

Department (LAPD) investigated the traffic stop and ultimately charged Lanigan with three misconduct allegations related to his interactions with the other officer, including harassment and refusal to comply. Lanigan was referred to the Board of Rights (BOR), a three-person administrative panel that adjudicates charges of police officer misconduct. The chief of police recommended to the BOR that Lanigan be terminated.

Before the BOR hearing, Lanigan's attorney negotiated a settlement agreement whereby the LAPD reduced his penalty to a 22-day suspension. In exchange, Lanigan agreed to resign from the department if future disciplinary charges were filed against him for on- or off-duty misconduct. He also agreed to waive several of his rights under the Public Safety Officers Procedural Bill of Rights (POBRA).

Lanigan's attorney advised him to sign the agreement to avoid termination. He had 21 days to consider the agreement and seven days to revoke it after signing it. He signed the agreement without hesitation and expressly waived the consideration and revocation periods. He understood that if he failed to comply with the agreement, he would be forced to immediately resign without the benefit of legal or administrative remedies.

Seven months later, Lanigan entered a hospital, allegedly intoxicated. While at the hospital, he unnecessarily identified himself as a police officer, "terrified" other patients, and harassed staff, causing the hospital to call the sheriff. He was charged with 10 new counts of misconduct, including providing false information to and failing to cooperate with the sheriff.

The police chief upheld the complaints, processed Lanigan's resignation, and terminated his employment. Lanigan petitioned for reinstatement and back pay, arguing that the settlement agreement he signed was unlawful and invalid. The trial court granted his petition. On appeal by the city of Los Angeles, the court of appeal reversed the trial court's decision.

Settlement agreement neither illegal nor unconscionable

POBRA requires public entities to provide basic rights and protections to all police officers. The rights include limits on and guidelines for investigations and interrogations in connection with disciplinary proceedings and the right to an administrative appeal. At the appeals court, Lanigan argued that the settlement agreement wasn't enforceable because his right to an appeal under POBRA couldn't be waived and the agreement itself was unconscionable.

In siding with the city, the court pointed out that police officers may waive POBRA protections when faced with disciplinary proceedings, provided the waiver is a voluntary and knowing act in which the police officer

SETTLEMENT AGREEMENTS

Court upholds settlement between police officer and Los Angeles

by Michael Futterman and Jaime Touchstone

In an effort to avoid termination, a troublesome Los Angeles police officer signed a settlement agreement requiring him to resign without the benefit of administrative or legal remedies if the police department charged him with future misconduct. Shortly after signing the agreement, the officer caused a public disturbance, and the department immediately terminated him. The officer asked the courts for reinstatement and back pay, but the California Court of Appeal enforced the settlement.

Officer signs agreement to avoid disciplinary proceedings

Robert Lanigan served as a Los Angeles police officer. On April 28, 2006, he was off-duty when another police officer pulled him over for driving his personal vehicle in the carpool lane. The Los Angeles Police

is sufficiently aware of the relevant circumstances and likely consequences. Lanigan was advised by an attorney and well aware of the repercussions of his actions. He was offered a choice: He could appear before the BOR and face near-certain termination or sign the agreement and remain employed so long as he stayed out of trouble. In fact, he enjoyed the benefit of the settlement agreement for several months and never once challenged it until he violated its terms.

Settlements of disciplinary proceedings are binding absent a showing of fraud, mistake, undue influence, or duress. Lanigan argued that the city forced him to sign the agreement under economic duress by threatening termination. The court disagreed, commenting that he could have refused to sign the agreement and appeared before the BOR, but he simply chose not to. Additionally, the settlement agreement expressly offered him time to consider and/or revoke it.

Lanigan next claimed that the settlement agreement was procedurally and substantively unconscionable. Procedural unconscionability occurs when there is an inequality of bargaining power resulting in a lack of meaningful negotiation. Substantive unconscionability occurs when the actual terms of the agreement cause unduly harsh and/or one-sided results.

The agreement wasn't procedurally unconscionable because Lanigan's attorney had the opportunity to negotiate the contract on his behalf. When he finally signed the contract, the provisions weren't oppressive, disguised, or hidden but instead were concisely summarized and specifically brought to the attention of his attorney.

Similarly, the agreement wasn't substantively unconscionable because it wasn't unfairly one-sided. Lanigan received job protection, and in return, the city gave up its opportunity to prosecute an accused officer. Finally, it was Lanigan's own misconduct that triggered the LAPD's power to terminate him. *Lanigan v. City of Los Angeles* (California Court of Appeal, Second Appellate District, 10/4/11).

Bottom line

Both statutory and common laws provide significant procedural safeguards to employees. In this case, the POBRA statute provides police officers with numerous procedural protections. Common-law principles, including the rules that a contract may be found unenforceable if signed under duress or if its terms are "unconscionable," also arise in the employment context. In drafting settlement agreements, it's critically important that you and your legal counsel anticipate future arguments that an employee is likely to make in an effort to wriggle out of the agreement.

The authors can be reached at Futterman Dupree Dodd Croly Maier LLP in San Francisco, mfutterman@fddcm.com and jtouchstone@fddcm.com. ❖