

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

.
DEPARTMENT OF THE ARMY .
RESERVE PERSONNEL CENTER, .
ST. LOUIS, MISSOURI .
Respondent .
and .
AMERICAN FEDERATION OF .
GOVERNMENT EMPLOYEES, .
LOCAL 900, AFL-CIO .
Charging Party .
.

Case No. 57-CA-70350

Thomas D. Puckett, Esq.
For the Respondent

Judith A. Ramey, Esq.
For the General Counsel

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to a Complaint and Notice of Hearing issued on April 24, 1987, by the Regional Director for the Federal Labor Relations Authority, Region V, a hearing was held before the undersigned on June 24, 1987 at St. Louis, Missouri.

This case arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et. seq. (herein called the Statute). It is based on a first amended charge filed on April 16, 1987 by the American Federation of Government Employees, Local 900, AFL-CIO (herein called the Union) against Department of the Army, U.S. Army Reserve Personnel Center, St. Louis, Missouri (herein called the Respondent).

The Complaint alleged, in substance, that on or about February 10, 1987 Respondent, by Lt. Colonel Pederson, in a loud voice and in the presence of other unit employees, yelled at the Union's vice-president and asked if he had permission to be in the area, while the Union official was meeting with a unit employee on a representational matter - all in violation of Section 7116(a)(1) of the Statute.

Respondent's Answer, dated May 14, 1987, denied the essential allegations of the Complaint as well as the commission of any unfair labor practices.

Both parties were represented at the hearing. Each was afforded full opportunity to be heard, to adduce evidence, and to examine as well as cross-examine witnesses. Thereafter, briefs were filed which have been duly considered.

Upon the entire record, from my observation of the witnesses and their demeanor, and from all of the testimony and evidence adduced at the hearing, I make the following:

Findings of Fact

1. At all times material herein the Union has been the exclusive representative of all career or career-conditional civilian employees, and certain specified classifications, employed by Respondent.

2. Since August 4, 1983, the Union and Respondent have been parties to a written collective bargaining agreement covering the employees of Respondent at St. Louis, Missouri. Article X, Section V of this agreement sets forth a procedure to be followed by a Union representative when leaving his work area to conduct union representational business during regular working hours. The said procedure also provides that said representative is required to have security clearance before entering a security area, and that said individual obtain permission from a supervisor before entering an area to conduct such business.

3. In and during February, 1987 1/ Ethel Mackey worked for Respondent as a military personnel clerk at the Army Personnel Center, known as ARPERCEN. She was attached, as a unit employee, to the Personnel Services Directorate. On February 9 Mackey called Ray Wilkins, vice president of the

1/ Unless otherwise indicated, all dates hereinafter mentioned occur in 1987.

Union, and stated she wanted to talk to him about a possible grievance of another employee as well as the new rules^{2/} and their impact upon Union representation.

4. On February 10 at about 8:45 a.m., which was outside his normal tour of duty, Wilkins went to see Mackey at her work area. On arriving at the Personnel Services Division (PSD) Wilkins spoke to Laverne Dancey, who was Mackey's immediate supervisor, and asked her if he could talk to Mackey. The supervisor granted permission to Wilkins as requested.

5. PSD is a warehouse which was being converted to a work area. The area is open space with movable partitions about 5 1/2 feet in height. Mackey worked in the training section in the back of the southern end of the Directorate. Her desk was located about 3-4 feet from other employees, of whom about 2 or 3 were present at the time Wilkins visited Mackey. The partitions were about 15-20 feet away from the employee's desk area. About 10 employees were situated on Mackey's side of the partition and about 10 individuals were working on the other side thereof.

6. Wilkins spoke to Mackey upon arriving at the latter's desk. A few minutes thereafter Lt. Colonel Pederson, commander and chief of ARPERCEN, came out of his office and noticed the Union representative talking to the employee. Pederson, who was responsible for security and productivity of the division, leaned over a partition and loudly asked Wilkins if he had permission to be there.^{3/} The Union representative stated he did have permission, and Pederson then left without making any comments. Record facts indicate, and I find, that Pederson was about 15 feet away from the individuals when he spoke to Wilkins.

^{2/} Rumors had persisted since January, as reflected in Wilkins' testimony, that a new in-house policy restricted employees to conferring with Union agents at breaks or lunch periods.

^{3/} While Pederson denies that he asked the question in a loud voice, I credit the testimonies of Wilkins, Mackey and Harold Swink, another employee who was present, that it was so asked. Note is taken that Wilkins described the Commander's tone as intimidating and challenging. However, I deem such conclusion as subjective in nature. Since no other evidence supports an objective determination in that regard, I make no finding that the question by Pederson was posed in an intimidating or coercive manner.

7. A meeting was held on February 17 at the Union's request due to the incident on February 10. Wilkins was concerned that Pederson questioned the right of the Union representative to be conferring with Mackey. The meeting was attended by Larry Lerman, Donna Sherwood, Richard Chapman, Ray Wilkins, Colonel Pederson and Andrea Wallace. The latter, who was steward of the Union asked if Pederson could not have used a different approach on February 10 instead of hollering at Wilkins. The Colonel stated he was comfortable with the way he handled the matter and would do so again. Wilkins remarked at the hearing that he considered it offensive for Pederson to question whether he had permission to be in the area. The record reflects that Wilkins, at the meeting, did not complain or remark that Pederson had yelled or hollered at the employee on February 10 while the latter was conferring with Mackey.

8. Both Wilkins and Lt. Colonel Pederson have met frequently during the past year concerning representational matters. They have discussed the issues posed and resolved their differences.

Conclusions

The issue for determination herein is simply stated: whether Respondent interfered with its employee's rights under Section 7102 of the Statute by virtue of Lt. Colonel Pederson's asking Union representative Ray Wilkins, who was conferring with an employee during duty hours, if the representative had permission to be in the area.

Under Section 7102 of the Statute employees are afforded protection "to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal . . ." An employer is not free to impede or interfere with such rights, and any attempt to do so will be in violation of Section 7116(a)(1) of the Statute. This protected activity encompasses filing of a grievance as well as conferring with a union representative at appropriate times.

In determining whether statements or remarks by management to employees constitute interference with the foregoing rights assured them, the standard to be applied is an objective one. The test is whether, under the circumstances, an employer's statement may reasonably tend to coerce or intimidate an employee. It must be concluded that an employee could reasonably have drawn a coercive inference from the statements or remarks posed by management.

Neither the intent of the employer or the perception of the employee is determinative in this regard. Department of the Treasury, United States Customs Service, Region IV, Miami, Florida, 19 FLRA 956.

Applying this recognized standard to the case at hand, I do not agree with the contention that the conduct of Pederson on February 10 reasonably tended to coerce Respondent's employees. General Counsel relies on two factors in asserting that an inference of coercion is warranted. Stress is put upon the tone and demeanor of the management official, as well as the fact that Pederson spoke directly to employee Mackey instead of talking to the latter's supervisor.

It should be noted at the outset that, as Division chief and the overall supervisor of Mackey, Pederson is responsible for the security and productivity in the Personnel Services Directorate. Thus, I find nothing untoward or strange about this official's questioning whether Wilkins had permission to be in the area talking to an employee stationed thereat. While Pederson could have approached Mackey's supervisor and inquired whether the latter gave her approval, it does not follow that his asking the Union official this question was intimidatory within the meaning of Section 7116(a)(1). General Counsel insists that, by approaching Wilkins and asking if he were permitted to confer with an employee, Pederson displayed no regard for employees' rights and manifested to them that he looked unfavorably upon those who discussed representational matters. This is strained reasoning. Nothing was said by Respondent's official to manifest such aversion to representational discussions. Further, Pederson and Wilkins had been discussing matters pertaining to employment conditions on many occasions during the past year and had resolved the problems. The record does not reflect any hostile reaction or conduct by Pederson toward the Union agent which supports the view that management disapproved discussions with employees.

In respect to the tone of the questioning by Pederson, the record shows only that his voice was loud when he questioned Wilkins on February 10 as to whether the latter had permission to be there. This quality of loudness may have resulted in several subjective perceptions that the Division Chief was annoyed at Wilkins' presence and representational discussion. Without more, however, I am unable to conclude that asking a question loudly tends to

coerce employees andinterferes with the exercise of their rights under the Statute. Moreover, during a later meeting on February 17, Wilkins complained that Pederson had challenged or questioned whether the Union agent had obtained approval to be in the area, and this he found offensive. The record fails to disclose that Wilkins was distraught by, or made mention of, the fact that the Division Chief yelled the question.

In sum, I conclude that, under the circumstances herein, Pederson's questioning whether Union official Wilkins had permission to be in the Division Chief's area - at a time when Wilkins was conferring with another employee -- was not violative of the Statute. Further, I conclude that posing such a question, despite it being asked in a voice deemed to be loud, may not reasonably be construed as coercive or tending to interfere with or restrain employees in the exercise of their rights under Section 7102 of the Statute. Accordingly, I recommend the Authority issue the following:

ORDER

The Complaint in Case No. 57-CA-70350 be, and the same hereby is Dismissed.



WILLIAM NAIMARK
Administrative Law Judge

Dated: March 23, 1988
Washington, D.C.