FEDERAL LABOR RELATIONS AUTHORITY

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424

DAVIS-MONTHAN AIR FORCE BASE, .

TUCSON, ARIZONA .

Respondent .

.

and . Case No. SA-CA-20534

.

AMERICAN FEDERATION OF .

GOVERNMENT EMPLOYEES, .

LOCAL 2924, AFL-CIO .

Charging Party .

Stephanie Arthur, Esquire For the General Counsel
Captain Jeffrey A. Rockwell, Esquire For the Respondent
W. Patrick O'Connor For the Charging Party Before: BURTON S. STERNBURG Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. Section 7101, et seq., and the Rules and Regulations issued thereunder.

Pursuant to a charge filed on June 11, 1992, by American Federation of Government Employees, Local 2924, AFL-CIO, (hereinafter called the Union), against the Davis-Monthan Air Force Base, Tucson, Arizona, (hereinafter called the Respondent), a Complaint and Notice of Hearing was issued on September 29, 1992, by the Regional Director for the San Francisco, California Regional Office, Federal Labor Relations Authority. The Complaint alleges that the Respondent violated Sections 7116(a)(1) and (8) of the Federal Service

Labor-Management Relations Statute, (hereinafter called the Statute), by holding a formal meeting with its employees without giving the Union notice and an opportunity to be represented at such hearing. It is also alleged that during the course of the aforementioned meeting Respondent made a statement which denigrated the Union in violation of Section 7116(a)(l) of the Statute.

A hearing was held in the captioned matter on December 9, 1992 in Tucson, Arizona. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. Counsel for the Respondent and Counsel for the General Counsel filed post hearing briefs on January 29, and February l, 1993, respectively, which have been fully considered.

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact

The Union is the exclusive representative of an appropriate unit of employees at Respondent's facilities. The employees working in the Aerospace Maintenance and Regeneration Center (AMARC) at Davis-Monthan Air Force Base are included in the unit represented by the Union. AMARC is composed of four directorates, i.e. Maintenance (LA), Supply (DS), Finance(FM), and other conglomerates (TI). Maintenance (LA) is further divided into a number of divisions, among which is the reclamation division (LAR). Within the LA directorate, Mr. Dean Phipps is the Chief of the Maintenance Directorate, Mr. Cecil Grimes is the Chief of the Reclamation Division and Mr. Edward Sorrell is the Reclamation Process Leader.

On April 13, 1992 Mr. Ramon Montano[1], who is employed in the Reclamation Division as an aircraft worker, was notified by his "work leader" that there was going to be a meeting the following day after the second break in the afternoon in the reclamation break room.[2] According to Mr. Montano, he was not told what the meeting was about.

The next day, about 1:30 p.m., Mr. Montano went to the breakroom where he found some thirty-five to forty of his fellow employees, along with supervisors Phipps, Grimes and Sorrell.

According to Mr. Montano, who was standing approximately thirty feet away, Mr. Phipps opened the meeting and began talking about the work load that the reclamation division could expect in the future. In this latter connection, according to Mr. Montano, Mr. Phipps mentioned the fact that the anticipated work load might result in a second shift rather than overtime. Mr. Phipps also told the employees that they were in the process of reorganizing the supervisors, but that the reorganization "was not going to effect the employees" since the "supervisors were going to be the ones that were going to be shuffled around". After speaking for approximately fifteen to twenty minutes, Mr. Phipps then turned the meeting over to Mr. Sorrell.

According to Mr. Montano, Mr Sorrell told the employees that it was his shop that was going to be affected by the anticipated work load. Mr. Montano, acknowledged on cross-examination, that Mr. Sorrell utilized slides in his presentation which showed how the employees had performed in the past six months. At the end of his presentation, Mr. Sorrell asked if there were any questions. At that time an employee asked about the "compressed work week" and, according to Mr. Montano, Mr. Sorrell responded "Management is currently

negotiating the subject with the union and was ready to implement a four day work week but the union was blocking any changes in duty hours and negotiation with the union was the pits".

Both Mr. Sorrell and Mr. Grimes denied that Mr. Sorrell made the above quoted statement in answer to an employee's inquiry about the compressed work week. According to their mutually corroborative testimony, the subject of a compressed work week was first raised by the question asked by an employee. In response, Mr. Sorrell informed the employee that the matter was under negotiation and that the employee should speak to the Union. According to Mr. Sorrell he also told the employees that as far as he was concerned the negotiations were going extremely or very slow. Both Mr. Sorrell and Mr. Grimes denied that Mr. Sorrell ever stated that "negotiation with the union was the pits". Mr. Sorrell further denied ever accusing the Union of blocking the negotiations. Mr. Grimes does not recall that Mr. Sorrell ever stated the Union was blocking the negotiations. Further, according to Mr. Sorrell the entire discussion at the April 14, 1992 meeting concerned the division's past accomplishments and the supervisory changes which had been implemented in February 1982. According to Mr. Sorrell, the purpose of the meeting was to allay any fears that the employees may have had concerning their jobs because of the recent supervisory realignment.

Mr. Sorrell denied that there was any discussion of the work load that the employees could expect in the future.

According to Mr. Grimes, who organized the meeting, at Mr. Phipps' request, the meeting was held without any formal agenda and no minutes of any kind were taken.

Discussion and Conclusions

The General Counsel, relying on the testimony of Mr. Montano, takes the position that Respondent violated Sections 7116(a)(l) and (8) of the Statute by failing to comply with the requirements of Section 7114(a)(2)(A), namely, to give the Union the opportunity to be represented at a formal discussion concerning "any grievance or any personnel policy or practices or other general conditions of employment." The General Counsel would also find an independent 7116(a)(l) violation predicated upon the statement allegedly made by Mr. Sorrell in answer to the inquiry made by an employee concerning the compressed work schedule.

Respondent, on the other hand, relying on the testimony of Mr. Grimes and Mr. Sorrell, denies that Mr. Sorrell made any denigrating statement about the Union during the meeting held on April 14, 1992. Respondent also takes the position that the meeting and/or discussion of April 14, 1992, contrary to the contention of the General Counsel and the testimony of Mr. Montano, did not concern "any grievance or any personnel policy or practices or other general conditions of employment" which would, according to Section 7114(a)(2)(A), necessitate union attendance.

A reading of the respective positions of the parties makes it clear that resolution of the instant complaint turns on a credibility determination. In this connection, having analyzed the testimony of the witnesses and observed their demeanor while on the witness stand, I credit the mutually corroborative testimony of Respondent's witnesses, Mr. Grimes and Mr. Sorrell, and find that in response to the question from an employee concerning the compressed work schedule, Mr. Sorrell informed the employees that the matter was

under negotiation and the employee should speak to the Union. While, admittedly, he noted that the negotiations were going slow, he did not accuse the Union of blocking the negotiations or state that "negotiation with the Union was the pits." Accordingly, it will be recommended that the Authority dismiss the independent 7116(a)(l) allegation of the complaint.

Turning now to the alleged violation of Sections 7116(a)(l) and (8), predicated upon the failure of Respondent to give the Union an opportunity to attend the April 14, 1992 meeting, I find, again based upon the credited testimony of Mr. Grimes and Mr. Sorrell, that inasmuch as the formal discussion did not concern general conditions of employment no violation of the Statute occurred.

While I agree that the meeting of April 14, 1982 had most of the trappings generally associated with a formal meeting, i.e. attendance of high ranking supervisors, prior notice, and held at a location away from the work floor, I find that there was one necessary ingredient missing, namely a discussion "concerning any grievance or any personnel policy or practices or other general conditions of employment. . . ." Thus, according to the credited testimony of Mr. Grimes and Mr. Sorrell the meeting was called for the sole purpose of informing the employees about the reorganization of the supervisory staff[3] and to inform the employees of the Reclamation Division's accomplishments over the past six months. To the extent the matter of a compressed work week arose during the meeting, it should be noted that the matter was raised by an employee, who thereafter was immediately informed that since the matter was under negotiation the employee should take it up with the Union. To find that the aforementioned question and answer converted what was to be an information meeting into a formal discussion within the meaning of Section 7114(a)(2)(A) of the Statute will make it impossible for an agency to have any type of meeting with its employees without first inviting their exclusive bargaining representative to attend. This would be contrary to the intent of the Statute, which envisions union attendance only in those instances when conditions of employment are to be discussed.[4]

Accordingly, based upon the above findings and analysis, it is recommended that the Federal Labor Relations Authority issue the following order dismissing the complaint in its entirety.

ORDER

It is hereby Ordered that the Complaint in Case No. SA-CA-20534 should be, and hereby is, dismissed in its entirety.

Issued, Washington, DC, June 23, 1993

BURTON S. STERNBURG

Administrative Law Judge

Dated: June 23, 1993

Washington, DC

1. Mr. Montano, at the time of the events described herein, was a Union Official, i.e. Trustee of Education.

2. The breakroom is "basically an employee break room."

3. I do not consider the realignment of the supervisory staff to concern "general conditions of employment" over which an agency is obligated to bargain. While I can conceive of many future situations where the change in supervisors might well impact upon bargaining unit employees and create a bargaining obligation, the mere realignment and announcement thereof, standing alone, does not in my opinion create a bargaining obligation since the duties and assignments of supervisors is solely a management prerogative.

4. Compare U.S. Department of the Army, New Cumberland Army Depot, New Cumberland, Pennsylvania, 38 FLRA 671, where the subject of the formal meeting was found to concern a condition of employment.