

FEB 19 1981

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

IN THE MATTER OF:

BETTY POUNTIOUS
CHARGING PARTY

v.

BENJAMIN ROBINSON, LACEA
LOCAL 660, SEIU
RESPONDENTUFC 70.18

BEFORE

HEARING OFFICER
VERLIN L. MCKENDREE

HEARING DATE: JANUARY 26, 1981

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS, AND ORDERI. STATEMENT OF THE CASE:

This Hearing arises out of a Charge filed by Betty Pountious on March 19, 1980, in which the following allegation is made:

"In reference to C.S. hearing heard on Oct 9, Oct 10, 1979. The appeal was denied by C.S.C. on Oct 31-79.

-At the pre hearing on July 30-79 with Mr. Ronald B. Adler & Mr. Fred Black (Representatives for County) Mr. Robinson submitted the names of the persons who were likely to be called as hostile witnesses. None of these were subpoenaed by Mr. B. Robinson. This was not only a denial to me of due process but also resulted in an unfair disadvantage against me.

-Prior to nor on the day of hearing I had no preparation to the C.S proceeding. I should have had some Counsel to the hearing process and what my role would be.

-On the day of the hearing I repeatedly requested Mr. Robinson to call several physicians who I put on notice to be available as witnesses in my favor. Again I had no Supportive witnesses."

S/ Betty Pountious

Not identified in the Body of the Charge, as filed, are the Sections or sub-sections of the Employee Relations Ordinance, nor of the Commission Rules and Regulations that are alleged to have been violated; nor is Specific Remedy being sought set forth in the Charge as filed.

By date of June 27, 1980, the Matter was set for Hearing before the undersigned on August 18, 1980. With the consent of Both Parties, the Hearing date was postponed on three occasions; first to October 14, 1980, secondly to November 21, 1980, lastly to January 26, 1981, on which date the Matter was Heard.

Charging Party, Betty Pountious elected to serve as her own (Counsel) Advocate, Respondent Benjamin Robinson was represented by Counsel Helena Sunny Wise, Attorney at Law.

The Hearing took up most of the day of January 26, 1981 during which time, each Party was afforded unfettered opportunity to offer evidence, testimony, exhibits, and argument; to call and interrogate witnesses, and to cross examine witnesses that testified. A Record of the proceedings was made by Court Reporter.

Before the Hearing was closed, each Party stated affirmatively that it had nothing further to offer into evidence. Each Party elected to submit the case on the Record, and to not file Post Hearing Briefs.

Following receipt of the Transcript, the Undersigned carefully reviewed it, as well as the total of the evidence, testimony, exhibits and argument forming the Record of the case. His recommended findings of Fact, conclusions, and Order are submitted timely to the members of the Employee Relations Commission within the provisions of Rule 6.10 of the Commission's Rules.

WITNESSES CALLED

FOR CHARGING PARTY:

BETTY POUNTIOUS
FRED BLACK
RONALD B. ADLER

FOR RESPONDENTS:

BENJAMIN ROBINSON

EXHIBITS

FOR RESPONDENT

1. FINDINGS OF FACT AND CONCLUSIONS
OF EMMET SULLIVAN WITH ATTACHED
DECISIONS OF CIVIL SERVICE COMMISSION
2. LETTER OF APPEAL ON BEHALF OF
B. POUNTIOUS BY MR. ROBINSON
DATED 12/78
3. FINDINGS OF FACT AND CONCLUSIONS OF
HYMAN DANOFF FROM HEARING OF 10/79

FOR CHARGING PARTY

- A. LETTER DATED 11/14/79 FROM
BETTY POUNTIOUS

DISCUSSION

At the outset, let it be noted that the undersigned Hearing Officer applied an extremely liberal application of Rule 6.07 c relating to the technical Rules of Evidence being not controlling. Examination of the Record will show considerable amounts of hearsay, conclusions, and opinions. This liberal approach was followed in an effort to assure the Charging Party every reasonable opportunity to present her case as she saw fit. It is to be further noted here, that the same liberal application of reasonable Rules is not properly applicable to the same extent in consideration of matters that concern themselves to findings of fact, conclusions of the Hearing Officer, and his recommended Order. It is the function, and duty of the Hearing Officer in this case, to give consideration to all matters entered into the Record of this case, and to then apply a rule of reason regarding relevancy and applicability to the issue to be decided. The undersigned has made every effort to correctly follow this precept in his recommendations.

It is abundantly clear from the Record, that the charging party, Betty Pountious, (Hereinafter referred to as Charging Party) is convinced in her own mind that she has not been fairly treated by her employer for a period that covers at least the past ten years or so. Apparently, Charging Party carried a feeling of frustration for a considerable period of time, and elected to protest a score given on several promotional appraisability ratings. It appears that the Charging Party came to the conclusion that because each of four (4) separate promotional appraisability ratings resulted in approximately the same numerical ratings, that this was evidence of prejudice against her. This set of circumstances gave rise to the Matter of the Appeal filed and duly heard before Hearing Officer Hyman O. Danoff, at various dates in 1979. (RX-3)

Some dispute exists as to the triggering factor that led to this Hearing. Charging Party expressing the opinion that it came about by reason of actions initiated by her, and in evidence is a letter of Appeal from Local 660 - SEIU-AFL-CIO over the signature of Respondent, dated December 20, 1978. (RX-2) It is unnecessary to resolve this particular item of dispute, since the evidence is clear that Respondent met his obligation

to initiate action on behalf of Ms/ Pountious. Accordingly, Hearings were instututed, and the matter was heard on three different dates in 1979, the last one being on October 10th.

It is not the purpose of this subject Hearing, to enter into a "re-examination" of the merits of the dispute that was heard by the Civil Service Commission. It is, however, the conduct of that Hearing by Mr. Benjamin Robinson, on behalf of Charging Party that is the subject matter to be resolved. Charging Party alleges that she was improperly represented, and that allegation is the basis of the Unfair Practices charge with which we are here concerned.

There are conflicts in the recollections of the Charging Party as to the number of meetings that were actually held between herself and Respondent. Initially her statement was to the effect that she had only two meetings, including the one immediately before the start of the proceedings before the Civil Service Commission. (Tr. Pg. 16, 1 1) This initial contention of only two meetings appears to have been incorrect, and that in fact more meetings and telephone contacts were actually engaged in.

As to the conduct of the case before the Civil Service Commission by Mr. Robinson, admittedly Charging Party is not in agreement with the method by which Respondent elected to proceed. It is therefore necessary to examine the possibility of impropriety on the part of Respondent. Examination of the total testimony shows that by controlling Rules of the Commission, only matters of the past 3-4 years could be considered as having direct bearing on the Issue before it at that proceeding.

Respondent over the course of his investigation of the matter, attacked the problem before him on behalf of the Charging Party, by first of all making a determination of what would and what would not demonstrate an advantage for Betty Pountious. There is no evidence before the undersigned that leads him to believe that the determination made by Respondent was made in bad faith, nor with anything but the best interests of Betty Pountious in mind. In the selection of possible witnesses, some as suggested by Charging Party were not available at the time, others had extremely doubtful advantage as a favorable witness, and two suggested witnesses were in fact called by the County as witnesses against Pountious. Even so, Respondent was able to cross-examine these witnesses, and did in fact elicit the same testimony as would have otherwise been made had they been called as an "Adverse Witness" as had been suggested by Complaining Party.

There is no credible evidence to support a claim that Respondent did not make a good faith appraisal of what would make for the best case for Betty Pountious. Being bound by the Rules of the Civil Service Commission as to the time limitations of only the past 3 or 4 years, it appears that he made a reasonable decision to concentrate on advancing as favorable posture as possible for Ms/ Pountious at the Hearing. She, on the other hand appears to have believed that "witnesses" would have presented a better avenue of procedure. This difference in approach was not reconciled, and is apparent even at this much later date and time. Nonetheless, Mr. Benjamin Robinson was her Advocate, was her Representative, and did in fact have the ultimate responsibility of presenting the case before the Civil Service Commission. It is significant to note that Mr. Danoff, the Hearing Officer notes in his Report, that as a matter within his jurisdiction, he allowed Appellant Pountious latitude in her testimony, even on "many irrelevant matters" which serves to confirm the decision by Mr. Robinson, to confine his case presentation to those matters which he in good faith believed to be relevant, and supportive of the then Appellant. To that end, some thirteen (13) Exhibits were entered into the Record; all favorable to Betty Pountious. Witnesses Julia Stewart, and Elizabeth Moseley were cross examined by Mr. Robinson, and testimony elicited that would have been the same had they each been called as "Adverse Witnesses" by Appellant.

I find no tangible evidence in the Record of this subject Hearing, to show that Respondent herein acted in any manner detrimental to the best interests of his client, Betty Pountious, before, during, or after the Hearing before the Civil Service Commission in 1979. Neither do I find any evidence of arbitrary, capricious, or bad faith actions in the decisions made by Mr. Robinson, in preparing and presenting Ms/ Pountious case before the Civil Service Commission. The most I can find is a difference of opinion between Pountious and Robinson as to what would be relevant, admissable, evidentiary and helpful in presenting the case. Mr. Robinson, as the responsible person, cannot properly be faulted for his best efforts, even though they do not coincide with the wishes of the person whom he is representing.

From the foregoing general comments, attention is now directed to the specifics of this subject Unfair Practices charge. The following seems from the evidence taken to be the facts:

1. Charging Party was and is unhappy with the presentation by Mr. Robinson, in the 1979 Hearings before the Civil Service Commission.
2. This "unhappiness" is rooted deeply in her belief that she should have had "witnesses" to testify for her.
3. It is clear that there were more than two (2) meetings between the Parties preparatory to entering the Hearing.
4. Betty Pountious did testify on her own behalf.
5. At least two (2) persons she had indicated as potential "hostile" witnesses, were called by the Department, but were subject to cross examination by Mr. Robinson.
6. Betty Pountious was allowed great latitude in giving her own testimony, evidently far beyond what might be expected under normal situations.
7. Mr. Robinson allowed Betty Pountious latitude beyond what his plan for the case entailed initially.
8. Witness Mr. Fred Black, called by Betty Pountious, confirms the position of Respondent here, that two witnesses used in the Hearing were those submitted by her in a pre-hearing and that they were cross examined. Also, that during the Hearing, he admonished Betty Pountious for hurting her own case. Mr. Black confirmed that no witnesses would agree to Betty Pountious being qualified for the job of Assistant Director of Nursing.
9. Witness Ronald B. Adler, further confirmed an exchange of names for possible witnesses, but was not able to confirm any number of possible witnesses beyond "more than 2." Mr. Adler confirmed Betty Pountious' being allowed to give testimony in narrative form, even over his objection, to a considerable degree.
Mr. Adler confirmed the agreement with the Civil Service Commission to examine records for only the past 3 or 4 years. Further, he made efforts to contact witnesses as requested by Betty Pountious, with at least two being no longer available. Mr. Adler confirmed that the letter from Mr. Robinson (RX-2) was a requisite to scheduling a hearing. Also, that no witnesses were of the opinion that Betty Pountious could perform the duties of an Assistant Nursing Director as she was seeking.
10. Neither of the above witnesses called by Pountious, was able to give any testimony that would support the allegation of Unfair Practices against Mr. Robinson.

11. The upshot of the case advanced by Charging Party in this matter is her own, unsupported allegations of improper representation, her displeasure at the decision to not call certain witnesses, and a smouldering belief that over the years, she has been the subject of bias and discrimination. Affirmatively in support of Mr. Robinson's position, the following appears to be conclusive:
- A. The weight of evidence supports the conclusion that Mr. Robinson had several meetings with Charging Party before the Hearing that gives rise to this case.
 - B. It is clear that Mr. Robinson made available his home telephone number to Charging Party, in addition to her having his office number.
 - C. The weight of evidence indicates that early on, Respondent made clear to Charging Party his intent to use only those items that were favorable to her position.
 - D. Clearly, in the conduct of the Hearing, Mr. Robinson was bound by Commission Rules that matters more than three or four years old were irrelevant, and not admissible as any proof, or "mitigation."
 - E. Mr. Robinson made a strategic decision to advance the case for Betty Pountious by introduction of letters of commendation, as well as Performance Evaluations for the years of 1976, 1977, and 1978. Also he elected to introduce in her behalf Appraisal of promotability related to three different examinations. (RX-3)
 - F. There is no evidence before the undersigned that indicates any measure of lack of good faith on the part of Mr. Robinson.
 - G. There is no evidence of any breach of responsibility nor of duties inherent in fair representation to Ms. Pountious before, during, or after the Civil Service Commission Hearing.
 - H. There is no evidence of actions of an arbitrary or capricious nature by Mr. Robinson in his representation of Ms. Pountious.
 - I. By cross examination of witnesses Julia Stewart, and Elizabeth Moseley, Mr. Robinson elicited the information he would have gotten had these witnesses been called by him instead of the County. It is significant to note that these two individuals were on the list of possible witnesses suggested by Ms. Pountious.

- J. The value of witnesses testifying in person, as opposed to use of affidavits and supporting letters is a matter that must be left to the discretion of the person in charge of presenting a case; in this case Mr. Robinson.
- K. Any differences between Ms. Pountious and Mr. Robinson in strategy to use in proceeding with the Hearing would require settlement prior to the actual conduct of the Hearing. Since the Hearing did go forward with the plan of procedure relied on by Mr. Robinson, it would be improper to now attempt to "second guess" the effectiveness of his selected approach, absent convincing evidence of bad faith, a breach of fair representation, arbitrary or capricious actions on the part of Mr. Robinson, or bias and discrimination against Ms. Pountious by him.
- L. The undersigned Hearing Officer can find no evidence to support a conclusion of impropriety against Mr. Robinson in any of the above areas.


It is apparent that there is a wide gulf between Ms. Pountious and Mr. Robinson and their respective ideas of a correct and proper manner with which to have proceeded in the Civil Service Hearing which gave rise to this subject Charge. However, Mr. Robinson was the person accountable to present the most favorable case for Ms. Pountious, not she. I find that he did so in a conscientious, credible manner, and there is an absence of bias, discrimination against Ms. Pountious. Neither do I find any acts that might be described as arbitrary or capricious.

From the foregoing, and from the total of the Record in this matter, including testimony, exhibits and argument taken during the hearing attendant to this matter, the following recommendation is made.

RECOMMENDATION

It is recommended that the Los Angeles County Employees Relations Commission concur, that the Charge filed by Betty Pountious is without merit and should be dismissed.

Dated: This 18th day of February, 1981


Verlin L. McKendree
Hearing Officer