LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

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| In the Matter of the Unfair Employee Relations Charge<br><br>between the<br><br>CALIFORNIA ASSOCIATION OF PROFESSIONAL EMPLOYEES (CAPE), CHARGING PARTY<br><br>and the<br><br>REGIONAL PLANNING DEPARTMENT, COUNTY OF LOS ANGELES, RESPONDENT | U.F.C. 3.6<br><br>REPORT OF HEARING OFFICER |

Hearing Officer
Philip Tamoush
2907 Oakwood Lane
Torrance, California 90505

| Hearing Held | Record Closed | Report Issued |
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| November 15, 1982<br>Los Angeles, California | December 17, 1982 | January 13, 1983 |

Appearances:

For the Charging Party: Blaine J. Meek
1910 West Sunset Boulevard
Suite 825
Los Angeles, California 90026

For the Respondent: Donna Hill
Office of Chief Administrative Officer
526 Hall of Administration
Los Angeles, California 90012

## BACKGROUND

On August 20, 1982, the Association filed an unfair employee relations charge against the Respondent, alleging a violation of Section 12(a)(1) of the Employee Relations Ordinance of the County of Los Angeles. The Employee Relations Commission set the matter for hearing before the undersigned. The hearing on the matter was held on November 15, 1982.

## ISSUE

As indicated in the charging documents and the post hearing briefs of the parties, the issue essentially is whether the Regional Planning Department and its Director interfered with and restrained employees of the Department in the lawful exercise of their rights in violation of Section 12(a)(1) of the Employee Relations Ordinance by his conduct in meeting directly with employees represented by the California Association of Professional Employees prior to formal consultation with the Charging Party over the matter of the employees' layoffs.

## RELEVANT PROVISIONS OF THE ORDINANCE

"Section 3. DEFINITIONS

(d) "Consult" or "Confer" means to communicate verbally or in writing for the purpose of presenting and obtaining views or advising of intended actions.

Section 4. EMPLOYEE RIGHTS

Employees of the County shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations. Employees of the County also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the County. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights.

Section 6. SCOPE OF CONSULTATION AND NEGOTIATION

(a) All matters affecting employee relations, including those that are not subject to negotiations, are subject to consultation between management representatives and the duly authorized representatives of affected employee organizations. Every reasonable effort shall be made to have such consultation prior to effecting basic changes in any rule or procedure affecting employee relations.

Section 12. UNFAIR EMPLOYEE RELATIONS PRACTICES

(a) It shall be an unfair employee relations practice for the County:

(1) To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Ordinance;"

## STIPULATION OF FACTS

The parties entered into the following Stipulation of Facts (Joint Exhibit-1):

"1. On Wednesday, July 21, 1982, Mr. Blaine Meek, Counsel for the California Association of Professional Employees was orally informed by Ms. Donna Hill, representing the Regional Planning Department, that the Department was planning a reduction in its work force which affected the classifications contained in a unit in which CAPE is currently the certified bargaining representative. The parties agreed to meet on Friday, July 30, 1982, at which time the Department would present its work force reduction plan for CAPE's review and discussion.

2. Subsequently, Mr. Norman Murdoch, Planning Director, called a meeting in his office for Tuesday, July 27, 1982, at 9:00 a.m., of the employees who are in the classification of Land Division Specialist regarding the Department's planned lay-offs. The classification of Land Division Specialist is in a unit in which CAPE is the certified majority representative.

3. On Friday, July 30, 1982, representatives of the Department and CAPE met at the offices of the Regional Planning Department. At this meeting, the Department presented its proposed work force reduction plan." (Stipulation of Facts of Blaine J. Meek and Donna Hill, November 15, 1982)

## STATEMENT OF FACTS

Further evidentiary facts in this matter are generally not in dispute and are described below in chronological

order as they relate to the actions of the parties relative to the planned layoffs of certain employees of the Regional Planning Department:

1. During the Spring of 1982, in preparing its budget, the Department had been considering various plans for employee reduction and/or layoffs.
2. On or about July 13, in a meeting between Larry Dolson, General Manager of the Union and Fred Jackson, Administrative Deputy of the Department, the general subject of layoffs, among other personnel matters, was discussed.
3. On July 9, 1982, the Department submitted a "Work Force Reduction" plan to the Chief Administrative Officer (incorporated in Joint Exhibit-2). That plan proposed the layoff of four Land Division Specialists due to budgetary curtailments.
4. On July 15, 1982, the Chief Administrative Officer submitted the approved departmental budget implementations plan to each member of the Board of Supervisors indicating that the proposed permanent layoffs of the Land Division Specialists had been approved (Joint Exhibit-2).
5. At its meeting of July 20, 1982, the Board of Supervisors took action requiring consultation with employee organizations as follows:

"...the Board instructed the Chief Administrative Officer/Director of Personnel, and each affected Department and District Head to consult with appropriate employee bargaining units prior to the promulgation of layoff or reduction notices.

The Board directed that permanent employees who face layoffs or reductions must be given at least two weeks notice of the scheduled action. Further, the Board directed that every reasonable effort be made to find alternatives which might reduce or eliminate the need for layoffs or reductions. Also the Chief Administrative Officer was instructed to report on impact of layoffs on Affirmative Action Program." (County Exhibit-2)

Apparently, the above action resulted from employee organization concerns expressed at the July 20 Board meeting.

6. On July 21, 1982, the County contacted the Union to consult with it pursuant to the Board Order. The parties agreed to meet on Friday, July 30, 1982, "at which time the Department would present its work force reduction plan for CAPE's review and discussion" (Stipulation of Facts No. 1 above).

7. On July 27, 1982, the Planning Director met with the employees scheduled to be laid off (Stipulation of Facts No. 2 above). The purpose of the meeting was both to inform the employees formally of their pending layoffs and inform them generally of benefits available, et cetera.

8. On July 28, 1982, the Planning Director mailed, by registered mail, formal notice to each affected Land Division

Specialist of his layoff, effective August 13, 1982. The notice itself was dated July 28.

9. On July 30, 1982, representatives of the Department and CAPE met (Stipulation of Facts No. 3 above).

## CONTENTIONS OF THE PARTIES

### Contentions of Charging Party

The Charging Party contends that:

1. By its conduct of meeting directly with the employees on July 27, the Respondent has undermined the Union as the representative of the affected employees, interfering with their rights under the Employee Relations Ordinance.
2. The Respondent, after contacting the Charging Party and setting up the July 30 meeting, did not further communicate formally with CAPE regarding the July 27 meeting between the Regional Planning Director and the affected employees nor of the July 28 layoff letters (or of the posting of a layoff list).

As a result of the above actions, the Union was unable to effectively consult with management prior to final action as required by the Board Order. Meeting with the employees

directly undermined the representation status of CAPE. Failure to comply with the Board Order resulted in an inability of the Union to be aware of the details of the layoffs and to bring forth information and views.

The Union seeks a remedy providing that the Employee Relations Commission order the Respondent to cease and desist from taking this type of action in the future.

Contentions of the Respondent

The Respondent contends that:

1. The Union was unavailable to meet prior to July 30, 1982, due to the unavailability of both its General Manager and Legal Counsel.
2. As a matter of good administrative practice, the impacted employees had a right to know of their impending layoff as soon as possible rather than waiting until after the July 30 meeting with the Union.
3. Layoff notices were required to be mailed on or before July 29 in order to meet the two week notice requirement in the Board Order and still implement the layoffs by August 13, the planned effective date.
4. None of the employees at the July 28 meeting with the Planning Director requested representation.

5. It was incumbent upon the Charging Party to recognize the necessity to meet with management as soon as possible when the matter was discussed on July 21.
6. There was no intent to affect negatively the Union's representation status by meeting with the employees on July 27. Rather, the purpose of the meeting was to provide employees with as much information as early as possible.

In conclusion, the Respondent contends that no bad faith or anti-Union motivation was intended by the scheduling of the meetings. The charge should be dismissed.

## DISCUSSION

The Employee Relations Ordinance establishes a unique "consultation" requirement which is at the heart of this dispute. That the Respondent had the unilateral right to effectuate the layoffs is not challenged by the Charging Party. Rather, the issue is whether or not the actions of the parties, especially that of the Regional Planning Department and the Chief Administrative Officer relative to the timing of the actions and meetings, failed to consider the representation rights of the Union and thus affected employee rights directly and negatively. The standard to be applied is not so much the "intent" of the

County in evidencing bad faith in its dealings with the employees and the Union, but rather its outward or "totality of conduct" (the "totality of conduct" doctrine, generally, stems from NLRB v. Virginia Electric & Power Company, 314 US 469, 9 LRRM 405 (1941). See also NLRB v. Katz, 369 US 736, 50 LRRM 2177 (1962). While all of these cases generally deal with the issue of good faith and bad faith in the direct bargaining obligation, they are instructive in creating an understanding of the "totality of conduct" approach to an evaluation of parties' actions in the more general labor relations context applied here). The totality of circumstances surrounding the events precipitating the filing of the unfair employee relations practice charge is especially important here. Thus, any analysis must include consideration of the "consult" obligations as well as the direct meeting with the employees themselves.

Analysis

1. Was consultation required?

   Yes. The County does not contend that it had no consultation obligation and the Board of Supervisors Order clearly and unequivocally reflects a top management decision which intensified the requirement. Similarly, Section 6(a) of the

Employee Relations Ordinance permits consultation as a general rule.

2. Was the consultation timely?

No. The Board Order is clear and unequivocal in requiring departmental consultation "prior to the promulgation of layoff or reduction notices". The consultation occurred on July 30, 1982, several days after meetings were held with the individual employees affected and notices distributed.

3. Was there "bad faith" on the part of the County in establishing the meetings in question?

No. While there may have been a sense of urgency on the part of the County to implement the layoffs in a budgetarily timely manner and to conform to the two week notice rule, there is no evidence that the County intended to bypass the Union. However, as indicated above, "bad faith" is not the most significant criterion in evaluating whether or not individual employee rights have been abrogated, but rather the "totality of conduct" or behavior must be viewed in light of the actions taken. Here, it appears that the two meetings in question, that of July 27 with the individual employees and of July 30 with the Union, were established independent of one another and while both may have been for

the best of motives, they still could have had the effect of undermining the effectiveness and usefulness of Union representation.

4. Was the Union undermined in exercising its representation rights, thus, "interfering, restraining or coercing employees" in the exercise of their rights?

Yes. The Union apparently was not informed of the intent of the County to go ahead with individual employee meetings, layoff notices, et cetera, prior to July 30. If the Union had known of the Order of the Board of Supervisors of July 20, it would have reasonably assumed that layoff notices and actions would occur after its consultation on July 30. The definition of consult as indicated both in the Ordinance and in the general discussion surrounding this case, deals with the potential for "problem solving" through the receiving and giving of views regarding the intended actions of the County. Had the required consultation occurred prior to July 27 or if the County had deferred its layoff actions until after July 30, the Union would have at least had the opportunity to be fully aware of the impact of County action on its represented employees and could have offered its reaction, views, et cetera, in a timely manner. The timing of the

meetings precluded the employees from having the benefit of such consultation and the Union from exercising its obligations.

While the County's representative indicated that no anti-Union motivation or bad faith was intended by its actions in scheduling the July 27 and 30 meetings, acceptance of that position does not change the potential for violation of employee rights. The consultation requirement is a minimal action not as important perhaps as negotiations itself. However, and perhaps for that reason, Respondent should have more clearly and unequivocally established the proper sequence of meetings consistent with the Board Order and employees' representation rights.

## CONCLUSION

After reviewing the evidence and arguments of the parties, the Hearing Officer concludes that the County violated employee rights as defined in Section 12(a)(1) of the Employee Relations Ordinance when it met directly with employees scheduled to be laid off prior to consulting with the Union in a timely manner as required by the Order of the Board of Supervisors.

## RECOMMENDATION

The Hearing Officer recommends that the Employee Relations Commission approve and adopt the following order:

> "The County violated the Employee Relations Ordinance by meeting directly with employees scheduled to be laid off without prior consultation with the Union. The County is hereby ordered to cease and desist from taking similar actions in the future under similar circumstances until prior consultation with the Union has occurred."

Respectfully submitted,

Philip Tamoush
Hearing Officer

Torrance, California
January 13, 1983

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BEFORE THE EMPLOYEE RELATIONS COMMISSION
COUNTY OF LOS ANGELES

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| In the Matter of Unfair Charge of California Association of Professional Employees,<br><br>Petitioner,<br><br>VS.<br><br>County of Los Angeles Regional Planning Department<br><br>Respondents | UFC 3.6<br>RESPONDENT'S REBUTTAL POST HEARING BRIEF |

## ARGUMENT

Petitioner's Post-Hearing Brief cites cases (C and C Plywood Corporation, 163 NLRB 1022 (1967), Medo Photo Supply Corporation vs. NLRB 321 US 678) in support of its contention that the meeting of Respondent Norman Murdoch on July 27, 1982, with employees scheduled for layoff effective August 13, 1982, caused injury to CAPE's status as a certified bargaining representative.

The aforementioned cases involve an employer bypassing a Union on matters that are negotiable. In the instance case, the subject of layoff is clearly negotiable and was in fact negotiated with County Coalition of Unions of which Petitioner is a member. The relevant negotiated Civil Service Rule (19) on Layoffs sets forth the procedure for reduction and layoff of employees when necessary. Specifically, Rule 19 delineates the basis for layoff, order of reduction and/or layoff for represented and nonrepresented employees, and exceptions to the order of layoff.

All that was required in this case was to consult with Petitioner on the specific names of individuals and order of layoff of employees. The Employee Relations Ordinance of Los Angeles County, Section 6, Scope of Consultation and Negotiation provides that:

"(a) all matters affecting employee relations, including those that are not subject to negotiations, are subject to consultation between management representatives and the duly authorized representative of affected employee organization. Every reasonable effort shall be made to have such consultation prior to effecting basic changes in any rule or procedure affecting employee relations." (Emphasis added)

The Employee Relations Ordinance indicates that consultation should occur prior to any change however, the Ordinance does not mandate that the consultation occur prior to the change. An effort was made to consult with Petitioner as soon as the Workforce Reduction Plan was approved by the Board of Supervisors. A meeting prior to the Board's final approval would have pointless as the Respondent would have been placed in a position of speculating as to which employees if any, were to be subject to layoff. This position is supported by the testimony of Mr. Jackson who stated that the Board provided additional funding on July 6, which certainly altered the course of the Workforce Reduction Plan and minimized impact on other employees.

Petitioner alleges injury to its status as a bargaining agent as result of Respondent's July 27, 1982, meeting

but did not provide witness(es) or other evidence in support of its allegation. Respondent contends that Petitioner's case is based solely on unsupported allegations. Mere allegations unsupported by corraborative evidence is not proof of an unfair labor practice charge under the Employee Relations Ordinance and should be given no weight by the Hearing Officer.

Petitioner also contents that Respondent failed to indicate to Petitioner during the July 21 telephone call that the July 30 meeting was untimely (Petitioner's Brief, Page 15, lines 12-14). Respondent maintains that Petitioner was advised of the urgency of the matter but Petitioner remained unavailable until July 30. Respondent's position is supported by the testimony of Mr. Dolson who stated that he and Mr. Meek were in mileage fact-finding and Mr. Dolson was on vacation the following week of July 26 which left one (1) CAPE representative to provide representation services to the entire CAPE membership of Los Angeles County during that week.

Respondent concludes that there is no basis in fact for Petitioner's unfair charge. Further, Petitioner has failed to carry the burden of proof in this case and therefore Respondent requests that Unfair Charge 3.6 be dismissed.

Dated: December 15, 1982 Donna Hill

DONNA HILL
Senior Administrative Analyst
County of Los Angeles