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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ALLEN HSIAO, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B293604 (Los Angeles County Super. Ct. No. BS169185)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Gregory G. Yacoubian for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, and Paul L. Winnemore, Deputy City Attorney, for Defendants and Respondents.

Plaintiff and appellant Allen Hsiao (Hsiao), a Los Angeles Police Department (LAPD) officer, appeals from the denial of his writ petition that seeks to overturn a written reprimand he received for failing an LAPD foreign language assistance audit. The parties are familiar with the facts, and our opinion does not meet the criteria for publication. (Cal. Rules of Court, rule 8.1105(c).) We accordingly resolve the cause before us, consistent with constitutional requirements, via a written opinion with reasons stated. (Cal. Const., art. VI, § 14; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1261-1264 [three-paragraph discussion of issue on appeal satisfies constitutional requirement because "an opinion is not a brief in reply to counsel's arguments"; "[i]n order to state the reasons, grounds, or principles upon which a decision is based, [an appellate court] need not discuss every case or fact raised by counsel in support of the parties' positions"].)

Hsiao advances only a legal contention for reversal; he does not challenge the discipline imposed as excessive or factually unjustified. Hsiao's argument is that California law, specifically the Public Safety Officers Procedural Bill of Rights Act (POBRA), does not allow a local agency decision maker to have the final word on employee discipline. As he frames the issue, the question is whether it is "permissible for the Chief of Police to be the ultimate finder of fact and final decision maker" when a police officer "invokes his right to appeal from disciplinary action imposed on him by the Chief of Police." As we briefly explain, California law does indeed permit the discipline and administrative appeal structure Hsiao challenges.

The statute at the heart of Hsiao's argument—Government Code section 3304, subdivision (b), which was enacted as part of

POBRA—provides: "No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal." The Courts of Appeal have held that implementing an administrative appeal process is left to local police agencies, so long as the process provides an appellant with an evidentiary hearing before a neutral factfinder. (*Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806 (*Binkley*) ["The limited purpose of an administrative appeal under [Government Code] section 3304 is to give the peace officer subjected to punitive action an opportunity 'to establish a formal record of the circumstance surrounding his termination' [citation] and 'to attempt to convince the employing agency to reverse its decision, either by demonstrating the falsity of charges which led to punitive action, or through proof of mitigating circumstances'"].)

Settled law runs directly contrary to Hsiao's argument that "one of the tenets of a fair hearing required by" Government Code section 3304, subdivision (b) is a requirement that the administrative hearing officer have the final word on the discipline imposed. Prior cases have instead approved administrative appeal rules, like those here, that say a neutral factfinder's determination results only in a nonbinding recommendation and that give an agency decision maker who made an initial disciplinary decision the authority to have the final say in the matter. (*Los Angeles Police Protective League v. City of Los Angeles* (2002) 102 Cal.App.4th 85, 93 ["The League also argues that the officer's due process right to a full and fair

evidentiary hearing before a neutral fact finder is not satisfied because the chief of police is the person who initiates the decision to reduce an officer's advanced pay grade or deselect the officer from a bonus position, and also the person who renders the final decision whether to uphold that decision. '[T]he right to a fair and impartial tribunal is not violated by permitting the official who makes the initial disciplinary decision to have the final say in the matter.' (*Burrell v. City of Los Angeles*[(1989)] 209 Cal.App.3d 568, 579[(*Burrell*)].) There is no due process violation inherent in the fact that the chief of police imposes the initial discipline and renders the final decision whether to uphold the decision"] (*Police Protective League*); see also *Binkley*, *supra*, 16 Cal.App.4th at p. 1811 ["It has been held that 'the right to a fair and impartial tribunal is not violated by permitting the official who makes the initial disciplinary decision to have the final say in the matter'"].) Hsiao pursued an administrative appeal and the neutral hearing officer recommended the LAPD police chief rescind the written reprimand Hsiao received. The chief opted not to follow that recommendation. Under *Police Protective League*, *Binkley*, and *Burrell*, that is not improper.

The cases Hsiao cites to argue the contrary are inapposite. *Morgado v. City and County of San Francisco* (2017) 13 Cal.App.5th 1 (*Morgado*) holds a local agency must afford an officer an opportunity to administratively appeal a punitive action after it is taken, even if there is some right to an administrative appeal earlier in the discipline process. (*Id.* at pp. 8-9.) Hsiao got what *Morgado* requires—the chief simply decided not to accept the outcome of the administrative appeal. *Gray v. City of Gustine* (1990) 224 Cal.App.3d 621 (*Gray*) and *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438 (*Stanton*)

are cases that explain local agency administrative appeal procedures will not suffice if biased, rather than neutral, factfinders preside over the administrative hearing process. (*Gray*, *supra*, at p. 632; *Stanton*, *supra*, at p. 1443.) The cases have nothing to say about the situation here where there is no dispute that the hearing officer was neutral.

DISPOSITION

The judgment is affirmed.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.