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LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of LOS ANGELES COUNTY EMPLOYEES ASSOCIATION, LOCAL 660, AFL-CIO, Charging Party, and COUNTY OF LOS ANGELES, DEPARTMENT OF PUBLIC WORKS Respondent.	Case No. UFC 6.226 REPORT OF HEARING OFFICER

Appearances:

For the Charging Party: James G. Varga, Esq.
417 South Hill St., Suite 770
Los Angeles, CA 90013

For the Respondent: Richard B. Dixon, C.A.O.
Don Elliott, Program Specialist
Employee Relations Division
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INTRODUCTION

On September 14, 1989, the Los Angeles County Employees Association, Local 660, SEIU, AFL-CIO [hereafter "Union" or "charging party"], filed an unfair employee relations practice charge against the Department of Public Works alleging a viola-

tions of § 12(a)(1) and (a)(3) of the Employee Relations Ordinance.

After notice was timely and duly given, a hearing on the charges was held on October 31, 1990, before Richard C. Solomon, duly appointed Hearing Officer. The parties agreed to file post-hearing briefs which they have done, and the matter is now deemed submitted. Having considered all the evidence, arguments, and post-hearing briefs, I now submit this Report pursuant to Rule 6.10 of the Commission's Rules and Regulations.

THE CHARGE

The Union charges that respondent violated the ordinance by refusing to allow a duly elected member of the bargaining team, Ted Stimpfel, who was then assigned to a night shift, to switch shifts so that he could attend the negotiation sessions on County time. The Union's claim is based on state law (Gov't Code section 3503.3), the L.A. County Employee Relations Ordinance, and the County's past practice. For a remedy, the Union requests an appropriate back pay order. The Union also charges other incidents where alternate team members have not been released to replace regular bargaining team members who were not able to attend negotiating sessions.

Respondent admits that it refused to allow Mr. Stimpfel to change shifts, and that he had to attend the negotiating sessions on his own time, but claims that the refusal was economically justified, the County Departments' past practice is to not allow such shift changes, and that its decision did not violate state

law or the ordinance.

THE APPLICABLE STATUTES

Section 12(a)(1) of the Employee Relations Ordinance states:

"(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 recognized or granted in this Ordinance;

* * *

(3) To refuse to negotiate with representatives of certified employee organizations on negotiable matters."

Gov't Code section 3505.3 states:

"Public agencies shall allow a reasonable number of public agency employee representatives of recognized employee organizations reasonable time off without loss of compensation or other benefits when formally meeting and conferring with representatives of the public agency on matters within the scope of representation."

Union'S EXHIBITS

U1 List of "Union/Management Labor Negotiations - 1989"

U2 Bargaining unit employees staff schedules for Sept. 1989

MANAGEMENT'S EXHIBITS

C1 Copy of Gov't Code section 3505.3

C2 Bargaining session attendance/sign-in sheets

JOINT EXHIBITS

J1 Union's charge

J2 Respondent's answer

SUMMARY OF THE FACTS

Except for the County's past practice, the facts are not disputed. This case arises out of the 1989 negotiations between the Union and the County on behalf of the "Artisan and Blue Collar" bargaining unit, which includes certain employees of the Department of Public Works. Ted Stimpfel is a Public Works employee, and works as an airport service worker at the El Monte Airport. At all relevant times, his assigned shift was graveyard (midnight to 9:00 a.m.). He had been a shop steward for some two years, and was invited to join the Union's Blue Collar Committee bargaining team after having been elected by the other shop stewards to represent the Department's Aviation Division employees.

The negotiations ran from July 26 through November 13, 1989; the sessions occurred during normal business hours, starting at or about 9:00 a.m. There were a total of 16 bargaining sessions; Stimpfel attended as many as he could, 13 in all (he missed two due to family emergencies and was not informed of the final meeting having been scheduled). Exh. U1.

Stimpfel asked management, both directly and through the chair of the Blue Collar Committee, to allow him to switch shifts with another airport service worker (same classification) assigned to days so that he (Stimpfel) could attend the bargaining

sessions on County time. Management took the request under advisement and then refused. Thus, Stimpfel attended 13 sessions on his own time having just got off his graveyard shift. Although he was occasionally late, there is no evidence that his participation in and contributions to the sessions suffered because he was coming off an eight hour work shift. His participation in the sessions was voluntary. He lost no pay or other benefits by virtue of his participation; he did "lose" the opportunity to switch shifts so that he could attend the sessions on County time.

The evidence regarding the County's past practice of allowing such shift changes is, however, conflicting. Mark Fink, a business agent for Local 660, chief negotiator in the 1989 season for the Blue Collar Committee, and a participant in every negotiation between the Union's Blue Collar workers and the County since 1974, testified that County Departments routinely allowed employee-representatives to switch shifts so they could attend negotiations. He specifically cited examples in 1974, two in 1983, two in 1985, three in 1987, and two in 1989, involving Probation, Health Services, Roads, Parks and Recreation, Purchasing and Stores, and Sheriff's Departments. During the 1989 negotiations, he asserted that James Riley (maintenance worker for Health Services) and Debra Colbert (parking control officer, Sheriff) were allowed shift changes so they could attend the sessions on County time. He testified that he knew of these past examples of his personal knowledge and could not recall any

denials of similar requests by any Department other than respondent's denial of Mr. Stimpfel's request.

Respondent's evidence was equally unequivocal on the other side. Six witnesses testified, each of whom were the employee relations representative for their respective departments. Each testified, in essence, that their department's policy and practice was not to change work schedules to allow employee-representatives to attend bargaining sessions on County time. Five of respondent's witnesses directly contradicted Mr. Fink's testimony that their respective departments had allowed the alleged shift changes. Thus, Linda Helmhold, the Sheriff Department's representative, denied that her Department had approved the Union's request for a shift change for Ms. Colbert in 1989. Similarly, Reginald Salazar, Health Service's representative, denied that he received a request for a shift change on behalf of James Riley, and that, had such a request been made, it would have been denied because of his Department's policy of not changing schedules for attendance at negotiation sessions. Each of respondent's witnesses further testified that, as their Department's representative to the Blue Collar negotiations, all such requests for shift changes would have had to come to their attention.

The evidence is also in dispute as to whether respondent's denial of Mr. Stimpfel's request was, or was not, economically justified. The Union claims that Stimpfel arranged for another airport service worker to take his graveyard shift at no extra cost to the County. Greg Slevin, Personnel Officer II for

respondent, testified that he investigated Stimpfel's request and was told by the head of the Aviation Division that they would have to pay some overtime for another employee to take Stimpfel's graveyard shift because Stimpfel and the proposed employee were on different schedules (Stimpfel worked a "9/80" schedule and his proposed employee worked "5/40").

Finally, it is undisputed that where negotiating sessions overlap with employee-representatives' regularly assigned shifts, those employees are paid for the time spent attending the sessions.

DISCUSSION

There do not appear to be any judicial or administrative interpretations of Gov't Code section 3505.3, and its language does not address the precise issue presented in this case. As a part of the Meyers-Milias-Brown Act, however, its purpose is clearly to facilitate the collective bargaining process. First, section 3505.3 acknowledges the obvious fact that bargaining would normally occur during regular business hours Second, it seems clearly intended to facilitate shop-floor representation in the bargaining process. The statute accomplishes its intended purpose by, in effect, requiring management to pay for the time employee representatives spend at the sessions, thus avoiding the Hobson's choice between participating (without pay) or working (and foregoing participation). If there is to be such bargaining, therefore, and if shop-floor employees could only participate without pay, the alternative would be to schedule meetings

outside normal business hours or limit Union representation to full-time officials.

Faced with a statute and County ordinance which do not squarely address the precise issue presented here, the test of whether respondent's refusal to authorize a shift change in this case violates section 3505.5 could be answered by asking whether that decision undermined the collective bargaining process, a consequence the statute was designed to avoid. From this perspective, respondent's decision is not a violation of state law, nor, derivatively, of the County ordinance. Mr. Stimpfel was still able to attend, to the extent feasible to him, all bargaining sessions. He suffered no loss in pay or benefits, since he continued to work his regular shifts for which he was paid. From his perspective, the result would have been the same if the negotiating sessions had been held on Saturdays. He essentially chose to use some of his own free time to participate in the sessions. Nor is there any evidence that Mr. Stimpfel's having to drive from work to the location of the negotiations after working an eight hour shift interfered with or hurt the collective bargaining process. He probably arrived late at some of the sessions (he signed in last twice on the attendance log, Exh. C2), but there was no evidence that this had any negative impact on the process.

Mr. Stimpfel did lose an opportunity--an opportunity to be paid for attending the bargaining sessions. The issue, however, is whether management must give employees that opportunity, not

whether it should or may, and I find no basis for this purported obligation in the state law or the County's labor relations ordinance where management's refusal does not give it an edge, or the Union less of an edge, in the collective bargaining process.

The Union introduced evidence of the County's past practice to prove the parties' mutual interpretation of section 3505.3 which interpretation the Commission should accept. The problem here is I am unpersuaded as to what the parties' past practice has been. I don't know if we have a "swearing contest" or differing interpretations of "allowable shift switches." For example, I have little doubt that County departments routinely allow employees to occasionally swap shifts; I do not know for certain, however, whether these departments have or have not ocassionally allowed the same so that an employee could attend a bargaining session on County time. The Union has the burden of proof in this case, and, in light of respondent's evidence, I am simply not persuaded, one way or the other, as to that past practice. Thus, I cannot rely on the Union's version of that past practice to fill in for the governing law's uncertainty.

The Union also claims that respondent failed to negotiate the issue of Mr. Stimpfel's shift switch [Post-Hearing Brief, p. 3] and that it failed to bargain with the Union in unilaterally changing the parties' past practice of granting these requests. Respondent argues that it considered the request and, after investigation, denied it, thus reaching impasse on the question. And it argues that since its past practice was to routinely deny

such requests there has been no unilateral change in a negotiable working condition.

First, I think Mr. Stimpfel's request was, indeed, negotiated, though without much discussion, and the Union's remedy was to invoke the impasse resolution procedures of Section 13 of the Employee Relations Ordinance (as amended). And, second, the Union's argument that the respondent unilaterally changed the parties' past practice is answered by my discussion above.

Finally, I do not reach the issue of whether respondent's decision to deny Mr. Stimpfel's request was or was not economically justified or "legitimate." Even assuming no legitimate economic reason to deny the request, i.e., another qualified employee was available to swap shifts with Stimpfel at no additional cost to the County, respondent had no obligation to give Mr. Stimpfel the opportunity requested since its refusal to do so did not interfere with the collective bargaining process and thus run afoul of section 3505.3.

FINDINGS OF FACT

1. Mr. Stimpfel, an employee of the Aviation Division of the Department of Public Works, was duly elected to represent Division employees on the Union's Artisan and Blue Collar Committee during the 1989 collective bargaining sessions.

2. Mr. Stimpfel then worked the graveyard shift, from midnight to 9:00 a.m., and the bargaining sessions took place during regular business hours, commencing at approximately 9:00 a.m. on each scheduled day;

3. Mr. Stimpfel requested authorization, both personally and through his Union, from respondent for him to swap shifts with another qualified employee of the same job classification, who was then assigned to a day shift, so that he (Stimpfel) could attend the bargaining sessions on County time.

4. Respondent considered and rejected the request.

5. The parties met in 16 negotiating sessions, 13 of which Mr. Stimpfel attended on his own time after getting off his assigned shift.

6. Management did not gain an advantage, nor did the Union suffer a disadvantage, in the bargaining process as a consequence of Mr. Stimpfel having to attend the bargaining sessions on his own time after working an eight hour shift.

7. Mr. Stimpfel did not suffer any loss in pay or other benefits in attending the negotiating sessions.

8. The Union has not sustained its burden of proving that respondent established a past practice of authorizing similar requests by similarly-situated employees.

CONCLUSIONS OF LAW

1. Respondent's refusal to grant Mr. Stimpfel's request for a shift change did not violate Gov't Code section 3505.3 nor the County Employee Relations Ordinance.

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RECOMMENDATION

Based on the above, I recommend that the Commission dismiss the Union's charges in this case.

Dated: February 11, 1991

Respectfully submitted,

RICHARD C. SOLOMON
Hearing Officer