

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

AUG 6 10 07 AM '81

IN THE MATTER OF:)	
SOCIAL SERVICES UNION, LOCAL 535)	
SEIU - RAYMOND W. CISSNA CASE-)	
CHARGING PARTY)	NO. UFC 10.17 BEFORE:
VS.)	
C. DIX, G. TODD, AND DEPARTMENT)	VERLIN L. McKENDREE,
OF PUBLIC SOCIAL SERVICES,)	HEARING OFFICER
RESPONDENTS)	HEARING DATES: MAY 29, 1981 and
)	June 8, 1981

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS AND ORDER

I. STATEMENT OF THE CASE:

This Hearing arises out of a Charge filed by Social Services Union, Local 535, SEIU, AFL-CIO, for and on behalf of Mr. Raymond Cissna, in which the following BASIS OF CHARGE is set forth:

"On or about 12/2/80, Raymond Cissna was denied a previously approved promotion to Social Worker Supervisor from Social Worker III because of and in retaliation against his exercise of rights protected under the Ordinance.
(SEE ATTACHED)"

At the outset of the Hearing, the following correction was made in the foregoing, and accepted by both Parties:

The date shown as "12/2/80" was changed to "9/3/80"
Said change being made to correct a factual error, and accepted by Complaining Party and Respondent, change was accepted by the Hearing Officer, and Hand Corrections made on the appropriate documents.
The "ATTACHMENT" referred to above reads as follows:

"ATTACHMENT
RAY CISSNA UNFAIR CHARGE
January 15, 1981

Mr. Cissna has 26 years of accumulated County service and was a Social Work Supervisor from June 1, 1968 to February 2, 1972 when he was demoted in lieu of layoff in the County reorganization.

On June 2, 1980, Mr. Cissna was telephoned by Mrs. Connie Dix to discuss the possibility of a full-time supervisor for the Lancaster Office.

On June 6, 1980, Mr. Cissna and Mrs Dix met for approximately 2½ hours to discuss the position of supervisor in the Lancaster office. The discussion included a great deal about 'loyalty'. Mrs. Dix stated that she was concerned about his position as Shop Steward with the Union. She stated she felt that the position of Shop Steward put one in an adversary role to administration while it was her view that a supervisor should be in a supportive role.

About the middle of July, 1980, Mr. Cissna and Mrs. Dix met again. Mr. Cissna was told that he would get the supervisor item, but that no date was set for the restoration at that time. At that time they discussed a replacement worker for Mr. Cissna and he was asked to participate in the interviews for his position. He and Mrs. Grant (Supervisor in the Reseda Office) conducted those interviews and one of the three people interviewed was given the position.

On August 27, 1980, Mr. Cissna received written notification of his restoration to Social Work Supervisor. This was hand-delivered to him in a sealed envelope with no accompanying instructions about 11:00 a.m. Mrs. Dix had given him verbal confirmation of his restoration a few days prior to this on the telephone.

Mr. Cissna had previously scheduled home calls to make on that day (8-27-80) but before he left the office he spoke to another Social Worker who had been restored to Supervisor.* He read the letter to her and discovered that she had not been required to serve a probationary period. There was a probationary period indicated on his restoration notification. Mr. Cissna left the office as planned about 11:30 a.m. He made his home calls and did not return to the office that day.

Mr. Cissna had previously requested and had approved several days vacation. His next day on the job was September 3, 1980. Mrs. Dix visited the office about 8:30 a.m. and informed him that the restoration had been cancelled. The reason she gave at the time was that if he had any questions about the restoration, he should have asked her first.

* by phone."

All proper and required notices were made, and by date of April 24, 1981, all allegations cited in the Charge were specifically and generally denied.

In due course, Hearings were held before the undersigned Hearing Officer, on Friday, May 29, 1981, and on Monday, June 8, 1981.

The Charging Party was represented by Mr. Dan Stormer, and the Respondents by Mr. Art Chavez and Ms. Lois Meiser. For a limited period of time on the first day of Hearing, Ms. Susan Guerrant, Field Representative for Local 535 was also present.

At the conclusion of the second day's Hearing, each Party rested its presentation affirmatively, subject to possible POST HEARING BRIEFS AND/OR POINTS OF LAW, which if either or both were to be filed with the Commission were to be postmarked no later than June 11, 1981. No such Briefs or points of Law were filed, and the Hearing was declared closed, on the Record as taken during the Hearings of May 29, 1981 and June 8, 1981.

II. THE ISSUE:

The ISSUE to be determined is whether or not, Connie Dix, RSA and Gordon Todd, RSA; Department of Public Social Services, Bureau of Social Services, Region V, did deny to Raymond Cissna a previously approved promotion to Social Worker Supervisor from Social Worker III because of and in retaliation against his exercise of rights protected under the Ordinance./((Claimant's Exhibit 3 (Charge))

No question was raised as to either Jurisdiction of the Employees Relations Commission to hear this subject charge, or as to the timeliness of all procedural steps. Since no questions were raised, it is here assumed that these matters are properly before the duly appointed Hearing Officer for his recommendation.

III. WITNESSES CALLED:

FOR CLAIMANT

RAYMOND WILLIAM CISSNA
ROBERT L. DUNCAN
JOYCE HARPER
JEAN WILLIAMS
JANICE SHELDON

FOR RESPONDENT

GORDON TODD
CONSTANCE LUCILLE DIX
KATHARINE GAVIN
MORRIS A. JOSEPH

FOR CLAIMANT (REBUTTAL)

CONSTANCE LUCILLE DIX

RAY CISSNA
JAN BRIEDENBACH

IV. EXHIBITS (HEARING DAY 1)

JOINT EXHIBIT

1. LETTER TO HARRY HUFFORD FROM GORDON TODD
DATED AUGUST 26, 1980.
2. FIVE-PAGE MILEAGE CLAIM FOR RAYMOND CISSNA
FOR PERIOD 8/6/80 TO 9/5/80

CLAIMANT'S EXHIBIT

1. LETTER TO RAY CISSNA FROM CONNIE DIX, DATED 9/8/80.
2. LETTERGRAM TO CONNIE DIX FROM RAYMOND CISSNA,
DATED 9/23/80
3. TWO-PAGE CHARGE OF UNFAIR EMPLOYEE RELATIONS PRACTICE
DATED 1/15/81
4. LETTERGRAM TO RAY CISSNA FROM CONNIE DIX, DATED 10/6/80.
5. TWELVE-PAGE EMPLOYEE RELATIONS ORDINANCE.

COUNTY'S EXHIBIT

1. THREE-PAGE MILEAGE CLAIM FOR RAYMOND W. CISSNA FOR PERIOD OF 7/15/80 TO 8/4/80.
2. MASTER TIME CARD FOR RAYMOND CISSNA FOR ENTIRE YEAR 1980.
3. FOUR SEPARATELY DATED DOCUMENTS ADDRESSED TO DIVISION CHIEFS FROM JAMES WINGMAN, DATED OCTOBER 15, 1980; JUNE 19, 1980; APRIL 15, 1980; AND MARCH 17, 1980

V. DISCUSSION:

After receipt of the transcript in this Matter, the undersigned Hearing Officer carefully reviewed it in its entirety, as well as all Exhibits entered into the Record. He made close examination of the opening statements of both Counsel, as well as each's closing Statement. Following the matters thus set forth, the undersigned now sets forth the following discussion, analysis, findings and recommendation to the members of the Employee Relations Commission. Let it be noted at the outset, that the ISSUE is narrow. Examination of CX-3 relates to and specifically sets forth alleged violation of Section 12 contained in the Employee Relations Ordinance of the County of Los Angeles. This section sets forth the following:

"Section 12. UNFAIR EMPLOYEE RELATIONS PRACTICES.

(a) It shall be an unfair employee relations practice for the County:

- (1) To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Ordinance." (Relevant portions only)

At the beginning of the Hearing attendant to this case, Counsel for Claimant set forth specific Sections of the Employee Relations Ordinance alleged to have been violated, in addition to the above cited Section 12, as follows:

"Section 4 entitled Employees Rights, the portion setting out:

'Employees of the County shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations. Employees of the County also shall have the right to refuse to join or participate in the activities of employee organizations, and shall have the right to represent themselves individually in their employment relations with the County. No employee shall be interfered with, intimidated, restrained, coerced, or discriminated against because of his exercise of these rights.'

Also cited: (in part)

"Section 5.It is also the exclusive right of the County to direct its employees, take disciplinary action for proper cause." "However, the exercise of such rights does not preclude employees or their representatives from conferring or raising grievances about the practical consequences that decisions on these matters may have on wages, hours, and other terms of conditions of employment."

(See Transcript, pages 15, Line 18, through Line 25 page 16)

Summary of alleged violations is conceded as Section 4, Section 5, and Section 12-A-1. (Tr. Pg. 17, ls. 16-19)

A brief review of the apparent sequence of events appears to be in order at this point.

From the Record, it appears that Mr. Cissna is an employee of the County, with some 26 years of total service. He was a Supervisor for some 4 or 5 years, and in 1972 there was a general cut and across-the-board reduction in supervisory staffing, including Mr. Cissna. There is no controversy regarding this 1972 reduction in Staffing. In the year 1980, a decision was made to re-open the Supervisory position in the Lancaster Office, and Mr. Cissna was among those considered for the opening, a position to which he might be restored to.

Mr. Cissna had discussions about this potential restoration with, Mrs. Connie Dix, Deputy Regional Services Administrator, Mr. Cissna's Supervisor. There were at least two such conferences. Testimony shows that there were some reservations from the beginning, as to Mr. Cissna's capabilities to perform as Supervisor at the Lancaster Office, where the vacancy was to be, however, in due course the job was offered him. This was accomplished by means of a hand-delivered document (JX-1) setting forth the requirement for Mr. Cissna to serve a six month probationary period. This form contains a designated line for the Employee's signature, and the date of signing. Mr. Cissna did not sign the document, and the testimony surrounding this portion of the events is contradictory. Mrs. Dix insists that she was told by the person delivering the letter to Mr. Cissna, asserted that he read the letter aloud to his fellow workers, that he was loud in a statement to the "effect" that he would not serve a probationary period. Mr. Cissna, on the other hand denies such conduct, and his denial is supported by testimony from Witness Robert L. Duncan, (Tr. pg89, ls. 4-20); Witness Joyce Harper, (indirectly)(Tr. pg. 98 ls. 12-15.); Witness Jean Williams, (Tr. pg 108, ls. 8-28, and pg.109 ls 1-13); and Witness Janice Sheldon, (Tr. pg.118, ls. 19-27).

It is not possible at this point in time to determine just what the person delivering the message to Mr. Cissna told Mrs. Dix when she next saw her. It is significant to note, however, that in her testimony, she was asked no questions regarding a disruptive posture by Mr. Cissna when the letter was delivered to him, nor to any loud and disturbing acts or speech. Even though this particular portion of the evidence would not be controlling in the view of the undersigned, the foregoing is set forth to show that the weight of the evidence does not support loud, boisterous, or disruptive behaviour by Mr. Cissna, as initially claimed.

Attention is next directed to the qualifications, and potential , capabilities of Mr. Cissna.

There is no evidence to even indicate that during his past tenure as Supervisor, he was anything but satisfactory. Testimony from fellow workers, (Duncan, Harper, Williams and Sheldon) shows that he is held in high esteem by his co-workers, both as to abilities and personal traits such as honesty, and consideration for others. Examination of Response Exhibit 5, (Appraisal of Promotability) which was the result of an evaluation following the events leading to this Charge, shows an over-all score of 70. Included in the items resulting in this score is one "Outstanding" for knowledge and skills; two as "Good", Productivity and dependability; and the remaining four as satisfactory, Personal Relations, Written and Oral Communications, Adaptability, and Supervision. The rating was made by a Geneva Grant, reviewed by C. Dix, and acknowledged by Mr. Cissna. Even in the remarks made by the rater, no unduly adverse comments are set forth, accordingly, one must conclude that Mr. Cissna's basic qualifications are at a minimum - satisfactory. The foregoing outline of events brings to the forefront, what actually happened in the matter of Mr. Cissna's restoration. Civil Service Rule 13.01 clearly gives to the appointing power, the right to require a six months probation period, ". . . before the appointment is complete. . ." (JX-3).

Mr. Cissna's notification of restoration to Social Service Supervisor clearly sets forth the requirement to serve a six months probation period. (JX-1) When this notice was hand delivered to Mr. Cissna, the testimony indicates that at the very least, he did not feel he should be required to serve such probationary period. He made a telephone call to another recently restored employee (Joyce Harper) and made inquiry as to whether or not she had been required to serve a probationary period, and was told that she had not. (Tr. pg.39 ls 9-28)

It is significant to note at this point that imposition of a probation period, is not mandatory, but is optional with the appointing power, at its sole discretion.

Apparently Mr. Cissna elected to ignore the notification form where his signature and date were indicated as appropriate, proceeded into the field on his regular work, then went off on a previously scheduled short vacation, returning on September 3, to what he assumed to be the new job assignment. Instead, he was met by Mrs. Connie Dix, who informed him that his restoration had been cancelled. (Tr. Pgs 43 & 44) The above brings into focus one of the contentions made on behalf of Mr. Cissna - that his appointment was effective September 1, 1980

and therefore he could only be demoted (or disciplined) for proper cause.

The undersigned does not accept this premise. Rule 13 of the Civil Service Rule establishes : "Upon reinstatement of an employee after separation or upon restoration of an employee pursuant to Rule 18.03 the appointing power may require such employee to serve a probationary period of six months before the appointment is complete." (Emphasis added) This language clearly precludes a determination that Mr. Cissna was restored as of September 1, 1980.

Attempt was made to show that the form used to notify Mr. Cissna was not the proper one, and therefore not applicable. It is argued that Form 1105 was the correct one to use, not PA-911 as was used. The undersigned Hearing Officer rejects this argument, finding that the notification to Mr. Cissna (JX-1) is clear on its face as to what was being offered, and it is not unreasonable to assume that Mr. Cissna should have noted the space for his signature and date of execution. Not even on September 3, 1980 during the conversation with Mrs. Dix, did Mr. Cissna indicate that he would sign this form, nor that he would be willing to serve a probationary period. (Tr. pg. 44, ls. 13-26) Obviously, Mr. Cissna elected to pursue his own form of objection, since he confirmed his lack of protest to Mrs. Dix in his Gram to her dated September 23, 1980, (CX-2) on the date she informed him that his restoration had been cancelled. Subsequently, Mr. Cissna did file a grievance, which though not a part of this Hearing, does tend to demonstrate his efforts to protest the cancellation of his restoration. There is nothing in the Record of this case to indicate any disposition of the grievance favorable to Mr. Cissna, and it is therefore reasonable to assume that no such disposition was made of it.

By date of January 15, 1981, the Charge which is the subject of this matter was filed. (CX-3)

Reference is made in the attachment to Mr. Cissna's activities as Shop Steward for the Union. Inference is advanced that the action of cancelling Mr. Cissna's restoration is rooted in retaliation for his activities as Union Steward. This inference is not supported by any evidence in the Record. In fact, examination of County Exhibit 3, shows that Mr. Cissna was not listed as a Steward at any time during the period between March 17, 1980, and March 27, 1981. Union concedes that he had not been listed as Steward by the Union. (Tr. pg. 10, ls 13-14). It is undisputed that Mr. Cissna had been active in Union activities over a long period of time, but the undersigned can find no evidence that such activities played any part in the cancellation of his restoration.

The total of the foregoing is a short analysis of events, leading to the heart of what is to be recommended as disposition of this subject Charge. Specifically, examination must be made of the allegation that Mr. Cissna's restoration was denied, "because of and in retaliation against his exercise of rights protected under the Ordinance."

As he was not a Union Steward, he obviously could not have been discriminated against as a Steward. The undersigned can find no evidence in the Record to support a finding that his other Union activities played any part in cancelling his restoration.

It appears from the evidence, that Mrs. Dix had reservations, rightly or wrongly, from the outset as to Mr. Cissna's capabilities to perform as Supervisor in the Lancaster Office. When the determination was made to offer him the position, the evidence shows that the right to require a probationary period was clearly present. Even if it were to be assumed that Mr. Cissna did not agree to serve such probationary period in advance, The Department had the unquestioned right to demand it as part of the position offer.

It is equally clear that when Mr. Cissna received the notice of restoration on August 26, 1980 (JX-1), he then knew, or should have known, that a probationary period of six months was a requisite of the restoration. Instead of immediately questioning this requirement with a superior, he elected to only check with another employee that had been restored to ascertain if she had been required to serve a probationary period. The fact of the matter is that the requirement for a probationary period is optional, not mandatory. In Mr. Cissna's case, the option to require the probationary period was exercised. In any event, he did not acknowledge receipt of the notification, (JX-1), and proceeded to finish the day's work, then to take his previously approved vacation. Let it be noted that there was nothing amiss about the vacation time, but it should be noted that he did have a good portion of the day remaining, of the date he received the notification, and it would not have been impossible to make inquiry about the requirement had he so chosen. But, he did not.


It would not be difficult to offer criticism of Mrs. Dix, for the speed with which she reached the decision to cancel Mr. Cissna's restoration, however, even that would not lend support to the claim that Mr. Cissna's rights under the Ordinance were violated. To make such a finding would require a degree of proof that just is not present here.

From the foregoing, and from the total Record of this case, the designated Hearing Officer concludes as follows:

1. Connie Dix, RSA and Gordon Todd, RSA and the Department of Public Social Services, Bureau of Social Services, Region V did not deny Raymond Cissna restoration to Social Worker Supervisor, because of and in retaliation against his exercise of rights protected under the Ordinance.

2. It is recommended that the Los Angeles County Employees Relations Commission, concur in this finding, and that the Charge filed by Social Services Union, Local 535, SEIU, AFL-CIO be dismissed.

Dated: This 5th day of August, 1981


Verlin L. McKendree,
Hearing Officer