

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)	
)	
AMERICAN FEDERATION OF STATE,)	
COUNTY AND MUNICIPAL EMPLOYEES)	
(AFSCME), LOCAL 575)	
)	
Charging Party)	
)	
v.)	UFC 1.90
)	
COUNTY CLERK)	
)	
Respondent)	
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DECISION AND ORDER

The charge in this case was filed by the American Federation of State, County and Municipal Employees, Local 575 (hereafter "Union" or Charging Party") against the Los Angeles County Clerk (hereafter "County" or "Respondent"). The Union alleged that the County had violated Sections (12(a)(1) and 12(a)(3) of the Employee Relations Ordinance (hereafter "Ordinance") when it delayed the implementation of the negotiated salary increase for employees in its Superior Court Clerk unit.

The matter was duly referred to Hearing Officer Mark Burstein, who held a hearing on June 27, 1991. The parties appeared and were afforded full opportunity to present evidence, offer argument, and examine and cross-examine witnesses. Upon the conclusion of the hearing, post-hearing briefs were filed. The Hearing Officer submitted a Report to the Commission on

September 18, 1991. Exceptions to this Report were filed by both the Charging Party and the Respondent.

The facts giving rise to this dispute are relatively uncontroverted. The Superior Court Clerk class (hereafter "Clerks") has been represented by the Charging Party since the early 1970's. Following the merger of the Superior Court Executive Office and the County Clerk, the Judicial Assistant class was established. This class performs identical duties to those of the Clerks and their compensation has paralleled that of the Clerks. The Judicial Assistants were unrepresented until June 1990 at which time an election was conducted and the employees selected the Charging Party as their representative.¹

Negotiations on the 1990-92 Clerks MOU concluded in a tentative agreement reached on March 7. This agreement was ratified by the Unit employees on April 16 and the resultant MOU was signed by the parties on April 25. The MOU provided for a three percent salary increase to be made effective on April 1. On July 12, the MOU was submitted to the Board of Supervisors (hereafter "Board") for adoption. Following adoption by the Board, the negotiated increase provided in the MOU was first reflected in the Clerks' August 15 paychecks. The retroactive moneys owed were received in the September 14 paychecks.

The Judicial Assistants had received a similar three percent increase as a result of the Board's approval on March 1

¹Unless otherwise noted, all dates refer to 1990.

of the proposed nonrepresented employees salary package. This increase was also made effective April 1, but was received by the Judicial Assistants in their May 15 paychecks. The same salary increases provided the Clerks in their 1986-88 and 1988-90 MOUs had been given to the Judicial Assistants and all increases had been implemented simultaneously for the two groups.

The Hearing Officer concluded that the manner in which the April 1 salary increases at issue were implemented amounted to disparate treatment which "created a chilling effect on the represented classes in violation of Section 12(a)(1) of the Ordinance." (H.O. Report, pg. 8.) The Hearing Officer further concluded that the delay in the submission of the ratified Clerks MOU to the Board with the resultant delay in the implementation of the negotiated salary increase was "unreasonable and therefore constituted a violation of Sections 12(a)(1) and (3) of the Ordinance." (H.O. Report, pg. 8.) In reaching these conclusions, Hearing Officer Burstein emphasized that the County's conduct in question had occurred against the backdrop of a pending representation election for the Judicial Assistants and that the County's actions had delayed the Clerks' salary increase until after the completion of the election process.

After a careful review of the entire record in this matter, including the hearing transcript, we are unable to adopt the findings and conclusions of the Hearing Officer for the reasons set forth below.

We first note that the record does not describe the

circumstances attendant to the implementation of the salary increases for the two groups of employees prior to the April 1990 increases at issue. Whether the simultaneous implementation of these increases was occasioned by design or by mere happenstance cannot be determined with any degree of certainty from the evidence before us. As such, we are not prepared to elevate the manner of the timing of these salary increases to the level of a term and condition of employment such that negotiations are required prior to any change thereon. Further, as the April 1990 Judicial Assistant salary increase had been approved by the Board some two months before the Clerks MOU was even signed, and in view of the customary time interval between the execution of a MOU and its submission to the Board as described by the County witnesses, it is not unexpected that the pay increases at issue were not simultaneously implemented.

Frank Fraizer, Head of Pay Policy in the Chief Administrative Office, testified without contradiction that the average time from tentative agreement to the submission of an MOU to the Board is approximately three months and that this average assumes a two-week interval between tentative agreement and ratification. Frazier further testified, again without contradiction, that under the most favorable conditions the minimum time from tentative agreement to submission of an MOU to the Board is about two months.

Here, the MOU was not ratified for almost six weeks after tentative agreement had been reached. When the above-

discussed timelines are adjusted to allow for a comparable period, it is readily apparent that the time which had elapsed between ratification of the Clerks MOU and its submission to the Board does not manifest an inordinate delay in the process. The observed deviation from the average time required to complete the process is minimal and, in and of itself, insufficient to sustain an unfair employee relations practice.

The Hearing Officer, in concluding that an unwarranted and improper delay had occurred in the implementation of the Clerks' pay increase, focused on the County's failure to implement the increase in line with the date specified in such regard in the Zolin memo of April 30.² The period between the May 16 date referenced in the memo and the July 12 date on which the MOU was submitted to the Board thus became for the Hearing Officer the relevant period of "delay" in the instant dispute.

Elliot Marcus, the County's Director of Labor Relations, described both practical and political reasons which he maintained tend to delay the submission of a ratified and signed MOU to the Board. The Hearing Officer found his proffered explanation inadequate to justify the delay which he determined had taken place with respect to the submission of the Clerks MOU to the Board. This conclusion, however, was reached in the context of the Hearing Officer's finding of a two-month delay in

²The memo issued to the Clerks and Judicial Assistants by Frank Zolin, then County Clerk/Executive Officer, stated, inter alia, that the matter of the adoption of the Clerks MOU was to be considered by the Board on May 16, 1990.

the process--the aforementioned May 16 to July 12 period. As previously discussed, our analysis of the relevant evidence does not support the conclusion that a delay of such magnitude had occurred. It is to be emphasized in such regard that the MOU was not ratified until April 16. Compliance with the May 16 date initially targeted in the Zolin memo for submission of the MOU to the Board would have required a two-week reduction in the best-case scenario for the process. The Ordinance cannot be read to impose such requirement on the part of the County.

The County witnesses, including the Chief Negotiator for the Clerks Unit, all denied that there was any intent to delay the implementation of the negotiated MOU. While such testimony is self-serving to some extent, it was unrebutted. Moreover, the record is devoid of any evidence remotely suggesting that the County engaged in prohibited conduct during the course of the negotiations which led to the pay increase at issue. As such, and again noting the proffered testimony as to the delays inherent in the County's MOU implementation process, the County's failure to meet the May 16 date appears more attributable to bureaucratic inefficiency and inertia rather than any deliberate machinations designed to interfere with employee rights recognized in the Ordinance.

The Hearing Officer's conclusion that the two employee groups had been treated in a disparate manner was based on his finding of the above-discussed "delay" in the implementation of the Clerks' April 1 increase and the fact that prior increases

given the Clerks and Judicial Assistants had been simultaneously implemented. This "disparate treatment," according to the Hearing Officer, created a "chilling effect" on the Clerks represented by the Charging Party. The Hearing Officer's Report, however, fails to describe the manifestations of this purported "chilling effect" and is less than precise in setting forth the basis for this specific conclusion. Our reading of the Report suggests that this conclusion is to some extent grounded in the fact that a representation election was then pending for the Judicial Assistants.

The Hearing Officer noted with respect to the linkage between this election and the County's actions at issue that these actions delayed the represented Clerks' increase until after the election was held. That such in fact did occur is irrelevant in the context of the instant dispute for the election did not concern the Clerks but was then pending among the Judicial Assistants. This latter group of employees had received their April 1 increase before the election was held. Further, there is not a scintilla of evidence that the County attempted to undermine the relation of the represented Clerks with their Union through any deliberate delay in implementing the April 1 salary increase. It is noted in such regard that the Clerks had secured through the negotiations process greater salary gains than those initially provided the Judicial Assistants and that the Judicial Assistant salaries were thereafter adjusted to bring them in to line with those of the Clerks.

If any "chilling effect" can be attributed to the County's actions, such would appear to have affected the Judicial Assistants on the somewhat convoluted theory that the purported delay in the implementation of the Clerks' increase was designed to send the Judicial Assistants the message that selection of the Charging Party as their bargaining representative would redound to their detriment. Again, however, there was no evidence that the County had conducted a campaign aimed at thwarting the Union's organizing efforts among the Judicial Assistants or that the County had attempted to influence the outcome of the election. In view of the gains secured by the Clerks in negotiations, it is not specious to suggest that the sole message sent by the County's actions as herein described is that union representation leads to greater salary gains. In any event, the evidence simply does not support any finding of a chilling effect attributable to the County's actions contested by the Charging Party.

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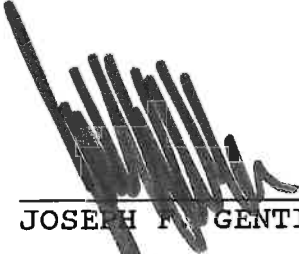
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For all the foregoing reasons, it is our finding and conclusion that the County did not violate the Ordinance by the manner in which it implemented the Clerks' April 1, 1990 salary increase.

O R D E R

IT IS HEREBY ORDERED that charge UFC 1.90 is dismissed.

DATED at Los Angeles, California this 24th day of January, 1992.



JOSEPH P. GENTILE, Chairman



PAUL K. DOYLE, Commissioner



ROBERT D. STEINBERG, Commissioner