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LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)

GEORGE E. RAMOS,)

Charging Party)

v)

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO, Council 36,)

Respondent.)

UFC 70.22

REPORT OF THE
HEARING OFFICER

I. BACKGROUND

On October 7, 1980 George Ramos filed an unfair employee relations charge against the Respondent, alleging a violation of Section 12(b)(2) of the Employee Relations Ordinance of the County of Los Angeles. The Employee Relations Commission, after investigation by its Executive Officer, ordered the matter to hearing. The matter was assigned to be heard by Sara Adler. An evidentiary hearing was held on the matter on January 15, 1981. Briefs in the matter were submitted and received by the hearing officer with a transmittal letter dated February 19, 1981. The hearing officer sought and was granted a continuance for the filing of this report.

II. APPEARANCES

For the Charging Party:

Don Martinez

For the Respondent:

Paul Schelly, Esq.

III. ISSUE

The parties were unable to agree upon an issue and stipulated that the issue could be formulated by the hearing officer who has

framed the following issue in this matter:

"Did AFSCME, Joint Council 36, violate Section 12(b)(2) of the Los Angeles County Employee Relations Ordinance when it refused to represent George E. Ramos in a hearing before the Los Angeles County Civil Service Commission?"

IV. ORDINANCE PROVISION

Section 12(b)(2) of the Los Angeles County Employee Relations Ordinance:

"It shall be an unfair employee relations practice for employee organizations or their representatives or members: (2) To refuse to negotiate with County officials on negotiable matters, when the employee organization involved has been certified as the majority representative."

V. CONTENTIONS

The Charging Party contends and the Respondent denies that Joint Council 36, AFSCME, had a duty of fair representation to represent him in a hearing before the Los Angeles County Civil Service Commission.

VI. STATEMENT OF FACTS

The Charging Party, George Ramos, had, for reasons not relevant in these proceedings, received a fifteen day disciplinary suspension. Mr. Ramos is a dues paying member of Local 119. He requested and received union representation by Carl Lublin, Chief Steward, in the grievance procedure. Mr. Ramos' grievance was denied at all steps of the grievance procedure. Mr. Lublin advised Mr. Ramos to apply for a hearing by the Civil Service Commission, which he did. The Civil Service Commission granted a hearing and Mr. Ramos requested that the union represent him before the Civil Service Commission. Mr. Ramos, in preparation for that hearing,

to see John Garfield of Joint Council 36. Mr. Garfield and Mr. Ramos are in some dispute as to what was said at the conclusion of the meeting, but it appears that Mr. Garfield believed that Mr. Ramos had a good case and that he agreed to represent Mr. Ramos if his representation was approved by the Executive Board of Local 119. The matter was presented to the Executive Board the week prior to the scheduled hearing. Local 119 had never in the past nine or ten years provided representation at Civil Service Commission hearings. After being told by Mr. Garfield that they had no legal obligation to provide representation, and after a comment by one of the Board members that Mr. Ramos had been previously involved in an incident of violence, the Executive Board voted not to provide representation for Mr. Ramos. Mr. Garfield, who had been indicated as Appellant's representative in the Civil Service proceedings, wrote the Civil Service Commission that he was withdrawing as Ramos' representative. That Friday, Mr. Ramos Called the Civil Service Commission and was informed by a secretary there that the union had withdrawn from representation. Mr. Ramos was informed by the union on the following Monday. The Civil Service Commission hearing was scheduled on that Thursday. Mr. Ramos secured the services of Mr. Martinez, who was a deputy sheriff at the facility where Ramos worked and who had never represented anyone previously in a Civil Service Proceeding. Subsequently, the Civil Service Commission reduced the suspension to three days. Mr. Ramos believes that the result would have been even more favorable if he had had experienced representation in the Civil Service Commission hearing.

VII. DISCUSSION

The Duty of Fair Representation doctrine has been created in the courts largely in response to the exclusiveness of control held by the union. It is also a matter of statute in some

areas of public sector labor relations, but it is not a part of the Milias-Meyers-Brown Act. In this situation, the union exerts almost no control; the grievant is free, on his or her own, to appeal to the Civil Service Commission upon grounds determined by the Los Angeles County Board of Supervisors relating to violation of the Civil Service Rules and not to a contract between the county and the union. Further, the Civil Service Rules provide that the Appellant has the right to a representative of choice and cannot be required to depend upon representation by the union. Thus, for matters before the Civil Service Commission, there appear to be none of the factors which underlie and justify the Duty of Fair Representation. Further, there appears to be no alternative ground for implying such a duty from the language of the ordinance relied upon by the Charging Party.

Despite the absence of a Duty of Fair Representation, the hearing officer believes that the union should recognize at least a morally implied duty of fair dealing with its members. In this instance, either Mr. Lublin or Mr. Garfield should have told Mr. Ramos that the Executive Board of Local 119 had never in the past voted to provide representation, the Executive Board should not have relied, even in part, on a wholly unsubstantiated and apparently wholly untrue, rumor about the grievant, and after the Board's action, the union should have notified Mr. Ramos as soon as possible and explained to him how to secure a continuance of the hearing for him to secure other representation.

RECOMMENDATION

The duly appointed hearing officer recommends that the Employee Relations Commission approve and adopt the following order:

"The American Federation of State, County and Municipal Employees, Council 36, did not commit an unfair employee relations

practice by refusing to provide representation for George Ramos in a hearing before the Los Angeles County Civil Service Commission. "

DATED: March 25, 1981

Respectfully submitted,

A handwritten signature in cursive script, reading "Sara Adler". The signature is written in dark ink and is positioned above the typed name.

Sara Adler, Hearing Officer