

**LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION**

**RECEIVED
EMPLOYEE RELATIONS
COMMISSION
JUL 13 1992**

In the Matter of)
)
LOS ANGELES COUNTY FIRE)
FIGHTERS, LOCAL 1014)
)
Charging Party)
)
LOS ANGELES COUNTY FIRE)
DEPARTMENT)
)
Respondent)
_____)

REPORT OF HEARING OFFICER

UFC 5.16

Hearing Officer: Karen G. Andres, Esq.

APPEARANCES

On Behalf of the Charging Party: On Behalf of the Respondent:

Mia Darbonne Farber, Esq.
Fogel, Feldman, Ostrov,
Ringler, and Klevens
26th Floor
5900 Wilshire Blvd.
Los Angeles, CA 90036

Kenneth Miller
Chief Program Specialist
Employee Relations Division
Chief Administrative Office
526 Hall of Administration
222 No. Grand Avenue
Los Angeles, CA 90012

BACKGROUND

Local 1014 of the Los Angeles County Fire Fighters Union (Union) filed this unfair practice charge on December 16, 1991. The hearing on this charge was held on June 17, 1992 before the duly appointed hearing officer, Karen Andres.

THE CHARGE

The basis of the Union's charge is as follows: on or about December 13, 1991, the Los Angeles County Fire Department (Employer/Department/County) ordered Fire Captain Xavier Campos to meet with the Employer's outside counsel on December 16, 1991 so that he could prepare for a deposition noticed for December 20, 1991 despite the fact that Captain Campos had been subpoenaed to testify at a Civil Service Commission hearing on December 16, 1991 and the fact that Captain Campos was the union officer who represented the appellants, Charles Galvan and Arthur Lopez, in their appeals before the Civil Service Commission.

The Union alleges that this course of conduct by Employer constitutes a violation of Captain Campos' right to serve and act as a union representative and the rights of Fire Fighters Galvan and Lopez to be represented by a union representative before the Civil Service Commission. The Union further alleges that the above acts and conduct by the Employer have interfered with, restrained and coerced employees in the exercise of rights guaranteed them by the Employee Relations Ordinance.

The County denies each charge contained in Unfair Charge 5.16.

THE APPLICABLE STATUTE

Section 12(a)(1) states, it shall be an unfair employee relations practice for the County to interfere with restrain, or coerce employees in the exercise of the rights recognized or granted in this Ordinance.

EXHIBITS

JOINT EXHIBITS:

1. Unfair Labor Practice Charge dated December 16, 1991.
2. Employer denial dated March 19, 1992.
3. Notice of Hearing dated March 13, 1992.

UNION EXHIBITS:

1. Subpoena of Captain Gene McCarthy dated June 15, 1992.

EMPLOYER EXHIBITS:

- A. Letter to Captain Gene McCarthy from Donna Bruce, Esq. dated October 29, 1991.
- B. Memo from Battalion Chief Michael Sandeman to Battalion Chief Rudy Monarrez dated November 1, 1991.
- C. Letter from Mia Darbonne Farber, Esq. to L.A. County Civil Service Commission dated December 9, 1991.
- D. Subpoena of Fire Captain Xavier Campos dated December 13, 1991.
- E. Rule 6.20.080 Other Leaves of Absence.

SUMMARY OF THE EVIDENCE

Witness for the Union:

1. Captain Eugene Victor McCarthy

Cpt. McCarthy is a County Fire Department Captain in charge of risk

management. On November 1, 1991, he contacted Cpt. Campos to meet with outside counsel on December 16, 1991 in preparation for a deposition.. Cpt. Campos said he had union business that would conflict with the meeting. Cpt. McCarthy said the attendance at the meeting was important as the matter concerned an expensive suit against the County, and arrangements had already been made for the meeting.

Cpt. McCarthy was not sure at what time the meeting was scheduled. The letter he received from Donna Bruce, outside counsel, setting the meeting for 4 p.m. was not sent to Cpt. Campos.

2. Captain Xavier D. Campos

In his capacity as a union representative, Cpt. Campos works on employees' grievances and appeals before the Civil Service Commission. He represented Fire Fighters, Galvin and Lopez, before the Commission when they filed their appeal of a promotional examination. The matter went to hearing on December 16, 1991. The Union provided representation at the hearing. However, Cpt. Campos was expected to act as a technical advisor to the Union regarding the firefighters specialist examination.

On December 11, 1991, Cpt. McCarthy ordered Cpt. Campos to meet with outside counsel on December 16 at 1:30 p.m. Cpt. Campos told Cpt. McCarthy that he was under subpoena to appear at the scheduled hearing. The subpoena had not yet been issued but Cpt. Campos knew it would be issued. His name was not on the witness list (County Ex. C).

The union representative would normally be present at the entire hearing. The Department has never prevented a representative from attending a hearing.

Cpt. Campos appeared at the hearing in the morning and left after the lunch break to meet with Ms. Bruce. Cpt. John Price remained as a technical advisor familiar with the promotional exam. Cpt. Campos stated he was more familiar with the facts of this particular case and was needed at the hearing in addition to Cpt. Price.

Cpt. Campos arrived to meeting with Ms. Bruce at 1:30. She did not begin the meeting until 3:00. At some point, a Sheriff's employee came in to ask to reschedule his appointment with Ms. Bruce, and she was able to reschedule until the next day.

Witnesses for the Department:

1. Rick Palardy represented the Department in the Commission hearing of Fire Fighters Galvan and Lopez. Neither Cpt. Campos nor the Union contacted him regarding Cpt. Campos' scheduling conflict. He called Ms. Farber to see if she would like to request a continuance. He also called Ms. Bruce to see if the meeting could be rescheduled and was told it could not.

Ms. Farber told him she tried to reach him without success on Dec. 13. However, the Union did not raise an objection at the hearing.

DISCUSSION

Primarily, the facts are not in dispute. The question is whether the Department's requirement that Cpt. Campos attend the December 16 meeting interfered with, restrained and coerced employees in the exercise of rights guaranteed them by the Employee Relations Ordinance.

The Union argues that Cpt. Campos was more than a technical advisor at the Galvan/Lopez hearing. He had been involved in the appeal from the beginning. He advised Cpt. McCarthy on December 11 that his presence was required at the hearing. Nevertheless, the Department ordered Cpt. Campos to attend the meeting with outside counsel. Moreover, Ms. Bruce was amenable to a schedule change for someone else.

The Union asserts that the Department's order to attend the meeting constituted interference with Cpt. Campos' right to fulfill his union obligation. The Union requests a cease and desist order and the reversal of the results of the Galvan/Lopez hearing.

The Department argues that Cpt. Campos was not designated as the Union representative at the Civil Service hearing. He was scheduled to be on duty that day. His presence was requested as an advisor. The Department implies that his presence was not crucial as a subpoena was not issued until December 13 and was not served until the 16th, and his name was not included in the witness list. In addition, the subpoena was defective as it was not served prior to the date of appearance. The Department did not interfere with Cpt. Campos' right to fulfill a union obligation and did not prejudice the outcome of the Galvan/Lopez hearing.

We find the Department's argument more compelling regarding both the alleged interference with Cpt. Campos' rights and alleged prejudice to Appellants Galvan and Lopez.

There was some confusion in the testimony as to what time the meeting was actually scheduled and what time Cpt. Campos was ordered to be there. The inference on the part of the Union was that the meeting could have been or was originally scheduled late in the day, and therefore Cpt. Campos could have remained at the hearing almost the entire day. There was no evidence as to what time the hearing concluded. In any case, Cpt. Campos was able to appear at the hearing for the entire morning, Cpt. Price was present to take over as advisor, and the Union did not ask for a continuance. Therefore it can be concluded that there was no prejudice to the Appellants. Consequently the Union's request for a reversal of the findings in the Galvan/Lopez case is moot.

A union representative does not have a right to be present at a hearing except on his own time or under subpoena. There was no

evidence presented that the Department knew of the Union's intention to request Cpt. Campos's assistance at the hearing before it scheduled the pre-deposition meeting with outside counsel. No subpoena existed at that time, and December 16 was a day that Cpt. Campos was scheduled to be on duty. There was no indication of any intent to prevent Cpt. Campos from attending the hearing.

When Cpt. Campos raised the issue with the Department of the perceived necessity for him to attend the hearing, the Department decided to continue to require Cpt. Campos' attendance at the meeting. The Department characterized the meeting as very important and Cpt. Campos's role in the hearing as relatively unimportant. It did not consider itself under an obligation to allow Cpt. Campos to attend the hearing, and it did not prevent him from attending during the morning.

CONCLUSION

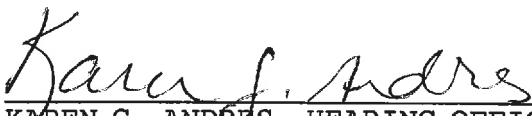
Having weighed and reviewed the evidence and arguments presented by the parties, it is concluded that:

The conduct of the Respondent did not constitute a violation of Cpt. Campos' right to serve and act as a union representative and the rights of Fire Fighters Galvan and Lopez to be represented by a union representative before the Civil Service Commission.

RECOMMENDATION

The duly appointed Hearing Officer recommends that the Employee Relations Commission dismiss the Union's grievance, UFC 5.16.

Respectfully submitted,


KAREN G. ANDRES, HEARING OFFICER

DATED: July 10, 1992