

REPORT OF HEARING OFFICER

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EMPLOYEE RELATIONS COMM.  
COUNTY OF LOS ANGELES  
MAR 1 2 32 PM '78

In the Matter of )

LOS ANGELES COUNTY EMPLOYEES )  
ASSOCIATION; SERVICE EMPLOYEES )  
INTERNATIONAL UNION, LOCAL 660 )  
AFL-CIO; RICHARD A. SMITH )

Charging Parties )

and )

JOHN J. CORCORAN, )  
LOS ANGELES COUNTY CLERK )

Respondent )

CASE NO. UFC 6.64: Charge of Unfair  
Employee Rel-  
ations Practice

Hearing Officer

Edward Peters  
1504 Angelus Avenue  
Los Angeles, California 90026

Hearing Held

November 3, 1977  
Los Angeles County Hall of Administration  
Los Angeles, California

Appearances

For the Charging Parties: Howard Z. Rosen, Esq.  
Geffner & Satzman  
3055 Wilshire Boulevard, Suite 900  
Los Angeles, California 90010

For the Respondent: Frank H. Sawyer, Esq.  
Department of Personnel  
County of Los Angeles  
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Los Angeles, California

Ginger Vadurro  
Personnel Officer and Clerk of  
Superior Court  
111 North Hill Street, Room 105B  
Los Angeles, California

### BACKGROUND

The charges in this case arise out of a three-day suspension without pay (June 21-23, 1977) imposed upon Richard Smith, an Intermediate Clerk in the Public Services Division of the Los Angeles County Clerk's Department (Joint Exhibit No.3). The circumstances surrounding the disciplinary action were featured by a "sick-out" on June 2, 1977 (Tr. p.13, L.5-10). On that day, 70% of the Superior Court Clerks and 25% of the Clerical/Superv. Clerical were off duty (County Exhibit No.3). The Hearing Officer will accept the definition of a sickout essayed by Union witness Lazo as essentially correct: "It's when all employees decide in advance that they are going to report off ill for one reason or another." (Tr.p.17, L.26-27).

On June 16, 1977, following a review of Mr. Smith's reported conduct immediately prior to the sickout (County Exhibits No.1 and 2; Union Exhibit No.2), the Department served notice on him of intent to suspend for three working days. Three grounds were given for the proposed action, based upon five incidents briefly described in the notice (Joint Exhibit No.2). A meeting was held with Mr. Smith on June 20, 1977 to afford him an opportunity to respond to the charges. An assessment of his response was made at the close of the meeting and the Department then re-affirmed its proposed disciplinary measure, to become effective June 21, the next day. On June 23 a letter confirming the Department's decision was sent to Mr. Smith (Joint Exhibit No.3). The letter re-stated the three grounds for suspension. It also elaborated on the descriptions of the five incidents upon which the County charges were based. Following are the three grounds cited in the letter:

Conducting union business without authorization on County premises during working hours resulting in an interference with the operations of the department; violation of Article 26 of the Clerical and Office Services Memorandum of Understanding.

Unauthorized absence from duty station and substandard work production.

Violation of Article 21 and Article 28 of the Clerical and Office Services Memorandum of Understanding.

On September 12, 1977 the Union filed with the Employee Relations Commission an unfair employee relations practice charge against the Office of the County Clerk (UFC 6.64), citing as basis for the charge Section 12(a)(1) and Section 4 of the County Employees Relations Ordinance.

The unfair charge was processed in accordance with Rule 6 of the Employee Relations Commission Rules and Regulations. Edward Peters was appointed by the Commission to serve as Hearing Officer. Pursuant to Rule 6.07 a hearing was held on November 3, 1977, at which time all parties concerned were given a full opportunity to present evidence and argument bearing on the issues.

Both Parties filed Post-Hearing Briefs.

#### ISSUES

Based upon the evidence and the adversary contentions of the parties, the Hearing Officer believes that the issues of this case may be fairly and properly encompassed by the following two questions:

1. Did the disciplinary suspension imposed upon Richard Smith by the Office of the County Clerk contravene his rights under Section 4 of the County Employee Relations Ordinance and constitute an unfair employee relations practice within the meaning of Section 12(a)(1) of the Ordinance?
2. If so, what appropriate remedy should the Hearing Officer recommend to the Employee Relations Commission?



PERTINENT PROVISIONS OF EMPLOYEE RELATIONS ORDINANCE

Section 4. EMPLOYEE RIGHTS.

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. Employees of the County also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the County. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights.

Section 12. UNFAIR EMPLOYEE RELATIONS PRACTICES.

(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.

PERTINENT PROVISIONS OF MOU --

CLERICAL AND OFFICE SERVICES UNIT

ARTICLE 21. STEWARDS

...

LACEA, Local 660, SEIU shall give to each department head a written list of employees from his department who have been selected as stewards. This list shall be kept current by LACEA, Local 660, SEIU.

Stewards may spend a reasonable amount of time to promptly and expeditiously investigate and process formal grievances without loss of pay or benefits of any kind. Stewards, when leaving their work locations to transact such investigations or processing, shall first obtain permission from their immediate supervisor and inform him of the nature of the business. Permission to leave will be granted promptly unless such absence would cause an undue interruption of work.

...

Upon entering a work location, the steward shall inform the cognizant supervisor of the nature of his business. Permission to leave the job will be granted promptly to the employee involved unless such absence would cause an undue interruption of work.

ARTICLE 28. STRIKES AND LOCKOUTS

During the life of this agreement no work stoppages, strikes,

slowdowns, or picketing shall be caused or sanctioned by the Union, and no lockouts shall be made by the County.

In the event any employees covered by this agreement, individually or collectively, violate the provisions of this Article and the Union fails to exercise good faith in halting the work interruption, the Union and the employees involved shall be deemed in violation of this Article and the County shall be entitled to seek all remedies available to it under applicable law.

#### POSITION OF THE PARTIES

##### PRELIMINARY STATEMENT

Respondent, in its Post-Hearing Brief, has, largely by de minimis concessions to adversary arguments of the Charging Parties, reduced the basis for the suspension of Richard Smith to a single and central allegation: That he, a member of the negotiating committee and therefore an agent of the Union, did sanction employees to participate in a sickout in violation of MOU Article 28. Further, that such conduct is not a protected activity within the meaning of Employee Relations Ordinance, Section 4. (Respondent P.H.Brief, p.28.)

##### POSITION OF CHARGING PARTIES

A Union attachment dated September 7, 1977 to the unfair employee relations practice charge states in pertinent part:

...

3. Richard Smith is an Intermediate Clerk employed in the Public Services Division of the Office of the County Clerk.
4. Mr. Smith was a member of the Clerical and Office Services negotiating committee. A fact known to the employees and management of Mr. Smith's Division.
5. In his capacity as a member of the negotiating committee, Mr. Smith received many questions from co-workers relating to the status of negotiations. Mr. Smith generally utilized his breaks and lunch time to provide the requested information.
6. At no time did Mr. Smith represent himself as either a Shop Steward or alternate Shop Steward of Local 660.



7. On or about June 16, 1977, Mr. Smith received written notice that the Department intended to suspend him for three (3) days based on the following allegations: conducting union business without authorization; unauthorized absence from duty; and violating several articles of the Clerical MOU relative to Shop Stewards, Work Access and Strikes and Lockouts.
8. Mr. Smith was subsequently suspended for the period June 21st through June 23rd.
9. Local 660 contends that the office of the County Clerk has committed an unfair employee relations practice within the meaning of Section 12(a)(1) of the Ordinance inasmuch as the disciplinary action taken against Mr. Smith abridged employee rights guaranteed under Section 4 of the Ordinance as it was predicated on Mr. Smith's active role as a member of the Clerical negotiating committee.

In reviewing the incidents described by Respondent (Joint Exhibit No.3), pertaining to alleged violations by Smith of MOU Article 28, Charging Parties in their Post-Hearing Brief categorically deny all such violations. The testimony concerning the allegations given by the witnesses for both parties suggest that Smith's remarks went no further than to advise employees that if they were going be sick on June 2, that they should be sure to bring in a sick slip. He cautioned each and all that the County would probably require such verification of illness before granting sick pay for absence on a day featured by a rumored sickout.

Additionally, Charging Parties argue in their Post-Hearing Brief (p.22):

...Further, even if it were believed that Smith did encourage employees to engage in a sick out, he did not violate Article XXVIII of the clerical/office services Memorandum of Understanding as this section pertains to work stoppages or strikes sanctioned by the Union. Clearly, Smith even if he did solicit a work stoppage, does not bind the Union. In addition, an employee is only in violation of Article XXVIII if the employee actually participates in a sick out. In its Notice of Intent to Suspend and in its letter of suspension, the County did not suspend Smith for engaging in, but rather soliciting, a sick out. Clearly, even if Smith did solicit a sick out, he did not violate Article XXVIII of the Memorandum of Understanding.

In summary, Charging Parties argue that the underlying reason for Smith's suspension was that he engaged in union activities protected by Section 4 of the Employee Relations Ordinance. Charging Parties urge a finding that Respondent committed an unfair

employee relations practice within the meaning of Ordinance Section 12(a)(1) and propose a remedy that Smith be given three days' back pay and that all reference to his suspension be deleted from his personnel file. It is further proposed that the Respondent be ordered to cease and desist from such conduct in the future.

#### POSITION OF RESPONDENT

In its response to the charges filed by the Charging Parties, Respondent, in a letter dated October 11, 1977, offered three affirmative defenses for its disciplinary suspension of Smith. The second and third affirmative defenses were based upon the Respondent's allegation that Smith was in violation of MOU Article 28:

##### Second Affirmative Defense:

As a member of the union negotiating committee, Smith was an agent of the union. As such, his conduct on County time (i.e. encouraging employees to strike during the term of the agreement) places him in violation of Article 28 Strikes & Lockouts.

##### Third Affirmative Defense:

The exercise of a management right to remedy, specifically agreed to with the union (Article 28) cannot be held a violation of "rights guaranteed under Section 4 of the ordinance."

Respondent stresses in its Post-Hearing Brief (p.7) that the word "union", to be meaningful, must include its agents; and Smith, as a recognized member of the Union negotiating team, signed the MOU.

Smith did not cause the sickout, Respondent observes; it was well planned, County-wide in scope, on a coordinated rolling schedule extending over several weeks. By June 2 it had been well covered in the media (Tr.p.138, L.22-25)(Respondent's Post-Hearing Brief,p.8). Respondent, in such circumstances, is entitled under Article 28 "to seek all remedies available to it under applicable law." Quoting from p.9 of Respondent's Post-Hearing Brief:

One of those applicable laws is the Employee Relations Ordinance and one of the available remedies is suspension.

And in this context, it no longer matters whether he violated



the contract on his time or his auditor's time or County time; or whether he was at point of contact with or without explicit or tacit approval; or whether the extent of the alleged interruption of the workforce was great or small.

This is a violation per se, in and of itself; there are no mitigating circumstances.

SMITH LEFT HIS AUDITORS WITH THE "APPEARANCE OF SUPPORT" TO THE STRIKE, I.E., SANCTION.

In support of the above conclusion Respondent quotes extensively from the testimonial record of various conversations between Smith and others. (Respondent's Post-Hearing Brief, pp.10-15). In the second of two Commentaries appended to Respondent's Post-Hearing Brief, the Hearing Officer has excerpted the following:

...  
Broadly described, County maintains, and encourages an extremely liberal, permissive policy towards its employees and their Union Representatives at least insofar as their "legitimate" union activities on County time and premises are concerned. "Liberal and permissive", at least compared to the toleration level generally deemed acceptable by private sector counterparts. (Ibid., p.21.)

...  
We would concur with the Union that a membership well informed on the status of negotiations is to our mutual benefit. Few arbitrary impediments are imposed on Negotiating Committee Members performing this function on County time and premises providing interference with the workforce is minimal.

Additionally we recognize that a democratic Union has political needs as well as economic needs to function with stability in an orderly process.

Absent the "planned sick-out" references, in line with the foregoing policy statement, Smith would have received no more than a routine reprimand and probably then only for failure to formally obtain prior approval. The Department of Personnel, through this Counselor, would not have sanctioned the three day suspension otherwise.

It was the coupling of "no prior authorization" with the "sick-out" that governed our decision. (Ibid., pp.22-23.)

...

His suspension was directly connected and limited to conduct polarized around the sick-out, which is the entire record of this case.

Smith had crossed the line. (Ibid., p.24.)



### FINDINGS AND CONCLUSIONS

It is worth repeating, at the outset, that Respondent in its Post-Hearing Brief (p.6) has, by conceding various adversary arguments of Charging Parties, reduced the grounds of Smith's disciplinary suspension to a violation of MOU Article 28 based on the allegation: "That he did in fact sanction the employees to strike." Respondent contends that: "Such conduct is not a protected right within the meaning of Employee Relations Ordinance Section 4."

Smith is no longer alleged to have solicited employees to call in sick on the day of the sickout, although in the letter of suspension (Joint Exhibit No.3) he was alleged to have done so. Nor did any witness support such an allegation at the Hearing on November 3, 1977, including Constance Young, who under cross-examination retracted an earlier statement that Smith, on June 1, had solicited her participation in the sick-out the next day. Smith is alleged to have sanctioned (as distinguished from solicited) the participation of employees in the June 2 sick-out. The express language of MOU Article 28 that refers to the term "sanction" reads: "During the life of this agreement no work stoppages, strikes, slowdowns, or picketing shall be caused or sanctioned by the Union ..."

The Hearing Officer has selected from three standard sources the following definitions of the term "sanction", typical and appropriate for the instant case.

From Webster's Third New International Dictionary of the English Language Unabridged, G. and C. Merriam Co., 1964:

sanction: to establish, maintain, encourage, or permit usually by some authoritative approval or consent.

A Dictionary of Contemporary American Usage, by Bergen and Cornelia Evans, Random House, 1957:

Sanction has acquired a number of popular meanings which are somewhat removed from its original meaning. The word is now commonly understood to mean authoritative permission, countenance or support given to an action, solemn ratification.

American Heritage Dictionary of the English Language, 1969:

sanction: authoritative permission or approval that makes a course of action valid.

An especially pertinent aspect of the above definitions is that the term "sanction" means authoritative approval, permission, or support. The word "authoritative" is underscored because crucial to Charging Parties' position is the contention that although Smith was a member of the Union negotiating committee, he was not, as such, an agent of the Union, and MOU Article 28 pertains to work stoppages or strikes sanctioned by the Union. Assuming that Smith did encourage members to engage in a sick-out (which Charging Parties deny) his action would not bind the Union, and would not, therefore, fall within the purview of Article 28.

As an employee, argues Charging Parties, Smith could have violated Article 28 only if he had actually participated in the sick-out. But, in Respondent's notice of intent to suspend (Joint Exhibit No.2) and in its letter of suspension (Joint Exhibit No.3), he was held to have violated Article 28 by soliciting participation in the sick-out. Since he was not an agent of the Union, Charging Parties maintain, even if he had solicited a sick-out, he would not have been in violation of MOU Article 28.

A few comments would be appropriate at this juncture concerning Respondent's allegation among others in its letter of suspension that Smith solicited participation in the sick-out. The question intrudes itself: Was Respondent's statement of its position in its Post-Hearing Brief (p.6) that Smith had sanctioned participation in the sick-out consistent with its earlier allegation in the letter of suspension that he had solicited participation in the sick-out? The Hearing Officer replies in the affirmative.

A review of the description of Smith's conduct detailed in the letter of suspension convinces the Hearing Officer that the claimed violation of Article 28 was based not only on an allegation that Smith had solicited participation in the sick-out, but also on an allegation that at very least he had sanctioned such participation.

We turn now to the issue of Smith's status as a member of the



Union negotiating committee. Since an exhaustive treatment of this question might create more problems for the parties than solutions, the Hearing Officer will confine his discussion to the following observations: The status of a member of a union negotiating committee is often a matter of bargaining tradition and the circumstances under which his conduct is questioned. As a general rule, a full member of a union negotiating committee who is one of the signers of the contract is considered to be an agent of the Union. There are exceptions to this rule, depending upon specific circumstances. To give an example, not intended to be applicable to the instant case, a union could be held not responsible for the actions of an elected negotiator who is a maverick, notorious for his lack of cooperation with the rest of his negotiating team. Each of these and other exceptions are dealt with on an individual basis. The record is barren of any consideration or circumstance that would categorize the status of Smith as an exception to the general rule. The Hearing Officer finds, therefore, that Smith is and was, during the period in question prior to the June 2 sick-out, an agent of the Union.

We proceed now to the crux of the case: Did Smith sanction the employees to participate in the June 2 sick-out? Charging Parties contend that:

Mr. Smith did no more than communicate to employees with whom he worked the status of those negotiations in response to requests from the employees as to what the status actually was at any particular time. The Union's position is that for engaging in that protected activity, participating in the negotiating sessions and communicating the status of the negotiations, Mr. Smith was unlawfully disciplined. (Tr.p.3, L.18-24.).

Respondent contends that Smith did more than convey to employees the status of the negotiations:

Smith left his auditors with the "appearance of support" to the strike, i.e., sanction. (Respondent's Post-Hearing Brief, p.9.)

Some perspective of Mr. Smith's role and function in connection with the sick-out may be obtained by reviewing his own description of his activities from May 27 to June 1, the day before



the event. The Hearing Officer will accept, as borne out by the record, Smith's denial that he made any statements actually soliciting participation in the sick-out.

On May 27 Smith entered Room 111 of the Courthouse, a room occupied by four Departments: the District Attorney's Office, the Calendar of Minutes Section, the Appeals Section, and the Probate Decree Section. He spoke to various persons in the District Attorney's Section, including Yvonne Simmons. When asked at the hearing what was the substance of his conversation with her, he replied:

A. Probably the flier because that's what I was discussing most with anybody who asked me any questions. That day it was the flier.

Q. When you say "the flier" are you referring to Joint Exhibit 2-A, the flier I showed you a little while ago?

A. Yes. (Tr. p.58, L.25-28 - p.59, L.1-2)

From Yvonne Simmon's desk he walked to the desk of Head Clerk Paulette Wilson and engaged her in conversation. When asked why he approached Mrs. Wilson, he replied:

A. To find out what she had heard about as far as the negotiations committee because I did not know she was a head clerk at the time. I didn't know what her status was, and then as clerk I thought maybe she -- if she had been a regular clerk, then I would be talking to her about negotiations. It was something about negotiations I wanted to talk about.

Q. Now what did she say to you, and what did you say to her on that occasion?

A. I don't know, but basically she wasn't interested in negotiations, and the subject of a sick-out came up, and I remember mentioning something about they should definitely have sick slips if there's a sick-out -- if anybody is sick that day, specifically if she should happen to be sick that day, I said she should get a sick slip. (Tr. p.59, L.13-26.)

Under cross-examination Mr. Smith was asked:

Q. During the times you were in these two particular sections, in the accounting division and the DA department, did you at any time discuss the coming sick-out with any of the employees?

A. Only insofar as they asked me what the rumors were and what rumors were mentioned, what rumors they'd heard; and I mentioned, "You'd best have a sick slip if you were out," because of the rumors. (Tr. p.74, L.20-27.)

On June 1 at 10.00 A.M. he spoke to Ola Watson in the Account-

ing Division. He discussed with her a Union flier (Joint Exhibit No.2-A) concerned with the state of negotiations. In response to a question as to what, if anything, he had said to Ms. Watson about a pending sick-out, he replied:

A. That if anybody was sick on that day, they had best have a sick slip because there were rumors that there was going to be a sick-out, and they would need a sick slip to prove they were sick if they were sick. (Tr. p.51, L.1-4.)

He testified further that during the conversation several other employees became involved. He was asked:

Q. Did you comment to any of these other folks whether or not they should participate in the sick-out?

A. No, only in the fact that if they happen to be sick they should get a sick slip. That's all I mentioned about that.

Q. Did you say this to each one of these clerks separately or to Ola or as a group?

A. It was generally, basically. (Tr. p.52, L.2-9.)

It is unnecessary to refer to other witnesses who, in the aggregate, gave a more expanded account of Smith's activities, but did not contradict his version in its essentials. The extensive quotes above from Smith's testimony present a pattern of intent, an overall design that can easily escape the notice of those who become pre-occupied with isolated incidents.

Consider the context in which Mr. Smith ranged through various sections of the Courthouse on the days immediately prior to a "rumored" sick-out -- the term "rumored" a euphemism for a well publicized demonstrative action, a variation of what is more traditionally known as a "work holiday". Within that context Smith queried various employees (including Head Clerk Paulette Wilson) as to whether they intended to participate in the "rumored" sick-out on June 2. Other employees initiated inquiries concerning the sick-out. In each and all instances Smith advised and admonished these employees that if they should happen to be home sick on June 2, they "had best have a sick slip."

If the test of Mr. Smith's culpability were limited solely



to the precise words he used, then a finding would be virtually mandated that he did not sanction participation in the sick-out. But, by the same token, if that test for culpability were generally applied in collective bargaining matters, then a finding that a management or a union had bargained in bad faith or had committed some other unfair labor practice would be a rare happening indeed.

Mr. Smith's words are but one aspect of his activity. A valid assessment of his culpability can only be attained by a view of the totality of his conduct. From this vantage point he can hardly be faulted for undue subtlety. In the judgment of the Hearing Officer his wide-ranging, energetic solicitude that those who might be, or intended to be, out sick on June 2 had best have a sick slip was a thinly veiled encouragement for participation in the sick-out.

In Commentary II appended to its Post-Hearing Brief (pp.21-24), Respondent candidly reflects feelings shared by the Hearing Officer, that this is not an easy case. When Respondent recognizes

...that a democratic Union has political needs as well as economic needs to function with stability in an orderly process ... (Ibid. p.22)

it exhibits the insights of a sophisticated management. Considering that a union's continued existence is bound up with the necessity of demonstrating at various times that it gets things for employees that the employer would not have given otherwise, contract negotiations can become a difficult and complex process for all persons involved.

However, no matter how sharp the conflict between the parties, it is essential that they preserve a rational balance in their relationship, in recognition of the fact that they do not contest each other as strangers who meet and part after each impasse. They understand as a fact of life that they have lived together before the impasse and will go on living together after the impasse is resolved. They accept an obligation, whatever their differences, to display



a sufficient flexibility and understanding to avert those extreme situations which can result in a fundamental deterioration in their relationship.

Respondent holds that Smith's suspension

...was directly connected and limited to conduct polarized around the sick-out, which is the entire record of this case.

Smith had crossed the line. (Ibid., p.24.)

Doubtless, the line Smith is said to have crossed refers to the rational balance in the relationship between the parties in a conflict situation -- a balance Smith is deemed to have assaulted by a highly energetic, strident pursuit of Union objectives. Only the parties can with a degree of certainty assess whether Smith did cross such a line.

The Hearing Officer will address himself now solely to the allegation that Smith sanctioned a sick-out (a one-day strike or work holiday) in violation of MOU Article 28. From a careful review of the entire record of this case, and for the reasons given in the above discussion, the Hearing Officer finds that Richard Smith did sanction the sickout of June 2, 1977 in violation of MOU Article 28.

He finds, therefore, that the disciplinary suspension imposed upon Smith by Respondent did not contravene his rights under Section 4 of the County Employee Relations Ordinance and did not constitute an unfair employee relations practice within the meaning of Section 12 (a)(1) of the Ordinance.

RECOMMENDATION

Upon full consideration of all the evidence and argument of the parties on the issues involved, the Hearing Officer recommends that the unfair employee relations practice charge against Respondent in the instant case (UFC 6.64) be dismissed.

Respectfully submitted,

*Edward Peters*

Edward Peters  
Hearing Officer

February 28, 1978  
Los Angeles, California