

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

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EMPLOYEE RELATIONS
COMMISSION
COUNTY OF LOS ANGELES

In the Matter of)	
ASSOCIATION FOR LOS ANGELES)	
DEPUTY SHERIFFS (ALADS))	
Charging Party)	
and)	REPORT
LOS ANGELES COUNTY SHERIFF'S)	
DEPARTMENT (LASD))	
Respondent)	
<u>UFC Nos. 043-13 & 014-15 Cons.</u>)	

APPEARANCES

For Charging Party:

Richard Shinee
Green & Shinee, P.C.

For Respondent:

Neel Granshyam
Gutierrez, Preciado & House, LLP

BACKGROUND

This proceeding is based on two Unfair Labor Practice Charges filed by ALADS on October 4, 2013 and September 14, 2015 that were consolidated for hearing. Sara Adler was appointed as the Hearing Officer. Hearings were held on March 1 and March 7, 2017. Richard Shinee, Esq. represented ALADS. Neel Ghanshyam, Esq. represented LASD. The parties submitted closing briefs. After receiving the briefs, I reopened the record to receive additional documents submitted at my request. The matter was considered fully submitted upon my receipt of the additional documents.

Both UFCs made the allegation that:

"Within 180 days immediately preceding the filing of this unfair labor practice charge, the Department unilaterally changed its past and consistent practice of over 25 years relating to the manner in which Bargaining Unit 611 members are suspended without pay in criminal investigations. It has been the Department's past and consistent practice of over 25 years that a suspension without pay would not take effect until such time as felony criminal charges were filed against the Bargaining Unit 611 member. The Department has unilaterally changed its practice to now suspend certain Bargaining Unit 611 members without pay on the basis of misdemeanor criminal charges being filed." (UFC 043-13)

SUMMARY OF THE EVIDENCE

ALADS introduced undisputed evidence that between 1996 and 2004, no member of Bargaining Unit 611 had received a Notice of Proposed Suspension (without pay) pursuant to Civil Service Rule 18.01A (Notice) for being criminally charged with a misdemeanor. LASD did not dispute that from 2004 forward, at least 220 Deputies had been charged with misdemeanors. Beginning in October, 2004 1 Deputy was given a Notice and resigned prior to the expiration of the 180 time limit to file a UFC. The next Deputy to receive a Notice was in 2009 that Notice was withdrawn after a *Skelly* hearing¹. A 3rd Deputy received a Notice in July, 2012. Two other Deputies received Notices in September, 2013 which led to the October, 2013 UFC being filed. 3 more Notices were then served on Deputies in September, 2015 leading to the September, 2015 UFC being filed. Following that filing, 2 more Deputies received Notices after being charged with misdemeanors.

On behalf of Respondent Cmdr. Alisa Ault testified that she served as Captain of the Internal Affairs Bureau (IAB) from 2008 to 2014 and she "believes" or "recalls" signing an estimated 10-15 Notices for Deputies charged with misdemeanors in those years, but she did not provide many specifics. Captain Nelson of the LASD Bureau of Labor Relations testified that members of other

¹ A Notice following a criminal investigation (not charges) in 2010 is irrelevant to these proceedings.

bargaining units, including some in LASD, have been given Rule 18.01 suspensions when charged with misdemeanors.

Civil Service Rule 18.01 A is non-disciplinary and provides in relevant part:

"Subject to such appeal rights as provided...an employee may be suspended by the appointing power for up to and including 30 days... Where the charge upon which the suspension is the subject of a criminal complaint or indictment filed against such employee, the period of suspension may exceed 30 calendar days and continue until, but not after, the expiration of 30 calendar days after the judgment of conviction or acquittal of the offense charged in the complaint or indictment has become final."

Two of the Deputies who had been subjected to Rule 18.01 suspensions for misdemeanor charges testified that there were severe economic and emotional consequences to them and their families as a result of the suspensions without pay. In one case the charges were eventually dropped. In the other the Deputy was acquitted.

DISCUSSION

It seems helpful to begin with a clarification of what this dispute is NOT about:

1. ALADS is the exclusive bargaining representative for Bargaining Unit 611.
2. Civil Service Rule 18.01 is permissive and does not mandate a suspension.
3. When a Civil Service Rule 18.01 suspension is imposed by an appointing authority, the Rule does not mandate that the suspension be without pay.
4. LASD routinely imposes a Rule 18.01 suspension without pay on Deputies charged with felonies.
5. LASD had no written policy regarding Rule 18.01 suspensions for Deputies charged with misdemeanors.
6. No notification of a change of policy was ever sent to ALADS regarding any change in policy over suspensions without pay of members of Bargaining Unit 611 charged with misdemeanors.
7. ALADS was never given the opportunity to meet and confer over the suspension without pay of members of Bargaining Unit 611 who were charged with misdemeanors.

The Union argues that there was a past practice concerning a term and condition of employment for the members of Bargaining

Unit 611 that was unilaterally changed by LASD without giving ALADS an opportunity meet and confer as required by the MMB and Section 12(A)(1) of the County's Employee Relations Ordinance.

Respondent argues that there was no such past practice. It further argues that even if there was such a past practice, the UFCs here in issue were untimely filed and must be dismissed pursuant to ERCOM Rule 6.01. Finally, Respondent argues that review of Rule 18.01 suspensions is vested solely in the Civil Service Commission.

The parties agree that the generally accepted criteria for establishing a past practice is that the practice was unequivocal, clearly enunciated and acted upon, and readily ascertainable as a fixed and established practice accepted by the parties.

There is no real doubt that the practice existed prior to 2004 when no Deputy received a Rule 18.01 suspension despite numerous Deputies being charged with misdemeanors. The question then becomes whether or not ALADS was on notice of a change in practice due to the issuance of a Rule 18.01 suspension Notice to Deputies in 2004², 2009³ or 2012.

² The fact that that Deputy resigned is irrelevant.

³ The fact that it was withdrawn doesn't determine the reason it was withdrawn after a *Skelly* hearing even if the Deputy's

While it is fundamental that a past practice must be consistent to find that it has become a term or condition of employment, it is not required that there exist absolutely no exceptions. In the absence of any notice of a unilateral change in practice being given to ALADS, the exceptions to the established past practice must be sufficient to put ALADS on notice of the change.

Prior to the 2013 Notices being sent, there were single Notices sent several years apart, despite the much greater number of Deputies who had been charged with misdemeanors during those years. ALADS persuasively argues that it was not until the 2013 Notices were sent that it was clear that there was a change in practice and that the prior Notices might represent that change rather than being outliers. UFC 043-13 was filed within 180 days of the 2013 Notices being sent. Cmdr. Ault's testimony was insufficient to prove that ALADS should have known earlier as she provided almost no specific details regarding the cases she recalled having signed off on even though those details were available to LASD. Captain Nelson's testimony regarding the practice in other bargaining units does not shed light on the terms and conditions of this bargaining unit. Although not discussed by either party, it appears that the second UFC, UFC 014-15, was a response to the hiatus in ERCOM processing of UFCs.

counsel argued that it violated existing practice as other arguments were also made according to Counsel's testimony.

Substantial evidence supports a finding that there was a past practice of not suspending members of Bargaining Unit 611 without pay when charged with a misdemeanor and that these UFCs were timely filed when ALADS reasonably could have known of the unilateral change of practice.

LASD's final argument, that only the Civil Service Commission has jurisdiction over Rule 18.01 suspensions, is also unavailing to defeat ALADS' allegations. The functions of the Civil Service Commission and ERCOM are quite different as they relate to Rule 18.01 suspensions. Only the Civil Service Commission has jurisdiction over each individual's Rule 18.01 appeal, but only ERCOM has jurisdiction over a claim of Respondent's failure to meet and confer (even over Rule 18.01 suspensions) such as the allegation here. A suspension may be upheld by the Civil Service Commission as appropriate, but also be found to be in violation of the very different criteria in the Employee Relations Ordinance.

CONCLUSION

LASD failed to give ALADS an opportunity to meet and confer over a unilateral change effecting wages, hours and working

conditions in violation of Section 12(A)(1) of the Los Angeles County Employee Relations Ordinance.

RECOMMENDATION

It is the recommendation of the Hearing Officer that ERCOM approve and adopt the following Order:

1. LASD is ordered to cease and desist from implementing this change of practice until it gives ALADS the opportunity to meet and confer over the suspension without pay of members of Bargaining Unit 611 who have been criminally charged with misdemeanors.
2. All members of Bargaining Unit 611 who have been suspended without pay under this unilaterally implemented policy shall be made whole as to lost wages and benefits.

DATED: August 14, 2017

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sara Adler".

Sara Adler, Hearing Officer

PROOF OF SERVICE BY MAIL

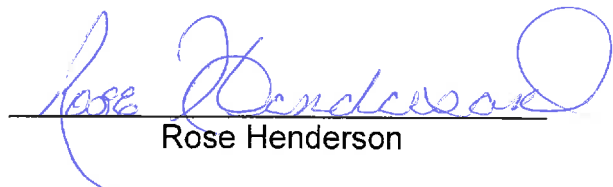
I, Rose Henderson declare under penalty of perjury as follows:

On August 15, 2017, I personally served the HEARING OFFICER'S REPORT in the matter of UFC 043-13 & UFC 014-15 (consolidated) on the parties listed below by placing a true copy thereof in a sealed envelope for collection and mailing in the Los Angeles County Kenneth Hahn Hall of Administration Mail Room addressed as follows:

Richard A. Shinee Green & Shinee 16055 Ventura Blvd., Suite 1000 Encino, CA 91436	Gregory P. Nelson, Captain Los Angeles County Sheriff's Dept. 211 W. Temple Street Los Angeles, CA 90012
Neel Ghanshyam, Esq. Gutierrez, Preciado & House 3020 East Colorado Blvd. Pasadena, CA 91107	Mahdi A. Mohamed Advocacy Unit-LASD 4900 S. Eastern Ave., Suite 101 Commerce, CA 90040

It is the practice of said mail room to place such correspondence with postage thereon fully prepaid in the United States Postal Service the same day they are received in the mail room.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 15, 2017 at Los Angeles, California.


Rose Henderson