

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2060, AFL-CIO Respondent	
and IRA SIEGELMAN, AN INDIVIDUAL Charging Party	Case No. SF-CO-01-0152

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been presented to the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JUNE 18, 2001**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: May 18, 2001
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: May 18, 2001

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2060, AFL-CIO

Respondent

CO-01-0152

and

Case No. SF-

IRA SIEGELMAN, AN INDIVIDUAL

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are any pleadings filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges OALJ 01-34
WASHINGTON, D.C.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2060, AFL-CIO Respondent	
and IRA SIEGELMAN, AN INDIVIDUAL Charging Party	Case No. SF-CO-01-0152

Vanessa Lim, Esquire
For the General Counsel

Ms. Joyce James
For the Respondent

Before: WILLIAM B. DEVANEY
Administrative Law Judge

**DECISION GRANTING GENERAL COUNSEL'S
MOTION FOR SUMMARY JUDGMENT**

On April 18, 2001, General Counsel mailed, and served, a Motion For Summary Judgment, received on April 23, 2001. General Counsel's Motion was filed pursuant to § 2423.27 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.27; included the following attached Exhibits: General Counsel Exhibit 1 (charge filed on December 4, 2000) (hereinafter, General Counsel Exhibits will be designated, "G.C. Exh.", followed by the number); G.C. Exh. 2 (Amended charge, filed on February 23, 2001); G.C. Exh. 3 (Complaint and Notice of Hearing (hearing was set for May 22, 2001); G.C. Exh. 4 (Respondent's reply to Complaint); and G.C. Exh. 5 (affidavit of Ira Siegelman with attached print-outs of electronic messages between Mr. Siegelman and Ms. James, including her message of November 27, 2000 to Mr. Siegelman in which she stated, in part, ". . . the only growing number of persons who are complaining are the freeloading vermin who do not pay dues . . .", and, ". . . you can come to me for assistance if you have the nerve. Joyce James", President, AFGE L-2060). Accompanying the Motion was a

Proposed Order and Notice, together with General Counsel's Brief in Support of the Motion For Summary Judgment.

On May 2, 2001, Respondent mailed and served an, "Opposition To The Motion For Summary Judgment" dated April 27, 2001, which was received on May 7, 2001. Respondent's Opposition was accompanied by a number of electronic mail messages including responses to Ms. James' request for assistance from Mr. Stanley L. Jaramillo; Ms. Kay Cappilla; Mr. Victor J. Ambe; Mr. Jack Sarjeant; Ms. Caleen Gillette; Mr. Joseph A. Abrano; Mr. Gerardo T. Samaniego; and Mr. Stephen M. Gangi.

Findings

1. The American Federation of Government Employees, Local 2060, AFL-CIO (hereinafter, "Respondent"), is a labor organization within the meaning of 5 U.S.C. § 7103(a)(4) and is the exclusive representative of certain employees at the Defense Contract Management Agency, Canoga Park, California (Complaint, G.C. Exh. 3, Par. 2).

2. The charge was filed on December 4, 2000 (G.C. Exh. 1); an amended charge was filed on February 23, 2001 (G.C. Exh. 2) and the Complaint and Notice of Hearing issued February 27, 2001 (G.C. Exh. 3).

3. During the period covered by the Complaint, Ms. Joyce James was President of Respondent and was acting on its behalf (Complaint, G.C. Exh. 3, Pars. 6 & 7).

4. During the time covered by the Complaint, the Charging Party, Ira Siegelman, was an employee under 5 U.S.C. § 7103(a)(2) and was employed in the bargaining unit represented by Respondent (Complaint, G.C. Exh. 3, Par. 8); but was not a dues paying member of Respondent (Complaint, G.C. Exh. 3, Par. 9).

5. On November 27, 2000, Respondent, by Ms. Joyce James, sent an e-mail to Mr. Siegelman in which she referred to non-dues paying employees as, "freeloading vermin" and stated that Mr. Siegelman could come to her, James, for assistance if he, "had the nerve" (Complaint, G.C. Exh. 3, Par. 10; G.C. Exh. 5, Affidavit of Mr. Ira Siegelman, Attachment).

6. On April 3, 2001, Respondent submitted a letter in response to the Complaint (G.C. Exh. 4). In its response, Respondent did not respond to the specific allegations of the Complaint; did not deny any factual allegation of the Complaint; and concedes that the statements alleged in

Paragraph 5 above (Par. 10 of the Complaint) were made, stating,

" . . . while admittedly the statement made by Ms James was a poor choice of words . . ." (G.C. Exh. 4, second page).

7. In its Opposition To The Motion For Summary Judgment, Respondent does not deny its failure to respond to the allegations of the Complaint; does not deny any allegation of the Complaint; but, rather, asserts that Local 2060's policy is, ". . . to assist all bargaining unit employees." (Opposition, p. 2); that Mr. Siegelman "baited the Union . . ." (Opposition, p. 2); asserts that she, James, ". . . did not refer to all non-union members of the bargaining unit as freeloading vermin" (Opposition, p. 2); and the enclosed, "letters from several non-dues paying members who are members of my bargaining unit who have been helped by my Local and me personally so you can see what I say is true." (Opposition, p. 2).

Conclusions

The issue in this case is whether the statements made by Union President James in her November 27, 2000 e-mail to unit employee Siegelman would tend to interfere with, restrain, or coerce an employee in the exercise of any right under the Statute. The standard for determining whether a union's statement violates § 7116(b)(1) is an objective standard based on whether, under the circumstances, an employee reasonably could have drawn a coercive inference from the statement. National Air Traffic Controllers Association, MEBA/AFL-CIO, 55 FLRA 601 (1999) (NATCA). Thus, the standard is similar to the standard developed for § 7116 (a)(1) violations. The subjective perception of the employee and the subjective intent of the union official are irrelevant. id. The Authority has made clear that where the union conveys the impression that it will treat nonmembers differently than members, a violation § 16(b)(1) will be found. NATCA, supra; American Federation of Government Employees, Local 987, Warner Robins, Georgia, 35 FLRA 720 (1990).

James' statements in the November 27, 2000 e-mail to Siegelman clearly create the impression that the Union will treat Siegelman and other nonmembers differently than members. Although James begins her message by stating that if Siegelman came to the Union for assistance she would by law be expected to assist Siegelman, her begrudging concession is immediately countermanded by the comment that "the only growing number of persons who are complaining are

the freeloading vermin who do not pay dues and who are the first in line to complain about others," a statement which conveys her utter disregard for Siegelman and the other nonmember employees. When combined with her challenge to "come to me for assistance if you have the nerve," the thrust of her message is undeniable--Siegelman and other non-dues paying bargaining unit employees will not receive the same assistance as members. The only conclusion a reasonable employee could draw from James' statements is that he, or she, must join the Union in order to be fairly and equally represented.

James' November 27, 2000 e-mail was part of a series of e-mail messages between James and Siegelman in which Siegelman was expressing his disagreement with the way the Union was handling the representation of another bargaining unit employee and James was defending the Union's actions. The exchange between Siegelman and James became hostile and accusatory as the messages continued. However, James went beyond the bounds of mere disagreement when, in the heat of the moment, she called Siegelman, and other non-dues paying employees who complained about the Union, vermin. James' further comment that Siegelman could come to her if he "had the nerve" negates any previous comments by James that she would represent all employees. James' comments clearly convey to Siegelman that she, and thus the Union, will not provide fair treatment to nonmember employees who exercise their right to speak out against the Union.

In these circumstances, the statements made by James in her November 27, 2000 message create the impression that employees who are not members will not receive the same level of representation as members and that Respondent thereby violated § 7116(b)(1) of the Statute. American Federation of Government Employees, Local 987, 35 FLRA 563 (1990) (violation where the union advised an employee that she would not receive full representation in the processing of her grievance unless she joined the Union); American Federation of Government Employees, Local 2000, 14 FLRA 617, 633-634 (violation where union president called nonmember who criticized the union "a troublemaker" and stated that she would "get" or "get rid of" him).

Respondent's argument in its response to the Complaint merely brings up matters that are irrelevant to the instant case. Respondent's past conduct is not relevant to a determination as to whether James' statements in her November 27, 2000 e-mail message violated the Statute. The only evidence relevant to this case is whether the statements were made and whether the statements constitute a violation of the Statute. For the reasons stated above,

Respondent's statements violated § 7116(b)(1) of the Statute.

Because Respondent has admitted all material facts and the admitted facts entitle General Counsel to judgment as a matter of law, General Counsel's Motion For Summary Judgment is granted.

Having found that Respondent violated § 16(b)(1) of the Statute, 5 U.S.C. § 7116(b)(1), it is recommended that the Authority adopt the following,

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41(c), and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the American Federation of Government Employees, Local 2060, AFL-CIO, shall:

1. Cease and desist from:

(a) Making comments to bargaining unit employees that create the impression that the Union will treat nonmember bargaining unit employees who are seeking the Union's representation before management in grievances differently than members or that any employee, regardless of membership, will be treated differently than any other employee in grievances.

(b) In any like or related manner, failing or refusing to comply with its obligations under 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 business offices and its normal meeting places, including all places where notices to employees and members of Defense Contract Management Agency, Canoga Park, California, are customarily posted, copies of the attached Notice To All Members and Employees on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the President of American Federation of Government employees, Local 2060, AFL-CIO, 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 and members are customarily posted. Reasonable

steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(b) Submit signed copies of the Notice to the San Francisco Regional Director who will forward them to the Agency whose employees are involved herein, for posting in conspicuous places in and about the Agency's premises where they shall be maintained for a period of at least (60) days from the date of posting.

(c) Pursuant to section 2423.41(a) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41(e), notify the San Francisco Regional Director of the Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: May 18, 2001
Washington, DC

NOTICE TO ALL MEMBERS AND EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the American Federation of Government Employees, Local 2060, AFL-CIO violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

On November 27, 2000, a representative of the American Federation of Government Employees, Local 2060, AFL-CIO, made certain comments to a bargaining unit employee.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT make comments to bargaining unit employees that create the impression that the Union will treat nonmember bargaining unit employees who are seeking the Union's representation before management in grievances differently than members or that any employee, regardless of membership, will be treated differently than any other employee in grievances.

WE WILL treat employees who are not members of the Union the same as members with regards to grievances.

WE WILL NOT in any like or related manner, fail or refuse to comply with our obligations under the Federal Service Labor-Management Relations Statute.

(Respondent/Activity)

Dated: _____ 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, San Francisco Regional Office, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103-1791 and whose telephone number is: (415-356-5000).

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. SF-CO-01-0152, were sent to the following parties:

—

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Vanessa Lim, Esquire
Federal Labor Relations Authority
901 Market Street, Suite 220
San Francisco, CA 94103-1791

P 855 724 103

Ms. Joyce James
AFGE, Local 2060
Department of Defense, DCMA
6633 Canoga Avenue
P.O. Box 7922, MS-NA-14
Canoga Park, CA 91309

P 855 724 104

REGULAR MAIL:

President
AFGE, AFL-CIO
80 "F" Street, NW
Washington, DC 20001

Dated: May 18, 2001
Washington, DC