Los Angeles County

Employee Relations Commission

In the Matter of COALITION OF COUNTY AFL-CIO UNIONS Charging Party and COUNTY OF LOS ANGELES AND CHIEF ADMINISTRATIVE OFFICER Respondents	UFC 60.11

Report of the Hearing Officer

The Charging Party has alleged the commission of certain unfair employee relations practices by the Respondents and the Respondents have denied all of the allegations. Pursuant to a Notice of Hearing and a Notice of Continuance of Hearing issued by the Executive Officer of the Employee Relations Commission, hearings were held on May 13 and June 5, 1980, at which times the parties appeared and were afforded opportunity to offer evidence and arguments upon the issues. Appearing for the Charging Party was Geffner and Satzman by Leo Geffner. Appearing for the Respondents was Steve Houston, Deputy County Counsel. The hearings were closed upon the filing of written briefs on September 16, 1980. The undersigned, having duly considered all the evidence and the arguments offered by the parties, submits this Report in accordance with Rule 6.10 of the Commission's Rules and Regulations.

The Allegations

The charge alleges that the Respondents engaged in unfair employee relations practices within the meanings of Sections 12(a)(3) and 6(a) and (b) of the Employee Relations Ordinance. These sections state as follows:

> Section 12(a)(3): It shall be an unfair employee relations practice for the County to refuse to negotiate with representatives of certified employee organizations on negotiable matters.
>
> Section 6(a): All matters affecting employee relations, including those that are not subject to negotiations, are subject to consultation between management representatives and the duly authorized representatives of affected employee organizations. Every reasonable effort shall be made to have such consultations prior to effecting basic changes in any rule or procedure affecting employee relations.
>
> Section 6(b): The scope of negotiation between management representatives and the representatives of certified employee organizations includes wages, hours, and other terms and conditions of employment within the employee representation unit.

The Charging Party is a coalition composed of certified employee organizations (hereinafter called the Unions) which represent the bulk of the County bargaining units and the bulk of the

represented County employees. The charge states as its basis that since about July 1979 the County Board of Supervisors (the Board) has received recommendations concerning the subcontracting of various types of services, that the Chief Administrative Officer (the CAO) and the Board have approved the solicitation of bids and proposals for the subcontracting of services, that bids and proposals have been received, and that subcontracts have been awarded or are nearing award. It states that such subcontracts have had and will have a substantial affect on the wages, terms and conditions of employment of County employees, as well as upon their employment opportunities, but that the Unions have not been notified and have not been requested to meet and negotiate concerning decisions to subcontract or concerning the effects of subcontracting and that these failures to notify and to negotiate constitute a failure to bargain in good faith.

Positions of the Parties

The Charging Party contends that the County has an obligation to negotiate with the Unions concerning decisions to subcontract bargaining unit work as well as concerning the impact of such subcontracts on represented employees. It asserts that the County has refused to negotiate on these matters despite requests by the Unions and that subcontracting has occurred and there have been impacts on employees. It argues that the Meyers-Milias-Brown Act (MMB) requires negotiations on such matters and that local ordinances cannot be so interpreted as to abridge that requirement. It denies that the Unions waived any right to negotiate concerning these matters and requests that the County be

ordered to resume any operations which it has discontinued pursuant to subcontracting arrangements, that all affected employees be restored to their previous positions and that the Respondents be ordered to cease further processing of subcontracting arrangements until there have been negotiations with the Unions.

The Respondents contend that their decisions concerning subcontracting are in the nature of fundamental government policy decisions and, therefore, are not within the scope of representation and are not matters as to which negotiations are required either by the MMB or by the Employee Relations Ordinance. They claim that the Unions waived any right to negotiate concerning decisions to subcontract when they accepted management rights provisions in the 1979 Memorandums of Understanding (MOUs) and, during the negotiation of those MOUs, relinguished their proposals for no-subcontracting clauses, as well as by the failure of the Unions to request negotiations concerning work which was subcontracted before 1979. The Respondents further allege that the evidence does not show that any represented employee has suffered a significant impact as a result of subcontracting and they request that the charges be dismissed.

The Facts

Pursuant to the approval of Proposition A by the County electorate in a 1978 election, Section 44.7 of the County Charter was revised on November 7, 1978 so as to permit the County to contract for services which previously had been, or which could be, performed

by County employees when the Board finds that such work can more economically or feasibly be performed by independent contractors. Ordinance 11,856 was adopted, effective February 16, 1979, to implement this charter revision. Section 44.7 had authorized contracting for services on a restricted basis before the 1978 amendment and some subcontracting had been performed before 1979 but this earlier subcontracting had little or no effect on represented employees. The revision of Charter Section 44.7 and enactment of Ordinance 11,856 pursuant to Proposition A made possible a much greater impact on County employees.

The procedure for subcontracting pursuant to Ordinance 11,856 starts with County departments evaluating possible subcontracting situations. If a department decides that a subcontracting award would be legal, feasible and cost effective it submits a request for authorization to solicit bids or proposals. The request is submitted to the CAO if the award is not expected to exceed $25,000 and it is submitted to the Board if it will exceed that amount. The request for authorization is required to include a number of items of information, including the projected employee relations implications of the proposed contract. If the request is approved by the CAO or the Board, the department prepares a contract and a recommendation that the contract be awarded. The bidding procedure is conducted by the County Purchasing Agent. After a successful bidder has been designated the contract award is submitted to the Board for approval. The contract becomes effective only after it has been approved by the Board and after

the Board has made a finding that that the services involved can be performed more effectively or feasibly by the contractor.

Pursuant to the requirement that requests for authorization include information as to projected employee relations implications, departments usually have stated whether or not current employees would be displaced and whether displaced employees could be absorbed elsewhere in the same department. Ordinarily, the number of the displaced employees has not been included and there has been no mention of other possible effects on employees. The information concerning employee relations implications is not required by Ordinance 11,856 but apparently is an administrative requirement.

By a letter dated October 31, 1979 the CAO reported to the Board on the status of subcontracting proposals. An attached chart listed 45 proposals at various stages of consideration but 10 of them, including the only two which had so far resulted in contracting awards, did not depend on Proposition A for authorization. A similar chart, dated April 4, 1980, includes all the proposals then pending. It lists 54 contracting proposals, 44 of which depend on Proposition A for authorization, and includes eight proposals which have resulted in contract awards, of which five depend on Proposition A.

It is clear that the subcontracting of County work has had some direct and immediate impact on employees represented by the Unions but the record is unclear as to the full extent of the impact. Much of the testimony on this point consists of hearsay

and speculation but it is established that there has been impact on golf starters at Mountain Meadows and on grounds maintenance employees at Cerritos Park due to subcontracts awarded pursuant to Proposition A. At Mountain Meadows the County had employed one full time starter and several part time starters, all of whom were displaced as a result of subcontracting. The full time starter was offered by his department the alternatives of a transfer to a location 75 miles away, demotion to a lower paid position, or a layoff. He chose the demotion and suffered a reduction in pay of around $100 a month. At Cerritos Park 13 employees have been displaced and have been, or will be, offered transfers to other locations.

In each year since 1973, during the renegotiation of MOUs with the Unions, the County has proposed the inclusion of management rights clauses. Until 1979 such proposals were uniformly rejected but in 1979 MOUs covering 50 bargaining units were renegotiated and in each one a management rights clause was included. The language of the clauses differs from one MOU to another but in each case the clause confirms the rights set forth in Section 5 of the County Employee Ordinance. This section states:

> It is the exclusive right of the County to determine the mission of each of its constituent departments, boards, and commissions, set standards of services to be offered to the public, and exercise control and discretion over its organizations and operations. It is also the exclusive right of the County to direct its employees, take

> disciplinary action for proper cause, relieve its employees from duty because of lack of work or for other legitimate reasons, and determine the methods, means and personnel by which the County's operations are to be conducted; provided, however, that the exercise of such rights does not preclude employees or their representatives from conferring or raising grievances about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment.

During 11 of the 1979 renegotiations Unions proposed the inclusion of clauses which would prohibit the subcontracting of any work then performed by represented employees. In each case the Union was unsuccessful with its proposal and no such provision appears in any MOU covering County employees.

On various occasions since the enactment of Ordinance 11,856 the Unions have requested that the County negotiate with them concerning decisions to subcontract, concerning the procedures to be followed in subcontracting, and concerning the impact of subcontracts on employees. The County has rejected these requests but has conceded that the Unions would have the right to process grievances concerning the treatment given to employees affected by subcontracting and has stated that if it could be shown that there was an impact on represented employees which was not covered by a provision in the applicable MOU, the County then would be willing to negotiate on that impact. In fact, most of

the applicable MOUs include clauses which specify rights and procedures in cases of layoffs and transfers.

Memorandums from the CAO to Board members dated October 9 and 10, 1979 show that the Unions then had been advised, "....the position of the County is that there is no legal obligation to bargain regarding impact on County employees until (the) Board has actually awarded a subcontract which actually has impact on employees." A letter dated October 19, 1979 from the County's Chief Deputy Director, Personnel to a Charging Party official states in part:

> While the County has the right to subcontract by contract and law, we do recognize our obligation to consult with County Unions prior to the Board adopting subcontracts which may affect represented employees. To this end, the Department of Personnel has attempted to maintain effective communication with County Unions regarding proposed subcontracting which might have impact on employees represented by those organizations.
>
> Our policy is to consult with affected Unions prior to requests for permission to solicit bids being submitted to the Board of Supervisors for approval. I believe this policy is effective even though I am advised that the lead time in some cases has been relatively short. I assure you that we will endeavor to consult with affected County Unions as soon as possible in all cases.

In these and other documents, as well as in a meeting held on March 6, 1980 between representatives of the parties, the Respondents consistently stated that they were prepared to consult with the Unions at any stage in the subcontracting process but that they would not negotiate concerning subcontracting and would negotiate concerning an impact on employees only after it is shown that there has been an employee impact which is not covered by the terms of an applicable MOU. It appears from the testimony that the Unions sometimes have not been advised concerning subcontracting intentions and actions until after the departmental actions were taken and the Unions sometimes have learned of impacts on represented employees only when personnel actions were announced to the employees.

Analysis

It is clear that each of the parties in this matter has a legitimate right which is entitled to protection. The Unions have a right to be consulted and to be afforded an opportunity to negotiate whenever a County action threatens their integrity as employee representatives or impinges upon the status of any employee for whom they are the certified representative. The Respondents have a right to exercise managerial duties and perogatives in respect to subcontracting as well as other matters. Each of these rights is important. Section 6 of the Employee Relations Ordinance, quoted above, while stating certain exclusive rights of County management also specifies the right of employee representatives to confer or raise grievances concerning the

practical consequences that management's decisions may have on employees.

It will be noted that Section 44.7 does not require that the County must subcontract work which can more economically or feasibly be performed by contractors, it merely permits such action. The County's recognition that there may be employee relations implications and that these implications are entitled to consideration is shown by the fact that the departments are required to state such implications when they request authorization for bids or proposals. The CAO or the Board presumably give consideration to the employee relations implications, along with other pertinent factors, when they decide whether or not to approve requests for authorization.

The relationships between the Charging Parties and the Respondents are governed by provisions of the MMB and of the Employee Relations Ordinance. The MMB, in Government Code Section 3500 states that County procedures for the administration of employer-employee relations are effective only if they are in accordance with MMB provisions. Section 3504.5 of the Government Code states:

> Except in cases of emergency as provided in this section, the governing body of a public agency, and boards and commissions designated by law or by such governing body, shall give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be

> adopted by the governing body or such boards and commissions and shall give such recognized employee organizations the opportunity to meet with the governing body or such boards and commissions.

It is clear that the Unions are entitled to meet and confer with the Respondents before the Respondents approve any request for authorization to solicit bids and proposals pursuant to Ordinance 11,856 in any situation where the request for authorization concerns a subcontract which has, or might have, an impact on employees represented by those Unions. It will be noted that Ordinance 11,856, by its terms, applies only in situations where contracting is for services which are, or could be, performed by County employees. In order that the right to meet and confer be meaningful, the Union or Unions concerned should receive written notice of the request for authorization before the request is submitted to the CAO or the Board for approval. Further, after any subcontract has been awarded pursuant to 11,856, the Union or Unions concerned are entitled to negotiate concerning the affects of the subcontract on represented employees. For that right to be effective the Unions should be given notice of all personnel actions proposed as a result of any subcontract awarded pursuant to Ordinance 11,856. It is true that no additional negotiations would be needed in situations where the provisions in current MOU's completely govern the proposed personnel actions but the Unions are entitled to be given the information upon which such a conclusion could be based.

There is no merit to the argument that the Unions have waived their right to negotiate concerning subcontracting. Careful reading of the management rights provisions which were included in the 1979 MOUs shows that they confirm and emphasize the rights of management but they do not include any waiver of statuatory Union rights. Such a waiver would have to be expressly stated and there is no such statement in the 1979 MOUs. The fact that the Unions proposed no-subcontracting provisions and then dropped the proposals is not evidence that they waived the right to negotiate concerning the awarding of subcontracts and the impact of subcontracts. Clearly, the right to negotiate concerning subcontracting is different from the elimination of subcontracting. Likewise, the failure of the Unions to request negotiations concerning subcontracting prior to the passage of Proposition A is of no significance because there is no showing that the subcontracting which occurred before Proposition A had any impact on represented employees.

The Respondent's argument that represented employees have not suffered a significant impact from subcontracting is not supported by the record. The full time golf starter at Mountain Meadows and the 13 grounds maintenance employees at Cerritos Park have suffered impacts. It should not be necessary for more instances of employee impact to accumulate before a remedy is ordered.

Inasmuch as the Respondents have approved subcontracts which affected employee relations and have neither requested negotiations

with the Unions nor given the Unions sufficient notice whereby the Unions could effectively request negotiations or consultation, it is concluded that the Respondents have engaged in unfair employee relations practices within the meaning of Sections 12(a)(3), 6(a) and 6(b) of the Employee Relations Ordinance. These unfair practices should be ordered to cease but it does not appear practical or necessary to order negotiations or corrections as to subcontracts which have been effectuated.

Recommendation

On the basis of the foregoing it is recommended that the Respondents be found to have violated Sections 12(a)(3), 6(a) and 6(b) of the Employee Relations Ordinance.

It further is recommended that:

1. The Respondents be required to give written notice to each Union concerned whenever a request for authorization to subcontract pursuant to Ordinance 11,856 is prepared for submission to the CAO or the Board.

2. The Respondents be required to give prior notice to each Union concerned of any action which affects any employee in an employee representation unit when such action is taken pursuant to a subcontract which has been awarded in accordance with Ordinance 11,856.

3. The Respondents be required to consult and, upon request, to negotiate before reaching any decision to approve a request for authorization to solicit bids or proposals pursuant to Ordinance

11,856.

4. The Respondents be required to consult and, upon request, to negotiate concerning the impact upon representation unit employees of any subcontract awarded pursuant to Ordinance 11,856.

DATED: October 3, 1980

Norman H. Greer

Norman H. Greer, Hearing Officer