LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of LOS ANGELES COUNTY PROFESSIONAL PEACE OFFICER'S ASSOCIATION, Charging Party and SHERIFF'S DEPARTMENT, COUNTY OF LOS ANGELES, Respondent	Case No. UFC 9.3 Report of Hearing Officer

The undersigned was appointed by the Los Angeles County Employee Relations Commission to serve as Hearing Officer in the above captioned matter, in which the Charging Party alleged the commission of certain unfair employee relations practices by the Respondent. The Respondent filed an Answer to Charge which admitted certain allegations of the charge but offered an affirmative defense. Pursuant to the charge and Notice of Hearing issued by the executive officer of the Commission, a hearing was held at the Hall of Administration on December 10, 1974, at which time the parties were afforded the opportunity to offer evidence and arguments upon the issues. Appearing for the Charging Party was Lester G. Ostrov of Bodle, Fogel, Julber, Reinhardt & Rothschild. Appearing for Respondent were John M. Baskett, Deputy County Counsel, and Ramon R. Singley, Employee Relations Administrator of the Department of Personnel. Upon the filing by the parties of written briefs on February 8, 1975, the hearing closed. The undersigned, having duly considered all the evidence and arguments offered by the parties, submits this Report in accordance with Section 6.10 of the Commission's Rules and Regulations.

I. THE ISSUES

The charge alleges that the Respondent engaged in unfair employee relations practices within the meaning of Section 12 (a) (1) and (3)

of the Employee Relations Ordinance on the basis of the following:

> On or about January 8, 1974, the Sheriff's Department of the County of Los Angeles instituted unilateral changes and reductions in the overtime compensation for deputies in the state-wide transportation detail with respect to out-of-town work. These unilateral changes were made without prior notification to and without negotiations with Los Angeles County Professional Peace Officer's Association, the certified representative of said employees.

The answer submitted by the Respondent admits the factual basis set forth above but states in defense that its action concerning overtime compensation was taken pursuant to and in accordance with County Ordinance No. 6222, Article 8, Section 140. The answer further states that from about March 4, 1974 to May 7, 1974 the parties were in negotiations concerning wages, hours and terms and conditions of employment but that the Charging Party, although aware of the Respondent's action concerning overtime compensation, made no request that the Respondent negotiate concerning overtime compensation. On these grounds the Respondent denies that it committed any unfair employee relations practices.

II. THE FACTS

Since about 1965 it was the practice of the Respondent to allow members of its state-wide transportation detail eight hours of overtime for each day they were out of Los Angeles County overnight engaged in prisoner movement. The practice was specifically confirmed and continued on November 15, 1971 in a memorandum issued by the Respondent's Inspector, Technical Services. On January 8, 1974, without prior warning or notice to either the Charging Party or the members of the state-wide transportation detail, the Respondent issued TDO (temporary departmental order) 143.1. This order set forth a number of regulations describing circumstances in which overtime might or might not be credited. Among other things it stated:

> On such trips lasting more than one day, members shall be considered on duty at the time they report to their Unit of Assignment or leave directly from their residence, as applicable. Actual time

spent in traveling and in carrying out their business shall be considered as time worked. Time spent in eating, sleeping, or in recreation (free time) shall not be considered as time worked. However, on any day that the member is actually engaged with outside persons in the conduct of the Department's business, he shall be credited as working a full shift. If the member is unable to conduct business because it is a Saturday, Sunday, or legal holiday, such days shall be considered as free time and considered as a regular day off.

It was testified, and I find, that the implementation of this order resulted in a new method of computing overtime for days when the members of the statewide transportation detail were out of the county overnight and it caused a material reduction in the overtime credited to those employees. It appears that the order was intended to have such effect.

The order, although effective January 8, 1974, was not made known to the members of the detail concerned until two days later. The Charging Party's chairman testified that he learned of the order in late January, 1974. However, no copy of the order was given to the Charging Party or its chairman until two or three months later, when the chairman asked the Department for a copy. The deputies affected by the order filed a written grievance concerning it early in April, 1974. This grievance was brought to the attention of PPOA and apparently gave rise to the chairman's request for a copy of the order. The grievance was denied by the Departmental authorities at each stage of its processing, and was finally denied in writing on May 17. It happened that the Memorandum of Understanding between the parties reopened for negotiation early in 1974. On February 1, 1974 PPOA submitted its negotiation proposals in writing and negotiations started early in March. A Notice of Impasse was issued in mid-April. The negotiations continued with the assistance of a mediator and fact-finding was initiated on disputed issues but agreement was reached in July before the fact-finding process was completed. At no time was the issue as to the method of computing overtime raised in the negotiations by either party.

III. Was there a refusal to negotiate within the meaning of Section 12 (a) (3)?

Section 12 (a) (3) states that it shall be an unfair labor practice for the County to refuse to negotiate with representatives of certified employee organizations on negotiable matters.

The Respondent concedes that PPOA is the certified employee organization for certain of its employees, including those in the statewide transportation detail, and further concedes that on January 8, 1974 it instituted a unilateral change in the method of computing overtime benefits for employees in the detail without giving notice to PPOA or inviting negotiations as to the changes or the effects of the changes. For an employer unilaterally to change an established condition of employment during the middle of a contract term, as the Respondent has done in this case, without affording notice, warning, or opportunity for discussion or negotiation before the change takes effect, presumptively constitutes a constructive refusal to negotiate. Only the most compelling circumstances might excuse such action. The County defense in this case is that the changes were compelled by Section 140 (4) of the Salary Ordinance of the County of Los Angeles.

Section 140 (4) is a definition clause which states:

> " 'Overtime' means time spent in the performance of work ordered and approved or authorized by a department head which is in excess of the number of hours regularly worked in the workweek or workday."

The Respondent declares, without amplification or explanation, that its previous method of computing overtime for the statewide transportation detail was in violation of Section 140 (4) because it paid for time not actually worked, but that its revised method of computing overtime is in compliance with the Section because it pays only for time actually worked.

The Respondent's position fails to explain the fact that from 1965 to January 8, 1974 its method of computing overtime for the statewide transportation detail remained unchanged, and that the definition of overtime has appeared in each Salary Ordinance of the County in identical language in every fiscal year from July 1, 1969 to, and including, the present time. The

Respondent has failed to offer any explanation whatsoever as to what caused it in January, 1974 to reach the opinion that such a long established method of calculating overtime had become illegal despite the fact that the applicable legal provisions had long remained unchanged. The record is barren of any suggestion that a challenge to the legality of the established method of computing overtime had been raised by any authority outside the Department. No crucial event occurred which compelled a sudden change in the method of computing overtime. No incident arose which compelled the conclusion that the method which long had been considered legal was now illegal. Even assuming that the Departmental authorities had some basis for questioning the prevailing method of computing overtime, there has been offered no explanation as to why the method was arbitrarily changed without notice or opportunity to confer. The Respondent avers that its action was taken as a good faith attempt to correct improper and illegal payments of overtime compensation. The Respondent's good faith is not questioned in this regard but its actions, even concluding that they were taken in good faith, were not consonant with its obligation to negotiate.

The question as to what constitutes "the performance of work" by a human being is not so easily susceptible to definition as the Respondent suggests. The highest courts have struggled with the concept in many cases involving such matters as overtime pay. As noted above, the Respondent asserted that its previous basis for computing overtime included payment for hours when no work was performed but it has offered no evidence to support the assertion. The Charging Party has offered evidence that deputies in the statewide transportation detail may have responsibility for prisoners overnight, even though they do not have physical custody of the prisoners, and that they may be continuously on call overnight in case problems arise. I find it unneccessary in this case to determine that either method used by the Department for computing overtime is legal, or that one method is more legal than the other. I do find that the County has failed to establish that its method of computation used prior to January 8, 1974 was ever illegal or ever became illegal.

IV. Was the Charging Party remiss in failing to raise the issue in the 1974 negotiations?

The Respondent contends that, even assuming it had a duty to negotiate concerning the change in computing overtime pay, that duty was offset or mitigated by the Charging Party's failure to submit the issue on its list of proposals for the 1974-1975 negotiations. The Charging Party claims that it had neither the opportunity nor the obligation to raise the issue in negotiations. The Memorandum of Understanding between the parties provides that either party desiring to negotiate shall serve upon the other between January 1 and January 31 its full and entire written proposals, except for salary proposals. The members of the statewide transportation detail became aware of the change by January 10 and the Charging Party's chairman became aware of the change some time in late January. However, the chairman of the PPOA committee which was charged with formulating the negotiation proposals for 1974 testified that he was unaware of the change until long after the deadline for submitting proposals had passed. In any case, I believe it is clear that the Department had full opportunity to raise the issue in negotiations had it chosen to do so, and that it cannot now shift the obligation to negotiate from its own shoulders to those of the Charging Party. That is particularly true in the circumstances of this case, where the party which effectuated the change did not even serve notice on the other organization until long after the time allotted for raising the issue in negotiations had passed.

V. Did the refusal to negotiate violate Section 12 (a) (1)?

Section 12(a) (1) states that it shall be an unfair employee relations practice for the County to interfere with, restrain or coerce employees in the exercise of the rights recognized or granted in the ordinance. Similar statutes long have been interpreted to mean that a violation of the obligation to negotiate, ipso facto, interferes with, restrains and coerces employees in their rights to self organization. I find that to be so in this case.

VI. CONCLUSIONS AND RECOMMENDATIONS

For the reasons set forth above I conclude that the Res-

pondent, by the issuance of TDO 143.1 on January 8, 1974, engaged in an unfair employee relations practice within the meaning of Section 12(a)(1) and (3) of the Employee Relations Ordinance of the County of Los Angeles.

Accordingly, it is recommended that:

(1) TDO 143.1 be rescinded and the prior existing order be reinstated.

(2) Overtime benefits which have been affected by TDO 143.1 shall be recomputed in accordance with the prior existing order and each member of the statewide transportation detail adversely affected by TDO 143.1 shall be made whole for benefits of which he was thereby deprived.

(3) Nothing in the foregoing shall prevent the Respondent from raising an issue with the Charging Party as to a change in the basis of computing future overtime for members of the statewide transportation detail. Such an issue, if raised, shall be subject to to negotiations and agreement between the parties and, if agreement does not result, shall be subject to the terms of Section 13 of the Employee Relations Ordinance.

Norman H. Greer

NORMAN H. GREER
Hearing Officer

Dated: March 6, 1975

DECLARATION OF SERVICE BY MAIL

I, Virginia E. Allan, do state that on the 25th day of August, 1975 I served the attached DECISION AND ORDER (UFC 9.3) by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service, addressed as follows:

Mr. Lester G. Ostrov
Bodle, Fogel, Julber, Reinhardt
and Rothschild
Suite 2600
5900 Wilshire Boulevard
Los Anagles, California 90036

I so state under penalty of perjury.

Dated: 25 August 1975.

Virginia E. Allan

DECLARATION OF PERSONAL SERVICE

I, Virginia E. Allan, do state that on the 25th day of August, 1975 I served the attached DECISION AND ORDER (UFC 9.3) by delivering a copy thereof to John M. Baskett, Deputy County Counsel, County of Los Angeles.

I so state under penalty of perjury.

Dated: 25 August 1975.

Virginia E. Allan

Courtesy copy to
Gordon Hayter, PPOA
Lieutenant Larry L. Anderson
Sheriff's Personnel Bureau
Ramon Singley, ERA