LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of

COALITION OF COUNTY FEDERATION OF LABOR UNIONS INCLUDING SEIU LOCALS 660, 535, 434, AFSCME COUNCIL 36, IUOE LOCAL 501, CAPE AND LOS ANGELES COUNTY FIREFIGHTERS LOCAL 1014, AFL-CIO,	UFC 60.7
Charging Party,	REPORT OF THE HEARING OFFICER
and	
FRANK H. SAWYER, DEPARTMENT OF PERSONNEL,	
Respondent.	

I. BACKGROUND

On July 19, 1979 the Coalition filed an unfair employee relations charge against the Respondent, alleging a violation of Section 12(a) (3) of the Employee Relations Ordinance of the County of Los Angeles. The Employee Relations Commission, during its regular meeting on August 24, 1979, set the matter for hearing before Sara Adler. The evidentiary hearings on the matter were held on February 27, 1980, March 27, 1980 and April 4, 1980 in the hearing room of the Employee Relations Commission. Briefs in the matter were submitted and received by the Hearing Officer on June 19, 1980.

II: APPEARANCES

For the County:

Richard K. Check, Chief
Safety, Rehabilitation &
Cost Control Division
Department of Personnel

Frank H. Sawyer
Employee Relations Administrator
Department of Personnel

222 North Grand Avenue
Los Angeles, Ca. 90012

For the Coalition:

Leo Geffner, Esq.
Geffner & Satzman
3055 Wilshire Blvd.
Suite 900
Los Angeles, Ca. 90010

For Los Angeles County
Firefighters, Local 1014:

Lester G. Ostrov, Esq.
Fogel, Julber, Reinhardt,
Rothschild & Feldman
5900 Wilshire Blvd.,
Suite 2600
Los Angeles, Ca. 90036

III. ISSUES

The Issues, as agreed upon between the parties at the start of the hearing, are:

1. Was the subject matter (Return-to-Work Program) negotiable?

2. Did the County refuse to negotiate that Program?

3. Did the County have the right to implement the Program?

IV. RELEVANT PROVISIONS OF THE ORDINANCE

Section 5. COUNTY RIGHTS.

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

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

Section 6. SCOPE OF CONSULTATION AND NEGOTIATION

(a) All matters affecting employee relations, including those that are not subject to negotiations, are subject to consultation between management representatives and the duly authorized representatives of affected employee organizations. Every reasonable effort shall be made to have such consultation prior to effecting basic changes in any rule or procedure affecting employee relations.

(b) The scope of negotiation between management representatives and the representatives of certified employee organizations includes wages, hours, and other terms and conditions of employment within the employee representation unit.

(c) Negotiations shall not be required on any subject preempted by Federal or State law, or by County Charter, nor shall negotiation be required on Employee or Employer Rights as defined in Sections 4 and 5 above. Proposed amendments to this Ordinance are excluded from the scope of negotiation.

Section 3. DEFINITIONS

(d) "Consult" or "Confer" means to communicate verbally or in writing for the purpose of presenting and obtaining views or advising of intended actions.

(o) "Negotiation" means performance by duly authorized management representatives and duly authorized representatives of a certified employee organization of their mutual obligation to meet at reasonable times and to confer in good faith with respect to wages, hours, and other terms and conditions of employment, and includes the mutual obligation to execute a written document incorporating any agreement reached. This obligation does not compel either party to agree to a proposal or to make a concession. Agreements concerning any matters within the exclusive jurisdiction of the Board of Supervisors or concerning any matters not otherwise delegated by the Board shall become binding when

executed by said affected management representatives and affected certified employee organizations.

Section 12. UNFAIR EMPLOYEE RELATIONS PRACTICES

(a) It shall be an unfair employee relations practice for the County:

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

V. CONTENTIONS OF THE PARTIES

1. CONTENTIONS OF CHARGING PARTY

The Charging Party contends that:

1. The County through its officers refuses to negotiate, as defined by Section 3(o) of the Ordinance, issues affecting the wages, hours and other conditions of employment of County employees returning to service after prolonged absence or job-related injury.
2. The County through its officers has unilaterally implemented a Return-to-Work Program effective July 1, 1979, in violation of Section 6(b) of the Ordinance.
3. That any Program which may result in layoff, transfer, change in salary and hours and subsequent reduction in employee benefits, status and security are issues

vital to the wages, hours and other terms and conditions of employment within the scope of negotiations as defined in Section 6(b).

4. Failure to negotiate these matters and all other matters relating to an employee's return to work after prolonged absence or injury is contrary to the good faith bargaining mandate in Section 3(o) and is an Unfair Labor Practice as defined in Section 12(a) (3) of the Employee Relations Ordinance of the County of Los Angeles. (Basis for Charge as stated by Coalition in Declaration filed with Employee Relations Commission August 19, 1979)

2. CONTENTIONS OF RESPONDENT

The Respondent contends that:

1. The subject matter (The Return-to-Work Program) falls within the rights of the County as those rights are defined in Section 5, County Rights of the Employee Relations Ordinance.

2. The Charging Party having been given adequate notice of, opportunity to consult about and information concerning the Program failed to raise any questions of substance which would demonstrate or identify any practical consequences flowing from the Program that would affect hours, wages and other conditions of employment.

3. The County did fulfill its obligations to negotiate as set forth in Sections 3(o) and 6(a) of the Employee Relations Ordinance.

4. The Charging Party was not concerned with negotiating the practical consequences of the Program in respect to the negotiable matters of hours, wages and other conditions of employment, but attempted to use the negotiations process to unilaterally impose a defacto restraining order upon the County.

VI. STATEMENT OF FACTS

The facts in this matter are not in dispute. They are assembled below in chronological order as they relate to the contacts between the parties relative to the Return-to-Work (hereinafter sometimes referred to as the R-T-W) Program.

1. By letter dated April 24, 1979 from Frank H. Sawyer to Mr. Joe Wetzler, Chairman, Coalition of County Unions, the Coalition was notified of the County's intention to implement the R-T-W Program. The letter reads, in pertinent part, "Enclosed for your information is a Memorandum dated February 20, 1979 regarding a County-wide RETURN-TO-WORK Program. It is our intention to implement this in the near future. If the Coalition or any constituent body wishes to meet on

the subject per the paragraph (7) reference, please advise." Enclosed was a copy of a Memorandum dated February 20, 1979 from Harry Hufford, CAO/Director of Personnel to Department Head Advisory Committee which briefly states the purpose of the R-T-W Program and generally outlines its basic elements. The reference to paragraph (7) is apparently to the statement, "Our next step will be for our Employee Relations people to consult with employee organizations regarding these proposals." Also enclosed was what might be described as a major topic outline of the proposed Program.

2. The Coalition requested meetings regarding R-T-W Program. The first such meeting was held on May 3, 1979 which was informational for the most part, although the Coalition expressed a number of concerns relating to aspects of the proposed R-T-W Program. The Coalition requested a second meeting which was held on May 22, 1979 with the Unions' attorneys in attendance. The attorneys expressed some serious concerns regarding the legality of various aspects of the proposal and were asked by the County to put their concerns in writing. At this meeting, the Coalition demanded to negotiate the R-T-W Program and demanded that the

Program not be implemented until after negotiations were completed. Mr. Sawyer stated that he was not willing to negotiate about the R-T-W Program but that he would confer about the practical consequences of the Program on wages, hours and other terms and conditions of employment. The Coalition did not offer any counterproposals at the May 22nd meeting.

3. By letter dated June 5, 1979 to Frank Sawyer from Larry Dolson, on behalf of the Coalition, the Coalition stated that it had many concerns regarding many aspects of the R-T-W Program and concluded, "Therefore, we believe that this entire subject matter is a subject for negotiations and its appropriate form would be at the Fringe Benefits negotiating table." There was no direct County response to this letter.

4. (The Coalition's Fringe Benefits Proposal was submitted to the County on or about April 9, 1979.) The County's Fringe Benefits Counter-Proposal was submitted to the Coalition on or about July 7,1979 and contain the following: "RTW PROGRAM - Implementation July 1, 1979". Following the first Fringe Benefits meeting the County offered the Coalition its basic position, dated July 16, 1979, which included under the heading

"OTHER ISSUES", "1. RTW Program implementation to continue. We have met our obligation to consult or confer as defined in ERO Section 3(d), and will continue to do so as the program develops."

5. The Coalition filed an Unfair Employee Relations charge on July 19,1979.

6. Training began for R-T-W coordinators in September, 1979. The Coalition had been invited to attend, but it declined to attend. The Coalition received the training manual for R-T-W coordinators in September.

7. On or about November 1, 1979 Firefighters Local 1014 President, Mr. Alfred Whitehead, received a letter regarding that Department's Proposed R-T-W Program, which stated, in pertinent part, "As you probably already know, a County-wide effort relative to Return-to-Work Programs has been encouraged by the County Administration. As a mater of fact, there are certain County departments that implemented such a Program some time ago. Enclosed you will find a package that explains the Program that our Department plans on implementing. Should there by any desire on your part to discuss this matter, please contact my office at your ealiest convenience."

8. On or about November 8, 1979, by letter from Barry Satzman, attorney for the Coalition, to Milton J. Litvin,

Office of the County Counsel, the Coalition commented on some of the matters contained in the County R-T-W training manual which it believed are or might be illegal and/or unethical.

9. By letter dated November 28, 1979 Local 1014 notified Joseph Rotella, Jr., Deputy Fire Chief, that the Union believed that the subject matter of the R-T-W Program was a subject of negotiation and was probably covered by the instant unfair charge.

10. In response was a letter dated December 17, 1979 from Chief Rotella to Larry Simcoe, 1st Vice President of Local 1014, which stated, in pertinent part, "We have been advised that there does not appear to be any need for negotiation between the Department and Local 1014 regarding this matter. In addition, our Program concurs with the recommendation for a County-wide effort."

11. In a responding letter, dated January 7, 1980, Mr. Simcoe indicated his continued belief that the Program represents a change in the terms and conditions of employment and that, as such, it is negotiable. Further, he concluded that the Fire Department Program implementation brings it under the instant Unfair Charge. The

Fire Department R-T-W Program was implemented Effective February 1, 1980.

VII. DISCUSSION

1. R-T-W Program

The first issue to be determined is whether or not significant elements of the R-T-W Program are proper subjects of negotiation. The Los Angeles County Employee Relations Ordinance (hereinafter "ERO") provides in Section 6(b) that:

> "The scope of negotiation between management representatives and the representatives of certified employee organizations includes wages, hours and other terms and conditions of employment within the employee representation unit."

The Courts of California have given a broad application on what subjects constitute "conditions of employment" under California Government Code Sections 3500 et seq., (the Myers-Millias-Brown Act (hereinafter "MMB")) and local rules and regulations. In International Association of Fire Fighters Union vs. City of Pleasanton, 56 Cal. App. 3d 959, the Court of Appeals held that the MMB must be interpreted in a broad and liberal manner and consistent with the federal law regarding what matters are within the scope of negotiations and as defined as "conditions of employment" (see specifically

pages 967-968). In the Pleasanton case, the Court held that examinations, promotions, applicability of merit pay increases to probationary employees, and classifications were within the scope of negotiations.

The California Supreme Court, in Fire Fighters Union vs. City of Vallejo, 12 Cal. 3d 608 (1974), reviewed a number of subject matters that were in dispute between the City of Vallejo and the Fire Fighters Union, and held that virtually all such subject matters could be considered as "conditions of employment" and therefore subject to negotiations under the MMB.

In reaching its conclusions, the California Supreme Court held that the federal law must be reviewed as guidelines in order to interpret the provisions of the MMB. In this regard the Supreme Court held that the schedule of hours, vacancies, promotions, manning procedures, and personnel reduction were subjects that involved the wages, hours or working conditions of fire fighters and therefore were negotiable subjects.

In the recent case of Los Angeles County Civil Service Commission vs. Superior Court, 23 Cal. 3d 55 (1978), the Supreme Court reaffirmed its prior decision in the City of Vallejo case, and again determined that Section 3505 of MMB extends to all matters "in regarding wages, hours, and

other terms and conditions of employment," and held that rules delineating how layoffs will be made, clearly fall within the "conditions of employment" term of the law.

The R-T-W Program as outlined in the enclosure to Mr. Wetzel and as reflected in the R-T-W Coordinators' Training Manual reflects that such items are involved as whether an employee should be returned to work, what work the employee should be returned to, whether or not the employee requires retraining, how the employee is to be paid while on leave from the County and what medical information the County shall secure. These matters all may have additional ramifications such as the employee being assigned to a position with a lesser chance of advancement or of less assigned overtime work. There are a significant number of matters contained within the R-T-W Program which effect wages, hours and other terms and conditions of employment as that clause has been interpreted by the California Supreme Court. There are other elements which may not effect wages, hours and other terms and conditions of employment, but they appear to be so inextricably interwoven with those which are as to render them necessarily involved with any negotiations on the subject of the R-T-W Program.

2. Management Rights (ERO Section 5)

The County has argued in its brief, that prior to the

implementation of the R-T-W Program each County Department had its own, mostly informal, R-T-W procedure and that all the County has done is to,"'...exercise control...over its organization and operations' by initiating a County-wide Return-to-Work Program governed by uniform procedures to be followed by all departments. Further, the County elected to exercise its right, in the form of the Return-to-Work Program, to direct its employees and to exercise discretion and control over its operations in respect to the methods, means and personnel by which its operations were to be conducted in returning an employee to work who had suffered either an industrial or non-industrial illness or injury."

The County's position in this case is exactly the position taken by the County in 1973, where the County refused to negotiate case load issues for eligibility workers with SEIU, Locals 660 and 535. The County contended that although case loads are clearly a condition of employment, the determination of the amount of work a person is required to perform is within Section 5, County Rights of the ERO, and therefore the County was not obligated to negotiate with the Unions on the subject. The Employee Relations Commission held that the County was obligated under the terms of the ERO to negotiate case loads for eligibility workers with the Unions. The County refused to comply with the Order of ERCOM, and the

Unions obtained a Writ of Mandate from the Superior Court. On appeal, the Court of Appeals in Los Angeles County Employees Association, Local 660 vs. County of Los Angeles, 33 Cal. App. 3d 1 (1973), (Supreme Court hearing denied, August 16, 1973), held that case-loads for eligibility workers were clearly a condition of employment and that the County had an obligation to negotiate on such items. The Court of Appeals held that under the MMB and the ERO, the County was obligated to negotiate, and that the County Rights Section 5 did not relieve the County of its obligation to negotiate on conditions of employment. The Court held that although the County has the exclusive right to make County management decisions, and such rights were preserved in Section 5 of the ERO, the County was still obligated to engage in negotiations on subjects that are conditions of employment; and by requiring the County to negotiate, the County was not deprived of its right to make management decisions, and that such management rights were totally consistent with the obligation to negotiate with the Unions.

The Local 660 vs. County of Los Angeles case was expressly cited and upheld by the California Supreme Court in the City of Vallejo case.

3. County Negotiations

It is amply clear from the record, and from the County's closing argument, that at all times the County believed that its only obligation was "consultation" with the Coalition prior to implementation of the R-T-W Program. Mr. Sawyer testified that at the second meeting with the Coalition, he offered the Coalition the opportunity to raise questions regarding the practical consequences on wages, hours and working conditions - which tracks the language of the concluding phrase of the Management Rights Section, but is by no means the same as the negotiations required by ERO Section 6(b). What the County did, in all respects, meets the definition of "consult" or "confer" but to "communicate verbally or in writing for the purpose of presenting and obtaining views or advising of intended actions", the definition contained in ERO Section 3(d), is not the same as negotiation - and that difference is recognized in the ERO with the separate definition contained in 3 (o). Mr. Sawyer specifically stated that the County, despite the concerns expressed by attorneys for the Coalition and the Coalition's demand to negotiate prior to the implementation of the Program, would not negotiate three items (1) application of

law, (2) decision to create the Program and (3) the decision to implement the Program. Mr. Sawyer further testified that he refused to hold up implementation of the Program, as in his opinion if the County delayed implemantation and commenced negotiations with the Unions, then there never would be any program. In response to the Coalition's demand that the R-T-W Program be placed on the Fringe Benefits table, the County simply indicated the date of implementation and a refusal to negotiate. In response to the Firefighters Local 1014 demand to negotiate, Chief Rotella stated that he had been told, presumably by County Management, that negotiation was unnecessary.

At no point in time has the County been willing to negotiate those aspects of the R-T-W Program which effect wages, hours and other terms and conditions of employment.

4. The Rehabilitation Act

The Rehabilitation Act was raised by the County, but neither the Act nor any of its requirements were placed before the Hearing Officer. It appears that there are some rehabilitative services which the County is required to provide under a plan of its own creation as long as the plan meets certain statutory guidelines. The County has not argued that this Act relieved it of the obligation to negotiate. The matter

is raised by the Hearing Officer out of concern that the proposed remedy place the County out of compliance - a question the Commission might wish to ask the parties to clarify.

5. Conclusion

After having examined the evidence and weighed the testimony and arguments presented by the parties, the Hearing Officer concludes that many elements of the Return-to-Work Program effect the wages, hours and terms and conditions of employment of the members represented by the Coalition and that the County failed and refused to negotiate as required by the Employee Relations Ordinance Section 6(b). Therefore, the County did not have the right to implement the Program and, by doing so, the County committed an unfair employment practice as defined in Section 12(a) (3) of the Employee Relations Ordinance.

RECOMMENDATION

The duly appointed Hearing Officer recommends that the Employee Relations Commission approve and adopt the following order:

> "The County violated the Employee Relations Ordinance by implementing the Return-to-Work Program on and after July 1, 1979 without negotiating with the Unions; that the County shall cease and desist from implementing any

portion of the program until good faith negotiations have been held with the Unions; and that all employees who have been adversely effected by the Program have their Return-to-Work placements re-evaluated in accordance with the Return-to-Work procedures followed by their respective departments prior to the implementation of the Program.

DATED: July 8, 1980

Respectfully submitted,

Sara Adler

SARA ADLER, Hearing Officer