

**LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION**

In the Matter of)	
)	
ASSOCIATION FOR LOS ANGELES)	
DEPUTY SHERIFFS (ALADS))	
)	
Charging Party)	DECISION OF HEARING OFFICER
)	
LOS ANGELES COUNTY SHERIFF'S)	
SHERIFF'S DEPARTMENT)	UFC 14.82
)	
Respondent)	
)	

Hearing Officer: Karen G. Andres, Esq.

APPEARANCES

On Behalf of the Charging Party: On Behalf of the Respondent:

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BACKGROUND

The Association for Los Angeles Deputy Sheriff's ("ALADS") (herein called Charging Party) charged on January 17, 1995 that the Los Angeles County Sheriff's Department (herein called "Respondent" or "Department") has engaged in unfair employee relations practices. Respondent allegedly imposed new conditions on deputies' participation in departmentally approved athletic events without notice to ALADS. Following a hearing on a Bill of Particulars held on May 22, 1995, hearings were held on this matter on August 24, September 19, October 5 and December 11, 1995 before the duly selected hearing officer, Karen Andres.

THE CHARGE

The basis of the Union's charge is as follows: on or about November, 1994, the Los Angeles County Sheriff's Department changed its practice of providing workers' compensation coverage to participants in Departmental sports events. The Department

determined that deputies with two or more sports-related injuries would not be covered. Anyone would be permitted to play. The Department characterized this modification as merely the enforcement of existing rules, within the discretion of the Unit Commander, and not requiring notice to ALADS. The Union characterized the modification as a unilateral change in practice and filed an unfair labor practice charge on January 17, 1995.

THE APPLICABLE STATUTE

Sections 12(a)(1) and (3) of the Los Angeles County Employee Relations Ordinance state,

(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;

(3) To refuse to negotiate with representatives of certified employee organizations on negotiable matters.

Government Code Section 3505 provides:

The governing body of a public agency...shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations...and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or a course of action.

SUMMARY OF THE EVIDENCE

Witnesses for the Charging Party:

1. Deputy Sheriff Greg Salcido.

Deputy Salcido is assigned to Norwalk station. He has participated on numerous occasion in various Department athletic events.

Deputy Salcido described the process of signing up for the sports events as varying somewhat for different events. One would fill out an application or sign up on a roster depending on the event. Later, the organizers informed prospective participants that a roster had been approved. On one occasion, Deputy Davoren organized a football team. He told prospective participants that the Chief's approval would be required prior to playing. Deputy Salcido did not recall the year.

In November, 1994, Deputy Salcido wished to sign up for a basketball tournament. Sergeant Aerts informed him that he could play but would not be covered by workers' compensation in case of injury. Sgt. Aerts said that the Deputy had been injured too many times, and it was costing the County too much money to cover him. Sgt. Aerts brought it to the Deputy's attention that it would be up to the Sergeant to determine who could participate in athletic events. The witness did not remember how long before the basketball game that the conversation took place.

Deputy Salcido did not remember talking with Captain Smith or Sgt. Aerts about the injury to his nose sustained in a boxing tournament in the Oxnard Police Olympics. He never sought approval to box after that.

Deputy Salcido did not recall any conversation in 1992 with Sgt. Aerts regarding workers' compensation coverage restrictions on his participation in sporting events. The first time he remembered speaking to Sgt. Aerts regarding such a restriction was prior to the basketball tournament in November, 1994.

2. Deputy Sheriff Mark Claahsen

Deputy Claahsen is an ALADS representative at Norwalk station. His duties are to represent and advise deputies and act as a liaison between deputies and the Department.

The witness has participated in numerous sporting events. The Department takes great pride in these events. It was his understanding that he was always covered by workers' compensation and that all participants were covered until November, 1994.

For the first time in November, 1994, the roster for a game included a column entitled, "Restriction". (Charging Party or "C.P." Ex. A). Deputies with two or more sports-related injuries would not be covered by workers' compensation. The Deputy had not heard of this restriction prior to this time. He stated that he was not in the habit of reading the briefing board and so was not aware if this restriction was published there.

3. Deputy Sheriff George Berumen

Deputy Berumen has been at Norwalk for twelve years and has been involved with intramural sports activities extensively during that time. He defined the activities as morale builders.

Deputy Berumen described the roster used to sign up for athletic events. (C.P. Ex. A). Prior to November, 1994, the roster was handwritten. Subsequently, Sgt. Aerts instructed that it be typed, and the column entitled "Restriction" was added. The Sergeant informed him that certain players who had sustained two sports-related injuries would not be covered under "I.O.D." or "injured on

duty" status.

Deputy Berumen had suffered five or six sports-related injuries. Prior to November, 1994, he had been covered by workers' compensation when playing in Departmental sports events. At that time, he was not relieved of duty nor was he on light duty status.

Prior to the basketball event in 1994, Sgt. Aerts told the Deputy for the first time that he would not be covered by workers' compensation in a Department athletic event. He recalled that this conversation took place on Election Day in 1994. He did not remember a previous conversation on this subject in 1993. Sgt. Aerts did not tell Deputy Berumen that he had been denying deputies coverage for a year.

Deputy Berumen had not received instructions nor did he see written instructions from Captain Stonich about getting approval in advance of athletic events. He had not seen Department Exhibit 1 (hereinafter "DX"). He had seen other letters from the Unit Commander in the briefing boards.

4. Deputy Sheriff Steven Blagg

Deputy Blagg is based at Norwalk station; he has been a frequent participant in Department sports events. He testified that in the past, players would sign a roster and submit it to the captain. In the past year, players were required to fill out a typed Departmental form which had to be signed by the Unit Commander and the Division Chief.

In November, 1994, Deputy Blagg was informed for the first time that he would not be covered for injuries sustained in the course of playing Departmental sports. He asked to see a written policy. Sgt. Aerts told him that this was the Unit Commander's discretion.

5. Marlyne Rinaldi

Ms. Rinaldi is employed by ALADS as a field representative. She testified as to her understanding of Department policies regarding sports events.

Prior to November, 1994, Ms. Rinaldi was not aware of any restrictions being imposed on deputies' participation in Departmental sports events. In November, 1994, she received a fax of CP ex. A including the "Restriction" column. Sgt. Aerts advised her that if deputies had a "yes" under the restrictions column, they would not be covered by workers' compensation in sports events. He said that he and Captain Smith had decided to impose the restriction on deputies who had a workers' compensation claim and/or any sports-related injuries and/or a disability rating. He later informed her that any deputy with two or more sports-related injuries would not be covered. They did not discuss how long the

practice had been in effect to deny deputies coverage based on prior sports-related injuries.

Sgt. Aerts did not tell Ms. Rinaldi that he had been reviewing deputies' records for a year to make a determination whether they would be covered by workers' compensation in sports events. This information was also not relayed in a subsequent conversation between Ms. Rinaldi and Captain Smith.

Ms. Rinaldi called Chief Anderson who told her that he relied on the Policy and Procedure Manual sentence, "At the discretion of the Unit Commander" in implementing the policy. ALADS did not send a letter demanding to meet and confer as the policy had already been implemented.

It was Ms. Rinaldi's understanding that "discretion" referred to people on light duty, suspension or relieved of duty. Absent language which talks about workers' compensation, ratings, benefits, or prior injuries, it was not the intent of the parties to include the situation at issue. She was not aware of other stations which had instituted a similar policy. She was of the opinion that the Department did not have a right to determine who would receive workers' compensation benefits.

Witnesses for the Respondent

1. Captain Norman L. Smith

Captain Smith is currently assigned to the Internal Affairs Bureau. He was formerly at Norwalk station.

During his tenure at Norwalk, early in 1993, Captain Smith participated in a Task Force involving workers' compensation injuries sustained during sports activities.

In April or May of 1993, Captain Smith directed the Personnel Sergeant, Sgt. Aerts, to review individual sports participants' history of sports-related injuries taking into account the particular sport at which the injury resulted and if the injury resulted in time off work.

Captain Smith then directed Sgt. Aerts to exclude from workers' compensation coverage individuals who had significant injuries in the sports event in which they were applying to participate. He made this directive in April or May, 1993 and thought that Sgt. Aerts was following his instructions from that time. ALADS was not notified as to this instruction. He based this decision on the language in DX 2, 8, 9 and 10 that participation of individual athletes in athletic events was at the discretion of the unit commander.

In 1992, the Captain informed Greg Salcido that he would not be

covered by workers' compensation if he participated in boxing because he had been injured often. He recalled other individuals who were also excluded in an informal process.

Marlyne Rinaldi complained about the exclusion of certain individuals from workers' compensation coverage on a case-by-case basis. She felt that Captain Smith had the right to exclude athletic events not individuals. He then decided to make the uniform rule that two sports-related injuries would exclude an individual from workers' compensation coverage. At no time did Ms. Rinaldi or anyone else from ALADS demand to meet and confer with him about the rule.

2. Sergeant John Aerts

Sgt. Aerts is the Personnel Sergeant at Norwalk station. One of his responsibilities is to ensure that the correct forms are submitted for athletic events. Since 1992, he has reviewed the forms to ascertain that they are filled out correctly and then sends them to the Department Athletic Coordinator. The Operations Sergeant and Operations Lieutenant also performed this review task.

In the first half of 1993, Captain Smith directed the Sergeant to review individual records of athletes for injuries. Sgt. Aerts began to review medical files to see if a participant had sustained injuries that had cost the County money. On a case-by-case basis, he discussed with some participants whether they thought it was prudent to play. They were permitted to play but were not covered by workers' compensation. Only sports-related injuries were considered in determining whether deputies could be covered by workers' compensation.

When a team roster was submitted (DX 3 and 7), Sgt. Aerts reviewed it. He contacted proposed participants who did not fit guidelines to play and that person was told he would not be covered by workers' compensation. Usually, the team captain submitted a new list that did not contain that person's name.

Sgt. Aerts stated that the "Restriction" column on the basketball team roster (CP Ex. A) may have been added by an assistant to Sgt. Aerts, Deputy Nina Sutter, or by Lieutenant Pendergist. He would not have submitted that roster to the Athletic Director. He would have informed the participants who would not be covered by workers' compensation and have had the team captain submit a new roster listing covered players.

In November, 1994, Marlyne Rinaldi complained that the system Sgt. Aerts was using was arbitrary and capricious. He then decided that rather than reviewing each player case-by-case, he would determine that if a participant had two or more sports-related injuries, he would not be covered by workers' compensation. He did not notify ALADS of this decision as he assessed it to fall under the

discretion category.

Regarding DX 1, Sgt. Aerts testified that he first saw the memo around March 15, 1994. He placed it in the Watch Sergeant's office and in the patrol briefing book. Prior to the start of each shift, the sergeant briefs the deputies on current events from information in the briefing book.

Sgt. Aerts testified to conversations he had with deputies on sports injuries. In 1992, he told Greg Salcido that the Department would not be able to cover him for injuries in boxing as he had been injured too often. The Deputy has not applied for coverage in boxing since. He was not told he would not be covered for other sports.

Sgt. Aerts remembered discussing injuries with Deputies Berumen, Marquez, and Salcido. There was some confusion as to when these discussions took place in 1992, 1993 or 1994. He told them they were putting the Department and themselves at risk by participating in certain events and they would not be allowed workers' compensation coverage for those events. Their names appeared on approved lists anyway as Lt. Pendergist approved the roster without Sgt. Aerts seeing it.

At some time in 1993, Sgt. Aerts had separate conversations with Deputy Berumen about football and basketball respectively to tell him that he would not be covered by workers' compensation for these sports. He had similar conversations with Deputies Salcido and Marquez. He brought these three names to the Captain's attention.

In 1994, Sgt. Aerts spoke to Deputies Berumen, Marquez and Serge Murillo about sports injuries and workers' compensation coverage. He told them that the evaluation system was changed at their Union's request to two or more sports injuries leading to withdrawal of coverage.

On another occasion, Sgt. Aerts held a similar discussion with Deputy Blagg. He asked for something in writing, and Sgt. Aerts gave him the manual section, the Unit Commander's letter and the letters from Commander Stonich. Sgt. Aerts testified that he had numerous conversations with Deputy Claahsen about the Captain's direction regarding workers' compensation coverage.

Sgt. Aerts took the position that there was no change in how the Department determined who received benefits. The Department's policy has always been that the Unit Commander determines which events he is going to cover and who he is going to cover in which events. The changes at issue were procedural changes. He assumed that the captains covered this in his meetings with the deputies. He did not put any documents in the briefing book which announced specifically that he would be reviewing medical files to see if sports-related injuries had occurred.

3. Commander William Stonich

Commander Stonich is one of 18 commanders in the Department. He is the current Department Athletic Director and has filled that position off and on since 1992. Some of the duties are set forth in DX 12, a memo dated March 24, 1994. The Athletic Director has Department-wide responsibility.

Commander Stonich identified DX 6, a memo from him to Deputy Blagg dated March 22, 1993 entitled Procedures for Requesting Department Sanctioning of an Athletic Program or Event. Commander Stonich sent to every unit commander a package outlining the policy and procedure and a copy of the Department-approved form requesting sanctioning of those athletic events.

Commander Stonich was the Vice-Chair of The Task Force on Department Sanctioning of Sports Activities and Related I.O.D. Injuries on which Captain Smith was a member. The Task Force was formed in late 1992 or early 1993 and reactivated in February, 1994 because of a concern about the cost to the County of sports-related injuries in light of the budget crisis and anticipated layoffs.

Prior to the formation of the Task Force, an Executive Planning Council (E.P.C.) met in October, 1992. Captain Stonich briefed the participants on the issue of sports-related injuries. The Sheriff directed Chief Graham to head a task force and in the meantime the Department was to strictly adhere to sections of the Manual of Policies and Procedures regarding the sanctioning of athletic events.

The Task Force considered various options from discontinuing Department sponsored sports events to placing further restrictions on participants. The Commander did not recall any specific discussion about notifying ALADS to meet and confer over the proposals.

On June 16, 1993, the Task Force made a series of recommendations (DX 13). According to the Commander, policy remained the same, and certain administrative changes were made.

As part of the compliance ordered in October, 1992, Commander Stonich developed the Athletic Event Approval Form and Roster that he believed accurately reflected policy. (Department Exhibit 13). The form was distributed throughout the Department under the Commander's signature and came into use at the end of 1992. It superseded a previously used form. The information on this form was required, but the individual could vary the format.

The Department labeled this change as an administrative change. A letter went to numerous deputies to alert them that the form was to be used. (DX 6). The form was to be filled out by the individual seeking sanctioning of the athletic event or permission for

participation by a list of deputies. It was then submitted through the chain of command to the Unit Commander and finally to Commander Stonich as Athletic Director for final approval.

It was the Commander's understanding of the Manual of Policy and Procedure on Department Athletic Events, section 3-09/300.00 that the unit commander is supposed to exercise discretion with respect to what events and what individuals are covered by workers' compensation. That would include the determination that participants with two or more sports-related injuries would be excluded from workers' compensation coverage. The Commander was not aware that any notification was sent to ALADS regarding this decision.

ANALYSIS OF THE EVIDENCE AND CONCLUSION

ALADS' position is that the Department's imposition of the rule that deputies who had sustained two or more sports related injuries would not be covered by workers' compensation amounted to a unilateral change in a term and condition of employment. It asserts that Department Manual Section 3-09/300.00 did not give the Department the discretion to unilaterally alter a long-standing practice concerning workers' compensation for deputies. Furthermore, ALADS did not have notice of this change prior to November, 1994 and thus filed its unfair labor practice in a timely manner.

The Department relies upon its Manual Section 3-09/300.00 (DX2, p.3) which reads in part,

"Only full-time sworn personnel will be covered by Workers' Compensation in case of an injury is sustained during a Departmentally approved athletic event. Workers' Compensation coverage is not valid during practice at any level...

"Participants in athletic events shall be permitted as scheduling permits, and then, only at the discretion of the entrant's Unit Commander. Only those events considered as being of sufficient benefit to the Department will be Departmentally approved, sponsored, and covered by Workers' Compensation. Employees participating in Departmentally approved events or practicing shall do so on their own time."

The Department asserts that the Captain's decision to impose the two-injury rule was consistent with Department rules, as manifested in the language above, which had been in effect for over fifteen years.

Many of the arguments of the parties diverge from what we believe to be the central issue in this matter. That question is:

Is workers' compensation coverage in Departmentally sanctioned sports events a term or condition of employment within the meaning of Government Code Section 3504.5? Additionally, is it a benefit of employment when conferred for an off-duty activity such as a sporting event?

It is necessary to determine this issue before deciding whether the Department is mandated to "meet and confer" with representatives of the recognized employee bargaining unit (ALADS) before imposing a change as required by the Meyers-Milius-Brown Act (MMBA). It is only after the determination of this question that it is potentially relevant to consider whether there was proper notice to ALADS prior to November, 1994.

The companion issue is whether the imposition of the two-injury rule constitutes a change. We find that it is a change in practice. It is not necessary to determine at this time when the change occurred. Suffice it to say that there was no testimony that before 1992, deputies' sports-related injuries were scrutinized or workers' compensation coverage was conditioned in any way. Therefore, the act of beginning to place conditions on workers' compensation coverage in Department athletic events constitutes a change in Department practice which was in effect at least prior to 1992.

Indeed, as the Charging Party argues, workers' compensation benefits are a form of insurance coverage required to be provided to employees by all California employers. However, this coverage is mandated for injuries sustained while at work or at the least for work-related events. The Department athletic events are specifically to be performed on the employee's own time. Department Manual Section 3-09/300.00. Quaere whether workers' compensation in Department athletic events fall within the same category of benefit as health insurance premiums payable by employees. (Social Services Union, Local 535 v. Board of Supervisors of Tulare County (1990) 222 Cal. App. 3rd 279). While the latter have been judged to be established benefits under the jurisdiction of the WCBA, we could find no authority for the premise that workers' compensation benefits for off-duty athletic events were in the same untouchable category.

Little authority exists to support the contention that workers' compensation benefits conferred in an off-duty event fall into the category of terms or conditions of employment. The Charging Party cites Building Material and Construction Teamsters' Local 216 v. Farrell to support its position. (1986) 41 Cal. App. 3rd 599. Farrell sets up a test defined as follows: "For an action by an employer to fall within the scope of representation, and thus be subject to the mandatory bargaining requirements of the MMBA, it must have a significant effect on the 'wages, hours, and other terms and conditions of employment' of the bargaining-unit

employees." Supra at 3482.

Farrell addresses layoffs and reassignments of employees and ruled that notice and meet and confer requirements of the MMBA applied. Without examining further explanatory language of Farrell, it is distinguishable from the instant case as layoffs and reassignments are unarguably significant aspects of employment whereas the status of off-duty athletic events are a subject for argument.

The case that comes closest to the facts herein is the County of Los Angeles Employee Relations matter of Local 66, AFL-CIO v. Department of Parks and Recreation. (1974) UFC 6.15. The basis of the unfair labor practices charge was the Department's unilateral action in revoking the established practices of the Department in providing free golf privileges for employees in the Golf Division. Employees were permitted to play on their own time. Respondent acknowledged having revoked the privileges but stated it gave the Union prior notice of this action.

The Union contended that, "It is clear that Management considered complimentary golf play a matter of administrative or managerial prerogative, and regarded the decision to cancel complimentary golf as a matter outside the scope of negotiability." 6.15 at p. 12. The Hearing Officer concluded and the Employee Relations Board upheld the conclusion that, "The County's revocation of its free golf policy for its Golf Division employees constitutes a negotiable issue under the Ordinance...The County therefore would have been obligated to negotiate with the Union on the matter of terminating the subject policy. Management's refusal to so negotiate would constitute an unfair employee relations practice within the meaning of Section 12(a)(1) and (3)." 6.15 at p. 12.

It could be argued that the language in Farrell which was issued in 1986 alters the ruling in the golf course case which was issued in 1973. Farrell states, "It is within the scope of representation only if the employer's need for unencumbered decision-making in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action in question." Ibid at 3482.

The above language could be used to support the Department's contention that it used its discretion with the meaning of Section 3-09/300.00. Farrell further defines the statement above stating, "When an employer makes a fundamental management decision that significantly affects the wages, hours, or working conditions of its employees, a balancing test applies: the employer's need for unfettered authority in making decisions that strongly affect a firm's profitability is weighed against the benefits to employer-employee relations of bargaining about such decisions." Ibid at p. 3484. The cases cited that utilized this principle in deciding in favor of management differ from the instant case in that, 1. They concern the private sector; and 2. they fundamentally affect the

economics of the employer.

Commander Stonich testified that the Task Force was formed because of a concern about the cost to the County of sports-related injuries in light of the budget crisis and anticipated layoffs. However the Department did not make a clear argument that the workers' compensation benefits fundamentally affect the economics of the Department.

We return now to the meaning of Section 3-/09/300.00. Although employees participated in both athletic events and practice sessions on their own time, for the purposes of workers' compensation coverage, the section separates athletic events from practice sessions. The very fact that coverage was conferred on employees playing in the events indicates that the Department considered the coverage a benefit and the events as a term or condition of employment.

Because of all of the reasons and citations discussed above, we determine that workers' compensation coverage in Departmentally approved and sponsored sports events is a term/condition of employment. Even if the Department did have the discretion under Section 3-09/300.00 to determine whether certain deputies would be excluded from workers' compensation coverage, it would still have to fulfill the meet and confer requirement.

The Department does not overtly address the issue of terms and conditions of employment. Instead, it asserts that Section 3-/09/300.00 gives it the discretion to deny workers' compensation benefits to any employee. We disagree. The placement of the word, "discretion" in the Manual section cited indicates that discretion refers to permitting a participant to play and which events to sanction and not to permitting or denying workers' compensation coverage. No witness testified that any deputy was forbidden to play because of sports-related injuries.

We now turn to the question of whether the Department provided ALADS or the deputies with notice of a change in practice prior to November, 1994 and whether the unfair charge is barred because of lack of timeliness. ERCOM rule 6.01 states in part,

"A charge shall be deemed untimely and subject to dismissal if filed with the Commission at its office in excess of one hundred eighty (180) days following the occurrence of the alleged act or acts on which the charge is based, or the date on which the charging party knew or should have known of said conduct."

The position of the Department is as follows:

The Department sent memoranda at various times to inform employees of procedures for getting approval to be covered under workers'

compensation. Deputies indicated knowledge of the forms be submitting them. Additionally, the information was placed on the Norwalk station briefing board. Finally, in 1992 and 1993, Captain Smith and Sgt. Aerts held conversations with individual deputies to inform them that they would not be covered by workers' compensation for certain sports activities. The only change in 1994 was the two-injury rule. The Department did not notify ALADS of the change as it was thought to be within the Department's discretion to make the change. Notwithstanding these announcements and pronouncements since 1992, ALADS did not request bargaining over either the Department's manual provision or its procedures prior to the end of 1994.

ALADS' position is as follows:

Department failed to provide either ALADS or the Deputies with any notice about a change in practice. According to ERCOM Rule 6.01, a charge will be deemed untimely if filed more than 180 days after 'the date on which the charging party knew or should have known of said conduct.' The evidence supports the position that ALADS first became aware of any change in workers' compensation coverage on or about November 1, 1994.

The Department cites DX 1, 2, 3, 6, 8, 9, 10, 13, 14 as evidence that deputies were notified of the workers' compensation coverage restriction well prior to November, 1994. DX 1 is a memo dated March 4, 1994. It reiterates Section 3-09/300.00. It does not address restrictions on workers' compensation coverage for participants in athletic events.

DX 2 is a March 29, 1994 memo entitled, "Procedures for Requesting Approval for Departmental Sanctioning of Athletic Event or Individual Participation in Same." This memo does outline procedures for sanctioning and signing up for an event and for obtaining workers' compensation coverage for participants. However, it treats participants collectively; it does not speak to the issue of individual qualification or disqualification for workers' compensation except for those on limited duty status. The attached roster is identical to DX 3, a roster dated May 1, 1993 and does not differ in content from previous rosters. DX 4 January, 1993; DX 5, February, 1992.

DX 6 is a memo from Commander Stonich dated March 22, 1993 which reiterates Section 3-09/300.00. It is silent on the issue of restrictions on workers' compensation coverage for deputies who have been injured in athletic events.

DX 13 is a memo dated February 3, 1994 entitled, "Reactivation of Task Force on Departmental Sanctioning of Sports Activities and Related I.O.D. Injuries." The 7th page of DX 13 is entitled, "Decision Options" mentions three options: 1. Make no changes to existing policy; 2. No longer cover any sports activities or

physical fitness activities under workers' compensation; or 3. "Take a compromise approach by creating policies and procedures to strictly regulate sports activities. These policies and procedures would serve to enable Department members to be covered by Workers' Compensation when participating in sports events provided certain procedures had been followed." Again this memo does not clearly spell out the restrictions under scrutiny herein.

It is not very relevant whether these memos were seen or received by ALADS or individual deputies as none of them directly address the issue at hand. Not until the roster for the basketball tournament of November 4, 1994 did any written documentation indicate that the Department intended to place restrictions on workers' compensation coverage of participants in events. C.P. Ex. A.

It is more difficult to reconcile testimony of Department management with that of deputies regarding individual conversations. All of the deputies testified that they first heard of restrictions on workers' compensation coverage just prior to the basketball tournament in November, 1994.

Captain Smith testified that in 1992 he told Deputy Salcido that he would not be covered by workers' compensation for boxing as he had been injured too many times. Sgt. Aerts testified that in 1993 he had a discussion with Deputy Berumen about football and basketball injuries and told him he would not be covered by workers' compensation for participations in these sports. There was some confusion about when he had similar conversations with Deputies Marquez and Salcido.

Capt. Smith testified that in 1993 he had instructed Sgt. Aerts to exclude from workers' compensation coverage individuals who had significant injuries in sports events. Sgt. Aerts stated that at that time, he began to review medical files to see if a participant had sustained injuries. He then discussed with these individuals if it was prudent for them to play. They were permitted to play but were not covered by workers' compensation.

It is speculated that these conversations and that reported with Deputy Salcido in 1992 focused on whether it was prudent to play rather than on workers' compensation coverage restrictions and that those restrictions were not clearly communicated until the end of 1994. This impression is supported by Department testimony that a roster was inadvertently approved with these deputies' names on it without restriction subsequent to the reported conversations. It is difficult to determine if Deputy Salcido never applied to box again simply out of a desire not to risk injury or because he believed he would not be covered by workers' compensation.

As all of these witnesses were credible, we speculate that the deputies were not given clear information from Captain Smith and

Sgt. Aerts prior to November, 1994 that they would not be covered for certain sports events because of prior injuries. This speculation is derived from the Department's determination that memoranda and team rosters prior to November, 1994 clearly indicated that the workers' compensation disqualification went into effect. Those memos were not clear on that subject. Additionally, it is questionable whether this information was clearly related to deputies in light of DX 13. The memos contained within this February 24, 1994 document are evidence of a policy in the process of formation rather than a definite rule regarding workers' compensation coverage.

All the testimony supported ALADS' contention that ALADS was not informed of the changes in workers' compensation coverage. Finally, it does make sense that if the restrictions had been clearly communicated to the deputies prior to November, 1994, they would have complained to ALADS.

Thus it is concluded that ALADS filed its unfair labor practice within 180 days of the time at which it knew or should have known of the conduct at issue. ERCOM Rule 6.01.

RECOMMENDATION

The duly appointed Hearing Officer recommends that the Employee Relations Commission issue the following order:

1. Respondent shall cease and desist from any further implementation of any rule, policy or practice which places restrictions on workers' compensation coverage for any full-time sworn deputy eligible to participate in any Departmentally approved athletic events.
2. Respondent is ordered to negotiate in good faith at all times with ALADS concerning any proposed change in workers' compensation coverage policies applicable to sheriff's deputies.

Respectfully submitted,


KAREN G. ANDRES, HEARING OFFICER

DATED: May 21, 1996