

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**PATERSON POLICE PBA LOCAL 1, PATERSON.
POLICE PBA LOCAL 1 SUPERIOR OFFICERS
ASSOCIATION, ALEX CRUZ, in his official
capacity as President of PATERSON POLICE PBA
LOCAL 1 and individually and MASON MAHER III,
in his official capacity as President of PATERSON
POLICE PBA LOCAL 1 SUPERIOR OFFICERS
ASSOCIATION and individually,**

Plaintiffs,

-against-

**THE CITY OF PATERSON, ANDREW SAYEGH,
in his official capacity as Mayor of THE CITY OF
PATERSON and individually and IBRAHIM
MICHAEL BAYCORA, in his official capacity as
Chief of Police of the Division of Police of the
Department of Public Safety of the CITY OF
PATERSON and individually,**

Defendants.

COMPLAINT

Civil Action No.

**Plaintiffs Request Trial
By Jury**

Plaintiffs, by and through their attorneys, Shaw, Perelson, May & Lambert, LLP, as and for their Complaint as against the Defendants, allege as follows:

PRELIMINARY STATEMENT

1. The Plaintiffs bring this action as against the Defendants for retaliation as against them for engaging in protected activity of freedom of speech and freedom of association in violation of the First Amendment to the United States Constitution and 42 U.S.C. § 1983.

2. The Plaintiffs also bring this action as against the Defendants for retaliation as against them for engaging in protected activity of freedom of speech and freedom of association

in violation of, respectively, Article I, ¶¶ 6 and 18 of the New Jersey Constitution and N.J.S.A. 10:6-2 and request that this Court exercise supplementary jurisdiction over these State law claims.

THE PARTIES

3. Plaintiff Paterson Police PBA Local 1 (“PBA”) is the collective negotiations representative for all rank and file and superior police officers employed in the Police Department of the Department of Public Safety of the Defendant City of Paterson within the meaning of the New Jersey Employer-Employee Relations Act.

4. Plaintiff Paterson Police PBA Local 1 Superior Officers Association (“SOA”) is the collective negotiations representative for all superior police officers, i.e., in the ranks of sergeant, lieutenant, captain and deputy chief employed in the Police Department of the Department of Public Safety of the Defendant City of Paterson within the meaning of the New Jersey Employer-Employee Relations Act.

5. Plaintiff Alex Cruz (“Cruz”) is a rank and file police officer employed in the Police Department of the Department of Public Safety of the Defendant City of Paterson and from on or about May 2011, through to the present, has served and continues to serve as the elected President of the PBA and ran for the position of Mayor of the Defendant City of Paterson against Defendant Andrew Sayegh and others in 2018. He brings this action both in his official capacity as the President of the PBA and in his individual capacity.

6. Plaintiff Mason Maher III (“Maher”) is a police lieutenant employed by the Police Department of the Department of Public Safety of the Defendant City of Paterson and from on or about May 2012, through to the present, has served and continues to serve as the elected President of the SOA. He brings this action both in his official capacity as the President of the SOA and in his individual capacity.

7. Defendant City of Paterson (“City”) is a municipal corporation of the State of New Jersey, which maintains a Department of Public Safety, which includes a Police Department in which Plaintiffs Cruz and Maher are employed, and which serves as the public employer of rank and file police officers represented by the PBA and of superior officers, as described in paragraph 4 above, represented by the SOA

8. Defendant Andrew Sayegh (“Sayegh”) is the duly elected Mayor of the Defendant City, having assumed that position on July 1, 2018. This action is brought against him both in his official capacity and individually.

9. Defendant Ibrahim Michael Baycora (“Baycora”) is the Chief of Police of the Division of Police of the City’s Department of Public Safety, having been appointed to that position by Defendant Sayegh on or about February 4, 2020. This action is brought against him in both in his official capacity and individually.

FACTS

A. The Protected Conduct of the PBA, SOA and Cruz and Maher Concerning the City’s Transition into the New Jersey State Health Benefits Program

10. Prior to January 1, 2019, the City provided health and prescription coverage for all its employees, eligible retirees and their eligible dependents, including those represented by the PBA and SOA, through a self-insured medical and prescription plan.

11. Prior (as well as subsequent) to January 1, 2019, the PBA and SOA, led, respectively, by Cruz and Maher, had successfully grieved to arbitration pursuant to the terms of the PBA and SOA collective negotiation agreements with the City, secured State Court orders confirming arbitration awards and State Court orders in aid of litigant rights enforcing said Court orders, all of which reversed actions of the City designed to decrease, restrict and limit medical and prescription benefits previously enjoyed by rank and file and superior police officers of the

City, police retirees of the City and their eligible dependents under the City's self-insured medical and prescription plans.

12. Prior to January 1, 2019, the City applied the benefit of the arbitral and judicial reversal of its actions, which had been designed to decrease, restrict and limit medical and prescription benefits previously enjoyed by City employees and retirees and their eligible dependents won by the PBA and SOA, to its other uniformed employees and retirees and eligible dependents, e.g., those represented by the City's Fire unions and, upon information and belief, non-uniformed City employees, in the interest of maintaining uniformity of benefits under the City's self-insured medical and prescription plans.

13. Prior to Sayegh taking office as Mayor of the City, under the administration of his predecessor, pursuant to the terms of a fiscal year 2017 Memorandum of Understanding entered into between the City and the State of New Jersey for the 2017 fiscal year, the City's Insurance Manager, Dena Cortese, prepared an executive summary that concluded that the City would enjoy limited, if any, financial benefit from switching from its self-insured medical and prescription plans to those provided under the New Jersey State Health Benefits Program for its employees, retirees and eligible dependents and that such a switch would violate provisions of the collective negotiation agreements between the City and the PBA and SOA and those covering other employees of the City.

14. Notwithstanding and despite the executive summary prepared by City Insurance Manager Dena Cortese, upon Sayegh taking office as Mayor of the City, in examining ways it could cut costs to the City, despite being fully aware that switching from its self-insured medical and prescription plans to those provided under the New Jersey State Health Benefits Program for its employees, retirees and eligible dependents would violate the collective negotiation agreements

between the City and the PBA and SOA and those covering other City employees and retirees and their eligible dependents, the Sayegh administration concluded that the easiest and politically most expedient way to do so, i.e., without negatively impacting the City's citizenry by either increasing taxes or reducing services or requesting additional State aid, would be to violate the collective negotiation agreements it had with its labor unions and transition from the City's self-insured medical and prescription plans to the New Jersey State Health Benefits Program and proposed to the City Council that such a transition be authorized for all City employees, retirees and their eligible dependents.

15. On September 25, 2018, following a PowerPoint presentation made to the City Council by the Sayegh administration, the City Council adopted a Resolution transitioning all City employees and eligible retirees and their eligible dependents into the New Jersey State Health Benefits Program for medical and prescription coverage effective January 1, 2019 ("the "Resolution").

16. The Sayegh administration and the City Council went forward with adopting the Resolution without first considering whether the insurance expert for the PBA and SOA would conclude that the New Jersey State Health Benefits Program was substantially similar with regard to the level of benefits to that under the City's self-insured medical and prescription plans even though both the PBA's and SOA's collective negotiation agreements with the City mandated as a condition for the City being permitted to change from its self-insured medical and prescription plans to the New Jersey State Health Benefits Program that their "insurance expert concludes that the SHBP is substantially similar to the current level of benefits."

17. On or about October 18, 2018, by and through PBA President Cruz and SOA President Maher, the PBA and SOA filed a joint grievance under the PBA and SOA collective

negotiation agreements challenging the City's decision to violate the PBA and SOA collective negotiation agreements by the Resolution.

18. On October 25, 2018, the PBA's and SOA's insurance expert, Dominick Fanuele, issued a preliminary report, which was forwarded by email to the City on that same date, in which insurance expert Fanuele concluded that the benefits under the New Jersey State Health Benefits Program were "not substantially similar to the benefits defined in the PBA/SOA agreements . . . ," and Insurance Expert Fanuele's final report thereafter reached the same conclusion.

19. During meetings with City representatives on October 26, November 8, November 16 and November 28, 2018, the PBA and the SOA, represented, respectively, by Cruz and Maher, objected to the City Council's September 25, 2018 Resolution as violating multiple provisions of the PBA and SOA collective negotiation agreements including the provision of each of those agreements that conditioned permission for a transition from the City's self-insured medical and prescription plans to the New Jersey State Health Benefits Program upon their insurance expert concluding that the benefits provided under the New Jersey State Health Benefits Program were substantially similar to those in existence under the City's self-insured medical and prescription plans, continuation of which was mandated by the PBA and SOA collective negotiation agreements.

20. By a December 5, 2018 email, the then-City's labor counsel, Steven Glickman, Esq., advised the PBA and SOA, as well as the City's Fire Unions, that under the transition to the New Jersey State Health Benefits Program, active and retired employees and their eligible dependents would "stay [in] the current prescription plan; retirees will remain in the [traditional or current] health benefits plan; active employees will move to NJSHBP medical coverage; the 60-day waiting period under NJSHBP will apply to new hires; survivor coverage will be maintained

as currently implemented by the City; and active employees with twenty years of service to the City but less than twenty-five years of pensionable employment will be entitled to current retiree health coverage if they retire before June 30, 2019.”

21. On December 12, 2018, then City Business Administrator Vaughn McKoy sent a letter to the New Jersey Division of Pensions and Benefits seeking “permission for several categories of employees and retirees to be ‘carved out’ of the City’s pending entry into the State Health Benefits Plan . . . due to, among other things, vested benefits language in past and current collective bargaining agreements.” The December 12, 2018 letter sought to carve out New Jersey State Health Benefits Program prescription coverage for all active and retired employees, acknowledging that current and past collective negotiations agreements would not allow for a change in prescription plans, carve out from the New Jersey State Health Benefits Program police and fire retirees enrolled in the traditional, PPO and Aetna Medicare Advantage plans, due to “vested benefits in CBA contracts upon retirement” and carve out all retirees who do not meet the New Jersey State Health Benefits Program eligibility requirements.

22. On December 19, 2018, the Acting Director of the Division of Pensions and Benefits denied the City’s request to carve out the requested categories of police and fire employees and retirees and advised that State law required uniformity between health benefits offered through the New Jersey State Health Benefits Program to local employers and that “all active employees and retirees must be enrolled in the SHBP at the same time, and offered only the plan options available within the SHBP.”

23. Despite knowing that going forward with the transition from the City’s self-insured medical and prescription plans to the New Jersey State Health Benefits Program for police rank and file and superior officers, retirees and their eligible dependents would violate the collective

negotiation agreements between the City and the PBA and SOA, and that the Acting Director of the State Division of Pensions and Benefits had warned the City that all active employees and retirees of the City must be enrolled in the State Health Benefits Plan at the same time, the City continued the process of going forward with the transition of all employees, retirees and their eligible dependents into the New Jersey State Health Benefits Plan, effective January 1, 2019.

24. On December 18, 2018, in conjunction with the City's Fire unions, the PBA and SOA filed an unfair practice charge with the New Jersey Public Employment Relations Commission, together with an application for interim relief, complaining of the City's action in unilaterally transitioning police and fire employees, retirees and their eligible dependents into the New Jersey State Health Plan and seeking temporary restraints in that action. The PBA, SOA and Fire unions were unsuccessful in securing interim relief, and that unfair practice charge remains pending.

25. The grievance filed on or about October 18, 2018 by the PBA and SOA was submitted to final and binding arbitration under the auspices of the New Jersey Public Employment Relations Commission, and by agreement of the City, the PBA and SOA and the City's Fire unions, the Fire unions' submission of their own grievances to arbitration was merged with that of the PBA and SOA for arbitration before a single arbitrator, Perry O. Lehrer Esq..

26. On November 18, 2019, Arbitrator Lehrer rendered his Opinion and Award ("Lehrer Award"), by which he directed the City to reinstate the City's self-insured insurance program that existed as of December 31, 2018, to transfer all fire and police employees, eligible retirees and their eligible dependents from the New Jersey State Health Benefit Plan back into the City's self-insured plan, to reimburse all fire and police employees, retirees and their eligible dependents for any increased costs incurred as a result of the transfer and to reimburse the PBA

and SOA (as well as one of the Fire unions that was a party to the arbitration) for their portion of the Arbitrator's fees expended in the successful prosecution of their cases.

27. On or about November 22, 2019, the PBA and SOA (and Fire unions) commenced an action in the New Jersey Superior Court for Passaic County, Chancery Division, to confirm the Lehrer Award, and on January 29, 2020, the Hon. Ernest M. Caposela, A.J.S.C. entered an Order confirming the Lehrer Award in all respects and set forth a schedule therein mandating the City's compliance with the Lehrer Award.

28. On June 22, 2020, the Hon. Ernest M. Caposela, A.J.S.C. entered an Order denying the City's motion for reconsideration and, in light of the position of the City and State of New Jersey that the New Jersey State Health Benefits Plan required uniformity in enrollment and benefits among City employees, retirees and their eligible dependents, directed that all City public employees, retirees and their eligible dependents were to be moved out of the New Jersey State Health Benefits Plan and into the City's reinstated self-insured medical and prescription plans by the end of June 2020. That decision has been stayed by Appellate Division of the New Jersey Superior Court and is awaiting decision on the City's appeal on an emergent basis as of the date of this Complaint.

B. The Protected Conduct of the PBA, SOA and Cruz and Maher Concerning Grievances in February of 2020

29. Since taking office as Chief of Police for the Police Division of the City's Department of Public Safety in February of 2020, Chief Baycora has taken it upon himself to make unilateral changes in the terms and conditions of employment of police officers in the collective negotiations units of the PBA and SOA and to reduce the contractually recognized authority of the PBA President and SOA President with regard to certain actions that Chief Baycora had taken it upon himself to unilaterally implement.

30. Chief Baycora's actions resulted in multiple grievances being filed by Cruz and Maher under the collective negotiations agreements between the PBA and SOA and City, including the following grievances filed in February 2020 by the PBA and SOA through Cruz and Maher: (1) Grievance No. 20-01 regarding Chief Baycora's removal and re-assignment of the extra duty officer who was historically and consistently appointed by the PBA President; (2) Grievance No. 20-03, regarding Chief Baycora's unilateral change in the work hours of the Emergency Response Team ("ERT"); (3) Grievance No. 20-06, regarding Chief Baycora's unilateral change in the work hours of the Patrol Division.

31. As a result of the filing of Grievance Nos. 20-03 and 20-06 by the PBA and SOA, Chief Baycora was forced to rescind his unilateral decisions as concerns the change in the hours of the ERT and Patrol Division through superseding Special Orders, publicly issued by Chief Baycora in March 2020, reinstating the work hours of the ERT and Patrol Division.

32. Grievance No. 20-01 regarding Chief Baycora's removal and re-assignment of the extra duty officer who was historically and consistently appointed by the PBA President was submitted to arbitration in PERC Case No. AR-2020-428 before Arbitrator Mattye Gandel, which hearing was adjourned while the parties have agreed to attempt through the offices of City of Paterson Police Director Gerald Speziale to resolve the dispute with Chief Baycora as concerns that grievance.

33. Since being compelled to rescind his decision unilaterally changing the hours of the tours of duty of the ERT and Patrol Division and the submission of Grievance No. 20-01 to arbitration, Chief Baycora has expressed hostility to both Cruz and Maher for their actions in filing these and other grievances and for engaging in other protected conduct on behalf of the PBA and SOA with regard to the unilateral actions engaged in by Chief Baycora.

C. The Protected Conduct of the PBA, SOA and Cruz and Maher Concerning the City's Action in Seeking to Disclose 20 Years of Police Officer Disciplinary Records

34. On or about June 16, 2020, in a press release entitled "Paterson will be the First City in the State to Release 20 Years of Police Misconduct Information," without having engaged in any prior discussions with the PBA, SOA or its officers, i.e., Cruz and Maher, Sayegh unilaterally announced that by July 15, 2020, the City's police department would publicly publish the names of rank and file and superior police officers who have been fired, demoted or suspended for more than five days over the last 20 years, together with a statement of the violations for which they were disciplined, which press release was broadcast on TV news outlets, online news publications and print newspapers on or about June 16, 2020.

35. On June 17, 2020, Cruz and Maher each unsuccessfully made demand upon Sayegh that the City negotiate with the PBA and SOA over issues of Sayegh's decision to have the City's police department publicly publish the names of its police officers subjected to major discipline over the prior 20 years and the violations for which they were disciplined and the impact of that policy upon police officers, their spouses and family members, who largely reside in the City and can be easily located by persons using the proposed published information in order to impose mental or physical abuse or engage in life-threatening behavior upon such police officers, their spouses and family members.

36. On June 19, 2020, the PBA and SOA filed an unfair practice charge with the New Jersey Public Employment Relations Commission, a proposed Order to Show Cause with temporary restraints and an application for interim relief, with supporting certifications by Cruz and Maher, to restrain the City from proceeding with Sayegh's decision to publicly publish the names of its police officers subjected to major discipline over the prior 20 years and the violations for which they were disciplined.

37. On June 24, 2020, New Jersey Public Employment Relations Commission Designee Jordan Ablon issued an Order to Show Cause with temporary restraints, restraining the City from proceeding with Sayegh's announced decision to publicly publish the names of its police officers subjected to major discipline over the prior 20 years and the violations for which they were disciplined, and on or about June 25, 2020, local online and print newspapers published articles publicly communicating to the public that Sayegh's action had been stayed, including a statement by Sayegh that he was "on the right side of this issue"; but on or about July 13, 2020, the City, the PBA and the SOA agreed that Commission Designee Ablon's Order with temporary restraints would remain in effect until such time as the interim relief proceedings might be concluded.

38. Commission Designee Ablon's Order with temporary restraints remains in effect as of the date of this Complaint, and Sayegh, to his political and public embarrassment, was thereby precluded from proceeding with implementation of his publicly announced decision to publish the names of police officers subject to major discipline over the prior 20 years and the violations for which they were disciplined either by his publicly announced deadline of July 15, 2020 or thereafter.

D. Further Protected Conduct of the PBA, SOA and Cruz and Maher and Acts of Retaliation.

39. In or about late Spring or early Summer of 2020, Sayegh and Baycora engaged in discussions, held upon information and belief in City Hall, during which Sayegh and Baycora voiced their frustrations with the protected conduct successfully engaged in by the PBA and SOA and Cruz and Maher, including that described above, and agreed that action should be taken against Cruz and Maher by Baycora in order to divide the PBA and SOA and weaken their organizations.

40. During a meeting with Cruz on June 22, 2020 concerning a potential settlement of Grievance No. 20-01 regarding Baycora's removal and re-assignment of the extra duty officer, following an expression by Baycora of his unwillingness to consider a settlement offer made by Cruz and a complaint that Cruz was sticking to his guns on union matters and that the PBA and SOA had filed six grievances on Baycora's actions taken when he had first become the Chief of Police, Baycora stated to Cruz "both of you have your years in." a threatening reference to both Cruz and Maher being able to retire with a full pension were they to promptly resign from their employment with the City.

41. Consistent with the successive collective negotiations agreements between the PBA and the City, the PBA President position has for decades occupied a non-duty full-time release status position with assignment, as a formality, to a section or division of the Police Division of the City's Police Department.

42. PBA President Cruz has been formally assigned to a non-duty status in the Warrant Division following his becoming PBA President and has during the ensuing almost ten years not been required to report to, base himself in or appear in the Warrant Division office or to perform any duties for the Warrant Division and has instead been based in the PBA office in the City's Public Safety Complex.

43. Consistent with the successive collective negotiations agreements between the SOA and the City, the SOA President position has for decades occupied a position that has a flexible schedule and not been required to formally report to, base himself in or appear in the office of the section or division to which he is formally assigned and is instead based in the SOA office in the City's Public Safety Complex.

44. Upon assuming the office of President of the SOA in May 2012, Maher has ever since that time been, as a matter of form, assigned to a day tour of the Records Division, and has since May of 2012 performed his duties for the Records Division in the SOA's office and never been required to appear in the Record Division's offices for purposes of performing police duties.

45. Maher's hours of work since May of 2012 have primarily been from 10:00 am to 6:00 pm, even though the Record Division's civilian staff routinely worked from 8:00 am to 4:00 pm, and Maher has since May of 2012 been permitted to unilaterally adjust his hours of work so that he could start earlier or later than 10:00 am and adjust his hours accordingly at the back end based upon the recognized "irregular hours" he is compelled to work in light of his duties as SOA President.

46. The annual New Jersey State PBA Day event was held at Tices Shoals, New Jersey on July 29, 2020.

47. Annual New Jersey State PBA Day event attendance by Paterson Police Union presidents (i.e., the Presidents of the PBA and SOA), without loss of pay or benefits and without the requirement of prior approval by a superior officer, as well as the use of a police transport van to transport off-duty officers to the New Jersey State PBA Day event, have been existing "rights, privileges and benefits" of employment, exercised annually, for some 40 years pursuant to section 10.1 of the collective negotiations agreements between the PBA and SOA and the City.

48. Paterson Deputy Chief Lourdes Phelan is in charge of the Police Department's Warrant Division and Record Division and, therefore, the deputy chief over Cruz and Maher, and on July 27, 2020, during a meeting with Cruz in her office in the Public Safety Complex, Deputy Chief Phelan asked Cruz who was going to attend the annual New Jersey State PBA Day event, taking place on July 29, 2020.

49. In response to Deputy Chief Phelan's inquiry on July 27, 2020, Cruz advised Deputy Chief Phelan that Maher and Cruz, as well as the full PBA executive board, would be attending the New Jersey State PBA Day event and that they were scheduled to speak to the State PBA President and State PBA Vice President concerning the actions of the New Jersey Attorney General and of Mayor's Sayegh relating to the attempted publication of disciplinary records of PBA and SOA members who are employed or who had been in the employ of the City going back 20 years.

50. During Cruz's meeting with Deputy Chief Phelan on July 27, 2020, she raised no objection to either Cruz or Maher attending the New Jersey State PBA Day event, nor requested any Official Report, and both of them attended that event on July 29, 2020.

51. On or about August 6, 2020, at the request of Baycora, the Police Division's Internal Affairs Division opened an internal affairs investigation against Cruz and Maher for attending the New Jersey State PBA Day event, and on August 6, 2020, both Cruz and Maher were served with Internal Affairs Request #084-20 pertaining to their attendance at the New Jersey State PBA Day event, indicating that an internal affairs investigation had been commenced concerning their attendance at the New Jersey State PBA Day event on July 29, 2020 and demanding that they respond to various questions, which had been prepared by Baycora, concerning that attendance.

52. Both Cruz and Maher thereafter responded to each question propounded to them, but in doing so, stated that they were answering the questions propounded without prejudice to the position of the PBA and SOA that the inquiry reflected by the August 6, 2020 memo constituted an act of retaliation against the PBA and SOA for their exercise of their rights as the collective negotiations representative of the Department's police officers, in violation of the New Jersey Employer-Employee Relations Act.

53. On August 6, 2020, during a meeting between Baycora, Cruz and Maher, Baycora admitted that the internal affairs investigation of Cruz and Maher had been initiated by Baycora and not by anyone in Internal Affairs, but advised Cruz and Maher that the responses to his propounded questions were not to be turned in to him, but to Internal Affairs.

54. On August 20, 2020, Baycora instructed Maher and Cruz (1) that neither of them was to any longer deviate from the scheduled hours of work of officers in the divisions to which they are formally assigned, (2) that they were to use contractual leave time, rather than change their hours of work during the week, as they and their predecessors – as well as other rank and file and superior officers – had done for decades and they had each done since becoming union officers, in order to engage in off-duty employment under an off-duty employment program administered by the City, (3) that they were to notify and receive permission of a deputy chief if, as a consequence of engaging in union business activities outside of regular duty hours, they needed to reschedule their hours of work the next day (e.g., after engaging in union activities late into the night or early morning hours, they would require permission of a deputy chief to start and end their work day later the following day) and (4) that when they were not actively involved in union activities, they were to report to and stay in their respective assigned division work spaces in the City's Public Safety Complex rather than in the union offices in the City's Public Safety Complex assigned to them for performing their duties as union officers.

55. None of the directives issued by Baycora to Cruz and Maher on August 20, 2020 had ever been in place for any PBA or SOA President previously, going back multiple decades.

56. Upon the demand of Cruz and Maher made to Baycora during their meeting of August 20, 2020, Baycora agreed to place the instructions he had provided to them during their meeting in writing by August 24, 2020, but he has ever since refused to do so or to provide minutes taken of the meeting by an officer he assigned to perform that function.

57. On or about August 24, 2020, Baycora decided that he wanted Cruz to be reassigned to the Major Crimes Unit to investigate homicides, but the Supervisor(s) in charge of the Major Crimes Unit objected to such a reassignment because it was an inappropriate assignment for the President of the PBA, as that union official is engaged full-time in activities on behalf of the PBA negotiating unit and would not be able to conduct proper investigations as part of the Major Crimes Unit, i.e., such an assignment would substantially interfere with Cruz performing the duties of PBA President, thereby making his continuation in that union position while successfully performing the duties of an assignment to the Major Crimes Unit impossible.

58. After being advised of the objections of the Supervisor(s) in charge of the Major Crimes Unit to a reassignment of Cruz to the Major Crimes Unit, on or about August 24, 2020, Baycora insisted to the Supervisor(s) in charge of the Major Crimes Unit that he wanted Cruz moved from Warrants to another division of the City's Police Department.

59. On or about August 25, 2020, the PBA and SOA filed an unfair practice charge with the New Jersey Public Employment Relations Commission, a proposed Order to Show Cause with temporary restraints and an application for interim relief, with supporting certifications by Cruz and Maher, to restrain the City from imposing each of the directives issued by Baycora to Cruz and Maher on August 20, 2020.

60. On August 28, 2020, New Jersey Public Employment Relations Commission Designee Jonathan Roth issued an Order to Show Cause for Interim Relief with Temporary Restraints in PERC Docket No. CO-2021-038, imposing temporary restraints upon the City, temporarily restraining and enjoining the City from implementing any of the directives made by Baycora to Cruz and Maher on August 20, 2020.

61. On September 24, 2020, New Jersey Public Employment Relations Commission Designee Roth issued his decision on the PBA's and SOA's interim relief application in PERC Docket No. CO-2021-038, granting interim relief by continuing restraint as against each of the directives made by Baycora to Cruz and Maher on August 20, 2020.

62. Until the September 24, 2020 decision of New Jersey Public Employment Relations Commission Designee Roth in PERC Docket No. CO-2021-038 was rendered, Cruz and Maher used their accumulated contractual leave time rather than adjust their hours to perform off-duty employment under the off-duty employment program administered by the City, and they have not had that leave time reinstated to them.

63. Upon information and belief, on or shortly after August 20, 2020, Baycora was advised or came to otherwise conclude that it would appear that his August 20, 2020 directive to the PBA President and SOA President that they would henceforth be required to use contractual leave time, rather than change their hours of work, in order to engage in off-duty employment under the City-administered program would appear to be retaliatory and/or discriminatory as against Cruz and Maher if that directive was limited to those two union officers

64. On or about August 26, 2020, in order to cover up his discriminatory and/or retaliatory motive in requiring Cruz and Maher to use contractual leave time, rather than change their hours of work, in order to engage in off-duty employment under the City-administered

program, Chief of Police Baycora verbally directed the police staff of his Chief's office that they would henceforth also be required to use contractual leave time, rather than change their hours of work, in order to engage in off-duty employment under the City-administered program; and on or about that same date, a number of police personnel employed in the Chief's Office, upon receiving assurances that their identities would not be disclosed because of their expressed fear of retaliation, notified Cruz and Maher of the imposition of that new requirement.

65. On or about September 28, 2020, the PBA and SOA filed an unfair practice charge with the New Jersey Public Employment Relations Commission, a proposed Order to Show Cause with temporary restraints and an application for interim relief, with a supporting certification by Maher, to restrain the City from requiring police personnel assigned to the Chief's Office to use contractual leave time, rather than change their hours of work, in order to engage in off-duty employment under the City-administered program.

66. On September 30, 2020, New Jersey Public Employment Relations Commission Designee Roth issued an Order to Show Cause with Temporary Restraints in CO-2021-062, ordering that "the Respondent City is hereby restrained and enjoined from requiring that rank and file and superior police officers assigned to work in the Chief's Office use contractual leave time, rather than change their hours of work, in order to engage in the off-duty employment program administered by the City"; and by subsequent agreement between the City and the PBA and SOA, those restraints are continuing.

67. On October 1, 2020, during a 9:30 a.m. visit to the inner Chief's Office, in the City's Public Safety Complex, arranged at Baycora's request to discuss another matter, Cruz and Maher sought to confirm with Baycora the implementation of Commission Designee Roth's September 30, 2020 Order to Show Cause with Temporary Restraints in CO-2021-062, but

Baycora claimed ignorance of that September 30, 2020 Order to Show Cause with Temporary Restraints even though Mark Rushfield, Esq., counsel for the PBA and SOA, had emailed a copy of it to City Corporation Counsel Irving and to Baycora at 5:58 p.m. on September 30, 2020. After Chief Baycora claimed such ignorance on the alleged basis that he had not yet read his emails, Cruz and Maher informed him of the restraint and injunction contained in Commission Designee Roth's September 30, 2020 Order to Show Cause with Temporary Restraints in CO-2021-062.

68. During the conversation between Baycora, Cruz and Maher held in Baycora's inner office on October 1, 2020, Baycora questioned these union officers as to whether it was "two officers" who had reported to them Baycora's directive to the staff of the Chief's Office that they would be required to use contractual leave time, rather than be permitted to change their hours, to work off-duty employment under the program administered by the City, but Cruz and Maher both declined to either confirm or deny the number of officers who had made the report or to identify the officers who had done so.

69. After informing Baycora of the restraint and injunction contained in Commission Designee Roth's September 30, 2020 Order to Show Cause with Temporary Restraints in CO-2021-062 and refusing to provide him with the identity of the officers who had made the report of mandatory use of contractual leave time to them on October 1, 2020, as Cruz and Maher were exiting Baycora's office, despite the Public Employment Relations Commission having already recognized that Cruz was on full release as PBA President, Baycora asked Cruz to whom in the Warrant squad Cruz reported his work hours, and thereafter, in the outer office of the Chief's Office, Cruz and Maher proceeded to advise Chief's Office staff members Captain Popov, Sergeant Luzzi and Police Detective Garcia of the restraint and injunction imposed by Commission

Designee Roth in his September 30, 2020 Order to Show Cause with Temporary Restraints in CO-2021-062.

70. Cruz and Maher, like other rank and file and superior police officers of the City's Police Department, have always had the unfettered and unrestricted ability to enter the outer offices of the Chief's Office, remain there for indefinite periods of time consistent with their other duties and responsibilities, and converse with Chief's Office staff members.

71. Pursuant to section 2.11 of the PBA and SOA collective negotiation agreements, PBA and SOA officers have the right to enter all police occupied facilities at all reasonable hours to discuss union business and PBA and SOA Presidents have always had the unfettered and unrestricted ability to enter the outer offices of the Chief's Office and personally discuss with the members of the staff of the Chief's Office union matters, including, particularly, matters affecting or relating to the terms and conditions of employment of such staff members.

72. After speaking to Chief's Office staff members Captain Popov, Sergeant Luzzi and Police Detective Garcia on October 1, 2020, Cruz and Maher then proceeded to the separate nearby office of Chief's Office staffer Lieutenant Delgado, and began to make disclosure to him of the restraint and injunction imposed by Commission Designee Roth in his September 30, 2020 Order to Show Cause with Temporary Restraints in CO-2021-062; whereupon, Baycora, who had been standing by the doorway to Lieutenant Delgado's office, barged into Lieutenant Delgado's office and, in the presence of PBA and SOA collective negotiation unit members, declared that Cruz and Maher were barred from speaking to anyone in his office and thereupon further stated that if either Cruz or Maher had a "personal matter" to discuss with a member of his staff, that was permitted, but that "anything else" had to "go through" him.

73. After Cruz and Maher explained to Baycora that they were discussing union business with PBA and SOA negotiation unit members, in the presence of Chief Office staff members Captain Popov, Lieutenant Delgado, Sergeant Luzzi and Police Detective Garcia, Baycora stated that he had “read the contract” and that Cruz and Maher have to go to him and not speak to his staff members who are in the PBA or SOA collective negotiation units.

74. Neither the PBA nor SOA collective negotiation agreements provide that Chief of Police permission is required for union representatives to speak with collective negotiation unit members employed in the Chief’s Office to discuss union matters, and no such limitation has ever before been imposed upon such union activities of officers of the PBA or SOA; nor has there ever been any prior directive or practice preventing or limiting the ability of officers of the PBA or SOA, or of any Police Division personnel not occupied by other duties, from entering the outer offices of the Chief’s Office to speak with members of the Chief’s Office staff about any matter, which has at all relevant times been the common practice in the City’s Police Division.

75. Since becoming PBA President in or about May 2011, Cruz had been provided with an automobile by the City that had a license plate bearing no identification that it was a municipal vehicle.

76. PBA President use of a vehicle with a license plate that bore no identification that it was a municipal vehicle was of particular importance and value to the PBA as it reduced the likelihood of police officers visited by the PBA President, for example, the PBA President visiting a police officer at his home to address a traumatic event, perform a welfare check or other personal union business, being potentially embarrassed or the subject of neighborhood suspicion or gossip by having a City municipal vehicle appear in the driveway of, or on the sidewalk in front of, his

or her home on one or more occasions. especially if in the late hours of the night, as was often the case.

77. On or about August 20, 2020, at the direction of Baycora, the City registered the vehicle assigned to Cruz so that it would have a municipal license plate that would identify the vehicle as a City municipal vehicle. and such a change in license plates on the vehicle assigned to PBA President Cruz was unilaterally implemented, without prior notice to him from the Chief's Office, on August 20, 2020.

78. In or about August of 2020, without the agreement of the Police Division's Internal Affairs Division, without completion of any investigation by the Internal Affairs Division, in derogation of established procedures and policies of the Police Division of the City's Department of Public Safety, and over the objections of members of the Internal Affairs Division and various superior officers in the Police Department, Baycora unilaterally sent spurious and unfounded charges of alleged criminality by Cruz, and, upon information and belief, by Maher, to the Passaic County Prosecutor's Office, which has taken no action with regard to those charges.

79. Commencing on or about October 9, 2020, persons contacting the Office of the Chief of Police have been falsely advised that Cruz would be retiring effective February 1, 2021.

80. On October 16, 2020, a higher-ranking superior officer advised Maher that there was an effort to have a vacant Deputy Chief position in the City's Police Department filled by Captain Bert Ribiero, who happened to be the SOA's Vice President and who was next in line to fill that position, but that there was a problem with that promotion going forward because Baycora associated Ribiero with Maher and the SOA and Baycora was vengeful and that Ribiero would have to distance himself from Maher and the SOA until the promotion occurred, to which Maher

responded that under the circumstances, Maher would understand if Ribiero felt the need to distance himself from Maher and the SOA to avoid retaliatory action by Baycora.

81. Upon information and belief, commencing in or about October of 2020, in retaliation against Cruz, Baycora commenced an investigation of Cruz's hours of work during the time that Cruz was running for Mayor of the City, the election for which was held on May 4, 2018, although Cruz properly took accrued contractual leave time during the period(s) in which he was campaigning for that elective position and, commencing in or about October of 2020, in retaliation against Maher, commenced an investigation of Maher's performance of work as a lieutenant responsible for the Records Division.

82. Every year since September 11, 2002, until September 11, 2020, the PBA President read a paragraph from the same pamphlet, which itself referenced the PBA President as its reader, at a special ceremony at a monument dedicated to the tragedy that occurred that day in 2001, after which a large PBA wreath is ceremoniously placed near the monument during the service to honor the police first responders who perished and police first responders who responded to the disaster at the World Trade Center, including Paterson police officers who have battled, or are battling, illnesses caused by their service in New York City on September 11, 2001, a number of whom have died as a result.

83. On September 11, 2020, in a shameful act designed to disparage and embarrass the PBA President and the PBA and SOA, and to the surprise and dismay of those attending, the PBA President was omitted from the pamphlet and was not called upon to read a paragraph therefrom during the ceremony and the PBA, for the first time, was not called upon to lay its wreath at the monument, but Baycora and the Police Department's Deputy Chiefs were instead called upon to lay a smaller wreath. It was only after the ceremony had concluded and the PBA wreath left out of

it that Maher requested a religious figure to place the wreath at the monument with Maher and say a prayer.

84. All actions of the Defendants complained of herein were engaged in under color of State law and deprived the Plaintiffs of rights secured under the U.S. Constitution, the New Jersey Constitution and federal and state law.

85. The actions of the Defendants complained of herein have caused damages to the individual Plaintiffs Cruz and Maher in the nature of anguish, humiliation, loss of respect, emotional and psychological distress and loss of income and contractual benefits and have caused, and continue to cause, damages to the Plaintiffs PBA and SOA in terms of humiliation, loss of respect, being compelled to expend their resources to defend their interests, and diminution in their ability to represent the interests of, and protect, their members as their collective negotiation representatives.

**AS AND FOR A FIRST CAUSE OF ACTION FOR RETALIATION FOR EXERCISE OF
THE PLAINTIFFS' FIRST AMENDMENT SPEECH RIGHTS AS AGAINST
DEFENDANTS CITY AND SAYEGH AND BAYCORA IN THEIR OFFICIAL AND
INDIVIDUAL CAPACITIES IN VIOLATION OF THE
U.S. CONSTITUTION AND 42 U.S.C. § 1983**

86. Plaintiffs repeat the allegations at paragraphs numbered 1 and 3-85 of the Complaint as if fully set forth herein.

87. The actions of the Plaintiffs set forth herein represented speech on matters of public concern that were made in their "private citizen" capacity as labor organizations or as union officials and representatives, and, in the case of Cruz and Maher, not made pursuant to their official duties as police officers.

88. The actions of the Defendant City set forth and complained of herein were actions engaged in or authorized by the individual Defendants, other officials of the Defendant City and/or the City Council of the Defendant City as final policymakers of the Defendant City and constitute actions taken pursuant to the customs, policies and practices of the Defendant City, which include punishing public sector labor organizations who are collective negotiation representatives of employees of the City, union officer employees of the City and other employees of the City in the exercise of their protected freedom of speech rights.

89. The actions of the Defendant City and of the individual Defendants set forth and complained of herein were engaged in in knowing violation of the Plaintiffs' First Amendment free speech rights.

**AS AND FOR A SECOND CAUSE OF ACTION FOR RETALIATION FOR EXERCISE
OF THE PLAINTIFFS' FIRST AMENDMENT ASSOCIATION RIGHTS AS AGAINST
DEFENDANTS CITY AND SAYEGH AND BAYCORA IN THEIR OFFICIAL AND
INDIVIDUAL CAPACITIES IN VIOLATION OF THE
U.S. CONSTITUTION AND 42 U.S.C. §1983**

90. Plaintiffs repeat the allegations at paragraphs numbered 1 and 3-85 of the Complaint as if fully set forth herein.

91. Deputy Chief Ibrahim Michael Baycora of the City's Police Department, who before taking that position had been an employee in the collective negotiations unit represented by the SOA, was appointed by the City as the new Chief of Police for the City's Police Department in or about February 2020, at which time he ceased to be a member of the collective negotiations unit represented by the SOA or an employee covered by the terms and conditions of employment of the SOA collective negotiations agreement with the City.

92. Upon ceasing to be an employee covered by the SOA collective negotiations agreement, Baycora ceased to be subject to the provisions at section 2.1 of the SOA collective negotiations agreement providing for the City to deduct monthly dues required by the SOA.

93. During a date in or about mid-August of 2020, Baycora made mention to PBA President Cruz and SOA President Maher that since he was no longer represented by the PBA or SOA, he did not see why he should be paying dues to the PBA or SOA.

94. As a consequence of Baycora's comment, it was determined by the PBA and SOA that Chief Baycora was correct in indicating that he should not be paying dues for membership in either of those organizations following his appointment as Chief of Police since, in addition to the limiting language of the SOA collective negotiations agreement, Baycora was otherwise no longer qualified to be a member of either of those organizations because, as required by the Constitution and Bylaws governing the PBA and SOA as concerns superior officers, he was no longer serving in a superior officer police position to which he had been "permanently promoted to the rank of Sergeant or above."

95. Upon reaching the determination that Baycora had been correct that he should not be paying dues for membership in either the PBA or SOA, in or about mid-August 2020, PBA President Cruz and SOA President Maher contacted the City's Personnel/Payroll offices and advised them that the City should cease making dues deductions from the biweekly wages paid by the City to Baycora, and the City complied with that request for the upcoming biweekly wage check for Baycora.

96. By email dated August 20, 2020 to SOA President Maher, with copies to City Personnel director Debra Hannibal, Payroll Supervisor Theresa Suarez, PBA President Alex Cruz,

Acting City Corporation Counsel Farrah Irving, City Police Director Jerry Speziale and City Business Administrator Kathleen Long, Baycora wrote:

This is to confirm our conversation in your office today at 0325 pm, that you and Det. Alex Cruz arbitrarily removed my biweekly payroll deduction of “PBA Dues” from my check beginning with check dated 08/21/20 (#445187). I take this threatening action very seriously, and definitely Retaliatory. I expect a written response as to your actions.

97. On or about August 27, 2020, Baycora instructed the Police Department’s Internal Affairs Division to meet with staff of the City’s Personnel/Payroll offices to compel them to reinstate his dues deductions as a member of the SOA and personally demanded of that staff that it do so.

98. On or about August 31, 2020, the PBA and SOA learned from a source who requested anonymity that Chief Baycora had demanded that the City reinstate the biweekly payroll dues deduction from his salary for dues for his membership in the SOA and that the City had acquiesced to that demand and was directing the Payroll office to recommence making such deductions for forwarding to the PBA and SOA’s Federal Credit Union, where such payments from the City’s Treasury Department are received biweekly, in an effort to establish Baycora being a member of the PBA or SOA.

99. On September 2, 2020, a police officer from the Police Department’s Internal Affairs Division, detailed by Baycora and acting under Baycora’s directions, appeared at the City’s Personnel/Payroll offices and took action to ensure that the staff of that office implemented the SOA membership dues deduction from Baycora’s September 4, 2020 wage payment.

100. Despite being notified by counsel for the PBA and SOA by emails of August 31, 2020 and September 4, 2020 as to the reasons why the City should not reinstate the deduction of “dues” from Baycora’s biweekly wages in light of his no longer being in the SOA’s negotiation

unit and not being otherwise entitled to membership in the SOA following Baycora's appointment as Chief of Police, the City reinstated that deduction, retroactively to include the deduction for the wage payment made on August 4, 2020, for the wage payment made to Baycora on September 4, 2020 and has since that time made such deductions from Baycora's subsequent wage payments and has forwarded those payments to the PBA and SOA's Federal Credit Union as membership dues despite being counseled that the issue of Baycora's membership in the PBA or SOA was an internal union matter.

101. The actions of the Plaintiffs set forth herein represented exercises of their protected right of association as public sector labor organizations and as members, representatives and officers of those organizations.

102. The actions of the Defendant City set forth and complained of herein were actions engaged in or authorized by the individual Defendants, other officials of the Defendant City and/or the City Council of the Defendant City as final policymakers of the Defendant City and constitute actions taken pursuant to the customs, policies and practices of the Defendant City, which include punishing public sector labor organizations that are collective negotiation representatives of employees of the City, union officer employees of the City and other employees of the City in the exercise of their protected freedom of association rights.

**AS AND FOR A THIRD CAUSE OF ACTION FOR RETALIATION FOR EXERCISE
OF THE PLAINTIFFS' FREEDOM OF SPEECH RIGHTS AS AGAINST
DEFENDANTS CITY AND SAYEGH AND BAYCORA IN THEIR OFFICIAL AND
INDIVIDUAL CAPACITIES IN VIOLATION OF ARTICLE I, ¶ 6 OF
THE NEW JERSEY CONSTITUTION AND N.J.S.A. 10:6 – 2**

103. Plaintiffs repeat the allegations at paragraphs numbered 2 and 3-85 and 87-89 of the Complaint as if fully set forth herein.

104. The actions of the Defendant City and of the individual Defendants set forth and complained of herein were engaged in in knowing violation of the Plaintiffs' New Jersey Constitution free speech rights.

AS AND FOR A FOURTH CAUSE OF ACTION FOR RETALIATION FOR EXERCISE OF THE PLAINTIFFS' FREEDOM OF ASSOCIATION RIGHTS AS AGAINST DEFENDANTS CITY AND SAYEGH AND BAYCORA IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES IN VIOLATION OF ARTICLE I, ¶ 18 OF THE NEW JERSEY CONSTITUTION AND N.J.S.A. 10:6 – 2

105. Plaintiffs repeat the allegations at paragraphs numbered 2 and 3-85 and 91-102 of the Complaint as if fully set forth herein.

106. The actions of the Defendant City and of the individual Defendants set forth and complained of herein were engaged in in knowing violation of the Plaintiffs' New Jersey Constitution freedom of association rights.

WHEREFORE, it is requested that the Court render and Order and Judgment:

(1) enjoining the Defendants from continuing to violate the Plaintiffs' freedom of speech and freedom of association rights in violation of the First Amendment to the U.S. Constitution and Article I ¶¶ 6 and 18 of the New Jersey Constitution;

(2) awarding damages to the Plaintiffs in sums to be determined upon the trial of this action;

(3) awarding the Plaintiffs punitive damages as permitted by law, including as against the individual Defendants;

(4) awarding to the Plaintiffs their reasonable attorney fees and costs for the prosecution of this action; and

(5) granting the Plaintiffs such other and further relief as the Court may deem just and proper.

Dated: November 10, 2020

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