

1 IN ARBITRATION PROCEEDINGS PURSUANT TO
2 AGREEMENT OF THE PARTIES

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6 In the matter of a controversy between)
7 **SERVICE EMPLOYEES INTERNATIONAL**)
8 **UNION, LOCAL 521,**)
9 Union,)
10 and)
11 **COUNTY OF MONTEREY,**)
12 Employer,)
13 Re: Joanne Lopez - Past Practice Grievance.)

OPINION AND AWARD

14 This grievance came before Catherine Harris, Esq., a neutral arbitrator mutually
15 selected by the parties to render a final and binding award pursuant to the parties' collective
16 bargaining agreement.

17 Anthony Tucci, Esq., Weinberg, Roger & Rosenfeld, appeared on behalf of
18 **SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521** (herein "the
19 Union"). Joanne Lopez (herein "the Grievant") was present throughout the hearing.¹

20 **COUNTY OF MONTEREY** (herein "the County") was represented by Deputy
21 County Counsel Janet Holmes.²

22 Hearing was conducted on November 13, 2017 at Salinas, California.³ At the hearing,
23 each party was given the opportunity to present testimonial⁴ and documentary⁵ evidence, to

24 _____
25 ¹ Also present on behalf of the Union was Frank Garden, Contract Enforcement Specialist.

26 ² Operations Manager Leslie Raghianti was also in attendance at the hearing.

27 ³ The hearing was *not* transcribed by a certified shorthand reporter or recorded.

28 ⁴ In addition to presenting the testimony of the Grievant, the Union presented the testimony
of the following witnesses: Jay Donato, Jacob Jones, Mark Weirick, and Frank Garden. The County
presented the testimony of Olivia Madrigal, Leslie Raghianti, and Brette Neal.

⁵ At the hearing, the arbitrator received Joint Exhibits "1" through "8" and Union Exhibits
"A" through "H" into evidence.

1 cross-examine the other party's witnesses, and to make argument to the arbitrator.⁶ Upon
2 receipt of both parties' briefs, the record was closed on December 29, 2017 and the matter
3 was taken under submission.⁷

4 **ISSUES IN DISPUTE**

5 At the commencement of the hearing, the parties agreed that the matter is properly
6 before the arbitrator for determination of the following issues:

7 Whether the County violated the MOU and established past practice by limiting the
8 number of union representatives to one; and

9 If so, what is the appropriate remedy?

10 Whether the County violated the MOU and established past practice when it denied
11 the Union the right to audio record the investigative interview of an employee (herein
12 "DS") when the County was making its own audio recording; and

13 If so, what is the appropriate remedy?

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

16 **RELEVANT PROVISIONS OF THE AGREEMENT**

17 The parties agree that the relevant agreement for the purpose of resolving this dispute
18 is the Unit J Memorandum of Understanding (herein "the predecessor MOU") for the period
19 July 1, 2013 through June 30, 2016 which contains the following provisions:

20 **SECTION 5 UNION RIGHTS**

21 **5.1 Representation**

22 The Union has the right to represent employees in the representation unit as specified
23 by state law and pursuant to the County Employer-Employee Relations Resolution.

24 **5.5 Union Access**

25 Authorized Union staff representatives shall have reasonable access to work locations
26 in which covered employees are employed for the purpose of transmitting information

27 ⁶ At the close of the hearing, the parties agreed to submit simultaneous post-hearing briefs to
28 be postmarked no later December 22, 2017. Consistent with the stipulation, both parties' briefs had
been received in the arbitrator's office as of December 29.

⁷ The parties also agreed that the arbitrator would have sixty (60) days from the closing of the
record in which to issue her decision by duplicate originals, regular mail to the representatives of the
parties. The parties were timely notified that there would be a slight delay in issuance of this decision.

1 or representation purposes. Authorized Union staff representatives desiring access
2 shall first request permission from the appropriate management representative, at
3 which time the authorized representative shall inform the management representative
4 of the purpose of the visit.

5 **SECTION 27 GRIEVANCE PROCEDURE**

6 **27.7 Representation**

7 **A.** The employee has the right to the assistance of one (1) employee representative/job
8 steward in addition to a staff representative of the Union in the preparation and/or
9 presentation of his/her grievance in Steps 1 through 4 of this procedure provided,
10 however, that supervisory employees shall not represent non-supervisory employees.

11 **SECTION 41 FULL UNDERSTANDING MODIFICATION WAIVER**

12 ...

13 Existing matters within the scope of representation which are not referenced in the
14 Memorandum of Understanding and which are subject to the meet and confer process
15 shall continue without change unless modified subject to the meet and confer process.

16 **STATEMENT OF THE CASE**

17 The Grievant, a Communications Dispatcher II, has been employed by the County's
18 Emergency Communications Department (herein "the Department") for approximately 14
19 years. For the last three to four years, she has served as a union shop steward. During the
20 course of her tenure as a shop steward, she has represented unit employees at five
21 investigatory interviews, four of which involved DS. The interviews involving DS occurred
22 in late 2015 and early 2016 at a time when the Grievant had not undertaken any formal shop
23 steward training.⁸

24 At the investigatory interviews involving DS, there were allegations that DS had been
25 falling asleep and missing critical radio traffic during his shift as a dispatcher. By the time of
26 the third investigatory interview, the Grievant was becoming concerned that DS was possibly
27 about to be terminated so she requested the assistance of Contract Specialist Frank Garden.⁹
28 Garden agreed to attend the investigatory interview with a view towards providing steward

29 ⁸ The Grievant testified that she had missed more than one stewards training provided by the
30 Union while working on Saturday.

31 ⁹ While serving as a shop steward in previous investigatory interviews, the Grievant had *not*
32 requested to have a paid Union staff member present.

1 training to the Grievant, i.e., training on how to properly represent an employee accused of
2 serious misconduct.

3 When Garden and the Grievant presented themselves at the investigatory interview,
4 Operations Manager, Leslie Ragghianti informed the Grievant and Garden that only one of
5 them would be allowed to be present.¹⁰ Garden asked to speak to Ragghianti's superior, i.e.,
6 the Department's Director William Harry. Director Harry initially agreed to allow both
7 Garden and the Grievant to attend the meeting as long as Garden was going to be a "fly on the
8 wall." A few minutes later, Director Harry changed his mind and agreed with Ragghianti to
9 allow only one representative at the meeting.¹¹

10 Garden then handed the Grievant an audio recorder to take into the meeting so that
11 they would be able to debrief privately *after* the meeting. Ragghianti informed the Grievant
12 and Garden that the Grievant would be prohibited from recording the meeting. There was
13 some discussion about postponing the meeting but, according to the Grievant, DS was on
14 "pins and needles" and wanted the meeting to go forward. Garden reassured the Grievant that
15 he would remain available and that, if she needed help, she could call a break and confer with
16 Garden outside the meeting room.

17 During the 10-15 minute meeting, Ragghianti made an audio recording of the
18 meeting.¹² The meeting was held in a side office with a computer to enable the meeting
19 participants to listen to audio recordings of radio traffic (illustrating that DS did not respond
20 to repeated requests for assistance). There was one chair behind a desk and two reception
21 chairs. In an e-mail dated February 22, 2016, Garden informed Ragghianti that the Union
22 considered her conduct in refusing to allow more than one union representative and
23 prohibiting the Union from making its own recording to constitute a unilateral change in

24
25 ¹⁰ The Grievant did not recall letting Ragghianti know in advance that Garden would be
attending the meeting.

26
27 ¹¹ For reasons not explained to the arbitrator, Harry was not called as a witness by either the
County or the Union.

28 ¹² Ragghianti indicated that she would make a copy of the recording available to the Union.

1 working conditions during the mid-term of the contract. After the parties were unable to
2 settle the issues informally, the Union filed a grievance.

3 **The Grievance**

4 On February 29, 2016, the Union filed a grievance on behalf of the Grievant which
5 alleges a contract violation as follows:

6 The County refused to allow [the Union's] staff to accompany our union steward to an
7 investigatory interview despite the well-established practice and understanding
8 between the parties. Further, upon announcing its intent to audio record the interview,
9 the County would not allow the Union to use its own recording device, again in
10 violation of the established understanding between the parties. The County is barred
11 from changing these practices in the middle of a contract term.

12 The grievance further alleges that the above-described conduct violates Section 41 of the
13 predecessor MOU.

14 After the Department's time for filing a Step 2 response expired, the Union appealed
15 the grievance to Step 3 (Human Resources). In a belated response to the Union's grievance,
16 Director Harry took the position that the Grievant, as a shop steward who had previously
17 represented unit employees without the assistance of paid Union staff, did *not* require training.

18 Harry also made the following admission:

19 The Department and the County [does] have an established practice of allowing two
20 representatives during investigatory interviews *when the steward requires training*
21 (emphasis supplied).

22 Harry denied that there ever was a past practice of allowing audio recordings.

23 In the County's Step 3 response to the grievance, Labor Relations Manager Brette Neal
24 denied the grievance and further noted that:

25 It is the County's position that if one department had, in the past, agreed to allow an
26 SEIU staff member to attend investigatory interviews in addition to the identified
27 SEIU Representative, this would not constitute a binding past practice on all County
28 departments. The department in question has an established past practice of allowing
only one (1) representative to accompany employees during investigatory interviews;
leaving the choice of either an SEIU representative (i.e. steward) or an SEIU staff
member to the employee's preference. The denial of the SEIU staff member's
presence during the investigatory interview in question was on the basis of said past
practice. In addition, it is the department's practice to record investigatory interviews
and provide a copy of the recording to SEIU upon request. At no point during this
grievance process has SEIU provided documentation pertaining to a standing
agreement between SEIU and the County regarding employee representatives
during investigatory interviews or the recording of such interviews.

1 No mention was made that Garden had failed to make a prior arrangement. Neal did *not*
2 squarely address the admission made by Director Harry, i.e., that there was an established
3 practice of allowing two representatives during investigatory interviews *when the steward*
4 *requires training*. The Union then appealed the matter to arbitration and this hearing followed.

5 **The New Contract**

6 In late 2016-early 2017, the parties negotiated a successor agreement in the form of a
7 Master Agreement covering all of the County's SEIU-represented bargaining units (herein
8 "the new MOU"). At that time, the parties added the following language to Section 5.4 (K)
9 (Union Rights) which states:

10 The County shall not incur any cost for Union Shop Stewards to participate as an
11 observer for training purposes, including labor costs. Shop Stewards may request
12 Annual Leave, Floating Holiday, Compensatory Time, Winter Recess time or Paid
Time Off to participate as an observer. Should use of such time result in overtime to
the department, use of said time will not be allowed.¹³

13 The new MOU, i.e., covering units F, H, J K and Temporary Employees, covers the period
14 from July 1, 2016 to June 30, 2019. It was ratified by the Union's membership in August of
15 2016.

16 **The Union's Past Practice Evidence**

17 Jay Donato, Internal Organizer for the Union, has attended many meetings with
18 stewards as a means of providing training dating back to 2009, including at least four or five
19 meetings involving Unit "J" employees.¹⁴ He testified that it has been the Union's practice to
20 record investigatory interviews since 2013-2014. In most cases, Donato lets County
21 management know that he plans to attend in advance of the investigatory meeting. Donato
22 explained that even experienced shop stewards frequently feel very uncomfortable

23 ¹³ This language describes the flip side of the circumstances presented here, i.e., where the
24 shop steward, not the paid Union staff member, is present at the investigatory meeting in the capacity
25 of an observer.

26 ¹⁴ Jacob Jones, a former member of bargaining unit "J" who worked for the County for 11
27 years, testified that he was accompanied by Jay Donato on one occasion for the specific purpose of
28 receiving one-on-one stewards training. After the meeting, he and Donato had a "debriefing" to
discuss the meeting, i.e., what they have could have done better. Like the Grievant herein, Jones had
attended previous meetings involving the same employee as the sole representative of the Union.

1 representing a member whose job may be in jeopardy. Donato further testified that the new
2 MOU allows stewards to “shadow” union representatives in all of the units. According to
3 Donato, while paid union representatives have a more detailed knowledge of representation
4 issues (contract provisions and applicable procedures), the stewards have more detailed
5 knowledge of the day-to-day operations of the workplace.¹⁵

6 Contract Specialist Garden, who has been representing Unit “J” employees in
7 Monterrey County for approximately 10 years, was formerly employed by the Department as
8 a dispatcher. During the past 10 years, Garden, who has attended 30-45 investigatory
9 meetings, has accompanied a shop steward to an investigatory meeting on five or six
10 occasions. He explained that shop stewards ask for assistance when they lack the competence
11 and confidence to engage management.¹⁶

12 The Union produced Garden’s notes of an investigatory meeting on May 5, 2010
13 attended by him (Garden) and shop steward Greg McWilliams. Also produced were notes of
14 an investigatory meeting dated March 21, 2010 which document that both Garden and Shop
15 Steward Vicky Haynes attended an investigatory meeting on behalf of unit employee. A third
16 set of notes dated February 29, 2016, involving a meeting attended by Garden and Shop
17 Steward Alex Soltero, was also produced by the Union.¹⁷ Garden insisted that the attendance
18 of paid Union staff (to “back up” the shop steward) was never questioned until the meeting
19 involving DS when he (Garden) tried to attend in order to support the Grievant. Garden also
20

21 ¹⁵ In his testimony before the arbitrator, Mark Weirick, who is employed by the Union as
22 Lead Internal Organizer, recalled that on at least one occasion, he attended an investigatory meeting
23 involving a Unit “J” employee in the company of a shop steward. After the meeting, Weirick
24 debriefed the shop steward Yolanda Watson regarding her performance in the role of a shop steward.
Documentary evidence supplied by the Union demonstrates that the events described by Weirick
occurred under the new MOU, as opposed to the predecessor MOU.

25 ¹⁶ Garden further explained that the Union has intensified its efforts to train stewards in
26 recent years due to the likelihood of loss of revenue and layoffs that is expected to occur with the
Supreme Court’s anticipated ruling in *Janus v. AFSCME, Council 31*.

27 ¹⁷ According to Garden, at the March 21, 2010 meeting, both the Union and the County
28 recorded the interview.

1 stated that, a week after being denied permission to attend the meeting involving DS, he and a
2 shop steward were both permitted to attend an investigatory interview involving a Parks
3 Department employee.

4 **The County's Evidence**

5 *The Shop Steward Training Issue*

6 Olivia Madrigal, the Department's Human Resources (HR) Director,¹⁸ testified that,
7 out of the approximately 30 investigatory meetings that she has attended, she has never
8 attended an investigatory meeting at which both paid Union staff and a shop steward were
9 present. She recalled that "shadowing" of a paid Union staff by a shop steward did occur on
10 one occasion at a Skelly hearing that she attended. On cross examination, Madrigal clarified
11 that, in her role as HR Director, she assigns investigatory interviews to managers. When she
12 was the Center Manager, she represented the County at most of the investigatory interviews
13 involving the Department.

14 Operations Manager Leslie Ragghianti reports directly to Madrigal and has held the
15 position for three or four years. She has attended at least ten investigatory meetings on behalf
16 of management. Ragghianti testified that until the instant grievance, not one of these meetings
17 was attended by both paid Union staff and a shop steward. Under questioning by union
18 counsel, Ragghianti continued to maintain that she could not recall ever having been present
19 at any investigatory meeting where two representatives were present on behalf of a bargaining
20 unit employee. Until the events that gave rise to this grievance, Ragghianti had never been
21 asked to allow two representatives at an investigatory meeting.¹⁹

22 *The Issue of the Audio Recording*

23 Madrigal testified that at some point (during the period from 2000 to 2008), County
24 management started to record all of the interviews. Madrigal further testified that she is

26 ¹⁸ Madrigal was the Center Manager for eight years before assuming her role as HR Manager.

27 ¹⁹ Ragghianti confirmed that neither Garden nor the Grievant notified her in advance that
28 Garden would be attending the investigatory meeting as an observer.

1 unaware of any practice of allowing the Union to make a recording under any circumstances
2 (whether or not the Employer chooses to record the meeting). Madrigal did not recall whether
3 she had ever specifically told the Union that it could not record the meeting; however, she did
4 recall that she always informed the Union representatives that they were entitled to a copy of
5 the County's recording. Consistent with Madrigal's testimony, Ragghianti recalled that it
6 was Madrigal who put in place the practice of recording the investigatory interviews.
7 Ragghianti further recalled making a recording of two or three investigatory meetings and, at
8 the same time, advising the Union that she would make a copy of the recording available.

9 ***Testimony of Labor Relations Manager Brette Neal***

10 Labor Relations Manager Brette Neal was involved in the negotiation of both the
11 predecessor MOU and the new MOU. She testified that the recording of interviews or
12 meetings is not addressed in either the predecessor MOU or the new MOU. Neal further
13 testified that under the predecessor MOU (referring to Section 27.7.A), the shop steward
14 training and observation applied only to the processing of grievances. Consistent with the
15 testimony of Jay Donato, she acknowledged that under the new MOU, the shop steward is
16 permitted to bring paid Union staff to an investigatory meeting to participate for training
17 purposes but the steward is required to make arrangements in advance of the meeting.
18 According to Neal, the Union never filed a grievance involving the issues raised by the instant
19 grievance on any prior occasion.

20 **POSITION OF THE UNION**

21 The County's actions of limiting the number of union representatives and prohibiting
22 the Union from making an audio recording of the investigatory interview of DS violates the
23 plain terms of Section 5. The County violated Sections 5.1 and 5.5 when it limited the
24 number of representatives at the investigatory interview to one and again when it prohibited
25 the Grievant from making a recording of the investigatory interview. These actions also
26 violate an established past practice. The County has explicitly admitted at Step 2 of the
27 instant grievance that there is an established practice of having two representatives attend an
28 investigatory interview when a shop steward requires training. It is up to the shop steward

1 and the Union to determine when a shop steward needs training and this determination is not a
2 function of the County. The arbitrator should grant the grievance and order that pursuant to
3 Section 5.4 (K) of the new MOU, paid union representatives be allowed to accompany shop
4 stewards to investigatory meetings for training purposes.

5 **POSITION OF THE COUNTY**

6 The predecessor MOU does not provide for a union employee representative to attend
7 investigatory meetings with a shop steward, or to record such meetings. The only place
8 where the predecessor MOU provides for attendance of a union staff representative in addition
9 to a shop steward is in the grievance procedure, i.e., Section 27.7. A. and, in this case, the
10 grievance procedure was not implicated. There is no past practice of permitting SEIU
11 employees to attend investigatory meetings with shop stewards or of allowing the Union to
12 audio record investigatory meetings. The Union has failed to establish an enforceable past
13 practice that is regular, consistent, historic and accepted. The Union has not established that
14 the County violated union rights either by disallowing more than one union representative, or
15 prohibiting the Union from making its own audio recording. For all of these reasons, the
16 Union has failed to meet its burden. The arbitrator should dismiss the grievance in its
17 entirety.

18 **OPINION**

19 In a grievance involving contract interpretation, the Union always has the burden of
20 establishing a contract violation by a preponderance of cogent and reliable evidence. For
21 reasons explained herein, the arbitrator finds that under, the circumstances presented here,
22 the County violated the MOU when it limited the number of Union representatives to one and
23 when it denied the Union the right to make an audio recording of the investigatory interview.

24 ***The language of the MOU is ambiguous.***

25 The following language of Section 5.1 of the MOU is extremely broad and general
26 language susceptible to more than one plausible interpretation:

27 The Union has the right to represent employees in the representation unit as specified
28 by state law and pursuant to the County Employer-Employee Relations Resolution.

1 Relying on this language, the Union claims that the right to representation²⁰ includes the
2 opportunity to provide shop steward training (by having a paid Union staff member present)
3 whereas the County claims that the full extent of its contractual obligation is to permit a *single*
4 union representative to attend the investigatory meeting, i.e., either the paid Union staff
5 member *or* the shop steward. Where, as here, both parties have provided a plausible
6 interpretation of the disputed language, the arbitrator must look to the bargaining history²¹ or
7 past practice (how the parties themselves have interpreted the disputed provision) in order to
8 determine which party's interpretation more accurately reflects the mutual intent of the parties
9 in negotiating the disputed language.

10 ***The record establishes that the parties have engaged in a consistent practice of allowing***
11 ***two representatives during investigatory interviews where stewards require training.***

12 The Union has presented evidence that paid Union staff (including Jay Donato and
13 Frank Garden) have, during times material to this case, attended many investigatory meetings
14 with shop stewards as a means of providing steward training. The testimony of Donato and
15 Garden, considered in tandem, demonstrates that a paid Union staff member *and* a shop
16 steward have attended investigatory meetings on 11-12 occasions (four or five meetings
17 involving Donato and six or seven meetings involving Garden). The County did not challenge
18 the accuracy of the Union's testimony with regard to the identified meetings.

19 While County witnesses uniformly provided general statements that they were
20 unaware of any practice allowing two representatives at the meeting and that they never
21 attended an investigatory meeting at which two union representatives were present, the

22
23 ²⁰ The right to representation under MMBA includes the right to be represented by the
24 employee organization in all matters within the scope of representation, e.g., discipline. In accord with
25 case law precedent, the right to representation extends to investigatory meetings prior to imposition of
discipline. *Civil Service Assn. v. City and County of San Francisco* (1978) 22 Cal. 3d 552.

26 ²¹ Neither party presented any evidence of what occurred at the bargaining table at the time
27 that the language was negotiated, or at the time that the parties decided to roll over the disputed
28 language into a subsequent agreement. While Labor Relations Manager Neal participated in the
negotiations for the predecessor MOU and the new MOU, she did not provide any testimony
regarding what the parties intended when they formulated the "Union Rights" language of Section 5.1.

1 County provided no specific evidence that it has previously refused to allow two union
2 representatives (paid Union staff and a steward) *for training purposes* prior to the meeting
3 that gave rise to this grievance.²² Nor did the County provide any persuasive explanation as
4 to why its Director of Emergency Communications conceded in writing, during the processing
5 of the grievance, that the parties have a practice of allowing two union representatives at
6 investigatory meetings *where the steward requires training*. Weighing the conclusory
7 statements of the County's witnesses against the Union's evidence (the testimony describing
8 specific meetings where two representatives were allowed to attend investigatory meetings
9 without objection from the County *and* the Director's admission), the arbitrator finds that the
10 Union's evidence is more compelling in explaining how the parties themselves have
11 interpreted their contract.²³

12 Lending additional support to this conclusion is the language of the new MOU which
13 both parties agree allows the shop steward to bring a paid Union staff to an investigatory
14 meeting for training purposes. In reviewing the language of Section 5.4 (K), this section
15 makes clear that the County will not bear the cost, including the labor costs, for shop
16 stewards to participate as an observer for training purposes. Unlike the situation here, the
17 language of the new Section 5.4 (K) references situations where the shop steward is observing
18 and not being observed by a paid Union staff member. Under these circumstances, the
19 arbitrator must conclude that the right of the paid Union staff member to *make observations of*
20 *the shop steward* at an investigatory meeting is derived from the broad language of Section
21 5.1 which has remained unchanged from the predecessor MOU to the new MOU with respect
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23

24
25 ²² The County's argument, i.e., that a practice cannot be established from so few instances is
26 unavailing where, as here, paid Union staff has only sought to observe shop stewards on those limited
occasions where the steward requires training.

27 ²³ The arbitrator's interpretation of the evidence is also consistent with Section 5.5 which
28 provides that paid Union staff shall have reasonable access to work locations for representation
purposes as long as the visit does not interfere with County operations.

1 to matters relevant to this proceeding.²⁴

2 Under the circumstances presented here, denying the Union an opportunity to train
3 stewards in a manner that does not interfere with the County's operations strikes at the core of
4 Union Rights, i.e., specifically the right to represent employees in an unhindered manner. If
5 the Union cannot effectively train its stewards to represent employees at investigatory
6 meetings in the absence of paid Union staff, its right to represent unit employees at
7 investigatory interviews (recognized in statute, case law, and Section 5.1 of both the
8 predecessor and the new MOU) is compromised. Here, the Union is not asking that both
9 paid staff and the shop steward be able to "tag-team" the County manager conducting the
10 investigatory meeting but only that a paid Union staff member be allowed to make
11 observations of the shop steward when reasonably required for training purposes.²⁵

12 Consistent with the evidence provided by paid Union staff and with Director Harry's
13 admission, the right to represent unit employees, as set forth in Section 5.1, includes an
14 opportunity for the Union to train job stewards to assume increasing levels of responsibility by
15 silently observing them in actual representation settings.²⁶

16 ***The failure to permit the Union to record the meeting violated Section 5.***

17 In the instant case, the Union, in the spirit of moving forward and avoiding
18

19
20 ²⁴ The changes to the new MOU relate to the number of stewards (increased to cover the consolidated units) and a provision relating to paid release time (irrelevant to this grievance).

21 ²⁵ This would not preclude the paid staff member from writing notes to the shop steward
22 during the meeting, i.e., including a note advising that the shop steward should request a brief caucus
23 outside of management's presence. A system of labor relations works well when both parties are
permitted to provide training to their representatives in this time-honored manner.

24 ²⁶ In reaching her conclusion, the arbitrator has not failed to consider the County's argument
25 that the only section of the predecessor MOU that provides for attendance of a Union staff
26 representative in addition to a shop steward is contained in the grievance procedure, i.e., Section 27.7.
27 A., and that the grievance procedure is not implicated in this controversy. In the arbitrator's view,
28 the language of Section 27.7.A does *not* settle the question of whether or not the County can preclude
paid Union staff from silently observing a steward's performance during an investigatory meeting *as part of stewards training*. This is particularly true where, as here, Section 27.7.A contemplates that two representatives will be actively involved in the *presentation* of a grievance.

1 confrontation, decided to achieve its purpose of providing stewards training through the
2 alternative means of conducting its debriefing at a later time with the use of an audio recorder.
3 By not allowing the Union to record the meeting, the County erected another barrier to the
4 Union's legitimate goal of providing shop steward training in the form of feedback
5 immediately following the investigatory meeting.

6 The fact that Ragghianti was willing to provide a copy of her recording is not sufficient
7 to defeat the grievance. Ragghianti did not say *when* the copy would be furnished to the
8 Union, or if the copy would be furnished while Garden was still performing duties in the
9 Monterey area (just one of the counties in his territory). Indeed, no evidence was offered to
10 the arbitrator as to the format of the audio recording, what type of device or software would be
11 needed in order to play the recording, or the quality of the County's recording.

12 In sum, where the County chooses to record a meeting, the Union representative
13 should be permitted to follow suit. Common sense dictates that the right to represent
14 employees in investigatory interviews, as specified by Section 5.1 of the predecessor MOU,
15 assumes a level playing field in which neither representative is operating at an obvious
16 disadvantage. Where the County has access and control of the *only* recording of the meeting,
17 it creates an imbalance which can only be corrected by allowing the Union to make its own
18 recording of the meeting to assure accuracy and completeness.²⁷ The arbitrator's
19 determination is limited to situations in which the County chooses to record the investigatory
20 meeting.

21 ***The Union's steward training requests have not been disruptive or unreasonable.***

22 The evidence herein shows that the Union is not indiscriminately attempting to turn
23 every investigatory interview into a steward training opportunity. To the contrary, the Union is
24 seeking only to provide training to shop stewards when they request assistance, particularly in
25 cases where a fellow employee's continued County employment may be in jeopardy. Thus, the

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27 ²⁷ While the arbitrator in no way suggests that County representatives would tamper with a
28 recording before supplying a copy to the Union, it is universally understood by all of us that
technology, while convenient, is not infallible.

1 fact that shop stewards and County managers may have conducted numerous investigatory
2 interviews without a paid Union staff member present is not dispositive of the contested issue
3 of whether it was appropriate for the County, under the circumstances of this case, to limit
4 the total number of union representatives to one. The record herein demonstrates that the
5 Union has requested that it be allowed to observe a steward in an investigatory interview only
6 in those cases in which it has made a reasonable determination that stewards training was
7 needed.

8 Contrary to assertions made by the County during the processing of the grievance, the
9 arbitrator is not persuaded that simply because the Grievant had attended two prior
10 investigatory meetings involving DS, unaccompanied by paid Union staff, that she no longer
11 required training in connection with a third investigatory meeting. To the contrary, the
12 Grievant provided unrebutted testimony that she had not attended the formal steward training
13 program prior to the investigatory meeting in question and that it was not until the third
14 investigatory meeting that she became concerned about the possibility of termination. Under
15 these circumstances, the Union's determination that the steward required training was
16 reasonable.

17 ***The arbitrator declines to provide an interpretation of the Section 5.4 (K) of the new MOU.***

18 In its closing brief, the Union requests that the arbitrator provide a binding
19 interpretation of the new language of Section 5.4 (K) of the new MOU. Compliance with this
20 request would require the arbitrator to exceed the scope of the jointly submitted issues and the
21 scope of the grievance as filed in violation of the authority granted to her by the MOU and the
22 parties.

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

24 **AWARD**

25 The grievance is granted.

26 The County violated Section 5.1 of the predecessor MOU by limiting the number of
27 union representatives to one where the Grievant, a shop steward, required training.

1 The County violated Section 5.1 of the predecessor MOU when it denied the Union the
2 right to audio record the investigative interview of an employee when the County was making
3 its own audio recording.

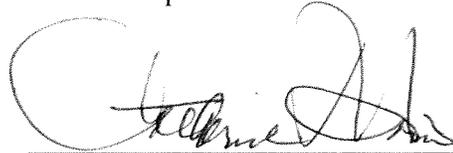
4 The County is ordered to cease and desist from prohibiting paid Union staff from
5 observing a job steward at an investigatory interview where the steward requires training.

6 When the County decides to record an investigatory meeting, the County is ordered to
7 permit the Union to make its own recording.

8 Paid Union staff desiring to accompany a steward to an investigatory meeting as an
9 observer for training purposes shall inform County management in advance of the purpose of
10 the visit.

11 The arbitrator retains jurisdiction over implementation of the award.

12 Dated: March 3, 2018



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14 **CATHERINE HARRIS, Arbitrator**

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