LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION

In the Matter of

JOINT COUNCIL OF LOS ANGELES COUNTY EMPLOYEES ASSOCIATION, LOCAL 660 and SOCIAL SERVICES UNION, LOCAL 535, S.E.I.U., AFL-CIO,

Charging Party,

vs.

DEPARTMENT OF PUBLIC SOCIAL SERVICES,

Respondent.

UFC 55.18

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

Pursuant to the Unfair Employee Relations Practice charges filed on December 13, 1976 by the Joint Council of Los Angeles County Employees Association, Local 660, and Social Services Union, Local 535, S.E,I.U., AFL-CIO, (the Charging Party) against the Department of Public Social Services of the County of Los Angeles, (the Respondent), alleging a violation of the Employee Relations Ordinance within the meaning of Section 12(a), Subsection (3) of the Ordinance, a hearing was held before Hearing Officer, Julius N. Draznin.

The charges allege that the Respondent-Employer engaged the services of one John Berry to conduct a program of time and motion studies that subsequently were extended by the County to establish "Pilot Projects" Programs in three County offices; and that said "Projects" were unilaterally effecting changes in the terms and conditions of employment of employees represented by the two local unions--the Charging Party in this proceeding--thereby

JULIUS N. DRAZNIN
Arbitrator
10880 Wilshire Blvd.
19th Floor
Los Angeles, CA 90024
(213) 474-5680

violating the Ordinance. It is further alleged by the Charging Party that the Respondent cannot waive the collective bargaining agreements, which are binding documents between the parties, and that Respondent's conduct, therefore, constitutes a refusal-to-bargain violation of the Ordinance.

A hearing was first scheduled for February 8, 1977 by the staff of the Los Angeles County Employee Relations Commission; then rescheduled to March 8, 1977. On March 8, 1977, these proceedings were convened by the undersigned, then temporarily adjourned and reconvened on March 11, 1977, in the offices of the Commission in Los Angeles.

The Respondent-Employer, the Department of Social Services, appeared at the March 8, 1977 meeting and submitted that it would not participate in this hearing, and that it objected to the proceedings because--according to its spokesman--"The Ordinance . . . specifically excludes the exercise of certain management rights from the arena of negotiation, and that on the basis of [the position submitted by County Counsel Harry Hufford on January 14, 1977] maintains that the Employee Relations Commission is without authority to have a hearing in this case." So stating, the representative of the Respondent withdrew from further participation in these proceedings and left the hearing.

The letter of January 14, 1977, referred to above, and the statement of the County's representative, cites Sections 5 and 6 of the Ordinance as the basis for the Respondent's position in this matter. Because of the position taken by Respondent, I

JULIUS N. DRAZNIN
Arbitrator
10880 Wilshire Blvd.
19th Floor
Los Angeles, CA 90024
(213) 474-5680

believe it is appropriate to deal first with this position before proceeding to deal with the evidence and argument presented by the Charging Party.

Section 5 of the Ordinance, titled "County Rights," reads as follows:

> "It is the exclusive right of the County to determine the mission of each of its constituent departments, board, and commissions, set standards of service to be offered to the public, and exercise control and discretion over its organization and operations. It is also the exclusive right of the County to direct its employees, take disciplinary action for proper cause, relieve its employees from duty because of lack of work or for other legitimate reasons, and determine the methods, means and personnel by which the County's operations are to be conducted; provided, however, that the exercise of such rights does not preclude employees or their representatives from conferring or raising grievances about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment."

Section 6, "Scope of Consultation and Negotiation," reads as follows:

> "(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 negotiation 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.
>
> "(c) Negotiation shall not be required on any subject preempted by Federal or State law, or by County Charter, nor shall negotiation be

JULIUS N. DRAZNIN
Arbitrator
10880 Wilshire Blvd.
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required on Employee or Employer Rights as defined in Sections 4 and 5 above. Proposed amendments to this ordinance are excluded from the scope of negotiation.

"(d) Management representatives and representatives of certified employee organizations may, by mutual agreement, negotiate on matters of employment concerning which negotiation is neither required nor prohibited by this Ordinance."

Based upon these two Sections, the County avers that it does not have to bargain with the Unions concerning the John Berry Projects.

The Charging Party contends that since the Respondent has not submitted a formal Answer to the Charges filed, in accordance with Section 6.06E of the Commission's Rules and Regulations, the allegations have been, in effect, admitted by the Respondent. Under the particular circumstances of this case, the undersigned has determined that, notwithstanding the lack of a specific formal Answer having been filed by Respondent, the nature of the Charges and the reply thereto are such that a complete record should be made of the evidence and argument the Charging Party offered in support of its allegations. Accordingly, the hearing was continued and a complete record was developed.

Discussion of Facts and Opinion of the Hearing Officer

In support of its contentions, the Unions presented witnesses from the various work locations involved in this matter. There are 1,500 eligibility workers and approximately 3,300 clerical employees in the Department of Public Social Services.

JULIUS N. DRAZNIN
Arbitrator
10880 Wilshire Blvd.
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Witnesses, who were present and participated in the meetings between the County and the Unions, testified as to the positions of the parties at such meetings, and the Employer's refusal to discuss the effect of the John Berry Project on working conditions. In fact, according to the credible testimony of the Unions' witnesses, jobs of employees in the bargaining unit were altered substantially, even to the point where their luncheon and rest periods were changed, and even eliminated in some instances.

Eligibility workers were given new duties, which included the work of the budget clerks, as well as a substantial increase in the case load each carried, thus reducing their effectiveness to function properly and professionally; in addition, they were also required to perform secretarial functions. The increased case load factor, while only one of the aspects of the changes effected by the Berry Projects, is a very pervasive one and affects all aspects of the DPSS personnel functions. Extensive evidence concerning these areas was offered by several witnesses, all of whom were credible and who supported every aspect of the Unions' position and argument.

The Unions argue that under Section 7(g)(5) of the Ordinance, the Commission is empowered to investigate unfair charges and take such action as the Commission deems necessary to effectuate the Ordinance. Therefore, they contend that the Commission, through this Hearing Officer, has full authority to conduct this hearing, develop evidence and offer the parties the opportunity to make a full and complete record so that a probative

JULIUS N. DRAZNIN
Arbitrator
10880 Wilshire Blvd.
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decision may be rendered. The Charging Party further argues that Section 12(a)(3) of the Ordinance clearly provides for any violation of the Ordinance, wherein there is a refusal to negotiate on negotiable matters, to be an unfair labor relations practice, and subject to whatever remedy the Commission shall direct.

The County appears to take the position that Section 6 of the Ordinance does not mean what it appears to clearly state, to wit:

> "Section 6(b). The scope of negotiation between management representations and the representations of certified employee organizations includes wages, hours, and other terms and conditions of employment within the employee representation unit."

The undersigned cannot accept the argument offered by the County, that a project such as the John Berry activity--whatever its effects on the terms and conditions of employment--is wholly within management's private domain and not subject to the bargaining process, even though the activity clearly and substantially affects employees' working conditions.

On several occasions, the Commission has dealt with similar issues of unfair charges and has chosen to follow the leading body of relevant decisions in this area, those arising under the National Labor Relations Act. I think such a course is a just and proper one. Increasingly, in recent years, when public-sector, labor-law decisions have been formulated in the courts of this country, the jurists and others so deciding have found that, notwithstanding certain basic differences between the public and private sectors, the

JULIUS N. DRAZNIN
Arbitrator
10880 Wilshire Blvd.
19th Floor
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private sector body of decisions affecting labor relations were largely applicable to most areas of the public sector. The duty to bargain in good faith on negotiable matters is certainly one of those areas.

In this situation, we have the Employer entering into a contract with a company to conduct a survey; the company then proceeded to develop new techniques, approaches, job schedules, duty sequences and assignments, all of which affected many of the employees in the bargaining unit. There is no doubt in my mind that the Employer has the authority to contract with John Berry to perform certain services for it, but when that contracting company's functions converge on and directly affect the terms and conditions of employment of employees in the bargaining unit represented by a certified bargaining agent, then the Employer has gone too far and is responsible for the acts of its agent, the John Berry organization.

The sharp increase in the case load of eligibility workers, which was one of the effects of the Berry Projects, would clearly be a case in point. Does such an operational change affect the terms of employment? This Hearing Officer believes that it does. The Commission has previously found, and been affirmed by the California Court of Appeal in 33 C.A.3d 1, that the "case load" of employees doing eligibility work and social workers, as such, was an obligatory negotiable area. In examining the leading guideline decisions from the private sector, the case of N.L.R.B. vs. Katz, 369 U.S. 736, stands out because it represents the

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Arbitrator
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United States Supreme Court dictum in the matter. Here, the Supreme Court found that an employer violated the duty to bargain in good faith by his unilaterally changing conditions of work that are found to be mandatory subjects of bargaining. The Court found this conduct to be clearly violative of the duty to bargain in good faith under the provisions of the National Labor Relations Act. In the instant matter, the record before me clearly shows that the Union requested the opportunity to meet with and bargain concerning the unilateral changes the Berry Project was beginning to effect, but management refused to bargain about such matters, contending that it has the right to employ such a contractor for whatever management need or purpose, and that such an issue is a management perogative protected by statute and, therefore, not negotiable. I do not agree with the Employer. For the reasons cited above and from all of the evidence and argument presented, I submit the following:

Findings and Conclusions

1. The undersigned finds that the Employer, The Department of Public Social Services of the County of Los Angeles, has refused to meet with and bargain in good faith with the Charging Party, Local 660 and Local 535, S.E.I.U., AFL-CIO, regarding the changes being effected in the terms and conditions of employment of the DPSS's employees in the bargaining units represented by the Charging Party;

2. This course of conduct has been a continuing one from late in 1976 until the present, the period of time when the

JULIUS N. DRAZNIN
Arbitrator
10880 Wilshire Blvd.
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contracting John Berry firm began to institute work changes at the work place of employees in the bargaining units represented by Locals 660 and 535;

3. That the unilateral changes in the working conditions and terms effected by the employer, through the activity of the John Berry firm, be halted at once;

4. That the DPSS, through its representatives and agents, begin to engage in good-faith collective bargaining with the Charging Party forthwith and upon the receipt of a valid request to bargain from the Charging Party;

5. That such bargaining shall encompass all areas of the John Berry Project contracted for by the Employer, where such activity by John Berry personnel has affected or will affect the terms and conditions of employment of the employees represented by Locals 660 and 535 with the DPSS;

6. That with such bargaining, there shall be effected an immediate cessation of all acts by the Employer and its agents, which have had an effect on the terms and conditions of employment of any affected personnel in these units; and

7. That hereafter, no such projects as those referred to here, or any similar projects, shall be undertaken by the Employer, the DPSS, without prior notice to and full negotiations in good faith with the Unions representing employees in the affected bargaining units, where such contracted projects and activities may reasonably be expected to result in having an effect upon the terms and conditions of employment of individuals covered therein.

JULIUS N. DRAZNIN
Arbitrator
10880 Wilshire Blvd.
19th Floor
Los Angeles, CA 90024
(213) 474-5680

Julius N. Draznin

JULIUS N. DRAZNIN
Hearing Officer

Dated: November 10th, 1977

Los Angeles, California

JULIUS N. DRAZNIN
Arbitrator
10880 Wilshire Blvd.
19th Floor
Los Angeles, CA 90024
(213) 474-5680