LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of,

The Association for
Los Angeles Deputy Sheriffs,
Charging Parties,

and

County of Los Angeles
Sheriff's Department,
Respondent.

REPORT OF THE
HEARING OFFICER

UFC 14.57

Hearing Officer: Michael Prihar, Esq.

APPEARANCES

On Behalf of Charging Party:

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On Behalf of Respondent:

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BACKGROUND

On or about March 22, 1991 Deputy Daniel Ybarra (Ybarra) of the Los Angeles County Sheriff's Department (Department) was relieved of duty pending an investigation focusing on alleged incidents of misconduct. On March 25, 1991, Ybarra, a member of the Charging Party bargaining unit (Union) was directed to report to the Sheriff's Department Internal Investigation Bureau (IIB) offices. He contacted his Union representative, Ms. Elizabeth Gibbons (Gibbons), and expressed his concern about going there alone since he didn't know why he had been ordered to report to the IIB at this time. Ms. Gibbons told him to wait until she called him back. She then called the IIB offices

and spoke with Sergeant Paul R. George (George). There is conflict between George's testimony and Gibbons' as to what George gave as the reason(s) for Ybarra's order to report to the IIB. According to Gibbons, Ybarra was only needed so that he could be issued a civilian identification card (ID card), a process which would take about five minutes. George assured her there would be no interview or interrogation. In contrast, George testified that he gave the reasons as the need to issue a civilian ID and to inform Ybarra of the allegations against him. He also denied saying that it would only take five minutes.

Based on her conversation with George, Gibbons called Ybarra and told him what she believed to be the reason for the order to report to the IIB, to get his civilian ID card. She assured him he would not be interviewed and therefore told him that he did not need any representation. At some time between 3:00 and 4:00 PM Ybarra reported to the IIB. He was joined in a small interview/lunch room by Sergeant George and a Lieutenant William McSweeney (McSweeney). The three individuals gave significantly different testimony about what transpired in this room and over what period of time. At some point after 5:00 PM Ybarra left the room and the IIB. By that time he had signed and submitted his resignation from the Department.

On April 10, 1991, the Charging Party filed the instant unfair practice charge with the Los Angeles County Employee Relations Commission (ERCOM), alleging that the Department's actions were calculated to interfere with Ybarra's protected rights in violation of the County's Employee Relations Ordinance (Ordinance), Section 12(a)(1)[1]. On may 9, 1991, the Respondent Department filed an answer denying every allegation set forth by the Union in this matter. A hearing on the matter was held on Thursday August 22, 1991, at the ERCOM offices.

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1 County of Los Angeles, Employee Relations Ordinance, Ordinance 9646 (1968)(amended 1971,1975).

ISSUE

1. Was the Respondent's conduct in its communications with Ybarra's Union representative and subsequently its conduct surrounding the scheduling and conduct of the meeting with Ybarra on March 25, 1991, which led to Ybarra's resignation from the Department such as to constitute a violation of rights as proscribed by Section 12(a)(1) of the Ordinance?

RELEVANT PROVISIONS FROM THE ORDINANCE

Section 4. EMPLOYEE RIGHTS

Employes of the County shall have the right to form, join and participate in the activities of employee organizations of their choosing for the purpose of representation on all matters of employee relations. Employees of the County also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the County. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of their exercise of these rights.

Section 12. UNFAIR EMPLOYEE RELATIONS PRACTICES

(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:

STATEMENT OF FACTS

1. Following a March 22, 1991, suspension from active duty pending an investigation into allegations of misconduct, Deputy Daniel Ybarra was ordered on March 25, 1991, to report that afternoon to the Department's Internal Investigation Bureau. Failure to obey that order may have led to his discipline for insubordination.

2. Ybarra contacted his Union representative, Elizabeth Gibbons, an attorney with the law firm of Green & Shinee, because of his uncertainty as to the intent of the meeting with the IIB.

3. Gibbons contacted Sergeant Paul George at the IIB and asked why Ybarra was ordered to report to the IIB in an effort to determine whether he would need or was entitled to representation during the meeting.

4. Following her conversation with George, Gibbons called Ybarra and told him the reason for the order to report was so that he could get his civilian ID and that the entire meeting would take about five minutes and that therefore there was no need for her to represent him at this meeting.

5. Ybarra reported as ordered and was joined in a small room, used at times as a lunch room and also an interview room, by Sergeant Paul George and Lieutenant William McSweeney.

6. George read a list of allegations against Ybarra. Ybarra was not questioned regarding these allegations. After reading the allegations there was a discussion and Ybarra was told that if any of the more serious allegations were proven to be true he could be fired. Ybarra was not told the source(s) or the status of these allegations or that a criminal investigation into some of these allegations had indicated that they could not be proven.

7. At no time during the entire meeting did George or McSweeney mention, reference, or otherwise begin the process necessary to procure a civilian ID for Ybarra.

8. By the end of the meeting Ybarra had signed and submitted his resignation from the Department and had received a memo whereby the Department stated its intent to close its administrative investigation surrounding the allegations and that by so doing the case would not be placed in Ybarra's "accessible personnel file."

The foregoing facts are those which were not in dispute. In addition to these there were a number of salient facts which were in dispute as evidenced by the conflicting testimony. Credibility determinations were based primarily on the conflicting testimony offered by George and McSweeney.

George testified that he was busy at his desk when Ybarra arrived and he therefore asked a secretary to escort him to the interview room where he could wait. (Tr. 69)[2]. He then passed by McSweeney's desk told him Ybarra was there, and then he returned to his

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2 Reference to the transcript will use the notation "Tr." followed by the page number(s).

desk to pick up his file and went into the interview room. (Tr. 69). The Union contended that Ybarra was led to the interview room and was made to wait at least ten minutes. (Tr. 19). According to George's testimony, he had already finished his business by the time Ybarra had arrived because after he asked the secretary to show him to the room he stopped by McSweeney's desk and then immediately proceeded to his desk to pick up the file and go into the room. Why then did he not pick up the file and accompany Ybarra into the room instead of first telling a secretary to take Ybarra into the room and then have Ybarra sit and wait in the room? George's statement that he went to his desk to pick up his file also conflicts with his statement that he was working or talking on the phone at his desk when Ybarra came and that was why he asked the secretary to assist Ybarra. (Tr. 70).

George also testified that he did not intent to solicit a resignation. (Tr. 85). He formed the intent of seeking a resignation after he went into the interview room (Tr. 106) and that he had no discussions with McSweeney about a resignation prior to entering the room. (Tr. 110-111). He also testified that he himself initiated the suggestion of resignation and he retrieved the resignation form from his desk. (Tr. 111). In contrast, McSweeney testified that before he entered the room with George he had asked George if he had thought about talking to Ybarra about a possible resignation. (Tr. 125, 137). McSweeney also testified that about seven minutes into the session, after the allegations had been read, he (and not George) suggested the possibility of a resignation. (Tr. 130, 136). Finally, McSweeney testified that the resignation form was produced about forty to forty-five minutes after Ybarra entered the room. (Tr. 137). George, on the other hand, testified that his decision to seek a resignation was spontaneous and he simply got up, left the room, and retrieved a resignation form. (Tr. 106). Ybarra testified that as soon as George and McSweeney entered the room McSweeney placed a sheet of paper in front of him titled "Resignation." (Tr. 24).

These conflicts in the testimony of the Department's witnesses along with other factors as identified in California Evidence Code § 780 led the Hearing Officer to credit otherwise conflicting testimony and thereby conclude the following additional facts.

9. When he spoke with Gibbons, George told her that the only reason Ybarra was asked to report to IIB was to collect his civilian ID. George did not tell her that he intended to tell Ybarra the allegations against him or that he would be asked about a resignation.

10. The Department had formed an intent to seek a resignation from Ybarra before the IIB meeting began.

11. The meeting between Ybarra and Department representatives Sgt. George and Lt. McSweeney was conducted in a small room in which the Department representatives were situated in a fashion that effectively blocked Ybarra's access to the door.

12. George and McSweeney spent at least one and one-half hours with Ybarra before Ybarra left after having resigned from the Department.

13. Other than the relatively brief initial period during which George read the list of allegations the balance of the time was spent on the issue of Ybarra's resignation and its impact on his future.

14. Ybarra had extensive discussions with McSweeney related to the impact of his resignation on his personnel file, his future employment opportunities, and the access by prospective employers to his personnel file. During these discussions Ybarra was given misleading statements regarding his options and their ramifications. He was also threatened with discharge if he didn't resign.

15. During the meeting Ybarra asked if he could take some time, at least one day, before making his decision about the resignation. He was told that if he did he would lose the opportunity to resign.

16. At no point during the meeting was Ybarra asked any questions regarding the allegations nor did he request the presence of a Union representative.

CONTENTIONS OF THE PARTIES

A. Those of the Charging Party

1. That the Department had formulated the intent to seek Ybarra's resignation before he was ordered to report to IIB and that by not communicating this intent to his representative the Department was intent on depriving him of his representative during the meeting which resulted in his resignation.

2. That during the course of the meeting Department representatives George and McSweeney made misleading and coercive statements designed to elicit a resignation without the benefit of representation.

3. That the meeting was one which called for the protections addressed by the Supreme Court in *NLRB v. Jay Weingarten, Inc.*, 420 U.S. 251, 95 S.Ct. 959, 88 LRRM 2689 (1975), and that by denying Ybarra representation the Department interfered with his rights in violation of Ordinance Section 12(a)(1).

4. That the nature of the Department's conduct in violating the Ordinance was such as to be remedied not only by a cease and desist order but also by an order calling for reinstatement of Ybarra with full back salary.

B. Those of the Respondent

1. Ybarra was never interviewed or interrogated regarding the allegations against him during the entire time he was meeting with George and McSweeney.

2. Ybarra never requested representation at any time during the meeting, even though he had been told by his Union representative, Gibbons, to do so if he was being interviewed.

3. Ybarra was not impaired in any way during the meeting and fully understood the nature of his actions.

4. In view of the preceding factors Ybarra's *Weingarten* were not violated and the Department did not violate Ordinance Section 12 (a)(1).

DISCUSSION

I. Hearing Officer's Authority

Court decisions and those of the National Labor Relations Board (NLRB) may be relied upon when they embody interests similar to those found in the local ordinance. *Vallejo Fire Fighter's Union v. City of Vallejo*, 12 Cal.3d 608, 116 Cal.Rptr. 507 (1974). Accord, *Aburtha v. AFSCME Local 119*, UFC 70.16 (1981). Any reliance on such decisions must entail an assurance that the purposes of the statutory provisions at issue coincide, and adherence to such precedents is precluded where it is evident that legislative intent underlying the subject language was not focused on similar policy goals. *Service Employees International Union, Local 660 v. City of Santa Barbara*, 125 Cal.App.3d 459 178 Cal.Rptr. 89 (1982).

II. Relationship Between the MMBA and the Ordinance

The legislatively prescribed scheme for the relationship between local agencies as employers, and employees and employee organizations, is set forth in the Meyers-Milias-Brown Act (MMBA).[3]

> "Nothing contained herein shall be deemed to supersede the provisions of existing ... ordinances, and rules of local public agencies which ... provide for other methods of administering employer-employee relations nor is it intended that this chapter be binding upon those public agencies which provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter. This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employees and the public agencies by which they are employed." *Cal. Government Code*, §3500.

The exercise of local authority, however, cannot void the bargaining obligations created by the MMBA. *Building Material & Construction Teamsters' Union v. Farrell*, 41 Cal.3d 651, 664-665, 224 Cal.Rptr. 688 (1986). The MMBA is a template for local ordinances in that it is intended to create a uniform fair labor practices throughout the state. *Fire*

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3 Cal. Government Code, §3500 *et seq.*

Fighters v. City of Los Angeles, 60 Cal.2d 276, 295 (1963). This relationship is affirmed in Ordinance Section 16(e) which expressly states that the Ordinance provisions are not intended to conflict with those of the MMBA.

III. Applicable Federal Labor Law

In its 1975 decision in *NLRB v. Jay Weingarten, Inc.*, 420 U.S. 251, 95 S.Ct. 959, 88 LRRM 2689 (1975), the Supreme Court sustained the National Labor Relations Board (hereinafter NLRB or the Board) ruling that an employer had violated the National Labor Relations Act (Act)[4] when it denied an employee's request for union representation at an investigatory interview which the employee reasonably believed might result in discipline. The employer's conduct constituted an unfair labor practice in violation of §8(a)(1) of the Act because it interfered with, restrained, and coerced the individual right of the employee as described in §7, "to engage in ... concerted activities for ... mutual aid or protection."

The California Supreme Court acknowledged its sensitivity to developments in the federal labor law as guidelines for interpreting the MMBA after noting that the phrase "wages, hours and other conditions of employment" as found in MMBA §3504 seemed to be taken from the federal Labor Management Relations Act[5]. *Social Workers Union, Local 535, v. Alameda County Welfare Dept.*, 11 Cal.3d 382, 113 Cal.Rptr. 461 (1974). That sensitivity was demonstrated in a subsequent ruling wherein the court acknowledged the applicability of *Weingarten* to defining public employees' rights under the MMBA. *Civil Service Assn., Local 400 v. City and County of San Francisco*, 22 Cal.3d 552, 150 Cal.Rptr. 129, (1978). Relying on *Civil Service Assn.*, a California appellate court noted that key language in the MMBA corresponded with that in the State Employee Organizations Act and therefore deemed *Weingarten* and its progeny as persuasive in reaching its interpretations. *Robinson v. State Personnel Board*, 97 Cal.App.36d 994, 159 Cal.Rptr. 222 (1979). The *Robinson* court noted that even though the California law does

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4 29 USC §151 *et seq.*

5 29 USC §141 *et seq.*

not contain the "mutual aid" language of Section 7 of the Act, it has nevertheless absorbed the federal policy regarding the scope of representation by adopting the federal language "wages, hours, and other terms and conditions of employment" which has been the subject of broad interpretation. 97 Cal.App.3d, at 1001. A similar congruence may be found between the MMBA and the Ordinance. MMBA §3504 provides that representation shall include "all matters relating to employment conditions and employer-employee relations, ..." and Ordinance §4 provides for employee organization representation in "all matters of employee relations."

IV. *Weingarten* and its Progeny

In formulating the *Weingarten* decision the Court relied heavily on the Board's decisions in *Mobil Oil Corp.*, 196 NLRB 1052, 80 LRRM 1188 (1972), and *Quality Manufacturing Co.*, 195 NLRB 198, 79 LRRM 1269 (1972). In those the Board identified certain criteria to be considered in determining when a right for representation arises. The Court identified the parameters, established by successive NLRB rulings, for defining the limits of statutory rights to refuse to participate without representation at an interview which is reasonably believed to result in discipline. *Weingarten*, 88 LRRM 2691. The first three of the five identified parameters have application to the instant matter.

Citing *Mobil Oil*, the Court identified the first parameter as the recognition of an inherent right to act in concert for mutual aid and protection, and that a denial of this right reasonably serves as interference, restraint, or coercion in violation of Section 158 (a) (1) of the Act. As previously analyzed, such a right exists in this instance. In *Mobil Oil* the Board stated that,

> "it is a serious violation of the employee's individual right to engage in concerted activity by seeking the assistance of his statutory representative if the employer denies the employee's request and compels the employee to appear unassisted at an interview which may put his job security in jeopardy." 80 LRRM, at 1191.

Union representative Gibbons called and inquired about the subject of the March 25 meeting after she was contacted by Ybarra. By misrepresenting to her the intent of that

meeting the Department implicitly denied Ybarra access to his representative. That Ybarra was compelled to appear is evident both from George's testimony that Ybarra was given an order and the recognized quasi-military structure and hierarchy of the Sheriff's Department. Finally, the evidence that prior to entering the meeting the Department intended to solicit a resignation serves as ample proof that the subject interview was one which put Ybarra's job security in jeopardy.

The second identified parameter was that the employee must have requested representation, since an employee may elect to participate in an interview unaccompanied by a union representative. *Weingarten*, 88 LRRM, at 2691. In this instance there was a request as evidenced by Ybarra's call to attorney Gibbons immediately upon receiving the order to report to the IIB. Respondent argued that Ybarra failed to request representation at any time during the interview. Citing the Board's decision in *Roadway Express Inc.*, 246 NLRB No. 180 (1979), the Fifth Circuit held that once an employee has requested union representation at one meeting he need not repeat that request where a second meeting involved a "single interrelated episode." *Lennox Industries, Inc. v. NLRB*, 637 F.2d 340, 345, (1981). The court went on to express that,

> "[a]s long as one or more company officials are aware of the employee's desire and request for the presence of a union representative, a single request will suffice for the multiple subjects of a single meeting, or for multiple meetings which are part of a 'single, interrelated episode,' as here. The union representative's admission ticket gained by the employer's original request entitles employee to representation during both ends of the doubleheader." 637 F.2d, at 345.

Here there was only one meeting and Sgt. George was aware of Ybarra's request for representation in that he had spoken with Gibbons regarding the intent of the meeting.

The third parameter identified in *Weingarten* was enunciated by the Board in *Quality Mfg.*, that the right to request representation was limited to interview situations where the employee reasonably believes the investigation may result in discipline. The Court cited the Board's reluctance to,

> "apply the rule to such run-of-the-mill shop-floor conversations as, for example, the giving of instructions or training or needed corrections of work

> techniques. In such cases there cannot normally be any reasonable basis for an employee to fear that any adverse impact may result from the interview, and thus we would see no reasonable basis for him to seek the assistance of his representative." 195 NLRB, at 199, 79 LRRM, at 1271.

Ybarra had been suspended on March 22, pending an investigation. He was ordered to report to IIB, the Department's office for conducting internal affairs investigations. Sgt. George and Lt. McSweeney told Ybarra that he would probably be discharged if any of the more serious allegations proved true. It is clear that the meeting was associated with a pending investigation and that discipline could ensue.

The fourth parameter limits the exercise of the subject right in that it may not interfere with legitimate employer prerogatives. To that end the employer is allowed to conduct an investigation without interviewing the employee and acting without the benefit of information otherwise available from an interview with the employee in the presence of his representative. The subject meeting was not an investigation which sought to harvest information relating to the surrounding allegations. The fifth and final parameter is that the employer has no duty to bargain with the representative who may be permitted to attend an investigatory meeting. These latter two parameters are not at issue under the facts as presented in this matter.

In *Weingarten* the Court indicated that the Board's interpretation of the applicable Sections 7 and 8(a)(1) language of the Act was permissible construction in that the individual employee is seeking " 'aid or protection' against a perceived threat to his employment security." *Weingarten*, 88 LRRM, at 2692. The requested union representative served to safeguard not only the particular employee's interest, but also those of the entire bargaining unit against the initiation by the employer of a questionable or unjust practice. 88 LRRM, at 2692 n. 6. As such the Board's construction effectuated "the most fundamental provisions of the Act," those intended to eliminate the inequities in the respective bargaining powers of the parties. 88 LRRM, at 2693. In the present instance the Department was bargaining by offering to accept Ybarra's resignation in exchange for not pursuing its investigation and any resulting administrative action. The

Department representatives presented the latter option as one which carried the threat of disgrace, discharge, and loss of future employment opportunities. Ybarra, in view of his experience and the surrounding circumstances including that of being caught off guard by the full scope of the meeting in lcontrast to what Gibbons had told him, lacked the abilities, skills, or opportunity to assess and effectively respond.

Respondent, by way of testimony from George and McSweeney, implicitly argued that such inequities were not involved in the subject meeting. Lt. McSweeney was asked why he believed Ybarra who had less than three years of total experience (which included the time he spent receiving his initial academy training) could rationally decide whether or not to resign without the aid of consultation with his representative or others. He answered that as a Deputy Sheriff Ybarra was capable of making "some pretty big decisions" as evidence by being empowered to shoot people. Such a claim is disingenuous in light of his earlier statements that one of the reasons he accompanied Sgt. George into the interview room was because George (who had over twenty-five years experience) was alone and didn't have a work partner. Lt. McSweeney apparently felt Sgt. George needed a partner in order to issue a civilian ID and read a statement of allegations. The relative experience, ranks, format, and environment of the March 25 meeting convey a clear image of the inequities between the parties' respective positions.

In *Weingarten* the Court noted the Board's acknowledgment of significant developments in industrial life as related to the use of sophisticated investigation techniques thereby justifying a modification and reformation of applicable standards based on accumulated experience. Specifically identified was the use of interviews conducted by specialists wherein an employee is confronted by a "stranger trained in interrogation techniques" and not a known and familiar supervisor. 88 LRRM, at 2694 n.10. The present facts serve to substantiate the Board's concern. At the time of the subject meeting Ybarra had been with the Department for approximately two and one-half years; Sgt. George had been with the Department approximately twenty-five years with the last two

and one-half years at the IIB; Lt. McSweeney had been with the Department approximately seventeen years with the last two years at the IIB. In other words, these two individuals who had no prior contact with Ybarra, had spent as much time as his total service in specifically conducting internal affairs investigations, not to mention the interviewing skills they had acquired during their tenure with the Sheriff's Department.

In *Alfred M. Lewis, Inc. v. NLRB*, 587 F.2d 403, 99 LRRM 2841 (1978), the Ninth Circuit cited *Weingarten* and delineated a distinction between the right of representation which arises when a "significant purpose of the interview is to obtain facts to support disciplinary action that is probable or is being seriously considered," and that situation where there was no interrogation only a "cut and dried" communication of a disciplinary action and hence no right to representation. 99 LRRM, at 2845, 2846. The court noted that although discipline may follow from a failure to comply with work direction or instructions pertaining to work performance such a latent threat without more does not give rise to *Weingarten* protections. 99 LRRM, at 2845. Subsequent to its *Lewis* ruling the Ninth Circuit also refused the Board's petition for enforcement of its order in *Certified Grocers of California*, 227 NLRB 1211, 94 LRRM 1279 (1977). *NLRB v. Certified Grocers of California, Ltd.*, 587 F.2d 449, 100 LRRM 3029 (1978). In both *Certified Grocers* and *Lewis* the court relied on the fact that the subject meetings were held primarily to deliver the discipline and not for the purpose of soliciting information. These may be distinguished by the surrounding facts. In this instance there was no communication of a predetermined discipline, only threats of discharge if allegations were proven and a corresponding pressure on Ybarra to resign.

In *Baton Rouge Water Works Co.*, 103 LRRM 1056 (1979) the NLRB acknowledged the court's reasoning in denying enforcement of its *Certified Grocers* decision. Accordingly, after determining it was wrongly decided on its facts, the Board overruled its *Certified Grocers* decision. 103 LRRM, at 1058. The Board noted that under the Supreme Court's *Weingarten* decision no right to representation existed at a meeting

"solely for the purpose of informing the employee of, and acting upon, a previously made disciplinary decision." The Board recognized that other than this type of meeting, and the purely investigative meeting as in *Weingarten*, there were other variations of discipline-related interactions between an employee and management. Accordingly the Board stated that,

> "if the employer engages in any conduct beyond merely informing the employee of a previously made disciplinary decision, the full panoply of protection accorded the employee under *Weingarten* may be applicable. Thus, for example, were the employer to ... attempt to have the employee admit his alleged wrongdoing or to sign a statement to that effect ... such conduct would remove the meeting from the narrow holding of the instant case, and the employee's right to union representation would attach." *Baton Rouge*, 103 LRRM, at 1058.

Respondent relied heavily on the fact that Ybarra was not interrogated regarding any of the allegations and was specifically instructed not to offer any information regarding the allegations. The Respondent's argument pits form over substance. First it must be noted that the operative word in the Board's and courts' decisions is "interview" and not "interrogation." An interview is defined as "a formal meeting in which one or more persons question, consult, or evaluate another person." *The Random House Dictionary of the English Language*, Second Edition, 1987. Ybarra's meeting with George and McSweeney was clearly an interview; he was asked if he wished to resign, and; there was consultation between the parties as to this subject, one which clearly entails job security. In accord with the Board's *Baton Rouge* decision, the March 25 meeting was clearly one where the full purview of *Weingarten* protections applied.

The Union argued that the Department's conduct in this instance was another example of a continuing course of conduct violative of Ordinance Section 12(a)(1). Witnesses offered testimony pertaining to a prior incident which allegedly entailed the same type of conduct. The Hearing Officer makes no determinations as to any prior incident or conduct based on the fact that the instant charges cited only the Ybarra incident and made no reference to prior incidents or a claim of a continuing course of conduct.

V. The Issue of Remedy

The foregoing justify a conclusion that the Respondent intentionally created a circumstance whereby Ybarra was deprived of his rights in violation of Ordinance Section 12(a)(1). The Hearing Officer agrees with the Charging Party that an order to cease and desist would be an inadequate remedy in light of the circumstances and the impact of the violation. The appropriate corrective action in this instance is the removal of the product of that violation, the resignation documents (Un. Ex. 1). This has the effect of reinstating Deputy Ybarra to his status before the resignation. The Department may exercise it's right to pursue its investigation into allegations surrounding Ybarra's conduct and to take any actions such as it would have done had the resignation form not been signed.

Where the employee's *Weingarten* rights have been violated but in a situation where the ensuing discharge was otherwise for cause the court has refused a Board's order for reinstatement or back salary. *NLRB v. Potter Electrical Signal Co.*, 101 LRRM 2378 (1979). In the absence of cause for a discipline, a make-whole remedy applies where there has been interference with the protected rights of the employee. *Taracorp*, 117 LRRM 1497 (1984). In this instance there was no determination of cause nor was there discipline before the resignation. There is no evidence that had the meeting not taken place Ybarra would have resigned or that had he not resigned he would have been suspended without pay. Accordingly the remedy would also require that Ybarra's reinstatement be accompanied with back pay for the interim.

CONCLUSION

Having weighed and reviewed the evidence and arguments presented by the parties, it is concluded that:

The Respondent's communications with Ybarra's Union representative and subsequently its conduct surrounding the scheduling and conduct of the meeting with Ybarra on March 25, 1991, which led to Ybarra's resignation from the Department was

such as to constitute a violation of rights as proscribed by Section 12(a)(1) of the Ordinance?

The product of that violation, the resignation, is to be destroyed and the parties are to be reinstated to their *status quo ante*.

RECOMMENDATIONS

The duly appointed Hearing Officer recommends that the Employee Relations Commission approve and adopt the following order:

"Respondent, Sheriff for the County of Los Angeles, shall;

1. Cease and desist from:

a. Mis-communicating to members of the bargaining unit and/or their union representatives the intent of any meeting between Internal Investigation Bureau personnel and members of the Bargaining Unit where; such meetings may reasonably result in disciplinary action or other personnel actions affecting the bargaining unit member's job security, and; where such meetings are not solely intended to communicate a previously determined discipline or process the employee's civilian ID in concert with established administrative procedures.

b. In any like or related manner interfering with, restraining, or coercing any employee in the exercise of rights guaranteed by the Ordinance.

2. Take the following affirmative action necessary to effectuate the policies of the Ordinance:

a. Cancel, withdraw, rescind, and otherwise destroy the resignation submitted by Deputy Daniel Ybarra on March 25, 1991, along with any related documents or records referencing such resignation.

b. Remove from any personnel files or any other Departmental files reference to this resignation, other as such may exist in relation to these proceedings.

3. Reinstate Deputy Daniel Ybarra into that status he would have had following the issuance of his civilian ID as represented by the Department in its discussions with his Union representative. Such reinstatement is to include back pay from the effective date of his resignation until the date he is reinstated to such *status quo ante*."

DATED: 12-19-91

Respectfully submitted,

Michael Prihar
Hearing Officer