In the Matter of LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION IN THE MATTER OF COALITION OF COUNTY UNIONS, AFL-CIO, Charging Party, vs. COUNTY OF LOS ANGELES/CHIEF ADMINISTRATIVE OFFICER, Respondent.	)	CASE NO. UFC 60.16 HEARING OFFICER'S REPORT

Appearances:

For the Charging Party: Richard A. Shinee
Attorney at Law

For the Respondent: DeWitt W. Quentin
County Counsel
By: Steve Houston
Deputy County Counsel
Labor Relations Division

A. Background

On March 8, 1983, the Los Angeles County Coalition of Unions, AFL-CIO filed UFC 60.16 with the County Employee Relations Commission. The charge stated in part:

> I. On March 4, 1983 the County 'Digest', an official County publication, was issued for distribution to County employees;....Part of said publication was comprised of a questionaire soliciting employee imput to the prospect of anticipation cutbacks and layoffs in the County work force. This questionaire was preceded by a foreward authored by Michael D. Antonovich, Board of Supervisors, Fifth District. The County Coalition of Unions/AFL-CIO charges that this is direct interference on the part of the County in the collective bargaining process in that a member of said Coalition, specifically Local 501, Operating Engineers is presently in negotiations with the County, and other members of said Coalition have just completed the submittal of their respective units' negotiation demands.

> II. A letter authored and signed by Michael D. Antonovich was distributed to employees soliciting their participation in completing the questionnaires noted above;....Employees of two departments, Sheriffs' and Mental Health Services, were ordered to fill out, sign and submit the questionnaires to departmental, management representatives.

On March 15, 1983, a similar charge was filed by the Los Angeles County Professional Peace Officers' Association; at the consolidated hearing, a representative of the Association requested dismissal. A third related unfair charge was filed by the Joint Council of Internes and Residents. No representative of the Internes appeared at the consolidated hearing and the undersigned dismissed its charge reserving the right to consider re-opening, without prejudice, if reasonable grounds were furnished for the non-appearance. No such request was filed and the undersigned recommends a dismissal of UFC 58.7.

The hearing was held on September 13, 1983. Briefs were filed by the County and the Coalition of County Unions on February 24, 1984. The Hearing Officer, after considering the evidence and arguments offered by the parties, submits this report in accordance with Rule 6.10 of the Commission's Rules and Regulations.

B. Statement of Facts

Much of the factual background is undisputed. The sequence of "events" was as follows:

1. On January 25, 1983, the Association for the Los Angeles Deputy Sheriffs (ALADS) directed a letter to the County's Administrative Officer stating in part as follows:

> This letter will serve as notice to the County that the Association for Los Angeles Deputy Sheriffs desires to negotiate a successor Memorandum of Understanding (MOU), and commence negotiations to that end, pursuant to Article 6 of the current MOU.
>
> Additionally, the letter will confirm our first meeting date, January 31, 1983 at 12:00 P.M., here at the ALADS Office. At that meeting, ALADS will provide the County with

> our proposals for a successor agreement and be prepared to discuss the forthcoming process....

2. On January 31, 1983 a second letter was sent the County by ALADS:

> (t)his Association is prepared to commence negotiations for a successor Memorandum of Understanding (MOU). Attached hereto are the ALADS proposal to be included in such MOU. A proposal regarding salary increase will be submitted by March 1, 1983. ALADS reserves the right to make additional proposals and to delete or modify those attached during the process.
>
> It is requested that you provide the following information to ALADS, prior to our next meeting:
>
> * A copy of the 1982-83 Fiscal Year Budget of the Sheriff's Department, including the current Budget review for this fiscal year.
>
> * A copy of any studies, reports or proposals concerning any potential re-organization of the Sheriffs Department or District Attorneys Investigations Bureau.
>
> * Any management proposals to be considered during the 1983 negotiations.
>
> In addition, I would appreciate your forwarding any other information that you feel is applicable to the upcoming process in an effort to facilitate the earliest possible conclusion....

3. In connection with the January 31 letter, ALADS submitted to the County, at January 31, 1983 meeting in ALAD's office, at about noon, with ALADS's bargaining team and the County represented by Ramon Singley and Ken Miller, a copy of ALAD's proposed Memorandum of Understanding. That proposal contained approximately 110 pages.

4. No proposals were submitted by the County at that January 31 meeting.

5. On March 3, 1983, Michael Antonovich, Chairman of the County Board of Supervisors, wrote the approximate 70,000 County employees, including the approximate 50,000 represented by the

Coalition, the following letter:

> As Chairman of the Board of Supervisors, I am taking this opportunity to make you aware that our County faces an estimated $157.1 million budget shortfall over the next 17 months, which translates into $63.5 million for the remainder of the current fiscal year and $93.6 million for the 1983-84 fiscal year.
>
> By law, the County must have a balanced budget, a task for which your Board must take responsibility, but which impacts us all. While the fiscal problems facing the County and the State are not dissimilar, the County has far fewer options for dealing with them. Unlike the State, the County cannot:
>
> - independently raise revenues
> - accelerate revenue payments
> - amend State law to reduce or eliminate statutory expenditure, or
> - carry forward into next fiscal year current year deficits
>
> County government of which we are all a part has no alternative but to reduce County expenditures to the level of available revenues. Next Tuesday your Board may have to determine which alternatives it will choose to accomplish this objective for the current fiscal year. However, I would appreciate receiving your recommendations to guide our choice of the available alternatives.
>
> To accommodate this, I have asked for a special edition of the County Digest to solicit your opinions on courses of action which the Board of Supervisors might take. Keep in mind that many issues are negotiable and cannot be finalized without first meeting and conferring with employee organizations.

6. The next day, March 4, the special issue of the Digest given each County employee began with the following:

> The County is facing serious funding difficulties which have been discussed in previous issues of the Digest. One solution to this problem would be to lay off 3,000 employees.
>
> There are other partial solutions, however, which could be considered as an alternative to massive lay-offs.
>
> The following questionnaire is designed to elicit employee opinion designating which

> approach(s) would be most preferable in reducing these difficulties.
>
> If you are interested in participating, please complete the form and give it to your Personnel Officer by Monday, March 7, 1983. All responses will be compiled by the Digest Editor who will submit them to the Board of Supervisors for consideration.

Following that introductory statement, a series of proposals for budget savings for the current fiscal year and for the following fiscal year were suggested, with employees being asked to rank their opinion as to which savings should be adopted. The proposals in terms of savings for the 1983-84 fiscal year included: laying off additional employees; putting employees on work furlough one day a month without pay; converting to a once-a-month payday; reducing the number of County holidays; reducing the number of management positions; seeking approval from the State Legislature for an independent revenue source; eliminating programs; borrowing from the County Retirement Fund; and placing a moratorium on step advances.

Edward Watson, the County's chief labor negotiator described his role in connection with the material in the Digest that: "I had some discussions with the Editor"; "I was involved in some of the review of the text before it went out and perhaps made some editorial comments on it"; "I think I had some specific involvement in the question that addressed the managerial participation"; "I perhaps made some editorial comment or some editorial changes on a question or two but I don't recall specifically which ones those might have been"; his section "had the responsibility" for making the dollar estimates in terms of proposed savings if various proposals were adopted; he did not know who actually wrote the questions.

7. The same day the Digest questionnaire was given County employees, Jack L. Holt, Captain and Commander at the Sheriffs Firestone station (that station had approximately 95 Deputy

Sheriffs) directed a notice to "all personnel" that:

> All employees shall complete the attached survey and return it to the Operations Office -- no later than Monday, March 07, 1983. (emphasis supplied)

To Holt's "best recollection" 10-12 deputies answered the questionnaire. He testified he prepared the document with his signature "to direct employees to turn in the questionnaire to the Operations Office."

8. On March 3, 1983, the Sheriffs Department "broadcast" a message to "all Unit Commanders", which message, after referring to Supervisor Antonovich's request that all County employees be given a copy of his 1983-84 budget letter as well as a copy of the County Digest with the employee survey form, stated:

> Each employee is encouraged to complete this survey immediately upon receiving it and return it to his/her Unit Commander. The Unit Commanders shall compile the completed survey forms and forward them to Inspector William Hanke, Administrative Division, Room 413, Hall of Justice, by Tuesday, 12:00 P.M., March 8, 1983. (emphasis supplied)

9. No evidence was offered by the Charging Party that the failure to complete the survey resulted in any adverse evaluations of County employees by supervision.

10. On March 11, 1983, Hufford issued a memorandum to each supervisor attaching a final tabulation of responses directed to the Digest Editor regarding County funding issues. The final tabulation included 33,834 responses (47.3% rate of return).

11. On April 7, 1983, the County submitted its contract proposals. The proposals were prepared and formulated under Watson's direction except for specific instructions given Labor Relations by the Board of Supervisors. Watson denied that in connection with those proposals, he had used the summary's results as summarized by Hufford in his March 11th memorandum to the supervisors. He acknowledged, however, that he had seen the Hufford memorandum and "when I read it, I couldn't help but take note of what I read." According to Bud Treece, the Association's

Labor Relations Director, about six of the County proposals just appeared in the questionnaire.

12. As Watson explained the status of negotiations:

> There are a number of steps that occurred between the parties before serious discussion of the substantive issue begins.
>
> They serve on one another, they offer to open or reopen the Agreement. They make contact to determine what and who and how many employees will meet and where.
>
> They sometimes exchange proposals prior to the first meeting, sometimes they do not; so there are many kinds of preliminary activities that occur before what I characterize as negotiations and facts begin.

C. Employee Relations Ordinance

(1) Section 12(a) of the Employee Relations Ordinance of Los Angeles County provides in part:

> 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....

(2) Meyers-Milias-Brown Act (Government Code 3500, et, seq) provides in part:

> Section 3502 states that all public employees
>
> 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 employer-employee relations.
>
> Section 3505 states:
>
> The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.
>
> "Meet and confer in good faith" means that a public agency, or such representatives as it

> may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.
>
> Section 3506 states:
>
> Public agencies and employee organizations shall not interfere with, incriminate, rest rain, coerce, or discriminate against public employees because of their exercise of their rights under Section 3502.

D. Position of the County

A review of Antonovich's March 3, 1983 letter and the March 4, 1983 questionnaire "clearly establishes" the voluntary, non-coercive nature of the survey which was distributed County-wide to both represented and non-represented employees. The questionnaire expressly calls for an employee response only "if" the employee is "interested in participating." No signature or indication of Union affiliation was required and no disciplinary action was taken or threatened against any employee who did not participate, nor was such act reflected in employee performance evaluations.

As to the status of negotiations, Antonovich's letter and the County questionnaire were distributed on March 3 and March 4; ALADS met with the County on January 31, 1983 and March 17, 1983 to deliver its proposals; and the County coalition of Unions met with the County for the first time on April 7, 1983. But "substantive" negotiations did not occur between the parties until approximately mid-May, 1983. The Antonovich letter expressly recognized the County's duty to negotiate survey issues with the employees' certified representatives and such negotiations did occur and continued to occur after the survey's distribution.

The testimony that ALADS suffered difficulty during negotiations with some of its members as a result of the County's survey cannot be credited, since it was based solely on hearsay testimony, with no foundational support.

The County cites City of Madison, Joint School District vs. Wisconsin Employment Relations Commission (1976), 429 U.S. 167 as "dispositive" of the free speech issue. In that case, the Supreme Court concluded that a speech before elected governing bodies at open public meetings by a non-union teacher on the subject of pending negotiations did not constitute "negotiations" within the meaning of the State's public sector labor laws. Antonovich's letter contained information about the County's then-critical fiscal problems and the choices it faced as a result, and it sought employee imput on those issues to be considered by the Supervisors at its next regularly scheduled meeting. There is no substantive distinction under the Madison ruling between County employee/citizens appearing and speaking at a Board's open public meeting on pending negotiable subjects and the Board communicating with its employee/citizens on such matters through the median of a questionnaire. This conclusion is reinforced not only by practical considerations due to the large number of County employees but also by the provisions of Government Code 3502 and ERO Section 4 which guarantees County employees the right to represent themselves individually in their employee relations. Since the County's voluntary questionnaire was protected free speech and not negotiations, the degree to which negotiations were or were not in progress and the extent to which the questionnaire addressed negotiable subjects is therefore irrelevant.

E. Position of the Union

The conduct of Antonovich and later that of the Sheriff's Department represents interference with negotiations ongoing at

the time of the distribution of the survey, constitutes direct dealing with represented employees and a bypassing of those employees' bargaining representative, derogates the position of the unions as the employees' statutory representative, and undermines the Union's authority to bargain meaningfully with the County. The County's actions, therefore are a violation of Section 3502, 3505 and 3506 of Meyers-Milias-Brown and Section 12(a)(1) of the County Employee Relations Ordinance.

Members of bargaining unit represented by ALADS were in many cases required to complete the attitude survey even though the questionnaire may have originally been intended to be voluntary. The Union notes the language in the March 3 broadcast which concluded "complete and return survey forms by Monday" and Captain Holt's memorandum that states all employees "shall" complete the survey.

As a consequence of the mandate that the survey be completed by employees who already had a bargaining representative, the bargaining position of the various unions was undermined.

The adverse effect of the questionnaire was magnified by the fact that negotiations between some Unions and the County had already begun prior to the distribution of the survey on March 4.

The Association raises the following issues:

1. Were negotiations in progress between the County and members of the Coalition prior to March 4, 1983 when the Digest questionnaire was distributed?

2. Did the County engage in direct dealing with employees who already had a bargaining representative by virtue of the survey and in so doing commit an unfair labor practice in violation of both the Government Code and the County Employee Relations Ordinance, Section 12(a)(1)?

3. Did the County survey constitute protected speech or

amount to an unfair labor practice by interfering with negotiations and violating the County's duty to bargain in good faith with the designated bargaining representatives of its employees?

The questionnaire was distributed to all County employees, those represented and those non-represented. The County did not, in its direct dealings with its employees, discriminate between those employees represented by Unions from those who were not.

And the act of distributing an attitude survey County-wide is sufficient in and of itself to constitute a refusal to bargain in good faith by the County. The Union cites a recent NLRB decision (Marriot Corp.), holding that an employer who requested employees to complete a survey, and who did not notify the union concerning its intention to circulate the attitude survey, was engaged in derogation of the employer's bargaining obligation to the union.

Watson acknowledged that the County's final proposal "may well have addressed some of the same issues as occurred in the Digest." A reasonable inference which may be drawn from this testimony as well as from the survey's timing was that the County was soliciting employees' sentiment regarding certain issues for purposes of making future bargaining proposals. Antonovich expressly states that the opinion of employees were being solicited "on courses of action which the Board of Supervisors might take."

And notwithstanding any original intention that the survey be voluntary, certain employees of the Sheriffs Department in particular were required to complete the survey. Had the questionnaire then been circulated only to non-represented employees, and had the questionnaire been entirely voluntary in terms of its completion, and had the questionnaire appeared at the time other than when negotiations between the County and its Unions were on-going, perhaps the survey would have been deemed

lawful. But those are not the circumstances in connection with the instant dispute.

On the free-speech issue, the survey was not protected and amounted to an unfair labor practice in that it interfered with ongoing negotiations and resulted in a violation of the County's duty to bargain in good faith with the designated bargaining representatives. Antonovich's letter "arguably" falls within the category of an employer communicating to its employees the reason for its bargaining position taken on specific issues; but in the context in which it was circulated, that is one day prior to the County-wide circulation of the Digest questionnaire, it may be construed as a coercive effort on the part of the County to force employees to accept cutbacks in benefits and wages. Aside from an employer's right to communicate to its employees the reason for a bargaining position, an employer may not seek to determine employees' sentiments on terms and conditions of employment through an attitude survey under the auspices of a right to freedom of speech.

The Charging Party, like the County, cites City of Madison. That case was limited to special circumstances, distinguishable from this dispute:

1. It involved a public meeting wherein a teacher participated in a public discussion on important governmental matters.

2. The Court determined the teacher's freedom of speech rights but declined to decide whether a municipal corporation, as an employer, had similar rights.

3. The teacher in Madison was a non-represented employee, and both under Meyers-Millias-Brown and the County Ordinance, individual employees can bargain on their own behalf and refrain from choosing their representative. But in the instant case the questionnaire was distributed to all employees County-wide,

notwithstanding their represented or non-represented status.

4. In Madison the teacher's two and one-half minute speech, according to the Court, was not "negotiation" and as a consequence did not amount to a "clear and present danger" to labor/management relations which might justify infringing First Amendment rights. In the instant case, the County initiated the direct communication with represented employees on matters already on the bargaining table.

ALADS ask that the Hearing Officer find in favor of the Coalition and recommend the posting of an Order stating that the County shall cease and desist from attempting to bargain directly with employees to the detriment of the members of the Coalition, and that such Order be posted on all County bulletin boards frequented by the Charging Party members.

F. Discussion

The Hearing Officer recognizes the attractiveness of accepting the County's position in connection with this unfair charge. Whatever impact on the negotiations Supervisor Antonovich's letter to all County employees, and the Digest's special issue, and the Sheriff's Department efforts to obtain responses to the questionnaire may have originally had is now, in a sense, ancient history. The Memorandums of Understanding are now signed; the County's financial crisis -- though it has not passed -- is perhaps less worrisome. And to recommend that ERCOM issue an order which might only stir up now forgotten disputes may well be counter-productive in terms of the desired goals of peaceful labor relations between the County of Los Angeles and those Unions representing County employees. It would be, then, simpler to recommend that Supervisor Antonovich's letter and the questionnaire which appeared in the Digest be treated as protected free speech and that the actions of the Sheriff's Department be treated as misinterpreted and over-zealous conduct

but not an attempt to coerce employees "in the exercise of the rights recognized as granted" in the County's Employee Relations Ordinance, not an unfair labor practice under Section 12(a) of the Ordinance.

But it is not that simple. The Hearing Officer is convinced that the developments were too well orchestrated to conclude that the County was innocent of any Ordinance violation as it now claims. Consider what happens in just a matter of a few days:

(1) Supervisor Antonovich writes a letter to all County employees, represented and unrepresented, referring to a special issue of the Digest.

(2) The next day the Digest appears, setting forth a number of possible options to cutting expenditures, some of those options having serious financial consequences for County employees and having the clear potential for pitting one group of County employees against another.

(3) The County's ultimate negotiating proposal to ALADS include a number of proposals which had originally appeared in the questionnaire.

The whole sequence of events do not appear -- at least in the opinion of the Hearing Officer -- to be only incidentally related. County government (or in fact any major employee with 70,000 employees) does not work that fast. The County Chief negotiator, Edward Watson, with or without the knowledge of Chief Administrative Officer Harry Hufford and Supervisor Antonovich but certainly with their concurrence, had to have played a major role in drafting the questionnaire. Hufford is listed as one of the members of the Digest's Editorial Board. And the record contains no evidence that Charles Steakley, named as the Digest's editor, had any independent knowledge of labor relations or of the options the County's C.A.O. and Board of Supervisors were considering in framing their negotiating

proposals. Watson, then, must have been a critical figure in developing the language.

And contrary to the County's contention, by early March, negotiations had commenced. When, in late January, ALADS had submitted a 110-page proposal, issues were on the table, notwithstanding the position of the County (perhaps concurred in by the unions) that until the financial news from the State government in Sacramento became more clear, it would be difficult for the County to frame its counter-proposals.

It is true, of course, that Supervisor Antonovich's letter uses language which does not appear to make a response mandatory. He only says he would "appreciate receiving your recommendations" and only seeks "your opinions on courses of action which the Board of Supervisors might take." And the Digest also only uses discretionary language: "if your are interested in participating."

But the Sheriff's Department at least took a much stronger position. And the fact that such a large percentage (over 47%) answered the questionnaires and that the material went to represented employees as well as unrepresented employees make it necessary to conclude the County was negotiating with represented employees unless Supervisor Antonovich's letter and the Digest fall within the protected free speech arena.

A careful reading of the Madison decision convinced the Hearing Officer that ALAD's position is appropriate and that the facts in this case are clearly distinguishable from those before the Supreme Court.

In his majority opinion Chief Justice Berger states:

> We need not decide whether a municipal corporation as an employer has First Amendment rights to hear the views of its citizens and employees. It is enough to say that Holmquist and other teachers and citizens have a right to communicate with the Board.

Justice Stewart, in a concurring opinion, stated:

> I write simply to emphasize that we are not called upon in this case to consider what constitutional limitations there may be upon a governmental body's authority to structure discussion at public meetings.

And Justice Brennan, in another concurring opinion, notes:

> Although there was a complete absence of any evidence that Holmquist's speech was part of a course of conduct in aid of an unfair labor practice by the board....

Further, as ALADS notes, the teacher in Madison was unrepresented; in the instant case, all employees, represented and unrepresented, were contacted. Also, the County, unlike the situation in the Madison case, initiated the direct communication with represented employees on matters already on the bargaining table. And the Madison situation involved a "terse" statement by a non-union teacher at a public meeting, not -- as in this case -- the expression of a position in response to a series of options suggested by the County.

Based on the above reasoning the Hearing Officer recommends that ERCOM issue the order requested by the Charging Party, limiting the language of the Order, however, to refer only to represented employees.