Filed 12/17/25 McMahon v. City of Los Angeles CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MICHAEL MCMAHON, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B335782 (Los Angeles County Super. Ct. No. 22STCP03767)

APPEAL from a judgment of the Superior Court of Los Angeles County, Curtis A. Kin, Judge. Affirmed.

Law Offices of Gregory G. Yacoubian and Gregory G. Yacoubian for Plaintiff and Appellant.

Hydee Feldstein Soto, City Attorney, Denise C. Mills, Chief Deputy City Attorney, Kathleen A. Kenealy, Chief Assistant City Attorney, Shaun Dabby Jacobs, Assistant City Attorney, and Brian Cheng, Deputy City Attorney, for Defendants and Respondents.

In 2021, the City of Los Angeles (City) adopted policies requiring employees to report their COVID-19 vaccination status and to either get vaccinated or request an exemption for medical or religious reasons. Employees who were not yet fully vaccinated or who had requested an exemption had to sign a notice agreeing to test for COVID-19 twice per week through the City's vendor and reimburse the City $65 per test. If the City ultimately granted an exemption request, it would reimburse the employee for the cost of testing. Michael McMahon, a police officer with the Los Angeles Police Department (LAPD), refused both to sign the notice and to comply with the vaccination requirements. The LAPD relieved McMahon of duty and, after a Board of Rights hearing, terminated his employment.

McMahon filed a petition for writ of mandate against the City and LAPD Chief Michael Moore (collectively, respondents). McMahon contended the requirement he pay for COVID-19 testing as a condition of employment violated Labor Code section 2802,[1] which requires employers to cover all "necessary expenditures" for a job. He asserted it was improper for the City to terminate him for refusing to sign the notice containing the illegal term that he reimburse the City for the cost of testing. Because his termination was unlawful, he contended he was entitled to reinstatement with full back pay. He also asserted LAPD did not afford him due process, which also entitled him to reinstatement with back pay.

The superior court granted the petition in part, concluding McMahon was entitled to limited back pay for the period between the time his loss of pay became effective and the date of his Board

---

[1] Undesignated statutory references are to the Labor Code.

of Rights hearing, because he did not have an opportunity to respond to the complaint against him before the LAPD relieved him of duty. The court otherwise denied the petition. It concluded section 2802 did not apply to public employers and that the notice requiring unvaccinated employees to pay for testing was not illegal; thus McMahon's termination was not an abuse of discretion.

McMahon contends the superior court erred in concluding section 2802 does not apply to public employers, and he maintains that LAPD could not lawfully terminate him for refusing to sign a notice that contained an illegal requirement that he, rather than the City, pay for COVID-19 testing. He contends the court also erred in failing to order he be reinstated with full back pay.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Ordinance and Notice of the City's COVID-19 Policies*

In March 2020, in response to the COVID-19 pandemic, the Mayor of Los Angeles declared a local emergency, and the City Council ratified the declaration two days later. In August 2021 the City Council enacted Ordinance No. 187134 (Ordinance). The Ordinance required that, by October 20, 2021, all City employees must have reported their vaccination status and be either fully vaccinated or have submitted a request for a medical or religious exemption. Exempted employees who were required to regularly report to a City worksite had to undergo weekly COVID-19 testing at no cost to them. Employees could not "opt out" of vaccination in lieu of weekly testing unless they received an exemption.

After the Ordinance was enacted, most City employees got vaccinated, but some requested an exemption, and others (like McMahon) did neither. In late October 2021, the City Council adopted a Resolution Implementing Consequences for Non-Compliance with the Requirements of Ordinance No. 187134 (Resolution). Under the Resolution, employees who failed to submit proof of their vaccination status by October 20, 2021 (and had not submitted a request for exemption) would receive a Notice of Mandatory COVID-19 Vaccination Policy Requirements (Notice). Employees had to sign and comply with the terms of the Notice. Not doing so would be a "failure to meet a condition of employment" and "result in appropriate and immediate corrective action."

Employees who remained unvaccinated had to test for COVID-19 twice per week through the City or its vendor and reimburse the City $65 per test.[2] If the City approved an employee's request for a religious or medical exemption, it would reimburse the employee for the testing costs. The Resolution explained "the City would be subjected to a significant financial burden if it had to provide a weekly testing option for all unvaccinated City employees, or place all unvaccinated City employees on paid leave, while simultaneously paying overtime to cover staffing shortages resulting from their absence. Either option would seriously compromise the City's ability to meet its ongoing financial obligations and adequately provide essential public services to the public."

---

[2] In February 2023 the City Council adopted a resolution discontinuing mandatory COVID-19 testing and providing "[a]ny and all City employees who incurred costs related to the . . . testing requirements, shall be reimbursed for such costs."

On October 28, 2021, the Mayor issued a memorandum directing all City department heads to issue the Notice to unvaccinated employees who had not filed exemption forms, to be signed by the employee within 48 hours. Employees who refused to sign the Notice would be placed off duty without pay pending service of a *Skelly* package that included a notice of proposed separation.[3] Sworn employees, such as LAPD officers, would be subject to Board of Rights proceedings.

B. *Personnel Complaint Against McMahon, His Response, Board Hearing, and Termination*

McMahon had served as a police officer since March 2008. His past performance evaluations rated him as meeting or exceeding expectations and praised his skill, knowledge, initiative, productivity, responsibility, attention to duty, investigative skills, and professionalism.

On November 3, 2021, LAPD Captain Japhet Hom served McMahon with the Notice. McMahon told Hom he had no intention of signing the Notice or getting vaccinated and was prepared to surrender his badge, gun, and identification card. The same day, he returned the unsigned form, writing, "I am declining to acquiesce to these mandates."

On November 9, 2021, the LAPD served McMahon with a personnel complaint alleging that a commanding officer served

---

[3] A *Skelly* package refers to materials a civil service employee is entitled to receive before being relieved of duty as set forth in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194. Under *Skelly*, an employee facing discipline is entitled to notice of the proposed action, the reasons for that action, the materials upon which the action is based, and an opportunity to respond. (*Id.* at p. 215.)

McMahon with the Notice and McMahon refused to sign or comply with it. The complaint stated McMahon had until December 9 to respond orally or in writing. The same day, McMahon notified the LAPD that he intended to respond to the complaint. The form indicated that McMahon's response "will be reviewed by the Chief of Police for evaluation prior to adjudication of this matter." However, on November 15, 2021, before McMahon had responded, the LAPD served him with a notice from Moore relieving him of duty effective the next day. Moore's notice directed McMahon to a Board of Rights hearing with a proposed penalty of termination.

The Board of Rights convened in early December 2021. McMahon faced a single count: "On or about November 4, 2021, you, while on duty, failed to sign and comply with the requirements of the Notice of Mandatory COVID-19 Vaccination Policy Requirements, a condition of employment." The proceedings took place over six days. The City argued McMahon violated the Ordinance by refusing to declare his vaccination status, submit to testing, or file for an exemption. McMahon raised several defenses, including that the City violated section 2802 by requiring him to pay for testing. He also asserted the LAPD denied him due process under *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 (*Skelly*) by relieving him of duty before he had an opportunity to respond to the charge against him.

McMahon testified that he had many concerns about the City's vaccination and testing policy. He believed the COVID-19 vaccines were experimental, ineffective, and potentially fatal. He also expressed concern that the City's testing vendor might mishandle his private medical information. McMahon told the

Board that when "presented with 'sign this or don't sign it,' " he could not comply "as a matter of integrity." He explained this refusal was a "deeply-held conviction" and said his position had not changed since receiving the Notice.

In July 2022 after closing arguments, the Board unanimously found McMahon guilty and recommended termination. Later that month, Moore signed a discharge order, retroactive to December 16, 2021.

C. *McMahon's Writ of Mandate*

In October 2022 McMahon filed a petition for writ of mandate seeking reinstatement and back pay. He argued that respondents violated his *Skelly* due process rights by relieving him of duty without first providing the required procedural protections, including an opportunity to respond to the charge. McMahon also argued the penalty of dismissal was excessive and he should be reinstated. Citing section 2802, he asserted it was unlawful to require him to sign the Notice that included an illegal term requiring him to pay for COVID-19 testing.

Respondents countered termination was justified because McMahon willfully refused to meet a condition of employment, and that section 2802 did not pertain to the City as a government employer. They conceded there may have been a *Skelly* violation but argued it was harmless because the Board of Rights hearing was a "better opportunity for [McMahon] to challenge the disciplinary action than what his *Skelly* response would have been." They also argued the proper remedy for a *Skelly* violation is back pay during the period of improper discipline, not reinstatement or a dismissal of the charges.

The superior court ruled that section 2802 did not apply to the City because it was a public employer. Thus, the Notice was

not illegal, and the City did not abuse its discretion in terminating McMahon.

The court also found that McMahon's *Skelly* rights had been violated because the City relieved him of duty without giving him an opportunity to respond to the charge against him. The court awarded McMahon back pay from December 16, 2021, when he was removed from the payroll, through July 1, 2022, when the Board of Rights found him guilty and terminated him.

The court entered judgment, and McMahon timely appealed.

DISCUSSION

A. *Standard of Review*

Administrative mandamus under Code of Civil Procedure section 1094.5 allows judicial review of a public agency's "decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer." (Code Civ. Proc., § 1094.5, subd. (a).) The superior court must decide whether an agency "proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." (*Id.*, subd. (b).) "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (*Ibid.*)

"When a fundamental vested right is involved, such as the right of a city employee to continued employment [citation], the trial court exercises its independent judgment to determine

whether due process requirements were met and whether the agency's findings are supported by the weight of the evidence." (*Flippin v. Los Angeles City Bd. of Civil Service Commissioners* (2007) 148 Cal.App.4th 272, 279; see *Lozano v. City of Los Angeles* (2022) 73 Cal.App.5th 711, 723; *Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 626.) When a superior court reviews an administrative determination affecting a vested fundamental right, "the court must 'exercise its independent judgment on the facts, as well as on the law' " (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811; see *Bautista v. County of Los Angeles* (2010) 190 Cal.App.4th 869, 875), "but affords the administrative findings 'a strong presumption of correctness' " (*Bedard v. City of Los Angeles* (2024) 106 Cal.App.5th 442, 454 (*Bedard*)).

We review the superior court's factual findings for substantial evidence and its legal conclusions de novo. (See *Lozano v. City of Los Angeles*, *supra*, 73 Cal.App.5th at p. 723; *Melkonians v. Los Angeles County Civil Service Com.* (2009) 174 Cal.App.4th 1159, 1168.) "We also 'review de novo whether the agency's imposition of a particular penalty on the petitioner constituted an abuse of discretion by the agency. [Citations.] But we will not disturb the agency's choice of penalty absent " 'an arbitrary, capricious or patently abusive exercise of discretion' " by the administrative agency.' " (*Bedard*, *supra*, 106 Cal.App.5th at p. 454.)

B. *Section 2802 Does Not Apply to the City*

McMahon argues respondents violated sections 2802 and 2804 by conditioning continued employment on signing the Notice and paying for COVID-19 testing. Section 2802, subdivision (a), provides: "An employer shall indemnify his or

her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. . . ." Section 2804 renders void any agreement in which an employee waives rights under section 2802.[4] McMahon contends his termination was unwarranted because the Notice was illegal and therefore an invalid condition of employment. (See *D'Sa v. Playhut, Inc.* (2000) 85 Cal.App.4th 927, 932 ["[T]he law will . . . protect [an employee] from a termination of his employment brought on by his refusal to sign an agreement containing [an] illegal covenant."].) Respondents counter that section 2802 does not apply to public employers such as the City. Respondents' position is correct.

In *Stone v. Alameda Health System* (2024) 16 Cal.5th 1040 (*Stone*), the Supreme Court set forth the framework for determining "whether the Legislature intended to impose their requirements on public employers." (*Id.* at p. 1054.) To answer this question, courts "must examine the 'statutory language, context, and history' of the particular statute[s]." (*Ibid.*) If those sources "provide 'positive indicia' of a legislative intent to exclude public employers" from the relevant statute, the court has its

---

[4] McMahon also contends the City violated section 450, which prohibits employers from "compel[ing] or coerc[ing]" an employee to "purchase . . . any thing of value." However, as McMahon acknowledges, he did not raise that claim before the Board of Rights or in the superior court. Accordingly, he has forfeited it. (See *Doe v. University of Southern California* (2018) 28 Cal.App.5th 26, 41 [the failure to present an argument before administrative body forfeits the issue]; see also *Bedard*, *supra*, 106 Cal.App.5th at p. 455 [police officer forfeited argument not made to Board or before the superior court].)

answer. (*Ibid*.) If, however, these sources do not provide such "positive indicia" of an intent to exclude public employers, courts must then analyze whether the application of the statute to a public employer would invade or impair the sovereign powers of the state, " 'injuriously affect[ing] its capacity to perform its functions, or establish a right of action against it.' " (*Id*. at pp. 1053, 1054.) " 'While the "sovereign powers" principle can help resolve an unclear legislative intent, it cannot override positive indicia of a contrary legislative intent.' " (*Id*. at p. 1054.)

The specific question at issue in *Stone* was whether the Legislature intended to exempt public employers—in that case, a hospital—from the provisions of the Labor Code governing meal and rest breaks (§§ 226.7, 512) and related statutes governing the full and timely payment of wages (see § 220, subd. (b)). (*Stone*, *supra*, 16 Cal.5th at pp. 1049-1050.) The court determined it did. The court examined the statutory language, noting the meal and rest break obligations applied to " 'employers,' and, under the relevant wage order, an 'employer' must be a 'person as defined in Section 18 of the Labor Code.' " (*Id*. at p. 1055.) Section 18 used words " 'most commonly associated with private individuals and entities' as opposed to public or governmental agencies." (*Stone*, at p. 1055.) Thus, the definition of employer was "*not* silent about whether government employers are covered; its language affirmatively indicates that they are not." (*Id*. at p. 1056.) Similarly, the relevant wage order stated it " 'shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district.' " (*Id*. at p. 1057.)

The court also examined the statutory context. (*Stone*, *supra*, 16 Cal.5th at p. 1055.) The court observed that

neighboring statutes within the same chapter of the meal break law expressly included public employers, while the provisions at issue affirmatively excluded them. (*Id*. at pp. 1055-1056.) The court next analyzed the provisions' legislative histories, finding them in accord with the text and the statutory context—governmental entities were historically exempt from wage order provisions. (*Id.* at pp. 1057-1058.) Lastly, the court examined administrative agency interpretations, noting they were also in accord, and case law, which "uniformly concluded that, unless the laws in question expressly state otherwise, the Labor Code's wage and hour requirements do not apply to public employers." (*Id.* at pp. 1059-1060.)

In October 2024, in a case presenting the identical question to the one here—whether section 2802 applies to public employers—the California Supreme Court ordered the Court of Appeal to vacate its 2023 decision and to reconsider the case in light of the decision in *Stone*, *supra*, 16 Cal.5th 1040. (See *Krug v. Board of Trustees of California State University* (2023) 94 Cal.App.5th 1158, vacated and remanded by *Krug v. Board of Trustees of California State University* (2024) 557 P.3d 314.) The Court of Appeal had found section 2802 did not apply to public employers based on the "sovereign powers" principle. The Supreme Court directed the Court of Appeal to instead apply *Stone*'s analytical framework in reconsidering the issue.

While the instant appeal was pending, the Court of Appeal revisited the issue and applied the analytical framework set forth in *Stone* to again conclude that section 2802 does not apply to public employers. (See *Krug v. Board of Trustees of California State University* (2025) 110 Cal.App.5th 234, 238, 241 (*Krug II*) ["We follow *Stone*'s analytical framework to determine whether

the Legislature intended to exclude public entity employers from the employment expense reimbursement obligations at issue here."].) In *Krug II*, a California State University professor challenged his employer's policy that it would not reimburse faculty for expenses they incurred for computers and other necessities when, during the COVID-19 pandemic, the university directed that instruction be provided to students remotely. (*Id.* at p. 237.) The court engaged in an exhaustive analysis of section 2802's text and statutory framework, legislative history, and case law to determine whether section 2802 excluded public employers from its reach. (See *Krug II*, at pp. 242-258.)

Because " '[t]he Labor Code provides no generally applicable definition of the term "employer," ' " the court determined section 2802's use of the term "employer" is ambiguous as to whether it includes public employers. (*Krug II*, *supra*, 110 Cal.App.5th at pp. 241-242.) The court, following the guidance of *Stone*, "examine[d] the statutory language not in isolation but 'in the context of the entire statutory framework to discern its scope and purpose.' " (*Krug II*, at p. 242, quoting *Stone*, *supra*, 16 Cal.5th at p. 1052.) Doing so, it determined "the statutory silence of section 2802 stands in marked contrast to neighboring provisions in [the same article] that expressly impose obligations on both private and public employers." (*Krug II*, at p. 243, citing §§ 2806, subd. (a); 2807, subd. (a); 2808; 2808.2; 2809.) The court concluded "[t]he specific reference to public employers in several nearby statutes . . . , but not in section 2802, weighs heavily against a conclusion that the Legislature intended to expose public employers to employer reimbursement liability." (*Krug II*, at p. 243; see also *Stone*, at p. 1055 [" 'the Legislature is capable of bringing government

entities within the scope of specific legislation when it intends to do so' "]; *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190 ["The specific enumeration of . . . governmental entities in one context, but not in the other, weighs heavily against a conclusion that the Legislature intended to include" them].) The court found it particularly telling that the Legislature had added or amended a number of these neighboring statutes to make them expressly applicable to both public and private employers, "while leaving section 2802 silent on that front." (*Krug II*, at p. 244.) After a thorough examination of the Labor Code, the court determined "the statutory structure evinces positive indicia that the Legislature intended to exclude government employers from the terms of section 2802." (*Id.* at p. 247.)

The court also scoured the legislative history for both section 2802 and its predecessor statute, 1872 Civil Code section 1969, and determined nothing in those histories suggested the Legislature intended to make either statute applicable to public employers. (*Krug II*, *supra*, 110 Cal.App.5th at pp. 247-251.) In addition, the court analyzed the relevant caselaw and concluded "[n]o case has applied the reimbursement obligations set forth in section 2802 to a public employer." (*Id.* at p. 253.)

The court determined in sum that, "although the language of section 2802 is silent on whether 'employer' denotes both public and private entities, the statutory structure and legislative history provide positive indicia of legislative intent to exclude public employers from the provision's reimbursement obligations." (*Krug II*, *supra*, 110 Cal.App.5th at p. 258.) Given this conclusion, the court determined that, under *Stone*, it did not need to reach the issue of whether application of section 2802 to

such employers would invade the public entity's sovereign powers. (*Krug II*, at pp. 241, 259.) We agree with the reasoning of *Krug II* and hold that the legislative text, context, and history of section 2802 demonstrate the Legislature intended to exclude public employers from the reach of the statute. (*Krug II*, at p. 243.)

McMahon attempts to distinguish his case based on its particular facts, pointing out that the employee in *Krug II* sought reimbursement for computer equipment purchased of his own volition, while here, the City imposed the testing requirement and shifted the cost of testing to employees. But that difference does not affect *Krug II*'s core holding: section 2802 does not apply to public employers. The nature of the expense is irrelevant.

McMahon also relies on *In re Acknowledgment Cases* (2015) 239 Cal.App.4th 1498, in which the court held the LAPD's requirement that officers reimburse the LAPD for training costs if they left within a certain time after graduating violated section 2802. (*In re Acknowledgment Cases*, at p. 1502.) However, as both the superior court and *Krug II* noted, in *Acknowledgment Cases* no party raised, and the court did not address, whether section 2802 applies to public employers. (See *Krug II*, *supra*, 110 Cal.App.5th at p. 256.) As a result, that decision does not help McMahon. (See *Madrigal v. Hyundai Motor America* (2023) 90 Cal.App.5th 385, 405 ["It is well settled that appellate opinions are not authority for propositions that are not considered and decided"].)

In sum, section 2802 does not apply to public employers such as the City. Accordingly, section 2802 did not make it illegal for the City to require unvaccinated employees to pay for COVID-19 testing, and to make doing so a condition of their

employment.[5] McMahon has failed to show that the City abused its discretion by terminating him after he refused to sign the Notice containing the requirement that he test at his own expense if he was not vaccinated and had not been granted an exemption.

---

[5] At oral argument, McMahon argued the Notice was unlawful for an additional reason—because it conflicted with the Ordinance. McMahon contended the Notice required employees to pay for testing, whereas the Ordinance stated the City would bear those costs. However, McMahon failed to cogently make this argument in his briefs (beyond a perfunctory reference with no supporting authority) and has therefore forfeited it. (See *LNSU #1, LLC v. Alta Del Mar Coastal Collection Community Assn.* (2023) 94 Cal.App.5th 1050, 1070 ["where, as here, the appellants' opening brief makes contentions unsupported by proper record citations or cogent legal arguments, we may treat the contentions as forfeited"]; *Lee v. Kim* (2019) 41 Cal.App.5th 705, 721 ["the scope of our review is limited to those issues that have been adequately raised and supported in the appellant's brief."].) Moreover, the record does not support his argument. Although the Ordinance provided that "[t]esting will be provided to the employees at no cost during their work hours following a process and timeline determined by the City," that provision only applied to employees who had already received an exemption. As McMahon acknowledges, nothing in the Ordinance "addressed the terms or outcomes for employees who did not become fully vaccinated by October 20, 2021, and had not requested an exemption." Because the Ordinance was silent on the issue, the Notice's requirement that employees pay for testing pending vaccination or an exemption did not violate the Ordinance.

C. *McMahon Is Not Entitled to Reinstatement*

The superior court found respondents violated McMahon's due process rights by removing him from the payroll before giving him time to respond to the charge against him. Neither party appeals that determination. McMahon contends, however, that the superior court should have ordered reinstatement and full back pay up until his reinstatement, rather than limiting McMahon's relief to back pay from the date he was removed from the payroll until the Board of Rights determination. He claims reinstatement is warranted both because the City denied him due process and because, in his view, the Notice was unlawful. As explained, we reject the second premise that the Notice violated the Labor Code.

We also reject McMahon's first argument that the due process violation here—the failure to afford McMahon an opportunity to respond prior to adjudicating the complaint against him—requires reinstatement. In *Barber v. State Personnel Board* (1976) 18 Cal.3d 395, the Supreme Court explained that where "[t]he constitutional infirmity of the disciplinary procedures . . . was the imposition of discipline prior to affording the employee . . . an opportunity to respond [to the charges,] . . . [t]his infirmity is not corrected until the employee has been given an opportunity to present his arguments to the authority initially imposing discipline. [Citation.] Under the procedures applied to [the] plaintiff, the constitutional vice existed until the time the board rendered its decision. Prior to that time, the discipline imposed was invalid." (*Id*. at p. 403.) In such a situation, the employee is entitled only to "back pay for the period discipline was improperly imposed, i.e., from the date of actual discipline to the time discipline was validated by the

hearing." (*Id.* at p. 402; accord, *Economy v. Sutter East Bay Hospitals* (2019) 31 Cal.App.5th 1147, 1162 ["A plaintiff is only entitled to recover lost wages until the due process violation has been corrected."]; see *Bedard*, *supra*, 106 Cal.App.5th at p. 460 ["*Barber* established that the only remedy for the violation of an employee's due process is back pay when her discharge is justified"].) "*Barber* makes clear that whether the employer had a legitimate basis to terminate the employee's employment and whether the employee is entitled to reinstatement are questions entirely distinct from whether the employee is entitled to back pay for the period during which the discipline was invalid." (*Economy*, at p. 1162.) "[W]hat makes the discipline 'wrongful' has nothing to do with whether the employer had a legitimate basis for terminating the employment. The discipline was wrongful solely because it was imposed in violation of the employee's right to due process." (*Ibid.*)

Here, McMahon was entitled to a remedy for the due process violation that occurred when he was not afforded an opportunity to respond to the LAPD complaint against him prior to being relieved of duty. However, once the Board of Rights found McMahon guilty of the charge against him and recommended his termination, after a hearing at which he was afforded full due process, the earlier due process violation was corrected. Under *Barber*, therefore, McMahon was only entitled to back pay for the period between his removal from the payroll and the Board's final decision, not reinstatement. (See *Bedard*, *supra*, 106 Cal.App.5th at pp. 459-460 [back pay, not reinstatement, was the proper remedy for City's due process violation in failing to give LAPD officer time to respond to

charges that she refused to comply with the City's vaccination and reporting requirements].)

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

STONE, J.

We concur:

MARTINEZ, P. J.

SEGAL, J.