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LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION

In the Matter of:

ASSOCIATION FOR LOS ANGELES DEPUTY  
SHERIFFS (ALADS),

The Charging Party,

v.

Sheriff's Department, Los Angeles County,

The Respondent.

UFC 14.60

RECEIVED  
EMPLOYEE RELATIONS

DEC 18 1992

Date of UFC 14.60:

August 28, 1991.

Date of Hearing:

September 29, 1992.

Representing the  
Charging Party:

Helen L. Schwab, Attorney at Law  
Green & Shinde  
Encino, California.

Representing the  
Respondent:

Ann P. Marinovich  
Assistant Director, Employee Relations  
L.A. County Sheriff's Department  
Los Angeles, California.

Date of Receipt of  
Post-Hearing Briefs:

November 18, 1992.

HEARING OFFICER'S REPORT

THE UNION'S CHARGE AND THE DEPARTMENT'S ANSWER

The union charges that the Sheriff's Department violated the collective bargaining rights guaranteed union members by §12(a)(1) of the Employee Relations Ordinance. The union alleges that without first advising, consulting or meeting/conferring with it, the department dealt directly with union members and required those who are patrol training officers to execute

individual MOU's (later entitled Training Officer-Trainee Relationship Agreements).

The department denies that it violated §12(a)(1). It contends that the MOU's/Relationship Agreements in dispute are not "agreements" between it and its patrol training officers. It asserts instead that these documents merely confirm that the department will not tolerate any hazing of trainees by training officers.

#### THE FACTS

On February 25, 1991, without any advice to or consultations/meetings with ALADS, the Sheriff's Department issued Field Operations Directive 91-3 entitled "Training Officer/Trainee Standards of Conduct." That directive stated, in pertinent part:

"It is the policy of the Department that all Sheriff's Deputies newly assigned to a station shall be treated with the consideration and respect that is afforded to all peace officers.

"The purpose, therefore, of this directive is to ensure that all Field Operations Regions trainees are provided with a positive training environment by their units of assignment.

"Each unit commander will establish a work environment wherein no hazing or discourtesy shall occur. Moreover, all conditions of the deputy sheriff Memorandum of Understanding [which is attached] shall be followed.

"To assist the unit commander in enforcing this mandate, the attached [Memorandum of Understanding] will be briefed by the Training Sergeant to every trainee/training officer partnership and signed by all parties present."

"All personnel assigned to a station will treat a deputy sheriff trainee with respect and courtesy. Any failure to comply with this directive shall be investigated, documented, and appropriately corrected." (Hearing Officer's emphases; page 1, Union's Exhibit 1).

On June 10, 1991, again without any consultation with the union, the department issued a revised version of Directive 91-3. In that revision the reference to "deputy sheriff Memorandum of Understanding [which is attached]" was changed to "the Training Officer-Trainee Relationship Agreement [which is attached]" (see Union's Exhibit 2). Otherwise the wording of the revised directive (as well as the wording of the attached agreement to be signed by the training sergeant, the patrol training officer and the trainee) remained the same as originally issued by the department.

Assistant Sheriff Harper testified that if a training officer or a trainee refuses to sign a MOU/Relationship Agreement, he/she will be brought into the training sergeant's office and counseled, as required by the last paragraph of Directive 91-3. Mr. Harper also testified that if a patrol training officer were to refuse to heed such counseling, he/she could lose his/her training position (and the attendant bonus or premium pay of approximately five and one-half percent of base pay) because the department will consider such a refusal his/her unwillingness to comply with Field Operations Directive 91-3.

Deputy Sheriff Bruce Prewett, a patrol training officer in the Norwalk Sheriff's substation in 1991, testified that the trainee who had first brought him a MOU for signature (after the two of them had already started the trainee's mandatory training period) made it clear that their training sergeant had given that agreement to him for Deputy Prewett's signature. Moreover, both Assistant Sheriff Harper and Deputy Sheriff Prewett testified that the department insists that individual Relationship

Agreements be signed (by the training sergeant, the patrol training officer and the trainee involved) each time a newly assigned deputy reports to a substation for training.

Thus, the Hearing Officer finds that signed individual Relationship Agreements are mandatory for patrol training officers under the department's Field Operations Directive 91-3, and that those who refuse to sign such agreements can lose their training positions and bonus pay.

ALADS' Assistant Executive Director, John Rees, testified that the union had extensive negotiations with the Sheriff's Department concerning the terms and conditions of the department's Deputy Orientation Program ("DOP"), and agreed with the department on that program before the department implemented it. This testimony of John Rees was not rebutted by Assistant Sheriff Harper, or by any other witness for the respondent or by any document in the record.

The parties agree that the department's DOP governs the transfers of, and the transition periods for, deputies moving from an assignment as a bailiff in the Court Services Division, or from an assignment as a correctional officer in the Custody Division, to a first-time assignment at a Sheriff's substation.

John Rees also testified that ALADS' negotiations with the Sheriff's Department concerning the department's DOP involved discussions/agreements about the procedures for such transfers, and the department's expectations for patrol training officers and trainees. Mr. Rees likewise testified that none of the requirements stated in Directive 91-3, or in the attached MOU/Relationship Agreement, are part of the department's DOP.

This testimony of John Rees was not rebutted by Assistant Sheriff Harper, or by any other witness for the respondent or by any document in the record.

#### THE ARGUMENTS OF THE PARTIES

##### The Union's Position and Arguments

The union contends that its unfair labor practice charge must be sustained. It requests that the Hearing Officer recommend that the Commission order the Sheriff's Department to cease and desist imposing a Relationship Agreement requirement on its patrol training officers until the parties have had an opportunity to meet, confer, negotiate and agree upon the department's unilaterally imposed changes in its DOP, and in the performance standards for the union members serving in patrol training officers' positions. In support of its position and request for relief, the union argues:

One, the department's requirement that patrol training officers enter into individual Relationship Agreements with their training sergeants and trainees constitutes direct dealing with these training officers and violates the Ordinance.

Section 12(a)(1) protects the right of these officers to bargain collectively with the Sheriff's Department. While ALADS is not the exclusive bargaining representative for members of Representation Unit 611, nevertheless it is the selected majority representative for collective bargaining. Moreover, the department made no distinction between represented and non-represented employees when requiring patrol training officers to execute individual Relationship Agreements or lose their training positions and bonus pay.

In Marriot Corp. 111 LRRM 1411 (1982), the NLRB held that any direct dealing by an employer with represented employees (even by simply requesting that these employees complete "attitude survey forms") results in the improper bypassing of these employees' bargaining representative, in derogation of their rights to bargain collectively and of their bargaining representatives' statutory/contract status.

It is undisputed that ALADS and the Sheriff's Department had an existing collective bargaining agreement (their Memorandum of Understanding) in March and June, 1991. When the department issued, and then revised, its Field Operations Directive 91-3 (which imposed on patrol training officers the requirement for Relationship Agreements), the department changed the conditions of employment, as well as the performance requirements, of these officers.

Two, the department's unilateral implementation of the terms and conditions of its Field Operations Directive 91-3, without notification to and negotiations with the union, also violates the Ordinance.

The Sheriff's Department does not dispute that it implemented its Deputy Orientation Program only after extensive negotiations with ALADS. Nor did the department dispute that its DOP was a mandatory subject for bargaining with the union.

Three, while admittedly ALADS may ultimately agree with many of the provisions in Field Operations Directive 91-3, and with the new performance standards for patrol training officers contained in their required Relationship Agreements, nevertheless the Sheriff's Department was obligated to negotiate with ALADS

concerning both of these documents. The department did not do so and therefore it violated the Ordinance.

#### The Department's Position and Arguments

The department contends that it did not violate §12(a)(1). Thus it urges the Hearing Officer to recommend a dismissal of the union's unfair labor practice charge. The department argues:

One, the document in question (initially referred to as a MOU, now called a Training Officer-Trainee Relationship Agreement) is not an agreement between the department and any patrol training officer. Instead, it is simply a written statement by a patrol training officer and his/her trainee (admittedly witnessed by their training sergeant) in which they acknowledge that the department will not tolerate the hazing of trainees.

Two, in no way can such a written recognition of the Sheriff's Department's policy condemning hazing constitute a change in any of the conditions of employment for any member of Representation Unit 611, whether or not represented by ALADS.

In Article 23, Management Rights, of the parties' MOU, the union expressly recognized the retained right of the department to conduct its business, to direct its work force, and to "exercise control and discretion over its organization and operations" (page 48, Joint Exhibit 1). Thus it is management's right to direct and counsel its employees in the performance of their duties. This obviously includes management's right to direct, counsel, instruct and discipline (if necessary) its patrol training officers.

Three, in the portion of the department's Manual of Policy

and Procedures entitled "Policy and Ethics," §3-01/030.15, Conduct Toward Others, expressly states:

"Employees shall observe the following rules of conduct:

"a) Members shall conduct themselves in a manner that will foster the greatest harmony and cooperation between themselves and the Units of the Department.

"b) Members shall not intentionally antagonize any person with whom they come in contact and shall treat all persons in a respectful, courteous, and civil manner." (Hearing Officer's emphasis; Respondent's Exhibit 1.)

Certainly the department has a contract right to counsel, and discipline if necessary, any patrol training officer who violates this section of its Manual of Policy and Procedures by hazing trainees assigned to work with him/her during their six-months mandatory training period.

Four, above all, it has always been the department's stated position that the hazing of trainees by their training officers is inappropriate. Obviously the department had a contract right to remind its patrol training officers of this policy, and that they will be disciplined for violating it. This it did by issuing Field Operations Directive 91-3. Obviously also the department had a contract right to require its patrol training officers to sign individual Relationship Agreements in which they acknowledge the existence of that policy.

Five, at the heart of the union's case therefore is its claim that management had an obligation to negotiate with it before issuing Field Operations Directive 91-3, because allegedly that directive constituted a change in the department's Deputy Orientation Program. This claim of the union, however, is without merit.



To begin with, Directive 91-3 has nothing to do with the department's DOP. That program details the procedures and requirements of the formal six-month training period for deputies assigned for the first time to patrol duties at a Sheriff's Substation.

Moreover, as Assistant Sheriff Harper testified, through the years the department received anonymous complaints about the hazing of trainees -- hazing which allegedly went on during their mandatory patrol training period in spite of the department's official condemnation of it. Mr. Harper also testified that these complaints convinced the department that a formal notice to all concerned (that is, to its training sergeants, training officers and trainees) was needed in order to make them aware of the department's official policy on hazing and of the department's intention to enforce that policy.

Furthermore, Field Operations Directive 91-3 is not a subject on which the department must negotiate with the union. This directive is merely a formal documentation of the department's policy against hazing, which has been in effect for years. This formal documentation that policy is like any other written reiteration of performance standards which the department might issue from time to time.

Six, admittedly Assistant Sheriff Harper testified that if a patrol training officer engages in hazing, or if he/she refuses to recognize that hazing is inappropriate (by refusing to sign a Relationship Agreement), he/she would be called in to his/her training sergeant's office, counseled and ultimately if necessary disciplined because of his/her misconduct or unwillingness to

abide by Field Operations Directive 91-3. However, Mr. Harper's testimony does not prove that Field Operations Directive 91-3, and the required Relationship Agreement for patrol training officers, violates the Ordinance simply because they reinforce the Sheriff's expectation of what is proper conduct for these officers.

In summary, there is no requirement in the Ordinance, nor in the parties' MOU, that the Sheriff's Department negotiate with ALADS every time union members are given memoranda reiterating their performance standards, or detailing counseling they have received. Hence it would be unreasonable for the Commission to now require the Sheriff's Department to negotiate with ALADS about Field Operations Directive 91-3 -- a memorandum which simply reiterates the department's expectations (and therefore its "performance standards") for patrol training officers in their official dealings with their assigned trainees.

The Hearing Officer, therefore, should find that the department's directive is not a negotiable matter, that the department did not violate §12(a)(1), and that the record does not support the union's claim of an unfair labor practice.

#### THE HEARING OFFICER'S DISCUSSION

##### The Heart of the Matter

ALADS and the Sheriff's Department have an existing collective bargaining agreement. Moreover, ALADS is the selected majority representative for collective bargaining in Representation Unit 611. Furthermore, the Sheriff's Department made no distinction between represented and non-represented bargaining unit members when it insisted for the first time in

February, 1991 that all patrol training officers sign an agreement (not just with their trainees, but with their training sergeants and therefore with the department) acknowledging the requirements placed on them by Field Operations Directive 91-3.

ALADS has a legitimate interest in protecting the collective bargaining rights of those deputies it represents, as well as its recognized status as their representative. Hence one question is at the heart of the matter: Did the department's Field Operations Directive 91-3 add a new condition of employment for those union members who serve as patrol training officers?

#### The Hearing Officer's Analysis and Reasoning

The department's Deputy Orientation Program ("DOP") states the procedures which govern the first-time transfers of deputy sheriffs from non-patrol assignments to patrol assignments. That program also details the training required when such transfers occur, including the assignment of individual transferees to individual patrol training officers and the relationship between these officers and their assigned trainees.

Certainly the terms and conditions for voluntary transfers by ALADS-represented deputy sheriffs is a mandatory subject of bargaining between the union and the department, as is the nature and extent of their training after such transfers and their relationship with their assigned patrol-experienced deputies (who are paid premium or bonus pay while serving as their patrol training officers). Moreover, the Sheriff's Department did not rebut the claim of ALADS' John Rees that before the department implemented its DOP, the department met, conferred and negotiated with the union on every essential feature of that program.

Accordingly, the underlying question is whether Field Operations Directive 91-3, with its requirement for a signed MOU/Relationship Agreement from every patrol training officer at the start of each training period, imposed new and different obligations on union members serving in training positions under the department's DOP. The Hearing Officer believes it did, because:

One, the record shows that prior to Field Operations Directive 91-3 no patrol training officer was required to sign a MOU/Relationship Agreement with the department before he/she could continue in his/her training position, with its attendant bonus pay.

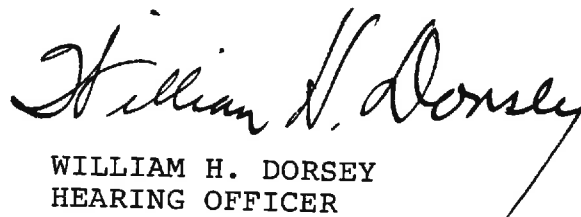
Two, moreover, the Sheriff's Department did not refute the claim of ALADS' Assistant Executive Director Rees that neither the stated requirements in Field Operations Directive 91-3, nor those in the mandatory MOU's/Relationship Agreements, are part of the terms and conditions stated in the department's Deputy Orientation Program.

#### THE HEARING OFFICER'S RECOMMENDATIONS

Accordingly, the Hearing Officer recommends that the Commission sustain the union's UFC 14.60. He also recommends that the Commission order the Sheriff's Department to cease and desist its enforcement of Field Operations Directive 91-3 (revised June 10, 1991), until the department has bargained with the union over the changes to the department's DOP which are contained in that directive. He likewise recommends that the Commission order the Sheriff's Department to cease and desist its direct dealing with union members who serve as patrol training

officers and its requirement that these officers sign individual Relationship Agreements with it.

December 16, 1992

  
WILLIAM H. DORSEY  
HEARING OFFICER

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