LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of FANNIE BUNCHE,ET AL., CHARGING PARTIES, VS. COUNTY OF LOS ANGELES, RESPONDENT.	CASE NO. UFC 70.25 REPORT OF HEARING OFFICER
LACEA, LOCAL 660, SEIU, INTERVENOR.	

Hearings were held in this matter on October 21 and October 30, 1981. Both the County of Los Angeles and Local 660 filed written briefs. A reply brief was filed in behalf of the Charging Parties.

Appearing for the County:

John H. Larson
County Counsel

Steven Houston
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Appearing for Charging Parties:

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Appearing for Intervanor Local 660, SEIU:

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I

STATEMENT OF FACTS

The facts are essentially undisputed:

1. In March, 1981, approximately 180 secretarial and clerical employees of the three legal departments of the County (all with bargaining unit #111, and represented by Local 660), submitted individual letters to the County advising that she/he desired to represent herself/himself in her/his employment relations with the County. The letters were identical letters other than the insertion of specific information of the signer's name, his/her classification, work location and employee number. The letters stated in part that

> I desire to represent myself individually in my employment relations with the County and particularly in connection with negotiations for improving my compensation benefits and working conditions for the 1981-82 fiscal year.

The letters further stated that the signer would be represented by Attorney Stephen Silver, who would forward specific requests for improved compensation benefits and working conditions for the 1981-82 fiscal year.

2. On April 7, 1981, Edward Barrios, a County Employee Relations Administrator, wrote Silver a response which stated in part:

> The County recognizes the right of employees to: (1) choose to join an employee organization, (2) choose not to join or participate in the activities of an employee organization, or (3) choose to represent themselves individually on employee relations matters. However, based on consultation meetings with the certified representative of clerical employees this past year and the sub sequent registration of the Los Angeles County Legal Clerical Employees' Association, we have serious doubts that these letters represent the desire of the employees to represent themselves "individually". The stated purpose of the employees in their letters, and the identification of you as their common agent, can only cause us to conclude

> that this activity represents the organizing efforts of a de facto competing employee organization. We believe it would be contrary to State law and the County's Employee Relations Ordinance for the County to meet and confer with you on matters of wages, hours and terms and conditions of employment for employees represented by a certified bargaining agent.
>
> If, however, you wish to meet to consult on matters of interest to your clients, please indicate in writing when you wish to meet and the specific agenda issues to be discussed.

3. On April 9, 1981, Silver wrote the County with reference to the individual letters (apparently the two letters crossed). Before listing a series of specific changes requested in terms and conditions of employment (16 particular changes plus a general one dealing with other matters which might be mutually agreed upon) Silver stated:

> ...Instead of forwarding to you an individual letter on behalf of each employee, for the sake of convenience, this letter is designed to set forth the requests of each such individual employee, where applicable. Each individual proposes that, except as modified by this request, all existing wages, hours and other terms and conditions of employment currently enjoyed by him/her shall remain in full force and effect for the entire duration of any resulting agreement between the County and the individual....

4. Following the receipt by Silver of Barrios' letter and the receipt by the County of Silver's letter, Silver and Barrios agreed to meet in an attempt to see if the differences could be reconciled. It was agreed, for the sake of convenience and to avoid for the County the expense of providing release time for each of the 180 individuals, that a representative group of four attend the meeting without loss of pay. The four were selected by Silver. One, Penny Roberts, had been listed as President of the Los Angeles County Legal Clerical

Association in an "Employee Organization Registration" with ERCOM on November 7, 1980; Mary Nunez was listed as Treasurer; and Helen Fagan was listed as Special Assistant. (The Registration Form requests verification that "one of the primary purposes of your organization is to represent employees in their employee relations with the County".)

5. At that meeting (as described in a letter by Silver to ERCOM July 24, 1981, which letter was stipulated to as accurate) the following occurred:

> ...Mr. Barrios related that the County would not meet and confer in good faith, or otherwise negotiate, with any of the individuals, either collectively or separately. Mr. Barrios expressed that the County's position was that its obligation to respond to an individual request for self-representation included only the limited obligation of listening to any suggestions for proposed changes in wages, hours and other terms and conditions of employment and perhaps considering that information. Mr. Barrios specified that it was the County's position that the right to self-representation would not include the right to compel representatives of the County to meet and confer in good faith (or negotiate) regarding such wages, hours and other terms and conditions of employment. In particular, Mr. Barrios said that none of the individuals would be afforded any of the following rights: (1) the right to cause the County to exchange information freely regarding proposed changes in wages, hours and other terms and conditions of employment; (2) the right to meet on a regular basis with representatives of the County regarding those matters; (3) the right to receive time off with pay to meet regarding such proposals; (4) the right to cause the County to enter into a good faith attempt to reach an agreement regarding changes proposed by the individual, and the right to cause any resulting agreement to be reduced to writing; and (5) the right to invoke any of the impasse procedures prescribed in the County Employee Relations Ordinance. Mr. Barrios specifically refused to discuss any of the requested changes set forth in my letter of April 9, 1981 on the ground that those matters were currently the subject of discussion

> between the County and the certified bargaining agent for the unit to which the employees had been assigned. Based upon the conduct of Mr. Barrios, as described above, the meeting concluded....

6. On June 3, 1981, Silver filed UFC 70.25 as representative for 183 County employees. The charge was based on alleged violations of the Employee Relations Ordinance of the County of Los Angeles as well as Sections 3502, 3506 and 3507 of the California Government Code.

7. ERCOM appointed the undersigned to act as Hearing Officer, pursuant to the Commission's rules.

8. On September 11, 1981, LACEA, Local 660, SEIU, AFL-CIO requested, under Rule 6.06.1 of ERCOM's Rules and Regulations, to intervene. The request stated in part:

> Since April 23, 1970, Local 660 has been certified as the bargaining agent for the Bargaining Unit (BU #111-Clerical and Office Service Employees) in which all 180 charging parties are employed.
>
> Since its certification as the certified bargaining representative, Local 660 has regularly met and negotiated with the County within the meaning of Section 3(o) and Section 6 of the Ordinance and has executed Memoranda of Understanding. The most recent MOU was executed effective July 1, 1981 and is effective through June 30, 1983.
>
> Mr. Silver's demand that the County negotiate with the charging parties, if sustained, would have a detrimental impact upon Local 660's standing as certified bargaining representative. Local 660 believes that Mr. Silver and his clients, in fact, represent an employee organization which is not certified to negotiate for these employees we represent.

9. On October 21, 1981, the undersigned conducted a hearing on the Motion to Intervene, which was unopposed by the charging parties and by the County. The Motion was granted.

II

EMPLOYEE RELATIONS ORDINANCE; CALIFORNIA GOVERNMENT CODE

A. County Employee Relations Ordinance

The following sections of the Los Angeles County Employee Relations Ordinance were cited:

1. Section 3(a) provides:

> "Certified employee organizations" or "certified employee representative" means an employee organization, or its duly authorized representative, that has been certified by the Employee Relations Commission as representing the majority of the employees in an appropriate employee representation unit.

2. Section 3(o) provides:

> "Negotiation" means performance by duly authorized management representatives and duly authorized representatives of a certified employee organization of their mutual obligation to meet at reasonable times and to confer in good faith with respect to wages, hours, and other terms and conditions of employment, and includes the mutual obligation to execute a written document incorporating any agreement reached. This obligation does not compel either party to agree to a proposal or to make a concession. Agreements concerning any matters within the exclusive jurisdiction of the Board of Supervisors or concerning any matters not otherwise delegated by the Board shall become binding when executed by the Board of Supervisors and affected certified employee organizations. Agreements concerning matters within the exclusive jurisdiction of management representatives, or otherwise delegated to them by the Board, shall become binding when executed by said affected management representatives and affected certified employee organizations.

3. Section 4 provides:

> Employee Rights
> 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.

4. Section 6(a) provides:

> All matters affecting employee relations, including those that are not subject to negotiations, are subject to consultation between management representatives and the duly authorized representatives of affected employee organizations. Every reasonable effort shall be made to have such consultation prior to effecting basic changes in any rule or procedure affecting employee relations.

5. Section 6(b) provides:

> The scope of negotiation between management representatives and the representatives of certified employee organizations includes wages, hours, and other terms and conditions of employment within the employee representation unit.

6. Section 9 provides:

> Certification of Employee Organizations. Following notice and hearing, the Commission shall adopt rules and regulations governing the certification and decertification of employee organizations. Only employee organizations that have been certified as majority representatives of appropriate employee representation units shall be entitled to negotiate on wages, hours, and other terms and conditions of employment for such units. This shall not preclude other employee organizations, or individual employees, from conferring with management representatives on employee relations matters of concern to them.

7. Section 12(a)(1) provides:

> (a) It shall be an unfair employee relations practice for the County:
>
> > (1) To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Ordinance;

8. Section 16(b) provides:

> Nothing in this Ordinance shall be construed to deny any person or employee the rights granted by Federal and State laws and the County Charter provisions.

B. California Government Code

The following sections of the California Government Code were cited:

§ 3502. Right of public employees to choose and partake in activities of employee organizations for representation in employer-employee relations: Rights of refusal to join and of self-representation

Except as otherwise provided by the Legislature, public employees 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 employer-employee relations. Public employees 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 public agency.

§ 3502.5. Negotiation of agency shop agreement

(a) Notwithstanding Section 3502, or any other provision of this chapter, or any other law, rule, or regulation, an agency shop agreement may be negotiated between a public agency and a recognized public employee organization which has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, ordinances, and enactments, in accordance with this chapter. As used in this chapter, "agency shop" means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of such organization for the duration of the agreement, or a period of three years from the effective date of such agreement, whichever comes first. However, any employee who is a member of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. Such employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to such dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in a memorandum of understanding between the public agency and the public employee organization, or if the memorandum of understanding fails to designate such funds, then to any such fund chosen by the employee. Proof of such payments shall be made on a monthly basis to the public agency as a condition of continued exemption from the requirement of financial support to the public employee organization.

(b) An agency shop provision in a memorandum of understanding which is in effect may be rescinded by a majority vote of all the employees in the unit covered by such memorandum of understanding, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) such vote is by secret ballot; (3) such vote may be taken at anytime during the term of such memorandum of understanding, but in no event shall there be more than one vote taken during such term. Notwithstanding the above, the public agency and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on an agency shop agreement.

(c) An agency shop agreement shall not apply to management, confidential, or supervisory employees.

(d) Every recognized employee organization which has agreed to an agency shop provision shall keep an adequate itemized record of its financial transactions and shall make available annually, to the public agency with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the Labor-Management Disclosure Act of 1959 covering employees governed by this chapter, or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the public agency with a copy of such financial reports.

§ 3505.1. Meetings of representatives of public agency and employee organizations: Joint preparation of written memorandum of understanding

If agreement is reached by the representatives of the public agency and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination.

§ 3505.2. Meetings of representatives of public agency and employee organizations: Agreement for mediation on failure to reach agreement: Division of costs

If after a reasonable period of time, representatives of the public agency and the recognized employee organization fail to reach agreement, the public agency and the recognized employee organization or recognized employee organizations together may agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation shall be divided one-half to the public agency and one-half to the recognized employee organization or recognized employee organizations.

§ 3506. Public agencies and employee organizations not to act to detriment of employee because of exercise of rights under § 3502

Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502.

§ 3507. Adoption of regulations after consultation with representatives of organization(s): Permissible provisions: Recognition of organizations

A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under this chapter (commencing with Section 3500).

Such rules and regulations may include provisions for (a) verifying that an organization does in fact represent employees of the public agency (b) verifying the official status of employee organization officers and representatives (c) recognition of employee organizations (d) exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof, subject to the right of an employee to represent himself as provided in Section 3502 (e) additional procedures for the resolution of disputes involving wages, hours and other terms and conditions of employment (f) access of employee organization officers and representatives to work locations (g) use of official bulletin boards and other means of communication by employee organization (h) furnishing nonconfidential information pertaining to employment relations to employee organizations (i) such other matters as are necessary to carry out the purposes of this chapter.

Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of such recognition.

No public agency shall unreasonably withhold recognition of employee organizations.

§ 3508.5. Right of public employee to authorize dues deduction

Nothing in this chapter shall affect the right of a public employee to authorize a dues deduction from his or her salary or wages pursuant to Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

§ 3543. Rights of employees

Public school employees 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 employer-employee relations. Public school employees shall also 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 public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer.

Any employee may at any time present grievances to his employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

III

POSITION OF THE COUNTY OF LOS ANGELES

The County raises three arguments:

1. Neither the Employee Relations Ordinance nor the California Government Code require the County to negotiate individually with any employees included in the bargaining unit represented by a certified employee organization.

The City of Hayward v. United Public Employees, Local 390 (1976) 54 Cal.App. 3d 761 decision was "rendered a nullity" by the enactment in the 1981-82 legislative session of §3502.2 of the Government Code, which expressly permit local public agencies and recognized employee organizations to enter into agency shop agreements. The principle of "exclusivity" inherent in such agreements also makes the reasoning in other cases decided in California prior to the enactment of AB 1693 "less than persuasive."

Los Angeles County Fire Fighters, Local 1014 v. City of Monrovia (1972) 24 Cal.App. 3d 289, Alameda County Ass't Pub. Defenders Ass'n v. County of Alameda (1973) 33 Cal.App.3d 825 and Placentia Fire Fighters, Local 2147 v. City of Placentia (1976) 57 Cal.App. 3rd 9 do not squarely consider whether an

individual might claim all of the rights, duties and obligations extended under Meyers-Milias-Brown to recognize employee organizations. Such a construction would be unreasonable in light of the overall bargaining structure contemplated by MMBA and would be contrary to the clear language of certain sections in setting forth the duties of public agencies which are required to give written notice of proposed legislation effecting working conditions to recognized employee organizations and to meet and confer in good faith with such organizations. The written memorandum agreement required by Section 3505.1 and the mediation provisions of Section 3505.2 apply only to recognized employee organizations, as does Section 3507 authorizing the agency to adopt reasonable rules and regulations, after consultation with representatives of employee organizations.

The County cites judicial interpretations of the NLRA for the proposition that the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain and that the Act does not empower the Board to certify where only one employee is involved. The Court's reasoning in City of Monrovia and in Public Defenders to the effect that Section 3502 and the general purposes of the MMBA require the substantial duties and obligations of a public agency to be imposed in relation to individual employees is "dicta which should not be followed."

2. If the County negotiated individually or otherwise with Charging Parties, it would be guilty of an unfair labor practice under Section 12 of the Employee Relations Ordinance.

The County cites Medo Photo Supply Corp. v. National Labor Relations Board, 321 U.S. 678 and Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 for the proposition that after a union has been recognized as a bargaining agent of

employees, an employer's negotiations with individual employees or a committee of such employees is an unfair labor practice.

3. Realistically viewed, the Charging Parties do not seek to represent themselves individually in their employment relations with the County but rather collectively as a de facto competing employee organization.

The Charging Parties' conduct represents the organizing effort of the de facto competing employee organization which does not want to be concerned with decertification procedures or "contract bar" problems. The record before ERCOM clearly establishes the "concerted nature" of the Charging Parties' activities. The County points to the January 21, 1981 memorandum from the LACLCA's Board to its members indicating the concerted nature of their plans, the February 25, 1981 letter from Silver to the President of the Association indicating that individual members of the Association can hire an attorney to represent him/her, the February 27, 1981 memorandum from the LACLCA Board indicating the concerted nature of their activities, by the references to their right to hire Silver as "our agent to represent us in the forthcoming negotiations", and Silver's letter to the County proposing identical changes in wages, hours and other conditions of employment for each of the Charging Parties.

It is apparent from the foregoing that Charging Parties' stated desire to represent himself/herself "individually" in his/her employment relations with the County is a thinly veiled attempt to secure the County's recognition of the Los Angeles County Legal Clerical Association as a de facto competing employee organization in the clerical bargaining unit. Such activity would violate ERCOM's long-established rules regarding decertification and "contract-bar" procedures

and would result in chaos in the County's complex collective bargaining obligations.

IV

POSITION OF LOCAL 660

This is not a case of an individual employee representing him or herself with the County or any particular problem involving that employee's relations with the County. Section 4 of the Ordinance protects an employee's right to refuse to join or participate in the activities of the employee organization and further grants the employee's right to represent himself or herself individually in employment relations with the County. Rather this is a case in which a group of employees, through a recognized employee organization not certified as the majority organization, is "attempting to negotiate salaries and conditions of employment" for the employees within a bargaining unit "in order to bypass the certified employee organization."

Section 3(a) of the Ordinance defines a "certified employee organization." Local 660 is that certified employee organization, not the Legal Clerical Association. Section 3(b) requires that the County meet with the "certified employee organization" and confer in good faith with respect to wages, hours and other terms and conditions of employment. Although under Section 6(a) all employee organizations, including the Legal Clerical Association, can consult with the County on matters affecting the employee organization, it is under Section 6(b) that the County must meet with the "certified employee organization" to negotiate. And under Section 9, only employee organizations certified as the majority representative of appropriate employee representation

unit "are entitled to negotiate." Further, Section 12, in defining unfair employee practices, provides that it is an unfair employee practice for the County to refuse to negotiate with representatives of a certified employee organization on negotiable matters.

The statutory mandate, therefore, is clear: the County must negotiate with Local 660 as the certified employee organization on subjects that are negotiable and the County is prohibited from negotiating with any organization which has not been certified as the majority representative, although the non-certified organization does have the right to consult or confer with management representatives.

It is clear that the plan of the Legal Clerical Association is to bypass the express provisions of the Employee Relations Ordinance by having individual employees, through the Association, hire an outside attorney to represent the organization to negotiate with the County. That is the intent as expressed in the memorandum to members of the Association from its Board on February 27, 1981 and in the letter from Silver to the County's Chief Administrative Officer, signed by each of the individuals. And this is the intent based on the April 9, 1981 letter from Silver to the County stating that Silver, in behalf of the group of employees, desired to negotiate salary changes and retirement benefits as well as vacations, hours of work, holidays, sick leave and other items covered by employment and salaries within the definition of the Ordinance.

To sustain the unfair charge would result in two employee organizations representing the same group of employees within the same unit bargaining with the County on salaries and conditions of employment, a result totally

contrary to the Ordinance's terms and intent.

As to Los Angeles County Firefighters, Local 1014 vs. City of Monrovia, Monrovia did not adopt rules and regulations that provided for a certified majority employee organization to represent employees following an election; instead it simply recognized the Monrovia Municipal Employees Association as the only organized group that could speak on behalf of City employees. Therefore Monrovia could not, under Meyers-Milias-Brown, simply recognize by City resolution the Employees Association as the "only" organized group who could speak on behalf of its employees. As to Covina-Azusa Firefighters Union vs. City of Azusa, the Court held that if Azusa had adopted rules and regulations for the exclusive representation or for a majority certified employee organization (as did the County of Los Angeles), then Azusa could deal exclusively with such certified employee organization on negotiating salaries and working conditions. The Covina-Azusa Firefighters Union case, therefore, supports the position of County and the Intervenor that under the County Ordinance and the rules and regulations adopted by the County in accordance with MMBA, the County adopted a lawful policy that allows it to negotiate only with the certified majority employee organization on salaries and conditions of employment.

In Alameda County Assistant Public Defenders Association vs. County of Alameda, the only issue before the Court was whether the County, in certifying an exclusive employee organization as the bargaining agent under the rules and regulations adopted by the County, had to establish a separate unit for public defenders as professional employees. No such issue is involved in this case.

City of Hayward vs. United Public Employees dealt with an agency shop agreement and its lawfulness under Meyers-Milias-Brown. That is not the issue in this case.

Finally, Placentia Firefighters vs. City of Placentia presented the Court only with the issue of whether Placentia was negotiating in good faith, not the issue in the instant case.

The Charging Parties have failed to establish the County has violated the Ordinance. To hold otherwise would defeat the purposes and express language of the Ordinance and Meyers-Milias-Brown, which is to provide an orderly scheme involving collective bargaining between employee organizations and a public agency. To allow more than one organization to negotiate with the County would create chaos and havoc in employer-employee relations. The system adopted by the County under its Ordinance presents an orderly and systematic collective bargaining scheme where one employee organization, specifically Local 660, was designated as the certified majority representative after an election and is the sole organization the County must recognize and negotiate with for wages and conditions of employment.

V

POSITION OF CHARGING PARTIES

The "real issue" is the nature and extent of the right of each of the individual Charging Parties to represent himself/herself in his/her employment relations.

According to the Charging Parties, the City of Hayward vs. United Public Employees' Local 390 decision emphasized that under California law there is an "unfettered right to self-representation." The Alameda County Assistant Public Defenders

Association vs. County of Alameda decision held that a public employer must negotiate with a recognized employee organization and this obligation was no different than its obligation toward an individual who has asserted his or her self-representation in connection with negotiating wages, hours and other terms and conditions of employment. The Placentia Firefighters Local 2147 vs. City of Placentia decision held that there is to be only one employee representative of a unit; but

> a member of that unit is not required to join the representative group and may bargain directly with the public agency.

The Los Angeles County Firefighters Local 1014 vs. City of Monrovia held in part:

> It appears from our examination of the entire Act that the Legislature intended by it to set forth reasonable, proper and necessary principles which public agencies must follow in their rules and regulations for administering their employer-employee relations, including therein specific provisions for the right of public employees, as individuals...to negotiate on equal footing with other employees and employee organizations, without discrimination..." (emphasis added.)

Finally, Section 3507(d) of the California Government Code provides that any grant of exclusive recognition must be subject to the right of individual employees to elect to represent themselves.

In response to the arguments raised by Local 660 and the County, the Charging Parties contend as follows:

A. The Charging Parties are not seeking to represent themselves collectively through a competing employee organization; to the contrary, their sole request is for individual representation

The Charging Parties make no secret of the fact that they formed the Los Angeles County Legal Clerical Association

because of a common dissatisfaction with Local 660's representation. They did explore the possibility of having their new organization replace Local 660 as bargaining agent. But when they realized they could not cause this to occur in time for the 1981-82 negotiations, they abandoned that approach. Instead, as individuals, each exercised his/her individual right to self-representation. The fact that each Charging Party chose the same attorney and submitted the same request for improved compensation benefits is irrelevant; the fact remains that each party is acting alone, on an individual basis. At all times each of the Charging Parties was and is prepared to meet with the County individually.

Both the County and Local 660 contend this right to individual representation does not include the right to compel the County to negotiate in good faith and that the right to individual representation extends only to individual problems. But the right to participate in the determination of one's own wages, hours and other terms and conditions of employment is the "most vivid example" of a particular problem involving an employee's relations with the County. The attempted distinction by the Union between individual grievances and matters that are the subject of negotiations is without foundation and ignores Section 3507(d).

Further, it contravenes the holding in the Alameda County case which equates the burden of a public agency to negotiate with an individual with its obligation to negotiate with a recognized employee organization. And it is in direct opposition to the Placentia and Monrovia cases.

The provisions of Meyers-Milias-Brown, particularly Section 3502 and 3507(d) must be contrasted with the language in Section 3543 which deals with the right of public school employees under the Public Educational Employment Relations

Act. That Section contains language which states in part that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized

> no employee in that unit may meet and negotiate with the public school employer.

Under this Section the legislature has provided that the right of individual public school employees to represent themselves in their employment relations exists only where exclusive recognition has not been granted. And even when exclusive recognition has been granted, an individual employee still retains his/her right to present grievances on his/her behalf. It is apparent from the language of Section 3543 that when the Legislature intends to preclude an individual from negotiating on his/her own behalf after exclusive recognition has been granted, it is aware what words should be used to accomplish this. Yet no such language appears in Meyers-Milias-Brown.

Covina-Azusa Firefighters Union vs. City of Azusa adds nothing to the issue at hand. The Charging Parties do not dispute the point asserted by Local 660 in referring to that case, mainly that had exclusive recognition been granted, an employee organization representing a minority of employees could not compel Azusa to negotiate with it on behalf of its members.

B. The enactment of Section 3502.5 and 3508.5 of the California Government Code has no bearing on the issue at hand.

These provisions basically permit the existence of an agency shop if negotiated by a public agency and a recognized employee organization. But the issue at hand must be decided based on the state of the law as it existed when the request for individual representation was made. These amendments did not become effective until January 1, 1982, more than

six months after the requests were made; and as a result they have no bearing on the issue to be decided. Moreover, the effect of the amendment was exclusively economic. It afforded to a recognized employee organization the opportunity to receive payment for services rendered for representing employees in the unit for which it was recognized who did not belong to the organization. The amendment did not abridge or even relate to the right to individual representation.

The Charging Parties request that the unfair labor practice charges be sustained and that each such employee be afforded the right to full individual representation, including, particularly, the right to compel the County to negotiate with him/her in good faith regarding wages, hours and other terms and conditions of employment.

VI

DISCUSSION

The facts -- essentially undisputed -- and the briefs of the parties raise two issues:

1. Are the Charging Parties seeking to represent themselves individually in their employment relations with the County or rather are they seeking representation collectively, as a de facto competing employee organization?

2. If the Charging Parties are attempting to represent themselves individually, did the County commit an unfair labor practice by its refusal to meet and confer or otherwise negotiate regarding wages, hours and other terms and conditions of employment?

An issue is <u>not</u> raised by the Charging Parties that even if they are, effectively, a competing labor organization, the County must negotiate with them. Such negotiations would

be improper under the Ordinance and the County would be subject to action by Local 660 challenging such negotiations. So long as Local 660 is the certified bargaining representative for the Charging Parties, and in the absence of taking the appropriate procedures to decertify, Local 660 is the only certified bargaining unit with which the County can negotiate for the Charging Parties.

In determining this issue as to whether the Charging Parties are actually collectively involved in a competing labor organization, we must look to substance, not to form. And with this as an approach, there appears no question the Charging Parties never intended to assert rights to represent themselves individually. They formed one organization; they solicited membership based on the one organization; their correspondence reflected one organization; they hired one representative to advise and counsel with them; and they made identical "proposals." As the County appropriately concludes, the Charging Parties' stated desire to represent themselves "individually" in their employment relations with the County

> is nothing but a thinly veiled attempt to secure the County's recognition of the Los Angeles County Legal Clerical Association as a de facto competing employee organization in the clerical bargaining unit.

To conclude otherwise would be to ignore the realities of the record and of the situation. By way of illustrating this, do the Charging Parties really contemplate that if they were "successful" in "individual" negotiations with the County, they would not claim -- and appropriately -- a success for their Association?

By ERCOM's concluding the Charging Parties are not

attempting to represent themselves individually, there should be no inference ERCOM is making any judgment as to the effectiveness or lack of effectiveness of Local 660 as the bargaining representative for the employees in question. That determination is not ERCOM's to make and it is not ERCOM's concern.

Based on a ruling the Charging Parties are not actually seeking to represent themselves individually, there is no need to consider the second question, that is, the requirements placed on the County in dealing with individual employees who have determined to exercise their rights under Section 4 of the Ordinance "to represent themselves individually in their employment relations with the County." But since the issue raised in this unfair labor practice charge may ultimately be considered by the courts, it would appear useful to explore ERCOM's understanding as to the rights of individual employees and the duties of the County in terms of individual representation.

In support of its position that the County must negotiate with individual employees, the Charging Parties point to Section 3507(d) of Meyers-Milias-Brown and to certain Court decisions. But Section 3507(d), in stating the "right of an individual to represent himself", refers to Section 3502(e). And 3502(e) uses language identical with the Ordinance language, namely, that employees "shall have the right to represent themselves individually in their employment relations" with the public agency (Meyers-Milias-Brown) and with the County (Employee Relations Ordinance of the County of Los Angeles).

A careful reading of both the Ordinance and Meyers-Milias-Brown must lead to the conclusion, notwithstanding

dicta in appellete decisions to the contrary, that the public agencies' duties, in terms of meeting with an individual employee who wants to represent himself, are not as broad as the duties to negotiate with the certified employee organization under either the Ordinance or under Meyers-Milias-Brown.

Let's first look at the Ordinance:

1. Section 2 refers to its purpose of "assuring, at all times, the orderly and uninterrupted operations and services of Government employment." It is hard to believe that that purpose could be achieved if each individual County employee had the same right to insist on the level of negotiation by the County which the County is required to do in terms of "certified employee organizations."

2. Section 3 defines "certified employee organizations."

3. Section 3(o) defines "negotiations" in terms of meeting at reasonable times "and to confer in good faith with respect to wages, hours and other terms and conditions of employment, and includes the mutual obligation to execute a written document incorporating any agreement reached." But "negotiations", under Section 3(o), is between a duly authorized management representative and "duly authorized representatives of a certified employee organization."

4. Section 4 does not use the term "negotiations" in connection with an employee's right to represent himself. The rights, then, and the duties, are quite different than when "negotiations" are required, since "negotiations" is a term which has a clear meaning in labor-management relations.

5. Even the duty to consult, under Section 6, on those matters which are not subject to "negotiations", relate only to consultation between management representatives "and the duly authorized representatives of affected employee organizations."

6. Section 6(b), in defining the scope of "negotiations" as including wages, hours and other terms and conditions of employment, again talks about "negotiations" between management representatives "and the representatives of certified employee organizations."

7. Section 13 deals with resolution of impasses on agreement terms. And again, this section clearly deals with impasses between appropriate management representatives "and the representatives of a certified employee organization."

In short, there is no appropriate way to read the Ordinance without concluding that whatever an individual's right to represent him or herself with the County, that right, in terms of placing responsibilities and duties on the County, is limited.

The same kinds of references can be found in Meyers-Milias-Brown. For example, the mediation provision, under Section 3501(e) refers to mediation between representatives of the public agency "and the recognized employee organization or recognized employee organizations." Section 3504.5 refers to the required notice by public agencies to each "recognized employee organization" of any ordinance, rules, resolution or regulation relating to matters within the scope of representation. Section 3505, in defining "meet and confer in good faith" refers to "representatives of such recognized employee organizations as defined in sub-division (d) of 3501, which sub-division defines such organizations as

> an employee organization which has been formally acknowledged by the public agency as an employee organization that represents employees of the public agency.

In concluding that the County's obligation, in terms of the Charging Parties -- even if it is assumed that they are

seeking to represent themselves individually -- is limited and that the County did not commit an unfair labor practice by the position it took in response to the request for negotiations, ERCOM recognizes there is some dicta in appellete decisions which equate the right to represent oneself with the right to negotiate on equal footing with other employees' employee organizations without discrimination. But that dicta which appears in the City of Monrovia decision, is not supported by Meyers-Milias-Brown. And in terms of that decision, certain facts must be considered:

1. Monrovia had adopted no rules and regulations providing for certification of a majority and the Court was concerned with the City's recognizing, by resolution, only one association which could speak for employees;

2. The Firefighters represented a significant number of the employees;

3. There is a finding that notwithstanding any claims by the City, it did not maintain an open-door policy to all employees and employee organizations to present grievances and make recommendations regarding wages, salaries, hours and working conditions.

In terms of the Placentia case, again notwithstanding any dicta, the Court noted that

> the sole question presented is whether the MMBA permits the creation of an agency shop in an agency of a local government. (emphasis supplied)

Therefore, the question of the impact of the recent amendment of Section 3502.5 in terms of the issues raised in this unfair practice is not relevant, nor is any implication from the decision that there is a broad right of individual employees to negotiate for themselves.

In the Alameda case, in considering the Court's language

one must remember what the Court itself determined as the issue:

> The question to be decided then becomes whether requiring all professional employees, regardless of type, to be in one organization for the administration of employer-employee relations is reasonable and appropriate. (emphasis supplied)

That "issue" does not present a basis for any broad statements in terms of an individual employee's right to require negotiations by a public agency.

As to the Placentia decision, it is important to note the issue raised in that decision was the Union's contention that the "City did not meet and confer in good faith." As to the statement made by the Court that it is "apparent" that an individual employee "may bargain directly with a public agency", this is by no means so "apparent." In fact the paragraph following this conclusion of the Court makes it clearer that the conclusion is not apparent, when the Court notes that in the event of a failure to reach agreement after good-faith efforts over a reasonable time to do so, the parties may agree to place the disputed matter in the hands of a mediator. As noted above, the mediation section (Section 3505.2) refers to mediation between representatives of public agency and "the recognized employee organization." There is no reference to mediation between representatives of the public agency and individual employee for an obvious reason; chaos rather than order would be created if a public agency was forced to mediate wages, hours and working conditions with individual employees.

In summary, then, even assuming a finding that the Charging Parties were in fact seeking the right to represent themselves individually, the County did not violate the Ordinance by refusing to meet and confer.

VII

RECOMMENDED ORDER

The County of Los Angeles did not commit a violation of Section 12 of the Employee Relations Ordinance of the County of Los Angeles by its refusal to meet and confer with the Charging Parties.

DATED: April 20, 1982

WILLIAM LEVIN
Hearing Officer