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EMPLOYEE RELATIONS COMM.
COUNTY OF LOS ANGELES

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LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)
)
LOS ANGELES COUNTY BLACK EMPLOYEES)
ASSOCIATION,)
)
Charging Party,)
)
v.)
)
RICHARD R. BUPP, CHIEF, REGIONAL)
SERVICES DIVISION, DISTRICT ATTORNEY'S)
OFFICE,)
)
Respondent.)
)

UFC 21.1

HEARING OFFICER'S REPORT

RECOMMENDED FINDINGS OF FACT

1. The charge herein ("Charge") was filed on May 3, 1979, and alleges that Respondent, Richard R. Bupp, Chief Regional Services Division, District Attorney's office, violated Section 12(a)(1) of the Employee Relations Ordinance ("Ordinance") by: (a) coercing certain employees "simply because they exercised their right of grievance against the Pomona District of the District Attorney's office"; (b) transferring certain employees "without just cause or just explanation"; (c) discriminating against such employees "simply because they were represented by the Los Angeles County Black Employees Association" ("Association") and choose to remedy their problems through the Association; and (d) harassing employees who used the grievance process.

2. The employees to whom the Charge applies are Child Support Investigators Gloria J. Fluker and Vivian L. Curtis. Other affected employees who were represented by the Association elected to accept the Respondent's action.

3. Starting as early as 1977, and possibly prior to that, the Pomona Regional Office of the District Attorney had experienced serious morale and personnel problems, as well as low productivity. Sometime in 1977, the local union advised Respondent that some of the problems had racial overtones. Because of the report from the local union of a potential racial issue that could explode at any time at the Pomona Regional Office, Respondent visited the Pomona

Office and met with most of its employees. Respondent also received reports that the atmosphere in the Pomona Regional Office was very tense. Regional Office Manager Emma Silva was specifically assigned to the Pomona Regional Office in December, 1979 to correct these problems. She had a good record of success in solving similar problems in other offices.

4. On March 15, 1979, an incident occurred between Fluker and members of the clerical staff. The incidents were reported in a memorandum from Silva, who recommended that Fluker be reassigned to a new office "where she might deal more effectively with the clerical staff." The memorandum indicated that members of the clerical staff were unwilling to work at the Pomona reception desk because they did not want any dealings with Fluker. (Respondent's Exhibit 1) Silva's recommendation that Fluker be transferred was not accepted by higher management.

5. In late March, 1979, Bupp sent his Administrative Assistant, Kay Cains, a Child Support Investigator II, to the Pomona Regional Office to determine what the problems were. Cains reported to him that there was a tense situation, but in her view it was not racially caused. The problems discovered related to need for improved management, large amounts of sick time being taken by employees, excessive tardiness, and failure of employees to work a full 8-hour day.

6. On May 4, 1979, a grievance, signed by ten (10) employees of the Pomona Regional Office, was filed. The grievance concerned the management ability of Silva. It alleged

among other things, communications problems with office staff, lack of qualification, and incompetency of performance. The employees suggested the removal of Silva as a solution to the problems raised in the grievance. (Charging Parties' Exhibit 1) Four of the ten signers of the grievance were White and the remaining six were Black.

7. On May 9, 1979, Mr. Jacobowitz, Director, Bureau Chief Child Support Operations, responded to the May 4, 1979 grievance, stating that the "complaints set forth are not subjects for a grievance." (Charging Parties' Exhibit 6)

8. On May 16, 1979, Respondent visited the Pomona Regional Office, and interviewed seven employees. Some employees (including Fluker and Curtis) refused to be interviewed. During the interviews, complaints were made about Fluker being hard to get along with and appearing to be a very angry person. It was also pointed out she was knowledgeable, but very impatient and intolerant. Problems of this sort involving Curtis and Fluker had previously been presented by supervisors who had been assigned to the Pomona Regional Office.

9. Respondent decided that while the morale and other problems were caused by both the employees and management, the situation could best be solved by transferring employees and some management out of the Pomona Regional Office and giving them a fresh start in a different work environment. Prior charges in management alone had not solved the problems.

DISCUSSION

The Association alleges that Respondent violated Section 12(a)(1) of the Ordinance by reassigning Fluker and Curtis from Pomona to San Gabriel and El Monte.

Section 12(a)(1) provides:

"(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".

Section 4 of the Ordinance provides as follows:

"Employees of the County shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations. Employees of the County also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the County. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights."

In support of the Charge, the Association relies on the following: (a) the local union informed management of possible racial problems in the Pomona Regional Office; (b) no effective solution had been implemented prior to the grievance filed on May 4, 1979; (c) Respondent had dealt with the Association in the past; (d) Respondent knew that the Association was the representative of the group filing the May 4, 1979 grievance; (e) four of the grieving employees were Association members; and (f) only Association members were transferred. Respondent contends that it had good reason to reassign the employees, i.e., to solve a long standing morale, personnel and productivity problem at the Pomona Regional Office.

It is not the job of the Hearing Officer to determine whether or not Respondent effectuated the best management solution to the Pomona problems. The issue is limited to whether Respondent's actions violated the Ordinance. The determination of whether there was a violation of the Ordinance depends upon an evaluation of Respondent's intent and motives.

The fact that morale, personnel and productivity problems existed in the Pomona Regional Office is not in dispute, nor is the fact that Respondent had a right to implement solutions to these problems. However, Respondent was barred by the Ordinance from taking any action, including harrassment, against the employees for either getting together and preparing and filing the grievance, using the grievance process, or becoming represented by the Association.

The Association had the basic burden of proving sufficient facts to justify a finding of a violation of the Ordinance.

The facts presented by the Association, which are summarized above, did, in the Hearing Officer's opinion, establish a prima facie case and required the Respondent to go forward. Respondent did this and offered a reasonable explanation for his actions. Respondent thereby fully rebutted the prima facie case presented by the Association, and because the Association thereafter failed to disprove the Respondent's explanation why Fluker and Curtis were transferred, there is no basis for finding a violation of the Ordinance.

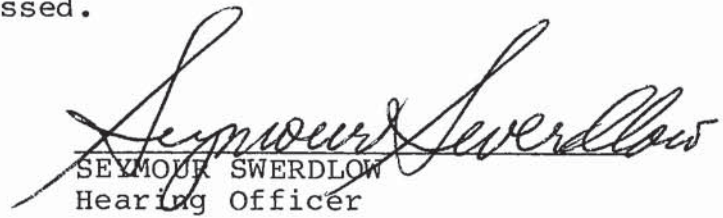
Respondent admits that transfers of large numbers of employees were not usual solutions to morale, personnel, and productivity problems. Prior attempts had been made to solve the problems by changing management--a conventional solution which would have made wholesale transfers of employees unnecessary. However, such prior attempts had failed. There has been a failure by the Association to show any animus on the part of the Respondent directed either towards the Association, Black or other minority employees, or persons using the grievance process. The Hearing Officer is satisfied that Respondent has honestly given his explanation for the transfers, i.e., an attempt to create a new work environment at the Pomona Regional Office, as well as an attempt to give the employees affected by the transfer an opportunity to work in a different environment and with new people. Such decision was motivated by an attempt to improve the operation of the Pomona Regional Office. It has not been proven that the transfers occurred because Fluker and Curtis were Black, represented by the Association, or had used the grievance process.

RECOMMENDED CONCLUSION

Hearing Officer concludes that the County did not violate the Ordinance.

RECOMMENDED ORDER

The Charge should be dismissed.


SEYMOUR SWERDLOW
Hearing Officer

DATED: March 3, 1980