BEFORE THE EMPLOYEE RELATIONS COMMISSION
OF THE COUNTY OF LOS ANGELES

In the Matter of

THE ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFF'S (ALADS),
Charging Party

And

COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT,
Responding Party

Case No,
UFC 14-07

HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS

APPEARANCES

For Charging Party	Helen L Schwab, Esq. Green & Shinee
For Responding Party	Jeffrey C. Freedman, Esq. Jolina Abrena, Esq. Liebert, Cassidy, Whitmore

THE HEARING

Pursuant to the Rules of the Los Angeles County Employee Relations Commission [hereinafter referred to as "ERCOM"], the undersigned was selected as the Hearing Officer in this matter. Hearings were duly held on April 9, May 20, and July 24, 2008 at the Hall of Administration, Room 374, 500 W. Temple Street, Los Angeles, California. Each of the parties appeared through their representative or representatives and was afforded the full opportunity to present relevant evidence on all issues before the undersigned, including documents and witnesses, and each was permitted to cross-examine opposition witnesses. Both parties filed written briefs after which the matter was taken under submission. Both briefs have been duly considered by the undersigned in arriving at this decision.

THE CONTENTIONS OF THE PARTIES

The issues are set forth in the Charging Party's "Charge Alleging Unfair Employee Relations Practice" as prescribed by Employee Relations Ordinance No. 9646, Section 12.

The Charge filed in this case alleges generally that the Responding Party unilaterally implemented a number of changes to the wages, hours and working conditions of deputy sheriff's assigned to the Scientific Services

Bureau without bargaining with the Charging Party in good faith. Specifically, It enumerates the following alleged violations;

1) Responding Party unilaterally created a mandatory on-call procedure and increased the number of bargaining unit members and non-bargaining unit members required to be on call;
2) Responding party unilaterally modified the schedule of bargaining unit members assigned to its Latent Print Section;
3) Responding Party created a "Regional Crime Lab" pilot program which, *inter alia*, transferred the duties and responsibilities associated with bargaining unit work to non-bargaining unit members;
4) Responding Party unilaterally redeployed county vehicles to the Latent Prints section headquarters and strictly for the use of on-call employees;
5) Responding Party unilaterally transferred the duties and responsibilities "associated with bargaining unit work to non-bargaining unit members, such as Forensic Identification Specialists, without bargaining in good faith.

The Charging Party alleges further that this conduct was in violation of both the Meyers-Milias-Brown Act, to the extent it is applicable, and

Section 12 (a) (3) of the Employee Relations Ordinances of the County of Los Angeles. The latter merely provides that it is an unfair employee relations practice of the County "To refuse to negotiate with representatives of certified employee organizations on negotiable matters."

FINDINGS AND CONCLUSIONS

There seems to be little genuine dispute concerning the essential facts of this case. Where the real dispute lies appears to be in the intent of the Responding Party during the bargaining period in implementing numerous changes in the wages, hours and working conditions of the affected members and non-members of the bargaining unit.

There is no argument by the Charging Party [hereinafter "ALADS"] in this case that it was not given proper notice for the most award of the proposals of Responding Party [hereinafter "Sheriff's Department"] prior to implementation. The record shows that ALADS received detailed letters between October, 2005 and February, 2006 setting forth these proposed changes. While there were certainly opportunities on ALADS part to submit counterproposals, the record is devoid of any evidence that it did so.

ALADS position in this matter appears to be rather that the Sheriffs Department was merely "going through the motions" and had no intent to alter or compromise any of its positions despite any input from ALADS. In

other words, though the Department came to the bargaining table with these issues, it never intended to reconsider or compromise on any of these proposed changes and therefore was not bargaining in good faith, i.e., that it adopted a "take it or leave it approach" and "stonewalled" on each of these proposals.

There was no evidence presented at the hearing demonstrating a history of "surface" or bad faith bargaining on the part of the Department during prior bargaining sessions between the parties.

Eddie Camarillo, a central witness for ALADS, and an officer of the union, a man experienced in the meet and confer procedures regarding employer proposals, testified that at a meeting of the parties on January 10, 2007, it was his understanding that the Department intended to implement the changes it had proposed regardless of any discussion with ALADS.

"Q Did Captain Brogan say anything to you at the outset of the meeting regarding the meeting and conferring over the changes to the Identification Section at Scientific Services Bureau?
A It was our understanding that that meeting was to take place. However, the Department was making the changes irrespective of what we discussed on that date.
Q Did you interpret that to mean that the Department was still meeting with ALADS but that they were set on making the changes that were proposed?
A I interpreted that as meaning that irrespective of what occurred that day and irrespective of what was said, the Department was going to implement those changes."

It should be noted that neither Camarillo's testimony nor any other evidence presented by ALADS identifies a specific statement by Captain Brogan or any of the other Department representatives. A number of witnesses were called by the Department, including Captain Brogan, all of whom contradicted this statement by Camarillo, and all of whom insisted the Department maintained an open mind concerning these proposals and would have considered counter-proposals had any been submitted by ALADS. Numerous letters were introduced at the hearing from the Department to ALADS, expressing the intention of the Department to go forward with these proposals but at the same time expressing a willingness to consider contrary positions. One such letter accused, as noted hereinabove, ALADS of "ambivalence" with respect to these proposals.

ALADS filed a Notice of Impasse pursuant to Section 7.03 of the Rules and Regulations of the Commission, but later withdrew this notice, it says, because the Department implemented its proposals.

ALADS additionally argues that the Department withheld information it requested as a part of its consideration of these proposals.

What constitutes "bad faith" in collective bargaining is not always readily ascertainable from the statements or action of the parties and in most cases this issue turns on questions of credibility. See, e.g. *The*

Refusal to Bargain Collectively Under the Terms of An Existing Agreement. 63 Harvard Law Review 1097 (1957).

Here, as ALADS does not seriously dispute, the Department clearly notified ALADS of its proposals and consented to meet and confer with respect to each of them prior to implementation. *McClatchy Newspapers v. NLRB,* 131 F 3d 1029 (D.C. Cir. 1997).

It is apparent that the Department was forceful and aggressive in these negotiations. But the insistence on one's proposals is not necessarily evidence of bad faith, since either party has the power in collective bargaining to be unyielding in a particular position so long as it retains an open mind and adheres to the bargaining process. See *Claremont Police Association v. City of Claremont* (2006) 10 Cal.4th 633.

What ALADS position boils down to upon close examination is that the Department was "going through the motions" and not acting in good faith in bargaining over these proposals. The courts have taken such allegations seriously in the past because such tactics can have the effect of destroying both the status and effectiveness of the employees' bargaining representative. *K-Mart v. NLRB,* 626 F. 2d 704 (9th Cir. 1980).

ALADS position in this respect would have been enhanced had it submitted counterproposals of its own. But the record reflects that it offered

not even one such proposal during the months these negotiations took place, despite requests from the Department for alternative proposals.

The position of ALADS in this proceeding is reflected in the testimony of Eddie Camarillo, its key witness, which amounts to no more than an impression that the Department was determined to push through its proposals irrespective of the position of the union. Though he refers loosely to conversations he had with Department negotiators, he assigns no particular statement which would support this conclusion.

The record, as already noted, consists of extensive correspondence showing the Department was willing to meet, and in fact, expected to meet with ALADS to discuss these various proposals. It is the nature of collective bargaining that parties need not specify in advance a willingness to make concessions concerning proposals. A party is only required by law to approach bargaining with an open mind, and a willingness to hear and give consideration to the other side's position. Again, ALADS failed to submit any counter proposals during the several months of bargaining in this case. Bargaining is a two way street. A union may not abandon its responsibilities in the process and then be heard to say it assumed a lack of good faith on the part of the employer.

Considering the entire record in this case, as a hearing officer is required to do, it cannot be concluded there was a violation of the provisions of the ordinance, i.e. that the Department failed to bargain in good faith with ALADS on these various proposals

In view of this finding, there is no need to consider the question of waiver on the part of ALADS, an issue not raised at the hearing by the Department. Suffice it to say that the cases have made it clear in the past that a union may not simply consider the negotiations a fait accompli and take no further action than complaining in a proceeding at a later date. See *Haddon Craftsmen,* 300 NLRB 784 (1990).

Only one further issue remains to be disposed of, ALADS claim that the Department refused to provide it requested information. This allegation is of recent vintage and does not appear in the Charge filed by ALADS. Moreover, one of the documents requested, was an independent study the Department rejected upon receipt and never relied upon. Though other information may have been provided in a less timely fashion than ALADS wished, no prejudice has been shown by the delay.

RECOMMENDED ORDER

The Sheriffs Department did not engage in "surface" bargaining or violate it's duty to bargain with ALADS in good faith over the new proposals it wished to implement and the charge filed by ALADS alleging the same is dismissed in its entirety.

Dated: November 17, 2008, at Burbank, California

THOMAS S. KERRIGAN