

LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of	)	
LOCAL 685, AMERICAN FEDERATION	)	
OF STATE, COUNTY AND MUNICIPAL	)	UFC 1.19
EMPLOYEES, AFL-CIO	)	
Charging Party	)	
and	)	
COUNTY OF LOS ANGELES PROBATION	)	DECISION AND ORDER
DEPARTMENT	)	
Respondent	)	
_____	)	

On April 26, 1973, Local 685 of the American Federation of State, County and Municipal Employees (hereinafter designated as the "Union") filed an Unfair Employee Relations Practice Charge against the Probation Department of the County of Los Angeles (identified herein as simply the "County"). The Los Angeles County Employee Relations Commission (the "Commission") assigned to the Charge the designation "UFC 1.19" and thereafter processed the matter in accordance with its rules and the mandate calling for such action as set forth in Section 12 of the Employee Relations

Ordinance of the County of Los Angeles (hereinafter the "Ordinance").

THE UNFAIR EMPLOYEE RELATIONS PRACTICE CHARGE

As amended on May 10, 1973, the Charge filed by the Union asserts the County, in violation of Section 12(a)(1) of the Ordinance, interfered with, restrained and coerced employees of the Probation Department in the exercise of their right to participate in the activities of Local 685. More specifically, the charge alleges County management "arbitrarily" imposed "suspensions without pay for a period of one day" upon those employees of the Probation Department who absented themselves from work, and thereafter sought compensatory time off to cover the period of their absence during "which they participated in a demonstration conducted by Local 685 to protest a proposed merger of the Probation Department into a new "Human Services Department. "

On May 24, 1973, the Commission issued a Notice of Hearing on the Charge and David Ziskind was appointed Hearing Officer. Pursuant to Rule 6.06 of the Commission, the County filed its Answer to the Charge on June 6, 1973. Thereafter, hearings were conducted by Mr. Ziskind on June 21, June 22 and July 2, 1973. After entertaining the written arguments of the parties, Hearing Officer Ziskind submitted his Report to the Commission on August 20, 1973. Finally, Exceptions to the Report were filed by the County in a timely manner and a response thereto was submitted on behalf of the Union. This Decision and Order of the Commission follows after consideration of the

entire record thus developed.

### THE APPEARANCES

The County was represented before the Hearing Officer by Deputy County Counsel Fred W. Clough and Deputy County Counsel Daniel C. Cassidy. The appearance on behalf of the Union was made by Mr. Hirsch Adell of Warren, Adell and Miller, attorneys at law.

### FINDINGS OF FACT

On April 17, 1973, the Board of Supervisors of the County of Los Angeles approved a report recommending the consolidation of several County functions into a new department under the designation "Department of Human Services." One of the agencies to be merged pursuant to that proposal (action not yet effected as of this date) was the Probation Department. The Chief Probation Officer endorsed the recommended consolidation while Local 685 and its members opposed the merger.

The Union determined to voice its resistance to the proposed consolidation by arranging a demonstration to be staged at 1:30 p.m. on April 26, 1973 in the mall adjoining the offices of the Board of Supervisors. In pursuit of that plan, the following bulletin was issued:

"The County has stepped up its attack on Probation. On April 17, 1973 the Board of Supervisors voted to effectively dismantle the Probation Department.

"MILITANT ACTION IS NECESSARY.

"The Supervising Deputy Probation Officers Association is giving

full support to this demonstration. We need every member out, carrying a picket sign at the demonstration. The issues are vital.

"There will be buses to pick up Probation Staff at the main area offices. There will be no buses for sub-offices. At 2:00 p.m. buses will be at Central Juvenile Hall and Los Padrinos to pick up the 2:00 p.m. shift.

"On Thursday at least 2/3 of Camp Staff will be off duty. These people must attend. Everyone must attend. The SDPO's will turn out and many directors will, too.

"Let's empty all the offices on Thursday afternoon.

Let's show the Supervisors that we will fight! "

When news of the planned demonstration came to the attention of the Chief Probation Officer, he promptly distributed a memorandum to his assistants dated April 24, 1973. That document stated in part:

". . . . The proposed demonstration by the DPO Union defies a properly constituted governing board. As an attempt to thwart a policy decision of the Board of Supervisors the demonstration is unacceptable to Department management. It must not be allowed to interfere with the conduct of the Probation Department's business.

"Due to our very real concern that services may be disrupted as a result of Local 685's proposed demonstration, all staff are to be advised that no hours of absence will be authorized on Thursday, April 26, 1973, for any Probation Department employees, except those required to be off duty because of verifiable illness, injury, or personal emergency.

"Previous authorized requests for time off will be reviewed by Office Heads to insure that all offices are properly staffed. If any staff take unauthorized time off, they will be subject to disciplinary action. "

The demonstration took place as scheduled with from four hundred to five hundred members of Local 685 participating. Thereafter, the Depart-

ment deducted from the wages of approximately two hundred Deputy Probation Officers the amount they would have otherwise earned during the time they were away from their duties. Additionally, the same individuals were placed on a one day disciplinary suspension to be served without pay.

#### THE POSITION OF THE PARTIES

The Union contends the reaction of Department management to the participation of its members in the demonstration of April 26, 1973 "constituted an interference with and restrained employees in the exercise of their rights" so that the County was thereby guilty of a violation of Section 12(a)(1) of the Ordinance. It identifies "rights" of its members thus violated as those set forth in Section 4 of the Ordinance, i. e. the right to participate in the representational activities of their employee organization. Local 685 requests an "order to roll back all harmful results stemming from the improper conduct, including the suspensions."

In its turn, the County insists the memorandum issued April 24, 1973 by the Chief Probation Officer was intended to do no more than insure an adequate staffing of the offices and facilities of the Probation Department during the period of the demonstration. It states to have acted otherwise "would have been to acquiesce in the disruption of the services the Department is required by law to provide." The County adds that, in any event, Section 145 of Article 8 of the Salary Ordinance of the County of Los Angeles provides that compensatory time off may be taken only "at the discretion of

the employees' department head" and such managerial discretion was properly withheld in the circumstance here at issue. Finally, the County states the suspensions were levied not because the recipients attended the demonstration but rather because they were absent from work without authorization. Indeed, it contends the Union was guilty of an unfair employee relations practice when it organized a protest against action exclusively within the authority of the Board of Supervisors and thereby encouraged Deputy Probation Officers to absent themselves from work.

## RELEVANT STATUTORY PROVISIONS

### Employee Relations Ordinance

of

The County of Los Angeles

#### Section 4. EMPLOYEE RIGHTS.

Employees of the County shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations. Employees of the County also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the County. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights.

#### Section 12. UNFAIR EMPLOYEE RELATIONS PRACTICES.

(a) It shall be an unfair employee relations practice for the County:

(1) To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Ordinance;

(d) Charges of violations of this Section or of this Ordinance, or of applicable rules or regulations may be initiated by a management representative, by a representative of any employee organization, or by an individual employee or group of employees. Such charges shall be filed in writing with the Commission. Each charge so filed shall be processed in accordance with the rules and regulations of the Commission.

(e) If the Commission's decision is that the County has engaged in an unfair employee relations practice or has otherwise violated this Ordinance or any rule or regulation issued thereunder, the Commission shall direct the County to take appropriate corrective action. If compliance with the Commission's decision is not obtained within the time specified by the Commission, it shall so notify the other party, which may then resort to its legal remedies.

## Salary Ordinance

of

The County of Los Angeles

### ARTICLE 8

### OVERTIME

#### Section 145. COMPENSATORY TIME OFF

- (1) Earning and Accumulation of Compensatory Time Off.  
Compensatory time off for overtime shall be earned and accumulated, and may be taken off at the discretion of the employee's department head, . . .

### DECISION

Section 12(a)(1) of the Ordinance declares that it shall be an unfair employee relations practice for the County "to interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Ordinance." Section 4 states "employee rights" include the right to "participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations."

Section 4 further provides, "No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights." It is the test established in this statutory scheme which the Commission must apply to the facts present in the matter here at hand.

It is clear that the potential threat to the working conditions and salary schedules enjoyed by Deputy Probation Officers inherent in the proposed integration of the Probation Department within the Human Services Department constituted a matter of "employee relations" as that phrase is used in Section 4 of the Ordinance. Not only had Local 685 initiated prior negotiations with departmental management concerning matters directly related to hours of work within service centers as well as the possible downgrading of Deputy Probation Officers upon the introduction of such classifications as "social workers", the Union had also expressed its concern by requesting of the department "written guarantees" that existing classifications and work scheduling would be maintained. We therefore find that the demonstration, called as it was to publicize concerns related to working conditions, constituted a protected representational expression concerning a matter of employee relations. But that is not the end of it. Although Section 4 of the Ordinance insulates such an exercise of employee rights from interference, intimidation, restraint, coercion or discrimination, we must likewise honor the legitimate administrative responsibilities of the Chief Probation Officer along with the reservation of departmental discretion in the matter of the utilization of compensatory time off spelled out in Section 145 of the Salary



Ordinance.

It was the judgment of the Chief Probation Officer that the bulletin announcing the demonstration and calling for "militant action" sufficient to "empty all the offices" represented an immediate and real danger that the services of his department would be inhibited. His response, however, went far beyond an expression of "very real concern that services may be disrupted." Not only did he ignore the planning and preparation undertaken by the Stewards of Local 685 to assure "adequate staffing to provide the usual services during the hours from 1:00 to 3:00 p.m.", in the Answer to the Charge filed on his behalf it is conceded that "no attempt was made by the Department on April 26, 1973 to determine whether persons using compensatory time off to participate in the demonstration could be spared from their Department work for the one and one-half hour demonstration." Beyond that, his initial concern seems to have been replaced by a determination to discourage or restrain this particular demonstration because he viewed it as an attempt to influence "a policy decision of the Board of Supervisors" and thus designed to countermand his own expressed endorsement of the proposed merger. In this regard, we note his statement to the Deputy Probation Officers in the memorandum of April 24, 1973 that "the demonstration is unacceptable to Department management." Whatever his original motivation may have been, the action taken constituted an interference and restraint of protected employee rights.

It is further significant to note that the County offered no evidence with respect to the actual handling of work on the day of the demonstration

while the Union presented detailed and uncontradicted testimony that participation by approximately one-third of the departmental complement did not cause a disruption of services. Additionally, the Union had sponsored two earlier demonstrations, neither of which had been attended by a disruption of departmental activities. Furthermore, the County in its Answer to the Charge admits "in prior years such demonstrations had been scheduled and held by the charging party [and] employees were given compensatory time off." Indeed, only four days after the demonstration here at issue, the Chief Probation Officer issued yet another memorandum in which all employees were urged "to adjust their work schedules" to attend a Vietnam Veterans Recognition Day ceremony in the mall area and to charge the time away from their duties to "vacation, overtime or personal leave." In the light of that record of endorsement of public demonstrations, the Department cannot now be heard to deny discriminatory treatment in the case at hand.

We recognize the inherent authority of County management to maintain an efficient level of service responsive to the reasonable expectations of the citizenry. Nor do we overlook the discretion in the matter of the approval of requests for taking advantage of earned and accumulated compensatory time off reserved to the department heads by Section 145 of the Salary Ordinance. That discretion, however, may only be exercised in a manner which is free of the restraint upon employee rights prohibited by Section 4 of the Ordinance. That is to say, the discretion available to the department head under Section 145 of the Salary Ordinance cannot be exer-

cised to defeat the protections afforded employees by the Board of Supervisors upon the adoption of the Employee Relations Ordinance. Similarly, we must reject the contention of the County that an orderly and lawful protest of action contemplated by the Board is of itself conduct prohibited by Section 12(b)(1) of the Ordinance. The demonstration of April 26, 1973 was not an attempt to influence other County employees but, rather, a direct importuning of the Board itself.

The County expresses a fear that should we sustain the Charge considered herein we would be holding that "participation in union demonstrations during working hours is a right guaranteed all [represented] employees by the Ordinance." We make no such finding. To the contrary, these remarks are addressed only to the facts here at issue and in the light of the applicable proscriptions of the Ordinance. Whatever recourse might be available to individual employees of the Probation Department under either the terms of a Memorandum of Understanding or those provisions of the County Charter defining the authority of the Civil Service Commission, under the clear mandate of the Employee Relations Ordinance our responsibility is to hear and decide charges of unfair employee relations practices. We do no more here. As the County argues in its Exceptions to the Hearing Officer's Report, "the Commission's authority to resolve unfair employee relations practice charges under the Employee Relations Ordinance is limited to an interpretation of that Ordinance." To put it in the words of Local 685 expressed in its post-hearing brief, "It is not the First Amendment right

to engage in a demonstration which is at issue here, but whether or not the County's attempt to prevent that demonstration from occurring constituted an unfair employee relations practice [under the Ordinance]."

There remains the question of appropriate Commission action upon a consideration of the entire record made in this proceeding. Is our role restricted to the finding of a violation of Section 12(a)(1) on the part of the Probation Department? We think not. Section 12(e) imposes a mandatory function upon the Commission in those situations in which it sustains an unfair employee relations practice charge brought against the County. In such a circumstance, we are instructed to "direct the County to take appropriate corrective action." It is our judgment that the prohibited conduct in which the Probation Department engaged in this instance requires a rescission of the suspensions imposed against those who had earned and accumulated compensatory time off and a restoration of all wages lost on either the day of the demonstration or by reason of the suspensions.

### ORDER

1) The Probation Department having been found to have committed an unfair employee relations practice as charged herein by Local 685 of the American Federation of State, County and Municipal Employees, the said Probation Department is ordered to rescind the suspensions imposed upon those employees with earned and compensatory time off who participated in

the demonstration of April 26, 1973.

2) The Probation Department is further ordered to reimburse all such persons for all wages lost as a result of either their participation in the demonstration or the imposition of a disciplinary suspension because of such conduct.

Dated: January 31, 1974.

  
Ben Nathanson, Chairman

  
Irving Helbling, Commissioner

  
Thomas T. Roberts, Commissioner

### Declaration of Service By Mail

Martha E. Schultz states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within matter; that my business address is 374 Hall of Administration, Los Angeles, California;

That on the 31st day of January, 1974 I served the attached DECISION AND ORDER upon the charging party by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in a United States mail box in Los Angeles California addressed as follows

Warren, Adell & Miller  
1411 West Olympic Boulevard, Suite 301  
Los Angeles, California 90015

I declare under penalty of perjury that the foregoing is true and correct.

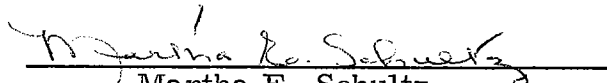
Executed on January 31, 1974 at Los Angeles, California.

  
Martha E. Schultz

### Proof of Service

I served the within DECISION AND ORDER by delivering a true copy thereof to John D. Larson, County Counsel, counsel for respondent, this 31st day of January, 1974.

Dated: January 31, 1974

  
Martha E. Schultz