LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of ASSOCIATION OF COUNTY ENGINEERING ADMINISTRATORS Charging Party v. COUNTY OF LOS ANGELES Respondent	UFC 22.2

DECISION AND ORDER

The charge in this case was filed by the Association of County Engineering Administrators (Charging Party or Association) against the County of Los Angeles (County) alleging that the County had committed an unfair employee relations practice within the meaning of Section 12(a)(3) of the Employee Relations Ordinance (Ordinance) by its refusal to meet and confer in good faith with the Association concerning the adoption of new Civil Service Rules (Rules).

The matter was duly referred to Hearing Officer Edgar Allen Jones III, who held a hearing on March 12, 1981. The parties were present during the 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 Jones submitted his Report on June 25, 1981. The County filed Exceptions to the Report, and the Association filed a statement in opposition to these Exceptions.

The sequence of events giving rise to the instant charge and the respective positions of the parties are well amplified in the Hearing Officer's Report and are incorporated herein by reference.

Hearing Officer Jones concluded that the County violated Section 12(a)(3) of the Ordinance by:

1. Failing to meet and confer with the Association prior to submitting its recommendations to the Board of Supervisors (Board).
2. Refusing to meet and confer upon the Association's request in May, 1980.
3. Its perfunctory treatment of the Association's proposals during meetings in June, 1980.

The Hearing Officer consequently recommended that:

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.

After due consideration of the entire record, the Commission rejects the conclusions and recommendations of the Hearing Officer.

Ample case law exists to support the conclusion that absent a fait accompli the Union must make a timely request to bargain and that a Union may waive its statutory right to bargain by virtue of its unreasonable delay or inaction. The United States Supreme Court in Columbian Enameling and Stamping Company, 306 U.S. 292, 4 LRRM 524 (1939), stated that ". . . there can be no breach of the statutory duty by the employer . . . without some indication given to him by them [his employees] or their representatives of their desire or willingness to bargain." The Courts and the National Labor Relations Board have condoned unilateral acts of an employer in situations where the union has failed to pursue bargaining. (See American Can Co. v. NLRB, 92 LRRM 2252 (2nd Cir. 1976); NLRB v. Spun-Jee Corp., 66 LRRM 2485 (2nd Cir. 1967); and U.S. Lingerie Co., 170 NLRB No. 77, 67 LRRM 1482 (1968).)

The record indicates that the Association was aware no later than February, 1979 of the County's intent to revise the Rules and in May of that year had been furnished a copy of the initial proposed revisions. The Association made no request at either time to negotiate, but merely asserted at the sidetable meetings concerning the Rules conducted from May through July, 1979 that its participation at those meetings did not constitute a waiver of its right to meet and confer. The Association did not present any counter-proposals during the course of these meetings. Concurrent with the conclusion of County-wide negotiations in

July, 1979 the sidetable meetings terminated. The Association took no further action on the Rules until May 14, 1980, when in response to the receipt from the County of proposed Rules, which were to be submitted by the County to the Board, the Association in writing requested the County to meet and confer on the Rules.

The Charging Party asserts that it did not waive 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." (Charging Party's Brief, p. 15.) The lack of good faith on the part of the County, the Association contends, is evidenced by the County's relegation of the Association to a sidetable while it dealt with the Coalition of County Unions on the Rules. We find this argument unconvincing. If the Association had doubts as to the good faith of the County, an appropriate administrative remedy (namely, the filing of an unfair employee relations practice charge) existed to contest the propriety of the County's actions.

The Association waited in excess of one year after receiving notice of the County's intent to revise the Civil Service Rules before requesting negotiations on those Rules. Mere conjecture that the County did not intend to negotiate in good faith, absent a specific finding to that effect or an expressed refusal to negotiate, cannot relieve the Association of its duty to affirmatively pursue

negotiations. Consequently, we conclude that the Association waived its right to bargain concerning the Rules and that the County's rejection of the Association's request of May 14, 1980, to negotiate did not violate the Ordinance.

Having found that by virtue of the Association's inaction a waiver existed which relieved the County of its bargaining obligation in May, 1980, we must next determine the effect of that waiver on any subsequent bargaining obligation owed the Association.

For reasons not stated with precision in the record, the County elected to rescind its position of May 22, 1980, and scheduled meetings with the Association in June, 1980. Subsequent to a review of the Association's written proposals, which were submitted at the June 18 meeting, the County advised the Association that it would not make any changes in the Rules which had been submitted to the Board.

Considering that the County had notified the Association in February, 1979 of its intent to revise the Rules, the County cannot now be faulted for proceeding on its announced intention, nor should the County be penalized for its attempt to reach agreement with the Association by scheduling the June meetings. While the concepts of good-faith negotiations dictate more than a perfunctory or surface consideration of the Association's

proposal, in view of the Association's lethargy in pursuing negotiations, which this Commission found to be a waiver, the County's actions at the June, 1980 meetings cannot be construed as bad-faith bargaining. "The question of good or bad faith is primarily a factual determination based on the totality of the circumstances [citations omitted] . . . ."[1/] Furthermore, the Ordinance provides that "[t]his obligation [to meet and confer in good faith] does not compel either party to agree to a proposal or to make a concession."[2/]

The Commission held in a previous decision that, absent the existence of bad-faith bargaining, the County was not precluded from implementing a vacation schedule change when an impasse in negotiations had been reached.[3/] Since we are of the opinion that the County did not engage in bad-faith bargaining during the June, 1980 meetings, we are compelled to conclude that the County's actions of

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1. Placentia Fire Fighters, Local 2147 v. City of Placentia, 92 LRRM 3373, 3381 (1976), 57 Cal.App.3d 9.

2. Employee Relations Ordinance of the County of Los Angeles, Ordinance 9646, Section 3(o).

3. UFC 8.3, International Union of Operating Engineers, Local 501, AFL-CIO v. Mechanical Department.

rejecting the Association's proposals and ultimately adopting its own version of the Rules are not violative of Section 12(a)(3) of the Ordinance.[4/]

We consider the above findings dispositive of the case; hence, we do not deem it necessary to address the County's offer to negotiate which followed the filing of the charge herein or the Association's subsequent and conditioned refusal.

The Commission emphasizes that its decision rests solely on the record before it and is not indicative of the Commission's position on the merits of any other pending unfair employee relations practice charge concerning the Civil Service Rules.

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4. We note that following public hearings the Board made changes in the Rules before adopting them in their current form. The Board's action does not appear inconsistent with the California Supreme Court's holding in Los Angeles County Civil Service System v. Superior Court of Los Angeles, 100 LRRM 2854, 2859, that "[n]othing in the MMBA [Meyers-Milias-Brown Act] precludes the commission from altering its rules after the charter-mandated hearing to accommodate more persuasive or previously unexpressed views."

O R D E R

IT IS HEREBY ORDERED that the charge as filed by the Association on October 9, 1980, be dismissed.

DATED at Los Angeles, California, this 18th day of September, 1981.

Lloyd H. Bailer
LLOYD H. BAILER, Chairman

JOSEPH R. GENTILE, Commissioner

Fredric N. Richman
FREDRIC N. RICHMAN, Commissioner

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