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RECEIVED
EMPLOYEE RELATIONS ROOM
COUNTY OF LOS ANGELES
JUN 23 2 33 PM '72

In the Matter of
ASSOCIATION FOR LOS ANGELES DEPUTY
SHERIFFS,

REPORT OF
HEARING OFFICER

Charging Party,
and
LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT,

UFC 14.2

Respondent,
concerning
Charge of unfair employee relations
practice.

The instant proceedings were initiated with the filing of certain "charges" before the Los Angeles County Employee Relations Commission in which the LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, hereinafter referred to as the "Department," is accused of unfair employee relations practices in its refusal to deal directly with the designated representative of the ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS, hereinafter referred to as "ALADS." In due time the undersigned was appointed Hearing Officer and notice thereof was served upon the parties. The report which follows is prepared for submission to the Los Angeles County Employee Relations Commission.

THE HEARING

A hearing before the undersigned was held in Los Angeles, California on April 4, 1972. Throughout the course of the proceedings both parties were permitted full opportunity to present

1 evidence in support of their respective contentions. The testi-
2 mony of all witnesses was taken under oath. Thereafter a verbatim
3 transcript of the proceedings was prepared. Both parties filed
4 post-hearing briefs.

5
6 APPEARANCES

7 The charging party, ALADS, was represented at the hearing
8 by JAMES R. TWEEDY of Tweedy, Pinhey and Howard, Attorneys at Law.
9 The appearance on behalf of the Department was made by LARRY A.
10 CURTIS, Deputy County Counsel of the Office of the County Counsel,
11 John D. Maharg.

12
13 RELEVANT SECTIONS OF THE LOS ANGELES COUNTY
EMPLOYEE RELATIONS ORDINANCE

14 Section 2 Statement of Policy

15 The Board of Supervisors of the County of Los Angeles
16 declare that it is the public policy of the County
17 and the purpose of this ordinance to promote the
18 improvement of personnel ... relations between the
19 County of Los Angeles and its employees.... This
20 policy is supplemented by provisions (a) recognizing
21 and defining the rights of employees to join organiza-
22 tions of their own choosing for the purpose of repre-
23 sentation on matters affecting employee relations....
24 (c) creating an independent Employee Relations Commis-
25 sion to ensure that all County employees and their
26 representatives are fairly treated, that their rights
27 are maintained and that their requests are fairly
28 heard, considered and resolved.

29 Section 4

30 Employees of the County shall have the right to form,
31 join and participate in the activities of employee
32 organizations of their own choosing for the purpose
33 of representation on all matters of employee rela-
34 tions.... No employee shall be interfered with,
35 intimidated, restrained, coerced or discriminated
36 against because of his exercise of these rights.

37 Section 6(a)

38 All matters affecting employee relations, including
39 those that are not subject to negotiations, are
40 subject to consultation between management represen-
41 tatives and the duly authorized representatives of
42 affected employee organizations.

43 Section 12(a)

44 It shall be an unfair employee relations practice
45 for the County

1 (1) To interfere with, restrain, or coerce employees
2 in the exercise of the rights recognized or granted
in this Ordinance

3 (2) To ... interfere with the formation of any
4 employee organization.

5 Section 8(a)

6 All matters affecting employee relations ... are
7 subject to consultation between management represen-
tatives and the duly authorized representatives of
affected employee organizations.

8 Section 3(d)

9 "Consult" or "confer" means to communicate verbally
10 or in writing for the purpose of presenting and
obtaining views or advising on intended actions.

11
12
13 FINDINGS OF FACT

14 The Association for Los Angeles Deputy Sheriffs (herein-
15 after called ALADS) is a duly qualified but non-certified
16 organization representing 1,000 deputy sheriffs. Majority
17 representation for the deputy sheriffs is held by another
18 organization, which has been certified and has the power to
19 negotiate on behalf of deputy sheriffs employed by the Sheriff's
20 Department.

21 On February 1, 1972, Claud T. Smith, a retired Division
22 Chief of the Los Angeles County Sheriff's Department, was
23 employed as Administrator for ALADS, and on February 3, he
24 registered with the County's Employee Relations Branch as an
25 authorized representative of that organization. His duties as
26 ALADS Administrator required that he discuss grievances and
27 complaints of the members of ALADS with the Department, mediate
28 between ALADS members and the Department, and independently
29 investigate any charges against ALADS members brought by the
30 Department.

31 On February 7, 1972, members of the Board of Directors
32 of ALADS were called to the Undersheriff's office and advised

1 that the Sheriff had instructed him to notify them that Smith
2 would not be welcome at any Department facilities; that Depart-
3 ment Management had been advised not to have any dealings with
4 Smith, but that other representatives of ALADS as well as in-
5 dividual members were welcome to contact Management regarding any
6 problems which might arise. Furthermore, stated the Under-
7 sheriff, if ALADS "took care of the problem properly" it would
8 open more doors for the organization. The Sheriff ordered super-
9 visory personnel not to communicate with Smith in any way, and
10 ordered that Smith was not to be welcomed at any Sheriff's
11 facility.

12 Inspector Pipkin or the Department's Personnel Bureau
13 is the Department's representative in dealings with both certi-
14 fied and non-certified employee groups. Prior to Smith's em-
15 ployment, Pipkin had dealings with officials of ALADS including
16 its Administrator. In fact, it was understood that the ALADS
17 Administrator prior to February 1972 was to contact either
18 Pipkin or another Management employee within the Department in
19 the event a problem regarding a member of ALADS arose. Even
20 after February 1972, Pipkin was willing to deal with representa-
21 tives of ALADS other than Smith or with ALADS members personally.
22 Only Smith could have no dealings with the Management of the
23 Sheriff's Department.

24 No evidence was produced as to the reason Smith was
25 barred from contact with the Management of the Department. After
26 the order of the Sheriff, on numerous occasions Smith attempted
27 to contact Pipkin as well as other members of Management. Pipkin
28 would not return his calls or meet with him, and the other mem-
29 bers of the Department made it clear that they were not to have
30 any contact with Smith. However, Smith did have access to
31 Nevins, Personnel Relations Administrator for the County Depart-
32 ment of Personnel. Nevins had been designated by the Sheriff's

1 Department to be available to Smith for consultation and to
2 provide Smith with information. Smith was given complete access
3 to Nevins.

4 During the month between the time that Smith was regis-
5 tered as the authorized representative of ALADS and the filing of
6 charges against the Department and its members, Smith attempted
7 to resolve several problems involving personnel problems of ALADS
8 members relating to a detention facility at which they were
9 employed. Smith sent a registered letter to Pipkin regarding the
10 matter. Pipkin did not reply, but instead Nevins replied. The
11 Department contends that other employee organizations already had
12 brought the problems at the detention facility to the Department's
13 attention; that corrective action was under way by the time
14 Smith's letter to Pipkin was sent; and that the matters complained
15 of in Smith's letter were already moot. In addition, Smith
16 attempted to obtain blank grievance forms for ALADS. Nevins
17 suggested that such forms be obtained from Pipkin but when Smith
18 attempted to do so he was unable to see Pipkin and other
19 Department members would not supply the forms. Evidence was
20 introduced that it was the Department policy not to supply
21 such forms to any employee organizations so that the formal filing
22 of grievances would be discouraged.

23 On March 3, 1972 ALADS filed a charge against the
24 Department, the Sheriff, the Undersheriff, Pipkin, and three
25 other officers, in essence alleging that they had committed un-
26 fair labor practices in the following respects:

27 1. The Sheriff ordered all supervisory personnel to
28 refrain from communicating with Smith or to permit him to visit
29 Sheriff's facilities.

30 2. Pipkin, the designated liaison officer between
31 ALADS and the Department refused to communicate with Smith.

32 3. The Commander of the West Hollywood Sheriff's Station

1 directed staff personnel that Smith was not to be permitted to
2 attend station briefings or to discuss policies and procedures with
3 Deputies.

4 4. Pipkin failed to answer the letter addressed to him
5 regarding problems at the detention facility.

6 5. The failure of Pipkin to see Smith when Smith
7 attempted to procure the grievance forms, and the failure of
8 other Department officers to supply Smith with the forms.

9 POSITION OF ALADS

10 The specific purpose of Section 2 of the Employee
11 Relations Ordinance is to promote and improve personnel relations
12 between the County and its employees, and to ensure that all
13 County employees and their representatives are fairly treated
14 and their requests fairly heard and resolved. It also recognizes
15 the rights of employees to join organizations of their own
16 choosing for the purpose of representation on matters affecting
17 employee relations. The purpose of these provisions as well as
18 those quoted above is to protect all employee organizations and
19 to encourage communication between Management representatives and
20 authorized representatives of employee organizations.

21 The Department had virtually cut off all effective means
22 of communication between the ALADS' authorized representative
23 and Management representatives who are members of the Department,
24 thereby interfering with ALADS' function in its role as the
25 representative of its members. The Department took this action
26 even though no evidence was produced that Smith is not a fit or
27 qualified person to act as a representative of ALADS. Thus, an
28 unfair labor relations practice was committed as defined in
29 Section 12(a)(1) of the Ordinance.

30 The Department's argument that Nevins, an Employee
31 Relations Administrator with the Department of Personnel, is
32 qualified to act as the sole representative to deal with ALADS

1 is not supported by the evidence since his job description does
2 not include meeting and conferring with minority employee
3 organizations.

4 It is also clear that the Department has committed an
5 unfair labor practice in that it has violated Section 12(a)(2),
6 which prohibits the Department from interfering in the formation
7 of any employee organization. Even though ALADS is a duly
8 constituted and qualified minority employee organization, never-
9 theless, the various employee organizations are constantly com-
10 peting with one another for new members, and their formation
11 is thus a continual process. The Department is attempting to
12 emasculate the effectiveness of ALADS. If the Department is
13 permitted to take these actions, ALADS will find itself unable
14 to compete with other employee organizations, thus resulting
15 in a diminution of its membership.

16 POSITION OF DEPARTMENT:

17 The Department has not been guilty of any unfair labor
18 practices as defined in the Employee Relations Ordinance. Section
19 12(a)(1) provides that it is an unfair labor practice to inter-
20 fere with employees in the exercise of their rights, and these
21 rights under Section 4 include the rights to form, join and
22 participate in the activities of employee organizations of their
23 own choosing. No showing was made that any employee was inter-
24 fered with or that any employee was adversely affected because of
25 the Department's refusal to deal with Smith.

26 Nor has interference with the rights specified by Section
27 12(a)(2) been shown. ALADS is a functioning employee organiza-
28 tion, and therefore, in no way can the Department be said to
29 have interfered in its formation.

30 The only rights which a non-certified employee organiza-
31 tion such as ALADS enjoys is to represent its members regarding
32 grievances and to consult with "management representatives" on

1 matters of concern. No evidence was produced that ALADS
2 attempted to represent its members on a specific grievance.
3 It is true that Smith attempted to obtain grievance forms from
4 the Department and was unsuccessful in doing so, but the evidence
5 also shows that although such forms were readily available to
6 individual employees they were not available to any employee
7 organization.

8 As to ALADS' right as such to consult with Management,
9 the evidence shows that this right was not unduly impaired.
10 Management has the right to designate certain representatives
11 to consult with employee organizations and the Sheriff designated
12 Nevins, an Employee Relations Administrator to deal with Smith.
13 The Employee Relations Ordinance permits the Sheriff to designate
14 any duly authorized representatives of the Department to consult
15 with employee organizations, and the Sheriff appointed Nevins in
16 such capacity. Furthermore, Management within the Sheriff's
17 Department was willing to deal with any representative of ALADS
18 other than Smith or any member of that organization. Thus, no
19 violation occurred by the Department of the Ordinance in design-
20 ating Nevins rather than Management within the Department to
21 deal with Smith.

22 Another complaint of ALADS is that Smith was barred
23 from station briefings, but the evidence shows that no represen-
24 tatives of an employee organization were permitted to attend
25 station briefings in respect to the conduct of Union business.
26 ALADS was accorded the same treatment as other employee organiza-
27 tions, particularly those organizations who hold a minority status.

28 Cases concerning unfair labor practices in the private
29 sector are generally not helpful because they usually concern
30 a situation in which a Union is the exclusive representative of
31 all employees, as opposed to majority recognition with concurrent
32 existence of minority unions such as is in the instant case.

1 CONCLUSION:

2 The determinative issue in this dispute is not whether
3 the Department was entitled under the Employee Relations
4 Ordinance to refuse to deal directly with a non-certified
5 employee organization such as ALADS but, rather, whether the
6 Department was within its rights in refusing to deal with the
7 specific representative of ALADS who was designated by that
8 organization to deal with the Department. It is clear from the
9 evidence, and not denied by the Department, that it was only
10 Smith who was forbidden to deal directly with Department Manage-
11 ment personnel and that any other representative of ALADS as well
12 as any individual member of ALADS could continue to deal directly
13 with Pipkin, the liaison officer designated by the Department to
14 deal with both certified and non-certified employee organizations.
15 The essential issue, therefore, is whether the Department was
16 privileged under the Ordinance to preclude not ALADS but whether
17 it could preclude the duly designated representative of ALADS
18 from direct contact with the Department.

19 The Ordinance provides that employees of the Department
20 have the right to participate in organizations for the purpose
21 of representation on all matters of employee relations (Section 4);
22 that all matters affecting employee relations are subject to con-
23 sultation between Management representatives and the duly author-
24 ized representatives of employee organizations (Section 8(a));
25 and that one purpose of the Ordinance is to create an Employee
26 Relations Commission to assure that all County employees and
27 their representatives are fairly treated and their requests
28 fairly heard, considered and resolved (Section 2). Consultation
29 is defined as "to communicate verbally or in writing for the
30 purpose of presenting and obtaining views or advising of intended
31 actions" (Section 3(d)) and all matters of employee relations
32 are specifically held to be the subject of consultation between

1 Management representatives and the duly authorized representative
2 of affected employee organizations.

3 The Department, by ordering that Smith was to have no
4 direct contact with Management representatives directly concerned
5 with liaison between the Department and ALADS, has in effect
6 banned the duly authorized representative of ALADS from any access
7 to Department employees concerned with employee grievances. Not a
8 scintilla of evidence was produced to justify the conclusion that
9 Smith is incapable of representing ALADS members or that he is not
10 fit to do so. In the absence of some evidence in this regard, the
11 conclusion must follow that the Department's conduct represents a
12 direct interference with the effective functioning of ALADS on
13 behalf of its members. So long as employees are privileged to
14 choose their own representatives to deal with the Department under
15 Section 4 (whether or not the chosen representative is an employee
16 or a non-employee of the Department), it would follow that the
17 Department must deal with the chosen representative without
18 interference or discrimination. To fail to do so clearly consti-
19 tutes an interference with the exercise of the right to choose a
20 representative granted to a member of the employee organization
21 and thus constitutes an unfair employee relations practice under
22 Section 12(a)(1).

23 The right to free access to Management by the representa-
24 tives chosen by an employee organization is an important one. If
25 the Sheriff could refuse, without justification, to deal directly
26 with the representative chosen by ALADS members, he would be in a
27 position, if he chose to do so, to exercise considerable powers of
28 coercion over the organization. Thus, in the event that ALADS
29 might select an Administrator who was unusually effective and if
30 the Department is to prevail in this dispute, Management could
31 simply refuse to deal directly with such Administrator. The
32 evidence suggests something in the nature of coercion in the

1 Smith-ALADS situation since the Undersheriff told the Board of
2 Directors of ALADS that although the Sheriff's Department would
3 refuse to deal directly with Smith, if ALADS took care of the
4 problem properly, more doors would be open to the organization.
5 Such interference in the choice of representatives falls clearly
6 within the scope of an unfair employee relations practice as
7 defined in Section 12(a)(1) of the Ordinance.

8 The fact that the Department designated Nevins, an
9 employee of another department, to deal with Smith, does not
10 immunize the Department from the charge of committing an unfair
11 employee relations practice. The Department's argument that the
12 Sheriff has the right to designate anyone he chooses to act as the
13 Department's representative in consulting with employee organiza-
14 tions is unpersuasive in view of undisputed evidence that both
15 before and after Smith's appointment, ALADS representatives were
16 not confined to dealings with Nevins, but could also deal with
17 Pipkin and other members of the Department. Thus, it would be
18 more correct to say that the Sheriff designated Nevins to deal
19 with Smith personally rather than with ALADS since it is clear
20 that ALADS representatives other than Smith had access to both the
21 Department directly and to Nevins. The fact that most of ALADS'
22 dealings occurred directly with the Department prior to Smith's
23 appointment is demonstrated by Nevins' testimony that he had had
24 only two contacts with ALADS representatives in the ten months
25 prior to Smith's appointment, and neither of these contacts
26 appears clearly to have related to employee grievances.

27 It is not at all clear from Nevins' job description that
28 he is permitted to participate in consultation with employee
29 organizations.^{1/} Nor was there any showing that Nevins had any

30 1/ An Employee Relations Administrator, such as Nevins is
31 required to represent the Director of Personnel in "negotia-
32 tions" with representatives of employee organizations. Clearly,
only certified employee organizations (ALADS is not certified) are
entitled to conduct negotiations on behalf of the employees they
represent.

1 direct knowledge of the affairs of the Department to permit him to
2 deal adequately with the question of grievances by ALADS members,
3 and no justification was advanced for requiring Smith to approach
4 the Department indirectly through Nevins rather than directly
5 through Pipkin who is the officer designated by the Department to
6 deal with employee organizations.

7 As to the specific charges filed by ALADS, it seems clear
8 from what has been said above that the Department committed an
9 unfair employee relations practice under Section 12(a)(1) of the
10 Ordinance by prohibiting Management of the Department from dealing
11 directly with Smith. Pipkin, the liaison officer designated by
12 the Department, must consult with Smith and Smith must be per-
13 mitted to visit Sheriff's facilities for the purpose of consulting
14 personally with Pipkin or other Department members charged with
15 dealing with employee organizations.

16 The Department made it clear that employee organizations
17 are not supplied with grievance forms and that no representatives
18 of employee organizations are permitted to attend station brief-
19 ings. Therefore, it was not an unfair employee relations practice
20 to fail to supply the forms to Smith or to bar him from the
21 meeting. We need not consider the problem involving Pipkin's
22 failure to reply to Smith's letter setting forth problems at the
23 detention facility. Whether or not the problem was moot by the
24 time that Smith's letter was received by Pipkin is not crucial,
25 what is important is that in the future Pipkin or another member
26 of the Department designated to deal with employee organizations
27 must deal with Smith regarding problems appropriate for discussion
28 with ALADS rather than to refer all inquiries from Smith to Nevins
29 (as was done regarding the problem of the employees in the deten-
30 tion center). In short, the conclusion follows that Smith must be
31 granted the same privileges to consult with the Department as the
32 representatives of other employee organizations. We are not faced

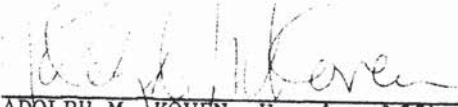
1 with the problem of whether the Department may make distinctions
2 in the privileges accorded certified as opposed to non-certified
3 employee organizations since the unfair practices alleged by the
4 charges did not relate to discrimination against ALADS as a non-
5 certified employee organization but against Smith personally.

6 In view of the conclusion that the Department committed an
7 unfair employee relations practice as defined in Section 12(a)(1)
8 of the Ordinance, it is not necessary to consider also whether the
9 Department's conduct constituted an unfair employee relations
10 practice as defined in Section 12(a)(2) of the Ordinance.

11
12 RECOMMENDED FINAL ORDER

13 It is respectfully recommended that the Los Angeles
14 County Employee Relations Commission issue an Order
15 finding the Los Angeles County Sheriff's Department
16 committed an unfair employee relations practice in
forbidding Management within the Department to
communicate or consult with Smith and in refusing
to consult with Smith.

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18 Dated: 6/20/72


19 ADOLPH M. KOVEN, Hearing Officer
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