

COUNTY OF LOS ANGELES
EMPLOYEE RELATIONS COMMISSION

In the Matter of

SERVICE EMPLOYEES INTERNATIONAL
UNION, Local #660, AFL-CIO,

Charging Party,

vs.

LOS ANGELES COUNTY DEPARTMENT OF
HEALTH SERVICES,

Respondent.

UNFAIR CHARGE No. 6.50

RECEIVED
EMPLOYEE RELATIONS COMM.
COUNTY OF LOS ANGELES
DEC 12 2 36 PM '77

Hearing Officer:

TED ELLSWORTH
2330 Beverly Boulevard
Los Angeles, California 90057
387 5341

Hearing held:

February 17, 1977
Los Angeles County Hall of Administration
500 West Temple Street
Los Angeles, California

Appearances:

For the Union: Leo Geffner, Esq.

Anthony Butka, Research Director
Local No. 660, S.E.I.U.

For the Union: Edwsrd Watson
Chief, Health Serices Division
Department of Personnel

Carol Karjala
Department of Health Services
Personnel Representative

Witnesses:

Steve Dougherty
Field Representative
S.E.I.U., Local #660

Walter Cooney
Field Representative
S.E.I.U., Local #660

THE UNFAIR LABOR PRACTICE CHARGE

The Union charges as follows:

"(1) On or about October 19, 1976, members of S.E.I.U., Local #660 and members of other certified labor organizations were present at the County Board of Supervisors' meeting to protest cut-backs in the Health Services Department.

(2) Employees participating in the protest were engaging in a lawful activity of Local #660 in trying to avoid job loss and cut-backs which would harm the community.

(3) We discovered that Liston Witherill, Department Head, had sent a memo to management telling them that employees should not be allowed to attend the Board of Supervisors' meeting.

(4) Local 660 contends that Mr. Witherill's actions worked to nullify the rights granted employees under Section 4

of the Ordinance, thus violating Section 12 (a) (1)."

RELEVANT STATUTORY PROVISIONS

Employee Relations Ordinance of the County of Los Angeles

EMPLOYEE RIGHTS:

"Sec.4. Employees of the County shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations. . . . No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights."

COUNTY RIGHTS:

"Sec.5. It is the exclusive right of the County to determine the mission of each of its constituent departments, board and commission, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations. It is also the exclusive right of the County to direct its employees. . . and determine the methods, means and personnel by which the County's operations are to be conducted; . . . "

UNFAIR EMPLOYEE RELATIONS PRACTICES:

"Sec. 12 (a) It shall be an unfair employee relations practice for the County:

- (1) To interfere, restrain, or coerce employees in the exercise of the rights recognized or granted in this Ordinance;"

PERTINENT MEMORANDUM OF UNDERSTANDING PROVISIONS

"ARTICLE 7, Sec. 2. Usage of Compensatory Time Off Previously earned.

A. Accumulated compensatory time off may be taken by an employee with prior approval of departmental management."

FINDINGS OF FACT

In February of 1976 the Board of Supervisors of Los Angeles County held hearings for the purpose of examining the full range of health services provided by the County. In June, 1976 a second hearing was held to consider a proposed cut of \$20,000,000. The Board reduced the proposed cut to \$7,000,000. About 500 jobs were affected.

A third hearing was held in August, 1976, and a final hearing was scheduled for October 18 and 19, 1976. On February 11, August 27 and October 15 in 1976, Mr. Witherill sent written memorandums to departmental supervisors instructing them not to give time off for planned union demonstrations or to attend the Board meetings. (Union exhibits Nos 1, 3 and 4). On August 26, 1976, Mr. Myron R. Goldberg, Personnel Officer for the Coastal Health Services Region, sent a similar memorandum to various department officers and supervisors (Union Exhibit #2).

The Unions concerned staged mass demonstrations at each hearing. About 700 demonstrated at the May hearing, 200 in August and about 100 in October.

POSITIONS OF THE PARTIES

THE UNION

It is the position of the Union that an unfair labor practice occurred when Mr. Witherill issued letters instructing the department heads not to authorize employees to take time off to participate in a lawful union activity which is protected by

by Section 4 of the Ordinance. It is further argued that employees are entitled to compensatory time off for any reason, and that Mr. Witherill's letter would restrict this right in regard to specific union activities.

It is not the position of the Union that employees are are entitled to such time off if at such time it would endanger patient care, or that all employees are entitled to such time off at the same time. It is conceded that prior approval is required..

However, it is the position of the Union that even though there might have been a staffing shortage, this would not negate the Memorandum of Understanding. In any event, compensatory time off was granted to other employees during these periods for unspecified reasons, and that some time off could therefore have been given to employees on October 18 and 19 had it not been for instructions issued by Mr. Witherill. At no time did the Department notify the Union of its intent to limit use of compensatory time off which had been established practice at all times in the past.

Finally, the result of Mr. Witherill's instructions was to interfere with a lawful union activity by restricting the rights of employees to take time off for such purpose with the result that fewer participated than otherwise would have and the effectiveness of the demonstration was reduced.

THE COUNTY POSITION

The primary position of the County is that it has the exclusive right to direct its employees and determine the methods by which the County's operations are to be conducted. In this case it was determined by Mr. Witherill that because of the mass demonstrations the granting of compensatory time off to his employees would endanger patient care. Because of severe staff shortage it was necessary to avoid such a situation, and it is the exclusive right of the County to direct its work force in such a situation.

In addition, the County maintains that there was no intent on Mr. Witherill's part to interfere with the demonstrations and his instructions were to be applied to all employees, not to just members of the Union. Further, the Union did not establish that any employee was denied compensatory time off or that any applied for such time off. Mr. Witherill's letter was not released to the Union or to the employees and was sent to Deputy Directors to alert them against an unusual number of requests for time off that would endanger patient care.

Finally, the County argues that the proposed demonstration was a political activity not protected by Section 4.

DECISION

Section 4 and Section 12(a) (1) establish the right of employees to "participate in the activities of employee organizations of their own choosing for the purpose of representation in all matters of employee relations."

It is clear that a substantial cut in the budget of the Health Services Department was an economic concern of the Union and its members. Attendance at budget hearings was important to the Union and demonstrations called to express its concern relating to future employment of its members is a protected right under the Ordinance. In a brief filed by counsel for the Union, it cited case number UFC 1.19 in the matter of Local 685, American Federation of State, County and Municipal Employees, AFL-CIO and County of Los Angeles Probation Department in which the Hearing Officer, David Ziskind and the Commission ruled that a demonstration called by the Union for the purpose of publicizing its opposition to a proposed departmental reorganization was held to be a protected right of the employees.

Although the County argued that there was a critical staffing shortage, it offered no proof that such a staffing shortage applied to all areas and all classifications. Certainly the County has the right to determine if such situations exist and to take such steps as are necessary to avoid endangering patient care.

However, Mr. Witherill's letter is aimed specifically at time off on a specific day in order to prevent employees from

participating in a lawful union activity. His letter of October 15, 1976 states:

"Because of our critical staffing shortage, it is the Department's policy that employees scheduled for work on October 18 and 19 will not be authorized to take time off to participate in the union demonstration or the Supervisors' Board meeting."

The letter does not instruct his Deputy Director not to authorize time off for any other reason on that date nor does it relate to time off on any other day even though granting of such time off for other reasons would obviously create the same problems.

The letter further states that:

"The purpose of this memorandum is to restate the Department's policy regarding employees' attendance at such functions."

Mr. Goldberg's Memorandum of August 26, 1976 confirms this policy. He states:

"The Department has ordered that employees not be permitted to attend this hearing and that any request submitted by an employee to attend should be denied. Additionally, attempts to change schedules to have Monday off should be carefully screened."

Certainly the legitimate changing of schedule, which is common practice, could not have any effect on patient care. The memorandums all refer only to such union activity and therefore must be considered as an effort to interfere with union activity.

The Memorandum of Understanding clearly gives an employee

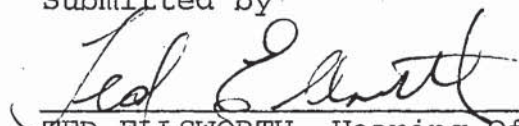
the right for compensatory time off, subject only to prior authorization. Such authorization cannot be by way of a blanket denial aimed at one type of activity only. Whether or not any employees requested or were denied time off is not of importance in this case. What is important is that the letters and memorandums established a policy in regard to union activity only.

It is the opinion of the Hearing Officer that the Department caused an unfair labor practice to be committed when the Director instructed not only Deputy Directors but all managerial and supervisory employees to deny all requests for time off to attend and participate in a lawful activity of the Union. The policy of the Department, as stated in the correspondence, relates only to union activity and does not refer to a policy for time off for any other reasons.

It is the recommendation of the Hearing Officer that the policy statement expressed in the letters of February 11, August 27 and October 15, 1976 be retracted, and that no policy statement which requires a change of operation affecting conditions of employment which have been established as a result of the Memorandum of Understanding or by past practice of the Department be implemented without conferring with representatives of the Union.

Dated: December 6, 1977

Submitted by


TED ELLSWORTH, Hearing Officer