

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

.
OGDEN AIR LOGISTICS CENTER .
HILL AIR FORCE BASE, UTAH .
Respondent .
and .
AMERICAN FEDERATION OF .
GOVERNMENT EMPLOYEES, .
AFL-CIO, LOCAL 1592 .
Charging Party .
.

Case No. 7-CA-80186

Clare A. Jones, Esquire
For the Respondent

Hazel E. Hanley, Esquire
For the General Counsel

Mr. Juan C. Pinedo
For the Charging Party

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 Final Rules and Regulations issued thereafter, 5 C.F.R. § 2423.1 et seq., concerns Respondent's action in entering in the

^{1/} For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, e.g., section 7116 (a)(1) will be referred to, simply, as § 16(a)(1)".

personnel file of union steward Janice White several "counseling" reprimands for her action in telling employees about the prospective grant of administrative leave by Respondent.

This case was initiated by a charge (G.C. Exh. 1(a)) filed on December 16, 1987, which alleged violations of §§ 16(a)(1) and (2) of the Statute; and by a First Amended Charge (G.C. Exh.(b)) filed on January 25, 1988, which also alleged violations of §§ 16(a)(1) and (2) of the Statute. The Complaint and Notice of Hearing (G.C. Exh. 1(c)) issued on January 29, 1988; alleged violations of §§ 16(a)(1) and (2); and set the hearing from March 17, 1988. The Amended Complaint and Notice of Hearing (G.C. Exh. 1(e)) issued on February 18, 1988; also alleged violations of §§ 16(a)(1) and (2); and also set the hearing for March 17, 1988, pursuant to which a hearing was duly held on March 17, 1988, in Ogden, Utah, 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 each party waived. At the close of the hearing, May 6, 1988, was fixed as the date for mailing post-hearing briefs. Respondent and General Counsel each timely mailed a post-hearing brief, received on May 9, 1988, which have been carefully considered.^{2/} Upon the basis of the entire record,^{3/} including my observation of the witnesses and their demeanor, I make the following findings and conclusions.

Findings

1. At all times material, the American Federation of Government Employees, AFL-CIO (AFGE) has been certified in Case No. 53-10177(UC) as the exclusive representative of the nationwide bargaining unit of employees employed by Headquarters Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio (AFLC) including, among others, all non-supervisory, non-professional employees of Respondents

^{2/} The undersigned denied the Motion of Counsel for the General Counsel requesting that Respondent's post-hearing brief be stricken.

^{3/} I hereby grant the Motion of Counsel for the General Counsel to correct the transcript and the transcript is hereby corrected as set forth in the Appendix.

and excluding, among others, all management officials, supervisors, professional employees, employees engaged in federal personnel work other than in a purely clerical capacity, employees paid from non-appropriated funds and temporary employees holding appointments not to exceed one year. At all times material, the American Federation of Government Employees, AFL-CIO, Council 214 (Council 214) has been an affiliate and agent of AFGE. At all times material, the American Federation of Government Employees, AFL-CIO, Local 1592 (the Union) has been an affiliate and agent of Council 214 and of the AFGE (G.C. Exh. 1 (e)).

2. At all times material, Kim W. Olson has occupied the position of Packing and Processing General Foreman, at the Ogden Air Logistics Center, Hill Air Force Base, Utah (Respondent), and has been, and is now, a supervisor and/or management official within the meaning of 5 U.S.C. 7103(a)(10) and/or (11), and an agent of Respondent (G.C. Exh. 1(e)).

3. At all times material, Janice White has been a packer in Respondent's off-base packing section and a steward of the Union. Her first-line supervisor has been Mike Cannon, her second-line supervisor has been Mr. Olson, and her third-line supervisor has been Mr. Blaine Nelson. (Tr. 8-9).

4. In the Fall of 1987, Ms. White was handling, to Mr. Olson's knowledge, two MSPB appeal hearings and 3-5 grievances. In addition, she had two grievances herself. Mr. Olson was involved in both of her personal grievances. (Tr. 10-11).

5. On Wednesday, November 25, 1987, Ms. White was at the Union's office where she overheard the President and Vice President of the Union discussing a message that had been received in the maintenance department which stated that three hours of administrative leave would be granted on Friday, November 27, to persons who were not mission essential (Tr. 11-23). Ms. White knew that, although employees in the off-base packing section previously had been required to work through holidays, they had been told in 1987 that they could not get overtime because they were not mission essential (Tr. 12-13). Ms. White testified that Vice President Harlin Francis told her it was alright for her to talk about the three hours of administrative leave because, ". . . everybody's aware of it so go ahead and talk about it" (Tr. 13) and that Mr. Francis told her she could get a copy of the message if she needed it (Tr. 12).

Ms. White admitted that she never saw the message (G.C. Exh. 2).

6. When she returned to her work station, she told two other employees with whom she was working that they were to get administrative leave off on Friday (Tr. 13-14). On Friday, November 27, she also discussed administrative leave with six employees (Tr. 37).^{4/}

7. On Friday, March 27, two groups of employees came to Mr. Olson's office and asked him to confirm the information that they were going to get administrative leave that day. Upon questioning, they told him that Ms. White was the source of this information (Tr. 49-50). He told them that he had not heard from his supervisor (Tr. 52). He then asked Ms. White to see him in private (Tr. 52-53).

8. In their conversation, Mr. Olson asked Ms. White why she was telling people they were going to get off. Ms. White said that she had been told that in the Union office based on a message from DOD and/or AFLC. Mr. Olson replied that the decision was up to management in light of the workload and that telling co-workers would result in disruptions. Ms. White said that work load was low and she had a right to tell co-workers whatever she wished. She further said that any decision would have to be justified to his (Olson's) superiors and could result in grievances (Tr. 18-20, 53).

9. Later the same day, Ms. White was called to Mr. Olson's office and shown a typed sheet to be inserted into her personnel file. It was entitled "Counseling on Improper Rights of a Union Steward" and stated that "White (was) using her position as a Union Steward, and receiving privileged information from a 'Profs' note, sent to Managers regarding Administrative Leave used Managements rights" (G.C. Exh. 2). It further stated that management has the right to determine when time off would be given and cannot have Union representatives giving such information to employees. The document also stated that White claimed that the Union Vice President directed her to tell the people, that she would get a copy of the "Profs" note to back-up her story, and that if the people did not get off we would have 600 grievances filed. (G.C. Exh. 2).

^{4/} I do not credit White's testimony that the employees had been told by others because I credit Mr. Olson's testimony, discussed below, that employees told him Ms. White was the source of their information about administrative leave.

10. Ms. White wrote on the typed sheet that on Wednesday, November 25, 1987, the other employees had asked her about 3 hours off on Friday and she told them that the Union Vice President said a letter had come down from headquarters, DOD, saying that they could have three hours administrative leave off on Friday. The other employees said they knew all about it. Ms. White also stated that she has the right to say anything to co-employees so long as it is not slanderous.

11. Mr. Olson then told her that he was especially concerned about statements about management rights made by White to other employees because she is a Union steward and other employees pay more attention to her. Ms. White claimed that she was acting as a co-worker and Mr. Olson replied that she is acting as a Union steward at all times on the job and cannot discuss management rights with employees. (Tr. 24, 65-67).

12. The employees were released early by Mr. Olson's supervisor because they had not been released on other occasions and they were becoming disgruntled (Tr. 65).

13. Subsequently, Mr. Olson was advised by Respondent's Labor Relations Specialist to revise the "Counseling" because it looked like he was picking on Ms. White as a Union representative, even though Mr. Olson regarded the statements about the Union as merely documenting what she had told him (Tr. 55-57). Therefore, on January 8, 1988, he presented to White a new "Counseling for Disrupting the Work Force", claiming that she had informed co-workers that they would receive three hours of administrative leave and that release of this type of information before management had assessed the work load could be disruptive to the workforce (G.C. Exh 3). White was not permitted to respond to this statement (Tr. 27-28).

Conclusions

To establish that Respondent violated §§ 16(a)(1) and (2), the General Counsel must prove that the counseling entries were motivated by Ms. White's union activities. See, e.g., Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 22 FLRA 91 (1986). It is clear that the initial counseling was motivated by White's union activities. The charge was that White was using privileged information obtained as a union steward to show the existence of an alleged management decision before it had been made. Only because White was a

Union steward did she have access to this information and had instructions to use the data adversely to management, in Mr. Olson's view. In fact, if the Union did have access to the data it was because management did not adequately protect data it deemed confidential. It cannot punish the Union for its own failures.

The second counseling entry omitted references to the Union on advice of management's Labor Relations Specialist. Nevertheless, it referred to the same incident and it was made clear to Ms. White that she was being punished for disseminating information she got through Union sources. Therefore, again she was reprimanded for her Union activities in violation of §§ 16 (a)(1) and (2). Accordingly, it is recommended that the Authority issue the following:

ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Labor-Management Relations Statute, the Authority hereby orders that Ogden Air Logistics Center, Hill Air Force Base, Utah, shall:

1. Cease and desist from:

(a) Discriminating against Ms. Janice White because of her union activities by counseling her for her actions in telling co-employees about the prospective grant of administrative leave.

(b) In any like or related manner, interfering with, restraining, or coercing 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) Forthwith remove the January 8, 1988, entry maintained in Janice White's 971 file, entitled "Counseling for Disrupting the Work Force".

(b) 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 Commander 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.

(c) Pursuant to 5 C.F.R. § 2423.30, notify the Regional Director, Region VII, Federal Labor Relations Authority, 535 - 16th Street, Suite 310, Denver, Colorado 80202, in writing, within 30 days from the date of this order, as to what steps have been taken to comply herewith.

William B. Devaney

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: January 24, 1989
Washington, D.C.

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT discriminate against Janice White because of her union activities by counseling her for action in telling co-employees about the prospective grant of administrative leave.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL FORTHWITH remove the January 8, 1988, entry maintained in Janice White's 971 file, entitled "Counseling for Disrupting the Work Force."

(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 of the Federal Labor Relations Authority, Region VII, whose address is: 535 - 16th Street, Suite 310, Denver, Colorado 80202, and whose telephone number is: (303) 837-5224.