

		<b>Policy # 806</b>
<b>Subject:</b> Employee Right To Union Representation At Pre-Disciplinary Investigatory Meetings With The Supervisor		
<b>Responsible Department:</b> Personnel Services		
<b>Effective Date:</b> 09/1981		<b>Revision Date:</b> N/A
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### 1. **Purpose**

This policy is intended to provide guidance to supervisors and managers concerning an employee's rights to union representation at a pre-disciplinary, meeting with the supervisor or manager.

### 2. **Authority**

Negotiated Memorandums of Understanding.

### 3. **Scope**

This applies to County Employees.

### 4. **Policy**

The right of an employee to have a union representation at meetings between the employee and a supervisor or manager does not apply to normal employer/employee conversations. No right to representation extends to ordinary supervisory discussions with employees during the normal course of work.

However, an employee in a representation unit has a right to union representation in a meeting with a supervisor or manager in a pre-disciplinary, investigatory interview.

#### Meetings Held in the Normal Course of Work:

There are too many laws, court decisions and legal opinions dealing with what constitutes the normal course of work activities to provide a detailed list of such activities herein. However, activities associated with the giving of instructions, training, or the correction of work techniques are generally

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accepted as being included with the normal course of work. Meetings between a supervisor and subordinate on such issues do not entitle the employee to union representation.

An employee does not have a right to have a union representation present when a supervisor is discussing an evaluation or evaluation observation of the employee's work performance when no disciplinary action is anticipated or contemplated. Poor or below standard performance inevitably carried with it the potential that if the employee does not improve or will not comply with a directive, discipline may follow; however, that latent potential alone does not create the right to assistance of a union representative.

### Pre-Disciplinary, Investigatory Meetings:

An employee is entitled to have a union representative present at a meeting if two elements are present:

- Disciplinary action is probable or seriously being considered, and;
- A significant purpose of the meeting is to obtain facts to support the disciplinary action.

### Pre-Disciplinary Element:

If disciplinary action is imminent (i.e., probable or seriously being considered), the pre-disciplinary element is present. (See County Personnel Policies and Procedures #15—Notice of Proposed Disciplinary Action—as an example.)

### Investigative Element:

The right to union representation arises only when the supervisor or manager insists that the employee participate in the investigation. If the meeting is disciplinary in character but explanatory in the sense that the employee is only told what the supervisor requires or intends to do and does not call upon the employee to respond, there is no right to union representation. In other words, there must be an interrogation of the employee for the investigatory element to be present.

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### Union Participation:

The employee's right to union assistance and representation is considerably qualified.

The right arises only when the employee asks for representation. The supervisor or manager has no obligation to suggest, recommend or give advice to the employee that such right exists.

The right is limited to situations where the employee reasonably believes that disciplinary actions may result. An employee has a right to union representation, as an example, during an employer conducted meeting with a supervisor or manager when the employee reasonably believes such action may result and the purpose of the interview is to investigate facts to support disciplinary action.

What is reasonable must be measured by objective standards using all the circumstances of the case. As an example, if the employee is told that the employer conducted meeting is not for the purpose of taking disciplinary action, and no punitive action is expected to result, the employee cannot reasonably believe that disciplinary action will result.

Exercise of the right may not interfere with legitimate management prerogatives.

The supervisor or manager conducting a pre-disciplinary investigative interview may, rather than comply with a request for representation, terminate the interview or pursue the investigation by other means.

The supervisor or manager need not postpone the interview because a particular union representative is unavailable for reasons which the employer is not responsible, when the employee could have requested the presence of another union representative who is available.

The supervisor or manager is not obligated to suggest or secure alternative representation for the employee.

The supervisor or manager has no duty to bargain with the union representative at the interview.

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The representative is present to assist the employee and attempt to clarify facts or suggest other employees who may have knowledge of the facts. The supervisor or manager has the right to require the employee to respond to relevant questions and can insist on hearing the employee's version of the facts. The employee may be charged with insubordination if the employee refuses and remains silent.

The union representative has no right to interfere in the interview process.

### County Counsel/Employee Relations Division Assistance:

Whenever a supervisor or manager is uncertain as to the issue of the right of union representative, the assistance of the County Counsel and/or the Employee Relations Division of the Department of Personnel Management should be sought. The general guidance given in this policy cannot substitute for specific guidance associated with the unique problems of a particular case.

### **5. Review** Not Applicable