LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of	)	
LOS ANGELES COUNTY EMPLOYEES ASSOCIATION, LOCAL 660, SEIU, AFL-CIO and PAT DAVOREN	)	
Charging Parties	)	
vs	)	UFC 6.25
COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT	)	
Respondent	)	

DECISION AND ORDER

Following the filing of a charge by the Los Angeles County Employees Association, Local 660, SEIU, AFL-CIO and Patrick J. Davoren on April 3, 1975, the Los Angeles County Employee Relations Commission appointed Dr. Paul Prasow as Hearing Officer to take testimony in the matter and to make his recommendations therein. Hearings were held before Dr. Prasow on January 20 and 27, May 26 and July 13, 1976. Post hearing briefs were filed by both parties. On August 31, 1976 the Hearing Officer submitted a report with his findings, conclusions and recommendations. Exceptions to the Hearing Officer's report and a supporting brief were filed by the County on September 15, 1976, and the Charging Parties filed their response and post hearing brief on October

12, 1976. The Commission has examined all of the documents on file herein, including the complete record of the proceedings conducted by the Hearing Officer, and on the basis thereof, renders the following decision.

The Hearing Officer's findings, conclusions and recommendations are supported by the record.

On December 10, 1974 Sergeant Davoren was given a three day suspension for allegedly consuming alcoholic beverages while on duty. He did not appeal the suspension to the Civil Service Commission. The three days were offset by accumulated overtime credits and Davoren avoided further confrontation with the Sheriff's Department. A few years earlier he had been in another dispute in which he had charged the Department with punishing him for union activities; his charge was upheld by the Employee Relations Commission; litigation ensued, and judgment was rendered in his favor by the Superior Court of the State of California.

Sixteen days after the expiration of Sergeant Davoren's time to appeal the three day suspension to the Civil Service Commission he was transferred and reassigned from Patrol Division West to the Custody Division at Biscailuz Center. The essential issue presented by this proceeding is whether that transfer and reassignment was in retaliation for his union activities or was to place him where he could be monitored for a drinking problem.

The record supports the following findings and conclusions now made by the Commission.

1. The three day suspension was the only punishment meted out to two other officers who were allegedly drinking with Sergeant Davoren, even though

they had received prior reprimands and warnings for the offense. Davoren had no such previous record. A fourth officer was given a transfer in addition to a suspension and he also had a record of prior infractions.

2. The transfer of Sergeant Davoren, ordered twenty-six days after the imposition of the suspension, was acknowledged by management as an afterthought, without the intervention of new circumstances.

3. The evidence does not support the charge that Sergeant Davoren was a "problem drinker", nor was there evidence that he was monitored, observed or counselled for such a problem at Biscailuz Center during the following eighteen months.

4. Sergeant Davoren was identified by Management as an "indigenous leader" whose conduct was "emulated and imitated by other people" and an official statement announcing his transfer referred to the negative influence of his performance in the role of an indigenous leader, which may reasonably be interpreted as a reference to his union activities or to his having prosecuted a charge against the Department before this Commission and the Court, both of which were legally protected rights.

5. The transfer of Sergeant Davoren to Biscailuz Center was punitive in that it was to a post where many of his skills as a detective would not be utilized and where (as stipulated by the parties) most detectives would prefer not to be sent.

6. The transfer and retention of Sergeant Davoren at Biscailuz Center for eighteen months and to the present time, without attention to an alleged drinking problem, is an open-ended punishment, unreasonable and discriminatory

in nature. In the absence of proof of a drinking problem or supervision of such a problem, this Commission concludes that the transfer was not for such a problem but was instead because of Davoren's asserting his rights under the Employee Relations Ordinance.

The Commission does not intend, by this action, to place upon the County a special burden of proof each time it takes a subsequent action against an employee who has been involved in an earlier Employee Relations Commission proceeding. We have not required in this case that the County prove it was not acting in a punitive manner. In terms of its treatment of Davoren, however, the County had the responsibility of demonstrating (1) Davoren did have a serious drinking problem and (2) the transfer was related to its desire to supervise him more closely. This the County failed to do in its presentation.

We share the County's concern that its conduct in connection with the prior unfair employee relations practice charge filed by Davoren should not be a basis for limiting the County's right to take appropriate disciplinary action against Davoren in new situations.

The exceptions taken to the Hearing Officer's report by the County were based largely upon County Counsel's interpretation of elements necessary to support an unfair labor practice charge under the National Labor Relations Act and the Hearing Officer's discussion of evidence counsel deemed irrelevant to those elements. In the Burnup case cited by County Counsel the United States Supreme Court indicated it would be an unfair practice if (1) a discharged employee had engaged in protected activity, (2) his employer knew it, and (3) the employee were not guilty of an alleged misconduct. The facts in this case involve

other circumstances; but the evidence supports all the essential ingredients of an unfair employee relations practice, even under the doctrine established by the United States Supreme Court for private employment.

A finding on "open-ended" punishment or the absence of monitoring the alleged problem during the period of the transfer may not be needed to establish an unfair employee relations practice, but it is a circumstance that may properly be considered in evaluating whether the alleged drinking problem was the true motivation for the transfer. Likewise the absence of proof that there was no drinking problem, or the fact that Sergeant Davoren testified it was generally his practice to have a drink or two on his lunch break or the evidence indicating that certain officials did not know that other drinkers had been reprimanded and given warnings are merely additional circumstances to be considered in determining what caused the transfer.

The exceptions based on the Hearing Officer's findings with respect to those facts just go to the sufficiency of parts of the record and do not reach the existence of other evidence as well. In the totality of the record the essential elements of an unfair employee relations practice can be and were supported.

IT IS HEREBY ORDERED that

1. Respondent be ordered to cease and desist from taking further action against Sergeant Davoren in violation of Section 12(a)(1) of the Employee Relations Ordinance; and

2. Respondent be ordered to transfer Sergeant Davoren

forthwith to an appropriate detective sergeant position in accordance with this decision, and to report to this Commission the action taken in compliance herewith.

Dated this 14th day of December 1976.

David Ziskind, Chairman

Lloyd H. Bailer, Commissioner

William Levin, Commissioner

ACKNOWLEDGMENT OF SERVICE

LACEA vs Sheriff's Dept.

UFC 6.25

Received two copies of DECISION AND ORDER this 14th day of December, 1976.

County of Los Angeles Sheriff's Department
Respondent

By Margaret Godward

Received copy of DECISION AND ORDER this 14th day of December, 1976.

County Counsel

By J. L. M. Bassett
Counsel for Respondent

DECLARATION OF SERVICE BY MAIL

Martha E. Schultz states:

That on the 14th day of December,

19 76, I served the attached DECISION AND ORDER

upon Charging Parties

by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mailbox addressed as follows:

Edward L. Faunce
Lemaire, Faunce and Katznelson
2404 Wilshire Blvd., Suite 700
Los Angeles, CA 90057

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 14, 1976

By Martha E. Schultz

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