

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)	
)	
CALIFORNIA ASSOCIATION OF)	
PROFESSIONAL EMPLOYEES (CAPE))	
)	
Charging Party)	
)	
v.)	UFC 3.16
)	
DEPARTMENT OF PUBLIC WORKS)	
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DECISION AND ORDER

The charge in this case was filed by the California Association of Professional Employees (Charging Party) against the Los Angeles County Department of Public Works (County or Respondent) alleging that the County had violated Section 12(a)(1) of the Employee Relations Ordinance (Ordinance) by refusing to promote Brian Brooks to the position of Valuation Engineer II.

The charge was duly referred to Hearing Officer Leonard S. Kimmell, who held hearings on October 11 and November 1, 1989. The parties appeared and were afforded full opportunity to present relevant evidence, cross-examine witnesses and offer argument. Post-hearing briefs were filed. The Hearing Officer submitted his Report on March 30, 1990. Exceptions to this Report were filed by both the Charging Party and the Respondent.

The factual background in this matter is well developed in the Hearing Officer's Report. Hence, we shall merely set forth

in summary fashion the essential operative facts underlying the dispute.

Brian Brooks has been employed with the Department since 1966. In an apparent settlement reached in response to a grievance, Brooks was promoted in 1984 to the Valuation Engineer I position. According to Brooks, at this time he was promised a further promotion to the Valuation Engineer II position in two years.

For Fiscal Year 1988-89 the Department obtained funding for two Valuation Engineer II positions. By memorandum dated May 24, 1988, Division Engineer Richard Hoff requested that the Personnel Department schedule a departmental promotional examination for these two positions. The evidence was undisputed that Brooks was the sole employee qualified to participate in the examination. This request was thereafter placed on hold by Deputy Director Harry Stone. The stated reason for this action was Stone's policy against scheduling an examination when there is a limited pool of qualified applicants. To date, no examination has been conducted and the two Valuation Engineer II positions remain vacant.

Following appointment to the Valuation Engineer I position, Brooks became a Union Steward and in this capacity processed a number of grievances and engaged in a series of communications with management regarding perceived problems affecting employees in his work unit. In 1987 Brooks was elected Secretary

of the Union and assumed responsibility for publishing a periodic Union newsletter. Brooks also became a member of the Union Bargaining Committee and was involved in negotiations for a successor MOU commencing in the summer of 1987.

The Hearing Officer found that the County violated Section 12(a)(1) of the Ordinance by its refusal to schedule a promotional examination for the Valuation Engineer II position. Although the Hearing Officer did not expressly acknowledge the Wright Line standard previously adopted by this Commission to examine the relationship between protected activities and adverse employment actions, his analysis comports with the analytic framework developed in that case.¹

The Hearing Officer's findings that Brooks had engaged in extensive union activities; that such was known by Stone, the management official responsible for the postponement of the examination; that Brooks was qualified for the position, and that he had previously been promised such promotion serve to establish the Charging Party's prima facie case under Wright Line. The Hearing Officer then considered the County's proffered reason for not scheduling the examination and in essence found that such was pretextual as examinations had been conducted in the Department with an applicant pool as limited as that herein.

¹Wright Line, A Division of Wright Line, Inc. (1980) 105 LRRM 1169.

The County in its Exceptions, inter alia, takes issue with the Hearing Officer's finding imputing knowledge of Brooks' union activities to Stone. Although such knowledge was denied by Stone, the Hearing Officer elected not to credit his testimony in this regard. This specific finding was based on both credibility resolutions and inferences drawn by the Hearing Officer from the record as a whole. As such credibility determinations are entitled to substantial deference and as we found support in the record for this finding, the County's Exception thereto is overruled. We also reject for the reasons stated in the Hearing Officer's Report those Exceptions which reflect a restatement of the County's contentions initially placed before the Hearing Officer. We therefore adopt the Hearing Officer's underlying findings and his conclusion that the County discriminated against Brooks for his union activities in refusing to schedule the Valuation Engineer II examination in violation of Section (12)(a)(1) of the Ordinance.

The instant dispute, particularly with respect to consideration of an appropriate remedy, implicates the oft-raised issue of the respective jurisdictions of this Commission and the Civil Service Commission. Although we have considered the County's contention that it is the Civil Service Commission which has exclusive jurisdiction in this matter, we concur with the Hearing Officer that our jurisdiction overlaps with that of the Civil Service Commission and that the Charging Party is not barred from

seeking a remedy before this Commission. Our conclusion in such regard is based on a reading of Sections 7(g)(5) and 12(e) of the Ordinance and prior decisions of this Commission wherein jurisdiction was asserted over a discharge of a permanent County employee,² a refusal to promote a qualified employee,³ and a demotion of a permanent County employee.⁴

Notwithstanding the Hearing Officer's above-noted conclusion regarding this Commission's jurisdiction, he did not recommend the full relief which the Charging Party asserted was required to remedy the County's prohibited conduct. For the reasons set forth below, we reject the limitations on our remedial authority implicitly imposed in the Hearing Officer's recommended remedy.

Relief fashioned under the Ordinance has as one purpose the restoration of the positions in which the parties would have been but for the prohibited conduct. In this regard, neither Section 7(g)(5) nor 12(e) of the Ordinance imposes any express restrictions on the Commission's authority to direct the County to take appropriate action when it has been determined that the Ordinance was violated.

²Joint Council of LACEA, Local 660, SEIU and LACEU, Local 434, SEIU v. Museum of Natural History (1981) UFC 56.6

³LACEA, Local 660, SEIU v. Data Processing Department (1987) UFC 6.152.

⁴American Federation of State, County and Municipal Employees (AFSCME), Local 119 v. Department of Facilities Management (1990) UFC 1.83.

The Commission acknowledges the authority and discretion vested in County management to determine if and when a vacant position will be filled and the manner in which such position will be filled within the confines of the relevant Civil Service Rules. This discretion, however, does not serve to insulate the County from the reach of this Commission's remedial authority when the proven basis for the County's refusal to effect an employment action of potential benefit to an employee is conduct proscribed by the Ordinance.

Here, the evidence was conclusive that until the process was stalled by Stone in July 1988, the County was inexorably moving to promote Brooks, the sole qualified employee at that time, to a vacant and funded Valuation Engineer II position. As it has been concluded that Stone's action in this regard was taken for reasons prohibited by the Ordinance, it is both warranted and within our Ordinance conferred authority to direct the County to implement the necessary procedures to fill one of these vacant positions. Any limitations placed on the Commission's remedial power in such regard would render our delegated authority to remedy proven unfair employee relations practices a nullity and tend to chill employees similarly situated to Brooks from exercising their rights recognized in the Ordinance.

As the jurisdiction of the Civil Service Commission overlaps with ours in disputes involving promotions, it is incumbent on this Commission to attempt to harmonize the Ordinance

procedures with any relevant statutory provisions and Civil Service Rules which govern promotions within the classified Civil Service. A careful reading of Sections 30 and 35 of the Los Angeles County Charter in concert with Civil Service Rules 6, 7, 10, and 11 discloses that as a condition precedent to promotion, an examination must be administered and an eligible list promulgated. As such, Charging Party's requested remedy of a Commission order directing that Brooks, absent an examination, be promoted retroactive to the fall of 1988 is overbroad and in conflict with the pertinent provisions of the County Charter and the Civil Service Rules. We are of the opinion, however, that the order set forth below both avoids such conflict and provides Brooks with the full relief to which he is entitled under the County Civil Service system. Further, this order recognizes Brooks' status as the sole employee qualified for the Valuation Engineer II position at the time the Ordinance violation took place.

O R D E R

IT IS HEREBY ORDERED that charge UFC 3.16 is sustained. The County is therefore directed to cease and desist from interfering with Brooks' exercise of his Ordinance protected rights. To remedy its Ordinance violation, the County is further directed to take the following affirmative action:

- 1) Forthwith schedule and conduct an examination for the vacant and funded Valuation Engineer II position. Admission to this examination is to be limited to those individuals qualified to

participate in the examination as of August 1, 1988.

2) Submit a written report to this Commission regarding the content of the examination and the results of the examination as to whether Brooks was found to be either qualified or unqualified for the Valuation Engineer II position. If found unqualified, the report is to include the reasons therefor.

3) If qualified, immediately promote Brooks to the Valuation Engineer II position retroactive to the date on which the Department secured funding for the position with back pay in an amount equal to the differential between the Valuation Engineer I and Valuation Engineer II positions for all hours worked subsequent to the effective date of promotion.

4) Post, in the Division in which Brooks is employed, a copy of this decision and order for a period of not less than thirty (30) days.

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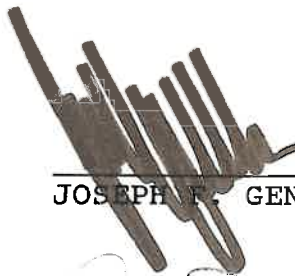
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The Commission will retain jurisdiction in this dispute until all matters of compliance are resolved.


DATED at Los Angeles, California, this 24th day of August, 1990.



JOSEPH P. GENTILE, Chairman



PAUL K. DOYLE, Commissioner



ROBERT D. STEINBERG, Commissioner