LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION

In the Matter of LOS ANGELES COUNTY EMPLOYEES UNION, LOCAL 434, SEIU, AFL-CIO, Charging Party, -vs- WARREN SAYERS, PERSONNEL DIRECTOR, RANCHO LOS AMIGOS HOSPITAL	CASE NO: UFC 7.9 HEARING OFFICERS REPORT AND RECOMMENDATIONS

BACKGROUND

On or about May 10, 1977, WARREN SAYERS, Personnel Director of Rancho Los Amigos Hospital issued to department heads and service chiefs two management information bulletins, one relating to the subject of distribution of paychecks to employees on industrial injury leave (UX-1) and the other relating to the pay status of employees on/or returning from an industrial leave (UX-2). The former bulletin (UX-1) indicated that employees on industrial leave would receive their paychecks either (1) in person at the desk of Gloria Wayne, the Regions Return to Work Coordinator, located in Rancho's Employee Health Clinic between 8:30 and 3:30 p.m., or (2) if unable to pick them up because of medical reasons Ms. Wayne would mail the paycheck to the employee and

arrange a personal visit in their home. The latter bulletin (UX-2), a two page document, in summary advised that it was the responsibility of the supervisor of an employee who is released by their physician to return to work from an industrial injury on a specific date to contact such employee if he does not return to work on that date. If the employee indicates an inability to return to work because of the industrial illness or injury, the employee was to be advised to furnish a statement countermanding his release at the earliest possible time and the employee would be considered away from work without pay until the supervisor received the new physicians statement. If the inability to return to work as indicated by the employee was not related to the industrial injury, then the employee was to be advised that until acceptable medical certification was received clearly indicating the inability to return to work was not related to the industrial injury, the employee was considered absent without pay. In each of the above instances Ms. Wayne was to be contacted and all certificates were to be forwarded to her so that time cards could be properly coded. The pay status bulletin indicated that if the time card was not properly coded, it may seriously impact on the County's settlement and may cause severe penalties to the County. The procedures set forth in both bulletins were to take effect immediately.

On or about October 13, 1977, Union Business Agent

Delores Gonzalez was in the office of Warren Sayers on business when she was advised by Mr. Sayers of some return to work procedures for Rancho Los Amigos Hospital about to be implemented and although she would receive a copy thereof in due course formally, he wanted her to have them before hand. A copy thereof was provided subsequent thereto under covering letter dated October 17, 1977 (UX-3). The covering letter indicated the return to work policies and procedures would be implemented in the very near future and if Ms. Gonzalez liked she could meet with Mr. Sayers to discuss the impact of these procedures for Rancho employees.

A review of the return to work procedures by Ms. Gonzalez, indicated that a portion of the procedures had already been implemented. Namely, those functions relating to the return to work coordinator as outlined in the bulletins of May 10, 1977 referred to above. Ms. Gonzalez so informed Mr. Sayers on October 21, 1977 (UX-4) and requested that the hospital return to the policies and practices that existed prior to May 10 in order that meaningful negotiations relative to the return to work procedures might be conducted in good faith. Such request was coupled with a demand to negotiate.

The County was willing to negotiate (RX-B) but unwilling to suspend any procedures which had been put into

effect and requested that the Union submit its proposals to be negotiated which the Union did not do (3/24/78 TR 36, 50; RX-B).

When the Union received no response to its letter of November 14, 1977 (UX-5) relating to negotiations on the conditions indicated in the letter of October 21, 1977 (UX-4), an unfair practice charge was filed alleging that in the past employees released by a treating physician to return to work from industrial injury or illness have been granted sick time, vacation time or compensatory time if they felt unable to return to work as a result of the industrial injury or illness. This practice it is alleged is covered by a (1) fringe benefits memorandum of understanding between the County and a Coalition of Unions, (2) Full Understanding, Modification and Waiver article in all local 434 MOUs, (3) the salary ordinance and (4) personnel manuals for various departments.

The Union contends that Mr. Sayers' bulletins of May 10, 1977, constitute a unilateral change of the practices and policies affecting employees at Rancho Los Amigos Hospital without affording Local 434 proper notice or an opportunity to negotiate the impact of the proposed change prior to implementation. Mr. Sayers' actions, therefore are in direct violation of Sections 4, 12(a)(1) and 12(a)(3) of the County Employee Relations Ordinance.

The County in responding to the unfair practice charge denied it had violated any of the provisions of the Ordinance. Hearings relating to the charge were held March 24, 1978, September 7, and December 5, 1978, and each party was afforded an opportunity to present both testimonial and documentary evidence relating to the issues. At the conclusion of the charging party's case, respondent moved to dismiss and the motion was denied. Post hearing briefs were received from both parties.

CONTENTION OF THE PARTIES

County Position:

It is the contention of the County of Los Angeles that there has been no change in the policies or procedures at Rancho Los Amigos Hospital which would require consultation or negotiation with the Union. All of the procedures implemented or contemplated at the facility in question are either within County Management's rights to operate and manage the health care facility or are rights exercisable by County Management under the Employee Relations Ordinance (ERO), Salary Ordinance or the various memoranda pertaining to this matter. The manner and method of distributing paychecks is clearly within management's discretion and not subject to consultation or negotiation with the Union. This is equally true of the initiation of home visits.

As for the claim that the policies relating to the use of sick leave in conjunction with industrial leaves have changed, the County under Section 250 of the Salary Ordinanace has always had the right to insist on receipt of medical certification prior to authorizing or paying sick leave. The Union has agreed pursuant to the Fringe Benefits MOU that requesting additional medical certification is a management right. The policies and procedures at issue are not required to be negotiated.

Even if the policies and procedures at issue here were negotiable, the parties have executed a mutual waiver which limits their duty to bargain during the term of the contract. Under the terms of the waiver there is no duty to bargain unless the subject matter is not covered in the MOU, that the proposed changes significantly affect the working conditions of a significantly large number of employees in the Union as the terms are defined in the MOU and the Union request to negotiate. The County contends that sick leave benefits are covered in the MOU and therefore subject to waiver. The distribution of paychecks and home visits are not covered in the MOU and would therefore be subject to the "significantly large number of employees in the unit" definition if not considered part of County rights.

The County contends that the Union fails on the evidence to bring itself within the various touchstones of the waiver provisions which would require the County to bargain on the proposed changes.

The unfair charges should be dismissed.

Union's Position:

The Union contends that its employee members at Rancho Los Amigos have been subjected to a campaign of anti-semitism, harassment, and intimidation by Gloria Wayne, a County representative, designed to coerce and dissuade employees from filing for Worker's Compensation benefits as a result of experiencing an industrial injury. The testimony of Union witness relative to remarks by Ms. Wayne that the law firm of Geffner & Satzman were "Jewish crooks", and "rip-off artists" who did not have the interest of their Worker's Compensation clients, who were in the main uneducated minorities foremost in their minds is unrefuted in the record.

According to the Union this intimidation and harassment stems from the implementation of a new fringe benefits policy relative to persons experiencing industrial accidents inconsistent with the past practice which permitted persons who felt they were unable to return to work as a result of an industrial injury to utilize their accumulated sick time. Such employees were also afforded the option of utilizing their vacation or compensatory time if they did not wish to use sick time for such purpose.

With the advent of Gloria Wayne the new policy was

established denying the employees described above the options of utilizing such time. The implementation of home visits by Gloria Wayne who was not a member of the Worker's Compensation Rehabilitation Downtown Office was designed to intimidate and harass employees in as much as prior home visits were made by the Worker's Compensation Rehabilitation Unit.

Further indication of the County's intent to harass and intimidate employees of Rancho Los Amigos Hospital is evidenced by the testimony of Union witness James Caudillo relative to his desire to return to his former position of Clinic Truck Driver and Ms. Wayne's assurance of an attempt to assist him in this endeavor if he obtained a medical examination at his own expense and be willing to return the money won in his workman's compensation litigation claim (3/24/78 TR. 80).

The Union contends that the County's refuge behind Section 1 of the Full Understanding, Modification and Waiver clause is misplaced and does not insulate them from being required to negotiate with the charging party on any matter that is covered within the MOU. Respondent ignores the reference in the modification and waiver clause which requires negotiation where management makes a significant change affecting a significantly large number of employees in the bargaining unit.

It is the Union's contention that the changes proposed affect all employees at Rancho Los Amigos Hospital which constitute a significantly large readily identifiable group of employees which requires the County to meaningfully negotiate in good faith with respect to policites or procedures which affect such employees.

Good faith bargaining requires that the County return to the status quo where a unilateral change in procedures has occurred. Such action on the part of the County is necessary as a demonstration of good faith. In the absence of such return to the status quo only surface bargaining could result.

Respondents have violated Sections 4, 12(a)(1) and 12 (a)(3) of the Ordinance and they should be ordered to cease and desist from intimidating, harassing and coercing employees with respect to the exercise of their rights guaranteed by the ordinance and further be ordered to restore the policies and procedures that were followed by Respondents prior to the changes reflected in Union Exhibits 1, 2 and 3 until such time they bargain in good faith with Local 434.

DISCUSSION AND CONCLUSIONS

It is unfortunate that the County has an employee as return to work coordinator a person who appears to lack

sensitivity and compassion for the rights of workers who have suffered industrial injuries and apparently resents their being represented by the counsel of their choice in prosecuting claims against the County of Los Angeles. Not withstanding the unexplained bias of Gloria Wayne toward the law firm of Geffner & Satzman which she has openly expressed to members and representatives of Union Local 434, it is incumbent upon the Union to establish that her conduct did in fact constitute intimidation, harassment and interference with the exercise of rights granted to employees under the Employee Relations Ordinance (ERO) of the County of Los Angeles.

Inasmuch as Section 4 of the ERO relates to the organizational and representation rights of employees and their right to participate or not as they see fit, it is incumbent upon the Union to show how these rights are being interfered with or restrained or how said employees are being intimidated or coerced in exercising said rights. The filing and procesution of industrial accident claims, although related to the employment relationship are not an exercise of County employees rights referred to in Section 4 which would entitled the employee to envoke the "representative" of his choice in connection with those claims against the County.

There is no evidence in the record notwithstanding

the statements and conduct of Ms. Wayne that any employee was being restrained, coerced or felt intimidated in exercising Section 4 rights. In the absence of said evidence there can be no finding of a violation of Section 4 of the ERO.

Although there is evidence that employees felt they were harassed by supervisors (Mr. Caudillo) and by Ms. Wayne according to the Union's business agent, and encouraged to discussed their claims with Ms. Wayne rather than the Union, there is no evidence that their rights were interfered or restrained under the ordinance. Accordingly there have been no unfair practices committed by the County and in particular Rancho Los Amigos Hospital within the meaning of Section 12 (a)(1) of the Ordinance.

There is no dispute relative to the failure of the parties to meet and bargain in good faith as to the proposed changes in the policies and procedures as Rancho Los Amigos Hospital. The Union demanded that the County meet to negotiate and requested a return to the status quo as evidence of the County's intent to bargain in good faith relative to the changes in procedures. The County requested the Union to submit proposals to facilitate negotiations. On the basis of the foregoing facts, without more, the County would be found to have committed an unfair practice for refusing to negotiate with the certified employee organization on negotiable matters. A request to return to the status quo

or to suspend the effect of the change made prior to negotiations is an appropriate request which would assure good faith negotiations rather than surface bargaining. The County's expression of a willingness to negotiate but refusing to suspend the effect of the new sick leave procedures nevertheless is a refusal to negotiate under Section 12(a)(3) of the Ordinance unless the proposed changes in policies and procedures are not negotiable (because of County rights) or are subject to the final modification and waiver provisions of the MOU which would preclude negotiations in this area. Sick leave benefits are mandatorily negotiable.

The County has taken the position that the implementation of a new sick leave policy with reference to industrial accidents is not negotiable in that they are merely adhering to the provisions of the Salary Ordinance (JX-9) Article 11, Section 250, which requires medical certification prior to authorization or payment of sick leave. Since the language of the Ordinance is permissive, it would afford County management discretion when to rely on and enforce this right when leaves occur. The County argues that in industrial accident situations where an employee is released to return to work and the employee says he can't return, County management has enforced the right to request medical certification to resolve conflicts relative to an employee's industrial accident status.

In view of the permissive and discretionary nature of

the language in the Salary Ordinance, the policies and procedures relative to the authorization and payment of sick leave may vary if supervisors, as is the case at Rancho Los Amigos Hospital, determine when to enforce this right (12/5/78 TR. 78, 79) when a request is made to use accumulated sick time. It would appear therefore that management is merely exercising a right which has been granted under the Salary Ordinance and the exercise of such right is not negotiable.

Although there may be no legal obligation to negotiate relative to the hospital's decision to insist on medical verification in industrial accident cases, their reluctance to discuss with the Union the impact of such decision to deny the use of accumulated sick leave and not discuss the affect of other options afforded pursuant to past practice and guaranteed under the Salary Ordinance (Article 11, Section 231) pending receipt of medical verification undercuts their express concern for the welfare and economic well being of their employees as testified to by top level hospital management. It is obvious that the hospital by some of its changes is only interested in minimizing its sick leave costs when they have been required to restore sick leave once a determination has been made that a released employee who didn't feel able to return to work was entitled to additional disability benefits. The past practice was at least consistent with concern and compassion

for the employee unfortunate enough to have suffered an industrial injury.

Since neither the use of sick leave for industrial injuries or home visits and the issuance and mailing of checks to incapacitated employees suffering industrial injuries are specifically covered in the MOU (JX-1) the County takes the position that the changes of May 10, 1978 are within the scope of county rights set forth in Section 5 of the ERO or in the alternative subject to the Full Understanding, Modification and Waiver provisions of the MOU and therefore there is no obligation to negotiate prior to the implementation of such changes unless the changes affect a "significantly large number" of employees in the Unit as the quoted terms are defined in the MOU.

"Significantly Large Number" is defined as (a) a majority of the employees in the unit, (b) all the employees within a department in the unit, or (c) all of the employees within a readily identifiable occupation such as stenographer or truck driver. It is quite apparent from the record that definitions (a) and (b) are not met since the changes were being implemented at Rancho Los Amigos Hospital, only one facility in the Department of Health Services, with no evidence of the number of persons at that facility in relation to the total number in the unit.

As to definition (c) there is a clinical truck driver

occupation identified in the record but no evidence that all the persons in said occupation are affected by the changes. The charging party argues and has presented testimony that all of the employees at Rancho Los Amigos are potentially affected because they could all suffer an industrial accident. However, in the absence of testimony that all members of an identifiable occupational group were affected by the change a finding that a "significantly large number" of employees have been affected is not possible.

Although there is testimony that all of the employees at Rancho Los Amigos Hospital are a "readily identifiable grou", it is apparent that the parties in agreeing to the "significantly large number" language did not intend that all employees as a "readily identifiable group" would satisfy the criteria which would trigger the obligation to negotiate changes. The criteria is quite specific and requires rather precise evidence to establish compliance therewith rather than generalities which are evident in the case at bar. The changes relate only to those employees returning to work from an industrial injury or illness and not to all employees returning to work from illness or injury which might otherwise satisfy the criteria.

To the extent that sick leave is covered in the Fringe Benefits MOU (JX-7) the parties have agreed relative to this subject and saived the right to negotiate changes under the Full Understanding, Modifications Waiver Clause (Article 16, JX-7). Testimony in the record by Warren

Sayers (September 7, 1978 and again on December 5, 1978) would tend to indicate that the change in distribution of paychecks and the establishment of home visits were all changes which took place within his areas of responsibility with the duties transferred from and to persons within the personnel function of Warren Sayers. This change would clearly fall within the purview of County rights.

In conclusion, it is determined that the parties are required to negotiate changes in sick leave policies and procedures inconsistent with past practice but they have agreed to waive the obligation to negotiate unless the criteria established in the Full Understanding Modifications, Waiver provisions of the MOU are met. The hearing officer for the reasons discussed finds that such criteria has not been met.

RECOMMENDED FINAL ORDER

Charge UFC 7.9 should be herewith dismissed with the parties being instructed to meet and consult relative to the impact of the proposed changes on employees in the unit at Rancho Los Amigos Hospital in accordance with Section 6 of the ERO.

Los Angeles, California, April 18, 1979.

George E. Marshall

GEORGE E. MARSHALL, JR.
Hearing Officer