

A MATTER IN ARBITRATION

In a Matter Between:

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 521,

UNION

And

COUNTY OF SANTA CRUZ,

EMPLOYER

Grievance: Jim Heaney – Release Time

Hearing Date: January 23, 2018

Award: April 3, 2018

Hirsch Case #: H17-114

**DECISION AND AWARD
ROBERT M. HIRSCH, ARBITRATOR**

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STATEMENT OF PROCEDURE

This matter arises from a dispute between Santa Cruz County (County or Santa Cruz) and SEIU Local 521 (Union or Local 521) over the request by the Union that its Chief Steward be granted release time to attend an arbitration of another bargaining unit member involving the appeal from an EEO investigation conducted by Santa Cruz.

The parties are bound to a memorandum of understanding (MOU) which requires them to submit such disputes to binding arbitration. They agreed at the arbitration hearing, that this matter was properly before the Arbitrator and all procedural requirements had been met. A hearing was held in this matter on January 23, 2018, at which time the parties had the opportunity to present evidence and cross-examine witnesses. At the conclusion of the hearing, the parties agreed to file post-hearing briefs, which they have done. Having had the opportunity to review the record in its entirety, this Arbitrator is prepared to issue a decision.

ISSUE

Whether the County violated the MOU when it denied paid release time to the Grievant. If so, what is the appropriate remedy?¹

RELEVANT CONTRACT LANGUAGE

RELEVANT STATUTE

Meyers-Milias-Brown Act ("MMBA"), California Government Code section 3505.3. Time off allowances to employee representatives:

- (a) *Public agencies shall allow a reasonable number of public agency employee representatives of recognized employee organizations reasonable time off without loss of*

¹ The parties stipulated the stated issue.

compensation or other benefits when they are participating in any one of the following activities:

- (1) Formally meeting and conferring with representatives of the public agency on matters within the scope of representation.
 - (2) Testifying or appearing as the designated representative of the employee organization in conferences, hearings, or other proceedings before the board, or an agent thereof, in matters relating to a charge filed by the employee organization against the public agency or by the public agency against the employee organization.
 - (3) Testifying or appearing as the designated representative of the employee organization in matters before a personnel or merit commission.
- (b) The employee organization being represented shall provide reasonable notification to the employer requesting a leave of absence without loss of compensation pursuant to subdivision (a).
- (c) *For the purposes of this section, "designated representative" means an officer of the employee organization or a member serving in proxy of the employee organization.*

(Government Code section 3505.3, emphasis supplied.)

RELEVANT SECTIONS OF THE MOU

ARTICLE 3 UNION ACTIVITIES

3.1 STEWARDS

The Union agrees to notify the County of their Stewards on a quarterly basis.... Release time shall be authorized in accordance with MOU Attachment C.

(Joint Exh. 1, p. 2.)

Attachment C of SEIU MOU

PROVISIONS REGARDING RELEASE TIME

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

Time Off For Meetings

Public agencies shall allow a reasonable number of public agency employee representatives of recognized employee organizations reasonable time off without loss of compensation or other benefits when formally meeting and 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).

A. Official Representatives

Official representatives of a recognized employee organization shall be allowed time off on County time during normal working hours when formally meeting and conferring in good faith with the Employee Relations Officer or other management representative designated by the Board on matters within the scope of representation, provided that advanced arrangements for the absence are made with the representative's department 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.*

B. Employees

1. County employees shall be allowed time off on County time to attend meetings held by County departments or agencies during regular working hours:
 - a. *If their attendance is required at a specific meeting.*
 - b. *If their attendance is required by a hearing officer or commission for presentation of testimony or other reasons.*
 - c. *For meetings required for settlement of grievances filed pursuant to a formal grievance procedure.*²*
 - d. *If they are designated as a Union Steward or representative for purposes of processing a formal grievance.**

² The body of Attachment C includes several "*" signs, which refer to the following provision appearing at the footer of Attachment C: "*See Article 22.5 B (1) of the General Representation Unit Memorandum of Understanding."

- e. *If they are designated as a representative of a recognized employee organization for purposes of making representation or presentations at meetings and hearings on wages, hours and working conditions.*
2. In each case above, advanced arrangements shall be made with the employee's department head or designee for the employee to be 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.
3. Other Absence. No other time off on County time shall be allowed except as specifically provided herein or in a Memorandum of Understanding.

(SEIU Exh. 1, p. 95-96, emphasis supplied.)

Time Off For Meeting Preparation

A. Employees

1. Permanent County employees, who have been served with a Skelly Notice (demotion, suspension, termination/dismissal) shall be allowed reasonable time off on County time during normal working hours to prepare for a Skelly meeting with the appointing authority or designee.
2. Employees who have been served with a written reprimand shall be allowed reasonable time off on County time during normal working hours to prepare for the first level appeal to the supervisor and the second level appeal to the appointing authority or designee.
3. Advanced arrangements shall be made with the employee's department head or designee for the employee to be absent from the work station or assignment.
4. Other Absence. No other time off on County time shall be allowed except as specifically provided herein or in the Memorandum of Understanding.

(SEIU Exh. 1, p. 96.)

ARTICLE 6 NO DISCRIMINATION

A. Fair Employment Practices. Equal Employment Opportunity/Non-discrimination.

1. The County and the Union agree that no person employed or applying for employment shall be discriminated against on the basis of race, color, religion, disability, medical condition (cancer related or genetic characteristics), national

origin, ancestry, marital status, sex, sexual orientation, age (over 18), pregnancy, gender, gender identity, veteran's status, or any other non-merit factor except where sex or physical capability is determined to be a bona fide occupational qualification after consideration of reasonable accommodation factors in relation to the essential job duties of the position. The parties also agree to support efforts which are intended to achieve equal employment opportunity as provided for in Federal, State and County requirements.

2. *Article 22.2 C and D sets forth the contractual process for employees aggrieved by alleged violations of Article 6A1.*
- B. Union Activities. Neither the County nor the Union shall interfere with, intimidate, coerce or discriminate against County employees because of their exercising their right to form, join and participate in activities of the Union or providing testimony to any public body including the Board of Supervisors, or exercising their right to refuse to join or participate in the activities of the Union.

(SEIU Exh. 1, p. 11, emphasis supplied.)

ARTICLE 22 GRIEVANCE PROCEDURE

Section 22.2(B)-(D), Alleged Violations of Article 6A.1

- B. Specifically excluded from the grievance procedure are:
1. Subjects involving amendment or change of a Board of Supervisors resolution, ordinance, minute order or this Memorandum of Understanding.
 2. Dismissals, suspension, or reduction in rank or classification (appeal process through Civil Service).
 3. Probationary dismissals upon original appointment.
 4. Content of performance evaluations.
 5. Leaves of Absence, Article 17.2-5.
 6. Violation, misinterpretation, or misapplication of Civil Service Rules or provisions of the County Code (appeal process through Civil Service).
 7. Complaints regarding occupational health and safety or the applicable procedures for such complaints (report to appropriate State or Federal agency).
 8. Complaints regarding Workers' Compensation or the applicable procedures for such complaints.
 9. Relationship Affirmation, Article 4.1.
- C. *Alleged violations of Article 6A.1 (anti-discrimination) are arbitrable; provided that and subject to the following: The employee must utilize the County's EEO process as a condition precedent to arbitration, and the matter shall not be ripe for arbitration until the EEO claim is resolved at the last level within the County (i.e., after appeal to the*

County Administrative Office). See Personnel Regulation Section 192. Employees may appeal and request arbitration of the County Administrative Officer's decision on harassment and/or discrimination complaints within seven (7) calendar days in writing to the Personnel Director. Arbitration after compliance with the County's internal EEO process and in compliance with Article 22.5B.4 will be final and binding.

- D. *With the exception of the provisions regarding arbitration of discrimination matters specified in subsection C, the exclusions from the grievance procedure specified in Article 22.2B remain unchanged, are in full force and effect, and are not grievable or arbitrable.*

(SEIU Exh. 1, p. 63 and SEIU Exh. 10, emphasis supplied.)

FACTUAL BACKGROUND

Jim Heaney is a Building Plans Checker with Santa Cruz's Planning Department. He also serves as the Union's Chief Steward—a position he has held for ten years, providing representation and assistance to bargaining unit members. In 2016, the County's Equal Employment Opportunity (EEO) office conducted an investigation in response to a complaint by a female employee. As a result of the investigation, Santa Cruz issued a notice of intent to discipline County employee J.S. for violating EEO policies.

J.S., in accordance with the MOU,³ appealed one of the conclusions in the EEO investigative report to the County Administrative Officer, and then proceeded to arbitration.⁴ Heaney accompanied J.S. to the *Skelly* hearing as his Union representative. The Grievant testified during our arbitration hearing, that he also helped J.S. prepare for his appeal.

The J.S. arbitration was held on June 22, 2017. About a month before that hearing, the Union sent an email to Deputy Personnel Director, Ajita Patel, requesting release time for Heaney to attend the J.S. hearing. Ms. Patel ultimately denied the request, finding that Local

³ Joint Exhibit (JX) 1, Article 22.2(C).

521's request failed to meet the criteria set forth in the MOU for paid time off for covered, County employees. Patel indicated that Heaney should request "annual leave" from his department if he wanted to attend the J.S. arbitration.

The Union, in response, filed a grievance against Santa Cruz in July 2017,⁵ challenging Patel's release time denial. This was the second grievance filed by Local 521 against the County challenging the denial of release time. A prior grievance was filed on behalf of Heaney when he was denied leave time to attend another bargaining unit member's arbitration hearing, one involving discipline, not an EEO matter. The County reasoned that Heaney did not meet any of the criteria set forth in Attachment C. The Union argued that it was the entity, not the County, that decides who is necessary to assist in the presentation of Union grievances.

On August 21, 2017, Arbitrator Catherine Harris, issued a seventeen-page decision granting the Union's grievance, finding that the "County violated the Agreement when it denied release time to the Grievant."⁶ Arbitrator Harris rejected the County's position that a designated representative is not needed unless he is going to testify, "whether or not the hearing arises out of a grievance or an appeal of disciplinary action."⁷ She concluded that "Attachment C together with requirements of Government Code section 3503.3 (a)(3)" mandate that Mr. Healey is entitled to paid release time while he assists the Union with a grievance arbitration.⁸

After the Harris decision was issued, Local 521 appealed again to the County, asking it to reconsider its position denying Healey release time to attend the J.S. hearing as the Union's representative. On August 25, 2017, Patel responded that Santa Cruz was not "convinced" that

⁴ The parties settled the disciplinary aspect of the case.

⁵ Union Exhibit (UX) 2.

⁶ UX 7.

⁷ Id. at p16.

the decision extended to “arbitrations of EEO appeals.”⁹ Accordingly, the County agreed to pay Healey only for the one hour he testified at the J.S. arbitration hearing, but not for the additional time he spent there as the Union representative. Santa Cruz does not dispute that he spent a total of eight hours at the hearing. Nor does it contend that Healey was denied the paid leave because of departmental staffing needs.

The Union seeks an order that the County cease and desist from denying paid leave time to officers and stewards who are designated as representatives in appeal processes or other dispute resolution processes that bear on terms or conditions of employment. It also asks that it be permitted to designate the representative of its choice to attend “meetings jointly convened by the County and SEIU,” and hearings concerning wages, hours, and conditions of employment. Finally, Local 521 wants Jim Healey to be made whole.

The County urges this Arbitrator to deny the grievance and find that it correctly interpreted the MOU, and specifically Attachment C.

DISCUSSION

This matter involves a contract interpretation dispute where the parties disagree over the meaning of the language they both agreed to in an attachment to their MOU. The critical language provides for paid release time for employees, “If they are designated as a representative of a recognized employee organization for purposes of making representation or presentations at meetings and hearings on wages, hours and working conditions.”¹⁰

⁸ Id. at p17.

⁹ UX 4

¹⁰ JX 1

Attachment C of the MOU also incorporates, by reference, Government Code §3505.3, which requires the County to afford reasonable release time for formal meet and confers and testimony or representation at a hearing involving an unfair labor practice charge or before a personnel or merit commission.

To assist the parties further, they have the benefit of an arbitrator's award in a previous grievance arbitration, where the County was ordered to reimburse the same Grievant, Mr. Heaney, for the time he spent as Union representative at a disciplinary appeal hearing. Arbitrator Harris concluded that the germane language in Attachment C mandated release time pay for Heaney even though he was the Union representative before an arbitrator at a "disciplinary appeal" rather than before the Civil Service Commission. Moreover, Arbitrator Harris held that it was irrelevant that Heaney did not appear at the Skelly hearing for the appellant in that dispute, or that Heaney worked in a different County department. As a designated representative of Local 521, Harris found that the release time request was reasonable and thus reimbursable.

The County correctly observes that the MOU does not "guarantee unlimited" release time to employees engaged in "any conceivable business between the Union and the County."¹¹ That does not address the question here, however. This Arbitrator can find no reasonable basis for Santa Cruz to conclude that Heaney was entitled to release time pay only for the one hour he testified on behalf of J.S. The Grievant was designated as the party representative by the Union in that matter. Attachment C draws no distinction between types of "hearings" provided they cover "wages, hours and working conditions." Neither Ms. Patel, nor any other County officer

can point to contractual or statutory language authorizing the employer to analyze the nature of the underlying dispute, in an effort to eliminate categories of arbitrations covered by the release time provisions. Furthermore, Arbitrator Harris could not have provided clearer guidance on the meaning and application of those provisions. Her award is persuasive authority, if not binding precedent.¹²

The Union is understandably indignant about the County's attempt to decide what types of arbitrations justify the designation of a Union representative, and who Local 521 may reasonably designate for that role. The MOU language is clear. A Local 521 designated representative, who will represent the Union at a meeting or hearing involving wages, hours and working conditions, is entitled to paid release time. Here, the J.S. arbitration involved findings by the County's EEO office—a mark on J.S.'s employment record and clearly a matter affecting employment status. Both the Union and J.S. were entitled to have the Chief Steward, Jim Heaney, present and fully engaged in the arbitration process. Heaney was entitled release time pay while serving as the party representative in the J.S. hearing.

Armed now with two arbitrators' decisions, it should be clear to both parties that the MOU, through Attachment C, gives Local 521 authority to designate its representative for hearings involving wages, hours or working conditions of bargaining unit employees. These decisions are final and binding, by virtue of the MOU's grievance procedure, and should serve as compelling precedent for any future, comparable circumstances.

¹¹ County's Closing Brief, at p 14.

¹² See, *Elkouri and Elkouri, How Arbitration Works, Chap. 11* (5th Ed. BNA, 1997).

AWARD

Based upon the evidence presented and arguments made by counsel, the following Award is issued:

- 1) The grievance is granted. The County violated the MOU when it denied release time to the Grievant.
- 2) The County is ordered to make the Grievant whole, paying him for the seven hours of time spent at the J.S. arbitration which were not previously paid as release time. He is to have his seven hours of vacation time restored.
- 3) The County is further ordered to cease and desist from denying paid release time to officers and/or stewards who serve as designated Union representatives at meetings or hearings involving wages, hours and working conditions, as mandated by MOU Attachment C, Section B(1)(e).
- 4) The Arbitrator retains jurisdiction over the remedy.

IT IS SO ORDERED.

Date: April 3, 2018



Robert M. Hirsch, Arbitrator