

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)	
)	
LOS ANGELES COUNTY PROFESSIONAL PEACE)	
OFFICERS ASSOCIATION)	
)	
Charging Party)	
)	
and)	UFC 9.6
)	
COUNTY OF LOS ANGELES (SHERIFF'S)	
DEPARTMENT AND PETER J. PITCHESS,)	
SHERIFF))	
)	
Respondent)	
)	
)	

DECISION AND ORDER

The unfair employee relations practice charge filed by the Los Angeles County Professional Peace Officers Association against the County of Los Angeles (Sheriff's Department and Peter J. Pitchess, Sheriff) because of a unilateral change in hours of work for Transportation Bureau employees was duly heard by Hearing Officer Howard Myers. Upon consideration of the Report filed by said Hearing Officer and the complete record on file herein, the Employee Relations Commission makes the following findings and

issues the order hereinafter set forth.

The material facts pertaining to the issues submitted for decision are free from dispute.

The prior history of working hours within the Sheriff's Department was that for an early period, before 1970, an 8 1/2-hour day was worked, and in 1970 this was changed to an eight-hour day by a directive of a unit commander. The eight-hour day continued to be the customary workday until again changed by order and directive in 1974.

Through the Chief of the Technical Services Division, the department issued an order on July 30, 1974, which directed all unit commanders to assign personnel on certain day shifts to a time span of 8 1/2 hours between the start and end of the shift, with the half hour in excess of eight for the purpose of a meal period. It provided further that if the mealtime relief were not possible, the duty hours might be reduced to an eight-hour shift. Supervisors were made individually responsible for the validity and necessity of duties that generate overtime.

On August 6, 1974, this order was implemented by a captain's memorandum to Transportation Personnel naming job classifications that were required to comply with the order. The memorandum also stated that a study of individual assignments would be made to determine whether the position requirements would permit an employee to have time from his duties to take a 30-minute meal

break. Reports of alleged inequities were invited.

On September 26, 1974, the Captain of the Transportation Bureau issued a clarification memo to his subordinates stating, "Personnel are not required to perform official duties during their lunchtime. Except for emergencies, the time is to be unencumbered by work functions." In closing the memo, he suggested the reading of sections of a Policy Manual (which declare that employees may be disciplined if they display reluctance to perform assigned duties, or act in a manner tending to discredit themselves or the department, or fail to assume responsibility or exercise diligence, intelligence and interest in the pursuit of duty).

Another memorandum from the Captain of the Transportation Bureau to Concerned Personnel, dated December 23, 1974, assigned specific one-half-hour lunch schedules to designated jobs. This advised the personnel that if it were necessary for them to work through the assigned lunch break they must receive permission from their immediate supervisor before working through the break and it notified supervisors to make every effort to see that their subordinates have an uninterrupted lunch break.

The departmental order of July 28, 1974, and the following implementing directives were all issued without any prior notification to or consultation with or negotiation with the Los Angeles County Professional Peace Officers Association, which had been

certified as the representative of employees whose hours of work were changed.

After the new order went into effect, individual deputies complained to their immediate supervisors, who said they would relay the matter through channels to the proper officials. On August 28, 1974, a formal grievance was filed by ten employees designating the Professional Peace Officers Association as their representative and protesting the change from eight to 8 1/2 hours without negotiation or agreement of the aggrieved parties as an unfair employee relations practice. This grievance was referred to the second level of procedure at which, on September 3, 1974, it was denied. No action was taken at the third level or by the Review Board as provided for in the Memoranda of Understanding of the parties. Instead, on December 23, 1974, the Professional Peace Officers Association filed the unfair employee relations practice charge that instituted this proceeding.

The witnesses at the hearing expressed some differences of opinion concerning what occurred with respect to meals following the July 30 order. Deputies testified that they took a few meals in the appointed half hours, but more often they were unable to eat then, and occasionally at no time, because of the pressure of work priorities. They were on call at all times and the requirements for transportation of prisoners and vehicle maintenance were unpredictable and insistent. The commanding

officers who testified stated the men could have been relieved by others if they had requested it, but as "dedicated" employees they had not asked to be relieved. All witnesses agreed that no employees had been scheduled for relief work during the lunch periods, and the day-shift deputies ate on a catch-as-catch-can basis at irregular times. That had been the custom in the earlier periods when an 8 1/2 hour day and, later, an eight-hour day prevailed, and it continued after the new order and directives were issued.

On the early-morning shifts and the late-afternoon shifts, as distinct from the day shifts, an eight-hour day was maintained. The official rationale for the difference was that there were fewer persons assigned to those shifts so relief workers were not readily available, and since many restaurants were not open then, the men needed to eat on the job.

The reasons why meals were eaten as they were and the differences between shifts may affect the desirability of one lunch arrangement or another, but they do not go directly to the basic issue of whether or not the Sheriff's Department was required to notify the Professional Peace Officers Association of a proposed change in the workday or lunch schedule and to negotiate on that.

The department sought to justify its failure to notify and negotiate on three grounds: (1) The change in the hours of work was authorized and legal. (2) The change was consistent with

past practice. (3) The Memorandum of Understanding between the parties superseded past practices or understandings and waived further negotiation on matters covered or any other matters within the scope of negotiation.

(1) As to the legality of the assigned workday, it is clear that the Administrative Code of the County (Ordinance 4099, Section 80) makes it the duty of the head of each office and department to assign work and to "designate working hours." The employee organization in this case did not contend otherwise. The only question raised was whether the head of the office or department was required also to negotiate the matter. The Administrative Code was adopted in 1942. The Employee Relations Ordinance, adopted in 1968, does not conflict with the Administrative Code, but supplements it with additional duties and responsibilities essential to the maintenance of harmonious employee relations.

The Employee Relations Ordinance is clear in its provisions for consultation and negotiation on hours of work.

Section 6 states:

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

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

Section 12 states:

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

Nowhere in the testimony of the officials of the Sheriff's Department or in the statements and brief of the department's counsel was there any mention of these provisions of law. The mere fact that the Administrative Code delegates authority to act to heads of offices and departments does not absolve them from their duty to observe all other laws requiring them to carry out their responsibilities in a defined manner. The Employee Relations Ordinance unequivocally requires consultation and negotiation on hours of work and it is unfortunate that that requirement was overlooked or neglected by a law enforcing agency.

(2) In view of the clear requirement of consultation and negotiation, it is immaterial that the change in the workday ordered on July 30, 1974, was consistent with the hours of work prior to 1970 or was set by an order of a head of an office or department as hours had been set before. There was a definite change in hours of work and that is a mandatory subject of

negotiation, regardless of the reasons that may warrant a change and regardless of the prestige, rank or authority of the persons seeking the change.

(3) The provisions of the Memoranda of Understanding referred to by the department do not state or have the effect inferred by the department. An MOU customarily concludes a process of negotiation and purposefully attempts to preserve the terms agreed upon for a period of time in order to stabilize employee relations. Consequently, it supersedes contrary or inconsistent past practices and waives the right of the parties to negotiate over new terms of employment during the period specified in the MOU. In this instance the Memoranda of Understanding did not provide for an 8 1/2-hour day or attempt to preserve that day. On the contrary, when the MOUs were adopted the workday was eight hours. This was not spelled out in the MOUs; but the testimony in this proceeding acknowledged, without dispute, that the workday for all the grievants herein was at that time eight hours. To maintain stability in employee relations, that eight-hour day was to be preserved for the duration of the MOUs, absent a mutual agreement by both the Sheriff's Department and the Professional Peace Officers Association to reopen the matter for negotiation. That did not confer upon the department power to make a unilateral change in the existing hours of work.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with the foregoing evidence and all documents of record, the Commission finds that on or about July 30, 1974, the County of Los Angeles, through the Sheriff's Department, Peter J. Pitchess, Sheriff, unilaterally changed the existing hours of work and the existing practice with respect to lunch breaks for employees in the Transportation Bureau represented by the Los Angeles County Professional Peace Officers Association, the certified representative of said employees, without first negotiating with that organization; and thereby committed an unfair employee relations practice as defined by the Employee Relations Ordinance.

ORDER

In order to effectuate the purposes and provisions of the Employee Relations Ordinance, the Commission orders the Sheriff's Department of the County of Los Angeles to vacate its order on hours of work, dated July 30, 1974, and all subsequent directives implementing that order, and to restore all employees who worked additional time by virtue of said

order to their former rights by paying them at the rate of time and one half for time worked in excess of eight hours a day from the effective date of said order to the time of its rescission.

Dated: October 10, 1975

A handwritten signature in cursive script, reading "Lloyd H. Bailer".

Lloyd H. Bailer, Chairman

A handwritten signature in cursive script, reading "William Levin".

William Levin, Commissioner

A handwritten signature in cursive script, reading "David Ziskind".

David Ziskind, Commissioner