

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of

LOS ANGELES COUNTY EMPLOYEES UNION
(LACEU), LOCAL 434, SEIU

Charging Party

v.

SHERIFF'S DEPARTMENT, CRIMINALISTICS
LABORATORY

Respondent

UFC 7.12

DECISION AND ORDER

The charge in this case was filed by the Los Angeles County Employees Union, Local 434, SEIU (Union or Charging Party) against the Los Angeles County Sheriff's Department, Criminalistics Laboratory (County or Respondent) alleging the County committed unfair employee relations practices within the meaning of Sections 12(a)(1) and 12(a)(3) of the Employee Relations Ordinance (Ordinance) by changing the work schedule without negotiating with the Charging Party; and by intimidating, threatening, and coercing one of the affected employees with the withdrawal of support in a reclassification study for filing grievances.

The matter was duly referred to Hearing Officer Paul W. Rothschild, who held hearings on May 27, 1981, and June 3, 1981. Both parties were present at the hearings and were afforded full opportunity to offer argument and evidence and to examine and cross-examine witnesses. Post-hearing briefs were filed. Hearing Officer Rothschild submitted a report that was received at the Commission's office on August 27, 1981. Exceptions to the Report were filed by the County with the Commission on September 22, 1981, with service of the Exceptions on the Charging Party. The Charging Party did not file a statement in opposition to these Exceptions.

The Charging Party raised four allegations with respect to the County. The first three were interrelated. These allegations were to the effect that: (1) the County was obligated to negotiate the change in work schedules; (2) the County's decision to terminate the ten hours a day, four days per week work schedule (4-10 schedule) was arbitrary and retaliatory; (3) the County agreed to reestablish the 4-10 schedule as a result of the written grievances, but withdrew this agreement, and (4) the County threatened, intimidated, and coerced an employee with the possible withdrawal of support in a pending reclassification matter for exercising his rights under the applicable Memorandum of Understanding and the Employee Relations Ordinance.

The Hearing Officer found that the allegations made by the Charging Party were supported by the weight of the evidence and that the ". . . record is replete with evidence of bad faith, arbitrary action and inconsistent explanations." Hearing Officer Rothschild concluded ". . . that the County in this situation was guilty of unfair employee relations practices in violation of both Section 12(a)(1) and (3)." As a remedy for these proven violations, the Hearing Officer made three recommendations: (1) that the Department be 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"; (2) that the Department cease and desist from conduct violative of the Employee Relations Ordinance, and (3) that the County pay certain mileage for the extra round trip per week occasioned by the Department's change in the 4-10 schedule.

The Commission has studied the entire record and concurs with the Hearing Officer's findings and recommendations that the County by intimidating, threatening, and coercing one of the affected employees with the withdrawal of support in a reclassification study for filing grievances violated Section 12(a)(1) of the Ordinance. However, the Commission does not adopt the Hearing Officer's conclusion that the County violated the Ordinance when it terminated the 4-10 schedule.

In deciding the matter of the work schedule change, the Commission deems it necessary to address two issues: (1) whether responses issued to grievances submitted by a number of Criminalists committed the County to a continuation of the 4-10 schedule and (2) whether the language of the Full Understanding, Modifications, Waiver article incorporated in the Criminalist Memorandum of Understanding (MOU) relieved the County of its obligation to negotiate concerning the work schedule change.

The record discloses that on December 10, 1980, Barry Fisher, Chief Criminalist, issued a memorandum announcing the termination, effective January 5, 1981, of the 4-10 schedule. In response to this memorandum, five of the affected Criminalists submitted written grievances to Francis Turney. Turney, a Criminalist III over the Narcotics Test Section, issued written responses to these grievances on December 16, 1980.

A dispute concerning Turney's supervisory status surfaced during the course of the hearings. The County contended that his position was that of a lead person and that he provided only technical supervision to the other Criminalists in the Narcotics Test Section. The Union asserted that Turney exercised both administrative and technical supervision and, hence, met the Ordinance definition of a supervisor. The Commission in this regard adopts the Hearing Officer's finding

that ". . . Tierney [sic], regardless of official designation or classification, was functioning well within the definition of supervisor and that all parties were aware of it."

Having reached this conclusion, we must determine whether Turney's responses to the Criminalists' grievances constituted a settlement favorable to their position that the 4-10 schedule remain in effect. Turney's responses to the grievances were uniform and read as follows: "I have no objection to the continuation of the 4-10 schedule." He did not state that the grievances were granted and/or that Chief Criminalist Fisher's memorandum announcing the termination of the 4-10 schedule was rescinded. In view of the manner in which Turney's responses were drafted and the fact that Fisher was both the author of the memorandum rescinding the 4-10 schedule and Turney's superior, we are compelled to conclude that Turney's responses constituted merely an expression of his personal opinion concerning the continuation of this schedule. Consequently, we do not find that the grievance responses issued by Criminalist III Turney, in and of themselves, prohibited the County from terminating the 4-10 schedule.

This Commission has held in a number of prior decisions that language contained in the Full Understanding, Modifications, Waiver articles of the applicable MOUs relieved the County of its obligation to negotiate on matters that were

within the scope of negotiations as defined by Section 6(b) of the Ordinance.^{1/} Those MOUs, as well as the Criminalist MOU, have as a common denominator language which provides, in pertinent part, that negotiations are not required unless ". . . such change would significantly affect working conditions of a significantly large number of employees in the unit" The Criminalist MOU is unique in that it does not enumerate criteria defining the term "significantly large number." Absent such definition, the Commission applied the usual and customary definition to this phrase; to wit, a majority of the employees in the unit, all the employees within a department in the unit, or all of the employees within a readily identifiable occupation such as Stenographer or Truck Driver.

The record establishes that the Criminalists bargaining unit is comprised of 3 classifications, totaling approximately 32 employees. At the time the 4-10 schedule was terminated, seven employees, five of whom were assigned to the Narcotics Test Section, were on this schedule. The number of employees affected by the change fails to meet any of the aforementioned definitions, nor do we believe that on its face 7 out of 32 bargaining unit employees constitute a "significantly large number" of employees as contemplated by the MOU. Thus, we are compelled to conclude that in

¹ See UFC 6.48, UFC 7.9, and UFC 60.11.

terminating the 4-10 schedule, the County did not violate Sections 12(a)(1) or 12(a)(3) of the Ordinance.

O R D E R

IT IS HEREBY ORDERED that the charge as filed by the Charging Party on January 2, 1981, be dismissed in part and sustained in part as follows:

1. The charge that the County violated Sections 12(a)(1) and 12(a)(3) of the Ordinance by terminating the 4-10 work schedule is dismissed;

2. The charge that the County violated Section 12(a)(1) of the Ordinance by intimidating, threatening, and coercing one of the affected employees for asserting his rights pursuant to the Ordinance is sustained; and

3. The County is directed to cease and desist from such conduct violative of the Employee Relations Ordinance.

DATED at Los Angeles, California, this 2nd day of April, 1982.



LLOYD H. BAILER, Chairman



JOSEPH F. GENTILE, Commissioner



FREDRIC N. RICHMAN, Commissioner