LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2712, AFL-CIO

Charging Party

v.

LOS ANGELES COUNTY DEPARTMENT OF HEALTH SERVICES

Respondents

UFC 1.45

RECOMMENDED DECISION

I. STATEMENT OF THE CASE

1. This case came to hearing before Karen Orren, Hearing Officer for the Commission, on October 26, 1979, as a result of Unfair Charge 1.45, filed June 22, 1980, by Local 2712, AFSCME.

2. The stated basis of the charge was the implementation by the Department of Health Services of an on-call program for psychiatric social workers at Olive View Hospital's In-Patient Unit, and the fixing of the rate of compensation for duties under the program.

3. The charging party was represented by Larry Dolson, Representative, AFSCME Local 2712, AFL-CIO. Respondents were represented by Susan Toy, Orville Placial, and Frank Sawyer, of the County Department of Personnel.

II. FACTS

On June 6, 1979, at a staff meeting with members of Local 2712 present, Mr. Kenneth Morgan, Director of the Social Work Division at Olive View Hospital, informed employees that they must participate in a program in which they would be available for emergency consultation after working hours and on weekends, on an assignment basis and at a rate of compensation fixed by the Salary Ordinance, which is twenty-five cents an hour. Some staff objected to the nature of the duty and to the pay, and they were informed that the hospital was implementing the program to meet the standards of the state Joint Commission on Hospital Accreditation; subsequent inquiries by social workers were answered by Mr. Morgan with more information and clarification. On June 14, Mr. Morgan sent a Lettergram to the social work staff, setting out a schedule indicating weekly intervals from June 15 through September 27 when individual employees must be available for consultation.

On June 15, at a meeting to negotiate a successor Memorandum of Understanding, the Union raised the issue of the on-call program and demanded to negotiate. Management explained the nature of the program. On June 22, the Union filed the Unfair Charge. On July 6 another negotiating session took place during which Management offered to write the twenty-five cents an hour pay for stand-by into the contract in exchange for the Union's withdrawing the Charge. The Union refused; and the subsequent Memorandum of Understanding contains no provision for on-call services.

III. ISSUES PRESENTED

1. Did the County engage in an unfair employee relations practice within the meaning of Section 12(a)(1) of the Employee Relations Ordinance?

2. Did the County engage in an unfair employee relations practice within the meaning of Section 12(a)(3) of the Employee Relations Ordinance?

IV. CONCLUSIONS

1. Section 12(a)(1) states that it shall be an unfair employee relations practice to "interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Ordinance." The Union contends that by not negotiating and otherwise consulting with employee representatives prior to the implementation of the on-call program, the County was in violation of Section 6(a) and (b). Management contends that since the Memorandum of Understading covering the period of June, 1979 was under a "tight zipper," Management was under no obligation to negotiate.

Section 6(a) states:

> All matters affecting employee relations, including those that are not subject to negotiations, are subject to consultation between management 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.

According to Mr. Morgan, the on-call program had been in the process of development since March, 1977. Although Management subsequently pro-

vided employees with additional information and was willing to adjust assignments, the program was presented on June 6 and thereafter as a fait accompli. No effort was made to consult with the Union prior to implementation; nor has Management offered any reason for an exception to Section 6(a). There is no argument that the on-call program does not effect "basic changes." In failing to consult, Management interfered with the exercise of employee rights in the meaning of Section 12(a)(1) of the Employee Relations Ordinance.

Moreover, on the matter of the "tight zipper's" relieving Management's responsibilities under Section 6(b), it would be a perversion of the intent of such a waiver to include the circumstances of this case as being beyond the scope of negotiations in June, 1979. The "tight zipper" explicitly holds both parties to their agreement on issues settled in the Memorandum of Understanding and prevents the opening of other issues that were within the scope of negotiations at the time of the waiver's signing. It cannot embrace issues that were non-existent or not known to both parties at the time of agreement, but which have a direct and significant impact on hours, wages, and working conditions. Any other interpretation would leave employees without representation on normally negotiable matters that might arise in unanticipated programs of indefinite bounds and effects, for the entire length of the agreement. To bring such programs under negotiations when they are proposed does not, contrary to Management's argument in the post-hearing brief, violate or nullify the Full Understanding, Modification and Waiver clause. Management's failure to negotiate in the manner prescribed in Section 6(b) is an interference in the exercise of employee rights in the meaning of Section 12(a)(1)

of the Employee Relations Ordinance.

There is a further argument raised by Management, that the proper recourse for the social workers was the grievance procedure as provided in Section 5 of the Employee Relations Ordinance. But it is here denied that the implementation of the on-call program is within "County Rights" defined in that Section. The on-call program does not simply affect wages, hours, and working conditions as a consequence of Management's role of assigning and directing employees, setting standards for service, imposing discipline, and so forth; rather the on-call program is itself a new scheme of wages, hours, and working conditions to supplement those already in place, and likewise under the on-call program Management will continue to carry on the specifically supervisorial functions of Section 5. Therefore, the filing of an unfair charge regarding negotiations was appropriate, quite apart from the merits.

2. Section 12(a)(3) states that it is an unfair employee relations practice to "refuse to negotiate with representatives of certified employee organizations on negotiable matters." The County does not deny that the on-call program was a negotiable matter for the successor Momorandum of Understanding under discussion at the time of the program's implementation, and contends that it met its obligations. According to the testimony of witnesses for both Management and the Union, Mr. Dolson, representing Local 2712, asked to negotiate on the issue of on-call compensation. Both of the witnesses for Management testified that they answered that Mr. Morgan, representing Management, proceeded to "consult" on the program, by discussing and describing it. The most ambiguous testimony came in the following response by Mr.

Morgan (Transcript, p. 74):

> Q.: But they refused to negotiate?
>
> A.: We were in negotiations. We were consulting on the issue of standby pay.

Neither witness for Management claimed that the County was willing or proceeded to negotiate on-call pay on June 15, or that they would negotiate it at a later meeting. On June 22, the Union filed its Unfair Charge. I find the weight of the evidence on events prior to the filing indicates a violation of Section 12(a)(3).

The question remains whether Management's offer to include the twenty-five cents an hour pay provision of the Salary Ordinance in the contract in exchange for the withdrawal of the Unfair Charge exonerates it of refusing to bargain. It is difficult to be certain about the spirit of Management's offer, as the parties disagree. But quite apart from the sincerity, reasonableness, and intent of the offer, and to the extent that nothing has transpired to moot the issues at hand, the Union has the right to have its Charge, filed on June 22 in accordance with Rule 6 of the Rules and Regulations of Commission, determined on the merits; it cannot be held to have forfeited this right by having rejected another solution later offered by Management. To decide otherwise, moreover, could have the effect of locking the parties for the life of the Memorandum of Understanding into the stance of non-negotiation on the on-call program, which is the very impasses which caused this hearing, and which has been determined to have been in violation of the Employee Relations Ordinance. In conclusion, I find that Management was in violation of Section 12(a)(3) in failing to bargain with the Union on the on-call program on June 15, 1979, when the Union demanded that it do so.

V. RECOMMENDATION

Based on the foregoing facts and conclusions, and the entire record, I recommend that the Commission order the Los Angeles County Department of Health Services to

1. cease and desist from requiring social workers in the bargaining unit represented by Local 2712 to participate in the on-call program at Olive View Hospital until such time as negotiations between the parties have been conducted and an agreement reached; and

2. enter as soon as possible into negotiations with Local 2712 on the issues of wages, hours and working conditions of the on-call program, not precluding the question of backpay for hours worked since the program was implemented.

Respectfully submitted,

Karen Orren

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Hearing Officer

April 11, 1980