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LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION

HEARING OFFICER REPORT

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EMPLOYEE RELATIONS  
COMMISSION

DEC 01 2009

In the Matter of	)	
	)	
ASSOCIATION OF LOS ANGELES	)	
DEPUTY SHERIFFS (ALADS)	)	
	)	
Charging Party,	)	UFC 30-06
	)	
and	)	
	)	
LOS ANGELES COUNTY SHERIFF'S	)	
DEPARTMENT	)	
	)	
Respondent.	)	

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HEARING OFFICER

Sara Adler

APPEARANCES

For the Charging Party:	Bonnie Lane & Helen Schwab Green & Shinee
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For the Respondent:	Meredith Karasch Liebert Cassidy Whitmore
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## **INTRODUCTION**

The instant unfair employee relations practice charge proceeding arises under the Los Angeles County Employee Relations Ordinance ("Ordinance") 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, Sara Adler was appointed to serve as Hearing Officer.

A hearing was held in the Commission's offices on April 14 & 28 and June 24, 2009. Both parties appeared and were afforded full opportunity to present relevant evidence, examine and cross-examine witnesses, and offer argument. At the conclusion of the hearing, the parties agreed to submit briefs in support of their respective positions. A verbatim transcript of the proceedings was provided to the Hearing Officer for consideration in preparing this Report.

## **THE UFC CHARGE**

The charge as filed on October 19, 2006 alleges that the County of Los Angeles ("Respondent" or "County") violated Section 12 A(3) of the Los Angeles County Employee Relations Ordinance. Specifically, the charge alleges that the County "unilaterally implemented a rule which eliminated the negotiated 4/10 work schedule...at the

Pitchess Detention Center North Facility (PDCN) and replaced it with a 5/8...work schedule." As a remedy, the Charging Party (ALADS) requests that ERCOM order PDCN return its affected members in Unit 611 to the former alternate work schedules.

#### **BACKGROUND**

In the Fall of 2005 PDCN was experiencing staffing shortages and anticipated those becoming worse as more units were opened. By letter dated September 6, 2005 the County notified ALADS that it needed to make scheduling changes at PDCN and that one change would be to eliminate some compressed work schedules and institute 5/2<sup>1</sup> schedules instead. The parties discussed the available ways to meet staffing needs at PDCN and the County determined that what it defined as a staffing "crisis" could be handled through the use of additional overtime and told ALADS that alternative schedules (mostly 4 days on and 3 off) would be retained.

Over the next months the workload at PDCN continued to grow much faster than the staffing levels. In July, 2006 over half the bargaining unit members were working 4/3 schedules although others were, and apparently always had been, on different alternate schedules or were on a

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<sup>1</sup> 5/2 and 5/8 are the same — each is a representation of 5 days of 8 hour shifts per week.

standard 5/2 schedule<sup>2</sup>. By letter dated July 6, 2006, the County notified ALADS that it proposed to eliminate all 4/3 schedules in favor of 5/2 schedules and that the change was planned for August 2, 2006. By letter dated July 13, 2006 ALADS demanded to meet and confer over the proposed changes. A meet and confer session was scheduled for August 23, 2006. On August 2, 2006 the County imposed a 5/2 schedule for most<sup>3</sup> of the unit members who were working a 4/3 schedule. The Union then cancelled the meet and confer session on this issue.

#### **SUMMARY OF POSITIONS**

ALADS argues that hours of work are a negotiable subject and that the County was obligated to meet and confer with it prior to the implementation of the changes from 4/3 to 5/2 work schedules. The County's unilateral implementation of the schedule changes prior to the meet and confer session constituted an unfair labor practice and rendered the scheduled meet and confer session meaningless. The appropriate remedy is to reinstate all 4/3 schedules which were in place on August 1, 2006.

The County argues that there was neither a negotiated agreement nor a recognized past practice regarding the 4/3

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<sup>2</sup> The differences appear to have related to differing assignments.

<sup>3</sup> A few assignments continued to have a 4/3 schedule.

schedules and that it was not obligated to negotiate any changes. Even if it was subject to a duty to meet and confer, the Union failed in its obligation to do so within a reasonable time by not scheduling a meet and confer session prior to the designated implementation date. Finally, the County argues that even if it had a duty to meet and confer in normal circumstances, this was an emergency during which it had the contractual right to unilaterally change schedules for the duration of the emergency. As the staffing level has increased at PDCN, some deputies have been returned to 4/3 schedules. As to the appropriate remedy, if there is to be one, there has been close to a 100% turn-over of staff at PDCN and it's not clear the current deputies want to work a 4/3 schedule as they have always worked a 5/2 schedule.

#### **FINDINGS AND CONCLUSIONS**

There appears to be no dispute that working hours are a proper subject of bargaining, but the County disputes that there was either a written agreement or a past practice of compressed work schedules. Although there is no written document in evidence, Deputy Louis Brookhout testified that he began working at PDCN in 1996 on a 4/3 schedule. Captain Ray Leyva (Leyva), Unit Commander at PDCN, testified that 4/3 schedules were common when he

began at PDCN in 2004. The availability of a 4/3 schedule had been continuous for long enough to reasonably be found to have been a past practice. It is irrelevant to the finding of a past practice that there were some assignments which had never been on a 4/3 schedule or that some assignments retained a 4/3 schedule after the August 2, 2006 implementation of a 5/2 schedule for most of those who had been working an assignment with a 4/3 schedule. The County had a duty to meet and confer over the proposed change.

ALADS promptly demanded a meet and confer over the proposed change and the parties agreed upon a date some three weeks after the proposed implementation date. The County offered no evidence that the situation would change in any way if the implementation date was deferred to allow for the scheduled meet and confer to occur. It also does not offer any persuasive evidence that the admittedly real staffing shortage was an "emergency" of the type contemplated by the parties' MOU. Leyva had been notifying ALADS of a staffing "crisis" and his "Critical needs" in regards to staffing since September, 2005. There is no evidence that the situation would change with a 3 or 4 week delay in implementation.

The parties had a lot going on between them at the time and the County agreed to the August 23, 2006 date for a meet and confer. The County offers no persuasive grounds for finding that ALADS failed in its obligation to meet and confer in good faith by the scheduling of the meet and confer 3 weeks after the proposed date of implementation. The County violated Section 12 A(3) when it unilaterally implemented the schedule change on August 2, 2006. It is irrelevant to the County's commission of an unfair labor practice that ALADS cancelled the meet and confer after implementation of the schedule change.

The last issue is an appropriate remedy. The customary remedy is to return the parties to the *status quo ante*. The County argues that such a change may not please the current workforce which has never been afforded a 4/3 schedule. This may be a real issue, although there's no evidence of what the workforces wants, but it's an issue for ALADS to work out with its members prior to any rescheduled meet and confer on this issue.

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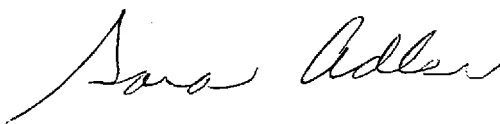
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### RECOMMENDATION

The duly appointed Hearing Officer recommends that the Employee Relations Commission adopt the following order:

1. The Respondent, Los Angeles County Sheriff's Department violated Section 12 A(3) of the Employee Relations Ordinance when it unilaterally implemented a shift change to a 5/2 schedule for those bargaining unit employees working a 4/3 schedule at Pitchess Detention Center-North on August 2, 2006.
2. The County is ordered to return those assignments which had a 4/3 schedule on August 1, 2006 to a 4/3 schedule.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sara Adler".

Sara Adler, Hearing Officer