

LOS ANGELES COUNTY  
EMPLOYEE RELATIONS COMMISSION

In the Matter of	)	
	)	
LOS ANGELES COUNTY FIRE FIGHTERS,	)	
LOCAL 1014	)	
	)	
Charging Party	)	
	)	
v.	)	UFC 5.14
	)	
LOS ANGELES COUNTY FIRE	)	
DEPARTMENT	)	
	)	
Respondent	)	
	)	

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DECISION AND ORDER

The charge in this case was filed by the Los Angeles County Fire Fighters, Local 1014 (Union or Charging Party) against the Los Angeles County Fire Department (County or Respondent) alleging that the County had violated Sections 12(a)(1) and 12(a)(3) of the Los Angeles County Employee Relations Ordinance (Ordinance) by engaging in a course of discriminatory and retaliatory conduct against Captain John Galiher for his filing of grievances.

The matter was duly referred to Hearing Officer Abraham Siegel, who held hearings on May 19, June 30, July 1, and July 3, 1986. The parties appeared and were afforded full opportunity to offer argument, present evidence, and examine and cross-examine witnesses. Post hearing briefs were filed.

In response to inquiries from the Charging Party, numerous attempts were made by the Commission's Executive Officer to obtain a date certain from the Hearing Officer as to the submission of his Report. As these efforts were unsuccessful and as the Report was then some six months late pursuant to Rule 6.10, the Commission at its regular meeting of June 26, 1987, on motion of Chariman Gentile, relieved Hearing Officer Siegel of his jurisdiction and transferred the matter to a substitute Hearing Officer. Michael Prihar was thereafter selected as the Hearing Officer and the transcripts, exhibits, and briefs were forwarded to him for preparation of a Report thereon.

Hearing Officer Prihar submitted a Report received in the Commission's office on August 11, 1987. Exceptions to this Report were filed by the Respondent on August 25, 1987, and by the Charging Party on August 26, 1987. On September 9, 1987, both parties submitted statements in opposition to the respective Exceptions.

Hearing Officer Prihar found, and we agree, that the County did not violate Section 12(a)(3) of the Ordinance by the manner in which it had processed various grievances filed by Captain Galiher, nor did the County violate Section 12(a)(1) in prohibiting Galiher from wearing a search and rescue rappelling belt. The Charging Party's Exceptions notwithstanding, we adopt the Hearing Officer's finding that the evidence was insufficient to establish that the proscription against Galiher's wearing of the belt was part of a scheme to violate his Ordinance rights.

We also agree with the Hearing Officer's finding that while certain events cited by the Charging Party merely reflected poor management practice rather than prohibited conduct, a significant number of events did manifest conduct on the part of the County with respect to Captain Galiher violative of Section 12(a)(1). However, we are unable to adopt all the Hearing Officer's reasoning in support of this finding. Specifically, we disagree with his assessment relative to the evidentiary use of events which occurred subsequent to the filing of the charge and his conclusion that the County did not violate the Ordinance in removing Galiher from the Training Captain position.

We begin by noting that the Commission has long followed the practice of referring to federal cases for such enlightenment as they may render in our interpretation of both the Ordinance and our Rules and Regulations. We further note that the language of Rules 6.01 and 6.02 differs somewhat from that of Section 10(b) of the Labor Management Relations Act (the "Act"). Nevertheless, these provisions and the expressed purposes of both the Ordinance and the Act are sufficiently parallel to warrant a review of federal precedent for guidance and enlightenment in determining the evidentiary use to be made of post-filing events in the unfair practice charge context.

Our review discloses that on two occasions the United States Supreme Court in reviewing decisions of the National Labor Relations Board has been required to address this issue.<sup>1</sup> The Court in both

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<sup>1</sup>National Licorice Co. v. National Labor Relations Board, 309 U.S. 350 (1940); National Labor Relations Board v. Fant Milling Co., 360 U.S. 301 (1959).

cases concluded that the Board lawfully could make a post-filing event the basis of a finding that a violation of the Act had occurred. In this regard, the Court in National Licorice stated that:

"Whatever restrictions the requirements of a charge may be thought to place upon subsequent proceedings of the Board, we can find no warrant in the language or purposes of the Act for saying that it precludes the Board from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board."<sup>2</sup>

The principles decided by the Court in National Licorice and Fant Milling are equally applicable to the facts before us. Here, the Union has alleged that the County engaged in a pattern and course of conduct against Captain Galiher for his exercise of protected rights and proffered testimony and evidence as to specific events comprising the bases for its charge. The evidence record discloses that two of these events--a February 10, 1986, discussion between Chief Belliveau and Galiher regarding the latter's use of a patrol vehicle and a meeting in March 1986 between Chief Sheppard and Galiher at which Galiher was allegedly threatened with a transfer--took place subsequent to the filing of the instant charge.

The Hearing Officer found the actions of the County in both instances to be violative of Section 12(a)(1) of the Ordinance. We find substantial evidence on the record to support these findings. However, in light of the principles we have elected to adopt and apply, we do not limit the use of these events to that of merely

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<sup>2</sup>National Licorice Co. v. National Labor Relations Board, 309 U.S. 350, 369 (1940). This language is quoted favorably in National Labor Relations Board v. Fant Milling Co., 360 U.S. 301, 306 (1959).

"shedding light" on events which occurred within the statutory period and/or as indicia of the "presence or absence of illegitimate intent" as concluded by the Hearing Officer. Rather, we find that the County's actions in the two post-filing events in question in and of themselves constitute Ordinance violations subject to the full reach of the Commission's remedial authority.

We next turn to the issue of the removal of Captain Galiher from the Training Captain position. The Hearing Officer's finding that this action did not violate Section 12(a)(1) appears to be grounded in the fact that this position provided no additional compensation or benefits and that management had sole discretion to make such assignments.

As the Charging Party correctly points out in its Exceptions, the exercise of a management right can be remedied if it is exercised for a proscribed motive. A careful review of the record discloses substantial evidence in the form of unrefuted testimony concerning both the respective levels of fire suppression activities at Fire Station 69 and Fire Station 71 and the absence of any policy or practice that Training Captains are routinely selected from the same station to undermine the reasons advanced by the County for Galiher's removal from this position. As such and noting that the record when considered as a whole demonstrates a pattern of conduct relative to Galiher violative of Section 12(a)(1), we are compelled to conclude that the reasons proffered by the County for his removal were pretextual and designed to disguise an improper motive. Hence,

we find that the County did violate Section 12(a)(1) of the Ordinance when it removed Galiher from the Training Captain position.

Our conclusion and the associated remedy set forth in our Order below are not to be construed as granting Galiher permanent tenure as a Training Captain. Absent prohibited motive or intent, the County had complete discretion to remove Galiher from this position and will continue to enjoy such discretion in the future.

For all the foregoing reasons, we find and conclude that the County did violate Section 12(a)(1) of the Ordinance in that the County through the actions of various supervisory and/or management individuals did interfere with, restrain, and coerce Captain Galiher in the exercise of his rights set forth in the Ordinance. To remedy these violations and to effectuate the purposes of the Ordinance, the following Order is deemed appropriate.


O R D E R

IT IS HEREBY ORDERED that charge UFC 5.14 is dismissed in part and sustained in part as follows:

1. The charge that the County violated Section 12(a)(3) of the Ordinance by the manner in which it processed grievances filed by Captain Galiher is dismissed;
2. The charge that the County violated Section 12(a)(1) of the Ordinance by interfering with, restraining, and coercing Captain Galiher for the exercise of his right to file grievances is sustained; and

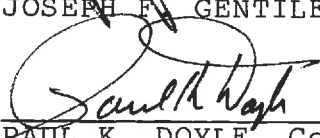
3. The County is ordered to cease and desist from in any manner restraining or interfering with Captain Galiher in the exercise of his rights under the Ordinance, forthwith reinstate Captain Galiher to the Training Captain position, and post, where notices to employees of Fire Station 69 are routinely posted, a copy of this Decision and Order for a period of ten (10) business days.

DATED at Los Angeles California, this 23rd day of October, 1987.



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JOSEPH F. GENTILE, Chairman



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PAUL K. DOYLE, Commissioner



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ROBERT D. STEINBERG, Commissioner