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LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of

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

Charging Party

vs.

J.E. DAVIS, JR., PURCHASING
AGENT, DEPARTMENT OF PURCHASING
AND STORES

Respondent

UFC Case No. 6.78

Appearances:

For the Charging Party: Jeff Paule, Attorney at Law
Geffner & Saltzman

For the Respondent: Charles R. Erdrich and Frank H. Sawyer,
Employee Relations Administrators

REPORT OF HEARING OFFICER

On October 19, 1979, Los Angeles County Employee's Association, Local 660, SEIU, AFL-CIO (herein called Union) filed a charge against J. E. Davis, Jr., Purchasing Agent, Department of Purchasing and Stores (herein called Respondent). In essence, the charge alleges that two members of its Blue Collar bargaining team, employees of the Department of Purchasing and Stores (herein called Department) were discriminated against when they were docked four hours pay on May 21 and 29, 1979 and that such discrimination was in violation of Section 4 and Section 12(a)(1).

of the Employee Relations Ordinance (herein called Ordinance).

Subsequent to the Issuance of Notice of Hearing by the County Employee Relations Commission (herein called Commission) the Respondent filed an answer specifically denying that it has committed an unfair employee relations practice as defined in Section 4 and Section 12(a)(1) of the Ordinance.

Hearing was held on January 16, 1980 before the Undersigned, duly designated Hearing Officer. Briefs were received by the Hearing Officer from both Parties on March 3, 1980.

I. Summary of Facts

The Charging Party is the certified bargaining agent for what is referred to as the "Blue Collar" bargaining unit in the County of Los Angeles. Negotiations for a new Collective Bargaining Agreement for the Unit began in April, 1979. The Union negotiating team consisted of the Union Field Representatives and twelve members who were employees working in the various departments which comprised the bargaining unit. Two of the members, Mark Fink and LeRoy Davis worked for the Department.

The initial negotiating sessions were of short duration. On May 21 and May 29, negotiations started around 10:00 a.m. and were concluded at or before noon. On both days the Union Representative, Abel Medina, requested permission to have the Union Committee continue to use the room for a "caucus". According to Medina, Robert Jessee, County negotiator, agreed to their remaining there and caucusing. Medina testified that by the time

they concluded the "caucus meetings" and had lunch. It was too late for the employees to return to work. (Tr. page 14, lines 15-19; page 17, lines 27-28; page 18, lines 1-12). He further testified that the only members of the bargaining team who complained to him that they didn't receive a full day's pay came from the Department of Purchasing and Stores and the Road Department. (The employee working for the Road Department subsequently received his pay).

In justifying his requesting time for a "caucus" on May 21 and May 29, Medina testified:

"It had everything to do with everything that normally goes into negotiations, talking about the unfairness of the County to call us for two hours, for one thing, we didn't like that at all, that they should call all these people out to negotiate a contract and then adjourn after two hours."

"I made it plain to our meetings that we was spending a lot of money, all the County Committee plus our Committee to come and meet with Management for two little hours, so naturally we caucused after that, we had a lot to talk about." (Tr. Page 23, lines 15-25)

Initially, both Fink and Davis were paid for the full eight hour day on May 21 and May 29. However, when their time cards were reviewed by the Division Chief and a further investigation made it was determined that the negotiations on those particular days lasted only from 10:00 a. m. to 12:00 noon. Both men were then advised that they would only be given four hours authorized absence for the time spent in negotiations and that they had the option of taking the other four hours as an offset against accrued sick leave, vacation time, personal time or by having the County consider them as having been absent without pay. Both men elected the last option and were subsequently docked four

hours pay for May 21 and May 29. (Tr. page 68, lines 12-18)

County Policy and Practices Re: Payment for Caucus Time

Both Parties have referred to California Government Code Section 3505.3 (Meyers-Miliias-Brown Act) which requires:

"Public agencies.....allow a reasonable number of..... employee representatives of recognized employee organizations reasonable time off without loss of compensation.....when formally meeting and conferring with representatives of the public agency on matters within the scope of representation."

At issue is the County policy and practice as it pertains to paying employees for time spent while allegedly caucusing. It is conceded that there is no written County policy or practice with respect to paying employees while engaged in a caucus. Robert Jessee who, at the time, was the principal spokesman and negotiator for the County with respect to the Blue Collar unit outlined his conception of County policy and practice as follows:

".....the County's position is that only that time actually spent in negotiations or normal travel time is paid time."

"However, if the Union specifically requests subsequent to the adjournment for some caucus time -- and we're talking what's reasonable, again, and I get very specific with people whenever I'm negotiating with them, if you would like to leave because -- for 30 minutes, then --and then if I agree to it, all right, you have until 12:30 and then you guys have to go to lunch and then return to work, that is a normal procedure, whether or not it's with a Blue Collar Unit or any other Union that I've negotiated with." (Tr. page 36, lines 26-28; page 37, lines 1-9)

Jessee emphatically denied that he had approved the Union's conducting a caucus on May 21 and May 29. (Tr. page 34, lines 14-20)

At the conclusion of negotiations, when an over-all agreement

was reached, the Union raised the matter of the three members of the Union negotiating team who had failed to receive a full day's pay for May 21 and May 29. Jessee was requested by the Deputy Director of Personnel, Phillip Stone, to see whether or not it could be worked out. Jessee was successful in persuading the Road Department to pay its employee for the two full days. However, he was unsuccessful in having the Department of Purchasing and Stores change its position regarding the payment for Fink and Davis.

Agreement was reached between the Parties around 10:00 or 11:00 p.m. on the last day of negotiations and all members of the bargaining committee were informed by Stone that they need not report to work on the following day. This had been the County practice for at least ten years. (Tr. page 79, lines 24-27; page 80, lines 15-17; page 82, lines 12-22)

II. Discussion

The main thrust of the Union's argument is that the two representatives from the Purchasing and Stores Department were treated differently from other members of the Blue Collar bargaining unit when they were docked for four hours on May 21 and May 29. Although the Union maintains that all other members of the bargaining committee received a full day's pay for each of the days in question, the record does not actually support this contention. The Union presumes this to be the case since, apart from the three employees who filed grievances, no other member of the negotiating committee complained or filed a grievance.

According to the County negotiator, some of the employees on the Union negotiating team did, in fact, return to work after negotiations were concluded on May 21 and/or May 29. (Tr. page 51, lines 4-25)

The Department maintains that, in accordance with Government Code Section 3505.3, it is only required to pay for time spent in ".....formally meeting and conferring with representatives of the public agency". Admittedly, it has, in the past, authorized the payment for time spent in what it considered legitimate caucusing. In the case of the meetings called by the Union on May 21 and May 29, when negotiations for Contract Agreement had just barely begun, it was the belief of the County negotiator that they were not bona fide caucuses but, essentially, "Union committee meetings" comparable to numerous meetings called by the Union negotiating committee prior to May 21 for which the Union was not requesting that its members receive compensation from the County.

The Hearing Officer believes Respondent's argument has merit, particularly in light of the Union chief negotiator's allusion to the "unfairness" of the County calling them ".....to come and meet with Management for two little hours,.....". Apart from questioning the necessity for calling a caucus so early in negotiations, his remarks would certainly cast a cloud as to the true intent and purpose of the meetings which followed those particular bargaining sessions.

Furthermore, the Hearing Officer is convinced that although the County Spokesman may not have objected to the Union's committee continuing to use the room after the formal negotiation

session had been concluded on May 21 and May 29, no specific authorization was given by him that such a meeting would be construed as a caucus for which pay would be approved.

One could argue that for the purpose of establishing and maintaining a "good harmonious relationship" between the Union and the County, the Department would have been well advised to have paid both men for a full day on May 21 and May 29. In fact, the Department had been urged to do so. Its failure to accept this advice may have resulted in a disparity of treatment as far as Fink and Davis were concerned when compared to other negotiating committee members. However, this disparity of treatment does not, in itself, mean that Fink and Davis were discriminated against in the exercise of their rights as set forth in Section 4 and Section 12(a)(1) of the Ordinance.

One further comment is in order regarding Union Attorney's contention that Respondent had ignored the order of Phillip Stone, Deputy Director of Personnel, to see that the employees were paid in full for May 21 and 29. The evidence is clear that Stone had instructed Jessee, the chief negotiator for the County, to ".....see what you can do to work it out." The ultimate decision as to whether the men should be paid was left up to the respective departments.

Finally, Union Counsel referred to the fact that all employees were given the day off with pay after negotiations had been concluded, noting that in this instance all employees were treated alike. However, it should be noted that the situation that existed at the conclusion of negotiations is distinguishable from that which occurred on May 21 and 29. First, it has been the

practice, extending over a period of years, that when negotiations have continued and have been concluded during the evening hours, employees were not required to report for work the following day. In addition, this time, Stone specifically advised the committees that they could take the following day off. In any event, what occurred at the conclusion of negotiations is neither relevant nor germane to the actual issue at hand.

Recommended Findings of Fact and Conclusions

1/ No specific authorization was granted by County negotiator that Union committee meetings held subsequent to the negotiation sessions on May 21 and May 29 would be construed as caucuses for which pay would be approved.

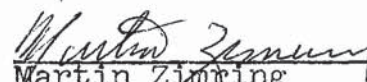
2/ The County was under no obligation to pay the Union negotiating committee members for time spent in attending meetings referred to as caucuses which were called by the Union's chief negotiator on May 21 and May 29, 1979.

3/ Fink and Davis were not discriminated against in the exercise of their rights as set forth in Section 4 and Section 12(a)(L) of the Ordinance/

4/ Respondent did not commit any unfair employee relations practice under Section 12(a)(1) of the Ordinance.

It is recommended that the charge be dismissed.

Dated this 21st day of March, 1980


Martin Zimmering
Hearing Officer

DECLARATION OF PERSONAL SERVICE

Chiyeko Hamada States:

That on the 24th day of March,
19 80, I served the attached

Report of Hearing Officer, UFC 6.78

by delivering a copy thereof to *

Mr. Frank Sawyer and Mr. C. Erdrich
Personnel

in person *picked up by C. Erdrich

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

Dated: March 24, 1980

By Chiyeko Hamada

DECLARATION OF SERVICE BY MAIL

Chiyeko Hamada states:

That on the 24th day of March,
1980, I served the attached

Report of Hearing Officer, UFC 6.78

upon the Charging Party

by depositing a copy thereof, enclosed in a sealed envelope/^{Certified Mail,}
Return Receipt Requested ^{County messenger mail pickup station}
~~postage thereon fully prepaid~~, in a United States mailbox addressed
as follows:

Mr. Jeff Paule
Geffner & Satzman
Suite 900
3055 Wilshire Boulevard
Los Angeles, CA 90010

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

Dated: March 24, 1980

By

Chiyeko Hamada