existing and acknowledged practices are subject to the meet and confer requirement, even if those practices are not formalized in a written agreement or rule. Also, a

County's argument that IAB management was not aware of the release of investigator logs; thus it was a mistake, is not a valid argument. County of Riverside (2018) PERB Decision No. 2573-M.

The Department asserts ALADS did not meet its burden of establishing that the Department had an established practice of producing investigator logs to employees or their representatives because the evidence presented at the hearing demonstrates that there was no regular, consistent, historic, or accepted practice of producing the logs that was accepted by both parties.

The Department's position and rationale for the refusal to provide investigator logs because there was no past practice is not factually or legally persuasive for the following reasons.

There was overwhelming evidence from the testimony of Ms. Gibbons, Ms. Okwuosa, and Ms. Johnson that there has been a longstanding and consistent practice of receipt of the investigator logs for their deputy discipline cases. Ms. Gibbons had a 34-year history of receiving the logs. Ms. Okwuosa has received them since 2014, and Ms. Johnson received them since 2016. They also testified they were aware the attorneys working in their respective firms also routinely received them.

Receipt of investigator logs was also a common occurrence when dealing with a number of other law enforcement agencies represented by their respective law firms. Those clients included Sheriff Departments in other counties that would deal with the identical issues, in particular with the rights pursuant to POBR.

The manner by which they were received, either by an informal request directly to the Department, by a subpoena request, or from a private attorney retained by the Department is irrelevant.

The fact that IAB may not have been aware of the practice is also irrelevant. IAB staff Administrative Services Manager II Susan Young and Operations Assistant III Jessica Real confirmed they have no direct involvement in requests for the logs, and understood it was Department policy not to release the log to an employee or their attorney.

However, Jessica Real testified that to her knowledge if a subpoena for a log is served on the Department, it is released to the party making the request. Ms. Young understood if a request

for a log is made by the private attorney retained by the Department it is relayed to County Counsel, who would then provide it to the private attorney.

The three ALADS attorneys indicated a number of the logs they requested had been provided to them by the Department's private attorney handling the discipline case. Both Ms. Gibbons and Ms. Johnson produced evidence confirming private Department attorneys were releasing the investigator logs to them as late as 2023 and 2024.

In Ms. Johnson's case involving Deputy K.T., the log was provided to her on November 28, 2023 following the request to private attorney Warren Williams. Ms. Gibbons received two logs on February 14, 2024 from private attorney Gayane Muradyan for the Deputy T.T. case. (Ex. 14)

In the February 6, 2024 email sent to the private attorney representing the Department in the Deputy T.T. case, Ms. Gibbons requested copies of several investigator logs following the testimony of a Department witness during a hearing. Just days later, on February 14, 2024, the attorney provided copies of two investigator logs to Ms. Gibbons by email. The request was handled informally without the need for the submission of a subpoena.

The Union did present credible evidence there was a routine, long-standing practice of providing investigator logs to ALADS attorneys, whether informally or by a subpoena duces tecum submission. IAB's lack of involvement in the release of the documents is of no legal consequence since the attorneys ultimately did receive them by other legitimate means; namely, Department management, Risk Management, County Counsel, or private attorneys retained by the Department.

Any argument that the release of the logs over a number of years was an isolated incident, or a mistake, would also be futile as stated in County of Riverside (2018) PERB Decision No. 2573-M.

"We also take guidance from decisions of the National Labor Relations Board (NLRB) which have held that a past practice may be found even where the employer's actions were indisputably the result of a mistake…

The County may not evade a finding of a past practice by failing to train its supervisors and managers, failing to review the information available to it, and then describing their actions as mistakes." Id at p. 2.

The testimony of IAB staff further confirmed their awareness logs were being released, even if they were not the ones who processed that request.

Investigator Logs Contain Relevant Information

The Department also argued the logs were internal documents that did not contain relevant information necessary for the deputy's defense in a disciplinary proceeding. A factor the Department also found significant was that the decision-maker never received the log, or the time frame sheet, and did not rely on information contained therein for the ultimate decision about the imposition of discipline.

There is no dispute the investigator log is an internal document since it is generally prepared by IAB staff to document and manage the steps taken during the investigation into a deputy's alleged misconduct. Yet, the fact it is an internal document does not shield it from disclosure, which would also be the case of other internal documents relied upon in disciplinary cases such as a deputy's performance evaluations, a counseling memorandum, and copies of the deputy's prior disciplinary actions. Those are "internal documents" prepared by Department staff and readily disclosed to outside private defense attorneys in Civil Service discipline and arbitration proceedings.

Nor is there a valid argument that the investigator log does not contain relevant information necessary for the deputy facing discipline. That is not a valid assertion. Moreover, case law established, "An employer must normally provide an exclusive representative with all information that is necessary and relevant to its right to represent bargaining unit employees regarding mandatory subjects of bargaining." State of California (State Water Resources Control Board) (2022) PERB Decision No. 2830-S; City and County of San Francisco (2020) PERB Decision No. 2698-M.

Because discipline is a mandatory subject of bargaining, information pertaining to actual or potential discipline is presumptively relevant. State Water Resources Control Board, supra, at p. 10. The term "necessary" and "relevant" are interchangeable, and a charging party union meets its burden by showing that it has requested relevant information, without also having to show, separately that the information is "necessary" to fulfilling the union's representative function. Sacramento City Unified School District (2018) PERB Decision No. 2597; see Petaluma City Elementary School District (2016) PERB No. 2485.

PERB uses a liberal, discovery-type standard, similar to that used by the courts, to determine the relevance of an information request. Regents of the University of California (Davis) (2010) PERB Decision No. 2101-H; Trustees of the California State University (1987) PERB Decision No. 613-H. The requested information need not itself be admissible or dispositive of the issues in dispute. Rather, it is considered relevant if reasonably calculated to lead to the discovery of such information. Petaluma, Id, at 17.

Information pertaining to employees' wages, hours, or working conditions is "so intrinsic to the core of the employer-employee relationship that it is considered presumptively relevant and must be disclosed.

When a union requests relevant information, "The employer must either fully supply the information or timely and adequately explain its reasons for not doing so, and the **employer** bears the **burden of proof** as to any defense, limitation, or condition that it asserts." Sacramento City Unified School District (2018) PERB No. 2597. (Emphasis added)

A review of Union Ex. 13 (attached) shows the information the Department and the IAB investigator consider critical, thus relevant, from the onset of the investigation. That information is at the very beginning of the log sheet and lists the following in large, bold black letters:

***DATE DEPARTMENT BECAME AWARE OF ALLEGATION(S):**	**09/09/2022**
***INCIDENT DATE:**	**09/09/2022**
***STATUTE DATE:**	**09/08/2023**

The Department and the investigator are fully aware of the significance of the dates that trigger the calculation of the statute of limitations provisions pursuant to Government Code section 3304(d). That code section is not vague or ambiguous. No punitive action shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's **discovery by a person authorized to initiate an investigation** of the allegation of an act, omission, or other misconduct and the Deputy must be **notified** of the proposed disciplinary action within the year of discovery of the misconduct.

Of equal significance are the provisions of subsections (d)(1) through (8) that allow for the tolling of the one-year period. Those sections include, among others, tolling to take place when a

criminal investigation or criminal prosecution is pending, more than one employee is involved, and where the Deputy is named as a party defendant in civil litigation.

It is clear that the Department must demonstrate strict compliance with the requirements of code section 3304(d), or the subject Deputy cannot be disciplined. The Department argued defense attorneys do not need the investigator log to determine whether there has been compliance with the one-year statute of limitations requirement since a summary is provided to them instead of the log.

The written summary provided to defense attorneys as part of the Skelly package should include dates pertinent to the statute of limitations and tolling periods, in addition to copies of transcripts of witness interviews. Yet, according to Ms. Johnson, Ms. Gibbons, and Ms. Okwuosa, the summary is not always complete or accurate. They gave the following examples why the summary is insufficient.

1. The summary stated certain witnesses were interviewed, but transcripts of those interviews were not provided to defense counsel.
2. Critical witnesses to alleged misconduct were never contacted or interviewed.
3. A civil lawsuit that tolled the statute date would not be included in the Skelly packet.
4. The Department's calculation of the statute of limitations date was inaccurate.
5. Exculpatory evidence may be contained in the investigator log, but not included in the summary of information prepared by the investigator.
6. The investigator's log could contain evidence used for impeachment of County witnesses.
7. The investigator's log can be used to check the accuracy of what is contained in the summary.

Ms. Johnson testified that the thoroughness of an investigation was a critical element of determining just cause for discipline. She explained why the investigator's log contained information that was not available in the Skelly packet provided to her.

"It's important because if there's a key witness to the case and if the Department has not made any valid attempt to get in touch with that witness, I need to know that. By the same token, if they have made multiple attempts to contact that witness and the witness cannot be found or is relocated or has passed away, that's also important information that I need to know in moving forward with the case." (Tr. 2:26-27)

Sgt. Paul Valle also confirmed the summaries he prepared do not show the time periods for the statute of limitations or the tolling dates, nor any information from the spread sheet showing calculations of those dates.

Management Directive No. 8 – Unit Order #8

The Department's refusal to provide the investigator logs to defense counsel was also based on Management Directive No. 8 that was issued on January 9, 2017 by the Internal Affairs Bureau Captain John M. Roberts. It was sent to "All Personnel Internal Affairs Bureau" and states in relevant part that "Investigator's Log, Administrative Investigations Time Frame Sheet, and Completed Investigation/Force/Shooting Investigation Check-off Sheet" were not to be released by IAB to "outside entities."

IAB PROTOCOL FOR PROCESSING THE ABOVE DOCUMENTS:

- The above three documents shall not be listed in any IAB investigative file's Table of Contents.
- The above three documents shall not be released to any outside entity as they are Internal documents for IAB use only. (Union Ex. 9)

A second document the Department relied upon was "Unit Order #8" that was essentially the same directive as the January 9, 2017 Management Directive No. 8. However, the Unit Order #8 is not dated, and does not indicate to whom it was distributed. That document states in relevant part as follows:

UNIT ORDER #8 – INTERNAL AFFAIRS BUREAU (IAB) DOCUMENTS NOT RELEASED TO OUTSIDE ENTITIES

IAB DOCUMENTS NOT RLEASED BY IAB TO OUTSIDE ENTITIES:

*Investigator's Log
*Administrative Investigations Time Frame Sheet
*Return to Unit Memorandums
*Completed Investigation/Force/Sheeting Investigation Check-Off Sheet

The document goes on to state that with the exception of the Office of Inspector General, the four documents are not to be released to any outside entity as they are "internal documents for IAB use only." To ensure "outside entities" do not receive the four documents, the IAB file clerk is given very specific instructions where the documents are to be saved in a digital format.

"*Upload and save in the IAB Shared File Folder (file server) = the entire completed IAB investigative file **(includes the above documents).** The saved IAB investigative files in this server **shall not be released to any outside entity.**

Upload and attach to PRMS = completed IAB investigative file saved in PRMS **shall not include the above documents.** The saved IAB investigative file in PRMS can be released to authorized – outside entities." (Emphasis added) (Union Ex. 10)

There is a problem with the Department directives for a number of reasons. There is no explanation why a Department employee facing discipline that is an internal Department procedure would be considered an "outside entity." The three ALADS attorneys representing deputies in disciplinary cases received the logs for **decades** until that past practice was changed when Ms. Johnson was denied the log for the Deputy C.R. disciplinary appeal. She, Ms. Gibbons and Ms. Okwuosa never received notice of either directive.

In her letter to Chief Bobby Wyche dated November 21, 2023, Ms. Johnson noted certain documentation was missing in the Deputy C.R. Skelly package she believed was relevant to the issue of the Department's compliance with the tolling provisions of Section 3304(d)(1)-(8). She pointed out that for a significant period of time the administrative investigation regarding Deputy C.R. was tolled due to a pending criminal investigation and multiple civil lawsuits. The first page of the Skelly package listed the statute of limitations date of November 16, 2023, presumably the date the statute of limitations period ended.

Yet, the Skelly package also contained a "Request for IAB Administrative Investigation" dated January 17, 2019 by Chief Eliezer Vera, and the "Subject of Administrative Investigation Notification" dated January 25, 2022 by Captain Richard Mejia. However, the packet did not contain any memos and/or documentation to establish the dates the tolling of the case was activated, nor the dates the tolling period was deactivated. There was no documentation regarding how the statute date was determined to be November 16, 2023, exactly six years from the date of the incident.

In her letter, Ms. Johnson listed her request for specific documents relating to the tolling periods, as well as the IAB investigation logs from Sgt. Ferreras, Sgt. Chang, and Sgt. Gonzalez. She requested the documentation prior to the December 20, 2023 Skelly meeting. (Union Ex. 5)

In his written response to Ms. Johnson dated November 30, 2023, Chief Wyche denied her request for the documents based on the following assertions:

1. The Skelly case only requires the disclosure of materials related to the findings and level of discipline considered by a decision maker **that would not include internal dialogue, whether written or verbal, as to deliberations or calculations of dates related to tolling and the statute of limitations under Government Code Section 3304. "Those are legal questions."**

2. The investigator's log is an internal document that contains **attorney-client privileged summaries.** (Emphasis added) (Union Ex. 6)

3. The Peace Officer Bill of Rights does not allow for any discovery and cited the case of Pasadena POA v. City of Pasadena (1990) 51 Cal.3d 564 as support for that position.

The Chief is mistaken in his understanding of his legal, statutory responsibilities pursuant to Government Code section 3304. First, any written "deliberations" or attorney-client summaries listed on the log could be redacted before the log was released to a defense attorney. Second, there are no "legal questions" regarding the **mandatory** calculations for the statute of limitations or tolling periods. Providing defense attorneys with the specific dates relied upon by the Department allows an employee facing discipline to confirm compliance with mandatory, statutory requirements. Even IAB Captain Chris Mouat testified, "Everyone needs to know if the statute of limitations dates are in compliance, including the employee."

Ms. Johnson responded to the Chief's letter on December 7, 2023 pointing out his arguments are contradicted by the principles established in Skelly v. State Personnel Board (1975) 15 Cal.3d 194, since the purpose of Skelly is to provide employees with a meaningful opportunity to challenge the allegations against them.

Ms. Johnson did not rely solely on the Skelly decision, but cited several legal decisions that supported the argument that an employee is entitled to discovery in grievance and disciplinary proceedings. Service Employees International Union Local 1021 v. Sacramento City Unified School District (2018) PERB Dec. No. 2597, and Modesto City Schools and High School District (1984) PERB Case No. S-CE-741. (Union Ex. 7)

Chief Wyche failed to respond to Ms. Johnson's rebuttal response. He may also have been unaware that Ms. Johnson received an investigator log in the Deputy K.T. case on November 28, 2023, just two days before his letter of November 30, 2023 in which he denied her November 21, 2023 request for the log in the Deputy C.R. case.

Also of note was the fact that the Chief never cited to Ms. Johnson in his letters either the 2017 IAB Management Directive #8, or the undated Unit Order #8, that both convey the same instruction that investigator logs are **not to be released by IAB** to "Outside Entities." The directive and unit order were also of no consequence when Ms. Gibbons was able to receive two investigator logs on February 14, 2024 from the private attorney retained by the Department. That may be because it appears only IAB personnel were notified of the two directives, while the remainder of County personnel (County Counsel, Risk Management, Human Resources, private Department counsel, etc.) were never provided with those directives and continued to release logs to defense attorneys before and after the directives were issued, thus establishing a "past practice."

Government Code Section 3303(g) - Confidential

The Department raised another basis for the denial of the investigator log, asserting it is a confidential document pursuant to Government Code Section 3303(g). The Department asserts it has the statutory right to designate **any material it wishes to be confidential** under subdivision (g) of section 3303. Subdivision (g) of section 3303 mainly concerns the disclosure of documents to a public safety officer under investigation who undergoes an interrogation by the officer's employing department, and states in relevant part as follows:

"(g) The public safety officer [being interrogated] shall be entitled to a transcribed copy of **any notes made by a stenographer** or to **any reports or complaints made by investigators or other persons,** except **those** which are deemed by the investigating agency to be **confidential…"** (Emphasis added)

There are a number of problems with the Department's reliance on this provision. First, in the context of an investigation, a "report" would be generally defined as a detailed account or statement, and a "complaint" would be generally defined as a formal allegation against a party. Both "report" and "complaint" suggest a more formal presentation than the raw or original source materials from which a report may be drawn. Gilbert v. City of Sunnyvale (2005) 130 Cal.App.4th 1264.

Second, the language of 3303(g) is not ambiguous. The officer is entitled to a transcribed copy of the stenographer's notes of his/her interrogation. The officer is entitled to "reports" or "complaints," unless they are deemed confidential by the investigating agency. The confidentiality

applies only to reports and complaints. "Logs" would not fit into either category of a report or a complaint and there is no language in 3303(g) that discusses the Department's ability to deem confidential any other document other than a report or complaint. Thus, the investigator logs that are the same as "notes" are not precluded from discovery.

"If City is correct that an accused officer is entitled to only the written complaints filed by third persons and the final written report prepared by investigators, but not to the underlying materials that might tend to show the complaints or reports were inaccurate, incomplete, or subject to impeachment for bias, the officer's ability to establish a defense at the administrative hearing could be hampered and the rights protected by the Act undermined." San Diego Police Officers Assn. v. City of San Diego (2002) 98 Cal.App.4th 779.

That is not to say that some information listed on a log is not confidential, such as references to attorney-client discussions. However, any confidentiality concern regarding specific materials could be remediated by redaction, or other accommodation.

"When a union's request for information seeks disclosure of information that would infringe on legally cognizable privacy rights, the employer must meet and negotiate in good faith to accommodate all legitimate competing interests…

When an employer and union meet and negotiate over privacy concerns, they can address all aspects of the problem, including the extent to which various levels of redaction might lessen such concerns, as well as the extent to which such redaction methods might frustrate the union in carrying out its representational functions." Sacramento City Unified School District (2018) PERB Decision No. 2597.

Accordingly, there is no legal or factual basis for accepting the Department's confidentiality claim, and any confidentiality concern regarding specific materials could be remediated by redaction, or other accommodation.

The County's Mandatory Duty to Negotiate Disciplinary Standards and Procedures

In this case, the County completely disregarded its duty to engage in bargaining with the Union regarding the logs. It is evident, and without contradiction, that the information contained in the investigator logs raises the issue of discipline, up to and including discharge from employment, and criminal prosecution.

ALADS presented ERCOM decisions stating that disciplinary issues are mandatorily negotiable. ALADS v. County of Los Angeles Sheriff's Department (2018) UFC 043-13, 014-15 (Automatic suspension without pay when criminally charged with a misdemeanor)

In the case of ALADS v. Los Angeles County Sheriff (2020) UFC 010-13, 001-17, the Sheriff Department made unilateral changes to the Guidelines for Discipline without engaging in negotiation with the union. ERCOM found the following:

"…the ERO imposes on the employer a duty to engage in negotiation as to three broad categories of subjects within the scope of bargaining: 'wages, hours, and other terms and conditions of employment' (Section 5.04.090(B). The term 'negotiation' is the equivalent of the term 'meet and confer.' It has the effect of making the duty to negotiate **mandatory** for all subjects encompassed by these three categories, **including the subject of discipline**, which falls squarely within the words 'other terms and conditions of employment.' This is because, besides wages, '[f]ew topics are of such immediate concern to employees as the conditions under which they may face discipline, up to and including discharge, for committing offenses against the employer (Eastex Inc. v. NLRB, 437 U.S. 556, 569) (1978))… It is widely understood that the duty to engage in negotiation extends to both the **decision** to set or change disciplinary conditions and the **effects** or implementation of such decision." Id. at p. 7 (Emphasis added)

The PERB decision in San Bernardino City Unified School District (1982) PERB No. 255 involved an employer's changes to work rules where violations would be grounds for disciplinary action.

"Disciplinary action, particularly termination, may have a direct impact on wages, health and welfare benefits, and other enumerated terms and conditions of employment… and is subject to negotiations… The unilateral adoption of such rules therefore violates the employer's duty to notify the exclusive representative and provide it with an opportunity to negotiate." Id at p. 4.

In Santa Clara County (2023) PERB No. 2876-M, PERB found that disciplinary rules and procedures "lie at the core of traditional labor relations; workplace policies generally fall within the scope of representation if they materially alter employees' disciplinary risks."

In this case, the Department failed in its duty to engage in negotiation with ALADS regarding the decision to ignore the past practice of providing Union attorneys with the investigator logs.

The County Failed to Give the Union Notice of the Proposed Change

The employer has a duty to provide reasonable notice and an opportunity to bargain before it implements a decision within its managerial prerogative that has foreseeable effects on negotiable terms and conditions of employment. A "reasonable" notice is one which is "clear and unequivocal" and which clearly informs the employee organization of the nature and scope of the proposed change. County of Santa Clara, (2013) PERB Decision No. 2321-M, at 30.

In this case, the County failed to provide ALADS with any notice of its intent to change the past practice of providing investigator logs to ALADS attorneys on request, or any meaningful opportunity to bargain over the reasonably foreseeable effects of its decision before implementation. Here, the only semblance of the required "notice" was when Chief Wyche informed attorney Amy Johnson of his denial of her request for the investigator log on November 30, 2023.

CONCLUSION

Based on the evidence presented in this case, ALADS met its burden of proof that the County violated sections 5.04.240(A)(1) and (3) of the Employee Relations Ordinance as follows:

1. The County unilaterally changed the past practice of providing ALADS members and their attorneys with a copy of the investigator log in a disciplinary case.

2. The investigator log contained relevant information necessary for the deputy sheriff's defense, and confirmation of the County's compliance with the statute of limitations requirements of Government Code section 3304(d) and the tolling provisions in subsections (d) (1) through (8). The noncompliance with the mandatory, statutory requirements prevents the County from imposing discipline on the deputy sheriff accused of misconduct. Statute of limitations and tolling dates are listed on the logs, but are not routinely provided to ALADS attorneys in summaries.

3. The County failed to give ALADS notice of the proposed change, or any opportunity to negotiate regarding the mandatory topic of discipline.

RECOMMENDATION

It is recommended the Commission adopt the Conclusions stated herein, sustain the Charging Party's Unfair Practice Charge, and order the following:

1. Order the County and the Sheriff's Department to restore the established past practice of providing investigator logs to attorneys representing ALADS members in disciplinary cases.

2. Order the County to post ERCOM's decision in this UFC case through the Sheriff Department's email system to all employees, and provide notice to all other appropriate County and Sheriff Department divisions.

Date: August 1, 2025.

Respectfully submitted,

Irene Ayala

Irene P. Ayala
Hearing Officer

EXHIBITS

DISCUSSION:

Government Code Section 3304(d)(1)

The Public Safety Officers Procedural Bill of Rights Act contains a statute oflimitations that commences with the discovery of misconduct by public safety officers in the employment setting. According to Government Code Section 3304(d)(1), an agency cannot discipline any officer "for any act, omission, or other allegation or misconduct" unless the agency completes its investigation and notifies the officer of the proposed discipline "within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct."