LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of JOINT COUNCIL OF LOCAL 434, LOS ANGELES COUNTY EMPLOYEES UNION, AFL-CIO AND LOS ANGELES COUNTY EMPLOYEES ASSOCIATION, LOCAL 660, SEIU, AFL-CIO Charging Party vs. COUNTY OF LOS ANGELES, DEPARTMENT OF BUILDING SERVICES Respondent	)	UFC 52.3

DECISION AND ORDER

Following the filing of a charge by Joint Council of Local 434, Los Angeles County Employees Union and Los Angeles County Employees Association, Local 660, SEIU on April 30, 1976, the Los Angeles County Employee Relations Commission appointed Herman Corenman as Hearing Officer to take testimony in the matter and to make his recommendations therein. The Charging Party alleged the County of Los Angeles, Department of Building Services, had engaged in an unfair employee relations practice

within the meaning of Sections 6(a) and (b) and 12(a)(1) and (3) of the ordinance. A hearing was held before Mr. Corenman on August 27, 1976. Post hearing briefs were filed by both parties. On December 15, 1976, the Hearing Officer submitted a report with his findings, conclusions and recommendations. Exceptions to the Hearing Officer's report and a supporting brief was filed by the County on December 22, 1976. The Charging Party filed its response to the exceptions on January 4, 1977. The Commission has examined all the documents filed herein, including the complete record of the proceedings conducted by the Hearing Officer and on the basis thereof, renders the following decision.

I

FINDINGS OF FACT

The facts, undisputed and stipulated to, are the following: (1) The Charging Union is the certified collective representative of approximately 2,600 building and custodial services employees within the bargaining unit involved in this charge. (2) Prior to April, 1976, the standard work shift in the County's Building Services Department for approximately 1,000 or more of the custodians in the unit (which represents approximately 95 percent of the custodians working in the Building Services Department) commenced at 4:30 p.m. and continued to 12:30 a.m. (3) The custodial work in County office buildings and facilities during those hours was required after the normal office clerical and adminis-

trative personnel had left the various County facilities, approximately 380 locations and buildings. (4) The individual employees were notified in February, 1976, of the projected schedule change. (5) In March, 1976, the Union was notified by the Building Services Department that it intended to change the shift hours for all such custodians to a 5:00 p.m. to 1:00 a.m. shift. (6) A meeting was held on March 23, 1976, between representatives of the County and the Union. At the meeting a Union representative requested that the County negotiate the schedule change. The County representative took the position there was no obligation to negotiate the change. (7) The change in schedules became effective April 5, 1976.

II

PROVISIONS OF THE MEMORANDUM OF UNDERSTANDING

Article 12 ("Work Schedules") of the Memorandum of Understanding in effect at the time of the challenged County's action provided in part as follows: ". . . Section 1. Employees shall be scheduled to work on regular work shifts having regular starting and quitting times. These work schedules shall be made known to the employee and shall not be changed, except as provided in Section 4, without notice to the employee at least five working days prior to the date the change is to be effective. . . ."

Article 33 ("Full Understanding, Modifications, Waiver") provides in part:

"Section 1. It is intended that this Memorandum of Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any other prior or existing understanding or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety. It is agreed and understood that each party hereto voluntarily and unqualifiedly waives its right, and agrees that the other shall not be required, to negotiate with respect to any subject or matter covered herein.

"With respect to other matters within the scope of negotiations, negotiations may be required during the term of this agreement as provided in Section 2 of this Article.

"Section 2. It is understood and agreed that the provisions of this Section are intended to apply only to matters which are not specifically covered in this agreement.

"It is recognized that during the term of this agreement it may be necessary for Management to make changes in rules or procedures affecting the employees in the unit. Where Management finds it necessary to make such change it shall notify Council indicating the proposed change prior to its implementation.

"Where such change would significantly affect the working conditions of a significantly large number of employees in the unit; where the subject matter of the change is subject to negotiations pursuant to the Employee Relations Ordinance and where Council requests to negotiate with Management the parties shall expeditiously undertake negotiations regarding the effect the change would have on the employees in the unit.

"The phrase 'significantly large number' shall mean (a) a majority of the employees in the unit, (b) all the employees within a department in the unit or (c) all the employees within a readily identifiable occupation such as Custodian or Elevator Operator.

"Any agreement resulting from such negotiations shall be executed in writing by all parties hereto, and if required, approved and implemented by County's Board of Supervisors. If the parties are in disagreement as to whether

any proposed change is within the scope of negotiations, such disagreement may be submitted to the Employee Relations Commission for resolution. In the event negotiations on the proposed change are undertaken, any impasse which arises may be submitted as an impasse to the Employee Relations Commission. . . ."

III

PROVISIONS OF THE ORDINANCE

The cited sections of the Ordinance are the following:

1. Section 6 ("Scope of Consultation and Negotiation") provides:

> "(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.
>
> "(b) The scope of negotiations between management representatives and the representatives of certified employee organizations includes wages, hours, and other terms and conditions of employment within the employee representation unit."

2. Section 12 ("Unfair Employee Relations Practices") provides in part:

> "(a) It shall be an unfair employee relations practice for the County:
>
> "(1) To interfere with, restrain or coerce employees in the exercise of rights recognized or granted in this Ordinance; . . .
>
> "(3) To refuse to negotiate with representatives of certified organizations on negotiable matters. . . ."

IV

ISSUE

Did the unilateral change of work schedules coupled with refusal to negotiate the change with the Union constitute a violation of the Ordinance? If so, what is the appropriate remedy?

V

POSITION OF THE COUNTY

The County met its obligation to negotiate by negotiating Article 12, the "Work Schedule" article. In view of that article and of Article 33 which states the County is not required to negotiate on subject matters specifically covered in the Memorandum of Understanding, the County has complied with the statute.

Article 12 was negotiated in the context of the County's taking a position it must maintain the right to change schedules in order to maintain operations of department services. The County did make a negotiating concession in connection with giving notice to individual employees affected. But that is the only concession fundamental to changing work schedules the County has made. In its negotiations in a bargaining relationship existing over six years, the Union has repeatedly requested the County fix starting and stopping times and define work schedules, not only in this agreement but in other agreements; but the County has never agreed to fix any work schedule, maintaining the posture

that it must have flexibility.

In 1975, according to the County, as a result of negotiations and in order to make it clear the County did not have to negotiate repeatedly every time a work schedule would change, Section 33 was negotiated. As quid pro quo for that language, the Union insisted on other changes in the agreement, including binding arbitration language.

The County also contends that if there is a dispute, it is an arbitrable matter under the Memorandum of Understanding, subject to the grievance procedure.

The negotiated language in Articles 12 and 33 is clear and unmistakable; and the matter of a future change in the work shift becomes a matter of contract interpretation, subject to arbitration. There has been no failure to negotiate and the charge should have been dismissed on that basis. To go beyond that and to interpret the application of the Memorandum of Understanding puts the "hearing officer . . . in the wrong forum; he should be an arbitrator because our contract calls for an arbitrator to consider that kind of dispute."

VI

POSITION OF THE UNION

The Union contends the Article 12 language requiring notice refers only to the changing of individual schedules; it does not refer to a "mass, wholesale, complete change of schedule."

And based on the undisputed facts, the County unilaterally changed shift hours without negotiating such with the Union, and after a request to negotiate had been made.

As to the County's contention that the subject matter should have been raised in an arbitration, and the Union is precluded from receiving a remedy under the Ordinance pursuant to the filing of an unfair charge, the Union argues the courts have long recognized the existence of concurrent jurisdiction. Multiple forums may provide multiple remedies for alleged conduct that may well constitute a violation of one or more laws or agreements. The fact that more than one forum may exist to provide a remedy for improper conduct does not mean the election of one forum in preference to another constitutes a basis for the dismissal of an action.

The Union seeks, as "an appropriate remedy," the issuance of a cease and desist order maintaining that the County not unilaterally change hours of employment without first negotiating such with the Union; and that the shift hours be restored to 4:30 p.m. to 12:30 a.m., the shift hours prior to the County's unilateral change.

VII

DISCUSSION

The Hearing Officer's report contains extensive analysis of the arguments raised by the parties; and the Commission, in

accepting his report, will not attempt to restate his entire analysis. The following matters should, however, be emphasized:

(1) Unilateral action on a negotiable matter within the definition of wages, hours and other terms and conditions of employment clearly violates Section 12(a)(3) of the Ordinance.

(2) The County does not dispute that the shift change would ordinarily be a negotiable item within Sections 6(a) and 6(b) of the Ordinance and that in the absence of Articles 12 and 33 the Respondent's action in unilaterally changing the work shift would constitute an unfair employee relations practice.

(3) Article 12 was intended to obligate the County to schedule employees on regular shifts with regular starting and quitting times, to make these schedules known to the employees, and to change the work schedules only with five days' notice. Article 12 contains no language, expressed or implied, granting the County the freedom unilaterally to fix work schedules or change work schedules without negotiation with the Union.

(4) The Union, by agreeing to Articles 12 and 33, did not waive its statutory right to negotiate and bargain on the work schedule changes. The Union's lack of success in bargaining to gain fixed starting times and stopping times and to have work schedules defined does not represent a waiver of its right to bargain on the work schedule changes.

(5) The approximately one thousand employees affected are a "significantly large number of employees"; the subject matter

of the charge is "subject to negotiations"; and the Council requested negotiations. Therefore subparagraph 3 of Article 33, Section 2 applies. Accordingly, it became the legal obligation of the Respondent to "undertake negotiations" with the Union expeditiously.

(6) With respect to the Respondent's request for deferral of this case to arbitration, under a Collyer doctrine, the Commission does not regard this as an appropriate case for such deferral. It takes this position because of the relatively few years of bargaining relationship between the parties and the fact that binding arbitration language is a relatively new development in the County-Union Memorandum of Understanding. Further, it is anxious to avoid the uncertainty which would develop if in a series of arbitrations involving different Memoranda with similar language, different conclusions were reached.

Accordingly, the Commission adopts the Conclusions of Law and Order of the Hearing Officer, as set forth below.

CONCLUSIONS OF LAW

1. The Union is the certified representative of the custodians in the County of Los Angeles, Department of Building Services, Respondent herein.

2. By unilaterally changing the work shifts of approximately 1,000 custodians on April 5, 1976, without affording the Union an opportunity to negotiate with the Respondent about such

proposed change and by refusing to negotiate concerning such change in work shifts, the Respondent engaged in unfair employee relations practices within the meaning of Sections 6(a) and (b) and Sections 12(a)(1) and (3) of the Ordinance.

ORDER

It is hereby ordered that the County of Los Angeles, Department of Building Services

1. Cease and desist from:

a. Refusing to negotiate with the Unions as the exclusive collective bargaining representatives of the custodians.

b. Making unilateral changes in work schedules of a "significantly large number" of employees in the unit represented by the Unions as that phrase is defined in Article 33, Section 2, as amended, of the Memorandum of Understanding covering the Building and Custodial Services Employees representation unit.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Ordinance:

a. If requested by the Unions, restore the work-shift schedule for the affected custodians as it existed prior to its change in April, 1976.

b. Negotiate with the Unions concerning the

proposed change in work shifts and if agreement is reached, reduce it to writing.

c. If an impasse is reached in negotiations, submit the dispute to the Commission pursuant to Section 13, "Resolution of Impasses on Agreement terms," of the Ordinance.

Dated: March 22, 1977

David Ziskind, Chairman

Lloyd H. Bailer, Commissioner

William Levin, Commissioner