LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of	
LOS ANGELES BUILDING AND CONSTRUCTION TRADES COUNCIL	No. UFC 2.1
Charging Party	
and	OPINION
COUNTY OF LOS ANGELES	SUPPLEMENTING ORDER
Respondent	DATED MARCH 26, 1971

BACKGROUND

The question for decision in this case is whether the County of Los Angeles has violated Section 12(a)(3) of the Los Angeles County Employee Relations Ordinance. That section provides that it shall be an unfair employee relations practice for the County of Los Angeles to "refuse to negotiate with representatives of certified employee organizations on negotiable matters." The certified employee organization in this case, the Los Angeles Building and Construction Trades Council, filed an unfair employee relations charge with this Commission on January 22, 1971, alleging a violation of Section 12(a)(3) of the Ordinance. Following investi-

gation of the charge by the Commission's Executive Secretary, the Commission, on February 10, 1971, issued a Charge and Notice of Hearing alleging that the County of Los Angeles violated Section 12(a)(3) of the Ordinance in that County management reneged on an agreement to recommend that the County Board of Supervisors implement a signed Memorandum of Understanding which County management and Local 45 of the International Brotherhood of Electrical Workers had negotiated. The County Board of Supervisors was not named in the Charge.

On due notice to all of the parties, the Commission on February 19 and 26, 1971, held a hearing on the allegations set out in the Charge. Both Local 45 and the County were represented by counsel at the hearing. On the basis of the evidence presented at the hearing, we issued a brief written Order on March 26, 1971, deciding this case in favor of the charging party. This decision and opinion supplements the findings in our Order dated March 26, 1971, that the management of Los Angeles County has committed an unfair employee relations practice.

FACTS AND DECISION

I

The material facts in this case are essentially undisputed. Acting pursuant to the County Employee Relations Ordinance (herein referred to as Ordinance), this Commission held hearings in April and May 1969 to determine the appropriate employee representation unit for a class of

communications employees involved in the present dispute. Following those hearings and an election supervised by this Commission, Los Angeles Building and Construction Trades Council (BCTC) was certified as the majority representative for the employees involved in this dispute as well as other employees. Thereafter, International Brotherhood of Electrical Workers Local Union 45 (herein referred to as Local 45) was duly designated by BCTC to negotiate with the County on behalf of the communications classes.

Negotiations between Local 45 and County management commenced. They were unsuccessful. This Commission appointed a mediator; and his efforts were unsuccessful. Then, at the joint request of the parties, this Commission appointed a fact-finder mutually selected by the negotiating parties. The fact-finder conducted a hearing during which he heard and considered evidence and argument from both sides. On December 8, 1970 the fact-finder filed Findings of Fact and Recommendations which favored granting substantial benefits to the employees. These recommendations were not accepted by County management. It requested Local 45 to negotiate a settlement in substitution for the provisions recommended by the fact-finder. The union reluctantly accepted the County's request to negotiate a substitute settlement, and further negotiations resulted in an agreement dated December 30, 1970.

Local 45's leadership then recommended to the employees in-

volved that they accept the compromise settlement. This recommendation was based in part upon the County Personnel Department's written promise of December 30, 1970 that it would "move swiftly to present a joint recommendation to the Board of Supervisors for effectivity the legally required thirty (30) days following Board approval." Affected employees accepted their union leader's recommendations and voted to ratify the agreement. The Director of Personnel, Mr. Gordon T. Nesvig, then recommended to the Board of Supervisors that the agreement be approved and implemented and that agreed salary increases be enacted. His letter to the Board was dated January 6, 1971. The Director of Personnel's letter noted that this agreement was not a midyear increase. He described it as "the terminal point of a negotiating process that started prior to July 1, 1970." He noted further in his letter of January 6, 1971 that money to fund these increases was included in the 1970-71 budget and that the total cost of the increases amounted to $30,249.

On January 21, 1971 the recently appointed Chief Administrative Officer, Mr. Arthur G. Will, recommended to the Board that Mr. Nesvig's letter of January 6, 1971 be tabled. The Director of Personnel, Mr. Nesvig, concurred in that recommendation and the Board accepted the joint recommendation to table the letter and the negotiated agreement.

The object of the tabling motion, as described at the hearing by the County Administrative Officer, was to delay indefinitely the implemen-

tation of the agreement by the Board of Supervisors. It was the County Administrative Officer's intention to recommend implementation of the agreement at an indefinite time in the future when the County's financial condition improved. When asked at the hearing whether the tabling action meant that the implementation of the agreement would be given retroactive effect when implemented in the future, the County Administrative Officer replied that he could not answer that question. On the same subject, the County Director of Personnel was emphatic. He said that the agreement, if and when implemented, would not be given retroactive effect. It was this joint recommendation to table, offered by the County Administrative Officer and the County Director of Personnel, which led to the unfair employee relations charge in this case.

II

It is the County's position that the existence of a $59 million County deficit, the exact nature and size of which was not discovered until shortly before the Memorandum of Understanding was signed, made it incumbent upon County management to recommend to the Board of Supervisors that implementation of the agreement be tabled indefinitely. The County Administrative Officer testified that shortly after taking office on December 12, 1970 he received instructions from the Board of Supervisors to ascertain the County's financial condition. The County Administrative Officer immediately undertook this task and by Christmas weekend, 1970,

he had projected a County deficit of between $8 and $30 million. By the following weekend he had projected a County deficit of $50 million. The following Monday, January 3, 1971, a study of other projected budget items added $9 million to the deficit.

While Mr. Will was determining the size of the County's deficit, the County's Personnel Director worked closely with him and was party to all information concerning the size and scope of the deficit. Thus, when the Memorandum of Understanding was signed by County management on December 30, 1970 both the County Administrative Officer and the County Director of Personnel knew that the County had a sizeable deficit. When the Director of Personnel wrote the Board of Supervisors on January 6, 1971 recommending that the Board of Supervisors put the Memorandum of Understanding into effect, the nature of the deficit and its full implications were known to him and to the County Administrative Officer. At no time on or prior to January 6, 1971 was it made known to Local 45 that County management would not take steps to recommend approval of the agreement. Failure to so recommend, it has been charged, was a breach of that obligation. We agree.

We infer from the County Administrative Officer's testimony that he believed that he was not bound by the commitment of the Director of Personnel to seek the Board's approval of the settlement. He had the right and the obligation, as he saw it, to use his own judgment whether or not to support the commitment of Mr. Nesvig. That view is not our

view. We think that the Director of Personnel did purport to bind, and did indeed bind, all of County management, including the Chief Administrative Officer, when he executed the Memorandum of Understanding. It is clear then that County management was committed to seek the Board's approval of the agreement. County Counsel concedes that there was at least an implied obligation to take certain action to implement the Memorandum of Understanding. We believe that on the basis of the facts presented to us there was both an implied obligation and an express obligation on management's part to seek the Board's approval. All of County management, including Mr. Will, was bound by that obligation.

In the context of this case, we think tabling and rejection of the negotiated agreement are almost synonymous. Tabling is not as final as rejection but it is almost as final. Tabling has had the effect of denying approval of this agreement and of denying the benefits provided for; that is the equivalent up to this point of rejection. Outright disapproval by the Board may seem to be, without actually being, more nearly final. The Director of Personnel's testimony that there will be no retroactivity if and when this agreement is ever approved means that there has been a permanent rejection of at least part of the negotiated benefits.

III

The Los Angeles County Employee Relations Ordinance was enacted by the Board of Supervisors on September 3, 1968, following

receipt of a report by a distinguished panel of consultants who drafted the Ordinance and recommended its adoption by the Board of Supervisors. Section 12(a)(3) of the Ordinance provides that it shall be an unfair employee relations practice for the County "to refuse to negotiate with representatives of certified employee organizations on negotiable matters." A similar duty is imposed upon employee organizations by Section 12(b)(2) of the Ordinance, which makes it an unfair employee relations practice for a certified employee organization or their representatives or members to "refuse to negotiate with County officials on negotiable matters." Section 3(o) of the Ordinance defines negotiation as follows:

> " 'Negotiation' means performance by duly authorized management representatives and duly authorized representatives of a certified employee organization of their mutual obligation to meet at reasonable times and to confer in good faith with respect to wages, hours, and other terms and conditions of employment, and includes the mutual obligation to execute a written document incorporating any agreement reached." (Emphasis added.)

The Ordinance is careful to protect both bargaining parties from any duty to make a concession to the other party. If the parties in good faith are unable to resolve their differences after a good faith attempt to do so, no negotiated agreement comes into existence and the Ordinance, under those circumstances, does not compel them to reach an agreement.

The obvious purpose of these provisions is to assure that County management and the employee organizations authorized to represent County employees make a good faith effort to reach a negotiated agreement which

is to their mutual satisfaction. Needless to say, the obligation of negotiating parties to make a good faith effort to iron out their differences and to reach accommodation, if possible, is the very heart and essence of the collective negotiations process.

In this case, Section 12(a)(3) of the Ordinance required that the agreement reached by County management and Local 45 be reduced to writing and signed by the parties. By signing the agreement, County management necessarily became obligated to make every effort to seek implementation of the agreement by recommending to the Board of Supervisors that it be implemented. If signing a negotiated agreement does not so obligate County management, then signing a negotiated agreement is a meaningless act on the part of County management. If signing a negotiated agreement is a meaningless act, then that portion of the Ordinance requiring that negotiated agreements be reduced to writing and signed is a meaningless provision, of no use to employee organizations or the County of Los Angeles. If negotiated agreements need not be reduced to writing and signed, it follows that no attempts need be made by County management or a certified employee organization to negotiate an agreement. In that event, the entire Ordinance would consist of a mere collection of words on paper, without meaning and without purpose.

We assume, as we must, that the Los Angeles County Employee Relations Ordinance was not enacted with the understanding that it would have no meaning. It follows that an interpretation of the Ordinance which

would effectively render it meaningless must be rejected. We accordingly find that County management is in violation of Section 12(a)(3) of the Ordinance by virtue of its failure to recommend approval of the Memorandum of Understanding which it reached with Local 45. We reject County management's defense that a fiscal crisis precluded it from recommending that the Memorandum of Understanding be approved. The County's financial condition was known when the Memorandum of Understanding was signed; the County's financial condition was known when the County's Director of Personnel recommended that the Board of Supervisors implement the Memorandum of Understanding. Plainly, this defense is without merit.

We do not suggest that there was malice or evil intent on the part of County management. On the contrary, it is argued that Mr. Will felt bound by a more pressing obligation -- as the Board's chief staff adviser -- to recommend tabling of their settlement (and freezing of other County obligations and capital expenditures unless they were "already legally committed") because of the County's large fiscal deficit. Certainly Mr. Nesvig was not motivated by any malice or intention to do an injustice. But, good intentions, such as those described to us, have limited weight in the Commission's determination whether the Ordinance has been violated. We have found that County management, not including the Board, did violate the Ordinance, as charged.

Having found that County management violated the Ordinance in this case, the Ordinance requires that we fashion a remedy for the charging party. In this case, we withhold fashioning a remedy at this time, as the principal parties to this dispute, having been made aware of our decision by means of our written order of March 26, 1971, have agreed to attempt to fashion a remedy consistent with our decision in this case. If the parties are unable to agree upon an acceptable remedy this Commission will fashion a remedy in accordance with its obligations as set out in Section 12(e) of the Ordinance. At our meeting scheduled for April 16, 1971 we will consider what progress the parties have made to this end.

Though we are holding the description of a remedy in abeyance, we feel compelled at this time to describe the nature of the Commission's remedial powers under the Ordinance. Section 12(e) of the Ordinance provides that when the Commission decides that the County has engaged in an unfair employee relations practice or has otherwise violated the Ordinance, "the Commission shall direct the County to take appropriate corrective action." That section further provides that if compliance with the Commission's decision is not obtained within the time specified by the Commission, it shall so "notify the other party, which may then resort to its legal remedies." Thus, this Commission has no legal authority to bind County management with an order in favor of an employee or an employee organization, even though employee organizations and employees are effectively

bound by the Commission's orders in favor of the County. Concerning this aspect of our obligations under the Ordinance, we quote from the report of the Consultants Committee which drafted and recommended adoption of the Ordinance:

> ". . . The Commission would lack authority to compel the County to obey its orders, although it would presumably advise the Board of Supervisors of any refusal by a County agency to comply. Thus, ultimately, the issue would become whether the Board of Supervisors intended to support the Commission. Refusal by the Board to do so would of course endanger the continued existence of the Commission.
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> ". . . we feel compelled to emphasize that if the recommended ordinance were simply to provide the basis for more litigation in the courts, it would fail utterly to achieve its intended purpose."

We agree with the sense of that statement. Further, we think the absence of a meaningful remedy in this case would have an adverse effect on the stability of employee relations in County government. Employee organizations would not know whether a signed agreement meant an agreement which County management would support before the Board of Supervisors. We make these observations in the context of this case. For the County Administrative Officer admitted that this was an unusual situation; that only the projected deficit prevented County management from recommending to the Board of Supervisors that the Memorandum of Understanding be implemented by the Board. This being an unusual case, it follows that compliance with our decision may not be regarded as having set an unfavorable precedent for the County.

Accordingly, this decision, supplementing our Order of March 26, 1971, finding County management in violation of Section 12(a)(3) of the Los Angeles County Employee Relations Ordinance will be further supplemented at a future date with a description of an appropriate remedy consistent with our findings and decision in this case, unless the parties advise us that they have mutually fashioned a remedy which will make further action by this Commission unnecessary.

Dated: April 9, 1971

EMPLOYEE RELATIONS COMMISSION

Melvin Lennard, Chairman

Ben Nathanson, Commissioner

Reginald H. Alleyne, Jr., Commissioner

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

Martha E. Schultz states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within matter; that my business address is 374 Hall of Administration, Los Angeles, California;

That on the 9th day of April, 1971 I served the attached OPINION SUPPLEMENTING ORDER DATED MARCH 26, 1971 upon the Charging Party by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box at 500 West Temple Street, Los Angeles, California, addressed as follows:

Daniel Feins, Esq.
1621 West Ninth Street
Los Angeles, California 90015

and that the person on whom said service was made has his office at a place where there is a delivery service by United States mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoin g is true and correct.

Dated: April 9, 1971.

Martha E. Schultz