

SEP 16 1991
LP

COUNTY OF LOS ANGELES
EMPLOYEE RELATIONS COMMISSION

In the Matter of

AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, LOCAL 575,
AFL-CIO

Charging Party

and

LOS ANGELES COUNTY CLERK

Respondent

Case No. UFC 1.90

Appearances

For Charging Party:

Della Bahan
Reich, Adell & Crost
501 Shatto Place, Suite 100
Los Angeles, CA 90020

For Respondent:

Ron Portnoy
Employee Relations Division
Chief Administrative Office
526 Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

INTRODUCTION

On October 11, 1990, American Federation of State, County and Municipal Employees, Local 575, AFL-CIO, hereinafter called Charging Party, filed an Unfair Employee Relations Practice Charge against the Los Angeles County Clerk, hereinafter called Respondent, alleging violations of Sections 12(a)(1) and (3) of the Employee Relations Ordinance, hereinafter called the Ordinance. A hearing was held on June 27, 1991 and the parties subsequently timely filed written closing briefs.

SUMMARY OF EVIDENCE

Since about 1975, Charging Party has represented the County's Superior Court Clerks, hereinafter called the Clerks. In 1985, after the Executive Office of the Superior Court merged with the Office of the County Clerk, a new classification of Judicial Assistants was created for new hires. Since that time, the Judicial Assistants have essentially performed the same duties as the Clerks and have had the same supervisors. The Judicial Assistants were an unrepresented classification until Charging Party became their collective-bargaining representative following a June 4, 1990 ^{1/} election. It was during the period shortly before and after this election that the instant dispute arose.

^{1/} Unless otherwise noted, all dates refer to 1990.

Prior to the negotiations in 1990 for the 1990-1992 Memorandum of Understanding, hereinafter called MOU, between the parties for the Clerks' unit (Joint Exhibit A), the wages and fringe benefits of the Judicial Assistants were tied to those of the Clerks. In a letter dated November 18, 1987 (Charging Party Exhibit B), County Clerk/Executive Officer Frank Zolin acknowledged this connection when he wrote, inter alia, "...the Court class of Judicial Assistant is benchmarked to the County class of Superior Court Clerk". Prior to the negotiations in 1990, the new wages and fringe benefits for both classifications had been implemented simultaneously after the approval of the Board of Supervisors, hereinafter called the Board.

The parties initialed a tentative agreement for the 1990-1992 MOU on or about March 7 and signed the MOU on or about April 25. Pursuant to the terms of the MOU, the Clerks were to receive a wage increase on April 1. However, in an April 30 memo to all Clerks and Judicial Assistants (Joint Exhibit B), Zolin notified the Clerks that their wage increase would not be reflected until the June 15 paycheck due to the timing of the Clerks' ratification of the MOU, which Respondent learned of on April 16, and the requirement for the Board's approval which was scheduled for May 16. In that same memo, Zolin notified the Judicial Assistants that they would receive their increases on April 30. Charles Fooks, the Chief Negotiator for Charging Party for the 1990-1992 MOU, testified that during the negotiations, no distinction was ever made between the dates that the Clerks and the Judicial Assistants would actually receive their wage increases.

As reflected in Zolin's August 7 memo to the Clerks and Judicial Assistants (Joint Exhibit C), the Clerks did not receive their wage increase until the August 15 warrant and the retroactive payments back to April 1 were not received until the September 14 check. Zolin also noted that the Judicial Assistants began receiving their increase in the May 15 paycheck. The Clerks did not receive any interest on the amount that they received retroactively.

Frank Frazier prepared the documents that went to the Board from Richard B. Dixon, the Chief Administrative Officer, hereinafter called the CAO, relating to the wages for non-represented units and the wages contained in the various MOU's that had been ratified. Frazier testified that documents relating to the implementation of wage increases for represented units were handled differently than those for the non-represented employees. A letter concerning wage increases for all non-represented employees traditionally went to the Board in March and in a letter to the Board dated March 1 (Respondent Exhibit 1), Dixon recommended, inter alia, the approval of the Judicial Assistant increase.

With regard to the process for represented units, Frazier testified that if there were no problems, it normally took between two to four months from the date of the tentative agreement to the time of Board approval. The average amount of time was three months, the least amount of time was about six weeks and if there were special problems, the process could take as long as four to five months. This time between the two events was required because the agreement had to be put in writing and signed, Frazier's

section had to make calculations and if necessary, prepare tables summarizing the salary adjustments, the CAO chain of command had to review the documents before the matter was placed before the Board and a minimum of two weeks was required by the Board to enact the enabling ordinance. Normally, Frazier did not prepare any documents until he received the ratified MOU. It then usually took him about a week or two to draft the implementing letter and salary ordinance and about a week for the drafts to go through the chain of command before it was filed with the Board.

With regard to the Clerks' MOU involved herein, Frazier did not remember when he was notified by the Employee Relations Division that the MOU had been ratified. He testified that the drafting that was required for this MOU was not complicated and he estimated that it only took one day. Frazier was not able to offer any explanation for the amount of time that it took from March 7, the date of the tentative agreement, to July 12, the date of Dixon's letter to the Board in which he recommended the wage increase for the Clerks (Respondent Exhibit 2).

Elliott Marcus, the Director of Employee Relations, opined that the delays in submitting the ratified Clerks' MOU to the Board resulted from the time that was required to complete the documents for the package and to make sure that the Board would approve the MOU. Marcus also testified that there were some unresolved issues and policy decisions concerning the newly created

Senior Judicial Assistant classification ^{2/} and he wanted to resolve those matters so that a complete package could be submitted to the Board. Marcus did not know how long it took to resolve these issues involving the Senior Judicial Assistants but he noted that Frazier was one of the individuals involved in working on those matters. When Frazier testified, he stated that the Senior Judicial Assistant was included since it was tied to the Clerks and it was regular procedure to include such benchmarked classifications.

Marcus denied any intent to harm Charging Party or abrogate the MOU. Similarly, Donna Singh, the Chief Spokesperson for Respondent during the 1990 negotiations, denied that Respondent attempted to delay the bargaining process.

DISCUSSION

The record established that Respondent violated Sections 12(a)(1) and (3) of the Ordinance when it delayed the implementation of the wage increases for the Clerks until September 14. According to Frazier, the average amount of time between the time of the tentative agreement and the time of Board approval was three months and it could take as little as six weeks. All of the evidence reflected that the process of implementing the MOU should have been relatively short. Frazier opined that there

2/ The parties stipulated that the Senior Judicial Assistant classification was created in November 1989 when the Board approved the Trial Court Funding Agreement. The first appointment to that position was in October 1990.

was nothing particularly difficult in this case and that while it might normally take a week or two to draft the required documents, it probably took only a day to draft the documents necessary for the Clerks' MOU. There was insufficient evidence that the review by the CAO's chain of command took more than the usual week or two. In this regard, I note that while Marcus opined that the delay was due in part to unresolved issues involved in the Senior Judicial Assistants classification, Frazier, who participated in the resolution of those issues, did not mention any such problems. Further, Frazier, the individual who apparently had more knowledge of what was involved in the approval of the MOU from Respondent's perspective, was unable to offer any explanation as to why it took until July 12 to get the documents to the Board.

Respondent argued that the delay in the implementation of the Clerks' wage increase resulted, in part, from the fact that the Clerks did not ratify the MOU until around April 16. However, that argument is not persuasive. I note that Zolin's April 30 memo to the Clerks notifying them that the wage increase would be reflected in the June 15 paycheck was sent after the ratification. Since the required documentation only took a day to draft and the review by the CAO's chain of command only took a week or two, ample time still remained for the Board to consider the MOU on May 16 as was originally scheduled.

For all the above reasons, I conclude that Respondent failed to offer any credible reasons for the delay from May 16 to July 12 for the submission of the Clerks' MOU to the Board and the subsequent implementation of the Clerks' wage increase. While a

delay of two months might not appear to be inordinate, based upon the context surrounding the delay in his case, I find that it was. The unrepresented Judicial Assistants had already received their wage increase in the May 15 paycheck and the evidence reflected that in the past, the two groups received their increases simultaneously. I conclude that the disparate manner in which the two units were treated created a chilling effect on the represented Clerks in violation of the Section 12(a)(1) of the Ordinance. In addition, the actions of Respondent must be viewed in light of the impending June 4 representation election in the Judicial Assistant unit in which Charging Party was seeking to become their collective-bargaining representative. Respondent's action resulted in the delay of the Clerks' wage increase until after the election. 3/ Accordingly, I find that the delay in the submission of the MOU to the Board and the subsequent implementation of the wage increase that was agreed to during negotiations was unreasonable and therefore, constituted a violation of Sections 12(a)(1) and (3) of the Ordinance.

With regard to a remedy, as discussed above, Zolin's April 30 memo established that the Board was originally scheduled to consider the wage increase on May 16 and that the increase would be reflected in the June 15 paycheck. Accordingly, I find that

3/ In its written closing brief, Charging Party also argued that Respondent's action was intended to influence the June 4 representation election of Judicial Assistants and thereby interfere with the exercise of their rights under Section 4 of the Ordinance. Since the charge filed by Charging Party did not allege such a theory, a separate finding on that theory would not be appropriate.

absent Respondent's violative conduct, the wage increase would have been included in that paycheck. Although interest is not usually an appropriate remedy, in this case, since the Clerks already received the delayed wage increase, I believe that it is the only remedy that would have any meaning. It must also be noted that Respondent did not offer any argument that interest was not appropriate. Therefore, as a remedy, I recommend that each Clerk ^{4/} receive interest on the wage increases that were delayed until September 14. The interest should be computed from the time that they should have received the money, commencing on June 15, until the wage increase was received. In view of the current prevailing interest rates, I recommend that a 6% rate of interest be utilized to determine the amount of the remedy. In addition, I recommend that the Commission issue a cease and desist order.

FINDING OF FACT

1. Respondent violated Sections 12(a)(1) and (3) of the Ordinance.

4/ In its closing brief, Charging Party argued that as an alternative, it should receive the interest. Since the Clerks were harmed and they can be identified rather easily, they should be the recipient of the interest payment.

CONCLUSION OF LAW

1. Charging Party met its burden of proving that Respondent violated Sections 12(a)(1) and (3) of the Ordinance.

RECOMMENDATION

I recommend that the Commission find that Respondent violated Sections 12(a)(1) and (3) of the Ordinance and issue the following Order:

1. Respondent shall cease and desist from unreasonably delaying the process of implementing negotiated wage increases.
2. Respondent shall pay 6% interest to each Clerk on the wage increases for the period of time that they were delayed from the time that they would have otherwise been paid, beginning on June 15 until the time that they were paid.

DATED: September 13, 1991

Respectfully submitted,



MARK BURSTEIN
Hearing Officer