

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)	
LOS ANGELES COUNTY EMPLOYEES ASSOCIATION,)	
LOCAL 660, SEIU, AFL-CIO, AND LOS ANGELES)	
COUNTY EMPLOYEES UNION, LOCAL 434, SEIU,)	
AFL-CIO)	
)	UFC 6.44
Charging Parties)	
)	
vs.)	DECISION AND ORDER
)	
LOS ANGELES COUNTY DEPARTMENT OF HEALTH)	
SERVICES, OLIVE VIEW MIDVALLEY HOSPITAL)	
)	
Respondent)	
)	
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DECISION

A hearing was held March 23, 1977 before Hearing Officer Ruth M. Harmer, duly appointed by this Commission to make recommended findings of fact and conclusions concerning the above-captioned matter. At the hearing Local 434, SEIU, AFL-CIO requested and by agreement between the other parties was granted permission to join its sister local as a charging party. The hearing officer submitted her report to the Commission on July 25, 1977. Respondent submitted exceptions to the hearing officer's report and the charging parties submitted a brief in opposition to these exceptions.

The substance of the charge is that County, through its Depart-

ment of Health Services, engaged in an unfair employee relations practice within the meaning of Section 12(a)(1) and (3) and Section 6(a) and (b) of the Employee Relations Ordinance by discontinuing the "past practice" at Olive View Midvalley Hospital of granting registered nurses and surgical technicians compensatory time off for standby services on holidays without notification to or negotiation with the unions representing those employees. Local 660 represented the registered nurses and Local 434 represented the surgical technicians. The alleged practice concerned operating room duty at Olive View Midvalley Hospital.

Respondent acknowledged that the alleged practice existed (for approximately ten years) and conceded that it discontinued this practice. The parties differed concerning the immediately surrounding circumstances, but the essential facts were not in dispute.

By memorandum dated April 27, 1976, Cherry Uyeda, personnel officer at Olive View Medical Center, responded to a request from Payroll Supervisor Karen Minnig for clarification of procedures by stating that "employees who are on standby on holidays should receive standby pay and not accumulate holiday time . . . This is established procedure throughout the County." The contents of this memorandum came to the attention of some of the affected employees. By lettergram dated May 17, 1976, those employees notified Director of Nursing E. Spees that "Unless we come to a reasonable agreement between now and May 31, 1976, we . . . will not be on 'Standby Call' on scheduled Holidays. There will be no O.R. Surgery coverage."

On May 18, 1976, several surgical technicians filed a grievance

protesting the announcement contained in the above-quoted memorandum from Personnel Officer Uyeda. The department subsequently denied the grievance at all three steps of the procedure. In denying the grievance, the deputy regional director of the department recommended that Local 434 address the substance of the grievance as a negotiation item at an impending bargaining session. The unfair employee relations charge in this proceeding was then filed.

On the holiday of May 31, 1976 the decision to discontinue the compensatory-time-off practice was not put into effect. Standby employees on that day received compensatory time off.

On June 11, 1976, County dispatched letters advising Locals 660 and 434 that as of July 1 Olive View Midvalley Hospital was discontinuing the practice of granting accumulated compensatory time off to registered nurses and surgical technicians because the practice was illegal. The disputed practice was discontinued effective July 1, 1976.

Throughout the County hospital system various personnel are required to engage in standby status. The County's Salary Ordinance provides for additional pay of 25-cents an hour for standby status and the same pay rate is provided for in the Memorandum of Understanding for various employee representation units, including the subject personnel. At Olive View the requirement is that the affected personnel appear at the operating room no later than thirty minutes after they are called. If they are called they are entitled to a minimum of four hours' call-in pay and they are compensated at the overtime rate for the time spent. These requirements and

compensation provisions are not disputed in this case. The controversy concerns solely the practice of granting eight hours' accumulated compensatory time off to employees who served on standby status for holidays in which they were not called to active duty.

This case, as did UFC 9.7, Los Angeles County Professional Peace Officers Association vs. Los Angeles County Sheriff, decided on August 1, 1975, poses the question of what responsibilities management and employee organizations have when in good faith the legality of an existing practice is raised. All persons are expected to know, or to ascertain, the law and to act in a lawful manner. Honest differences of opinion concerning the law still persist. Administrative officials have a responsibility to direct their employees in accordance with their understanding of the law; but administrators are not endowed with judicial finality and there are various ways in which they may deal with legal problems. Employee Relations Ordinance 9646, as amended, requires that prior to changing existing wages, hours or conditions of employment, Los Angeles County officials must negotiate on such changes with employee representatives. That, too, is a requirement of law and violation of that obligation is not to be condoned by a mere unilateral assertion that an existing practice is considered to be illegal.

Obviously, the law cannot be changed by employer-employee negotiations; but if a past practice is illegal (or thought to be illegal), negotiation can lead to appropriate action in a manner calculated to preserve harmonious employer-employee relations. Discussion of legality by all of the interested parties may well lead to consensus

and a change in practice, with continuing good employer-employee relations. Negotiation may lead to an agreement on what should be done to avoid illegal behaviour and what, if any, alternative forms of conduct should be substituted for a questioned practice. If the parties remain in disagreement on the legality of a practice, only court proceedings can fully and finally dispose of the matter. The law and the public policy of this County require negotiation on changes in conditions of employment and that law and policy must be observed even with respect to problems of legality.

In this case, the legality or illegality of compensatory time off for standby service was not free from doubt even among the department officials. The personnel officer of the department decided it was illegal but when challenged, she voluntarily continued the practice during the next holiday period. The deputy director, in rejecting a grievance on the issue, recommended that the matter be made a subject of negotiation at forthcoming bargaining sessions. If it were deemed negotiable at a later date, there should have been no hesitation to submit the matter to prior negotiation.

Counsel for the department did not present a court decision dealing expressly with the legality of compensatory time off for standby service. She argued that the Salary Ordinance specifies the maximum cash payments that are to be made to employees for services rendered, including standby service, and she inferred from that compensatory time off may not be allowed. It should be noted that the employees did not ask for more money than specified in the Salary Ordinance. They had been receiving an exchange of time off during

regular working hours for time spent on standby during holidays. The Salary Ordinance does not appear to deal explicitly with that practice. What implication should be drawn from the legislative intent behind that ordinance or from other public policies, and what alternative practices, if any, are available, are matters of vital interest to the employees involved. The department itself was willing to continue the compensatory-time-off practice for at least another holiday, and sound employer-employee relations as provided for in the Employee Relations Ordinance should have been preserved by submitting the matter to negotiation.

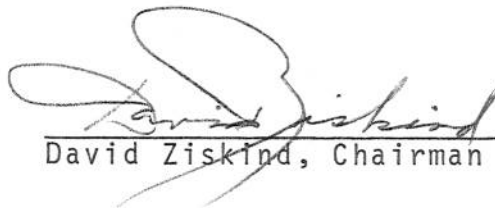
Even if the matter were not negotiable, the Employee Relations Ordinance requires that such matters, since they affect employee relations, should be made the subject of consultation, if possible prior to the introduction of any change. The Commission finds that it was feasible to have had such consultation prior to the unilateral change. However, since this was a matter directly involving conditions of employment, the department had an obligation to negotiate as well as to consult.

FINDINGS AND ORDER

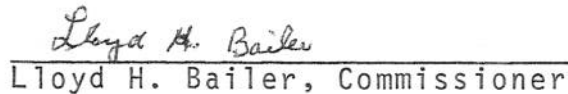
In view of the foregoing, the Commission finds that the Los Angeles County Department of Health Services committed an unfair employee relations practice by discontinuing compensatory time off for registered nurses and surgical technicians who rendered standby services on holidays at the Olive View Midvalley Hospital; and

orders the department (a) to rescind its directive of July 1, 1976 discontinuing said compensatory time off, (b) to enter into good faith negotiations with Local 660, SEIU, AFL-CIO and Local 434, SEIU, AFL-CIO concerning any proposed changes in its past compensatory-time-off practices or policies, and (c) to allow compensatory time off to those registered nurses or surgical technicians who may have been deprived thereof by said unfair employee relations practice.

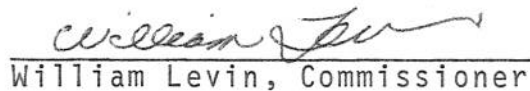
Dated: October 20, 1977



David Ziskind, Chairman



Lloyd H. Bailer, Commissioner



William Levin, Commissioner