LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of LOS ANGELES COUNTY LIFEGUARD ASSOCIATION Charging Party v. LOS ANGELES COUNTY, DEPARTMENT OF PERSONNEL Respondent	UFC 19.5

DECISION AND ORDER

The charge in this case was filed by Los Angeles County Lifeguard Association (Charging Party or LACOLA) against the County of Los Angeles, Department of Personnel (County or Respondent) alleging the County committed an unfair employee relations practice within the meaning of Section 12(a)(3) of the Employee Relations Ordinance by refusing to negotiate with Charging Party on changes in "salaries, hours, and work load" for paramedic lifeguards stationed at Catalina Island when the County entered into a new Community Recreation Agreement (CRA) with the City of Avalon. This Agreement, dated November 25, 1981, was

adopted by the County's Board of Supervisors on December 2, 1981. LACOLA's request for negotiations was first set forth in a letter dated September 19, 1980, addressed to the Director of Personnel. No negotiations on this subject occurred either before or after the Board's action.

The matter was duly referred to Hearing Officer Ruth M. Harmer, who held a hearing on April 9, 1981. Both parties were present at this hearing and were afforded full opportunity to offer argument and evidence and to examine and cross-examine witnesses. Post-hearing briefs were filed. Hearing Officer Harmer submitted a report that was received at the Commission's office on August 28, 1981. No Exceptions to the Report were filed and, therefore, there was no occasion for a response.

In brief, since 1970, the County Department of Beaches has provided lifeguard service for the City of Avalon on Catalina Island, pursuant to executing a Community Recreation Agreement which provided for the County to provide this function and similar services. By 1977, the County was providing paramedic service at some of its beaches. The lifeguards at Catalina were given the opportunity to take paramedic training and were given additional pay when certified. The purpose of affording this training to Catalina-based lifeguards was to handle emergencies occurring at the Avalon Beach and harbor areas only. Three lifeguards based at Catalina became so

certified and began performing as intended. Since the Avalon Fire Department had no paramedics, beginning in May, 1978 the County lifeguard-paramedics began responding to emergency calls in the City. Some of these calls were outside of their regularly scheduled hours of work, and although they were not specified in the above-mentioned Community Recreation Agreement, the County began recognizing these "outside of regular working hours" calls by compensating the paramedic lifeguards involved at the rate for overtime calls, with a minimum of four hours for each one.

In July, 1980 the County and the City of Avalon began negotiating a revision of this 1970 CRA, and this revision became effective on or about November 25, 1980. Said revised CRA provided, in pertinent part, for the provision of paramedic services at Avalon Beach, within Avalon Harbor, and to the inland areas of Avalon. This revised agreement also contained the following clause:

> "City will reimburse direct County cost including actual salary and employee benefits for each land-based paramedic call in the City of Avalon when such calls are made after regular working hours for County paramedic personnel. The amount of this reimbursement shall not exceed $5,000 each fiscal year. . . ."

Meanwhile, experience showed that this sum was inadequate. On August 25, 1980, the Department of Beaches reduced the rate of pay for overtime from time and one-half

to straight time. The specified minimum of four hours was not involved in this reduction. This pay rate action was applicable to the entire Department of Beaches (Tr., p. 99).

Except as modified by this decision, we adopt Hearing Officer Harmer's findings of fact and her summary of the parties' contentions. We also accept her conclusion that the revised Community Recreation Agreement "did not materially alter the hours and working conditions of the members of LACOLA." We concur with her conclusion that the County committed an unfair employee relations practice within the meaning of Section 12(a)(3) of the Ordinance by unilaterally "reducing the pay for the emergency service provided by the lifeguard-paramedics," but for different reasons than the Hearing Officer advanced.

The County asserts that the Charging Party waived its right to negotiate this matter by virtue of having agreed to Article 23, which contains the so-called "zipper clause," and presents several court decisions to support this contention. But in the lead case cited by the County (NLRB v. Southern Materials Company, 1971, 449 F.2d 15, C.A. 4), which concerned a company's unilateral discontinuance of a Christmas bonus, the court stated:

> "This is not to say, however, that if the maintenance of standards clause includes Christmas bonuses that the company would have any right to discontinue them unilaterally. It would only have the right to decline the

union's request to reconsider them during the life of the contract, and conversely the union could decline a similar request by the company."

In the present case, we conclude that emergency service outside of regularly scheduled working hours is a subcategory of call-back overtime and call-back overtime is expressly set forth in the parties' Memoranda of Understanding. In an arbitration award dated February 6, 1980, and involving the same parties (Sara Adler, Arbitrator), the applicable rate of pay was held to be time and one-half. That rate of pay is controlling here. Were we to direct the parties to negotiate an applicable rate of pay, the presumption would be that we regard the Adler decision as incorrect. Said presumption is incorrect. Since the County unilaterally reduced the rate of pay for emergency overtime outside of regularly scheduled working hours for paramedic lifeguards, Respondent violated Section 12(a)(3) of the Ordinance.

O R D E R

IT IS HEREBY ORDERED that the charge as filed by the Charging Party on January 6, 1981, be dismissed in part and sustained in part as follows:

1. The charge that the County violated Section 12(a)(3) of the Ordinance with respect to hours and working conditions is dismissed;
2. The charge that the County violated Section 12(a)(3) of the Ordinance with respect to

rates of pay for emergency overtime (outside of regularly scheduled working hours) is sustained; and

3. The County shall restore the previous premium rate of pay (time and one-half) for such service and make whole those paramedic lifeguards who have been paid less than this rate for said service.

DATED at Los Angeles, California, this 7th day of January, 1982.

Lloyd H. Bailer
LLOYD H. BAILER, Chairman

JOSEPH R. GENTILE, Commissioner

FREDRIC N. RICHMAN, Commissioner