LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

IN THE MATTER OF: LOS ANGELES COUNTY EMPLOYEES ASSOCIATION (LACEA), LOCAL 660, SEIU Charging Party v. DEPARTMENT OF PUBLIC SOCIAL SERVICES Respondent	UFC 6.102

Appearances:

For the Charging Party: Jeffrey Paule
Geffner and Satzman

For the Respondent: James L. Ellman
Employee Relations Administrator
County of Los Angeles

REPORT OF THE HEARING OFFICER

On February 4, 1982 the Los Angeles County Employees Association (LACEA), Local 660, SEIU, on behalf of employee Jan Whitton, filed an unfair employee relations practice against the County of Los Angeles, Department of Public Social Services. On April 12, 1982, pursuant to Section 6.06 of the Employee Relations Commission Rules, the Respondent County filed an answer to the charge in which it denied committing the alleged unfair employee relations practice. The undersigned was then appointed to act as Hearing Officer in the above entitled matter and on June 2, 1982 a notice of hearing in the matter was executed. The hearing took place in room 374 of the Hall of Administration on August 18, 1982. During this hearing, the parties appeared and were given the opportunity to present evidence and argument. Briefs were received by the Hearing Officer from both parties via the Executive Officer on October 8, 1982. The undersigned, having considered all the evidence and arguments presented by the parties, now submits this report in accordance with Rule 6.10 of the Commission's Rules and Regulations.

THE ISSUE

The Charging Party has alleged that the Respondent has committed an unfair employee relations practice under Sections 4 and 12(a)(1) of the Employee Relations Ordinance. The Hearing Officer has determined that the issue to be decided is as follows:

> "Did the County commit an unfair employee relations practice under Section 4 and/or 12(a)(1) of the Employee Relations Ordinance during the interview of County employee Jan Whitton on February 1, 1982? If so, what is the proper remedy?"

SUMMARY OF THE FACTS

Although there is some disagreement between the parties regarding certain aspects of the present case, for the most part, the basic facts are not in dispute.

Jan Whitton is an eligibility supervisor for the Department of Public Social Services (hereafter known as "DPSS") in the Covina office. She has held that position

for approximately twelve years. As an eligibility supervisor, she is an active member of the Supervisory Social Services Employees Bargaining Unit of Local 660. Her activities on behalf of the Union have included being a job steward for the past thirteen years and a member of the Union's Board of Directors for the past three years.

In February 1982 Whitton applied for another job assignment known as district monitor. The district monitor job assignment is within the same classification as eligibility supervisor. The responsibilities of the district monitor job include the review of cases for security purposes, determination of training needs within the district, and determination of error rates of departmental employees through the audit of cases.

On February 1, 1982 Whitton and several other applicants also interested in the position were interviewed by four DPSS Management employees including District Director Gloria Cuevas and Duputy District Director Richard D'Agostino. Whitton alleges that during the course of the interview various questions were asked about her Union activities which she regarded as improper and constituting an unfair labor practice. There were three specific questions which Whitton could recall which she found improper. She alleges that one had to do with concern as to whether there would be a conflict of interest between the job of district monitor and her duties as shop steward. Another related to her reaction in the event an employee was discussed in a negative manner during an administrative staff meeting. The third had to do with a discussion regarding access she would have to certain materials as district monitor and how she would react to them. Whitton testified that seventy-five percent of the ten minute interview was spent discussing her Union activities.

Whitton responded to the questions and concern expressed by Management by explaining that she would separate her role as shop steward from that of district monitor just as she had been able to separate her Union activities from her present duties as eligibility supervisor.

The County version of what occurred during the February 1st meeting differed from that of Whitton. According to the County, the interview lasted for about twenty minutes, and only a very brief portion of it, about one or two minutes, was spent discussing her role with the Union. According to Cuevas, about eighteen to twenty questions were asked in all, and most had to do with auditing of cases, general knowledge, and how she would regard discussing audit results. D'Agostino testified that the only question that he could recall relating to Whitton's status with the Union

had to do with whether she would use a negative comment made about an employee in an administrative staff meeting against the County in any future grievance action. Cuevas testified that she said to Whitton, "It doesn't matter to me that you're a Union steward, but would it constitute a conflict of interest for you?" She explained that as a review board monitor, the grievant would be part of the administrative staff while at the same time representing people who work with Union affiliates. In addition, it would mean that Whitton could be put in a position of finding information which could result in discipline of the employees involved. She also testified that she recalled D'Agostino's question. She could not recall any additional questions being asked on this matter.

Following the February 1st meeting, the candidates for the position were evaluated and several days later Whitton was informed that she was the best candidate and offered the job. On February 15th, however, she was informed by Gloria Cuevas that another job assignment, that of training specialist, was also available on a temporary basis. She was offered her choice of either position, and she chose the training specialist position, indicating, however, that when the temporary training job ended, she would still like the district monitor job. Whitton admits, however, that Cuevas did not make any committment about this. Whitton then began working as a training specialist and is currently assigned to that position.

POSITION OF THE UNION

The Union argues that the unfair labor practice occurred during the February 1st interview when Whitton was asked questions regarding her role as a Union shop steward. According to the Union, Whitton has an absolute legal right to be a member of Local 660 and, accordingly, to participate actively in the Union, including the right to be a shop steward. Therefore, it was improper and illegal for the employer to question her regarding the effect her role as shop steward might have on her duties as district monitor. The Union also argues that it is not necessary in this case to prove actual discrimination or actual intimidation for there to be an unfair labor practice. The intimidation and unfair labor practice occurred, according to the Union, when the questions were asked during the interview and subsequent events are irrelevant.

For these reasons, the Union asks that the unfair labor practice charge be sustained and the County ordered to cease and desist its unlawful conduct.

POSITION OF THE COUNTY

The County takes the position that there has been no violation of the County Employee Relations Ordinance.

The County argues that there is no evidence that any unfair labor act was committed. The County points out that Whitton was offered the district monitor position which she refused and that she was given the training supervisor job which she elected to take. It also points out that she remains a steward and that her work schedule, pay schedule and work location have not been changed. In short, according to the County, no evidence exists to show that Whitton or the Union were in any way the victim of an act of unfair labor practice.

The County also argues that the facts do not support the Union's position. According to the County, the two or three questions which concerned Whitton constituted only a very small part (less than a minute) of the twenty minute interview and not the seventy-five percent as alleged by Whitton. The County also argues that the grievant misinterpreted the questions when she misconstrued them as interference with her role in the Union because no such thing was intended. In support of this position, the County argues that the transcript shows that Whitton could not give any specifics which support her conclusion about the nature or purpose of the questions. Instead, she admitted that she based her position on her interpretation of the questions.

Finally, the County argues that according to case law and NLRB decisions, it is a well accepted proposition that only when an employer's interrogation of an employee concerning Union activities specifically restrains, coerces or interferes with the exercise of employee rights is such interrogation considered an unfair labor practice. According to the employer, simple questioning is not an unfair labor practice and, therefore, the present charge should be dismissed.

DISCUSSION

The issue before the hearing officer is whether Management's interview with Whitton on February 1, 1982 constituted an unfair labor practice. After reviewing the evidence presented, the hearing officer has concluded for the reasons that follow that there is no basis for upholding the unfair labor practice charge.

The charge against the County alleged that Sections 4 and 12(a)(1) of the Employee Relations Ordinance was violated. Section 4 guarantees employees the right to participate in the activities of employee organizations...and says that no employee "...shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights". Section 12(a)(1) makes it an unfair labor practice for the County to..."interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in the Ordinance". Thus, the question before the hearing officer is whether the events occurring during the interview of February 1st somehow denied or interfered with Whitton's right to participate in the Union or its activities.

In order to make that determination, the hearing officer must first determine what occurred during the interview itself. According to Whitton, seventy-five percent of the interview was spent discussing her Union activities. According to the County, only about two or three questions were asked on Union related issues and those questions and their response constituted only about one or two minutes of the twenty minute interview. Looking at the evidence presented, it appears to the hearing officer that three questions were asked which related to the grievant's role in the Union and the potential impact on her job, but that these questions could not be characterized as covering seventy-five percent of the interview. Furthermore, the questions themselves did not impress the fact finder as interfering with Whitton's rights under the Employee Relations Ordinance. The questions clearly dealt with the relationship between the position for which Whitton was interviewing and her activities as a steward. However, the questions do not appear to the hearing officer to have been intended to nor to have had the effect of intimidating, restraining, or coercing Whitton nor in any other way interfering with her activities on behalf of the Union. Instead, the questions

seemed to go to legitimate concerns about potential problems that the interviewee might face if selected for the position. Whitton would, after all, be in a position of auditing members of the Union which in turn could lead to discipline in which, as a steward, she might have an interest. Therefore, it was not improper to discuss this with her, if for no other reason than to make certain that she herself was aware of potential conflict in this area. In fact, from Cuevas' testimony, it appears that quite clearly, this was not a problem for Cuevas, but that she wanted to be certain that Whitton herself was aware of the issue. Specifically, when asked whether any questions concerning Whitton's role or association with the Union as a steward were asked, her reply was:

> "Only very briefly. Mine initially wasn't exactly a question. I said to her, 'It doesn't matter to me that you're a Union steward, but would it constitute a conflict of interest for you?'"

This question, as well as the other questions asked during the interview, were in themselves not apparently designed to intimidate Whitton, but merely to express and share with her some areas of potential problems. It is apparent from the nature of her answers that Whitton was not intimidated by the questions and after giving forthright answers, the questions moved on to other areas. It is also quite apparent from the fact that she was selected for the position that neither the concerns expressed by the questions nor her answers to the questions were detrimental to her.

The explanation as to why the entire interview was seen differently by the parties involved apparently goes to the perception of each of the parties. Cuevas testified that no further questions were asked regarding Whitton's Union role. Whitton claims that seventy-five percent of the interview was spent on this topic. The explanation for this discrepancy appears to be how each party regarded the questions asked. The hearing officer asked Cuevas what kinds of questions were asked during the interview. She responded by saying eighteen to twenty questions were asked which "...had to do with auditing cases, general knowledge, how she would feel sitting in a meeting having to discuss the audit results and that kind of thing". The hearing officer then asked if she considered that part of the in-

terview as discussing Union business, to which she replied, "No. These are the results of how she would feel dealing with her peers when she would have to tell us how they were doing". While from Cuevas' perspective she did not regard this as dealing with Union activities, since apparently the same questions might have been asked of anyone in a position to conduct audits, from Whitton's perspective, she apparently regarded this as relating to Union business. However, the hearing officer is not persuaded by her perception. An important part of the job in question deals with audits of the district monitor's peers. Therefore, general questions asked about this aspect of the job were perfectly proper and cannot be considered as dealing with Union business since the issues raised by them would face anyone in the job. The mere fact that Whitton perceived these questions to be directed at her Union activities does not in fact mean that was their purpose.

The Union also argues that it is not necessary to show actual discrimination or intimidation to prove an unfair labor charge. The hearing officer recognizes that this may well be the case in some situations. It is conceivable that a situation could arise where the kinds of questions asked, as well as the atmosphere and manner in which they were asked, might have a chilling effect on the ability of an employee to conduct Union activities. However, in the present case, the hearing officer sees no evidence that this was the intent nor the result of the questions asked.

For the reasons given, the hearing officer has concluded that there was insufficient evidence presented to support a finding of an unfair labor practice. Therefore, the hearing officer must conclude that an unfair labor practice was not committed by the County.

RECOMMENDATION

Having concluded that the action in question by the County on February 1, 1982 did not violate Section 4 or 12(a)(1) of the Employee Relations Ordinance, it is recommended that the charge be dismissed.

Nov 4, 1982
date

Michael D. Rappaport
Hearing Officer