

OGDEN AIR LOGISTICS CENTER HILL AIR FORCE BASE, UTAH Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1592 Charging Party	Case No. DE-CA-30326

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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **MARCH 27, 1995**, and addressed to:

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

GARVIN LEE OLIVER
 Administrative Law Judge

Dated: February 23, 1995

Washington, DC

MEMORANDUM

DATE: February 23, 1995

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: OGDEN AIR LOGISTICS CENTER
HILL AIR FORCE BASE, UTAH

Respondent

CA-30326

and

Case No. DE-

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 1592

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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

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

OGDEN AIR LOGISTICS CENTER HILL AIR FORCE BASE, UTAH Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1592 Charging Party	Case No. DE-CA-30326

Clare A. Jones, Esq.
For the Respondent

Bruce A. Conant, Esq.
For the General Counsel

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

This case arose 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. (herein the Statute).

Pursuant to an unfair labor practice charge filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority, by the Regional Director for the Denver Regional Office, issued a Complaint and Notice of Hearing alleging that the Respondent, through one of its supervisors, Constance Hanney, violated section 7116(a)(1) of the Statute by stating at a meeting attended by one of the Union's stewards, Bill Andersen, that if employees go to the Union, or if they file grievances, these could be signs that they abuse alcohol and drugs and maybe they should be sent to the Social Actions Office for an evaluation.

Respondent filed an answer denying that it had violated the Statute as alleged.

A hearing in this matter was conducted before the undersigned in Ogden, Utah. Respondent and the General Counsel of the FLRA were represented and afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Based upon the entire record in this matter, my observation of the witnesses and their demeanor, and my evaluation of the evidence which is largely undisputed, I make the following:

Findings of Fact

The American Federation of Government Employees, Council 214, AFL-CIO, is the exclusive representative of a nationwide bargaining unit of the U.S. Air Force Materiel Command (formerly known as the Air Force Logistics Command), including certain employees who work for the Respondent, Hill Air Force Base. The Union, AFGE Local 1592, is an agent of Council 214 and represents bargaining unit employees located at the Respondent's facilities.

Constance Hanney is, and for 12 years has been, the Respondent's Civilian Drug and Alcohol Program Coordinator. In that capacity, she has conducted training classes for supervisors and managers at Hill Air Force Base once per month to teach them about their role in the agency's substance abuse program. Their role is to identify the "problem employee" through poor job performance and frequently irregular work attendance, and to use the poor performance to motivate the employee to seek help through the employee assistance or alcohol rehabilitation program. The purpose of the program is to motivate the employee, who is in jeopardy of receiving discipline for poor job performance, to accept his or her supervisor's offer of referral for treatment by qualified professionals so that the employee again may become a productive member of the agency's workforce.

Due to the number of supervisors and managers at Hill Air Force Base and the requirement that each of them attend such training every four years, Hanney estimates that she has given the class presentation to over 5000 students. Until February 1993, the class had been provided exclusively to supervisors and managers. However, on February 8, 1993, Bill Andersen attended the monthly training session as a representative of the Union. Hanney testified that she had recently attended a drug and alcohol employee assistance

seminar in San Diego, at which the suggestion was made that in order to foster better understandings and working relationships with unions representing their employees, the directors of employee assistance programs should invite union representatives to attend classes designed for supervisors and managers at their respective facilities. Hanney sent a letter specifically inviting Andersen to attend the February 8 class in his capacity as a Union steward, and Andersen agreed to attend when asked by his immediate supervisor if he wanted to do so.¹

Andersen attended the February 8 class along with approximately 25-30 supervisors and managers. Hanney was aware that Andersen was in attendance, but did not announce it to the others. She simply made her usual one-hour presentation to the class at the beginning of the scheduled 4-hour training session.² As part of her presentation, Hanney used a transparency entitled "Alcohol/Drug Abusing Employees Are:" which listed a number of characteristics common to what she described as "troubled employees."³ The purpose of the chart was to provide supervisors with assistance in attempting to identify employees who might need professional counselling or other help as a means of improving their job performance. One of the many listed indicia of possibly troubled employees was item 5(b), which stated that they "[a]re repeatedly involved in grievance procedures." As Hanney explained to the class when that item was discussed, troubled employees with problems generally do not recognize or acknowledge that the problems are their own, but instead frequently try to blame others. Therefore, she indicated to the class, an employee who files

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Andersen was aware when he accepted the offer to attend the class that management wanted to foster good labor-management relations by improving the Union's understanding of the program and thereby create better working relationships.

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Among the other participants were a moderator who introduced Hanney as the first speaker; recovering drug addicts and alcoholics; and someone from the personnel/labor relations office who discussed the entire process, including the possibility of discipline against employees who ultimately fail to improve their work performance.

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Hanney put together her list of indicators from such sources as professional periodicals and other literature on the subject of alcohol and drug abuse, as well as from training sessions that she had attended. She did not make up any of the listed indicators on her own, and all of her materials had to be approved in advance by her supervisor.

many grievances--rather than a few--may be troubled and in need of referral to her office for assistance.⁴

Almost a month after Andersen attended the above class, the Union filed an unfair labor practice charge which alleged that "[o]n or about February 8, 1993, in a class on drug abuse, Ms. Connie Han[n]ley stated that a potential sign of drug abuse is filing a grievance." Andersen initiated the Union's decision to file the charge. According to Andersen, he interpreted Hanney's remarks as suggesting to the assembled supervisors that if an employee is causing trouble, referral of that employee to the Social Actions Office is a good way to shut him up or make an example of him. Andersen conceded on cross-examination that Hanney did not use any words to that effect, but merely cautioned that employees who file "too many" or "repeated" grievances may be exhibiting one of the signs of a troubled employee and could benefit from referral to her office for professional help if such assistance were deemed warranted as a result of consultation. He stated, however, that employees fear being referred to the Social Actions Office because of their perception that such referrals may lead to their discharge or lower their performance appraisals, and that employees view such referrals as belittling them in front of their co-workers. It was in this "context" that Andersen interpreted Hanney's remarks as a threat to those who filed grievances. Andersen admitted, however, that he knew of no instance in which Hanney or any other supervisor at Hill Air Force Base ever threatened an employee with referral to the Social Actions Office for filing grievances, and that he did not know of any employee who received a lower appraisal as a result of being referred to Hanney's office for counselling.

With regard to Andersen's testimony about employees' fears of referral to her office, Hanney acknowledged their desire to avoid being referred because of the discomfort associated with confronting their problems. However, she testified credibly that no employee has received a lower

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According to Andersen, Hanney said that if an employee "repeatedly" filed grievances, the employee should be referred to her office. I find no material difference between Hanney's version and Andersen's. The testimony of both suggests the same idea: that only an abnormally large number of grievances filed would be significant in terms of identifying a possibly troubled employee. Moreover, to the extent that Andersen's testimony suggests that Hanney directed supervisors to refer any employees to her office for filing grievances, I credit Hanney's denial that she did so. Her only purpose was to provide supervisors and managers with information with which to exercise their independent judgment.

appraisal simply for being referred to the Social Actions Office, and that such a consequence would be contrary to the mandates of the Employee Assistance Program whose goal is to get employees back on the job as productive members of the workforce.⁵

Discussion and Conclusions of Law

Under section 7102 of the Statute, an employee has the right to form, join, or assist any labor organization freely and without fear of penalty or reprisal. An agency's interference with that protected right violates section 7116 (a) (1) of the Statute. Marine Corps Logistics Base, Barstow, California, 33 FLRA 626, 637 (1988), petition for review dismissed sub nom. Boyce v. FLRA, No. 88-7524 (9th Cir. order March 23, 1989). The standard for determining whether a management statement violates section 7116(a) (1) is an objective one. The question is whether, under the circumstances, the statement could reasonably tend to coerce or intimidate the employee or whether the employee could reasonably have drawn a coercive inference from the statement. Id. See also Ogden Air Logistics Center, Hill Air Force Base, Utah, 34 FLRA 834, 837 (1990). Although the circumstances surrounding the making of the statement are taken into consideration, the standard is not based on the subjective perceptions of the employee or the intent of the employer. U.S. Department of Agriculture, U.S. Forest Service, Frenchburg Job Corps, Mariba, Kentucky, 46 FLRA 1375, 1385 (1993); Department of the Air Force, Scott Air Force Base, Illinois, 34 FLRA 956, 962 (1990). Rather, objective standards must be used. Department of the Army Headquarters, Washington, D.C., and U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Oklahoma, 29 FLRA 1110, 1124-25 (1987); Bureau of Engraving and Printing, 28 FLRA 796, 803 (1987).

Based upon the foregoing, the issue presented is whether Hanney's statements, in the circumstances of this case, could reasonably tend to interfere with, restrain, or coerce Andersen, or any other employee, in exercising a right protected under section 7102. Unquestionably, employees have a right under section 7102 to file grievances, and an agency's interference with that protected

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Hanney also rebutted Andersen's concerns about employees being fired as a consequence of referral to her office. She acknowledged that employees may be fired for drug abuse, but only after being given an opportunity to receive drug rehabilitation and either failing to attend or complete the program, or failing to improve their job performance or stay drug-free after completing the program and having had a last chance to succeed.

right violates section 7116(a)(1) of the Statute. Equal Employment Opportunity Commission, 24 FLRA 851, 855 (1986), affirmed sub nom. Martinez v. FLRA, 833 F.2d 1051 (D.C. Cir. 1987). See also U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 42 FLRA 22, 56-57 (1991); Internal Revenue Service and Brooklyn District Office, 6 FLRA 642 (1981). I find, however, for the reasons stated below, that Hanney's statements could not *reasonably* tend to interfere with that protected right in the circumstances of this case.

As previously found, Andersen attended the February 8 class for supervisors and managers on the drug and alcohol abuse program solely because the Respondent, through Hanney, invited him specially in order to improve labor-management understanding and cooperation. Andersen was well aware that this was why he had been invited to attend. The 4-hour session was devoted exclusively to various aspects of the drug and alcohol abuse problem as it affects the workplace and employee job performance. The emphasis was on how to identify the Respondent's troubled employees, specifically so that assistance could be offered and provided to them. As Hanney stated, her sole function is to get troubled employees back on the job. This is the context in which Hanney's allegedly coercive statements must be evaluated.

The only allegedly coercive statement in the entire 4-hour session was Hanney's reference to employees who file many grievances. Specifically, what Hanney said was that one possible indication that an employee has a drug or alcohol abuse problem is that he or she files many grievances, or as Andersen recalled her statement, an employee who files repeated grievances. Hanney made it clear at the time that she was not talking about an employee who files a few grievances. She also explained why the filing of many grievances might be an indicator of possible substance abuse: employees in trouble tend to blame others for their problems on the job. Hanney never said that an employee exhibiting this behavior pattern must be referred to her office.⁶ She merely identified a number of behaviors that might indicate the existence of a drug or alcohol problem, but left it up to the supervisors and managers, in

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Indeed, as paragraph 18 of the complaint alleges, Hanney used words to the effect that employees filing grievances may be showing a drug or alcohol abuse problem and "maybe they should be sent over to Social Actions for an evaluation." (Emphasis added.)

their informed discretion, to decide what--if any--action to take.⁷

Under these circumstances, I conclude that Hanney's statements could not *reasonably* be interpreted as a threat of adverse consequences to an employee who might file a grievance, as the Union's unfair labor practice charge alleged. Further, there is absolutely no basis for Andersen to have interpreted Hanney's statement as a signal for supervisors to refer grievance-filing employees to the Social Actions Office in order to shut them up or make an example of them. As Andersen conceded, Hanney never said anything which could support such an interpretation. The fact that Andersen and other employees might have an inaccurate understanding of the drug and alcohol abuse program and the consequences of being referred to Hanney's office for assistance, if warranted, cannot justify a finding in the circumstances of this case that Hanney's statements reasonably tended to coerce employees in the exercise of the protected right to file grievances. Based upon the above findings and conclusions, it is recommended that the Authority issue the following Order:

ORDER

It is ordered that the Complaint in Case No. DE-CA-30326 be, and it hereby is, dismissed in its entirety.

Issued, Washington, DC, February 23, 1995

GARVIN LEE OLIVER
Administrative Law Judge

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The complaint in this case specifically alleges that Hanney made two separate statements. In paragraph 17, the allegation is that Hanney used words to the effect that "if employees go to the Union, that could be a sign that they abuse alcohol and drugs and maybe they should be sent over to Social Actions for an evaluation." There is absolutely no evidence in the record that Hanney ever made such a statement. Accordingly, without reference to whether such a statement, if made, would be an unfair labor practice, I conclude that this allegation of the complaint must be dismissed.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. DE-CA-30326, were sent to the following parties in the manner indicated:

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Dated: February 23, 1995
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