

Los Angeles County  
Employees Relations Commission

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In the matter of

Los Angeles County Employees  
Association, Local 660, SEIU

Charging Party

vs.

Case No.

UFC 6.150

County of Los Angeles Treasurer  
and Tax Collector Department

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Report of Hearing Officer

Appearances

For the Charging Party:

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Van Bourg, Weinberg, Roger  
and Rosenfeld  
417 South Hill Street, Suite 770  
Los Angeles, CA 90013

For the Respondent:

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Officer  
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On December 17, 1985 the Los Angeles County Employees Association, Local 660, SEIU, AFL-CIO, on behalf of employee Joe Shepard, filed an unfair employee relations practice charge against the Treasurer and Tax Collector of the County of Los Angeles. On May 15, 1986 a Notice of Hearing was issued by the Commission designating the undersigned as Hearing Officer and fixing the time and place of said hearing as June 3, 1986 at 10:30 A.M. in Room 374, Hall of Administration. Copies of said Notice of Hearing were sent to all parties.

Hearings were held on June 3 and June 26, 1986 in Room 374, Hall of Administration. During the hearing, the parties appeared and were given the opportunity to call witnesses, present evidence and argument. Although counsel for the charging party made a closing statement, counsel for Respondent chose to file a post-hearing brief in lieu of a closing statement and did so on July 10, 1986 at which time the original brief was filed with the Commission and copies were sent to counsel for the charging party and the undersigned. Counsel for the charging party advised that he did not intend to submit a reply brief.

The undersigned, having considered all of the evidence, arguments and post-hearing brief filed by counsel for Respondent, now submits this report in accordance with Rule 6.10 of the Commission's Rule and Regulations.

#### The Unfair Employee Relations Practice Charge

The charge alleges that Respondent violated Sec. 12(a)(1) of the Employee Relations Ordinance by changing the work schedule of Joe

Employee Relations Ordinance by changing the work schedule of Joe Shepard, an employee of the Respondent and a union shop steward, on November 13, 1985 because of the fact that he testified against the County in a discrimination suit and also in retaliation for his activities as a shop steward on behalf of the union; that said change in the work schedule caused the said Joe Shepard to suffer great hardship and increased his difficulties in going to and from work. The charging party alleged that his shift change was retaliatory in nature and reflected management's anti-union animus which had a "chilling effect" on Shepard's ability and desire to participate in union activities. During the course of the hearing counsel for the charging party submitted evidence of subsequent managerial actions which counsel charged were similarly retaliatory in nature and also resulted in a "chilling effect" on Joe Shepard. There was no objection by counsel for the Respondent to the introduction of said evidence.

Respondent denied that it ever did or now does engage in actions arising out of anti-union animus or in a pattern of harassment directed against Joe Shepard because of his activity as a union shop steward or his appearance as a witness on behalf of a departmental employee in a discriminatory suit against the County. Respondent contended that its actions were proper and justified in view of the employee's behavioral problems and management organizational changes taking place at the time.

#### The Applicable Statute

Section 12(a)(1) of the Employee Relations Ordinance provides as follows:

- (a) It shall be an unfair employee relations practice for

the County (1) to interfere with, restrain or coerce employees in the exercise of the rights granted in this ordinance.

Section 4 of the Employee Relations Ordinance provides as follows:

Employees of the County shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations.....

...no employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights.

#### The Respondent

The Respondent is the County of Los Angeles Treasurer and Tax Collector. Richard B. Dixon is the County Treasurer and Tax Collector. At the time in issue, Nancy Morton was in charge of and Manager of Operations of the Collections Group. Donna Doss is the Division Chief of the Collections Division having assumed the position of Division Chief on or about November 1, 1985 succeeding Ed Davis who retired. The Collections Division is divided into three sections, namely, Public Services Section, Unsecured Personal Property Section and Automated Delinquent Accounts Section. On or about November 12, 1985 there was a departmental reorganization as a result of which the Automated Delinquent Accounts Section was consolidated with and became part of the Public Services Section. Joe Shepard, who had been working in the Automated Delinquent Accounts Section, consequently was reassigned to the newly restructured Public Services Section which was and still is one of the sections under Donna Doss' supervisory jurisdiction.

Shirley Nance, a supervisory investigator was the second line supervisor in the Public Services Section. She was and still is on extended medical leave and was not available as a witness in these proceedings. Vivian Resendez, a supervising investigator, is the first line supervisor in the Public Services Section and the immediate supervisor of Joe Shepard. She succeeded Richard L. Vasquez, who was transferred on or about July 1, 1985 to Respondent's office in the Martin Luther King Hospital in Los Angeles where he supervises the unit.

#### Summary of the Facts

Joe Shepard, the employee on whose behalf the within charge was filed by the union, is presently employed as a collection investigator II with the County Treasurer and Tax Collection Department and has worked in the Department for about seven years. He is presently assigned to the Public Services Section where his primary function is to collect money owed to the County and to deal with delinquent taxpayers' accounts. In carrying out his functions, Shepard conducts interviews, attends to correspondence and answers telephone inquiries relating to the accounts he is handling. Shepard also testified that for about six years he had been acting as a "back-up" supervisor, having been designated such by Ed Davis, Ms. Doss' predecessor. Richard L. Vasquez, who was Shepard's immediate supervisor until his transfer in July, 1985, testified that Ed Davis asked him to choose a "back-up" supervisor sometime in January, 1985. He chose Shepard. The "back-up" supervisor's duties were to act as supervisor in the absence of any supervisor, to monitor the employees' work flow, direct unit personnel in handling interviews and questions that other employees

might have with problem accounts. However, Ms. Doss testified that she was not aware of the fact that Shepard had been designated as "back-up" supervisor or that he was a "back-up" supervisor at the time of her appointment.

Shepard also was and is a union shop steward in the Department. As such he has been involved in filing grievances against the Department on behalf of fellow employees.

Shepard resides in Rialto which is next to San Bernardino and about 60 miles from the office in downtown Los Angeles where he works. Shepard had been trying for about three years to join a van pool to obviate the long and tiring trip, both to him and his car, to and from work. The Department also was continuously urging its employees to support the County "ridesharing program" (Union exhibit "1"). Finally, in April, 1985 Shepard found a van pool that he could join. At that time Shepard worked from 8:00 A.M.-4:30 P.M. Monday through Friday. However, in order to fit in with the work schedules of the other passengers, Shepard requested that his work schedule be changed to 7:30 A.M.-4:00 P.M. Monday through Friday. The regular starting time is 8:00 A.M. Granting the request would mean that the half-hour which he would work from 7:30 A.M.-8:00 A.M. would be unsupervised. However, in his request he stated that "the 30 minutes prior to ADS sign-on can be used to handle correspondence and case files..." Shepard spoke to his Division Chief, Ed Davis, who said that he had no objection and told Shepard to put it in writing and submit it to Shirley Nance. Shepard did so. (Union exhibit "2".) Ms. Nance, on June 10, 1985, returned the request with the following notation "approved on condition (A) that this shift is not requested by other employees because of ride-sharing and the Counties(sic) backing of same I will allow. However, if this

type request gets out of hand, it must be resended(sic). Remember no supervision available at that time. (B) Future request must be done through the chain of command. In the future please see your immediate supervisor" (Union exhibit "2"). Shepard started out as a rider in the van pool. In November, 1985 he became the driver. At that time he requested a change from his inside parking space to an outside parking space inasmuch as the van was too high to clear the inside parking area. Shepard went to his supervisors, then to the persons in charge of the parking facility, all without success. He then contacted the office of County Supervisor Kenneth Hahn on or about November 11, 1985, explaining his problem. Supervisor Hahn referred Shepard to Dixon, the County Treasurer. The following day Ms. Tracy, of Mr. Dixon's office, called Shepard to tell him that his request for an alternate parking space had been granted. On November 13, 1985, Shepard wrote a letter of thanks to Supervisor Hahn and sent a copy to Mr. Dixon (Union exhibit "3"). That same day Shepard received a notice from Ms. Nance advising him that effective November 25, 1985 his regular work hours would be changed from 7:30 A.M.-4:00 P.M. to 8:30 A.M.-5:00 P.M. The notice stated that "this change is being made as there is no supervisory coverage at 7:30 A.M.....while the department encourages car pools, we cannot allow employees to work without proper supervisory coverage" (Union exhibit "4"). Shepard testified that from June 1, 1985 to November 13, 1985, he had worked the half-hour from 7:30 A.M. to 8:00 A.M. without supervision. Richard Vasquez, Shepard's immediate supervisor, testified that when Ms. Nance spoke to him about Shepard's request for a change in his work schedule she did mention to Vasquez that there would be no supervision during that half hour. Vasquez told

her that there would be no problem on Shepard's part finding work to do during that half-hour and that he was glad that Shepard had gotten into this van pool because it would be good for Shepard and the department. Vivian Resendez, Vasquez's successor, testified that when she took over her present position, Shepard was working from 7:30 A.M.-4:00 P.M. and that she experienced no problems with the fact that Shepard started working at 7:30 A.M. She testified that when she told Shepard of his change of hours she told him that she had been instructed to do so by Ms. Nance; that the change was being made because of the fact that Shepard was not being supervised during the half-hour period between 7:30 A.M. and 8:00 A.M. At this time Ms. Doss had recently replaced Ed Davis as Division Chief. Also, at this time the departmental organizational changes above referred to were taking place. On November 13, 1985 Shepard filed a grievance protesting the change in his work hours. The grievance was denied by Ms. Doss at step 2 of the grievance procedure on November 26, 1985 (Department exhibit "I"). Implementation of the change was delayed until about December 10, 1986, pending consideration at Step 3 of the grievance procedure by Ms. Morton who was away on vacation at the time. On her return, Ms. Morton concurred in the denial of the grievance. Shepard did not pursue the grievance any further.

Ms. Doss, the Division Chief, testified that when she took over from Ed Davis, who was retiring, there was a consolidation of the Automated Delinquent Accounts Section with the Public Services Section. At that time she contacted Ms. Nance, the second line supervisor and asked her to prepare a proposal for incorporating the Public Services Staff and the late night shift. On or about November 8, 1985, Ms. Doss received Ms. Nance's memo. It showed the regular and extended shifts



of all employees. It was at that time that she noted that Shepard worked a shift from 7:30 A.M.-4:00 P.M. (Department exhibit "III"). She returned the memo to Ms. Nance with the notation "why does Joe work 7:30-4:00"? That was the first time, Ms. Doss testified, she became aware of the fact that Shepard was working from 7:30 A.M.-4:00 P.M. She told Ms. Nance that it would have to be changed and instructed Ms. Nance to give Shepard the proper notice. Ms. Nance did so. (Union exhibit 4.) Ms. Doss testified that there were two important factors that motivated her decision. First, the lack of supervisory coverage between 7:30 A.M. and 8:00 A.M. Second, the need to have personnel present when the office was open to the public to provide proper coverage. Ms. Doss stated that Shepard was the only employee who worked on a 7:30 A.M. to 4:00 P.M. shift. It was these considerations and these considerations alone that formed the basis for her denial of Shepard's grievance protesting the change of hours.

Be that as it may, Shepard testified that as a result of the change in his hours he had to arrive before 7:30 A.M. to accomodate the other riders and they had to wait for him until 4:30 P.M. when he quit work. Two members of the van pool had to drop out because they could not conform to that schedule.

On November 15, 1985 Shepard was notified that effective December 2, 1985 he would have to work the alternate Thursday late-shift from 10:30 A.M. to 7:00 P.M. (Department exhibit "11".) Ms. Doss testified that this is an extended-hour shift on Thursday evenings that had been instituted years ago in order to provide extended coverage for the public and to enable the collectors to make their outgoing calls on Thursday evenings. After the consolidation of the two sections, Ms.

Doss established a rotational shift to provide the desired coverage. Shepard testified that prior to his being advised that he would have to work on Thursday evenings, it was a common practice for employees scheduled to work on Thursday evening to change the work-shift for that day, with the approval of the supervisor, so that they would work the substitute's regular schedule and the substitute would work the late schedule. Shepard testified that some employees live locally and like to come in late so that they can attend to some things in the morning. As for him, Shepard said that in order to work the late shift, he would have to come to work about three hours before he would begin to work, arrange to have someone drive the van home that evening and to work the next morning and he would have to sleep over at his mother-in-law's house. Shepard said that his requests for shift changes had always been granted. However, on or about February 20, 1986 Vivian Resendez testified that this was changed; that while employees could switch dates with other employees they were not to be replaced by another employee on a permanent basis. After the reorganization and the appointment of Ms. Doss as Division Chief, she was told by Ms. Nance, her supervisor, that everyone was to be rotated so that all would participate and there "would be no privileges and that there wouldn't be any grievances because so-and-so is excluded from the shift by being replaced by another." Ms. Doss explained that exchanges of work-shifts were permitted to meet any emergencies. She testified that as Division Chief it has been her policy for all employees to work the extended shift; that in emergencies employees could exchange shifts but not get permanent substitutes so that they would never work the late shift at all. Consequently, the February 20, 1986 request for a substitution was denied. Shepard testified that when he tried to reason with Ms.

Nance she said "these are your hours; that's it." Shepard filed a grievance protesting the change. Ms. Doss withheld the final decision until the return of Ms. Morton from her Christmastime vacation following which the denial of the grievance was upheld. During the time that the grievance was "on hold" Shepard was not asked to work the extended shift.

On January 8, 1986 Shepard was given an "oral warning follow-up in writing" for unauthorized use of the Compass Card (a card given to the Department employees for use in making out-of-area calls) by Vivian Resendez (Union exhibit "5"). Shepard testified that he was at a loss to understand the action at that time. In September, 1985, his then Division Chief, Ed Davis, showed him the Compass billing report and told him that he was making too many calls home and said "once in a while is okay but this has got to stop." Shepard promised to do so. Later that month, about September 13, 1985, Ms. Nance counseled him concerning the matter. Shepard wrote to Ms. Resendez advising that he was aware of the situation and would make no further calls without prior approval. The phone charges amounted to \$8.12. Shepard offered to pay but was told that it was not necessary. Nothing further was said to him about the fact that he was continuing to make improper phone calls. On three occasions he had to make home calls and for those he obtained prior approval from his supervisor. When he asked Ms. Resendez why this was being done to him, now, in January, 1986 she told him that Ms. Doss showed her other reports and told her that he was still continuing to abuse the system. Shepard asked to see the reports but they were not available. Shepard filed a grievance requesting that the oral warning write-up be rescinded. (Union exhibit "7".)

Although Ms. Nance denied the grievance Ms. Doss granted it. (Union exhibit "7".) Ms. Doss explained that she receives Compass billing reports two or three months after the actual billing period and reviews them at that time for unauthorized calls. After reviewing the billing in question she instructed Ms. Nance to issue the oral or written warning to Shepard. However, when Shepard grieved the warning and having all of the facts, she granted the grievance (Union exhibit "7").

On January 21, 1986, Shepard found that his brake lights were not working. He tried to make temporary repairs without success. He then told the van riders to get other transportation. He called Ms. Resendez and told her of his difficulties with the van. He requested personal leave-time. Ms. Resendez told Shepard, "no problem with it but you know Miss Nance is going to request some sort of verification." Shepard said, "that's fine. I'll bring in a repair order." Shepard explained that employees are allowed three days a year personal leave time for minor non-medical emergencies. Shepard testified that he brought the van to the repair shop at about 8:45 A.M. The van was not ready for pick-up until about 2:30 P.M. Taking travel time into account Shepard figured that going to the office at that time was not practical. The next morning when he arrived at the office he gave Ms. Resendez the copy of the work order (Union exhibit "6"). She took the work order and came back later saying she could not approve the personal leave time request. When Shepard asked for the reason he was told that where the order said "owner of the vehicle", the name of P.M. Barnes appeared. Shepard explained that she should be aware of the fact that he did not own the van but was merely driving it in exchange for transportation; that the van was owned by Barnes and the repair shop took the information from the vehicle registration slip;

that he, Shepard, was responsible for making necessary repairs; that he was the one that had taken it in for repairs the following day. When Shepard spoke to Ms. Nance about the matter she repeated that she was not going to honor the request because someone else's name is on the work order and also for the reason that under the line marked "repair" it said "1.5 hours." Shepard tried to explain that this did not show the time the van was in the repair shop waiting to be repaired. Shepard testified that he filed a grievance protesting the non-payment for the eight hours. After it was denied at the first level he dropped the matter. Although Shepard testified that he went back to the repair shop and obtained additional documentation relative to the repair, which was produced at the request of the undersigned (Comission exhibit "B"), Shepard never satisfactorily explained why he did not submit such documentation at step one of grievance procedure or pursue the grievance and submit it at the next step in the grievance procedure. Ms. Resendez testified that while she did not find the repair bill which Shepard submitted to be inadequate, Ms. Nance did. Ms. Doss testified that although the slip submitted by Shepard was a repair slip, it nowhere indicated that it was his vehicle being repaired since his name did not appear on the slip. Consequently, it was not acceptable as satisfactory documentation to support his request for personal leave-time.

Relative to the demand that he substantiate his personal leave-time request with proper supporting documentation, Shepard testified that this was the first time that he had ever been requested to do so. However, there was testimony that Shepard had been on "medical certification" since June 26, 1984 (Department exhibit "VIII").

Vivian Resendez testified that there is an established attendance policy pursuant to which employees who exceed the departmental standard of 96 hours per year are counseled to improve their attendance; if there is no improvement more formal disciplinary action follows. Ms. Doss stated that Shepard was on "medical certification" at the time. Apparently, when an employee is on "medical certification" all absences must be documented, medical or non-medical. Whatever the situation may be, there is no dispute over the fact that Shepard knew that he would have to submit documentation to support his personal leave-time request (Union exhibit "6"). Shepard filed a grievance protesting the denial of his personal leave-time request but, as herein above indicated, after its denial at the first step he did not pursue it any further.

On or about October 1, 1985 the union and the County were engaged in contract negotiations. To prod management into making the requested concessions the union encouraged the shop stewards to organize demonstrations during the employees' lunch-time periods. Two such demonstrations were held in October, 1985. Informational picket lines were established at the various job sites. Shepard testified that he was actively involved in recruiting employees to participate in the demonstrations. The demonstrations were held on the sidewalk between the D.P.S.S. Building and the Treasurer-Tax Collector Building. The demonstrations attracted extensive media and press coverage. Shepard was interviewed by KFWB-Radio and KTLA-Channel 5. Shepard stated that Ms. Nance saw him leave during his lunch-time for the demonstrations and he noticed her looking out of the window watching the demonstrations. Shepard said that during the negotiations he would obtain information from the employees to aid the bargaining team in the formulation of their demands, distribute information bulletins to the

employees and keep them informed as to the progress of the negotiations.

Shepard also testified that he was asked to be a witness for Mounir Guirguis, an employee of the Department who had brought a discrimination suit against the County. Shepard was subpoenaed and did testify on November 19, 1985. Ms. Doss stated that prior to or during this action she was not aware of the fact that Shepard was going to or had testified in the action. She first became aware of that fact when he mentioned it in one of the grievances he had filed. In the course of said grievance procedure Shepard alleged that the Department was taking action against him because he had testified in the Guirguis case. Ms. Doss stated that she was aware of the lawsuit but only because the County Counsel had interviewed her prior to the case going to trial. Ms. Doss stated that she had been a member of the panel that interviewed Guirguis for a higher classification and that she had given him an unsatisfactory rating.

#### The Union's Position

The union contends that this is a classic case of discriminatory and disparate treatment of Joe Shepard because of his status as a union shop steward, his extensive involvement in union activities during the fall '85 contract negotiations between the union and the County and his appearance as a witness against the County in a discrimination suit brought by an employee of the Department. The attorney for the union pointed to a series of actions by the Department which counsel for the union asserts, clearly establish a pattern of discriminatory action motivated by the Department's animus against Shepard for the reasons above stated. The first was the rescission November 13, 1985 of a

change in Shepard's work hours which required his working from 8:00 A.M.-4:30 P.M. instead of from 7:30 A.M.-4:00 P.M. This interfered with Shepard's participation in a van pool of employees going to and from his home in Rialto, some 60 miles from his place of work. This caused Shepard a great deal of hardship and many difficulties. Shepard would have to arrive early to accomodate the other riders and they would have to wait for him to complete his day's work. Two riders had to drop out of the van pool. Counsel for the union explained that at first Shepard was only a rider. Later on he became the driver. When he became the driver he had to obtain a parking space that could accomodate the van. His request for such a space met with no success in his application to his supervisors or those in charge of parking facilities. He then appealed directly to County Supervisor Kenneth Hahn for relief...all of this despite a departmental policy of encouraging pool riders. Then in October, 1985 the Department became aware of the fact that Shepard was going to testify against the County in a discrimination suit brought by one of its employees....and on November 19, 1985 he did so testify.

Again on November 15, 1985 Shepard was advised that he would have to work on the alternate Thursdays extended shift from 10:30 A.M.-7:00 P.M. Given his participation in the van pool this would require his arriving to work on such Thursdays more than three hours before his starting time, arrange to have a substitute driver for Thursday night and Friday morning and stay over at his mother-in-law's house. Previously Shepard had been permitted to change shifts with other employees obviating the need for his working the late Thursday shift with all of it's attendant problems.



In January, 1986 Shepard was given a follow-up in writing of an oral warning of unauthorized use of the Department telephone even though, back in September, 1985, he had been given an oral warning and had been told by his then Division Chief, Ed Davis, to be careful in the future. Shepard successfully grieved the write-up of the oral warning.

The capping incident, says the attorney for the union, occurred on January 21, 1986 when Shepard discovered that the van was in need of repairs. He advised the office that he would not be able to report for work. He requested that he be granted personal leave-time. At the time he was told that he would have to provide supporting documentation. The next day he presented a work-order from the repair shop and was told that it was not acceptable because it did not show his name anywhere on the work-order. Shepard tried to explain that he did not own the van and that there was only space for the name of the owner on the work-order but to no avail. He filed a grievance which he did not pursue after it was denied at the first step. Shepard insisted that the reason for the denial of his request for personal leave-time was crudely pretextual inasmuch as the fact of his having had the van repaired was not seriously questioned but only the sufficiency of the documentation. Shepard further explained that heretofore he had not been required to document personal leave-time requests. Counsel for the union argued that the reasons given for the denial of his personal leave-time were as pretextual as the reasons given for his change of work-shift on November 13, 1985, from 7:30 A.M.-4:00 P.M. to 8:00 A.M.-4:30 P.M. The reason given for the change was that Shepard would be unsupervised for the half hour period from 7:30 A.M. to 8:00 A.M. That this was known to Ed Davis, his Division Chief at the time, was

established by the testimony of his supervisors to the effect that it had been approved by them as well as by Ed Davis, and that there were no problems arising out of the fact that he was not being supervised during this half-hour period; that there was work for him to do during this time and he was doing the work.

Counsel for the union insists that the only inference to be drawn from all of these actions is that Joe Shepard was being punished for his union activities and his testimony against the County, all of which was and is in violation of the County Ordinance. Counsel for the union asked that a remedial order issue which would correct this injustice and carry out the purposes and intended effect of the Ordinance.

#### The Respondent's Position

Respondent vigorously denied that it committed any unfair employee relations practices in violation of the Ordinance. It firmly denied that any personnel decisions made affecting Joe Shepard were motivated by any anti-union animus or retaliation against his having testified in favor of an employee of the Department against the County in a suit alleging discrimination. Respondent insists that Shepard's activities as a shop steward and during the period surrounding the contract negotiations between the union and the County had nothing at all to do with any personnel decisions affecting him. Respondent points to the fact that there was absolutely no evidence produced to indicate any discriminatory or disparate action against any union shop steward for similar activities.

Respondent insists that the actions taken were proper and justified in view of Shepard's behavioral problems and management

organizational changes. On or about November 1, 1985, Donna Doss replaced Ed Davis, who was retiring, as Division Chief. At that time a plan for a departmental restructuring and reorganization was being formulated which was installed on November 12, 1985. At that time the Public Services Division was enlarged taking over a part of the Automated Delinquent Accounts Section. Prior to the reorganization Shepard had been working in the Automated Delinquent Accounts Section which had been under the supervision of Ed Davis, the Division Chief. After the reorganization, Donna Doss took over as Division Chief.

Ms. Doss stated that at that time, in keeping with her new responsibilities, she undertook a review of the entire operation of the newly restructured division, including the staffing and work hours of all employees to ensure compliance with departmental policies and see to it that the needs and requirements necessary to fulfill the Division's responsibilities were being met. It was then that she first discovered that Shepard was working a 7:30 A.M.-4:00 P.M. shift, the only employee working such a shift, during which one-half hour was unsupervised time. In keeping with the then existing departmental policy, Shepard was informed that his working hours would be changed to conform with the needs of the service and to assure that adequate supervision was provided. His work schedule was changed at first to 8:30 A.M.-5:00 P.M. After reviewing his grievance filed protesting such change, it was revised to an 8:00 A.M.-4:30 P.M. work shift as being more in keeping with his van pool arrangement. The fact that this reassignment of work-hours came sharp on the heels of the granting of a proper parking space for Shepard following the intercession by County Supervisor Hahn on Shepard's behalf was pure

coincidence and nothing more. The same was true of the notice given to Shepard three days later on November 15, 1985 (Department Exhibit "II") that he would have to work on Thursdays, from 10:30 A.M.-7:00 P.M., pursuant to the alternative extended hours shift program despite the fact that Ed Davis had permitted permanent volunteers to change shifts so that those employees who chose not to work the extended shift would not have to do so. Since her appointment as Division Chief, Ms. Doss has made it a policy that all employees work the extended shift and that temporary and non-permanent changes could be made only to meet emergency situations. Again, this was part of the over-all review of departmental operations and the establishment of working rules, practices and procedures applicable to all employees equally and without favor or consideration of union activity or testimony in proceedings adverse to the County or the Department. The same is true with respect to the January 8, 1986 instructions to Ms. Nance to follow-up in writing the oral warning given to Shepard in September, 1985 with respect to unauthorized telephone calls. (Union exhibit "5".) The instructions to Ms. Nance were the result of a desk review by Ms. Doss in January, 1986 of all telephone bills going back several months. At the time she was not aware of the fact that Ed Davis had already spoken to Shepard about this matter. Upon consideration of Shepard's grievance protesting this action, and with all of the information before her, Ms. Doss granted the grievance. Regarding the denial of Shepard's request for approval of personal leave-time for the repair of his van, Shepard did not dispute the fact that he was told that he would have to submit appropriate supporting documentation (Union exhibit "6"). The only issue was whether the documentary proof submitted was satisfactory. Ms. Doss took the position that the repair

slip which failed to show his name anywhere on the slip was insufficient. Yet, although Shepard obtained a subsequent bill showing his name as authorizing the work (Commission exhibit "B"), he never submitted it either when he obtained it or with the filing of his grievance which was denied at step one of the grievance procedure and never pursued any further by Shepard. Shepard could have met the departmental requirements by submitting it as above set forth. That he failed to do so was the result of his non-action and cannot be attributed to any ordinance-prohibited animus against Joe Shepard.

Respondent felt most strongly that the charge filed by the union is based upon an attempt to draw a series of inferences from a series of actions by Respondent with inferences backing on inferences seeking to establish a violation of the Ordinance that finds absolutely no support in the record. Respondent asked that the charge be dismissed for the reason that the union had failed in any and all respects to prove the allegations set forth in the charge.

#### Discussion

In a charge filed on December 17, 1985 (Commission exhibit "A"), the union alleged a violation of Section 12 (a) (1) of the Employee Relations Ordinance by the Treasurer and Tax collector of the County of Los Angeles. The charge alleged that on November 13, 1985, Joe Shepard, an employee of the Department in the Public Services Division, was told by his second-line supervisor, Shirley Nance, that he would have to change his work schedule from 7:30 A.M.-4:00 P.M. (Union exhibit "4"), despite the fact that on June 10, 1985 Ms. Nance had granted his request for a change in his work schedule from 8:00 A.M.-4:30 P.M. to 7:30 A.M.-4:00 P.M. to enable him to join a van pool

(Union exhibit "2"). The charge went on to state that Shepard was an active shop steward and had testified against the County in a discrimination suit. It was the contention of the union that Joe Shepard's shift change was a direct retaliatory action based on these incidents and a reflection of the anti-union animus of the Department all of which has had a "chilling effect" on Shepard's ability and desire to participate in union activity.

The Department denied that it engaged in any action violative of Section 12 (a) (1) in its employer-employee relationships with either Joe Shepard or any other employee of the Department, be they or be they not a union shop steward. The Department insisted that all of its actions affecting Joe Shepard were related to and a part of a restructuring and reorganization within the Department as a result of which the Division in which Shepard worked became part of the Public Services Division. Also significant is the fact that Ed Davis who had been Shepard's Division Chief retired and Donna Doss was appointed Division Chief of the newly constituted Public Services Division to which Shepard was assigned.

Shortly before the adoption of the reorganization plan on November 12, 1985, Joe Shepard was actively engaged in organizing employee support and noon-time demonstrations in support of the union's demands in its negotiations with the County on the terms of a new contract, and acting as a communications link between the employees of the Department and the union negotiating committee. There is no disputing the fact that Shepard's supervisors were aware of his activities. In addition, shortly after the implementation of the departmental reorganization, Joe Shepard testified as a witness against the County in a suit brought

by an employee of the Department of which the Department was aware. The union, in additional support of its claim of anti-union animus introduced evidence of other acts by the Department which it claimed not only had a harrassing effect on Shepard but imposed additional hardships upon Shepard, to wit: prohibiting any permanent substitution of employees during the Thursday alternative extended hours shift program which compelled him to work on assigned Thursdays from 10:30 A.M.-7:00 P.M. (Department exhibit "II"); issuing orders on January 8, 1986, to make a follow-up in writing of an oral warning relative to unauthorized telephone calls despite the fact that he had already discussed the matter with Ed Davis, his then Division Chief; and finally, rejecting his claim for personal leave-time taken to have electrical repairs made to his van on grounds which the union contended were pretextual.

As has already been indicated, there had been a substantial structural, organizational and supervisory change which took place on or about November 12, 1985. Donna Doss, the newly appointed Division Chief, testified that in keeping with her new responsibilities she undertook a review of the entire operation of the newly restructured Division, including the staffing and work hours of all employees to insure compliance with departmental policies and see to it that the needs and requirements to fulfill the Division's responsibilities were being met. She testified that the decisions which she made reflected her understanding of the Department's policies and her feeling that they should be applied equally to all and she did so; that at the time when the decisions were being made she was not aware of the fact that Shepard had been given permission to work a schedule which included a half-hour unsupervised period which was not in accordance with

departmental policies. When reviewing the grievance dealing with Shepard's complaint about the write-up of the oral warning which was the result of a billing review back-up, Ms. Doss stated that she did not hesitate to grant the grievance having all of the facts at the time. Certainly, said Ms. Doss, Shepard might have disagreed with her refusal to find his supporting document in connection with his application for personal leave-time, but he had the right to pursue his grievance and support it with the work-order containing his name (Commission exhibit "B") which for some unexplained reason he did not choose to do. That was his decision and not hers. But all of these decisions, Donna Doss asserts were and are totally devoid of proof of any animus directed against Shepard because of his activities as a shop steward or as a witness against the County. The undersigned is inclined to agree with her.

Before proceeding with a further discussion of the facts and issues, it is important and necessary to clarify the nature of the proceedings herein. The instant hearings relate to the unfair employee relations practice charge filed against the Respondent alleging a violation of Section 12 (a) (1) of the Employee Relations Ordinance of the County. It is not an arbitration proceeding. It is not and can not be treated as an appeal from the denial of the grievance filed by Joe Shepard protesting the change of his work hours (Department exhibit "1"). Apparently some confusion does exist. In his examination of Shepard on June 26, 1986, counsel asked Shepard:

Q: Do you see this proceeding as your appeal from this determination?

A: Yes.



In his closing argument counsel for the union stated that "the grievance was not taken to arbitration because the issue was to be addressed in this hearing...that's why we are here today..." The confusion in the mind of the undersigned was compounded by the fact that in the reply brief, the citations, while properly addressing themselves to the issues, nevertheless dealt exclusively with decisions of arbitrators in labor arbitration proceedings.

While there may be some overlap, conceptually, structurally and legislatively there is a substantial difference between the subject matter covered by an unfair labor practice charge and that covered in a grievance procedure. A grievance procedure is primarily a matter of contract and may cover subjects such as wages, fringe benefits, working conditions and matters covered in the negotiation process generally affecting the day-to-day working relationship of the employer and the employee. Most often it requires that any adverse employee action by the employer be based upon "proper cause" which need not necessarily be related to union or concerted action. The subject matter of an unfair employee relations practice charge is confined to and limited by the provisions of Section 12 of the County Ordinance. To sustain a charge under Section 12 there must be a finding of a nexus between the activities complained of and concerted or union activities protected by Section 12. Important procedural differences also are present. These are found within the contractual provisions governing the grievance procedures and the procedural requirements prescribed in the Ordinance and the Rules and Regulations issued thereunder applicable to unfair employee relations charges. The legal results of the decision of the arbitrator, the "award", and the Report and subsequent Decision and Order of the Commission are dissimilar. The former, with rare

exception, is not subject to judicial review. The latter, on the other hand, is subject to review by the Superior Court which has the right to exercise its independent judgment in deciding whether to approve, reject or modify the Commission's Decision and Order (Section 12:2). It should also be noted that an aggrieved employee may avail himself or herself of both procedures by filing both a grievance and a charge. In such instances, where the grievance procedure provides for arbitration as the terminal step, then many jurisdictions have followed the "deferral doctrine" wherein the Labor Board will refrain from exercising its jurisdiction with respect to disputed conduct, which arguably could constitute both an unfair employee relations charge and a contract violation, pending the conclusion of the arbitral proceedings. (William E. Arnold Co. vs. Carpenters District Council, 417 U.S. 12; City of Willington vs. Wilmington Firefighters, Local 1590, 385 A.D. 2nd 720).

In the matter before the undersigned the aggrieved employee, Joe Shepard did not pursue his grievance to the terminal step of arbitration after it had been denied at the penultimate step. Consequently, there was no need to consider the question of the applicability of the "deferral doctrine". So, bearing in mind the fact that this is not an arbitration proceeding but an unfair employee relations practice proceeding, let us proceed with an examination of the evidence.

As was herein above stated, the issue to be decided in this proceeding is whether the Respondent did change Shepard's work hours from 7:30 A.M.-4:00 P.M. to 8:00 A.M.-4:30 P.M. because of his activities as a union shop steward generally, his activities on behalf

of the union in connection with the contract negotiations, in the Fall of 1985, between the union and the County and his appearance as an adverse witness in an action brought by an employee of the Department against the County, all of which would constitute a violation of the provisions of Section 12 (a) (1) of the Ordinance.

There are certain guiding concepts that may be helpful. One is that management can take an unfavorable action for good cause, or bad cause or no cause at all, as master of its own business affairs, with complete freedom, with but one specific qualification: it may not take unfavorable action when the true motivating purpose is to do that which Section 12 (a) (1) forbids (The Berry Schools, 653 F2nd 966; N.L.R.B. vs. Condensor Corporation of America, 128 F2nd 67). Also, even where the disputed activity is shown to be protected activity, an employer may prove that the employee's protected activity was not a substantial and motivating factor in its decision to discipline the employee. Even if the union is able to establish its prima facie case, the employer may still avoid a finding that it violated the Ordinance if it can establish by a preponderance of the evidence that it would have taken the disputed action even if the employee had not been involved with the union (N.L.R.B. vs. Associated Milk Producers, 114 LRRM 2215). This is in keeping with the doctrine formulated in the Wright Line case (251 N.L.R.B. 1083, enforced in 662 F2nd 899, Cert. denied 102 Sup. Ct. 1612) and adopted in many public sector jurisdictions (A.F.G.E. vs. F.L.R.A., 114 LRRM 2216).

In the instant proceeding, it is the opinion of the undersigned that not only has the union failed to sustain its burden of proof in support of its charge filed in the above matter, but that the Respondent has satisfactorily established that its actions were in no

way related to Shepard's union activities or participation as an adverse witness against the County. The evidence clearly discloses that in the beginning of November, 1985 a restructuring and reorganization within the Department resulted in the absorption of the Automated Delinquent Accounts Section, where Joe Shepard was working under the then supervision of Ed Davis, into an enlarged Public Services Section under the supervision of Donna Doss as Division Chief. In the opinion of the undersigned, the evidence also portrays a sharp difference in the managerial and supervisory style of Donna Doss from that of her predecessor, Ed Davis. Davis' approach was more permissive as is indicated by his approval of Shepard's request for a change in his work schedule to a 7:30 A.M.-4:00 P.M. shift even though it included a half-hour unsupervised time for which Davis had not sought or obtained any authorization from the branch head prior to approval of the requested change (Department exhibit "V") as required by established policy (Department exhibit "VI"). This is also evident from Davis' approval of permanent shift changes which would permit some employees to avoid working the late extended work-shift on Thursdays. Whether due to the recency of her appointment, resulting in the application of the "new broom" doctrine or a basic difference in managerial and supervisory style, Ms. Doss' approach was more of a "strict constructionist" concept calling for a more rigid interpretation of existing policy and applying the same to all employees without privileges or special favors except as might be necessary to meet temporary emergencies. It is the opinion of the undersigned that it was this difference in the Davis and Doss kind of supervision that resulted in the actions of which the union complains

and not Shepard's activities as a union shop steward or as a witness testifying against the County. Whether one approach is preferable to the other is not the issue. What motivated Ms. Doss to act as she did is.

It is true that in modern day labor relations an employer will rarely, if ever, baldly assert that it has disciplined an employee because it will not tolerate an employee's engaging in union or other protected activities. However, where the union contends that the employer was punishing the aggrieved employee because of his participation in protected activity, it must establish that the protected conduct was a "substantial" and "motivating" factor. (Wright Line, Supra.). This the union has not done. Lu Villareal, the Department Personnel Officer, testified that there are approximately ten employees in the Department who are union shop stewards and that all of them file grievances on behalf of members of the union. It is also probably true that most, if not all of the ten union shop stewards, were engaged in activities similar to those engaged in by Shepard during the October, 1985 contract negotiations. Yet there was no evidence introduced to indicate that any of the other shop stewards or any of the participating employees were subjected to any discriminatory action in retaliation for their participation in the collective bargaining negotiations. Insofar as the denial of Shepard's request for personal leave-time is concerned (Union exhibit "6"), it may well be that the rejection of the work repair slip submitted by Shepard was somewhat harsh. However, the evidence is undisputed that Shepard was told that documentary proof would have to be provided and that he did not object. It may well be that Ms. Doss' rejection was prompted by "new broom zealotry" or personal pique at Shepard arising out of the

continuing inquiry by Supervisor Hahn's office resulting from Shepard's request for Supervisor Hahn's aid in obtaining a proper parking space for his van (Department exhibit "V") or undue sensitivity arising out of the investigation of employee relations in her division as the result of the inquiries by Supervisor Hahn's office coming hard on the heels of her appointment as division chief. However, it appears to the undersigned that her rejection of the proffered documentation, or for that matter, Ms. Doss' other actions, were not motivated by any animus arising out of his union activities or testimony as an adverse witness and the undersigned so finds. Furthermore, Shepard did have the opportunity to submit the work repair order containing his name, thus meeting Ms. Doss' objection, which he had subsequently obtained, in support of the grievance which he filed. This he did not do, nor did he pursue the grievance following its denial at the first step for some unexplained reason. Whatever the case may be, it cannot be said to be violative of Shepard's rights under the Ordinance.

In the same connection, Shepard testified that he had never, prior to this time, been asked to produce documentary support for any request for personal leave-time. Yet there is no question but that Shepard had been placed on "medical certification" on or about June 26, 1985 (Department exhibit "VIII") after having exceeded the departmental standards on sick-time. Ms. Villareal, the Department Personnel Officer, testified that under departmental policy it was necessary for any employee on "medical certification" to substantiate any request for medical or personal leave-time approval. It may have been true that under the Davis regime no substantiation for approval of medical or personal leave-time was asked for. If that is so, then it would be

another indication of the differences in supervisory attitudes and practices of Ed Davis and Donna Doss. It could also be argued that the grounds for Ms. Doss' denial of Shepard's request for personal leave-time was not for "proper cause" as required by the contract. Such an issue might be appropriate for determination in an arbitration proceeding but not in an unfair employee relations proceeding. In the latter the only issue is whether the Respondent's actions toward Shepard violated his rights under the Ordinance. There must be a nexus between Respondent's actions and Shepard's union activities and as a witness against the County. The union has failed to establish such nexus or connection (Midwest Body, Inc., 73 L.A. 654).

The undersigned, after having carefully considered the entire record in the within proceeding is impelled to the conclusion that while the union has produced evidence showing that Joe Shepard was engaged in protected activity, it has not demonstrated by a fair preponderance of the evidence that the activities engaged in by Joe Shepard were the motivating reasons for Respondent's actions. (N.L.R.B. vs. Daniel Construction Co., 115 LRRM 3579). Respondent has satisfactorily explained the reasons for its actions which the undersigned finds are devoid of any intent to discriminate against Joe Shepard because of his activity on behalf of the union or because of his testimony in the Munier Girgus case.

#### Findings of Fact

On the entire record in this proceeding, my observation of the demeanor of the witnesses and after due consideration of oral argument by counsel for the union, the post-hearing brief filed by counsel for the Respondent, the undersigned does hereby find and conclude that the


union has not adduced evidence sufficient to support the allegations of its charge and that said charge alleging the commission, by the Respondent, of an unfair employee Relations Charge in violation of Section 12 (a) (1) of the Employee Relations Ordinance be dismissed.

Recommendation

Having concluded that the actions in question by the Respondent as alleged in the charge filed by the union did not violate Section 12 (a) (1) of the Employee Relations Ordinance, it is hereby recommended that the charge be dismissed.

August 21, 1986

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Irving Stone  
Hearing Officer