

EMPLOYEE RELATIONS COMMISSION
COUNTY OF LOS ANGELES
LOS ANGELES, CALIFORNIA

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EMPLOYEE RELATIONS COMM.
COUNTY OF LOS ANGELES

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NADINE McKINNOR,)	
Charging Party)	CASE NO. UFC 70.21
v.)	
ALFRED MOSLEY, LACEA, LOCAL 660,)	REPORT OF HEARING
SEIU,)	
Respondent)	OFFICER

Appearances: Nadine McKinnor, In Pro Per for Charging Party and Mike Posner, Esq., Law Offices of Geffner & Satzman for Respondent.

BACKGROUND

On September 5, 1980, Nadine McKinnor (Charging Party) filed with the Employee Relations Commission a charge alleging the commission of an unfair employee relations practice by Alfred Mosley, Field Representative for SEIU, Local 660 (Respondent), within the meaning of Section 4 of the Employee Relations Ordinance or Section 6, subsection 6.01 of the Commission's Rules and Regulations. Charging Party set forth the following allegations as the basis for the charge:

"During group meetings scheduled for the purpose of giving instructions to workers about grievance forms and procedure, Alfred Mosley side stepped the issues. After two meetings the request for help was dropped.

Both stewards requested another representative and that was ignored. Meeting during January 1980."

"My scheduled discharge (because of grievance follow-up with and for the group of workers I was a shop steward for, along with Roy Hunt and Beverly Smith) was encouraged by Alfred Mosley during a meeting with supervision (3-6-80)."

On November 13, 1980, the Executive Officer for the Commission sent a Notice of Hearing which set the case for hearing on January 29, 1981 before me as the duly appointed Hearing Officer of the Commission and informed the parties that pursuant to Section 6.06 of the Commission's Rules and Regulations, Respondent's answer "shall be filed with the Commission within seven days after service of the Notice of Hearing" and "if a timely answer is not filed, all allegations of the charge shall be deemed admitted". On January 26, 1981, Respondent filed its answer to the charge, denying in full the allegations and further alleging that the charge was not filed in a timely manner as required by Rule 6.01 of the Commission.

The case came to hearing against that background on January 29, 1981 and was disposed of at the outset of the hearing on the basis of a motion to dismiss. Following is a summary of each party's presentation at that hearing. (In the body of this report, "T" followed by a number refers to Transcript and appropriate page number of the transcript.)

SUMMARY OF PRESENTATIONS AND POSITIONS

Respondent moved to dismiss the charges in this case on two grounds, i.e., (1) Charging Party's failure to allege an unfair practice - this aspect of the motion is based upon the fact that Section 4 of the Ordinance, which Respondent allegedly violated, is merely a statement of employee rights which does not relate to the allegations here, and that Section 6 of the Commission's Rules also alleged to have been violated is merely a statement of the Commission's time-filing requirements for unfair practice charges, and (2) Charging Party's failure to file the charges within 180 days of the date of the incidents which gave rise to the charges, as required by Rule 6.01 of the Commission. (T.6). Expanding upon the second ground for the motion, Respondent pointed out that it was clear even without counting that more than 180 days had elapsed between the date of the acts alleged in Paragraph 1 in support of the charge (January 1980) and the date of the filing of the charge (September 5, 1980). Further, Respondent pointed out that there was a time lapse of 183 days between the acts alleged in Paragraph 2 in support of the charge (March 6, 1980) and the date of the filing of the charge (September 5, 1980). (T.6-7).

In opposition to the motion, Charging Party indicated that the charges which are the subject of this proceeding were timely filed because they were first filed with the Commission on August 7, 1980 and that the case number involving the instant charges appeared on the Commission's agenda on August 14, 1980. Among other documents, Charging Party presented one document which was specifically

intended to support her position that the instant unfair charge is the same charge which was filed with the Commission on August 7, 1980, viz., a document dated August 7, 1980 from the Commission's Executive Officer to Charging Party acknowledging receipt of an unfair charge identified as Nadine McKinnor v. C. J. Cormier and LACEA 660 and LACO Department of Building Services (Union Discrimination and Failure to Represent). That case was further identified by the Commission as UFC 70.20. (T.7-12).

DISCUSSION

Section 4 of the Employee Relations Ordinance, allegedly violated by Respondent, provides as follows:

"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."

Section 6.01 of the Commission's Rules, also allegedly violated by Respondent provides, as follows:

"A charge that the County, an employee organization or its representatives or members, individually or in concert with others, have engaged in or are engaging in any unfair employee relations practice as defined in the Ordinance, or otherwise have violated or are violating the Ordinance or Rules and Regulations issued thereunder,

may be filed by a management representative, by a representative of any employee organization, or by an individual employee or group of employees. Such charge shall be filed in writing on a form provided by the Commission, shall be signed, and shall contain a declaration by the person signing, under penalty of perjury, that its contents are true and correct to the best of his knowledge and belief.

A charge shall be deemed untimely and subject to dismissal if filed with the Commission at its office in excess of one hundred eighty (180) days following the occurrence of the alleged act or acts on which the charge is based, or the date on which the charging party knew or should have known of said conduct. This Rule (6.01) shall not be subject to the waiver of time requirements of Rule 6.13."

It is clear from a reading of the above-quoted provisions of the Commission's Rules and of the Employee Relations Ordinance that the provisions are incongruous with the allegations made in support of the charges. Section 4 of the Ordinance simply states the rights of employees. Section 6.01 of the Commission's Rules sets forth time-filing requirements for unfair practice charges. It is Section 12 of the Ordinance which identifies unfair practices proscribed by the Ordinance. Upon examination of Section 12 of the Ordinance, I have found nothing in either Section 4 of the Ordinance or in Section 6.01 of the Commission's Rule which could serve as the authority upon which this unfair practice charge is grounded. Consequently, I find that the instant unfair charge, even if its supporting allegations are deemed true, should be dismissed for failure to state a proper cause of action under either the Ordinance or the Commission's Rules.

Second, it is clear from the face of the instant unfair practice charge that more than 180 days elapsed between the date of

the alleged circumstances which gave rise to the charges and the date of the filing of the charges. Even if Section 6.01 of the Rules allows the Commission to excuse untimely filings for good cause (no such finding is made here), Charging Party has failed to explain why the charge was filed outside the 180-day time frame of Section 6.01. Charging Party did not present evidence that she learned of the alleged facts giving rise to the charge at a much later time than they allegedly occurred, thereby starting the running of the 180-day period from a later date than January 1980 (specified in Paragraph 1) or March 6, 1980 (specified in Paragraph 2). Additionally, there is nothing in the documentation presented by Charging Party which supports her position that the instant charge was initially filed on August 7, 1980. Examination of the documents she presented reveals that the charge she filed on August 7, 1980 involved parties and allegations entirely distinct from the parties and allegations involved in the instant charge. There is no evidence that UFC 70.21 (the instant charge) was simply an amendment to UFC 70.20 (the August 7 charge). Accordingly, I find that UFC 70.21 was not timely filed and should also be dismissed on that ground.

Although neither party addressed the issue during the hearing, it appeared to me during my review of the file for the purpose of drafting this report that Respondent's answer was not timely filed as required by Section 6.06 of the Commission's Rules and that the allegations of the charge must, therefore, be deemed admitted by Respondent. The Executive Officer of the Commission confirmed in

a phone conversation with me on March 31, 1981 that the last date for timely filing of the answer was November 28, 1980. The record reflects that the answer was filed with the Commission on January 26, 1981, nearly two months late. I note, however, that even if the allegations are deemed true, the allegations do not support Charging Party's contention that Respondent violated Section 4 of the Ordinance or Section 6.01 of the Commission's Rules.

FINDINGS OF FACT

1. On September 5, 1980, Charging Party filed the instant unfair charge, UFC 70.21, against Respondent alleging that Respondent had violated Section 4 of the Employee Relations Ordinance and Section 6.01 of the Commission's Rules and Regulations.

2. As supporting bases for the alleged violations, Charging Party alluded to alleged acts by Respondent which occurred during meetings in January 1980 and during a meeting with supervision on March 6, 1980.

3. The allegations made in support of UFC 70.21 do not pertain to rights prescribed by Section 4 of the Ordinance. Nor do the allegations pertain to Section 6.01 of the Employee Relations Ordinance.

4. Commission Rule 6.01 requires that unfair practice charges be filed within 180 days following the occurrence of the alleged act or acts on which the charge is based, or the date on which the party knew or should have known of such conduct.

5. More than 180 days elapsed between the dates of the alleged acts which formed the basis for the charge and the date of Charging Party's filing of the charge with the Commission. There is no evidence that Charging Party learned of the acts on other than the dates specified in the charge.

6. Rule 6.06 of the Commission requires that answers to unfair charges be filed within seven days of service of the Notice of Hearing and that if a timely answer is not filed, the allegations of the charge shall be deemed admitted.

7. Respondent's answer was filed nearly two months after service of the "Notice of Hearing".

CONCLUSIONS OF LAW

1. Charging Party has failed in UFC 70.21 to allege the commission of an "unfair practice" by Respondent within the meaning of the Employee Relations Ordinance.

2. Charge UFC 70.21 is barred by the time-filing requirements of Section 6.01 of the Commission's Rules.

3. The allegations of UFC 70.21 by Respondent are deemed admitted by virtue of the late filing of Respondent's answer. However, Conclusions 1 and 2 above render the admitted allegations immaterial.

4. UFC 70.21 should be dismissed.

RECOMMENDED ORDER

Based upon the foregoing findings of fact, conclusions of law, and the entire record in this case, I recommend that the Employee Relations Commission dismiss the instant charge, UFC 70.21.

Dated: April 3, 1981

Los Angeles, California

Edna E. J. Francis
Edna E. J. Francis
Hearing Officer
Employee Relations Commission