

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

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In the Matter of

ALADS

Charging Party

vs.

Los Angeles County
Sheriff's Department
Respondent

Case no. UFC 002-14

Hearing: April 19, 2018
Kenneth Hahn Hall of Administration
500 W. Temple, Rm 342
Los Angeles CA 90012

APPEARANCES:

For the Charging Party: Christopher D. Nissan Rains Luca Stern St. Phalle
& Silver, PC

For the Respondent: Alex Wong, Liebert Cassidy Whitmore

BEFORE: David P. Beauvais, Hearing Officer

INTRODUCTION

The above captioned matter was heard by Hearing Officer David P. Beauvais selected by the Los Angeles County Employee Relations Commission. The hearing was conducted on April 19, 2018. The Charging Party introduced 11 exhibits and the Respondent introduced 17 exhibits. All exhibits were identified, received and made part of the record. Following the hearing, the parties submitted written argument which was received by the Hearing Officer on June 1, 2018.

ISSUE

Did the Department commit an Unfair Labor Practice (ULP) by offering Grievants Anguiano, Quinonez and Hernandez an opportunity to submit a written statement under the unilateral Respect Based Discipline process (RBD) and/or by referencing the RBD process and the Grievant's refusal to participate during the Step one grievance meetings?

BACKGROUND

On April 22, 2013, Deputies Anguiano and Quinonez were advised by Captain Angelo Gonzalez that they were subject to discipline for failing to report an uncooperative inmate. Captain Gonzalez provided each deputy with a CD containing investigative materials on which the proposed discipline was based. Captain Gonzalez advised the deputies they could submit a written statement concerning the investigation under the RPD process. The Deputies declined to submit any written statement.

Similarly, on April 29, 2013, Deputy Hernandez was advised she was subject to discipline based on a charge of failure to report an incident of use of excessive force. Deputy Hernandez was given a CD of investigative material and provided an opportunity to submit a written statement under the RPD process, which she also declined.

On May 23, 2013, all three deputies received Notices of Intent to suspend, Anguiano and Quinonez for three (3) days and Hernandez for five (5) days. All three deputies filed grievances and met with Captain Gonzalez on July

25, 2013 at step one of the grievance procedure. The deputies were represented by Julie Petrella-Cramer. According to Ms. Petrelli-Cramer¹, Captain Gonzalez was overbearing and failed to give Ms. Petrelli-Cramer an adequate opportunity to present her arguments during the meeting.

Allegedly, Captain Gonzalez also told the Grievants they had an opportunity to submit a written statement under the RBD process. Captain Gonzales advised they could submit written responses following the step one meeting, but it could lead to reopening the investigation and possibly additional charges and discipline. Captain Gonzales denied the grievances at Step one of the grievance procedure.

All three Grievants appealed the disciplinary actions to step two of the grievance procedure. Deputy Anguiano's grievance was discussed on September 10, 2013. The grievance was settled at that point. Deputy Hernandez' grievance was discussed on September 20, 2013 and denied. The grievance was eventually settled prior to arbitration. Deputy Quinonez' grievance was discussed on August 13, 2013 and denied. The grievance was eventually settled prior to arbitration. Ms. Petrelli-Cramer represented each Grievant at step 2 of the grievance procedure.

TESTIMONY OF WITNESSES

Julie Petrelli-Cramer

Ms. Petrelli-Cramer has been a representative for ALADS since 2012. One of her main functions is to represent deputies in the grievance procedure.

¹ Neither Captain Gonzalez, who is retired, nor any of the Grievants testified at hearing.

Ms. Petrelli-Cramer represented the Grievants at step one and step two of the grievance procedure. Ms. Petrelli-Cramer testified she was familiar with the Respect Based Discipline Process (RBDP). Ms. Petrelli-Cramer stated that ALADS position was that the RBDP was a unilateral program instituted by the Department. Ms. Petrelli-Cramer testified ALADS consistently advised deputies not to participate in the process if a deputy inquired. Ms. Petrelli-Cramer testified ALADS was concerned the process could lead to re-opening an investigation and result in more severe discipline.

Ms. Petrelli-Cramer testified she met with Captain Gonzales regarding the Hernandez grievance on July 17, 2013. Ms. Petrelli-Cramer testified Captain Gonzales kept insisting Deputy Hernandez had her opportunity to respond as part of the RBDP and had declined to submit a written response. Ms. Petrelli-Cramer met with Captain Gonzales on July 25, 2013 with Deputies Anguiano and Quinonez present. Ms. Petrelli-Cramer said this meeting went much as the previous meeting. MS Petrelli-Cramer stated Captain Gonzalez frequently interrupted her and she felt she was not allowed to present her arguments regarding the merits of the cases adequately. Ms. Petrelli-Cramer testified all three deputies seemed nervous and intimidated by Captain Gonzales demeanor.

Ms. Petrelli-Cramer testified the grievances were appealed to step two and she met with then Chief Richard Barrantes. Ms. Petrelli-Cramer stated she met with the Chief with each Grievant separately. Ms. Petrelli-Cramer said she felt the step two grievance meetings were productive. Ms. Petrelli-Cramer testified all three Grievants were offered settlements, but only Deputy Quinonez' grievance was settled at step two. Ms. Petrelli-Cramer

stated she was satisfied with this settlement. Ms. Petrelli-Cramer testified Deputies Hernandez and Anguiano declined the settlement offers.

Richard Barrantes

Mr. Barrantes is retired from the Department after forty-two and a half years of service. Mr. Barrantes was the Assistant Sheriff when he retired. During the period relevant to this matter Mr. Barrantes was the Chief of the Courts Division. Mr. Barrantes' operational responsibility extended to thirty-eight (38) county courts. Mr. Barrantes testified Division Chiefs are involved in discipline of sixteen (16) days or more. The Chief normally serves as the Skelly officer and is also usually the step two designee for grievances.

Mr. Barrantes testified all three deputies were in his chain of command and that he served as the step 2 designee for their grievances. Mr. Barrantes recalled that Deputy Anguiano was accused of using unnecessary force with an inmate. Mr. Barrantes also recalled Deputies Hernandez and Quinonez were disciplined for failure to report an uncooperative inmate. Mr. Barrantes testified Captain Gonzalez was the step one designee and denied all three grievances.

Mr. Barrantes testified he was familiar with the RBD process. Mr. Barrantes avowed the process was put in place to allow an employee to submit a written response to proposed discipline. Mr. Barrantes emphasized the process was voluntary and deputies did not face reprisal if they declined to participate. Mr. Barrantes testified the RBD process was terminated on March 31, 2014 because very few deputies were participating.

Mr. Barrantes testified he met with all three Grievants at step 2. Mr. Barrantes stated Deputy Anguiano's discipline was settled at that level. Mr. Barrantes indicated settlement offers were discussed with the other deputies but declined. Mr. Barrantes testified neither the RBDP nor Captain Gonzalez's behavior at step one was discussed during the step two meetings.

DISCUSSION AND ANALYSIS

The issue in this charge is not the RBD process itself, but rather the interpretation and application of the process by Captain Anselmo Gonzalez during the initial disciplinary actions against Deputies Anguiano, Hernandez and Quinonez and at the subsequent step one grievance meetings. ALADS argues the Department violated the principles established in National Labor Relations Board v. Weingarten, Mount Diablo Unified School District (PERB decision 44) and Rio Honda Community College District (PERB decision 272). ALADS also contends the RBD process is a violation of the MOU between the Department and the Association in that it was a unilateral process established without consultation or bargaining with the Association.

The Department argues ALADS failed to demonstrate the grievants suffered any adverse employment action due to their purported union activity (declining to participate in the RBD process). The Department points out the grievants met at step one of the grievance procedure and were represented by the Association at the meeting. The grievances were denied and subsequently appealed to step two, wherein one of the grievances was settled. The two remaining grievances were appealed to arbitration and settled in pre-arbitration meetings.

First, the Hearing Officer finds no Weingarten violation. The principle established in Weingarten provides that an individual is entitled to representation during the grievance process, including investigative interviews that may lead to discipline. The testimony and documents presented at hearing established the RBD provided a deputy an opportunity to submit a written response to proposed discipline, including the findings in the investigation. ALADS determined this “process” deviated from and was in violation of the existing relevant provisions of the MOU. Thus, ALADS consistently advised their members to not respond in writing when offered the opportunity under the RBD process.

The RBD form itself (Res. ex. 17) stated a written response was voluntary and choosing not to respond would not be held against the deputy. Moreover, if a deputy did choose to respond, nothing prevented the deputy from seeking Association assistance in preparing said response. Given these facts, there was no denial of representation, either during the investigation stage or during the subsequent grievance process and thus no violation of Weingarten. Similarly, there was no violation of the subsequent PERB decisions in the Mount Diablo Unified School District and Rio Hondo Community College District as those decisions flow from Weingarten.

Second, ALADS failed to prove Captain Gonzalez’ actions, either prior to or during the step one grievance meetings, violated the MOU. Ms. Petrelli-Cramer testified Captain Gonzalez was boorish and rude during the step one meetings. Ms. Petrelli-Cramer testified Captain Gonzalez interrupted her and she felt as if she was not able to fairly present her arguments. Ms.

Petrelli-Cramer also testified the Grievants felt intimidated by Captain Gonzalez' demeanor. While I partially credit Ms. Petrelli-Cramer's testimony in this regard, it does not rise to the level of a violation of the MOU. The step one meetings were held, and Ms. Petrelli-Cramer was present to represent the Grievants. Moreover, Ms. Petrelli-Cramer's testimony that the Grievants were intimidated and nervous is hearsay and afforded little weight given one or more of the Grievants could have been called to testify.

Ms. Petrelli-Cramer also testified Captain Gonzalez brought up the fact the Grievants had not submitted written responses through the RBD process and the deputies could not "unring the bell". However, the evidence did not establish Gonzalez denied the grievances as retaliation for non-participation in the RDB process as opposed to the charges developed in the investigation. During each grievance meeting Captain Gonzalez offered the Deputy an opportunity to submit written questions to be asked during a second interview. Ms. Petrelli-Cramer testified she saw this as an intimidation tactic, as Captain Gonzalez warned a second interview might lead to additional charges. But this could just as easily be taken as a good faith effort by Captain Gonzalez to assure the investigations were fair and comprehensive. However, each deputy declined to submit anything in writing.

Third, the Respondent's argument that the grievants did not prove they suffered an adverse personnel action is persuasive. In support of their position, the Respondent cited *Brooks v. City of San Mateo* (9th Circuit, 2000) 229 F.3d. In this case the Plaintiff, a female police dispatcher, was

sexually harassed by a male dispatcher. Brooks reported the incident, the male dispatcher was placed on administrative leave and subsequently resigned pending termination. Brooks took a lengthy time off. When she returned to work she claimed several conditions circumstances constituted a hostile work environment. Among those was an evaluation in which she was rated “needs improvement”. Brooks appealed the evaluation, but before the City acted on the appeal, Brooks resigned. Brooks subsequently filed an EEO complaint against the city. The ninth circuit court ruled the evaluation could not be considered as a factor in the hostile work environment claim because it was not final at the time Brooks resigned.

Here, Respondent argues similar circumstances exist. Respondent contends that even if Gonzalez actions could be construed as retaliation, his action in denying the grievances was not final; hence there can be no finding of retaliation. This argument becomes even more persuasive given one of the three grievances was settled at step two and the others were settled in pre-arbitration agreements.

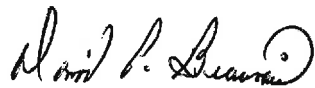
In summary, the Charging Party failed to prove Captain Gonzalez’ offer to each Deputy to submit a written statement under the RBD was a violation of Weingarten principles. Additionally, Captain Gonzalez references to the RBD during the step one grievance meetings did not rise to the level of retaliation. Captain Gonzalez offered each Grievant an opportunity to submit questions to investigators and participate in a second investigative interview. Captain Gonzalez cautioned each Grievant that if the investigation was reopened they could be subject to additional charges. A reasonable person could see that as either retaliation or a good faith effort to

assure a full and fair investigation. Finally, even if Captain Gonzalez's actions could be construed as retaliation, the Charging Party cannot prove an adverse action occurred because the grievance process was not final. In reaching these conclusions, the Hearing Officer makes no finding regarding the RBD process itself, or whether it violated the terms and conditions of the existing MOU or other County statutes. This ULP issue was very narrow in scope, involving only Captain Gonzalez actions prior to initiating discipline against the three Grievants and his conduct during the step one grievance process.

RECOMMENDATION

It is respectfully recommended the Commission adopt the findings and conclusions contained herein and dismiss the charge.

Respectfully submitted,



David P. Beauvais, Hearing Officer
DATE: June 19, 2018

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is 500 W. Temple Street, 374 Hall of Administration, Los Angeles, CA 90012.

On June 26, 2018, I served the within REPORT OF HEARING OFFICER in the matter of UFC 002-14 on the interested parties in said action, by electronic transmission. The electronic transmission report indicated that the transmission was complete and without error. Service was completed as follows:

Will Aitchison Public Safety Law Group Email: will@pslglawyers.com Christopher Nissen Email: cnissen@rlslawyers.com Alex Wong Liebert Cassidy Whitmore Email: awong@lcwlegal.com Adrianna E. Guzman Liebert Cassidy Whitmore Email: aguzman@lcwlegal.com	Gregory P. Nelson, Commander Los Angeles County Sheriff's Dept. Email: GPNelson@lasd.org Joel Barnett, Captain Email: jlbarnett@lasd.org Mahdi A. Mohamed Advocacy Unit-LASD Email: mamohame@lasd.org
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Executed on June 26, 2018 at Los Angeles, California. I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.


Rose Henderson