STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SANTA CLARA COUNTY CORRECTIONAL PEACE OFFICERS' ASSOCIATION, Charging Party, v. COUNTY OF SANTA CLARA, Respondent.	Case No. SF-CE-1339-M PERB Decision No. 2613-M December 21, 2018

Appearances: Mastagni Holstedt APC by Jeffrey R.A. Edwards, Carl C. Larson, and David L. Kruckenberg, Attorneys, for Santa Clara County Correctional Peace Officers' Association; Cheryl A. Stevens, Deputy County Counsel, for County of Santa Clara.

Before Winslow, Banks and Shiners, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by the County of Santa Clara (County) to a proposed decision of an administrative law judge (ALJ). The County excepts to the ALJ's conclusion that it violated the Meyers-Milias-Brown Act (MMBA)[1] when, upon placing the president of the Santa Clara County Correctional Peace Officers' Association (CPOA or Association) on administrative leave pending an internal affairs investigation, the County directed him to refrain from discussing the allegations against him with other employees of the Sherriff's Department.

The Board itself has reviewed the record in its entirety and considered the County's exceptions and CPOA's responses thereto. Based on that review, we affirm the ALJ's legal

[1] The MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

conclusion that the County violated the MMBA when it directed the CPOA president, Lance Scimeca (Scimeca), not to discuss the allegations against him with various individuals, including his co-workers, in accordance with our discussion of the County's exceptions.[2]

FACTUAL SUMMARY

At all times relevant to this case, Scimeca was the president of the CPOA, a position to which he was elected in 2012. In this capacity, he was the lead negotiator for the Association, and routinely met with employees in their workplace during their respective break time in order to respond to their concerns and answer questions.

CPOA has an office in San Jose that is staffed only by one full-time administrative employee who is not a bargaining unit member. No CPOA members have release time from the County to act as union representatives.

In August 2015, the parties were negotiating a successor Memorandum of Understanding (MOU) and reached a tentative agreement sometime in mid-September. During this time the County initiated two investigations into workplace misconduct, the most notorious of which focused on the death of an inmate at the Elmwood Facility who had allegedly been beaten to death by correctional deputies. The other investigation focused on Scimeca and two other deputies concerning allegations unrelated to the inmate's death. The record is silent as to the nature of the allegations against Scimeca, other than that they concerned alleged violations of workplace communications policies.

[2] The ALJ also concluded that the Association failed to prove that the County violated the MMBA when it placed the CPOA president on administrative leave, or when it gave him other directions to stay away from the workplace during that leave. Neither party has excepted to these conclusions. Therefore they are not before the Board and the ALJ's conclusions regarding these issues are binding only on the parties. (PERB Regulations 32215, 32300, subd. (c). [PERB Regulations are codified at California Code of Regulations, title 8, section 31001, et seq.].)

On September 17, 2015, the Sheriff placed Scimeca on "Administrative Leave With Pay" and directed him not to return to work until further notice and to stay away from the Sheriff's Office property and functions, unless specifically directed by a captain to enter or attend. The part of the letter relevant here, Paragraph 6, reads:

> 6. You are hereby ordered not to discuss this matter with any witnesses, potential witnesses, the complainant, or any other employee of the Sheriff's Office other than your official representative.

CPOA objected to the scope of the September 17 letter, complaining in writing to the County that it prevented Scimeca from meeting with members in the workplace, and from attending meet-and-confer sessions and other negotiations with the County when those sessions were held on County property. Undersheriff John Hirokawa (Hirokawa) responded by letter to Scimeca dated September 23, 2015, clarifying the terms of Scimeca's administrative leave. That letter reads, in pertinent part:

> While you are on paid administrative leave you may continue to engage in union activities including but not limited to discussing union matters with CPOA members; representing CPOA members in any disciplinary proceedings, participating in meet and confer sessions with the County and the Department; participating in contract negotiations; meeting with CPOA members regarding contract negotiations or other matters related to anything discussed in a meet and confer session.

Unchanged by Hirokawa's letter was the directive contained in Paragraph 6. Hirokawa testified that it was standard practice in the Sheriff's Office to separate witnesses from officers that are under investigation to prevent "collaboration and tainting of the witnesses or the subject officers." Individuals who, like Scimeca, are placed on administrative leave pending an investigation for alleged misconduct are all given the same directive contained in Paragraph 6.

PROPOSED DECISION

Relying on both private sector case law developed under the National Labor Relations Act and PERB's own precedential decisions, the ALJ observed that "a workplace rule that infringes on [the right of employees to discuss with each other working conditions] may be valid only where the employer demonstrates a legitimate and substantial business justification."

The ALJ found that Paragraph 6 of the September 17 directive, the so-called "gag order," restricted Scimeca's right to communicate with his fellow employees concerning working conditions, namely the "matter" that caused the Sheriff's Office to place him on administrative leave. According to the ALJ, because the harm suffered by Scimeca was "comparatively slight," the burden shifted to the County to establish substantial and legitimate business justification for its directive in Paragraph 6.

The County argued to the ALJ that Paragraph 6 was justified because management needed to: (1) ensure the investigation was free from improper collusion or coercion by the subject employee; and (2) treat all employees the same with respect to restrictions when it conducts an investigation into misconduct. The County also asserted that the order was necessary because the environment in which correctional deputies work is dangerous with real threats of violence. The ALJ rejected these justifications because they articulated only general concerns unconnected with the particular investigation of Scimeca. There were no facts indicating that the safety of inmates or employees was compromised by his alleged misconduct, or that he abused inmates or abused his position or intimidated his coworkers or inmates. The ALJ concluded: "In short, the County gives very little beyond its own characterization of the conduct as egregious to warrant denying Scimeca his right to meet and

confer with coworkers about working conditions. The same generalized concerns were rejected by the Board in *Los Angeles Community College District* [(2014)] PERB Decision No. 2404" (*Los Angeles CCD*).

The ALJ further noted that the County had the opportunity to present more specific justification for why Scimeca needed to be subject to Paragraph 6 by disclosing the nature of the allegations against him, either on the record or *in camera* before the ALJ. It did not do so, which in the ALJ's opinion "left PERB without any quantifiable factual evidence that the County had substantial and legitimate business justification for imposing its broad directives." Because the County failed to meet its burden, the ALJ ruled that it violated the MMBA by restricting Scimeca's right to discuss with his coworkers working conditions, including the County's pending investigation of his alleged misconduct. The ALJ also concluded that Paragraph 6 interfered with the Association's right to represent its members because it restricted employees other than Scimeca from discussing working conditions with each other, and therefore independently violated the MMBA.

To remedy these violations the ALJ ordered the County to cease and desist from interfering with Scimeca's rights under MMBA section 3502 and with CPOA's rights under MMBA section 3503, and to rescind Paragraph 6 of the September 17, 2015 directive to Scimeca and other employees.

DISCUSSION[3]

The County's exceptions to the proposed decision set forth three arguments: (1) Paragraph 6 did not prohibit Scimeca from performing his duties as Association president or from discussing working conditions with unit members; (2) the County was prohibited from establishing the business justification called for because of statutorily established privacy rights applicable to peace officers that Scimeca refused to waive; and (3) Paragraph 6 did not prohibit Scimeca from talking to any "official representative" including a co-worker. We reject each of these arguments for the reasons that follow.

Before turning to the merits, we call to the County's attention PERB Regulation 32300, which requires the statement of exceptions to identify the page or part of the decision to which each exception is taken, state the grounds for each exception, and to designate by page or exhibit number the portions of the record, if any, relied on for each exception. (PERB Reg. 32300, subd. (a).) Compliance with the regulation is required to afford the responding party and the Board an adequate opportunity to address the issues raised. (*Temecula Valley Unified School District* (1990) PERB Decision No. 836, pp. 2-3.) Failure to comply with this regulation can result in dismissal of the exceptions without review of the merits of the excepting party's claims. (See *California State Employees Association (O'Conell)* (1989) PERB Decision No. 726-H, p. 3.)

Despite referring to matters it implies are in the record, such as its "legitimate business reasons" for the directive in Paragraph 6, the County fails to cite to any portion of the record in

[3] The Association has requested oral argument in this case. The Board typically denies such requests when an adequate record has been prepared, the parties had ample opportunity to present briefs and have availed themselves of that opportunity, and the issues before the Board are sufficiently clear as to make oral argument unnecessary. (*Antelope Valley Health Care District* (2006) PERB Decision No. 1816-M; *Arvin Union School District* (1983) PERB Decision No. 300.) Because these criteria are met here, we deny the request for oral argument.

its exceptions. The exceptions also fail to address the central legal issue raised in this case, viz., whether *Los Angeles CCD, supra*, PERB Decision No. 2404, applies to public safety officers and their employers. The proposed decision relied heavily on *Los Angeles CCD*, yet the County's exceptions make no attempt to distinguish it from the facts here, or explain why our holding in *Los Angeles CCD* should be overruled. Indeed, the exceptions fail to mention this case at all. This lapse is particularly puzzling, since the County *did* discuss the case in its closing brief to the ALJ, asserting that the conditions placed on Scimeca were in no way similar to those in *Los Angeles CCD*. Given the County's failure to advance this argument in its exceptions, we conclude that it has abandoned its argument that *Los Angeles CCD* is distinguishable from the instant matter. (See PERB Regulation 32300, subd. (c): an exception not specifically urged is waived; *Dieckmeyer v. Redevelopment Agency of Huntington Beach* (2005) 127 Cal.App.4th 248, 260 ["An appellant's failure to raise an argument in its opening brief waives the issue on appeal"].)

Despite the County's deficient exceptions, we acknowledge the public policy favoring hearing cases on their merits, notwithstanding technical non-compliance with matters of form. (*United Farm Workers of America v. Agricultural Labor Relations Bd.* (1985) 37 Cal.3d 912, 916.) Because of the important issue this case raises, we exercise our discretion to address the merits.

Prima Facie Case Establishing Interference with Protected Rights

The MMBA forbids an employer from interfering with employees' exercise of their rights guaranteed by the MMBA, including the right to form, join, and participate in the activities of employee organizations of the employees' own choosing. (MMBA, § 3502.) It is also unlawful for an employer to deny employee organizations the rights guaranteed to them by

the MMBA, including the right to represent their members. (MMBA, §§ 3506.5, subd. (b); 3503.)

PERB's framework for analyzing allegations of unlawful interference is well-settled. "A prima facie case of interference is established by allegations that an employer's conduct tends to or does result in some harm to employee rights under our statutes." (*Jurupa Unifieid School District* (2012) PERB Decision No. 2283, p. 7, citing *Carlsbad Unified School District* (1979) PERB Decision No. 89 (*Carlsbad*).) "If the harm to protected rights is slight and the employer offers justification based on operational necessity, the competing interests are balanced. [Citations.] If the harm to employee rights outweighs the asserted business justification, a violation will be found. [Citation.]" (*Cabrillo Community College District* (2015) PERB Decision No. 2453, pp. 13-14.) Where the employer's conduct is inherently destructive of protected rights, it will be excused only on proof that it was caused by circumstances beyond the employer's control and that no alternative course of action was available. (*County of San Bernardino (Office of the Public Defender)* (2015) PERB Decision No. 2423-M, pp. 36-37.)

As we observed in *Los Angeles CCD, supra*, PERB Decision No. 2404, there is "no more fundamental right afforded employees under the statutory scheme than the right to communicate with others about working conditions." (*Id*. at p. 11, fn. 5.) "Working conditions" include the circumstances underlying and surrounding an investigation into alleged employee misconduct. (*Id*. at pp. 11-12; *Caesar's Palace* (2011) 336 NLRB 271, 272; see *City of Davis* (2016) PERB Decision No. 2494-M, pp. 29-31 [procedures for discipline are within scope of representation]; *Valencia v. County of Sonoma* (2007) 158 Cal.App.4th 644 [employer is bound by MOU provisions concerning discipline].)

On its face, the directive in Paragraph 6 of the September 17, 2015 letter prohibited Scimeca from communicating with his co-workers about the matter for which he was being investigated. He thus was prevented from contacting potential witnesses, or from making other inquiries that could help him prepare for his investigatory interview. This, in turn, prevented him from giving effective assistance to CPOA in its representation of him in the investigation. Additionally, Scimeca's inability to assert his innocence to Association members during the investigation could potentially have eroded members' confidence in union leadership, and thereby potentially compromised the organizational capacity and effectiveness of the Association. Thus, the directive in paragraph 6 tended to result in some harm to Scimeca's right to discuss working conditions with fellow employees, as well as the Association's right to communicate with employees under investigation and therefore with its right to represent employees.[4]

We thus conclude that CPOA established a prima facie case that the County interfered with protected rights when it issued the "gag" rule contained in Paragraph 6. We turn then to consider whether the County established a legitimate defense.

The County's Business Necessity Defense

Because the Association established a prima facie case of interference, the County was required to provide a legitimate justification for the directive in paragraph 6. (*Cabrillo Community College District*, *supra*, PERB Decision No. 2453, p. 13.) We have previously addressed this requirement in a similar situation. In *Los Angeles CCD, supra*, PERB Decision No. 2404, the employer placed an employee on administrative leave pending a fitness-for-duty

[4] Because we conclude, *infra*, that the County failed to offer any legitimate justification for its directive, it is unnecessary to determine whether the harm was slight or inherently destructive.

examination and directed him in the meantime to have no contact with faculty, staff or students. As in this case, the community college district routinely issued this directive to employees placed on administrative leave or who were under investigation. In assessing whether this directive violated EERA, the Board relied on the decision of the National Labor Relations Board (NLRB) in *Banner Health System* (2012) 358 NLRB 809, 810, which held:

> To justify a prohibition on employee discussion of ongoing investigations, an employer must show that it has a legitimate business justification that outweighs employees' Section 7 rights. See *Hyundai America Shipping Agency*, 357 NLRB No. 80, slip op. at 15 (2011) *(no legitimate and substantial justification where employer routinely prohibited employees from discussing matters under investigation*). . . . [W]e find that the Respondent's generalized concern with protecting the integrity of its investigations is insufficient to outweigh employees' Section 7 rights. Rather, in order to minimize the impact on Section 7 rights, it was the Respondent's burden "to first determine whether in any give[n] investigation witnesses need[ed] protection, evidence [was] in danger of being destroyed, testimony [was] in danger of being fabricated, or there [was] a need to prevent a cover up." *Id*. *The Respondent's blanket approach clearly failed to meet those requirements.* Accordingly, we find that the Respondent, by maintaining and applying a rule prohibiting employees from discussing ongoing investigations of employee misconduct, violated Section 8(a)(1) of the Act.

(Emphasis added.) Because the directive in *Los Angeles CCD* was vague and overbroad, and the employer offered no explanation as to why or whether confidentiality was necessary to preserve the integrity of the employer's investigation or any other justification for the rule, the Board concluded that the employer failed to carry its burden under *Carlsbad*, *supra*, PERB Decision No. 89, to show business necessity.

The County asserts in its exceptions that it was unable to fully explain the rationale behind Paragraph 6 "because the employee, Scimeca, refused to waive the privacy rights unique to peace officers, thus tying the County's hands and preventing the County from fully

explaining the significance and importance of Paragraph 6 in this case." We reject this defense for multiple reasons.

First, this argument was not raised before the ALJ, despite the fact that the County was on notice that neither CPOA nor Scimeca intended to waive his privacy rights in the PERB administrative hearing. CPOA also asserted in the administrative hearing its view that the County was required to pursue the *Pitchess* process[5] in order to bring to the ALJ's attention evidence relating to Scimeca's personnel file, including the accusations against him and details of the County's investigation of his alleged misconduct. The County also was aware of PERB's decision in *Los Angeles CCD* because it argued in its closing brief to the ALJ that the decision did not apply to the facts here. Yet the County's closing brief did not raise the argument that Scimeca's privacy rights prevented the County from presenting more specific reasons justifying the "gag'" rule, and the hearing record reveals no attempt to bring this asserted conundrum to the ALJ's attention.

As we recently explained in *Los Angeles County Superior Court* (2018) PERB Decision No. 2566-C, asserting an argument for the first time before the Board itself "wastes the parties' time and resources, and deprives the Board of the benefits of the ALJ's expertise." (*Id.* at pp. 12-13.) Under such circumstances, we would be justified in refusing to consider the merits of this exception. Yet, as stated earlier, we choose to address the merits of this important issue, namely whether the rule established in *Los Angeles CCD* requiring an employer to provide a case-specific "legitimate and substantial business justification" for a directive not to

[5] Named for *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, this refers to a motion pursuant to Evidence Code section 1043, which requires "the party seeking . . . disclosure [of a confidential peace officer personnel file to] file a written motion with the appropriate . . . administrative body."

discuss an ongoing investigation applies to public safety employers, and to explain why we reject the County's argument in this instance.

Just as in *Los Angeles CCD*, the County had a generalized "gag" rule that was not uniquely applied to Scimeca. The Undersheriff himself testified that the "gag" rule of Paragraph 6 was routinely issued to employees who were placed on investigatory administrative leave. Use of this generalized and routine order indicates that the County had no particular reason for directing Scimeca not to communicate with his co-workers about the "matter" of his administrative leave. Therefore, whether Scimeca refused to waive his privacy rights is irrelevant because the County did not assess whether the allegations against him merited the directive contained in Paragraph 6.

Even if there were facts unique to the investigation of Scimeca's conduct that would justify the "gag" order, the County made no attempt to present those facts to the ALJ. As a custodial officer, Scimeca is protected by the Public Safety Officers Procedural Bill of Rights Act (POBRA)[6] and Penal Code section 832.7,[7] which prohibits the disclosure of peace officer personnel records unless a motion for disclosure is approved by a judicial or administrative tribunal. Scimeca did not waive his protections under these statutes during the administrative hearing.

But the County was not without recourse in the face of Scimeca's refusal to waive his privacy rights. The CPOA asserts in its response to the County's exceptions that the County could have filed a motion pursuant to Evidence Code section 1043, popularly known as a

[6] The POBRA is codified at section 3300, et seq.

[7] Penal Code section 832.7 provides in pertinent part that peace officer or custodial officer personnel records are confidential and may not be disclosed in any criminal or civil proceeding unless a motion is made pursuant to Evidence Code section 1043.

Pitchess motion. Evidence Code section 1043 requires "the party seeking . . . disclosure [of peace or custodial officer personnel records to] file a written motion with the appropriate . . . administrative body." (Evid. Code, § 1043, subd. (a).) Upon such a motion, the administrative body must hold an *in camera* hearing to determine the relevance of the material sought and, upon a finding of relevance, permit disclosure of the relevant information. (Evid. Code, § 1045, subd. (b).) When such disclosure is permitted, the administrative body must order that the disclosed records not be used for any purpose other than the immediate proceeding. (Evid. Code, § 1045, subd. (e).)

There is no doubt after the California Supreme Court's decision in *Riverside County Sheriff's Department v. Stiglitz* (2014) 60 Cal.4th 624, that a *Pitchess* motion may be filed with an administrative body and that administrative hearing officers are authorized to rule on such motions. (*Id*. at p. 628.) Less clear is whether the custodian of the records in question must file a *Pitchess* motion as a prerequisite to presenting the protected information in a hearing to which it is a party.[8] But nothing in PERB's regulations expressly prohibited the County from moving for an *in camera* inspection by the ALJ of documents and/or moving to have certain testimony and evidence sealed in order to protect Scimeca's privacy rights.[9] (See § 11425.20, subd. (a)(1) [permitting an administrative hearing officer to issue "protective orders to the extent necessary and proper" to prevent public disclosure of information protected from

[8] The vast majority of judicial decisions regarding Evidence Code section 1043 involve attempts by third parties such as criminal defendants, civil plaintiffs, or the press, to obtain police personnel files. (See, e.g., *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272 (newspaper seeking access to civil service disciplinary proceedings against police officer).

[9] The County asserts, without citation to any authority, that it could not have disclosed the underlying facts to the ALJ even *in camera.* Without further explanation by the County or discussion of relevant authority, we treat this point as forfeited. (*Bellflower Unified School District* (2015) PERB Decision No. 2455, p. 9, fn. 9.)

disclosure by state law].)[10] Yet the County made no attempt to do so. In the face of this inaction, it may not now credibly claim that it was caught between the proverbial rock and a hard place with respect to justifying Paragraph 6 as necessary in this particular investigation.

The County also asserts that it was prevented from providing any information concerning the allegations against Scimeca because "the specifics of the investigation were the subject of a sealed criminal search warrant." This also is an argument that was not presented to the ALJ. In any event, the evidence shows that the Sheriff's Department directed its Internal Affairs department to evaluate the information concerning possible policy violations allegedly committed by Scimeca. This investigation was independent of any criminal charges that may have been subject to a search warrant. We therefore reject the County's assertion that it was the sealed search warrant that prevented it from offering evidence to the ALJ concerning the allegations against Scimeca.

Because nothing prevents an employer from filing a *Pitchess* motion or utilizing another procedure for protecting peace and custodial officer personnel records in a PERB unfair practice hearing, we conclude that *Los Angeles CCD*'s requirement that an employer provide a case-specific "legitimate and substantial business justification" for a directive not to discuss an ongoing investigation applies to peace and custodial officers and their employers. Consequently, as the County has failed to offer any specific justification for the proscriptions of Paragraph 6, its defense to the interference charge fails as a matter of law. (*Los Angeles CCD, supra*, PERB Decision No. 2404, p. 13; *Hyundai America Shipping Agency* (2011) 357 NLRB 860, 874.)

[10] Section 11425.20 applies to PERB unfair practice hearings. (§ 3541.3, subd. (h); *City of Torrance* (2009) PERB Decision No. 2004, pp. 5-6.)

Additional Exceptions

The County also contends that Paragraph 6 did not interfere with Scimeca's rights because he was only restricted from discussing "this matter"—presumably the subject of the investigation—with his colleagues and was still free to discuss "union related matters" with his co-workers and could discuss the investigation with his "official representative." We join with the ALJ in rejecting this argument.

The fact that Paragraph 6 did not restrict Scimeca from discussing the larger category of "union related matters" misses the point of the Association's objection to the order and ignores the teaching of *Los Angeles CCD.* A generalized gag rule harms employee and organizational rights because it prevents communication about a particular "union related matter," namely an employer investigation into alleged misconduct, which could hamper the subject employee's ability to prepare for an investigatory interview. In this case, the same order interferes with the ability of the employee organization to render assistance concerning this particular matter—investigation of conduct that could result in discipline.

Neither does the County's assertion that Paragraph 6 did not prevent Scimeca from speaking to his "official representative" excuse its conduct. The right protected by MMBA section 3502 and in *Los Angeles CCD* is the right to communicate with co-workers about working conditions. Absent legitimate employer justification, that right is not limited only to an "official representative." Because CPOA had but one paid staff person who is responsible for office administration, not representation, Scimeca's choice for a representative would logically and foreseeably be a co-worker. By the literal terms of Paragraph 6, he would not have been able to speak to that person about "the matter," effectively denying him

representation.[11] Equally problematic is that Paragraph 6, read literally, forces a choice of "official representative" who is not employed by the Sheriff's Department. It is not the employer's purview or its right to dictate who serves as a representative of an employee organization or of an individual. (*San Bernardino County (Office of the Public Defender)*, *supra*, PERB Decision No. 2423-M, p. 36.)

For all of the reasons discussed above, we affirm the ALJ's conclusion that the County violated MMBA section 3506.5, subdivsion (a), when it ordered Scimeca not to discuss the allegations against him with "any witnesses, potential witnesses, the complainant, or any other employee of the Sheriff's Office other than your official representative." The same conduct also violated MMBA section 3506.5, subdivision (b), by denying CPOA the right to represent Scimeca.

REMEDY

Government Code section 3541.3 vests PERB with broad remedial authority to effectuate the purpose of the Acts it administers. An appropriate remedial order seeks a restoration of the situation as nearly as possible to that which would have obtained but for the unfair labor practice. (*Modesto City Schools* (1983) PERB Decision No. 291.) In this case, it is appropriate to direct the County to: (1) cease and desist from denying Scimeca his right to discuss terms and conditions of his employment with co-workers, and (2) cease and desist from denying CPOA its right to represent members without interference by the County. This

[11] The County asserts in its exceptions that Paragraph 6 did not prevent Scimeca from having a co-worker represent him. This *post hoc* explanation is undermined by the fact that in his September 23, 2015 letter to Scimeca clarifying the terms of his administrative leave, Undersheriff Hirokawa did not mention Paragraph 6 or otherwise offer any assurance that its true meaning permitted Scimeca to have a co-worker represent him. Employees should not have to navigate at their own peril the parameters of an employer's directive, and any ambiguity in the directive should be construed against the employer. (*Hyundai America Shipping Agency*, *supra*, 357 NLRB 860.)

includes the right to discuss workplace investigations between and among employees and their union representatives, absent a showing that confidentiality is justified by circumstances particular to the subject investigation. Thus, to the extent that Paragraph 6 of the September 17, 2015 letter is still in effect, the County should be ordered to rescind that paragraph.

It is also appropriate that the County be ordered to post a notice incorporating the terms of this order. (*Belridge School District* (1980) PERB Decision No. 157.) However, to ensure the continued viability of this tool, where the offending party in unfair practice proceedings regularly communicates with public employees by e-mail, intranet, websites or other electronic means, it shall be required to use those same media to post notice of the Board's decision and remedial order. Any posting of electronic means shall be in addition to the Board's traditional physical posting requirement. (*City of Sacramento* (2013) PERB Decision No. 2351-M.)

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the County of Santa Clara (County) violated the Meyers-Milias-Brown Act (Act), Government Code sections 3506.5, subdivisions (a) and (b). The County violated the Act by interfering with the rights of Scimeca to discuss the terms and conditions of his employment with co-workers, and also by interfering with the right of the Santa Clara County Correctional Peace Officers' Association (CPOA) to represent its members in their employment relations with the County.

Pursuant to MMBA section 3509, subdivision (a), it hereby is ORDERED that the County, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Interfering with Lance Scimeca's (Scimeca) rights to communicate with other employees about terms and conditions of employment; and

2. Interfering with CPOA's right to represent employees in their employment relations with the County.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Rescind the directive in Paragraph 6 of the September 17, 2015 letter to Scimeca and others, prohibiting them from discussing workplace investigations with coworkers.

2. Within ten (10) workdays following the date this Decision is no longer subject to appeal, post at all work locations where notices to employees in the Sheriff's Department customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the County indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. In addition to the physical posting of paper notices, the Notice shall be posted by electronic message, intranet, internet site and other electronic means customarily used by the County to communicate with its employees in the bargaining unit represented by CPOA. (*City of Sacramento* (2013) PERB Decision No. 2351-M.) Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General

Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on CPOA.

Members Banks and Shiners joined in this Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. SF-CE-1339-M, *Santa Clara County Correctional Peace Officers' Association v. County of Santa Clara*, in which all parties had the right to participate, it has been found that the County of Santa Clara violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Interfering with Lance Scimeca's rights to communicate with other employees about terms and conditions of employment; and

2. Interfering with CPOA's right to represent employees in their employment relations with the County

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Rescind the directive in Paragraph 6 of the September 17, 2015 letter to Lance Scimeca and others prohibiting them from discussing workplace investigations with coworkers.

Dated: _____ COUNTY OF SANTA CLARA

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.