

RECEIVED
EMPLOYEE RELATIONS
COMMISSION

LOS ANGELES COUNTY SAFETY
POLICE ASSOCIATION,

Charging Party,

v.

DEPARTMENT OF PARKS AND
RECREATION,

Respondent.

The Association, in substance, accuses the Department

of unfair labor practices by releasing Kenneth Holtz, a recurrent park patrol officer (Security Officer I) in retaliation to his having filed a grievance, to coerce and threaten reprisals against recurrent officers for exercising their union rights, and in order to dominate the Association and/or interfere with its formation and/or administration.

During the hearing, both parties were afforded complete opportunity to examine and cross examine witnesses, introduce documents and argue their respective positions. The hearing was free from prejudicial error.*

*Over the objection of the Association and its subsequent motions for the Hearing Officer to reconsider and strike or deny, the Hearing Officer allowed documentation pertaining to Officer Holtz maintained in an unofficial personnel file to be admitted into evidence and allowed testimony pertaining thereto. The basis of the objection was that such documentation is prohibited by the Peace Officer's Bill of Rights and the parties' Memorandum of Understanding (MOU).

The Hearing Officer does not believe that either argument of the Association is valid in this type of administrative proceeding. Even if it were otherwise well founded, the Hearing Officer could or should not be estopped from receiving evidence that is relevant and material. Any attack on this unofficial personnel file kept by the Department's agent is a matter for collateral attack in another forum. The documentation was relied upon by the agent in her decision to release Officer Holtz. If said documentation, and testimony pertaining thereto was not admitted, it would have made a credibility finding as to the Department's true motive more difficult.

While the Commission should be cognizant of prohibitions against secret files, the contents of this unofficial personnel file was known to Holtz and the Association more than a month prior to the hearing. Because of this and because the hearing lasted more than a month, the Association could not claim surprise; nor did it do so.

Having carefully and fully evaluated the record herein, having observed the witnesses as to credibility and for the reasons set forth hereinafter, the duly-designated Hearing Officer hereby submits his Report, inclusive of findings of fact, conclusions of law and recommendation.

BACKGROUND

At all times material herein, Kenneth Holtz was retained by the Department as a park patrol officer in Bonelli Park. He was released on February 1, 1984, effective February 8, 1984, after more than 15 months continuous service. At all times he was under the ultimate supervision of Olene Shipley, Regional Park Superintendent.

On or about January 11, 1984, a directive issued from Ms. Shipley, under the signature of Lt. Jones, Patrol Supervisor, to the effect that park patrol officers could no longer make traffic stops without the express authorization of supervision. The Union complained about this directive both verbally and in writing on January 16, 1984. Both the verbal complaint and written complaint were general and Officer Holtz's name was not specifically mentioned.

The matter was treated as an informal grievance and on January 30, 1984, a meeting was held among three department representatives and two representatives of the Association, including its president, Charles Kowalski. The Association introduced a statistical summary prepared by Officer Holtz

which cited the number of citations and arrests at Bonelli Park for traffic related incidents during 1983. Said report reflected a 700% increase over the prior year. Officer Holtz's name appeared on the upper right hand corner of the document. Two days after this meeting Officer Holtz was released.

CONTENTIONS OF THE PARTIES

Association: The evidence leads to the conclusion that the only reason Holtz was release was his initiation of a grievance concerning the Department's directive of January 11, 1984. By virtue of his name being on the statistical sheet presented to it, management presumed that Holtz was the moving party.

No other reason exists to justify his release. Holtz was competent and his attitude and demeanor in performing his job were professional. The Department had a history of threatening recurrent employees with release if they exercised their union rights. By so releasing Officer Holtz, the Department interfered with employee's union rights and unlawfully sought to dominate the Association.

Department: There is no evidence that Holtz was viewed by the Department as one who initiated the grievance of January 12 or thereabouts, so there was no motive for retaliation. The verbal grievance was collective in nature and was so understood by the Department. There is no

evidence that Holtz was active in or a supporter of the Association.

A valid business decision had been made to add a permanent Security Officer at Bonelli Park as a replacement for a recurrent employee. Holtz was the recurrent employee chosen for release as he carried out his duties to an excess; creating ill will with the residents of an adjacent R.V. park and the visitors to Bonelli Park. The last in a series of complaints against Officer Holtz led to the directive of January 11, 1984. As far as the Department was concerned it could no longer tolerate his behavior and the embarrassment placed upon the Department. Where it was costing visitors \$2.00 to enter the park, it was costing them up to \$50.00 to leave when Holtz was on duty.

No evidence was presented that linked the Department to threats against recurrents for filing grievances. One employee allegedly threatened has been retained for a number of years and the only threats allegedly made against him were by a non-management agent; a member of the Association.

DISCUSSION

At the completion of the Association's case, the Department moved to dismiss the complaint. While the Hearing Officer denied the motion with respect to the Section A(1) allegation, he granted it with respect to the Section A(2) allegation because the evidence, even if fully

interpreted in favor of the Association, failed to establish a prima facie case that the Department was in any way dominating or illegally interfering with the Association. As it would affect any meaningful remedy, the sustaining of the Department's motion with respect to the allegation of domination is irrelevant.

In order for it to sustain its burden of proving a prima facie case with respect to a violation of Section 12(A)(1), the Association had to convincingly demonstrate that the Department believed Officer Holtz was behind the grievance that surfaced on or about January 12, 1984, and that the Department had previously threatened recurrences with release if they exercised their union rights. Apart from his involvement in the January, 1984, grievance, there is no evidence that Holtz was active with or on behalf of the Association. When Officer Holtz received his copy of the January 11 directive, he called the Association to complain, and the Association, in turn, complained verbally to the Department. At the same time, Holtz and other officers voiced complaints with a Sgt. Fraijo, their senior member and a former acting patrol supervisor, that they were all being made victim of what was a perceived overzealousness of Officer Holtz. Sgt. Fraijo met with Lt. Jones, the then patrol supervisor, who indicated that the matter was out of his hands; in substance indicating that he was just following orders from above.

After raising the complaint verbally, the Association reduced its complaint to the Department in writing on January 16. This led to a meeting between the Department and the Association on January 30, 1984. References were made to this being an informal grievance and this appears to be based on the fact that under the strict terms of the parties' MOU only an employee can file a grievance. Prior to the meeting of January 30, Officer Holtz was not identified as being the grieving employee. Both as raised by Sgt. Fraijo and the Association, both verbally and in writing, all indications were that it was a collective grievance.

At the meeting of January 30, Holtz's name was not mentioned directly, but his name was apparent on a statistical summary which the Association stated it presented to the Department. The evidence on behalf of the Department was that it was not particularly aware of Holtz's name being on that document, and Walta Smith, the Department's Personnel Officer testified that when she reported the results of the meeting to Park Superintendent Shipley, she did not reference Officer Holtz.

The complaint of the Association was that the Department was unilaterally changing the terms and conditions of employment. The Department's position, later reduced to writing, was that it was merely exercising it's management's rights and that there was no violation of the MOU. While

this ended the grievance procedure, Ms. Smith did recommend to Ms. Shipley that a meeting be held among park patrol officers at Bonelli Park to explain the reasons behind and for the January 11 directive. (This meeting occurred, with Ms. Shipley stating that Holtz was not the only officer making excessive traffic stops.)

While the evidence is not convincing of the Department's knowledge or belief that Officer Holtz was behind the January grievance, it may be sufficient to allow the conclusion that the Department was aware of Holtz's active involvement in the grievance. It was his conduct that gave rise to the Shipley directive, and his name did appear on the statistical document shown or given to the Department during the course of the grievance discussions. Management could easily have concluded that the grievance was his, and a presumption that it did so could be drawn from the fact that he was notified of his release two days later.

The primary evidence of threats of retaliation was presented by a recurrent patrol officer working at Santa Fe Dam who believed that the dam was also under the jurisdiction of Ms. Shipley. It was prior to the time she assumed responsibility for Bonelli Park. This employee testified as to having voiced three to four informal grievances with his patrol supervisor (the proper first step in the parties grievance procedure) and that the acting supervisor, a Sgt. Hutley, threatened him repeatedly from late 1982 until he quit around January, 1984.

This employee testified that one of the grievances resulted in a formal grievance in September, 1983, which was dropped after the first step. He said he was not concerned about termination or release until recently, but that the direct supervising agent at Santa Fe was aware of the threats that had been made by Hutley and that he was unsympathetic. The Department's posture was one of first giving the acting sergeant enough time to learn his job and that he would improve his demeanor. Later the employee was told that Hutley, by virtue of his position, could do whatever he wanted.

Kenneth Holtz, himself, did not testify as to being personally and actually threatened with discharge for filing grievances or complaints, but he did testify that he was harassed by Lt. Jones from the time that Lt. Jones became patrol supervisor in October, 1983. Lt. Jones considered him a "hot dog" and a "bad guy." Holtz complained to Ms. Shipley around December, 1983, of the preceived harassment by Lt. Jones. Shipley's advice was that Holtz should first discuss his displeasure with Lt. Jones personally, and then bring the matter back to her if there was a continuing problem. At the time, he was satisfied with Ms. Shipley's response. Holtz stated that none of the other recurrents working at Bonelli Park told him they had been threatened concerning the filing of grievances, but he also testified that each of the other recurrents were afraid.

The evidence in favor of the Association with respect to a history of threats of retaliation for exercising union rights and filing grievances is, at best, tenuous. The alleged victim of these threats did not appear to be dissuaded from filing even a formal grievance, and he is still employed. While there is no doubt that recurrent employees, by their neither fish nor foul position, are afraid of being highly visible or vocal in their criticism of supervision or management, this cannot be directly attributed to senior management, in general, or Ms. Shipley in particular. The threats in regard to the testifying employee were made by an acting supervisor and sergeant, who was a member of the bargaining unit.

If one were to give every benefit of the doubt to the Association concerning the evidence regarding the threats, there might be enough to allow the conclusion that management was aware of threats being made by employees acting in supervisory capacities and that management did little or nothing to discourage such activity.

Assuming this to be the case, and adding the inference that management believed Officer Holtz to be responsible for the grievance arising from the January 11, 1984, directive, management still voiced another reason to justify the release of Holtz; one that was not in violation of the Ordinance. Contrary to the initial pronouncements of management, the reason for Officer Holtz's release was not

the Department's need to replace a recurrurent employee with a permanent employee. As connected with the release of Officer Holtz, that was the Department's pretextual, after-the-fact justification, and it did not ring true.

Regional Supervisor Shipley, as supported by Personnel Officer Smith, testified as to a long-time desire to replace recurrent employees with permanent employees. Because permanent employees were on layoff in other departments, the Department could not retain a newly hired permanent employee and their ability to retain permanent employees was limited primarily to temporary employment ("170's").

The testimony reveals that a permanent employee was transfered into the Park Department for use in Bonelli Park in October of 1983, but Officer Holtz's hours were not disturbed at that time. That permanent employee was promoted into another department in late November, 1983, and it was not until April, 1984, that he was replaced. In the meantime, the schedule in Bonelli Park was limited to two permanent employees and two recurrent employees with other personnel coming in and out of the area on temporary assignments or on probation status.

Ms. Shipley attempted to explain away her need for Holtz during the period of at least February and March, 1984, by stating that this was a slow period of park use. However, no employee hours, recurrent or permanent, were reduced during the alleged slow season of October 82-April,

1983, nor from October, 1983, up until Holtz was released in February of 1984. Ms Shipley conceded that in February and March, 1984, she may have been between 32 and 50 hours below her weekly manpower needs, and that the need for such manpower was not considered in the timing of Holtz's discharge. Ms. Shipley testified that she had been considering releasing Officer Holtz since September, 1983, and had discussed it with her superior, the Department's Eastern Regional Director. An attempt was made to release Holtz in October, 1983, but it was withdrawn. She released Holtz in February because she had had it with him. However, it fit into the total scheme of things; that scheme being to replace a recurrent with a permanent.

A fair reading of the evidence in this regard is that the Department and Ms. Shipley did desire the addition of a permanent employee, and perhaps as a replacement for a recurrent. There was a shortage of permanent employees to be available as acting supervisors and for promotion. However, the release of Officer Holtz in February, 1984, was coincidental to any desire the Department had to replace a recurrent employee with a permanent employee. With the turnover among personnel in Bonelli Park between November, 1983 and April, 1984, there was a continuing need for Officer Holtz's services.

As it ultimately became apparent on the record, the true reason for the release of Officer Holtz was that Ms.

Shipleigh determined that she could no longer tolerate his overly aggressive and excessive behavior. She had been amassing complaints against him and a complaint that was brought to her attention on or about January 11, 1984, was the straw that broke the camel's back. In actuality there were two complaints that surfaced at that time. One was filed by a resident of the adjacent R.V. park complaining of Officer Holtz's abusive behavior. That is the complaint that led to the two directives issued by Ms. Shipley on January 11. A second complaint was actually notice of a \$1,500,000.00 law suit filed by a visitor to the park alleging, in addition to an unlawful stop and verbal abuse, assault and battery perpetrated by Holtz.

In sum, Ms. Shipley collected or retained seven incident reports about Ken Holtz encompassing the period of December, 1982, through January, 1984. Four of those complaints occurred in the last seven months of his employment. Of the seven, two involved complaints filed by residents of the RV park and one was filed by a visitor to that location. The common thread arising in these complaints, which primarily dealt with drivers not making a complete stop at stop signs, was that Holtz was cocky, abusive and belligerent. One of the seven complaints against Holtz was filed by the Sheriff's Department in conjunction with their performing some research, and arose from Holtz's obnoxious attitude in dealing with them.

In addition to the above-referenced complaints, there was an incident that occurred in July, 1983, that involved an off-duty County employee attending a picnic in the park. As testified to by Officer Holtz, the employee had alcohol in a County vehicle and appeared to be intoxicated. There was some angry exchange of words and allegedly the County employee threatened to "knock me on my ass." The crux of this incident was that Officer Holtz did not forget it when it was over, but made efforts to file a complaint with the County against this employee. This greatly disturbed all of Holtz's superiors, including Ms. Shipley, and Holtz was warned that conduct of this type could endanger the status of park patrol officers and could lead to his release.

Ms. Shipley testified that she personally spoke to Officer Holtz regarding at least two of these incidents, that Sgt. Fraijo spoke to Holtz concerning others and that Lt. Jones questioned Holtz concerning the last of the incidents. Holtz, in substance, confirmed that he had been spoken to concerning some of these incidents, but not all. He stated that Ms. Shipley spoke to him once, that the conversation was general, but that Ms. Shipley did tell him that if he did not improve his demeanor and attitude it could result in his being released. Officer Holtz indicated that he was aware of a number of complaints filed against him by residents and patrons of the adjacent RV park and that Ms. Shipley did not like the complaints.

While each of the complaints against Officer Holtz may be overstated and not entirely justifiable, they are, in their totality, evidence that Holtz had a problem in attitude and in exercising restraint. After observing both Ms. Shipley and Mr. Holtz for the amount of time that I did, I am satisfied that Ms. Shipley honestly felt that Holtz was causing the Department embarrassment and that his excesses could not be corrected nor tolerated any longer.

I also was impressed that Holtz, while certainly proficient, was intent, persistent and dogmatic in carrying out his mission to the full extent of his charge. He failed to see any distinction between the spirit of his responsibilities and the letter of his authority. He failed to exercise tact and common sense, and failed to act with restraint. Undoubtedly, Officer Holtz always believed he was acting correctly in protecting Bonelli Park and the use of that park by its public patrons. However, it is also clear that what he viewed as proper protection, others, including Ms. Shipley, viewed as harassment and unwarranted excess.

I do not discredit Ms. Shipley personally in the Department's attempt to justify the release of Officer Holtz as merely a matter of replacing a recurrent employee with a permanent. I would credit Ms. Shipley that had she had no personal knowledge of Officer Holtz being the moving party to the grievance which resulted from the January 11, 1984

directive, and I also believe that even if she did have such knowledge, or draw a conclusion to this effect, it was not the reason why she decided to terminate Officer Holtz's services. The Department had attempted to release Officer Holtz in October, 1983, when some question arose as to his character background, and I believe from that point, or earlier, as testified to by Ms. Shipley, for reasons dealing with Officer Holtz's demeanor and attitude, that Officer Holtz was a marked man.

The evidence is that it was the complaints arising in January, 1984, that caused Officer Holtz's release, and there is insufficient evidence that the incident that caused his release was his promotion of a grievance.

FINDING OF FACTS

1. Kenneth Holtz was employed by the Department as a recurrent park patrol officer from October, 1982, through February 8, 1984.
2. The determination to release Officer Holtz was made on February 1, 1984, two days after the Department and the Association met to discuss an informal grievance filed against a directive that officers could no longer make traffic stops without permission of the watch commander.
3. The grievance was collective in nature and Officer Holtz's name arose only tangentially.

4. The decision to release was made by Olene Shipley, the Superintendant of Bonelli Park, where Officer Holtz was employed.
5. There is insufficient evidence to demonstrate that Ms. Shipley had knowledge of Officer Holtz's involvement in the grievance or, if she did have such knowledge or belief, that it materially influenced her in any manner.
6. Neither Department management in general, nor Ms. Shipley in particular had a history of threatening recurrent employees or otherwise attempting to chill their exercise of union rights.
7. Apart from his involvement in the January 12, 1984 grievance, Officer Holtz was not active with or on behalf of the Association.
8. During his employment with the Department, a number of complaints were raised against the attitude, conduct and demeanor of Officer Holtz, including two serious complaints that surfaced around January 11, 1984.

CONCLUSIONS OF LAW

1. There is sufficient evidence to conclude that Officer Holtz was released because of the complaints against him.
2. There is insufficient evidence to conclude that Officer Holtz was released because of his participation in an

informal grievance filed by the Association on or about January 12, 1984.

3. The Department did not release Officer Holtz to interfere with employee rights to file grievances or otherwise engage in union activities.
4. The Department did not release Officer Holtz in order to dominate or interfere with the Association in its administration or operation.

RECOMMENDATION

The duly designated Hearing Officer respectfully recommends to the Commission that the complaint of unfair labor practices be denied, and that the release of Officer Holtz be sustained.

Respectfully submitted,



Robert D. Steinberg
Hearing Officer

Dated: August 17, 1984
Culver City, California