In the Matter of

LOS ANGELES COUNTY PROFESSIONAL PEACE OFFICERS ASSOCIATION,
Charging Party,

and

COUNTY OF LOS ANGELES
(SHERIFF'S DEPARTMENT and
PETER J. PITCHESS, SHERIFF),
Respondent.

before

Edgar A. Jones, Jr.,
Hearing Officer

Recommended
Findings of Fact,
Conclusions,
and
Final Order

UFC 9.5

August 27, 1975

I.

Appearances

Charging Party: Bodle, Fogel, Julber, Reinhardt & Rothschild, by Lester G. Ostrov, Esq.

Respondent: County Counsel, by Joe Ben Hudgens, Esq.

II.

Proceeding

The Los Angeles County Professional Peace Officers Association ("PPOA"), Charging Party here, is an employee organization within the meaning of Section 3(g) of Los Angeles County Employee Relations Ordinance, No. 9646. It has about 4,200 members. PPOA on December 24, 1974, filed a charge, citing Section 12, subsections (a)(1), (2) and (3), of the Ordinance. The basis of the charge was stated to be an alleged unilateral change on June 28, 1974, in existing practices and procedures relative to access by PPOA, as certified representative of the employees of the Sheriff's Department. On that date, the employer allegedly prohibited PPOA access to the Sheriff's Academy "in order to discourage lawful union activity and in order to punish PPOA for engaging in activities protected by Section 4 of the Ordinance." Respondent denies the charge.

On March 10, 1975, shortly after appointment by the Commission of the undersigned Hearing Officer, Respondent filed

a Motion for a Bill of Particulars, which was granted. On March 25, 1975, the Charging Party complied, supplementing its charge. On March 26, Respondent filed its Answer to Bill of Particulars.

The hearing, set on March 7 for April 7, 1975, was rescheduled for May 12 upon request of the Charging Party. The hearing convened May 12, the proceedings being transcribed and reported by Mavis E. Theodoron, CSR. The transcript was received by the Commission on May 28. The due date for briefs, June 19, was extended to July 3; they were transmitted to the undersigned on July 7.

III.

Findings of Fact

In the Sheriff's Department, as of December 19, 1974, there were 5,448 personnel. There were then 13 custodial facilities staffed by 2,200 persons; about half of the latter are normally comprised of new Deputy Sheriffs graduated from the Academy within the most recent 2-3 years.

The Sheriff's Academy processes classes of cadets through a training program prior to their assignment to duty. The curriculum covers 24 weeks in two phases. Each class numbers 100-120. During the first phase of 14 weeks, about half the trainees are from other governmental agencies than the County Sheriff's Department (for example, police departments like Compton and Glendale, and the Los Angeles City schools). In that first phase, these outside trainees are integrated with the Sheriff's cadets in their activities. During the second phase, the cadet class is reduced to just the Sheriff's cadre. The PPOA under its certification represents the Sheriff's cadets.

Class #169 started its training on June 24, 1974, completing its course December 13, 1974. Class #170 began September 10, 1974, ending February 28, 1975. Class #171 began October 28, 1974, ending on April 18, 1975.

In the scheduling of the curriculum, each day is allotted eight hours of training. Provision was made for a number of years prior to June 28, 1974, for the appearance of a variety of lecturers from organizations other than the Sheriff's Department. Included were the Sheriff's Relief Association, the FBI, the California Highway Patrol, the U. S. Immigration Service, the County Probation Department, the National Conference of Christians and Jews, the First Baptist Church of Van Nuys, the County Public Defender's Office, the District Attorney's Office, a telephone company, and PPOA.

A representative of PPOA routinely appeared before each cadet class once within the first week and again once in the last week. "The nature of the presentation," testified James B. Allen, PPOA official in 1973 and 1974 and a scheduled speaker in those years, "was to acquaint the members of the Academy class with the association as the collective bargaining unit for their classification, to inform them of the items that the association provides for them in relation to grievances, collective bargaining, attorney representation, discount purchases, and/or entertainment attractions within the area. Also concerning insurance programs and a general overview of the organization structurewise." (Tr. 20)

Michael W. Kapic retired as Deputy Sheriff in March of 1970. PPOA hired him in September 10, 1974, as its "field representative." In that capacity he is responsible for administering the grievance procedures, counselling members of the bargaining unit about examinations or promotions, advising as to insurance programs, discounts, referrals and the like. He visits all of the 16 sheriffs' substations and a dozen or so other facilities. He has visited the Academy several times to counsel cadets relative to possible grievances. He also has checked on the bulletin boards placed there by PPOA to keep them up to date. Sometimes he has requested permission to enter the Academy; mostly he has gone to the Academy without that formality. He has never been denied permission to enter the Academy. (Tr. 28-30)

On June 28, 1974, a hearing was being conducted before Hearing Officer Benjamin Aaron of an unfair employee relations practice filed against Sheriff Peter J. Pitchess by the Association for Los Angeles Deputy Sheriffs ("ALADS"), another employee organization within the meaning of Section 3(g) of the Ordinance. The charge was that the Sheriff had allowed PPOA representatives to conduct recruiting activities at facilities of the Sheriff's Department.

On November 4, 1970, ALADS had charged the Sheriff with unfair employee relations practices, alleging that PPOA representatives had been allowed to conduct recruiting activities at the Academy and elsewhere in department facilities. At a December 11, 1970, meeting before ERCOM, the Sheriff's Department had entered a stipulation with PPOA and ALADS that stated in relevant part,

> That in the future ALADS will have the same right of representation at the Sheriff's Academy for the purpose of recruiting membership as PPOA has enjoyed in the past. And that the time that has been allotted to PPOA will be divided equally with ALADS in that recruitment program. Furthermore, that with respect to the other Sheriff's facilities throughout the County that . . . duly

> qualified representatives will have the right to go to those facilities and to make their presentations in efforts to recruit members as PPOA is allowed to do. . . .

After PPOA was certified by ERCOM in June, 1971, as majority employee representative, the Department and PPOA had announced September 30, 1971, that they were therefore no longer bound by the December 11, 1970, stipulation, so ALADS representatives would no longer be allowed to conduct recruiting activities at the Academy. From that time until the June 28, 1974, announcement of withdrawal of permission, PPOA representatives had regularly appeared at the Academy, with the knowledge and consent of the Department, and had described to the cadets the purposes and functions of PPOA, passing out and collecting PPOA enrollment and dues deduction authorization cards.

In the course of the June 28, 1974 hearing, the Sheriff's Department, by Chief George W. Pipkin, Administrative Division, announced that an order had been issued that morning "that the PPOA presentations that have been scheduled for the classes in the past will no longer be permitted." The reason stated by Chief Pipkin in testimony was that "A report from the Academy staff was sent to me and, in essence, it stated that Deputy Tom Akren, in his presentation at the Academy this week, made statements that were of a political nature and on the basis of that, the Sheriff made his decision." (C. P. Ex. 3, Aaron Tr. 36)

The memorandum reporting the incident to the Sheriff quoted Deputy Akren (an 18-year Deputy Sheriff) as saying, "I'm not supposed to talk about politics but if a Democrat is elected rather than a Republican, as governor, law enforcement would be ahead." The memorandum, as described in Chief Pipkin's testimony before Hearing Officer Aaron, asserted that Deputy Akren had "stated that a Republican would do nothing with the state retirement but a Democrat would get 'us' a statewide retirement that would be far superior and much cheaper for the individual than what we now have." (C. P. Ex. 3, Aaron Tr. 37)

Sergeant H. C. Jahelka, then staff-training sergeant at the Academy, was present during Deputy Akren's remarks. He wrote a memorandum to his superior reporting the incident, as he testified in a Civil Service Commission hearing on December 19, 1974, "Mainly because of his remarks indicating that he knew he wasn't supposed to talk politics or give political information, and then he went ahead and did it talking to a new group of recruits. I didn't feel this was right regardless of what the remarks were." (C. P. Ex. 4, CSC Tr. 20)

Deputy Akren appeared before the cadets in civilian clothes. He was not identified as a member of the Sheriff's Department. He was on his own off-duty time. He followed an outline of subjects that had been previously approved by the Department in 1972, including the PPOA's work relative to legislation. He had previously made about ten presentations to earlier classes based on the same outline. (C. P. Ex. 4, CSC Tr. 121-124) Under the heading "V. LEGISLATIVE" there appeared the following entries in the approved outline for discussion in the presentation by PPOA:

A. Monitor the Assembly

1. New legislation affecting law enforcement

2. Maintain legislative advocate (lobbyist) in Sacramento

B. Sponsor new legislation

1. AB 1131 - Heart attack after five years is required to be job connected

2. AB 3232 - provides for 4, 5 & 6% increase to retired law enforcement officers

3. Currently writing legislation for automatic cost of living increase for law enforcement officers in the state

Departmental members are covered by a state retirement plan issuing from the state legislature and revised by it from time to time. Deputy Akren discussed past and present legislation affecting members of the Department, particularly as to retirement and other fringe benefits. His presentation completed without incident, he was asked during the question-and-answer period what the prospects were for passage of Senate Bill 1483. It was his response to that cadet question that provoked the Sheriff's response relative to him personally and to PPOA. Deputy Akren's testimony relative to what occurred was that a cadet asked what PPOA was doing in the area of politics for the deputies; that in response he referred to Senate Bill 1483 (the Karabian Bill) which would greatly increase retirement benefits; that a cadet asked him what the prospects were for its enactment into law; that he said there would be no difficulty getting the bill through the legislature but that he didn't think, based on past experience, that the Governor (without mentioning incumbent Governor Reagan's name) was going to sign it into law; that he was then asked, "What do you think we should do to get this bill passed?"; that he "indicated it looked to me like somebody else would have to sign the bill because the present Governor

would not sign it"; and that he "definitely" recalled that he "did not make the remark that I shouldn't be saying this because I would have no reason to have made that remark because there was nothing in the presentation that had not been approved by the Department." (C. P. Ex. 4, CSC Tr. 123-124)

By June 24, 1974, incumbent Governor Reagan had already announced that he was not a candidate to succeed himself in the governorship.

The Sheriff's Department Manual Section 301/035.05 sets forth regulations governing political activity by members of the Department. Proscribed are the use by a Deputy Sheriff of "his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office," and taking "an active part in political management or in political campaigns other than to cast his vote and to express privately his opinion." Nor may he "participate in any political activities" while in uniform. Section 301/035.10, entitled "Political and Religious Discussions," also prohibits engaging in political or religious discussions "to the detriment of good discipline."

Deputy Akren was notified on July 8, 1974, of a four-day disciplinary suspension due to his remarks before the Academy class on June 24. He was also transferred to custodial duties from the field apparently 80 miles from his home (C. P. Ex. 3, CSC Tr. 95) for showing "poor judgment" and a consequent need for closer supervision. The suspension and transfer "grew from the same act, "Chief Pipkin testitied in the Civil Service Commission hearing relative to them. (C. P. Ex. 4, CSC Tr. 62) The letter sent Deputy Akren by Sheriff Peter J. Pitchess informed the deputy that "while presenting a lecture at this Department's Training Academy you made statements of a political nature to the assembled class. These statements were not part of the class curriculum and were a direct violation of this Department's Manual of Policy and Procedures. By your actions, you have brought discredit and embarrassment to yourself and the Department." (C. P. Ex. 5)

On December 5, 1974, PPOA Executive Director Gordon Hayter wrote Sheriff Pitchess expressing his desire to arrange for PPOA representatives "to make an oral and written presentation to the current class at the Academy. We also intend to distribute information regarding benefits, as provided in our Memorandum of Understanding." He identified Sergeant (Ret'd) Kapic and himself as the ones who would "make the presentation and be available to discuss and answer questions regarding our organization." (C. P. Ex. 6) At no time, however, did PPOA seek to meet with any cadets on their off-duty time to explain its organization and benefits. (Tr. 34)

On December 23, 1974 Sheriff Pitchess responded to Mr. Hayter's letter. Citing potential "administrative difficulties" were the request to be granted, he denied it. He referred to the June 28, 1974, dismissal without prejudice of UFC 14.3. He observed that to grant the PPOA request would reactivate that charge and again involve the Department in a formal hearing. "Secondly," he wrote, " there seems to be little doubt that if we allow any employee representation organization to address our personnel, we would be required to extend similar courtesies to all such organizations. As you know, the training time is extremely limited and we have continually revised the curriculum to maximize the benefits of all subject matter." He concluded his letter with an offer to supply cadets with copies of Exhibit A of the Memorandum of Understanding which describes PPOA and quotes Sections 2 and 4 of the Ordinance relative to the rights of employees to join employee organizations of their own choosing. He also reiterated the Department's permission to PPOA "to post informational arch files at the Academy." (C. P. Ex. #7)

IV.

Section 4 of the Ordinance declares that "No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights."

Section 12(a) declares it to be an unfair employee practice for the County "(1) To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Ordinance;" or "(2) To . . . interfere with the formation of any employee organization . . . provided that the County may permit the use of County facilities . . .;" or "(3) To refuse to negotiate with representatives of certified employee organizations on negotiable matters."

V.

Positions of the Parties

A. Charging Party

The Charging Party sees two violations of the Ordinance in the recission of PPOA's right to appear before and address cadets as it had done in the past. First, the recission unilaterally changed existing working conditions of employee recruits and thereby violated Sections 12(a)(1) and (2). Second, the recission was issued for discriminatory reasons and to discourage proper union activity by PPOA.

As to the unilateral change in working conditions, PPOA refers to Fire Fighters Union v. City of Vallejo, 12 Cal. 3d 608, 616-617 (1974) and the California supreme court's acceptance of private-sector federal employment relations law in determining public-sector labor disputes. Under federal law, it is accepted that an employer violates its duty to bargain in good faith by instituting unilateral changes in wages, hours or conditions of employment without first notifying the bargaining-unit representative and bargaining over the proposed changes. Nor is the duty lessened if the existing condition had been established by past practice. Furthermore, the unilateral change need not have been taken in bad faith nor discriminatorily in order to constitute a violation of the duty to meet and confer, in short, to bargain. See generally NLRB v. Katz, 369 U.S. 736 (1962); Granite City Steel Co., 167 NLRB 310 (1967).

As its second basis for charging the Sheriff with violating the Ordinance by withdrawal of the right to speak to the cadets in the course of the regular curriculum, the Charging Party asserts that there was in fact a discriminatory motivation that constituted a proscribed interference, restraint or coercion of employees in the bargaining unit. This second charge is based on the suspension and transfer of Deputy Akren, as well as the unilateral revocation of PPOA's right of access. Deputy Akren's statements relative to the legislation were "protected union activity" related to a primary objective of a labor organization like PPOA, obtaining improved retirement and other fringe benefits for its members. "In the private sector such protected activity may include picketing, handbilling and striking. In the public sector, however, improved benefits come through legislative action and public employee unions must obtain improvements in wages and other benefits through the support of elected officials. Thus, efforts to obtain passage of legislation improving wages and other benefits and election of candidates sympathetic toward such improvements are the life's blood of public employee unions." (C. P. Brief, 12)

B. County of Los Angeles

Respondent County mounts a four-pronged refutation of the charges against it in this proceeding.

First, there has been no total denial of access for PPOA to the Academy, only withdrawal of the opportunity to address cadet classes during duty hours. In such addresses PPOA "would probably be speaking to a captive audience, approximately one-half of whose members would have no intention of going to work for the employer with whom the union is certified to bargain." (R. Brief, 2-3) It is doubtful that there is a privilege to address cadet classes on duty relative to which political party they should support; it is

inconceivable that there is a right so to address non-employees.

Second, there may have been a past practice to allow PPOA addresses to cadet classes, but certainly none "to suggest how its captive listeners should vote in partisan elections." The Department's policy is to stay out of partisan politics as required by the California Constitution, Article II, Section 5. Thus if the Sheriff were to permit political activity by speakers on the Academy curriculum of required attendance by trainees, "it could well be charged that the Sheriff . . . was urging his own partisan viewpoint, in violation of the Constitution." (R. Brief, 4) In addition, it is private-sector law, applicable here, that an employer may unilaterally prohibit employees from engaging in union activities during working hours. NLRB v. United Steelworkers of America, 357 U. S. 357 (1958). Especially should this be so here for a public official constitutionally required to be nonpartisan. There was only one sure way to prevent a recurrence of this abuse of the opportunity to address the cadets, namely, a simple prohibition of the PPOA presentation during duty hours. Although off-duty meetings are available, PPOA has not even tried to arrange such meetings.

Third, the County had no duty to negotiate revocation of the privilege. This is so because there was no "past practice to talk partisan politics before the cadets during class-time." Such activity has no special legal protection. It was therefore "lawful and reasonable under the circumstances" to remove the union from the roster of organizations permitted to address the cadets.

Fourth, there is no evidence of discrimination against the union. The only other organization offering any of the benefits PPOA does is the Sheriff's Relief Association, and it is not an employee organization. Since Respondent did not exclude PPOA in favor of another employee representational organization it did not violate Section 12(a)(1) or (2).

In sum, "When the Sheriff learned that the union spokesman had suggested, by fairly obvious implication, which candidates for state offices -- or, at least, which gubernatorial candidate -- the cadets should vote for, when he was supposed to be explaining what benefits and services his organization offered and what rights the cadets had to avail themselves of those benefits and services, he realized that the union could not be relied upon to respect Academy regulations." (R. Brief, 6)

VI.

Conclusions

A. The Unfair Practice Charges

1. The Status and Conduct of the Association

Section 12(a)(2) provides that the County "may permit the use of County facilities" without being guilty of contributing financial support to an employee organization. As early as the December 11, 1970 stipulation, the County formally conceded a "right of representation at the Sheriff's Academy for the purpose of recruiting membership." The stipulation also impliedly endorsed the prior appearances of PPOA as an aspect of that right. When PPOA was later certified as the majority representative, the County on September 30, 1971, withdrew permission from ALADS but continued to afford access to class presentations to PPOA until June 28, 1974.

Perhaps the County could initially have insisted on access and presentation limited to non-duty hours. Yet such a restriction, in the circumstances, might have been construable as an undue interference with the representational rights conferred by the Ordinance. In any event, without question there had by June 28 evolved a contractually binding past practice of access and presentation to the cadet class. For it to be revoked or altered required mutual agreement; it was negotiable and was not subject to unilateral revocation.

In the context of this proceeding -- an unfair employee relations practice charge -- this unilateral act constituted a violation of Section 12(a)(1) and (3). That is so unless this revocation could be construed as an act of last resort, reasonably necessary in the circumstances in order to rectify a chronic situation rather than a single instance of abuse of the right of access and presentation which, after formal complaint by the Sheriff to PPOA, had continued unabated. Here there was no complaint to PPOA prior to revocation of the right. No opportunity was afforded the organization to investigate the matter and determine if what had happened should be disavowed by it as unauthorized. No prior complaints of similar conduct had been made by the Sheriff. That indicates several years of unexceptional presentations. This at the very least should have suggested to the Sheriff, assuming an instance of apparent abuse, that it was conduct not authorized by PPOA. The lack of prior complaints warranted the presumption that the organization would seek to assure its

compliance with whatever the law required relative to political partisanship.

Instead, in the midst of an ERCOM-directed hearing of a sensitive representational dispute involving a competing employee organization -- ALADS -- the Sheriff suddenly and quite dramatically interrupted the proceeding to announce the revocation, thereby artificially casting PPOA and its officers in a distinctly unfavorable light in the eyes of those whom it already represented, as well as those who are potential members, as either inept, or malicious, or both. Whether or not that was a calculated tactic of the Sheriff here -- and no finding either way is suggested by the record -- that assuredly was the effect of the abrupt and unilateral revocation. Regardless of good faith, therefore, this unwarranted revocation amounted to a refusal by the Sheriff to negotiate, within Section 12(a)(3), and constituted the kind of serious interference proscribed by Section 12(a)(1).

2. The Discipline of Deputy Akren

When the Sheriff revoked the right of access and presentation, he retaliated not only against the organization but also the individual PPOA spokesman, Deputy Akren. He received a disciplinary suspension of four days and a transfer from radio-car duty to a custodial facility for closer supervision due to "poor judgment."

Of course, this is not a grievance proceeding concerning Deputy Akren's personal contractual rights. The significance of Deputy Akren's discipline in this proceeding is relative to the question of possible violation of section 12(a) by the Sheriff as charged by PPOA. Section 12(a) must also be read relative to the rights of employees declared in Section 4.

The issues raised by Deputy Akren's discipline are: Was there an intent by the Sheriff to interfere with his or others' Section 4 employee rights? If there was no actual intent evidenced, was the discipline meted out so disproportionate to the conduct disapproved as foreseeably to interfere with, intimidate, restrain, coerce or discriminate against Deputy Akren or any other Sheriff's employee contemplating service to, or open support of, PPOA, causing reasonable fear of consequent jeopardy to an employee's status and prospects?

As with the unilateral revocation of the right of access and presentation, here too the reaction of the Sheriff was of a magnitude wholly disproportionate to the conduct charged against the deputy. He had made over ten prior presentations without exception having

been taken to any for their form or content. The subject of current or proposed legislation had been approved by the Sheriff as part of the outline for a PPOA spokesman's routine remarks. He was not in uniform; nor was he on duty. The context of the remarks about the prospects for legislation favorable to Sheriff's personnel was in response to cadet questioning. It was obviously spontaneous rather than calculated. Assuming then to have been exactly as quoted by Captain Pipkin before Hearing Officer Aaron, and especially taking cognizance of the Sheriff's advance approval of the discussion of legislative prospects by Deputy Akren, they do not evidence more than an incidental venture into partisanship, so casual and unforeseen (relative to past presentations of this spokesman and others) as to make it inconceivable that anyone could have a sustainable complaint against the Sheriff for unconstitutional partisanship. The most that was warrantable to protect the Sheriff in these circumstances was a warning letter to PPOA and to Deputy Akren, cautioning against intrusion into political party or candidate partisanship in the context of the Academy curriculum.

Yet this deputy, a veteran of 18 years in the Department, with no investigative interview whatsoever with him by anyone in authority as to what he had said or why he may have said it, was suddenly banished 88 miles from his home, removed from duty congenial to him with the demeaning statement that he had evidenced such "poor judgment" in this instance that he now required the close supervision only possible in a custodial facility. This was so even though, in this proceeding, his 18-year record was unmarked by any adverse entries in the record. The later modification of location due to his wife's physical condition is not material in this context. If an 18-year veteran of good repute and record may thus be summarily disciplined and siberianized with impunity under such flimsy provocation by the Sheriff for conduct in the course of union activity, off duty and in civilian clothes in a previously sanctioned situation, how shall those of lesser seniority or record calculate whether to stand with the union or avoid the prospect of individual deprivation by refraining from union association? How could the lesson remain unlearned that union-supportive acts may well be the equivalent of extrahazardous duty?

It is evident that the four-day suspension and transfer of Deputy Akren will foreseeably have the effects upon him and others in the Department that are proscribed by Sections 4 and 12(a)(1). The Sheriff's actions in this aspect of this case are, therefore, also violative of Sections 4 and 12(a)(1).

B. Remedies to Rectify the Unfair Practices

1. Relative to the Association

a. The Sheriff should be directed by ERCOM to restore the right of access and presentation to PPOA in the Sheriff's Academy.

b. It should be stated in that direction that the results of this unfair practice proceeding should not be construed to sanction or condone partisan political activities by PPOA representatives that are otherwise unlawful. It should also be declared, however, that it is unnecessary in this proceeding to reach the issues of the extent to which political commentary, or even advocacy, may lawfully be indulged under the federal and state constitutions or statutes, or the Ordinance, by PPOA representatives discussing issues germane to the welfare of personnel of the Sheriff's Department.

2. Relative to Deputy Akren

a. Deputy Akren should be recompensed for the loss of pay during his four-day suspension.

b. He should be restored to his status at the Norwalk substation if he so elects.

c. This order should be directed to be incorporated in his personnel record.

Respectfully submitted,

Edgar A. Jones, Jr.

August 27, 1975