

Los Angeles County  
Employee Relations Commission

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EMPLOYEE RELATIONS COMM.  
COUNTY OF LOS ANGELES

AUG 27 11 41 AM '81

In the Matter	)	
	)	
Los Angeles County Employees	)	
	)	
Union, Local 434,	)	
	)	
Charging Party,	)	
	)	UFC 7.12
vs.	)	
	)	
Sheriff's Department,	)	
	)	
Criminalistics Laboratory,	)	
	)	
Respondent	)	

Hearings held May 27, 1981 and June 3, 1981  
at 374A and 374 Hall of Administration  
500 West Temple Street  
Los Angeles, California  
before  
Paul W. Rothschild  
Hearing Officer

Briefs and Ordinance received complete August 8, 1981

Appearances for Charging Party:

Michael Posner, Esq.	Chief Counsel representing
	Geffner and Satzman
Daniel Nathan	President, Los Angeles
	Criminalist Association
Dewayne Beakner	Criminalist II
Walter Miller	Assistant General
	Manager, Local 434
Tom McCleary	Criminalist II

Appearances for the Respondent:

Kenneth Miller	Chief Counsel
Barry Fisher	Chief Criminalist, Director
	of the Laboratory
Gary Siglar	Supervising Criminalist
Elaine Minnis	Department IV Employee
	Relations
Donald A. Denison	Commander of the Sheriff's
	Department, Scientific
	Services Bureau, Technical
	Services Division
Christopher Chadwich	Personnel Analyst III

## ISSUES

The issues are clearly stated in Respondent Counsel's Closing Brief as follows:

### B. Issues

Was the County obligated to negotiate a change in work schedule with Los Angeles County Employees Union, Local 434 (hereinafter Union) under the terms of the 1979-1981 Memorandum of Understanding (hereinafter MOU)?

Were the grievances filed in accordance with the grievance procedure in the 1979-1981 MOU?

Did the County intimidate, threaten and coerce an affected employee for exercising his rights under the 1979-1981 MOU and the Employee Relations Ordinance?

## FACTUAL BACKGROUND

The Statement of Facts in Respondent Counsel's brief are as follows:

### C. Statement of Facts

The Sheriff's Criminalistics Laboratory consists of five sections with five Criminalist III's and approximately twenty-six Criminalist II's assigned to the various sections. In addition, there are two Supervising Criminalists, a Chief Criminalist and a Sheriff's Captain. The Captain is responsible for the overall management of the Laboratory. (TR. Vol. 2, pp. 9;45.)

On August 11, 1978 eleven of the twelve Criminalists assigned to the Narcotics Section voluntarily changed their work schedule from eight-hours a day five days per week (hereinafter 8-5) to ten-hours a day four days per week (hereinafter 10-4). (TR. Vol. 2, pp. 9-10.)

In June, 1980, Management announced the termination of the 10-4 schedule effective August 4, 1980 (County Exhibit 1). However, following a meeting with the affected employees, Captain Denison agreed to continue the 10-4 schedule on a temporary basis. (TR. Vol. 2, p. 11).

On December 10, 1980, Management again announced the termination of the 10-4 schedule effective January 5, 1981 (Union Exhibit 4). At the time, seven employees were on the 10-

4 schedule (Tr. Vol. 2, p. 45), and five of the seven employees filed formal written grievances with the Criminalist III assigned to the Narcotics Section (Union Exhibit I).

During a conversation with Dan Nathan on December 24, 1978, Barry Fisher, a Criminalist, allegedly made reference to the Criminalists pursuing the 10-4 schedule and Management's support of a pending re-classification study which Nathan interpreted as a threat. (Tr. Vol. 1, pp. 23-28.)

RELEVANT PROVISIONS OF EMPLOYEE RELATIONS ORDINANCE  
OF THE COUNTY OF LOS ANGELES  
ORDINANCE 9646 AS AMENDED

Section 2 (r)

"Supervisory Employee" means any employee, having authority to exercise independent judgment in the interest of the County, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or having the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of the independent judgment.

Section 12. UNFAIR EMPLOYEE RELATIONS PRACTICES.

(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.

RELEVANT PROVISIONS OF THE MEMORANDUM  
OF UNDERSTANDING DATED SEPTEMBER 13, 1979 (MOU)

Article 26, Section B

...Where Management makes any such change for reasons other than the requirements of law or an emergency, where such change would significantly affect 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 Local 434, within the time limits provided, requests to negotiate with

Management, the parties shall expeditiously undertake negotiations regarding the effect the change would have on the wages, hours and other terms and conditions of employment of the employees in the Unit.

Article 26, Section D

Except as specifically provided herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its right, and agrees that the other shall not be required, to negotiate with respect to any matter covered herein or with respect to any other matters within the scope of negotiations during the term of this Memorandum of Understanding.

RELEVANT PROVISIONS OF THE SALARY ORDINANCE  
(COUNTY EXHIBIT 3)

ARTICLE 7

WORKING HOURS, WORKING WEEK AND HOLIDAYS

Section 110. Working Hours

(1) 8-hour day. Eight hours shall constitute a day's work for all persons employed by the County unless otherwise provided by the department rules adopted by the Board, by specific orders of the Board, or by this Ordinance.

(2) Rest Periods. All persons in the County service who are doing continuous, routine, repetitive tasks, other than mechanics and those engaged in manual labor, shall be entitled to mid-morning and mid-afternoon rest periods of 15 minutes each, respectively.

Section 111. Working Week

(1) 5-Day Week. All persons employed by the County shall work on a 5-day per week basis, except as follows:

(a) Where the Chief Administrative Officer finds that a 5-day work week is impracticable, he may authorize work on a 40-hour week basis in more or less than 5 days. Such change in the number of work days shall not alter the basis for nor entitlement to receive the same rights and privileges as provided all 5-day, 40-hour employees.

## POSITION OF THE PARTIES

The position of the Charging Party according to Respondent Counsel's brief is as follows:

### D. CONTENTIONS OF CHARGING PARTY

The Union contends that:

- The County was obligated to negotiate the change in work schedule;
- The decision to terminate the 10-4 was arbitrary and retaliatory;
- The County agreed to reestablish the 10-4 schedule as a result of the written grievances; and
- The County threatened an employee for exercising his rights under the MOU and Employee Relations Ordinance.

This is clarified and supported by Charging Party Counsel's brief entitled "Conclusion" which reads as follows:

It is respectfully submitted that Respondent violated Section 12(A)(1) and (3) of the Employee Relations Ordinance for the reasons set forth above, and an appropriate remedy would be to order the Department to reinstate the 4/10 schedule, as such had been the mutual agreement of the parties following a written grievance, and to issue a cease and desist order to restrain the Department from intimidating, threatening, or coercing its employees for asserting their rights pursuant to their Collective Bargaining Agreement and the Ordinance. In addition, those Grievants that were obligated to report to work on the fifth work day of the week should receive premium pay for all hours worked on said days.

The position of the Respondent according to Respondent Counsel's brief is as follows:

### E. CONTENTIONS OF THE RESPONDENT

The County contends that:

- It has the exclusive right under the provisions of the MOU to unilaterally change the work schedule;
- The decision to terminate the 10-4 schedule was made prior to December 9, 1980 and was based solely on operational needs;

-- The written grievances are defective because they were not filed in accordance with the grievance procedure; and  
-- Reclassification matters could not be used to threaten an employee because such matters are strictly controlled by Civil Rules and not departmental management.

#### OPINION

Traditionally, unfair labor practices are determined by viewing specific acts or conduct within a framework or background of acts, attitudes and prior conduct the sum of which constituted an unfair labor practice. Seldom are these acts so flagrant and apparent as to justify a simple and direct condemnation on their own.

Evaluating the arguments first of Counsel for the County as made in his post-hearing brief, it is his initial contention that the County "has the exclusive right to unilaterally change the work schedule, except as limited by the terms of the agreement."

He argues further that this "is a long-standing and commonly applied standard in labor arbitration matters, and cites appropriate authority therefore.

This is a classic statement of the management reserved rights theory which has long since been balanced by labor's reserved rights which hold that both parties to an agreement are entitled to be protected from unilateral changes in wages, hours and working conditions during the life of the agreement. Certainly it would seem to be beyond question that this would apply to arbitrary and unnecessary unilateral changes.

Counsel argues further that "Nowhere in the MOU is there any provision limiting the County's right to unilaterally change the

work schedule", and cites the zipper clause of Article 26 Section D in support thereof. He cites further appropriate arbitral authority in support of this proposition.

This Hearing Officer would in general agree with the proposition that it is managements prerogative to change the work schedule where it is based upon sound management needs if the employees were given sufficient notice.

Counsel continues his argument by stating, "The evidence shows that the County met it's obligation under the terms of the MOU. The affected employees were given timely notice (Union Exhibit 4) and their representatives were consulted prior to the change in work schedule (County Exhibit 2)".

This ignores the fact and the evidence that, in the words of Union Counsel, "the grievances submitted regarding the unilateral change of the 4/10 work week to a 5/8 work week were resolved by Francis Tierney, the immediate supervisor of the Grievants, when he agreed to the continuation of the 4/10 work schedule.

However, Captain Denison unilaterally determined that even though the grievance had been resolved, he would nonetheless carry on as if the above sequence of events was nonexistent. In addition thereto, the Department has attempted to suggest that Mr. Tierney was not a supervisor and therefore did not have authority to adjust disputes."

County Counsel argues that a criminalist III is a leadperson (County Exhibit 4a) and therefore not a supervisor. The evidence indicates overwhelmingly that Tierney, regardless of official designation or classification, was functioning well within the

definition of supervisor and that all parties were aware of it. It is the practical function of an individual not his official classification or it's description which determines the supervisory status in a particular situation. This is especially true where good faith is a primary issue.

As Union Counsel concludes, "Therefore, when Tierney resolved the grievances by agreeing to the continuation of the 4/10 schedule, he was acting as a supervisor as defined in the Ordinance. The Hearing Officer so finds and rules.

The next point addressed by County Counsel is that the change in work schedule was based on the operational needs of the laboratory. He argues further that,

The tentative agenda Captain Denison provided Dan Nathan (Union Exhibit 7) clearly shows that the narcotics field testing program and the expansion of the Physical and Serology Sections were items he intended to address. These items are directly related to his decision to terminate the 10-4 schedule.  
(TR. VOL.2, p. 14)

Union Counsel's reply to this is as follows:

The reason for altering the 4/10 schedule to the 5/8 schedule, according to Captain Denison was because it was his perception that the initiation of the 4/10 schedule was in response to a gas crisis, and the restoration of the 5/8 schedule at the present time would be more effective. He stated that it was not as a retaliation for being kept waiting and having been denied the opportunity to speak at the Criminalists Association meeting when he thought he should have.

Captain Denison dismissed as coincidence the timing of his abolishment of the 4/10 schedule with respect to the date of the proposed Criminalists Association meeting that he was to speak at. However, Captain Denison's recollection and credibility leave something to be desired, inasmuch as it was his testimony



that one of the items he intended to discuss with the criminalists at the speaking engagement was the abolishment of the 4/10 schedule. However, Union Exhibit 7, which is a list of agenda items that Captain Denison handed to Dan Nathan regarding the proposed subjects he was going to discuss, did not mention the abolishment of the 4/10 schedule at all.

In addition thereto, it should be noted that Captain Denison represented that the 4/10 schedule was instituted as a result of the energy crisis we were experiencing in 1978 and the shortage of gasoline at that time, whereas Union Exhibit 3 speaks to the contrary, indicating that following the fuel shortage of 1973, gasoline continued to be generally available throughout Southern California through early 1979.

Thus, the institution of the 4/10 schedule was not for the reason set forth by Captain Denison, but in reality, such had been instituted by management as a result of the high input of narcotic cases on Tuesdays, Wednesdays, and Thursdays, and with the new teletype (JDIC) system of reports, with more hours worked on those days, such could then effectively handle the large number of custody rush cases. In addition thereto, the evidence in the record demonstrated that under the 4/10 schedule, the system was more effective and efficient. In that regard, it should be noted that the reason proffered by Captain Denison for reverting back to the eight hour per day, five day per week schedule was to serve the expanding gunshot residue and rape programs by utilizing criminalists from the narcotics section.

However, in response to an inquiry posed by counsel for the Charging Party as to whether, following the abolishment of the 4/10 schedule, any of the Grievants had been assigned during regular work hours to work in the physical or serology area, Captain Denison did not know the answer, nor did he make any inquiry of Mr. Fisher as to determine as to whether such had occurred.

It is thus readily apparent that the excuse of eliminating the 4/10 schedule, to expand the number of hours that the criminalists could spend in the expanding gunshot residue and rape program, was in fact just an excuse to veil his retribution for not being called to speak before the Association when he believed he should have been.

It should be added at this point that County Counsel's argument that "the Union failed to show that the change 'significantly affected working conditions of a significantly large number of employees in the Unit' as required under Article 26 Section B (page 46) of the MOU" falls of its own weight when one considers that eleven of the twelve criminalists had changed to the 4/10 work schedule.

The final issue concerns the alleged threat conveyed to Dan Nathan by Barry Fisher, Chief Criminalist that he was informed that Management may withdraw its support of a pending reclassification study if the Criminalists pursued the 10/4 schedule. The simple fact remains that the County did not have Barry Fisher take the witness chair to deny this allegation. It remains un rebutted, and quoting Union Counsel,

It is important to note, as a preliminary point, that the latter portion of the unfair labor practice charge--that the Employer intimidated, threatened, and coerced Daniel Nathan when the Chief Criminalist, Barry Fisher, attempted to dissuade him from pursuing the grievance procedure relative to the 4/10 schedule by suggesting that Captain Denison might react like a child and seek retribution by forcing the employees to punch a clock, restrict their lunch breaks, and withdraw support for their reclassification--exists in the record rebutted, and constitutes a prima facie violation of Section 12 (a) (1) of the Ordinance.

It serves no constructive purpose to rehash the evidence further for the record is replete with evidences of bad faith, arbitrary action and inconsistent explanations.

The Hearing Officer finds that the County in this situation was guilty of unfair employee relations practices in violation of both Section 12(a) (1) and (3).

RECOMMENDED AWARD

The Department is ordered to reinstate and continue the 4/10 schedule in accordance with the agreement of the parties following the written grievances for all members of the Department that so desire it. Further, the Department shall cease and desist from conduct that is intimidating, threatening or coercive to it's employees in the exercise of their rights pursuant to the Collective Bargaining Agreement and the Ordinance.

Finally, the County shall pay to each employee unfairly changed to the 5/8 schedule the amount of the regular County mileage for the extra round trip per week occasioned thereby from the date of the change until the date of the reestablishment of the offer of the 4/10 schedule.

Date:

August 24, 1981

  
Paul W. Rothschild-Hearing Officer