

LOS ANGELES COUNTY  
EMPLOYEE RELATIONS COMMISSION

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EMPLOYEE RELATIONS COMM.  
COUNTY OF LOS ANGELES  
MAY 1 2 10 PM '74

In the Matter of

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

Charging Party

and

LOS ANGELES COUNTY DEPARTMENT OF WEIGHTS  
AND MEASURES

Respondent

UFC 6.16

REPORT OF HEARING OFFICER

APPEARANCES:

For the Charging Party: Leo Geffner, Esq.  
Lorraine Mitchell

For the Respondent: Don Becker, Employee Relations  
Administrator, Department of  
Personnel

On August 16, 1973, the Los Angeles County Employees Association, Local 660, SEIU, AFL-CIO, hereinafter referred to as the "Union", filed a charge against the Los Angeles County Department of Weights and Measures, hereinafter referred to as the "Department". The Charge alleges that Darrell Sutherland, a Probationary Inspector II, was given an unsatisfactory Performance Evaluation and reassigned to the position of Inspector I because of his ".....membership in and activities connected with LACEA Local 660, SEIU, AFL-CIO" and that he was, therefore, interfered with, restrained and coerced

in the exercise of the rights granted by the Employee Relations Ordinance in violation of Sections 4 and 12(a)(1) of the Ordinance.

On October 31, 1973, the Employee Relations Commission issued a Charge and Notice of Hearing alleging that Sutherland was notified of his unsatisfactory performance as an Inspector II and reassigned to Inspector I because of his membership in and activities connected with the Union and that such acts constitute unfair employee relations practices within the meaning of Sections 4 and 12(a)(1) of the Ordinance.

The Department filed an Answer denying the above allegations.

Hearings were held on December 6, 1973, January 2 and January 30, 1974 before the undersigned Hearing Officer. Briefs were submitted by both Parties on March 22, 1974.

### Summary of Facts

#### Background

The Department's employees are included in the bargaining unit consisting of Administrative and Staff Services Personnel. The Union has been certified for this group since 1970 with the current Memorandum of Agreement having been entered into on May 17, 1973. The Union Steward for the Department involved herein has agreed that he has had very good rapport and relations with the Department's supervisory personnel over the years.

In April, 1973, the Department's supervisors announced a new system of scheduling Compliance Inspectors working on the Test Purchase Program. On a rotating basis, Inspectors were

to be required to work periodically on a 12 noon to 8:30 p.m. shift rather than the customary 8:00 a.m. to 4:30 p.m. shift.

Thereafter, the Union filed two charges against the Department: one alleging that the Department had violated the Memorandum of Agreement by unilaterally changing its work schedules without first negotiating with the Union; and, second, the instant charge involving Sutherland.

#### Sutherland's Work Record and Activities

Sutherland was first employed by the Department in November, 1969, as an Inspector I. The Parties stipulated that up to June, 1973 there was no question of his being considered an excellent employee. During that period he received numerous Performance Evaluation Reports attesting to his competency in the work that he performed.

In April, 1973, the same month in which the new work schedules were put into effect, Sutherland was promoted to Inspector II and entered the usual six month probationary period as a Compliance Inspector in the Test Purchase Program. The monthly probationary reports for April and May, 1973, indicated that he was performing his work satisfactorily. However, during this period Sutherland did express his opposition to the institution of the noon to 8:30 p.m. shift. He made his objections known at staff meetings as well as to various supervisory personnel. Thus, at the April meeting when the new work schedules were first announced, Sutherland testified:

"Well, I spoke out. Naturally, everybody had their own problem -- either going to school or having to do something after working hours--

and I was probably a little more vocal than others, but I spoke up." (Tr. 12/6/73, p.15)

Thereafter, he called the Union Steward, Gerald Meade, to tell him what had happened at the meeting and advised him that:

"I was against it. I wondered if I could file a grievance on it or what action I could take."  
(Tr. 12/6/73, p.16)

When queried by Union Counsel at the Hearing as to whether he was contacting Mr. Meade on behalf of all the Compliance Inspectors, Sutherland replied that he had contacted him on his own behalf to file a grievance or to see if it was possible to file a grievance.

Subsequently, a meeting was held between the Compliance Inspectors and the Union Steward, Meade. According to Sutherland, the general theme of this meeting was:

"...to find out what the Inspectors wanted or what they would be satisfied with to work the late shift, and it was pretty much decided that they wanted money, number one....the money probably would be the most satisfiable agreement." (Tr 12/6/73, p. 20)

In May, 1973, the Division Chief of Compliance, Nahan Gluck, discussed with Sutherland his then current Interim Probationary Report pointing out that the report referred to Sutherland's attitude and application toward his work as being commendable. Sutherland testified that when he read this he replied: "Well, I'm not too sure about my attitude." Gluck then inquired as to what the problem was and Sutherland then replied:

".....because of the work hour change, I was not happy being in that Division.....that when I first came on the job it was from 8:00 to 4:30 and that there were other things that I do after the job and that, you know, we felt that this was unfair, that if we had wanted to work a different hour shift, we would have looked for that in our employment when we first started." (Tr. 12/6/73, pp. 30-31)

When Union Counsel inquired of Sutherland at the Hearing as to whether there was any discussion between him and Gluck or between him and his immediate supervisor, Mr. Turner, who was present at the time, concerning the role of the Union ".....in filing.....holding meetings and proceeding with the grievance or unfair?" Sutherland replied:

"Well, possibly not with the actual Union being mentioned but he said they had the right to change our hours in this way, and I had made reference that we were.....myself was going to hold them to the line that I would, you know, personally not -- you know, not referring to any other people, but if there was something I felt wasn't right that I would be outspoken against it as far as changing things." (Tr. 12/6/73, pp. 31-32)

During this period, Sutherland informed other Inspectors about the dates of Union Meetings which were being scheduled. He was one of several Compliance Inspectors relied upon by the Union Steward as his contacts in the Department.

#### The June 15th Incident And Its Aftermath

The incident principally relied upon by the Department when it decided to request that Sutherland be reduced to

Inspector I occurred on June 15, 1973. It is customary in the Test Purchase Program to have two Inspectors work as a team in the field. On this particular day, Sutherland was scheduled to meet another Inspector II, Willie Henderson, around 12:40 p.m. in the field. After waiting approximately thirty minutes for Henderson to appear, Sutherland called his office and, in the absence of his immediate supervisor, Turner, spoke to Mr. Gluck. He relayed to him the fact that Henderson had not as yet shown up and advised Gluck that: "I was coming back in."

When he returned to the office at around 2:00 p.m. he went in to see Mr. Gluck, once again advising him as to what had transpired and told Gluck that he was going to go home. When queried as to why he decided to go home, Sutherland testified that he had already worked two hours and that he was "....not going to work eight hours in the remaining six hours." (Tr 1/2/74, p. 18). Sutherland made out a leave slip taking six hours on his accrued vacation leave and left the premises.

In the meantime, the other Inspector, Henderson, whom Sutherland was to meet in the field, had called in and advised Gluck that he had been late in getting to the meeting point. He was told to return to the office, arriving just after Sutherland had left. Since the work that had been planned that day was to be performed by a team of two Inspectors it then became necessary to assign Henderson to other duties. Henderson received a reprimand for having been late at the meeting site.

About a week later Gluck called Sutherland into his office to discuss the events which had transpired on June 15.

According to Sutherland he was told that the only thing he had done wrong that day was to leave the office early. Gluck then asked him "what was bugging him", why he was against the program. Sutherland replied that it was because of the extended hours, that he had hired in to work 8:00 to 4:30."..this was how my whole life revolved around these hours and this created a hardship when they changed them."(Tr 1/30/74, p. 91).

In referring to this meeting, Gluck testified that there were two points he wanted to make clear to Sutherland: first, that he did not appreciate his jeopardizing one day's Test Purchase Program since this Program had top priority, to which Sutherland replied: "I don't care about your Test Purchase Program."; second, that his excuse for leaving early because he did not want to do eight hours of work in a period of six hours was totally unfounded because there were no work time standards in the Compliance Division.(Tr 1/2/74, p. 25)

Some time in the latter part of June or early July, an Inspector III, Cliff Smith, stopped Sutherland in the corridor and cautioned him about being so outspoken. According to Sutherland, Smith told him to watch his step because the "County was out to get him". Smith denies using this terminology maintaining that all he was trying to do was caution Sutherland about his outspoken opposition to the Test Purchase Program while he was on probation. Smith contends that, at the time, he did not know that Sutherland was even a member of the Union.

Around July 6, the next Interim Probationary Report covering the month of June was prepared by Sutherland's immediate



### Discussion

Basically, the question to be resolved is whether Director Becker's decision to demote Sutherland was because of his Union membership and/or activity. It is apparent that, at least as of July 6, 1973, all levels of supervision under Becker did not believe that there were sufficient reasons for terminating Sutherland's probationary status as Compliance Inspector II.

Apart from the fact that Becker denies knowing about Sutherland's Union membership or Union activity, the record does not support a finding that Sutherland's activity on behalf of the Union was of such a nature as to bring it to the attention of management - let alone be the cause for the Department to seek his demotion. Sutherland, in his own testimony at the Hearing continuously referred to the fact that he personally objected to the revised work schedules. No evidence was adduced at the Hearing to show Sutherland's participation on behalf of the Union with respect to the related grievance or the charge which was filed by the Union. It was only after continuous prodding by Union Counsel that Sutherland remembered to mention the fact that he was interested in the Union's filing of the grievance or unfair charges.

It could be argued that regardless of the intensity or degree of his Union activity it would still be a violation of the Ordinance if, in fact, this was the prime reason for the action taken by Becker. In this connection the Union refers to the brief encounter which occurred between Cliff Smith, Inspector III, and Sutherland when the latter was told to



supervisor, Turner. In this report Turner stated that he still considered Sutherland a competent employee. However, in his comments in the report, Turner referred to the June 15 incident noting that: "...what is cause for concern is your response to a disagreeable situation and the effect it had on the work assignment. Secondly, it was not in keeping with your usual high performance." The report was reviewed and concurred in by Nahan Gluck and the Assistant Director of the Department, Wes Mossberg. However, when the report reached the desk of the Director of the Department, M.H. Becker, he refused to go along with the evaluation and wrote across the report in large red letters: "NOT ACCEPTABLE! THE FACTS PLEASE --MHB". (Jt.Ex.6) Becker then requested the various supervisors involved to give him a written detailed report on the June 15 incident. Such a report was subsequently furnished Becker. On July, 19, 1973, an unsatisfactory Performance Report together with a three page letter from the Director was given to Sutherland. At the same time permission was requested from the Civil Service Commission to reduce Sutherland to Inspector I. Reduction took place on July 23, 1973.

In the letter which Becker gave Sutherland on July 19, reference was made to Sutherland's recent behavior which: "...indicates an immaturity which is not compatible with law enforcement or the objectives of this Department." Becker also referred to the June 15 incident in great detail and the fact that Sutherland's attitude had been one of disrespect to the Division Chief.<sup>1</sup>

1. Reference was also made in the letter to alleged minor mileage claim discrepancies on the part of Sutherland. This was apparently dropped by the Department inasmuch as it did not pursue the matter further at the Hearing.

"watch his step". Even here, no reference was made to Sutherland's Union membership and activity. Nevertheless, the Union urges that such an inference be made by the Hearing Officer. However, the undersigned is convinced that Smith was, in fact, trying to help Sutherland by suggesting that during any probationary period it was "best to do your job and keep your mouth shut."

The Union further maintains that what occurred on June 15 was nothing but a trivial and insignificant incident and one grasped upon by Management to justify the demotion of Sutherland. This could very well be the case but that, in itself does not warrant the finding that the Department violated the Ordinance. On the other hand, Sutherland did not leave any doubt in anyone's mind that he, personally, was unequivocally opposed to the change in working hours and didn't care about the importance of the Test Purchase Program; that he, himself, conceded that his attitude had changed. Taking into consideration his conduct on June 15 together with his over-all change in attitude, one can understand the rationale and conclusions reached by Director Becker on July 19.

The Union has referred to the Commission's decision involving Patrick J. Davoren, an employee of the Sheriff's Department. (Case No. UFC 6.8) The Commission had found that the Department violated the Ordinance when it transferred Davoren to another station because of his Union activities. However, the facts of that case bear little resemblance to those of the instant case. There, the Hearing Officer found that Davoren was extremely active in his Union's efforts to

defeat another organization in a representation election; that he held the position of Chairman of his Department delegation to the Union and in this position circulated Union literature. In the instant case, Sutherland's Union activity was confined to serving as one of the liaison employees relied upon by the Union Steward in his Department and as such was responsible for notifying other Inspectors as to the date of Union meetings.

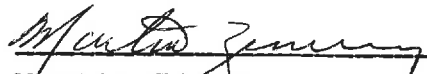
In the Davoren case there was no question of Management's knowledge of his Union activity, whereas in this proceeding there is no evidence to show that Management, particularly the person directly responsible for Sutherland's demotion, had any knowledge of his Union membership or activity.

Finally, it should be noted that none of the anti-Union hostility and animus which was exhibited by Management in the Davoren case was present here.

#### Recommended Finding of Fact and Conclusions

Inasmuch as the Hearing Officer finds that the record as a whole fails to support the finding that the Department gave Sutherland an unsatisfactory Performance Rating and reassigned him to Inspector I because of his membership in and activities in behalf of the Union, it is recommended that the Charge be dismissed.

Dated this 29th day of April, 1974

  
Martin Zimmering  
Hearing Officer