

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

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EMPLOYEE RELATIONS COMM.
COUNTY OF LOS ANGELES
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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.

UFC 9.6

APPEARANCES: For Respondent: John H. Larson, Esq.
County Counsel
John M. Baskett, Esq.
Deputy County Counsel
For the Union: Bodle, Fogel, Julber,
Reinhardt and Rothschild
By: Lester G. Ostrov, Esq.

HEARING OFFICER'S REPORT

On December 30, 1974 Los Angeles County Professional
Peace Officers Association, herein referred to as the Union, duly filed with
Los Angeles County Employee Relations Commission, herein referred to as
the Commission, a charge alleging, among other things, that the County of
Los Angeles Sheriff's Department and Peter J. Pitchess, Sheriff, herein re-
ferred to either as Respondent or as the Sheriff's Department, that the Res-
pondent, in violation of Section 12(a)(1) and 12(a)(3) of the Employee Relations
Ordinance of the County of Los Angeles, herein referred to as the Ordinance,
on or about July 30, 1974, unilaterally changed the then existing work hours
and the then existing practice of lunch breaks of Respondent's Transportation
Bureau employees without prior consultation or negotiation with the Union, the
certified representative of said employees.

On March 11, 1975 the Commission duly served upon Res-

1 pondent a copy of the aforesaid Charge together with a Notice of Hearing.

2 On March 20, 1975 Respondent duly filed with the Com-
3 mission a motion for a Bill of Particulars and a request for an extension of
4 time in which to file an Answer to said Charge, which motion and request
5 were referred by the Commission to me for consideration and disposition.

6 Pursuant to my Order, dated March 25, 1975, granting in
7 part Respondent's motion for a Bill of Particulars and extending Respondent's
8 time to file an Answer to and including April 14, 1975, the Union, on April 4,
9 1975 served a Bill of Particulars on Respondent's counsel and on the same
10 day duly filed a copy thereof with the Commission, together with proof of
11 service of a copy thereof.

12 On April 14, 1975 Respondent duly filed with the Com-
13 mission an Answer, together with proof of service of a copy thereof upon the
14 Union's counsel, denying the commission of the unfair labor practices alleged.

15 Pursuant to due notice, a hearing was held on April 23, 1975
16 at Los Angeles, California, before the undersigned, the duly designated
17 Hearing Officer. Each party was represented at the hearing by counsel. Full
18 and complete opportunity was granted the parties to call, examine and cross-
19 examine witnesses and to introduce evidence pertinent to the issues. At the
20 conclusion of the taking of the evidence the parties were afforded an oppor-
21 tunity to argue orally on the record, to file briefs or to do both. Oral argu-
22 ment was waived. The parties were given until June 20, 1975 to file briefs.
23 Each party filed a brief on June 20, 1975, which briefs have been carefully
24 read and considered by me.

25 Upon the entire record in the case and from observation of
26 the witnesses, I make the following findings, and recommendations.

27 I. PREFATORY STATEMENT

28 Being of the opinion that the employees of Los Angeles County
29 should be granted the right to organize and to select their own labor organiza-
30 tion or representative to represent them for the purposes of participating in
31 decisions affecting their wages, hours and working conditions, the Board of
32 Supervisors of Los Angeles County discussed the matter at one of its formal

1 sessions which was held in or about 1967, with the County Director of the
2 Department of Personnel, the County Counsel, representatives of labor
3 organizations representing various groups of County employees, representa-
4 tives of local business associations and with individuals interested in the
5 matter. At the conclusion of said discussion the Board of Supervisors re-
6 quested the County Director to prepare and submit for its consideration a
7 proposed Employee Relations Ordinance.

8 A series of draft proposals were submitted from time to
9 time by the County Director to the Board of Supervisors. Each submitted
10 draft, however, brought forth strong objection to portions thereof or to the
11 entire draft by one or more of the participating groups or individuals.

12 On January 30, 1968 the County Director submitted to the
13 Board of Supervisors what is referred to as his final draft proposed ordinance.
14 When strong objection was raised to its acceptance, the Board of Supervisors
15 appointed a Consultants' Committee, composed of Benjamin Aaron as Chair-
16 man, Lloyd H. Bailer and Howard Block, three renowned experts in the field
17 of employer-employee relations, each of whom was not in any way connected
18 with the County of Los Angeles, except possibly by being a resident thereof,
19 or with any group, individual or labor or business organization which had
20 previously participated in this matter of County employee representation.
21 Since this Consultants' Committee from its inception has been publicly referred
22 to as the Aaron Committee it will be so referred to herein.

23 After carefully considering both the County Director's series
24 of draft proposals and all the objections advanced to those drafts by the various
25 organizations representing the County employees, County management and
26 other groups and individuals, the Aaron Committee held public hearings, had
27 private discussions regarding the matter of a proposed Employee Relations
28 Ordinance with representatives of County management, with representatives
29 of labor organizations representing various groups of County employees, and
30 with principal interested persons.

31 Upon completion of the hearings and consultations referred
32 to immediately above and after considering and evaluating the numerous oral

1 and written suggestions and recommendations of the above mentioned groups
2 and individuals, ranging from a completed draft of a proposed Ordinance to
3 the argument that no ordinance regulating employment relations for County
4 employees was necessary or desirable at the moment, the Aaron Committee
5 submitted to the Board of Supervisors, on July 25, 1968, a proposed Employee
6 Relations Ordinance together with a lengthy Report and Recommendations.
7 The latter document consisted mainly of a detailed discussion of the major
8 provisions of the ordinance coupled with the Committee's reasons why each of
9 said major provisions must be embodied in any ordinance adopted since they
10 insure to the County employees, County management and the general public
11 their respective legitimate rights. Specifically, the Report and Recommenda-
12 tions called the Board of Supervisors' attention to the fact that the proposed
13 ordinance insures the managers of the various County agencies the right, in
14 order that they might promptly and without interruption, carry out the functions
15 entrusted to them, to initially determine the manner in which those functions
16 are to be performed and that the affected employees likewise had the right to
17 challenge those decisions by means of filing grievances or charges with res-
18 pect to the practical consequences those decisions may have on their wages,
19 hours, and other terms and conditions of employment.

20 Upon receipt of the proposed ordinance and the Committee's
21 Report and Recommendations, the Board of Supervisors advised all interested
22 parties that it would hold a formal hearing on the matter on September 3, 1968.

23 On August 30, 1968 the Chairman of the Aaron Committee
24 wrote the Board of Supervisors, advising it that the Committee had met with
25 representatives of County Department of Personnel, the County Counsel, the
26 Chief Administrative Officer, and the County Federation of Labor; that as a
27 result of the discussions at those meetings, the Committee had prepared 24
28 revisions to its July 25, 1968 proposal, which he understood were acceptable
29 to and supported by the County Department of Personnel, the Chief Adminis-
30 trative Officer and the County Federation of Labor; that he was attaching to
31 the letter a list of the 24 suggested revisions with explanatory comments; that
32 the comments marked with an asterisk were drafted by the Committee and the

1 others were drafted by the office of the County Counsel; that the County Coun-
2 sel has approved as to form the proposed ordinance as revised; that the pro-
3 posed revisions are almost entirely technical in nature and are intended to
4 eliminate ambiguities and to clarify meanings; that the only substantive change
5 of any consequence concerns impasses over the scope of negotiable subjects;
6 that all parties attending the above mentioned meetings agreed to eliminate
7 from the July 25, 1968 proposal the specific clause relative to that subject
8 and to handle all impasse matters in the manner prescribed in Section 13 of
9 the Committee's original proposed ordinance; that he was making available
10 copies of the letter and the list of 24 proposed revisions to all organizations
11 representing County employees and to other interested parties; and that the
12 Committee and the parties who participated in preparing the proposed re-
13 visions urge the immediate adoption of the July 25, 1968 proposed Employee
14 Relations Ordinance as revised.

15 At the formal session of the Board of Supervisors held on
16 September 3, 1968, after adequate opportunity was afforded all interested
17 parties to be heard, the following resolution was unanimously adopted:

18 " RESOLUTION

19 Regarding

20 ADOPTION OF EMPLOYEE RELATIONS ORDINANCE

21 The Board of Supervisors of the County of Los Angeles does resolve
22 as follows:

23 That the document entitled "An Employee Relations Ordinance for
24 Los Angeles County--Report and Recommendations of the Consultants'
25 Committee" filed with this Board on July 25, 1968 by Benjamin Aaron,
26 Lloyd H. Bailer, and Howard Block, the three employee relations
27 Consultants previously retained by this Board to prepare and submit
28 a proposed Employee Relations Ordinance for the County of Los Angeles
29 and accompanying Report, as well as the subsequent Report filed by
30 said Consultants on August 30, 1968 with this Board recommending
31 amendments to the proposed Employee Relations Ordinance, are hereby
32 found to be accurate statements of this Board's intent and purpose in
adopting Ordinance No. 9646 entitled "The Employee Relations Ordinance
of the County of Los Angeles" and each provision thereof, except to the
extent that any provisions of the proposed Ordinance as recommended
by said Consultants may have been subsequently amended by this Board
in adopting said Employee Relations Ordinance. "

31 The Ordinance became effective, by order of the Board of
32 Supervisors, on October 4, 1968.

1 II. THE PERTINENT FACTS

2 Most of the testimony adduced at the hearing centered
3 around the July 30, 1974^{1/} directive issued by Victor D. Riesau, Chief of
4 Technical Services Division of the Sheriff's Department, to all Unit Com-
5 manders of that Division, including Captain Kenneth R. Hays, the Unit Com-
6 mander of the Transportation Bureau, and the latter's order of August 6, 1974
7 implementing Riesau's aforementioned directive.^{2/} The directive and sub-
8 sequent order of Hays were unilaterally issued without prior notice to or con-
9 sultation with the Union.

10 The portion of Riesau's directive which the employees here
11 involved and their certified representative found especially objectionable
12 reads as follows:

13 "All personnel assigned to a regular letter schedule shift of five
14 days on and two days off shall have a time span of eight and one-half
15 (8-1/2) hours between start and end of their shift. The one-half
16 (1/2) hour in excess of eight is for the purpose of a meal period."

16 In short, the aforesaid directive increased the work hours of all "five on and
17 two off" Sheriff's Department employees from eight to eight and one-half hours.

18 Captain Hays' August 6 order only affected the work hours
19 of the day shift Field Sergeants, Headquarters Sergeant (also called Watch
20 Sergeants), Watch Deputies, Desk Deputies, and Utility Correction Officers.^{3/}

21 Under date of December 23, Lieutenant Stuart W. Avery,
22 who at that time was Acting Captain of the Transportation Bureau, caused to
23 be posted on the Bureau's bulletin board the time each group of day shift

24 ^{1/} Unless otherwise noted all dates hereinafter mentioned refer to 1974.

25 ^{2/} Copies of each of said documents were posted on the Transportation Bureau
bulletin board shortly after its issuance.

26 ^{3/} There are three separate employee units here involved; Deputy Sheriffs, for
27 whom the Union was certified as their majority representative on July 13,
1974; Supervisory Peace Officers, consisting of lieutenants and sergeants, for
28 whom the Union was certified as their majority representative on January 9,
1970; Utility Correction Officers for whom the Union was certified as their
29 majority representative on March 30, 1973.

30 From September 23, 1969 until March 30, 1973 the Utility Correction
Officers were represented by another labor organization. Prior to the above
mentioned certifications the deputy sheriffs and the supervisory peace officers
31 were not represented by any majority representative.

32 The hours of the above named officers working the evening shift or the
early morning shift were not affected by Hays' order, although their basic
pay was the same as the day shift officers.

1 employees was to take its lunch break. This notice, like Riesau's July 30
2 directive and Hays' August 6 order, was unilaterally issued and put into effect
3 without prior consultation with the Union.

4 Prior to 1969 or 1970 all Transportation Bureau employees
5 worked an eight and one-half hour shift, with no specific time set aside for
6 lunch breaks. During either of said years, Captain Baker, the Bureau's then
7 Unit Commander, unilaterally issued an order reducing the work hours to
8 eight hours, again without specifying when the employees were to take their
9 lunch breaks.

10 The record discloses that the duties of the Field Sergeants,
11 Headquarters or Watch Sergeants, Watch Deputies and Utility Correction
12 Officers are such that they are unable to eat their lunch at any specific hour
13 each day. It would unduly protract this Report to set forth the various duties
14 each of these officers is called upon to perform during a normal shift, but the
15 uncontraverted evidence clearly indicates that they have to eat their lunch
16 whenever and wherever the opportunity to do so arises. These officers did
17 not seem to complain about when and where they ate their lunch. In fact, even
18 though their work hours were increased 30 minutes, the uncertainty as to
19 when and where they had their lunch still existed. Avery's assignment of
20 certain lunch hours did not, in reality, remedy the situation for the afore-
21 mentioned officers still eat their lunch on a "catch-as-catch-can" basis.

22 Between August 6 and August 28, day shift Field Sergeant
23 Rodney Graham, as the Union's representative of the unit composed of the
24 Transportation Bureau's lieutenants and sergeants, complained to Hays on
25 three separate occasions that the latter's August 6 order "infringed" upon the
26 employees' rights and that he felt it was unfair to make the affected day shift
27 officers report for duty at 5:30 in the morning instead of six o'clock under the
28 guise that they would have a regular specified 30 minutes for lunch, and he
29 requested Hays to meet with the Union to discuss and negotiate the matter.
30 On each of these occasions Hays informed Graham that he was powerless to
31 do anything about the matter because of Riesau's July 30 directive.

32 On or about August 29 Graham presented to his immediate

1 superior, Lieutenant Stuart W. Avery, a document, dated August 28 and
2 signed by eleven day shift Transportation Bureau officers, reading in part
3 as follows:

4 "The undersigned aggrieved personnel do hereby protest the
5 unfair and discriminatory action by the Chief, Technical Service
6 Division, and the Commander of the Transportation Bureau in
7 arbitrarily, without notification or the agreement of the aggrieved
8 parties, changing the work shift from eight (8) to eight and one-half
9 (8-1/2) hours contrary to long established practice. The aggrieved
10 parties feel the above to be an unfair labor practice.

11 The aggrieved parties that have worked during the extra half (1/2)
12 hour [believe they should] be compensated as per Salary Ordinance
13 and that the Division Order dated 7/30/74 and the Transportation
14 Bureau order dated 8/6/74 be rescinded."

15 Under date of October 11, Assistant Sheriff William J. Anthony, for and on
16 behalf of Sheriff Peter J. Pitchess, wrote the Union as follows:

17 "Pursuant to the grievance dated August 28, 1974, initiated by four
18 Sergeants, six Deputies, and one Corrections Officer, I have
19 thoroughly considered the pertinent information relative to the
20 change of working hours in the Transportation Bureau.

21 The revision from an eight hour day to an eight and one-half hour
22 day involves positions within the Transportation Bureau that have
23 been identified as those which will be entitled to a half hour lunch
24 break during the working day. Any work beyond the regularly scheduled
25 working hours will be subject to review for applicability of overtime
26 credit.

27 I, therefore, concur with the decision of the Review Board that the
28 current scheduling practices remain in effect and that any claim for
29 overtime credit will be considered on an individual basis."

30 Other than Anthony's letter, quoted immediately above, and the conversations
31 Graham had with Avery and with Hays, as epitomized above, Respondent
32 never conferred or communicated with any Union representative regarding
33 the change in hours which went into effect on August 6.

34 III. CONCLUDING FINDINGS

35 The United States Supreme Court has repeatedly and uni-
36 formly held that an employer was under a duty to bargain with the majority
37 representative of his employees in an appropriate unit about his decision to
38 change the wages, hours and other terms and conditions of employment of
39 his employees. That duty to bargain, the Court stated, included the obligation
40 to notify the majority representative prior to making the change and to give
41 such representative a chance to negotiate with respect to the contemplated
42 change.

1 In its post-hearing brief the Union's counsel cites some of
2 those Supreme Court cases and relies heavily upon them in support of the
3 Union's position that Respondent has violated the Ordinance by engaging in
4 the unfair labor practices alleged in the Charge as amplified by its Bill of
5 Particulars.

6 Since all the cases heretofore decided by the Supreme Court
7 involving notification to the employees' majority representative before the
8 contemplated change of the employees' conditions of employment were put
9 into effect involved employers in the private sector category they are not
10 directly applicable to the instant proceeding since (1) we have before us a
11 public sector proceeding; (2) Section 6(a) of the Ordinance provides: "All
12 matters affecting employee relations, including those that are not subject to
13 negotiation, are subject to consultation between management representatives
14 and the duly authorized representatives of affected employee organizations.
15 Every reasonable effort shall be made to have such consultation prior to
16 effecting basic changes in any rule or procedure affecting employee relations";
17 and Section 6(b) reads: "The scope of negotiation between management rep-
18 resentatives and the representatives of certified employee organizations in-
19 cludes wages, hours, and other terms and conditions of employment within
20 the employee representation unit"; and (3) in the Aaron's Committee July 25,
21 1974 Report and Recommendation^{4/} the Committee, in explaining why a broad
22 management rights clause was desired, stated that in its opinion "Managers
23 of governmental agencies must insure that the functions entrusted to them are
24 carried out promptly and without interruption. We think they should have the
25 right initially to determine the manner in which these functions are to be
26 performed. Accordingly, the provision we recommend explicitly sets forth
27 those rights that County management may exercise unilaterally and without
28 prior negotiation with employees or their organizations." ^{5/}

29 ^{4/} By its resolution of September 3, 1968 the Board of Supervisors adopted
30 in toto the Aaron Committee's proposed ordinance, as revised, and the Com-
31 mittee's Report and Recommendation and the Committee's August 30, 1968
32 letter. The undersigned has considered, therefore, the latter two documents
in the nature of the legislative history of the Ordinance as enacted on Septem-
ber 3, 1968 and thus ample use has been made of them in considering this
matter.

^{5/} Please see page -10-

1 Granted, that Respondent was not obliged to notify, discuss,
2 or negotiate with the Union its decision to increase the hours of the day shift
3 Transportation Bureau employees prior to putting that decision into effect,
4 Respondent, however, was under a mandatory duty, pursuant to Section 6(a)
5 and (b) and Section 12(3) of the Ordinance to accede to the Union's requests
6 to discuss and negotiate Hays' order after the increased hours had been put
7 into effect. Hays' and Avery's disclaimer of authority to meet with the Union's
8 representatives and discuss the matter in an attempt to resolve it, plus
9 Assistant Sheriff Anthony's October 11 letter, quoted in full above, singularly
10 and collectively, evidence Respondent's absolute refusal to abide by the
11 mandatory provisions of the Ordinance to meet and discuss matters regarding
12 the working conditions of the employees involved.

13 The duty to discuss and negotiate a change in employees'
14 wages, hours, and other terms and conditions of employment which an em-
15 ployer already put into effect does not impose an unfair or undue burden upon
16 the employer. The obligation to discuss or negotiate about a condition of
17 employment already put into effect in no wise obligates an employer to reverse
18 his decision or to yield to the employees' representative's demand that the
19 change be rescinded.

20 Experience has shown that candid discussion of mutual
21 problems by labor and management frequently results in their mutual resolu-
22 tions with attendant benefit to both sides. Such discussions with a duly desig-
23 nated employee representative is all the Ordinance contemplates. But it
24 commands no less.

25 In addition to a general averment that it did not in any
26 manner violate any provision of the Ordinance as alleged, Respondent raised
27 three separate and distinct defenses which are: (1) That the Memorandum of
28 Understanding which each of the appropriate employee units entered into with
29 the Sheriff's Department and which documents were approved by the Board of

30 ^{5/} In the paragraph immediately following the one above quoted reads, in part:
31 "Nothing in the section on employer rights shall preclude employees from
32 raising grievances about the practical consequences that decisions on matters
reserved for management may have on wages, hours, and other terms and
conditions of employment."

1 Supervisors contain identical clauses which precludes the Union from now
2 contesting the validity or reasonableness of Hays' August 6 order; (2) That
3 Section 80 of Ordinance No. 4099, adopted by the Board of Supervisors on
4 October 7, 1955, which grants to each County department head the authority
5 to designate and fix the working hours of departmental personnel under his
6 command, supersedes and controls over any past practice which is in conflict
7 or inconsistent with it under the terms of the above-mentioned memoranda
8 between the Union and the Sheriff's Department; and (3) that the past practice
9 of the heads of various County agencies has been to designate and fix the
10 working hours of personnel under their command and that such action was
11 followed in the Transportation Department when Hays' August 6 order was
12 put into effect.

13 As to (1) above, Article 20 of the Deputies or Peace Officers
14 Memorandum of Understanding, Article 19 of the Supervisor Peace Officers
15 Memorandum of Understanding, and Article 24 of the Utility Correction
16 Officers Memorandum of Understanding are identical and provide as follows:

17 "A. This Memorandum of Understanding sets forth the full
18 and entire understanding of the parties regarding the matters set
19 forth herein. Any other prior or existing understanding or agree-
ments by the parties, whether formal or informal, regarding any
such matters are hereby superseded or terminated in their entirety.

20 "B. Except as specifically provided herein, it is agreed and
21 understood that each party hereto voluntarily and unqualifiedly waives
22 its right, and agrees that the other shall not be required to negotiate
23 with respect to any matter covered herein or with respect to any
other matters within the scope of negotiations, during the term of
this Memorandum of Understanding.

24 "C. No agreement, alteration, understanding, variation,
25 waiver or modification of any of the terms or provisions contained
26 herein shall in any manner be binding upon the parties hereto unless
made and executed in writing by the parties hereto and, if required,
approved and implemented by County's Board of Supervisors.

27 "D. The waiver of any breach, term or condition of this
28 Memorandum of Understanding by either party shall not constitute
a precedent in the future enforcement of all its terms and provisions."

29 The Union at no time requested the Sheriff's Department to
30 negotiate or renegotiate any term or condition of the existing Memorandum
31 of Understanding which it had entered into with the Sheriff's Department prior
32 to August 6. All the Union desired was an opportunity to discuss with the

1 Sheriff's Department the August 6 increase in the hours each of the day shift
2 Transportation Bureau employees were ordered to work, with the sole object
3 in mind of having this order rescinded. Accordingly, it is concluded that
4 Respondent's reliance on the above mentioned memoranda of understanding
5 is without substances or merit.

6 As to (2), after the proposed Employee Relations Ordinance
7 was submitted to the Board of Supervisors on July 25, 1968, the members of
8 the Aaron Committee met with, among others, the County Counsel, County
9 Department of Personnel, and the Chief Administrative Officer and discussed
10 suggested revision of the proposed ordinance. As the result of these dis-
11 cussions 24 revisions were made to the July 25, 1968 proposed ordinance;
12 these revisions were acceptable to and supported by the County Department
13 of Personnel, the Chief Administrative Officer, and by others.

14 When the July 25, 1968 proposed ordinance and the 24 re-
15 visions were presented to the Board of Supervisors on September 3, 1968,
16 the Ordinance, as revised, was unanimously adopted by that body.

17 The pertinent portions of Section 6 of the Ordinance as
18 finally adopted read:

19 "(a) All matters affecting employee relations, including those that
20 are not subject to negotiation, are subject to consultation between
21 management representatives and the duly authorized representative
22 of affected employee organizations. Every reasonable effort shall
be made to have such consultation prior to affecting basic changes
in any rule or procedure affecting employee relations.

23 (b) The scope of negotiation between management representatives
24 and the representatives of certified employee organizations includes
wages, hours, and other terms and conditions of employment within
the employer representation unit." (Emphasis supplied)

25 Section 12 of the Ordinance as finally adopted deals with
26 unfair employee relations practices and the pertinent portions thereof read:

27 "It shall be an unfair employee relations practice for the County. . .
28 to refuse to negotiate with representatives of certified employee
organizations on negotiable matters".

29 The Sheriff's Department contention that since Section 80
30 of Ordinance 4099, which was adopted approximately 13 years before the
31 Employee Relations Ordinance became effective, gave each department head
32 of the various County agencies the unlimited authority to "designate the

1 working hours within his department and [he] shall determine the actual time
2 [his] employees shall report to their work stations---" and hence Respondent
3 was free to ignore the Union's demands to discuss the August 24 increase in
4 hours of the day shift Transportation Bureau employees is without merit. To
5 find otherwise would make the County employees' rights and those of its duly
6 certified representative under the Ordinance a nullity.

7 As to (3), the record discloses that on only one occasion
8 the hours of any County employee were changed and that change was made in
9 1969 or 1970 when Captain Baker, the then Unit Commander of the Trans-
10 portation Bureau, reduced the hours of all the employees under his command.
11 The Sheriff's Department points to the fact that no protest to Baker's decision
12 was made, and that it thus follows that Baker's action set a precedent for any
13 and all future unilateral action any department head may take respecting the
14 working conditions of the employees under his command. It might be said,
15 without fear of successful contradiction, that no normal government employee
16 would file a protest when informed that his work day was shortened and his
17 basic pay remained unaffected by the change. Moreover, at the time of Baker's
18 order reducing the Transportation Bureau's hours from 8-1/2 to 8, the only
19 person here involved having a certified representative was the Utility Correc-
20 tion Officer. Why that labor organization which is not the one here involved
21 did not protest is quite obvious. Under the circumstances, it is concluded
22 that this contention is likewise without merit.

23 IV. RECOMMENDED REMEDY

24 Section 12 of the Ordinance substantially charts proscribed
25 activities of both employers and labor organizations which constitute unfair
26 labor practices.

27 The Aaron Committee Report and Recommendations made
28 no specific recommendation with respect to the Commission's remedial powers
29 nor did the Board of Supervisors attempt to enumerate in the Ordinance any
30 fixed remedies for each substantive violation committed. Nevertheless, it
31 seems obvious that, in adopting the Ordinance, the Board of Supervisors did
32 not engage in the empty gesture of creating rights without parallel remedies.

1 It is axiomatic that remedial action, if it is to afford an
2 effective redress for the commission of a statutory wrong, must be tailored
3 to restore to the wronged the condition he would have occupied but for the
4 action of the wrongdoer. Where an employer refuses to discuss or negotiate
5 with the duly certified representative of the employees whose working con-
6 ditions have been affected by the unilateral action of their employer, as here,
7 said employer must be required to restore the status quo ante by abrogating
8 his action of changing the hours of the affected employees and fulfill his
9 obligation to meet, consult and negotiate when so requested by the Union. Of
10 course, in the instant proceeding when that obligation has been satisfied,
11 Respondent may lawfully change the hours of any of its employees represented
12 by the Union without prior consultation or negotiation with the Union.

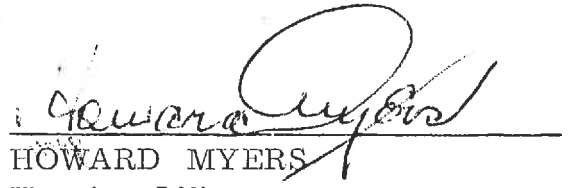
13 Having found that Respondent violated Section 12(3) of the
14 Employee Relations Ordinance by refusing the Union requests to meet with it
15 to discuss and negotiate the effect Captain Hays' August 6 order had on the
16 Transportation Bureau day shift employees here involved, thereby interfering
17 with, restraining, and coercing said employees in the exercise of the rights
18 guaranteed them in Section 12(1) thereof, it is recommended that the Com-
19 mission order Respondent to cease and desist therefrom and from in any other
20 like or similar manner interfering with its employees' rights under the
21 Ordinance and to take the following affirmative action:

22 (1) Within 10 days after receipt by it of a Union request to
23 meet, Respondent be ordered to meet, discuss, and in good faith negotiate
24 with the Union the desirability and reasonableness of Captain Hays' August 6
25 order and the resulting effect said order has been having, and is having, on
26 the employees here involved;

27 (2) Immediately rescind Captain Hays' August 6 order and give
28 no effect to it until Respondent completely complies with the requirement set
29 forth in (1) above;

30 (3) Make whole all the employees affected by Captain Hays'
31 August 6 order by payment to each of them one-half hour's pay at overtime
32 rate for each half-hour worked in excess of eight hours per shift since the

1 implementation of Captain Hays' August 6 order until said order has been
2 rescinded. At the election of Respondent payment, as prescribed herein,
3 may be made either by cash or by granting said employees compensatory
4 leave.

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8 HOWARD MYERS
9 Hearing Officer
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12 July 17, 1975
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