LOS ANGELES EMPLOYEE RELATIONS COMMISSION

In the Matter of	)	UFC 6.104
	)	
LOS ANGELES COUNTY EMPLOYEES ASSOCIATION (LACEA) LOCAL 660, SEIU,	)	HEARING OFFICER'S REPORT AND DECISION
	)	
Charging Party,	)	
	)	
and	)	
	)	
COUNTY OF LOS ANGELES DEPARTMENT OF COUNTY ENGINEER,	)	
	)	
Respondent	)	
	)	

HEARING OFFICER: GEORGE E. MARSHALL, JR.
8484 Wilshire Boulevard
Suite 900
Beverly Hills, CA 90211

HEARINGS HELD: July 23, 1982, October 13, 1982, Los Angeles, California

APPEARANCES:

For Charging Party: Helena S. Wise, Esq.
Geffner & Satzman
3055 Wilshire Boulevard
Suite 900
Los Angeles, California 90010

For Respondent: Harry L. Hufford,
Chief Administrative Officer
Don Elliott,
Employee Relations
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Los Angeles, California 90012

BACKGROUND

The Los Angeles County Employees Association (LACEA) Local 660 filed an unfair practice charge March 5,

1982 against the Los Angeles County Department of County Engineer (County). The charge alleges that the County has denied the Union access to a public lobby for the purpose of setting up an information table and talking to employees on February 4, 1982 and has denied the Union access to employees through bulletin boards and handouts at Union meetings until such materials to be posted or handed out have first been reviewed and approved by the Department. LACEA contends that the Department has unduly interfered with and restrained and coerced the Union, its employee members and potential members in violation of Section 12 of the Employee Relations Ordinance (ERO).

The County's response to the charge denies a violation of Section 12 of the ERO, contending that the Union intended to conduct a meeting in the lobby of its County Engineer facility without making a formal request to hold a meeting on County premises and without submitting a copy of the materials to be distributed on the premises. According to the County, knowledge of the Union's intent to hold a meeting in the lobby on February 4, 1982 was not discovered until mid-morning. The County then offered to make available another area in the building for the meeting. Denial of access to the lobby was made on the basis that it is a small area in the front of the building used to gain entrance to the offices by way of elevators. The Union's intended purpose would create a traffic jam.

After investigation by the executive officer of the Employee Relations Commission, the matter was set for hearing and both parties were afforded ample opportunity to present both testimonial and documentary evidence relating to the issues.

At the hearing the County filed a written motion to dismiss the proceedings on the ground that the charge alleges violations of the Memorandum of Understanding of the Clerical Bargaining Unit and are not violations of the ERO. Such allegations are the basis for grievance and arbitration but not an unfair practice charge.

The motion to dismiss was denied.

POSITION OF THE PARTIES

County Position

The County contends that the allegations in support of the charge in this matter are alleged violations of the Memorandum of Understanding (MOU) between the parties and do not constitute unfair labor practices within the meaning of Section 12 of the ERO, let alone Section 12(a). These allegations should therefore be prosecuted pursuant to the terms and conditions of the Memorandum of Understanding Grievance and Arbitration provisions.

As to an infringement of Ms. Demott's First Amendment free speech rights, the County contends the courts are the proper forums for that determination if such a violation has in fact occurred.

The Los Angeles County Employees Association does not have a guaranteed right of access to County facilities to meet with employees as they contend. Sections 3500-3510 of the Meyers-Milias Brown Act (MMB) and the ERO both empower County management with the right to promulgate reasonable rules and regulations pertaining to the use of County facilities and bulletin boards by employee organizations.

Under Meyers-Millias Brown, the County contends that such reasonable rules and regulations shall include access of employee organization officers and representatives to work locations, use of official bulletin boards and other means of communication by employee organizations. This right is also expanded by the catch-all clause "such other matters necessary to carry out the purpose of this chapter."

A similar grant of rights is found in Section 10(a) of the ERO. Pursuant to this authority County Rule 693 (JX-2) was promulgated. The Rule makes it clear that registered employee organizations may be granted the privilege of using County facilities for meetings of the organization. The granting of the privilege to use the facility per the Rules is expressly conditioned on the employee organization meeting all of the requirements set forth in Rules 693.3-693.6.

The County has not waived any of the requirements contained in Rule 693 and the Union must comply with those

rules (693.3-693.6) if it wishes to utilize County facilities which includes access to the County-Engineer building lobby.

There is no merit to the Union contention that the lobby is a public area, not a work area and not subject to the County Engineer's rules regarding prior approval before using the facility for a meeting nor to their contention the intent was not to hold a meeting but to set up an information table and therefore the County Engineers' prior approval rules were not applicable. Section 3507 of MMB (Section 10(a)) of the ERO and the purpose statement of Rule 693 clearly state that management has the right to make rules on the use of their facilities by employee organizations.

According to the New World Dictionary of the American Language College Edition (1964) World Publishing Company, the term "meeting" is defined:

"1) A coming together of persons or things;

2) An assembly; gathering of people, especially to discuss or decide on matters;

3) An assembly or place of assembly for purposes of worship, as among the Friends or Quakers;

4) A point of contact or intersection; junction;

5) A hostile encounter, duel."

The County does have the right to prescreen Union literature before it may be distributed or posted. There

exists both public and private sector authority for such prescreening to ensure that the Union literature is not derogatory, inflammatory or calls for illegal action upon the part of County employees. The County acknowledges that it cannot unreasonably withhold permission to post or distribute "Union business" literature but County management may first screen to ensure its contents are actually "Union business" whether that right is spelled out in the Memorandum of Understanding or not.

Notwithstanding Ms. Demott's claim as a citizen to pass out any literature she wishes without having it prescreened by management, labor relations case law, both arbitral and judicial point out that when persons are engaged in activities granted them under an employee relations law (such as distributing or posting Union literature), then their right to do so must be found in the applicable employee relations law and not under the First Amendment of the United States Constitution. Ms. Demott's rights therefore are circumscribed by the perimeters of MMB, the ERO and County rules promulgated in furtherance thereto. The County has a right to prescreen Union literature to be distributed or posted on its premises.

The Union's unfair practice charge should be dismissed or denied.

Union Position

The Union contends that the County has unlawfully regulated the message content of the Union literature. Regulation of message content is inconsistent with case law which rejects the lodging in a public official such broad discretion which would allow him to act as censor and thus determine which expressions of view will be permitted and which will not.

In addition, the Union contends that Federal law gives the Union license to use intemperate, abusive or insulting language without fear of restraint or penalty if it belives such rhetoric to be an effective means to make its point.

As a result the Union has a right to convey certain information to its membership, even though the County does not agree with the contents thereof. Section 16(b) of the ERO states that "Nothing in this Ordinance shall be construed to deny any person or employee the rights granted by Federal and State laws . . ." The County therefore cannot now attempt to deprive the Union and its employees of the right to freedom of expression. This method of regulation, which the County readily admits is being followed clearly shows the County is engaging in unfair labor practices by regulating the message content contained in news bulletins posted by the Union.

This method of regulation also constitutes a violation of Article 11 of the Memorandum of Understanding.

According to the Union, the County cannot, through its established bulletin board posting policy supercede the provisions of the Memorandum of Understanding between the parties. The MOU sets forth the conditions upon which the Union is granted access to bulletin boards in County facilities, i.e.:

ARTICLE 11. BULLETIN BOARDS

Management will furnish adequate bulletin board space to LACEA, Local 660, SEIU, where there are existing bulletin boards for the employees in this Unit and where adequate bulletin board space has not yet been made available. The boards shall be used for the following subjects:

A. LACEA, Local 660, SEIU, recreational, Social and related LACEA, Local 660, SEIU, new bulletins;

B. Scheduled LACEA, Local 660, SEIU, meetings;

C. Information concerning LACEA, Local 660, SEIU, elections or the results thereof;

D. Reports of official business of LACEA, Local 660, SEIU, including LACEA, Local 660, SEIU, Newsletters, reports of committees of the Board of Directors; and

E. Any other written material which first has been approved and initialed by the designated representative of the department head. The designated representative

must either approve or disapprove a request for posting within 24 hours, excluding Saturday, Sunday and legal holidays from the receipt of the material and the request to post it. Failure to do so will be considered approval to post the material.

The designated representative will approve all reasonable requests.

The parties may mutually waive the provisions of this Article if a satisfactory posting policy on bulletin boards is currently in effect.

Neither the Union or the County has waived Article 11 of the Memorandum of Understanding provisions in favor of the County's bulletin board policies. Accordingly, in light of the parties' clear and unambiguous mandate of the Union's access to the County's bulletin boards relating to the materials set forth in Article 11, Sections A through D, any attempt by the County to prescreen such material is a violation of the Memorandum of Understanding and an unfair practice which interferes with, restrains and coerces employees in the exercise of their rights.

The Union also contends that prohibiting Union access to the lobby is impermissible for a number of reasons. First, the lobby is a non-work location which, contrary to the County contention, is not governed by County Rule 693 which pertains to the utilization by registered

employee organizations of the County's facilities for meetings with County employees.

Secondly, notwithstanding the County-Engineers' adoption of special procedures pursuant to County Rule 693, those County-Engineer procedures apply solely to the manner in which an employee organization can schedule use of the conference room in the County-Engineer building. Neither County Rule 693 nor the County-Engineer procedures state that non-work locations such as a public lobby, must be scheduled according to those procedures.

Thirdly, to the extent that County Rule 693 and the County-Engineer procedures attempt to govern access to the lobby. They must be stricken absent a showing of good faith consultation with the Union, consistent with Government Code Section 3507 relating to the adoption of reasonable rules for access to work locations. There is no evidence that the County-Engineer even consulted the Union relative to rules pertaining to access to non-work locations.

Fourth, the evidence indicates that access to public lobbys in County facilities has never been denied the Union. If County Rule 693 applied to non-work locations and public lobbys, it would be applied equally throughout the County and not in an inconsistent manner.

Fifth, several Public Employee Relations Board (PERB) decisions have made no distinction between employee

and non-employee organizers in affording access to an employer's property. In addition the Higher Education Employer-Employee Relations Act (Government Code 3568) and the Educational Employer-Employee Relations Act (Government Code 3549, et seq.) contains an unqualified right of access.

Although the private sector cases and National Labor Relations Board decisions do not grant an unlimited right of access to an employer's property, the cases do afford employee organizations greater access rights than those afforded non-employee organizers.

There is at least one case NLRB v. Villa Avila, et al. (9th Cir. 1982) F.2d enforcing (1980) 283 NLRB 10 (105LRRM1499) which permitted Union organizers to come on to the private property of an employer.

The Union contends also that under MMB a presumptive right of access to non-work locations is presumed and any attempt to ban this right of access should be deemed unlawful.

The Union's unfair practice charge should be sustained in its entirety.

DISCUSSION

The County acknowledges in its response to the charge that the County Engineer building lobby is a non-work location but contends that the lobby is a part of its facilities and is subject to reasonable rules promulgated by

the County regulating the use of those facilities. The County's right to promulgate reasonable rules is found in Meyers-Millias-Brown Act and the ERO (JX-1, Section 10).

At issue here is whether the request to set up an information table in a public lobby, an admitted non-work location, constitutes a meeting subject to the rules and regulations promulgated by the County and the County Engineer so as to preclude the use of the lobby for failure of the Union to comply with the stated rules. There is no question that being a County facility, the County has a right to make reasonable rules governing access to the facility notwithstanding the fact that the lobby in question is a public place and a non-work location.

Denial of access to the lobby was made on the basis that a meeting was going to take place which would result in congestion, create a fire hazard and block ingress and egress to an off lobby restaurant as well as access to elevators. All of these reasons on their face are legitimate reasons for denying access to a public lobby if there is evidence in fact to support that which is believed would occur if access were granted.

The evidence in this record does not establish the various propositions given for denying access. First, the evidence indicates that charitable organizations have used the lobby for solicitations and to provide information about their organizations to the exclusion of employee organiza-

tions. The existence of those tables did not create congestion, fire hazard nor interfere with ingress and egress to the lobby, the restaurant or the lobby elevators. Although it is conceded that the possibility does exist that a large crowd may gather, the likelihood of such occurrence is remote. It is remote because the purpose for having access to the lobby was an attempt to reach non-members of the Union and give them an opportunity to see and meet their perspective Union representation and obtain information. There was no contemplation, according to the evidence in the record, that a "meeting" or series of "meetings" was going to take place. A "meeting" under the New World Dictionary of the American Lanaguage College Edition (1964) World Publishing Company definition as argued by the County "1) A coming together of persons or things" was definitely contemplated and could be considered a meeting. There was definitely no intent, however, to hold a formal meeting with an agenda to discuss and decide matters. Since the parties are in agreement that the lobby is a public non-work area and the evidence points up the fact the Union wished to utilize the lobby for the purpose of setting up an information table for purposes of solicitation and communication with its current members and since that purpose is one consistent with the rights granted pursuant to Meyers-Milias-Brown and the Employee Relations Ordinance, that purpose when balanced against the County Engineer Rules and argument as to a

meeting must be given greater weight and be accommodated. The County Engineer cannot therefore impose the same rules of access to non-work locations as is applicable to work locations or for meeting rooms in its facilities.

The hearing officer agrees with the Union argument and believes that if the County Rules relative to access were applicable to the public lobbys of County buildings, such rules would be applicable County-wide unless one of the reasons argued by the County Engineer were in fact established which would preclude access. There is no evidence in the record to refute Union access to other County building lobbys on two hours prior notice.

In the absence of evidence establishing a legitimate reason for excluding the Union from the public lobby, the Union must be given access upon reasonable notice. Although photographs which were taken of employees in the lobby to give some indication of congestion were received in evidence, little or no weight can be given to them in light of evidence in the record that they were "staged" and did not depict actual scenes of employees in the lobby under conditions which might exist during the hours the Union information table would be in use (11:30 a.m.-1:30 p.m.). Since the Union was not granted access to the lobby there is no competent evidence in the record to establish any of the reasons promulgated by the County which would have given the County Engineer the right to have requested the Union to

move to a conference room because of congestion or fire hazard. There are no facts establishing either congestion or fire hazard outside of speculative opinion evidence which is insufficient.

What is reasonable notice for access to a public lobby in a County building depends upon the use to be made and the experience relative to the use of other County lobbys. Except for Union evidence that two hours prior notice, notice the day before or several days before the intended use was given, there is no evidence on this issue except that notice which is required for a meeting room. There is no dispute that Ms. Demott contacted the County on or about January 28th for access to to the lobby on January 4, 1982. There is some testimony however that the County was unaware that a meeting was to take place until the morning of February 4, 1982. Under the circumstances it cannot be said that the notice given relative to the lobby was unreasonable notwithstanding the County's claim it did not understand for what purpose the lobby was going to be utilized.

Having reached the conclusion that the Union should have been granted access to the lobby on reasonable notice it is not necessary to review the decisions cited by the Union pertaining to unlimited access. The hearing officer has read those decisions and finds as the Union concedes in its argument that those decisions, although persuasive are not binding upon the County.

As to the prescreening by the County Engineer of all Union literature prior to its being handed out at Union meetings or posted on bulletin boards within County offices, there is no question that the County Engineer's right to do so is limited by the terms of the Memorandum of Understanding. Any Union literature falling within the enumerated categories of Article 11 A-D may be posted on any bulletin board without being prescreened. Included in these categories are recreational, social and related new bulletins, scheduled meetings, information concerning elections or the results thereof and reports of official business, news letters and reports. Material not falling in the above categories must be approved for posting within 24 hours of requested approval (excluding Saturday, Sunday and legal holidays) in accordance with Article 11 E.

A demand by the County Engineer to screen all Union literature without regard to whether it is being posted or handed out and a refusal to permit the posting of such literature without regard to category is not only a violation of the Memorandum of Understanding between the parties but is an unfair practice to the extent that such conduct on the part of the County interferes with or restrains the employees in an exercise of their right to join and participate in the activities of the Union. The fact that the County's conduct is a violation of the Memorandum of Understanding and is grievable thereunder does not

preclude the bringing of an unfair charge to the Employee Relations Commission.

Although there is no direct evidence in the record that any particular employee's rights were interfered with or restrained, it can be assumed that a request to prescreen material and a refusal to permit the posting of material has a chilling effect on employee membership and participation from their failure to get information essential to the exercise of their employee rights under the Employee Relations Ordinance.

To illustrate its point that prescreening of all material was necessary, the County submitted for review material containing an application for membership (CX-3) in the Union with the words "clerical power turns the wheels" with a drawing to illustrate their meaning which had an attachment. The attachment explained clerical power in relation to the operation of County government indicating that only 40 percent of the County clericals were members of the Union as to 60 percent non-members who according to said attachment were putting "their power behind Pete Schabarum's effort to destroy the County work force." There was a drawing comparing what was purported to be Schabarum's program and the Union's program. There was a statement seeking support and encouraging membership. It is quite clear that the Union is not precluded from making statements or comparisons reasonably calculated to encourage membership

in its organization. The County Engineer offers no evidence which would show that the allusion to Supervisor Schabarum in County's Exhibit 3 is incorrect, is false, libelous or unprotected speech in an organizational setting.

Notwithstanding the absence of such evidence by the County, the material still does not fall into any one of the enumerated categories of Article 11 A-D to qualify as material which can be posted on the bulletin board without prior County approval as is indicated in Article 11 E.

Equally true is the fact that inherent in the language of Article 11 E is an obligation on the part of the Union to submit material for posting on bulletin boards not falling within the categories enumerated in 11 A-D to the County for approval and if no such approval is forthcoming within 24 hours of request therefore then the material is deemed approved and may be posted.

Notwithstanding the conclusion that the Union should have been given access to the public lobby upon reasonable notice is no basis for concluding that the County does not have a right to prescreen Union materials to be handed out in public buildings, ~~and~~ based upon the cases cited by the Union in the private sector and in particular NLRB v. Babcock and Wilcox 351 US 105, 113, an employer may prohibit the distribution of Union literature by non-employee Union organizers if through reasonable efforts other available channels of communication will enable it to

reach the employees and there is no discrimination against the Union by the employer by allowing distribution by other non-employees. There is no evidence of discrimination in this case on the part of the County but there is at least some question as to whether the County-Engineer is permitting Union access through other channels to reach its employees.

The evidence indicates that the Union is posting materials on the bulletin boards in County-Engineer facilities although some materials are being removed because they have not been approved or because the County feels the material is objectionable. County Exhibit 4 encouraging employees to join the Union at a Dr. Martin Luther King, Jr. birthday celebration was one example of material the County deemed objectionable because its second page accused the Board of Supervisors by inference of having a racist attitude in its refusal to honor King's birthday, its attack on health services and because of contemplated Countywide layoffs, which affected the Black and Brown community. The County-Engineer removed this material from the bulletin boards in its facilities. The hearing officer does not find that the statements contained in the material to be inflammatory, derogatory or call for any illegal action on the part of County employees. There is a great deal of opinion contained in the material which may or may not be factual and a conclusion based thereon is made. The statements

contained therein would not be improper nor subject to deletion even in a prescreening of said material. County Exhibit 4 refers to a Union activity, a rally honoring King's birthday and makes statements which would appear to be of concern to County employees, both members and non-members who might wish to learn more information and determine for themselves whether the statements are true or organizational rhetoric. Removal of the material deprives the employee of the opportunity to obtain information and participate in activities sponsored by the Union.

Notwithstanding the County-Engineers actions, however, there is insufficient evidence to conclude that the County-Engineer is prohibiting access to employees through other channels sufficient to warrant finding an unfair practice relative to the prescreening of materials. The County's right to prescreen materials being handed out in its facilities, however, is limited to a determination as to whether such hand out is inflammatory, not related Union business, or calls for illegal activity on the part of County employees.

CONCLUSION

It would appear, based upon the foregoing discussion, that the County Engineer by failing to provide access to its public lobby to the Union for setting up an information table for approximately two hours upon reasonable

notice has committed an unfair labor practice in that it has interfered with the organizational rights of County employees which are guaranteed under the Employee Relations Ordinance.

In addition, to the extent that the County seeks to require prescreening of all Union materials prior to posting which falls in the enumerated categories of Article 11 A-D, the County Engineer has not only violated the Memorandum of Understanding between the parties but has also committed an unfair labor practice to the extent that such conduct has effectively chilled the participation of Union members in their Union and limited information which would permit said employees to more fully participate in Union activities.

The hearing officer does not find that the County Engineer committed any unfair practices by insisting upon screening materials to be handed out within County office buildings, at meetings and for informational purposes. If handouts are to be given on County property, the County has a right to know the content and take appropriate steps to neutralize the content of any material which is disruptive to the work force or affects the productivity thereof which cannot be considered protected organizational material. Any material calling for illegal activity on the part of employees or which is inflammatory can be rejected by the County Engineer. The Union does not have an unlimited and

unfettered right to do or say whatever it pleases and make use of County property. Whatever is contained in Union literature must be related to Union business or related protected activity within the ERO and MMB. If the Union wishes to make any statement unrelated to Union business or related protected activities which falls within the prohibited categories discussed herein then it should distribute such material outside County property or on property owned and controlled by the Union.

RECOMMENDED DECISION AND ORDER

Upon careful consideration and evaluation of all of the evidence and argument of the parties, it is the decision and recommended order of the hearing officer that:

1. The County Engineer did commit an unfair labor practice by requesting or demanding that the Union submit all material to be posted on bulletin boards within its offices for prescreening and approval without regard to the provisions of Article 11 A-D of the Memorandum of Understanding between the parties and it is hereby ordered to cease and desist making such request without regard to category.
2. The County Engineer did commit an unfair labor practice when it denied access to its

public lobby upon reasonable notice from the Union of its intended use to set up an information table and introduce employees to Union leadership, the County Engineer is ordered to cease and desist denying access to its non-work location public lobby upon receipt of reasonable notice from the Union of its intended use.

3. The County did not commit an unfair practice by requesting to prescreen literature to be handed out on County premises in non-work locations. This aspect of the Union's unfair practice charge is denied.

April 29, 1983
Beverly Hills, California

George E. Marshall, Jr.
GEORGE E. MARSHALL, JR.