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LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)
ADA E. CYRUS, CHARGING PARTY)
v.)
COUNTY OF LOS ANGELES, DEPARTMENT OF)
HEALTH SERVICES AND MENTAL HEALTH)
Respondent)

UFC 70.15

REPORT OF THE HEARING OFFICER

The Charging Party, Ada E. Cyrus, has alleged the commission of certain unfair employee relations practices by the Respondent and the Respondent has denied all the charges. Pursuant to a Notice of Hearing issued by the Executive Officer of the Employee Relations Commission a hearing was held on October 24, 1979 at which time the parties appeared and were afforded opportunity to offer evidence and arguments upon the issues. Appearing for Mrs. Cyrus was Samuel McNeal. Appearing for the Respondent was Orville Placial, Employee Relations Administer. Upon the filing of a written brief by the Respondent on February 7, 1980 the hearing was closed. The Charging Party waived her right to file a brief. The undersigned, having duly considered all the evidence and the arguments offered by the parties, submits this Report in accordance with Rule 6.10 of the Commissions Rules and Regulations.

The Issues:

The charge alleges that on April 30, 1979 Mrs. Cyrus filed a grievance to which she received no response and, upon appeal, she was advised that the grievance was denied as being untimely. It further alleges that the Respondent's reply was made unilaterally and without giving Mrs. Cyrus an opportunity to respond, thus violating Section 4 of the Employee Relations Ordinance.

The statement of the issues agreed upon by the parties is as follows:

1. Was the Department of Health Services and Mental Health justified in rejecting as untimely the grievance filed by Ada Cyrus on April 30, 1979?
2. If not, what should be done about it?

Positions of the Parties:

Mrs. Cyrus argues that her grievance was not untimely. She states that she had reasonable cause to believe that her position was in jeopardy on April 30, 1979 and the grievance was filed in order to remove that jeopardy. She concedes that her status was secured prior to the hearing by her assignment to another position but points out that this action did not result from the grievance procedure. She further argues that it was improper for the Respondent to make a determination concerning the grievance without first discussing the facts with her or her representative. She asks that the Respondent's handling of the grievance be found

to constitute an unfair employee relations practice.

The Respondent contends that there is no evidence that it has violated Section 4 of the Ordinance. It argues that even if its action in rejecting the grievance was incorrect, such action still would not constitute an unfair employee relations practice under the Ordinance. Finally, it argues that the charge itself was untimely because it resulted from an incident which occurred in July 1978 and in any case the charge is moot because Mrs. Cyrus' most recent transfer has given her the remedy requested in the grievance.

The Facts:

Mrs. Cyrus has been employed by the Respondent since 1968 and has held the position of supervising psychiatric social worker since 1969. In June 1977 she filed a grievance against Dr. Schuman, who was her immediate supervisor. The grievance was resolved in her favor and, at her request, she later was assigned to work under other supervision. However, the "item" for which her position was budgeted remained under the control of Dr. Schuman and her reassignment was noted as being temporary. In March and again in April 1979 Mrs. Cyrus was informed that she would have to find a permanent assignment by April 30 because Dr. Schuman had requested that the "item" she was filling be returned to his supervision. Mrs. Cyrus tried to find a position to which she could transfer but was unsuccessful. She believed that working under Dr. Schuman's supervision again

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would cause a recurrence of ailments from which she had suffered before. On April 30 she filed a grievance which stated as its basis:

My immediate supervisor, Harold R. Schuman, M.D. caused my health and safety to be placed in extreme danger because of his berating conduct and attitude toward me. Dr. Schuman's offensive attitude drove me from my permanent position and to this date the matter is still unsettled, also my employee rights were violated under Civil Service Rule 1.02.

The grievance also stated that the problem had been discussed with her supervisor, "Since July 26, 1978, continually to present."

Dr. Schuman was on leave starting May 1, 1979 and the grievance was routed to the Respondent's personnel officer. On May 16 the personnel officer noted his decision as, "grievance denied - untimely." By a letter dated May 21 the personnel officer advised Mrs. Cyrus that the grievance was untimely because the alleged berating conduct and offensive attitude occurred in July 1978. The Respondent's grievance procedure requires preliminary discussion of an employee's grievance with the immediate supervisor and filing of the formal written grievance within 15 business days of the occurrence of the matter on which the grievance is based.

Mrs. Cyrus is employed in an employee representation unit represented by Supervisory Professional Social Workers of Los Angeles

but the Memorandum of Understanding between that employee organization and the Respondent makes no provision for a grievance procedure to be used by the supervisory employees. There is no showing in the record that Mrs. Cyrus sought to be represented by that employee organization in connection with her grievance disputes. She was represented instead by a consultant who in May 1979 telephoned the personnel officer and asked for a meeting at which he could explain the basis of the grievance and argue as to its timeliness before a final determination was made. That request was denied. The personnel officer concedes that it was his obligation in such situations to discuss the matter with each of the parties involved but that in this case he discussed the matter only with Dr. Schuman and not with either Mrs. Cyrus or her consultant. Mrs. Cyrus filed the charge herein on June 25, 1979.

Analysis:

It is evident that the Respondent failed to follow its normal procedure when the personnel officer arrived at a final decision as to the timeliness of Mrs. Cyrus' grievance without giving her or her consultant an opportunity to explain her position. It is understandable that the personnel officer interpreted the language of the grievance to indicate that it referred to events which occurred in July 1978 but a brief conversation with Mrs. Cyrus or her representative might have demonstrated that she had a real problem concerning her job status based upon recent events. In April and May 1979 Mrs. Cyrus was on notice that her temporary assignment would come to an end on April 30 and she had no

indication that any other acceptable assignment was in prospect.

The charge before the Employee Relations Commission alleges that the unilaterally arrived at denial of the grievance constituted a violation of Section 4 of the Ordinance. Section 4 states:

Employees of the County shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations. Employees of the County also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the County.

No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights.

Mrs. Cyrus does not claim that a question ever arose as to her right to form, join or participate in the activities of any employee organization or to refrain from such actions. The evidence does not suggest that such considerations played any part in the Respondent's decision to reject her grievance. Section 4 states that employees have the right to represent themselves individually, as Mrs. Cyrus did, but this carries no assurance that the employee representing herself will be successful in her dealings with the County, any more than it conveys such assurance for employee organizations. There is no allegation and no

evidence that the Respondent took adverse action against Mrs. Cyrus because she chose to be represented individually.

On the basis of the foregoing I conclude that the Respondent was not justified in rejecting as untimely the grievance filed by Mrs. Cyrus on April 30, 1979 because in doing so it did not follow its own rule requiring discussion with both parties before deciding that the grievance was untimely. If the personnel officer discussed the matter with Mrs. Cyrus or her consultant he might have come to a different conclusion.

The Respondent's argument that the charge was untimely is without merit. The charge was filed on June 25, 1979 and is based upon incidents which occurred in April, May and June 1979. Rule 6.01 of the Commission's Rules and Regulations declares that a charge is untimely only if it is filed in excess of 180 days following the occurrence of the alleged acts on which it is based.

However, I further find that no violation should be found and no remedial action directed, for a number of reasons. The rejection of the grievance, even though unjustified, did not constitute a violation of Section 4 of the Ordinance because it was completely unrelated to Mrs. Cyrus' right to participate or not participate in employee organization activities or her right to represent herself individually. Whether or not the rejection of the grievance might have been argued to constitute a violation of some other section of the Ordinance, no such argument can be

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considered now because the charge does not allege the violation of any other section.


There is no evidence that the rejection of the grievance without first speaking to both parties was maliciously intended or that it was anything more than an isolated error.

The grievance is moot because Mrs. Cyrus' subsequent reassignment gave her the full remedy requested in the grievance.

Recommendation:

For the reasons stated above it is recommended that the charge be dismissed.

DATED: February 20, 1980


Norman H. Greer, Hearing Officer