EMPLOYEE RELATIONS COMMISSION

COUNTY OF LOS ANGELES

In the Matter of:	
JOINT COUNCIL OF LACEA, LOCAL 660, SEIU, AND SOCIAL SERVICES UNION, LOCAL 353, SEIU, AFL-CIO, Charging Party,	CASE NO. UFC 55.34
vs.	FINDINGS OF FACT CONCLUSIONS FINAL ORDER
DEPARTMENT OF PUBLIC SOCIAL SERVICES, COUNTY OF LOS ANGELES, Respondent.	

Hearing Officer

Louis M. Zigman, Esq.
473 South Holt Avenue
Los Angeles, CA 90048

Dated: June 4, 1982

Appearances

For the Charging Party	Geffner & Satzman by: Michael Posner, Esq. 3055 Wilshire Blvd., Suite 900 Los Angeles, CA 90010
For the Respondent	James L. Ellman Employee Relations Administrator County of Los Angeles Hall of Administration Los Angeles, CA 90012

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	)	
Respondent	)	
	)	

Introduction

This matter was heard before Louis M. Zigman, duly appointed Hearing Officer, on August 5, November 17, November 18, and December 21, 1981. The Charging Party was represented by Michael Posner, Esq. and the Respondent was represented by James L. Ellman.

Both parties presented evidence and examined witnesses. At the conclusion of the hearing both parties submitted post-hearing briefs. Based upon the evidence and the arguments by the parties I make the following recommendation and determinations.

Background and Material Facts

This case involves the work assignment of the Eligibility Workers in the East Valley District office in Panorama City.

The evidence disclosed that the Department of Public Social Services (hereinafter DPSS) provides various forms of assistance to

indigent members of the public. Several of the forms of assistance, commonly referred to as aids, included medical assistance, food stamps, and aid to families with dependent children.

Prior to April 1978 the East Valley District office assigned Eligibility Workers to handle requests and applications for one particular aid exclusively. Thus if an individual requested two or more forms of aid, i.e. medical assistance and food stamps, that individual would have had to have been seen by two different Eligibility Workers regarding that request.

The evidence also disclosed that although the DPSS provided several forms of aid nevertheless the qualification and criteria for the different forms of aid did vary amongst themselves. Individuals could qualify for one or more types of aid but not be qualified for others.

In or about April 1978 the East Valley District office established a pilot program called the "combo program". Under the combo program Eligibility Workers were given a combined caseload consisting of two aid categories, i.e. medical assistance and food stamps, and these eligibility workers were now responsible for administering requests in both aid categories. The purpose of the combined caseload system was to cut down on the number of Eligibility Workers that an individual would have to see in the course of applying for assistance from DPSS. It was perceived, by management, that this system would ease the handling of requests for assistance.

This combined caseload system was implemented unilaterally by management and initially covered those Eligibility Workers involved in the Intake section. After about one month the program was expanded to include the Eligibility Workers involved in the Approved section.

The evidence also disclosed that there were many problems initially encountered by the Eligibility Workers as a result of the combination of their caseloads. Many Eligibility Workers were unfamiliar with the criteria and regulations involved with the other categories of aid which they had not previously worked with. As a result there was a great deal of confusion and the Eligibility Workers had to take a great deal of extra time in interviewing prospective applicants and in learning the proper methods of computing their qualifications.

According to the Charging Party there was a lack of appropriate training and additionally there was a great deal of confusion and this resulted in the wasting of a great deal of time and ultimately in a misuse of department resources.

The evidence also disclosed that the Eligibility Workers began voicing their complaints about this new combined caseload system almost immediately after the system was implemented. Meetings were held with management but there was no satisfactory resolution as far as the Eligibility Workers and the Union were concerned.

Despite the confusion and the difficulties experienced by the Eligibility Workers the program was gradually expanded and the numbers of combined caseloads rose from the initial program of two per each Eligibility Worker to approximately ten to fifteen by November 1978. Again there were complaints and meetings but the Union was not

satisfied with the actions by management.

According to the Charging Party the complaints of the employees fell upon deaf ears. In October 1979 an employee flyer was circulated amongst the employees identifying the problems that existed in the Department and following the circulation of that flyer additional meetings were conducted with the Director of the Department on November 5 and 6, 1979. Again, according to the Charging Party, promises were made by management that training would commence and that the other matters would be corrected. However, the Charging Party asserted that these promises did not materialize.

As a result of the lack of any meaningful action having taken place following the meetings in November 1979, another flyer was sent to the employees in mid-November 1979 raising the spectre that the employees were receiving in effect a "snow job".

In late February 1980 an employee questionnaire was prepared by one of the employees in the combo program and was distributed to other employees to help identify the problems that existed within the program. These problems were discussed with management at a meeting on March 5, 1980. The meeting was conducted with a member of a group known as the Operations Review Board (hereinafter ORB). ORB was called into this situation to investigate the complaints by the employees and to review their work assignments. Several meetings were held with the employees and with management officials and in April 1980 ORB issued a report. Several recommendations were contained in that report and thereafter in May and June additional meetings were held with management representatives and with the Charging Party.

Following those meetings management did implement most of the recommendations from the ORB report. In addition, on or about July 10, 1980, management officials notified the employees and the Charging Party that it intended to discontinue the combined caseload system and that system was discontinued on or about July 21, 1980.

During the interim period, particularly on June 24, 1980, sixteen of the approximately 22 Eligibility Workers involved in the combo program at the East Valley District office reported that they were ill and each left work at some point during that day between 11:30 a.m. and 1:30 p.m. One other person had been absent for the entire day.

As a result of those absences, the Department believed that the Eligibility Workers engaged in an unlawful work stoppage and strike and therefore the Department refused to pay the Eligibility Workers for their time off on that day and furthermore imposed a one day suspension without pay for all those employees who were absent.

On October 21, 1980 the Charging Party filed an unfair labor practice charge contending that the Department violated Sections 12(a)(1) and (3) of the Employee Relations Ordinance. More particularly, the Charging Party asserted that the Department imposed the combo program on the Eligibility Workers unilaterally and without negotiating with the Union prior to any impasse being declared. According to the Charging Party the Department's actions were in violation of its duty to negotiate in good faith. In addition, the Charging Party maintained that the failure of the Department to negotiate with the Charging Party in a meaningful way was further evidence of bad faith bargaining by the Department.

In addition, the Charging Party asserted that the Department violated the Employee Relations Ordinance when it refused to pay the 17 Eligibility Workers their sick leave entitlement for June 24 and when they suspended these Eligibility Workers for one day. In this respect the Charging Party asserted that the Department unilaterally determined that the action taken by the employees constituted an illegal work stoppage and that this was improper. By doing so the Department unilaterally changed working conditions and practices notwithstanding the fact that some of the employees submitted medical certification to verify their illnesses.

By denying the employees their sick pay that they had earned and accrued, the Charging Party asserted that the Department not only breached the terms and conditions of the Memorandum of Understanding but also ignored the Department's own rules and regulations regarding the procedures and practices that should be followed for sick pay.

In view of this conduct the Charging Party asserted that the Department engaged in unfair labor practices within the meaning of Sections12(a)(1) and (3) of the Employee Relations Ordinance.

The Department denied these allegations. In addition, the Department asserted that the filing of the unfair labor practice charge was untimely as it failed to comply with Rule 6.01.

The Department also asserted that it was not under any obligation to have negotiated the implementation of the combined caseload system, that it did not engage in bad faith bargaining and that the employees were properly docked for June 24, 1980 as well

as being suspended for their improper work stoppage.

And finally, the Department denied that it engaged in any conduct in violation of Sections12(a)(1) and (3) of the Employee Relations Ordinance.

Specific Allegations

As set forth in the unfair labor practice charge filed by the Charging Party the specific allegations with respect to the violations of the Employee Relations Ordinance are as follows:

> Refusing to negotiate in good faith, by failing to reduce an agreement to writing and to implement the provisions of the Agreement
>
> By unilaterally implementing changes in working conditions without and before the conclusions of negotiations and the conclusions of an impasse resolution procedure specified in the Employee Relations Ordinance.
>
> By penalizing employees for legitimate use of sick leave because of their participation in union activity (negotiation).
>
> By by management's Unfair Employee Relations Practice the Strikes and Lockouts Article of the applicable M.O.U. was not in effect.
>
> Disciplining employees without proper cause, management denied the employees right, recognized in Section 5, to be disciplined only for 'proper cause'.

Exhibits

Joint Exhibits

1. Memorandum of Understanding, Social Services Investigators entered into August 22, 1979.

2. Memorandum of Understanding, Fringe Benefits entered into August 23, 1979.

Union Exhibits

1. Report of Hearing Officer Edgar A. Jones, Jr., dated May 4, 1979.

2. The Decision and Order of the Los Angeles County Employee Relations Commission in Case No. UFC 60.6, dated July 25, 1979.

3. A flyer entitled "Flash", dealing with Medi-Cal/Food Stamps Nightmare.

4. Flyer entitled "Flash", dealing with Medi-Cal/Food Stamps Nightmare No. 2.

5. 3 page questionnaire.

6. Memo to Joseph Pisciotta from Brian O'Connell dated April 24, 1980.

7. Memo to Medi-Cal/Food Stamp staff from Adelaide B. Herron dated June 18, 1980.

8. 2 Medical Verification Forms from So. Calif. Permanente Medical Group.

9. Employee Grievance Form of Fay Slotnick dated June 30, 1980.

10. Document entitled "So. Calif. Permanente Medical Group,"with Prescription Form for Ann Kuk.

11. Grievance Form for Ann Kuk dated June 30, 1980.

12. Medical Certification for Harriet Metzger.

13. Grievance Form for Harriet Metzger dated June 30, 1980.

14. 5-page document entitled "Probationers".

15. Permit to Return to Work for Leonella Marrone dated June 24, 1980.

16. Employee Grievance Form for Leonella Marrone dated June 30, 1980.

17. Permit to Return to Work or School Form for Francis Friedman dated June 24, 1980.

17A. Check-in Slip at Kaiser Hospital for Frances Friedman.

18. Employee Grievance Form for Francis Friedman dated June 30, 1980.

19. Medical Certification Form 680 for Sharon Geiger.

19A. Letter from Sharon Geiger, dated June 25, 1980.

20. Employee Grievance Form for Sharon Geiger dated June 30, 1980.

21. Medical Certification Form for Pattie Gilmore.

22. Employee Grievance Form dated June 30, 1980 for Pattie Gilmore.

23. Grievance Form of Aurora Alvarez.

24. Grievance Form of Sheryl Sack.

25. Grievance Form of Casey Holladay.

26. Grievance Form of Patricia Mansushaiean.

27. Grievance Form of Peggy Rice.

28. Grievance Form of Marla Leventhal.

29. Grievance Form of Shirley Abramson.

30. Grievance Form of Jim Aitchison.

31. Grievance Form of Doris Findley.

32. Grievance Form of Doris Rojas.

33. Memo to Linda Morchy from Gerald Elijah dated July 21, 1980.

34. 3-page document consisting of letter from Leon Green to Carlos Sosa, plus attachments, dated August 29, 1980.

35. Medical Certifidation for Shirley Abramson, dated June 24, 1980.

36A, Medical Certification for Sheryl Sack.

36B. Medical note from Dr. Boonsue, dated June 24, 1980.

36C. Check-in slip at Kaiser Hospital, June 24, 1980.

Department's Exhibits

1. A demand for Bill of Particulars in case no. UFC 55.34.

2. Document dated August 1980 entitled "The News".

3. A series of letters to various employees from Mr. Elijah dated June 25, 1980; subject: "Your absence of June 24, 1980."

4. Document entitled "D.P.S.S. negotiations aid," dated September 16, 1980.

5. Document entitled, "on the line with 660."

6. Unfair Labor Practice Charge No. 55.34 dated October 21, 1980.

7. Agenda, dated November 7, 1980.

8A. Memo to Onalee Kuziara from Larry Novack, dated April 3, 1981.

8B. Lettergram to Anita Condon from Medi-Cal Intake Units, dated March 10, 1981.

9. Memo to Onalee Kuziara from Robert Achterberg, dated April 6, 1981.

10. Form PA 306.

11. Form PA 2410.

12. Letter to all department heads from Harry Hufford, dated June 7, 1977.

13. Findings of Fact and Conclusions of Law, Superior Court, in Case No. 314006

14. Section 15840 of the D.P.S.S. Personnel Manual.

15. Document entitled, "East Valley District, 6/24/80, concerted activity".

16. Section 250 of the Salary Ordinance.

17. List of Intake Workers for June 24, 1980.

18. Medi-Cal agreement, dated October 14, 1980.

19. Social Services Investigators' M.O.U., effective July 1, 1981.

20. Bill of Particulars

21. Memo to J.L.Pisciotta from Ulma Peatman dated June 24, 1980.

21B. Document entitled "Intake Worker".

21C. Memo to East Valley Family District from Gerald Elijah.

22. Memo to Miss Kuziara from Mr. Elijah, dated May 24, 1981.

23. Letter to Stephen Coony from Gilbert Sainz, dated May 29, 1981.

24. Letter to Mr. Elijah from Adelaide Herron, dated March 3, 1981.

24B. Explanation of abbreviations in Exhibit 24.

Procedural Issues

Motion to Dismiss

At the outset of the hearing the Department made a motion to dismiss the instant unfair labor practice charge alleging that under Rule 6.01 the charge was untimely and therefore should be dismissed. That Motion was denied.[1]

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[1]In support of its position the Department asserted that even if the Department made unilateral changes in April 1978 those changes

occurred more than 2½ years prior to the filing of the unfair labor practice charge and therefore those matters are beyond the scope of this hearing.

With respect to the more specific allegation that the Department had been engaged in bad faith bargaining the Department pointed to the statements in the Charge asserting that these events occurred as early as February 1980. Inasmuch as the unfair labor practice charge was not filed until October 21, 1980, more than 180 days later, the Department contended that this too should be barred as untimely.

In responding to the Union's argument that the Department did not raise the issue of timeliness in its Answer, the Department asserted that it is the policy of the Employee Relations Commission to defer issues concerning timeliness to the hearing officer unless the dates on the face of the charge are absolutely clear and demonstrate untimeliness.

In addition the Department notes that there is no absolute requirement of raising affirmative defenses under Rule 6.06 inasmuch as in Paragraph 6.06(h) the rule states that the answer "may" include an affirmative defense. Since that rule does not require that the department raise an affirmative defense by using the word "must" and since the Commission itself has deferred such issues customarily to the hearing officers, the Department submits that the Union's reliance on Rule 6.06 to prohibit the raising of the timeliness issue is invalid.

In view of the foregoing the Department asserted that the charge should have been dismissed and the hearing terminated.

While the Union initially denied that its charges were untimely, the Union asserted that the Department was precluded from raising any such affirmative defense in view of Rule 6.06. According to the Union the Department did not raise this issue in its Answer and therefore the Department waived its right to assert such defenses.

The Union argued that the purpose of raising affirmative defenses, early in the proceedings, is to make the parties aware of their contentions with the hope that issues might be refined and that neither party would be surprised by new issues at the hearing. Additionally, the raising of issues during the grievance process often helps to assist the parties in settling their disputes.

Assuming that the hearing officer would not preclude the raising of the affirmative defense, the Union denied that the charges were untimely filed. The Union contended that it was charging the Department with bad faith and surface bargaining over the combined caseload system in the East Valley office and although those negotiations occurred in February 1980 the Union was in no position to determine whether or not the Department was engaging in surface and/or bad faith bargaining until a certain amount of time had expired and only after the Union could have observed and evaluated the posture of the Department.

Inasmuch as negotiations continued through June 1980 the filing of the charges in October 1980, some four months later, was in conformance with the 180 day requirement provided in Rule 6.

For these reasons, the Union contended that the Department's motion to dismiss should be denied.

After considering the arguments by the parties the motion to dismiss was denied on the basis that the allegations concerning surface bargaining were within the 180 day filing requirement.

The issue concerning the alleged unilateral change in the combined caseload system in April 1978 would be barred as untimely. However, the allegations and the charges concerning surface and/or bad faith bargaining in 1980 and as late as June 1980 were within the time requirement under Rule 6.01 of the Employee Relations Rules and Regulations. In this respect I agree with the Union's contention that some time must elapse during which an evaluation is made concerning the posture and motivation of the other negotiator. Inasmuch as the negotiations continued through at least June 1980 and inasmuch as the charges were filed on October 21, 1980, I found and concluded that the charges were within the proper time constraints and the case could not be dismissed on that basis.

As an aside, I did permit the Department to raise the issue of timeliness in its motion to dismiss despite the Union's contention that such an affirmative defense was barred by reason of Rule 6.06(h). I did so on the basis that the language in Rule 6.06 is permissive and also on the basis of the Department's assertion that the Commission customarily defers such issues to hearing officers despite the fact that those issues are not raised in the Department's Answers.

CONTRACTUAL CONTENTIONS

The Department also asserted that the Union was merely attempting to raise matters which should have been raised under the grievance procedure and possibly processed through to arbitration. In view of the fact that many of the allegations are arguably violations of the Memorandum of Understanding the Department asserted that the matter was not properly before the undersigned.

The Union asserted that there was no mandate for an election of remedies and therefore it was not precluded from filing and processing unfair labor practice charges over factors that might also be argued as violations of the Memorandum of Understanding.

The Department's motion was again rejected by the undersigned with the statement that only unfair labor practice allegations under the Ordinance would be considered. Inasmuch as this proceeding was limited to the disposition of the unfair labor practice charges, no consideration would be given by the undersigned as to alleged violations of the Memorandum of Understanding except as it may apply to an unfair labor practice under the Ordinance.

CIVIL SERVICE CONTENTIONS

The Department also asserted that the Union was raising the question of the employees' suspension in this proceeding improperly because it did not file an appeal before the Civil Service Commission and

therefore those contentions were also without merit and improperly before the instant hearing.

The Union contended that the Department violated its own procedures and unilaterally changed sick leave provisions when it refused to accept the employees' reasons for illness. According to the Union this unilateral change in working conditions was a violation of the Ordinance and therefore was properly before the hearing officer.

The Department's motion was again rejected with the admonition that the issue concerning the suspensions would be viewed in the context of purported violations of the Ordinance and not in context of the just cause provisions or under civil service rules and regulations. In other words the Union would have to show that the Department violated provisions of the Ordinance in order to prevail.

In view of the foregoing the Department's motion to dismiss was denied and the hearing proceeded.

Evidence was then taken with respect to the merits of the case and of the Union's contentions that the Department engaged in unfair employee relations practices within the meaning of Sections 12(a)(1) and (3) of the Employee Relations Ordinance.

Testimony

LYNNE MORCHY, an Eligibility Worker in the Medical Intake Section at the East Valley District office in Panorama City, testified that the medical program is a program of assistance for individuals who cannot meet their medical bills. She noted that people who are considered medically indigent are given assistance in paying their medical bills.

Morchy continued by explaining that people initially apply to the Department and are interviewed by eligibility workers. The eligibility worker in the Intake Section does the initial investigation as to eligibility and once the individual is found to be eligible that individual is transferred to the Approved caseworker who periodically investigates the client's status.

Morchy pointed out that the medical assistance program is only one type of assistance program offered by the Department and that individuals may also apply for food stamps, aid for dependent families and others. Prior to April 1978 the eligibility workers at the East Valley District office worked in one particular aid, and did not cross over into the other aids. In this respect Morchy indicated that she worked on the medical assistance program and did not interview clients with respect to applications for other types of assistance such as food stamps and/or aid to dependent families with children.

Sometime in April 1978 management made a decision to combine the caseloads of eligibility workers. The concept of the combined caseloads was developed with the idea to cut down on the amount of time that an individual had to spend in the office and to cut down on the number of different eligibility workers the client had to see. In other words, the idea was that an eligibility worker would handle two different aids, i.e. such as medical assistance and food stamp requests and thus the client would only have to see one eligibility worker instead of two.

Morchy continued in her testimony by recalling that the pilot unit was set up in the Intake Section in the spring of 1978 and combined the case assignments of the medical and food stamp programs. According to Morchy the pilot program ran into a great deal of difficulties from the outset inasmuch as the criteria and rules and regulations for eligibility in the two aids, medical assistance and food stamp, were different. Due to the fact that the eligibility

workers themselves were unfamiliar with the criteria and eligibility requirements in the aids in which they had not previously worked they themselves had difficulty in handling those applications.

Morchy stated that there was no formal training established for the eligibility workers and thus the eligibility workers had a great deal of difficulty in interviewing clients. According to Morchy the interviews were very long because the eligibility workers had to continually check with other eligibility workers as to the proper information and as to the type of criteria to be applied. For example the eligibility workers who had previously worked only in the medical program had to constantly check with the eligibility workers who had experience with the food stamp program and vice versa.

Despite the confusion and the difficulty in handling this new assignment the pilot program was expanded to include the cases in the Approved Section approximately one month later. Morchy pointed out that the eligibility workers in the Approved Section began experiencing similar difficulties as their counterparts in the Intake Section.

As time went on the eligibility workers became very greatly frustrated and they began raising a whole host of complaints. Despite these problems the Department steadily began increasing the number of combined caseload assignments of the eligibility workers and the assignments increased from the initial two combined cases to a high of 19 combined cases for the eligibility workers. In view of the difficulties and the lack of training the eligibility workers were having difficulty meeting the time constraints and even management realized there were great problems. Thus there was no

discipline taken against the eligibility workers even though they were unable to meet the time constrants for processing their cases.

Morchy pointed out that as shop steward she received many of the complaints from her fellow workers and that these complaints were brought to management. According to Morchy although management listened to their complaints they did not respond in any effective manner. Morchy recalled that by February 1979 morale in the office was very low as the eligibility workers felt inundated with their caseloads and with an inability to complete their work on schedule. She stated that absenteeism was high and that people were attempting to transfer out of that office and that things were in a very poor state.

Although meetings were held with management officials the employees were not satisfied and finally in October 1979 a group grievance was filed and the Union met with management concerning that group grievance. This grievance was filed and this meeting was held because in the two or three months before October there had been meetings between the stewards, eligibility workers and management officials trying to identify problems and solutions. In view of the fact that nothing much had come of those meetings the group grievance was filed.

Although Morchy could not recall what finally happened to that grievance she did acknowledge that the grievance "most likely" concerned the combining of the two aid categories and that the combination of the caseloads continued thereafter. According to Morchy although management was still dragging its feet they indicated to the Union that they would start training the employees. The Union therefore decided to give the management representatives additional

time.

The problems however persisted and in February 1980 Morchy and another steward developed a questionnaire which they distributed to the eligibility workers asking for their comments about the combination concept. The results of the questionnaire demonstrated that the eligibility workers were very unhappy about the program and Morchy turned those results over to management officials to further demonstrate that point.

Finally in March the employees and the Union contacted the Operations Review Board (hereinafter ORB) in order to resolve the matter. Several meetings were held in March 1980 during which time the employees described all of their complaints concerning the combined caseload system. A representative from ORB studied these complaints and spent time actually watching the eligibility workers performing their tasks and the ORB representative filed a written report in April 1980. That report noted some of the complaints and difficulties previously described by the caseworkers and union stewards. The report also included several recommendations for the Department to carry forward.

There were additional meetings in May and June 1980. However, according to Morchy, the Department failed to carry out the recommendations of the ORB report and the Union believed that the Department was dealing in bad faith and attempting to avoid its responsibilities.

Morchy recalled that the pressures were increasing and that the eligibility workers were becoming more frustrated by the Department's actions and particularly so when one of the supervisors had to borrow additional eligibility workers to work in that area. The employees

were becoming more and more frustrated and increasingly tense under the tremendous pressure and stress of the work environment.

On cross examination Morchy conceded that the Department did eventually implement the recommendations in the ORB report, particularly those recommendations as were highlighted in the unfair labor practice charge filed by the Union in October 1980. Moreover she acknowledged that those recommendations had been implemented several months before the filing of the unfair labor practice charge. According to Morchy the problems that the employees experienced concerned the laxity given to their complaints by the Department and the Department's attitude in dealing with these problems created a great deal of stress and tension for the employees.

When Morchy was asked why the unfair labor practice charge was filed in view of the fact that the recommendations were in fact implemented, Morchy replied that the charge was filed because the employees were unfairly AWOP'd because of their illness on June 24, 1980.

With respect to the lack of training, Morchy acknowledged that the Department did conduct some training program for the eligibility workers. However she asserted that the training was ineffectual because there was no attempt to integrate the two types of aids, i.e. food stamps and medical assistance, together as the eligibility workers had to do in their combined caseloads. Again, according to Morchy the eligibility workers were merely getting parallel training in the different aid categories and that training was not very good. In support of her testimony she noted the constant complaints by the other eligibility workers and the fact

that the combined caseload system was eventually rescinded.

Morchy also acknowledged, on cross examination, that there were negotiations going on at that time and that those negotiations did cover caseloads. However, according to Morchy, although the combined caseloads were initially on the agenda for discussion the Union changed its mind and did not discuss that in their negotiations. Negotiations on the mid-year topics was concluded sometime in October 1980.

Morchy recalled that a number of eligibility workers became ill on June 24, 1980 due to the buildup of the stress at work. She noted that many of the employees came to her and told her that they were not feeling well and she advised them that if they were not well they should leave work. She also pointed out the proper procedures for the employees and told them that if they went to the doctor that they should bring in a medical excuse.

Morchy pointed out that in the past that employees were not questioned about their absences if they were not on medical certification. In other words, the past procedure merely required the employees to notify their superiors of their need to take sick leave and the leave was virtually always approved. However, in this situation even though many employees brought in doctor verification of illness these employees were not paid for their time off on June 24, 1980. All of the employees who became ill on that day were in effect docked pay and were not compensated based upon the sick leave policy. According to Morchy none of the employees were on medical certification and therefore none was required to bring in a doctor's certificate upon return to work.

Morchy further testified that grievances were filed on behalf of all of those employees on June 30, 1980 and that the grievances were all denied at the first step by their supervisor. The basis for the denial was because management believed that this was a concerted work action in violation of the Memorandum of Understanding and therefore not a legitimate sick day.

On cross examination Morchy acknowledged that of the approximately 22 eligibility workers assigned to combined caseloads, 16 became ill on June 24 and went home. She conceded that constituted an abnormally high rate of illness for that job classification. However, she denied that this was a concerted action by those employees.

Morchy also acknowledged that although employees fill out an absentee form that the form does not automatically mean that they will have been given permission for sick leave. In this respect she conceded that the supervisor does have the authority to review the form and to either approve or disprove the request. However, according to Morchy, those forms are generally approved.

Morchy also acknowledged that under Paragraph 6705 of the Department's Sick Leave Policy that corrective action or disciplinary action can be taken if a supervisor believes that there has been an abuse of sick time.

And finally with respect to the combined caseload situation, Morchy recalled having attended a meeting with management personnel on July 10, 1980 to again discuss that program. After discussing the difficulties management agreed to place a moratorium on the combined caseload program and agreed that they would not return to such a system unless there were further negotiations with the Union.

ONALEE KUZIARA, Deputy District Director of the Glendale Bureau Assistance Payments, testified that she served five years and at all times material herein, as the Departmental Employee Relations Representative for the Department. Moreover the East Valley office was one of the offices within her jurisdiction. She also noted that she was formerly a Business Agent with Local 660 and that she was also an Eligibility Supervisor and an Eligibility Worker at the East Valley office.

Kuziara further testified that she had participated in negotiations, on behalf of management, for the past six years with respect to the Memorandum of Understanding for the Social Service employees. She indicated that Article 18 involving caseloads has a specific provision dealing with the combining of caseloads between different types of aids. She further noted that this language has been in the Memorandums of Understanding since the 1975-76 agreement.

She further testified that combining caseloads is not unusual and that other offices combine caseloads and the different aids. In this respect she noted specifically the Lancaster office, the Metro North office, and the Hawaiian Gardens office and the fact that there has never been any grievances filed by any of the eligibility workers in those offices.

Kuziara stated that there were no grievances because the Memorandum of Understanding specifically permits the combining of caseloads and that there is a provision in that agreement to allow for adjustments in eligibility workers' caseloads to insure an equitable distribution of work. She described the system wherein the cases are weighted by percentage in order to insure a proper division of work. Kuziara also noted that employees may grieve an

improper caseload assignment under the terms of the Memorandum of Understanding.

With respect to the alleged sick out on June 24, 1980 Kuziara recalled being called by the administrative deputy in the East Valley office. That deputy told her that the eligibility workers were in the process of preparing to leave work because of their discontent over the combination files. Kuziara told the administrative deputy not to authorize their absences and she then called the local Union to seek their assistance in stopping this action.

While Kuziara noted that absences may be accepted upon the statements of employees nevertheless those explanations are not routinely accepted in all circumstances. In this particular situation Kuziara believed that there was a concerted work action in progress because of the employees' discontent over the combination program and in view of the fact that they had voiced their discontent for a number of months. In addition Kuziara noted the large number of eligibility workers who were all apparently suddenly taken ill and that their illnesses occurred within a relatively short period of time.

Kuziara also noted that the Department does have a policy concerning sick-outs and Paragraph 15840 of that manual indicates that employees may be disciplined for abuse of sick leave, i.e. sick-outs. She also noted that under Section 250 of the Salary Ordinance employees may be required to furnish proof of absence due to legitimate illness.

Kuziara continued by stating that 16 employees left work that day and one employee had been off work the entire day. Because of the previously discussed factors Kuziara believed that the employees had engaged in an unlawful sick-out and therefore did not approve any of

the absences. As a result all of the employees were told that their absences would be recorded as absent without pay and each was given an additional one day suspension as a result of their improper conduct.

Kuziara noted that all of the employees grieved the fact that they were not paid for their absences on June 24 and that their grievances were denied. Moreover the Union did not proceed any further with those grievances after the denial by management.

With respect to the suspensions, Kuziara noted that there were no appeals to the Civil Service Commission.

Kuziara also stated that the management officials were not empowered to negotiate modifications in the Memorandum of Understanding and that if the Union wished to make changes they had to do so through the collective bargaining process. According to Kuziara there were some negotiations in 1980 concerning caseloads and an agreement was reached in October 1980. Again, according to Kuziara, the question of combination caseloads was discussed but there was no change in the language which allowed management to create combined caseloads. Thus, according to Kuziara, management was permitted to combine employees' cases unilaterally and without negotiations with the Union and that the employees were protected to insure that their caseload requirements did not exceed maximum standards by virtue of the formulas in Article 18.

GERALD ELIJAH, District Director and Director of the East Valley District office since 1974, testified that he participated in a number of meetings with the Union and with employees concerning the combination program. He also recalled that ORB made recommendations

after studying the situation and that they agreed to incorporate some of those recommendations.

Elijah denied that the Union ever asked him to bargain with respect to the medical combination files and he stated that he had no jurisdiction to negotiate on those provisions. Had the Union asked to negotiate he would have directed them to the Department of Personnel.

Elijah also denied that the Union ever asked him to put any agreement in writing and/or that he ever refused to do so.

Elijah continued by stating that they ended the combination program in July 1980 because of staffing problems and because of the feelings of the employees against it. He indicated that the district reinstituted the use of combination caseloads in June 1981 and that they so informed the Union.

Elijah also disputed Morchy's testimony with respect to the absence of any training. According to Elijah the employees were given training in the various aids when they were working with the combination program. According to Elijah the training was sufficient although the ORB report identified a few weaknesses therein.

Positions of the Parties

Union's Position

As indicated above, the Charging Party asserted that the Department violated Sections 12(a)(1) and (3) of the Employee Relations Ordinance by having unilaterally implemented a change in the conditions of employment of the eligibility workers when it

instituted the combo program. In addition, the Charging Party maintains that the overall posture by the management officials in discussing the employees' and Charging and Party's complaints demonstrated that they had no real intent to correct the problems nor to return to the former situation. The Department's position could not be gleaned until after a period of time had elapsed. It was only after the ORB made its recommendations and the employee complaints became so vocal that the management officials finally ended the program. Their action in ending the program however did not absolve them from their earlier bad faith bargaining. The Charging Party asserted that the Department also violated the Employee Relations Ordinance when it unilaterally changed the accepted practices concerning sick leave by refusing to accept the employees' contentions that they were ill on June 24, 1980. In the past statements by employees, particularly when not on medical certification, were accepted and the failure to have accepted the employees' excuses without any evidence to the contrary constituted a unilateral change in working conditions and the resulting docking of their pay and suspensions were therefore improper and unlawful.

In view of the foregoing the Charging Party requested that the Commission issue a cease and desist order prohibiting the Department from engaging in unilateral conduct and an affirmative order that the employees be made whole for all monies withheld both pursuant to the denial of sick pay and for the wrongful imposition of a one day suspension

Department's Position

The Department asserted that the allegations concerning the alleged unilateral imposition of the combo program are barred as untimely inasmuch as that program was instituted in 1978. Under Rule 6.01 an unfair labor practice charge should have been filed within 180 days of that alleged improper conduct. Inasmuch as the unfair labor practice charge was filed in October 1980, some 2½ years later, those allegations must be barred as untimely.

Even assuming arguendo that the allegation for some reason was not considered untimely, nevertheless the Department pointed to the language in the Memorandum of Understanding, Article 18, wherein it provides and allows for the combining of caseloads. More particularly the Department pointed to the language in Article 18 to wit:

> When management assigns caseloads resulting from the specialization of an Intake or Approved function of an aid category listed, or when Management assigns caseloads resulting from combinations of the Intake or Approved functions of aid categories listed, Management will adjust an employee's caseload to maintain an equitable workload relative to the workload of those employees assigned to an Intake or Approved function of related aid categories listed. (emphasis added)

In light of the foregoing the Department asserts that it committed no unfair labor practice when the East Valley District office combined caseload assignments. And finally, the Department noted that it has engaged in similar conduct at various other district offices with the full knowledge of the Union and with no similar protests.

The Department also denies that there were any negotiations taking place concerning the issue of combining caseloads during the

1978 and 1979 period and therefore it did not engage in any bad faith bargaining. In this respect it noted that the management officials at the East Valley District office had no authority to negotiate language which was appropriately incorporated in the Memorandum of Understanding and in addition there was never any type of demand by the Union to negotiate along those lines.

The Department also denies that there was any agreement which it failed to execute in writing and noted that there was no evidence of any such agreement established by the Union. In this respect it asserted that the charge relating to that contention was simply without any foundation.

With respect to the denial of sick pay and discipline for employees as a result of the incident on June 24, 1980, the Department again asserted that there was no violation of the Employee Relations Ordinance.

In support of its position it noted that under the Salary Ordinance, Section 250, employees may be required to present evidence of illness and in addition under the Personnel Manual, Section 6705, employees may be disciplined if they abuse sick leave.

The Department denied that it changed any terms and conditions of employment by its actions in docking the employees and in disciplining them. Rather, the Department contends, that it took action against the employees because of their unlawful work stoppage. This was simply discipline and did not amount to any unilater change in working conditions. According to the Department the proper avenue for redress would have been through the Civil Service Commission or by the filing of a grievance.

In view of the foregoing the Department asserts that the denial of sick pay benefits was a legal remedy available to the County under Section 250 of the Salary Ordinance and under Section 5 of the Employee Relations Ordinance.

In view of the foregoing the Department asserted that the unfair labor practice charges should be dismissed.

Analysis and Conclusion

After considering all of the testimony and all of the arguments by both parties I find that there is an absence of proof that the Department engaged in any conduct violative of Sections 12(a)(1) and (3) of the Employee Relations Ordinance.

In viewing the specific charges by the Charging Party listed in its unfair labor practice charge I note, in agreement with the Department, that there was no evidence of an agreement which the Department allegedly failed to reduce to writing and which the Department allegedly refused to implement. In this respect there was some very vague testimony by Morchy as to some agreement concerning training in 1979 or 1980. Her recollection was very vague and in view of the evidence that some training was provided and in view of the lack of clarity with respect to any type of an agreement I could not find that the Charging Party has met its burden of proof.

In addition although the Charging Party seemed to indicate that the Department refused to implement recommendations of the ORB nevertheless during testimony Morchy agreed that the allegations contained on the first page of the unfair labor practice charge were eventually implemented by the Department and that the implementation was several months prior to the filing of the

unfair labor practice charge.

In view of the foregoing I find no evidence to support the Charging Party's argument that the Department refused to negotiate in good faith, by failing to reduce an agreement to writing and to implement the provisions of the Agreement.

The allegation concerning the unilateral implementation of changes in working conditions without prior discussion with the Union as it related to the imposition of the combo program was clearly barred and untimely. I agree with the position by the Department that such a claim is barred under Rule 6.01 in light of the fact that no unfair labor practice charge was filed within 180 days of the alleged occurrence. Inasmuch as the occurrence took place in April 1978, some 2½ years earlier, that allegation is deemed as untimely.

The assertion by the Department that it was privileged to have made the change under the terms of the Memorandum of Understanding was not considered in light of the fact that the allegation was barred as untimely.

The assertion that by management's unfair employee relations practice the Strike and Lock-outs article of the applicable Memorandum of Understanding was not in effect was not considered by the undersigned as particularly relevant in this case. That was not an allegation of an unfair labor practice but merely a statement of position with respect to the incident occurring on June 24, 1980.

Turning now to the Charging Party's more broad assertion that the Department engaged in bad faith bargaining in its discussions with the employees and Charging Party concerning their complaints

about the combo program, I find that there was an absence of evidence to support that finding. The evidence demonstrated that management officials met with the charging party and with employees and did attempt to provide some training. The fact that Union steward Morchy did not believe that the training was sufficient does not constitute an unfair labor practice. Moreover there was an absence of any tangible evidence to demonstrate that the management officials were attempting to either undermine the Charging Party or to avoid their responsibilities. While it can be argued, and was argued, that the fact that the Department did not produce results that were satisfactory to some of the employees and/or some of the stewards, that this was evidence of bad faith, it can certainly be argued that this type of evidence is not sufficient upon which to base a finding of a violation of the Employee Relations Ordinance. I agree with the latter theory primarily because of the absence of any real or solid evidence to convince me that the management officials had engaged in bad faith dealings.

This point seems to be even more emphasized by the fact that the Union did not file the unfair labor practice charge until October 1981 some 3 months after the combo program had been discontinued. Therefore it could certainly be argued that the situation had become moot in view of the fact that the Charging Party had been successful in getting the Department to rescind the combo program.

The question of why the unfair labor practice charge was filed at all seems to have been answered when Morchy testified that it was filed to recoup the lost pay and to vacate the suspension of the eligibility workers who had left work on June 24, 1980.

In view of the foregoing I find that there simply is an absence of any evidence to support a finding that the Department engaged in conduct violative of Section 12(a)(3) of the Employee Relations Ordinance.

Turning now to the contention by the Charging Party that the Department violated Sections 12(a)(1) and (3) by having docked the employees' time for being sick on June 24, 1980 and then for suspending them for their illnesses, I again find no evidence to support this position

Initially I agree with the assertion by the Department that these matters are more properly within the context of a grievance under the terms of Memorandum of Understanding and/or of an appeal to the Civil Service Commission, nevertheless I must analyze the Charging Party's contentions that this action also constituted an unfair labor practice within the meaning of Sections 12(a)(1) and (3) of the Employee Relations Ordinance.

In examining the Charging Party's theory I find that I am not in agreement with it. It appears that the Charging Party is trying to get around the other potential avenues of resolution by asserting that the Department, in its actions, unilaterally changed working conditions. I do not agree with that theory.

Although there may be a practice to generally accept employee statements concerning their mental or physical condition and although there may also be a practice of generally accepting doctor's excuses, nevertheless the provisions in the Salary Ordinance and in the Personnel Manual, Paragraph 6705 specifically allow for the review of the excuses given and for discipline of employees for abuse of sick time.

The question of whether or not the employees did or did not abuse sick time is not properly before the undersigned. The only issue that need be resolved is if the Department violated Sections 12(a)(1) and/or (3) by its actions. In view of my finding that it did not unilaterally change working conditions because it always had the right to review and to discipline for abuse of sick leave there was no unilateral change in any employees conditions of employment.

Furthermore under the terms of the Memorandum of Understanding, Article 35, the Department is privileged to take disciplinary action for an alleged unlawful work stoppage. That argument, however is more properly confined to a grievance and of an interpretation of the Memorandum of Understanding and beyond the scope of this proceeding.

In view of the foregoing I find that there is no evidence to establish that the Department violated either Section 12(a)(1) or Section 12(a)(3) of the Employee Relations Ordinance by this conduct and therefore the allegations in the unfair labor practice charge should be dismissed.

Findings of Fact

1. That the Department instituted a combo program in April 1978 wherein caseloads of eligibility workers were combined.

2. That the unfair labor practice charge, filed in October 1980, purporting to attack that program as an unlawful unilateral change is barred as untimely.

3. That after the institution of the combo program discussions were held between management representatives, employees and Union

representatives concerning the complaints of the employees.

4. That these discussions took place over a period of two years and that some attempts to remedy the employee and Charging Party's complaints was made.

5. That in July 1980 the Department did discontinue the combo program.

6. That on June 24, 1980 16 of the 22 eligibility workers who were assigned combo caseloads left work stating that they were ill.

7. That those 16 eligibility workers together with the one eligibility worker who did not report to work at all that day were docked time for that day and were also suspended one day because of their purported participation in an unlawful work stoppage.

Conclusion

That there was an absence of evidence to establish that the Department engaged in any conduct violative of Sections 12(a)(1) and/or (3) of the Employee Relations Ordinance.

Recommended Order

That the unfair labor practice charges be dismissed in their entirety.

Respectfully submitted,

Louis M. Zigman, Hearing Officer