

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of)	
)	
SHELAN JOSEPH, GREGORY APT, JOHN B. PERRONI III, AND NANCY THEBERGE,)	
)	
Charging Parties,)	
)	
vs.)	UFC No. 011-23
)	
LOS ANGELES ASSOCIATION OF DEPUTY DISTRICT ATTORNEYS,)	
)	
Respondent.)	
)	

INTERIM DECISION AND ORDER

Background

On or about May 15, 2023, Shelan Joseph, Gregory Apt, John B. Perroni, and Nancy Theberge (Charging Parties) filed an Unfair Practice Charge (UFC) against the Los Angeles Association of Deputy District Attorneys (Respondent or ADDA). The UFC alleged that the Respondent had violated Section 5.04.070 and 5.04.240(B)(1) of the Employee Relations Ordinance (ERO) by failing or refusing to admit them to membership in ADDA, or by failing or refusing to process their membership applications.

On or about July 16, 2023, the Respondent filed an opposition seeking to have the UFC dismissed on various grounds, including untimeliness, lack of jurisdiction, and lack of merit. As to lack of jurisdiction, the Respondent contended that the Civil Service Commission (CSC), rather than the Employee Relations Commission (ERCOM), has exclusive jurisdiction to resolve the issues raised by the UFC.

On July 24, 2023, the matter came before us for hearing. At the hearing, the Respondent and the Charging Parties each had a full and fair opportunity to present their allegations, defenses, and legal arguments in all respects.

Having considered the foregoing, we now issue this Interim Decision and Order (Interim D&O)

(1) requiring ADDA to admit membership forthwith to each of the affected Charging Parties¹ and (2) holding in abeyance further consideration of the UFC unless and until such time as the CSC has issued its ruling on the related appeals now before it.

Facts

Most of the facts material to this Interim D&O are not in dispute. They are summarized as presented in the allegations made in the UFC or as represented by the parties at the July 24, 2023, ERCOM meeting. To the extent that any other material facts remain in dispute, we do not purport to resolve them at this stage of the proceedings.

In 2021, each of the Charging Parties was hired as a deputy district attorney (DDA) by the Los Angeles County District Attorney and became employed by that office (DA's Office). (In addition, each of them was formerly employed as a deputy public defender, either by the Los Angeles County Public Defender or the Los Angeles County Alternate Public Defender.) Each of the Charging Parties was hired at Grade IV except Mr. Perroni, who was hired at Grade III. At all relevant times, membership in ADDA was limited to DDAs employed by the DA's Office in Grades I through IV.

Thereafter, on various dates in 2021 or 2022, each of the Charging Parties applied for membership in ADDA. None was admitted. The application of Ms. Joseph was never acknowledged. The applications of Mr. Apt and Mr. Perroni were approved for membership but then deferred due to a "clerical error," and the dues collected from them were refunded via checks that they have declined to cash. The application of Ms. Theberge was not further described.

Due to these developments, the Charging Parties have been placed in a type of representational limbo. They are unable to participate in the activities or business of ADDA, which include, but are not limited to, attending union meetings, running for union office, or voting in union elections or on union-negotiated memoranda of understanding. They are unprotected by the union's bylaws and, apparently, the benefits and protections of union representation. When asked at the July 24, 2023, ERCOM meeting whether a Charging Party who was disciplined would be entitled to union assistance or representation in filing and pursuing a grievance, counsel for the Respondent declined to answer the question, much less answer in the affirmative.

Meanwhile, pending before the CSC is a group of appeals filed by eleven incumbent DDAs, including ten in Grade III and one in Grade II.² The gist of these appeals appears to be that the appellants were passed over for promotions to Grade IV in favor of one or more of the Charging Parties, who were improperly hired and/or misclassified in violation of the Civil Service rules.

¹ Charging Party Joseph is no longer an affected party because, as she represented at our July 24, 2023, hearing, she has been promoted out of the bargaining unit and into a management position not represented by ADDA. Therefore, this Interim D&O does not require that she be admitted to membership.

² Matter of Consolidated Appeals of Eric Siddall, et al., CSC Case No. 21-92.

We have no jurisdiction over the issues raised by the appeals and express no opinion as to their merits, which are within the exclusive purview of the CSC, but do recognize the significance of the appeals: they place in dispute the proper employment status of the Charging Parties. If the CSC determines that the Charging Parties were hired and/or misclassified in violation of the Civil Service rules and if, consequently, the Charging Parties cease being employed in ADDA represented classifications, then the Respondent may be within its rights to deny or strip the Charging Parties of union membership. Of course, if the CSC determines that the Charging Parties were not hired and/or misclassified in violation of the Civil Service rules and if the Charging Parties remain employed in ADDA represented classifications, then the Respondent has no right to deny or strip the Charging Parties of union membership.

Discussion

As noted above, the Charging Parties have been placed in a type of representational limbo. They are unable to attend union meetings, run for union office, or vote in union elections or on union-negotiated memoranda of understanding. They are left unprotected by the union's bylaws and, apparently, the benefits and protections of union representation. When asked at the July 24, 2023, ERCOM meeting whether a Charging Party who was disciplined by the DA's Office would be entitled to union assistance or representation in filing and pursuing a grievance, counsel for the Respondent declined to answer the question, much less answer in the affirmative.³

This representational limbo is the direct result of the Respondent's having taken the position that the Charging Parties are not entitled to membership in ADDA, either because they are not true "employees" or are not truly qualified to be employees in the DDA bargaining unit. But that is merely the Respondent's legal argument; it is not a legally binding judgment. And the Respondent has cited no authority – and we are aware of none – supporting the proposition that active employees can be denied the benefits and protections of union membership solely at the discretion of the labor organization having the exclusive right to represent them. The decision to join the union is at the discretion of the employee, not the union; the union, in taking on the role of the exclusive representative of the bargaining unit, does not get to pick and choose who is admitted to membership – at least, not on the limited record before us. To fail or refuse membership under these circumstances is a plain violation of the duty of fair representation.

At the end of the day, the CSC may well determine that the Charging Parties were hired and/or misclassified in violation of the Civil Service rules. If and when that time comes, the Respondent may well be within its rights to deny or strip the Charging Parties of union membership, and we can revisit the merits of the UFC then.

In the interim, however, employees who were hired by the DA's Office, who are serving in

³ We note here that an exclusive representative has a duty of fair representation to all employees in the bargaining unit; however, this duty extends to contractual remedies under the union's exclusive control and would not apply to disciplinary hearings before the Civil Service Commission (*see Bay Area Quality Management District Employees Association (Mauriello)*, (PERB Decision No. 1808-M (2006)).

ADDA represented classifications, who are on the payroll of the DA's Office, and who are appearing in court, dispensing advice, trying cases, and/or supervising others, all while holding themselves out as representing The People, cannot be denied union membership. Under Rule 6.05a(4), ERCOM has the authority and the jurisdiction to "[t]ake such other action as it deems appropriate" to effectuate the purposes of the ERO. We will do so here to protect the rights of the affected Charging Parties.

Findings of Fact and Conclusions of Law

Therefore, we make the following findings of fact and conclusions of law:

1. For the reasons outlined above, we find that, consistent with Section 5.04.070 and 5.04.240(B)(1) of the ERO, the Charging Parties were and are entitled to representation by Respondent.
2. Accordingly, pursuant to Rule 6.05a(4), we find that the affected Charging Parties must be admitted to membership in ADDA while the related appeals before the CSC remain pending.
3. Meanwhile, except to find that we have jurisdiction to order interim relief under Rule 6.05a(4), we make no findings as to the timeliness or merits of the UFC. The foregoing findings are made without prejudice to any timeliness, jurisdictional, or merits arguments that the Respondent may raise as to the underlying UFC.

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Order

Therefore, we order as follows:

1. Respondent is required to admit membership forthwith to Charging Parties Gregory Apt, John B. Perroni, and Nancy Theberge.
2. Further consideration of the UFC is held in abeyance unless and until such time as the CSC has issued its ruling on the related appeals now before it.
3. This Interim D&O is issued without prejudice to any timeliness, jurisdictional, or merits arguments that the Respondent may raise as to the underlying UFC.

Dated: July 26, 2023



Christopher David Ruiz Cameron, Chair



Najeeb Khoury, Commissioner



Patti Paniccia, Commissioner