

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

U.S. DEPARTMENT OF VETERANS AFFAIRS Respondent and GENERAL SERVICE EMPLOYEES UNION, LOCAL 73, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO Charging Party	Case No. CH-CA-70412

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before 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 MARCH 30, 1998, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: February 25, 1998
Washington, DC

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

MEMORANDUM

DATE: February 25, 1998

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF VETERANS AFFAIRS

Respondent

and

Case No. CH-

CA-70412

GENERAL SERVICE EMPLOYEES UNION,
LOCAL 73, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

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 the transcript, exhibits and any briefs filed by the parties.

Enclosures

**FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001**

U.S. DEPARTMENT OF VETERANS AFFAIRS Respondent and GENERAL SERVICES EMPLOYEES UNION, LOCAL 73, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO Charging Party	Case No. CH-CA-70412

Paul E. Piwinski, Esquire
For the Respondent

Susan Kane, Esquire
Greg A. Weddle, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq. 1, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether a supervisor of Respondent told employees at its Lakeside Medical Center, in essence, that they should not trust Union Representative Brenda Woodall; that if they dealt with her they could lose their jobs; that Woodall was trouble. The supervisor denied having made any such statement to any employee at any time. For reasons fully set forth herein-after, I have found that a

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For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7116 (a) (1) will be referred to, simply, as, "\$ 16(a) (1)".

preponderance of the evidence supports the allegations of the Complaint.

This case was initiated by a charge filed on April 28, 1997, alleging violation of §§ 16(a)(1), (2), (3) and (8) of the Statute (G.C. Exh. 1(a)). The Complaint and Notice of Hearing issued on September 15, 1997; alleged violation of § 16(a)(1) only (G.C. Exh. 1(b)); and set the hearing for November 3, 1997, pursuant to which a hearing was duly held on November 3, 1997, in Chicago, Illinois, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which Respondent exercised. At the conclusion of the hearing, December 3, 1997, was fixed as the date for mailing post-hearing briefs, which time subsequently was extended, on motion of the General Counsel, to which the other parties did not object, for good cause shown, to December 17, 1997, and Respondent and General Counsel each filed an excellent brief, received on, or before, December 22, 1997, which have been carefully considered. Upon the basis of the complete record²,

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General Counsel's motion to correct the transcript, to which no objection was made, and which is meritorious, is granted and the transcript is hereby corrected as follows:

	Page	Line	From	To
1.	11	20	"effect"	fact
	17	19, 23	"Kelly"	Kane
2.	18	8, 15	"Kelly"	Kane
	77	4	"King"	Kane
	78	23	"King"	Kane
3.	13	18	"GSE"	GSEU
4.	13	25	"Section"	sector
5.	25	3, last word	"her"	our
6.	37	19	"Ms. Kane"	Mr.
Piwinski				
7.	44	5	"Greg"	Rick
8.	51	20	"James"	Jones
9.	24	6	"taking"	talking
	52	18	"taking"	talking
	14	16	"Hynes"	Hines
	15	1, 4, 5, 6, 10	"Hynes"	Hines
	25	10	"Hynes"	Hines
	38	12, 14, 16	"Hynes"	Hines
	47	19	"Hynes"	Hines
10.	75	11, 16	"Hynes"	Hines
11.	51	7	"Flag"	Flagg
	29	5	"Flag"	Flagg

including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

FINDINGS

1. The General Service Employees Union, Local 73, Service Employees International Union, AFL-CIO (hereinafter, "Union"), is the exclusive representative for a unit of Respondent Department of Veterans Affairs' Lakeside Medical Center ("Lakeside"), West Side Medical Center and Edward Hines, Jr. Hospital ("Hines"), Chicago, Illinois, employees.

2. Ms. Brenda Woodall is employed full-time by the Union as Union Representative, also referred to as Business Agent (Tr. 13, 24, 69, 70), a position she embarked upon on November 4, 1996 (Tr. 14). Prior to that, Ms. Woodall had been a Pharmacy Technician at Hines, from which she now is on leave without pay (Tr. 14), and, for five or six years, had served as a Union steward at Hines (Tr. 15). As Union Representative, she handles Lakeside, Hines and West Side Medical Center (Tr. 14).

3. Ms. Woodall testified that in the middle of January, 1997, about the 22nd (Tr. 15), following a stewards meeting at Lakeside, she was stopped on the elevator by an employee of the Lakeside Radiology Department, Diane Halle (Tr. 20), who expressed concerns about matters in Radiology (Tr. 16) and Ms. Woodall told the employee she would arrange a meeting with Radiology employees (Tr. 16). Later, Ms. Woodall arranged the meeting, with the approval of Dr. Edwin April, Chief of Radiology (Tr. 66), and of Ms. Sarita Ann Brown, Administrative Officer, Radiology Service (Tr. 16, 56), and in the first week of February, 1997, met with Radiology employees (Tr. 17), including Ms. Brenda Williams, Ms. Diane Halle, Ms. Karen Williams, a man whose first name is James (she couldn't remember his last name), and a couple of other people (Tr. 19). She said the employees talked primarily about the weekend rotation (Tr. 17).

4. Ms. Brenda Williams is a Receptionist/Clerk Typist in the Lakeside Radiology Service (Tr. 22) and on February 20, 1997 (G.C. Exh. 2), was appointed Union steward. Ms. Williams confirmed the meeting with Ms. Woodall (Tr. 24) and recalled some of the people present that she remembered: Karen Williams, Damion Jackson, Diane Halle, James Warren, Priscilla Flagg, and Laverne Gaither (Tr. 29).

Some time after Ms. Woodall's meeting with the Radiology employees, Ms. Williams thought it was about

February 14 (Tr. 36, 37), Ms. Brown, Ms. Williams' immediate supervisor (Tr. 23), called her on the telephone and asked her to come to her office, which she did immediately (Tr. 24). Ms. Williams testified, in part, on cross-examination as follows:

"A Sarita Brown asked me -- I think she asked me how well did I know Brenda Woodall. I said, Well, we just met Brenda Woodall. I don't really know her. And she said, Well, I'm telling you now, you shouldn't trust her because she is bad news.

"And I was just looking at her like why would she be telling me this? And she said, If you don't believe me, I can call some people over Hines. She has made people lose their jobs.

"Q Did she ever identify these people at Hines?

"A I told her I didn't, no. She asked me did I want the number to the people at Hines. I told her no." (Tr. 38).

On direct examination, Ms. Williams had testified, in part, as follows:

"Q To the best of your recollection, what specifically was said in Sarita Brown's office?

"A She was talking about Brenda Woodall, the business agent for Local 73 Union Office. She was telling me that we shouldn't trust her because she is not a good person to deal with. She has had experience dealing with her, and she was trouble, and if we keep dealing with her, we would lose our jobs.

"Q Now, did you say anything to Sarita Brown in response?

"A I was, like, a little shocked, and then I said, Well, I'll just judge Brenda Woodall for myself.

"And she said, Well, I have phone numbers for people at Hines VA that I can call right now and ask, and they will tell you that Brenda is going to make you lose your job." (Tr. 24-25).

5. Ms. Diane Halle, an x-ray technician at Lakeside, acknowledged that it was she who met Ms. Woodall on the

elevator and told her she was having problems and Ms. Woodall gave her her card and told her to call and she would come back and talk about her case, stated that her second line supervisor, Ms. Brown (her first line supervisor is Mr. Rick Jones (Tr. 44)), called her to her, Brown's office on February 13, 1997, to ask what the problem was in Radiology. Ms. Halle testified, in part, that the following took place:

"A It was a conversation that Sarita Brown had with me. She brought me in the office and asked me what was the problem around the Department, what did they do about it, and I was telling her it was due to them getting this guy this position.

. . .

"THE WITNESS: And we were talking about why he got it and stuff, and then she asked me did I know anybody at Hines VA, and I told her yes.

"And then she said, Well, you should ask some of them about Brenda Woodall, she said, because Brenda Woodall would sell us out. She would act like she was going to help us, and then she'd sell us out, and we'd get fired. And she told me not to tell anybody else this; it's between me and her." (Tr. 46-47).

In cross examination, Ms. Halle explained the problems more fully as follows:

"Q What sort of junk was happening in Radiology Service at that time?

"A Rick Jones -- they hired James Warren, Karen Williams, Damion Jackson, and then a position became available for Special Procedures. Priscilla Flag, myself, and James Warren applied for it. James Warren had been with the Department for one year. He had just graduated from school. [Ms. Halle had been an x-ray technician at Lakeside 12 years (Tr. 43)]. They trained Priscilla in the position for a while, and then something got started. I don't know. They stopped training her.

"Then they started training James Warren, which I kept asking them would they train me in the Department.

"Even though I had done the job before but done it somewhere else. James Warren trained in the room for over nine months, and when the position became available, they said that James, myself, and Priscilla was qualified, but they selected James Warren for the position.

"That was in November. Then in January, Rick James came back to Priscilla and myself. James was working Saturday through Tuesday.

"Then after he got the position, they came back and said, James didn't -- Ms. Brown said James didn't want to work weekends anymore and that they was going to put me and Priscilla on his weekends. . . ." (Tr. 51-52).

Ms. Halle made a record of her meeting with Ms. Brown on February 13, 1997, the day it took place (Tr. 50), on a "Report of Contact" form, VA Form 119 (G.C. Exh. 3).

6. Ms. Brown, who has been Administrative Officer, Radiology Service, since March 18, 1996 (Tr. 56), denied that she stated to Ms. Williams that, ". . . she should not trust the union representative, Brenda Woodall; that if she dealt with Ms. Woodall, she could lose her job and that Woodall was nothing but trouble" (Tr. 58) and denied that she had made that statement to any other employees (Tr. 58). She was not asked about any meeting with Ms. Halle.

7. Ms. Orajean Pruitt, a supervisor of the Lakeside x-ray File Room for nine years and employed at Lakeside for 17 years (Tr. 73), testified as a rebuttal witness that on February 14, 1997,

". . . Ms. Brown called me into her office to tell me about the union, which is Brenda Woodall. She said that if you keep listening to Brenda Woodall, you all are going to get fired." (Tr. 74).

Ms. Pruitt made a written record of Ms. Brown's conversation on February 14 on VA Form No. 119, "Report of Contact." (G.C. Exh. 4; Tr. 73-75). Ms. Pruitt said she made out this "Report of Contact", "Because I felt that it was something wrong. . . ." (Tr. 76).

8. Although Ms. Brown was recalled by Respondent and testified about counseling Ms. Pruitt for failure to sign employee time cards (Res. Exh. 3; Tr. 81), she was not asked, and, therefore, did not deny, Ms. Pruitt's testimony concerning her, Ms. Brown, calling Ms. Pruitt into her

office on February 14, 1997, and making the statement about Ms. Woodall as set forth above in Paragraph 7.

CONCLUSIONS

Although I have considered that Ms. Williams has been disciplined for attendance by Ms. Brown (Res. Exhs. 1 and 2); that Ms. Halle was denied compensation benefits (Tr. 53, 54); and that Ms. Pruitt was counseled by Ms. Brown for failure to sign employee time cards, nevertheless, I find their testimony credible, mutually corroborative and Ms. Halle and Ms. Pruitt each made a wholly corroborative written record. Ms. Brown's testimony was not convincing; she did not specifically address Ms. Halle's testimony; and, although recalled to testify about Ms. Pruitt's counseling, did not deny Ms. Pruitt's testimony. Accordingly, I fully credit the testimony of Ms. Williams, Ms. Halle and Ms. Pruitt and find that in February, 1997, Ms. Brown stated, in effect, that Union Representative, Brenda Woodall, should not be trusted; that she was nothing but trouble. Such statements were coercive and tended to discourage employees from engaging in protected activity in violation of § 16(a)(1) of the Statute. U.S. Penitentiary, Florence, Colorado, 52 FLRA 974, 981, 982 (1997). Respondent's contentions have been carefully considered and have been found without merit.

Having found that Respondent violated § 16(a)(1) of the Statute, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.41, of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41, and § 18, of the Statute, 5 U.S.C. § 7118, the U.S. Department of Veterans Affairs, Lakeside Medical Center, Chicago, Illinois, shall:

1. Cease and desist from:

(a) Making statements to employees to the effect that they should not trust Union Representative Brenda Woodall; that she is not a good person to deal with; and that she would cause them to lose their jobs.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Post at its Lakeside Medical Center facility 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 Director of the Lakeside Medical Center 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(b) Pursuant to § 2423.41(e), of the Authority's Rules and Regulations, 5 C.F.R., § 2423.41(e), notify the Regional Director of the Chicago Region, Federal Labor Relations Authority, 55 West Monroe Street, Suite 1150, Chicago, Illinois 60603-9729, 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: February 25, 1998
Washington, DC

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Veterans Affairs, Lakeside Medical Center, Chicago, Illinois, has violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY ALL OF OUR EMPLOYEES THAT:

WE WILL NOT make statements to employees to the effect that they should not trust Union Representative Brenda Woodall; that she is not a good person to deal with; and that she would cause them to lose their jobs.

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.

(Agency or 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, Chicago Region, Federal Labor Relations Authority, 55 West Monroe Street, Suite 1150, Chicago, Illinois 60603-9729, and whose telephone number is: (312) 353-6306.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. CH-CA-70412, were sent to the following parties in the manner indicated:

CERTIFIED MAIL, RETURN RECEIPT

CERTIFIED NUMBER

Paul E. Piwinski, Esquire
Veterans Affairs Medical Center
333 E. Huron Street
Chicago, IL 60611

P 600 696 225

Susan Kane, Esquire
Greg A. Weddle, Esquire
Federal Labor Relations Authority
55 West Monroe Street, Suite 1150
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REGULAR MAIL:

Brenda Woodall, Union Representative
General Service Employees Union,
Local 73
1165 N. Clark Street
Chicago, IL 60610

Dated: February 25, 1998
Washington, DC