LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of LOS ANGELES COUNTY EMPLOYEES ASSOCIATION (LACEA), LOCAL 660, SEIU Charging Party v. TREASURER-TAX COLLECTOR Respondent	)	UFC 6.154

DECISION AND ORDER

The charge in this case was filed by the Los Angeles County Employee Association, Local 660, SEIU (Union or Charging Party) against the Los Angeles County Treasurer-Tax Collector (County or Respondent) alleging that the County had violated Sections 12(a)(1), 12(a)(3), and 12(d) of the Los Angeles County Employee Relations Ordinance (Ordinance) by unilaterally implementing an incentive bonus plan (Bonus Plan) for certain employee classes in the Collections Division of the Treasurer-Tax Collector.

The matter was duly referred to Hearing Officer Michael D. Rappaport, who held a hearing on December 16, 1986. The parties appeared and were afforded full opportunity to offer argument, present evidence, and examine and cross-examine witnesses. Post-hearing briefs were filed. Hearing Officer Rappaport submitted a Report received in the Commission's office on August 27, 1987. Exceptions

to this Report were filed by the Respondent on September 11, 1987. On September 25, 1987, the Charging Party submitted a statement in opposition to these Exceptions.

In brief, Hearing Officer Rappaport found that the Bonus Plan in question is a mandatory subject of negotiations under the Ordinance and that the Union had not waived its rights to negotiate on the matter. While we agree with the ultimate conclusions of the Hearing Officer, we are unable to adopt his reasoning in support thereof.

The evidence record discloses that four separate Memoranda of Understanding (MOUs) are pertinent to the matter before us. These MOUs all have as a common denominator articles entitled Full Understanding, Modifications, Waiver. Section 2 of these articles provides that in the event the County "makes changes in rules or procedures affecting the employees in the Unit," the County upon request of the Union shall commence negotiations where the changes affect a "significantly large number" of employees. The criteria defining a "significantly large number" are set forth in Section 2. The application of the provisions of Section 2, however, is contractually limited to matters which are not "specifically covered" in the MOUs.

The Hearing Officer found that the Bonus Plan is a matter "specifically covered" by the pertinent MOUs. While we agree with the Hearing Officer that the incentive elements of the Bonus Plan constitute a wage item, we find the County's Exceptions to his finding that the Bonus Plan is "specifically covered" by the MOUs to be well taken.

We begin by noting that a fundamental principle of contract interpretation provides that the expressed inclusion of one or more of a class in a contract must be taken as an exclusion of all others. Here, the four MOUs in question all contain a Salaries article which sets forth the minimum and maximum wage rates for each unit's employee classifications. These MOUs also include articles entitled Special Pay Practices which, with minor variations, cover such matters as shift differentials, call-back rates, and superior-subordinate pay. Noticeably absent from the pertinent MOUs are any provisions expressly addressing an incentive pay plan such as that at issue.

The Hearing Officer acknowledged that the MOUs themselves do not "specifically discuss" the Bonus Plan. Nevertheless, he concluded that the Bonus Plan was "specifically covered" by virtue of the "close and intertwined relationship between the Bonus Plan and its impact on wages of employees . . . ." (H.O. Report, p. 10). As additional support for this conclusion, the Hearing Officer noted the aforementioned Special Pay Practices provisions of the MOUs and observed ". . . the subject of wages was negotiated and . . . special pay practices which impact upon wages, including bonus plans, were negotiated, and are specifically covered by the MOU."[1] (H.O. Report, p. 10).

In light of the aforestated principle of contract construction, however, we are not prepared to conclude that the close nexus

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[1]Although the MOUs covering the Administrative and Technical Employees and their supervisory counterparts include provisions which provide a bonus for certain classes upon completion of a state certificate program, these bonus provisions are not analogous to the incentive plan at issue.

between wages and the Bonus Plan serves to bring the latter within the ambit of matters "specifically covered" by the MOUs. As such, we find contrary to the Hearing Officer that Section 2 of the Full Understanding, Modifications, Waiver article is applicable in determining the propriety of the County's unilateral implementation of the Bonus Plan.

Having reached this conclusion, we next consider whether this language can be construed as a clear and unmistakable waiver of the Union's rights to negotiate with respect to the Bonus Plan.[2]

The Commission on numerous occasions has visited the language of Section 2 of the Full Understanding, Modifications, Waiver article and found it to constitute a waiver of union rights to negotiate on a myriad of subjects. Most recently in LACEA, Local 660, SEIU v. Department of Health Services, UFC 6.125 (1985) at p. 3, the Commission found this language a clear and unmistakable waiver of the Union's rights to negotiate on revised job descriptions and performance evaluation procedures for certain clerical and nursing personnel employed at a County hospital.

A review of our prior decisions discloses that in none of these cases was the Commission confronted with a unilateral change involving a matter within the statutory definition of wages such

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[2]The National Labor Relations Board and the federal courts have employed either a "totality of the circumstances" test or a "clear and unmistakable" test in determining whether a union has waived its statutory bargaining rights. The California Court of Appeal in Independent Union of Public Service Employees v. County of Sacramento, 147 Cal. App. 3d 482, 488 (1983), concluded that the clear and unmistakable test is the "appropriate" standard in cases involving public employees. The State Supreme Court in Teamsters Local 216 v. Farrell (City and County of San Francisco), 121 LRRM 3479, 3487 (1986), reaffirmed its preference for this standard.

as the Bonus Plan at issue.[3] As these decisions are thus clearly distinguishable from the matter before us, we cannot afford them the precedential effect espoused by the County in our determination of whether the Union has waived its rights to negotiate regarding the Bonus Plan.

Careful scrutiny of the language of Section 2 reveals that this contractual provision makes no explicit reference to wages. Instead, the references contained therein are limited to "rules and procedures" and to "working conditions." The fact that the MOUs may permit unilateral action on certain subjects does not warrant the inference that such action is permitted on all matters within the scope of negotiations. Certainly any such inference that may be drawn from the contractual language in question would fail to meet the clear and unmistakable test. As such, we cannot find that Section 2 of the Full Understanding, Modifications, Waiver articles constitutes a clear and unmistakable waiver of the Union's rights to negotiate on the implementation of the instant Bonus Plan. It should also be noted that even under the less stringent totality of the circumstances test, we cannot find on the evidence record before us a waiver of the Union's rights to negotiate herein.

In view of the foregoing, we find and conclude that the Union did not waive its rights to negotiate on the Bonus Plan and that the County's unilateral implementation thereof was violative of Sections 12(a)(1) and 12(a)(3) of the Ordinance. However,

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[3]Although we did not find the Bonus Plan to be a matter specifically covered by the MOUs, we find such incentive plan to come within the ambit of wages as that term is used in the Ordinance.

we found no evidence to support a finding of a violation of Section 12(d) of the Ordinance. We therefore issue the following Order.

O R D E R

IT IS HEREBY ORDERED that charge UFC 6.154 is sustained. The County is directed to forthwith rescind the Bonus Plan and enter into negotiations with the Union on the matter. Employees who have received bonuses under the Plan shall not be required to reimburse the County for these payments.

DATED at Los Angeles, California, this 19th day of November, 1987.

JOSEPH E. GENTILE, Chairman

PAUL K. DOYLE, Commissioner

ROBERT D. STEINBERG, Commissioner