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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SALVADORE NERI, Plaintiff and Respondent, v. CITY OF LOS ANGELES, Defendant and Appellant.	B231266 (Los Angeles County Super. Ct. No. BC387038)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert O'Brien, Judge. Affirmed.

Carmen A. Trutanich, City Attorney, Zna Portlock Houston, Senior Assistant City Attorney, and Alison R. Platt, Deputy City Attorney, for Defendant and Appellant.

Law Offices of Thomas Hoegh, Thomas Hoegh for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant City of Los Angeles appeals from a judgment issuing a writ of mandate that rescinds the decision by the Board of Civil Service Commissioners to terminate the employment of plaintiff and respondent Salvadore Neri. Defendant contends that the trial court abused its discretion because there was insufficient evidence in support of the trial court's finding that (1) the due process provisions of *Skelly v. State Personnel Bd*. (1975) 15 Cal.3d 194 (*Skelly*) were not met; (2) plaintiff did not report falsely his jury duty status to defendant and receive salary compensation for which he was not entitled; and (3) termination of plaintiff's employment was improper. Although the trial court did not specifically find that defendant's termination of plaintiff's employment was retaliatory, defendant also contends on appeal there was insufficient evidence to support any such finding. We affirm.

FACTUAL BACKGROUND[1]

A. Preliminary Events

Plaintiff testified before a hearing officer of the Civil Service Commission that in 2001, he became employed by defendant in the Department of General Services, assisting in preparing purchase orders and employee timekeeping. In approximately August 2005, plaintiff became a union steward, and in September 2005 he filed a grievance against defendant because plaintiff was assigned to process purchase orders that were generated by a person who was not employed by defendant.

Plaintiff testified that on October 18, 2005, because he believed that he was being retaliated against for filing his grievance, plaintiff transferred to the Los Angeles Police Department in the scientific investigation division (SID) as a clerk typist. Plaintiff continued to be a union steward. When plaintiff commenced working at SID, his

[1] The factual background is based on the August 8 and October 19, 2007, proceedings before the hearing officer at the Civil Service Commission, and the facts are stated pursuant to the applicable standard of review discussed below.

supervisor, Larry Wong, advised him that instead of taking a 30-minute lunch break and two 15 minute breaks each day, plaintiff was to take a one-hour lunch break each day and record it on his timesheet as a 30-minute lunch break and two 15 minute breaks. Plaintiff questioned Wong as to whether a one-hour lunch should be recorded as such. Wong replied that it should be because a one-hour lunch break needs to be broken down. According to plaintiff, "And that's what started the ball rolling against me." Wong also rejected plaintiff's complaint, made shortly after plaintiff transferred to SID, that there was not always someone available to relieve plaintiff so he could take a break when he was engaged in a task requiring an uninterrupted 10 minutes to one hour. Plaintiff also filed a complaint alleging Wong discriminated against him because Wong told plaintiff that he needed to wear socks.

Plaintiff, in his capacity as union steward, filed complaints with Wong that the chair he was given by the police department was broken, the ladders they wanted him to use were not "at [his] weight limit and also were not durable, fragile," and the computers were outdated. According to plaintiff, Wong was not responsive to plaintiff's complaints.

B. Claim of Allowed Pay—Jury Duty Incident

Plaintiff testified that in November 2005, he showed Wong a "subpoena" ordering plaintiff to report for jury duty on Tuesday, November 8, 2005. By the time of the administrative hearing that commenced in August 2007, plaintiff no longer had the subpoena. Plaintiff recalled that the subpoena required him to appear for jury duty on Tuesday, Wednesday and Thursday, November 8, 9 and 10, 2005, respectively—three consecutive days. Friday, November 11, 2005, was Veteran's Day holiday. It was the first time plaintiff had been ordered to report for jury duty.

Plaintiff testified that on November 8, 2005, he reported for jury duty at the criminal court located on Temple Street in Los Angeles. At the end of the day, plaintiff was assigned to a jury panel and instructed to report on November 14, 2005, to Department 61 in the Stanley Mosk Courthouse in Los Angeles. According to plaintiff,

he was never told that he was excused from the subpoena ordering him to report for jury duty. Plaintiff believed that he was still under subpoena and that he had to continue to appear at court, but at the Stanley Mosk Courthouse. Plaintiff immediately called Wong to advise him that plaintiff been transferred to another courtroom.

Plaintiff testified that the next day, on November 9, 2005, he went to Department 61 of the Stanley Mosk Courthouse, but it was locked and no one was there. Plaintiff then went to the jury assembly room. Plaintiff had on his juror badge and advised the court administrator in the room that he is a potential juror. Plaintiff was instructed to sit in the room, and he complied. By the end of the day, plaintiff's name was not called, and he was not aware of any announcement to see the court administrator if his name was not called. The court administrator validated his parking.

Plaintiff testified that on November 10, 2005, he parked at the Walt Disney Concert Hall parking lot, reported to the Stanley Mosk Courthouse, and "did the same thing again" as he did the previous day. Betty Onley testified that she was a Los Angeles County Superior Court services coordinator assigned to the Stanley Mosk Courthouse, she recognized plaintiff's November 10, 2005, parking receipt from the Walt Disney Concert Hall parking lot, and there appears to be a Los Angeles Superior Court stamp on it.

Plaintiff testified that he called Wong on November 9 and 10, 2005. Plaintiff produced his cell phone records reflecting that on November 10, 2005, plaintiff called Wong on three occasions. On November 10, 2005, Wong told plaintiff not to call every day but to just keep Wong updated on the status of plaintiff's jury service.

Plaintiff testified that on November 14, 2005, plaintiff again reported to jury duty in Department 61, and plaintiff served on a jury for several non-continuous days until the trial concluded on December 16, 2005. Plaintiff testified that on December 14, 2005, he reported for jury duty but the courtroom was dark. Plaintiff called Wong and explained the situation, and asked Wong if he could take the day off as a vacation day if he did not get jury duty credit because he wanted to see his ill grandmother. Wong approved plaintiff's request.

Plaintiff testified that at the conclusion of the trial, the Los Angeles Superior Court generated a certificate of jury service stating that he attended jury duty for multiple non-consecutive days in November and December, 2005. Plaintiff noticed that there was a discrepancy between the days he was in court and the credited days reflected on the certificate of jury service. Plaintiff called Wong and stated that there was the discrepancy. Plaintiff advised Wong that plaintiff was in the court on November 9 and 10, 2005. Plaintiff also advised Wong that he did not get jury duty credit for December 14, 2005, and in their earlier conversation, Wong had agreed to allow plaintiff to use vacation time for that day. Wong responded, "Okay. No problem."

Vivian Levario testified that she was employed by the Los Angeles Police Department SID unit, and her responsibilities included employee timekeeping. She noticed that there was a discrepancy between the time plaintiff reported he had served jury duty and the dates reflected on the certificate of jury service. Defendant ultimately concluded that plaintiff falsely claimed that he had reported for jury duty on November 9 and 10, and December 14, 2005, and claimed improperly compensation for those days.

C. Failure to Report for Duty—Bereavement Incident

Plaintiff testified that at approximately 4:45 a.m. on Friday, February 3, 2006, his mother notified him that his grandmother had passed away. Plaintiff was scheduled to work that day. Plaintiff immediately called Wong and advised him of the death of plaintiff's grandmother. Plaintiff requested that he be provided bereavement leave,[2] which he understood was a three-day leave of absence. Plaintiff was not scheduled to work on Monday, February 6, 2006. Wong told plaintiff, "Take the week off since it was

[2] Wong testified that plaintiff did not request bereavement leave, but Wong offered it and explained it is for three days.

already in the middle of bereavement leave." Plaintiff told Wong to "[u]se whatever I have in the books to cover" the additional time off. [3]

Plaintiff testified that the funeral was held on Thursday, February 9, 2006, the day after plaintiff's bereavement leave expired. On February 10, 2006, plaintiff attended to relatives who had stayed the previous night at his grandmother's house. Plaintiff did not believe he needed to call Wong because he understood that Wong had approved plaintiff taking those days off from work.

Plaintiff testified that on Monday, February 13, 2006, he returned to work. Wong told plaintiff that his absence from work on February 9 and 10, 2006, was recorded as his being absent without leave. Plaintiff replied, "You got to be kidding me[;] [absent without leave] for burying my grandmother?" Plaintiff told Wong that plaintiff was going to file a complaint about it, and in response Wong told plaintiff to take it easy and that Wong was going to speak to his supervisor "to get this matter resolved." Plaintiff, therefore, did not file a complaint at that time.

PROCEDURAL BACKGROUND

A. Discipline

On January 6, 2006, defendant filed a personnel complaint against plaintiff regarding the jury duty incident. Following defendant's investigation it concluded that plaintiff falsely reported his jury duty status, and received salary compensation for which he was not entitled—for November 9 and 10, and December 14, 2005—and recommended a 10-day suspension.

On February 17, 2006, defendant filed a personnel complaint against plaintiff regarding the bereavement incident. Following an investigation defendant concluded that

[3] Wong testified that plaintiff did not ask to be allowed to take the following week off work and that any additional days beyond the three days for bereavement leave be deducted from whatever time he had available to him.

the allegation of plaintiff failing to appear for duty as assigned on February 9 and 10, 2006, without notifying his supervisor, was "NOT RESOLVED."

Plaintiff testified that in August 2006, he was served with a written *Skelly*[4] notice charging him with neglect of duty and dishonesty for falsely reporting jury duty status and receiving salary compensation for which he was not entitled, and recommending a 10-day suspension. In August 2006, a *Skelly* hearing occurred at which plaintiff and his union representative met with defendant to respond to the charges. Plaintiff received the personnel complaints for the jury duty and bereavement matters, and was told that he would be given an opportunity to respond to the 10-day suspension regarding the jury duty incident and no response was necessary regarding the bereavement incident because no discipline was being recommended. On September 26, 2006, plaintiff prepared a written *Skelly* response denying any misconduct regarding the jury duty incident and claimed that defendant was retaliating against him because he was a union stewart.

On November 27, 2006, Marleen Cudillo, defendant's SID Adjutant, telephoned plaintiff and left him a voicemail message to schedule a second *Skelly* hearing. On November 28, 2006, Cudillo followed up the voicemail massage by sending plaintiff an e-mail stating, "I'm hoping you received my voice message left Monday 11/27/06. We need to set up a date/time for you to meet with CO (commanding officer) for a skelly . . . [*sic*] Again, you have a right to bring representation. [¶] Please contact them (your rep) asap to arrange a time." Plaintiff testified that Cudillo's e-mail advised him there was going to be a *Skelly* hearing and to contact his union representative. Plaintiff requested union representation. Dolores Spears, plaintiff's union representative, sent plaintiff an e-mail that included Cudillo's e-mail. Spears's e-mail stated in part, "Hi Sal, the lady called back and left a message, that you are being re Skellied. The Bureau bounced back your package because there was a change. You do not need a Rep to receive a Skelly package. When you receive it, call me to arrange getting the package to me and schedule a meeting if necessary."

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4 *Skelly*, *supra*, 15 Cal.3d 194.

Plaintiff testified that on December 5, 2006, he met with defendant, without union representation, and received new *Skelly* notices for both the jury duty and bereavement matters. Yvette Sanchez Owen testified that she was a Los Angeles Police Department commanding officer, and the meeting was considered a *Skelly* hearing.

The new *Skelly* notice regarding the bereavement incident stated that the original investigation had been returned for review and re-adjudication. The new *Skelly* notice was different from the original notice in that, inter alia, it stated that the allegation was sustained and recommended a five-day suspension of plaintiff's employment (instead of no penalty because the investigation was unresolved), and cited defendant's disciplinary guidelines. It stated that under the disciplinary rules, the suggested employment penalty for a *first* offense of "[v]iolat[ing] departmental rules" is "[o]ral warning to 5-day suspension," "[u]nexcused . . . absenteeism" is "[w]ritten [n]otice to 5-day suspension," and the "[f]ailure to provide [work] information" is "[w]ritten [n]otice to 10-day suspension."

The new *Skelly* notice regarding the jury duty incident stated that the original investigation had been returned for review and re-adjudication. The new notice contained the same allegations as the original *Skelly* notice. The new *Skelly* notice was different from the original notice in that, inter alia, it included allegations that plaintiff, as a union steward, should have known that he should return to work when he was not ordered to attend jury service, cited defendant's disciplinary guidelines, and recommended that plaintiff's employment be terminated (instead of plaintiff serving a 10-day suspension). It stated that under the disciplinary rules the suggested employment penalty for "[f]alsifying [defendant's] records (by not reporting the actions correctly)" or "[f]alsely claiming . . . allowed pay" is "[d]ischarge." It also stated that the suggested employment penalty for a *second* offense of violating departmental rules or an [u]nexcused . . . absenteeism" is "6-day suspension to discharge," and the failure to provide work information is "6 to 30-day suspension."

Plaintiff testified that at the December 5, 2006, meeting, defendant did not tell him that it was a *Skelly* hearing, and plaintiff merely thought that at the meeting defendant

was "going to give me some type of document or something, or just tell me." Plaintiff was upset that the penalty sought against him had increased, and asked to have the meeting stopped so plaintiff could have his union representative present. Defendant responded that if plaintiff did not agree to continue with the hearing, it was going to charge plaintiff with insubordination.

On January 24, 2007, defendant served plaintiff with a notice advising him that he is suspended for five days because he failed to report to duty on February 9 and 10, 2006. The notice further advised plaintiff that there is no appeal from this disciplinary action. On February 20, 2007, defendant served plaintiff with a notice advising him that his employment with defendant was terminated effective February 21, 2007, because plaintiff falsely reported his jury duty status for November 9 and 10, and December 14, 2005, and he was not entitled to the salary compensation he received for those days.

B. Administrative Hearing

On February 22, 2007, plaintiff filed an appeal of his employment termination with the Board.[5] A hearing was conducted by a civil service commission hearing examiner to determine whether plaintiff falsely reported his jury duty status and received salary compensation thereby for which he was not entitled. And, "TO ESTABLISH SECOND OFFENSE STATUS," the hearing was to determine whether plaintiff failed to report for duty on February 9 and 10, 2006.

Following the hearing, the hearing examiner issued a report stating that the parties stipulated defendant complied with the due process provisions of *Skelly*, *supra*, 15 Cal.3d 194.[6] The report recommended that the Board conclude defendant properly terminated plaintiff's employment because plaintiff falsely reported his jury status to

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[5] Plaintiff's five day suspension for failing to report to duty on February 9 and 10, 2006, was not appealable to the Board because suspensions of five days or less are excluded from review. (City of L.A. Charter, § 1016, subd. (h)(3).)

[6] Plaintiff denies that he entered into such a stipulation.

defendant for two of the three alleged days at issue, and he was not entitled to the salary compensation he received for those days. The report stated, "It is undisputed that [plaintiff] was called to jury duty commencing November 8, 2005. On that date, he was advised in writing that he was to report to Dept. 61 in another courthouse on November 14, 2005. [Plaintiff's] testimony that he thought he should report several days early to the other courthouse, and did so without ever notifying anyone at the courthouse of his presence is unbelievable. If he indeed thought that, even though already assigned to a specific trial, he should report on the off chance he might be assigned to an interim trial, the only logical thing for him to do would be to report to the site of his original call (the Criminal Courthouse), and to at least let someone know he was there, in which case he would likely have been told to go to work until his report date of November 14, 2005. Whatever his relationship with Wong, it is clear that [plaintiff] determined that he could engineer a couple of days off with pay on the pretext of being on jury duty, when in fact, he was under no obligation to report for jury service on November 9 and 10, 2005." The hearing examiner did not make any finding as to the other charged date—December 14, 2005—errounesously referring to the events of "November 18, 2005," and stating that it was "immaterial."

The report continued, "In the end, the issue of . . . [plaintiff's] claim that [defendant] cannot categorize the alleged abuse in collecting pay while supposedly on jury duty as a second offense, on the ground that [plaintiff] was AWOL after exhaustion of bereavement leave [is immaterial]. . . . [T]he suggested [penalty] for [the first offense of] falsely claiming allowed pay . . . is discharge." The hearing officer's recommendation to the Board to terminate plaintiff's employment, therefore, was limited to plaintiff's activities on November 9 and 10, 2005.

C. Board

At its December 13, 2007, meeting, the Board received and considered the hearing examiner's report and plaintiff's exceptions. After hearing argument from plaintiff's counsel and defendant, the Board found that the due process provisions of *Skelly*, *supra*,

15 Cal.3d 194 had been met. The Board adopted the hearing examiners report, sustained the charges that plaintiff falsely reported his jury status to defendant and received salary compensation for which he was not entitled, and sustained the discharge of plaintiff's employment. Commissioner De Los Reyes stated, "I'm not persuaded that the Hearing Examiner made any mistakes, but there's some element of doubt here with regard to the parking stub that [plaintiff] provided, although I tend to think that the Hearing Examiner called it correctly when he dealt with the question of credibility and I find that it strains my credulity to think that [plaintiff] was quite so misled by the Superior Court." At its meeting on May 8, 2008, the Board denied plaintiff's demand for reinstatement.[7]

D. Petition for Writ of Mandate

On March 11, 2008, plaintiff filed a complaint in the trial court alleging, inter alia, a cause of action for a petition for writ of mandate against defendant pursuant to Code of Civil Procedure section 1094.5.[8] Plaintiff contended in his memorandum of points and authorities in support of his petition for writ of mandate that (1) "[t]he evidence does not support the actions of the [Board], the evidence shows . . . that there was no 'just cause' to terminate [plaintiff's employment], and that [plaintiff] is fully capable of performing his duties as a Clerk Typist 1;" (2) the discharge of plaintiff's employment was the first disciplinary action to be taken against plaintiff, but it was categorized as a second offense for purposes of determining the appropriate penalty; (3) "[t]he discharge of [plaintiff's employment] is an abuse of discretion, and that the true reasons for the discharge was [*sic*], as presented [at the administrative hearing], was [*sic*] that [plaintiff] reported fraud and misconduct at the [defendant's] Department of General Services, that [plaintiff] reported safety violations regarding the chairs and ladders use by [defendant], and that [plaintiff] reported wage and hour violations as a result of [defendant's] refusal to allow rest breaks in the morning and afternoon shifts at Scientific Investigations, such that no

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[7] The record does not include plaintiff's demand for reinstatement.

[8] The complaint was not originally included in the record. We have obtained a copy from the Superior Court record and order that it be deemed part of the record.

'just cause' existed to discharge [plaintiff's employment];" (4) the discharge was in retaliation for plaintiff "having filed a Skelly response denying the allegations rather than accepting the initial ten day suspension . . . without any further evidence of misconduct, [defendant] increased the proposed discipline from a ten day suspension to discharge" of employment; and (5) plaintiff's "Skelly rights were violated" because plaintiff "was denied representation at his second Skelly hearing." Defendant opposed the petition, and plaintiff filed a reply listing several facts in support of the petition that he argued were uncontested.

Both parties represent to this court that by the time of the October 25, 2010, hearing on plaintiff's petition for writ of mandate, all of plaintiff's causes of action, other than for a petition for writ of mandate, had been dismissed. At the October 25, 2010, hearing, after defendant's counsel advised the trial court that defendant contested what plaintiff characterized in pleadings as uncontested facts, the parties submitted on their briefs, and the trial court took the matter under submission. Neither party requested a statement of decision. The trial court issued a minute order granting the petition and it was served on the parties on October 25, 2010. On January 6, 2011, the court entered judgment issuing a peremptory writ of mandate ordering defendant to rescind the Board's findings that (1) the due process provisions of *Skelly*, *supra*, 15 Cal.3d 194 were met; (2) plaintiff was guilty of falsely reporting his jury duty status to defendant; (3) plaintiff was guilty of receiving salary compensation for which he was not entitled; and (4) plaintiff's employment discharge be sustained. There is no indication in the reporter's transcript of the October 25, 2010, hearing, the minute order, or the Judgment as to the rationale or ground of the trial court's ruling.

DISCUSSION

A. Standard of Review

"In examining the findings in a [Code of Civil Procedure] section 1094.5 case, reviewing courts apply the substantial evidence test. That test is applied to *the trial*

court's findings if a fundamental vested right is involved or substantially affected and the trial court exercised its independent judgment in examining the administrative decision. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143, fn. 10 [93 Cal.Rptr. 234, 481 P.2d 242].)" (*Antelope Valley Press v. Poizner* (2008) 162 Cal.App.4th 839, 851.) "Under the substantial evidence standard of review, our review begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the trial court's factual determinations." (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 501.) "We indulge every reasonable inference and presumption in favor of the trial court's findings." (*Deegan v. City of Mt. View* (1999) 72 Cal.App.4th 37, 40.) "'Evidence is substantial if any reasonable trier of fact could have considered it reasonable, credible and of solid value.' [Citations.]" (*Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 52.)

B. Statement of Decision

Defendant contends that this matter should be remanded because the trial court did not issue a statement of findings. We disagree.

Defendant cites *Hadley v. Superior Court* (1972) 29 Cal.App.3d 389, for the proposition that findings of fact are required when the trial court rules on a petition for administrative mandamus utilizing the "independent judgment test." There are administrative mandamus cases suggesting that "'[a] judgment entered without findings required is a nullity.'" (See *City of San Marcos v. California Highway Commission* (1976) 60 Cal.App.3d 383, 392.)

But the law has changed. "Under former law, written findings of fact and conclusions of law were required when a question of fact was decided by a superior court. See former [Code of Civil Procedure section] 632 (before amendment by Stats 1981, ch 900). For purposes of [Code of Civil Procedure section] 1094.5 review, findings of fact and conclusions of law were mandatory when the court exercised its independent judgment on the record . . . if one of the issues raised in the petition was whether the agency's findings were supported by the evidence. See *Sears, Roebuck &*

Co. v. Walls (1960) 178 [Cal.App.]2d 284, 288, 2 [Cal.Rptr.] 847. . . . By amendment to former [Code of Civil Procedure section] 632 in 1981, the statement of decision procedure replaced findings of fact and conclusions of law." (2 Cal. Administrative Mandamus (Cont. Ed. Bar 2011) § 15.2, p. 551 (Cal. Admin. Mandamus.)

"It is . . . well established that Code of Civil Procedure section 632 applies to administrative mandamus proceedings in which the trial court exercises its independent judgment in reviewing the record." (*Cooper v. Kizer* (1991) 230 Cal.App.3d 1291, 1301.) Code of Civil Procedure section 632[9] provides that a statement of decision is required upon a party's timely and specific request in the trial court. A party forfeits the right to a statement of decision by failing to make such a request. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1056; 2 Cal. Admin. Mandamus, *supra*, §§ 14.32, 15.2, and 15.3, pp. 539, 551-553.) The court in *Hadley v. Superior Court*, *supra*, 29 Cal.App.3d 389 stated, "[P]etitioner has long since waived findings of fact and conclusions of law. While the minute order . . . announcing the court's decision to deny the petition for writ of mandamus did not constitute final judgment in the action, it did constitute a notice of the intended decision of the trial court . . . and copies thereof were mailed to counsel . . . . Petitioner did not request findings of fact and conclusions of law within 10 days nor at any time thereafter. . . . Accordingly, findings of fact and conclusions of law have been waived. [Citations.]" (*Id*. at pp. 394-395.)

Here, the trial court issued its minute order granting the petition and it was served on the parties. The parties, however, did not request a statement of decision. Defendant

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[9] Code of Civil Procedure section 632 provides in part, "In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision."

forfeited its right to statement of findings and cannot contend reasonably that the matter should be remanded because the trial court did not issue one.

Even if the trial court should have given a statement of decision, the failure of defendant at any time to call this to the attention of the trial court constitutes a forfeiture of the right to the statement of decision. Moreover, defendant only points to the purported requirement in footnotes, and therefore has presented no reasoned argument on the issue. (Cal. Rules of Court, rule 8.204(a)(1)(B); *People v. Stanley* (1995) 10 Cal.4th 764, 793 [if no legal argument and citation of authorities on a point, court may treat issue as waived].)

C. Right to Union Representation at the Second *Skelly* Hearing

Defendant contends that the trial court erred by ruling that the due process provisions of *Skelly, supra,* 15 Cal.3d 194 were met. We disagree.

Plaintiff's contentions that his due process rights under *Skelly, supra,* 15 Cal.3d 194, were violated because he was denied the right to have union representation at the second *Skelly* hearing. *Skelly, supra,* 15 Cal.3d 194 requires that a public employee must be provided with certain procedural due process rights at a pre-discipline hearing, but it is silent on the employee's right to union representation. *NLRB v. J. Weingarten, Inc*. (1975) 420 U.S. 251, however, held that a public employee is entitled to union representation at such a hearing. (*Id*. at pp. 260-263; *Robinson v. State Personnel Board* (1979) 97 Cal.App.3d 994; Gov. Code, § 3503.)

Defendant does not dispute plaintiff's contention that plaintiff had a due process right to have such representation at the second *Skelly* hearing. Defendant contends that plaintiff waived his contention that his due process rights were violated at the second *Skelly* hearing because plaintiff never raised this issue in his administrative hearing. In plaintiff's papers in support of his petition for a writ of mandate, he contended that he did in fact raise the issue to the hearing officer, and the transcript of the administrative hearing does not include the parties' respective closing arguments.

As discussed above, the parties failed to request a statement of decision. When reviewing a judgment issued without a statement of decision, as occurred here, we presume the court made the findings to support its judgment under the doctrine of implied findings. (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792-793, superseded on other grounds by statute as stated in *In re Zacharia D.* (1993) 6 Cal.4th 435, 448; *Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 58.) Because the record does not provide the parties' closing arguments at the administrative hearing, defendant has failed to establish that plaintiff did not raise the issue that his procedural due process rights had been violated at the second *Skelly* hearing.

Defendant also contends that there was insufficient evidence in support of the trial court's finding that plaintiff's due process rights were violated because plaintiff was deprived of the right to have union representation at the second *Skelly* hearing. The hearing examiner's report stated that the parties stipulated defendant complied with the due process provisions of *Skelly*, *supra,* 15 Cal.3d 194. The record does not contain such a stipulation, and plaintiff contended before the trial court that there was none.

There is sufficient evidence to support a finding by the trial court that plaintiff's due process rights were violated. On November 28, 2006, defendant sent plaintiff an e-mail in an attempt to coordinate a second *Skelly* hearing, advising plaintiff he had a right to bring a representative with him to that hearing, and requesting that plaintiff contact his representative to arrange the hearing. Plaintiff testified that he contacted his union representative, who exchanged telephone messages with defendant. The union representative advised plaintiff that plaintiff was going to be subjected to a second *Skelly* hearing, that a new "package" (presumably a new *Skelly* packet) that defendant had sent plaintiff had been returned, plaintiff did not need a union representative with him to receive the new *Skelly* packet, and when plaintiff receives the new *Skelly* packet to call her to arrange getting the package to her and to schedule a meeting.

A meeting occurred on December 5, 2006, between plaintiff and defendant, and plaintiff did not have union representation. The record does not state the circumstances under which the December 5, 2006, meeting was coordinated so as to provide a

reasonable understanding of what the meeting was to concern. Although defendant considered the meeting to be a *Skelly* hearing, plaintiff testified that at the meeting, defendant did not tell him it was a *Skelly* hearing. Plaintiff thought that at the meeting defendant was "going to give me some type of document or something, or just tell me." When plaintiff learned that defendant increased the penalty against him plaintiff asked to have the meeting stopped so plaintiff could have his union representative present. Defendant responded that if plaintiff did not agree to continue with the hearing, it was going to charge plaintiff with insubordination.

There was substantial evidence to support the trial court's ruling that plaintiff's due process rights were violated. Even if plaintiff's due process rights were not violated, as discussed below, there is sufficient evidence to support the trial court's ruling that plaintiff did not falsely report his jury duty status and received salary compensation for which he was not entitled.

D. Termination of Plaintiff's Employment

Defendant contends that the trial court erred in rescinding the Board's decision to terminate plaintiff's employment because there was insufficient evidence plaintiff did not report falsely his November 9 and 10, 2005, jury duty status to defendant and receive salary compensation for which plaintiff was not entitled.

Plaintiff testified at the administrative hearing that a "subpoena" required him to appear for jury duty on November 8-10, 2005, and when plaintiff was assigned to a jury panel and instructed to report to the Stanley Mosk Courthouse on November 14, 2005, he was never told that he was excused from the "subpoena" ordering him to report for jury duty. The evidence established that plaintiff had never before been required to report for jury duty, and plaintiff testified that he believed he was still required to continue to appear at court, but at the Stanley Mosk Courthouse.

Plaintiff testified that on November 9 and 10, 2005, he went to the jury assembly room at the Stanley Mosk Courthouse, and reported in to the court administrator who instructed him to sit in the room. At the end of the day, after plaintiff's name had not

been called, the court administrator validated plaintiff's parking. Los Angeles County Superior Court services coordinator assigned to the Stanley Mosk Courthouse authenticated plaintiff's November 10, 2005, parking receipt and the stamp on it from the court. The evidence also showed that plaintiff called Wong on November 9 and 10, 2005, and the evidence included plaintiff's cell phone records reflecting that on November 10, 2005, plaintiff called Wong on three occasions.

There is evidence that plaintiff contacted Wong, shortly after plaintiff received the certificate of jury service from the court, to advise him that plaintiff had noticed there was a discrepancy between the days he was in court and the credited days reflected on the certificate of jury service. Plaintiff explained his position to Wong, and Wong responded, "Okay. No problem."

Although, one could view plaintiff's evidence with skepticism, it was sufficient to uphold the trial court's ruling that plaintiff did not report falsely his jury duty status to defendant and receive salary compensation for which he was not entitled and that therefore the termination of plaintiff's employment was improper.

E. Other Contentions

There is substantial evidence that plaintiff's due process rights were violated and plaintiff did not report falsely his jury duty status and receive a salary for which he was not entitled—either of which could be a basis for affirming the judgment. Because we affirm the judgment for the reasons stated above, we do not reach defendant's contentions that there was insufficient evidence to find that its termination of plaintiff's employment was retaliatory.

DISPOSITION

The judgment is affirmed. Each party shall bear his or its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.