

LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION
HEARING OFFICER'S REPORT
RECOMMENDED FINDINGS OF FACT, CONCLUSIONS AND FINAL ORDER
UNFAIR EMPLOYEE RELATIONS PRACTICE

In the Matter of

ASSOCIATION FOR LOS ANGELES COUNTY
DEPUTY SHERIFFS (ALADS)
(Ronald Marquez)

Charging Party,

vs

LOS ANGELES COUNTY SHERIFFS
DEPARTMENT

Respondent

CASE: UFC 14.39

RECEIVED
EMPLOYEE RELATIONS
COMMISSION
SEP 15 1986

Hearing Officer:

Philip Tamoush
2907 Oakwood Lane
Torrance, California 90505

Hearings Held

March 3, 20, 1986

Record Closed

August 15, 1986

Award Issued

September 12, 1986

Appearances:

For Charging Party:

Richard A. Shinee, Esquire
Stillman, Green & Shinee
16055 Ventura Blvd., Ste. 1000
Encino, CA 91436

For Respondent:

Jeffrey Hauptman, Director
Employee Relations
Linda M. Kenutson
Los Angeles County Sheriff Dept.
Hall of Justice
Suite 400
Los Angeles, CA 90012

The charge herein was filed on November 4, 1985, by the Association of Los Angeles Deputy Sheriffs on behalf of Deputy Sheriff Ronald Marquez, ("Charging Party"), alleging that the Los Angeles County Sheriffs Department ("Respondent") violated Section 12(a)1 of the Employee Relations Ordinance by suspending Deputy Marquez from work without pay for three (3) days. Section 12(a)1 of the Ordinance provides that:

(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 denied the allegations of violation of Employee Relations Ordinance Rights and the matter was set for hearing by the Los Angeles County Employee Relations Commission. Hearings were held on March 3 and 20, 1986, at which time both Parties presented evidence and argument bearing on the issue. The Parties submitted post-hearing briefs as well.

BACKGROUND AND FINDINGS OF FACTS

The event precipitating the filing of the Unfair Employee Relations Practice charge in this case was the issuance of a letter to Deputy Marquez suspending him without pay for three (3) days (Association Exhibit 1A, Letter to Deputy Marquez from Sheriff Sherman Block dated August 22, 1985). The letter charges Deputy Marquez with two separate incidents of violation of the Department's Manual of Policy and Procedures, Policy and Ethics Chapter. The first policy manual chapter deals with the subject of Obedience to Laws,

Regulations and Orders, and the second deals with Statements During Departmental Internal Investigations.

The separate incidents of alleged Policy Manual violations are outlined as follows in the suspension letter:

1. Laws, Regulations and Orders:

"An investigation conducted by Field Operations Region II, coupled with your own statements, has established that on March 9, 1985, Sergeant Allan Frisch ordered a subordinate to gather four specific Lynwood Station trusties for a work detail. You were working the jailer's position and refused to allow one of the trusties to be taken because you wanted that trusty to wax your personal boar. You and the sergeant argued over the trusty issue an when ordered to leave the sergeant's office several times, you disregarded the order. Another sergeant had to interject himself by standing between you and Sergeant Frisch, and he had to order you to leave the sergeant's office. You did not leave the office and that sergeant had to physically grab you by the arm, turn you around, and reorder you to leave the office." (from the August 22, 1985, letter, above cited)

2. Statements During Departmental Internal Investigations

"During the Divisional investigation conducted by Lieutenant Ramon Sanchez you refused to cooperate. Captain Nick Popovich ordered you to recontact Lieutenant Sanchez and to cooperate with the investigation. During a subsequent interview with Lieutenant Sanchez you were argumentative, evasive, and unresponsive to questions." (from the August 22, 1985 letter, above cited)

With regard to Issue 1, above referenced, the Charging Party has filed a formal grievance and a request for arbitration is pending. At the Hearing, both Parties stipulated and agreed that the first incident of March 9, 1985, was not the subject of the instant Unfair Employee Relations Practice charge. Neither was there any indication that the Employee Relations Commission or the Parties desired that that issue be referred to and considered in the Unfair Employee

Relations Practice charge. The issue in contention in the current proceedings is as indicated in the Charging Party's Unfair Employee Relations Practice form (Joint Exhibit 1), filed on November 4, 1985, which states:

"On or about August 22, 1985 Deputy Marquez, member of Bargaining Unit 611, received a 3-day suspension. Said 3-day suspension was issued to Deputy Marquez for his failure to participate in a departmental investigation regarding alleged misconduct on his part without a union representative. Said investigation was conducted on or about May 4, 1985 wherein Lt. Sanchez ordered Deputy Marquez to participate in the interrogation without a union representative. Upon Deputy Marquez' refusal, Deputy Marquez was immediately relieved of duty and subsequently disciplined as set forth hereinabove." (JX 1, Item 3. "Basis of Charge")

Accordingly, while extensive information by necessity was provided regarding the March 9 incident leading to the subsequent May 4 incident, only the May 4 incident is before the Hearing Officer now.

With regard to the May 4 incident, the Parties are generally in agreement with regard to events leading up to a contact between Lt. Ramon Sanchez and Deputy Marquez. In background, Deputy Marquez had filed a complaint against one of his supervisors, a Sgt. Allan Frisch, for his attitude and behavior towards him. This complaint was filed apparently pursuant to a Department practice on a Los Angeles County Sheriffs Department Complaint Form, Association Exhibit 1, which is normally to be used by members of the public in filing complaints about departmental employees. Sgt. Frisch as well filed a memorandum outlining his perception of the issue and Deputy Marquez' alleged insubordination (County Exhibit 1). Lt. Ramon Sanchez was assigned by the Station Commander to conduct an investigation of the incident of March 9. The specific incident leading to the filing by Deputy Marquez and ALADS of the unfair charge dealt with the contact between

Lt. Sanchez and Deputy Marquez on the morning of Saturday, May 4, 1986. The testimony of both employees with regard to their contacts on that morning are found generally at pages 41 to 51 of Volume I with respect to Deputy Marquez and pages 66 to 76 of Volume I with respect to Lt. Sanchez.

Deputy Marquez and ALADS allege that the Deputy was refused union representation at the May 4 investigatory administrative interview, thus forming the basis of an Unfair Employee Relations Practice charge in that such activity is protected under the Employee Relations Ordinance in cases such as this. The Department alleges that the Deputy did not request representation, but rather refused when offered the opportunity to seek it. The specific testimony in this regard is as follows:

1. Deputy Marquez' version:

Q (by Mr. Shinee) Now, on May 4, 1985, you were apparently contacted by Lt. Sanchez; is that correct?

A (by Deputy Marquez) Yes, I was.

Q And what if anything at that time did he tell you?

A Lt. Sanchez asked me if I was ready for the interview. And I told him that I was. He next asked me if I wanted representation at that time. And I told him, No, because I -- because I felt in my own mind after speaking with Captain Popovich that I was not the subject of a departmental administrative investigation.

Q All right. You had advised him that you did not want representation at that time?

A That's correct.

Q And that's before the interrogation started?

A That's correct.

Q Where did this interrogation take place?

A It took place in the hallway immediately outside the Watch Commander's office in Lynwood Station.

Q That discussion took place at that time -- strike that. You just described a discussion with Lt. Sanchez; where did this take place?

A In the hallway just outside the Watch Commander's office.

Q And thereafter you were interrogated by Lt. Sanchez?

A That's correct.

Q Where did that take place?

(Mr. Tamoush: The discussion regarding representation occurred in the hallway?)

A No, sir. We're still in the hallway at that point. And then this conversation terminated. And he asked me inside the office.

(Mr. Tamoush: It terminated at the point you said -- referring to the fact that you wanted representation?)

A That's correct, at that time.

(Mr. Tamoush: Go ahead.)

Q In the hallway, you actually said, "I don't want representation"; is that correct?

A That's correct.

Q Then you went into the office?

A Yes.

Q And the formal interrogation began?

A That's correct.

Q At that time what did Lt. Sanchez advise you?

A Lt. Sanchez showed me this document, and --

Q Now, what document are you referring to?

A The administrative interview.

(Mr. Tamoush: Can I see a copy?)

(Mr. Shinee: Yes.)

(Mr. Hauptman: I have an extra copy.)

Q He showed you that document?

A That's correct.

Q Did he ask you to sign that document?

A Yes, he did.

Q Did he start to read it to you before he asked you to sign it?

A Yes.

Q And what part of that document -- if you would just read it aloud to us -- what part of the document did he begin to read to you?

A He read to me, "I am Lt. Ramon C. Sanchez and this is Lynwood Station which is commanded by Captain Popovich. You are about to be questioned as part of an official administrative investigation of the Los Angeles County Sheriff's Department. The nature of this investigation concerns insubordination, refusal to follow direct orders of supervisory personnel."

Q And did he indicate to you that you were the subject of those charges?

A Yes.

Q And there is a special notation on the top part of the administrative interview paper which states "Note this card is for subjects only and is not to be read to other persons interviewed." Was this the first time that you were aware of the fact that you were the subject of an investigation concerning insubordination?

A That's correct.

Q At that time, what if anything did you do, sir?

A I got up, advised Lt. Sanchez that I wanted representation, and --

(Mr. Tamoush: Wait a minute. Had he finished reading at some point on that administrative interview document?)

A Sir, he got to the point of the charges, and I stood up and told him --

(Mr. Tamoush: You mean in the document itself? It doesn't use the word charges.)

A The words -- after he referred to the charge of insubordination and refusal to follow direct orders of supervisory personnel, I was shocked. I stood up and informed Lt. Sanchez that I wanted ALADS representation and began walking toward the door to seek that representation, possibly by telephone, before continuing further with any discussion.

Q What if anything transpired then?

A Lt. Sanchez advised me that if I left the room at that point I would be additionally charged with failure to cooperate with an official departmental investigation, and also refusal to answer questions.

Q Did he indicate to you that you could be charged for additional counts of insubordination if you walked out of the door?

A That's correct.

(Pages 42-46, Transcript of Proceedings, March 3, 1986)

The balance of Deputy Marquez' testimony repeated his allegations that he sought union representation, was denied it, was forced then to continue the interview which concluded shortly thereafter.

2. Lt. Sanchez' version:

Q (by Mr. Hauptman) Specifically, in the case of Deputy Marquez, did you -- when did you approach him to interview him?

A According to my worksheet this was 5-4-85. It was the date that I attempted to interview subject Marquez.

Q Do you recall how you approached Deputy Marquez?

A Yes.

Q Would you please describe it in your own words?

A I had interviewed all of the witnesses and people that I felt were pertinent in this matter, with the exception at that point of Deputy Marquez. I knew he was working my particular shift; he was the station jailer. I happened to see him in the hallway or the kitchen area of the facility. And I approached him and asked if he was ready to be interviewed by me,

that I was ready at that point and that I was allowing him -- I was giving him sufficient notice to have a representative, an attorney, whatever he wanted present during his interview.

(Mr. Shinee: Excuse me. May we establish a foundation as to when this discussion occurred?)

(Mr. Tamoush: You mean during that day?)

(Mr. Shinee: I don't know.)

(Mr. Hauptman: He said he did it during --)

(Mr. Tamoush: May 4.)

A May 4.

Q He said, May 4.

A Sometime, approximately, between 9:00 and 10:00 o'clock.

(Mr. Tamoush: Okay, continue.)

Q Did you at that point advise him he was the subject of this investigation?

(Mr. Tamoush: Let's let him narrate. In this case you told him you were ready? You said, you, Lt. Sanchez, were ready and you told him he could be represented by an attorney or someone, and then --)

A A representative or his attorney of his choosing. And I fully expected to allow him a sufficient time -- meaning it was the weekend, so I was going to give him three or four days in order to contact his attorney or his representative. He at that point told me, "I'm ready now." He says, "I'm ready to be interviewed by you now." So being that it was a Saturday morning, I said, "That's fine if you don't want a representative, but it's your choice. And I told him you have --

....

Q He said, "I'm ready"?

A "I'm ready now." I says, "Let me gather my material and I'll be ready in a few minutes." And he was the station jailer so it may have taken five, ten minutes before he came back in my office said he was ready. He had to relinquish his duties as jailer to somebody else. He had to get relief for that. He came into my office, closed the door, and I went into the

interview. It was, as I recall, ten minutes after 10:00 when I started the interview -- where I actually wrote down a time and who was present, Deputy Marquez and myself. I asked if he had a manual of policy and procedures, and if he was familiar with its contents. He stated, "No." So I took the time to get the manual. And I was referring to a specific section during an internal investigation. He had to make truthful, accurate statements to the investigating officer. I took the time to get the material. He then said, "Oh, yes, I'm familiar with that." We went into the next procedure which was a preprinted form where I put down my name, his name, and explained to him his rights under that form.

Q Let me -- I was going to say that Exhibit 2 is the form -- is that that form you're referring to?

A Yes.

Q The witness has got a copy of Exhibit 2 in front of him. Please continue.

A I read this verbatim, filled it out. I asked him to sign it.

...

A I filled in the top portion, the top half of this form.

(Mr. Tamoush: Meaning the heading there and your signature there?)

A Right.

(Mr. Tamoush: And who was present?)

A Just him and me in the office.

(Mr. Tamoush: And you are printing the words on this document, is that what you're telling us?)

A That's correct. I read this to him.

(Mr. Tamoush: After you printed it?)

A I gave him a copy. As I recall I had an extra copy and I gave him one to read. As I was printing this, he read it. I gave it to him and asked him to sign. He says, "I'm not signing this." We went into a discussion about this form, that it was very clear that this was an administrative investigation, that it was not criminal. And I went into detail about this

form. He again refused to sign. I said, "That's fine. I'll indicate here that you have refused to sign and we'll continue with the interview." I don't know what amount of time that took, but it took some time to go over this. We continued. I started asking specific questions at that point.

(Mr. Tamoush: Go ahead, Mr. Hauptman.)

Q Did he at any point during this process ask for union representation?

A No, sir.

Q Did he at any point - strike that, strike the question. Let me go back to a step before. I wanted to ask you at what point did you inform Deputy Marquez that he was a subject of the investigation?

A Initially, right here. It explains here that he was the subject. It is self-explanatory in here that he is a subject. And that the nature of the investigation concerned insubordination and refusal to follow direct orders of supervisory personnel.

Q Did you read through the entire form down to the right to have representation section?

A Yes, sir.

Q Did he in his refusal to sign ask for union representation?

A No.

Q Did he agree to go ahead with the interview?

A Yes.

Q Did he give you any reason as to why he refused to sign?

A He kept saying -- or he said something about the Captain, that this isn't the way the Captain said it would be. And I explained to him at that point that I don't know what the Captain told him, but that I was the investigator and that I was conducting it according to policy, that this was the procedure that had to be followed. There were certain forms, certain procedures that we had to go through before I could start asking questions.

Q Did Deputy Marquez get up and leave the room at that point?

A At one point during the time that he was in the office, he did get up and start to leave the room. And I told him -- I told him, "You can leave the room, but I will interpret that as your refusal to cooperate during an internal investigation."

Q How did he respond to that?

A He stopped, came back and we talked about it a little bit more. And he sat down and we started in with the questioning.

Q Did he ask for representation at this point?

A No, sir.

Q So at no point in this process did he ask for proper representation?

A No, he never did.

Q How did the interview terminate?

A I stopped it at -- I wrote in here, approximately, 10:48, because he was being unresponsive to the questions being asked. ...

(Pages 66-75, Transcript of Proceedings, March 3, 1985)

Further, in his testimony, Lt. Sanchez described Deputy Marquez' participation in the interview as being essentially non-responsive, evasive and non-cooperative. In addition, when asked whether Deputy Marquez' captain ever told him that he was the subject of this investigation, Lt. Sanchez responded that "I'm not certain, but I'm certain he may have. I don't know if he was specific as to telling him whether he was the subject or not." (Transcript, Volume 1, page 76, lines 7-11).

The memorandum which Lt. Sanchez read to Deputy Marquez at the beginning of the interview of May 4 is attached hereto as Appendix A since it is a critical piece of evidence in sorting out some of the details of what did occur there. That memorandum indicates the

sections which Lt. Sanchez hand printed and reflects the fact that indeed Deputy Marquez was the subject of the investigation and that the interview of May 4 was to deal specifically and perhaps solely with the charges of insubordination filed against the Deputy and not his complaint against Sgt. Frisch, except perhaps tangentially. Lt. Sanchez issued a report of his findings with regard to the May 4 incident (AX 6). That report states in part with regard to the actual interview itself:

"I then began a series of questions, but before I was able to complete the first questions Deputy Marquez stood up and said, "This isn't what Captain Popovich said it would be," and started to leave the office. I informed him that he was free to leave, but by doing so I would interpret his action as a refusal to cooperate. He elected to remain, but remained standing. I informed him that I was not comfortable with him standing and me looking up at him. I further explained that the interview would take some time. He remained standing, but eventually took a seat. The questioning commenced, but it was like pulling teeth. Deputy Marquez was argumentative, evasive, and unresponsive to the questions asked. I stopped questioning him several times and informed him that he was not cooperating. He stated that he was cooperating and would only answer questions as they related to his memoranda. I informed him that I was the investigator in this matter and that I, not he, would dictate the course of investigation as it pertained to the allegations of insubordination. I also reiterated a previous statement, informing him again that I was a direct representative of the sheriff, and that his failure to cooperate could result in punitive action. At the end of each admonishment, Deputy Marquez said he understood and that in his opinion he was cooperating. I continued my line of questioning. He continued to rephrase my questions and answered them to suit himself. He then alluded to me being prejudiced and not like him. I informed him that he was wrong in his assessment and assured him that I harbored no ill will toward him. He then accused me of writing down information that was not indicative of his response to questions asked. I informed him that he would be able to review the written interview and that I would correct any statement that he was not happy with. I again attempted to continue questioning Deputy Marquez and he continued to be argumentative, evasive, and unresponsive. Forty minutes into the interview I

stopped and informed him that I was terminating the interview because he was not cooperating. I asked seven (Exhibit C) out of forty-three prepared questions (Exhibit G) prior to terminating the interview."

On May 7, 1985, prior to Lt. Sanchez issuing his written report, but after he verbally reported to the Station Commander with regard to the events of the morning of May 4, the Station Commander relieved Deputy Marquez of duty and temporarily reassigned him to the Internal Investigations Bureau and ultimately Deputy Marquez was transferred to another station. Subsequently, as indicated previously, on August 22, a three-day suspension was meted out.

PARTIES' CLOSING ARGUMENTS

Charging Party

The Association and Deputy Marquez allege that the Deputy was not provided union representation when he requested it during the interview of May 4. While the Association agrees that Deputy Marquez indicated no need for representation prior to the meeting, it was because he had no knowledge that he was the subject of any charges and that the meeting was solely for the purpose of discussing his, Deputy Marquez', charge against Sgt. Frisch. The 3-day suspension which resulted was clearly because of the events of May 4 and the desire of Deputy Marquez not to continue any interview without a union representative. Even Lt. Sanchez testified that he did know whether Deputy Marquez was aware that he was the subject of an investigation prior to May 4. The filing of a complaint against a supervisor as in this case is not unknown in the Sheriff's Department. The Department

was merely using the pretext of alleged insubordination on March 9 to punish the Deputy for the filing of his complaint.

It is well established both in the public and private sector that employees who are subjects of investigation which could potentially result in discipline are entitled to union representation. The County does not deny that. Any issue of credibility must be resolved in favor of Deputy Marquez. His testimony was that his Captain advised him that he was not the subject of an investigation by Lt. Sanchez. The Department did not rebut that with any testimony. Both Lt. Sanchez and Deputy Marquez testified that Deputy Marquez indicated when he tried to leave the May 4 interview that his Captain had indicated that it would be of a different nature. When Deputy Marquez pressed for union representation Lt. Sanchez coerced him into remaining, thus leaving the Deputy no alternative. He did remain, he did participate in the interview and yet was still subject to discipline.

Subsequent to the filing of the charge, the Association learned that the Deputy was transferred out of the Lynwood Station as a direct result of the March and May incidents. Accordingly, the Association asks that not only the 3-day suspension be overturned but that all records should be expunged and that his involuntary transfer be reversed and, finally, that the Department be ordered to cease and desist similar conduct in the future and that such order be published.

Respondent

The Department responds specifically by denying the failure to provide Deputy Marquez the opportunity for union representation. Both

the Deputy and the Lieutenant agree that prior to the May 4 meeting, in the hallway, Lt. Sanchez asked the Deputy if he was ready for the interview and wanted representation to which he answered that he did not. Lt. Sanchez clearly and specifically testified that the Deputy did not request union representation. Deputy Marquez obviously knew that he was the subject if one reviews his testimony about his discussions with his Captain prior to May 4. He was aware from those discussions that he might be disciplined as a result of his behavior on March 9. The Deputy knew at least at the interview of May 4 that he was the subject of the investigation. If he had asked for representation, Lt. Sanchez would have permitted it.

The Charging Party has failed to meet any burden of proof with regard to a violation of the Employees Relations Ordinance. The Association is obviously attempting to deal with other unrelated events in this rather than go through normal grievance and arbitration procedures. The Unfair Practice charge should be dismissed.

FURTHER FINDINGS AND CONCLUSIONS

In arriving at his principal conclusions in this matter, the Hearing Officer places significantly greater reliance on the undisputed testimony of the Parties and the written evidence submitted rather than the conflicts in their testimony over whether or not a specific request for union representation was made during the early part of the interview between Lt. Sanchez and Deputy Marquez on the morning of May 4, 1985. Additionally, the undersigned arrives at no specific conclusions with regard to the events of March 9, 1985, the

verbal altercation between Deputy Marquez and Sgt. Frisch which led up to the investigative interview of May 4, 1985. The events of March 9 are the subject of a separate grievance and arbitration procedure and should be resolved there.

With regard to the events of May 4, the following are the principal findings and conclusions from the record.

1. Deputy Marquez was asked by Lt. Sanchez in the hallway, prior to the interview, whether he wanted union representation at that meeting, without being informed as to the nature of the interview itself. Nothing was provided to Deputy Marquez either verbally or in writing which stated that charges had been filed against him by the Department and that the interview was to discuss and consider such charges with the potential result of exoneration or disciplinary action.

2. Both Deputy Marquez and Lt. Sanchez testified that he, Deputy Marquez, upon having the administrative interview card read to him (AX 2 appended hereto as Appendix A), rose from his chair and attempted to terminate the interview and/or leave the room. It was only when Lt. Sanchez indicated to him that he could be the subject of further charges of insubordination that he agreed to remain in the room.

3. Deputy Marquez refused to sign the administrative interview card. However, Lt. Sanchez continued the interview at least for a short period of time.

4. The Station Commander receiving a verbal report of the May 4 interview attempt from Lt. Sanchez, relieved Deputy Marquez of duty, reassigned him to the Internal Investigations Bureau, from which he was ultimately transferred to another station. Deputy Marquez was not

provided an opportunity to explain his version of the event of May 4 to the Station Commander.

Based on the above, the undersigned concludes that there is a reasonable certainty that Deputy Marquez requested union representation during the interview of May 4. While the specific words used by the Deputy to communicate his desire for representation may be undiscernible at this point, the undisputed attitude and actions he took to terminate the interview lead the Hearing Officer to the single conclusion that he clearly was unaware of the nature of the interview when he was first offered representation in the hallway. It was at that point that Lt. Sanchez had an administrative obligation to inform the Deputy that he was the subject of an investigation and for that reason he could have union representation if he so desired. For whatever reason, that information was not provided. However, when it was provided during the early part of the interview, it should have been clear to the Lieutenant that either the interview should have been terminated, if for no other reason due to the surprise of the Deputy as to its nature, or union representation should have been obtained. The Deputy refused to sign or acknowledge the administrative interview card. That in itself is, of course, an act of insubordination and should have tipped the Lieutenant off to the need to terminate the interview rather than press on under the circumstances. Both witnesses at the interview agree to Deputy Marquez' surprise as to the nature of the interview. When forced to continue under threat of charges of insubordination, one is not surprised that subsequent communications between the two were not successful.

Even assuming that Lt. Sanchez' actions and behavior during and preceding the interview of May 4, 1985, were unintentional and not designed to deny Deputy Marquez union representation, the fact remains that the sequence of events served to effectively to do so. Accordingly, the Hearing Officer makes no conclusion with regard to Lt. Sanchez' intent or management behavior. Notwithstanding his intentions, Deputy Marquez was effectively denied union representation after he learned the nature of the interview.

Based on all of the above, the Hearing Officer concludes that Deputy Marquez was inadvertently or deliberately misled as to the nature of the interview when he was asked if he wanted union representation. Once the circumstances were known to him, and he indicated at most a desire to terminate the interview and at least a desire for union representation, the interview should have been terminated. Finally, he was not provided any opportunity until the filing of the Unfair Practice charge to discuss his side of the events of May 4 with his Commander, but rather was precipitously relieved of duty, transferred and ultimately suspended. Those actions, all apparently disciplinary in nature, should all be rescinded.

The Hearing Officer concludes that Deputy Marquez' rights to representation were denied him, thus violating his rights under Section 12(a)1 of the Employee Relations Ordinance. An appropriate Order is recommended making him whole with regard to the unpaid suspension and his reassignment out of the Lynwood Station. The memorandum imposing Deputy Marquez' suspension did not differentiate between the two alleged policy manual violations. Accordingly, it is not possible for the Hearing Officer to divide the suspension as to

each event. Accordingly it will be the recommended Order that the whole suspension be reversed.

ORDER

The following Order is recommended consistent with the findings and conclusions of the Hearing Officer.

1. The order to suspend Deputy Ronald Marquez for three (3) days without pay is rescinded.
2. Deputy Marquez shall be provided all rights and benefits lost as a result of the 3-day suspension, including past lost pay.
3. The order transferring Deputy Marquez from Lynwood Station to another Sheriff station is reversed.
4. The Sheriff shall remove from Deputy Marquez' personnel file the letter of August 22, 1985, suspending him for 3 days, and any other records in his personnel file with regard to the events of May 4, 1985.
5. This Order shall be posted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Philip Tamoush".

Philip Tamoush
Hearing Officer

Torrance, California
September 12, 1986

ADMINISTRATIVE INTERVIEWSSubject (print) MARQUEZ, RONALD R.

NOTE: This card is for SUBJECTS only and not to be read to other persons interviewed.

I am LT. RAMON C. SANCHEZ and this is _____
of Lynwood Station which is commanded by Captain POPOVICH.

You are about to be questioned as part of an official administrative investigation of the Los Angeles County Sheriff's Department.

The nature of this investigation concerns: (explain basic reason for investigation) INSUBORDINATION ... REFUSAL TO FOLLOW DIRECT ORDERS OF SUPERVISORY PERSONNEL

You will be asked questions specifically directed and related to the performance of your official duties and/or your conduct as it relates to and is required by the orders and standards of the Los Angeles County Sheriff's Department.

This is an administrative investigation and neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges.

You are hereby notified that failure to answer questions directly related to the investigation or interview may result in punitive action.

You have the right to have a representative of your choice, who is not involved in this investigation, present with you during the interview.

You may tape record this interview if you wish.

Do you have a copy of the Manual of Policy and Ethics? Yes X No _____
Are you familiar with its contents? Yes X No _____

Subject MARQUEZ REFUSED TO SIGN
(signature)

Date 5/4/85

LT. Ramon C. Sanchez
5/4/85

Time 1030 HRS.

EXHIBIT **F**