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 Respondent	UFC 1.45

DECISION AND ORDER

This case concerns an allegation by the Charging Party, American Federation of State, County and Municipal Employees (AFSCME), that the Respondent, Los Angeles County Department of Health Services, failed and refused to bargain with the Charging Party when it unilaterally established an on-call program with corresponding standby pay procedures for psychiatric social workers at Olive View Hospital. By this action, the Union alleged that the Department had violated Sections 12A(1) and 12A(3) of the Ordinance.

The Commission referred this matter to Hearing Officer Karen Orren. A hearing was held on October 26,

1979. The parties were present and afforded full opportunity to offer argument, present relevant evidence, and examine and cross-examine witnesses. Charging Party concluded its case with oral argument, and the Respondent thereafter filed its Brief. Hearing Officer Orren submitted a report on April 14, 1980. Respondent filed Exceptions thereto. Charging Party did not reply to the Exceptions.

The Commission rejects the findings and recommendations of Hearing Officer Orren to the extent inconsistent herewith. Specifically, Hearing Officer Orren recommended that:

> "V. RECOMMENDATION
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> "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
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> "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
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> "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." (Hearing Officer's Report, p. 7.)

Hearing Officer Orren clarified her Recommended Order and unilaterally filed her Opposition to County's Exceptions

to Report and Recommendations on May 7, 1980. Therein she recommended that "the County cease and desist from requiring participation in the on-call program 'until such time as negotiations have been conducted and agreement reached' -- not, as the County would read it, that the parties must negotiate until an agreement be reached." This recommendation is likewise rejected by the Commission.

A review of the record in this matter leads the Commission to the conclusion that prior to the execution of the 1979-81 Memorandum of Understanding between the parties, the County violated Sections 12A(1) and 12A(3) of the Ordinance by failing to negotiate with the Charging Party when it unilaterally imposed an on-call program and further, by imposing a standby pay provision for psychiatric social workers at Olive View Hospital. However, the record clearly demonstrates that the on-call program and the standby pay provision became the subject of collective bargaining, particularly on June 15, 1979, while the parties were meeting for the purposes of finalizing terms for a new 1979-81 Memorandum of Understanding. The issue surfaced during the bargaining sessions; and subsequently, the County's offer was rejected by the Union. Nonetheless, a new Memorandum of Understanding was later executed to be effective July 1, 1979. It should be noted that the charge giving rise to this action was filed on June 22, 1979.

Manifestly, by executing the 1979-81 Memorandum of Understanding, albeit silent as to the rate of pay for on-call

services, the Union has waived its right to insist that the County's practice which is challenged herein, continues to be a violation of the Ordinance. Despite no agreement on the subject, the issue surfaced during negotiations and was discussed; hence it can be said that the County fulfilled its bargaining obligation, although its offer was unacceptable to the Union. The record unequivocally discloses that the Charging Party did nothing further after having rejected the County's offer; and thus, there appeared to be nothing extant.

The more difficult question facing the Commission is that of remedy. As noted above, the County committed an unfair employee relations practice, i.e., its unilateral imposition of the on-call program and standby pay provision. However, the parties themselves remedied the unfair employee relations practice during the course of negotiations. Although it is required that we remedy proven violations, we shall only do so when the ends of justice require. Stability in collective bargaining must be maintained and were this Commission to adopt the recommendations of the Hearing Officer by ordering the County to cease and desist from requiring social workers from participating in the on-call program, it would be overreaching, unnecessary, and conceivably create chaos. The parties negotiated on the issue for which the Charging Party seeks a remedy; and in our opinion, it has already been remedied. If nothing more, the Union waived any objection to the County's conduct

when it executed the 1979-81 Memorandum of Understanding. Suffice it to say, no cease and desist order is warranted.

The Commission concludes that based upon the above and foregoing, which is dispositive of the issue, it need not consider the question of the applicability of the "zipper clause" of the 1977-79 Memorandum of Understanding to the matter at hand.

O R D E R

The charge in Case No. UFC 1.45 is dismissed.

DATED at Los Angeles, California, this 26th day of August, 1980.

JOSEPH F. GENTILE, Commissioner

FREDRIC N. RICHMAN, Commissioner

CONCURRING OPINION

I concur that the charge should be dismissed. I do not differ with the majority's view that "the issue surfaced during negotiations and was discussed; hence it can be said that the County fulfilled its bargaining obligation" with respect to the 1979-81 Memorandum of Understanding. I, nevertheless, disagree with the majority view that the County violated Ordinance Sections 12A(1) and 12A(3) by unilaterally adopting the on-call program and the associated standby pay rate. The zipper clause of the then current Memorandum of Understanding precluded the Union from requiring the County to negotiate this program and pay rate. To quote the pertinent language of Article 29 of that document, "each party hereto voluntarily and unqualifiedly waives its right, and agrees that the other shall not be required, to negotiate with respect to any matter covered herein or with respect to any other matters within the scope of negotiations, during the term of this Memorandum of Understanding." (Emphasis added.)

DATED at Los Angeles, California, this 20th day of August, 1980.

Lloyd H. Bailer

LLOYD H. BAILER, Chairman