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IN ARBITRATION PROCEEDINGS
PURSUANT TO AGREEMENT OF THE PARTIES

In the matter of an arbitration between)
)
SERVICE EMPLOYEES INTERNATIONAL)
UNION, LOCAL 521,)
)
Union,)
)
and)
)
COUNTY OF SANTA CRUZ,)
)
)
Employer,)
)
Involving the grievances of Jim Heaney.)

OPINION AND AWARD
CSMCS Case No. ARB-16-0156

This matter came before Catherine Harris, Esq., a neutral arbitrator mutually selected by the parties to render a final and binding decision.¹

Kerianne R. Steele, Esq., Weinberg, Roger & Rosenfeld, appeared on behalf of **SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521** (herein “the Union”), the collective bargaining representative of Jim Heaney (herein “the Grievant”). The Grievant was present throughout the hearing.

Siobhan Kelly, Assistant County Counsel represented the **COUNTY OF SANTA CRUZ** (herein “the County”).

A hearing was held on June 22, 2017 at Santa Cruz, California.² At the hearing, each party was given the opportunity to present testimonial³ and documentary evidence,⁴ to

¹ The arbitrator was selected from a list supplied by the California State Mediation and Conciliation Service (CSMCS).

² No transcript or recording of the hearing was made by either party.

³ The Union presented the testimony of Frank Garden and the Grievant. The County presented the testimony of Ajita Patel. No rebuttal testimony was presented by the Union.

⁴ At the commencement of the hearing, the arbitrator received Joint Exhibits “1” through “6.” During the hearing, the arbitrator also received Union Exhibits “7” through “21.”

1 cross examine each other's witnesses, and to make argument to the arbitrator.⁵ Upon
2 receipt of both parties' post-hearing briefs, the record was closed on July 13, 2017 and the
3 matter was taken under submission.⁶

4 **RELEVANT PROVISIONS OF THE AGREEMENT**

5 The parties agree that the relevant agreement for purposes of resolving this dispute
6 is the Memorandum of Agreement between the County and the Union for the General Unit
7 for the period September 11, 2013 through September 23, 2016 (herein "the MOU") which
8 contains the following provisions:

9 **ARTICLE 3 UNION ACTIVITIES**

10 **3.1 STEWARDS**

11 The Union agrees to notify the County of their Stewards on a quarterly basis. At least one
12 Steward shall be allowed in each department... Release time shall be authorized in
13 accordance with MOU Attachment C.

13 ...

14 ATTACHMENT C OF SEIU MOU

15 PROVISIONS REGARDING RELEASE TIME AND THE VOLUNTARY RELEASE
PROGRAM

16 This attachment states the provisions of State law and the County's Employer-Employee
17 Relations Policy regarding release time for employee representatives. Meyers-Milias-
Brown Act, Government Code Section 3505.3.)⁷

19 ⁵ The parties agreed to finally argue the matter by way of simultaneous post-hearing briefs
20 to be filed on or before July 10, 2017. Consistent with the stipulation, both parties' briefs were
21 received in the arbitrator's Sacramento office as of July 13.

22 ⁶ The parties also agreed that the arbitrator would have 45 days from the closing of the
23 record in which to issue her opinion and award by regular mail, duplicate originals, to the
representatives of the parties.

24 ⁷ Government Code section 3505.3(a) (3) provides in pertinent part that public agencies
25 shall allow a reasonable number of public agency employee representatives of recognized
26 employee organizations reasonable time off without loss of compensation or other benefits when
27 they are testifying or appearing as the designated representative of the employee organization in
28 matters before a personnel or merit system commission.

1 Time Off For Meetings

2 Public agencies shall allow a reasonable number of public agency employee
3 representatives of recognized employee organizations reasonable time off
4 without loss of compensation or other benefits when formally meeting and
5 conferring with representatives of the public agency on matters within the
scope of representation. (County Employer-Employee Relations Policy
181.13, Employee Meetings on County Time).

6 A. Official Representatives

7 Official representatives of a recognized employee organization shall be
8 allowed time off on County time during normal working hours when
9 formally meeting and conferring in good faith with the Employee Relations
10 Officer or other management representative designated by the Board on
11 matters within the scope of representation, provided that advanced
12 arrangements for the absence are made with the representative's department
13 head or designee and provided that the number of representatives released
for such meetings shall not exceed three (3) persons, except by mutual
agreement between the Personnel Director and the employee organization
prior to the meeting. The use of official time for this purpose shall be
reasonable and shall not interfere with the performance of County services.
The County understands and acknowledges the need to utilize shop stewards
across County departments and will approve reasonable requests for time
for that purpose.

14 B. Employees

- 15 1. County employees shall be allowed time off on County time to
16 attend meetings held by County departments or agencies during
regular working hours:
- 17 a. If their attendance is required at a specific meeting.
 - 18 b. If their attendance is required by a hearing officer or
19 commission for presentation of testimony or other reasons.
 - 20 c. For meetings required for settlement of grievances filed
pursuant to a formal grievance procedure.*
 - 21 d. If they are designated as a Union Steward or representative
22 for purposes of processing a formal grievance.*
 - 23 e. If they are designated as a representative of a recognized
24 employee organization for purposes of making representation
or presentations at meetings and hearings on wages, hours
and working conditions.⁸
- 25 2. In each case above, advanced arrangements shall be made with the
26 employee's department head or designee for the employee to be

27 ⁸ The asterisk that appears at the end of sections B (1) (c) and B (1) (d) provides: "See
28 Article 22.5 B (1) of the General Representation Unit Memorandum of Understanding."

absent from the work station or assignment, and the County department or agency calling the meeting shall be responsible for determining that the attendance of the particular employee is required.⁹

ARTICLE 19 EMPLOYEE RIGHTS

19.1 ADVERSE ACTION

... “Adverse Action” is defined as a dismissal, demotion, suspension, placement at a lower salary step in the salary range of the employee, written reprimand, or transfer for purposes of punishment. ... Nothing in this section shall be construed to modify County Code or Civil Service Rule provisions regarding disciplinary actions (i.e., dismissal, suspension and demotion.)

19.2 ALTERNATE DISCIPLINARY APPEAL

The County and Union agree that in some disciplinary cases it would be appropriate and beneficial to use the services of an arbitrator/hearing officer.

A. Employees, with Union approval, may utilize an arbitrator for disciplinary actions (suspensions, demotions, dismissals) provided they waive their right to an appeal before the Civil Service Commission. This alternative shall apply only to disciplinary actions that can be appealed to the Civil Service Commission.

B. The arbitration for disciplinary actions will use arbitrators from State Mediation and Conciliation Service that are mutually selected by the County and Union. The arbitrator for each disciplinary hearing will be selected by random method from the list provided by the State Mediation and Conciliation.

C. The arbitration shall be subject to all the provisions of Title 9 of Part 3 of the California Code of Civil Procedure, commencing with Section 1280 except for the following special provisions of this agreement:

...

4. The arbitrator shall be bound by all County ordinances and resolutions and the Memorandum of Understanding.

...

D. ...

⁹ During the last round of bargaining, the parties did not make any changes to the above-quoted contract language; however, provisions were added dealing with “Time Off for Meeting Preparation.” These provisions allow employees who have been served with a notice of disciplinary action reasonable time off on County time during normal work hours to prepare for Skelly meetings, as well as first and second level appeals to the supervisor and the appointing authority. These changes are not relevant to the determination of the instant grievance.

1 **ARTICLE 22 GRIEVANCE PROCEDURE**

2 ...

3 **22.2 DEFINITION**

4 A. A grievance may only be filed if it relates to:

5 1. A management interpretation or application of provisions of this
6 Memorandum of Understanding which adversely affects an
7 employee's wages, hours or conditions of employment, except as
8 provided for in subsections 22.2 B, C, D and E below.

9 2. A management interpretation or application of the County
10 Procedures Manual Section 160, Salary, Compensation and Leave
11 Provisions, which directly applies to employees in the General
12 Representation Unit and which adversely affects the employee's
13 wages, hours or conditions of employment.

14 B. Specifically excluded from the grievance procedure are:

15 1. Subjects involving amendment or change of a Board of Supervisors
16 resolution, ordinance, minute order or this Memorandum of
17 Understanding.

18 2. Dismissals, suspension, or reduction in rank or classification (appeal
19 process through Civil Service).

20 ...

21 **STATEMENT OF THE ISSUES**

22 At the hearing, the parties agreed that the following issues are properly before the
23 arbitrator for final and binding determination:

24 Issue number one, whether the County violated the Agreement when it denied
25 release time to the Grievant; and

26 Issue number two, if so, what is the appropriate remedy.

27 The parties also jointly requested that, in the event that a remedy were to be ordered, the
28 arbitrator retain jurisdiction over implementation of the award.

STATEMENT OF THE CASE

Background

The Union's approach to representing County employees is that member participation in union affairs is crucial. To that end, the Union emphasizes leadership at the local level provided by members of the bargaining unit who are elected to steward positions. The Grievant, who has held the position of Chief Steward for ten years, is a

1 Building Plans Checker in the County's Planning Department. As such, he reviews plans
2 for code compliance, notes deficiencies, and answers questions from the public regarding
3 procedures and permits. As the Chief Steward, the Grievant regularly provides steward
4 training and advice to other stewards. In general, all stewards, including the Grievant, have
5 been permitted to regularly participate in investigatory interviews, Skelly hearings,
6 disciplinary hearings before the Civil Service Commission and grievance step meetings.
7 While participating in these activities, stewards have received paid release time. This case
8 raises the issue of whether a steward designated as the Union's representative is entitled to
9 paid release time for attending an arbitration hearing conducted pursuant to Section 19.2 of
10 the MOU.

11 **Facts Giving Rise to the Grievance**

12 On July 27, 2016, Frank Garden, a Contract Enforcement Specialist (paid staff of
13 the Union)¹⁰ asked Deputy Director of Personnel Ajita Patel to grant both Employee M and
14 the Grievant release time on September 12, 2016 in order to attend an arbitration hearing
15 regarding an appeal of Employee M's demotion.¹¹ Garden requested that both Employee M
16 and the Grievant be released at 8:00 a.m. in order to allow time for them to confer with the
17 Union's attorney prior to the hearing.

18 In response to this request, Patel had a conversation with the Union's Regional
19 Director Debbie Navarez which she confirmed in writing.¹² In her e-mail confirmation
20

21 ¹⁰ As part of his duties, Garden covers various bargaining units located in Monterey, Santa
22 Cruz and San Benito counties, including the General Representation Unit at the County.

23 ¹¹ While demotion is generally considered appealable to the Civil Service Commission and
24 not a proper subject of a grievance per Section 22.2 (B) (2) of the MOU, Section 19.2 of the MOU
25 allows an employee to elect an alternate disciplinary appeal procedure, i.e., arbitration before a
mutually agreed upon "arbitrator/hearing officer" selected from a list supplied by the CSMCS.

26 ¹² The Union introduced e-mail exchanges between Patel and Kathy Previsich in which
27 Patel informed Previsich that paid release time is discretionary when a matter involves an issue
28 outside the steward's department and involves "an enormous amount of time." Previsich agreed
that it was too much time and asked Patel to confirm that the Grievant was also on the negotiating
team. During times material, the Grievant was on the IT Study Team, not the negotiating team.

1 dated August 24, 2016, Patel states:

2 Based on our conversation it is our understanding that Jim is necessary to the
3 proceeding for the following reasons: 1) he has background information as he
4 assisted in the Skelly and 2) the request is a training opportunity for Jim in order to
5 handle future arbitrations.

6 In the same e-mail, Patel informed Navarez that her office had learned that the Grievant
7 was not involved in the Skelly¹³ and that, accordingly, he should request vacation time in
8 order to attend arbitration training. On the same date, i.e., August 24, 2016, Patel denied
9 the request on the grounds that the Grievant would not be able to provide background
10 information¹⁴ and that any training should be charged as vacation time.

11 In response to the denial, Garden offered to reschedule the hearing if the County
12 was concerned about the operational needs of the Planning Department in the Grievant's
13 absence.¹⁵ Garden took the position that, assuming that there was no concern on the part of
14 the Department regarding operational needs, it was outside the County's purview to decide
15 that the Grievant was not the appropriate representative of the Union to attend the hearing.
16 Patel then responded by asking Garden what provision of the MOU he was relying on and
17 Garden identified Attachment C, Section B (1) (a).¹⁶ Senior Deputy County Counsel Betsy
18 Allen also weighed in, i.e., stating in an e-mail that an arbitration hearing is not a meeting
19 held by the County and that no other provision of the MOU authorized paid release time.
20 On August 24, 2016, the Grievant requested (and received approval for) a day of vacation

21 ¹³ Since there was no steward in Employee M's department, the Union sent paid staff to
22 represent Employee M at the Skelly hearing.

23 ¹⁴ This was the first time that denial of release time for a steward to represent a Union
24 member was based on the fact that the member was employed outside the steward's department.

25 ¹⁵ At the hearing, the parties stipulated that if Senior Plans Examiner Laura Brinson had
26 been called to testify, she would have stated that on all the dates that the Grievant requested and
27 took vacation (9/12 and 11/22) there was no perceptible increase in workload or work flow
28 attributable to the Grievant's absence.

¹⁶ This section provides that County employees shall be allowed time off on County time
to attend meetings held by County departments or agencies during regular working hours if their
attendance is required at a specific meeting.

1 in order to be able to attend the arbitration hearing.

2 **The Filing of Grievance 75313**

3 On August 25, 2016, the Grievant filed a Step 1 grievance which alleges that:

4 The County refuses to provide release time for the SEIU Chief Steward assigned to
5 be the representative for SEIU in an arbitration hearing set for September 12, 2016
6 that was mutually agreed upon and jointly facilitated by the County and SEIU. The
7 Chief Steward's presence is necessary at the meeting in order to function as the
8 representative for SEIU. In attempting to justify its denial of release time, the
9 County offered two different theories: First, that the meeting is being convened by
10 SEIU and the County is merely attending against its will; therefore the meeting is
11 not being facilitated by a county department or agency, and second, that the County
12 retains exclusive authority to determine which employees can and cannot attend a
13 meeting pursuant to the release time conditions. In other words, the County
14 erroneously believes it has authority to designate who the representative for SEIU
15 will be for release time purposes.

16 The grievance identifies "Memorandum of Understanding including, without limitation,
17 Attachment C (Provisions Regarding Release Time and the Volunteer Initiative Program)
18 of the MOU" as "the Article or Section number and title which has been violated." The
19 grievance requests that the County cease and desist all efforts to limit the ability of the
20 Union to designate its union representatives at meetings jointly convened by the County
21 and SEIU; that the County authorize release time for the Grievant to attend an arbitration
22 hearing on September 12, 2016 as the Union's representative; and that the Grievant be
23 reimbursed the eight hours of accrued vacation time that he had been forced to use in order
24 to attend the September 12, 2016 arbitration hearing.

25 **The Step 1 Meeting on Grievance 75313**

26 On September 8, 2016, a Step 1 meeting was held before Nancy McCollum, the
27 Departmental Fiscal Officer. The meeting was attended by Garden, the Grievant and Senior
28 Personnel Analyst Erin Morimoto. During the Step 1 meeting, Garden argued that the
Grievant, as the Chief Steward, was designated as the SEIU representative for the
September 12, 2016 disciplinary appeal arbitration hearing and that by denying release time
for an SEIU representative to attend the hearing, the County was violating the provisions of
Attachment C of the MOU. Garden further argued that the County was in essence trying to
decide who represents the Union at arbitration hearings. When the Grievant was asked by

1 the County to explain what his role would be at the hearing, he responded that it was his
2 responsibility to ensure that dues were being spent wisely on the attorney and that since the
3 SEIU attorney is not familiar with the County's rules and regulations, he would be a
4 resource during the hearing. McCollum denied the grievance on the grounds that the
5 Grievant's attendance at the Section 19.2 arbitration does not meet any of the criteria listed
6 in Attachment C.¹⁷ The grievance was then appealed to Step 2, i.e., the Personnel Manager.

7 **The Arbitration Hearing**

8 The first day of the arbitration hearing occurred on September 12, 2016. Both the
9 Grievant and the Union's Contract Specialist Frank Garden attended the arbitration
10 hearing. At the commencement of the hearing, Union counsel Ms. Steele told the arbitrator
11 that the Grievant was attending the hearing as the Union's designated representative. The
12 hearing did not conclude on September 12 and two additional days were scheduled for
13 November 22¹⁸ and 23. On September 16, the Union requested two additional days of paid
14 release time for the Grievant to attend the resumption of the arbitration hearing. This
15 request was denied for the same reasons as the earlier request for one day of release time.
16 On September 28, 2016, the Grievant requested (and received approval for) two additional
17 vacation days.

18 **The Filing of a Grievance 75445**

19 On September 28, 2016, the Union filed a second grievance protesting the denial of
20 the request for two additional days of paid release time. By agreement of the parties, the
21 two grievances were consolidated for hearing at the Step 2 level. On October 5, 2016, the
22 Step 2 meeting was held before Claire Schwartz, Principal Personnel Analyst and attended
23 by Garden and the Grievant. During the meeting, the Grievant reiterated that his role at the
24 arbitration hearing was to consult with the Union's attorney in caucuses and offer

25
26 ¹⁷ According to the Grievant's un rebutted testimony, the parties herein have been so
27 successful in resolving disputes at the local level that arbitration hearings are a rare occurrence.

28 ¹⁸ As it turned out, the case concluded on the second day of hearing so only *two* days of
paid release time are at issue in this proceeding.

1 information on County practices. Garden also argued that the Grievant was representing
2 the Union in the same way that Karina Aragon would be representing the County even
3 though both sides would have attorneys present. In a written decision dated October 14,
4 2016, Schwartz denied the grievances on the grounds that Patel had correctly determined
5 that the situation did not meet the criteria for release time established in Attachment C of
6 the MOU. The Union then requested arbitration of the grievance, the undersigned
7 arbitrator was mutually selected, and this hearing followed.

8 **POSITION OF THE UNION**

9 The County has contracted to provide officers and stewards paid release time in a
10 variety of circumstances including when their attendance is required at a specific meeting
11 or when they are designated as a representative of the Union for purposes of making
12 representation or presentations at meetings and hearings. Under the plain meaning doctrine,
13 the Grievant is entitled to release time under Attachment C, Section B (1) (a) and/or (e).

14 In interpreting Attachment C of the MOU, the arbitrator should look to the MMBA
15 to give meaning to the contract language. The MMBA mandates paid release time for
16 testifying or appearing as the designated representative of the employee organization in
17 matters before a personnel commission [Government Code section 3505 (a) (3)]. After the
18 employee waives his or her right of appeal to the Civil Service Commission, the arbitrator
19 stands in the shoes of the Civil Service Commission.

20 Applying the principle of ejusdem generis, this arbitrator should find that the
21 purpose of the request for release time at issue herein is substantially similar to other
22 purposes enumerated in Attachment C, Section B (1). A disciplinary appeal is “of the same
23 kind” as the grievance.

24 The County must not be permitted to dictate who shall participate in a hearing or
25 meeting on behalf of the Union. The County has offered shifting explanations of its
26 actions. The arbitrator should order the County to restore two days of vacation to the
27 Grievant and order the County to cease and desist from denying release time to stewards
28 who serve as the Union’s designated representatives in the disciplinary appeal process.

1 burden of establishing a violation of the MOU for the reasons expressed in this opinion.

2 ***Attachment C of the MOU cannot be interpreted without reference to Government Code***
3 ***section 3505.3.***

4 As a threshold matter, the arbitrator cannot fail to note that the MOU, on its face,
5 incorporates Government Code section 3505.3 into Attachment C when it unequivocally
6 states:

7 This attachment states the provisions of State law and the County's Employer-
8 Employee Relations Policy regarding release time for employee representatives.
9 (Meyers-Milias Brown Act, Government Code Section 3505.3).

10 In the arbitrator's view, the language, quoted above, manifests a mutual intent to provide
11 the statutory rights guaranteed by Government Code Section 3505.3 as part of the MOU.

12 The language does *not* state that the attachment states *some* of the statutory release time
13 provisions nor does it identify specific portions or sub-parts of the provisions. Thus, it
14 cannot be found that the MOU constitutes only a partial grant of selected release time
15 provisions, as set forth in Government Code section 3505.3. To the contrary, a reasonable
16 inference to be drawn from the sweeping language, quoted above, is that the parties
17 intended, at a minimum, to make all the statutory requirements of Government Code
18 section 3505.3 a part of their contract.

19 ***For release time purposes, Employee M's demotion hearing is a matter before a***
20 ***personnel or merit commission.***

21 Section 19.2 of the MOU merely provides that a disciplinary hearing, such as
22 Employee M's demotion hearing, may, at the request of an employee and with Union
23 approval, be heard by a mutually selected "arbitrator-hearing officer" from the CSMCS in
24 lieu of a Civil Service Commission hearing officer. When the alternate disciplinary appeal
25 procedure is invoked by the employee and the Union, the essential nature of the hearing is
26 unchanged, i.e., the parties, the issues, and the governing legal principles are the same. This
27 is consistent with Section 19.2 (A) which specifically provides that the alternate
28 disciplinary appeal shall only apply to disciplinary actions that can be appealed to the Civil
Service Commission and with Article 22 (B) which specifically excludes reductions in rank
(demotions) from the grievance arbitration procedure. Under these circumstances, the

1 arbitrator must conclude that the Section 19.2 “arbitration” hearing remains, in essence, a
2 matter before a personnel or merit commission for purposes of the Grievant’s statutory
3 entitlement to paid release time.¹⁹ Adding additional support to this conclusion, nothing in
4 Section 19.2 of the MOU suggests that the parties intended to limit paid release time when
5 the alternate disciplinary appeal procedure is utilized.

6 ***Attachment C provides paid release time in excess of MMBA requirements.***

7 Government Code Section 3505.3 guarantees reasonable time off without loss of
8 compensation or other benefits when participating in 1) formal meet and confers with
9 representatives of the public agency on matters within the scope of representation;
10 2) testifying or appearing as the designated representative of the employee organization in
11 matters involving unfair labor practice charges; and 3) testifying or appearing as the
12 designated representative of the employee organization in matters before a personnel or
13 merit commission. On the other hand, Attachment C guarantees paid release time to union
14 representatives, not only under the circumstances described in Government Code Section
15 3505.3, but also under broader circumstances including “meetings held by County
16 departments or agencies during regular working hours” under the following conditions:
17 1) *if* the employee’s attendance is required at a specific meeting; 2) *if* attendance is
18 required by a hearing officer or commission for presentation of testimony *or other reasons*;
19 3) for meetings required for settlement of grievances; 4) *if* the employee is designated as a
20 union steward or representative for purposes of processing a formal grievance; or 5) if the
21 employee is designated as a representative of a recognized employee organization for
22 purposes of making representation or presentations at meetings and hearings on wages,
23 hours and working conditions. In the arbitrator’s view, the Grievant herein was required to
24 attend a meeting during regular working hours due to his designation as a party-
25 representative.

26

27

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¹⁹ As outlined in the previous section, this statutory right has been incorporated into the MOU.

1 *The Grievant is entitled to paid time off to attend a disciplinary hearing as the*
2 *designated representative of the Union.*

3 The County argues that it has no obligation to provide paid release time for the
4 Grievant to attend a meeting which is not being held by the County. This argument ignores
5 the fact that the MOU (Attachment C, Section B) explicitly authorizes paid release time to
6 attend meetings held by “County departments *or* agencies” during regular work hours and
7 that “meetings” are broadly defined to include “hearings.” In reaching this conclusion, the
8 arbitrator notes that Attachment C makes no distinction between meetings and hearings for
9 purposes of paid release time. While Section B (1) provides for mandatory paid release
10 time to attend *meetings* held by County departments or agencies, Section B (1) (b)
11 includes appearing at a *hearing* to present testimony, or for *other reasons*, as one particular
12 category of meeting subject to paid release time requirements. Similarly, Section B (1) (e)
13 refers to “meetings *and* hearings on wages hours and working conditions.”

14 When the parties negotiated an alternate disciplinary appeal under Section 19.2,
15 they also specifically provided that the “arbitrator/hearing officer” would be selected from
16 a list supplied by the CSMCS. In short, the parties agreed that rather than a disciplinary
17 appeal hearing held before the Civil Service Commission, the hearing would be held before
18 an arbitrator/hearing officer mutually selected from a CSMCS list. As previously stated,
19 Section 19.2 of the MOU does not change the essential character of the disciplinary appeal
20 hearing as a meeting held by a third party agency but merely substitutes one agency (the
21 Civil Service Commission) for another agency (CSMCS).²⁰ Reading Government Code
22 Section 3505.3 (a) (3) together with Attachment C, Sections B (1) (a) and (e), when
23 attending a disciplinary hearing (presided over by an arbitrator/hearing officer) as the
24 designated representative of the Union, the Grievant is entitled to receive paid release time

25
26 ²⁰ The initial sentence of Section 19.2 specifically provides: “The County and the Union
27 agree that in some disciplinary cases it would be appropriate and beneficial to use the services of
28 an **arbitrator/hearing officer**.” Emphasis supplied. The use of this term (arbitrator/hearing
officer) underscores the fact that the nature of the hearing has not changed except that the evidence
and arguments are presented to a mutually agreed upon third-party neutral.

1 as long as the request for release time is reasonable.

2 ***Under the circumstances presented here, the request for release time was reasonable.***

3 Both Government Code section 3505.3 and Attachment C provide for “reasonable
4 time off” such that every request for paid release time must be separately considered in the
5 light of applicable facts and circumstances. There is no showing in this case that the Union
6 has sought to abuse the release time provision in terms of the number of release time
7 requests, the number of stewards who have been the subject of the requests, the number of
8 days and/or hours being requested, or in any other manner.

9 In the arbitrator’s judgment, the fact that the Grievant was not involved in
10 representing Employee M at his Skelly; was not employed by the same department as
11 Employee M; or was not identified as a percipient witness regarding Employee M’s
12 demotion does not render the Grievant’s request for paid release time unreasonable where
13 the Grievant was the designated representative of the Union at the Section 19.2 arbitration.
14 Moreover, any “arbitration training” that the Grievant may receive while attending a
15 hearing is merely incidental to his primary role as the Union’s designated representative.
16 Given the Grievant’s long tenure as Chief Steward, his designation as the Union’s
17 representative at the hearing (making him available to Union counsel as a consultant on
18 matters involving County policies and procedures) was, under the circumstances,
19 reasonable. Whether or not future requests for paid release time are reasonable within the
20 meaning of the MMBA and Attachment C of the MOU can only be determined on a case-
21 by-case basis.

22 ***The Grievant was required to attend the hearing as the representative of the Union.***

23 While it may be true that the County was *not* requiring the Grievant to represent the
24 Union at the hearing, once designated as the Union’s representative, the Grievant’s
25 attendance was required as part of a fair hearing process. When a matter has been duly
26 noticed for hearing before an arbitrator or hearing officer, a party (whether represented or
27 unrepresented by legal counsel) *must* attend the hearing in order to protect the party’s
28 interests. Indeed, any professional third party neutral, including the arbitrator/hearing

1 officer who presided over the demotion hearing, would likely be reluctant to proceed in the
2 absence of a party. This is especially true where, as here, the Union has a duty to fairly
3 represent bargaining unit employees in disciplinary matters of a serious nature that may
4 result in the loss of earnings. Under the circumstances presented here, the attendance of the
5 Union's designated representative at a Section 19.2 disciplinary appeal hearing is *required*
6 within the meaning of Attachment C, Section B (1).

7 ***The Union, not the County, is responsible for designating its representative.***

8 While it may also be true that both Contract Specialist Garden and Union counsel
9 Steele were in attendance at the arbitration hearing, the Union presented un rebutted
10 testimony that the Grievant was formally designated as the representative of the Union at
11 the hearing due to his familiarity with County policies and procedures pertaining to
12 disciplinary actions. As provided in Section 19.2, the arbitrator/hearing officer is expected
13 to render a decision consistent with County ordinances and resolutions and with the MOU.
14 Even though he did not attend Employee M's Skelly hearing, the Grievant, a steward with
15 ten years of experience, probably had more specific knowledge of County policies and
16 procedures than paid union staff (who covers a three-county area) or union counsel
17 assigned to present evidence and argument at the hearing. Under these circumstances, it
18 was a reasonable exercise of the Union's prerogative to designate the Grievant as its
19 representative at the hearing whether or not the Grievant was expected to testify.

20 **CONCLUSION**

21 In sum, the arbitrator cannot accept the County's argument that the designated
22 representative of the Union need not attend a hearing unless he is going to give testimony
23 whether or not the hearing arises out of a grievance or an appeal of disciplinary action.
24 Indeed, the role of a party representative at a hearing is deemed so important that arbitrators
25 and hearing officers typically allow a party-representative to remain present throughout the
26 hearing even if the party-representative may be called to testify and the opposing party has
27 requested witness sequestration. In short, the Grievant was required to attend Employee
28 M's demotion hearing as the designated representative of the Union. Reading the contract

1 requirements contained in Attachment C together with the statutory requirements of
2 Government Code section 3505.3 (a) (3), the arbitrator must conclude that the Grievant is
3 entitled to paid release time. This is especially true where, as here, the essential nature of
4 the disciplinary hearing did not change when the parties agreed that the hearing would be
5 held before an arbitrator-hearing officer from the CSMCS rather than a Civil Service
6 Commission hearing officer.

7 Based on the foregoing findings and conclusions, the following award is made:

8 **AWARD**

9 The grievance is granted.

10 The County violated the Agreement when it denied release time to the Grievant.

11 The County is ordered to restore two days of vacation to the Grievant's vacation
12 account.

13 The arbitrator retains jurisdiction over implementation of the award.

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15 Dated: August 17, 2017

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18 **CATHERINE HARRIS, Arbitrator**

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WR&R

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Arbitrator · Mediator

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August 17, 2017

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Our No. # 58251339827

Re: Service Employees International Union, Local 521 and County of Santa Cruz - Jim Heaney - Refused
Release Time (Consolidated Grievance Nos. 75313 and 75445)
CSMCS Case # ARB-16-0156

STATEMENT FOR SERVICES

FOR PROFESSIONAL SERVICES	PER DIEM	\$ 2150.00
6/22/2017 conduct hearing (1 day)		\$ 2150.00
8/8/2017 study and writing (1 day)		\$ 2150.00
8/15/2017 study and writing (0.8 day)		\$ 1720.00

