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LOS ANGELES COUNTY EMPLOYEE'S RELATION COMMISSION

HEARING OFFICER REPORT

EMPLOYEE RELATIONS  
COMMISSION  
COUNTY OF LOS ANGELES

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In the Matter of the Appeal of	)	Case Nos: UFC 003-12 & 005-12
	)	(CONSOLIDATED)
ASSOCIATION FOR LOS ANGELES	)	
DEPUTY SHERIFF'S (ALADS).	)	
Charging Party	)	
v.	)	
	)	
LOS ANGELES COUNTY SHERRIF'S	)	
RESPONDENT,	)	
Respondent	)	

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Hearing Officer: Brent J. Rosenbaum

APPEARANCES

**For the Charging Party:**

1. Will Aitchison – Public Safety Labor Group – Representative For Association For Los Angeles Deputy Sheriffs

**For the Respondent:**

1. Alexander Y. Wong, Esq. – Liebert Cassidy Whitmore APLC

INTRODUCTION

The instant unfair employee relations practice for the consolidated charges arises under the Los Angeles County Employee Relations Ordinance ("Ordinance") and the Rules and Regulations ("Rules") of the Los Angeles County Employee Relations Commission ("ERCOM"). Pursuant to the Ordinance and applicable ERCOM Rules, Brent J. Rosenbaum was appointed to serve as the Hearing Officer.

A hearing was scheduled and held on July 26, 2018 and July 27, 2018 in the Kenneth Hahn Hall of Administration, Room 374-A. Both parties appeared and were afforded a full opportunity to present relevant evidence, examine and cross-examine witnesses, and argue the merits of their case. At the conclusion of the hearing, the parties agreed to submit closing briefs in support of their respective positions, which were received by the Hearing Officer on September 25, 2018. A transcript of the proceeding was provided to the Hearing Officer for consideration in preparing this Report.

### **UNFAIR PRACTICES CHARGES**

The Charges. UFC 003-12 & 005-12 as filed by the Association for Los Angeles Deputy Sheriff's ("ALADS" or "Charging Party"). on February 17, 2012 and March 8, 2012, alleges that the Los Angeles County Sheriff's Department ("Department" or "Respondent") engaged in unfair employee relations practices under Sections 12(A)1 and (A)2<sup>1</sup> as set forth as defined by the Employee Relations Ordinance of the County of Los Angeles, Ordinance 9646 and in violation of the Meyers-Milias-Brown Act ("MMBA"). Specifically, ALADS alleges the following charges:

UFC 003-12: On June 29, 2011 Deputy Harralson attended a "meet and confer" session as a member of ALADS Bargaining Unit 611 at the request of his ALADS representative John Urbach. Deputy Harralson received write-ups on in the Department's Performance Log on July 6, 2011 and July 13, 2011. On February 8, 2012, Deputy Harralson had his work schedule changed in violation of the seniority policy. The hereinabove referenced conduct was in retaliation for Deputy Harralson's concerted protected activity.

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<sup>1</sup> This is now Chapter 5.04 of the Employee Relations Ordinance.

UFC 005-12: As a member of ALADS Bargaining Unit 611, Deputy Kocisko met with Captain Duran and subsequently after his meeting with Duran, Deputy Kocisko was transferred from his position of Certified Flight Instructor ("CFI") to a line pilot. By taking these actions herein above alleged, Chief Grossman, Captain Duran and their subordinates engaged in anti-union animus and retaliation of this ALADS member's exercise of his concerted protected activity.

### **POSITION OF THE PARTIES**

#### **Charging Party's Position**

ALADS in representing Deputies Harralson and Kocisko, allege that the Department's conduct towards them was in violation of Sections 5.04.070<sup>2</sup> and 5.04.240 (A) (1)<sup>3</sup> of the County's Employee Relations Ordinance, and the Meyers-Milias-Brown Act.

By way of remedy, ALADS is requesting that Deputies Kocisko and Harralson be made whole in which includes a premium overtime remedy as well as compensation for work hours outside of the deputies' normal shifts, compensation for additional commuting time, and related expenses. The Department cease and desist from retaliation and discrimination. Additional relief in the form of electronic posting of work-related notices and that the Department, through

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<sup>2</sup> Section 5.04.070 states in part: "Employees of the county shall have the right to form join and participate in the activities of employee organizations of their own choosing for the purpose of representation of all matters of employee relations... No employee shall be interfered with, intimidated restrained, coerced, or discriminated against because of his exercise of these rights."

<sup>3</sup> Section 5.04.240 (A) (1) states: "It shall be an unfair employee relations practice for the county to interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this chapter."

their email system, electronically post ERCOM's decision; and any further action as the Hearing Officer may deem appropriate.

### **Respondent's Position**

The Respondent representative denied that they have engaged in any unfair employee relations practice and seek dismissal of the Charges. Respondents argue that the Charges are untimely because the Union filed it more than 180 days after it knew or should have known about any changes made by the County.

### **DISCUSSION AND ANALYSIS OF THE EVIDENCE PRESENTED**

Deputy Todd Kocisko (Kocisko) has worked for the Los Angeles County Sheriff's Department for thirty years and has been at the Aero Bureau division since 2003. He is a Deputy Sheriff helicopter pilot. Kocisko was a "F. T. O", which stands for Field Training Officer who would evaluate and instruct new deputies and bring them up to speed for the Department's expectations and policies. Kocisko became a C.F.I., Certified Flight Instructor in 2010.

Kocisko testified that Captain Louie Duran was assigned as the commanding officer in charge of the Aero Bureau operations in 2008. Kocisko stated through 2010 and into 2011 that he found himself being the unofficial spokesperson for the Aero Bureau members regarding the unfair practice of receiving overtime and the relocation of the crew rest facilities.

On May 18, 2011, Kocisko was told by Sergeant Dowling to see Lieutenant Wheat. Lieutenant Wheat told him to report to Chief Grossman's office for a meeting. At the meeting with Chief Grossman, Kocisko was told that Duran relayed to Grossman that there was a "disturbance in the workplace" and was going to refer this matter to Internal Affairs. Kocisko stated that he told Grossman that the meeting was regarding Duran's dismal rating in the

ALADS magazine and Duran had asked Kocisko what were his "bitches and gripes" with him as his captain.

Kocisko was told that pending the investigation, he was being transferred to County Services at the Rancho Los Amigos facility working in a different uniform and different shift.

Kocisko testified that sometime in June 2011, he met again with Chief Grossman, an unnamed Commander, and Commander Osborne who was taking notes regarding the unfair overtime practices, shift assignments and low morale. Kocisko further stated that Chief Grossman told him that there wouldn't be an I.A. investigation and he was returning to the Aero Bureau not as a flight instructor but as a line pilot.

On or around October 12, 2011 Kocisko receives a phone call from Chief Grossman and stated that after telling Grossman that he still isn't a C.F.I. again, Grossman replied "that at least you're flying."

Kocisko added that he was ultimately banned for 37 months from his C.F.I. duties and that it had a huge impact on his life. Kocisko stated that he went on his days off and personally paid for the two-day course to maintain his C.F.I. status and being up to-date on all training techniques.

Kocisko was brought back as a rebuttal witness and testified that even when there was a lull in training, Certified Flight Instructors were never returned to patrol on a permanent basis alluding to the disparate treatment he received from Captain Duran.

Kocisko added further that he never had to check in with his supervisors while he was I.O.D., "Injured On Duty" which illustrated to the disparate treatment that Deputy Harralson received while Harralson was I.O.D.

Kocisko read from ALADS Exhibit 31, Section 3-01/010.35 Rank which states in part, "In cases where there is an established training relationship, the Instructor or Training Deputy is responsible for performing the functions of command without regard to the relative ranks of

the involved personnel” to illustrate that Deputy Harralson was following proper protocol for being dismissed after his training was complete on June 22, 2011.

Keith Edey who has been with the Los Angeles County Sheriff's Department since 1987 and the Aero Bureau since 1998, testified that at an Aero Bureau meeting shortly after Captain Duran was in charge of the Aero Bureau in 2008, Duran said that he favored loyalty to him and that reflected in the way favorable job assignments, overtime, and promotions were given out.

Edey stated that Kocisko was basically the spokesperson for all the pilots and deputies at the Aero Bureau with regards to the issues of overtime, favoritism of job assignments, the reducing of the perquisites to be a pilot which were leading to an increase of crashing the aircraft. Edey added that Duran perceived Kocisko disagreeing with him as threatening him.

Edey further stated that he heard Captain Duran say that “those Kocisko's are troublemakers, we have to get rid of them. Todd is not any good.”

In a conversation with Sergeant Brick, Edey testified that Brick told him that Duran wanted to punish Kocisko by removing him as a flight instructor.

Dennis Harralson started with the Sheriff's Department in 1992 and transferred to the Aero Bureau in August 2008 and is currently a Sheriff's Deputy Observer.

Harralson testified that in 2011 he was tactical flight deputy and worked with Deputy Pat Morris who became a neighbor of his in an outside of Hesperia which is about 80 miles from his Long Beach station and worked P.M. shifts.

Harralson further added that Captain Duran pulled Harralson aside and told Harralson, “I just needed to make sure that you are on my team.” That loyalty talk that Harralson received from Captain Duran took it to mean loyalty to Duran personally over loyalty to the Department. Harralson stated that he pointed out to Duran that they wore the same shoulder

patches and that's who they should be loyal to and not a loyal to an individual, but to the Department.

Harralson stated that an e-mail dated May 19, 2011 from one of Harralson's supervisors named Sergeant Haughey, Exhibit 1 (ALADS), discussed the change in how the selection of shifts would be changing from being totally on seniority to a system of rotating shifts.

Harralson added that the system was changed from the way overtime was assigned changed from where there was a piece of paper scotch-taped up to where you had to be physically present at that moment it was posted to sign up for overtime.

In early June 2011, Harralson contacted ALADS to discuss this new practice of overtime allocation and talked to ALADS representative John Urbach, Harralson told Urbach that he would be the Aero's representative at a meet and confer session on June 29, 2011 after hearing that the other Aero deputies did not want to do this as they feared Duran and possible retaliation. Harralson stated that as a result of the new shift changes, he was assigned to the day shift.

ALADS Exhibit 2, dated July 6, 2011, Harralson Performance Log Entry, notes that on June 22, 2011, Deputy Harralson had a training session and left before the completion of his work shift and opted to leave the facility without first obtaining proper absence authorization. Harralson stated that the day in question he received one-on-one training with Deputy Mike Voge. When the training was over, Harralson added he asked Voge if there was anything further to do and Voge responded, "you're done, see you later."

Harralson testified that he went into the lobby and didn't see any sergeants around, so he filled out his slip accounting for his time and left. Harralson added that this was an established practice at the Aero Bureau.

Looking at ALADS Exhibit 26, Absence Request, Prior Approval, the approval signature on that slip appeared to be Sergeant Renteria for Harralson's training day of June 22,



2011. Harralson was approved on June 27, 2011. The meet and confer session was held on June 29, 2011.

On July 6, 2011, Harralson said that he met with Renteria with Renteria telling him that he had a piece of paper that Harralson had to see and stood at the door of the Operations Sergeants Office and ultimately refused to sign the Performance Log Entry.

Looking at (ALADS) Exhibit 26, page 3, Absence Request Prior Approval, Harralson testified that he had done on February 29, 2012 an Absence Request Slip for the same activity and was approved for the same situation and did not get a Performance Log Entry for that date.

The following is a chain of events with regards to Harralson.

1. Harralson files a formal grievance, Exhibit 3 (ALADS) on July 13, 2011 to appeal the Performance Log Entry of July 6, 2011 as it does not accurately reflect what happened.
2. Harralson receives a second Performance Log Entry, Exhibit 4 (ALADS) on July 13, 2011 for his outburst and refusal to follow simple instructions on July 6, 2011.
3. Harralson files a formal grievance, Exhibit 5 (ALADS) on July 13, 2011 to appeal the Performance Log Entry of July 13, 2011.
4. Harralson files a formal grievance, Exhibit 7 (ALADS) on July 13, 2011 regarding disparate treatment and discrimination and a continuing pattern of disparate treatment in his workplace.

Harralson testified that on July 18, 2011, that he went to his doctor and discovered his blood pressure is upwards of 180 over 135 and the doctor puts Harralson on I.O.D., "Injured On Duty" and would ultimately be returning to work sometime around January 15, 2012.

Just prior to returning to work in January 2012, Harralson had a conversation with a new sergeant, Steve Mills, and told Mills that he would like the P.M. shift, so he could carpool with Deputy Pat Morris and they could carpool and use Mills' economical car.



Harralson testified that he was working his desired shift for about three weeks in January 2012 when he received an email from Sergeant Renteria, (ALADS) Exhibit 10, dated February 8, 2012 stating effective immediately Harralson would be switched over to a day shift for monitoring issues which were never explained to Harralson.

Harralson was unfamiliar with the term monitoring but was familiar with the term "Performance Mentoring" where someone gets help or mentoring so they can perform to Department standards and get extra training when needed. Harralson added that there were no "mentoring" daily observation logs filed for him

Harralson stated that there were no changes in supervision or meetings with supervisors to discuss his monitoring. Harralson went on to state that he was spending extreme amounts of time and money to commute to his daytime job shift.

Department Exhibit 4, Sheriff's Department Formal Grievance dated July 27, 2011 shows that all the grievance meetings were postponed including the Step 1 meeting with a third-level supervisor as well as the Step 2 Executive Level process regarding Harralson's grievances due to Harralson going on IOD.

Harralson added that he had seen other deputies put their leave slips on their supervisors' desk and leave the facility without receiving a Performance Log Entry for the same Aero Bureau accepted procedure of when you can't find a supervisor to sign off.

Harralson further stated that he finally got back on P.M. shift in 2013 by way of contacting Chief Roberta Abner in 2012 and calling in a favor.

Harralson was brought back as a rebuttal witness and testified that when he received a "blocked call" on his phone he does not answer it and waits to see if the caller leaves a message. Harralson added that he never received a phone call from Renteria where the phone number was identified originating from the Aero Bureau, so he would not answer it. Harralson

further stated that he always replied to voicemails and did not receive an order from Renteria to call in every Monday.

Robert Renteria is a sergeant with the Los Angeles Sheriff's Department and has been employed with the Department for 24 years and has been with the Aero Bureau for almost eight years.

Renteria testified that a Unit Performance Log is not a form of discipline but more of written warning not to do something again. Renteria added that these logs may or may not go into an employee's permanent record or considered for an employee's performance evaluation.

In reviewing ALADS Exhibit 2, Renteria stated that Harralson left early prior to completing his full-duty shift that day and Renteria prepared the Performance Log on Harralson because he didn't obtain permission before his absence and that the Log was justified.

Renteria added that it was not acceptable under Department Policy for a deputy assigned to training to leave early without first obtaining pre-authorization from a supervisor. Renteria added that there might have been instances where this could occur but not when there were supervisors everywhere.

Renteria stated that he did speak with Captain Duran before issuing the Performance Log but was not directed to prepare it and was not aware at that time that there was going to be a meet and confer session between ALADS and the Department in late June or early July 2011.

In examining ALADS Exhibit 4, Renteria testified that when he tried to get Harralson to sign the first Performance Log, Harralson stood in the doorway and got agitated. Harralson wasn't screaming but his voice was raised. Renteria felt that Harralson wasn't being disrespectful. Renteria further stated that there was just "a back and forward, back and forward" about the need for Harralson to come into his office. Prior to issuing this Performance Log, Renteria did speak to Captain Duran.

Renteria testified that the notes in Department's Exhibit 7, were his notes regarding Harralson, so he could document the history of events if it became necessary. Renteria was made aware that the only people training on June 22, 2011 were Harralson and his training officer, Deputy Voge. Renteria did not try to contact Deputy Voge.

Renteria stated that he couldn't say for certain besides himself, where the other sergeants were on the day of the training and added that other deputies put slips into the drawer and he did not issue them Performance Logs for this behavior. Renteria added that he did have the option to have Harralson turn around and return to the station. Renteria testified that he did not order Harralson to come into his office and Harralson was not insubordinate. This testimony does not support the discipline that Harralson received.

Renteria stated that there wasn't any Internal Affairs investigation regarding the two log entries.

In reviewing ALADS Exhibit 17 which was Harralson's Personal Evaluation for the period in which he received the two Performance Log entries, Harralson either received "Very Good" or "Outstanding ratings. Renteria stated that he did not have any input into these evaluations.

Renteria stated that he believed if Harralson would have not left early that day without obtaining supervisor approval, he would have not had his schedule changed to Day shift.

Renteria added that he felt that the Performance Log entries were the initial start of Harralson's change to day shift assignments. On direct examination Renteria stated that Harralson probably would have not been transferred if it weren't for the UPL entries.

Under cross-examination it was pointed out that the new assignment schedule would have come out in mid-June which would have been at least a week before Harralson's slip of June 22, 2012 so Harralson's shift change would not have been due to his Performance Log entries of July 6 and July 13, 2011 respectively.

Michael Grossman retired in 2013 after forty years of service with the Los Angeles County Sheriff's Department with the rank of Chief of the Homeland Security Division. Grossman knew both Deputy Kocisko and Captain Duran.

Grossman learned about a conflict between Kocisko and Duran from a phone call from Duran and testified that he did not recall if Duran made any mention of the ALADS Captain survey. Grossman further added that since it was seven and a half years since the incident, he was trying to remember all the details but remembered that Duran told him that Kocisko had to go.

Grossman added that he met with Kocisko to discuss the issues regarding him and Duran and Grossman decided he would move Kocisko temporarily out of the Aero Bureau while things were sorted out. Grossman stated that Kocisko would be placed at a location closer to his house with his duty hours and days off remaining the same. To Grossman's knowledge, Deputy Kocisko was not docked pay nor was there was an Internal Affairs Bureau investigation started regarding the alleged actions of Deputy Kocisko.

Grossman testified that he did conduct an inquiry regarding Kocisko's interactions with Captain Duran and met with Duran, the Lieutenant, and the Sergeants and told them to do their jobs and manage the Unit. Grossman could not remember the details of his conversation with Kocisko and added that he saw no reason to transfer Kocisko, so he ordered Kocisko to return and remain at the Aero Bureau.

Grossman testified that he found out from a conversation with the Captain that Kocisko was no longer performing Certified Flight Instructor duties. Grossman said that Duran told him that Kocisko did not want to train supervisors who needed flight instruction and there was nobody else to train.

### Are UFC Charges 003-12 and UFC 005-12 Timely or Time Barred?

Commission Rule 6.01 provides, in part, that an unfair practice charge “shall be deemed untimely and subject to dismissal if filed with the Commission at its office in excess of one hundred eighty (180) days following the occurrence of the alleged act or acts on which the charge is based, or the date on which the charging knew or should have known of said conduct. This Rule (6.01) shall not be subject to the waiver requirements of Rule 6.13.” Under Commission Rule 6.13, the Commission or the hearing officer may waive time requirements in Rule 6 upon a showing of good cause.”

Section 12 of the County’s labor ordinance, codified as Section 5.04.240 (A) (1) of the County code provides that “It shall be an unfair employee relations practice for the county...to interfere with, restrain, or coerce in the exercise of the rights recognized or granted in this chapter.” Section 4 of the labor ordinance, codified at 5.04.070 of the Code, guarantees that “Employees of the county shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation of all matters of employee relations.” Both Deputies Kocisko and Harralson acted on behalf of their fellow Aero Bureau deputies. Deputy Harralson became involved in protesting the changes in the way, overtime, assignments, and shift were assigned.

Charging Party argues that **UFC Charge 005-12** is timely due to the fact that Deputy Kocisko first learned that his removal from CFI status was anything but temporary on October 12, 2011 during his conversation with Chief Grossman which made it 148 days to the March 8, 2012 filing. Well within the statute of limitations 180-day policy.

Department argues that the Continuing Violation Doctrine does not apply to this case. Under the Continuing Violation Doctrine, a violation within the statute of limitations period, may revive a violation of the same type. However, the latter conduct must stand on its own as an independent violation, without reference to the prior violation. In other words, there must

be a new, independently wrongful act that is not barred by the statute of limitations. (Rio Teachers Association (2011) PERB Decision No. 2155-M; County of Orange (2006) PERB Decision No. 1868-M.) Conduct that merely maintains a position or action taken outside the statute of limitations period does not establish a continuing violation. (County of Riverside (2011) PERB Decision No. 2176-M; Service Employees International Union, Local 1000 (2015) PERB Decision No. 2406-S.)

While Deputy Kocisko's temporary transfer from the Aero Bureau may be time barred, his knowledge of when he found out he would no longer be a CFI was within the 180-day statute and was filed timely.

The Department argues that **UFC Charge 003-12** is time-barred under ERCOM Rule 6.01. The record established that Sergeant Renteria issued the Uniform Performance Logs (UPL) on July 6 and July 13, 2011, and Deputy Harralson grieved both UPLs with ALADS assistance the day he received the second UPL, yet ALADS did not file Charge 003-12 until February 17, 2012 or 219 days later upon Deputy Harralson being returned to work from IOD leave.

The Department contends that Harralson was briefly allowed to pick and work his desired scheduled, this was erroneous and was promptly returned to day shift for monitoring purposes was a continuation of the Department's original decision made a year earlier rather an independent violation so accordingly, Harralson's claims are time-barred.

The Charging Party argues that Harralson's claims are timely as even if Harralson's return to day shift was not a new violation, it falls within the "Continuing Violation" doctrine.

The leading continuing violation doctrine case is *Richards v. CH2M Hill, Inc.*, where the California Supreme Court held that the doctrine may toll the statute of limitations, if the employer engaged in a series of continuing and related FEHA violations, and at least one of



those violations occurred within the one-year period. The doctrine also requires a showing of a *continuing violation*: (1) the conduct occurring within the limitations period is similar in kind to the conduct outside the period; (2) the conduct was reasonably frequent; and (3) the conduct had not yet become permanent. Both UFC Charge 003-12 and UFC Charge 005-12 clearly fall under this umbrella.

ERCOM applies the Wright Line test in Section 12 cases. In brief, the Wright Line test as applied to disputes involving the Ordinance requires that the Charging Party make prima facie showing sufficient to support the inference that protected conduct was a “motivating factor” in the County’s decision. Once this is established, the burden shifts to the County to demonstrate that the same action would have taken place even in the absence of the protected conduct. If the County’s asserted reasons for the adverse action are shown to be a pretext to mask prohibited conduct, the County has failed to meet its burden.

In order to prove its prima facie case, ALADS must show:

1. That the activity being exercised is a protected activity. In the case of UFC 003-12, this was a case of the Charging Party participating in a “Meet and Confer” on June 29, 2012 with regards to shift and a rotating schedule change, which is a protected activity. The schedule changes are within the scope of mandatory bargaining. In the case of UFC 005-12, Kocisko interacted with his supervisors to improve the working conditions for Aero Bureau members with regards to the rest area as well as his interaction with Captain Louie Duran in discussing the ALADS Captains’ Survey.
2. That the employer had knowledge of the activity. Testimony demonstrated that the Department was aware of ALADS intent to bargain regarding the shift changes and conditions of the Aero Bureau’s rest area. The Department did not make a contention that Harraison and Kocisko did not engage in protected activity.
3. That the employer took adverse actions against the employees. The close temporal proximity of the Department’s conduct to those actions also raises a reasonable inference of anti-union animus. ALADS witness Deputy Keith Edey’s undisputed testimony that Captain Duran had a desire to get rid of Deputy Kocisko and his twin



brother as Captain Duran believed that the Kocisko brothers were after him and that Captain Duran did similar things to other deputies at the Aero Bureau (Tr. Vol 1 pp. 157:23-159:14). According to Edey's testimony, Captain Duran first indicated that he wanted to get rid of the Kocisko brothers and others who weren't first loyal to him.

Deputy Harralson spoke to Sergeant Anderson and other supervisors that he was going to appear on behalf of ALADS for the meet-and-confer session on the issues of scheduling and overtime, was denied his bid for the afternoon shift, participated in the meet-and-confer session and received his first two UPL entries of his career in the Aero Bureau.

4. That the employer's actions were motivated by the protected activity. ALADS would have to demonstrate that the Department had removed Harralson from his preferred shift and put him on "monitoring", not "mentoring" was due to his demanding of a "meet and confer". As argued by the Charging Party, the term is not used by the Department in an employment setting. (Tr.1:212). The Department transferred Kocisko and took away his Certified Flight Instructor status due to the fact that he participated in a "meet and confer" with Duran regarding working conditions and the ALADS Captain Survey.

Under Wright Line, since it is concluded that the Charging Party has established its *prima facie* case, Respondent has the burden to show it would have taken the same action with regards to Kocisko and Harralson.

The absence of the decision-maker, Captain Duran to deny and/or refute the allegations diminished the Department's ability to meet its burden of proof by a preponderance of the evidence.

The Department did not provide testimony or evidence that other Aero Bureau deputies had UPLs for the same time slip activity that Harralson engaged in and incurred the same disciplinary consequences.

With Deputy Kocisko, there was no evidence provided that Kocisko did anything to warrant his removal as a CFI. Kocisko's personal evaluations were either Outstanding or Very Good and there was no direct testimony to prove that he had a problem training supervisors who were in need of additional flight instruction, which would have contradicted Deputy Edey's testimony, or a lull in training pilots would have caused his removal at the time.

As Deputy Edey was not on Captain Duran's list of deputies that Duran wanted out of the Aero Bureau, Deputy Edey's testimony was credible and consistent even under cross-examination.

There is the question of Deputy Harralson's monitoring. Renteria testified, "the monitoring was just making sure he is showing up to his work position at the time he is supposed to be there and doing what he is supposed to be doing." (Tr. 2:77). One would have to question why a Deputy with his last several personal evaluations rated Outstanding or Very Good required monitoring which a term or policy isn't even used by the Sheriff's Department.

The Charging Party argued the Harralson's second UPL uses language referring to Deputy Harralson's "outburst" that bordered on "insubordination." Testimony provided by Sergeant Renteria suggested a different tone of the events by testifying "Deputy Harralson wasn't happy. He wasn't screaming. He got a little escalated and would only come to the threshold of the door, and I didn't want to conduct business in the main lobby." (Tr. 2:21). Finally, during cross-examination, Sergeant Renteria went further, going as far to testify that "I never said he was insubordinate." (Tr. 2:51-52).

From the foregoing, it is concluded that due to the close temporal proximity of the events described above, ALADS has thus made a *prima facie* showing that protected union conduct played a motivating part in the Department's decision to transfer Deputy Kocisko and remove his status as a Certified Flight Instructor and change Deputy Harralson's schedule and put him under monitoring as well as remove him from his preferred shift in January 2012.

## FINDINGS OF FACT<sup>4</sup>

### *Charging Party's (Dennis Harralson) UFC- 003-12*

1. The Union represents Sheriff's Deputies employed by the Department in Bargaining Unit 611.
2. Charging Party began his employment with the Sheriff's Department in April 1992.
3. The Charging Party's performance evaluations from: August 26, 2008 through August 25, 2014; the Charging Party was rated "Outstanding" or "Very Good."
4. May 19, 2011, the Charging Party receives an email from Sergeant Haughey announcing a change in how shifts and assignments are going to be on a rotating shift schedule, with first pick being based on unit seniority.
5. June 8, 2011, the Charging Party discusses the new policy change with his Sergeants and is told that it is Captain Duran's decision.
6. On June 8, 2011 the Charging Party goes to ALADS and speaks to his representative, John Urbach to protest the changes.
7. On about June 16, 2011, the Charging Party finds out that he is now assigned to the Day shift even though he has bid for the Afternoon shift.
8. On June 22, 2011, the Charging Party was in a training session that ended before his shift was over and he left to go home after filling out a leave form.

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<sup>4</sup> The facts are largely undisputed. The Charging Party called Deputy Dennis Harralson (Harralson), Deputy Todd Kocisko (Kocisko), and Deputy Keith Edey (Edey), and Respondent called Sergeant Robert Renteria (Renteria), and Retired Chief Michael Grossman (Grossman). Charging Party submitted 31 exhibits and Respondent submitted 9 exhibits, all of which were received in evidence.

9. On June 29, 2011, there is a "Meet and Confer" session between Department representatives and the Charging Party.
10. The Charging Party receives a Performance Log Entry, Exhibit 2 (ALADS), on July 6, 2011 for misconduct; for leaving work without permission.
11. The Charging Party files a formal grievance, Exhibit 3 (ALADS) on July 13, 2011.
12. The Charging Party receives a second Performance Log Entry, Exhibit 4 (ALADS) on July 13, 2011; for being disruptive, discourteous, and arguing about being ordered into the Unit Commander's Office to discuss the July 6, 2011 Performance Log entry given to him prior.
13. The Charging Party files a formal grievance, Exhibit 5 (ALADS) on July 13, 2011 to appeal performance log entry dated July 13, 2011.
14. The Charging Party files a formal grievance regarding Disparate Treatment, Exhibit 7 (ALADS) on July 13, 2011
15. On July 21, 2011, the Charging Party goes on "Injured On Duty" (IOD) status.
16. On January 15, 2012, the Charging Party returns to work on his preferred shift.
17. On February 8, 2012, The Charging Party receives notice of his change in work schedule, Exhibit 10 (ALADS) which was in violation of the Department's seniority policy.

**Charging Party's (Todd Kocisko) UFC- 005-12**

1. The Union represents Sheriff's Deputies employed by the Department in Bargaining Unit 611.
2. Charging Party began his employment with the Sheriff's Department in 1988. In 2003, he became a Certified Flight Instructor.
3. The Charging Party's last 17 years of performance evaluations were: 16 were rated "Excellent" and one (1) was rated "Very Good"
4. On May 9, 2011, the Charging Party takes two passengers on rides following Aero Bureau protocol.

5. Within several days following the May 9, 2011 ride-along, the Charging Party has a closed-door conversation with Captain Duran regarding the Captain's poor rating in the ALADS magazine evaluation of ratings for the Sheriff's Department Captains.
6. On May 18, 2011, The Charging Party has a meeting with Chief Grossman and is told that pending the investigation, he is being transferred to County Services at the Rancho Los Amigos facility resulting in a change of work site, job duties, work shift, uniform and is no longer a Certified Flight Instructor (CFI).
7. On or around October 12, 2011, the Charging Party receives a phone call from Chief Grossman and states to the Chief that he hasn't returned yet to his CFI duties, Grossman responds; "that at least you are still flying."
8. On or around January 1, 2012, the Charging Party contacted Chief Grossman to inquire if the transfer would be lifted and the Charging Party would resume his responsibilities as a Certified Flight Instructor and is told that the change is not temporary but permanent.
9. During July 2014, the Charging Party is returned to Certified Flight Instructor status after 37 months. Captain Duran is no longer the Aero Bureau Captain.

### CONCLUSIONS

Based upon the aforementioned evidence, the Hearing Officer concludes that:

1. The Charging Party's claims are timely and not time-barred with regards to consolidated charges UFC 003-12 and UFC 005-12 under the "Continuing Violation Doctrine."
2. Respondent, County of Los Angeles, Sheriff's Department conduct towards Deputies Harralson and Kocisko violated sections 5.04.070 and 5.04.240 of the Employee Relations Ordinance by engaging in Anti-Union Animus and/or Retaliation when the Department transferred Deputy Kocisko and stripped him of his CFI status as well as Deputy Harralson when he was reassigned to day shift shortly after their respective "meet and confer" sessions as ALADS representatives.

### RECOMMENDATIONS

The Hearing Officer further recommends that the Employee Relations Commission adopt the following orders:

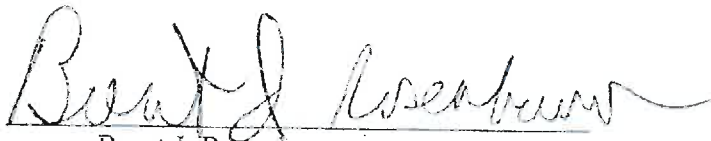
1. That the Department cease and desist from violating section 5.04.070 of the Employee Relations Ordinance which states in part: "No Employee shall be interfered with, intimidated, restrained, coerced, or discriminated against because of his exercise of these right." and section 5.04.240 Unfair Labor Relations Practice Designated – Corrective Action.
2. That the Department compensate Deputy Harralson at the half-time rate for every hour spent working outside of his regular shift which began in January 2012 and including Harralson's preferred assignment if he was eligible in any of the rotations until January 2013 when Harralson chose Brackett. The parties shall make a good faith attempt to resolve the amount of the compensation.
3. That the Department reimburse Deputy Kocisko for his out-of-pocket expenses to retain his C.F.I. certification and restore his personal, vacation, etc. days used to attend that training.
4. That the Department compensate Deputy Harralson at the overtime rate for his additional commuting time and direct the parties to make a good faith attempt to resolve the amount of the expense.
5. That the Department compensate Deputy Harralson for his additional commuting expenses using the parameters set in item No. 2.
6. That the Parties make a good faith attempt and come up with a "reasonable" number for an award of punitive damages.
7. Per ERCOM procedures, the Los Angeles County Sheriff's Department is directed to distribute a posting delineating the violations of sections 5.04.070 and 5.04.240 of the Employee Relations Ordinance, indicating that the Department engaged in Unfair Employee Relations Practice when it engaged in retaliation and discrimination as delineated in this case. That

posting be distributed electronically to all Department employees through the Sheriff's Information Bureau.

Dated this the 9<sup>th</sup> day of January 2019

Respectfully submitted.

By:

A handwritten signature in cursive script, appearing to read "Brent J. Rosenbaum", written over a horizontal line.

Brent J. Rosenbaum  
Hearing Officer



## PROOF OF SERVICE BY ELECTRONIC MAIL ONLY

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 January 9, 2019, I served the within HEARING OFFICER'S REPORT in the matter of UFC 003-12 & UFC 005-12 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 Email: <a href="mailto:will@pslglawyers.com">will@pslglawyers.com</a>	Gregory P. Nelson, Commander Email: <a href="mailto:GPNelson@lasd.org">GPNelson@lasd.org</a>
Adrianna E. Guzman Email: <a href="mailto:aguzman@lcwlegal.com">aguzman@lcwlegal.com</a>	Joel Barnett, Captain Email: <a href="mailto:jl Barnett@lasd.org">jl Barnett@lasd.org</a>
Alex Y. Wong Associate Email: <a href="mailto:awong@lcwlegal.com">awong@lcwlegal.com</a>	Mahdi A. Mohamed Email: <a href="mailto:mamohame@lasd.org">mamohame@lasd.org</a>

Executed on January 9, 2019 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