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EMPLOYEE RELATIONS COMM.
COUNTY OF LOS ANGELES
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LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)
AMERICAN FEDERATION OF STATE, COUNTY,) February 28, 1978
AND MUNICIPAL EMPLOYEES, Local 685)
vs.)
COUNTY OF LOS ANGELES PROBATION) U.F.C. 1.23
DEPARTMENT)
_____)

On November 2, 1976 Local 685 filed an unfair employee relations practice charge against the Probation Department, alleging violations of Section 12(a), subsections (1) and (3) of the Employee Relations Ordinance. The basis for the charge was set out as follows:

- "1. On or about September 2, 1976, the respondent promulgated a promotional examination for Deputy Probation Officer II, and failed and refused prior thereto to negotiate with Local 685 regarding the content thereof.
- "2. Despite an agreement between respondent and Local 685 that respondent shall consult with the union regarding selection criteria for Deputy Probation Officer classifications, the respondent did establish and offer an examination for the classification of Deputy Probation Officer II without such prior consultation."

In its reply, dated December 2, 1976, the County denied both allegations in the following manner:

- "1. On September 2, 1976, the Department of Personnel posted an examination announcement, commonly known as a 'Bulletin' for the classification of Deputy Probation Officer II. The examination consists of three parts; a Rating from Records, an Appraisal of Promotability, (AP), and an interview. As of this writing, the examination is not concluded pending the completion of Appraisals of Promotability for all candidates. County maintains that the examination process, including the determination of appropriate content, is a matter within the exclusive jurisdiction of the Civil Service Commission.
- "2. No such agreement exists. The existence of a clause in the negotiated Memorandum of

1 Agreement to the effect that Probation
2 management agrees to discuss selection criteria
3 with the Union in no way acts as a condition
4 precedent to creation of an examination."

5 Meantime, the ERC designated the undersigned as Hearing
6 Officer in the dispute and a hearing was scheduled for
7 January 28, 1977. In fact, the matter was brought before
8 the Commission itself on that date. The County's motion,
9 set forth at length in a letter from Ronald H. Voight,
10 Employee Relations Administrator, to the ERC on January 28,
11 is summarized as follows:

12 "...the examination process in Los Angeles
13 County is within the exclusive jurisdiction of
14 the Civil Service Commission and...such conclusion
15 does not conflict with the Meyers-Miliias-Brown
16 Act or the Employee Relations Ordinance.

17 "On these bases, as well as provisions contained
18 in the Employee Relations Ordinance (Sections 6(c),
19 11(d), 12(a), (3), and 16(b)), the County
20 respectfully requests that your Commission
21 reconsider U.F.C. 1.23 and direct that the hearing
22 in that matter be cancelled forthwith. As stated
23 in Mr. Hufford's letter of January 14, 1977, on a
24 related matter, if your Commission chooses to do
25 otherwise, the County will be compelled to appear
26 at such hearing for the sole purpose of objecting
27 to the proceedings."

28 The ERC considered the Voight motion at its meeting of
29 January 28, 1977. The minutes read, "After discussion, the
30 Commission reaffirmed its prior action setting the matter
31 for hearing."

32 The hearing was held on April 15, 1977. At the outset
representatives of both parties were present. Voight on
behalf of the County made certain that several documents,
including those noted above, were in the record and then
stated,

"Our position is that the Commission is without
jurisdiction in the County. We are only here for
the purpose of stating that objection and will not
participate in the proceedings."

I then made the suggestion that a representative of the

1 County be present for the limited purpose of refuting any
2 statement of fact made by the Union which he considered
3 inaccurate, this without prejudice to the County's basic
4 position. Voight declined and he and his colleague departed.
5 Thus, the testimony and supporting documents come entirely
6 from the Union, in fact, from one witness, John Seferian,
7 Chief Steward. Despite the position he took at the hearing,
8 Voight on May 6, 1977 sent me a copy of Judge W. R. Channell's
9 decision in United Professional Fire Fighters of Contra Costa
10 County, Local 1230 vs. County of Contra Costa. On January 6,
11 1978 I received the post-hearing brief of the Union filed by
12 Hirsch Adell of Reich, Adell & Crost.

13
14 Facts

15 While, as noted above, the facts were presented by only
16 one party, I have no reason to question their accuracy. At
17 the same time, I have no idea whether they are complete.

18 Local 685 has been the certified representative of
19 Deputy Probation Officers since June 12, 1969 and each year
20 since the County and the Union have entered into a Memorandum
21 of Understanding effective July 1. The issue of promotions
22 has been thorny throughout the bargaining history.

23 During 1969 the Personnel Department gave a written
24 examination for promotion from Deputy Probation Officer II
25 to III. When the list was promulgated it showed that whites
26 predominated at the top and Blacks and Chicanos were
27 concentrated at the bottom. The Union, which was committed
28 to affirmative action, became concerned. A member from each
29 of these ethnic minorities filed complaints with the Civil
30 Service Commission, alleging that the examination was
31 culturally biased and asking that the results be set aside.
32

1 In August 1969 the Union and the County negotiated over
2 this issue. On August 27 the Departments of Personnel and
3 Probation made proposals to Local 685. They are complex and
4 dealt with four examinations. For the DPO III exam the
5 passing point would be lowered so that 90 per cent of those
6 who took it passed. The parties would jointly undertake a
7 validation study. The Union accepted these proposals along
8 with those dealing with the three other exams. In response
9 to the minority complaints that the DPO III exam was culturally
10 biased, the Civil Service Commission on September 3, 1969
11 ordered that "the written examination be rescored with the
12 pass point (70%) set at 52 raw score points."

13 For several years thereafter the Probation Department
14 and Local 685, assisted by at least one expert, sought to
15 devise a written examination that was not, as the Union put
16 it, culturally biased. From the Union's point of view, the
17 effort failed. As Seferian said, "the whites floated to the
18 top and the browns and blacks to the bottom."

19 Beginning in October 1971, examinations were abandoned
20 as a basis for promoting Deputy Probation Officers. Instead,
21 reliance was placed upon ratings from records and appraisals
22 of promotability. In late 1975 or early 1976 the Department
23 indicated that it wished to reinstate written exams. The
24 Union reacted negatively. The matter became a subject of
25 negotiations and a new Section 6 was added to Article 26.
26 AFFIRMATIVE ACTION of the MOU that took effect on July 1,
27 1976. Section 6 reads, "Probation management agrees to
28 consult with the union regarding selection criteria for
29 Deputy Probation Officer classifications."

30 On September 2, 1976 the Civil Service Commission
31 posted a promotion bulletin for Deputy Probation Officer II.
32 It contained the following paragraph:

1 "EXAMINATION INFORMATION: This examination will
2 consist of three parts. An evaluation of training
3 and experience related to the position weighted at
4 10% and interview weighted at 65%, covering
5 personal fitness and general ability to perform
6 the duties of the position and an Appraisal of
7 Promotability weighted at 25%, which will measure
8 the following characteristics necessary at the
level of Deputy Probation Officer II (1) An under-
standing of Human Behavior with respect to working
with adults and juvenile clients. (2) An ability
to communicate both orally and in writing. (3) An
ability to establish effective working relationships.
(4) Work habits and attitudes."

9 Neither the Probation Department nor the Civil Service
10 Commission had negotiated with nor consulted with Local 685
11 about this promotional bulletin or the examination it
12 established. This is the basis for the Union's unfair
13 employee relations practice charge against the Probation
14 Department.

15 In addition, while Sefarian offered no testimony about
16 this before me, an attachment to Adell's brief indicates
17 that the Union also filed a general grievance alleging a
18 violation of Article 26, Section 6 of the MOU. The attachment
19 is a letter from Henry Alva of the Employee Relations Office
20 of the Probation Department to Sefarian dated November 29,
21 1976. Alva rejected the grievance.

22
23 Opinion

24 Section 12(a) (3) of the Employee Relations Ordinance says
25 that it shall be an unfair employee relations practice for
26 the County "to refuse to negotiate with representatives of
27 certified employee organizations on negotiable matters."
28 Section 6(b) states that, "The scope of negotiation between
29 management representatives and the representatives of certified
30 employee organizations includes wages, hours, and other terms
31 and conditions of employment...." The method by which
32

1 promotions are made, clearly, is one of the "terms and
2 conditions of employment." The Probation Department must have
3 accepted this conclusion in the past because it negotiated
4 over the promotion issue.

5 One may also note Section 6(a), which reads as follows:

6 "All matters affecting employee relations,
7 including those that are not subject to negotiations,
8 are subject to consultation between management
9 representatives and the duly authorized representa-
10 tives 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."

11 Thus, the Probation Department had the duty under Section 6(a)
12 to consult with Local 685 on the promotion issue prior to the
13 posting of the Civil Service Examination on September 2,
14 1976. By failing to do so, the Department committed an
15 unfair employee relations practice in violation of Section
16 12(a)(3).

17
18 RECOMMENDATION

19 The County of Los Angeles Probation Department
20 should be found to have committed an unfair
21 employee relations practice under Section 12(a)(3)
22 of the Employee Relations Ordinance and should be
ordered to come into compliance with that
provision.

23 Respectfully submitted,

24 *Irving Bernstein*

25 Irving Bernstein
26 Hearing Officer
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