

LOS ANGELES COUNTY

ECONOMY AND EFFICIENCY COMMISSION

ROOM 163, HALL OF ADMINISTRATION /500 WEST TEMPLE / LOS ANGELES, CALIFORNIA 90012 | 974-1491

April 1, 1975

Honorable Board of Supervisors  
Los Angeles County  
383, Hall of Administration  
Los Angeles, California 90012

Gentlemen:

Maurice Rene Chez  
Chairman

Muriel Pfaelzer Bodek  
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John D. Byork  
Rudolph A. Cervantes  
Anne S. Collins  
Dr. Robert J. Downey  
Jerry Epstein  
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Leo A. Majich  
William S. Mortensen  
Robert Ruchti, II  
Earl J. Sachs  
Dr. Warren H. Schmidt  
George Shellenberger  
Larkin Teasley  
Bryan Walker

Burke Roche  
Executive Secretary

SUBJECT: RECOMMENDATIONS ON THE AUTHORITY OF THE  
EMPLOYEE RELATIONS COMMISSION

The ruling by Judge Norman R. Dowds of the Superior Court on March 18, 1975, that the orders of the Employee Relations Commission (ERCOM) are to be treated as advisory only makes the operation of ERCOM essentially meaningless. It renders the County's present bargaining system inoperable, or at least seriously impaired, and it will remain so until this issue is settled. The unions will refuse to use a system in which they must comply with ERCOM orders or face the danger of being decertified, while the County may comply or not, at its own discretion.

While the County's machinery for settling labor disputes remains in disarray, the County is particularly vulnerable to employee relations conflicts, work stoppages, and strikes.

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It is imperative, therefore, that the Board act quickly to remedy the situation. It can do this through two simple actions. To this end we make the following recommendations.

Recommendation 1.

The Board of Supervisors should instruct County management - in particular the Chief Administrative Officer, the County Counsel, and the Director of Personnel - to comply with ERCOM orders, unless otherwise directed by the Board.

There is ample support in the history of the development of the ordinance and in previous litigation over ERCOM orders for the action we propose. First, the Aaron Committee stated very clearly, in its report of June, 1972, recommending amendments to the ordinance, that in its original draft of the ordinance it did not intend that ERCOM orders were to be considered as merely advisory. "We believe," the committee said, "that ERCOM 'decisions' and 'orders' are intended by the ordinance to be obeyed; they are more than mere advice or recommendations."

Second, in two previous court cases involving the County's refusal to comply with an ERCOM order, the court agreed with the Aaron Committee interpretation. Both decisions were made by Judge Robert A. Wenke of the Superior Court. In the second case Judge Wenke's decision was affirmed by the Court of Appeal.

Although Judge Dowds ruled in favor of the County Counsel's opinion, he stated that he was particularly interested in securing a clear legal determination of the issue from the Appellate Court. "This is the time," he said, "to have it settled one way or the other." It would seem much simpler, however, and certainly much union to go through the process of prolonged litigation. Equally important, we do not think the County - which at one

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time was widely praised for its progressive approach to employee relations - can afford to leave this system its present impaired condition while the contending parties argue their position through a lengthy appeals procedure.

It is true that proposed State legislation (Senate Bill 275), which in its present form preempts local collective bargaining systems, may pass this year and eliminate ERCOM along with the problem of its authority. It is difficult, however, to predict what provisions the final bill will contain. Ironically, what has happened in Los Angeles County further weakens the argument of the cities and the counties for maintaining 'local control.

We therefore urge the Board, in the interests of maintaining an effective collective bargaining system in Los Angeles County, to take the administrative action which we propose.

Recommendation 2.

The Board of Supervisors should amend the Employee Relations Ordinance to add the underlined words to the statement on the duties of ERCOM, Section 7, (g) (5).

"To investigate charges of unfair employee relations practices or violations of this Ordinance, and to take such action as the Commission deems necessary to effectuate the policies of this Ordinance, including, but not limited to, the issuance of cease and desist orders, which orders shall have the force and effect of law."

Our commission agrees with Judge Wenke that the present ordinance is clear in stating that ERCOM's orders are binding on the County (unless overruled by the Board of Supervisors, the sovereign authority).

Nevertheless, County management has consistently supported the Opposite opinion that the orders are merely advisory. Moreover, while Judge Wenke concluded that the ordinance was clear on the nature of ERCOM orders, Judge Dowds, in his recent opinion, did not. "Well I certainly don't think," he

stated, "that the ordinance is clear on it, and I don't think the Local 660 case has established the matter. I think of a better case to have this determined one way or another."

We believe, therefore, that this proposed amendment will clarify any possible misunderstanding in the future as to the intention of the Board of Supervisors.

There is precedent for this phrasing in the section of the County Charter governing the authority of the Civil Service Commission. Section 34 of the Charter states, "The commission shall prescribe, amend, and enforce rules for the classified service, which shall have the force and effect of law. . ."

It should be clearly understood also that the proposed change in the Employee Relations Ordinance would not mean that the County, if it disagreed with an ERCOM order, would have no recourse but to comply with the order. As with the Civil Service Commission, ERCOM would have no authority to enforce its orders on the County. If the County did not agree, it would not have to act, and the opposing party - as is true today - would have to take its case to court. The difference would be, however, that the County could not argue in court that it need not comply with an ERCOM order because it is merely advisory. It would have to argue either that the order violated the provisions of the Employee Relations Ordinance or that ERCOM had gone beyond its proper jurisdiction.

### Recommendation 3.

The Board of Supervisors should not amend the Employee Relations Ordinance, as recommended by the Aaron Committee, to give ERCOM the authority and the necessary budget to independently enforce its orders by initiating appropriate legal action when necessary.

We see no need to give ERCOM this additional authority. If the County or a union does not agree with an ERCOM order, it has the recourse of legal action in the courts. While it is true that this can be an expensive process, we think that the past history of such litigation clearly shows that it is a practical and feasible procedure.

As with the Civil Service Commission, whose rules are binding on the County but are not enforceable by the Commission itself, we believe that ERCOM orders should also be binding in a similar manner, but also not enforceable by ERCOM.

To give ERCOM this authority would tend to destroy its aura of neutrality. In pursuing an enforcement of its orders through legal action, ERCOM would become an adversary against the County. It would also establish the questionable and perhaps costly practice of allowing a County commission to use the County's own tax funds to pay for a Suit against the County itself.

Finally, according to the County Counsel, there is no legal authority for the Board of Supervisors to authorize ERCOM to bring legal action against the County to enforce its decisions. For the Board to do so would in many cases constitute an unlawful delegation of the Board's duties under the charter.

Consequently, we see no need for this amendment. We further believe that it would seriously injure the effective and impartial operation of ERCOM.

Very truly yours,

MRC:ml

MAURICE RENE CHEZ  
Chairman