LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

HEARING OFFICER REPORT

In the Matter of	)	
	)	
UNION OF AMERICAN PHYSICIANS AND DENTISTS	)	
	)	
Charging Party,	)	
	)	
v.	)	UFC 26-08
	)	
LOS ANGELES COUNTY SHERIFF'S DEPARTMENT	)	
	)	
Respondent.	)	
	)	

HEARING OFFICER
STEVEN L. HOUSTON, ESQ.

APPEARANCES

For the Union of American Physicians and Dentists:

LAWRENCE ROSENZWEIG, ESQ.
PROFESSIONAL CORPORATION

For the Los Angeles County Sheriff's Department:

LIEBERT CASSIDY WHITMORE
By
STEVEN M. BERLINER, ESQ.
And
MEREDITH G. KARASCH, ESQ.

INTRODUCTION

The instant unfair labor practice proceeding arises under the Los Angeles County Employee Relations Ordinance ("Ordinance" or "ERO") and the Rules and Regulations ("Rules") of the Los Angeles County Employee Relations Commission ("ERCOM" or "Commission"). Pursuant to the Ordinance and the applicable ERCOM Rules, the undersigned was appointed to serve as Hearing Officer.

A hearing was held in the Commission's offices on March 19, April 21 and 29, 2010. Both parties appeared and were afforded full opportunity to present relevant evidence, examine and cross-examine witnesses, and offer argument. A verbatim transcript of the proceedings was provided to the Hearing Officer for consideration in preparing this Report. Post-hearing briefs were filed with the Commission. The matter stands submitted with the Hearing Officer's receipt of these briefs.

THE UNFAIR PRACTICE CHARGE

The charge, filed November 10, 2008, by the Union of American Physicians and Dentists ("UAPD", "Union" or "Charging Party"), alleges that the Los Angeles County Sheriff's Department ("LASD", "Department" or "Respondent") violated the parties' Memorandum of Understanding ("MOU") by unilaterally eliminating the flex work schedules of bargaining unit physicians assigned to the Department's Medical Services Unit. It further alleges, in that regard, that Respondent violated both the ERO and the Meyers Milias-Brown Act ("MMBA" or "Act") by denying the

Union the opportunity to negotiate those matters. Respondent denies the charges against it and asserts numerous affirmative defenses.

ISSUE

The broad issue herein is did the Sheriff's Department commit an unfair labor practice in violation of Section 12(a)(3) of the Employee Relations Ordinance when it unilaterally eliminated physicians' flex work schedules? Determinative of this broad issue is the answer to the narrow issue, which is, did the UAPD waive its right to bargain on those issues by inaction?

BACKGROUND

Respondent's Medical Services Bureau ("Bureau") provides health care services for the inmates of its jails. At the time the instant charge was filed in November 2008, the Bureau cared for approximately 20,000 inmates, seeing perhaps a thousand new inmates in its temporary holding facility every night. New inmates must be processed, medically assessed and treated within twenty-four hours of their admission. The Bureau also oversees a 196-bed treatment facility and an urgent care center. Inmate medical care must be coordinated with a myriad of California and Federal laws and regulations. (Wilson Testimony, 3/1910, pp. 155-156, 159; see also Title 15, 22 and 24 of the California Code of Regulations and relevant Department of Justice guidelines.)

Prior to September 2008, a long-standing practice apparently existed whereby Bureau physicians scheduled their own work shifts through the Chief Physician. (UAPD Opening Statement, 3/19/10, pp. 12-13; Wallace Testimony, 3/19/10, 53-57.) In mid-2008, the Bureau's then

Chief Physician, Dr. Peck, passed away. Dr. Peck's death uncovered numerous scheduling problems, which threatened to detrimentally impact patient care. (Wilson Testimony, 3/19/10, pp. 160-163.) For example, the Bureau discovered that Dr. Peck had authorized so many vacations for August 2008, not enough physicians were available to service the Bureau's patients. (Responding Party ["R.P."] Ex. 1; Wilson Testimony, 3/19/10, pp. 160-161.) Moreover, the Bureau further discovered gaps in physician coverage, inefficient physician-patient deployment, and scheduled physician overtime that well-exceeded budgetary constraints. (Wilson Testimony, 3/19/10, pp. 163-164, 175-176.) As a consequence, the Bureau concluded it needed to completely revise the physicians' flex-work shift, vacation, continuing education and overtime schedules.[1] (Responding Party Exhibits ["R.P." Exs."] 14 and 18.)

To accomplish these goals, the Bureau met with the UAPD on July 24, 2008 to try and resolve the immediate August vacation issue. During this meeting, the Department also advised the Union that it intended to "revamp its entire MD scheduling system" beginning in September. It promised that details of the changes would be shared with the Union prior to implementation. (R.P. Ex. 2; Corvera Testimony, 3/19/10, pp. 126-129; Wilson Testimony, 3/19/10, pp. 165-166.)

Thereafter, Senior Deputy Coon, an experienced scheduler and the Bureau's operations deputy in charge of personnel, testified that he collaborated with the new Chief Physician, Dr. Campeau, to develop the current schedule. (Coon Testimony, 4/21/10, pp. 8, 18-19, 22-23.) The two men created a staff study that analyzed the posts that needed to be filled and how they could be utilized with the most efficient use of resources. Such a study is complex, influenced by the MOU, State and Federal regulations, *supra,* and must consider the characteristics of the inmate population, the institution and the health delivery system. (Wilson Testimony, 3/19/10, pp. 156-159; Coon

[1] Only the changes affecting the physicians' flex-working hours schedule are at issue here. The other changes, including the flex schedule dispute, were the subject of a grievance filed by Charging Party on October 17, 2008. (R.P. Ex. 12.)

Testimony, 4/21/10, pp. 10-12.) Individual physician staff members were also consulted by Dr. Campeau to obtain their input regarding how their particular specialties fit into the proposed schedules. (Wilson Testimony, 3/19/10, pp.180-181; Coon Testimony, 4/21/10, pp. 22-23.) Dr. Campeau and Deputy Coon then put together the matrices used to schedule necessary physician workflow and staff coverage. (Coon Testimony, 4/21/10, pg. 27.) This staffing study became the basis for the current schedules ultimately implemented on October 5, 2008. (Coon Testimony, 4/21/10, pp. 27-31.)

On September 11, 2008, the Department notified the UAPD in writing that it intended to eliminate the old 10 and 12-hour work schedules in favor of an 8-hour shift based on the new schedules developed by Dr. Campeau and Deputy Coon. The new schedules were to commence October 5, 2008. (R.P. Ex. 3.)

September 17, 2008, was calendared as a tentative date for the parties to meet and discuss the issues. Both UAPD and LASD representatives attended that meeting. The Department provided the Union with a "draft" of the new proposed schedules. (Corvera Testimony, 3/19/10, pp. 130-132.) UAPD representative Lux Irvin testified that he did not consider the meeting a negotiating session nor did he request any negotiations. (Irvin Testimony, 3/19/10, pp. 88-91, 95.)

At his request, the Department arranged a meeting for Mr. Irvin with his members at the Twin Towers Correctional Facility. (Corvera Testimony, 3/19/10, pp. 133-134.) The meeting was scheduled for September 30th. (R.P. Ex. 4.) In the meantime, on September 20th, the Bureau sent each physician a copy of the new proposed work schedules. (R.P. Ex. 6; Wilson Testimony, 3/19/10, pp. 182-183.) Thereafter, as previously arranged, Mr. Irvin met with his members on September 30th at the Twin Towers facility. (R.P. Exs. 7-9.) Asked if he discussed the schedule

changes with his members, Mr. Irvin testified, "...yes, because it was a hot, burning issue and the physicians were pissed off." (Irvin Testimony, 3/19/10, pp. 92-93.)

After his Twin Towers meeting, Mr. Irvin did not contact the Department about physician complaints, their impending schedule changes or request negotiations concerning those issues. (Corvera Testimony, 3/19/10, pg. 138.) The schedules then changed as announced on October 5, 2008. (Wilson Testimony, 3/19/10, pp. 182-183.)

Between September 11, 2008 and October 5, 2008, the UAPD did not request that the Department negotiate the physician work schedule changes or make any written counterproposals thereto. (Irvin Testimony, 3/19/10, pp. 89-91, 94-95, 112-115; Corvera Testimony, 3/19/10, pp. 132-133.) As Mr. Irvin succinctly put it: "I'm a seasoned rep and I know how the process works ... I filed a grievance instead... there was no need to meet and confer. It was clear to me that there was no discussion. There was nothing to talk about.... their minds were made up." (Irvin Testimony, 3/19/10, pp. 89 and 94.)

Later, in October 2008, prior to filing their unfair charge, the UAPD threatened to take a number of steps against the Department (R.P. Ex. 11.) It filed a Grievance General in Character ("GGIC") instead pursuant to the parties' MOU. (R.P. Ex. 12.) The GGIC contained complaints regarding flex work hours, vacations, holidays and mandatory overtime. The Union waived the "Level A" step, "since there has been so much discussion on these issues", and requested that the matter proceed to "Level B" for a meeting with the Chief Executive Officer ("CEO"). (R.P. Exs. 12 and 19.) The Level B meeting was held on October 29, 2008, and the CEO's representative

concluded that the Department had not violated the MOU. (R.P. Ex. 18.) Charging Party did not pursue the matter to arbitration. (R.P. Ex. 19; Corvera Testimony, 3/19/10, pp. 143-144.)[2]

Outside the GGIC process, Lieutenant Wilson testified that he continued to work into early 2009 with Dr. Wallace, the Interim Chief Physician, in an attempt to resolve the parties' scheduling concerns until Dr. Wallace abandoned the process. (R.P. Ex. 20.) Senior Deputy Coon thereafter worked with Dr. Pile in an attempt to create workable physician schedules, also to no avail. (R.P. Exs. 23-26.) UFC 26-08 was then set for hearing.

DISCUSSION

At the outset, a few preliminary observations are in order. It is not the Hearing Officer's function to determine if the Department's work schedule changes represent a better or more desirable system, only whether those changes give rise, under all the circumstances, to a duty under the ERO to bargain. In making that determination and in devising his findings and recommendations, the Hearing Officer may consider both state and federal precedents.

State courts and ERCOM have both acknowledged that federal precedents interpreting provisions of the National Labor Relations Act ("NLRA") parallel to those of the ERO may provide guidance and give enlightenment in interpreting the Ordinance.[3] Further, the California Public Employee Relations Board ("PERB") has also followed NLRB precedent in interpreting the various statutes that it administers and ERCOM may appropriately consider PERB decisions. The primary source for Hearing Officers, however, is prior Commission decisions, if any, that address the matters

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[2] A labor-management committee was created to work with the Chief Physician to develop individual physician schedules and guidelines. The degree of participation by the parties on the committee, however, is disputed. (R.P. Ex. 18.)

[3] See, for example, *Vallejo Fire Fighter's Union v. City of Vallejo (1974) 12 Cal. 3d 608, 116 Cal. Rptr. 507*; *Arburtha v. AFSCME, Local 119 (1981)* and UFC 70.16.

in dispute. These decisions, thus, provide an analytical template by which the Hearing Officer may consider and address the facts presented, the legal issues raised, and the parties' respective contentions.

Both parties agreed that the issue before the Hearing Officer is whether the LASD violated the ERO when it eliminated the physicians' 10 and 12-hour "flexible working hours" schedules. Specifically, the UAPD alleged that the Department unilaterally changed the physicians' entire "flexible working hours" schedules in blatant violation of the parties' MOU (Article 12, Section 6) and denied it the opportunity to negotiate before this "major" change was implemented. These actions, it claims, constitute an unfair labor practice under both the ERO[4] and the MMBA.[5]

Article 12 (Work Schedule) of the parties' MOU states in relevant part that nothing in that Article is a "guarantee" of a minimum number of work hours per day or per week or of days of work per week. Section 3 (Workday) thereof provides that 8 hours constitutes a regular workday for full time employees "unless" a flextime work schedule has been arranged pursuant to Section 6. Section 6 (Flexible Working Hours) specifies that "nothing herein shall preclude Management from establishing flextime work schedules (Ex. 4/10, 9/80)" and that "upon request", a unit member "may" be permitted a flextime schedule as "mutually agreed" upon by the employee and Management. (Charging Party ["C.P."] Ex. 2.)

It is clear on this record that on October 5, 2008, the LASD significantly changed the physicians' ability to self-schedule their flextime work hours (among other things). (R.P. Ex. 3; Wallace Testimony, 3/19/10, pp.54-55; 4/29/10, pp.18-19; Pile Testimony, 4/29/10, pp. 30-31; Wilson Testimony, 3/19/10, pp. 160-161, 165-166, 175-176.)

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[4] The Ordinance is codified at Chapter 5.04 of the Los Angeles County Code.
[5] Government Code Sections 3500, et. seq. All statutory references are to the Government Code.

The Hearing Officer, however, is not persuaded that the MOU language quoted here restricts the LASD's ability to make the flextime changes at issue. Indeed, when read in its totality, Article 12 clearly states that nothing contained therein is a "guarantee" of any particular work schedule(s) and that the flextime schedules described in Section 6 "may" be permitted only if both parties "mutually agree". The language used is thus permissive, not mandatory. It does not require or eliminate the possibility of flexible schedules. In Charging Party's own words: "Article 12, Section 6 of the MOU does not require the use of flexible scheduling. However, it allows for that option on an individual basis." (C.P. Brief, pp.3-4.) Further, the weight of the evidence also does not support the Union's assertion that the Department "took scheduling away from the physicians". Indeed, as previously discussed, Dr. Campeau and Deputy Coon specifically developed the current schedule, implemented October 5, 2008, as a collaborative effort.

Assuming *arguendo* that the Department did violate the parties' MOU, that violation alone does not necessarily support a claim that the LASD committed an unfair labor practice. In UFC 6.37, the Hearing Officer had previously been selected by the parties to act as arbitrator in a dispute arising out of the same factual background as the unfair charge. The arbitrator found that the department had violated the MOU but that, based on the same facts, its actions did not constitute a violation of the Ordinance. A unanimous Commission adopted the Hearing Officer's proposed findings and opined at pp. 3-4:

" The fact that a course of conduct may be found to violate a negotiated agreement does not alone support an allegation that an unfair practice has occurred; every contract violation is not necessarily an unfair employee relations practice. Similarly, an employee or a group of employees may have a legitimate grievance regarding denial of certain rights or benefits from an MOU, but

denial of those rights or benefits does not necessarily constitute a denial of rights guaranteed by the Employee Relations Ordinance."

The outcome of the Union's GGIC, had it been pursued to arbitration, is not before the Hearing Officer. (R.P. Ex. 12, 19.) Having concluded only that it does not appear the Department violated the parties' MOU but that, if it did, such violation does not necessarily constitute an unfair labor practice, attention now turns to whether the County's actions, nevertheless, violated the Ordinance.

The MMBA and the ERO are the basic laws governing County employer-employee relations. The clear language of the Ordinance provides that its provisions are not intended to conflict with the MMBA.[6]

Section 3505 of the MMBA requires the County or its designated agents to meet and confer in good faith with recognized employee organizations "promptly upon request ", and endeavor to reach agreement on matters within the scope of representation such as "wages, hours and other terms and conditions of employment ". Consistent with the MMBA, Section 12(a)(3) of the ERO specifies that it is an unfair practice for the County to refuse to negotiate with representatives of certified employee organizations on negotiable matters. Ordinance Section 6(b) defines negotiable matters to include "wages, hours, and other terms and conditions of employment".

The Commission has long considered changes to employee work schedules a mandatory subject of negotiations. (See UFC 9.6 [1975]; UFC 52.3 [1977] and UFC 02-08 [2009].) The duty to bargain these changes, however, arises only upon request. (MMBA Section 3505: "promptly upon request".)

Under the MMBA, if an employer wants to change a matter within the scope of bargaining, it must give the union notice of the change and sufficient time to meet and confer before

[6] ERO Section 16 (e); see also MMBA Section 3509 (d).

implementation of the proposed change. Once appropriate notice is given, the employer is not required to "invite" bargaining. (*Metropolitan Water District Supervisors' Association (2009) PERB Decision No. 2055-M.*) If the union wishes to negotiate, it has the burden to clearly communicate its request to the employer. (MMBA Section 3505; *El Centro School District (1996) PERB Decision No. 1154.*)[7] Mere "objections", "protests" or "concerns" about an employer's contemplated unilateral actions are not sufficient. (*Delano Joint Union High School District (1983) PERB Decision No. 30; Sylvan Union Elementary School District (1992) PERB Decision No. 919.)*

NLRB and court decisions have recognized that a union may waive its right to negotiate by inaction[8] on a particular subject after receipt of reasonable notice and opportunity to meet and confer if it makes no meaningful attempt to request negotiations. *(Stockton Police Officers' Assn. v. City of Stockton (1988) 206 Cal. App.3d 62, 66.)* The Commission reached the same conclusion in UFC 22.2 when it decided that the union had waived its right to negotiate new Civil Service Rules. In reaching this conclusion, the Commission observed, "absent a *fait accompli* the union…may waive its statutory right to bargain by virtue of its unreasonable delay or inaction." (UFC 22.2, pg. 4.)[9]

As the proponent of change, the LASD had the initial obligation to promote negotiations with the UAPD on flextime issues. It did this, as noted above, as early as July 24, 2008, when the Bureau met with the Union regarding the August vacation problems and notified the Union that it also intended to "revamp its entire MD scheduling system" in September. (See R.P. Ex. 2 and the Corvera -Wilson testimony, *supra*, pg. 4.) More importantly, on September 11, 2008, the Department advised the UAPD in writing of its intent to eliminate the physicians' old 10-12 hour work schedules and replace them with an 8-hour work shift on October 5, 2008.

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[7] In *El Centro School District, supra*, PERB found that a letter, which described the proposed change as an illegal violation of the bargaining agreement and threatened to sue, did not clearly communicate a request to bargain.
[8] See for example, *Columbia Enameling and Stamping Co. (1939) 306 U. S. 292 and U. S. Lingere Co. (1968) 170 NLRB No. 77.*
[9] See also UFC 80.1, UFC 6.213 and UFC 02-08.

After the Department's September 11th notice of the impending changes, both parties attended a September 17th meeting, arranged by Respondent, to discuss those matters. At that meeting, the LASD provided the Union with a "draft" of the new proposed schedules. (See R.P. Ex. 3; Corvera testimony, *supra*, pg. 5.) Thereafter, on September 20th, Respondent supplied each physician with a copy of his new work schedule. (See R.P. Ex. 6; Wilson testimony, *supra*, pg.6.) On September 30, 2008, Mr. Irvin met with his members at the Twin Towers regarding the proposed changes but did not correspond with the LASD thereafter about those changes even though his members were "pissed off". The schedules then changed as announced on October 5, 2008. (See R.P. Exs.7-9; Corvera-Wilson testimony, *supra,* pg. 6.)

The Hearing Officer is thus persuaded that the UAPD had clear notice by September 11, 2008, and perhaps as early as July 24th, that the Department intended to significantly alter its physicians' work schedules on October 5th. (R.P. Ex. 3.) The Union had ample time to demand that the Department meet and confer or request that it be given more time to do so. The evidence undisputedly shows, however, that the Union never made such a demand or request even though it had over three weeks advance notice of the impending changes.[10] (Irvin Testimony, 3/19/10, pp. 94-95.) Absent futility or *fait accomplit*, such failure constitutes a waiver by inaction of an employer's duty to bargain. (See, e.g. *Clarkwood Corp.*, 233 NLRB 1172 [1977]; *Gannett Rochester Newspapers*, 319 NLRB 215 [1995]. This rule applies despite the general reluctance of the NLRB (or ERCOM) to give broad effect to a waiver by inaction. (See *Peerless Publ'ns*, 231 NLRB 244 [1977].)

[10] The UAPD apparently did demand, on October 21, 2008, that the LASD meet and confer on the separate issue of 16-hour shifts, which is not before the Hearing Officer. To the extent that this demand may have related to the instant charge, it was not timely in that the changes herein were already implement as of October 5, 2008. (R.P. Ex. 14; Irvin Testimony, 3/19/10, pp. 113- 115.)

Mr. Irvin testified that he never demanded the LASD bargain because he determined, among other things, it would have been futile.[11] (Irvin-Corvera testimony, *supra*, pg. 6.) In light of this assertion, it must be determined whether the Charging Party was in fact confronted with a *fait accompi* or its demand to bargain would have been futile.

As previously noted, on September 11, 2008, the Department gave the UAPD clear notice, in no uncertain terms, that it "intend[ed] to eliminate" the physicians' old 10-12 hour work schedules and replace them with an 8-hour shift "to commence on Sunday, October 5, 2008." (R.P. Ex. 3.) In *Haddon Craftsmen*, 300 NLRB 789, 790 (1990), the Board rejected the argument that the "positive language" of the notice demonstrated that the employer unlawfully presented the union with a *fait accompli*, reasoning that it is not unlawful for an employer to present a proposed change in terms of a fully developed plan or to use positive language to describe it.

Here, while the LASD's proposal was presented in positive terms, there is no credible evidence it was presented on a take it or leave it basis. September 17th was reserved for the parties to meet and discuss the issues. They did. The Department provided the Union with a "draft" of its proposed changes. The Union never demanded that the LASD negotiate nor provide it with written counterproposals. (Irvin-Corvera testimony, *supra*, pg. 6.) It never requested any follow-up meetings. It did not ask for additional time to prepare for negotiations or demand that the LASD cease and desist until such negotiations could take place. (Coreva Testimony, 3/19/10, pp. 131-133.)

The only formal meeting prior to the October 5th changes occurred as a result of the Department's action. There is no evidence the UAPD communicated with Respondent about those changes after its September 30th meeting with its members, even though they were clearly unhappy. There is no evidence the LASD cancelled any meetings, refused to meet or unilaterally implemented

[11] " ... I filed a grievance instead...because there was no need to meet and confer. It was clear to me that there was no discussion. There was nothing to talk about.... their minds were made up." (Irvin Testimony, *supra*, at pg. 94.)

any relevant changes prior to October 5th. It further appears that the language of the parties' MOU[12] expressly permitted the changes in question. There is no independent evidence to support the Union's assertion that the Department's "mind was made up". There is likewise no evidence that the Department was intransigent or exhibited union animus to frustrate the bargaining process. Those contentions are pure speculation. It is also conjecture to assume that the LASD would have refused to bargain if requested to do so or that such a request would have been futile. Instead, the evidence shows only that the Department met and continued to work with the physicians well into March 2009 to try and create workable schedules. (R.P. Ex's 12, 20-27 and 32;Wilson Testimony, 3/19/10, pp. 186-190.)

The Union, as discussed, had at least three weeks notice to request negotiations. That was ample time to demand that the LASD meet and confer and bargain.[13] Mr. Irvin testified he is an experienced union agent. He knew how to make a timely and effective demand to trigger the Department's duty to bargain. For whatever reason, he chose not to. (Irvin Testimony, 3/19/10, pp.94-95.) The facts establish that the LASD gave the UAPD adequate notice of its intended changes and an opportunity to bargain.[14] Without a request, the Department had no duty to meet and confer. (MMBA Section 3505.) There is no evidence of such a request here. The totality of the evidence also does not support the Union's contention that it was somehow presented with a *fait accompli* or that a request to bargain would have been futile. The Hearing Officer therefore finds

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[12] The Union's argument that the County should have brought the issue of schedule changes to the bargaining table when renegotiating the parties' old MOU is not before the Hearing Officer. It is noted, however, that Mr. Irvin was involved in those negotiations and that the relevant language regarding Article 12 in the new agreement remains identical to the old contract. (C.P.Exs. 2 and 3; Irvin Testimony, 3/19/10, pg.82.)

[13] See *American Bus Lines, 164 NLRB 1055* [1 month advance notice] (1967); *YHA Inc. v. NLRB, 2 F. 3d* 168 [8 days advance notice] (6th Cir. 1993); *NLRB v. Oklahoma Fixture Co., 79 F.3d 1030 [*4 days advance notice] (10th Cir. 1996).

[14] The NLRB has upheld unilateral changes in working hours where employers have notified the unions of their proposed changes and the unions failed to make any reasonable attempts to bargain over the issue. (*K-Mart Corp., 242 NLRB 855 (1979), enforced, 626 F. 2d 704 (9th Cir. 1980.)*

that the Union waived its right through inaction to require the LASD to bargain over the work schedule changes at issue.

CONCLUSIONS

Having weighed and reviewed the evidence and the arguments proffered by the parties, the Hearing Officer finds and concludes that the record of the hearing in this matter does not demonstrate an unfair employee relations practice as defined in the Ordinance. Even though the Respondent unilaterally implemented changes affecting physicians' employee working conditions, it did not violate Section 12(a)(3) of the Ordinance. The Charging Party waived its right to negotiate those changes through its inaction. It is further concluded that the Respondent did not breach the parties' MOU by making the complained of changes, but that, if it did, such breach alone is not violative of the ERO.

PROOF OF SERVICE

I, Rose Henderson declare under penalty of perjury as follows:

On September 20, 2010, I personally served the HEARING OFFICER REPORT in the matter of UFC 26-08 by placing copies of the same with the appropriate persons in the Los Angeles County Hall of Administration Mail Room in sealed envelopes with postage prepaid addressed as follows:

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It is the practice of said mail room to place in the United States Mail such sealed envelopes the same day they are received in the mail room.

Rose Henderson