

RECEIVED  
EMPLOYEE RELATIONS  
COMMISSION

///

## II. APPEARANCES

### For the Charging Party:

Lester G. Ostrov, Esq.  
Fogel, Rothschild, Feldman  
& Ostrov  
5900 Wilshire Blvd., Ste. 2600  
Los Angeles, CA 90036

### For the Respondent:

Kenneth Miller  
Office of Chief  
Administrative Officer  
Employee Relations  
526 Hall of Administration  
Los Angeles, CA 90036

## III. ISSUES

1. In processing grievances filed by Fire Captain John Galiher on or about June 20, 1986 and/or October 25, 1986, has the Department engaged in practices such as would constitute a violation of Ordinance Section 12(a)(3)?
2. Following the filing of either or both of the above referenced grievances, subsequently docketed by the Commission for arbitration as ARB 157-85 and ARB 13-86, respectively, did the Department engage in activities such as would constitute a violation of Ordinance Section 12(a)(1)?

## IV. RELEVANT PROVISIONS OF THE ORDINANCE AND THE MEMORANDUM OF UNDERSTANDING (MOU)

### Ordinance 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;
  - (2) ...
  - (3) To refuse to negotiate with representatives of certified employee organizations on negotiable matters.

### Ordinance 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.

Los Angeles County Fire Fighters Union Local 1014 M.O.U. (CP Ex. 3)

## Article 16 Grievance Procedure, Section 5. Formal Procedure

.  
.  
.

The Fire Chief or his designated representative shall meet with the employee at the earliest possible date, evaluate the grievance and afterward determine a course of action.

.  
.

V. FACTS OF CASE

On May 19, 1985, the Department's crew assigned to Station 69 in Topanga Canyon were involved in a rescue attempt. A car had gone off the road down an embankment. The crew, consisting of Fire Captain Jon Galiher, Firefighter Specialist-Paramedic Tom Norton, Firefighter Shermin Owens, and Firefighter Shawn Corbeil, reached the victim who had been thrown out of the car and suffered severe injuries. They provided CPR and mouth-to-mouth resuscitation but the victim died. All members of the crew had suffered cuts and scrapes in their efforts to get to the victim and in their rescue attempts had contact with the victim's blood, and in one case with the victim's saliva. The crew later returned to their station and that same day learned that the victim had been infected with both hepatitis-B and AIDS. Captain Galiher, out of concern for his men and also for others, notified his superiors and took his station out of service. He then began his efforts to learn about AIDS and any pertinent Departmental policies in order to assist his crew and address their concerns. During the period following the incident the members of the crew were involved in efforts to clarify issues regarding Departmental policies, such as those relating to use of mouth-to-mouth resuscitation, and also questions about AIDS. (Tr.Vol.2:109)(Tr.Vol.1:57-66). The crew's concerns were further exacerbated by statements from Departmental officers regarding the proper use of mouth-to-mouth resuscitation and the possibility that certain actions undertaken by Captain Galiher might have been irresponsible. (Tr.Vol.2:120)(Tr.Vol.1:71). The crew was also subjected to varying forms of harassment from fellow firefighters who were similarly uninformed as to the issue of AIDS.

The Department made some effort to inform the crew and other members about the AIDS issue and thereby address some related concerns. (Tr.Vol.2:117). Captain Galiher and his crew apparently felt this was insufficient and continued in their own efforts to address their concerns. These efforts included the sending of memos to and meetings with supervisory officers. (CP.Exs.10 & 15) (Tr.Vol.1:132,144). While some the meetings addressed some of the individual crew member's concerns, others, due to the apparent insensitivity of the officer involved, only served to intimidate the crew member. (Tr.Vol.1:144). Throughout this period Captain Galiher was never directly criticized or disciplined for his actions during or following the attempt. He did hear, by way of hearsay disclosed by other officers and his crew members, that he would be receive discipline. At no time, however, did the hearsay include any indication of what would be the basis for such discipline. (Tr.Vol.1:149,157). There was a murmur of an alleged violation regarding the proper use of the chain of command, but no clear example was presented as to when such a violation had taken place. (Tr.Vol.2:20).

To address what he believed to be attacks on his performance and competence, Captain Galiher orally presented a series of grievances on or about June 12, 1985. These were later written up and filed on June 20, 1985. (CP.Ex.4). During a meeting involving the Captain, his immediate superior Battalion Chief Ericson, and their superior Assistant Chief Hanson, the three discussed the Captain's intent to formally file these grievances and the substance of the grievances. (Tr.Vol.3:80-88). This meeting was held on June 17, 1985, after the June 12 verbal discussion and before the June 20 formal filing. These grievances became the subjects for Commission's file ARB 157-85. During the course of this meeting Chief Hanson tried to persuade the Captain not to pursue the grievances. (Tr.Vol.3:102).

On August 23, 1985, Captain Galiher was notified that he and his crew would receive blood tests. (Tr.Vol.2:29). This addressed some of the Captain's and the crews concerns.

On September 20, 1985, Union President Simcoe wrote to Fire Chief Englund to protest the manner in which the Department had processed

Captain Galiher's grievances. The objection was based on having a Departmental officer named in the grievance as the Department's representative in a meeting designed to resolve the grievance. (CP.Ex.4). In response to the letter an additional grievance meeting was held on November 15, 1985, to review the Captain's grievances. The Department's representative approached this meeting with less than an open mind. (Tr.Vol.2:28)(Tr.Vol.3:105).

Sometime during the early part of May, 1985, before the May 19 rescue attempt, Captain Galiher was involved in a training exercise. At that time he was requested by Chief Belliveau not to wear a safety belt that he, Captain Galiher, had become accustomed to wearing over an extended period of time. (Tr.Vol.4:14). On or about October 11, 1985, Belliveau directed Captain Galiher not to wear the belt since it was used in rappeling and had not been safety tested. (Tr.Vol.4:15). Galiher questioned his immediate superior and Belliveau's peer, Chief Ericson, about the proscription and was told by Ericson he could wear the belt. (Tr.Vol.4:16). On October 25, Captain Galiher filed a grievance challenging some statements made by Chief Belliveau. (CP.Ex.5). This was later docketed as ARB 13-86. On December 21, Ericson informed Galiher he could no longer wear the belt. (Tr.Vol.3:119). Captain Galiher had worn and used the belt for over a decade. (Tr.Vol.3:117).

In January, 1986, Chief Ericson was transferred and his position as Battalion Chief for "C" shift was assumed by Chief Sheppherd. At the time of the transition, Chief Sheppherd was out on injury leave and Chief Belliveau was the only Chief on the job. On January 7, Galiher was notified that he was no longer the Battalion Training Officer. (Tr.Vol.3:124). That position is an honorary one and serves at the pleasure of the Battalion Chief. There are no financial benefits associated with the position.

On February 7, 1986, the Battalion Chiefs issued a policy restricting the use of patrol vehicles. (CP.Ex.20). The policy was contrary to extensive past practice regarding such use and raised a number of questions from Fire Captains throughout the battalion. Each one is told to basically disregard the policy and use the patrols as per past practice. (Tr.Vol.3:50,64,68,73). The instant charges

were also filed on February 7, 1986. On February 10, 1986 Captain Galiher used a patrol vehicle while attending a training program, and was seen by Chief Belliveau. Since Captain Galiher had not received prior authorization to use the patrol, as required by the new policy, he was reprimanded by Chief Belliveau and told that any further violation would be treated as insubordination. (Tr.Vol.3:131). Past practice did not require prior approval and other officers had been told by Belliveau that they would not need to get prior approval for use of the patrol. The incident was discussed at a later meeting involving Union representatives and the patrol vehicles policy has reverted to the status quo existing prior to the February 7 policy statement. (Tr.Vol.3:132).

In addition to the above facts and incidents relating primarily to Captain Galiher, additional incidents occurred during this period which involved other members of the May 19th rescue crew. Among these was an incident which involved the confiscation of personal mail reportedly belonging to Firefighter Norton by a Departmental officer. This incident was the subject of a grievance and addressed through the grievance procedure. (CP.Ex.8).

## VI. CONTENTIONS OF THE PARTIES

### A. Contentions of the Charging Party

1. That direct and indirect actions taken by Chief Officers in response to Captain Galiher's handling of the AIDS incident constituted reprimands and threats of discipline so as to harass and discriminate in violation of Ordinance Section 12(a)(1).
2. That following the filing of grievances by Captain Galiher, Departmental officers acted in a manner designed to harass, intimidate, and discriminate against the Captain and his crew in violation of Section 12(a)(1).
3. The Department's manner for processing the grievances filed by Captain Galiher violated Ordinance Section 12(a)(3).
4. The Ordinance's 180 day statute of limitations should not bar review and considerations of events outside the period which may shed light on the character of matters and events occurring within the period.

B. Contentions of the Respondent

1. That the record does not support the charges as they pertain to the Department's dealings with Firefighters Corbeil, Rancipher, or Norton. Firefighter Corbeil's concerns were addressed in meetings with Chief officers and testimony regarding those meetings fail to support a 12(a)(1) violation. Firefighter Norton filed a grievance which was ultimately disposed of through the negotiated grievance procedure and no evidence was entered to show that these dealings violated either Section 12(a)(1) or 12(a)(3) of the Ordinance. Firefighter Rancipher was not involved in the incident and no nexus can be shown to support consideration of his involvement in a determination on the instant charges.
2. That Captain Galiher was never disciplined and individual actions by Departmental officers pertaining to him did not violate Section 12(a)(1) of the Ordinance.
3. The Department's processing of Captain Galiher's grievances did not violate Ordinance Section 12(a)(3).

VII. DISCUSSIONA. Issue of Limitation

Ordinance Section 12 dealing with unfair employee relations practices provides that charges of such will be filed and processed in accordance with rules and regulations of the Commission. The Rules and Regulations of the Commission, specifically Rule 6, sets forth the pertinent time limits. Section 6.13 provide the Hearing Officer with authority to modify any specific time requirements, save the granting of an extension for filing of his report, upon a showing for good cause. In the present matter the allegations surrounding the charges are so inextricably meshed with the facts and incidents stemming from the May 19, 1985 rescue that their omission would greatly hamper any proper analysis of the issues. The Hearing Officer finds that in the instant matter the Court's concept of utilizing "...early events to shed light on the true character of matters occurring within the limitations;..." is appropriate, as argued by the Charging Party. Local Lodge No. 1424, Int'l. Assoc. of Machinists v. N.L.R.B., (1960) 362 U.S. 411, 416, 45 LRRM 3212, 3214. Similarly,

the Hearing Officer notes that testimony was received regarding the issuance and enforcement of the policy regarding the use of patrol vehicles. That policy was issued on the day the instant charges were filed and the alleged discriminatory application of the policy took place after the charges were filed. Such post-filing incidents may be examined, as those falling outside the 180 days period, as possibly shedding light on the activities that fall within the statutory period, as well as the presence or absence of illegitimate intent.

B. Section 12(a)(3)

The Charging Party has alleged that the Department has violated this Section of the Ordinance in that they failed to meet with him at the final step as called for in the negotiated grievance procedure. Additionally, the Department failed to properly investigate the grievances and that these acts constitute a unilateral change in the negotiated grievance procedure.

The failure to meet with the grievant, here Captain Galiher, appears to be violative of the M.O.U. language which requires such a meeting as part of the final step. A deviation of this nature from express contract language is properly the subject of a grievance. To elevate this deviation, in light of the nature of the grievance issue and surrounding circumstances, to a level constituting a breach of a duty to bargain is deemed inappropriate. Were the Hearing Officer to find otherwise, every issue that was based on an alleged violation of the MOU would be escalated to that of an unfair employee relations practice. Such a conclusion would be illogical. An alleged breach of a duty to bargain resulting from the manner in which a grievance is processed may be established when the issue is one that impacts a significant number of employees in the unit, or may otherwise be the proper subject of contract negotiations. Here the grievance issues concern themselves primarily with Captain Galiher.

Finally, the grievance machinery is self-processing. That is, failure to achieve settlement at a lower level results in the movement of the issue to a higher one. Should the parties fail to resolve the issue among themselves the machinery provides for external review



and finding by an arbitrator. The grievances can proceed to a final determination. The circuit court has affirmed this facet of the grievance procedure when it addressed a refusal to bargain issue stemming from a refusal to process grievances regarding the reinstatement of strikers. N.L.R.B. v. Los Angeles - Yuma Freight Lines, (9th Cir., 1971), 77 LRRM 3079.

There appears evidence to support a questioning of the manner in which the Department approached the grievance resolution process in regards to the grievances filed by Captain Galiher, as well as that filed by Firefighter Norton. (CP.Ex.8). The actions, however, do not present substantial evidence to support a finding that the Department violated Ordinance Section 12(a)(3).

C. Section 12(a)(1)

A review of the record clearly supports a number of conclusions. The first, and most prominent one, is that following the rescue attempt on May 19, 1985, and the discovery that the victim had been suffering from AIDS and may have infected the crew, an environment was created that is best described as one filled with anxiety. There was the obvious anxiety due to possible infection. In addition, anxiety was created by the statements and rumors circulated within the Battalion as to the propriety of action taken during the rescue and the possible disciplining of the Captain and/or the crew. The record clearly shows that the Captain and the crew exercised the proper procedures during the rescue attempt. Unfortunately, statements which are best described as Monday morning quarterbacking, made by certain Departmental officers only added to the anxiety. The reporting of the incident by the media and the resulting public attention added to the anxiety. During this period, Captain Galiher and his crew members participated in efforts to address their concerns regarding both their health and their performance. Some of the Departmental officers, sensitive to the situation tried to assist in these efforts. Unfortunately, other officers reacted in a manner which has ultimately lead to the filing of the instant charges.

The Charging Party cited a number of incidents involving Captain Galiher's crew members in support of its claim of a 12(a)(1) violation. These include the manner in which Departmental officers responded to Firefighter Corbeil's written memos, a failure to allow Corbeil to have a colleague (Captain Galiher or Sanchez) present when Corbeil met with top Departmental officers, the confiscation of personal mail, and the instructions given to Firefighter Rancipher to stop wearing a baseball cap, even though other Battalion officers continued to wear them. Firefighter Rancipher was not a part of the crew involved in the May 19th rescue. He occasionally served under Captain Galiher, but that fact alone, or even when combined with recognition that his incident occurred during the pertinent time frame, does not provide an adequate nexus to consider his situation as an element of these charges.

Actions taken by certain Departmental officers in their involvement with Firefighters Corbeil and Norton may be viewed as poor management, but that does not raise them to a level warranting a finding of a 12(a)(1) violation. In both cases, the individuals did not suffer any denial of benefits nor were the individuals subject to any discipline or change in working conditions. Norton filed a grievance and the matter was resolved through the grievance procedure. Firefighter Corbeil met with senior officers and expressed his concerns. While he may have felt intimidation by the prospect of having to confront senior officers without a colleague, the record shows that the meeting itself was not adversarial in nature. Corbeil did not receive any discipline for his role in the May 19th rescue or for any of his activities following the rescue. To the contrary, Corbeil received commendations.

The above conclusion cannot be reached when reviewing the facts as they relate to Captain Galiher. A number of the elements cited by the Charging Party may be attributed, as in the cases above, to poor management practices. There are, however, a significant number of incidents manifesting that a 12(a)(1) violation did take place in the case of Captain Galiher.

On June 3, 1985, Asst. Fire Chief Hanson sent a memo to Captain Galiher (CP.Ex.16) in response to Galiher's memo of May 24. (CP.Ex.15). Hanson's memo criticized Galiher for indicating that a copy of his memo was forwarded to the Union. Clearly Captain Galiher as a member of the Union has the right to apprise the Union of his actions in this matter. Firefighter Corbeil, who also sent a memo on May 24, (CP.Ex.10), similarly indicated that a copy was being forwarded to the Union. Unlike Galiher, however, he never received similar criticism. Hanson testified that he was concerned about the manner in which carbon copies being forwarded to people outside the chain of command would be viewed by superiors. It is conceivable that Chief Hanson distinguished between Captains and Firefighters in that Captains are one promotion away from becoming Chief officers. Whether that distinction existed or not, Hanson did state that he felt that by involving the Union, the Captain had limited the chance for open and free dealings on the issue between himself and the Department. That implication, that a bargaining unit member would be subject to freer discussions and a more receptive ear by excluding the Union clearly evidences an intent to restrain the employee from dealing with the Union.

On June 17, 1985 Captain Galiher met with Chief Hanson and Chief Ericson and discussed his grievances. While Chief Hanson was not completely clear as to the events of the meeting he did recall that he indicated to Galiher that the grievances were improper in that they didn't relate to him personally. Additionally, that the comments and the form used in the grievance weren't "useful." Finally, that he indicated to Captain Galiher that if he felt dissatisfied with his present assignment and would benefit from a transfer that he, Chief Hanson, could assist in that matter. Taken those statements in the most favourable light, there is clear evidence that the intent was to discourage the filing of the grievances. Had there been a question as to the language of the grievance, and or whether the issue was one not affecting the Captain and therefore precluding his ability to file that grievance, such discussions could have taken place during a regular grievance meeting. This meeting does not meet the criteria in that the verbal stage had taken place on or about June 12 and the

written grievances were only submitted on June 20, 1985. The intent of this meeting appears to have been one of coercing Captain Galiher not to file the written grievances which were ultimately docketed by the Commission as ARB 157-85.

The restriction given to Captain Galiher as to the wearing of the safety belt was cited by the Charging Party in support of their claim as to the 12(a)(1) violation. The Hearing Officer cannot find merit to such claim. Captain Galiher himself testified that Chief Belliveau had directed him not to wear that belt while the Captain was conducting an exercise in the early part of May, 1985, prior to the triggering incident. It was Chief Ericson who ultimately directed Captain Galiher not to wear the belt in December 21, 1985. Chief Ericson had consistently supported Captain Galiher. To conclude from the facts presented that the Chief's proscription against the wearing of the belt, at that time, was part of a scheme to violate the Captain Galiher's rights, without further proof, is beyond the logical reach of the Hearing Officer.

At approximately the end of February, 1986, after the instant charges had been filed, Chief Shepperd returned from his injury leave and assumed command over "C" shift, and Captain Galiher. Upon his return he met with Captain Galiher and stated that he wanted to get the AIDS situation smoothed out and that if it meant transferring Captain Galiher to accomplish this end he would do so. The issue of providing test for the crew had already been resolved, as had the question regarding whether or not proper procedure had been used during the rescue attempt. In fact, the only unresolved matters stemming from the AIDS incident were the open grievances filed by the Captain and the instant charges. Chief Sheppherd had been one of the officers that had accused Captain Galiher of acting irresponsibly in regrads to the May 19 rescue. Chief Sheppherd had also been one of the officers who had made statements that seemed to contradict Departmental policies regarding the use of mouth-to-mouth resuscitation. As such he became an issue in a memo sent by Captain Galiher to Fire Chief Englund. In light of these facts it is concluded that the statements made by Chief Sheppherd to Captain Galiher regarding the smoothing out of the situation and the possible use of a transfer were coercive in nature and designed to restrain Captain Galiher in his exercise

of rights recognized by the Ordinance.

The discriminatory application of the February 7, 1986 policy regarding the use of patrols further demonstrates a discriminatory intent based on Captain Galiher's exercise of rights granted under the Ordinance. The record substantially demonstrates that a long standing practice regarding the use of the patrols was changed by the words of the policy. When other Captains contacted the chiefs to seek clarification of the apparent change in policy they were told that, in effect, the policy didn't apply to them, that they could continue to use the vehicles as in the past. On February 10, 1986 after Captain Galiher had used the patrol in conjunction with a training program he was summoned to Chief Belliveau's office and warned that any further violation of the policy would be considered as insubordination. This was ultimately challenged by Captain Galiher and the policy related to use of patrols is as it was prior to the issuance of the memo. Chief Belliveau's actions were discriminatory and, while occurring after the filing of the instant charges, evidence an intent to interfere with Captain Galiher's exercise of his rights.

The Charging Party has tried to further support its claim as to the 12(a)(1) violation by citing the removal of Captain Galiher from the position of Battalion Training Officer, by not allowing him to participate in training he had historically provided, and by the proscription on the wearing of the safety belt he had historically worn. The assignment to Battalion Training Officer is one which lies completely within the discretion of the Battalion Chief. The record clearly shows that Captain Galiher has performed in that position admirably and has been commended on his performance on numerous occasions. (CP.Ex.7). Captain Galiher clearly enjoyed his role as the Battalion Training Officer despite the fact that it called for use of personal time and provided no additional compensation. His removal may cause questions as to the wisdom of the decision, but it does not allow for second guessing of management's rights. The right to make that assignment is clearly one belonging to the Battalion Officers and not subject to challenge, especially since it has no impact on Captain Galiher other than that of denying him a task he found personally satisfying.

The aforestated analysis regarding Captain Galiher's removal as a Battalion Training Officer applies to the denial to participate in the other training programs, as Captain Galiher had historically done. The issue of the safety belt has been previously addressed. In light of the foregoing, the remedy for the Departmental violation of Section 12(a)(1) cannot address these matters.

#### VIII. CONCLUSION

Having weighed the arguments and the testimony presented, as found in the record, and after reviewing the evidence, the Hearing Officer concludes that the Department did not violate Section 12(a)(3) in its processing of grievances filed by Captain Galiher. The Department, through actions taken by individual officers, did violate Section 12(a)(1) of the Ordinance in that these officers did interfere with, restrained, or coerced Captain Galiher in his exercise of rights recognized in the Ordinance.

IX. RECOMMENDATION

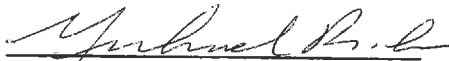
The duly appointed Hearing Officer recommends that the Commission approve and adopt the following order:

"The Department did not violate Section 12(a)(3) of the Ordinance in its processing of grievances filed by Captain Galiher on or about June 20, 1985, and/or October 25, 1985.

The Department did violate Section 12(a)(1) of the Ordinance in that following the filing of the above referenced grievances Departmental officers discriminated against Captain Galiher because of his exercise of these rights. That in this manner and through other acts these officers tried to restrain, interfere, and coerce Captain Galiher in his exercise of his rights under the Ordinance. That the Department and its officers cease and desist from in any manner restraining or interfering with Captain Galiher and other employees in the exercise of their rights under the Ordinance."

DATED: 8-10-87

Respectfully submitted,



Michael Prihar  
Hearing Officer