

COUNTY OF LOS ANGELES
EMPLOYEE RELATIONS COMMISSION

In the Matter of)	
)	
ASSOCIATION FOR LOS ANGELES)	
DEPUTY SHERIFFS (ALADS))	
)	
Charging Party)	
)	
v.)	UFC 14.57
)	
SHERIFF'S DEPARTMENT)	
)	
Respondent)	
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DECISION AND ORDER

The charge in this case was filed by the Association for Los Angeles Deputy Sheriffs (hereafter "Union" or "Charging Party") against the Los Angeles County Sheriff's Department (hereafter "County" or "Respondent"). The Union alleged that the County had violated Section 12(a)(1) of the Employee Relations Ordinance (hereafter "Ordinance") by interfering with Deputy Sheriff Daniel Ybarra's representation rights at a meeting with Internal Investigation Bureau (hereafter "IIB") personnel.

The matter was duly referred to Hearing Officer Michael Prihar, who held a hearing on August 22, 1991. The parties appeared and were afforded full and complete opportunity to present relevant evidence, offer argument, and examine and cross-examine witnesses. Post-hearing briefs were filed. The Hearing Officer's Report was submitted to the Commission on December 19, 1991. Exceptions to this Report were filed by the Respondent on January 10, 1992 which were answered by the Charging Party's

statement in opposition received on February 10, 1992.

Deputy Ybarra had been relieved of his duties on March 22, 1991.¹ On March 25 he was directed to report to the Sheriff's Department IIB office. Ybarra telephoned his Union Representative, one Elizabeth Gibbons, because of his concerns regarding the purpose of the meeting. Gibbons in turn telephoned Sergeant Paul George of the IIB; the substance of their discussion is in dispute. Following this discussion, Gibbons again telephoned Ybarra and informed him that the meeting was called to issue him a civilian ID and would take but five minutes.

Ybarra thereafter reported to the IIB office and met with George and a Lieutenant William McSweeney, also of IIB. The testimony of these three individuals was at odds both as to what took place during this meeting and its duration. Ybarra did not ask for a Union Representative during the course of this meeting, nor was he questioned regarding the allegations then pending against him. By the end of the meeting, Ybarra had signed and submitted his resignation from County service.

The Hearing Officer concluded that Sergeant George had misrepresented the purpose of the March 25 meeting to Union Representative Gibbons, that Ybarra's telephone call to Gibbons amounted to a request for Union representation, and that the meeting was associated with a pending investigation with the potential for disciplinary action. The Hearing Officer further concluded that the meeting was "clearly one where the full

¹Unless otherwise indicated, all dates refer to 1991.

purview of Weingarten protections applied."² (H.O. Report, pg. 15.) He therefore concluded that Respondent's communication with Ybarra's Union Representative and its actions with respect to the scheduling and conduct of the March 25 meeting were violative of Ordinance Section 12(a)(1).

The County in its Exceptions, inter alia, takes issue with the various facts developed from the Hearing Officer's review of the conflicting testimony.³ These findings were based on credibility resolutions made by the Hearing Officer and are entitled to substantial deference. As such, and as we find ample support in the record for these findings, the County's Exceptions thereto are overruled.⁴

As to the County's specific Exception grounded in Ybarra's failure to request Union representation during the course of the meeting, we agree with the Hearing Officer that Ybarra's earlier telephone call to Gibbons constituted a request for such representation. As Sergeant George was aware of this

²In *NLRB v. Jay Weingarten Inc.*, 420 U.S. 251, 88 LRRM 2689 (1975), the Supreme Court held that an employee had a right to union representation at an investigatory meeting which the employee reasonably believed might result in discipline. The Weingarten holding was first adopted by the Commission in *LACEA, Local 660, SEIU v. Department of Public Administrator-Public Guardian*, UFC 6.28 (1976) and subsequently reaffirmed in *Association for Los Angeles Deputy Sheriffs v. Sheriff's Department*, UFC 14.39 (1986); and *SSU, Local 535, SEIU v. Department of Public Social Services*, UFC 10.31 (1989).

³These are identified as "additional facts" by the Hearing Officer and are set out as findings No. 9 through No. 16 on page six of the Report.

⁴The respective roles of the Commission and its Hearing Officers, and in particular the weight to be assigned credibility findings of a Hearing Officer, are explicated in *AFSCME, Local 119 v. Department of Facilities Management*, UFC 1.83 (1990).

request by virtue of his telephone conversation with Gibbons prior to the meeting, Ybarra was not required to repeat his request at the meeting under the federal precedent we have elected to adopt and apply.⁵

The Hearing Officer's findings and conclusions as summarized herein and as more fully amplified in his Report reflect a careful review and application of relevant federal case law to the facts developed on this record. We find no basis to reject either the Hearing Officer's reading of these cases or the manner of their application to the particular facts of this dispute. Hence, for the reasons stated in the Hearing Officer's Report, we reject those Exceptions submitted by the Respondent which essentially reflect a restatement of its contentions initially placed before the Hearing Officer.

The Commission has considered those Exceptions submitted by the Respondent which bear on the determination of an appropriate remedy. The Respondent's position that this Commission lacks jurisdiction to fashion a remedy with respect to Ybarra's resignation as such resignations are matters within the exclusive purview of the Civil Service Commission represents neither a new nor novel contention.⁶ That the Civil Service

⁵See, for example, *Roadway Express, Inc.*, 103 LRRM 1050 (1979); *Lennox Industries, Inc. v. NLRB*, 637 F.2d 340, 106 LRRM 2607 (5th Cir. 1981); and *General Motors Corp. v. NLRB*, 674 F.2d 576, 109 LRRM 3345 (6th Cir. 1982).

⁶The Commission rejected similar jurisdictional challenges in *Joint Council of Local 660, SEIU and Local 434, SEIU v. Museum of Natural History*, UFC 56.6 (1981); and *California Association of Professional Employees v. Department of Public Works*, UFC 3.16 (1990).

Commission's jurisdiction in resignation matters overlaps or is concurrent with ours does not preclude this Commission from ordering appropriate relief in the event a party prevails in such dispute brought before us. Neither Section 7(g) nor Section 12(e) of the Ordinance can be read to impose any restrictions on this Commission's authority to provide an appropriate remedy for a resignation procured in violation of the Ordinance. Hence, our Order below expressly requires the County to take certain affirmative action with respect to the matter of Ybarra's resignation.

Having carefully reviewed the entire record in this matter, the Commission adopts the findings, conclusions, and recommendations of the Hearing Officer as set forth in his Report for the reasons stated therein.

O R D E R

IT IS HEREBY ORDERED that charge UFC 14.57 is sustained. The County is directed to cease and desist from.

1. Miscommunicating 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.

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

The County is further directed to take the following affirmative action necessary to effectuate the policies of the Ordinance:

1. 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.
2. Remove from any and all personnel files or any other files maintained by the County all references to this resignation, other as such may exist in relation to these proceedings.
3. Reinstate Deputy Ybarra into the status that he would have held had he been issued his civilian ID at the meeting of March 25, 1991. Such reinstatement is to include back pay from the effective date of his resignation until the date of such reinstatement.

DATED at Los Angeles, California, this 18th day of March, 1992.