

INTERNAL REVENUE SERVICE, OGDEN SERVICE CENTER, OGDEN, UTAH Respondent	
and ELIZABETH ANN PAINTER, Individual Charging Party	Case No. DE- CA-30893

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 **JULY 24, 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: June 22, 1995

Washington, DC

MEMORANDUM

DATE: June 22, 1995

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: INTERNAL REVENUE SERVICE,
OGDEN SERVICE CENTER,
OGDEN, UTAH

Respondent

CA-30893 and Case No. DE-

ELIZABETH ANN PAINTER,
Individual

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

INTERNAL REVENUE SERVICE, OGDEN SERVICE CENTER, OGDEN, UTAH Respondent	
and ELIZABETH ANN PAINTER, Individual Charging Party	Case No. DE-CA-30893

Janis E. Baldwin
Counsel for the Respondent

Matthew Jarvinen
Counsel for the General Counsel, FLRA

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that Respondent violated section 7116(a)(1) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1), when the Respondent's agent, Chris Gough, in denying bargaining unit employee Painter's request for advanced sick leave, told Painter that upon her return to work, it would not take long for her to go complain to the Union.

Respondent's answer denied that the alleged statement was made and any violation of the Statute.

A hearing was held in Salt Lake City, Utah. The Respondent and the General Counsel were represented by counsel and afforded full opportunity to be heard, adduce relevant evidence, and examine and cross-examine witnesses. Counsel for the General Counsel introduced certain documentary evidence and presented the testimony of the

Charging Party, Elizabeth Ann Painter, who testified as to the surrounding circumstances and the alleged statement. Counsel for Respondent presented the testimony of Supervisor Chris Gough who testified as to the surrounding circumstances and denied that any such statement was made. Based on the entire record, including my observation of the witnesses and their demeanor, and the extensive arguments in the briefs as to the credibility of the respective witnesses, I have credited major portions of the testimony of the Charging Party. I found her detailed testimony to be forthright and persuasive. Accordingly, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

On February 9, 1993, Elizabeth Ann Painter, a seasonal career-conditional term employee of Respondent, requested her supervisor, Chris Gough, to approve advanced sick leave in connection with surgery on her left wrist scheduled for the next day. She presented a certificate from the medical center indicating that she would be unable to work for six to eight weeks. Gough initially denied Painter's request, stating that seasonal employees were not eligible for advanced sick leave.

Painter then went to the office of Nancy Fisher, the president of Chapter 67, National Treasury Employees Union (NTEU), which represents unit employees for NTEU at the Respondent's Ogden facility. Painter was advised that she was eligible for advanced sick leave under the negotiated agreement. She was given a copy of the pertinent contract provision. Painter then proceeded to talk to Linda Fielding, an EEO counselor in Employee Services. Fielding confirmed that Painter was entitled to advanced sick leave and furnished Painter the forms to fill out. Fielding also telephoned Supervisor Gough to inform her of Painter's eligibility for advanced sick leave.

When Painter returned to Gough with the contract provision and the completed papers, Gough appeared to be upset. Her face was red and she raised her voice. Painter and Gough discussed the possibility of light work for Painter and the length of time Painter would be off. At that time, Gough went on to ask Painter how long it would be after Painter returned, after her six to eight week absence, before she "started to complain again and run to the Union?"

Following the conversation, Gough promptly submitted Painter's application for advanced sick leave and it was

approved the same day. Gough called Painter at home later in the day to inform her of that fact.

The record reflects that Painter had previously asked the Union to intervene with Gough concerning an incident that occurred near the end of the 1992 tax season. The Union president informed Painter at that time that she had spoken to Gough and resolved the matter.

Discussion and Conclusions

Section 7102 of the Statute protects each employee in the exercise of the right to form, join, or assist a labor organization, or to refrain from any such activity, without fear of penalty or reprisal. Section 7116(a)(1) provides that it is an unfair labor practice for an agency to interfere with, restrain, or coerce any employee in the exercise by the employee of such right.

The Authority has held that the standard for determining whether management's statement or conduct violates section 7116(a)(1) of the Statute is an objective one. The question is whether, under the circumstances, the statement or conduct would tend to coerce or intimidate the employee, or whether the employee could reasonably have drawn a coercive inference from the statement. 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, 49 FLRA 1020, 1034 (1994).

Gough's comment, in the context of processing Painter's request for advanced sick leave, questioning how long it would be until Painter started to complain again and run to the Union, would make a reasonable employee in Painter's position "think twice" about exercising the statutory right to seek the Union's assistance in the resolution of an employment problem. Under such circumstances, a reasonable employee would conclude that further attempts to seek Union assistance may lead to adverse job consequences. Thus, the statement was coercive and constituted interference with the protected right of a bargaining unit employee in violation of section 7116(a)(1), as alleged. See Navy Resale System Field Support Office Commissary Store Group, 5 FLRA 311 (1981); Department of the Treasury, Internal Revenue Service, Louisville District, 11 FLRA 298 (1983).

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order:

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 Internal Revenue Service, Ogden Service Center, Ogden, Utah, shall:

1. Cease and desist from:

(a) Making statements to employees which interfere with, restrain, or coerce employees in the exercise of their rights to form, join, or assist any labor organization, including the right to seek the labor organization's assistance in the resolution of an employment problem, or to refrain from any such activity, freely and without fear of penalty or reprisal.

(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 facilities, 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, 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 Denver Region, Federal Labor Relations Authority, 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204-3581, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, June 22, 1995

GARVIN LEE OLIVER
Administrative Law Judge

NOTICE TO ALL 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 EMPLOYEES THAT:

WE WILL NOT make statements to employees which interfere with, restrain, or coerce employees in the exercise of their rights to form, join, or assist any labor organization, including the right to seek the labor organization's assistance in the resolution of an employment problem, or to refrain from any such activity, freely and without fear of penalty or reprisal.

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, 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204-3581, and whose telephone number is: (303) 844-5224.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. DE-CA-30893, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Janis E. Baldwin, Attorney
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Federal Labor Relations Authority
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Ms. Elizabeth Ann Painter
1080 Rancho
Ogden, UT 84404

Dated: June 22, 1995
Washington, DC