

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter)	
)	
AMERICAN FEDERATION OF STATE,)	
COUNTY AND MUNICIPAL EMPLOYEES)	
(AFSCME), Local 685)	
)	
Charging Party)	
)	
v.)	UFC 1.85
)	
PROBATION DEPARTMENT)	
)	
Respondent)	
)	

DECISION AND ORDER

This case concerns a charge filed by the American Federation of State, County and Municipal Employees, Local 685 (Union) against the Los Angeles County Probation Department (County) alleging that the County had violated Sections 12(a)(1), 12(a)(2), and 12(a)(3) of the Employee Relations Ordinance (Ordinance) by the remarks made by Deputy Director Philip Stein at a November 3, 1988 "Departmental Forum."

The matter was duly referred to Hearing Officer Jonathan S. Monat, who held a hearing on June 22, 1989. Both parties appeared and were afforded full opportunity to offer argument, present relevant evidence, and cross-examine witnesses. Post-hearing briefs were submitted. The Hearing Officer issued a Report received in the Commission's office on September 11, 1989. No Exceptions were filed to this Report.

In brief, the Probation Department has periodically conducted meetings (the "Departmental Forums") for the purpose of improving communications within the Department. These meetings are attended on a voluntary basis by various levels of staff and cover a variety of topics chosen by the participants. During the course of his discussion at the November meeting in question, Stein made comments about the role of the Union and the perceived divisiveness within the Department. His comments were subsequently published in the Union's newsletter.

The Hearing Officer found, and we agree, that Stein's comments, when viewed in the context in which they were made, did not constitute an unfair employee relations practice. In this regard, the Hearing Officer found "no evidence that Mr. Stein was attempting to settle or avoid grievances in the forum" and that the questions posed by Stein "were rhetorical as part of an overall summary." (H.O. Report, p. 5).

Having carefully reviewed the record in this matter, we adopt the Hearing Officer's findings and conclusions as set forth in his Report for the reasons stated therein.

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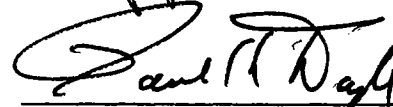
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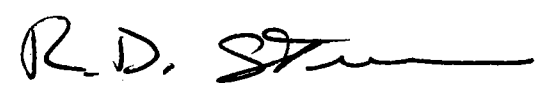
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IT IS HEREBY ORDERED that charge UFC 1.85 is dismissed.

DATED at Los Angeles, California, this 27th day of November,
1989.



JOSEPH F. GENTILE, Chairman

PAUL K. DOYLE, Commissioner

ROBERT D. STEINBERG

1 In the Matter of Arbitration)
2 Between)
3 AMERICAN FEDERATION OF STATE,)
4 COUNTY AND MUNICIPAL EMPLOYEES,)
5 AFL-CIO, LOCAL 685)
6 And)
7 DEPARTMENT OF PROBATION,)
8 COUNTY OF LOS ANGELES)
9 Unfair Labor Practice UFC 1.85)

ARBITRATOR'S OPINION
AND AWARD

9 Hearing Site: 374 Hall of Administration
10 500 West Temple Street
11 Los Angeles, CA 90012

12 Hearing Date: June 22, 1989 at 10:00 A. M.

13 Impartial Arbitrator:

14 Jonathan S. Monat, PhD

15 Appearing for the Union:

16 Della Bahan, Esq.
17 REICH, ADELL & CROST
18 501 Shatto Place, Suite 100
19 Los Angeles, CA 90020
(213) 386-3860

20 Appearing for the County:

21 Robert Navarro
22 Employee Relations Division
23 Chief Administrative Office
24 526 Hall of Administration
25 500 West Temple Street
26 Los Angeles, CA 90012
27 (213) 974-2494

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EMPLOYEE RELATIONS
COMMISSION
SEP 11 1989

STIPULATIONS

The parties stipulated to five (5) joint exhibits (JE). The before the Arbitration is in the form of an Unfair Labor Practice Charge (UF), namely, UFC 1.85 wherein the Union charges that the Probation Department agent, Philip Stein:

- 1) interfered with, restrained and coerced employees in the exercise of protected rights;
- 2) attempted to dominate and interfere with Union activity; and
- 3) refused to negotiate with the Union by directly bargaining with employees.

FACTUAL BACKGROUND

The Department has a practice of holding open forums periodically in which staff from all probation department functions meet to "exchange ideas on issues and concerns." Attendance is voluntary and representatives are chosen by their co-workers. Members of the bargaining unit may be present but no official representative of the Union was invited.

The meeting at which the events in question occurred was held on November 3, 1988. Philip Stein, Deputy Director, was invited to be the "speaker." Comments made by Mr. Stein and published later in the Union newsletter were taken by the Union to be anti-union. Mr. Stein had provided a copy of his notes when a request had been made by some of those who attending the session. Therefore, the Union filed the charges at issue before the arbitrator in instant case.

1 POSITION OF THE UNION

2 The Union contends that, in bypassing the Union and solicit-
3 ing employees to communicate directly with management, the Employ-
4 er has interfered with employees' protected rights. Further, the
5 Employer made disparaging remarks about the Union, its methods and
6 employees' needs for the Union.

7 Mr. Stein directly solicited grievances from employees in
8 violation of the Employee Relations Ordinance. Citing an N.L.R.B.
9 decision, Obie Pacific, Inc.,¹ the Board held that "(a) systematic
10 effort by the (employer) to interfere with the bargaining process
11 by either surreptitious espionage or open interrogation consti-
12 tutes a clear undercutting of . . . the exclusive agency relation-
13 ship between the agent and its collective principals."

14 The questions asked rhetorically by Mr. Stein (Union PHB, p4)
15 called for an indication of support from the employees and were
16 designed to undermine employees' faith in the Union. Complaints
17 which followed after employees read Stein's comments in the Union
18 newsletter clearly established the comments' anti-union intent.

19 Citing other N.L.R.B. decisions, the Union argues that the
20 comments made by Stein (How many of us truly know and what's ap-
21 prove of what's in the MOAs?) interfered with employees' bargain-
22 ing status and successful functioning as exclusive bargaining rep-
23 resentative. Any attempts by management to deal directly with em-
24 ployees who have authorized bargaining representatives is a vio-
25 lation of the ER ordinance.

26

1 196 N.L.R.B. 458 (1972)

The Probation Department argues that the "Forum" it offered was simply an opportunity for management and employees to communicate and share ideas about the work environment. The Union believes this is adjustment of grievances without the Union present. The angry phone calls received by the Union are evidence of how employees interpreted Stein's comments. An Employer forum is no different from administration of attitude surveys or written complaint programs.

Whatever Mr. Stein's personal intentions, the comments made at the Forum disparaged the Union and encouraged direct bargaining between the Department and its employees. The grievance must be upheld.

POSITION OF THE EMPLOYER

The forums are voluntary with employees selected by their own co-workers. In four previous forums, no one has been disciplined, counseled or suffered negative sanctions. The remarks made by Mr. Stein in his role as guest speaker were in the context of a discussion begun by employees and were his own ideas. The comments were not intended to be anti-union or disrupt the relationship between the Department and the Union.

The questions were rhetorical in nature. They did not in any way restrain or coerce employees with respect to their representation rights nor was it a refusal to avoid or to refuse to bargain with the Union. Finally, the remarks brought no harm to the Union and no violation should be found.

1 ARBITRATOR'S OPINION

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3 The nature of the forums is one of a relatively unstructured
4 discussion with no formal agenda or restriction on the issues dis-
5 cussed. Employees from all functions, line and staff, attend
6 voluntarily and determine the issues for discussion. There is no
7 evidence on the record that Mr. Stein came to the meeting with the
8 intent to disparage the Union, undermine its role or that his re-
9 marks were prepared in advance.

10 The Arbitrator finds that Mr. Stein's comments about the role
11 of the Union were part of the larger fabric of his remarks as he
12 summarized the discussion (JE2). It is apparent that he was
13 greatly concerned with the divisiveness within the Department and
14 the need to reduce it. There appeared to be little, if any, anti-
15 union sentiment. The questions were rhetorical as part of an
16 overall summary and must be interpreted in that context.

17 Furthermore, there is no evidence that Mr. Stein was attempt-
18 ing to settle or avoid grievances in the forum. Management has a
19 right to hear employee complaints and an obligation to direct em-
20 ployees to the Union if a violation of the collective agreement
21 has been alleged. But if Management were to be denied the right
22 to hear complaints, than the Forum would lose a great deal of its
23 effectiveness. Topics at the forum are selected by participants,
24 themselves, through a committee process. Management does not
25 select the issues to discuss (JE4).
26
27

1 Mr. Shumsky testified that he received 20-30 phone calls at
2 his office complaining about Stein's comments, but did not recall
3 if there were any written complaints. The witness had no estimate
4 of how many callers were actually in attendance at the forum. The
5 Union represents some 1600-1700 members, according to testimony.

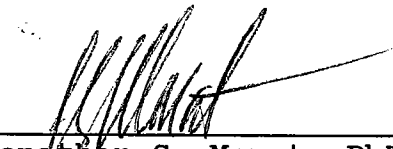
6 There is a significant difference interpreting Mr. Stein's
7 remarks when one hears them at the forum and when one reads them
8 in the the Union newsletter (E1). The newsletter is written cyni-
9 cally with derogatory cartoons and comments. One quote that seems
10 to typify Mr. Shumsky's attitude states, "Phil should be . . . ap-
11 pointed hall monitor. . .where his assignment would be to pick up
12 paper from the floor" (E1, p1). Shumsky's comments about Stein
13 were only slightly more kind at the hearing. Under the circum-
14 stances, Mr. Stein's comments appeared restrained.

15 The Arbitrator concludes that Mr. Stein's comments, taken in
16 the context in which they were made, did not constitute an unfair
17 labor practice depriving the Union or its constituents of their
18 rights.

19 AWARD

20 The Employer did not commit an unfair labor practice when Mr.
21 Stein made his remarks to the Forum. Unfair labor practice charge
22 UFC 1.85 should be dismissed.
23

24 August 24, 1989
25


Jonathan S. Monat, PhD
Impartial Arbitrator
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