HEARING OFFICERS REPORT AND RECOMMENDATIONS

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of:

Joint Council, Local 660, LACEA, and SSU, Local 535, AFL-CIO

Charging Party

versus

Gloria Sapp (DeCuevas), District Director, Department of Public Social Services

Respondent

UFC 55.28

Hearing Officer's Report and Recommendations

Charge of Unfair Employee Relations Practice

Hearing Officer:

Paul Prasow
338 Oceano Drive
Los Angeles, California 90049

Hearings Held:

October 16, November 21, December 10, 1980; March 13, 1981.
Los Angeles, California

Appearances:

For the County:

James Ellman
Employee Relations Administrator
County of Los Angeles
222 North Grand Avenue
Los Angeles, California 90012

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BACKGROUND

On February 1, 1980, the Joint Council of LACEA, Local 660 and SSU, Local 535 filed with the County Employee Relations Commission (ERCOM) an unfair practice charge (UFC 55.28) against Gloria Sapp (DeCuevas) District Director, Department of Public Social Services. The charge cited that Respondent violated Sections 4, 12(a)(1) and 12(a)(3) of the County Employees Relations Ordinance. The unfair practice charge was processed in accordance with Rule 6 of the Employee Relations Commission Rules and Regulations.

ERCOM appointed Paul Prasow to serve as Hearing Officer. Pursuant to Rule 6.07, and hearings were held on October 16, November 21, December 10, 1980; and March 13, 1981, at which time all parties concerned were given a full and complete opportunity to present evidence and argument on the issues involved. Post-hearing briefs were submitted by both parties at which time the record was closed on July 1, 1981.

ISSUES

The issues to be addressed by the Hearing Officer based upon the record established in this case are:

1. Did the District Director, Department of Public Social Services contravene the rights of various employees under Section 4 of the County Employee Relations Ordinance which constitutes an unfair employee relations practice within the meaning of Section 12(a)(1) and 12(a)(3) of the Ordinance?

2. If so, what appropriate remedy should the Hearing Officer recommend to the Employee Relations Commissions?

PERTINENT PROVISIIONS OF EMPLOYEE RELATIONS ORDINANCE

SECTION 4 - Employee Rights

SECTION 5 - County Rights

SECTION 12(a)1) and (3) - Unfair Employee Relations Practices

PERTINENT PROVISIONS OF MOU

a. SOCIAL SERVICES INVESTIGATORS

ARTICLE 16 - Work Schedules

ARTICLE 18 - Caseloads

ARTICLE 29 - Transfers

b. SUPERVISORY SOCIAL SERVICES EMPLOYEES

ARTICLE 15 - Work Schedules

ARTICLE 28 - Transfers

c. FRINGE BENEFITS

Article 16 - Vacations

This case arose out of the charging Party's claim that the Respondent had engaged in a course of conduct designed to discourage Union activities of various employees. The circumstances surrounding the charges involved eight separate incidents occurring over several months. The claims surrounding these events are as follows:

1. On June 1, 1979, Field Representative Marie Norro wrote a letter to Gene Pomeroy, Employee Relations Officer for the DPSS requesting to meet and consult regarding the violation of caseload assignments in the Azusa Medi-Cal Intake Unit. This was brought to Norro's attention by the intake supervisor, Ruby Miranda, who is also a shop steward for eligibility supervisors. On June 22 through July 5, Miranda was on vacation. When she returned, she was informed of a change of assignment to the Medi-Cal approved unit without the required 5 day notice. While she was away on vacation personal belongings had been moved and stocked on the floor in boxes in her new section.

2. On September 18, 1979, Janet Falconer, an eligibility worker in an intake unit, approached Jan Whitton and Valerie Paehler regarding her insufficient training. Both stewards discussed the problem with District Director DeCuevas about the need for additional training. Approximately ten days later, Falconer was informed by Deputy District Director Dan Harris that she was to move to an approved unit. The change in her job assignment took place on October 8, 1979.

3. On October 4, 1979, Latricia McConnell, Administrative Deputy in the Covina office, took two hours of sick leave for a scheduled medical appointment. Before returning to her office, she visited Ruby Miranda at the Azusa office with whom she regularly traded books. During her visit, McConnell spoke to many people in the office. Later, Miranda was called into Deputy District Director Barbara Smith's office. Miranda answered telephone inquiries from Director DeCuevas concerning why McConnell was present in the office. No one else was questioned regarding her visit.

4. In the middle of October, Jan Tansey, an Intermediate Typist-Clerk, approached Steward Jan Whitton regarding her vacation denial by Deputy Director Barbara Smith. The vacation had previously been approved by her supervisor and former Deputy Director Harris. About two weeks later, Smith notified Tansey that she would be reassigned because her unit was to be disbanded. Tansey was transferred from unit clerk of the Food Stamp Section to the central clerical section. With respect to Tansey's vacation request, it was eventually granted by Smith.

5. On or about October 15, 1979, Steward Jan Whitton and the approved unit she supervised were moved from the intake room to another area, some 20-25 feet from her former location in the Covina office. Whitton received only 3 days' notice of the move. For some two months after the move, the case files being processed by Whitton's unit remained in the intake room.

6. On October 19, 1979, Valerie Paehler, an eligibility worker and shop steward, requested a one-week vacation to begin the following day as she felt fatigued. Deputy Director Smith denied the request

on the grounds that there was a backlog of cases in the intake section, When her vacation was denied, Paehler went on extended sick leave ending in February, 1980. She eventually received her vacation benefits upon resigning from County employment in March, 1980.

7. On October 24, 1979, Steward Whitton filed a group grievance on duplicate and excessive home calls and circulated a petition for signatures. While Whitton was collecting the signatures, Deputy Director Smith approached her in front of several workers and told her to stop harassing the employees. Two days after the grievance was filed, Deputy Directory Smith approached an intake worker and asked him why he had signed the grievance.

8. On November 16, 1979, intake eligibility worker, Gloria Espinoza, approached Steward Whitton regarding a problem with her supervisor. The problem involved an alleged shouting incident between Espinoza and her supervisor in front of her co-workers regarding a misplaced field itinerary and late mileage report for her field work. Whitton spoke to Deputy Director Smith about the incident. Smith then asked the supervisor to be more careful about raising his voice. Five days later, Espinoza heard from her co-workers that she and others would be re-assigned. She confirmed the change in job assignment with Smith on November 29, 1979. In early December she was the only intake eligibility worker transferred out of that section into an approved section.

POSITION OF THE PARTIES

PRELIMINARY STATEMENT

The Charging Party in its post-hearing brief bases the unfair labor charge on Events #2 - #8 of the Statement of Charges Section of this Report. The earlier event, the re-assignment of Ruby Miranda, is introduced only for the evidentiary value in demonstrating the unlawful conduct of Respondent. The Charging Party utilizes the U.S. Supreme Court Case, Local Lodge 1424, International Association of Machinists, v. NLRB (Byran Manufacturing Company), 362 U.S. 411, to validate its claim that this earlier event should not be barred by the six month statute of limitation of Rule 6.01 of the Employee Relations Commission. In that case, the Supreme Court decided that the six-month statute of limitations only bars the use of earlier events as the basis for an unfair practice charge. When the charging party has alleged events within the six-month period which are sufficient to constitute the basis of a charge, earlier events may then be admitted as evidence for the purpose of shedding light on the character of events within the six-month period.

POSITION OF THE CHARGING PARTY

The Charging Party's contends that the seven incidents, which constitute the basis of the unfair practice charge, must be viewed in toto and not as isolated events. When taken as a whole the seven incidents reveal a course of conduct which demonstrates Respondent's desire to discourage employee recourse to the Union. When as many as eight separate events are shown, the pattern is too strong to be explained away as coincidence or justified by isolated defenses.

The Charging Party claims that over a period of several months employees who sought the assistance of Union Stewards were subsequently re-assigned or denied requested vacations.

In September, 1979 eligibility worker Janet Falconer, having problems with her workload and assignments for which she was not trained, sought the assistance of Steward Whitton and Paehler. Shortly, after the stewards discussed the problem with District Director DeCuevas, Falcomer was re-assigned to another section involving precisely the work she was not trained for.

In October, 1979, unit clerk Jan Tansey was denied a vacation which had previously been approved. Two weeks after seeking the assistance of Steward Whitton, Tansey was reassigned to a position which required substantially different duties.

In November, 1979, eligibility worker Gloria Espinoza sought the assistance of Steward Whitton regarding an incident she had with her supervisor who had shouted at her in front of her co-workers. Shortly after Whitton spoke to Deputy Director Harris, Espinoza transferred from the intake section to the approved section.

The Charging Party also argues that the Respondent discloses a particular animosity on the part of Smith and DeCuevas toward employees who serve as Union Stewards.

In June, 1979, Steward Miranda was assigned to a new unit with no advance notice and her personal belongings were moved when she was away on vacation. This reassignment occurred shortly after she had brought complaints about heavy caseloads to Smith's attention. Further, in October, 1979, Miranda was called into Smith's office to answer questions from DeCuevas as to the reasons why Administrator Deputy Latricia McConnell was visiting the Azusa office.

Stewards Whitton and Paehler also experienced adverse treatment during this period. Whitton and her unit were moved on very short notice from the intake room to another area of the Covina office. The move occurred soon after Smith relocated from Azusa to Covina. For two months, Whitton and her unit had to endure the inconvenience of working in one room while their case files remained in the former location. A few days after the Whitton move, Smith denied a vacation request by Steward Paehler. Smith informed her that the workload was too heavy and to ask again next month knowing full well that the workload would be even heavier.

The Charging Party also contends that Smith desired to discourage the use of the grievance procedure by her subordinates. In October, 1979, while Steward Whitton was collecting signatures on a group grievance concerning home calls by intake workers, Smith stopped her and accused her in front of several employees of harassing the workers. Although Smith did process the grievance, she told Whitton she was very upset about the filing. She also interrogated one of the signers as to the reason why he had s'gned.

The Charging Party argues that the above events disclose a pattern of conduct motivated by a desire to discourage Union activity. Respondent offered business justifications for the transfer of three eligibility workers, but in not one of the three cases does the Respondent explain why that particular worker was selected. In fact, Falconer was transferred to an approved section for which she was not trained; Tansey was assigned to new duties substantially different from her former position, and Espinoza was the only intake worker transferred to an approved section even though there were

numerous other intake workers also being transferred.

For the actions taken against the Union Stewards, Respondent claims that Whitton's unit was moved in preparation for the arrival of Azusa personnel in Covina. However, the Azusa office did not close until the following year. Respondent gives no explanation at all regarding Whitton's group grievance and Smith's harrassment in the signing of the grievance. Finally, with respect to Steward Paehler's vacation denial, Respondent disputes the reason for her vacation request and contends that she was ill on the date in question.

Additionally, Respondent has failed to offer the best evidence in its own defense. Despite her involvement in all but one of the incidents, Barbara Smith failed to testify to refute the charges that she engaged in conduct to hinder and obstruct legitimate Union activity.

In conclusion, over a period of several months, Respondent took retaliatory action against Union Stewards, against persons seeking the assistance of stewards, and against persons who invoked the grievance procedure. Each of the Respondent's defenses are insufficient to explain its actions. The only reasonable conclusion from Respondent's course of conduct is a desire to hinder and discourage the Union activity on behalf of the Covina District employees.

Therefore, the Charging Party submits that Respondent violated Sections 4, 12(a)(1) and 12(a)(3) of the Ordinance. Accordingly, the Hearing Officer should issue an Order to Respondent to cease and desist from the conduct set forth in the charge. Also, that the affected employees be made whole for the harm suffered.

POSITION OF RESPONDENT

Respondent contends that it did not contravene the Section 4 rights of its employees in administering a complex welfare program and providing services to the community. The actions of management were well within its rights cited in the Ordinance and within applicable Memoranda of Understanding and not a means of retaliation against certain employees seeking union assistance. These actions are part of the County's continuing responsibility to: 1) administer a welfare program which constantly changes; 2) equalize the workload of employees due to staffing and caseload fluctuations; 3) administer the provisions of the caseload Article for eligibility workers to ensure that individual caseworkers do not exceed negotiated maximum caseloads; and 4) meet the service needs of the community.

In its post-hearing brief, Respondent separately argued each of the seven events that comprise the unfair practice charge.

In the event involving Janet Falconer's lack of adequate training and eventual reassignment, Respondent based its action on her poor audit results and that the intake section she worked in was overstaffed. During that same month, 33 other employees also had their job assignment changed. Falconer was eventually moved to an approved function with a reduced caseload under the supervision of a strong eligibility supervisor. In fact, Falconer's reassignment occured on October 8, 1979, almost one month after she had sought assistance from union stewards. Respondent contends that the actions taken represent an effort to maintain high district case quality while utilizing available staff to equalize staffing imbalances.

In the situation involving Ruby Miranda and Deputy Director Latricia McConnell, Respondent argues that its actions reflect a proper investigation by a supervisor of a subordinate's use of time. McConnell's unscheduled appearance in the Azusa sub-office prompted an inquiry since DeCuevas thought McConnell had a medical appointment. The inquiry represents nothing more than a proper handling of a supervisor's duties. McConnell did not lose any pay.

With respect to the Jan Tansey event involving her vacation denial and eventual transfer to another section, Respondent contends that the change of assignment was necessitated because her unit was disbanded and not because she sought Union assistance to retain her vacation request. In fact, she was assigned to the very section, main clerical, that she had requested when she was informed that her unit was to be disbanded. With respect to her vacation request, it was eventually approved after discussion with management.

In the incident involving the relocation of Jan Whitton and her intake unit, Respondent argues that the move was the direct result of the planned closing of the Azusa sub-office. In addition, Local 660 Field Representative Charmeine Yackee met with Division Chief Charles Ventura concerning this very move. As a result of that meeting, Whitton and her entire unit were moved in preparation for the district's reorganization. The effect of the move on Whitton and her unit employees was that they were 20 to 25 feet away from their former location. Respondent contends that the relocation was based on needs of the district. To preclude Management from making such moves on the basis of an unfair labor practice would paralyze the District's operation.

In the event involving Valerie Paehler's vacation denial, Respondent contends that the request was denied because not only was she behind in her work but her entire unit was backlogged. Additionally, Respondent utilizes Article 16 of the Fringe Benefit Memorandum of Understanding in supporting its position. The article states:

> "Nothing in this article diminishes the department head's authority to grant, schedule, and defer vacation time".

In fact, Paehler requested the vacation on October 19, 1979, one day prior to the start of the requested vacation. Respondent argues that vacation requests are to be made at the beginning of the year so that proper staffing is maintained. Further, once the request was denied, Paehler went on extended sick leave which terminated in February, 1980. When she resigned in March, 1980, all her benefits including vacation were paid.

In the matter involving Steward Jan Whitton and the group grievance, Respondent argues that Whitton was representing employees outside her bargaining unit. Whitton, a steward for eligibility supervisors, was filing a group grievance on behalf of eligibility workers. Respondent argues that the employees Whitton represents complained to Management about her interference with their respective work units. Respondent contends that it was aware of the grievance and objected to Whitton pursuing the signing of the petition as Management was seeking to resolve the issue. Respondent purports that no unfair practice was committed, but rather a grievance had been resolved.

Finally, on the last issue regarding Gloria Espinoza's problem with her supervisor and eventual transfer after seeking Union assistance, Respondent claims that the basis for her charge in assignment was

primarily the result of client complaints about her performance in the intake function. Respondent contends that Espinoza was not singled out for seeking union assistance, but was moved to a job assignment which had less contact with the community. She was assigned to an approved Spanish-speaking function where her bilingual skills could continue to be utilized. The official change was on November 29, 1979, thirteen days after speaking with Steward Whitton about the problem with her supervisor. Respondent argues that 47 other employees also had their assignment changed during that time frame including others in her intake unit.

In conclusion, Respondent argues that the Union had attempted to show that Management retaliated against employees as a result of Union affiliation. This retaliation allegedly took the form of job re-assignments, changing desk locations, and denying vacation requests.

With respect to job reassignments, Respondent contends that between August, 1979 and February 1980 at least 259 job assignments were changed due to service needs (County Exhibit #14). Such changes are so commonplace that grievances are rarely filed. Additionally, there is no contractual requirement guaranteeing employees a particular desk location or job assignment. In fact, no prior notice is necessary before changing one's job assignment unless their work schedule is also changed. None of the issues in the charge represents a changed work schedule.

In the two events concerning vacation denials, Respondent argues that the Union misrepresented the situations as retaliatory gestures. In one case, Tansey did secure her vacation. In the other, Paehler had requested her vacation one day prior to its start. Her vacation was denied because her unit and her own caseload were backlogged. Upon

being denied, she left work on extended sick leave and later resigned. Upon resignation, her vacation benefits were paid in full.

Respondent contends that the Union has not presented evidence supporting a 12(a)(1) violation, but only that certain employees had complaints or grievances. Such complaints could and should have been resolved through the grievance procedure. They were not. Respondent states that a charge of retaliation because of Union affiliation cannot rest upon mere surmise, inference or conjecture. Clear proof is required to sustain such charges.

Based on the foregoing arguments, the County contends that the Union has failed to show that the Covina Office Management of the Department of Public Social Services has retaliated against any employees in the Covina office because of their Union affiliation. Therefore, the County respectfully requests that the unfair charge be dismissed.

DISCUSSION

The Joint Council alleges that Respondent violated Sections 12(a)(1) and 12(a)(3) of the Ordinance and contravened various employees Section 4 rights by a series of actions that occurred between September, 1979 and December, 1979.

Sections 12(a)(1) and (3) provide:

(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;

(3) To refuse to negotiate with representatives of certified employee organizations on negotiable matters.

Section 4 of the Ordinance provides:

> 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.

In support of the Charge, the Union's major contentions are that Respondent had interfered with employee rights and retaliated against certain employees for exercising these rights by changing their job assignments and desk locations, denying vacation requests and interfering with the grievance process. The seven events which constitute the basis for the Charge reveal a course of conduct which demonstrates Respondent's desire to discourage employee recourse to the Union. Within the time frame indicated, employees seeking the assistance of Union stewards maintained they were subsequently reassigned or denied vacations. Also, Union stewards claimed they experienced discriminating treatment by interference with their processing of grievances, denying their vacation requests, and by displacing them from their customary work location. According to the Union, these events disclose a pattern of conduct motivated by a desire to discourage Union activity and to retaliate against those employees for exercising their Section 4 rights.

Management responds by claiming that no violation of the Ordinance had occurred. The changes during the indicated time frame represented legitimate exercises of managerial prerogatives in directing the work

force and conducting efficient operations of the Department. According to the Respondent, management's actions were well within the rights as cited in the Ordinance and in the applicable MOU and not a form of retaliation against employees seeking Union assistance.

In resolving the issue in this case, it is not the responsibility of the Hearing Officer to determine whether or not the Respondent effectuated the best managerial policies in administering a complex welfare program. The issue is limited to whether Respondent's actions violated the Ordinance. The determination of whether a violation indeed existed depends upon an objective evaluation of Respondent's intent and the effect of its actions. The question then becomes: Were the actions of Management in seven incidents cited justified on the basis of legitimate client service needs; or did the actions of Management constitute an unwarranted interference with employee rights under the Ordinance?

In examining the motivation and effect on the part of Management, two criteria for judging its actions are essential: first, the action must have an economic or service-related justification and must be for a significant and legitimate purpose; second, the business justification for management's actions must outweigh the interference with the Section 4 rights involved.

A relatively slight economic justification may be outweighed by the more serious impact on Section 4 rights of employees when the challenged conduct is inherently prejudical to employee rights or Union interests so as to impair or interfere with these rights, then a violation can be considered evident even in the face of an actual economic justification by management.

In the instant case, the motives of management seem mixed. On the one hand, management was attempting to assert its prerogatives regarding scheduling vacations, job transfers, etc. On the other hand, several incidents described in the record seem to indicate an interference with employee rights and Union interests. The Arbitrator cannot read the minds of the individuals involved and therefore cannot state with certainty whether some of management's actions were due to a clash of personalities or were motivated by an intent to interfere with employee rights. The ultimate effect, however, of several of management's actions did result in the kind of interference that could be construed as an unfair practice under the Ordinance.

RECOMMENDATIONS

Upon full consideration of all the evidence and argument of the parties on the issues involved, the Hearing Officer recommends that the Commission find:

1) that the District Director, Department of Public Social Services, did contravene the rights of various employees under Section 4 of the County Employee Relations Ordinance which constitutes an unfair employee relations practice within the meaning of Section 12(a)(1) and 12(a)(3) of the Ordinance.

2) that the appropriate remedy is for the Employee Relations Commission to issue a cease and desist order.

Paul Prasow
Hearing Officer

September 29, 1981
Los Angeles, California