

LOS ANGELES COUNTY  
EMPLOYEE RELATIONS COMMISSION

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EMPLOYEE RELATIONS  
COMMISSION  
MAY 14 1985

In the Matter of:

LOS ANGELES COUNTY )  
EMPLOYEES ASSOCIATION, )  
LOCAL 660, SEIU, AFL-CIO, )

Charging Party )

v. )

COUNTY OF LOS ANGELES, )

Respondent, )

DEPARTMENT OF HEALTH )  
SERVICES, )

Interested )  
Party. )

UFC 6.125

HEARING OFFICER'S REPORT

The above-captioned matter was litigated before Robert D. Steinberg, the duly appointed Hearing Officer, on November 30 and December 6, 1984. Charging Party was represented by Marjorie J. Weinzweig, Staff Counsel. Respondent and the Interested Party (hereinafter either "County" or "Department") was represented by Kenneth Miller, Senior Administrative Analyst, Office of the Chief Administrative Officer. A transcribed record was taken by Cameron Reporting Service.

Both parties had complete opportunity to examine and cross-examine witnesses, introduce documentation (approximately 30 exhibits were received) and argue their respective

positions. The hearing was free from prejudicial error. Upon a complete and thorough examination of the record, included post-hearing briefs timely received by the Hearing Officer on or about March 6, 1985, the undersigned hereby issues his Report, inclusive of findings of fact, conclusions of law and recommendations.

#### BACKGROUND

The parties are in substantial agreement as to the relevant facts, but they disagree as to their significance. Commencing between October, 1983 and January, 1984, management at Harbor-UCLA Medical Center (hereinafter, "Center"), one of nine such institutions within the Department, implemented certain changes affecting ward clerks or unit secretaries encompassed within the "Clerical and Office Services Employee Representation Unit," Registered Nurses in such unit and Supervisory Staff Nurses I and II encompassed within the "Supervisory Registered Nurses Employee Representation Unit."

The changes were initiated pursuant to revised job descriptions and new or revised "Performance Evaluation Guides" which Charging Party alleges causes a revision in employee performance evaluations. As of mid-January, 1984, only two or three of 11 wards or units were effected, and as of September, 1984, the changes were implemented in one or two more units. The changes, however, were intended to be

put into effect in all the units within the Center as part of the phased-in "Primary Nursing Care" concept. The implemented changes are as follows:

Ward Clerks/Unit Secretaries had to transcribe doctors' orders and had to post primary nursing care assignments (nursing care teams and team leaders).

Registered Nurses, in addition to becoming responsible for the 24-hour nursing care of patients assigned to each as the primary nurse, had to formulate a detailed nursing care plan, inclusive of diagnosis to be completed within 24 hours, and an ongoing written evaluation critiquing the relative success of the nursing care plan. It is also alleged that Registered Nurses also had to engage in peer evaluation of fellow nurses.

Supervisory Registered Nurses, because of the changes in the duties of the Registered Nurses and the new thrust of primary nursing care, were now required to perform a different type of performance evaluation, which allegedly included a greater amount of paper work and expenditure of time.

When the Charging Party learned of these implemented changes in January, 1984, it protested to Center management alleging a violation of its bargaining rights. The Department postured that the changes were not subject to bargaining, but it offered to consult with the Union. Meetings

concerning each certified unit were held in February, 1984, but the parties maintained their previously-stated positions. After filing a grievance (or grievances) on February 29, 1984, concerning the change in performance evaluation, the Union filed this Charge on August 1, 1984, alleging the County, by the above-mentioned conduct, violated Section 12(a)(1) and (3) of the Employee Relations Ordinance. (Hereinafter "Ordinance.")

The County, in essence, responded with a general denial (in the meantime, the grievance was referred to arbitration on May 8, 1984).

#### SUMMARY OF THE EVIDENCE

As is relevant herein the job description of Ward Clerks or Unit Secretaries appears to be virtually the same in content, but not in form. The latest one is merely more modern and more stylized, but it is also more specific as to knowledge and skills and states as a requirement regarding transcriptions, the following language: "Knowledge of medical terminology, abbreviations and common medical procedures."

The new job description regarding Registered (or Staff) Nurses sets forth the concept of primary nursing and the duties and responsibilities of the primary nurse. It provides for diagnosis, the presentation of a care plan within 24 hours, follow up evaluations and a quasi-supervisory

responsibility over Registered Nurses servicing the same patient on other shifts. While planning, supervision and evaluation of patient care was encompassed in the prior job description, one page of clinical responsibilities was expanded into six pages in the new position description.

The Supervisory Nurse (Head Nurse) job description also reflects a change in form and style rather than a change in substance as the supervisory characteristics and functions have not changed. The Supervisory Staff Nurse is responsible for the overall nursing care given to patients on a 24 hour basis. As the system itself changes, so does the leadership role.

The "Performance Evaluation Guides" were obviously adopted to reflect the changes recorded in the latest job descriptions. For example, the skills and responsibilities listed in the Unit Secretary Guide dovetail those enumerated in the job description. In addition, raters are using the Guide to perform the actual rating, inclusive of substantive comments. These are then transposed to the standard County rating form, but when the Guide is attached thereto, there is only limited substantiation to be found in the "comment" section of the standard rating document.

Peggy Nazarey, the Center's Director of Nursing, explained that the new job description for Registered Nurses, introduced in October, 1983, was rewritten so as to conform to the State's "Nurse Practices Act" and it did not

add any new duties. A nursing diagnosis has always been required, but it is now more formal and standardized (and grouped into 11 functional health pattern areas).

In addition, the new Performance Evaluation Guide contained only changes in terminology and did not add additional duties for Registered Nurses. It was to be guide only and not to be attached to the actual, and unchanged, performance evaluation form. It was to make rating more uniform.

Nazarey testified that Ward Clerks were being given the transcription responsibility to relieve Registered Nurses of that duty and because it would speed up the process. It requires only straight transcription with the Registered Nurses being responsible for review and corrections. This assignment was being phased back in as the shortage of clericals was rectified. Clerks had performed this transcription duty prior to 1974.

Ron Fifer, the Center's Head Personnel Technician, testified there were 68 Supervisory Nurses I and II in this Center out of 490 in the unit; 426 Registered Nurses out of 2,279 and 60 Unit Secretaries out of 1,411 in the total unit. Cheryl Carter, who was employed at the Center until September, 1984, as a Supervisory Nurse and before that a Registered Nurse (she was also a Union steward), testified that she did not use the new Performance Evaluation Guides until just before she terminated her employment because it

was, in part, inapplicable for her department as primary care had not been introduced and because it would have been more time consuming. The difference was that the evaluations were now "goal" oriented in contrast to previous evaluations being "problem" oriented.

Evaluating employee performance and setting goals are the primary job of the Supervisory Nurse. When she started using the new guide, Carter found herself spending an extra 8-16 hours a week at work. While the rating sheets stayed the same, the comments differed. The evaluation had to be more complete and detailed and the new form, as it were, had to be learned. There was more paper work in general and she was also short of staff. While she was eligible as a salaried employee for certain compensatory time off in lieu of overtime, this was restricted under the collective bargaining agreement, and it was too much trouble applying for it on a continual basis.

Carter also testified that while the concept of nursing diagnosis was not new, the particular application of it, as addressed by the revised job description and necessitated under primary nursing care, was new, requiring a formalized approach using prescribed terminology, some of which was not readily known by nurses, requiring greater effort (initial diagnosis to be performed within eight hours of admission with a plan for treatment to be drawn up within 24 hours) and responsibility. Prior to January, 1984, diagnosis were done in broad terms.

This testimony was echoed by other Registered Nurses who also conceded that all which was covered in the new job description were duties that Registered Nurses had been required to perform and were encompassed within the State Nursing Code. They added that LVN's and Nurses Aides could no longer perform the actual charting and make the care plan entries regarding patients (under Registered Nurse supervision) that there were more forms to complete and that they were more detailed.

As supported by the testimony of the professionals working with and responsible for the performance of Ward Clerks, two of them (one who was a shop steward) testified that clerks were not generally prepared by either education or training to competently perform the new transcription requirement, that this new requirement, in conjunction with the duty of posting nursing assignments, had caused a delay in filing and made one clerk unable to take his full quota of meal and rest period time off. This clerk also said his unit was short of help.

The one clerk with 14 years service testified he had transcribed all doctor's notes, excepting orders for medicine, up until 1974. Lack of familiarization with medical abbreviations was a particular concern but it was realized that clerk's transcription was reviewed by the Registered Nurses.

The less experienced clerk testified that although his



unit - Pediatrics - went to primary nursing some time late in 1984, transcription by clerks was not yet being required nor was he yet required to do the posting assignments. He testified the additional duties were scheduled for implementation for the latter part of 1985 and that he had not yet been rating according to the new Performance Evaluation Guide.

#### CONTENTIONS OF THE PARTIES

Union: With the new job descriptions, Performance Evaluation Guides and the inception of primary nursing care, came many unilateral changes affecting employees in represented units. The Ward Clerks, whose title was changed to "Unit Secretaries" pursuant to the new job description, assumed new responsibility for transcribing doctor's orders and maintaining primary care bulletin board. In part due to insufficient training, the clerk's work was substantially increased.

Registered Nurses now became trainers of the clerks, but the biggest change affecting Registered Nurses was their having to perform an initial diagnosis within eight hours of a patient's arrival and having to prepare a detailed patient care plan within 24 hours of admission. A number of new documents had to be utilized including the necessity of making evaluation notes. All Registered Nurses as they became "primary nurses" incurred this responsibility which,

in detail and scope, they had not performed before and for which they were insufficiently trained.

By virtue of the changes affecting the Registered Nurses and the Unit Secretaries, the emphasis of the Supervisory Nurse position became one of training regarding goal setting, and rating employees according to newly introduced or re-emphasized standards or methods. It caused a substantial increase in paper work and time, and even one supervising nurse whose unit was not yet engaged in primary nursing was expending an extra 8-16 hours per week once she started using the new Performance Evaluation Guide.

The Union cited several lines of precedent, both P.E.R.B. and N.L.R.D. decisions in addition to E.R.C.O.M. and court rulings, to justify its claim that the unilateral changes were substantial and unlawful as they directly impacted wages, hours, terms and conditions of employment. The Charging Party also argued that the number of employees affected -- a total of three units within the second largest of the Department's nine medical facilities and upwards to 20% of the overall unit -- was significant and it did not, therefore, waive any rights under its collective bargaining agreement to bargain on the units' behalf. Evidence of waiver of bargaining rights must be clear and unmistakable, and here it is not.

The Charging Party ultimately argues that even if a waiver clause excused the County's obligation to negotiate,

the County was obligated to notify and confer with the Union before the changes were unilaterally made herein. Because the County frustrated meaningful negotiation or consultation, all changes promulgated should be rescinded.

County: Citing the Commission's decision in UFC 7.12, it argues the percentage of the certified units affected are insubstantial and that the Union waived its right to negotiate on the changes encompassed herein pursuant to the "Full Understanding, Modification, Waiver" article in each of its three relevant Memorandum of Understandings. While the County concedes it failed to notify the Union of the anticipated changes in advance of a final decision, it argues that the changes were in conformance to law or pre-existing standards, were changes in terminology and otherwise de minimis, and that its failure of consult was cured as a result of the meetings that took place in February, 1984.

#### ANALYSIS

As a threshold matter it must be determined if the Charging Party waived its right to negotiate because its execution of "Full Understanding, Modification, Waiver" clauses in each of its relevant labor agreements with the County. Under this clause, Management is required to negotiate on the effects of the change only when such change would "significantly effect the working conditions of a significantly large number of employees in the Unit

(emphasis added)...." Each Agreement goes on to define "significantly large number" as either a majority of the unit, all employees of a department within the unit or all employees within a readily identifiable occupation such as Stenographer or Truck Driver.

Charging Party does not argue, nor does the evidence suggest, that the mere fact of change in one of the nine departmental facilities impacts employees at each of the facilities. The evidence indicates that the decision of primary nursing care, and the changes resulting from the implementation thereof, was made solely by or on behalf of the one facility; Harbor-UCLA Medical Center.

Accordingly, neither all the Department employees nor all employees within any readily identifiable occupation are affected, substantially or otherwise, and it is clear a majority of the unit is unaffected.

It is axiomatic that evidence of waiver must be clear and unmistakable for it does not necessarily serve the purposes of this Ordinance or related ordinances to terminate proceedings on procedural or tangential grounds. While it would be preferable to resolve a labor dispute on its merits, there is no doubt that Charging Party clearly waived its right to negotiations during the life of its collective bargaining agreement on matters that were either insignificant in and of themselves or which did not affect a significant number of employees as defined in its labor

agreements. The undersigned does not see an ambiguity in this waiver language and neither has the Commission, in previous unfair labor charges where the same or similar waiver language was incorporated in the parties' Memorandum of Understanding, seen such an ambiguity. See e.g., its decisions in UFC 6.48, 7.9, 7.12 and 60.11.

Because there still remains the allegation of failure to consult, also in order to give some direction to the parties and to the Commission in the event it does not sustain the Hearing Officer on his finding of waiver the changes themselves must be addressed. The decision to implement primary nursing care is within the exclusive province of the County and its agents, and the consequences of that implementation are, absent waiver, bargainable to the extent that they are significant.

Be they guide or be they in fact part of the new performance evaluation itself, the Performance Evaluation Guides as well as the new procedures and formalities introduced in January, 1984, or thereabouts, appear to have amended the duties and responsibilities of a Registered Nurse in a material way, with a real (although perhaps indefinite) impact on wages, hours and other working conditions. To the extent that the change may also have added hours to the Supervisory Nurse, I was not impressed that this was significant. The primary duty of a supervisory nurse is to train and evaluate and no new skills, duties or responsibilities were added to this position. The extent of

additional hours or productivity required by the changes was uncertain at best, and appeared to be temporary during the period of familiarization.

The admitted change of duties for the Ward Clerk/Unit Secretaries (it is not a valid defense that these clerks transcribed doctors' notes or orders ten years ago) are ones that affect their hours/productivity and potentially impacts their ability to maintain overall competence. Their need for additional training is apparent.

In light of the above observations, the undersigned must now address the contention of Charging Party that since Respondent violated its duty of consultation, a cease and desist order as well as a rescission of the changes implemented is appropriate and necessary. This may be a case of first impression.

Pursuant to Section 6(a) of the Ordinance, "all matters effecting employee relations...are subject to consultation", and management is urged, if not directed, to engage in consultation prior to effectuating change. Clearly, "all matters" includes both bargainable matters or nonbargainable matters and an agreed upon waiver against negotiations may not be read to also waive consultation rights.

One aspect of the obligation encompassed within the definition of "negotiation" as set forth in Section 3(o) is to "confer" and confer, according to the definition as cited in Section 3(d) is synonymous with "consultant." While

experience and logic, if not the legislative history of this Ordinance, dictates the conclusion that "negotiation", or good faith bargaining, requires more than is required merely by consultation, the difference in the respective duties is one of degree.

Where a violation of one's negotiating duty is protected in specific terms under Section 12(a)(3) of the Ordinance, the failure to properly confer is also necessarily protected, even if by implication. A failure to confer constitutes a per se violation of Section 12(a)(1) for such a failure interferes with and restrains employees in the exercise of their rights guaranteed by the Ordinance.

If a County employer were free to ignore its stated obligation to confer with labor organizations, employees could not have effective representation; nor would the public be properly served if this were so.

The Center conceded its failure herein to give the Charging Party appropriate notice and the opportunity to consult/confer regarding the changes made before they were implemented, and this failure to properly confer must be remedied. The traditional remedy for a violation of Section 12(a)(1), standing alone, is a cease and desist order. The Center's failure herein was not corrected by its willingness to engage in conferral meetings with the Union as of February, 1984, some two to three months after the changes

started being implemented, but there is no persuasive evidence for the Commission to depart from a traditional remedy and enter an order that the changes be rescinded.

There was no ulterior motive in management's failure to initially notify the Union. Because the changes are being slowly implemented and still only directly impacts a minority of the Center's 11 units (wards) there appears to be no reason to undo what has already been done nor to conclude that there cannot be a meaningful dialogue between the parties on the implementation issues raised. Moreover, since Charging Party on January 30, 1984, requested to meet with the Center or the Department, Respondent has been willing to confer with it. The Union itself has short circuited consultation pending the result of this proceeding (and a grievance filed on February 29, 1984, which was referred to arbitration on May 8, 1984).

#### FINDINGS OF FACT

1. Charging Party is the exclusive bargaining representative of Supervisory Nurses, Registered Nurses and Unit Secretaries/Ward Clerks, and has executed Memorandum of Understanding with the County regarding these classifications.

2. Pursuant to its decision to commence a standard of service entitled "Primary Nursing Care," a number of changes impacting the classes of employees represented by Charging



Party were implemented by the Director of Nursing, Harbor-UCLA Medical Center, effective January 1, 1984, or thereabouts.

3. The extent of the changes is as set forth supra.

4. Charging Party learned of these changes in mid-January, 1984, and requested negotiations thereto.

5. Management met with the Union regarding each bargaining unit in February, 1984, but denied any obligation to negotiate.

6. Charging Party filed unfair labor practice charges on August 1, 1984, alleging that the County violated Sections 12(a)(1) and (3) of the Ordinance.

7. The changes attendant to primary nursing (and otherwise improved nursing care) are still being introduced on a unit (ward) by unit basis.

#### CONCLUSIONS OF LAW

1. Even if the Center unilaterally implemented changes affecting employee(s), wages hours and other terms and conditions of employment, it was not guilty of violating Section 12(a)(3) of the Ordinance as its obligation to negotiate was waived by Charging Party as the result of the Union's executing "Full Understanding, Modifications, Waiver" clauses in its relevant collective bargaining agreements with the County.

2. By failing to notify Charging Party of these

changes and by failing to consult with Charging Party regarding them prior to their inception, the County, the Department and the Harbor-UCLA Medical Center has engaged in conduct violative of Section 12(a)(1) of the Ordinance.

#### RECOMMENDATIONS

The duly designated Hearing Officer respectfully recommends that the Commission substantiate the finding of a Section 12(a)(1) violation and the dismissal of the charge alleging a violation of Section 12(a)(3) and enter the following order:

1. Harbor/UCLA Medical Center shall cease and desist from failing to confer with Charging Party on all changes enacted since January 1, 1984, regarding the job content and method or manner of performance of and by Supervisory Staff Nurses, Registered Nurses and Unit Secretaries. Upon request, the Center shall confer with it regarding changes made on or about January 1, 1984, and continuing to date affecting the job content method and manner of performance of and by Supervisory Nurses, Registered Nurses and Unit Secretaries.

Respectfully submitted,



Robert D. Steinberg  
Hearing Officer

Dated: May 14, 1985  
Culver City, California