LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of,

DAVID C. ANDERSON,

Charging Party,

v.

PROFESSIONAL PEACE OFFICERS ASSOCIATION,

Respondent.

UFC 70.36

REPORT OF THE HEARING OFFICER

BACKGROUND

On August 3, 1988, David C. Anderson (Anderson) filed a complaint with the Los Angeles County Employee Relations Commission (Commission). The charge alleges that Respondent Professional Peace Officers Association (PPOA/Association) engaged in an unfair labor practice and violation within the meaning of Section 12 (b)(1) and 4, respectively, of the County's Employee Relations Ordinance (Ordinance), in that it interfered with or restrained him in his right to join and participate in the activities of his employee organization.

In a supporting statement, Anderson alleged that by denying him this membership, the PPOA has prevented his seeking office in his bargaining unit, serving on the bargaining committee, and voting on the M.O.U. that determines his wages hours and working conditions. Further, that a denial of membership prevents him from "obtaining proper assistance with grievances and arbitrations or with civil service in the event of a suspension, reduction or discharge."

PPOA answered that as a non-member Anderson has representation in the grievance procedure, including arbitration, as does any member of Unit 612. It affirmed that as a non-member he is not entitled to representation before the Civil Service Commission in the event of suspension, reduction, or discharge. He also does not have representation at "Skelly" proceedings. Additionally, as a non-member he may not be nominated nor elected to office, he may not serve on

any PPOA committee (including bargaining), and he may not vote in any PPOA election (including that related to M.O.U. ratification). Finally, a non-member is not obligated to pay PPOA dues or assessments.

The Commission set the matter for hearing before Michael Prihar. A hearing was held on January 17, 1989, at the Commission's hearing room located in Room 374, Hall of Administration, 500 West Temple Street, Los Angeles, California. Both parties were represented by counsel. The parties agreed to a number of stipulated facts and exhibits. These were presented in a notebook to the hearing officer. Following the commencement of the hearing, the parties indicated that additional factual stipulations had been reached and that additional joint exhibits were to be submitted. These stipulations were then read into the record, and the joint exhibits were marked and entered. The parties agreed to argue in briefs. Charging Party submitted an opening brief (Ch.1.) which was answered by Respondent's brief (Re.1.). This was followed by Charging Party's reply brief.(Ch.2.). All briefs were exchanged through the Commission's offices, which forwarded the complete set to the hearing officer. These were received on or about April 10, 1989.

APPEARANCES

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ISSUE

Did the PPOA, by denying Anderson membership and rights associated with such membership, engage in acts such as would constitute violations of Los Angeles County Employee Relations Ordinance Sections 4 and/or 12(b)(1).

RELEVANT PROVISIONS OF THE ORDINANCE

Section 4. EMPLOYEE RIGHTS.

Employees of the County shall have the right to form, join, and participate in 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 12. UNFAIR EMPLOYEE RELATIONS PRACTICES.

(b) It shall be an unfair employee relations practice for employee organizations or their representatives or members:

(1) To interfere with, restrain or coerce employees in the exercise of the rights recognized or granted in this Ordinance;

STATEMENT OF FACTS

In 1984, following a promotion to Sheriff Sergeant, Anderson became a member of PPOA. The Association was the exclusive bargaining agent for Unit No. 612 which included all employees in the classifications of Sheriff Sergeants and Lieutenants, Lieutenant (District Attorney), and Supervising Investigator (District Attorney). PPOA was also the exclusive bargaining agent for Unit No. 621 (all employees in Correction Officer and Custody Assistant classifications). Lastly, although PPOA was not recognized as the bargaining representatives for any other employee in any other unit, its membership also included a large number of employees in classifications other than those noted for the two bargaining units.

After gaining membership in PPOA, Anderson and a group of other individuals (all members of Unit No. 612) perceived a need to implement certain goals designed to improve the representation of individuals in Unit No. 612. He worked towards that end in his capacity as an appointed delegate from his place of assignment. After concluding that his efforts were ineffective in bringing about the desired changes, Anderson, on or about March, 1986, became actively involved in the formation of the Lieutenants And Sergeants Organization (LASO).(Ch.1:4) LASO was duly registered by the Commission as an employee organization on March 5, 1986.(Transcript at page 18, lines 26-27, hereinafter Tr.18:26-27)

The PPOA Board of Directors began proceedings to remove Anderson from membership in March, 1986. In accordance with Article VI, Section 1(B), of its by-laws, three members of PPOA's Board of Directors submitted a written request for the removal of Anderson. (Exhibit 1, hereinafter Ex.). The matter was raised at PPOA's March 12, 1986 meeting and Anderson was

so notified in a letter the following day. (Ex.2,3). On April 9, 1986, Anderson appeared before the Board and presented his statement. (Ex. 4). In a letter dated April 11, 1986, PPOA notified Anderson that his membership had been withdrawn. The reason stated for the action was his involvement in establishing LASO, a competing organization with the objective of representing "supervisors of Unit 612 with respect to their terms and conditions of employment." Additionally, the letter stated that Anderson's involvement in establishing LASO, "constituted acts inimical to the welfare of the Association in violation of Article VI, Section 1 (A)." (Reference is to the PPOA By-Laws). (Stipulation 6 [hereinafter Stip.];Ex.4,5).

In 1987, while President of LASO and intent on replacing PPOA as bargaining agent for Unit 612, Anderson petitioned for decertification of PPOA. During the attendant campaigns pending the decertification vote, both LASO and PPOA distributed campaign literature in support of their respective positions. The County certified the results of the election on November 18, 1987. PPOA was selected to continue as bargaining agent for Unit 612.(Stip.8)

A decision to disincorporate LASO was made at an April 4, 1988, general meeting. Shortly before April 13, 1988, Anderson applied for reinstatement as a member of PPOA.(Stip 9). On April 13, 1988, the PPOA Board rejected Anderson's request to be reinstated as a member of PPOA.(Ex.9). On In a letter dated April 18, 1988, Anderson requested review of the Board's decision. (Ex.10). Anderson was notified in a May 9, 1988, response that although there was no provision for an appeal, he could address the Board and solicit its reconsideration at its regularly scheduled June 8, 1988, meeting. (Ex.11). Anderson appeared before the PPOA Board at its scheduled July 13, 1988, meeting and solicited its reconsideration.(Ex.12). In a letter dated July 13, 1988, the PPOA conveyed the finality of its decision to deny him membership.

On or about August 1, 1988, Anderson filed the instant unfair practice charges, designated by the Commission as UFC 70.31.

CONTENTIONS OF THE PARTIES

A. Those of the Charging Party

1. PPOA failed to establish reasonable restrictions as to who may join the Association, as allowed under Section 3503 of the Meyers-Milias-Brown Act[1] (MMBA). Since there are no

1. Cal. Government Code Section 3500 *et seq.*

reasonable restrictions, its basis for denying membership is conclusively unreasonable.

2. Since PPOA's is an exclusive bargaining agent for Bargaining Unit 612, which included Anderson as a member, it occupies a unique status and in such status its denial of membership forecloses Anderson from any opportunity to have voice in his wages, hours, or terms and conditions of employment. Decisional law reflects a recognition of the importance of preserving the rights of membership in such organizations.

3. PPOA's denial of membership acts as improper restraint and discrimination against Anderson due to his exercise of his rights to form, join, and participate in LASO, an employee organization of his choosing. PPOA's actions, if allowed, would have a chilling effect in deterring other employees from exercising their legal rights to secure perceived improvements in representation through another employee organization.

4. The PPOA's denial of membership violates Anderson's Constitutional rights of freedom of expression and association. Since PPOA is granted exclusive recognition by the Commission under the terms of the Ordinance, which in turn is grounded in State legislative action, its actions are tantamount to state actions. Therefore, First and Fourteenth Amendments protections would apply if PPOA's actions are based on Anderson's criticism of PPOA communicated to other members.

5. Failure by Anderson to assert violation of Constitutional rights in filing his original charge does not constitute a waiver as asserted by PPOA. The County's Rules do not require that the filed documents raise every possible legal theory which may be asserted, and a copy of a letter attached to the charge indicated a claim of denied free speech rights.

6. Anderson's actions were not designed to destroy PPOA as an organization, but to replace it with another employee organization more capable of meeting the representational needs of Unit 612 members. Therefore, denial of membership cannot be justified as a means of insuring PPOA's continued existence.

7. Cases cited by Respondent in support of its position are inapposite in that they are based on express statutory language not found in the MMBA.

B. Those of the Respondent

1. The rejection of Anderson's reinstatement as a member to PPOA was consistent with its by-laws and applicable state and analogous federal labor laws.

2. The nature of Anderson's actions in seeking PPOA's decertification as a bargaining agent is comparable to union "treason" and as such it justifies his rejection from the Association.

3. Anderson's assertions that denial of reinstatement constitutes violations of his "free speech" rights as supported by case law is inapposite in that case law recognizes a distinction between statements directed at officers or members, and those directed at the union as an institution.

4. The decision to deny reinstatement was not arbitrary as supported by the factual background.

5. Anderson is precluded from belatedly raising claims to constitutional freedom of expression and association when such were not a part of his original charge.

6. Pertinent acts by the PPOA did not implicate state action and therefore constitutional contentions are inapposite.

7. Any decision interfering with PPOA's membership decision would implicate state action and would raise issues as to the possible violation of constitutional rights of liberty and association of PPOA's members.

DISCUSSION

I. Hearing Officer's Authority:

The Employee Relations Ordinance of the County of Los Angeles, Ordinance 9646 (Ordinance), created the Commission to implement and administer the Ordinance. The Commission is authorized to promulgate appropriate Rules and Regulations (Rules). These ensure that County employees and their representatives are fairly treated and their rights maintained, as set forth by the Ordinance. As to determinations and findings related to unfair employee relations practices, the Commission may appoint a hearing officer who shall conduct a hearing which shall be limited to argument and evidence on issues of fact or law material to the proceedings. The findings and recommendations of the hearing officer cannot exceed the scope of authority of the Commission as to such findings. Therefore, such findings must limit themselves to interpretation and application of the Ordinance and/or the Rules where these are at issue.

Whereas the hearing officer may consider and utilize federal, as well as state precedents in formulating his findings and recommendations, it is beyond the scope of his authority to interpret Federal Constitution provisions and

both federal and state laws (such as the California Non-profit Corporation Code) that may or may not apply to the instant matter. Federal precedents may be followed or may serve as guide to interpretation or application of local ordinance where such precedents reflects interests similar to those found in the local ordinance. Vallejo Fire Fighter's Union v. City of Vallejo, 12 Cal.3d 608, 116 Cal.Rptr.507 (1974). The Commission has also approved the use of federal precedents where such is appropriate. Abu rtha v. AFSCME Local 119, UFC 70.16 (1981). In applying federal precedents, however, care is needed to insure that such applications relate to those statutory provisions whose purpose does not significantly differ from those of the applicable federal laws. Service Employees International Union, Local 600 v. City of Santa Barbara, 125 Cal.App.3d 459 178 Cal.Rptr. 89 (1982). Conflicting policy goals underlying legislative intent precludes unquestioned adherence to such precedents.

II. Applicable Precedents:

Both parties cited decisions relying on provisions found in the Labor-Management Reporting and Disclosure Act,(LMRDA), otherwise known as the Landrum-Griffin Act.[2] (Ch.1:34-35)(Re.1:13, et al.) It was enacted as an amendment to the Labor-Management Relations Act (LMRA) following the Senate's McClellan Anti-Racketeering Committee investigations. Recommendations from the Committee were designed to address abuses in five areas. One of these, and as pertinent to this issue, was the insurance of union democracy.[3] In the LMRDA's Declaration of Findings, Purposes, and Policy, Section 2.(c), one of the stated intentions is that of eliminating or preventing improper practices "on the part of labor organizations, employers,...which distort and defeat the policies of the Labor-Management Relations Act, 1947, as amended,..". It would appear logical that precedents dealing with sections of the LMRDA which relate to pertinent portions of the Labor-Management Relations Act (LMRA) could be pertinent, so long as these reflect consistency with policy goals underlying applicable legal constraints.

Title I of the LMRDA incorporates the "bill of rights" for union members, authored by Senator McClellan, with the intent of prescribing minimum standards of a democratic process.[4] It calls for a balancing between the rights of

2. 73 Stat. 519.

3. Interim Report of the Senate Select Committee on Improper Activities in the Labor or Management Field, Report No. 1417, 85th Congress, 1958.

4. 105 Congressional Record 5806 (daily ed.), April 22, 1959.

individual members and those of a union to promulgate and enforce reasonable union rules. For this reason, Congress incorporated the proviso in Title I, Bill of Rights of Members of Labor Organizations, Section 101(a)(2), Freedom of Speech and Assembly, that nothing in that section of the law should be construed to,

> "...impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

It has been noted and suggested that since the Bill of Rights found in the LMRDA was an amendment introduced from the floor it never was subjected to the degree of close scrutiny afforded by congressional committees and resulting in some form of clarification or guidance. Fulton Lodge No. 2 IAM v. Nix, 415 F.2d 212, 71 LRRM 3142 fn.13 (5th Cir. 1969). Archibald Cox offered, in reference to the LMRDA's Bill of Rights of the, that "courts would be well advised to seek out the underlying rationale without placing great emphasis upon close construction of the words."[5] It was previously noted that the intent of the LMRDA was to eliminate distortions undermining the LMRA, and otherwise support the policies set forth in the LMRA. It may therefore be logically concluded that the proviso in Section 101(a)(2) of the LMRDA is but a further edification of the proviso found in Section 8(b)(1)(A) of the LMRA. That section declares it an unfair labor practice for a union to coerce or restrain employees in exercising their rights under Section 7 of the Act. The LMRA proviso states that the union is not impaired in its rights to prescribe its own rules as to acquisition or retention of membership.[6]

The legislative scheme dealing with relationships between local agencies as employers, and employees and employee organizations, is set forth in the MMBA. The relationship between the Ordinance and the MMBA is one wherein the MMBA is to create uniform fair labor practices throughout the state. Fire Fighters v. City of Los Angeles, 60 Cal.2d 276, 295 (1963). Accordingly, where rules and regulations of public agencies are deficient as to rights, duties, and obligations

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5. Cox, Archibald, "Internal Affairs of Labor Unions Under the Labor Reform Act of 1959," 58 Mich. Law Review 819, at 852, (1960), as cited in Fulton v. Nix.

6. 29 USC Section 158(b)(1)(A).

of employers, employees, and employee organizations, appropriate standards are provided by the MMBA. Los Angeles County Fire Fighters, Local 1014 v. City of Monrovia, 24 Cal.App.3d 289, 101 Cal.Rptr. 78 (1972).

The Ordinance does not contain language pertinent to an employee organization's rights to formulate membership guidelines. Section 3503 of the MMBA states that "employee organizations may establish reasonable restrictions regarding who may join, and may make reasonable provisions for the dismissal of individuals from membership." This language is similar to that in Section 8(b)(1)(A) of the LMRA. The language reflects a consistency in the underlying intent of the cited provisions of the three statutes. Applicable precedents addressing any or all of these could provide guidance and therefore may be properly considered by the hearing officer in his findings and recommendations.

Anderson argues that reliance on federal precedents based on statutes markedly and significantly different in content and purpose from the MMBA is misplaced. He thereby challenges Respondents arguments based on precedents dealing with LMRDA Section 101(a)(2).(Ch.2:2). Such argument is unpersuasive in light of reliance, as previously noted, by both parties on federal precedents addressing this section. Additionally, the statutes, as noted above, are not significantly different in either content or purpose.

III. The Issue:

Section 4 of the Ordinance provides for the rights of County employees to join in employee organizations of their own choosing, or to refuse to join and retain the right to self representation. Section 12(b)(1) declares it an unfair labor practice for an employee organization to interfere with an employee's exercise of such rights. Similar provision exists in MMBA Section 3502. These rights have been allegedly denied to Anderson and form the basis for the present issue. Assessment and ruling must note that Section 3502 provides that the stated rights exist, "[E]except as otherwise provided by the Legislature,.." The Legislature, in Section 3503, provided that "employee organizations may establish reasonable restrictions regarding who may join, and may make reasonable provisions for the dismissal of individuals from membership."

Within this statutory framework, the issue focuses on the narrow matter of the Association's refusal to re-instate Anderson. The initial withdrawal of membership is not an issue to the proceedings. (Ch.2:13,n.1). The facts surrounding that withdrawal will be considered only to the extent that these are pertinent to the denial of

reinstatement. A ruling must concentrate on the following three aspects: whether the Association's By-Laws reflect a *prima facie* violation of the Ordinance; if not, was the manner in which these were applied to deny Anderson reinstatement a violation of the Ordinance; and finally, if not, if the denial of reinstatement is based on factors leading to his initial expulsion, does the denial violate the Ordinance.

A. The Association's By-Laws

No reason is given for the Association's denial in all correspondence to Anderson related to his request for reinstatement. (Exs.11,13). There is no dispute that Anderson is a member of Unit 612 and is in a classification that would otherwise allow for membership in the Association, as per Article III, Sections 1 and 2, of the Association's By-Laws. The applicable Association By-Laws, Article III, Section 3, provide,

> "Application for membership in this Association shall be filed within three hundred sixty-five days of the date of the applicant's appointment to the position as outlined in Section 2. of this article. Any employee making application for membership after the three-hundred sixty-five day period shall have his application submitted to, and approved by, the Board of Directors of this Association; a majority vote of said Board of Directors shall either confirm or deny such application for membership." (Ex.16)

In light of MMBA language enabling an employee organization to deny membership, Anderson argues that such denial is authorized under narrow circumstances. Any restrictions must be reasonable. The argument continues, the Association failed to promulgate any identifiable restrictions as to who may join, as evident in its By-Laws. The only provision cited is Article III, Section 3, as above. PPOA also failed to provide any standards that govern the Board of Directors in its decision as to the granting or denial of membership. PPOA therefore failed to provide any guidelines which could be construed as reasonable under the MMBA. While the MMBA does not define what constitutes reasonable restrictions, by failing to promulgate any identifiable reasonable restrictions, Anderson argues that it must be concluded that the Association's actions are unreasonable.

Building upon the this argument and conclusion, Anderson posits that by requiring reasonable restrictions, the Legislature required that any restrictions as to membership must set forth the reason(s) for the denial. These reason(s) must be rationally related to a valid objective of the organization.

The hearing officer fails to reach the same conclusion. The rights of individuals to membership in employee organizations are of paramount concern. These, however, are tempered with the rights of the employee organization to promulgate reasonable rules as to who may join, as evidenced by language in MMBA Section 3503. Research and review fails to provide basis for concluding that by requiring reasonable rules for denying membership, the Legislature required employee associations to publish these. Such publication may be a desirable act, but it is not one mandated by applicable statutes. Absence of a clear expression of the reason for denial, as in Anderson's case, is not to be automatically construed as a violation of either the Ordinance or the MMBA.

The Ninth Circuit has sustained union's right to prescribe rules regarding the retention and acquisition of members under LMRA Section 8(b)(1)(a) rights and its proviso. Price v. N.L.R.B., 373 F.2d 443, 64 LRRM 2495 (9th Cir. 1967). Citing legislative history, the Court upheld suspension of membership for an individual charged with efforts to decertify the union.[7]

The pertinent By-Laws do not provide a basis for the denial of reinstatement. The language only states the ministerial acts necessary to deny such reinstatement. The fact that a reason for denial is not proffered, however, does not justify a conclusion that the denial was unreasonable. It also does not on its face support a finding that the By-Laws reflect a violation of the Ordinance. In the absence of any stated reasons however, either in the By-Laws or in the notice of denial, adherence to the tenor of the Ordinance and the MMBA require that further examination take place. The scope for such an examination was offered by the National Labor Relations Board (NLRB) when it stated, "[A]ll union rules affect a member's employment relationship. The question is whether, in enforcing the rule, the union goes outside the area of union-member relationship and enters the area of employer-employee relationship." Local 248 U.A.W. and Allis-Chalmers, 149 NLRB 10, 57 LRRM 1242 (1964) quoting in part U.A.W. and Wisconsin Motor Corp., 145 NLRB 1097, 55 LRRM 1085 (1964).(Validity of union fines for crossing picket line). The next phase of review must focus on the manner the By-Laws were administered or enforced.

7. *Cf.*, Feist v. Engineers Beneficial Assn., 118 LRRM 2419 (E.D. La. 1983) (Denial of membership after satisfaction of licensing requirements challenged under LMRDA.)

B. The Association's Application of the By-Laws

When Anderson applied for reinstatement the matter was put for vote before the Board in compliance with the By-Laws. Anderson failed to get a majority number of supporting votes and his application was denied. He was notified of this. He requested for an opportunity to address the Board and was given that opportunity. Following his presentation the Board met in executive session. No motion was made during the session to reconsider Anderson's denial of reinstatement and Anderson was notified of the finality of the decision.

The By-Laws do not require any action other than a majority vote of the Board members. In light of the individual rights involved, it is proper to review the manner in which the By-Laws were carried out to ascertain if the Ordinance was violated.

In a pertinent ruling addressing the issue of union membership rules under LMRDA Section 101(a)(2), the Ninth Circuit noted that,

> "One of the union's requirements for membership...is a two-thirds favorable vote of the current members. This requirement...can hardly be characterized as a mere formality or ministerial act." Moynahan v. Pari-Mutuel Employees Guild, 317 F.2d 209, 53 LRRM 2154 (9th Cir., 1963).(Upholding of union's denial of membership to applicant who met all requirements except that of two-thirds vote.)

The requirement of a majority vote by the Board also cannot be construed as a mere ministerial duty nor can it be construed as in any manner violative of the Ordinance, absent a showing that the language is a facade or the act a charade intent on violating the Ordinance.[8]

Following its victory in the decertification election the Association extended an invitation to all LASO members to become PPOA members.(Ex.28-O). Such an invitation does not imply a waiver of normal membership requirements under the By-Laws. Therefore, while all were invited to become, not all were automatically granted membership. Anderson cites the Association's failure to grant him membership following this invitation as indicative of possible discriminatory or arbitrary application of the By-Laws. No evidence was introduced to conclude that the Association acted in an arbitrary manner. As to the potential for discrimination,

8. *Accord*, Feist, supra. (citing Moynahan v. Pari-Mutuel Employees Guild, 317 F.2d 209, 53 LRRM 2154 (9th Cir., 1963)

Anderson, as reflected by the record, was not a mere member of LASO, but a former member of PPOA whose membership had been revoked, and who had been actively involved in the formation of LASO and its effort to decertify PPOA. As such, and without further evidence to the contrary, Anderson cannot be considered to have occupied the same position as other Unit 612 members who merely paid LASO dues and whose motives for joining LASO are easily distinguishable from Anderson's.

Finally, it should be noted that although the By-Laws do not provide for an appeal from a denial of membership under Article III, Section 3, Anderson was granted one. He was given the opportunity to address the Board at its regular scheduled meeting and solicit its reconsideration, an opportunity he utilized. He presented his viewpoints following which the Board met in executive session. Such procedural application of the By-Laws does not support the present charges.

Anderson argues that the Association, as an exclusive representative, holds a unique position. Any review of the manner in which By-Laws are used to deny membership should be subject to a high degree of scrutiny, one which should insure that any reason for denying membership is an "extremely strong" one. Specifically, by denying membership, the exclusive representative precludes an opportunity for the individual to have any voice in determining his wages, hours or terms or conditions of employment. The importance of the right of membership was addressed by the Court in Mitchell v. International Association of Machinists, 196 Cal.App.2d 796, 16 Cal.Rptr. 813 (1961). The Court ordered reinstatement of expelled individuals for publicly supporting a "right to work" proposition contrary to official union stand and policies. It noted that expulsion meant loss of voice in how the exclusive agent was to represent the employee, as well as the potential social ramifications for non-members working among members. A similar reflection of the importance of union membership was noted by the California Supreme Court in Directors' Guild of America v. Superior Court, 64 Cal.2d 42, 48 Cal.Rptr.710 (1966). Therein the Court noted that denial of membership is akin to disenfranchising the employee since membership in a union has the effect of an economic ballot.

As a consideration in their rulings, these courts were addressing facts which easily distinguish those cases from that at hand. In Mitchell, the employees were supporting an issue that was part of a local election and therefore entailed an issue related to their freedom to exercise their political franchise. While the position was contrary to the union's philosophy it clearly was not a threat to its existence. Conceptually, a "right to work" provision may ultimately threaten all unions, but the employees' exclusive

representative was not endangered any more by their action than were any other unions who may have been affected by the passage of the proposition. The distinction between the situation in Mitchell and the instant case is noted by the Court's reflection that,

> "[o]ther groups of cases involving the question of the extent of the limitation on personal rights imposed by union membership have been fairly well characterized by the writers. At one extreme there are the 'treason' cases in which an individual's acts are patently antagonistic to the continued existence of the union as a collective bargaining agent. Company spies and dual unionists are two examples. [Cites omitted.] ....The courts lose no time in such cases in upholding union discipline." 196 Cal.App.2d at 801 (emphasis added).

Finally, Mitchell evolved as a result of the expulsion from the union. The present issue does not deal with expulsion, an act which draws greater notoriety than a denial of reinstatement. When Anderson first lost his membership due to his involvement with LASO he did not challenge PPOA's actions. At that time, PPOA was still the exclusive representative and Anderson was presumably denied those same benefits which he now raises and understandably holds important. Despite that, he failed to challenge his expulsion. It may be concluded that this reflected his valuation of those benefits and rights against the value he attributed to his involvement with LASO. His actions then and the failure to challenge the expulsion reflect a position in conflict with that which he now asserts. While Anderson may claim that he placed a high value on the need to provide better representation for himself and others in his bargaining unit, the path he chose was clearly not the only one available. The record reflects that while he tried to implement certain changes as a member of PPOA, he spent only approximately one and one half years in PPOA before he became involved in formation of LASO. During that time he was appointed a delegate from his assigned station, but he never ran for a Board office, or for any other elected position. There is no indication that such avenues were closed to him in his efforts to bring about reform. Therefore, Anderson could have easily worked at protecting both the membership rights he now cites as well as the right and need to bring about necessary reform, without creating an organization which directly threatened the existence of the Association. The law clearly recognizes his right to have chosen and exercised such a course. In so doing, however, his behavior arguably reflects a strong personal motive other than the improvement of Unit 612 representation. It is this motive that must also be considered in assessing PPOA's right to deny him reinstatement.

The Directors' Guild Court was confronted with a union shop environment where membership was arbitrarily denied. Membership in the union appeared to be limited to relatives of existing members or those enjoying personal friendship with or favoritism from union officers. As noted by the Court in Allis-Chalmers, *supra*, all union rules affect the employment relationship, but the question is whether they affect the employer-employee relationship. Clearly in a union shop setting, as the Court noted, denial of membership affects the employment relationship. Such is not the case at hand where no union shop exists and Anderson's employment is not affected.

The issues addressed in cases cited by Anderson focus on a balancing of employee's rights against those of the union. In each, the courts ruling favored the immediately threatened and socially recognized high value of the involved employee's right over the asserted general union rights whose violation did not constitute an actual and recognizable threat to its existence. In Mitchell, it was the rights of the employees to freedom of speech as it related to political expression versus the rights of the union to protect itself against some remote potential threat to a long term existence. In Directors Guild, it was right to employment versus the right to arbitrary exercise of authority. In James v. Marinship Corporation, 25 Cal.2d 721, 155 P.2d 329 (1944), the Court enjoined an agreement which allowed the union to deny full membership to blacks. The individual rights involved are self-evident, but it is also noted that the Court recognized the presence of "..a real conflict between rights of unions to determine membership and rights of individual members." (at 25 Cal.2d 799). In Thorman v. International Alliance of Theatrical Stage Employees, 49 Cal.2d 629, 320 P.2d 494 (1958), the Court held that a member was entitled to compel the union to grant him admission even though he failed to receive the required two-thirds vote from voting members. As in Directors Guild, the right involved was that of employment, but here the situation was one entailing a closed union and a closed shop.

The value of union membership and the impact of denial of such membership justifies a higher degree of scrutiny into the manner in which the Association, the exclusive representative, applied its By-Laws. Application of guidelines for such scrutiny as reflected in pertinent court rulings fails to show that the Association violated applicable sections of the Ordinance when it denied Anderson reinstatement.

C. The Reason for Denying Reinstatement

Although no reason was given by the Association in its communication with Anderson regarding the denial for reinstatement, the parties' arguments reflect agreement that it was the same reasons involved in his loss of membership. (Ch.1:24)(Re.1:20).

Proceedings to expel Anderson were instituted by the PPOA in March, 1986, the same month that LASO was formed and registered as an employee organization by the County. His expulsion became effective in April, 1986. The Association cited the reason for expulsion as his active involvement with the creation of LASO while a member of PPOA, a competing organization as to the representation of Unit 612 members. This was an act deemed "inimical to the welfare" of PPOA. (Ex.5)

An element raised by Anderson in defense is the nature of the goals which LASO sought to achieve in relation to the role of an exclusive representative. He then points to the fact that many of these same goals were subsequently implemented by PPOA. Anderson's claimed intent behind his involvement in LASO is not an issue. While the goals may have been aimed at improving the service provided to Unit 612 members, it is the manner in which he sought to bring about the changes that are an issue. As previously noted, Anderson did not undertake a comprehensive effort to bring about these reforms within the structure of PPOA. He created a competitive entity. It is this aspect and PPOA's reaction which form the analytical scope for this section.

Anderson claims that under the provisions of Section 4 of the Ordinance and Section 3502 of the MMBA he had a lawful right to engage in the activities which then lead to his expulsion. Specifically, Anderson cites the right to form, join and participate in activities of employee organizations. Section 3507 of the MMBA and the Commission's Rules and Regulations promulgated in accordance with the Ordinance also provide for his rights to engage in decertification efforts while a member of LASO. Continuing the argument, MMBA Section 3506 and Ordinance Section 12(b)(1) proscribe discrimination by an employee organization against employees for exercising such rights.

There is little doubt that the denial of rights asserted by Anderson would sustain his position, were it not for recognition that the basis for such denials calls for a balancing of an equation. On the one side lies the statutory rights of the individual and those derived from union membership. The other side represents the rights of the union

as an organization. The need for such a balancing is evident in light of Section 3503 of the MMBA which allows a union to establish reasonable restrictions as to who may join and reasonable grounds for expulsion. The analytical comparison is undertaken with an understanding that no portion of the Ordinance or the MMBA encumbers a union with an affirmative duty to further labor policies or laws. The NLRB recognized that imposing such a duty would violate LMRA proscription against interference with internal union affairs. East Texas Motor Freight v. International Brotherhood of Teamsters, Local 745, 262 NLRB 101, 110 LRRM 1547. A similar proscription is found in Section 12(a)(2) of the Ordinance.

In all such cases, however, analysis is based on elements unique to the circumstances. As emphasized by the Court in Mitchell, its decision was under the facts presented for its deliberations. 49 LRRM at 2120. Similarly, the Seventh Circuit has also affirmed that "..section 8(b)(1)(a) [of the LMRA] and its proviso envision a balancing...on a case by case basis." N.L.R.B. v. International Molders and Allied Workers Union, Local 125, 442 F.2d 92, 77 LRRM 2067 (7th Cir. 1971). (Enforcement of NLRB cease and desist order to union for fining of member for circulating petition to decertify union.).[9]

A union expelled members after they had filed a decertification petition. In a decision relying on Section 8(b)(1)(a) of the LMRA, the NLRB cited three reasons for sustaining the union's position. First, it noted that the expulsion was limited to union membership and did not involve job security. Second, the grounds for expulsion related to matters of legitimate union concern. The Board recognized that no action is perceived as more threatening to a union than decertification. Finally, the expulsion was recognized by the Board as a defensive position, rather than a punitive one. Specifically, the Board acknowledged the potential impact of requiring reinstatement in view of future election campaigns by the union and the rights of these expelled members to participate in deliberations. Tawas Tube Products, Inc. v. United Steelworkers of America, 151 NLRB 46, 58 LRRM 1330 (1965). The Tawas decision was cited by the Court in International Molders, *supra*, and distinguished based on the Molder's union imposition of a fine which was deemed a punitive and not a defensive measure. The Court also noted that decertification attacks the very existence of a union and that requiring the retention of the antagonistic member would pose continuous problems to the union. The punitive nature of a fine, as opposed to the defensive measure of expulsion was also cited in Loudermilk as an element in the Court's ruling.

9. Accord, I.A.M. Lodge 702 v. Loudermilk, 77 LRRM 2721 (5th Cir. 1971) (Court upheld lower courts dismissal of union action to collect fines for dual unionism).

The cited cases evidence a common thread of recognition that expulsion from a union is a defensive measure and that it may be justified in at least two specific situations; efforts to decertify and dual-unionism. Both activities are recognized as directly threatening the continued existence of the union. As further evidence of the uniformity of judicial viewing of such issues, the Ninth Circuit upheld the NLRB's dismissal of a complaint based on a suspension of union membership for efforts to decertify the union. Price v. N.L.R.B., 373 F.2d 443, 64 LRRM 2495 (9th Cir. 1967). The individuals alleged violation of Sections 7 and 8(b)(1)(a) of the LMRA, those sections which are reflected by Ordinance Sections 4 and 12(b)(1). The Court noted that, as in this instance, the suspension took place after internal hearings. Anderson attempts to distinguish Price by noting that the Court ruled that union restraint and coercion under those circumstances was permitted because the LMRA proviso regarding union rules appeared in the same sentence as the words "restraint or coercion." Since the MMBA language prohibiting restraint or coercion does not include the proviso, Section 3503 proviso could not be found to permit similar acts by the PPOA. This attempt at distinction falls short. The Price Court clearly would not have sustained at union acts of restraint and coercion. The proviso permitted acts otherwise deemed coercive or restraining only when they were defensive in nature and were taken in retaliation for acts that attacked the union's existence or its role as the bargaining agent.

The foregoing review reflects a recognition that dual unionism and/or efforts to decertify a union as the bargaining agent justify expulsion from membership. Anderson was initially expelled for his dual unionism. He subsequently labored to decertify the Association. He notes that at the time he was denied reinstatement he was no longer involved in the competing organization. The Board in Tawas, as well as the courts in International Molders and Price recognized the potential for conflict and continuous problems if such an antagonist was allowed to remain in the union and be privy to union tactics and strategy. This very issue exists in the present case as evidenced in Anderson's reference to financial information otherwise available to PPOA members (Exs. 27(g):2, 20:2). As noted also by PPOA, Anderson admitted his use of such information. (Ex. 14). PPOA and its Board would reasonably feel constrained to carry out its functions in a normal environment were it forced to re-admit Anderson. It is therefore concluded the denial of reinstatement based on reasons justifying the initial expulsion and Anderson's subsequent efforts to decertify the Association is not a violation of the Ordinance.

CONCLUSION

Having weighed and reviewed the evidence and arguments presented by the parties, it is concluded that:

The PPOA, by denying Anderson membership and rights associated with such membership, did not engage in acts such as would constitute violations of Los Angeles County Employee Relations Ordinance Sections 4 and/or 12(b)(1).

RECOMMENDATIONS

The duly appointed Hearing Officer recommends that the Employee Relations Commission approve and adopt the following order:

"The Professional Police Officers Association did not violate Sections 4 and/or 12 (b)(1) of the ordinance when it denied membership, and rights associated with membership, to David C. Anderson."

DATED: 5-19-89

Respectfully submitted,

Michael Prihar
Hearing Officer