LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of	)	
	)	
SOCIAL SERVICES UNION (SSU), LOCAL 535, SEIU	)	
	)	
Charging Party	)	
	)	
v.	)	UFC 10.31
	)	
DEPARTMENT OF PUBLIC SOCIAL SERVICES	)	
	)	
Respondent	)	
	)	

DECISION AND ORDER

The instant charge was filed by the Social Services Union (SSU), Local 535, SEIU (Union or Charging Party) against the County of Los Angeles Department of Public Social Services (County or Respondent). The Union alleged that the County through the actions of the Administrator at the Long Beach District Office of the Department had violated Section 12(a)(1) of the Employee Relations Ordinance.

The matter was duly referred to Hearing Officer Richard C. Solomon, who held hearings on September 20 and December 8, 1988. The parties appeared and were afforded full opportunity to offer argument, present relevant evidence, and cross-examine witnesses. Post-hearing briefs were filed. The Hearing Officer submitted his Report on March 27, 1989. Exceptions to this Report were filed by both the Charging Party and the Respondent.

The charge as filed sets forth a series of incidents which the Union contends constituted impermissible interference with or denial of employee and union rights recognized in the Ordinance. These incidents were addressed individually by both parties as well as the Hearing Officer.

Hearing Officer Solomon found no Ordinance violation with respect to the disputes concerning the County's denial of Supervisor Evelyn Pierce's request for a specific Union Representative at her grievance meeting, the alleged transfer threat made to Steward Cliff Espy, and the "missing" Union curtains and bulletin board material. No Exceptions were filed to these findings.

Having carefully reviewed the entire record with respect to the above findings, the Commission adopts these specific findings and conclusions of the Hearing Officer for the reasons set forth in his Report.

The remaining findings and conclusions of the Hearing Officer were excepted to by either the Union or the County.

We first consider the findings and conclusions to which the County filed Exceptions. These were to the following effect: 1) The County violated the Ordinance in conditioning Espy's representation of Ruby Coleman at a grievance meeting on the former issuing an apology to Supervisor Sheila Klick for an earlier incident, and 2) the County improperly threatened Espy for his circulation of a petition in support of Supervisor Pierce.

In its Exceptions, the County essentially argued that the incident involving Espy's representation of Coleman was at most a de minimus violation of the Ordinance. Given the timing and the setting in which the requirement of an apology was imposed, the County's characterization is misplaced. The requirement that Espy first apologize for an incident unrelated to the subject matter of Coleman's grievance before he would be permitted to represent her derogates the office of Union Steward and, as such, is conduct prohibited by Section 12(a)(1) of the Ordinance.

We next turn to the dispute concerning Espy's circulation of the petition. The Commission has reviewed a number of federal court cases in which employee circulation of petitions, distribution of leaflets, or solicitation of union membership was at issue.[1] From this review, we have developed the following principles pertinent to the issue at hand: 1) For the circulation of a petition to constitute protected activity under the Ordinance, the petition must either relate to conditions of employment, concern union activities, or have as its purpose the redress of grievances; 2) activity otherwise protected can lose such status if the petition is circulated during working hours in contravention of a rule clearly prohibiting such circulation, and 3) circulation presumptively interferes with production and is thus unprotected when either the solicitor or the solicited is on work time.

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[1]See, e.g., Pioneer Finishing Corp. v. NLRB, 667 F. 2d 199, 109 LRRM 2112 (9th Cir. 1981); NLRB v. Daylin Inc., dba Miller's Discount Dept. Stores, 496 F. 2d 484, 85 LRRM 2818 (6th Cir. 1974), and Richardson Paint Co. v. NLRB, 579 F. 2d 1195, 98 LRRM 2951 (5th Cir. 1978).

In view of these principles, our initial inquiry focuses on the contents of the petition itself. This petition reads as follows:

> "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."

The above petition on its face is limited solely to an expression of support for Pierce; it neither relates to conditions of employment nor does it concern union activities. Further, the language of the petition cannot be construed as seeking the redress of any grievance. Union Steward Espy's circulation of the petition therefore does not come within the ambit of activities protected by the Ordinance. As such, and contrary to the Hearing Officer's finding, the statement of District Regional Services Administrator Norma Nordstrom to the effect that she would "come after" Espy if the petition was devisive was not violative of Ordinance Section 12(a)(1).

Having reached this conclusion, we need not decide the effect of the Department's solicitation rule on this dispute.

The Union excepted to the Hearing Officer's finding that the County did not violate the Ordinance in denying Edythe Abblett's request for a Union Representative at the September 29, 1987, meeting with Nordstrom. We find the Union's exception to the

effect that there is no material difference between Abblett's "treatment program" and her attendance problem to be well taken. The treatment program is so inextricably intertwined with her attendance record that any distinction between the two is merely one of semantics.

Notwithstanding the above conclusion, we find ample support in the record evidence and the relevant case law to adopt the Hearing Officer's ultimate conclusion that no Ordinance violation occurred with respect to the aforementioned meeting.

The Commission in the matter of LACEA, Local 660, SEIU v. County of Los Angeles, Department of Public Administrator-Public Guardian, UFC 6.28 (1976) extended to County employees the right to union representation at an investigatory meeting recognized in National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975). In brief, this right arises when an employee has a reasonable belief that the meeting might result in disciplinary action and the employee has requested the presence of a union representative.

The court in Alfred M. Lewis, Inc. v. National Labor Relations Board, 587 F. 2d 403, 410, 99 LRRM 2841 (9th Cir. 1978) further amplified the concept of an investigatory meeting as follows:

> "It should be acknowledged that a supervisory interview in which the employee is questioned or instructed about work performance inevitably carries with it the threat that if the employee cannot or will not comply with a directive, discharge or discipline may follow; but that latent threat, without more, does not invoke the right to the assistance of a union representative. The right of representation arises when a significant purpose of the interview is to obtain facts to support disciplinary action that is probable or that is being seriously considered."

The Commission has carefully reviewed the testimony of the percipient witnesses in light of the above-quoted principles. This review failed to disclose any probative evidence that Nordstrom attempted to elicit any facts or responses from Abblett which might have served as the basis for the imposition of discipline. As such, it cannot be said that a significant purpose of the meeting was to obtain facts to support contemplated discipline. Rather, it appears that the meeting was an informal counseling session designed to apprise Abblett of the situation so that she might take the necessary steps to avoid future discipline. Although references were made to Abblett's attendance as well as the disciplinary consequences of the continuation of her attendance problem, the right to Union representation does not arise in that limited context.

It should be noted that although Nordstrom is a relatively high-level administrator, the evidence was undisputed that she had routinely met with Abblett on an informal basis to discuss work-related matters. The fact that Nordstrom rather than Abblett's immediate supervisor conducted the meeting therefore does not of itself warrant the conclusion that the meeting was of an investigatory nature such as to give rise to Weingarten rights.

For the foregoing reasons, we are compelled to conclude that the County did not violate Section 12(a)(1) of the Ordinance by denying Abblett's request for Union representation at the meeting in question.

O R D E R

IT IS HEREBY ORDERED that Charge UFC 10.31 is sustained in part and dismissed in part as follows:

1) The charge that the County violated Section 12(a)(1) of the Ordinance with respect to Steward Cliff Espy's representation of Ruby Coleman is sustained. The County is ordered to henceforth cease and desist from interfering in a similar manner with the representation rights of union stewards.

2) All other allegations set forth in UFC 10.31 are dismissed.

DATED at Los Angeles, California, this 14th day of July, 1989

JOSEPH F. GENTILE, Chairman

PAUL K. DOYLE, Commissioner

ROBERT D. STEINBERG, Commissioner