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EMPLOYEE RELATIONS
COMMISSION
MAR 27 1989

LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of SOCIAL SERVICES UNION, LOCAL 535, SEIU, AFL-CIO, Charging Party, and COUNTY OF LOS ANGELES, DEPARTMENT OF PUBLIC SOCIAL SERVICES, Respondent.	Case No. UFC 10.31 REPORT OF HEARING OFFICER

Appearances:

For the Charging Party:

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For the Respondent:

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INTRODUCTION

On December 31, 1987, the Social Services Union, SEIU, Local 535, AFL-CIO, filed an unfair employee relations practice charge against the Department of Public Social Services, alleging seven specific violations of § 12(a)(1) of the Employee Relations Ordinance.

After notice was timely and duly given, a hearing on the charges was held on September 20 and December 8, 1988, before Richard C. Solomon, duly appointed Hearing Officer. The parties agreed to file post-hearing briefs on or before January 20, 1989,[1] which they have done, and the matter is now deemed submitted. Having considered all the evidence, arguments, and post-hearing briefs, I now submit this Report pursuant to Rule 6.10 of the Commission's Rules and Regulations.

THE CHARGE

The union charges seven violations of § 12(a)(1) of the Employee Relations Ordinance: three "Weingarten" violations involving employees Ablett, Pierce, and Coleman; two threats against a union shop steward, one arising from his circulation of a petition and the other involving a possible reassignment; and two involving the unauthorized removal of union material from the workplace. The union alleges that all of these, and in particular the first two categories, were committed by Deputy Regional Services Administrator Norma Nordstrom.

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[1] I received both briefs on February 15, 1989, later than normal because they were inadvertently mailed to an incorrect address and had to be re-mailed.

Respondent denies that the conduct of its supervisor, specifically Ms. Nordstrom, violated the Ordinance. Respondent contends that Nordstrom's actions were fully justified and there is no proof implicating management in the removal of the union's materials from the office.

THE APPLICABLE STATUTE

Section 12(a)(1) of the Employee Relations Ordinance states:

> (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;

MANAGEMENT'S EXHIBITS

CX1 E. Pierce grievance, dated 11-3-87 with attachments;

CX2 E. Pierce grievance, dated 11-20-87 with attachments;

CX3 E. Pierce grievance, dated 11-30-87 with attachments;

CX4 Internal telephone directory for Long Beach district office;

CX5 Memo from N. Nordstrom to E. Ablett, dated 10-1-87;

CX6 Memo from M. Calderon to E. Ablett, dated 10-22-87;

CX7 Excerpts from DPSS Personnel Manual re petition circulation;

CX8 Excerpts from DPSS Personnel Manual re discipline;

UNION'S EXHIBITS

U1 Memo from J. Earwood to N. Nordstrom dated 10-21-88 re disaster responsibilities;

U2 Memo from C. Espy to N. Nordstrom dated 12-5-88 requesting time off or overtime;

U3 Handwritten note from "Jan" to "Dick--per Norma" dated 11-8-88;

U4 Petition dated 11-4-87;

JOINT EXHIBITS

J1 Charge filed by Local 535, dated 12-31-87;

J2 Memorandum of Understanding between the County and Charging Party, dated 8-16-88.

SUMMARY OF THE FACTS

The background facts are undisputed. The incidents complained of occured in the Long Beach District office of DPSS, one of three district offices in Area IV of Region II. Norma Nordstrom is the District Regional Services Administrator (DRSA) with supervisorial responsibility for the approximately nine supervisors and sixty Social Workers who work in the Long Beach, Norwalk, and Compton district offices. These offices provide a range of social services to area residents.

Evelyn Pierce and Shiela Klick are both supervisors in the Long Beach district office. Pierce has been with the County for almost 30 years, and has been a supervisor for two. Cliff Espy is Local 535's shop steward for Social Workers, works in the Long Beach office, and has been supervised by both Pierce and Klick. He has been a County employee for 22 years and a steward for 20. He and Pierce are also close friends. Abblett and Coleman are employees in the Long Beach office.

Nordstrom was promoted to her present position in 1986, her first management level job, after spending some ten years with the Department in staff development. She claims to have inherited an apparently long-standing feud between Pierce and Klick.

She also claims to have inherited an office plagued by lax standards, unprofessional conduct toward clients, and excessive absenteeism and tardiness. In response, she adopted an active management style and set high and clear standards by which DPSS employees were to conduct themselves. This caused conflict.

Specifically, Nordstrom investigated the on-going animosity between Pierce and Klick and, in essence, concluded that the primary source of the problem was Pierce's "continued emphasis on what [she] think[s] Ms. Klick is doing to [her] ("accosting me", "trying to stab me in the back") [thus] preventing [her] from concentrating on the solution of case problems." Exh. C3, p. 4. Nordstrom thereupon sent Pierce a memo (a "gram" in departmental parlance) which rather clearly placed primary responsibility for the feud on Pierce and warned her of progressive disciplinary consequences in the event of future disruptive incidents. Exh. C1, pp. 6-7.

Upset, Pierce filed a grievance on November 3, 1987, calling Nordstrom's memo "inaccurate and unfair." Exh. C1, p. 1. In short, the matter was never satisfactorily resolved: management's attempts to re-write and "soften" the original memo were not accepted; instead, on November 20 and November 30, Pierce filed two more grievances [Exhs. C2, p. 1 and C3, p. 1]. Except for the Abblett representation denial charge and the missing union material, all of the remaining charges stem out of or are related to the Nordstrom-Pierce dispute. Further relevant evidence regarding each charge is summarized below, in chronological

order.

1. INTERFERENCE WITH ABBLETT'S REPRESENTATION RIGHTS:

Edythe Abblett was a Social Worker III in the Long Beach office. At least since early 1986, she was missing too much work due to medical problems and was placed on "medical certified time." This required medical documentation for all work missed because of illness. Her absenteeism problem continued, and Nordstrom asked her to attend a meeting on September 29, 1987, to discuss the situation. Before the meeting started, Abblett asked to be represented by Cliff Espy, the steward for her unit. Nordstrom denied her request, claiming that the purpose of the meeting was not discipline but to discuss Abblett's treatment program and to "counsel" her. The meeting was held in Nordstrom's office; Abblett's immediate supervisor (P. Salsido) was also present. Ms. Abblett testified that Nordstrom told her she was "in violation of the County's attendance policy," and that she (Abblett) felt frightened and feared discipline. The meeting lasted about one hour. Nordstrom told Abblett that she was being placed on "certified time."

This meeting was followed by two formal disciplinary meetings, on October 9 and 26, 1987, during which Abblett was formally warned [Exh. C5] and then reprimanded [Exh. C6]. Abblett was represented by Mr. Espy at both of these meetings.

2. INTERFERENCE WITH UNION'S RIGHT TO CIRCULATE A WORK-RELATED PETITION:

As summarized above, Nordstrom had met with Pierce on October 9, 1987, to discuss the poor working relations between Pierce and Klick, but the problem remained. On November 4, Espy was circulating a petition among the employees during a break which read:

> "Evelyn Pierce has been working for Los Angeles County 27 years and has an unusual ability to get along with people. She has supervised the students, and the volunteer, who wishes to work under no one else. Evelyn has coordinated the Appeals and Fair Hearings and has dealt with irate clients. Evelyn has always handled the Fair Hearings and Appeals to the satisfaction of all parties. We believe the charge of continued conflict with another supervisor to be in error." Exh. U4.

Ms. Klick saw it being circulated and read it. An employee took it back, and there was a brief "altercation." Nordstrom intervened and claims to have heard Espy say to Klick: "If not for you, we'ld be better off." Nordstrom considered this statement an act of insubordination and, shortly afterwards, gave Espy the choice of apologizing or having the incident written up in his personnel file. He chose to apologize.[2]

Although she apparently had not yet read the petition,

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[2] The "apology" issue becomes legally significant with respect to employee R. Coleman's representation rights.

Nordstrom also was concerned that it was divisive in that it was "anti-Klick." She, in fact, had been thinking about transferring either Pierce or Klick out of the Long Beach office as a way of "resolving" their feud, and believes that Espy was part of the factionalism that was developing in the office. Regardless, Espy claims that Nordstrom asked him what the petition said; he replied, "You must know," and that Nordstrom then said, "You're probably going to bring it up later and use it. If you do, and it's divisive, I'll come after you." The union claims that the petition was circulated solely on break time and did not require prior management approval, and therefore Nordstrom's statement to Espy violated § 12(a)(1) of the Ordinance.

Nordstrom denies threatening Espy. The County also claims, through the testimony of Gilbert Sainz, the Department's head of Employee Relations, that the petition was circulated in violation of County policy in that it was written and circulated during working hours and was not first approved by management as required by DPSS Personnel Manual §§ 8251-52 (Issued March 12, 1979).

3. INTERFERENCE WITH PIERCE'S REPRESENTATION RIGHTS:

Nordstrom scheduled a hearing on Pierce's second grievance on November 23, 1987. That grievance had been filed on November 20, and, as were the others, it was prepared on a pre-printed form. Near the top, the employee is asked to designate the "name of person, if any, whom you have chosen to represent you" in

which Ms. Pierce filled in "Local 535, Shop Steward Dan Gray and/or Local 535 Field Rep." Exh. C2, p. 1. Apparently, Gray is the steward for the supervisors and Espy is the steward for the line employees. If Espy represents a supervisor he must do so on his own time. Gray represented Pierce at the November 13 hearing which arose out of her first grievance.

At the November 23 meeting, Pierce expressed her desire to be represented by Espy. Gray was present, but, in Pierce's opinion, was not as knowledgable as Espy. Mr. Espy was present at the meeting but Nordstrom asked him to leave, even though he would have been on his own time. The hearing proceeded without him. Pierce also designated Gray as her representative in her third grievance filed one week later. Exh. C3.

4. NORDSTROM'S THREAT TO TRANSFER ESPY BECAUSE OF HIS UNION ACTIVITIES:

On December 1, 1987, Espy and Nordstrom were talking about the up-coming Ruby Coleman grievance hearing. Espy asked Nordstrom to give Coleman a "break" and not transfer her out of the approved unit. Nordstrom replied, in her words, "Cliff, who's going to do her work? Would you want to do it if she can't keep up with it?" Espy recalls Nordstrom saying, "Maybe we'll have to put you in [the] approved [unit]." Management claims the statement was made in jest and that Espy knew that that was its context. The union claims that the statement was an unlawful threat. There is no evidence of any personal animosity between

Espy and Nordstrom; they appear to get along well and have gone to lunch together.

5. INTERFERENCE WITH COLEMAN'S REPRESENTATION RIGHTS

On December 7, 1987, Nordstrom, Espy, Klick (Coleman's supervisor) and Coleman met to discuss the latter's grievance. Nordstrom said she was reluctant to allow the meeting to proceed until Espy followed through on his earlier promise and apologized to Ms. Klick. Her reluctance was reasonably interpreted by Espy as an order, and he apologized. She did this because she feared that the underlying tension would "overshadow" the meeting, and that it would not be fair to the employee if her representative had an ax to grind with the employee's supervisor.

6. REMOVAL OF MATERIALS FROM UNION BULLETIN BOARD:

The union apparently has the right to use a bulletin board in the employees' work room for posting information, and claims that materials placed on the bulletin board have mysteriously vanished since Nordstrom became supervisor of the Long Beach office. There is no evidence in the record linking anyone in management to specific removal incidents nor to any statements which could circumstantially support such an inference.

7. REMOVAL OF UNION CURTAINS:

Similarly, the union claims that some curtains, or bunting, with the union's name affixed, that had been hung in the employ-

ees' work room, were removed without the union's permission. Again, there is no evidence in the record linking management to this incident.

DISCUSSION

I. INTERFERENCE WITH ABBLETT'S REPRESENTATION RIGHTS:

The Union contends that the purpose of the meeting was to discuss Abblett's attendance problem and to place her on "certified" time which is the equivalent of a formal warning. Abblett was nervous during the meeting, felt that she was going to be disciplined, and clearly expressed her desire to have union representation.

The County contends that the meeting was non-disciplinary; that its purpose was to allow management to explore what progress the employee was making in her treatment program so that formal discipline could be avoided. Further, the County contends that such a meeting is within § 9010 of the Personnel Manual,[3] that Nordstrom explained the nature and purpose of the meeting to Abblett, and that Abblett decided to forego representation.

Preliminarily, the facts are in dispute as to whether Ms. Abblett eventually chose to withdraw her request for representation. I resolve the conflict by finding that Abblett initially requested a union representative, that Nordstrom told her why it wasn't necessary, that Abblett did not insist further, that

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[3] "The purpose of non-disciplinary action is to inform the employee of potential problems which may result in discipline if they continue, to help correct the problems before they become significant, and/or to advise the employee of the expected behavior. . . ."

Nordstrom interpreted Abblett's silence as a withdrawel of the initial request, but that Abblett would, in fact, have preferred to have a representative present. This takes us to the legal question.

Under the parties' Memorandum of Understanding, "[t]he employee has the right to the assistance of a representative . . . to represent him/her in formal grievance meetings." Art. 29, § 5(1). The parties have apparently chosen language significantly narrower than the comparable language in the Meyers-Milias-Brown Act which states: "Recognized employee organizations shall have the right to represent their members in their employment relations with public agencies. . . ." Gov't Code § 3503. Identical language in the Educational Employees Relations Act, Gov't Code § 3543.1, has been interpreted by California courts to acknowledge the right to union representation where a potential for disciplinary action exists, except in "highly unusual circumstances." Redwoods Community College District v. P.E.R.B., 159 Cal. App.3d 617, 205 Cal. Rptr. 523, 528, 117 L.R.R.M. 2173 (1984).

The employee/supervisor meeting in Redwoods was, on the surface, a routine performance-evaluation interview, as here. The court noted the importance of the discipline element, holding that it is still generally required, but went on to find that the employee's representation rights had been denied because of the following "highly unusual circumstances:" the employee was required to participate in the meeting, management was represented by a "high-level District administrator," the employee had to

respond to questions concerning her work performance, the interview was investigatory and relatively formal, and the atmosphere was intimidating.

Assuming that state law, rather than the M.O.U., defines the scope of the representation rights, all of the "highly unusual circumstances" present in Redwoods, except one, are present here. That one difference is that the focus of the meeting was on Ms. Abblett's treatment program and not on her work performance. The difference is significant.

Where the focus of the meeting is on aspects of the employee's life outside of the job, such as medical or family problems, union representation will not advance management's desire to avoid a disciplinary confrontation. As the Robinson court noted:

> "The employer's interest in efficient operation for maximum return is in measurable degree shared by the employee. The proces of arranging for and permitting participatory union representation will have some necessary tendency to interrupt the operation. It is therefore a matter of mutual interest that participatory representation at employer-employee interviews be limited to those situations in which it is warranted by the circumstances, and that the parties be enabled promptly and accurately to identify such situations. In any work situation employers and employees will be required repeatedly to communicate on a variety of subjects, often including the employer's expectations and the employee's performance. We cannot agree with the suggestion, implicit in PERB's argument, that under EERA an employee will be entitled to union representation at every routine performance-evaluation interview. Regardless of their importance, such interviews are an accepted part of personnel management in any well-run operation, and bear no significant threatening or derogatory connotation."

205 Cal. Rptr. at 527-28. With the focus on non-work issues, and where the imposition of discipline is not on the agenda, a rou-

tine supervisor-employee evaluation meeting poses no threat to the employee's status, regardless of how the employee feels about it. Further, it is not adversarial in the sense that management has taken a position regarding discipline vis-a-vis the employee, in which case the representative's presence could be vital, for example, to protect the employee's interests and explore ways of resolving the underlying problem without disciplinary measures.

But just as union representation would be inappropriate at meetings where the purpose was training, performance reviews, and so forth, it would appear to be inappropriate where management clearly intends the meeting to be for some legitimate non-disciplinary purpose and is not claiming "non-disciplinary" as a pretext for undermining the employee's and union's representation rights. I conclude that the County did not violate employee Abblett's nor the Union's rights by denying representation in the instance presented.

2. INTERFERENCE WITH UNION'S RIGHT TO CIRCULATE PETITION

The Union analogizes the right to circulate a petition to the right to solicit union adherents: so long as it is not done on "company" time, it is lawful. Here, Mr. Espy was circulating the petition during the morning break which is not "company" time, even though the employees are being paid for it.

The County agrees that circulation of petitions is constitutionally protected but argues that this petition was circulated

during working hours, which is prohibited by § 8252(4)[4] of the DPSS Personnel Manual. It also argues that because the petition was not approved in advance, its circulation violated DPSS Personnel Manual § 8252(3).[5] The County would also limit the right to circulate petitions to those which involved or touched on legitimate union business. Here, the County argues, Mr. Espy's petition does not qualify because it was not circulated on behalf of the Union but took sides in a personnel dispute, was not on Union letterhead, and was not identified as dealing with union business.

First, are break times "working" or "non-working" hours? It is a well-established principle in labor-management relations that management cannot forbid otherwise lawful union solicitation during employee break or rest times even though the breaks are paid time. In other words, break periods are non-working hours. NLRB v. Essex Wire Corp., 245 F.2d 589 (9th Cir. 1957); Mid-west Metallic Products, Inc., 121 NLRB 1317, 42 LRRM 1552 (1958). The parties' M.O.U. agrees. Art. 15, § A provides, in part: "During rest periods, employees shall be relieved of all duties and may leave their immediate work locations but must remain within the general area as prescribed by Management."

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[4] "No employee may distribute written or printed material during working hours except as required as part of his County duties." Exh. C7.

[5] "Each office head shall be responsible for approving, in advance, the distribution of materials within the non-public areas of DPSS facilities which is not delivered in the ordinary course of business." Exh. C7.

Second, the Personnel Manual is ambiguous as to a requirement that employees obtain permission before distributing materials. Section 8252(3) does state that the office head shall "be responsible for" approving distribution, but it does not state categorically that employees must first obtain such permission.[6] Approval could, under § 8252, be granted after the fact of distribution or circulation. Further, since this petition would have had to be approved anyway, assuming the existence and legality of such a requirement, Espy's failure to comply is irrelevant.

Finally, the County argues that management acted properly because the petition did not involve legitimate union business and its circulation disrupted the office. Whether it involved legitimate union business or not, Mr. Espy, as an individual, certainly had the right to circulate the petition on his break, and, correspondingly, other employees in the office had the right to express themselves by signing or not signing it. And, if it caused a disturbance which management considered independently worthy of discipline, proper action could have been taken against the source(s) of the disruption. But if the petition is otherwise lawful (i.e., not obscene, defamatory, etc.) and is being properly circulated (i.e., on break or lunch times, etc.), management violates § 12(a)(1) when it threatens the circulator with negative consequences. Such threats, regardless of how veiled,

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[6] Contrast this provision with Art. 13 of the M.O.U. which requires prior approval of certain materials to be posted on the Joint Council's bulletin board.

inevitably chill the exercise of protected rights. Thus, there was no substantial business justification for Ms. Nordstrom to threaten Mr. Espy with consequences if she found the petition to be divisive. In the absence of such justification, the Union need not prove intent to discriminate or interfere with the union, as required by cases such as NLRB v. Great Dane Trailer, Inc., 388 U.S. 26, 65 LRRM 2465 (1967).

3. INTERFERENCE WITH PIERCE'S REPRESENTATION RIGHTS:

Preliminarily, there is no dispute that Pierce was entitled to union representation at the November 23, 1987, grievance hearing. The issue is whether she was denied the representative of her choice. The Union claims that Pierce specifically requested Espy to represent her, that this request was denied without legitimate business reason, and that the denial was a clear violation of both the employee's and the union's representational rights.

The County claims that Pierce did not designate Espy as her representative before or during the hearing, that she designated Mr. Gray to be her representative on the grievance form, that he was present at the hearing and did, in fact, represent her, and that Espy, being present solely as an observer, was properly excluded as such.

The Union has not convinced me on this one. On the one hand, Pierce claims she, in essence, changed her mind and told Nordstrom, at the beginning of the hearing, that she wanted Espy

to represent her. She testified that she did this because she considered Espy more qualified than Gray. She has, however, known Espy for some time and has known that he was available to represent her. But, instead, she designated Dan Gray to represent her not only on the grievance which led to this hearing but also on the grievance filed one week later. I am simply not convinced that Pierce requested Espy as her representative.

Even if she had, the County correctly argues that "only a person selected by the employee and made known to Management prior to a scheduled formal grievance meeting shall have the right to represent or advocate as an employee's representative." M.O.U., Art. 29, § 6(1) (emphasis added). But how much advance notice is required? In the absence of express guidance in the M.O.U., that would be a time reasonably calculated calculated to contribute to the prompt and fair resolution of the grievance. Unless unavoidable, "last minute" designations would be counter-productive; they could be expected to delay hearings, and, by definition, they preclude pre-hearing discussions to settle the dispute and/or streamline the hearing. The point of this is that management could well have interpreted "prior to" to mean something more than "last minute." Thus, even if Pierce had told Nordstrom she wanted Espy to represent her at the last minute, Nordstrom's resistence is understandable, and a continuance or a recess to resolve the representation issue would have been in order. But neither Gray nor Espy requested such a recess or continuance, and this casts further doubt on the Union's claim.

The bottom line on this charge is that I am not convinced one way or the other. Since the Union has the burden of establishing a violation of the Ordinance, I conclude only that that burden has not been met in this case regarding this charge.

4. MANAGEMENT'S THREAT TO TRANSFER STEWARD ESPY:

There is a factual dispute as to what precisely was said, and depending on how that dispute is resolved, whether the words uttered constitute an unlawful threat or a lawful jest.

I find that regardless of what was said, either version could only have been interpreted as a jest. I am especially persuaded by the facts that the relationship between Nordstrom and Espy has been a professionally courteous one, where joking is more likely to occur in daily communications, and that Nordstrom's comment was made in the context of discussing another employee. Thus, her comment is entirely plausible as a jest and/or as a rhetorical response to Espy's request to give the employee a "break."

Given the other evidence, the Union's apprehension about Nordstrom's true intentions is certainly understandable. But that other evidence is a mixed bag, and does not indicate a pattern of anti-union animus. Thus, the total evidence is not sufficient to support an inference of such a pattern strong enough to outweigh the more probable inference that what Nordstrom said was innocuous.

5. INTERFERENCE WITH COLEMAN'S REPRESENTATION RIGHTS:

The facts are not in dispute here: Nordstrom would not allow the grievance meeting to start unless and until Espy apologized to supervisor Klick for a previous, unrelated incident. The County argues that Nordstrom never told Espy that he could not represent Coleman until he apologized, but I consider this argument specious. Her "reluctance" to allow the meeting to proceed was clearly the functional equivalent of telling the parties that the meeting would not start until the employee's representative apologized.

Nordstrom's reason for this action was out of her concern that the tension between Klick and Espy would pervade the meeting and would be unfair to the employee. There are two problems with this rationale. First, it was premature; nothing had taken place at the beginning of the meeting between Espy and Klick to create any concern, and it is just as likely that, as professionals, they would have comported themselves accordingly as let any pre-existing animosities get in the way of the business at hand. Regardless, Nordstrom certainly could have taken appropriate action during the meeting if the animosity broke out into the open and materially interfered with the proceedings.

Second, Nordstrom's action, in essence, held an employee's grievance "hostage" in order to take care of an entirely unrelated problem. Except to the extent that Espy's feelings about Klick would, in actuality, interfere with his ability to adequately represent Coleman, Coleman had no stake in the apology,

and had a right to have her grievance heard at the scheduled time. If Espy was refusing to comply with his earlier promise to apologize, Nordstrom had the alternative of disciplining him for the underlying insubordinate remark. She did not have the right to use another employee's grievance as a device for obtaining his compliance with that unrelated promise. Such an action was most unfair to Coleman, and placed Espy in an embarrasing position during the hearing. It violated § 12(a)(1).

6. REMOVAL OF UNION MATERIALS:

Assuming, for the sake of argument, that the Union had a right to keep its curtains in place and a right to not have posted materials on the bulletin board in question removed, there is a complete failure of proof that management either removed the materials or otherwise sanctioned their removal by subordinates. A finding of management interference with the Union's rights must, of course, be based on some solid evidence, whether direct or circumstantial, but here no evidence was presented which makes the inference of management involvement likely, let alone compelling. It is just as likely that the Union's curtains were removed and that materials were taken from the bulletin board by a custodian or other employee as by a representative of management. Again, the other evidence presented is simply insufficient, even if all of it were accepted to prove a pattern of anti-union animus, to support the Union's case on this charge.

The Union also introduced evidence of occurances in 1988

(i.e., occuring after the incidents charged herein) which are also claimed to show a continuing pattern of hostility toward Mr. Espy. For example, in October, 1988, a District Monitor prepared a memo listing certain responsibilities in the event of a disaster, and designated Espy as "stand by personnel" rather than "essential personnel" in spite of his willingness and ability to serve in the latter capacity. Exh. U1. The author of the memo did not testify, and Nordstrom understood that it reflected what Mr. Espy wanted. In December of 1988, Espy requested eight weeks of vacation [Exh. U2], and Nordstrom returned it with a request for more information; no decision had been made on Espy's request by the time of the second hearing. Finally, and frankly more ominous, the Union presented a handwritten note [Exh. U3], purportedly written by a "Jan" and addressed to "Dick per Norma" which reads: "You are right regarding political information in the office, this includes union forms. . . . If you see any political brochures, please bring them to Sondra or myself and I will see that Norma receives them." Unfortunately, there is no evidence in the record identifying "Jan," and Nordstrom denied any knowledge of this note or of its contents. Her denial is uncontradicted. Thus, this "post-incident" evidence does not support the suggested inference of a pattern of interfering with the rights of the Union and/or of its officers and members.

In the same vein, the County repeatedly argues that somehow the Union's claims lack merit because none of the incidents were grieved. This argument lacks merit for the simple reason that

the Union can pursue redress under the M.O.U. or under the Ordinance, and that its decision to pursue one route rather than the other, by itself, has absolutely no probative value.

FINDINGS OF FACT

1. The Union has not sustained the charge of interference with Abblett's representation rights, since her meeting with Nordstrom was a routine meeting to discuss her treatment program and was not intended to be disciplinary in nature.

2. The petition in question was circulated on break time, was protected speech, and was lawful; Nordstrom's statement to Espy that he would suffer consequences if she later determined that the petition was "divisive" was an unlawful threat and a violation of § 12(a)(1) of the Employee Relations Ordinance.

3. The Union has not met its burden of proving that Pierce requested Espy to represent her at the grievance meeting held on November 23, 1987, and, thus, the charge of interference with Pierce's representation rights has not been sustained.

4. The Union has not sustained the charge that Nordstrom unlawfully threatened to transfer Espy, since the statement, regardless of the version, was made in jest and/or in rhetorical response to Espy's advocacy on behalf of another employee.

5. The Union has sustained the charge of interference with Coleman's representation rights, since Nordstrom, in effect, made Espy's apology, based on an earlier and unrelated event, a precondition to starting Coleman's grievance hearing without having a factual basis for doing so.

6. The Union has not sustained the two charges of unlawful removal of its curtains and material from its bulletin board, since there is no evidence in the record implicating management, directly or indirectly, in the removal.

RECOMMENDATION

Based on the above, I recommend that the charges of interference with Coleman's representation rights and of threatening Espy over circulating a lawful petition be sustained and that the remaining charges be dismissed.

Dated: March 23, 1989

Respectfully submitted,

RICHARD C. SOLOMON