LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of LOS ANGELES COUNTY EMPLOYEES ASSOCIATION (LACEA), LOCAL 660, SEIU, AFL-CIO Charging Party v. DEPARTMENT OF HEALTH SERVICES Respondent	)	UFC 6.125

DECISION AND ORDER

The charge in this case was filed by the Los Angeles County Employees Association, Local 660, SEIU, AFL-CIO (Union or Charging Party) against the Los Angeles County Department of Health Services (County or Respondent) alleging violations of Sections 12(a)(1) and 12(a)(3) of the Employee Relations Ordinance (Ordinance). The Charging Party contended that the County had violated these provisions by its unilateral implementation of new or revised job descriptions and performance evaluations for certain clerical and nursing personnel employed at the Harbor-UCLA Medical Center.

The matter was duly referred to Hearing Officer Robert D. Steinberg, who held hearings on November 30 and December 6, 1984. The parties appeared and were afforded full opportunity to present

evidence and to examine witnesses. Post-hearing briefs were filed. The Hearing Officer submitted his Report on May 14, 1985. Exceptions to this Report were filed by the Charging Party on June 10, 1985. The Respondent did not submit a statement in opposition to these Exceptions.

In brief, Hearing Officer Steinberg concluded that any statutory right the Charging Party may have had to negotiate on the job descriptions and performance evaluations was waived by virtue of the "Full Understanding, Modifications, Waiver" clauses included in the pertinent Memoranda of Understanding (MOUs). In reaching this conclusion, the Hearing Officer determined that the contractual language in question constituted a clear and unambiguous waiver of the Charging Party's right to negotiate on matters that were either insignificant or did not affect a significant number of employees as defined in the MOUs. The Hearing Officer, however, refused to construe this language as a waiver of the Charging Party's right to consult as provided for in Section 6(a) of the Ordinance. Thus, while he recommended dismissal of the 12(a)(3) allegation, Hearing Officer Steinberg concluded that the County had violated Section 12(a)(1) by its failure to consult with the Union prior to its implementation of the new or revised job descriptions and performance evaluations. The Hearing Officer's proposed remedy directed the County to "...cease and desist from failing to confer with Charging Party on the job content and method or manner of performance of and by Supervisory Staff Nurses, Registered Nurses and Unit Secretaries" and, upon request, to confer with the Charging Party on these changes. (Hearing Officer's Report, p. 18.)

In its Exceptions, Charging Party took issue with both the Hearing Officer's finding with respect to waiver and his proposed remedy.

Addressing first the question of waiver, we note that the language contained in the "Full Understanding, Modifications, Waiver" clauses of the MOUs obviates the requirement to negotiate changes in wages, hours, and terms and conditions of employment unless the changes affect a "significantly large number" of employees in the bargaining unit. The phrase "significantly large number" is explicitly defined in the MOUs as either a majority of the employees in the unit, all the employees within a department in the unit or all of the employees within a readily identifiable occupation such as Stenographer or Truck Driver.

We find no amgibuities in the language in question and, accordingly, can reach no conclusion other than to find a clear and unmistakable waiver of the Charging Party's right to negotiate the changes contested herein. Hence, we specifically adopt the conclusion of the Hearing Officer that the County's unilateral implementation of new or revised job descriptions and performance evaluations was not violative of Section 12(a)(3).

Turning next to the Charging Party's Exceptions to the Hearing Officer's proposed remedy, we note that Hearing Officer Steinberg explicitly refused to recommend that the Commission order the County to rescind the changes and return to the status quo. As a basis for its Exceptions, the Charging Party raised two separate but interrelated contentions: 1) No material distinction exists between the parties' obligations in the consultation

versus the negotiation format under either the Meyers-Milias-Brown Act (MMB) or the Ordinance, and 2) restoration of the status quo is required when the County takes unilateral action in contravention of its obligation to consult.

In support of these contentions, the Charging Party pointed to a number of cases wherein the California courts found no material distinction between the MMB's "consultation in good faith" obligation and its "confer in good faith" requirement. Our review of these cases indicates that the conclusions reached by the courts were grounded in the specific context and language of the MMB. Hence, we do not find them persuasive either in the determination of whether the Ordinance establishes a material distinction between consultation and negotiation or in the determination of the parties' rights and obligations under the consultation provisions of the Ordinance. Nor do we find these cases persuasive as to the appropriate remedy in those situations in which violations of the consultation provisions have been found.

Inasmuch as the Commission has not heretofore decided these issues, we consider it appropriate to set forth below the reasons underlying our conclusions.

Initially we note that Section 6(b) of the Ordinance defines the scope of negotiation to include "wages, hours, and other terms and conditions of employment." Section 6(a) provides that "[a]ll matters affecting employee relations, including those that are not subject to negotiations, are subject to consultation between management representatives and the duly authorized representatives of affected employee organizations." The term "consult" as defined in Section 3(d) merely implies that the parties have an

obligation to "...communicate verbally or in writing for the purpose of presenting and obtaining views or advising of intended actions." On the other hand, Section 3(o) in defining the term "negotiation" imposes a duty on the parties to "meet at reasonable times," to "confer in good faith," and to "execute a written document incorporating any agreement reached."

Sections 12(a)(3) and 12(b)(2) of the Ordinance specifically make a breach of either parties' duty to negotiate an unfair employee relations practice. No similar provisions exist pertaining to violations of the consultation duty. However, a failure to consult on the part of the County, as pointed out by Hearing Officer Steinberg, implicitly constitutes a violation of Section 12(a)(1).

Our reading of the above-referenced provisions of the Ordinance compels the conclusion that the Ordinance establishes a material distinction between consultation and negotiation and imposes a greater obligation on the parties in the latter mode. A Commission order directing the restoration of the status quo to remedy a unilateral change on which consultation rather than negotiation was required would serve to elevate a failure to consult to the level of a refusal to negotiate. Furthermore, an order to this effect would negate the distinction between those matters that are within the scope of negotiation and those that are excluded. Neither result is appropriate nor warranted. In the instant matter, wherein a clear and unmistakable waiver of the Union's right to negotiate was found, such an order would render the negotiated contract language a nullity. Whereas the Ordinance and sound labor relations principles dictate that the

County make every reasonable effort to consult with an employee organization prior to making any changes affecting employee relations, even more compelling principles require that we give deference to contract language freely bargained by the parties.

Having carefully reviewed the entire record in this matter, we adopt the Hearing Officer's conclusion that in failing to notify and consult with the Union prior to making changes in job descriptions and performance evaluations for certain employees at the Harbor-UCLA Medical Center the County violated Section 12(a)(1) of the Ordinance. In view of the foregoing discussion, we issue the following Order:

O R D E R

IT IS HEREBY ORDERED that the County shall cease and desist from failing to consult with the Union on all changes enacted since January 1, 1984, and continuing to date regarding the job content

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and method or manner of performance of and by Supervisory Staff Nurses, Registered Nurses, and Unit Secretaries employed at the Harbor-UCLA Medical Center. Upon request, the County shall consult as defined in Section 3(d) of the Ordinance with the Union regarding these changes.

DATED at Los Angeles, California, this 31st day of July 1985.

JOSEPH F. GENTILE, Chairman

PAUL K. DOYLE, Commissioner

LLOYD H. BAILER, Chairman Emeritus

Because he was appointed Hearing Officer in this case prior to his appointment to the Commission, Commissioner Robert D. Steinberg did not participate in this decision.