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LABOR & EMPLOYMENT

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**Labor Arbitration Decision, Dep't of Veterans Affairs, 2019 BL 508934, 2019 BNA LA 23**

**Pagination**
* BNA LA 23 p

Decision of Arbitrator

In the Matter of a Controversy Between US Dept. of Veterans Affairs (Martinez, CA), Employer and AFGE Local 1206, Union.

October 7, 2019

July 31, 2019

Hide Headnotes

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**BNA Headnotes**

**LABOR ARBITRATION**

**SUMMARY**

**[1] Discourtesy to customers ►118.646 ►118.6521 ►93.27** [Show Topic Path]
The U.S. Department of Veterans Affairs had just cause to reprimand a grievant working at a call center for inappropriate conduct with patients by abruptly hanging up on a caller after a disagreement, and inviting a caller to "talk to my supervisor" after making a rude comment about a veteran's disability, Arbitrator **Paul D**. **Roose** held, as supervisors' hearsay accounts are sufficient to establish the charge given that grievant declined to give his account of the incidents. The charge that the grievant failed to follow instructions by not attending proposed interviews regarding the incidents was not established, as management did not make it clear that the grievant was required to attend the proposed interviews. The agency did not violate the contract with AFGE Local 1206 by failing to notify the union in advance, Roose ruled, as this applies only to "formal investigations," and the agency complied with the contract by informing the grievant, in writing, of his right to have a union representative at the proposed interviews.

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Coleen Welch, Staff Attorney, Office of General Counsel, U.S. Department of Veterans Affairs, 150 Muir Road, Martinez, CA 94553, for the Employer.

Shareef Valentine, National Representative, American Federation of Government Employees, 7391 Late Harvest Way, Sacramento, CA 95829, for the Union.

**PAUL D**. **ROOSE**, Arbitrator.

## OPINION AND AWARD
## IN ARBITRATION PROCEEDINGS PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT
## PROCEDURAL BACKGROUND

The above-referenced matter was processed through the grievance procedure contained in the collective bargaining agreement (CBA) between the parties. Remaining unresolved, it was submitted to binding arbitration. The undersigned was mutually selected as the neutral arbitrator from a list provided by the Federal Mediation and Conciliation Service. The matter was heard on July 31, 2019 in Martinez, California.

The parties stipulated that the matter was properly before the arbitrator. The parties also stipulated that the arbitrator retains jurisdiction over the implementation of the remedy if the arbitrator awards a remedy.

The Grievant was not present for the hearing. The arbitrator asked the Union representatives if the Grievant was aware of his right to be present. The Union representatives assured the arbitrator that the Grievant was aware of this and had chosen not to attend the hearing.

Both parties were afforded full opportunity to present documentary evidence and to examine and cross-examine witnesses. Both parties were ably represented by their respective representatives. The parties chose to conclude their presentations by filing written briefs. The briefs were received by the arbitrator on September 26, 2019 and the matter was submitted for decision.

## ISSUE

The parties stipulated to the issues as follows:

> Was the Grievant, A__, reprimanded for just cause? If not, what shall the remedy be?
>
> Did the Employer violate Article 22 of the master agreement between VA and AFGE? If so, what shall the remedy be?

## RELEVANT CONTRACT PROVISIONS AND STATUTES
## MASTER AGREEMENT - DEPARTMENT OF VETERANS AFFAIRS, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES - 2011
### Article 14 - Discipline and Adverse Action
### Section 1 - General

No bargaining unit employees will be subject to disciplinary action except for just and sufficient cause. Disciplinary actions will be taken only for such cause as will promote the efficiency of the service.

### Section 2 - Definitions

> A. For Title 5 Employees:
>
> 1. A disciplinary action is defined as admonishment, reprimand, or suspension of 14 calendar days of less …

### Section 10 - Investigation of Disciplinary Actions

> A. The Department will investigate an incident or situation as soon as possible to determine whether or not discipline is warranted. Ordinarily this inquiry will be made by the appropriate line supervisor. The employee who is the subject of the investigation will be informed of his/her right to representation before any questioning takes places [sic] or signed statements are obtained …

## ARTICLE 22 - INVESTIGATIONS
### Section 1 - General

> A. As exclusive representative, the local union shall be given the opportunity to be present at any examination of an employee in the bargaining unit(s) by a representative of the Department in connection with an investigation if:
>
> 1. The employee reasonably believes that **[*2]** the examination my result in disciplinary action against the employee; and,
>
> 2. The employee requests representation.
>
> D. If any supervisor or Department official, in advance of or during the questioning of an employee, contemplates the likelihood of disciplinary action, the employee shall be informed of his/her right to union representation prior to further questioning …

### Section 2 - Investigations

> A. The Department agrees that before employees conduct a formal investigation, they shall be properly trained.
>
> B. The Department will inform the local union in advance of a formal administrative investigation when a bargaining unit employee is the subject of the investigation or inquiry …
>
> G. Upon request, the subject of the investigation and the local union will be furnished a copy of the complete investigation file (not just the evidence file) and all other relevant and pertinent information which would be provided under the Freedom of Information Act (FOIA) or **5 USC 7114** , which would normally include the Administrative Investigation Board (AIB) report findings.

## FACTS

### The Grievant is a Lead Medical Assistant (MA) in the Call Center at the VA's Martinez Facility:

The call center handles phone calls that come into the Employer's 800 number throughout northern California. The calls are from veterans and their family members who use the VA's health system.

The Grievant handles calls, but also performs lead duties for other call center medical support assistants. He is one of two leads in Martinez. Fourteen MAs work in the Martinez call center, and 32 work at the McClellan site. Incoming calls are routed to an MA in either facility, depending on availability.

### On January 31, 2019, the Employer Received a Call from a Patient Who Complained That the Grievant Had Hung Up on Him:

J'nai Pinkard is the Grievant's immediate supervisor. She has supervised him since she became a call center supervisor in 2016. Ms. Pinkard was contacted by data manager Carrie Saucedo on January 31, 2019. [1] The contact concerned a veteran, Mr. C, who complained about an interaction with an MA that morning.

Ms. Saucedo emailed Ms. Pinkard to let her know that she had run a report and determined that the Grievant was the one who had spoken to Mr. C. The call lasted 16 seconds.

Ms. Pinkard filled out a Report of Contact form, as follows (in relevant part):

> Carrie Saucedo (data manager) escalated this veteran's complaint to me after he called the call center for a second time on the morning of 1/31/2019. Per her email, the veteran reported that "he was hung up on after declining to give his full social security number to the call center agent."
>
> I contacted the patient to offer apologies for the unpleasant experience and to inquire if he would like to email a detail of what occurred. He declined and offered me his point of view to document. Per the veteran, "I called and a grump sounding guy said his name and asked for my full social." He continued, "I told the agent **[*3]** No and was then hung up on immediately." Writer explained that what took place is not our standard of service and advised him to follow up if any other issues arise.

Supervisor Pinkard testified that "we can pull up patients using their full name as long as we confirm the date of birth. Last name and last four is sufficient."

Supervisors can listen in on MA calls, but no recording is made of the calls.

### The Grievant's Immediate Supervisor Attempted to Meet with the Grievant for a "Weingarten Interview" But He Failed to Show Up for the Meeting:

Ms. Pinkard stated that she sought guidance from human resources on what to do next. She testified that the Grievant had a "history of complaints" and a "history of not being able to engage professionally." Human resources advised her to "seek a Weingarten, like a management inquiry into the complaint."

Ms. Pinkard stated that, with veteran complaints about other staff, she can just say to the employee that she wants to "hear your side of the story" and "have a calm conversation." With the Grievant that technique has not been successful. She testified as follows:

> I have attempted to do that with Mr. A__ on several occasions, and it has not been a productive conversation. It is almost always like an argument or a defensive, "The veteran is wrong," or "The veteran is lying," has been said multiple times by Mr. A__.

On February 1, Ms. Pinkard sent an email (with a copy to her supervisor Adriane Martinez) to the Grievant as follows:

> Good morning
>
> I would like to meet with [sic] for a Weingarten interview 2/6 @ 11 AM in AB6 conference room regarding a veteran concern that took place 1/31/2019.
>
> You are welcome to have Union representation; if you decline representation, please be sure to fill out the attached form
>
> Also, please let me know if Wednesday 2/6 @ 11 AM is not a good day or time for you.

Attached to the email was a form entitled "*Statement Declining Union Representation"* that reads as follows:

> I (employee name) have been advised of my right to Union Representation on, (date) in a meeting with (supervisor name/title).
>
> I have declined my right to Union Representation, but understand that I can request a Union Representative at anytime, if I decide I need one.
>
> Signed: (employee signature) Date:

Ms. Pinkard sent the Grievant a reminder email on the morning of February 6. He was at work that day. The Grievant did not respond to the email and did not show up for the meeting. Ms. Pinkard received no explanation from the Grievant about why he did not attend the meeting. Ms. Pinkard advised Sonia Banghoo from the human resources department that the Grievant did not show up for the meeting. [2]

**The Immediate Supervisor's Supervisor, the Call Center Manager, Also Attempted to Meet with the Grievant for a "Weingarten Interview" But He Failed to Show Up for the Meeting:**

Adriane Martinez is the call center manager. She has held that position for four years. She has worked at the call center for thirteen years.

After the Grievant failed to show for the meeting **[*4]** with Ms. Pinkard, Ms. Martinez took on the task of attempting to meet with him. She testified as follows:

> I took it on because after many attempts of Ms. Pinkard trying to meet with A__, he has never showed and he's never responded. So, giving him the fair chance to respond, I decided to take it on so maybe he would meet with me to get his side of the story.

Ms. Martinez, under cross-examination, described the unsuccessful meeting between the Grievant and Ms. Pinkard as "mandatory." "So, all the employees are required, as an employee, to meet with their manager or supervisor. It's mandatory."

Ms. Martinez sent the Grievant an email on February 7 requesting an "interview" with him on February 12. The wording of the email was identical to the email sent by Ms. Pinkard on February 1. Again, the "Statement Declining Union Representation" form was attached.

On the morning of the proposed meeting, Ms. Martinez checked the schedule and determined that the Grievant was off that day. She sent a follow-up email changing the meeting to February 14$^{th}$. The Grievant again did not show up for the meeting nor did he explain why he did not attend.

On February 15, Ms. Martinez sent another email to the Grievant, setting up a meeting on February 19 for the same purpose. Again, the Grievant did not show up for the meeting, nor did he offer any explanation for not attending.

**On February 19, 2019, The Employer Received a Complaint from a Second Patient That the Grievant Had Been Rude to Him on a Call Earlier That Day:**

Brandy Pruyne is a supervisor at the McClellan call center. [3] On February 19, she emailed Ms. Pinkard and Ms. Martinez about a complaint from veteran J received that day. The email reads as follows:

> Good morning
>
> We received a complaint from patient J regarding treatment received from A__ today 2/19. Mr. J stated that he called in to update his address and A__ was rude, when Mr. J made a comment to him about his rudeness, A__ told him "talk to a supervisor" and spelled his name twice to make sure the patient got it right. A__ also did not update the

> patient's address as requested. The information has now been updated per patient request.

On the advice of human resources, Ms. Martinez did the follow-up on the complaint. She filled out a "Report of Contact" form that reads, in relevant part:

> I called Mr. J to follow up on a complaint reported to a call center supervisor. I called Mr. J on 2/28/19. I told Mr. J I was the call center manager and I was following up on a complaint about service he received in the call center on 2/19/19. Mr. J said "yes" it was unacceptable and he was calling into the VA to update his new address … He was told by A__ that he needed to come into the clinic to complete a form, Mr. J stated to A__ that he recently had surgery and was also handicap [sic] and couldn't make it to the clinic … he said A__ was rude and made rude comment about his ability to come into the clinic **[*5]** - he said he felt embarrassed and hurt by the comment and rudeness and A__'s attitude towards his concern. A__ did tell him he could speak to his supervisor in a loud tone and then hung up without even communicating that he was ending the call.

**Call Center Manager Martinez Attempted to Meet with the Grievant for a "Weingarten Interview" But He Failed to Show Up for the Meeting:**

On February 28, Ms. Martinez sent an email to the Grievant, as follows:

> Hello A__,
>
> I would like to set up a day/time to conduct a Weingarten interview with you regarding a conversation you had with Mr. J regarding his request to update his new address on 02/19/19. You have a right to union representation during the meeting. It is your responsible [sic] to obtain union representation if you wish to have representation. If you wish to decline union representation, please complete the attached form and bring it with you to the meeting.
>
> The times available for the interview are as follows:
>
> AB7/Room 710
> Monday 03/04/19 at 9am or 10am
> Please let me know what works best for you.

According to Ms. Martinez, the Grievant did not respond or show up for the meeting.

***Two Management Witnesses Testified to the Practice of Weingarten Inquiries and Administrative Investigation Boards (AIBs)*:**

Ms. Martinez testified that she has conducted other "Weingarten" interviews in the past. She stated it as follows:

> … you would ask specific questions to the employee to get all the information out. "Mr. So-and-So stated this, did you say that?" "Mr. So-and-So stated this, did that happen? What is your side of the story?" So, you give them the opportunity to say, "Yes," "No," "I did this," or "I did not."

Ms. Martinez also testified that she has participated in an AIB, on an issue not related to the call center. She described the difference between an AIB and a management inquiry as follows:

> So, the management inquiry is like the lower level. So, we're trying to handle things at the lowest level. That goes higher, there's more … of a higher complaint.

She said that a court reporter is used at an AIB.

Christopher Howell has been the human resources officer for VA northern California since 2003. He testified that a Weingarten meeting is based on the Weingarten decision.

> It was a decision made about how employees are to be advised of their rights. Are given a union rep when they request one, if they have reasonable belief that disciplinary action could be taken against them.

He cited a VA internal management handbook, 0700, that outlines how administrative investigations are to be conducted.

**On March 20, the Grievant Was Issued a Proposed Reprimand (Later Sustained) Charging Him with Inappropriate Conduct with Patients and Failure to Follow Instructions:**

Supervisor Pinkard gave him the memorandum that proposed to reprimand him for inappropriate conduct with patients and failure to follow instructions.

The "inappropriate conduct" charge cites the two phone calls with patients on January **[*6]** 31 and February 19.

The "failure to follow instructions" charge states that he "failed to follow … instructions" in the emails from Ms. Pinkard and Ms. Martinez on February 1, 12, 15, and 28. He "failed to follow instructions" by not reporting to the Weingarten meetings.

On April 2, Service Chief Elizabeth Blohm issued a memorandum sustaining the charges in the proposed reprimand. She wrote the following:

> In reaching this decision, the evidence developed was carefully considered as you did not provide an oral or written response.

**On April 6, the Union Filed a Grievance Against the Reprimand:**

The Union's grievance cited violations of Articles 1, 2, 14, and 17 plus various statutes. The grievance claims a violation of Article 22 since the Union was not notified in advance by management of the proposed questioning of the Grievant. It also cites a violation of Article 14, claiming that the Agency did not conduct a "fair and impartial inquiry."

The grievance asks that the Agency comply with its statutory obligations, rescind the reprimand, and pay attorneys' fees.

It is that grievance that is before the arbitrator.

## EMPLOYER'S POSITION

The Employer argues that the reprimand was for just cause. The Union offered no evidence to contradict the veterans' complaints, either at Weingarten meetings or at the arbitration hearing.

The Employer contends that the Union has also provided no evidence to rebut the second charge that the Grievant failed to appear at Weingarten meetings as "instructed."

The Agency asserts that the requirements of Article 22 for union notification apply only in the case of "formal investigations" or "administrative investigations." This was not a formal administrative investigation, as understood in Article 22 and VA Handbook 0700.

The Employer contends that Article 14 governs a management inquiry such as the one conducted by the Agency in this case. The Agency followed the requirements of that article in the way it handled the veterans' complaints about the Grievant. "The Agency could not take Mr. A__'s responses into consideration because he willfully failed to participate in the 4 attempted meetings,' the Employer argues in its brief.

The Employer asks that the Arbitrator find in favor of the Agency.

## UNION'S POSITION

The Union argues that the preponderance of the evidence is that the Grievant did not engage in the conduct with which he was charged. The supervisors admitted that they did not know what exactly the Grievant said to the two veteran callers. They admitted that they did not know if the Grievant hung up on the veteran, or the other way around.

The Union contends that the Agency did not comply with Article 22. "… [I]t is clear this was an official administrative inquiry and that the inquiry was used to perform an official action," the Union writes in its brief.

The Union asserts that the Agreement's references to AIBs are explicit. It cites, for example, Article 22 section 2 (G) and (K).

Moreover, the Union argues that the document attached to the emails **[*7]** to the Grievant allowing him to decline union representation "created a chilling factor for the employee."

The Union asks that the Reprimand be removed and all action resulting from the reprimand also be removed. The Union also requests that all discipline for other employees resulting from a similar violation of Article 22 over the past two years be removed.

Further, the Union asks for joint training for labor and management on contract writing. And the Union requests that data requested by the Union be provided in a timely manner.

## DISCUSSION

### While the Contract Language Has Some Ambiguity, as a Whole the CBA Does Not Require the Employer to Notify the Union Except in Cases of Formal Investigations:

Ambiguity is created by the placement of the "General" Section 1 under Article 22 - Investigations. This structure seems to imply that the rights outlined in Section 1 apply exclusively to formal investigations. It is clear from Article 14 Section 10, however, that those rights to union representation apply more broadly.

A contract review reveals that the right to union representation in interviews that might lead to discipline, and the requirement of the Agency to inform the employee of that right, applies to all disciplinary inquiries. It does not apply exclusively to "investigations."

What further obfuscates the parties' intent is that Article 14 Section 10 refers to "Investigations" and "investigate." Yet that process described in Article 14 is clearly less formal than the process detailed in Article 22 Section 2 "Investigations." The inconsistent use of the word "investigations" in the CBA lends ambiguity to the issue of when union notification is required.

The core of the dispute results from the addition of the word "inquiry" in Article 22, Section 2B. All management witnesses described the process that was used with the Grievant in the instant case as an "inquiry." It is understandable that the Union would then take the position that the requirement to notify the union, spelled out in that section, would apply under the fact circumstances of this case.

The preponderance of the evidence is, however, that Article 22 Section 2 is only about formal investigations. It is not about the type of management inquiry that the Agency attempted to utilize with the Grievant.

The undersigned arbitrator draws this conclusion by noting the use of the word "formal" in sections 2A, 2B and 2D (for example.) He draws this conclusion by the reference to employees being "required to provide a written or sworn statement" in section 2D. He infers this from the reference in section 2G to an AIB and its findings.

The conclusion is also derived from reading section 2J, which refers to tapes, testimony and transcripts. None of these more formal procedural tools came into play in the case of the Grievant.

The arbitrator was persuaded that the entire Article 22 Section 2 is about formal investigations that utilize AIBs. Hence, section 2B, despite the use of the word **[*8]** "inquiry" does not impose a requirement on management to notify the Union in the case of a Weingarten inquiry.

The arbitrator was not presented with evidence by either party about the origins of the contract language in dispute. Reliable bargaining history in this case might have reinforced the arbitrator's view of the language. Or, conversely, it might have led in the opposite direction of supporting the Union's contention that management must notify the Union of upcoming disciplinary inquiries of the kind proposed in the instant case. Without that bargaining history, or evidence of how similar disputes might have been resolved by the parties in the past, the arbitrator in this case can only go on the plain meaning of the words in the contract.

The Agency introduced VA Handbook 0700 as further corroboration of its viewpoint about formal investigations. No evidence was introduced that this handbook had previously been provided to the Union. Therefore, the undersigned arbitrator has not considered that handbook in this award.

### Since the Proposed Inquiries Into the Two Patient Calls Were Interviews, Not Investigations, the Agency Did Not Violate the CBA by Failing to Notify the Union:

Given this reading of the meaning of Articles 14 and 22, the arbitrator concludes that the Employer did not violate the CBA when it did not notify the Union in advance of the proposed interviews with the Grievant. The emails sent by the supervisor and managers consistently referred to the proposed meeting as a "Weingarten interview."

The Agency complied with the contract by informing the Grievant, in writing, of his right to have a union representative at the proposed interviews. No additional contractual requirement for union notification applied in this case.

The Union has alleged that the inclusion of the "Statement Declining Union Representation" as an attachment to the emails had an anti-union chilling effect on the Grievant. While the undersigned arbitrator can understand this contention, it could also be concluded that the attachment merely reinforces the right to have a union representative. Underscoring this interpretation is the inclusion in the attachment of the statement "I can request a Union Representative at anytime, if I decide I need one." This does not read like an attempt on the part of the Agency to discourage the employee from asking for union representation.

Finally, no evidence emerged that the attachment had any chilling effect. To the contrary, the Grievant seemed perfectly capable and willing to exercise his rights under the CBA by seeking out the Union to file a grievance against the Reprimand a few days after it was issued.

**By Declining to Give His Side of the Story, the Grievant has Failed to Rebut the Employer's Charges of Inappropriate Conduct:**

The Employer's investigations into the inappropriate conduct allegations were adequate. After bargaining unit members (other call center MAs) received initial complaints from **[*9]** patient callers, supervisors followed up by calling the veterans and speaking with them to get a more complete story.

What the supervisors heard from the veterans, as recounted in their "Report of Contact" forms and their testimony at arbitration, affirms the charge of "inappropriate conduct" specified in the reprimand.

The Union is apparently not arguing that the charged conduct does not warrant discipline. Abruptly hanging up on a caller after a disagreement is not conduct the Union condones. Inviting a caller to "talk to my supervisor" after the caller said the Grievant made a rude comment about the veteran's disability is not conduct that the Union condones. The Union's defense of the Grievant is that the Grievant did not engage in the charged conduct, or at least that the Agency did not sufficiently prove that the Grievant engaged in the charged conduct.

Undermining this Union contention of inadequate proof is that the Agency provided the Grievant with multiple opportunities to give his side of the story. The Agency did so while clearly communicating to him that he had a right to have union representation when he gave his account of what happened.

Had the Grievant availed himself of the opportunities provided, he might have presented a different recollection of the phone conversations than the veteran callers did. Further investigation by management might then have exonerated the Grievant, partially or even completely.

Even had the Agency proceeded with the charges despite the Grievant's alternative version of the phone calls, the matter could have gone through the grievance procedure with a much higher burden on the Agency. Arbitrators are generally reluctant to credit a secondhand account of a complaint when participants have conflicting memories. A firsthand account, subject to cross-examination by opposing counsel, has more probative weight than hearsay (unless the parties have stipulated otherwise).

Without the Grievant's account of what transpired on those phone calls, the only account in evidence is the hearsay account provided by the supervisors. Without a competing explanation, those accounts stand unrebutted in the record, despite their hearsay character. On their face, the accounts of the two phone calls provide sufficient basis for the lowest form of formal discipline available, a written reprimand.

**Charge 2 is Not Valid Since the Grievant Was Invited, Not Instructed, to Attend the Weingarten Meetings:**

Charge 2, and its four "specifications" is labelled "Failure to Follow Instructions." It reprimands the Grievant for "not report[ing]" to the meetings, thereby failing to "follow instructions" as outlined in the four emails.

The problem with this charge is that the Grievant was not instructed to attend the meetings. He was invited to meet. "I would like to meet with [you] for a Weingarten interview" is not an instruction. It is an invitation.

Further reinforcing the notion that this was not an instruction is that the **[*10]** Grievant was never provided with notice of any consequences of his not attending the meetings. If discipline was to result for his failure to attend, he should have been put on notice of that. He was not.

Manager Martinez characterized the meetings as "mandatory," but provided no testimony or other evidence that this "mandatory" aspect of the meeting was communicated to the Grievant.

The fact that these were invitations, not instructions, is consistent with the definition of a Weingarten interview. A Weingarten interview is an opportunity for an employee to give her or his side of the story. It is a legal and contractual requirement designed to protect the rights of the accused employee.

An employee who declines to participate in a Weingarten interview must be willing to live with the consequences of the fact that the Agency will not have the benefit of the employee's point of view before making a disciplinary decision. The employee should not be disciplined for declining to participate, but he or she must accept that the employer might proceed to discipline without the employee's side of the story.

Certainly, in some cases, management does have a legitimate and compelling need to interview an employee. (For example, if a forklift goes missing and the employee in question was the last person to whom it was assigned, management has a legitimate right to require an interview of that employee.) In such cases, management must tell the employee in no uncertain terms that the interview is not optional but required.

In the instant case, management did not make it clear to the employee that he was required to attend the proposed interviews. He was not instructed to attend. The charge of Failure to Follow Instructions lacks merit. It is not for just cause and must be removed from the Letter of Reprimand.

**AWARD**

1) The Employer did not violate Article 22 of the Master Agreement when it did not notify the local union of the Weingarten interviews of the Grievant A__ in February and March of 2019.

2) Charge 1 (Inappropriate Conduct with Patients) of the Reprimand of the Grievant A__ proposed on March 20, 2019 and sustained on April 2, 2019 was for just cause.

3) Charge 2 (Failure to Follow Instructions) of the Reprimand of the Grievant A__ proposed on March 20, 2019 and sustained on April 2, 2019 was not for just cause.

4) The Employer is ordered to modify the Reprimand by removing Charge 2.

Date: October 7, 2019.

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fn 1

Ms. Saucedo did not testify at the hearing.

fn 2

Ms. Banghoo did not testify at the hearing.

fn 3

Ms. Pruyne did not testify at the hearing.