

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)	
)	
ASSOCIATION FOR LOS ANGELES)	
DEPUTY SHERIFFS)	
)	
Charging Party)	UFC 036-13
)	
v.)	
)	
COUNTY OF LOS ANGELES; COUNTY)	
OF LOS ANGELES OCCUPATIONAL)	
HEALTH PROGRAM; LOS ANGELES)	
COUNTY SHERIFF'S DEPARTMENT)	
)	
Respondent)	
)	

DECISION AND ORDER

This decision and order pertains to proceedings that were based on a charge filed with the Los Angeles County Employee Relations Commission on September 9, 2013, by the Association for Los Angeles Deputy Sheriffs (ALADS). ALADS filed an Unfair Practice Charge, alleging that the County of Los Angeles, the County of Los Angeles Occupational Health Program (OHP), and the Los Angeles County Sheriff's Department, respectively and collectively, violated Section 12, subsections (a)(1) and (3) of the Employee Relations Ordinance.¹

The hearing for the Unfair Practice Charge # 036-13 commenced on May 18, 2017, with Samuel Reyes as the Hearing Officer. Both parties were afforded full opportunity to present relevant evidence, examine and cross examine witnesses, and other arguments. A number of specific cases involving deputies were presented, where those deputies, due to medical conditions, were precluded from their duties as bus drivers, until they provided required information. The cases all involved sleep apnea as the concerning medical condition.

¹ The appropriate section is actually 5.04.240. The old ordinance had the UPC sections in the 12 series, the new ordinance has it in the "5" series.

The main issue was ALADS claim that the Sheriff's Department, OHP, and the County unilaterally and without bargaining with the Union added requirements for deputy sheriffs to obtain and maintain their skill bonus pay as bus drivers with requirements that were more medically intrusive and restrictive than requirements applicable under California and federal law. Respondents also argued the charge was untimely and that the only change at issue was the setting of medical standards, a subject that was within the purview of the Director of Personnel and the Civil Service Commission, and thus outside the scope of bargaining.²

OHP is a County unit responsible for oversight of compliance with medical requirements and for oversight of contract clinics, which conduct medical examinations for County employees. Effective January 1, 2013, OHP implemented new countywide guidelines for employee medical testing, including guidelines for commercial driver's license medical examinations. A new questionnaire was created by OHP Medical Director Robert Goldberg, M.D., in consultation with other OHP physicians and County risk management personnel. As established by the uncontradicted testimony of Dr. Carrigan, OHP physicians concluded that the questions contained in DMV Form DL-51 were inadequate to obtain the information required to assess employees' fitness to drive commercial vehicles.

Regarding timeliness, the Hearing Officer ruled that the case was not filed in a timely manner. The union was informed of the change by a deputy on January 23, 2013 and again in March 2, 2013. The Unfair Practice charge was filed on September 9, 2013 exceeding the 180 day requirement for timely filing. The Charging Party argued that the case was timely because Respondents failed to provide written notice about a matter within the scope of representation.

As to the failure of the Department, OHP, and the County to negotiate with ALADS pertaining to the medical standards for employees, the Hearing Officer opined that Los Angeles County Civil Service Rule 9 and specifically Rule 9.06, subdivision (A) states that the Director of Personnel shall establish medical standards for county employment and goes on to describe the review and appeal of the decision. The Hearing Officer also cited Government Code section 3500, subdivision (a) and the holding of *American Federation of State, County, and Municipal Employees, Local 119 v. County of Los Angeles* (1975) 49 Cal.App.3d 356 case makes clear that county charters and local ordinances enacted pursuant to the MMBA control in case of conflict, both schemes should be harmonized whenever possible. Additionally, the Hearing Officer cited the sections of the Los Angeles County Code under 5.04.090 that define the scope of consultation and negotiation. The Hearing Officer opined that the establishment of medical standards falls within the "merits, necessity, or organization of any service or activity" exclusion from bargaining contained in Government Code section 3504, as such activity is analogous to the type

² Under the current structure, this would actually be the Director of Human Resources

of general managerial policy decisions found by courts to fall outside the duty to negotiate before implementation.

The Hearing Officer recommended the following to the Commission:

- 1) That the filing of the Unfair Practice Charges be deemed untimely as they filed more than 180 days from the date the Union became aware of the practice.
- 2) That the Commission dismiss Unfair Practice Charge 036-13 in its entirety.

ORDERS


IT IS HEREBY ORDERED that the Hearing Officer's Report and Recommendation be adopted in part.

IT IS HEREBY ORDERED the Employee Relations Commission has determined that the filing of Unfair Practice Charge 36-13 was timely.


IT IS HEREBY ORDERED that the County of Los Angeles, the County of Los Angeles Occupational Health Program, and the Los Angeles County Sheriff's Department did not violate Section 12 (a)(1) and (3) of the Employee Relations Ordinance by unilaterally, and without bargaining with the Union, adding requirements for deputy sheriffs to obtain and maintain their skill bonus pay as bus drivers, which requirements are more medically intrusive and restrictive than requirements applicable under California and Federal law.

IT IS HEREBY ORDERED that Unfair Practice Charge 36-13 be dismissed in its entirety.

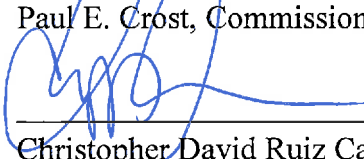
Dated at Los Angeles, California: February 26, 2018



Anthony Miller, Chair



Paul E. Crost, Commissioner



Christopher David Ruiz Cameron,
Commissioner

PROOF OF SERVICE BY ELECTRONIC MAIL ONLY

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On February 27, 2018, I personally served the Decision and Order in the matter of UFC 036-13 on the 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:

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Executed on February 27, 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