LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

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

Appearances -

For Charging Party: Herbert March, Attorney

For Respondent: John D. Maharg, County Counsel
John Arthur Boyd, Deputy County Counsel
Daniel C. Cassidy, Deputy County Counsel

## DECISION AND ORDER

### Background

This case is before the Commission by way of exceptions to the report and recommendations of a Hearing Officer, Ben Grodsky, duly appointed

by the Commission to make recommended findings and conclusions concerning an unfair employee relations practice charge filed against the County Department of Personnel by the American Federation of State, County and Municipal Employees, Local 119. The Hearing Officer concluded that the Department of Personnel violated Sections 12(a)(1) and 12(a)(3) of the Employee Relations Ordinance by refusing "to negotiate with the Union regarding job classifications in the Equipment Maintenance Men's Series." In other unchallenged respects, the Hearing Officer found the charge without merit.

Most of the essential facts are undisputed. Since 1970, when the Union was certified as the representative for County employees in the Automotive and Equipment Maintenancemen unit, representatives of the Department of Personnel and the Union have annually negotiated a Memorandum of Understanding for submission to the County Board of Supervisors for approval. During the negotiations which began in 1971, the Union claimed that certain employees in the representation unit had been improperly classified; the Union requested that the matter of their reclassification be negotiated, and that the negotiated position of the two parties be submitted to the County Civil Service Commission in the form of a recommendation for approval. In response, the County at all times took the position that the subject of job classifications is not negotiable within the meaning of the Ordinance. The Hearing Officer disagreed. The County excepted to his conclusion and filed a brief in support of its exception. In its brief, counsel for the County argues, as he did before the Hearing Officer, that the subject of job classifications is within the exclusive jurisdiction

of the County Civil Service Commission. No other exceptions were filed by either party. Thus, the sole question before us is the propriety of the Hearing Officer's conclusion concerning the negotiability of job classifications.

## The Applicable Sections of the Ordinance

Section 12(a)(3) of the Ordinance makes it an unfair employee relations practice for the County to "refuse to negotiate with representatives of certified employee organizations on negotiable matters." Section 6 of the Ordinance, entitled "Scope of Consultation and Negotiation", defines the required scope of negotiations.

Section 6 of the Ordinance comprises four subsections, each of which bears either directly or indirectly on the issue before the Commission. Section 6, in its entirety, reads as follows:

> "(a) All matters affecting employee relations, including those that are not subject to negotiations, are subject to consultation between management representatives and the duly authorized representatives of affected employee organizations. Every reasonable effort shall be made to have such consultation prior to effecting basic changes in any rule or procedure affecting employee relations.
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> "(b) The scope of negotiation between management representatives and the representatives of certified employee organizations includes wages, hours, and other terms and conditions of employment within the employee representation unit.
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> "(c) Negotiation shall not be required on any subject preempted by Federal or State law, or by County Charter, nor shall negotiation be required on Employee or Employer Rights as defined in Sections 4 and 5 above. Proposed amendments to this Ordinance are excluded from the scope of negotiation.
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> "(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."

We note that Section 6 contains both a definition of negotiability in respect to what is negotiable and a definition in respect to what is not negotiable.

## The Issue of Preemption

Job classifications constitute a "term or condition of employment" within the meaning of Section 6(b) of the Ordinance. From our reading of the record and County Counsel's post-hearing exceptions, it does not appear that the Hearing Officer's determination to that effect has been challenged.[1] But Section 6 must be read as a whole, and we next consider its other subsections.

Specifically, the County cites Section 6(c) of the Ordinance as not requiring negotiations "on any subject preempted . . . by County Charter." The County points out that the County Civil Service Commission was created by the County Charter; that the County Charter authorizes the Civil Service Commission to make rules concerning the classification of employees; and that Civil Service Commission rules provide for the classification of employees as well as the procedures for submitting classification issues to the Civil Service Commission. On that basis, the County concludes that the subject of job

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[1] See Latin Watch Case Co., Inc., 156 NLRB 203, 61 LRRM 1021 (1965), an NLRB decision holding that "job classifications are a mandatory subject of bargaining under the /National Labor Relations/ Act." In that case, the NLRB recognized the close relationship between the subjects of job classification and wages by noting that "Other mandatory subjects of bargaining such as seniority and pay rates depend in part at least upon a resolution of the proper job classifications . . . ." Section 6(b) of the Employee Relations Ordinance is almost a carbon copy of Section 8(d) of the National Labor Relations Act in defining the scope of negotiation. That case of course has no bearing on the preemption issue before us.

classification is preempted by the County Charter and is hence not a negotiable subject within the meaning of Section 6(c) of the Ordinance. It is our task to reconcile the apparent conflict between Sections 6(b) and 6(c) of the Ordinance.

We think that in juxtaposition, Sections 6(b) and 6(c) of the Ordinance are arguably susceptible of either of the following two interpretations:

(1) Any matter falling within the Section 6(b) definition of "wages, hours, and other terms and conditions of employment", is negotiable; Section 6(c), relating to preempted matters, may not be read as an exception to or limitation upon Section 6(b), but as describing a particular class of subjects within a broader class of matters not constituting "wages, hours, and other terms and conditions of employment."

(2) A matter falling within the Section 6(b) definition of "wages, hours, and other terms and conditions of employment" is negotiable only if, at the same time, that matter is not one preempted under Section 6(c) by "Federal or State law, or by County Charter."

If interpretation (1), above, is correct, the Hearing Officer should be sustained, inasmuch as it is undisputed that the subject of job classification is within the Ordinance definition of "terms and conditions of employment." If interpretation (2), above, is correct, it must be determined whether job classifications constitute a matter preempted by the County

Charter, and if so, then, under interpretation (2), we should disagree with the Hearing Officer's conclusion that the Ordinance was violated in this case. Of course, if the subject of job classifications is not preempted by the County Charter, the Hearing Officer may be sustained under either interpretation (1) or (2). In short, we should find the charge without merit only if (1) the subject of a recommended job classification is preempted by the County Charter, and, in addition (2), that preemption makes a recommended job classification not negotiable, even though job classification is a "term or condition of employment."

I

Whether one law preempts another is always a question of legislative intent. Specifically, the question here is whether anything in the County Charter prevents the Department of Personnel and the Union from negotiating on job classifications and submitting any result reached (if one is reached) to the Civil Service Commission for approval, modification, or total rejection. We take care to note that the question is not whether, on the subject of job classifications, the Department of Personnel and the Union may negotiate a binding agreement not subject to Civil Service Commission approval. To do so would constitute negotiations on a matter clearly committed to another agency by a superior law. We think that is an example of what is meant by preemption in Section 6(c) of the Ordinance. But that is not this case, as we note with further elaboration on the issue of preemption. We first illustrate by example:

Nonnegotiable under our understanding of "preemption", as used in Section 6(c), would be a final and binding wage agreement between the Department of Personnel and a Union, inasmuch as the County Board of Supervisors is clearly and unequivocally committed by the County Charter to make a final wage or salary determination for County employees.[2] It certainly does not follow that because the Board of Supervisors derives from the County Charter the final say on County wages, the Department of Personnel and a Union may not negotiate a recommended wage agreement subject to approval by the Board of Supervisors. This is what the Department of Personnel and Unions have done since shortly after the inception of the Ordinance.[3]

Should we embrace the argument of the Department of Personnel that the power of the Civil Service Commission to finally determine a subject means that it is "preempted" and that recommendations to the Civil Service

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[2] Charter Section 47 provides:

"In fixing compensation to be paid to persons under the classified civil service, the Board of Supervisors shall, in each instance, provide a salary or wage at least equal to the prevailing salary or wage for the same quality of service rendered to private persons, firms or corporations under similar employment in case such prevailing salary or wage can be ascertained."

[3] A typical wage agreement in a County-Union agreement provides, in part, as follows:

"The parties, jointly having reviewed and considered all available salary and wage information and data, agree that the recommended salaries set forth herein comply with the requirements of Section 47 of the Charter of the County of Los Angeles and will, in each instance, provide a salary or wage at least equal to the prevailing salary or wage for the same quality of services rendered in private industry under similar employment where such prevailing salary or wage can be ascertained." [Amendment No. 1 to Memorandum of Understanding, Clerks and Office Employees Unit, May 5, 1972.]

Commission are therefore not negotiable, it would then follow that the subject of wages is not negotiable despite the unambiguous inclusion of "wages" in the Ordinance's Section 6(b) and Section 3(o) definitions of negotiable matters.

We must read the Ordinance as a whole and not in isolated parts.[4] Also, we are bound by the familiar rule of construction that legislative enactments should be construed so as to give life and not certain death to the enactment's general objectives.[5] We think it is something of an understatement to say that if wages are not negotiable under the Ordinance, there is no viable Ordinance, and the effort to maintain industrial peace in County employer-employee relations with a law-and-order administrative procedure will have failed.

If negotiations on recommended wages are not preempted, it follows from what we have said that negotiations on recommended job classifications are not "preempted by . . . County Charter." In reaching this conclusion, we are not in agreement with the Hearing Officer's view that every subject within the purview of Section 6(b) ("wages, hours, and other

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[4] E.g. Candlestick Properties, Inc. v. San Francisco Bay Conservation and Development Commission, 11 Cal.App.3d 557, 89 Cal.Rptr.897 (1970)

[5] E.g. East Bay Garbage Co. v. Washington Township Sanitation Co., 52 C.2d 708 at 713, 344 P.2d 289 (1959). Other cases so holding are too numerous and too well established to require extensive citation. See footnote 14, infra, on the objectives of the Employee Relations Ordinance as defined in Section 2 of that Ordinance.

terms and conditions of employment") is negotiable. We think that some matters within Section 6(b)'s coverage may be nonnegotiable because of the preemption clause in Section 6(c).

A subject within the general scope of "wages, hours, and other terms and conditions of employment" might be "preempted" by higher law and hence not negotiable. If, for example, the County insisted on negotiating a wage agreement for hospital workers that was below the federal minimum wage, that particular subject would be nonnegotiable for the reason that the Board of Supervisors, to whom the recommendation would be made, would have no power to act favorably upon it. The clear and specific affirmative mandate of the superior federal law would govern in that case, and would operate to impose upon the County the penalties enumerated in the Fair Labor Standards Act[6] if the County, with or without the approval of a Union, violated the federal minimum wage standard contained in that Act. In similar fashion, we would regard a Union's request that the County negotiate on the subject of a salary schedule which discriminated among employees on the basis of sex, race, religion, or nationality as nonnegotiable because of preemptive County, State and Federal laws clearly and specifically precluding the Board of Supervisors from approving such an agreement. These are of course purely hypothetical examples posed solely for purposes of illustrating our

[6] 29 U.S.C. §201, et seq., particularly §203(d) as amended in 1966 to include as an employer within the Act's wage and hour provisions a state or political subdivision with respect to employees in a hospital, institution or school.

understanding of "preemption" as used in Section 6(c) of the Ordinance.

In each of the two hypothetical examples, the subject matter sought to be negotiated would be unlawful under a positive mandate of law containing explicit remedial sanctions. We think that only in such cases may it be said that a possible subject for negotiations is "preempted by Federal or State law or by County Charter."

Applying what we have said to the case before us, we are aware of nothing in the County Charter that would prevent the Department of Personnel and the Union from effectively negotiating an agreement containing recommended job classifications subject to Civil Service Commission approval. We also find nothing in the Charter precluding the County Civil Service Commission from exercising its discretion to act favorably or unfavorably upon recommended job classifications placed before the Civil Service Commission in the form of a negotiated agreement between the Department of Personnel and the Union. But County Counsel has an additional argument.

## II

## The Issue of Who Directs the Director of Personnel

County Counsel argues that the Director of Personnel, as an employee of the Civil Service Commission, may be directed only by the Civil Service Commission to negotiate with the Union on the subject of classifications; and that the Civil Service Commission has not so directed the Director of Personnel. To support this argument, County Counsel's brief cites

only the first sentence of Charter Section 31, as follows:

> "The Commission shall appoint the Director of Personnel who shall administer the Civil Service system under the direction of the Commission. . . ."

The remaining portion of Charter Section 31 provides:

> " . . . The director of Personnel shall, under the direction of the Board of Supervisors, perform such other duties as may be prescribed by said Board pursuant to the provisions of Section 22 3/4 hereof. The Director of Personnel shall appoint all assistants, deputies, and other persons in the department."

Thus, while the Director of Personnel is appointed by the Civil Service Commission, his duties are not definable by the Civil Service Commission alone. The Civil Service Commission may direct the Director of Personnel only in respect to matters relating to the Civil Service system. The Board of Supervisors may direct him in all other matters, in accordance with Charter Section 22 3/4 which provides:

> "The Director of Personnel shall be appointed and perform duties as provided in Article IX hereof.
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> "To enable a consolidation of personnel functions of the County, other than personnel functions which are the responsibility of other appointing authorities pursuant to the provisions of this Charter, the Board of Supervisors may prescribe that the Director of Personnel exercise general supervision over and enforce all or any portion of the rules and procedures of the County's personnel system including, but not being limited thereto, the making of reports and recommendations to the Board of Supervisors with respect to the compensation of County employees and the administration of rules and procedures to be followed in the County's employer-employee relationships. All duties performed by the Director of Personnel, other than those performed pursuant to Article IX hereof, shall be under the direction of the Board of Supervisors." [Emphasis added]

As we read Charter Section 22 3/4, the power of the Board of

Supervisors to direct the Director of Personnel in "the administration of rules and procedures to be followed in the County's employer-employee relationships" has been implemented in part by the Employee Relations Ordinance. We so conclude because Section 6(b) of the Employee Relations Ordinance speaks of negotiations between "management representatives and the representatives of certified employee organizations" [Emphasis added]; and the Ordinance's definition of "management representative", in Section 3(m), "includes . . . the Director of Personnel".

It is true that the job classification function is a Civil Service Commission function and that Charter Section 31 makes the Director of Personnel the Civil Service Commission's agent for that purpose. It is also true that Civil Service Commission rules direct the Director of Personnel to maintain a schematic outline of the classes in the County service and a specification for each such class.[7] Those rules provide further that the specifications formulated by the Director of Personnel are subject to Civil Service Commission approval;[8] that under the Civil Service Commission rules a classification study may be made by the Director of Personnel on his own initiative,[9] at the request of "the appointing power",[10] or at the request of an employee via the appointing power;[11] and that any change in the outline of classes or the specifications for the classes is also subject to Civil Service

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[7] Civil Service Commission Rule 6.02.
[8] Civil Service Commission Rule 6.02(a).
[9] Civil Service Commission Rule 6.03(a).
[10] Civil Service Commission Rule 6.03(b). Civil Service Commission Rule 2.03 defines "appointing power" as "the person, board, or commission having authority to make appointments to a position."
[11] Civil Service Commission Rule 6.03(c).

Commission approval.[12] An employee or the appointing power may appeal the results of the Director of Personnel's classification action to the Civil Service Commission.[13]

We find nothing in the above description of the Civil Service Commission's rules on classifications that is inconsistent with the Director of Personnel's duties under the Employee Relations Ordinance to negotiate with a union on job classifications subject to Civil Service Commission approval. Since, as we have noted, an employee or the "appointing power" may ultimately bring a classification issue to the Civil Service Commission for a final decision, it would seem to follow that in terms of the administration of the Civil Service system, nothing much is new when a joint recommendation of an employee representative (a union) and a county representative (the Department of Personnel) is placed before the Civil Service Commission for approval. In terms of effective "employer-employee relations" within the meaning of Charter Section 22 3/4 and the implementing Employee Relations Ordinance, the joint recommendation on classifications, assuming the parties were able to arrive at one, would be more consistent with the unmistakable direction of the modern trend away from purely unilateral personnel practices. It would be consistent with the trend towards efforts at mutual accommodation between management and employee organizations representing public employees, as reflected in the Employee Relations Ordinance's Statement

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[12] Civil Service Commission Rule 6.02(b).

[13] Civil Service Commission Rule 6.04.

of Policy.[14]

Under its own rules the Civil Service Commission has the final say. Nothing in the Employee Relations Ordinance or this decision is to the contrary.

We conclude, on the basis of the above analysis, that the Director of Personnel is an agent of the Board of Supervisors in respect to all matters within the purview of the Employee Relations Ordinance. This includes the duty to negotiate with certified employee organizations on any matter falling within the Ordinance's Sections 6 and 3(o) definitions of matters within the scope of negotiation. Particularly, in this case we conclude that under the Employee Relations Ordinance, the Director of Personnel is the agent of the Board of Supervisors for purposes of negotiating on the subject of recommended classifications subject to Civil Service Commission approval. We accordingly agree with the Hearing Officer's conclusion that the Department of Personnel violated Section 12(a)(3) of the Ordinance by refusing to negotiate with the Union on that subject on grounds of nonnegotiability.

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[14] Section 2, entitled "Statement of Policy", of the Employee Relations Ordinance provides in part as follows:

"The Board of Supervisors of the County of Los Angeles declare that it is the public policy of the County and the purpose of this ordinance to promote the improvement of personnel management and relations between the County of Los Angeles and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and services of County government. This policy is supplemented by provisions . . . (b) establishing formal rules and procedures to provide for the orderly and systematic presentation, consideration and resolution of employee relations matters, . . . "

## CONCLUSION

On the basis of the foregoing, we conclude that the Department of Personnel violated Sections 12(a)(1) and 12(a)(3) of the Ordinance by refusing to negotiate with the Union on the subject of job classifications for certain employees in the Automotive and Maintenancemen's unit and by failing to make a good faith attempt to reach an agreement, subject to the approval of the Civil Service Commission. This does not mean that the Department of Personnel is obligated to reach an agreement with the Union on that issue. Section 3(o) of the Ordinance precludes this by providing that the obligation to negotiate "does not compel either party to agree to a proposal or to make a concession." Our conclusion does mean that the Department of Personnel has an obligation to make a good faith attempt to reach an agreement with the Union on job classifications, subject to Civil Service Commission approval.

## ORDER*

IT IS HEREBY ORDERED that

1. The Department of Personnel cease and desist from refusing to negotiate with the Union on the subject of job classification;

2. Upon request of the Union the Department of Personnel shall

a. Recommend to the Civil Service Commission the reversal

* We are in general disagreement with the Hearing Officer's recommended remedies, as they may be regarded as directing the Department of Personnel to invade that area of final decision regarding classifications which is the exclusive province of the Civil Service Commission.

of any action taken by the Civil Service Commission which resulted from the unilateral recommendations of the Department of Personnel regarding the classification of positions held by employees in the Automotive and Equipment Maintenancemen 's employee representation unit, and

b. Meet promptly with representatives of the Union and negotiate with the Union in good faith regarding appropriate classifications for employees within the employee representation unit described above. Any agreement which may be reached shall be reduced to writing, signed by an appropriate representative of the Department of Personnel and of the Union, and submitted to the Civil Service Commission as the joint recommendation of the Department of Personnel and the Union.

IT IS FURTHER ORDERED that in all other respects the charge is dismissed.

Dated: March 2, 1973

Reginald H. Alleyne, Jr.
Commissioner

Irving Helbling
Commissioner

## DISSENTING OPINION

The undersigned respectfully dissents from the majority opinion sustaining that part of the Hearing Officer's Report and Recommendations in the above entitled matter which holds that the employer had committed an unfair employee relations practice by refusing to negotiate on the subject of classifications. This dissent is predicated upon what the undersigned believes to be the applicable points of law.

Civil Service came into being to remove the spoils system in public employment. But where no legislation existed providing the necessary mechanics to formally recognize labor organizations and bargain with them, the Civil Service Commission filled the void and performed the functions of an employee relations department. Rules were adopted which established a uniform grievance procedure throughout the agency. Other rules specified the order in which a reduction in force would be effected (lay-offs). Yet, other rules dealt (and do deal) with matters commonly (and best) left to the parties to negotiate and include in a written Memorandum of Understanding -- or Agreement -- or Contract, as these are variously called.

The undersigned has stated publicly on a number of occasions that where legislation does exist, the Civil Service Commission should amend its rules and the public should amend its Charters to remand to the parties those subjects embraced in the phrase "wages, hours, and other terms and conditions of employment" for mutual agreement between them. Resolution of the scope of the subject matter might also be best left to the parties to agree upon -- or disagree. There is no Management's Rights clause in the National Labor Relations Act. The employer includes it in the negotiated agreement.

I am not alone in advocating that the Civil Service Commission should

continue to concern itself with the functions of a personnel department and leave employee relations to the parties themselves where legislation makes the respective roles permissible. Most, if not all, of my peers in Public Employee Relations Boards throughout the country join me and are on record.

In a conference in New Orleans January 10 through 12, 1973, sponsored by the FBA and the BNA jointly, Mr. Robert G. Howlett, Chairman of the Michigan Employment Relations Commission, responded to a question on how to deal with conflicts between civil service systems and collective bargaining laws for public employees. Howlett replied that "It would only be a slight overstatement to support eliminating the civil service system." He explained that such systems originally were systems established to preserve the merit concept but that they became personnel systems and an arm of management. Bargaining should determine public employees' working conditions, he continued, but civil service systems still can perform the hiring function to assure hiring on a merit rather than political basis. This squares with the private sector, he added, where the employer hires new employees who then are covered under a bargaining agreement.

Mr. Hugh D. Jascourt, Director of Public Employment Relations Research Institute, was chairman of the conference, and he recalled that the National Civil Service League itself has advocated abolishing the commission.

Milton Derber, labor relations professor at the University of Illinois, suggested adding the concept of political discrimination to other kinds of discrimination now included in bargaining laws.

But we must consider the instant matter within the framework as it exists. It arises out of a request by the certified employee organization

that the County conduct a restudy of certain classifications within its certified unit. The study was conducted and the results made known to the concerned employee organization. Certain positions were reclassified to a lower level. Others were reclassified to a higher level. In some instances employees found themselves reassigned to a unit represented by another employee organization. The charging party thereupon cried "Foul!". It alleged first that the analyst who conducted the survey had impugned the integrity of the employee organization in his conversation with members of the unit. The Hearing Officer dismissed that allegation as unsubstantiated. The majority concurs. So does the undersigned.

The charging party, secondly, categorized the County's refusal to negotiate changes in the findings resulting from the restudy as unfair. That portion of the charge is supported by the Hearing Officer and is sustained by the majority. The remedy proposed by the Hearing Officer, however, has been significantly altered by the majority. I would hold that the charge in its entirety should be dismissed.

Historically, the County conducts restudies of classifications either routinely to keep current, or pursuant to the request of an individual or employee organization. The resulting findings are generally made known to the concerned employee organizations. Upon request they have been privileged to "meet and confer" and occasionally changes were made as a result of the meeting and conferring process. Subsequently, the reclassifications are unilaterally submitted to the Civil Service Commission for approval. Continuing dissatisfaction thereafter is evidenced by appeal to the Civil Service

Commission under its rules. The writer is not aware of any instance, nor does ERCOM have any record of such, in which the County conceded it had a mandatory obligation to bargain on the subject of classification.

Section 5 of the Ordinance provides that:

> "It is the exclusive right of the County to . . . . set standards of service . . . . and determine the methods . . . . by which the County's operations are to be conducted; provided, however, that the exercise of such rights does not preclude employees or their representatives from . . . . raising grievances about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment."

The writer construes this as granting the County the right to conduct job evaluation studies so that it may determine the methods and means by which the work will be performed. The impact of such a determination is subject to the grievance procedure under the applicable Memorandum of Understanding, or, where there is no certified employee organization, by utilizing the procedure the rules of the Civil Service Commission provides (Rule 6).

This practice is common in the private sector. The employer establishes job functions, assigns employees to them and negotiates an appropriate rate. As time passes, the job duties may have gradually changed and a re-study often is made. If the skills and other related factors have increased to parallel those in a higher classification, the employees are reclassified and rerated. And vice versa. If an employee finds himself downgraded, he, or his union, may file a grievance which, in essence, places the burden upon the employer to substantiate his re-evaluation of the job. But the union does

not, as a rule, join in the study or negotiate the findings initially.[1]

The Charter of the County of Los Angeles, Section 22 3/4, provides in pertinent part that:

> " . . . . All duties performed by the Director of Personnel, other than those performed pursuant to Article IX hereof, shall be under the direction of the Board of Supervisors." (Emphasis supplied.)

Article IX provides in pertinent part:

> "Sec. 31. The (Civil Service) Commission shall appoint the Director of Personnel who shall administer the Civil Service system under the direction of the Commission."
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> "Sec. 34. The (Civil Service) Commission shall prescribe, amend and enforce rules for the classified service, which shall have the force and effect of law; . . . .
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> "The rules shall provide:
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> "(1) For the classification of all positions in the classified service."

It would appear from the reading of these Charter sections, therefore, that the Charter precludes the Board of Supervisors from enacting an ordinance which would overlap the powers expressly reserved to the Civil Service Commission to direct the activities of the Director of Personnel in the manner described above.

The Board of Supervisors must undoubtedly have been informed of and/or recognized that limitation when it enacted the Ordinance. The Board's legislative intent seems clear.

The rules of statutory construction provide that where there is a conflict between two provisions in a statute a specific or special provision con-

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[1] There are certain industries in which, by mutual agreement, this is not observed. The garment industry frequently calls upon the union for industrial engineering assistance in setting piecework standards, for example. But these are mutually agreed upon and are exceptions to the general rule.

trols over a general one. Where an irreconcilable conflict exists, the later provision in point of position controls the earlier provision although both are in the same statute and passed at the same time.[2] Using that rule to interpret both the Charter and the Ordinance, it would seem clear that where Section 22 3/4 and Sections 31 and 34 conflict, the specific language of the later sections control. Further, one must conclude that Section 6(c) of the Ordinance was intended to limit the effect of Section 6(b). Section 6(c) expressly excludes from the area of negotiability subjects pre-empted by the Charter. It would seem logical, therefore, that the legislative intent was to delete such subjects from the mandatory obligation to bargain.

The majority's analogy between the subject of wages and the subject of classifications clouds the issue rather than clarifies it. The Board of Supervisors under the Charter does have the power to direct the Director of Personnel to make reports and recommendations with respect to the compensation of County employees in accordance with the rules and procedures to be followed in the County's employee - employer relationship (Charter Section 22 3/4). The Civil Service Commission, however, has currently the exclusive power to adopt rules with respect to classifications and to direct the Director of Personnel to administer those rules under the Commission's supervision (Charter Sections 31 and 34).

If the writer's analysis that the Charter specifically places the power to adopt rules with regard to classifications within the exclusive jurisdiction of the Civil Service Commission (Rule 6) is correct, the Board of Super-

[2] Hartford Accident & Indemnity Company v. City of Tulare, 30 Cal. 2d 832.

visors could not adopt an ordinance or rule to limit that power, nor could the Civil Service Commission delegate its duty to adopt rules regarding classification studies and/or determine what the classification shall be.[3]

When the Board adopted the Ordinance it must have been aware, or been made aware, of the court's January 1968 interpretation of the Charter with respect to the issue of classifications. It must follow, therefore, that by enactment of the Ordinance in September 1968 the Board of Supervisors would not have ignored the court's decision and endeavored to make negotiable an item which was outside its power to regulate.[4]

In a question of statutory construction, the courts have ruled that every statute (ordinance) must be construed in the light of constitutional (charter) restrictions upon the power of the Legislature.[5]

While "meeting and conferring" and "negotiations" may seem to be merely semantics, the history of legislation in public employee relations makes the distinction emphatic. The County's willingness to meet and confer and amend findings mutually and willingly, does not, in this Commissioner's opinion, obligate the County to negotiate mandatorily on that subject.

The undersigned would dismiss the charge in its entirety.

Dated: March 2, 1973

Ben Nathanson
Commissioner

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[3] Schecter v. County of Los Angeles, 258 Cal.App.2d 391.

[4] The construction placed on a statute (the Charter) by judicial review becomes a part of that statute. (People v. Hallner, 43 Cal.2d 715.)

[5] County of Los Angeles v. Riley, 6 Cal.2d 625; Wines v. Garrison, 190 Cal.650.