

LOS ANGELES COUNTY  
EMPLOYEE RELATIONS COMMISSION

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EMPLOYEE RELATIONS COM.  
COUNTY OF LOS ANGELES  
JUL 18 11 13 AM '75

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 referred to either as Respondent or as the Sheriff's Department, that the Respondent, 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<sup>1/</sup> 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.<sup>2/</sup> 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  
(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.<sup>3/</sup>

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 <sup>1/</sup> Unless otherwise noted all dates hereinafter mentioned refer to 1974.

25 <sup>2/</sup> Copies of each of said documents were posted on the Transportation Bureau  
bulletin board shortly after its issuance.

26 <sup>3/</sup> 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  
the change in hours which went into effect on August 6.

### 33 III. CONCLUDING FINDINGS

34 The United States Supreme Court has repeatedly and uni-  
35 formly held that an employer was under a duty to bargain with the majority  
36 representative of his employees in an appropriate unit about his decision to  
37 change the wages, hours and other terms and conditions of employment of  
38 his employees. That duty to bargain, the Court stated, included the obligation  
39 to notify the majority representative prior to making the change and to give  
40 such representative a chance to negotiate with respect to the contemplated  
41 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<sup>4/</sup> 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." <sup>5/</sup>

29 <sup>4/</sup> 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.

<sup>5/</sup> 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 <sup>5/</sup> 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-  
20 ments by the parties, whether formal or informal, regarding any  
21 such matters are hereby superseded or terminated in their entirety.

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

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

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

33 The Union at no time requested the Sheriff's Department to  
34 negotiate or renegotiate any term or condition of the existing Memorandum  
35 of Understanding which it had entered into with the Sheriff's Department prior  
36 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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