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Hearing Officer

LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 119 Charging Party and COUNTY OF LOS ANGELES, DEPARTMENT OF PERSONNEL Respondent	UFC 1.18

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

Background

On June 1, 1972, the American Federation of State, County and Municipal Employees, Local 119, hereinafter called the Union, filed a charge with the Los Angeles County Employee Relations Commission, hereinafter called the Commission, alleging that Los Angeles County, Department of Personnel, herein called the Respondent, has engaged in and is engaging in unfair employee relations practices within the meaning of Section 12, subsections (a)(1) and (3) of the Employee Relations Ordinance (Ordinance 9646), as more fully described below. Following investigation by its Executive Secretary, the Commission issued a Notice of Hearing dated July 3, 1972, naming the County's Department of Personnel as Respondent. The undersigned was appointed as hearing officer in this matter on June 30, 1972. On July 13, 1972, counsel for

Respondent filed a motion for a bill of particulars, which was referred to the undersigned for appropriate disposition. On July 21, 1972, the undersigned ruled on the motion, granting it in part only, extending the time for filing answer, and rescheduling the hearing to August 22, 1972. After the bill of particulars was supplied, Respondent filed its answer to the charge on August 8, 1972, denying, in substance, the commission of unfair employee practices within the meaning of the Ordinance and setting forth several affirmative defenses. A hearing was held on the issues thus joined on August 22, 1972, at which time the parties were afforded full opportunity to present testimonial and other evidence relating to the charge. Thereafter the parties filed briefs and the hearing was closed on September 25, 1972.

Upon the entire record, my observation of the witnesses, and the briefs filed by the parties, I make the following findings, conclusions and recommendations.

The Facts

The Union was certified on February 24, 1970, by the Commission as the majority representative of County employees in the Automotive and Equipment Maintenance Men Employee Representation Unit. Thereafter the Union negotiated terms of an agreement with the then County's Employee Relations Administrator, Robert L. Craig. These negotiations resulted in a Memorandum of Agreement reached by the parties on September 17, 1970, which was to be submitted to the Board of Supervisors on or before October 1, 1970, for its approval. Presumably, it was approved by the Board. The same procedure was repeated in 1971: an agreement was negotiated between the Union and Craig on May 13, 1971, and it was submitted jointly to the Board which presumably approved it.

During the negotiations both in 1970 and 1971 the Union claimed that certain of the employees whom it represented were

improperly classified and requested that they be reclassified. The precise nature of this claim and demand by the Union is in dispute. According to Craig, in 1970 the Union inquired about the progress of a Countywide occupational study which, the Union understood, the County had previously undertaken and which in part encompassed the jobs within the Equipment Maintenance Man series (e.i., Senior Equipment Maintenance Man, Equipment Maintenance Man, and Equipment Maintenance Helper, herein respectively called EM Series, Senior EM, EM and EM Helper). Craig checked and found that the study had not yet been undertaken. Craig proposed that employees in the disputed classifications be given an increase 50% higher than that offered other employees (8-1/4% rather than 5-1/2%) and agreed to undertake an occupational study of the EM Series as part of a Countywide study recently undertaken involving all County classifications. No time limit was set for this study. According to the Union representative,Fiering, the Union pressed for the adjustment of certain specific grievances where it claimed that some employees were improperly classified and were performing work of a higher classification. He stated that the County "probably had some problems with respect to the EM Series and also the Power Equipment Helper Group of classes" and that Craig explained that the County did not have time to audit the specific allegation but proposed to compensate the people working out of classification by giving them an increase of 2-1/2% extra "to keep them quiet" until the County could restudy their classification. According to Fiering, following the 1970 negotiations, in accordance with the provisions of a letter from Craig dated May 27, 1970, he met with personnel representatives of the various departments and worked out a settlement of "some of the inequities." This involved, to the extent relevant to this proceeding, the upgrading of a number of certain Power Equipment Repair Men Helpers.

The issue of employees working at a higher level than their classification was again raised during the 1971 negotiations. According to Craig, the Union renewed its request for the County to complete the Countywide classification study of the EM Series. The Union was concerned over the delay of the general Countywide audit of classifications which might take several years and asked that the study of the classifications in which it was interested be completed earlier. Accordingly, during the course of the 1971 negotiations Craig undertook to have the study of the EM occupation completed prior to July 1, 1972, and memorialized this undertaking in a letter to the Union's attorney, March, dated May 20, 1971. The Union's version is essentially the same to this point, but there is dispute as to the nature of the Union's demand which Craig accepted.

March testified that Craig's offer was:

> ..."that there would be a study made in response to our demand of all jobs.
>
> "Our demand, which is Joint Exhibit 7, was to the effect that wage inequities and reclassification be subject to the grievance procedure and arbitration, that Management make available to the Union all necessary information so that there can be joint intelligent discussion of such problems...." (Transcript, p. 35 l. 1-7).

Bearing on this issue, Craig testified that during the principal 1971 negotiations the Union had proposed that the County agree to negotiate regarding classifications, subject to grievance and arbitration procedures[1/] and that he had rejected such proposal, basing such rejection on his belief that exclusive jurisdiction with reference to classification matters lies with the Civil Service

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1/ The Union proposal reads as follows:

ARTICLE XIII - RECLASSIFICATION

Section 1. Request for job reclassification shall be subject to the grievance procedure and arbitration.

Commission and that he has no authority to negotiate in that regard. In view of this position, it is evident that when Craig agreed to review the classifications of the EM Series he did not intend to agree to do it within the scope of the Union's demand as expressed by March and that if March thought so, he was mistaken.

March further testified that at the conclusion of the 1971 negotiations, when Craig stated to him that Craig would incorporate the undertaking regarding the classification study in a letter, March said, "You know, we expect to be involved in this" and Craig responded, "Don't worry, you will be." Union Steward, McKinney, who was present at the negotiations, testified that there was agreement that a study of the EM classification would be made by the County, that he did not know whether Craig or the mediator, Kotin, brought it up; that the Union accepted the idea, and that nothing was said whether such study would result in wages going either up or down. McKinney did not testify regarding March's conversation with Craig described above. Craig testified that he did not recall March saying that the Union expects to be involved or his reply, don't worry about that. In view of March's positive testimony that he made the statement, and in view of Craig's failure to contradict such testimony, I find that the conversation happened as March testified. However, I find that March's interpretation of the conversation and Craig's promise is not in accord with what Craig had in mind. Boiled down, March believed that Craig had agreed to negotiate with the Union about the classifications after the Respondent had completed its classification study. But, as noted above, the parties had just concluded

negotiations for an agreement in which the Union had set forth a demand that reclassification shall be subject to negotiation and Craig had rejected it as beyond the scope of his authority. Accordingly, it is manifestly implausible that Craig would turn around and agree to negotiate regarding classification as March testified. This conclusion is further buttressed by the reading of the first paragraph of Craig's letter, [redacted], which reads as follows:

> "Pursuant to an understanding reached in recent negotiations, we advise that our study of the Equipment Maintenance Man occupation will be completed prior to July 1, 1972. Before we make our recommendations to the Civil Service Commission, we will meet with your organization and present the basic data pertinent to the study and the reasoning we pursued in reaching our conclusions."

Viewing March's testimony in light of the immediately prior negotiations and the confirming letter of May 20, 1971, I find that, irrespective of what March said, Craig believed that he agreed to make known to the Union the results of Respondent's study after it had been completed and prior to its submission for approval and implementation by the Civil Service Commission and did not agree to make the results of such study subject to negotiation. Finally, Jeffery Bloch, who conducted the EM study to be discussed below, testified that he discussed the procedure to be followed by the Respondent with the Union's steward, McKinney, when auditing McKinney's position on January 14, 1972, and advised him of the appeal procedures under Civil Service Rule 6, which does not envision negotiation but appeal by an aggrieved employee from an unfavorable classification decision. In view of all these factors, I conclude that Craig did not agree to make the classification study subject to negotiation with the Union.

March also testified that the Union only sought review of classifications which would result in promotions, not demotions, and that Craig had agreed to such limited review. Obviously no union will insist upon job reclassifications which would be detrimental to its members and, to the extent it could, would structure its demands to benefit its constituency. Thus, in the 1970 negotiations, the Union's demands, as reflected in Craig's letter of 1970, was limited to classification inequities in the helper classifications and resulted in improvements to certain helpers. But the 1971 review was occupation-wide, and was so known by the Union both by Craig's 1971 letter, by the extensiveness of the job survey which must have come to its attention, and by the discussion between Bloch and McKinney on January 14, 1972. The possibility that an occupation-wide job survey would uncover some overclassification as well as underclassification should have been apparent to the Union. The result, while unwelcome to the Union, was a natural consequence of the demand for reclassification which was asked for by the Union and acceded to by the Respondent.

In September 1971 Personnel Analyst Jeffery Bloch was assigned to conduct the EM study. He sent out forms to all County departments which have employees in these classifications and in certain related positions which the Department thought might be appropriate to put in the EM Series. The incumbents were required to fill out the forms describing their duties, which forms were then reviewed by their supervisors and returned to Bloch. The study encompassed approximately 145 positions within the unit and about 35 related positions, spread among 23 County departments. Beginning in December 1971 Bloch conducted a field audit of these positions during the course of which he audited approximately 90% of the positions included in the study. Upon conclusion of the field interviews, he wrote up the results of

his study and submitted his report to his supervisor, the Chief Personnel Analyst, who, after review, submitted it to the Division Chief.

Thereafter Bloch, together with other management representatives including Phil Stone who had replaced Craig as Employee Relations Administrator, met with March and other Union representatives on May 5, 1972, to inform the Union about the results of the study. Stone opened the meeting stating that they were there pursuant to the commitment in Craig's letter, that they were there to discuss their findings and the basic data pertinent to the findings and the reasoning pursued in the course of the study. The testimony of the various witnesses as to precisely what transpired at this meeting was somewhat fragmentary and to some extent conclusionary. Accordingly, what follows is a composite reconstruction of what was discussed at this meeting as gathered by reading all the testimony in the transcript bearing on the subject.

Either at the outset or shortly thereafter March accused Bloch of having told certain employees during the course of his study that their wages would be cut or that they would be demoted or that their jobs would be reclassified as lower paying jobs, and that they should look to their damn Union. Some stewards, March said, had reported to him that Bloch had told them, "Don't blame me, blame your Union. They should not have asked for this study or you wouldn't have this trouble." Stone interjected that the purpose of the meeting was to go over the study and not into a personal attack on anybody. Bloch then stated generally the results of the study, indicating that of the 145 positions in the unit, 111 were unchanged and 34 changed. Of the latter, 6 were classified upward, 16, downward, and 12 reclassified laterally, that is, they remained at an equal level but belonged in a different

unit and hence would not be represented by the Union. Of the 16 positions classified downward, only 7 were filled at the time of the study and 2 of the 7 incumbents had left their positions when the classifications became effective July 1. The remaining 5 employees are Y-rated; that is, they continue to work at their present pay scale until the balance of the employees in that class catch up with their pay scale, and in the interim they are placed on a preferential hire list which gives them rights to be considered for upcoming vacancies in their appropriate classifications for which they might be qualified. In those instances in which the job was reclassified upward, the incumbent could take the necessary qualifying examination and he was usually, but not invariably, appointed. No evidence was adduced concerning the effect of the job reclassification on the 6 specific employees involved. March asked to be furnished in writing everything which Stone and Bloch had in their files bearing on the classification study but he was told that he would only be given orally whatever information they could give him, and Stone pointed out that Craig's letter did not require that the information be furnished in any particular form. March wanted to know the names of the specific employees affected but was told he could not be given the information at that time because not all of the various departments had yet been advised of Personnel's proposed action. He was told that when the departments are informed of the proposed action they would have an opportunity to dispute the findings prior to the submission of the findings to the Civil Service Commission. March summarized his position at the May 5 meeting as follows (Transcript, p. 54 l. 27 - p. 55 l. 7):

> "We had one question. We wanted to get this in writing. We wanted to negotiate. I was given no names. I was given no details on departments. When I asked for it I was told, no. ... In other words, I was not given the basic data pertinent to the study nor the reasoning pursued in reaching the

conclusions, although I asked for it.

. . . . .

"Mr. Stone advised him that the matter was going to be treated 'like all routine classification matters were always treated'... and that this had no place in the bargaining procedure, and that he, in a personal friendly way, would be helpful to me in guiding me to use the processes long established by the County, if I wanted to use them.

"And he called to my attention, I think it is Rule 6 of the Civil Service Rules of the Civil Service Commission, that had to do with classification matters." (Transcript p. 56 l. 1-10)

Stone left the group at some time during the meeting on May 5 but Bloch stayed on to answer any and all questions put to him. In response to a question put by McKinney, Bloch explained the difference between Power Equipment Repairmen and Senior Equipment Maintenance Men in that the Power Equipment Repairman is a Journeyman Mechanic who is expected to be able to handle the maintenance, rebuilding or repair of any vehicle, including the mechanical systems, while a Senior Equipment Maintenance Man might be called on at times to work on automotive equipment but he would only be expected to work on a minor system involving the maintenance, repair or replacement of parts rather than rebuilding an engine or a hydraulic system. He also explained in response to a question that some employees in Parks and Recreation who were working on playground equipment were performing tasks more properly described as General Maintenance (and hence outside the Union's unit) rather than Equipment Maintenance because they work on structures rather than on equipment and tools. The effect of this determination, if adopted, is a lowering of the pay scale for the job by about $80. to $100. per month. (As previously noted, the actual wage of the incumbent employee is not immediately affected although his chances to secure a wage increase and for promotion are diminished if not extinguished.) Bloch also mentioned that, as another result of his study, Personnel was studying the classification specifications with a view of conforming them to the job

performance as disclosed in the study (Transcript p. 96 l. 7-10). The meeting continued until about 11 AM when, Bloch having answered all the questions posed, the meeting ended.

Bloch denied the allegations that he had belittled the Union during his interviews with the employees while conducting the study. He testified that in most cases he explained to the employees why he was there by stating that the classification study was due to a commitment made by the Department of Personnel to the Union during negotiations. He denied informing the employees how their positions would be classified because, among other reasons, his recommendation would not be final but would be subject to two levels of review. No witness testified that Bloch had told him that any adverse change in his or anyone's job classification is attributable to the Union, or that Bloch in any way denigrated the Union.

On or shortly after May 23, 1972, March was given by Stone a handwritten list of all specific changes, together with the names of the employees affected.

Contentions Of The Parties

a. The Union

The Union contends that the Respondent promised to conduct a classification study to see if the wages of employees in the EM Series should be adjusted upward but instead conducted a study which resulted in some downward adjustments, contrary to the intent of the parties; that the Respondent had promised to negotiate with the Union regarding Respondent's classification study when its study was complete but instead merely advised the Union of the results of the study and insisted that the recommendations based on its study were not subject to negotiation; and that Jeffrey Bloch, in telling employees that he was making the study (which resulted in some downgrading of jobs) as a result of a commitment made to the Union by the County, had the effect of

derogating the Union and impressing employees that they asked at their own risk for a study whether they were classified too low. The Union contends that by the above-described conduct the Respondent violated Section 12(a), subsections (1) and (3) of the Ordinance and requests an order that the Respondent cease and desist from refusing to negotiate regarding classifications, that it be directed to negotiate concerning classifications, and that the employees who suffered as a result of Respondent's refusal to negotiate be made whole. No specific remedy is urged to erase the effects of Bloch's alleged misconduct.

b. The Respondent

The Respondent contends that it has the authority and duty to make the classification study herein unilaterally and report its findings and recommendation to the Civil Service Commission; that it agreed to meet with the Union and supply it with the results of its study, the basis for its conclusions and the underlying reasoning prior to submitting its recommendations to the Civil Service Commission so that, if the Union sought to contest the findings before the Commission, it would be facilitated in doing so; that under the terms of the County charter Respondent could not negotiate regarding classifications because the determination of classifications is within the sole purview of the Civil Service Commission; and that Bloch had not maligned the Union to the employees while conducting the study. Respondent urges that the charge be dismissed in toto.

Analysis

The Alleged Section 12(a)(1)

Statements by Bloch

As noted above, during the May 5 meeting March accused Bloch of telling certain employees that their wages would be cut, or that they would be demoted, or that their jobs would be

reclassified downward, and that such action is due to their "damn Union," and that some stewards had reported to him that Bloch told them, "Don't blame me, blame your Union. They should not have asked for this study or you wouldn't have this trouble." Bloch denied having made these statements. The employees and stewards to whom it was alleged that the statements were made were not called as witnesses and no reason was advanced for the failure to call them. Accordingly, I credit Bloch's denial and find that he did not make these statements.

Bloch did tell the employees why he was out at their job site auditing their jobs. He testified (Transcript p. 88 l. 15-20):

> "In most cases when I went out and did audit, I would explain to the people I was out there because of the commitment the Department of Personnel had made with AFSCME in the course of negotiations in the previous year. That was a way of opening up the discussion. Most people I contacted had no idea why I was out there looking at their job."

In its brief, the Union argued that Bloch's mere recital had the effect of derogation of the Union and impressing employees that they asked at their own risk for a study of whether they are classified too low. The facts in this case do not permit such conclusion. Bloch had a perfectly valid reason to tell the employees why he was there and he did not misrepresent the basis for the audit. It was being conducted as a result of the negotiations of the parties. Moreover, there is no evidence that he was motivated by any antagonism to the Union in making such statements to derogate the Union in the eyes of the employees. Given the valid reason for and innocuous nature of Bloch's communication with the employees, and the lack of animus against the Union, I conclude that Bloch's statements did not interfere with, restrain, or coerce employees within the meaning of Section 12(a)(1) of the Ordinance nor are they evidence of such intent either by Bloch or by the Department of Personnel.

The Refusal to Negotiate Regarding Classifications

Before considering the specific problem raised by this charge, it is necessary to examine the legal substructure from which it stems. On September 3, 1968, the Board of Supervisors of the County adopted the Employees Relations Ordinance. At the same time it adopted the report of the Consultants' Committee, hereinafter called Committee, who had drafted the Ordinance, as an accurate statement of the Board's intent and purpose when adopting the Ordinance. The Ordinance has as its purpose the improvement of labor relations between management and employees. In this respect it is similar to the National Labor Relations Act, hereinafter called NLRA, which deals with labor relations in private industry in interstate commerce. While the NLRA deals with the relations of management and its employees in interstate commerce and in private industry, the Ordinance is limited in its application to the County and its employees. The Ordinance sets up a procedure for the selection of employee representatives and, more to the point in this proceeding, certain standards of conduct to which both the County and employee organizations must adhere as spelled out in Section 12 of the Ordinance, and a Commission to administer the Ordinance.

The key to better labor relations, as envisioned by both the NLRA and the Ordinance, is recognition by the employer of the majority representative of its employees in the various appropriate units as the representative for all the employees in their unit. Under the NLRA, the employer is required to bargain collectively with the employee representative. Each side, both management and the unions, are unrestricted in their use of economic power (except that they cannot involve innocent third parties in their dispute by secondary boycott pressures). To enforce their

demands, the unions may strike the employers; the latter can seek to bend the unions to their will by lockout. In public employment, the use of these weapons, the strike and the lockout, is intolerable. In addition, as pointed out by the Committee, the two systems--the private and the public sector--differ both in their services which they provide and the standards which are used to determine what services to provide and how to provide them. In the private sector the nature and quantity of services is determined by economic market forces; in the public sector, the level of service is determined by political forces and legislative action depending on how much revenue can be raised and how to accomodate it to the competing demands of the electorate. These factors necessarily make the determination of employment conditions in public agencies different from the process followed in private industry. In view of these considerations, the Committee concluded that the term "collective bargaining," which is used in the NLRA and which the employee groups urged should be used in the Ordinance, should not be adopted because it had a 30-year legislative history and interpretation dealing with private employment, some of which may be inapplicable to the County's position. Instead, the Ordinance at Section 12(a)(3) requires the County "to negotiate with representatives of certified employee organizations on negotiable matters." (Underlining supplied.)

Section 6 of the Ordinance deals with consultation and negotiation between management and the unions. Consultation is encouraged between management and employee representatives on all matters affecting employee relations. While not so spelled out at the hearing, it is evident that in the present case the Respondent was engaging in consultation with the Union regarding classifications at the May 5 meeting. Negotiation covers a much narrower field. As the Committee pointed out:

"The scope of management's duty to negotiate is the subject of considerable dispute between County officials and the employee organizations. The latter want no limit on the scope of that duty, or as few as possible, whereas the County officials desire that the duty to negotiate be narrowly circumscribed.

".... County officials have urged us... to include in the recommended ordinance examples of the kinds of subjects on which negotiation is not mandatory. The difficulty we have with this approach is that topics proposed for negotiation, like words in a sentence, take on color and meaning from their surrounding context. Viewed in the abstract, the demand to negotiate over 'the level of service to be provided,' for example, would seem to be a matter covered by Section 5 [which delineates County rights] and therefore not negotiable except at the discretion of the County, as provided in Section 6(d). In the context of a specific situation, however, a demand for a lower maximum case load for social workers, for example, although theoretically related to the level of service to be provided, might be much more directly related to terms and conditions of employment." (Manuscript copy of Report and Recommendations of the Committee, hereafter called Committee Report, dated July 25, 1968, p. 10-11.)

The next question to which we must address ourselves is whether, and to what extent, the NLRA experience is relevant to our consideration. Attempts to draw an exact analogy between the public and the private sector are, as the Committee observed, misguided and dangerous, Report, p. 8. However, there does not appear to be any compelling reason why the subject matter of negotiations in the public sector should not parallel the subject matter of collective bargaining in the private sector. Section 6(b) decrees that the scope of negotiation "includes wages, hours, and other terms and conditions of employment." Under Section 8(d) of the NLRA the employer is required to bargain collectively with the employee and to meet this obligation must "confer in good faith with respect to wages, hours, and other terms and conditions of employment...." It can thus be seen that both the NLRA and the Ordinance impose on management an obligation to deal with employee representatives regarding the same subject matter, that is, wages, hours, and other terms and conditions of employment.

Rulings of the National Labor Relations Board, herein called the Board, with reference to the subject matters of negotiation, while not conclusive, are instructive. Thus, it has been held that Section 8(a)(5) and 8(d) impose upon the employer the obligation to supply to the bargaining representative, at its request, any information in its possession which is relevant and is reasonably necessary to enable it to discharge its function as an employee representative, NLRB v. Truitt Mfg. Co., 351 U.S. 149. The Board has held that job classifications are a mandatory subject of bargaining, Latin Watch Case Co., 156 NLRB 201, 208. In Zenith Radio Corporation, et. al., 177 NLRB 366, the Board held that the parties might, by contract, establish new jobs and a mechanism for bargaining about them. The Board also declared in that case that the employer is under a statutory duty to give to the union notice of, and to discuss with it, any proposed change in working conditions (at 367-8). Applying these principles to the case at hand, it would appear that the Ordinance imposes upon the Respondent the obligation to negotiate with the Union about job classifications in accordance with Section 12(a)(3). See, in this connection, the fully researched and well-reasoned decision of Commissioner Alleyne in SEIU Local 535 v. DPSS et al., Case No. UFC 55.3, decided June 25, 1971, in which the Commission unanimously concluded that Elegibility Workers' caseloads are a term or condition of employment and that therefore the County must negotiate with the union about the size of the caseloads.

The Respondent contends that under the terms of the County charter the power to determine classifications was vested in the Civil Service Commission, that the determination or classifications requires the exercise of discretion, that it therefore cannot be delegated to others and hence cannot be the subject of negotiation between the Civil Service Commission's representatives, who prepare classification studies on its behalf, and the Union.

In support of this position counsel cites Schecter v. County of Los Angeles, 258 Cal. App. 2d 391 (1968). The facts in that case are as follows: The Board of Supervisors had authority under the State Constitution to set wage rates and, by charter provision, the Civil Service Commission had authority to create job classifications. The Civil Service Commission by its Rules had delegated the preparation of classifications to its Secretary and Chief Examiner, hereafter called Secretary. Subject to the approval of the Civil Service Commission, he was instructed to report his classification actions to the County's Chief Administrative Officer and to the appointing power concerned. In the Schecter case, certain deputy sheriffs who were attached to the civil courts as bailiffs received a lower rate of pay than other deputy sheriffs because their work was not considered as arduous. They sought a reclassification by use of the procedures set up by the Civil Service Commission. The Commission's staff representative, after considering the evidence submitted by the employees' representative, decided that a new classification should be created, designated Deputy Sheriff, Court Bailiff, which would encompass bailiffs in both the civil and criminal courts. The employees were dissatisfied with this decision because they wished to be treated equally with the other deputy sheriffs. Accordingly, they appealed this decision to the chief deputy who, after review, confirmed the staff decision. The bailiffs then appealed to the Civil Service Commission. While this appeal was pending, the Board of Supervisors passed a salary ordinance effective July 1, as required by law. In this ordinance they retained the wage differential between deputy sheriffs and bailiffs. Two days later the Civil Service Commission handed down its decision eliminating the distinction and creating the single classification of deputy sheriff. The bailiffs thereupon filed a mandamus action to compel the Board of Supervisors to amend the salary ordinance and implement the reclassification. The Board

defended on the ground that the Civil Service Commission had delegated its authority to classify the County employees to its Secretary and hence his action is conclusive and the Commission's reclassification had no force or effect. The Court declared that the Charter granted the power to classify employees to the Commission, that this power is discretionary or quasi-judicial, and that it must be exercised by the Commission itself and cannot be delegated to its assistants. The Court observed that a person or board vested with ultimate authority to make a decision need not personally gather the data need for the exercise of his discretion, but that the judgment or discretion finally exercised and the orders finally made must be his or the board's own. In the Schecter case, in accordance with this reasoning, the Board was directed to disregard the findings of the Secretary and to implement the Civil Service Commission's reclassification decision. The Respondent contends that because the Civil Service Commission cannot delegate its authority to determine job classifications it cannot legally be required to negotiate with the Union and that therefore its subordinates, in this case, the Department of Personnel, cannot be required to negotiate.

The ruling in Schecter is not directly applicable in this case. The Union does not contend that whatever agreement it negotiates with Personnel must automatically be accepted by the Civil Service Commission. Rather, it contends that negotiations regarding classifications be treated like negotiations regarding wage rates. Section 11(3) of the County Charter vests in the Board of Supervisors the ultimate authority to determine the compensation of County employees. The Director of Personnel has been delegated the function of making reports and recommendations to the Board of Supervisors with respect to the compensation of County employees. Pursuant to such authority he has negotiated with the various unions regarding wage rates and has made unilateral

wage rate recommendations for those employees who are not represented by any union. The fact that in the exercise of his delegated authority he has negotiated regarding wage rates with employee representatives, even to the point of use of this impasse procedure specified in Section 13 of the Ordinance, has not diminished the paramount authority of the Board to determine the compensation of County employees.

The Respondent answers the Union's contention as follows:

> "Counsel for the Union indicated at the close of the hearing that he would make such an argument of the permissability of delegating such a power to Union and County management representative on the basis of the first two pages of the Salary Recommendations of 1971-72 which indicate that there is negotiation between the Department of Personnel and employee representative concerning salaries and other benefits resulting in recommendations which are then submitted to the Board of Supervisors for their approval. The County wishes to object to the introduction of such evidence as irrelevant and immaterial to the charges brought before this hearing. The question of salaries to be paid to County employees is as unique in its setting within the County Charter as is the question of classification of positions of employment. For example, County salaries and wages must be 'at least equal to the prevailing salary or wage for the same quality of service rendered to private persons, firms or corporations. . . .' (Section 47 of the County Charter.) Nothing is to be gained at this time through a consideration of the relative merits of the mode of adoption of the County salary ordinance by the Board of Supervisors as compared to the adoption of County-wide classification studies by the Civil Service Commission when viewed in the context of the unique Charter and case law surrounding each procedure. The case of Schecter v. County of Los Angeles, is controlling. Furthermore, Rule 6 of the Civil Service Commission grants all interested parties ample opportunity to be heard concerning the classification process and thus guarantees an equitable and just solution to disputes arising from classification studies." (Closing Brief p. 18)

The answer is unconvincing. Merely to state that the question of the setting of salaries is unique does not make it any more unique than the establishment of job classifications. While the two cases are not identical, both relate in a real sense

to the compensation which the employee will receive and are close enough to have a bearing on each other. Because of these considerations, the first two pages of the Salary Recommendations of 1971-72 are admitted in evidence.

In both the salary setting and job classification powers, the ultimate, non-delegable decision-making power vested in a County agency, in the case of wages and salaries, in the Board of Supervisors; and in the case of job classifications, in the Civil Service Commission. In both cases the immediate task is delegated to subordinates--in both instances, to the Director of Personnel. In pursuance of his delegated duties, he negotiates with the employee unions regarding wage rates, subject to ultimate approval by the Board. No reason is advanced why he may not also negotiate with the unions regarding job classification. It might be urged that the wage negotiations are conducted under the permissive negotiation powers granted management under Section 6(d) of the Ordinance[2/] but no evidence was adduced to this effect and in the present posture of the evidence in this case any such argument is sheer speculation. Accordingly, it is concluded that the Respondent had a duty under Section 6(b) to negotiate with the Union regarding job classifications. However, it should be reiterated that any agreement which they reached would still be subject to the independent exercise of its discretion by the Civil Service Commission to approve or disapprove such agreement, in accordance with the teaching in Schecter.

2/ Section 6. Scope of Consultation and Negotiation.
(d) Management representatives and representatives of certified employee organizations may, by mutual agreement, negotiate on matters of employment concerning which negotiation is neither required nor prohibited by this Ordinance.

Two collateral observations should be made with reference to such negotiations. First, it cannot be repeated too often that the duty to bargain under the NLRA and the parallel duty to negotiate under the Ordinance do not imply imply that an agreement must be reached. To quote the Committee Report (p. 12):

> "We also think it pertinent to point out in this connection that the duty to negotiate in good faith carries with it no obligation to agree or, indeed, to make any concession. Experience has shown, however, that disputes over the duty to negotiate are frequently more intractable than the substantive issues involved, and that agreement is more readily reached on the latter than on the former."

Thus, Personnel can negotiate with the Union and if it fails to reach agreement it may still submit its unilateral recommendations to the Commission for its consideration. Secondly, assuming that an agreement is reached, the Civil Service Commission is more likely to look with favor upon it than upon a unilateral recommendation by its staff because it knows that any agreed proposal is far less likely to generate employee dissent than a unilateral determination.

In further support of its refusal to negotiate, the County relies upon the provision in the Meyer-Milias-Brown Act providing the supremacy of charters, ordinances, and rules of local public agencies which regulate a merit or civil service system, and the provisions of Section 6(c) of the Ordinance which provides, in part, that negotiation shall not be required on any subject preempted by Federal or State law, or by County Charter. It is argued that, because classification of positions is within the exclusive domain of the Civil Service Commission under the terms of the Charter, the County cannot be required to bargain about it. Insofar as the Brown Act is concerned, there is no conflict between its provisions and the County's duty to negotiate with the Union because negotiation between the Department of Personnel and the Union, successful or not, will not affect the

the ultimate right of the Commission, unilaterally, to make the final decisions regarding classification of employee positions.

With reference to the argument based upon the provisions of Section 6(c), the Committee wrote as follows in explanation of the intent of that Section (p. 11):

> "The language of Section 6(c) of the recommended ordinance is designed to enforce the policy enunciated in Section 5 [County Rights] without at the same time prejudicing requests to negotiate on subjects that might arguably fall within the category of wages, hours, and other terms and conditions of employment. The line between non-negotiable management rights and subjects over which certified employee organizations would have the right to negotiate under the recommended ordinance is not always clearly discernible. We do not think that it would be wise to draw it, once and for all and for all subjects, in the ordinance. Rather, we recommend that in close and doubtful cases the Commission be empowered to draw the line on an ad hoc basis."

It thus seems clear that in the mind of the drafters, any subject which would "arguably fall within the category of wages, hours, or other terms and conditions of employment" is without question a proper subject for negotiation irrespective of whatever may have been "preempted" and hence nonnegotiable. Job classification certainly has a significant or material relationship to wages or other conditions of employment. It is, therefore, a proper subject for negotiation.

Conclusions

The undersigned concludes as follows:

1. There is no evidence that the conversations of Jeffery Bloch with any employees or Union shop stewards interfered with, restrained, or coerced employees within the meaning of Section 12(a)(1) of the Ordinance.

2. The Department of Personnel refused to negotiate with the Union regarding job classifications in the Equipment Maintenance Men's Series within the meaning of Section 12(a)(3) of the Ordinance, in violation of Section 12(a)(3) and, by said

refusal, did interfere with, restrain, and coerce employees in the exercise of the rights granted by Section 12(a)(3) in violation of Section 12(a)(1) of the Ordinance.

The Remedy

It having been found that the Respondent refused to bargain regarding job classifications within the EM Series, it is recommended that Respondent be ordered to bargain regarding this matter as more fully set forth in the Order below. This does not mean that the Respondent is obligated to reach an agreement with the Union on the issue in question. Section 3(o) of the Ordinance, which defines "negotiation," explicitly states that "This obligation does not compel either party to agree to a proposal or to make a concession." The Respondent is required to make a good faith attempt to reach an agreement with the Union concerning the matter in dispute and, if such agreement is reached, to reduce it to writing as provided in the Order, below.

Insofar as certain employees have suffered any loss as a result of Respondent's unilateral actions, they shall be made whole by being restored to their status quo ante. The evidence reflects that 6 employees were reclassified upward. By such action Respondent conceded that the Union's contention that these employees should be reclassified was correct. Accordingly, they need not be restored to their prior classification. However, their classification, as well as all others, shall be subject to negotiation at the request of the Union.

The evidence also reflects that some employees may have been reclassified into the unit from other, non-unit positions. Inasmuch as the Union did not previously represent them and they were included in the unit by Respondent's unilateral action, the Union has no standing to insist upon their inclusion except to

the extent that it may attain such result in the future by the process of negotiation. On the other hand, Respondent has, by its action, conceded that in its view these employees properly belong in the unit. Under the circumstances, the employees in question should be offered their option of whether they wish to return to their former classification or remain in the present one.

RECOMMENDED ORDER

In view of the foregoing findings and conclusions, the undersigned recommends that the Commission enter the following order:

It is hereby ordered that the Department of Personnel cease and desist from refusing to negotiate with the Union on the subject of job classifications; that it negotiate with the Union in good faith on this subject in an effort to reach an agreement, and that in the event that an agreement is reached, that it be reduced to writing and signed by it and the Union and submitted for consideration to the Civil Service Commission as the joint recommendation of the Department of Personnel and the Union.

It is further ordered that all employees in the Equipment Maintenance Men's Series who have been unilaterally classified and have suffered any loss as a result shall be restored to their ~~former~~ former classifications and made whole for any losses which they suffered due to Respondent's unilateral action.

It is further ordered that all employees transferred into the unit as a result of the Respondent's unilateral classification shall be given their option of whether they wish to return to their old classification or remain in their present one.

It is further ordered that in all other respects the charge be, and it hereby is, dismissed.

Respectfully submitted,

Ben Grodsky
Hearing Officer

Dated: October 7, 1972