LOS ANGELES COUNTY
CITIZENS ECONOMY AND EFFICIENCY COMMITTEE

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July 13, 1971

TO: Committee Members

FROM: Executive Secretary

SUBJECT: EMPLOYEE RELATIONS AND SALARY DETERMINATION IN LOS ANGELES COUNTY

This report reviews the major elements involved in administering employee relations and determining salaries in Los Angeles County government. The purpose of the report is to discuss problem areas rather than to draw conclusions, although some conclusions are suggested. The procedures and decision rules involved in these processes are extremely complex. Consequently, this report by no means exhausts all the issues. It does attempt to cover the main problems.

I. Establishment of the Employee Relations Function and the Adoption of the Employee Relations Ordinance

In July, 1966, the E & E Committee submitted a report to the Board of Supervisors recommending a major reorganization of the County's personnel functions. The committee recommended that the position of Director of Personnel be established as a charter position with responsibility for administering all centralized personnel activities. Prior to that time personnel functions had been administered by the Civil Service Commission, except salary and wage administration which was assigned to the Chief Administrative Officer.

The committee also recommended that an employee relations division be established in the new Personnel Department responsible for negotiating proposed salary rates and working conditions with union and employee representatives.

The Board of Supervisors approved these recommendations and submitted them as a charter amendment to the voters in the November, 1966 general election. Two other charter amendments recommended by the committee were also submitted to the electorate. One increased the authority of the Board of Supervisors to consolidate or split up County departments. The second divided the Charities Department into the Departments of Hospitals, Adoptions, and Public Social Services. The voters approved each amendment by a large majority.

The new department was immediately established under the direction of Gordon Nesvig as Director of Personnel. Shortly thereafter Mr. Nesvig organized the Employee Relations Division as a major function of the new department. The division 5 first task was to develop an employee relations ordinance setting forth the procedures and ground rules for a collective bargaining system. This task proved to be long and difficult. Department management and union representatives met and debated over the provisions which should be included in the ordinance. After two years of such meetings and numerous proposed drafts of the ordinance the contending parties were still unable to reach agreement.

An ordinance was finally agreed to after the Board of Supervisors appointed a consultants committee of three labor relations experts headed by Benjamin Aaron, Professor of Law and Director of the Industrial Relations Institute at UCLA. This committee drafted an ordinance, which was adopted by the Board of Supervisors in September 1968. The ordinance provides for the establishment of employee representation units, election procedures to determine which union will represent each unit, grievance procedures, a list of unfair employee relations practices, and provisions for mediation or fact finding in the event of an impasse in negotiations.

The ordinance also established an employee relations commission, consisting of three members, which would be responsible for administering the ordinance, deciding contested matters involving the ordinance, and appointing mediators or fact finders in the event of an impasse.

II. Putting the New System into Effect

In the first year under the ordinance the commission spent most of its time conducting hearings to determine appropriate employee representation units. According to the ordinance these units were to be established on the basis of community of interest among the employees in the unit and the effect of the unit on sound employee relations. After each unit was established the commission then scheduled an election in which the employees in the unit determined which union they wanted to represent them. The County now has 47 employee representation units, represented by 13 union groups. The majority of employees are represented by unions affiliated with the County Federation of Labor, AFL-CIO, including the Los Angeles County Employees Association, the Social Workers Union - Local 535, the County Employees Union - Local 434, the American Federation of State, County and Municipal Employees, and the County Fire Fighters - Local 1014. The principal nonaffiliated unions are the California Association of Professional Employees, the California Nurses Association, and the Professional Peace Officers Association.

For the first time the salary recommendations presented this year to the Board of Supervisors were the result of negotiations between union representatives and County management. When negotiations began Arthur Will, Gordon Nesvig and two division chiefs in the Personnel Department met in executive session on two occasions with the Board of Supervisors to discuss and determine the County's bargaining position.

In these sessions the County managers informed the Board that it would be difficult to negotiate anything less than approximately $50 million of pay increases to County employees. They said this amount was required to match wage trends in the private sector amounting to average increases of 6-7%, reach agreement with the unions, and avoid the possibility of strikes. It was agreed in these meetings that the largest increases should be given to the sheriff and fire personnel in order to keep their rates competitive with the City of Los Angeles. It was also agreed, however, that the County would no longer maintain strict parity with the City, a decision which certainly is to be applauded and one which this committee has strongly advocated.

With these decisions agreed to, County management then proceeded to bargain on this basis. The results were incorporated in the salary recommendations submitted to the Board of Supervisors by Gordon Nesvig on May 14.

III. Salary Increases and Automatic Step Progression

As required by law the Board of Supervisors conducted a series of hearings on the salary recommendations, at which they heard numerous protests against the size of the increases - particularly by officials from the smaller cities in the County. On May 25, after a long debate on the issues, the Board voted 3-2 to approve the salary package as recommended, including 40 negotiated agreements with the unions. As could be expected, since the negotiations were based on this assumption, the total increase amounts to $50 million.

The increases in percentage terms were given as follows:

Number of Employees	Salary Increase
153	No Increase or Less Than One Schedule
2,640	One Schedule (2.75 percent)
21,501	Between 1 and 2 Schedules (4.6 percent)
20,710	Two Schedules (5.5 percent)
4,244	Between 2 and 3 Schedules (6.7 percent)
5,742	Three Schedules (8.25 percent)
6,894	Four Schedules (11 percent)

The average increase for all employees is 6.2%. I have reviewed these increases with two outside experts, Mr. Robert Gray, Director of the Industrial Relations Center, California Institute of Technology; and Mr. F. E. Avery, Director of Personnel Services, Southern California Edison Company. Mr. Gray served as Chairman, Mr. Avery as a member, of t~e spe~ia1 industry committee which the E & E Committee organized in 1966 to assist in a study of County compensation policies and practices. Both men are therefore familiar with County pay procedures.

Mr. Gray and Mr. Avery both stated that while they could not comment on each individual increase, the 6.2% average increase was in line with the trend in most areas of the private sector. The Joi~t Salary Survey conducted by the City, County, Los Angeles School District, and the Los Angeles Housing Authority indicated an increase of 7.5%. Almost all other surveys, including the Merchants and Manufacturers Survey and the Bureau of Labor Statistics Survey, indicate a 6 to 7% average increase.

Other factors, however, also need to be taken into consideration in determining whether these increases are justified.

The Director of Personnel bases his salary recommendations on surveys of wage trends in the community. The principal survey of this type is the Joint Salary Survey. This survey covers 60 benchmark jobs from 661 private firms. This information is published on March 1. Since the information for this survey is collected during January and February, and salaries based upon this survey are made effective on July 1, the employee organizations have long claimed that the resulting time lag between the collection of salary information and the effective date of the salaries in the County results in salaries below prevailing wages in the community. There is no doubt that some time lag occurs which supports a more liberal approach to salary increases than might otherwise be justified. However, the courts have ruled that the County procedure is a reasonable, workable method, and that the prevailing wage clause in the County eharter does not require that the County make an attempt to forecast increases in prevailing wages occurring after March 1.

On the other hand, recognition should also be given to the fact that during the course of the fiscal year many County employees will receive additional 5.5% salary increases in addition to those negotiated for them in the union agreements. This is due to the automatic step progression feature incorporated in the County's pay plan, a feature common to most public jurisdictions and used at some levels in most large private firms.

Following is a brief explanation of the County's plan. Each job in the County is assigned a salary range called a schedule. Within each schedule there are five steps, each step increasing the salary rate by 5.5%. The total rate range for each schedule is thus approximately 22%. The difference between each schedule and the next highest schedule at each of these steps is 2.75%. Exhibit 1 presents the County's current schedule.

When an individual enters County employment, he is paid on the first step of the salary schedule assigned to his job. On his anniversary date he receives an automatic step increase until he reaches the fifth step. If he is promoted to a new job, he is placed upon the step, which will give him an increase over his present salary rate. Thus, many of the County employees for whom salary increases were negotiated will receive an additional 5.5% increase during the fiscal year.

Mr. Gray and Mr. Avery pointed out that many companies have somewhat similar plans but generally such increases are not automatic except at lower levels or in certain areas such as plant jobs governed by union contracts. Increases in other areas are generally based upon some type of incentive system based upon performance evaluation. One might hope, therefore, to see the County in the future move away from the automatic step progression system - especially at the higher salary levels - to a system more attuned to relating pay to quality of performance.

In this regard it is important to note that the Chief Administrative Officer this year has proposed, and the Board has approved, such a performance evaluation plan for department heads. As a result department heads will not receive a salary increase on July 1. In lieu of schedule increases, Mr. Will 5 proposal calls for an evaluation of the performance of each department head during the next six months. This evaluation will be conducted by the Board of Supervisors with Mr. Will's assistance. On the basis of this evaluation the department head will then receive an increase, decrease, or no change in his salary. In the first year the plan will be limited to department heads. After the first year, other levels of management will be included.

"For some time," Mr. Will states in his report, "your Board has expressed a belief that salary increases for County executives in general and department heads in particular should be related to performance on the job. Additionally, the Economy and Efficiency Committee has recommended such a procedure for executive salaries on several occasions."

This is true. However, this committee's recommendation for an incentive pay plan based upon performance evaluation always carried with it a strong caveat: It is not likely to be effective unless it is accompanied by a basic reorganization in County government. This reorganization must include the establishment of a strong chief executive position. Under the committee's proposed organization most department heads would report to the chief executive, not as in the present system to the Board of Supervisors.

Although the Board of Supervisors, as the boss of the chief executive, should hold him accountable for his decisions, he - not the Board - should administer the incentive pay plan and make the department head evaluations. "An effective incentive plan," the committee said in its report on the County Charter, "can only be established if there is a single chief executive to administer it. The Board of Supervisors cannot perform this task. In some instances the Board cannot be in close enough touch with the particular activity to make a sound evaluation. In other instances the Board members may differ among themselves about the performance of the executive to be evaluated."

Therefore, while Mr. Will certainly deserves commendation for his intention, one must question whether his plan is workable under the present system of organization.

IV. The Prevailing Wage Clause

Section 47 of the County charter is called the prevailing wage clause. It reads as follows:

> "In fixing compensation to be paid to persons under the classified civil service, the Board of Supervisors shall, in each instance, provide a salary or wage at least equal

> to the prevailing salary or wage for the same quality of service rendered to private persons, firms or corporations under similar employment in case such prevailing salary or wage can be ascertained."

During the Board of Supervisors discussion of the salary increases, before their final vote on the matter, several members of the Board stated that while they were reluctant to approve the $50 million of increases, they had no other alternative because their hands were tied by the prevailing wage clause of the County charter.

Supervisor Bonelli advocated a 37½ hour workweek to get around the prevailing wage clause "until such time as the people of the County of Los Angeles can vote on a charter change that will remove once and for all the obstruction of our having to be confronted with and constantly arguing over what is prevailing wages." Supervisor Debs observed that in a number of cases County employees have been successful in bringing suit against the Board of Supervisors when they attempted to keep the lid on County salaries. The Court supported the employees in each case, and the County was ordered to pay salary increases retroactive to the beginning of the fiscal year. Supervisor Chace added that he believed the Board should submit a charter amendment to the voters deleting the clause from the charter, but he did not make a formal motion to this effect, apparently, because the next election is not until June 1972.

I have discussed this issue with the County Counsel and the members of his staff who represented the County in the court cases. I have also reviewed each of the opinions delivered by the court in these cases.

The landmark case was Walker vs the County of Los Angeles. This case was brought against the County in 1958 by a joint action of four employee organizations. The lawyers for the employee charged that, although the County had conducted its customary annual survey, the Board of Supervisors had ignored the findings in the survey by adopting an ordinance, which simply continued the wage scales of the preceding year.

The trial court found in favor of the employee organizations. The County appealed the decision, and the Appellate Court unanimously reversed the decision of the trial court. The employee groups then appealed to the Supreme Court and with one minor change the Supreme Court unanimously sustained the trial court.

The Supreme Court found that the prevailing wage clause requires the County to perform a fact-finding function to ascertain prevailing wages in the community. Such a determination must be made in some fashion either before or at the time of adoption of the salary ordinance. The court found that the Board did not consider the facts before it in a reasonable manner and did not make a finding as to what was the prevailing wage. The Supreme Court therefore agreed with the trial court that the Board had acted "arbitrarily and capriciously and was so palpably unreasonable as to demonstrate an abuse of discretion as a matter of law."

However, the Supreme Court stated that as long as the Board of Supervisors considers the facts in some reasonable manner and makes the finding that the recommended rates satisfy the prevailing wage clause of the County, the Board will be acting within the law, and the courts will not interfere. The opinion reads: "The courts will not interfere with the board's determination of whether proposed rates of compensation are in accord with generally prevailing rates unless the action is fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (City and County of San Francisco V. Boyd. . .) Such an abuse of discretion was present here because the board failed to make the mandatory ascertainment under section 47 and there- fore the May 27, 1958, salary ordinance was adopted in disregard of the mandatory charter requirements."

The two other cases which the County lost on this issue - in 1962 and 1968 - although different in detail, were lost for essentially the same reason. The City of Los Angeles, which also has a prevailing wage clause in its charter, also lost a case under similar circumstances. The County Counsel has summarized the issue as follows:

> "Section 47 of the County Charter, as construed by the courts, in essence requires:
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> 1. That the Board of Supervisors determine, as a result of salary hearings, the wages prevailing in private industry for like employment when the same can be ascertained.
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> Such fact-finding hearings have been termed "quasi-judicial" by the courts and the Board's findings must be supported by evidence produced before it.
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> 2. Thereafter, the Board must, by ordinance, provide payment of not less than such prevailing wages.
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> 3. Nothing contained in the courts decisions prevents the Board from using <u>any reasonable and appropriate method of ascertaining prevailing wages or from exercising its sound discretion</u> in determining whether a certain method has adequately reflected prevailing wages or salaries.
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> 4. Security of employment resulting from the existence of a Civil Service system cannot be considered as a factor in making salary determinations.
>
> 5. The Board may, such is taken into basis with private but is not bound to, consider fringe benefits. If such is taken into consideration the same should be done on a comparative basis with private industry.
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> With respect to the record made by the Board, I would caution that one, such must leave without question the fact that the Board, from the facts produced before it, is providing wages at least equal to prevailing wages. Secondly, the record should be left clear that the Board's determination is predicated upon factual data presented to it. Lastly, discussions with respect to the fiscal impact of salaries on the County Budget or tax rate, though of understandable concern, impairs the record leaving it suspect to the inference that the Board's determination was predicated upon these factors rather than the facts produced with respect to prevailing wage."

Under the present negotiating system, if the prevailing wage clause were deleted from the charter, it is unlikely that the negotiating procedures would be much different from what they are under the prevailing wage clause. Without the clause the union representatives would support their arguments for salary increases with all available trend data supporting their position. The County, on its part, would support its position with its trend data. The essential argument would be on the point of what is a fair salary. The best measure for determining "fairness" would be data on salaries paid in the private sector. This is much the same process that now occurs under the prevailing wage clause.

It appears, therefore, that the Board is not severely restricted by the prevailing wage clause. The Board has considerable leeway before negotiations begin to establish the County's bargaining position and to order the County's representatives to bargain on that basis. After the negotiations are completed, and the "memorandums of understanding" have been signed, the results of these agreements are incorporated in the salary recommendations presented to the Board.

While the Board has the authority at that time to reject or modify the recommendations, whether based on an agreement or not, certainly such action should only be taken in very unusual or extreme circumstances. Otherwise, there is danger that the entire negotiating system would be destroyed.

Thus, if the County has adopted salary increases which cannot be justified on a reasonable basis, it is very likely not the prevailing wage clause which is at fault. Rather it is because either (1) the Board did not establish an appropriate bargaining position with County management before negotiations began, or (2) County management failed to carry out the Board's instructions. The critical point, therefore, in the entire salary setting procedure occurs before negotiations begin. It occurs in the executive sessions when the Board meets with County management to discuss its bargaining position and the specific salary increases considered fair and reasonable.

V. Authority of the Employee Relations Commission

Now that the employee representation units have been established and the bargaining representatives determined for these units, the principal function of the Employee Relations Commission in administering the Employee Relations Ordinance is settling differences between employees or their union representatives and County management.

Unfortunately, in performing this function the commission and County management have become embroiled in a number of disagreements. The situation reached an extremely serious point last month when two of the Commissioners - Mr. Melvin Lennard, Chairman of the Commission, and Mr. Ben Nathanson - resigned. In their letters of resignation both charged the County with a lack of cooperation which has seriously impaired the effective operation of the Employee Relations Ordinance. "My main reason for resigning," Mr. Lennard wrote, "is my conclusion that certain important members of County management (but obviously not all of them) have decided to withhold their voluntary compliance with certain of the commission's orders. Without such continued support from them (as well as from employee organizations) the Employee Relations Ordinance, as presently written, and this commission could not continue to function effectively and credibly."

Mr. Lennard apparently was referring to three recent cases brought before the commission by union representatives charging the County with an unfair labor practice under the terms of the Employee Relations Ordinance. In one case, the American Federation of State, County and Municipal Employees claimed that the County Engineer's department had given an employee a low grade on his appraisal of promotability because of his union activities. In a second case, the County Employees Association charged that the Sheriff had transferred a sergeant to an outlying post, again because of his union activities. In the third case, the County Employees Association and the Social Workers Union charged that the County had violated the ordinance by refusing to negotiate caseloads for eligibility workers in the Department of Public Social Services.

The commission found in favor of the unions in the County Engineer case and the eligibility workers case and issued orders to County management to raise the employee's promotability score and to cease and desist from refusing to negotiate caseloads. The County to date has not complied. The commission has not yet acted officially on the Sheriff's case, but the hearing officer found in favor of the union and recommended that the commission order the Sheriff to transfer the sergeant back to his former post. If the commission adopts his recommendation, it is not likely that the Sheriff will comply.

I have conferred on this subject with County management, union representatives, and Professor Reginald Alleyne, Professor of Law at UCLA and the remaining member of the Employee Relations Commission.

The unions charge that the County's failure to comply with the commission's orders in these cases demonstrates a serious inequity in the ordinance in its present form. They argue that in such cases involving grievances or charges of unfair employee relations practices, if the commission finds in favor of County management, and orders the union to comply with its order, the unions must comply. They have no other choice, since the commission has the authority to decertify them if they do not comply. In contrast, if the commission finds in favor of the union or an individual employee, and orders the County to comply, the County can simply refuse to comply, as it has done to date in two of the above cases. The commission has no authority - unlike the Civil Service Commission - to mandate its order on the County. The only recourse for the union or the employee then, according to the ordinance is to resort to "legal remedies."

The union representatives claim that this places a court cost burden on the union or an individual employee. In the latter case in particular the cost is very likely to be beyond the average employee's resources. Moreover, if the damages are not great - say no more than $1,000 - the employee may find it difficult', if not impossible, to hire a lawyer.

Union representatives do not propose that the orders of the Employee Relations Commission should be mandated on the County. This would violate the sovereignty of the Board of Supervisors who are, after all, the elected representatives of the people. Rather, they favor changing the Employee Relations Ordinance to allow the commission itself to take the case to court.

Professor Alleyne points out that if this authority were given to the commission, it would not mean that the commission would take every case to court if the County refused to comply. It would depend upon the commission's determination of how significant the case was and what the chances would be for successful litigation. In any event, the commission would require legal counsel. Since the County Counsel would be defending the County, his office could not act as counsel for the commission since it would place the County Counsel in a conflict of interest situation. Either the commission or the County Counsel, after conferring with the commission, would have to be authorized to hire an outside counsel to represent the commission.

The National Labor Relations Act provides a precedent for this proposal. It allows the National Labor Relations Board (NLRB) to take a case to court when it finds in favor of a union or an employee, and the employer does not comply. The difference, however, is that the NLRB brings the suit against a private company. In the County proposal the Employee Relations Commission would be using the taxpayers money to hire a counsel to represent it against the County government itself.

It is difficult to argue that a system which allows the County to ignore an order to correct an unfair labor practice and requires an employee or his union to comply with a similar order is entirely equitable. On the other hand, the proposed solution to this problem requires the County to fund a suit against itself.

There appear to be two major points for consideration here. (1) The establishment of a collective bargaining system under the Employee Relations Ordinance is a pioneering effort which is bound to run into problems different from those in the private sector. The solution to these problems, therefore, may require some innovative procedures. (2) An effective collective bargaining system must seek to establish an equitable balance of power between the contending parties - unions and management. If it does not, the more powerful party inevitably will establish its interests over those of the weaker party. The result is exploitation by one party over the other - in a government environment exploitation either of employees by government managers or the exploitation of the government's taxing authority by the employees.