

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, R5-66,
MEMPHIS, TENNESSEE

Respondent

and

RANDALL P. BUNCH, AN INDIVIDUAL

Case No. AT-CO-31299

Charging Party

Brent S. Hudspeth, Esq.
Before: ELI NASH, JR.

For the General Counsel
Administrative Law Judge

DECISION

Statement of the Case

On December 17, 1993, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (herein called the FLRA), issued a Complaint and Notice of Hearing which was duly served by certified mail upon the named Respondent. The Complaint alleged that Respondent violated section 7116(b)(1) of the Statute by telling Randall P. Bunch, in the presence of other bargaining unit employees, that if he was not a dues-paying member of the Union, it was not obligated to represent him.

The Complaint allowed Respondent the requisite 20 days, until January 11, 1994 to file an answer pursuant to section 2423.13 of the Rules and Regulations of the FLRA. Respondent filed no answer within the required period.

Thereafter, on or around April 19, 1994, Counsel for the General Counsel moved for summary judgment based on Respondent's failure to file an answer in the captioned matter. On that same day, the Regional Director of the Atlanta Region, in accordance with section 2423.22(b) of the Rules and Regulations of the FLRA referred the motion to the Chief Administrative Law Judge. Thereafter, on April 26, 1994, the Chief Administrative Law Judge issued an Order granting all parties until May 11, 1994, to file any further pleadings or briefs in the matter. The matter was assigned to the undersigned for disposition pursuant to section 2423.19(t) and section 2423.22(b)(3) of the Rules and Regulations of the FLRA. No further briefs or pleadings were filed with the Chief Administrative Law Judge within the time period set out in his Order.

Since Respondent failed to reply to either the Complaint or the Order of the Chief Administrative Law Judge, it is recommended that the motion for summary judgment be granted for the following reasons:

Findings of Fact

The admitted uncontested facts establish the following:

1. The Respondent is the certified exclusive representative of a unit of employees appropriate for collective bargaining at the Department of Veterans Affairs, Veterans Affairs Medical Center, Memphis, Tennessee.
2. Randall P. Bunch is an employee within the meaning of the Statute and a member of the bargaining unit represented by the Respondent.
3. Sometime around September 1, 1993, the Respondent, through its president James Confer, stated in the presence of bargaining unit employees, that if Bunch was not a dues-paying member of the Union, then the Respondent was not obligated to represent him.

Conclusions

Section 2423.13(b) of the Rules and Regulations of the FLRA provides, in pertinent part:

Failure to file an answer or to plead specifically to or explain any allegation shall constitute an admission of such allegation and shall be so found by the Authority, unless good cause to the contrary is shown.

The failure of Respondent to file any answer in this case requires a finding that it has admitted all the allegations of the instant Complaint. Therefore, no genuine issue of fact exists in the matter and disposition by summary judgment is proper. U.S. Department of Treasury, Customs Service, Washington, D.C. and Customs Service, Region IV, Miami, Florida, 37 FLRA 603, 610 (1990).

Since a similar statement, as the one made herein, has been found by the FLRA to constitute an attempt to coerce employees into joining by creating an impression that membership is necessary to receive representation or that union members will receive better representation than non-members the admissions of fact support a finding that union president Confer's statement to Bunch, on or about September 1, 1993 violated section 7116(b)(1) of the Statute. See, American Federation of Government Employees, Local 987, Warner Robins, Georgia, 35 FLRA 720, 732 (1990).

Inasmuch as Respondent has admitted all allegations of the Complaint, which if undenied establish a violation of the Statute, it is found to have committed the alleged unfair labor practice in violation of section 7116(b)(1) of the Statute.

Accordingly, it is recommended that the Authority grant Counsel for the General Counsel's motion for summary judgment and issue the following:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the National Association of Government Employees, R5-66, Memphis, Tennessee, shall:

1. Cease and desist from:

(a) Attempting to coerce employees into joining by creating an impression that membership is necessary to receive representation or that union members of the National Association of Government Employees, R5-66 will receive better representation than non-members.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Post at its local business office, at its normal meeting places, and at all other places where notices to members and to employees at the Department of Veterans Affairs, Veterans Affairs Medical Center, Memphis, Tennessee, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the President of the National Association of Government Employees, R5-66, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(b) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Atlanta Region, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, May 23, 1994

ELI NASH, JR.

Administrative Law Judge

NOTICE TO ALL MEMBERS AND OTHER EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

**FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE
WE HEREBY NOTIFY OUR MEMBERS AND OTHER EMPLOYEES THAT:**

WE WILL NOT attempt to coerce employees into joining by creating an impression that membership is necessary to receive representation or that union members of the National Association of Government Employees, R5-66 will receive better representation than non-members.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

(Activity)

Date: _____ By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Atlanta Region, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, and whose telephone number is: (404) 347-2324.

