LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

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| In the Matter of<br><br>ASSOCIATION OF COUNTY ENGINEERING ADMINISTRATORS,<br><br>CHARGING PARTY,<br><br>-and-<br><br>COUNTY OF LOS ANGELES,<br><br>RESPONDENT. | UFC 22.2<br><br>Report<br><br>and<br><br>Recommendation<br><br>June 24, 1981 |

Hearing Officer:

Edgar Allan Jones, III

Appearances:

For the Charging Party:

Fogel, Julber, Rothschild & Feldman
By: Lester Ostrov, Esq.

For the Respondent:

Elliot Marcus
Division Chief, Personnel
Department of Personnel

## STATEMENT OF THE CASE

On October 9, 1980 a charge was filed with the Los Angeles County Employee Relations Commission by the Association of County Engineering Administrators (the Association) against the County of Los Angeles (the County), the Respondent herein, alleging that the County had engaged in and was engaging in an unfair employee relations practice as defined in Section 12(a)(3) of the Employee Relations Ordinance (the Ordinance) of the County of Los Angeles, Ordinance 9646, in that the County had over the prior six months

failed, refused and been unwilling to meet and confer in good faith with the Association in the matter of proposed Civil Service Rules changes. After notice to the parties a hearing was held on March 12, 1981 in 374-A Hall of Administration, 500 West Temple Street, Los Angeles, California before the undersigned hearing officer. At the hearing all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. Representatives for the Charging Party and the Respondent filed briefs. Upon the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact and conclusions.

## FINDINGS OF FACT

Since 1978, the Association has been the certified representative of certain employees in the mid-management level of three major engineering departments within the County. The Association is an independent organization, unaffiliated with other organizations in the County such as the Coalition of AFL-CIO affiliated unions in the County (herein called the Coalition). Harry Stone is the President of the Association.

As a result of the passage of Proposition B in the November 1978 election, the County Board of Supervisors (the Board) was authorized -- in place of the County Department of Personnel -- to revise County Civil Service Rules (the Rules). Pending such revision, Interim Civil Service Rules were implemented by the Board. The Rules cover procedures for numerous employment matters, including hiring practices, promotional examinations, disciplinary procedures and layoff rights. In the spring of 1979 a package of proposed Rules changes was distributed by the Board's bargaining agent, the Director of the Department

of Personnel, to the various certified representatives including the Association. The proposed changes affected such matters as appeal rights in such areas as disciplinary matters, appraisals of promotability, layoffs and medical standards. The proposals would also change such hiring procedures as appointment to an eligibility list and the weight to be given prior appraisals.

Negotiations between the County and the Coalition were initiated on the Rules changes and two other issues, fringe benefits and mileage. At the same time certain independent labor organizations such as the Association were informed by the County that they could attend a so-called "side table" where the County would keep the non-Coalition organizations informed of progress at the main table negotiations with the Coalition. Stone, representing the Association, attended the side table meetings starting in May 1979. He was informed by Frank Sawyer, County chief negotiator, that the County did not intend to meet and confer at the side table on the Civil Service Rules changes. Stone advised Sawyer, and Sawyer acknowledged, that by attending the side table it was not Stone's intention to waive his right to meet and confer with the County. The Association was also in the process of negotiating a seperate Memorandum of Understanding for the bargaining unit it represented. When Stone attempted to bring up the proposed Rules changes or fringe benefit issues there, he was told that those issues were being dealt with at the table with the Coalition.

The County and the Coalition failed to reach agreement on the Rules changes. However, in seperate negotiations agreement was reached in July 1979 on fringe benefits and mileage. Only then did the Association have an opportunity to negotiate on the same two issues; Sawyer had indicated to Stone that the County would face an administrative nightmare if it attempted to negotiate issues, like fringe benefits and mileage, with each of the certified organizations individually. The Association did reach an agreement

on the two issues with the County. The side table discussions ended in July 1979 but the County and the Coalition after that summer continued discussions on the proposed Rules changes.

The next contact the Association had with the proposed changes in the Civil Service Rules came in the form of an April 29, 1980 letter sent to the Association and other independent organizations enclosing a copy of proposed Rules changes (the spring 1979 edition in a somewhat modified form) which were to be sent to the Board with a recommendation from the Director of Personnel that they be adopted. The letter noted that prior to implementation the Board would hold a public hearing at which the organizations could appear to pursue their positions. In addition an opportunity for consultation with the County, if desired, was set for May 6, 1980. Stone met with County representatives Sawyer and Patricia Swancutt on May 7 and reviewed the changes in the proposed Rules section by section. Stone was told that the proposed Rules would shortly be on the Board's agenda. Sawyer suggested that since the Rules were close to adoption, the Association ought to hold off bargaining on the changes until the following year when negotiation of its Memorandum of Understanding was due. Stone responded that it was not in the best interests of the Association to forgo bargaining on the changes before adoption of the Rules. He further indicated that the Association did not desire to waive its right to meet and confer with the County. A scheduled hearing on the County's recommended Civil Service Rules changes was postponed by the Board from May 13 to May 17, 1980.

On May 14, 1980 the Association requested by letter to begin immediately the process of meeting and conferring on the proposed changes to the Rules. The Association further requested that action regarding implementation of the Rules -- insofar as they applied to the Association's unit -- by the Director of

Personnel or the Board be deferred until negotiations were completed. The County responded by letter dated May 22, 1980 in which it noted that the Association had been given in May 1979 copies of various proposals and had been advised of the status of negotiations on the Civil Service Rules with the Coalition but had "at no time during the prolonged period when this was an open subject" requested negotiations. The County concluded that the May 14 request was unreasonable and untimely. The County's recommendations on the Civil Service Rules went to the Board for consideration on May 27. Board consideration of the matter was rescheduled to July 22, 1980.

Upon reading the May 22 communication Stone contacted Swancutt and insisted to her that the Association had always taken the position with Sawyer that it did not want to waive bargaining. He told her the Association had not been kept fully informed of negotiations, noting that there had been some major changes in the proposals, particularly with regard to layoff rules. Thereafter on June 3, 1980 Sawyer indicated in writing for the County that he was willing to meet and review the Association's written modifications and recommendations. He indicated Board action had been deferred until July 21 and that the County would confer with the Association until that date. Accordingly Stone arranged a meeting for June 18.

At the June 18 meeting Stone presented written proposals indicating the Association's agreement with twelve of the proposed Rules and disagreement with fourteen. As to the latter, the Association proposed retention of the Interim Rules for twelve Rules and additional matters in two. Stone went over each of the Rules explaining the Association's proposals. For example, Stone proposed the addition of a definition of a management official to Rule 2, Definitions, since the term was used elsewhere in the Rules and might apply to Association unit employees. With regard to the layoff Rules, the Association wanted to know

which track covered its members, the one for employees in supervisory classes and non-supervisory classes in bargaining units certified by the Employee Relations Commission (ERCOM) or the one for all other supervisory and all managerial classes. During Stone's discourse, the County representatives -- Sawyer, Swancutt and Elliot Marcus were present -- did, in some cases, explain the intent of the Rules as proposed. The County agreed to review the Association's proposals and meet again.

On June 25 County representatives Sawyer, Swancutt and Marcus met very briefly with Stone. Sawyer informed Stone that the County was unwilling to make any changes in the Rules which were being presented to the Board. There was no item by item discussion of why the Association's proposals were being rejected nor any oral or written counterproposals. On July 22, 1980 the Board postponed consideration of the Rules until November 18, 1980.

On October 9, 1980 the Association filed the instant charge alleging an unfair employee relations practice by the County in that over the prior six months it had failed to meet and confer in good faith with the Association regarding the Civil Service Rules changes. By letter of October 17, 1980 the Association clarified its charge by asserting that at the June 25 meeting in response to the Association's request to meet and confer the County had stated its unwillingness to alter any of the proposed Civil Service Rules changes being recommended to the Board.

On November 6, 1980 County representative Marcus informed Stone in a phone call that the County was interested in returning to the negotiations table. After consulting with counsel, Stone advised Marcus that the Association would not return to the bargaining table. Stone did say that if the County would recommend postponement or the withdrawal from the Board's agenda of the proposed changes, the Association would

enter into negotiations. The County declined to do so. Nor did Marcus indicate whether the County was willing to modify its position on the Rules changes. Stone indicated that he felt the County could not negotiate in good faith if it had already given its recommendations to the Board.

In December the Board again postponed consideration of the proposed Rules. As a result, Marcus sent a January 6, 1981 letter to Stone urging a resumption of negotiations on the Civil Service Rules changes. Marcus spoke to Stone by phone on January 21 and Stone told him that he had not received the January 6 letter. Stone called back later and said that he would wait till after January 27, when the Board was next scheduled to consider the Rules. At that time, if the matter was again postponed, he indicated negotiations might be possible. After the Board postponed the matter until March 3, Marcus spoke to the Association's counsel on February 7 about having Stone contact him regarding negotiations. Some two weeks later Marcus saw Stone and inquired about negotiations. Stone said he had not received any messages from the Association's counsel. Stone had already sent a February 10, 1981 letter to Marcus indicating that since the Board had postponed action on the Rules, the Association was willing to meet and confer on them "whenever the County was willing to resume full and meaningful negotiations." Marcus subsequently received the letter but did not reply to it.

The proposed Civil Service Rules were adopted by the Board as an ordinance on March 10, 1981 after consideration had been postponed on March 3, 1981.

## CONTENTIONS OF THE PARTIES

### Position of the Association

The Association contends that the Civil Service Rules changes clearly affected terms and conditions of employment of Association bargaining unit members and the County was therefore

obligated to meet and confer with the Association regarding the proposed changes. The Association asserts that the duty to meet and confer entails the presentation by the parties of proposals, the articulation of supporting reasons, the listening to and weighing of the proposals and reasons and the search for some common ground reducible to a written agreement. Surface bargaining, going through the motions without a serious attempt at compromise, violates the duty to bargain in good faith. The Association submits that the County here has engaged in surface bargaining. In relegating the Association to a non-bargaining side table while it dealt with the Coalition, the County has not treated the Association as a full bargaining partner. It's agent, the Department of Personnel, acted unilaterally in submitting proposals to the Board prior to meeting and conferring with the Association. Its actions in June 1980 in rejecting the Association's counterproposals was perfunctory, reflecting the presence of a closed mind. The Association emphasizes that the County's conduct described here amounts to an unfair employee relations practice.

The Association maintains that the submission to the Board of a proposal regarding a term or condition of employment is supposed to be the last act of the Department following negotiations and agreement with employee organizations. The Department's submission of the proposed Rules changes to the Board prior to negotiation with the Association constituted unilateral employer action in violation of the duty to bargain and an unfair employee relations practice. The Department's subsequent offer to meet and confer after it had already submitted the proposals to the Board does not minimize the violation. The Association points out that the Department refused to undo its wrong by temporarily withdrawing the proposals from the Board's agenda.

The Association takes the position that the adoption in March 1981 of the proposed Rules by the Board constituted a

further violative unilateral action, a failure by the County to meet and confer with the Association. Further, the Board's failure to renew negotiations with employee organizations prior to making changes in the proposed Rules submitted by the Department is in the view of the Association a violation of the duty to bargain.

The Association argues that it did not waive its right to meet and confer prior to the Board's adoption of the proposed Rules. The Association claims that the County had no serious interest in negotiating with the Association. The County was more interested in dealing with the Coalition while only surface bargaining with the Association. And in any event a proposed set of Rules was submitted to the Board prior to any negotiations with the Association. The Association submits that it was faced with a fait accompli under these circumstances. It follows, the Association maintains, that any attempt to meet and confer with the County would have been fruitless. The Association concludes that it should not be deemed to have waived its right to bargain by foregoing the opportunity to go through the motions of bargaining with an employer who had shown no intention to meet and confer in good faith.

The Association further argues that it did not waive any bargaining rights because it was never notified of nor permitted to bargain on the Board modified Rules which the Board eventually adopted. Nor could the Board assume in advance that the Association would not want to bargain on the alterations contemplated by the Board.

The Association submits that the proper remedy is the restoration of the status quo ante and a bargaining order. Thus the Civil Service Rules enacted in March 1981, insofar as they apply to the Association's bargaining unit, should be rescinded and the County should be ordered to bargain in good

faith with the Association on the entire scope of Rules relevant to the terms and conditions of employment of employees represented by the Association.

Position of the County

The County asserts that the Association had knowledge over the two and a half year period from November 1978 to March 1981 that the County intended to amend the Civil Service Rules after negotiating with any employee organization that expressed a desire to negotiate. The County notes that it did bargain with the Coalition and another independent group, the Association of Los Angeles Deputy Sheriffs, on the Rules changes. Despite engaging in negotiations of fringe benefits and mileage and asserting the right to bargain on the Civil Service Rules changes, the Association, in the County's view, made no specific demands or proposals on the Rules changes until June 1980. The County contends that it was not obligated to hold in abeyance any progress on the Rules pending expression by the Association of its specific desires. Nor was it obligated to actively seek Association demands. The County notes that the Association initiated no contact with the County to make demands or ascertain the status of the proposed Rules changes. Only after the proposed Rules had been scheduled for hearing by the Board did the Association make a demand for bargaining, but without specific proposals. The County initially rejected the demand as untimely but after the Board hearing was postponed indicated to the Association a willingness to meet and confer. The County claims that in the two bargaining sessions that followed the Association made demands on but two Rules while simply indicating like or dislike on the other proposed Rules. The County argues that the latter expressions cannot be taken as counterproposals to the County's position. On the two specific demands, after evaluating them, the County found them wanting in merit and so informed the Association on June 25, 1980. Thereafter the Association waited three and a half months before

charging the County with an unfair employee relations practice.

The County takes the position that the filing of a charge is an expression of a desire to bargain on the part of the charging party. The County reacted to the charge in the instant case by seeking by its count on four occasions to bargain with the Association. The County suggests that the Association's position that the proposed Rules had to be withdrawn from the Board's agenda before it would bargain is in truth an indication that it did not desire to bargain and a violation of the duty to meet and confer in good faith. Pointing to the frequency with which the Board postponed hearings on the proposed Rules, the County argues that presence of the matter on the Board's agenda was no barrier to bargaining. The County concludes that it has not engaged in an unfair employee relations practice under Sections 6(b) and 12(a)(3) of the ERO.

## ANALYSIS AND CONCLUSIONS

The Employee Relations Ordinance (ERO) of the County of Los Angeles, Section 12, makes it an unfair employee relations practice for the County to refuse to negotiatie with representatives of certified employee organizations on negotiable matters. Section 3(o) of the ERO states that negotiation

> means the 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.

The same section also notes that agreements concerning any matter within the exclusive jurisdiction of the Board or concerning any matters not otherwise delegated by the Board shall become binding when executed by the Board and affected certified employee organizations. Section 3(e) states that "County" refers to the Board as well as to the "County of Los Angeles." Section 3505 of the

Government Code (the Meyers-Milias-Brown Act) provides that the "governing body of a public agency...or other represenatives as may be properly designated by law or such governing body, 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 organizations on behalf of its members prior to arriving at a determination of policy or a course of action." Under the scheme envisioned by the above cited language the Board is obligated to meet and confer with certified employee organizations such as the Association. This the Board does through the agency of the Director of Personnel. The Director in bargaining with employee organizations fulfills the statutory obligation of the Board, as the governing body of the County, to meet and confer prior to taking decisive action. When the Director sends a matter to the Board with the recommendation it be adopted, the Board will presume that its agent has fulfilled the bargaining requirement. The Director's action is in essence a declaration both to the Board and to employee organizations that further negotiations are not contemplated nor required. this is so because the Board itself will not generally thereafter negotiate directly with employee organizations after receiving the Director's recommendations. If, however, the Director makes his recommendation to the Board without having properly met and conferred, then his action in referring the matter and any subsequent adoption by the Board, without more, would constitute an unfair employee relations practice. The Board is liable for such conduct of its agent which is found violative of the duty to negotiate. It should be noted here that the parties to this case concede that the matter of the Civil Service Rules changes falls within the scope of negotiations as defined in Section 6 of the ERO and Government Code Section 3505 noted above.

The charge in this case as originally filed alleged the

County had over the six months preceding the October 9, 1980 filing date failed to meet and confer on the Civil Service Rules changes. At the request of ERCOM, the Association clarified its charge in an October 15, 1980 letter in which it cited the County's conduct on June 25, 1980 as demonstrative of the alleged unfair employee relations practice. In its post hearing brief the Association looks beyond the allegations of the charge described above to the County's conduct in and after May 1980, conduct within the confines of the 180 day limitation of Rule 6.01 of the Rules and Regulations of ERCOM. Inasmuch as the Association's expanded view of this case was also shared by the County both at the hearing and in its brief, it must be concluded that the matter was properly, and fully, litigated. It remains for determination whether the County fulfilled its bargaining obligation on the Rules changes vis-a-vis the Association.

The Association contends that the County did not meet its bargaining obligation prior to submitting its recommendations to the Board for consideration on May 13, 1980. It is admitted that the County did not meet and confer with the Association prior to that time. The County notes and the Association recognizes that the Association was on notice from the spring of 1979 forward that the County intended to change the Rules. The County argues that since the Association failed to request bargaining, the County was free to implement its proposals. In the normal course of events the Association, having notice of the proposed changes, would have been required to request bargaining to trigger the County's obligations. However the record establishes that the County made it clear to the Association, in relegating it to a non-bargaining side table on the Rules issue, that the County did not intend to bargain with the Association while it was dealing with the Coalition on that issue. In light of the County's expressed position, the Association cannot now be faulted for not requesting bargaining prior to the time the Director's recommendations were

scheduled for action by the Board on May 13, 1980. Prior to May 13, the County never told the Association that the time for bargaining had arrived. By failing to meet and confer with the Association prior to that time, the Direcotr of Personnel engaged in an unfair employee relations practice under Section 12(a)(3) of the ERO.

The Association requested bargaining on the proposed Civil Service Rules changes on May 14, 1980. The County denied the request on May 22, 1980 because it was untimely. However, as found above, the Association's failure to request bargaining sooner was attributable to the County's improper refusal earlier to deal with the Association. Accordingly the County's obligation to meet and confer with the Association had not been tolled by the mere passage of time nor waived by the Association's inaction. The County's refusal in May 1980 to meet and confer with the Association constituted the continuation of an unfair employee relations practice.

The County by letter of June 3, 1980 indicated a willingness to meet and confer with the Association, resulting in meetings on June 18 and 25. On June 18 the Association explained its position on each of the proposed Rules changes with which it disagreed and put forth proposals as reflected in its June 17, 1980 letter to the County. The County suggests that the bulk of the Association's proposals were not really proposals at all, but mere statements of disagreement. The record does not support that contention. The June 17 listing of Association proposals contained more than simple statements of like or dislike. Where the Association disagreed with the County's recommended Rules, the Association counterproposed that the then existing Interim Rules be retained. And Association representative Stone explained to the County the reasons for each of the counterproposals. The County's response on June 18 was to take the proposals under consideration. At the June 25 meeting the County pronounced that it was unwilling to

make any changes in its recommendations to the Board and indicated that no further discussion was called for. The County unmeritoriously claims that its abrupt dismissal of the Association fulfilled its bargaining duty. The County was obligated to do more than just listen to the Association. Good faith bargaining entails each party making and efforts to explain its position and to actively examine the potential for compromise through an exchange with the other party. In treating the Association in such a perfunctory manner the County failed to accord the Association equal status as a negotiator. There was some suggestion in the record that the necessity of dealing with a large number of employee organizations on issues such as Civil Service Rules presents administrative difficulties for the County. The solution is not, however, to ignore the Association's status. The Employee Relations Commission in certifying the Association as majority representative of employees in an appropriate unit has already determined that it is in the interests of efficient operation of public service and sound employee relations to accord the Association bargaining rights. The conclusion is compelled here that the County's actions on June 18 and 25, 1980 amounted to a refusal to negotiate in violation of Section 12(a)(3) of the ERO.

The County relies on the Association's refusal to bargain after the filing of the October 9, 1980 charge in this case as evidence that the Association was never truly interested in bargaining. The Association's actions after the filing of the charge do not bear on the conclusion here that the County's conduct prior to that time constituted an unfair employee relations practice. Post complaint conduct might in some cases have a bearing on determining the appropriateness of a remedy. In this case, though, the County never offered to restore -- indeed it refused to -- the bargaining environment to which the Association was entitled, that which would have prevailed had the County not relegated the Association to a non-bargaining

side table in the spring of 1979 before the County made any recommendations to the Board. That the County was able to reach agreement with another independent organization on the Rules changes after their submission to the Board brings into question only the wisdom of the Associations decision to refrain from post complaint bargaining, not its propriety. Further, the Associations eventual offer to negotiate -- the February 10, 1981 letter -- went unanswered.

## RECOMMENDATION

It is recommended that the Employee Relations Commission approve and adopt the following order:

1. The County shall cease and desist from refusing to negotiate with the Association concerning Civil Service Rules changes.

2. Upon written request of the Association to the Director of Personnel to negotiate the Civil Service Rules changes, the County shall, with respect to employees in the Association bargaining unit, cease and desist from implementing the Civil Service Rules changes adopted by the Board of Supervisors on March 10, 1981, and the County shall meet and confer with the Association on the Civil Service Rules changes.

3. Any agreement reached between the Association and the County under paragraph 2 above shall be presented as a recommendation by the Director of Personnel to the Board of Supervisors for its consideration and action as provided by Section 29000 et seq of the Government Code and Section 12(e)(2) of the Employee Relations Ordinance of the County of Los Angeles.

June 24, 1981

Respectfully submitted,

Edgar Allan Jones, III
Hearing Officer