

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)

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

Charging Party)

vs.)

UFC 6.50

LISTON A. WITHERILL, DIRECTOR, DEPARTMENT)
OF HEALTH SERVICES)

Respondent)

DECISION

On November 4, 1976 Local 660 of the Service Employees International Union (herein called the Union) filed an unfair employee relations practice charge against the Department of Health Services of the County of Los Angeles (herein called the County). The Los Angeles County Employee Relations Commission (herein called the Commission) assigned to the charge the designation "UFC 6.50" and thereafter processed the matter in accordance with its rules and as set forth in Section 12 of the Employee Relations Ordinance of the County of Los Angeles (herein called the Ordinance).

The Union's charge as to the alleged unfair practice was the following:

1. *On or about October 19, 1976, members of SEIU Local 660 and members of other certified labor organizations were present at the County Board of Supervisors to protest cutbacks 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 cutbacks 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 action worked to nullify the rights granted employees under Section 4 of the Ordinance, thus violating Section 12(a)(1).*

On January 6, 1977 the Commission issued a Notice of Hearing on the charge and Ted Ellsworth was appointed hearing officer. The County filed its answer to the charge on January 13, 1977. Thereafter, a hearing was conducted by Mr. Ellsworth on February 17, 1977. Following submission of written arguments of the parties, Hearing Officer Ellsworth submitted his report to the Commission on December 12, 1977. No exceptions to the report were filed by the County or the Union. This Decision of the Commission follows after consideration of the entire record.

The County was represented before the hearing officer by Edward Watson, Chief of the Health Services Division of the Department of Personnel, and Carol Karjala, personnel representative of the Department of Health Services. The Union was represented by Leo Geffner, Attorney at Law.

Findings of Fact

The Union is the certified bargaining representative of employees in the Department of Health Services. Local 660 is certified in bargaining units consisting of registered nurses, clerical employees, and a number of health-related professional employees. For each unit there is a Memorandum of Understanding. There are approximately 6,000 union members in the bargaining units, which consist of approximately 10,000 to 12,000 employees.

Each year the Board of Supervisors of the County holds budget hearings. In addition, under state law, the Board must hold hearings before any cuts are made in County health services. In February, 1976, the Board held hearings for the purpose of examining the full range of health services provided by the County. The Board, following a budget hearing regarding possible cuts in health services, made a tentative decision that health services would be reduced in a manner which would affect approximately 1,500 jobs held by employees in the bargaining unit. Local 660 asked its members to appear before the Board in protest, along with members of Los Angeles County Employees Union, Local 434, an organization which also represents employees in the hospitals, primarily in technical and nonprofessional classifications. At the Board hearing in June, 1976, approximately 700 members were present to protest; there was some picketing before the hearing, and a number of members testified at the hearing itself.

Following the June hearing, the Board did cut the health services budget, in effect deleting 500 jobs in the bargaining unit.

The Board then set an additional hearing for August 30, 1976. Again, together with Local 434, the Union informed its members of the hearing and of the need to be present. Prior to the August meeting, on August 27, 1976, L. A. Witherill, Director of Health Services, issued a memorandum directed to all deputy directors on the subject of "Employees' Attendance at August 30, 1976 Public Budget Hearing." The memorandum stated:

This will confirm the August 25, 1976 policy decision regarding the attendance of employees at the August 30 Board of Supervisors Budget meeting.

Due to our critical staffing shortage, it is the Department's policy that employees scheduled to work Monday, August 30, 1976, will not be authorized time off to attend the budget meeting.

Your Personnel Officer previously has been requested to prepare and release this policy statement to all managerial and supervisory staff in your Region. Please ensure that this statement is promptly released to concerned staff.

About the same time, Myron Goldberg, personnel officer for the Coastal Health Services Region, one of the five regions of the health services, issued the following memorandum directed to department chairmen, services directors, regional mental health chiefs, and district health officers:

SUBJECT: ATTENDANCE BY EMPLOYEES AT THE BOARD OF SUPERVISORS BUDGET HEARING

There will be a Board of Supervisors Hearing on Monday, August 30, 1976, to discuss the proposed Health Services Budget cuts.

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.

Once again, the Union's members engaged in demonstration and picketing. Approximately 200 employees were involved in this second hearing.

The Memorandum of Understanding between the County and the Union includes the provisions that employees for "any personal reason that does not interfere with the department or the County to a maximum of three working days in any one calendar year" are entitled to leave "with the prior approval of the department head. . . ." The Agreement also provides that accumulated compensatory time off may be taken by an employee "with prior approval of departmental management." At both the June and August hearings those employees and members of the union who appeared before the Board took time off pursuant to this provision for either personal leave or based on accrued time off; they were not paid for the period they left their work to attend the meeting of the Board.

Following announcement that there would be a third Board hearing concerning possible cuts in jobs in health services on October 19, 1976, the Union called on members for a demonstration during their lunch period in front of the USC Medical Center, a County facility, on October 18, 1976. The Union also sought to have employees present at the October 19 Board hearing, to picket and demonstrate prior to the meeting.

Prior to the planned demonstrations on October 18 and 19, Mr. Witherill, on October 15, 1976, directed the following memorandum to all deputy directors regarding employees' attendance at the planned demonstrations:

It has come to my attention that Locals 434 and 660 are coordinating a noon time demonstration in front of General Hospital on October 18, 1976 and are also calling for a mass demonstration at the Board of Supervisors meeting on Tuesday, October 19. These demonstrations are to protest further employee or program cutbacks within the Department.

The purpose of this memo is to restate the Department's policy regarding employees' attendance at such functions. 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 time off to attend the Union demonstration or the Supervisors' Board meeting.

Your Personnel Officers should prepare and release this policy statement to all managerial and supervisory staff in your region. Please ensure that this statement is promptly released to concerned staff.

At this October meeting, news persons and approximately 100 employees were present. As a result of the decisions reached by the Board of Supervisors at the final hearing in October 1976, approximately 100 employees in the bargaining unit were transferred and approximately 270 temporary employees were laid off.

Position of the County

The County argues that it did not commit an unfair employee relations practice by exercising "management discretion" in issuing

the memorandums notifying the department that because of a critical staffing shortage, the department's policy was that employees scheduled to work would not be authorized time off to attend a Board meeting. The issuance of the memorandums, according to the County, was within its rights of management under Section 5 of the Ordinance giving it the exclusive right to set standards of service to be offered to the public and to exercise control and discretion over organization and operations. The memorandums only reminded employees of their obligation to be at work. The memorandums "did not order or demand" that employees not attend the Board meetings.

No leaves were canceled, nor was any employee restrained from attending the Board meeting on approved time off. Attendance at a Board meeting, according to the County, is "not a protected right" under Section 4 of the Ordinance. The Board is a "body politic" and does not itself negotiate with unions regarding wages, hours, and working conditions. The authority and responsibility for consulting, meeting and conferring or negotiation for the County was, under the Ordinance, delegated to management. Approximately 100 employees were present, even at the October meeting; and no evidence was brought forth nor was any contention made as to any specific employee harmed.

County argues that the "Union expectations" were unreasonable. Management has a responsibility to provide adequate staffing at all of its acute hospitals. Even a Union witness testified that there were occasions when there was an inadequate number of registered

nurses available. Therefore, any Union assumption that "any and all employees" should be allowed time off to attend a Board budget meeting is unreasonable.

Management's action was not arbitrary, capricious or in bad faith. At any one time approximately 1,550 nurses would be off duty and available to attend a hearing; and management placed no restrictions on what employees could do during their time off.

The Position of the Union

The Union states the issue as whether the County violated the Ordinance and the Meyers-Miliias-Brown Act by issuing directives to the effect that employees will not be authorized time off to attend a budget meeting or hearing or to attend a Union demonstration. Union members were thereby prohibited from taking time off at their own expense, by using personal leave or credited compensatory time off in overtime work, to participate in union activities regarding a Board budget hearing.

The Union argues that its members or any employee in the unit has the right to "participate in the activities of the employee organization" certified as bargaining agent. In the instant situation the Union had requested its members and other employees to participate in its activities regarding a basic condition of employment involving job security and layoff provisions as a result of proposed cuts in health services.

At the Board hearings basic job conditions were involved, conditions "crucial" in terms of the Board making determinations as to whether the budget would be cut. For "obvious reasons," the Union desired to have its members participate in its activities and to exert "maximum pressure" on the Board. It "cannot be seriously questioned" that attendance at a Board meeting, by participating, demonstrating, picketing and testifying, are protected rights both under the Ordinance and under the Meyers-Milias-Brown Act.

The Union does not contend that employees should be paid by the County for participating in the projected activities. But employees do have the "absolute right" to take time off at their own discretion on use of personal leave or accrued compensatory time credited to overtime work.

As to the problems of staffing if all union members decided to take time off, obviously if all County nurses decided to take the same time off, then "the County's position would have some merit." But this "extreme position" was never asserted by the Union. The Union was always prepared to cooperate and to work out a program under which an adequate number of members and employees would be available to staff the hospitals and still allow a reasonable number of members to take time off to participate in union activities before the Board.

In support of its position, the Union cites the ERCOM decision in the matter of Local 685, American Federation of State, County and Municipal Employees, AFL-CIO, UFC 1.19. According to

the Union, ERCOM's reasoning in this earlier case is applicable in the instant case on "the right of employees to participate in the activities of the Union."

Decision

We find it difficult to make more clear than did ERCOM in UFC 1.19 the appropriate limits of so-called management discretion. In that earlier decision, the Commission stated:

We recognize the inherent authority of County management to maintain an efficient level of service to the reasonable expectations of the citizenry. Nor do we overlook the discretion in the matter of the approval of requests for taking advantage of earned and accumulated compensatory time off reserved to the department heads by Section 145 of the Salary Ordinance. That discretion, however, may only be exercised in a manner which is free of the restraint upon employee rights prohibited by Section 4 of the Ordinance. That is to say, the discretion available to the department head under Section 145 of the Salary Ordinance cannot be exercised to defeat the protections afforded employees by the Board of Supervisors upon the adoption of the Employee Relations Ordinance. Similarly, we must reject the contention of the County that an orderly and lawful protest of action contemplated by the Board is of itself conduct prohibited by Section 12(b)(1) of the Ordinance.

A substantial cut in the budget of the Health Services Department was obviously of economic concern to the Union and its members. We have no question that attendance at the budget hearings and the proposed demonstrations called to express the Union's concern relating to employment of its members are "protected rights" under the Ordinance. As provided in Section 4 of the Ordinance, "Employees . . . have the right to . . . participate in the activities of

employee organizations . . . for the purpose of representation on all matters of employee relations . . ." and "No employee shall be interfered with . . ." or "restrained, because of his exercise of these rights."

As the hearing officer points out, although the County argued that there was a critical staffing shortage, there was no proof such a staffing shortage applied to all areas in all classifications. The general observation of a Union witness (that "on some days" there is a shortage of registered nurses within the department) does not establish the proposition that no employees could be given the discretionary day off. Also as the hearing officer notes, the disputed communications did not instruct deputy directors to refuse time off for any other reason nor did they relate to time off on any other day; yet if the County's argument is accepted, granting such time off for other reasons or on other days would also create the alleged staffing problem. The memorandums refer only to union activity and therefore must be considered as an effort to interfere with union activity.


Although the record is not clear as to the extent to which the Union offered to cooperate so that there would not be any staffing problem, there is more than adequate testimony to support a finding that the Union never contended or contemplated it had the right or desire to have all its members attend the Board meetings.

In summary, then, the County does have the rights retained under Section 4 of the Ordinance and further, the right under the

Memorandums of Understanding in terms of department approval for the use of personal leave or compensatory time off. But this discretion cannot be exercised in a way as to be directed solely against union activity.

The Department of Health Services committed an unfair employee relations practice as charged herein by SEIU Local 660. Since no disciplinary action was taken against any employee and since the circumstances giving rise to the unfair employee relations practice are no longer present, it is not necessary to issue an order in this case. It is assumed that the Department, in the future, will issue no policy statement prohibiting members of Local 660 and employees in the hospital units to take a reasonable amount of time off during the day at the employees' own expense to attend and participate in meetings of the Board of Supervisors.

Dated: March 1, 1978



David Ziskind, Chairman



Lloyd H. Bailer, Commissioner



William Levin, Commissioner

Va