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	)	UFC 60.6
v.	)	
HARRY L. HUFFORD, CHIEF ADMINISTRATIVE OFFICER/ DIRECTOR OF PERSONNEL, AND ALL COUNTY DEPARTMENTS	)	
Respondent	)	
	)	

DECISION AND ORDER

The charge of unfair employee relations practice in this case was filed by a coalition of unions against the County of Los Angeles on behalf of 45 bargaining units encompassing 50,000 County employees; and it alleged that the County's Chief Administrative Officer unilaterally changed methods for granting paid sick leave.

The matter was referred to Professor Edgar A. Jones, Jr., as hearing officer. Hearings were held March 14, 15, May 3, 4, 5 and June 20 and 30, 1978. Briefs of counsel were received by December

28, 1978 and the hearing officer submitted his findings and recommendations to the Commission on May 4, 1979. Exceptions were filed by the County and responded to by the unions. On the entire record, the Commission issues this Decision and Order.

The hearing officer's findings of fact were supported by substantial evidence and the Commission adopts their thrust. Because of the complexities and importance of the matter we note and summarize the following significant facts:

At various times in May and June, 1977, about 8,000 County employees, out of units approximating 50,000 employees, failed to report to work. From 3,000 to 6,000 of the absentees filed doctors' certificates claiming illness at that time. An undetermined number of these were denied leave and pay for their absences.

Prior to the work stoppage, sick leave of brief duration was routinely allowed upon the filing of an employee's report without medical verification. In instances in which a doctor's certificate was deemed necessary, there was no special kind of certification required beyond a simple, signed statement to the effect that the employee was ill on the dates indicated.

Sick-outs had occurred in prior years and the need for precautions to avoid recurrences was not a matter of emergency. In recognition of this situation provisions were made in personnel manuals of departments for disciplinary action, but even these recognized that the employee might present a doctor's certificate

or "other proof" satisfactory to the department. (Probation Department Personnel Manual, Instruction 13.)

Shortly before the work stoppage in this case, it became apparent to the County administration that some union leaders were urging employees to engage in a sick-out. Without calling in the official representatives of the employees for consultation and negotiation on new regulations, the Chief Administrative Officer issued a letter to department and district heads changing established policies and procedures.

The following changes were made:

1. The department heads were told that letters to employees suggesting they bring in proof of illness "should no longer be used." (CAO letter of May 19, 1977.)

2. Affidavits of illness "will no longer be accepted as proof of illness." (Ibid.)

3. Doctors' notes "are no longer routinely accepted." (CAO's report to Board of Supervisors dated June 6, 1977.)

Thereafter, many claims of illness filed by employees in the forms customarily accepted before then were summarily denied.

These changes were made unilaterally, without prior consultation or negotiation with the certified representatives of the employees. That was a breach of the obligation imposed upon the administration by the Los Angeles County Employee Relations Ordinance. The duty to meet and confer with employee representatives prior to an alteration of conditions of employment is clearly set

forth in the law; it has been reiterated on many occasions in decisions of this Commission; and was well known by the County administration. The fact that an anticipated work stoppage would be illegal did not waive that basic requirement of law and sound employment practice. Consultation with duly authorized employee representatives might have helped localize responsibility, might have resulted in alternative procedures, or might have led to other measures to minimize the harm of a work stoppage. The benefits of collective consideration of problems by management and organized employee representatives should need no further clarification at this late date. The legal mandate for such joint consultation was ignored in this instance, and that must be declared an unfair employee relations practice.

In determining the appropriate remedy for the situation, the usual corrective principles of rescinding the unilateral action and restoring the parties to their former positions should be applied with some attention to the special circumstances of this case. The changed methods of dealing with sick leave, improperly introduced, can and should be rescinded. To the extent possible, all persons affected should be restored to the rights they would have enjoyed were it not for the unilateral action. That, however, poses some questions of concern. The employees who would have received sick leave under prior practices were not differentiated from those who might have been deemed fabricating an excuse and denied sick leave. Had the record furnished an

evidentiary basis for making the separation, the Commission would confine its order of restitution to those employees who would have qualified for sick leave under earlier procedures. Employees who engaged in unlawful absence from work have no claim to compensation, but the failure to identify those may not be permitted to deny proper restitution to those entitled to it.

The catchall, indiscriminate presumption of guilt penalized the innocent along with the guilty. The normal rate of absenteeism for the 50,000 employees represented was as high as six per cent, which would amount to 3,000 bona fide absentees on an average day. Fewer than that number were granted sick leave. Of those remaining, many would normally have had valid excuses.

To deny them their rights as a punitive measure against unlawful "sick-outs" would be a grave injustice and place a premium upon unilateral action in disregard of the law.

There are inherent difficulties in seeking to do justice on the basis of individual merit, especially when there are a few thousand individuals involved. The difficulties are compounded in this case by the passage of time, the unavailability of essential witnesses and the dimming of recollections. It is not feasible at this date to seek further evidence with respect to each individual. It is unavoidable that restitution to the innocent be fashioned broadly.

Moreover, the Commission is not called upon to determine the

extent to which an unfair employee relations practice may have affected each and every employee. In dealing with unfair employee relations practices, we are empowered to take such action "as the Commission deems necessary to effectuate the policies of this Ordinance." (Section 7[g][13] of the Los Angeles County Employee Relations Ordinance.) To that end, we find that the recommendation of the hearing officer granting relief to the entire class of grievants, not only protects those who have been innocent of wrongdoing but also will serve as a deterrent to further infraction of the Employee Relations Ordinance.

Should similar situations arise in the future, prior negotiations with certified employee representatives might provide techniques for verifying legitimate illness or other grounds for absence, as called for by law, and thus may diminish the problem of proof presented by this case or eliminate entirely the issue of an unfair employee relations practice.

Order

Under the foregoing circumstances, the Commission orders:

1. That the letter of the Chief Administrative Officer of the County to all department and district heads on sick leave, dated May 19, 1977, be deemed void and be rescinded; and

2. That the County reimburse each employee, who filed a grievance claiming sick pay for absences in May and June, 1977

and who was denied payment because of the presumption of unlawful participation in a concerted withholding of services, the amount of pay lost by him or her.

Dated at Los Angeles, California, this 25th day of July, 1979.

David Ziskind, Chairman

Lloyd H. Bailer, Commissioner

Commissioner William Levin did not participate in this decision because of illness.

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