LOS ANGELES COUNTY
Employee Relations Commission

REPORT
and
RECOMMENDATIONS
of
Hearing Officer
EDGAR A. JONES, JR.

COALITION OF UNIONS,
Charging Party

vs.

COUNTY OF LOS ANGELES, et al,
Respondents

UFC 60.6

May 4, 1979

TABLE OF CONTENTS

The Hearing Officer recommends that the Commission issue an order holding that:

A. The County in May and June, 1977, as charged by the Coalition of Unions, did commit unfair practices in violation of ERO Sections 4, 12(a)(1) and 12(a)(3).

B. The County shall reimburse each employee who has claimed sick pay, was denied payment because of the presumption of unlawful participation in a concerted withholding of services, and has asserted the legitimacy of the rejected claim by filing a grievance protesting the denial and demanding its payment.

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of COALITION OF SEIU LOCALS 660, 535, 434 AFSCME COUNCIL 36, INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, CALIFORNIA ASSOCIATION OF PROFESSIONAL EMPLOYEES, AND LOS ANGELES COUNTY FIRE FIGHTERS LOCAL 1014, AFL-CIO Charging Party, vs. HARRY L. HUFFORD, CHIEF ADMINISTRATIVE OFFICER AND DIRECTOR OF PERSONNEL, AND ALL COUNTY DEPARTMENTS, Respondents.	REPORT and RECOMMENDATIONS of Hearing Officer EDGAR A. JONES, JR. * * * UFC 60.6 May 4, 1979

The hearings in this matter were held in 1978 on March 14 and 15, May 3, 4 and 5, and June 20 and 30 before the undersigned Hearing Officer, Edgar A. Jones, Jr., appointed on or about October 17, 1977, and authorized by the Employee Relations Commission (ERCOM) to conduct hearings, make findings of fact and formulate recommendations to ERCOM relative to UFC 60.6. After several continuances requested by the County and the Coalition, briefs were filed with the Commission by December 28, 1978, and the hearing was closed. This report is filed pursuant to Rule 6.10 of the Commission's Rules and Regulations.

Appearances: for the Charging Party (the Coalition of Unions): Geffner & Satzman, by Michael Posner, Esq.; for the Respondents: John H. Larson, Esq., County Counsel; Steven L. Houston, Esq., Deputy County Counsel, Labor Relations Division.

I.

Findings of Fact

A. Stipulations of Fact

Certain stipulations of fact were entered into by the parties to this proceeding at the outset of the hearing. They are as follows (Tr. 2-5):

1. Between May 6 and June 16, 1977, approximately 8,000 employees absented themselves from work "without prior authorization" from time to time, and without prior notice, but not throughout that period. The phrase "prior authorization" refers to vacations, personal leave, pre-scheduled and non-emergency dental situations, in contrast to "an employee calling up and saying, 'I have the flu, a stomach ache, or a sore throat'" which are not susceptible to prior authorization. (Tr. 2-3)

2. Until midnight June 30, 1977, the unions comprising the Coalition were signatories to County-Union Memoranda of Understanding containing "No-Strike" clauses comparable or identical to the terms of Article 28 quoted above in this Report. (Jt. #1)

3. Negotiations between and among the adversary parties (i.e., the Unions comprising the Coalition and the County) for successive "labor contracts" (to be effective 12:01 a.m. July 1, 1977) were in progress from May 6 through June 16, 1977.

4. Those negotiations were subsequently concluded and the "No Strike" clause in Article 28 (Jt. #1) was retained.

5. Of the 8,000 employees referred to in paragraph 1 above, an indeterminate number of 3,000 - 6,000 submitted doctors' certificates to verify illnesses between May 6 and June 16 but were nonetheless denied sick-leave compensation for the time lost. (As to this stipulation, the County did not stipulate that these employees "were, in fact, sick during the period of time in question," nor that they had complied with Salary Ordinance Section 250. (quoted below) / Tr. 22 /)

6. No specific format for "a doctor's certificate" with respect to acceptability had previously been established by the County.

7. During May 6 through June 16, 1977, medical certificates submitted by employees for illnesses allegedly having occurred in that period were routinely rejected by the County at the time of initial submission, and this because such employees were presumed to be participants in a prohibited "sickout."

B. The Circumstances of the Unfair Labor Practice Charge

On August 5, 1977, the Coalition of Unions constituting the "Charging Party" filed an unfair employee relations practice charge -- UFC 60.6 -- with the Los Angeles County Employee Relations Commission (ERCOM). The Coalition of Unions comprise the unions that are the certified bargaining agents for some 45 bargaining units encompassing about 50,000 County employees.

The gist of the charge is that County Administrative Officer Harry Hufford (CAO) issued a memorandum dated May 19, 1977, which instituted a "unilateral change" which is proscribed by the Employee Relations Ordinance. This change involved the method whereby sick leave benefits would thereafter be paid County employees.

The May 19 change was in response to the perception of the CAO that about 8000 County employees in certain critical occupations in 58 County departments had engaged in an illegal concerted work stoppage in the nature of a "sickout" during the course of negotiations for a successor Memorandum of Understanding for 1977-78. The new policy resulted in the denial of sick leave pay to some 3000 - 6000 employees.

The Coalition detailed its position in an attachment to its Unfair Labor Practice Charge as follows:

1. Various local unions within the County Federation of Labor, including SEIU Locals 660, 535, 434, AFSCME, Operating Engineers, Local 501, CAPE, Firefighters, are the certified bargaining agents for some 45 units covering approximately 50,000 County employees.

2. In the past, granting of Sick Leave Benefits has been covered by (1) Fringe Benefits Memorandum of Understanding between the County and coalition of unions, (2) the Salary Ordinance and, (3) Personnel Manuals for the various departments.

3. On or about May 19, 1977, the Chief Administrative Officer, Harry Hufford, issued a memoranda to all County department heads instituting a significant and unilateral change in the method whereby Sick Leave Benefits would be paid to County employees.

4. Mr. Hufford never afforded the certified bargaining agents proper notice or an opportunity to negotiate the impact of his proposed change.

5. As a result of Mr. Hufford's actions, between 3,000 and 6,000 County employees have been improperly denied Sick Leave Benefits, and some have also been subjected to discipline.

6. The unions of the County coalition contend that Mr. Hufford's actions are in direct violation of Sections 4, 12(a) (1) and 12 (a) (3) of the County Employee Relations Ordinance.

Mr. Hufford's letter of May 19, 1977, which comprises the gist of the Coalition's charge, was addressed by him to "All Department and District Heads." Entitled "Employee Work Stoppages," it read in full as follows:

> In any case where employees engage in concerted work stoppages, it is recommended that the attached letter only be mailed to those absent to direct them to return to work and advise them of abandonment regulations.
>
> When employees engaged in such concerted work stoppages return to work, they should be advised in writing that their absence was unauthorized and they will not be paid for time off the job.
>
> Letters suggesting employees engaged in apparent work stoppages bring in proof of illness to cover such absence should no longer be used. If some employees bring in Doctor's statements to cover such absences for pay purposes, their proof must be satisfactory to the Department and if, in your judgment, it is not, such proof may be rejected and the employee docked for time off the job. Affidavits of illness will no longer be accepted as proof of illness for time off during apparent work stoppages.
>
> If you have any questions on this policy, please contact the Employee Relations Administrator assigned to your Department.

The attached letter, referred to above by Mr. Hufford, read in full as follows:

> LETTER TO BE USED FOR EMPLOYEES INVOLVED IN ANY APPARENT WORK STOPPAGES
>
> DEPARTMENT LETTERHEAD
>
> (Date)
>
> (Address to employee)
>
> On (day), (date), you did not report for work. Many other employees of the department also failed to report for work.
>
> As you are aware, this department performs mandatory services for the public and we are vitally concerned that our department meets the needs of the residents of this County. It is essential that our employees report for duty when they are scheduled to work. Therefore, you are instructed to return to duty at the start of your next regularly scheduled workday.

We wish to advise you that the law of the County provides that an employee who has been absent without authorization for more than *three consecutive regular working days, shall be deemed to have resigned his position. We want you to be fully informed of this fact so you will not remove yourself from County employment unwittingly.

Your unauthorized absence has placed your continued employment in serious question. If you do not return to work by (time), (date), you will be deemed to have resigned your position.

If you have any questions regarding this matter, please contact (name), (title), (location). and (telephone number). We sincerely hope you will return.

Very truly yours,

(Department Head)

*or two consecutive regularly scheduled on-duty shifts, whichever is applicable.

By June 6, 1977, CAO Hufford reported, 7,180 employees had been "out sick;" 6,325 had been "docked" and 855 had been paid sick pay. In reporting this information to "Each Supervisor" about "Disciplinary Action Taken as a Result of Recent Sick Outs by County Employees," Mr. Hufford wrote (Co. #2)

"When it became apparent that the sick outs of County employees would become a widespread and continuing activity, I advised County departments to modify their current practice with respect to sick leave. Doctors notes are no longer routinely accepted. The attached memorandum is being implemented in all departments affected."

Among the 50,000 Union-represented County employees there are on average about 3-6 percent (some departments are higher, some lower, in that range) absent on any given workday, whatever the reasons may be. The average is remarkably consistent among the various occupations and departments. In May and June the rate of absenteeism literally skyrocketed on certain days. The Department of Health Services affords an example. It encompasses five regions with 26,000 employees working in 11 hospitals, 50 community health districts and some 22 mental health districts. It experienced an "abnormal amount of absences" among employees of its custodial staff and its nurses in several hospitals, its patient financial service workers, its clerical support staff and its Medical Records Divisions in various facilities and in various degrees on May 6, 9, 10, 20, 23 and 26, and June 3 and 4, and through the 6th, 1977. (Tr. VII, 56) Thus of some 700 custodial workers scheduled on May 23 nearly 50 percent, about 300, failed to report for duty, in

contrast to a normal average daily rate of absenteeism of 4-6 percent. (Tr. VII, 59-60) Of 10 Radiology employees scheduled at Olive View Hospital, all 10 were absent on one day, and of 200 Radiology employees (department-wide) 105 were absent on a certain day. The illness rate normally is 6 percent. (Tr. VII, 60) Of 80 dietary employees scheduled to work one day at Martin Luther King Hospital, 40 reported for work and the same occurred at Harbor General Hospital. The normal rate of illness there runs 6 percent. (Tr. VII, 61) Of the over 2000 employees absent of the 26,000, some 1100 - 1300 filed claims, of which about 900 were ultimately paid. (Tr. VII, 70)

The documentary and testimonial evidence in this proceeding has been voluminous (65 Union exhibits, 50 County exhibits, seven days of hearing). It is not necessary, however, to undertake to summarize the actions of each department relative to the problem of the sickouts as commonly perceived by the administrators. The prior policies for handling sick-leave claims, and even sick-out, sick-leave ones, were also substantially the same with only minor variations. It will suffice to examine what occurred in a relatively typical department, the Probation.

The Probation Department comprises several areas of function. One division encompasses a number of field service areas in which deputy probation officers work with courts and supervise probationists. Another operates from juvenile hall facilities for temporary detention. A third administers 11 camps in which youngsters under sentence are housed and provided training and rehabilitation.

On May 26, 27, 30 and 31, 1977, in the field services 1,096 were scheduled to work. But 41 percent -- 453 -- were absent. In the camps, 70 out of 151 (46 percent) did not report as scheduled. In the detention halls 402 were scheduled but 233 were absent (58 percent). Assigned to transportation 41 were absent of 46 deputies scheduled to work (89 percent). The normal rate of absenteeism due to illness in the department is in the range of 3-6 percent. (Tr. VII, 8)

Under "normal circumstances," testified Henry Alva, Probation Department senior department employee relations representative, "it is left up to the discretion of the individual manager at the individual facility to interpret the Salary Ordinance ... that satisfactory proof be presented to him for payment." (Tr. VII, 13) "[I]n our normal processes the managers have that discretion." (Tr. VII, 31) But in reaction to the circumstances of the four days in May "I advised all the managers to deny all claims of illness and to 'AWOP' [absent without leave] everyone up until the time that we could review the individual claims for illness." (Tr. VII, 14) "Just as soon as we denied all claims of illness we were swamped with grievances. We began to individually process all the grievances, at which point in time we advised the managers to try to make an honest attempt to identify individuals that were ill or other kinds of reasons for which payment would be forthcoming." (Tr. VII, 15) As a consequence of this procedure, some 200 of the 755 absentees received their pay as claimed.

The Probation Department grievance procedures, described by Mr. Alva, worked as follows:

"Essentially that if there were some prior indication or authorization given to an employee to be out, that we really had no way of denying them payment for those days, in which case we went back and paid them. Whether or not they were able to ascertain whether or not an employee had previously discussed a vacation with them and had been authorized, that they would also be paid. Whether there were prior medical appointments that had been discussed and approved prior, that they would also be paid. ...

Q. Is it your testimony, then, that the branch managers were advised that unless there was prior authorization for the absence, be it vacation or medical appointments or prior sick leave that had been granted, that all other individuals were to be denied sick pay for the dates in question?

A. Unless they had satisfactory proof that the employee was out ill for some reason also.

Others where we denied them and let them come up through the grievance procedure and we would address them further up along the grievance procedure.

Q. Were there any guidelines established for what would serve as satisfactory proof? ...

A. Basically that a doctor's certificate contained all the necessary elements in order to give satisfactory proof to the manager that it was a bona fide illness. Things such as a doctor's statement ... on it that because he was ill, unable to work, specify dates and times, and that actually a physician had seen him and signed the certificate. ... That the proof be satisfactory. To the manager. ... [A]nd in those instances where there wasn't sufficient satisfactory proof, ... to deny those and they could come up the grievance mechanism. ...

Q. Did you give the managers any guidance as to what would be satisfactory proof other than a medical certificate from a doctor?

A. ... prior excuses, prior knowledge, pre-scheduled, things that had been approved in the past ... that there had been prior approval on different situations.

Q. Other than that?

A. No." (Tr. VII, 31-38)

The published policy of the Probation Department relative to the control of absenteeism is contained in its Personnel Manual (PDPM) as instruction 13. The revision of December 20, 1976, (Co. #27) was operative (as instruction 13C) during the events of May, 1977, (a new revision -- C. #25 -- was issued on May 31, 1977, reactive to the "sick-out" events).

Instruction 13C, a seven-page document entitled "Discipline and Corrective Action," details the conditions for assuring "satisfactory discipline," recognizing that "To invoke formal discipline or corrective action is potentially to impose a severe disadvantage upon an employee. Therefore, such a step must be taken only after deliberation and with reliable information as the basis for such action."

In the section relative to "Absenteeism Control," sub-section A addresses "Employee Responsibility." Paragraph III-A-2 states, "When requested to do so by his superior, the employee must show proof of illness, in accordance with the provisions of Salary Ordinance Section 250." (As quoted above, that is "to furnish a doctor's certificate or other proof satisfactory to his department head that his absence was due to such / "sickness, injury, pregnancy, quarantine, non-emergency medical or dental care ..." / causes.") (emphasis added)

Sub-section B, entitled "Management Responsibility," sets forth progressive disciplinary responses invocable when "an employee's rate of sick leave absence hinders his effectiveness on the job, is disruptive to the efficient operation of the office, or when his absenteeism follows an unusual pattern (e.g. repeated absences on Fridays or Mondays, in association with holidays or paydays)..." There is then set forth a series of steps designed to get to the physical or psychological basis for the employee's conduct. It is initiated with a supervisor's interview, of which a written record is made and given the employee, and concludes, after procedures designed to exhaust potentially valid medical reasons for absenteeism, with a referral to the procedures of "corrective action." The first "formal discipline or corrective action" of a sequence, set forth in I-A, is a letter of warning, to be followed by a letter of reprimand, a suspension, then in turn by a reduction in rank and, finally, by discharge.

The final sub-section of the December 20, 1976 instruction PDPM 13C operative during May, 1977, is entitled "IV. Planned Sick-Outs or Walk-Outs." It reads in full as follows:

> If employees engage in an organized "sick-out" (defined as a concurrent action of numerous employees who do not report to work because of a claim of illness) and the rate of absenteeism for illness in an office on a given day significantly exceeds the normal pattern of absenteeism because of illness for that office, the following procedure applies:

1. When an employee fails to report to work because of a claim of illness and his action appears to be part of a concurrent action of numerous employees, the office head signs and sends a warning letter to the employee. The letter serves as official notification that the absence is unauthorized and is without pay. The letter also warns the employee that if he is absent without authorization for more than three consecutive regularly scheduled on-duty shifts, his absence is deemed a resignation (see ASM Vol. I, G-6).

   The warning letter further directs the employee to submit a doctor's statement or a witnessed affidavit stating that the employee was ill or injured and, therefore, unable to work during the entire period of absence. The affidavit is not accepted if the total number of employees submitting affidavits exceeds the number normally absent due to illness.

2. In some cases employees may be involved in a planned absence or "walk-out" without reporting sickness as the reason. Under such circumstances, the office head will sign and send a letter of warning to the employee notifying him that his continued unauthorized absence places his employment status in serious question, and that, if the employee does not return to work by a specified time and date, he is deemed to have resigned his position. Such allowed time should not be in excess of one working day from receipt of the letter of warning (see ASM Vol. I, G-6). (C. #27) (emphasis added)

No letters of warning were issued by the Probation Department relative to the submission by a claimant for sick-leave pay of a doctor's statement or a witnessed affidavit that the employee was ill or injured and therefore unable to work during the four "sick-out" days in May. (Tr. VII, 48)

The procedures set forth in full above in sub-section IV of the December 20, 1976 PDPM 13C were not altered in any way in the revision issued May 31, 1977.

The County elected to cope with the 1977 sick-out situation on May 19, 1977 (C. #1) by an order of CAO Harry Hufford rescinding the policy, exemplified in the December 20, 1976 PDPM quoted above, of accepting a "doctor's statement or a witnessed affidavit" in justification of an absence attributed by an employee to illness. That was followed on June 2 by a report to "Each Supervisor" by CAO Hufford summarizing "disciplinary action taken as a result of recent sick outs by County employees." (C. #2) (emphasis added) He wrote:

> "When it became apparent that the sick outs of County employees would become a widespread and continuing activity, I advised County departments to modify their current practice with respect to sick leave. Doctors notes are no longer routinely accepted. ..." (emphasis added)

Among the 7,180 persons identified as "sick outs" by CAO Hufford as of June 6 (C. #2), there were 3,994 Department of Public Social Services employees, all of whom were "docked." (the DPSS absenteeism average has run 6-8 percent. Tr. IV, 100) In addition to the one-day docking for each "sick out," that Department suspended 13 employees for 5 days each because of their participation. Alonzo Cephus has since 1972 been a MEDI-CAL eligibility supervisor in the Rancho Park Office. He was absent on June 6, 1977. On that same date in ten DPSS locations, there were 1963 employees scheduled to work, of whom 1000 [50.9 percent] were absent. (C. #5) During the night of June 5, he became ill with "considerable discomfort." (Tr. II, 6) According to his Kaiser doctor after examining him the next morning, he had gotten food poisoning from eating in a restaurant. He called his supervisor, Miss Joyce English, from the doctor's office at 8:00 a.m. to report his illness and that he would not be in to work. The doctor gave him a Kaiser form reporting "Extreme gastro-intestinal discomfort" and advised him to remain out until the discomfort has subsided. By the next morning, June 7, he felt better, called the doctor at 8:15 a.m. and got clearance to return to work. He gave the doctor's form to Miss English who told him "I would be AWOP'd [absent without pay] for the time I was out on June 6th and ... I asked her why, because I considered that a disciplinary action and ... I had received no counseling prior to that about ... absentee problems. I asked her whether there was something wrong with the statement, or what. And she said, 'No,' that it was her understanding that all people that were out on that particular day would be declared AWOP." (Tr. II, 8)

He then spoke to DPSS District Director Joseph Kaufler, telling him to telephone the doctor and ask if he did not believe him. "There was ample proof I was still suffering from a little bit of discomfort from the illness. He said he thought it was out of his hands. They were all being handled centrally and whatever decisions were being made were being made downtown." (Tr. II, 9)

Mr. Cephus had been responsible as a supervisor for administering the departmental sick-leave policies. Prior to May, 1977, he understood that policy to be that an employee was expected to call in within the first hour of his absence from work if there was no prior arrangement about it; if he were out three or more days, he was required to present a doctor's certificate; if he were simply out sick for a day "he was not required to bring in a doctor statement unless the employee had been previously counseled that he had a problem with his attendance or he was abusing sick time." (Tr. II, 5)

Mr. Cephus, who remains unpaid, filed a grievance to obtain his sick pay for June 6. It was processed, along with numerous other grievances (evidently several hundred) making the same claim, but under individual circumstances, in various County departments. His grievance, along with all of the others, remains pending, short of arbitration because the Coalition of Unions believed, as counsel expressed it, that "the denial of sick pay constituted both a violation of the Memorandum

of Understanding as well as an unfair labor practice, and the decision had been made by the local/s/ instead of going to 8,000 grievances or 3,000 grievances, that we would repeat the same issue in this unfair /labor practice/ hearing which we believe would provide an equal remedy." (Tr. II, 18) County counsel responded that those grievances had not been merged into the unfair practice charge if the Unions had decided "to drop the arbitration matter because the County picks up the cost" of the unfair practice proceeding, that essentially is not relevant to this proceeding. (Tr. II, 18)

Asked by County counsel to comment on his views, in the course of his discussion of his claim with his district director, Mr. Kaufler, of the high rate of absenteeism that day (50.9 percent) in DPSS, Mr. Cephus testified, "My views were strictly related to me. I was sick and my doctor said so, and I invited them to call up my doctor and ask. So, I was really concerned about why I was being penalized, and I tried to focus my conversation on that." (Tr. II, 31)

Other County employees had accounts of denials of sick-leave pay to recount that were comparable to that of Mr. Cephus. (See Tr. I, 29; II, 31; II, 50; II, 59; II, 64; II, 79; VII, 79; U. #3, 9, 10, 15, 16, 18-49, 52, 53, 55-62, 65)

Some departments were quite conscientious in attempting to separate legitimate from illegitimate claims for sick pay. Thus Mrs. Emma Lee Johnson, Personnel Officer, Health Services, described that department's procedures:

> "We had informed our management to do a more thorough investigation of these medical certificates by contacting the treating physician, determining if the employee was too ill to perform his duties, his or her duties, on the particular day or on the given day of absence. And this was done, and those that were validated, we paid." (Tr. VII, 77-78)

The prior departmental policy relative to sick-leave claimants had been to leave it to individual managers to decide on an individual basis whose claims to accept or deny. (Tr. VII, 66) "When we realized that we were not dealing with a normal situation, my office then assumed responsibility for communicating with line management, how they were to deal with what we termed the sick-outs by employees."

Other departments proceeded differently. For example, the Department of Communications, with a normal 6-7 percent average absenteeism, staffing locations in 112 separate county buildings, on June 15, 1977, scheduled 284 employees for work; but 169 were absent (59.5 percent). It had been notified in advance of an impending sick-out work action on June 15. (Tr. VI, 45) It did occur on that one date that the rate of absence rose to 59.5 percent from the 6-7 percent. Prior to it, having been made aware that it was impending, the department sent out a notice with its June 10 paychecks to about 450 employees,

some 55 percent of whom are women, that declared: "Any employee absent from work during a 'sick-out' without approval of absence on that day and well in advance of the day will be presumed to be a participant in an illegal concerted activity." (C. #23)

The previous departmental policy regarding women employees who experienced menstrual cramps during their periods, however, was not to require advanced notice. (Tr. VI, 58) But pursuant to the June 10 notice, a menstrually discomfited employee, who happened to be out and called in ill during an apparent sickout work action in the department was "presumed to be engaged in" the sickout. So also would one who called in to report out with diarrhea or the flu. (Tr. VI, 59)

There were 81 absent employees who submitted "medical slips," as the Personnel Officer of the department testified, who were denied pay and grieved; about 6 percent of them were paid, the rest not. (Tr. VI, 63) Only those were paid who had made arrangements to be off prior to that day or had already been out sick before that day. (Id. at 64) There were also 88 who simply reported to their supervisors that they had been sick. (Id. at 61) Both groups sought sick pay. Neither groups were paid. The department simply assumed that no one of them was entitled to sick pay, regardless of the employees' accounts or doctors' certificates: "Those employees who were absent from work on June 15, 1977, were notified the following day that the department was not going to pay them sick pay for that date." (Tr. VI, 62-63)

The personnel officer testified that due to "the sheer magnitude of absenteeism" it had been "impossible for them [the supervisors] to contact all these people's doctors" in compliance with the existing departmental sick-leave policy that required (C. #22):

> "(d) Each supervisor shall determine the authenticity of sickness made by or in behalf of subordinates. He or she may visit the employee at any reasonable time, to inquire as to the nature of the ailment, he or she may contact the attending physician or other competent authority to investigate the nature of the ailment and take other steps to verify the authenticity of the illness."

Evidently no efforts were made whatsoever, even on a sampling or by-lot basis, to comply with that departmental policy for determining the validity of doctor certificates.

On June 7, 1977, CAO Hufford wrote the officials of AFSCME Council 36, Social Services Union Local 535, LACEU Local 434, LACEA Local 660 and Professional Supervising Social Workers of L.A. County, respectively, invoking the No-Strike clauses in the Memoranda of Understanding and asserting (C. #3):

"We have some indications that your Union may be causing and, in fact, sanctioning these work stoppages. In order to clarify this situation, we feel your Union should comply with the provisions of the No Strike Article and make an affirmative good faith effort to stop these interruptions of the work process and to prevent their reoccurrence.

If the work stoppages continue, the County may be compelled to seek such remedies as are available to it under applicable law."

On June 7 CAO Hufford also directed a memorandum on "Work Actions-Discipline" to "All Department and District Heads," setting forth and urging consistent application of a policy of disciplinary action based on the premise that "It has now become apparent that these actions are not spontaneous actions by employees, but are, in fact, illegal concerted activities in violation of law and of No Strike provisions of most of our labor agreements." Accordingly, he continued, any employee "absent from work during a 'sick out' without approval of absence on that day well in advance of the day must be presumed to be a participant in illegal concerted activity." A form written notice to that effect was suggested which would declare to such an employee, "Management feels your absence on day (5) date(s) was part of an illegal concerted activity. Accordingly, you will not be paid for this time off. You are further advised that any reoccurrence of absence of this nature will subject you to further discipline."

C. The Employee Relations Ordinance

The Coalition of Unions charges that action by the County to have been a violation of Sections 4, 12(a)(1), and 12(a)(3) of the Ordinance (ERO) which provide as follows (C. #8):

Section 4, entitled "Employee Rights," declares the right of County employees "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." They have a correlative right of refusal of representation and to undertake to represent themselves individually. "No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights."

Section 12, entitled "Unfair Employee Relations Practices," provides in relevant part as follows:

"(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;

* * *

(3) To refuse to negotiate with representatives of certified employee organizations on negotiable matters."

D. The Answer

Respondents filed an Answer on October 18, 1977, denying the Coalition's allegations. They claimed that their actions were justified because the employees were engaged in a prohibited "work action" and seeking to have the County finance it. The County presses its "right to require proof of illness, proof satisfactory to the department heads before issuing sick leave pay." (Tr. 26)

E. The Memorandum of Understanding

Article 28 of the then operative Memorandum of Understanding (MOU) provides that "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 employee 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."

Section 2 of MOU Article 30 provides in relevant part that "It is recognized that during the term of this agreement it may be necessary for Management to make changes in rules or procedures affecting the employees in the unit. Where Management finds it necessary to make such change it shall notify the Union indicating the proposed change prior to its implementation. Where such change would significantly affect the working conditions of a significantly large number of employees in the unit; where the subject matter of the change is subject to negotiations pursuant to the Employee Relations Ordinance and where the Union requests to negotiate with Management, the parties shall expeditiously undertake negotiations regarding the effect the change would have on the employees in the unit. ..."

MOU Article 30, Section 3 provides: "Nothing herein shall limit the authority of Management to make necessary changes during emergencies. However, Management shall notify The Union of such changes as soon as practicable. Such emergency assignments shall not extend beyond the period of the emergency. 'Emergency' is defined as an unforeseen circumstance requiring immediate implementation of the change."

MOU Article 30, Section 4 provides: "Where Management makes any changes in working conditions because of the requirements of law, including ordinances adopted by the Board of Supervisors, the County

shall not be required to negotiate the matter or manner of compliance with such law where the manner of compliance is specified by such law."

F. The Salary Ordinance

Section 250 of the County Salary Ordinance (No. 6222) provides in full as follows:

> "Any employee absent due to sickness, injury, pregnancy, quarantine, non-emergency medical or dental care, or on any of the leaves provided for in Section 240 may be required, before such absence is authorized or payment is made, to furnish a doctor's certificate or other proof satisfactory to his department head that his absence was due to such causes."(Co. #6B) (emphasis added)

G. The Civil Service Commission Handbook

The "Rater's Handbook on Performance Evaluation" (U. #5), published by the County Civil Service Commission "as a guide" to be used in departmental "current policies and procedures for completing performance evaluations," in a question-and-answer section (at p. 75) sets forth the following simulated dialogue:

> Q: Under what circumstances can medical verification of illness be required?
>
> A: Medical verification of illness can be required for any absence. Supervisors should be cautioned, however, to warn the employee prior to the absence that verification will be necessary. A doctor's excuse cannot be required retroactively by the supervisor.
>
> Q: How do MOU's [Memoranda of Understanding] affect what can be said in documenting attendance problems?
>
> A: Please refer to your copies of Memoranda of Understanding. Generally, if a definite pattern of absence exists which is tied to weekends, holidays or paydays, even using 100% sick leave can be cause for disciplinary action. The best policy to use with employees you believe are abusing sick leave is to require medical verification of illness. Employees must be told prior to their absence that this documentation will be required. (U. #5) (emphasis added)

H. Martin Luther King, Jr., Hospital Policies

As an example regarded by the Coalition of Unions to be typical statements of managerial policy among the various County administrative units is the "Policy Statement" of the Martin Luther King, Jr., General Hospital memorandum "Reporting on Duty from Being Absent" which provides in relevant part as follows:

"2. A physician's verification of illness and/or a release to return to duty is required under the following conditions:

2.1 Absence over three (3) days.
2.2 Employees with attendance problems.
2.3 Employees returning from sick leave.
2.4 Employees who requested health related leaves of absence.
2.5 Employees who have been off duty ill for more than thirty (30) days will obtain a special form of medical release from the personnel office. The form is to be filled out by the employee's physician and taken to Occupational Health by the employee prior to returning to duty. ...

* * *

4. Statements must be from the employees personal physician ..."

The Martin Luther King Jr. General Hospital Nursing Personnel Policy relative to "Reporting Off Duty" provides in relevant part as follows:

"3. Employees who are going to be off for an extended period of time (more than 3 days), must submit a doctor's statement indicating the approximate length of time he/she will be off duty and the expected date of returning.

3.1. Any employee who is absent for more than three (3) days and fails to notify the nursing office will be considered to have abandoned his position.

3.2. Any employee who does not call to report off duty will be considered AWOP." (U. #2)

I. MOU (6-8-76) on Fringe Benefits

The June 8, 1976, Memorandum of Understanding "Agreement on Fringe Benefits" provided in the incorporated Attachment (at p. 3) as follows:

"SICK LEAVE

"Full-time, permanent employees with less than a full year's service as of January 1, of any year accrue sick leave ... Such paid sick leave, subject to proof required by departmental management, may be used for absences due to illness and for non-emergency medical and dental care. ..." (C. #7) (emphasis added)

J. ERCOM Decision in UFC 6.37 (10-20-77)

In support of its assertion of its legislatively and contractually unimpaired power to act as it did here in May and June, 1977, the County proffered a decision (UFC 6.37) of the Commission, dated October 20, 1977, in an SEIU Local 660/County Mechanical Department dispute. There it had adopted the conclusion of Hearing Officer Robert G. Meiners that no unfair employee relations practices had been committed in the identical circumstances in which he had earlier, functioning then as an arbitrator rather than an ERCOM hearing Officer, concluded (ERCOM: ARB 20-76) that certain departmental conduct had been "arbitrary and unreasonable" in violating the applicable Memorandum of Understanding "when it refused to pay sick leave benefits and then issued a letter of reprimand to the grievants." (C. #9A)

In reference to the Meiners report, the Commission took the occasion to make "a few additional comments" that it felt to be appropriate in "clarifying the Commission's approach to disputes of this nature." It found "no fault with the conclusion of Hearing Officer Meiners that the department's action in denying sick leave benefits without consideration of the proffered physicians' certificates and then issuing letters of reprimand was 'arbitrary and unreasonable.'" It then added the following observation:

> "But although the department acted unreasonably in making a decision as to the legitimacy of the employees' illnesses, it did not change working conditions. Rather, it interpreted those conditions in an unreasonable manner. The sick leave rule as spelled out in the Salary Ordinance [Section 250] remained the rule of the department.
>
> "The fact that a course of conduct may be found to violate a negotiated agreement does not alone support an allegation that an unfair practice has occurred; every contract violation is not necessarily an unfair employee relations practice. Similarly, an employee or a group of employees may have a legitimate grievance regarding denial of certain rights or benefits from an MOU [i.e., Memorandum of Understanding], but denial of those rights or benefits does not necessarily constitute a denial of rights guaranteed by the Employee Relations Ordinance. ..."

II.

Analysis and Conclusions

The evidence in this record compels the conclusion that substantial numbers of County employees in May and June, 1977, engaged in a concerted and integrated effort to generate settlement pressures against the County, then actively engaged in new-contract negotiations with the Unions representing them. This they did by resort to calculated -- and unlawful -- mass absences from work, followed by several

thousands of falsified sick-pay claims, all of which resulted in unavoidable and potentially serious disruption of vital services performed for the public by County employees.

Quite evidently, this resort by certain County employees to a coordinated, even an orchestrated, abuse of their sick-leave benefits, as a tactic, albeit unlawful, to bring pressure against the County negotiators, was well advertised in advance. County managers were informed by employees under their supervision, some of whom were evidently bragging, but also by some who disapproved the tactic. (Tr. VII-19 et seq.) Thus the Probation Department was made aware "that it would be a rolling kind of sick-out ... We would first be hit in Field Services and then it would roll over to Detention Facilities and the Camps." The Department was "hit" precisely in that way on the dates predicted.

In order to resolve this matter, the Commission will have to decide an essentially philosophical or moral issue wrapped in a legislative conundrum: does the Ordinance leave the County free to respond to a reasonable perception of an unlawful action by numerous of its employees by denying thousands of employee sick-pay claims, an indeterminable but nonetheless evidently a substantial number of which were valid and would have been routinely paid under procedures previously administered? The prior practice, for example, for a menstrually cramped employee (or one with temporarily disabling allergic reactions, a sneezing head cold, a sprained ankle, a back ache, or other felt temporary disability) was to stay out, return when able, and simply report "sick" without the requirement of having to spend money and experience physical inconvenience in order to obtain a doctor's certificate of the existence of a condition that would otherwise not prompt the person to go to the doctor, perhaps telephoning the physician for reassurance or advice or, instead and far more often, simply self-treating oneself.

One group of employees who were denied sick-leave pay was comprised of those who, not having previously been warned to obtain a doctor's verification certificate, sought none while allegedly ill and were therefore unable to comply with the subsequent demand for medical proof of sickness. That amounted to a reversal of the prior acceptance of an employee's word that an absence had been due to illness (e.g., a woman's menstrual cramps or a man's sprained ankle).

A second group of denied employees encompassed those who did obtain a doctor's certificate but whose certificates were rejected as proof without any prior warning about what kinds of certificates would be regarded to be insufficient. That was a reversal of the widely prevalent practice of accepting the typical office-form printed doctor certificates with some elemental notation on its face relative to the employee proffering it as being released to return to work.

What this proceeding does not involve are grievances whereby to recoup sick pay allegedly wrongfully withheld from certain County employees who were provably "sick," under existing procedures for such proof, and therefore entitled to receive sick-pay benefits. If the CAO were to issue an order disentitling all employees reporting in as "sick" on a certain day, in an ensuing grievance proceeding challenging that denial of benefits an obvious contractual issue would concern the rationality of that order as applied to any employee verifiably sick on that date. This would be so regardless of whether the order had been prompted as a supposed administrative convenience, or a personal act of fiat or retaliation, or one taken out of disgruntlement or pique, or simply as a mistake in drafting overreaching language of scope.

Whatever might be thought to be the relevance or materiality in a grievance proceeding of the state of mind or actions of the CAO in a grievance proceeding, however, the only issue to be resolved in an unfair practice proceeding is whether the actions of the CAO have resulted in the commission by the County of an unfair practice proscribed by the Employee Relations Ordinance.

As ERCOM has recognized (C. #9A), conduct by the CAO that may arguably be contractually wrongful under the terms of an MOU negotiated by a Union and the County will not necessarily be prohibited by the ERO. Nor does conduct barred in the ERO automatically run afoul of an MOU. Contractual propriety and legislative proscription must therefore be carefully distinguished.

At the same time, however, it may be that a series of repeated contractual violations may become tantamount to -- or disclose -- a pattern of contempt for the consensual that may, realistically viewed, escalate in significance to a violation of the legislated standard of conduct required of the County and each Union in order in good faith to conform to the expectations of fair play and, in the case of the County, of proper governance that are embodied in the Ordinance.

The ultimate question in the present proceeding is whether the actions of the County in response to its perception, realistic or unrealistic, of the nature of the conduct of its employees in May and June of 1977 must be viewed to have so cumulated into that kind of a violation of the Ordinance.

We start with the recognition that an across-the-board order arbitrarily denying what are essentially small-money sick-leave benefits to anyone so claiming within a certain required period of time, and regardless of the proffer of evidently valid medical certification, is properly regardable at least to be contractually arbitrary, even capricious. In an individual case, grieved by the wrongfully denied employee and taken to arbitration by a Union under a MOU, an award in such circumstances compelling payment of the benefit wrongfully withheld would be the rationally expected result.

But may the County with impunity under the Ordinance compel a Union to arbitrate each claim as a condition precedent to the recovery of each? That is the import of what the County has done in these circumstances.

Were that to be the case, with tens of thousands of employees on its payroll, the County could, were its managers so minded -- or even if they were mindless of the prospect -- effectively divest itself of the necessity to negotiate, let alone resolve grievances, with unions about the wages, hours and conditions of employment of its employees. It could be adament (albeit unreasonable) in each of hundreds of cases and the unions would soon be grieved into insolvency, impotent to vindicate the legitimate claims of County employees through the negotiated grievance procedures.

That suggests the need for two sequential issues to be considered by the Commission, or its Hearing Officer, whenever it appears as here, that the County has arbitrarily denied en masse the multiple sick-leave claims (or other types of small-money claims) that have been submitted by hundreds or thousands of individual claimants:

1. Does the record compel the inference that there exists the subjective intent of County or departmental management, through unwarranted and unreasonable denials of multiple individual claims, to impair or render nugatory the capacity of an affected Union, through calculated economic erosion, properly to represent County employees in vindicating, not just the small-money claims at issue in the short term, but also, in the longer term, the basic employment rights of County employees?

2. Regardless of whether there has been proven an actual intent on the part of County or departmental management to undermine a Union's effectiveness in vindicating meritorious small-money claims of its bargaining-unit employees, is that nonetheless the practical foreseeable result of such multiple arbitrary denials of individual meritorious claims in the particular circumstances proven?

If the answer to either of those questions -- subjective or objective -- is in the affirmative, in order properly to discharge its responsibilities under the Ordinance the Commission should act so as effectively to checkmate such a pattern of County action as prohibited by the Ordinance.

There was one reason, and one reason only in May and June, 1977, why sick-pay claimants by the hundreds, indeed adding up to at least 6,325 claimants, were denied sick pay by the County in May and June, 1977, and that was the presumption that their absences were attributable, not to legitimate illnesses or temporary disabilities, but instead to their participation in a carefully staged, statutorily unlawful and contractually prohibited concerted withdrawal of their scheduled services from the County.

In its turn, that constituted a calculated, concerted program of County retaliation against the Unions, designed to counter the supposed unlawful activities of the Unions. The problem is that the innocent pawns in those retaliatory moves by the County against the Unions who were its bargaining adversaries were those employees -- statistically likely to be about 3,000 in number -- who had legitimate excuses for their absences. The statistical assumption of the County, based on years of experience, is that about 6 percent of the sick-pay claimants would routinely be expected to be entitled to sick pay.

Thus, of the 50,000 unit employees, perhaps 3,000 (6 percent) might reasonably be expected to have been absent for perfectly valid reasons on any one of the days involved in the suspected sickouts. Yet of the 7,180 employees reporting "out sick" -- 14.4 percent of the 50,000 -- over the entire period, it was not 3,000 who were paid; only 855 employees (a mere 1.7 percent) were reported by Mr. Hufford to have been paid sick pay.

The obvious and compelling lesson taught by the County to each of its 50,000 employees, intended or not, would have to be: if you are legitimately absent during a suspected or, indeed, an uncontroverted work-withholding protest by your fellow workers, at the behest of or in sympathy with the Unions' leadership and membership, you will not be paid your contractually due sick pay.

The corollary lesson, of course, is that Union membership leads to undesirable and losing confrontations, whether or not one acts in good faith, with the County management who have the ultimate and unchecked -- as to each individual -- control of payroll approval. The more elemental economic lesson of that confrontational sequence, intended or not, is that membership or identification with a union of public employees in the County is dangerous to the economic security and well-being of individual employees who may find themselves involuntarily caught up in unsought and unwanted, but unavoidable, confrontations with their County administrators, encounters that are triggered by union-inspired or union-reactive activities.

Finally, these personally injurious and vicarious reactions by County management inflicted on those employees who were innocent of any wrongdoing are bound to have a foreseeably adverse impact, whether intended or not by County management, on the self-interested judgment of the 50,000 County employees thereby constrained to doubt whether membership in or representation by a union is really worth it all. That is precisely the kind of pressure that violates the ERO Section 12(a) ban on interference with or restraint or coercion of employees in their decisions to participate in labor-organization representational activities.

It could certainly be rationally argued, in the light of the events of May and June, 1977, that a tougher sick-leave procedure for proof of illness would be warranted to establish entitlement to the

benefit. But the County did not undertake to fashion such a policy for administrative decisions about sick-leave eligibility, to be announced at that time and then enforced prospectively. It sought instead to cope with its perception of widespread employee wrongdoing by engaging in wrongdoing itself, departing from the existent procedures for justification.

In doing so, it ignored the individual rights of innocent employees who were ill but could not present the type of proof earlier held to be acceptable by County management but now suddenly rejected as not sufficiently probative of entitlement. It seined up those who were abusing sick leave along with those who were not and thereby unwarrantably penalized the latter along with the former.

By adopting that tactic to cope with the suspected "sick-outters" whose wrongful intentions it did not undertake individually to prove, the County effectively foreclosed vindication by the Unions of the contractual rights to sick pay of individual employees actually entitled to sick pay. The sweeping effect of the no-pay edict resulted in the economic impossibility of processing individual claims through the grievance procedure, provable -- and therefore justifiable -- under the pre-existing administrative policies, but now to be denied. The County was not legally entitled to force that Catch-22 dilemma on the Unions: how could they possibly vindicate the numerous valid small-money claims without crippling their budgets, funded by the dues contributions of the County employees they represent?

The necessary effect of that dilemma was to portray the Unions to be wholly ineffectual in their representation of County employees.

Regardless of the actual motivations of County managers -- whether they be wide-eyed and incredulous at the prospect of this wholly unintended and unforeseen result so enervative of Union bargaining strength, or cynically amused by the anticipated struggles of the Unions to extricate themselves from the deep pit thus crafted for them -- the direct effect of what the County did on May 19, 1977, and thereafter, objectively viewed, substantially interfered with the exercise of the rights of County employees to rely on their elected bargaining representatives to administer the contractually established grievance procedures. The County thereby violated ERO Section 12(a)(1).

Furthermore, the unilateral action of the County in this instance -- substantially restructuring the procedures for proving reimbursable illness in such a manner as to undermine the representational effectiveness of the Unions -- may reasonably be said to have constituted a refusal to negotiate with the Unions over negotiable matters in contravention of ERO Section 12(a)(3).

Hearing Officer Robert Meiners in UFC 6.37 concluded that no unfair practice had been committed in the circumstances in which he had earlier held as an arbitrator that a department's conduct was "arbitrary and unreasonable" and therefore it had violated the applicable MOU "when it refused to pay sick leave benefits and then issued a letter of reprimand to the grievants." In adopting the Meiners conclusion, ERCOM observed that "although the department acted unreasonably in making a decision as to the legitimacy of the employees' illnesses, it did not change working conditions. Rather, it interpreted those conditions in an unreasonable manner. The sick leave rule as spelled out in the Salary Ordinance remained the rule of the department." (emphasis in original) In dismissing UFC 6.37 as recommended by Mr. Meiners, the Commission observed that a valid MOU employee grievance "does not necessarily constitute a denial of rights guaranteed by the Employee Relations Ordinance."

In this instance, however, the County did change the working conditions of the employees affected by the unilateral issuance on May 17, 1977 by CAO Hufford.

What then should be the remedial response of the Commission should it concur with these conclusions? The Coalition of Unions describes the remedies sought thus: "An appropriate remedy would be to issue a cease and desist order restraining Respondent from engaging in such conduct and to order Respondent to remove all adverse material from the files of the individuals who were affected by the unfair labor practices committed by Respondent and make said employees whole for any wages and benefits lost by Respondent's conduct." (Coalition Brief, p. 22)

One possible remedial response to the violations of the Ordinance by the County, relative to the plight of those employees with legitimate claims not susceptible of proof on the County's terms, who grieved the denial of their sick-pay claims but whose grievances would be unprocessable for the lack of adequate funding on the part of the Unions, would be for the Commission to require the County to underwrite the expenses of an impartial resolution of the grievances by ERCOM-appointed hearing officers. Undoubtedly, as a practical matter, the County would be likely to dispose of a number of the unresolved claims through satisfactory settlements by authorizing the various managers to act directly with their claiming employees as they normally do. Those that the managers believed to be unwarranted claims violative of the legal and contractual strictures against work stoppages and slowdowns would become the grist of this special claims procedure before ERCOM hearing officers. It would seem that such a special grievance procedure would effectively protect the rights of legitimately aggrieved employees whose claims had been arbitrarily denied while preserving the County's (and the public's) interest in not being subjected to unlawful work-stoppage pressures in the course of negotiations of memoranda of understanding with the Unions.

But it is extremely unlikely that departmental supervisors can fairly and effectively separate those employees who were or were not entitled to receive sick pay on the basis of past policies. This is due to the lack of preparedness in May and June, 1977, to cope with "the sheer magnitude" of the problem, plus staleness due to the passage of time. It was the County's overreaching reactions to the sick-out problem, constituting unfair practices, that created this dilemma in regard to the sorting of claims. To avoid further contentions over the propriety of individual claims, that could only be damaging and needlessly costly to the County, the Unions and the affected employees, I recommend that the County be ordered to pay the sick-leave claims, whether supported simply by personal affirmation or by tender of a doctor's certificate, of all employees whose claims were rejected and who have protested the rejections by duly filing grievances in accordance with MOU grievance procedures. A cease-and-desist order, however, would not appear to be necessary in the circumstances, given the Commission's express finding of unfair practices in these circumstances and the prescription of the financial remedy which effectively removes the taint of interference, restraint or coercion with the employee rights affected.

What may be said to be the implications for the County of this proposed finding of violations of the ERO and of the proposed remedial orders?

Would it violate the duty to "negotiate" or to "meet and confer," as the case may be, were the County now, prior to the outset of negotiations, unilaterally to announce its alteration of its existing procedures for proof of sickness so as to make possible a more rigorous check on the bona fides of sick-pay claims? It would appear that it would unless management, on a departmental basis, were at least to conduct a series of discussions, in advance of the promulgation of any administrative policies, to outline the problem and the contemplated efforts to remedy it. Given that type of advance consultation by County departmental managers with the Union representatives, including stewards, it is unlikely that the County would be found in violation either of the ERO or an MOU, and this regardless of whether the obligation be categorized as to "meet and confer" or to "negotiate."

Salary Ordinance Section 250 empowers a department head to require an employee who will be or has been absent due to an alleged sickness "to furnish a doctor's certificate or other proof satisfactory" to the department head "that his absence was due to such causes." But the form or the extent of the "other proof," if it be required, is not wholly at the discretion of the department head. It must impliedly meet the test of reasonableness in the circumstances. Thus no one would be apt to assert that an employee's treating physician must personally appear before a County administrator and make a sworn affirmation of the illness of his patient before that employee's claim for sick leave may be allowed. That extreme case illustrates that there are implied limits on discretion. It is clear that it is unreasonable.

Others, however, may be less so. In interpreting the ordinance, how intrusive may be the probe for verification, how extensive the "proof" to be properly "satisfactory"?

Such conditions should comprise the substance of negotiations between the County and its Unions. Some conditions would be financially and even physically onerous for actually sick employees to comply with them -- for example, a doctor's office visit by a flu-stricken employee to be verified. Yet, however harsh that might be thought to be, it may nonetheless be within the area of legislative tolerance, enabling a department head to exercise his discretion in that manner, unless somehow checked by an MOU restriction negotiated by the employee's Union concerned to protect its members from such a perceived needless or excessive imposition by a County administrator. Thus the terms of what shall constitute "satisfactory" evidence of entitlement to sick-leave benefits is precisely the sort of thing under ERO Section 6 that constitutes the grist of "consultation," at the very least, and more likely, even of negotiation as "terms and conditions of employment" of the sort routinely to be found in collective bargaining agreements in the private and public sectors alike.

III.

Recommendations

The Hearing Officer recommends that the Commission issue an order holding that:

A. The County in May and June, 1977, as charged by the Coalition of Unions, did commit unfair practices in violation of ERO Sections 4, 12(a)(1) and 12(a)(3).

B. The County shall reimburse each employee who has claimed sick pay, was denied payment because of the presumption of unlawful participation in a concerted withholding of services, and has asserted the legitimacy of the rejected claim by filing a grievance protesting the denial and demanding its payment.

Edgar A. Jones, Jr.
Hearing Officer