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EMPLOYEE RELATIONS
COMMISSION
MAR 23 1992

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 10.41 REPORT OF HEARING OFFICER

Appearances:

For the Charging Party:
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For the Respondent:
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INTRODUCTION

Local 535 of the Social Services Union, SEIU, filed this unfair practice charge on August 16, 1990. The hearing on the charge was duly held on January 15, 1992, before Richard C. Solomon, hearing officer. The charging party was represented by Victor Manrique, Esq. of Van Bourg, Weinberg, Roger & Rosenfeld, and the County was represented by Ronald Portnoy, assisted by Onalee Kuziara of DPSS Personnel. The Union called Margie Cahill to testify; the County called Ron Price, Lynn McCune, and John Palubicki to testify; all witnesses testified under oath and the documents described below were received into evidence. The matter was left open for the filing of post-hearing briefs, which were duly submitted, and the matter is now deemed submitted for this Report to the Commission. 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 one violation of § 12(a)(1) of the Employee Relations Ordinance: that on August 9, 1990, DPSS management distributed a memo to DPSS employees at the Rancho Dominguez facility which contained "an unfounded attack" against a Union steward which "was intended to coerce and restrain employees in their exercise of rights guaranteed by the Ordinance."

The County denies the charge, contending that management, although it did prepare and circulate the memo in question, did not intend to coerce and restrain employees, nor did circulation of the memo have that effect apart from management's intent.

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;

JOINT EXHIBITS

1. Unfair Labor Practice Charge, dated 8/15/90, with attached Memo from Supervisors McCune, Grenier, and Iniquez to All Staff, dated 8/9/90;

2. Memo from Union Steward Cahill to Phil Ansell, dated 5/10/90;

3. Cover Letter from M. Lowe to P. Ansell, dated 9/13/90, with attached McClaren Report of its Indoor Air Quality Investigation, dated 6/20/90;

4. Petition (6 pages) with various signatures directed to Supervisors McCune, Grenier, and Iniguez, dated 8/10/90;

5. Art. 15 of the parties' Memorandum of Understanding: "Safety and Health"

COUNTY EXHIBITS

A. Letter from C. Marx (County Internal Services Dept.) to A. Johnson (L.A. City Community Safety Division), dated 8/15/90.

SUMMARY OF THE EVIDENCE

Ms. Cahill, at the relevant times, was a social worker with Adult Protective Services and a union steward from January, 1990, through November of that year. Around April 2, 1990, her unit moved into a new facility at 17600 Santa Fe, in Rancho Dominguez, a refurbished commercial building. One or two months after they moved in, employees started to complain of headaches and nausea. Ms. Cahill testified that approximately 30-40% of the employees in her unit complained of some health problems. Rumers started circulating about environmental problems with the building. In her capacity as steward, Ms. Cahill talked with one supervisor about the health situation, and the supervisor advised her to work through the Union. Cahill eventually spoke with a Glenda Rousseau, who identified herself as a Hazardous Materials

Inspector for the County.[1] Rousseau told Cahill that she had inspected the building when it was occupied by its former owner on several occasions and that she had observed leaking tanks and similar environmental hazards on the site. She also told her that the building would be safe only if the concrete floor had been completely replaced but that, as far as she knew, that had not been done. A small group of employees participated in this discussion with Rousseau.

That evening, May 10, 1990, Cahill composed a memo [JX 2] to Phil Ansell, a Field Representative for the Union, raising her concerns about the site. She testified that she spoke on the phone with Ms. Rousseau before completing the memo to make sure that the technical portions were accurate. She also circulated the memo to the small group of fellow employees who had talked with Rousseau the day before. She then delivered the memo to Ansell. The memo, in essence, describes the problem and concludes "PLEASE ADVISE ASAP."

The memo was immediately "leaked" to management. That appears to be the correct word, because Ms. Cahill denies giving any supervisor a copy, and she did copy only her fellow employees who were part of the discussion with Rousseau. She denies circulating the memo to employees at large, and there is no evidence in the record to the contrary. Regardless, management took the information seriously and hired the McClaren company to conduct an indoor air quality investigation of the building. JX 3. With the exception of inadequate fresh air supply, the report was negative.

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[1] According to Ms. Cahill, Rousseau was having lunch with a friend, Wanda Vasquez, who told Rousseau that she had just moved into the Rancho Dominguez building. Rousseau, was shocked that people would be working in the building. Vasquez passed Ms. Rousseau's name on to Cahill.

On August 9, 1990, some 6-7 weeks after receiving the McClaren report, the supervisors of the three units in the facility (McCune, Grenier, and Iniguez) wrote a memo addressed to "all staff" in which they advised the employees of the results of the study and, according to the Union, made an unlawful statement regarding Ms. Cahill. Its first paragraph reads:

> "The purpose of this memo is to share with you our efforts to investigate the allegations recented circularized relative to a potentially hazardous health situation at this facility. In May, a memo sent to Local 535 contained a series of allegations received from 'an environmental specialist and government inspector.' The memo failed to identify both the name of this 'specialist' and the agency. The substance of the allegations focused on the use of toxic chemicals and carcinogens by the former occupants, American Racing. It was further alleged that this facility had previously been cited for environmental violations."

JX 1. Thus, it is clear that management is referring to Ms. Cahill's memo of May 10 as the triggering event. The supervisors' memo goes on to summarize the report's findings and their confidence in its accuracy. The next key paragraph, and the allegedly offending one, states:

> "We regret that an inflammatory memo of this nature was produced. The author obviously has no basis in fact and acted irresponsibly and unethically in generating information clearly invalid. Administration action has been taken to ensure this type of unprofessional conduct is not repeated at the expense of our staff."

JX 1. Again, it is clear that management is referring to Ms. Cahill as the "author" of the memo in question and is thus accusing her of acting "irresponsibly and unethically." With respect to the last sentence, Ms. Cahill at first thought that the "adminstrative action" was to be directed at her, and she felt afraid. It turns out that that administrative action took the form of a request to a sister agency of the City of Los Angeles [CX A] to take disciplinary action against a City employee who, according to County management, was the actual source of Ms. Cahill's information. Ms. Cahill agreed that she talked with Mr. Bean, but claims it was three to seven

days after she prepared her May 10 memo, that he said he might be able to help by finding relevant documents, but never followed through.

Ms. Cahill claims she announced her desire to resign her position as steward earlier than she otherwise would have because of the incident; at the Union's request, she stayed on until the next election. Management's August 9 memo had no other effects: Cahill's performance evaluations did not suffer, and soon thereafter she took a position as a management trainee. Most employees in the unit signed a petition protesting the supervisors' August 9 memo. Exh. JX 4. Finally, Mr. Price testified that the level of grievances filed by employees within the three districts housed in the Rancho Dominguez facility did not go down after the August 9 memo was circulated to the employees.

DISCUSSION

There are two preliminary issues. First, the County seeks to hold the Union to the literal language of its charge in this case, namely, that management's August 9 memo ". . . was intended to coerce and restrain employees in their exercise of rights guaranteed by the Ordinance." JX 1 (emphasis added). The Union claims that the language reflects inartful pleading and that intent is not properly an element of a Section 12(a)(1) charge. The County cites no authority in its post-hearing brief to support its argument, nor did I find any authority to support the County's argument. Further, I reject the argument because the County has not been prejudiced by inclusion of this unnecessary element.

Second, Ms. Cahill was engaged in protected activity by investigating what appeared to her to be reliable information regarding the safety of her workplace and by directing an appropriate memo to the Union asking for advice. Her memo raised health and safety concerns

in her capacity as union steward, and the information she had received from Ms. Rousseau appeared, under the circumstances of significant employee health complaints, to be reliable because of the information's source (Rousseau appeared to be someone who would know about the building's past uses in light of her position) and its detail. She did not circulate her memo to other employees willy-nilly, which would have been unduly provocative and unsettling, nor did she release the memo to the public at large. For a steward to inform the union of a potential problem and to ask for guidance as to how to proceed is protected activity.

The Commission has declared it appropriate to analyze employer communications "under a standard which comports with the express language of Section 8(c)." In the Matter of L.A.C.E.A., Local 660, SEIU v. Chief Administrative Office, UFC 6.180 and 6.188 at p. 5 (consolidated, ERCOM, Oct. 31, 1989). Section 8(c) immunizes employer expression of opinion "if such expression contains no threat of reprisal or force or promise of benefit." Consequently, I will analyze management's August 9 memo under the standard adopted by the Commission.

When read as a whole, the August 9 memo contains a threat of reprisal against a union steward for having engaged in protected activity and thus its circulation violates Section 12(a)(1). The first sentence in the key paragraph describes Cahill's memo as "inflammatory," and the second sentence accused her of having "acted irresponsibly and unethically in generating information clearly invalid." If the memo stopped there, it would not violate the Ordinance because it would not have threatened anything. It would simply have memorialized DPSS management's understandable reaction at having to respond, at some expense, to what proved to be groundless charges, i.e., it would simply have reflected management's opinion about the

affair. The third sentence, however, states that "[a]dministrative action has been taken to ensure this type of unprofessional conduct is not repeated. . . ." This sentence beyond doubt also refers to Ms. Cahill. The County argues that this sentence in fact refers to an unspecified City employee, which does appear to be true in light of County Exh. A. I am not persuaded by the County's argument for three reasons. First, even if its authors intended that sentence to apply to a non-County employee, its clear import, when read in conjunction with its preceding sentence and the first paragraph, is aimed at Ms. Cahill. Second, the problem could have been avoided had the authors stated that a non-County employee had been the source of the incorrect information and that DPSS management had requested L.A. City management to take appropriate administration action against that employee. And, finally, although not dispositive, Ms. Cahill reasonably interpreted that sentence to refer to her. The entire thrust of the memo is that that employee had better be 100% certain of the facts before directing a preliminary memo to the union asking for assistance.

There are numerous examples of similar statements being made to union stewards and being held unlawful. For example, in Dept. of Health & Human Services, etc. and Amer. Fed. of Gov't Employees, 12 F.L.R.A. 667 (1983), a supervisor told a Union Steward that she "had just read the steward's 20-page audit and wasn't the steward embarrassed that it was so poor and that [the steward] had not been performing [well] as a Service Representative." The Authority concluded that the statement denigrated the steward's work performance and could reasonably have the effect of inhibiting the steward's performance; therefore, in these circumstances, it was deemed coercive of the steward's protected right to present grievances to that level of

supervision under 4 U.S.C. Section 7116(a)(1).[2] Similarly, in U.S. Dep't of Commerce, Bureau of the Census and Amer. Fed. of Gov't Employees, etc., 1983 FLRA LEXIS 174 (F.L.R.A. ALJ Dec. No. 29, 1983), the supervisor told a union steward that he was angry with the steward for having filed an unfair labor practice charge, that official time should not be used for filing unfair labor practice charges, that the supervisor was offended both as a taxpayer and a manager that the steward was causing trouble by filing unfair labor practice charges, and that it was time to crack down on this use of official time. The Authority had no difficulty concluding that these statements also violated 5 U.S.C. Section 7116(a)(1).

The parties introduced evidence on both sides of the issue as to whether the August 9 memo actually restrained or coerced employees in exercising their rights, apparently assuming that the applicable substantive standard required proof that the employer's communication actually caused such restraint. In light, however, of the Commission's ruling referred to above, whether a management communication actually caused employees to restrain from exercising their collective rights is not necessarily required. I read the Commission's ruling in the L.A.C.E.A., Local 660, SEIU v. C.A.O. to suggest a threshold inquiry, namely, whether the communication constitutes a "threat" as proscribed by Section 8(c) of the N.L.R.A. If it does, that ends the matter, and proof of interference, restraint, or coercion is not required. If the communication does not contain a threat, it may perhaps be found to violate the Ordinance, under the ruling of Public Employees' Association v. Board of Supervisors, 167 Cal. App.3d

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[2] That statute is virtually identical to Section 12(a)(1) of the Ordinance. It provides:

"(a) For the purpose of this chapter [5 U.S.C. Sections 7101 et seq.], it shall be unfair labor practice for an agency--

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;"

797, 807, 213 Cal. Rptr. 491 (1985), but that issue is not presented in this case. Thus, the parties' evidence regarding actual interference, restraint, or coercion is not relevant in light of the applicable standard.

FINDINGS OF FACT

1. M. Cahill is a DPSS employee and was also serving as a Union steward from April through November, 1990.

2. In her capacity as steward, Cahill learned that a significant number of fellow employees, and bargaining unit members, were complaining of adverse health problems shortly after employees assigned to three DPSS Districts moved into a new facility in Rancho Dominguez.

3. Cahill also received what, at the time, appeared to be reliable information from a Hazardous Materials Inspector for L.A. County to the effect that the Rancho Dominguez facility had previously been used by a manufacturing business which had allowed toxic chemicals to soak into the concrete floor and sub-flooring, and that the County had refurbished the building for DPSS use without replacing the concrete floor. Cahill raised these possible health concerns with a supervisor and was advised to first work through the Union.

4. Cahill composed a memo, dated May 10, 1990, in her capacity as Union steward, describing her conversations with the Inspector and directed to the Union's Field Representative asking for advice as to how to proceed further.

5. Before the Union could formally present the matter to management, DPSS supervisors came into possession of a copy of the May 10 memo and immediately commissioned an indoor air quality investigation of the facility.

6. The study found that the previous occupier of the facility had used the building only

as a warehouse and had not used toxic chemicals in any manufacturing processes; it thus concluded that there were no air quality problems arising from toxic chemicals, although it did recommend increasing the fresh air supply in the building.

7. DPSS management thereafter sent a memo, dated August 9, 1990, to all employees working at the facility informing them of the results of the study, accusing Ms. Cahill, by implication, of having acted unprofessionally and unethically in drafting her May 10 memo, and stating that "administrative action has been taken" against the responsible party.

8. The statement about administrative action impliedly and reasonably refers to Ms. Cahill and constitutes a threat of reprisal against her for having engaged in activity protected by the Ordinance.

CONCLUSIONS OF LAW

1. Respondent violated Section 12(a)(1) of the Ordinance by circulating the August 9 memo because it constituted a threat of reprisal against a union steward for having engaged in protected activities.

RECOMMENDATION

Based on the above, I recommend that the Commission sustain the Union's grievance, and order respondent to rescind the offending paragraph of its August 9 memo and to cease and desist from similarly violating employees' rights in the future.

DATED: March 20, 1992

RICHARD C. SOLOMON, Hearing Officer