

LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION

In the Matter of

LOS ANGELES COUNTY
EMPLOYEES ASSOCIATION
(LACEA), LOCAL 660,
SEIU

Charging Party

v.

COUNTY OF LOS ANGELES
DEPARTMENT OF HEALTH
SERVICES

Respondent

UFC 6.108

Appearances:

For the Charging Party: Geffner and Satzman
By: Michael P. Posner
3055 Wilshire Blvd.
Suite 900
Los Angeles, CA 90010

For the Respondent: Susan Toy
Employee Relations
Office of Chief Administrative
Officer
County of Los Angeles
526 Hall of Administration
Los Angeles, CA 90012

REPORT OF THE HEARING OFFICER

On July 12, 1982 LACEA, Local 660, SEIU, AFL-CIO (Charging Party) filed an unfair employee relations practice charge against the Los Angeles County Department of Health Services (Respondent). A hearing was conducted on this matter by the Hearing Officer on April 14, 1983. Briefs were received by the Hearing Officer on July 11, 1983. The Hearing Officer requested and received an extension on the date that his report would be filed until September 15, 1983. The Hearing Officer, after considering the evidence and arguments offered by the parties, submits this report in accordance with Rule 6.10 of the Commissions Rules and Regulations.

Michael D. Rappaport
Hearing Officer

BACKGROUND

The Charging Party has alleged that the Respondent has committed an unfair employee relations practice under Section 12(a)(1) and 12(a)(3) of the Employee Relations Ordinance by bargaining in bad faith. Section 12(a)(1) provides that it is an unfair labor relations practice for the County to "...interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Ordinance". Section 12(a)(3) makes it an unfair employee relations practice to "refuse to negotiate with representatives of certified employee organizations on negotiable matters".

While no specific statement of the issue was agreed to, it appears that the appropriate issue to be decided is: Did the Respondent County engage in an unfair employee relations practice within the meaning of Section 12(a)(1) and 12(a)(3) of the Employee Relations Ordinance when it implemented an evening shift for Patient Financial Service Workers and Supervisors at Olive View Medical Center?

SUMMARY OF THE FACTS

In November 1981 Management at Olive View Medical Center decided to establish an evening shift for Patient Financial Service Workers (PFSW) and Supervising Patient Financial Service Workers (SPFSW) and to implement the program in early December. However, when the approximately seven or eight employees impacted by the shift changes were informed of the new schedule necessitated by the action, the matter was raised with the Union. In turn, Union officials discussed the issue with Management. Eventually a meeting was scheduled with representatives of Olive View Management and County Employee Relations Administrator Warren Sayers who represented the County, and Walt Miller of Local 434 and Rudy Salinas of Local 660, representatives for the Union. Due to a misunderstanding, the meeting which was originally scheduled for December 2 never took place and instead it was rescheduled for December 16.

According to the testimony of the Union witness Salinas, when he contacted Sayers to request the meeting, he specifically stated that he wished to negotiate the implementation of the new shift and expressed concern over Management's unilateral attempt to implement the change.

Sayers testified that he agreed to the meeting because he wanted to assure that both Management and Union were aware

that consultation was required when making the proposed changes. He also wanted to assure the employees that Management was interested in hearing from employees in regard to the impact of the change. However, during the conversation with Salinas when the request for the meeting was made by Salinas, as well as at the meeting itself, Sayers made it clear that negotiations were not required on this matter under Article 32 of the July 1981 Memorandum of Understanding. Therefore, according to Sayers, since the County was not required to negotiate the matter, the meeting was for consultation only.

On December 16 the meeting took place. Representing the County were Sayers and Maureen Williams, Revenue Manager at Olive View, and one other County representative. The Unions were represented by Miller, Salinas and four others.

Joint Exhibit 3, entitled "Consultation meeting with employee organization regarding changes in work assignments for PFSW's at Olive View Medical Center" is the minutes of the meeting. According to the minutes, the December 16 meeting was rescheduled from the December 2 "consultation" meeting. Salinas began by pointing out that the shift change had been unilaterally implemented without consultation with the Union. He further stated that employees assigned to the evening shift were having some individual personal problems with the change.

Sayers then assured the Union that Management was interested in hearing the problems of the employees and in order to do so and to show good faith, Management would delay implementation of the new shift until January 1982. He then stated that the "consultation" meeting would be used to discuss the employees problems.

The Union then made several suggestions to be considered by Management before the implementation, including the use of a pilot program based on volunteers, re-considering the actual number of employees needed, hardship cases, and the selection of employees to work the undesirable shift based on County-wide seniority.

Sayers responded by indicating that hardship caused by the shift changes was a serious concern of Management, however, more clarification was needed regarding the hardships and pilot programs. Sayers then indicated that the Union should present the hardship cases for consideration prior to the next meeting and that Management would respond to each case.

The parties then agreed to meet again on December 29.

In addition to the minutes, Sayers testified that during the December 16 meeting Salinas indicated that the matter being discussed was a negotiable matter, however, Sayers responded by saying that the matter before them was not a negotiable matter, based on the Memorandum of Understanding, since in the Memorandum the parties agreed that they would not require the other party to negotiate matters in the Agreement during its term. He also pointed out that the matter was not negotiable since it did not meet the test of a significant number of employees being affected. Therefore, according to Sayers, the meeting was simply a consultation meeting and not a negotiating meeting. After Sayers explained the County position, according to his testimony, the Union did not further pursue the question of negotiability.

At the December 29 meeting, both parties were represented by the same individuals who were at the earlier meeting with the exception that Salinas was not present.

According to County Exhibit #1, which was the County's minutes of the meeting, each of the Union's points were discussed. At the meeting the Union stated that instead of identifying individual hardship cases, it would recommend two hardship categories for Management's consideration. Management then indicated that it had expected the Union to identify individual cases. After some discussion, it was decided that Management would identify individual cases and report this to the Union. The Union then listed three other topics for Management to consider: the use of volunteers, allowing the most senior person on the night shift to return to days when a vacancy occurred by assigning new hires to the night shift, and that Management implement a pilot program with a Labor/Management review board within a six month period.

After a caucus, Management responded to each of the proposals as follows. Management indicated that it would ask for volunteers to work the new shift, but if not enough volunteers were found, it would designate the employees to work the shift. In the case of PFSWs, the selection would be based on County-wide continuous service date. In the case of Supervisory PFSW's, employees would be selected "...according to supervisory ability and County-wide continuous service date".

With regard to vacancies, Management indicated it would place new hires on the evening shift, allowing senior people to return to the day shift.

With regard to a pilot program, Management indicated

that it would not implement the program as a trial program but that it would make appropriate adjustments.

Following some discussion of other matters related to the program, the meeting was adjourned.

Union Exhibit #1 is the Union's minutes of the same meeting. For the most part, the minutes are not significantly divergent from those of the County. In reference to how the Supervisory PFSWs will be selected, the Union minutes read, "Will assign by County seniority and ability". Just beneath that, separated by a space, is the notation, "subject to budget and staff".

With reference to his review of both sets of minutes, Salinas was asked if he believed that an agreement had been reached between the County and the Union regarding the assignment of employees to the new shift and he responded by saying, "Yes, that they would follow through on all of those issues that we had raised with them". When asked by the Hearing Officer what he meant by "follow through", he replied, "...they had agreed to and would implement, based on ...our recommendations on all those issues which we had brought forth to them". This included the agreement that the County would assign supervisors based upon their County wide seniority and ability.

According to Sayer's testimony, the Union's primary concern during the meeting was that seniority be used as the basis for assigning all of the classifications of employees to the night shift. Management did indicate that it would use seniority to assign PFSWs to the shift, but Management did not agree to utilize seniority exclusively to assign the supervisors. Instead, according to Sayers, "Management decided and advised the Union that needs of the service, the abilities of the supervisors, would be the determining factors. Those two being equal, seniority would be used".

Subsequent to the meeting, the selection of employees to be assigned to the night shift was made.

The employee with the lowest seniority, John Brewster, was assigned to the shift. However, the other employee ultimately assigned to the shift was Virginia Johnson, even though another eligible employee, Paula Calderon, had lower seniority.

When questioned about this, according to the Union, the only reason given for the action was that Calderon had previously worked the night shift.

Management testified that the reason for excluding Calderon had to do with the needs of the department since she was the only bilingual Spanish speaking supervisory PFSW-I and it was felt that she was needed on the day shift.

Following the assignment of Johnson to the night shift, the Union filed the present unfair labor relations charge, alleging that "...the County violated its agreement to re-assign supervisory employees in accordance with seniority and skills" and "...that the County's violation of its agreement constitutes bad faith bargaining in violation of the Employee Relations Ordinance and, therefore, constitutes an unfair labor practice".

POSITION OF THE UNION

The Union argued that the meetings which occurred between the parties resulted in an agreement as to how personnel were to be assigned to the evening shift and that the agreement reached was that supervisory ability and seniority would be the criteria used in selecting supervisory PFSWs.

The Union further contended that whether the meetings were designated consultation meetings or negotiating meetings was not important because in any event, an agreement was reached between the parties as to how the shift selection would be made. Therefore, any unilateral repudiation of the agreement, after it was reached, no matter how the meeting was characterized, would amount to an act of bad faith bargaining.

The Union also argued that the evidence showed that in the agreement which was reached, the sole criteria for assigning supervisors to the night shift were supervisory ability and County-wide seniority. No mention was made in the minutes of either meeting of the additional criterion of the needs of the Department. Therefore, the Union argued that this criterion was not part of the agreement between the parties. Accordingly, the decision to assign Johnson to the night shift instead of Calderon was a violation of the agreement since Calderon had the necessary supervisory ability and a lower County seniority date. Therefore, when Johnson was given the night shift assignment over her objection, the County violated the agreement in question.

Finally, the Union argued that by reaching an agreement with the Union and then unilaterally repudiating it, the County was guilty of bad faith bargaining in violation of the Ordinance.

COUNTY POSITION

The County argued that the meetings which occurred between the parties were not negotiating sessions because the County had no obligation to negotiate the shift change. The County acknowledged that it did have a duty to consult with the Union over the changes and says that it did so during the December 1981 meetings when the County informed the Union of the changes that it intended to implement and gave the Union the opportunity to make suggestions. Management considered the suggestions and announced at the December 29 meeting its decisions on how the evening shift would be implemented. In support of its position that the sessions were not bargaining sessions, the County cited the Memorandum of Understanding.

Based on the above, the County argued that since it was not obligated to bargain and no bargaining occurred, it obviously cannot be guilty of bad faith bargaining.

As to the assignment of Johnson instead of Calderon to the evening shift, the County maintained that the assignment was consistent with the procedures Management had announced at the December 29 meeting. The County argued that Calderon's bilingual abilities convinced Management that her ability as a supervisory PFSW could be more productively utilized on her current assignment on the day shift. Therefore, it was decided not to assign her to the night shift and to instead assign the person with the next lowest seniority, who was Johnson. The County also argued that if Johnson felt the assignment unfair, the appropriate procedure would be to file a grievance, which she did, as opposed to filing an unfair labor practice charge.

DISCUSSION

The issue before the Hearing Officer is whether the County committed an unfair labor practice by violating Section 12(a)(1) or 12(a)(3) of the Ordinance. After examining the Ordinance as well as the evidence and arguments presented, the Hearing Officer has determined that there is insufficient evidence to sustain the charge.

The basis of the Union's charge appears to be that the County and the Union reached an agreement on how the shift reassignments were to be made and that subsequent to that agreement, the County unilaterally breached the agreement. In order to maintain the charge, the Union must present convincing evidence both that an agreement was reached and

that the agreement was violated. The Hearing Officer finds that the evidence presented was not convincing on either of these two points.

Turning first to the question of whether an agreement was reached, there can be no doubt that the Union and County met on two occasions to discuss the shift change and that at the end of those meetings, a policy was stated by Management as to how the shift changes were to be implemented. However, there is insufficient evidence to support the Union's contention that the policy statement could be described as an agreement between the parties which could be used to sustain a bad faith bargaining unfair labor practice charge.

The Union argued that whether the alleged agreement was arrived at through bargaining or consultation is immaterial. The Hearing Officer however does not find that position convincing. While for certain purposes how such an agreement was arrived at might be immaterial, for the purpose of determining if it can be used as the basis of an unfair labor practice for bad faith bargaining, the circumstances and forum of the discussions surrounding the alleged agreements are highly material. Quite clearly, if a party runs the risk of being charged with bad faith bargaining, then some element of bargaining must exist during the discussions leading to the agreement. At a minimum, some evidence of the kind of give and take exchange normally associated with bargaining must exist or at least there must be mutual recognition by both parties to the discussion that bargaining occurred. These minimal requirements of evidence of bargaining must be met if for no other reason than to protect a party involved in consultation discussions from being held to an agreement which it had no intention of making in the first place and which in fact it never recognized. To subject either party to the risk of being accused of bad faith bargaining based on mere discussions occurring during a consultation session would only serve to stifle and inhibit what should otherwise be a free and unfettered exchange of ideas. Therefore, the question of how the alleged agreement was arrived at is very significant.

In the instant case, there is nothing to suggest that any bargaining occurred other than the Union's claim that the discussions constituted bargaining. It is quite clear, however, from the evidence presented, that from Management's perspective, there was never any intent that the sessions be regarded as bargaining sessions. It is undisputed that from the first discussion with the Union, Management made it quite clear that it regarded the sessions as consultations and not bargaining sessions. Management based this claim on the Memorandum of Understanding and the Management's Rights section of the Ordinance. After Management explained its position at the December 16 meeting, the Union apparently dropped

any claim that the meetings were bargaining sessions. Therefore, the Hearing Officer finds that the meetings were merely consultations at which Management announced its intention to implement the changes and considered and adopted some of the Union's suggestions to better implement the reassignments. Accordingly, for purposes of a bad faith bargaining charge, the arbitrator finds that no bargaining occurred, and that, therefore, Management did not enter into any agreement which could be enforced through a bad faith bargaining unfair labor practice charge.

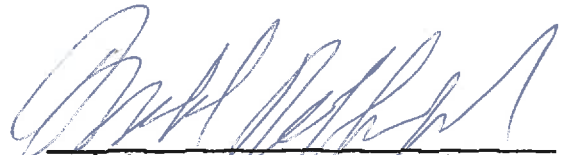
As to the charge that Management committed an unfair labor practice by interfering with, restraining, or coercing employees in the exercise of rights under the ordinance, again the Hearing Officer can find no basis for sustaining the charge.

Even if Management's stated intention to assign employees to the night shift on the basis of County-wide seniority and supervisory ability did somehow constitute an enforceable bargaining agreement, the Hearing Officer is not persuaded that the County violated this intention in the way it assigned the employees. While the Union is correct when it argues that the criterion of needs of the Department was not specifically stated in that manner in Management's announced criteria, the Hearing Officer finds that the criterion of "supervisory ability" is broad enough to include the interpretation that various abilities of the supervisors would be considered, including bilingual or other appropriate abilities or talents, when considering the assignment of supervisors. Therefore, the Hearing Officer can find no violation of Management's stated policy to assign supervisors to the night shift on the basis of seniority and ability.

RECOMMENDATION

Having concluded that the actions in question of the County did not violate Section 12(a)(1) or 12(a)(3) of the Employee Relations Ordinance, the Hearing Officer recommends that the charges be dismissed.

Sept 15, 1983
date



Michael D. Rappaport
Hearing Officer