LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of:	)	
	)	
CHARLES WARREN	)	
	)	
Charging Party,	)	
	)	UFC 70.213
and	)	Hearing Officer's Report
	)	
ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS (ALADS)	)	
	)	
Respondent.	)	

HEARING OFFICER

Walter F. Daugherty

APPEARANCES

For the Charging Party:	Gregory S. Emerson, Esq. Law Offices of Gregory S. Emerson
For the Respondent:	Richard A. Shinee, Esq. Green & Shinee, A.P.C.

INTRODUCTION

Pursuant to the relevant Rules and Regulations of the Los Angeles County Employee Relations Commission ("Commission" or "ERCOM"), the undersigned was appointed as the Hearing Officer in this dispute. A hearing was held on April 5, May 24, June 28, July 14, and October 4, 2004 at the Commission's offices in Los Angeles, California. Both parties appeared and were afforded full opportunity to present relevant evidence, examine and cross-examine witnesses, and offer argument. Post-hearing briefs were filed with the Commission; these briefs were received by the Hearing Officer on December 2, 2004.

The unfair employee relations practice charge at issue was filed by Charles Warren on behalf of the Los Angeles Sheriff's Professional Association ("LASPA"). It alleges that the Respondent employee organization has violated Sections 5.04.070 and 5.04.240 (B) (1) of the Los Angeles County Employee Relations Ordinance ("Ordinance") by the following conduct as set out in the charge filed on June 24, 2003:

> The Association for Los Angeles Deputy Sheriffs ("ALADS") has reached an agreement with the Los Angeles County Professional Peace Officers Association ("PPOA") whereby ALADS will collect a monthly fee of $49.00 from each PPOA member in bargaining unit 611. For each PPOA member, ALADS will then remit $42.00 to PPOA to cover its regular membership costs. ALADS will keep the remaining $7.00 per member as an agency shop "fair share" fee.
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> The effect of this scheme is that PPOA members will pay a substantially reduced "fair share" fee compared to members of the Los Angeles Sheriff's Professional Association ("LASPA"). As it stands, LASPA members must pay a $57.16 fee, yet their chosen employee organization receives absolutely no remittance from ALADS.
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> By taking a "fair share" of only $7.00 from PPOA members instead of the $57.16 demanded from LASPA members, ALADS is targeting LASPA members, and is seeking to destroy the employee organization with whom they chose to affiliate themselves. This infringes on the right of each LASPA member to "form, join

and participate in the activities of employee organizations of their own choosing" pursuant to Section 5.04.070 of the Employee Relations Ordinance of Los Angeles County.

Moreover, ALADS is in violation of Ordinance Section 5.04.240 (B) (1) in that it has taken actions that "interfere with, restrain or coerce employees in the exercise of the rights recognized or granted in this chapter," namely, the right guaranteed under Ordinance Section 5.04.070.

BACKGROUND

Respondent Association for Los Angeles Deputy Sheriff's ("ALADS") is the certified majority representative for Bargaining Unit 611, consisting of deputy sheriffs and nonsupervisory district attorney investigator classes. The Professional Peace Officers Association ("PPOA") has similar status in Bargaining Unit 612; a unit made up of various sworn supervisory classes. PPOA was once certified as the majority representative for Bargaining Unit 611 but was decertified by ALADS in an election conducted by ERCOM. The Los Angeles Sheriff's Professional Association ("LASPA") is a registered organization within the meaning of ERCOM Rule 2.11.[1] Its membership appears to consist of County employees in both Unit 611 and Unit 612.

An agency shop election for Bargaining Unit 611 was conducted by ERCOM in 2002. In a notice of agency shop election dated August 15, 2002, ERCOM advised that a secret ballot election would be conducted to "determine whether employees of the County of Los Angeles in the Peace Officers Employee Representation Unit 611 desire to be covered by an Agency

[1]Rule 2.01 requires that an employee organization "representing, or desiring to represent, County employees" must register with the Commission and submit certain information in such regard.

Shop/Fair Share Agreement" (CP. Ex. 1).[2] This notice further advised Unit 611 employees that if the agency shop election was successful they ". . . will have to either become a member of ALADS, or if they don't want to become an ALADS member, they will have to either (a) pay a fair share equal to ALADS dues, (b) pay a service fee, or (c) contribute to a 501(c) charity if they have a bona fide religious objection."

This election was conducted by secret mail ballot. ERCOM's October 16, 2002 tally of the ballots showed that agency shop was approved by those Unit 611 employees who voted in the election. On November 25, 2002, ERCOM through its Executive Officer issued its "certification of bargaining unit election" memorializing the results of this election.

On April 15, 2003, ALADS President Roy Burns sent a "Hudson notice" to all non-ALADS members of Unit 611.[3] This notice stated that "all members of Bargaining Unit 611 are required to join the union or pay a fair share fee to support contract negotiations and maintenance efforts" (R. Ex. 1). It also set forth specific procedures by which a nonmember was to request the reduced fair share fee and/or challenge this fee. ALADS Administrative Services Manager Paul McGinn testified that this notice was sent to all Unit 611 employees who were not members of ALADS.

By letter dated April 22, 2003, PPOA President Roger Mayberry informed PPOA members in Unit 611 that pursuant to the agency shop election "all non-ALADS members in Bargaining Unit 611 (including PPOA members) must pay a fair share fee to ALADS" (CP. Ex.

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[2]Charging Party and Respondent exhibits are referenced as "CP. Ex.__" and " R. Ex.__," respectively.

[3]See, *American Federation of Teachers, Local 1 (Chicago) v. Hudson* (1986) 475 U.S. 292, 121 LRRM 2793.

2). This letter suggested that PPOA members return to PPOA the request for a reduced fair share fee form included in ALADS' Hudson notice. It further stated that "PPOA members can rest assured that they will not be forced to pay 'double dues' to both ALADS and PPOA." On its Internet web page, LASPA told its members to "disregard" the Hudson notice sent by ALADS (R. Ex. 2).

In a declaration dated July 29, 2004, PPOA's Executive Director Paul Roller described what had once been an "absolutely toxic" relationship between ALADS and PPOA (CP. Ex. 6(a)). Roller explained that before 1987 these two employee organizations had "continually attacked the other" and had entered an agreement in 1987 brokered by their respective international unions. This "settlement agreement" provided, in relevant part, that each union agreed to respect the other's jurisdiction and that there would be no raiding or effort to recruit members from the other's jurisdiction (CP. Ex. 4). It also provided that each organization could maintain all members as May 13, 1987 whatever their bargaining unit. In his declaration, Roller stated that pursuant to this agreement there are currently some 150 "grandfathered" PPOA members employed in Unit 611.

Roller stated further in his declaration that before the agency shop election was conducted PPOA and ALADS had discussed the potential effects of the election on the 1987 settlement agreement. These discussions, according to Roller's declaration, led to a signed agreement on September 20, 2002 that required PPOA members in Unit 611 to pay "Agency Shop fees" to ALADS. It further provided that PPOA would continue to provide representation for its members in Unit 611 and that ALADS would pay PPOA a service fee in such regard. In his

supplemental declaration of August 17, 2004, Roller said that this fee was currently $41.35 per member each month (CP. Ex. 6(b)).

Testimony and documentary evidence reveal that following the agency shop election PPOA members in Unit 611 ceased to have monthly PPOA dues deducted from their pay warrants. Simultaneously, deductions were first made for the ALADS agency shop fee for all Unit 611 employees. These deductions are approximately either $57.00 or $42.00 per month, the latter reflecting the reduced fair share fee based on the Hudson notice calculations (CP. Ex. 3 and 5).

SUMMARY OF POSITIONS

Of the Charging Party:

The Charging Party maintains that the Respondent has violated Section 3502.5 of the Meyers-Milias-Brown Act and the relevant provisions of the County's Employee Relations Ordinance because it has selectively applied the agency shop arrangement to Unit 611 employees. In such regard, the Charging Party asserts that ALADS has colluded with PPOA to effectively exempt PPOA members in Unit 611 from paying agency shop fees. While acknowledging that PPOA members pay an agency shop service fee to ALADS, the Charging Party points out that these employees no longer pay dues to PPOA. Instead, these dues are now paid by ALADS. This arrangement, says the Charging Party, impermissibly targets LASPA and non-PPOA members and is not justified by the 1987 and 2002 agreements made between ALADS and PPOA. The Charging Party asserts further that the selective implementation of an agency shop gives the Respondent a means of eliminating competing employee organizations. As such, and as the clear language of the relevant statutes precludes the selective implementation

of an agency shop, the Charging Party requests that ERCOM invalidate the agency shop election conducted in Unit 611 and reimburse agency shop fees to all affected Unit 611 employees.

Of the Respondent:

The Respondent asserts that the Charging Party has failed to prove that the conduct at issue was violative of the Ordinance. It argues in such regard that LASPA is merely a registered employee organization with no bargaining rights and that the Ordinance protections are not applicable because the complained of conduct relates to internal union matters and not collective bargaining concerns. According to the Respondent, federal precedents make clear that a business decision or policy enacted by a union that reflects a legitimate business purpose does not violate applicable labor laws. As such, and as the arrangement with PPOA was made to ensure order and peace between two labor organizations, the Respondent says that no Ordinance violation occurred. The Respondent emphasizes that the Charging Party has failed to prove that any employee in Unit 611 paid an agency fee amount other than the full agency fee or the reduced fair share fee as provided in the Hudson notice. For these reasons, the Respondent says that the Charging Party has failed to prove the Ordinance was violated and requests that the charge be dismissed.

DISCUSSION

At the outset, it is noted that during its opening statement the Charging Party indicated its intention to proffer argument and evidence concerning the propriety of the agency fee charged Unit 611 employees. This specific allegation was not included in the charge as filed, nor was the charge amended to place this contention in issue. As such, and based on the Hearing Officer's

reading of ERCOM Rule 6.02(c), the Charging Party was precluded from submitting argument and evidence regarding the propriety of the agency fee.[4]

Underpinning the instant charge is the Charging Party's contention that PPOA members in Unit 611 who are not members of ALADS do not pay the fair share/service fee required under the terms of the agency shop election. Review of the relevant testimony and documentary evidence in such regard, however, shows that all Bargaining Unit 611 employees who are not members of ALADS pay an agency shop fee of either some $42.00 or $57.00 per month to ALADS. These amounts are collected through deductions made in Unit 611 employees' pay warrants (CP. Ex. 3 and CP. Ex. 5). Following the implementation of the agency shop election, PPOA members in Unit 611 were effectively no longer charged monthly dues by PPOA. Instead, ALADS remits to PPOA $41.35 per PPOA member per month for providing representation for these employees (CP. Ex. 6(a) and (b)). This tendered amount serves to maintain the employee's membership status in PPOA. It is this arrangement that the Charging Party contends violates Sections 5.04.070 and 5.04.240 (B) (1) of the Ordinance.

As pointed out by the Respondent, LASPA is a registered rather than a certified employee organization. While the Ordinance at Section 5.04.210 gives only certified employee organizations the right to negotiate, other employee organizations may represent their members in their employment relations with the County.[5] PPOA is certified to represent employees in

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[4]Rule 6.02(c) requires that the Charging Party include in the charge a "clear and concise statement of the acts constituting the charge. . . ."

[5]The Ordinance at Section 5.04.030 (G) defines an "employee organization" as an organization that includes County employees and ". . . has as one of its primary purposes representing such employees in their employment relations with the County."

Unit 612. It is not, however, the certified bargaining representative for Unit 611 and, as such, its status with respect to this bargaining unit is identical to that of LASPA; to wit, it cannot negotiate for Unit 611 employees but may represent them in employment matters.

The Respondent argues that LASPA is not a "competing" employee organization. However, no authority was submitted suggesting that LASPA must be a "competing" employee organization before it can be found that the Respondent violated Ordinance Section 5.04.240 (B) (1) with respect to the Ordinance rights of LASPA's members. Indeed, no cases were submitted nor did the Hearing Officer's review of ERCOM and National Labor Relations Board decisions reveal any cases factually parallel to the situation presented herein. However, some guidance is afforded by review of those cases regarding employer responses when confronted with competing employee organizations.

It is well settled under NLRB case law that an employer must remain neutral when dealing with competing labor organizations and that rendering aid or providing favorable treatment to one employee organization is proscribed by Section 8(a)(1) the National Labor Relations Act ("NLRA"). Applying this analytical template to the instant dispute, it is first observed that while LASPA solicits membership from among Unit 611 employees, PPOA does not do so. Although the relationship between PPOA and the Respondent was once characterized by substantial enmity, the 1987 settlement agreement resolved their differences. Of relevance here, this agreement precluded PPOA from soliciting members in Unit 611 and by all accounts PPOA has fully complied with this prohibition. As such, PPOA no longer solicits Unit 611 employees and its membership in Unit 611 is limited to those "grandfathered" employees who were PPOA members as of May 13, 1987. Thus the Respondent's complained of conduct does

not appear to encourage membership in PPOA at the expense of LASPA among those Unit 611 employees who were not PPOA members as of the date of the settlement agreement.[6] Further, even assuming that the Respondent's conduct at issue encourages Unit 611 PPOA members to remain in PPOA rather than join LASPA, for the reasons next discussed no Ordinance violation is found.

As the Respondent observes, the arrangement at issue between the Respondent and PPOA essentially reflects an internal union affair. The NLRB and the federal courts have long exercised care and caution when treading into this area.[7] As the United States Supreme concluded in *Scofield v. National Labor Relations Board* (1969) 394 U.S. 423, 70 LRRM 3105, a union business decision that reflects a legitimate interest, is uniformly enforced and does not impair the collective bargaining process is not violative of the NLRA. Here, the 1987 settlement agreement between the Respondent and PPOA was amended to reflect the implementation of an agency shop and to address its impact on Unit 611 PPOA members. The initial agreement had as its genesis a bitter internecine dispute between two affiliated AFL-CIO unions resolved only through the intercession of the respective international unions.

Labor peace as secured through the 1987 settlement agreement was and remains a legitimate interest of the parties to this agreement. As such, the parties should be permitted substantial discretion in the manner by which they continue to abide by its terms and regulate

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[6]In such regard, it is again emphasized that PPOA does not now solicit members from among employees in bargaining unit 611.

[7]Since it appears that no relevant ERCOM decisions have issued in this area, it is appropriate to look to federal precedence for guidance and enlightenment. See, e.g., *Fire Fighters Union, Local 1186 v. City of Vallejo*, 12 Cal. 3d 608 (1974).

their relationship. It therefore appears that the arrangement by which the Respondent reimbursed PPOA for providing representation to Unit 611 employees who maintained membership in PPOA reflects a business decision consistent with the principles set forth in the initial settlement agreement. Further, if PPOA elects to apply this rebate to cover the dues owed by its members in Bargaining Unit 611, that is an internal union matter that lies outside ERCOM's jurisdiction.

It is again acknowledged that the arrangement between the Respondent and PPOA may tend to cause those grandfathered PPOA Unit 611 members to remain in PPOA rather than join LASPA. Such effect is, however, speculative. Moreover, any such interference with employee rights under Ordinance Section 5.04.070 must be balanced against the legitimate business needs of the Respondent and PPOA and the discretion given to employee organizations to regulate their internal business affairs. In such regard, the Hearing Officer is persuaded that given the comparative slight and speculative harm to employee rights and given the substantial and legitimate business interests served, the Respondent's conduct is lawful.

Lastly, the Hearing Officer again emphasizes that no evidence was presented that Unit 611 employees are charged different agency shop fees by the Respondent. While the Charging Party asserts that this is the case here, the evidence reveals that all Unit 611 employees who are not members of ALADS monthly pay either some $57.00 or $42.00, with the latter amount based on the calculations contained in the Hudson Notice, to ALADS (R. Ex. 1). As discussed previously, the propriety of these fees and the Hudson computations was not raised in the charge as filed and is therefore not before the Hearing Officer. For all the foregoing reasons, it cannot be concluded that the Respondent has violated Ordinance Sections 5.04.070 and 5.04.240 (B) (1).

RECOMMENDATION

It is the recommendation of the duly appointed Hearing Officer that the Employee Relations Commission issue a decision and order finding that the Respondent did not violate Sections 5.04.070 and 5.04.240 (B) (1) of the Los Angeles County Employee Relations Ordinance and dismissing charge UFC 70.213.

Respectfully submitted,

Walter F. Daugherty
Hearing Officer

Dated: January 3, 2005
Los Angeles, California