LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of JOINT COUNCIL OF LACEA, LOCAL 660, SEIU and SSU, LOCAL 535, SEIU Charging Party v. GLORIA SAPP, District Director, Department of Public Social Services Respondent	UFC 55.28

DECISION AND ORDER

The charge in this case was filed by the Joint Council of LACEA, Local 660, SEIU and SSU, Local 535, SEIU (Union or Charging Party) against Los Angeles County Department of Public Social Services (County, Department, or Respondent) alleging that the County through the actions of Gloria Sapp, District Director, Department of Public Social Services, had committed an unfair employee relations practice within the meaning of Sections 4, 12(a)(1) and/or 12(a)(3) of the Employee Relations Ordinance (Ordinance)

by engaging in a course of conduct which indicated a desire to discourage the Union activities of a number of employees.

The matter was duly referred to Hearing Officer Paul Prasow, who held hearings on October 16, November 21, December 18, 1980, and March 13, 1981. The parties appeared and were afforded full opportunity to offer argument and evidence and to examine and cross-examine witnesses. Post-hearing briefs were filed. Hearing Officer Prasow submitted his Report on October 1, 1981. The County filed Exceptions to the Report, and the Union filed a statement in opposition to these Exceptions.

In brief, the Charging Party contends that by a number of personnel actions, including reassignments and denial of vacation requests that occurred primarily between September and November, 1979 in the Covina District Office of the Department, the Respondent engaged in a pattern and course of conduct designed to discourage employee recourse to Union assistance and to the grievance procedure. The Respondent asserts that its actions reflect a proper exercise of Management rights required to insure the orderly administration of a complex welfare program.

Hearing Officer Prasow, in concluding that the County had violated Sections 12(a)(1) and 12(a)(3) of the

Ordinance and recommending that a cease and desist order issue to that effect stated that "[t]he 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." The Report, however, does not contain findings of fact or sufficient discussion from which the Commission can infer the basis of the Hearing Officer's conclusions and recommendations. Hence, the Commission in order to reach a decision in the instant matter has developed the following findings of fact and conclusions:

We begin by noting that Sections 4 and 12(a)(1) of the Ordinance are virtually identical to Sections 3502 and 3506, respectively, of the Meyers-Milias-Brown Act (MMB). The California Court of Appeal in a discharge case alleging violations of Sections 3502 and 3506 of the MMB, determined that:

> "These provisions [Sections 3502 and 3506] of the Government Code while not identical, are similar in language to the provisions of section 7 of the Federal Labor Relations Act [citation omitted] and section 8(a)(1) and (3) of the same act [citation omitted]. Therefore, the construction to be placed by

> this court upon the language [of Sections 3502 and 3506] . . . is guided by decisions, interpretations of the comparable sections of the Federal Labor Management Relations Act by the federal courts [citations omitted]." (Laborers, Local 89 v. Board of Trustees, 96 LRRM 2427, 2431.)

In deciding that the discharge of two employees was violative of Sections 3502 and 3506 of the MMB, the Court relied essentially on the principles articulated by the U.S. Supreme Court in NLRB v. Great Dane Trailers, 65 LRRM 2465, 2469:

> "First, if it can reasonably be concluded that the employer's discriminatory conduct was 'inherently destructive' of important employee rights, no proof of an antiunion motivation is needed and the Board can find an unfair labor practice even if the employer introduces evidence that the conduct was motivated by business considerations. Second, if the adverse effect of the discriminatory conduct on employee rights is 'comparatively slight,' an antiunion motivation

must be proved to sustain the charge if the employer has come forward with evidence of legitimate and substantial business justifications for the conduct. Thus, in either situation, once it has been proved that the employer engaged in discriminatory conduct which could have adversely affected employee rights to some extent, the burden is upon the employer to establish that it was motivated by legitimate objectives since proof of motivation is most accessible to him." (Emphasis not ours.)

With these principles in mind, we turn to the events set forth in the charge before us.

Janet Falconer

On Septemer 18, 1979, Janet Falconer, an eligibility worker assigned to the Aid to Families with Dependent Children (AFDC) intake section of the Covina Office, discussed her need for additional training with Jan Whitton and Valerie Paehler. Paehler was Falconer's steward, while Whitton was the steward for a supervisory bargaining unit. Later that day, Whitton and Paehler discussed Falconer's training needs with District Director Gloria DeCuevas (nee Sapp). Approximately ten days later, Falconer was informed

by Deputy District Director Dan Harris that she was to be reassigned to an AFDC approved unit. The change was effective on October 8, 1979.

The Union contends that the reassignment was in retaliation for Falconer seeking the assistance of the Union in her attempt to secure additional training. The County asserts that the reassignment was made because the intake unit was overstaffed, the audit results of Falconer's cases were poor, and Falconer would be able to obtain training in the approved unit under a knowledgeable supervisor.

Although it appears that the decision to reassign Falconer was based to some extent on the request for additional training, this fact alone is insufficient to compel the conclusion that an unfair employee relations practice occurred. The County responded to the request for additional training with an action--reassignment to another unit--that, while not satisfactory to the employee, reflected a proper exercise of its authority to determine where such training could be afforded and to allocate its employees where operational needs dictate. Furthermore, we note that such reassignments are made frequently and that Falconer's salary, fringe benefits, and work schedule were not changed by the reassignment. We, therefore, find that the reassignment of Janet Falconer was not violative of her rights under the Ordinance.

Ruby Miranda--October 4, 1979, Incident

On October 4, 1979, Latricia McConnell, Administrative Deputy in the Covina office, took two hours of sick leave for a scheduled medical appointment. On the day in question, she visited Steward Ruby Miranda at the Azusa office with whom she regularly traded books. Their meeting was limited solely to a discussion of various books they had read. Miranda subsequently received a telephone call from District Director DeCuevas inquiring into the purpose of McConnell's visit and the nature of their conversation. DeCuevas also discussed this matter with McConnell.

Director DeCuevas testified that the call was made for two reasons: (1) her perception that since McConnell was scheduled off because of a medical appointment she should not have been present in the Azusa office and (2) her concern that in talking to Miranda, McConnell was bypassing Deputy District Director Barbara Smith, Miranda's immediate supervisor.

We find DeCuevas' testimony persuasive and concur with the County's position that in contacting Miranda and subsequently discussing the matter with McConnell, DeCuevas properly exercised her prerogative as a manager to investigate her subordinate's (McConnell) use of time. In our view, a contrary holding would unreasonably shackle the County in its efforts to supervise its employees. We

further note that no adverse action was taken against Miranda, nor do we believe that Miranda's conversation with McConnell comes within the ambit of activities protected by the Ordinance. Thus, we are compelled to conclude that in conducting its inquiry into the October 4, 1979, meeting the County did not violate the Ordinance.

Jan Tansey

In September or early October, 1979, Jan Tansey, an intermediate typist clerk in the Covina office, submitted to her supervisor (one Walter Simms) a request for a short vacation in late November. The request was approved by Deputy District Director Harris, but was subsequently denied by Barbara Smith, Harris' replacement.

Following notification that her vacation request was denied, Tansey discussed the matter with Steward Whitton, who contacted Local 660 Business Agent Charmeine Yackee.[1/] Approximately two weeks later, Tansey was informed by Deputy Smith that she was to be reassigned to the Azusa

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[1] The actual date is in dispute. The charge alleges that the discussion occurred on October 15, 1979. During the hearing, the County introduced into evidence Whitton's timecard which indicated she was sick on the day in question. We do not consider it necessary, however, to resolve this issue in reaching our decision on Tansey's reassignment.

office. Tansey indicated to Management that reassignment to a different office would create a hardship because she was in a carpool. Ultimately, she was reassigned to the central clerical section in the Covina office, effective November 29, 1979.

There is not one scintilla of evidence which establishes that the matter of the denial of Tansey's vacation request was ever discussed between Business Agent Yackee and Deputy Smith. Absent such evidence, we cannot find any grounds for concluding that Tansey's reassignment was made in retaliation for her seeking the assistance of the Union. Assuming arguendo that Yackee discussed the matter with Smith, we still do not find on the record before us any basis from which we can infer that Tansey's Ordinance rights were violated. To the contrary, the uncontroverted testimony indicates that Tansey's intake unit was disbanded and that the employees in the unit were assigned to other units or sections. We also note that Tansey's vacation request was eventually approved and that by reassigning Tansey to a unit within the Covina office, the County recognized and accommodated her hardship situation.

Jan Whitton

Jan Whitton is an eligibility supervisor employed in the Covina office of the Department. She is the steward

for the Supervisory Social Services Employees bargaining unit which includes the Eligibility Supervisor classification. On a number of occasions she has represented employees in classifications, such as eligibility worker and intermediate clerk, which are not included in her bargaining unit.

(a) Relocation of Whitton's Unit

Whitton supervises an AFDC approved unit consisting of approximately eight employees which, since October, 1978 was located in a room with a number of intake units. On or about October 15, 1979, she was informed by Mary Morales, her Deputy District Director, that her unit was to be moved in approximately three days to a room occupied by various other approved units.[2/] Whitton was not apprised at the time as to the reasons for the move. Approximately two months later, Whitton was informed by Deputy Morales that Barbara Smith, the Deputy District Director over the intake section, had made a request to Director DeCuevas that Whitton's unit be moved from the intake room. The case files of Whitton's unit remained in their former location for about

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[2]See discussion concerning October 15, 1979, date in Footnote 1.

nine months after the unit had been moved to the approved room. The rooms are separate and the relocation involved a physical displacement of from 15 to 25 feet.

Although the chronological sequence is not stated with precision in the record, it appears that Business Agent Yackee discussed Whitton's relocation prior to its implementation with Division Chief Charles Ventura, DeCuevas' immediate superior. As a result, Management agreed to modify its initial plan and move Whitton's unit to a room from which it would not have to be moved when the contemplated transfer of employees from the Azusa office occurred.

The County has admitted on the record that the relocation was precipitated to a considerable extent by the complaints of Whitton's co-supervisors concerning her attempts to have their subordinates file grievances. Such activity on the part of Whitton, irrespective of whether she was functioning as a steward in this regard, is activity that normally warrants protection under the Ordinance. However, this basic presumption must be modified where dictated by the facts of the particular case.

In the instant case, the County was faced with a problem; specifically, the concern of the majority, if not all, of the eligibility supervisors who shared the intake room with Whitton that her actions were interfering

with their ability to supervise their units. In response to the concerns expressed by these supervisors, the County elected to move Whitton's unit. The relocation, however, did not change Whitton's salary, work schedule, or assignment, nor is there any evidence which shows that her ability to function as a steward was impaired. The relocation of Whitton was an inconvenience and a de minimus violation of the Ordinance at best.

We believe that this minimal interference with Whitton's Ordinance rights were outweighed by the legitimate operational needs of the Department and, therefore, conclude that in relocating Whitton's unit the County did not violate her rights under the Ordinance.

(b) Grievance Concerning Home Calls

Following complaints made to Whitton by two eligibility workers assigned to AFDC intake units, a meeting was held on October 17, 1979, between Whitton and a number of eligibility workers. As a result of the meeting, a group grievance was circulated on behalf of these workers concerning the application of the Department's home-call policy. Because Valerie Paehler, the steward for the eligibility workers, was out ill, the signatures were collected by Whitton.

While Steward Whitton was in the process of collecting signatures, Deputy District Director Smith

approached her in front of several workers and stated that the workers were busy and that she should refrain from harassing them. Smith also suggested that Whitton collect the signatures at a later time. The record is silent as to whether Whitton complied with this suggestion.

Whitton testified that the group grievance was filed on October 24, 1979 (the document, however, shows a filing date of October 23, 1979) and was signed by 14 eligibility workers. Smith discussed its filing with Whitton and acted upset that the grievance had been filed. There is no evidence that she threatened Whitton or that any action was taken against Whitton for her role in processing the grievance. Smith later informed Whitton that she had questioned Eligibility Worker Lu Duong concerning his reasons for signing the grievance and that Duong had told her that he believed he was signing to attend a meeting.

We are not persuaded by the Union's argument that Whitton was acting in the capacity of a steward while circulating a grievance on behalf of eligibility workers. Whitton is the designated steward for the Supervisory Social Services Employees bargaining unit, not the steward for the bargaining unit which includes the eligibility worker class. The position of steward is created by provisions incorporated in the memorandum of

understanding. This status does not accrue in those situations in which an individual is engaged in union activity on behalf of employees outside his bargaining unit. Consequently, we do not consider it unreasonable that a member of Management would be concerned in a situation where an employee who is not the designated steward was circulating a grievance. While we do not believe that Smith's accusation that Whitton was harassing employees demonstrates an enlightened approach to labor-management relations, there is no evidence that these accusations interfered with Whitton's ability to collect signatures or had a chilling effect on any employee's willingness to become a party to the grievance. Rather, the grievance was signed by all interested employees, processed in a timely fashion, and resolved by the Department at the second level of the grievance procedure.

Interrogation which tends to restrain, coerce, or interfere with employees in the exercise of their rights under the Ordinance is proscribed by Section 12(a)(1), but casual, moderate interrogation of employees concerning their union activities is not, per se, an Ordinance violation.

The record is void of any evidence that Smith's conversation with Whitton concerning the grievance on the home-call policy consisted of anything more than a mere expression of Smith's displeasure that the grievance had

been filed. Absent any indication that during this conversation Whitton was threatened with reprisals for engaging in Union activity, we are not prepared to conclude that Smith's conduct was violative of the Ordinance. Similarly, the evidence fails to establish that Smith's questioning of Lu Duong was interrogation of the kind prohibited by the Ordinance.

For the foregoing reasons, we find that Smith's actions in voicing her displeasure concerning the grievance to Whitton and questioning Duong about the grievance were not a course of conduct prohibited by the Ordinance.

Valerie Paehler

Valerie Paehler was an eligibility worker assigned to an AFDC intake unit in the Covina office of the Department. She was the steward for the Social Services Investigators Employees bargaining unit, which includes the Eligibility Worker classification. Sometime in October, 1979, Paehler requested a one-week vacation. The request was approved by Linda Lockwood, her immediate supervisor, but was denied by Barbara Smith, her Deputy District Director, Paehler was subsequently informed by Smith that the request was denied because her backlog of

cases was excessive.[3/] It appears that Paehler submitted her request less than one week prior to the time of her intended vacation. When her vacation was denied, Paehler went on extended sick leave, commencing October 16, 1979, and ending in February, 1980. She eventually received her vacation benefits upon resigning from County service in March, 1980.

The Union contends that Paehler's vacation request was denied because of Smith's animosity toward Union stewards. The County argues that in view of the short notice of the request and the magnitude of Paehler's backlog, it acted reasonably in denying her vacation.

It is not the role of this Commission to determine whether the County acted reasonably or exercised good judgment in denying Paehler's vacation request. The Commission's review is limited solely to the issue of whether the County's action was taken for purposes proscribed by the Ordinance. The record establishes that other intake eligibility workers had case backlogs approximately equal to Paehler's. However, there is no evidence that any other employee with a backlog equivalent

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[3]It is virtually impossible to accurately reconstruct the chronology of the events giving rise to this portion of the charge. The date that Paehler submitted her request as well as the date it was denied cannot be determined from the record.

to Paehler's who submitted a vacation request on equally short notice had the request approved. Absent such evidence of disparate treatment, we are left with nothing more than mere conjecture or speculation that the County violated the Ordinance. Such conjecture or speculation is insufficient to sustain an Ordinance violation. Furthermore, had the County intended to engage in a retaliatory campaign against Paehler, it could have denied her sick leave benefits for the extended period she was out ill. This was not the case, however; and the record reflects that Paehler received all sick pay that she was entitled to for the duration of her illness.

Gloria Espinoza

On November 16, 1979, Eligibility Worker Gloria Espinoza discussed with Steward Whitton an incident involving a dispute with her supervisor over a mileage report. Later that day, Whitton spoke to Deputy Smith concerning the matter. Smith subsequently informed Whitton that she had brought the matter to the attention of Espinoza's supervisor. Approximately one week after meeting with Whitton, Espinoza heard from several co-workers that she was to be reassigned to another intake unit. She consulted Smith who confirmed the reassignment.

The following week, Espinoza was informed by Smith that in lieu of reassignment to an intake unit, she was to be assigned to an approved unit. When questioned by Espinoza as to the basis for the reassignment,

Smith stated that there had been several community complaints lodged against her and that she had been in the intake section too long.

The Union argues that the reasons advanced by the County in support of its decision to reassign Espinoza are a pretext to disguise the fact that the reassignment was in retaliation for Espinoza resorting to the Union to resolve her difficulties with her supervisor.

We are not convinced, however, that such was the case. Although the evidence establishes that other eligibility workers had been in the intake section longer than Espinoza, we cannot infer from this fact that the County's contention that she had been in the section too long was pretextual. Since complaints from clients had been received about Espinoza, Smith could very well have reached the conclusion that Espinoza had been in intake too long and that a reassignment was warranted. Furthermore, evidence introduced into the record by the County reflects that concurrent with Espinoza's reassignment, a number of other eligibility workers, including three employees in Espinoza's intake unit, were reassigned. For the reasons discussed above and in view of the fact that the evidence establishes that such reassignments are routine, we do not find that the County violated the Ordinance by reassigning Espinoza to an approved unit.

Ruby Miranda--Reassignment Incident

We turn to the matter of the reassignment of Steward Ruby Miranda in July, 1979. As the basis of a charge, that action is barred from consideration by the provisions of Rule 6.01, but is advanced by the Charging Party on the theory that it has evidentiary value on events occurring within the 180 day filing period. However, even if we accord such value to the Miranda situation, we are unable to conclude that the County violated the Ordinance.

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Based on the foregoing findings of fact and conclusions, we do not find that the recommendations of Hearing Officer Prasow are supported by substantial evidence and conclude that the County's actions as set forth in the charge, individually or collectively, were not violative of Sections 4, 12(a)(1) and/or 12(a)(3) of the Ordinance.

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IT IS HEREBY ORDERED that the charge as filed by Joint Council of LACEA, Local 660, SEIU and SSU, Local 535, SEIU on February 1, 1980, be dismissed.

DATED at Los Angeles, California, this 19th day of February, 1982.

Lloyd H. Bailer
LLOYD H. BAILER, Chairman

JOSEPH F. GENTILE, Commissioner

FREDRIC N. RICHMAN, Commissioner