

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

.....
DEFENSE LOGISTICS AGENCY
DEFENSE DEPOT TRACY
TRACY, CALIFORNIA

Respondent

and

Case No. 9-CA-80143

LABORERS INTERNATIONAL UNION,
LOCAL 1276, AFL-CIO

Charging Party
.....

Stephen J. Giebelhaus, Esq.
For the Respondent

Stefanie Arthur, 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 May 17, 1988 by the Regional Director, Region IX, Federal Labor Relations Authority, a hearing was held before the undersigned on June 20, 1988 at San Francisco, California.

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 by Laborers International Union, Local 1276, AFL-CIO (herein called the Union) against Defense Logistics Agency, Defense Depot Tracy, Tracy, California (herein called the Respondent).

The Complaint alleged, in substance, that on or about January 6, 1988 Respondent conducted a meeting^{1/} with bargaining unit employees relative to implementation of new quantitative performance standards; that it constituted a formal discussion under section 7114(a)(2)(A) of the Statute; and that the Union was not notified thereof nor given an opportunity to be represented thereat - all in violation of section 7116(a)(1) and (8) of the Statute.

Respondent's Answer, dated June 6, 1988, admitted that a meeting was held on January 4, 1988 with employees, but denied that it constituted a formal discussion under section 7114(a)(2)(A) of the Statute. It also admitted that the Union was not notified of the meeting. The alleged violations of the Statute were also denied.

All 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 with the undersigned which have been duly considered.^{2/}

Upon the entire record herein, 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 and conclusions:

Findings of Fact

1. At all times material herein the Union has been, and still is, the exclusive representative of all non-supervisory wage grade employees of Respondent with specified exclusions from said unit.

2. There are about 20 employees who work in Respondent's Receiving Division, the Directorate of Distribution, in Warehouse 10, Sections 3 and 4. Section 3 receives freight which is returned from other installations, then repackages and marks the material before being shifted out to the

^{1/} Paragraph 6(a) of the Complaint was amended at the hearing to change the date of the meeting from January 6, 1988 to January 4, 1988.

^{2/} Along with its brief General Counsel filed a Motion To Correct Transcript. No objections having been interposed, thereto, and it appearing that the proposed corrections are accurate, the motion is granted as requested.

warehouses. After processing new procurement receipts, Section 4 packages and labels them before distribution.

3. On January 1, 1988 Respondent implemented quantitative performance appraisal standards affecting the bargaining unit employees.^{3/} Under these standards, employees are required to put out a certain amount of work to obtain ratings. To obtain an "Outstanding", an employee would be required to mark an average of 202 pieces of material a day; for packing and marking material the requisite amount would be 111 pieces per day.^{4/}

4. Ron Cline, supervisor of employees in Warehouse 10, Sections 3 and 4, and Francis (Corky) Goodwin, his assistant foreman, devised a form known as DIMES control card. This was done to keep a record of the employees' work counts in order to compute the appraisals at the end of the year.

5. A meeting was called by Cline, which he and Goodwin conducted on January 4, 1988 with the employees in Warehouse 10, Sections 3 and 4. The purpose of the meeting was to explain how to fill out the DIMES control form. About 20 employees attended, having signed an attendance roster, at which time Cline instructed them on filling out the line count form - keeping counts of the work an employee does and how long it takes to do that work. He explained how the packers, laborers, sorters and forklift operators would use the DIMES form. Cline also explained that the employees would be appraised from January through March for 1988 - that there would be no appraisal for the previous nine months.

6. Record facts show management decided to have the meeting on the morning of January 4, 1988. No preparations or agenda were devised. Both Cline and Goodwin went around and told the employees that the meeting would be held that day in the lunchroom of Warehouse 10.

7. At the meeting, which lasted about one hour, questions were posed by the employees to Cline after he had explained the proper usage of the DIMES form. When Cline mentioned that the section marked "leave" should be logged in, an employee asked what effect the taking of leave would

^{3/} The unit includes those employees in Warehouse 10, Sections 3 and 4.

^{4/} The new performance standards and the DIMES form were received by some employees on or about December 28, 1987.

have on productivity, and whether the same amount of work would be required under the standards. Cline stated that scheduled annual leave would not be counted against productivity. However, he mentioned, other leave as sick leave, jury duty, blood donations and military leave would count as having no productivity. Another employee asked how long she would be "out the gate" if unable to meet the required performance standards. Cline replied that he did not think she would be "out the gate". However, he did not know, but he did not think so, and it would probably take some time. Some discussion ensued at the conclusion of the meeting, with some individual questions from employees who were afraid of losing their jobs under the new arrangements.^{5/}

8. While the Union was neither notified of the meeting by Respondent nor attended it, both parties met on January 6, 1988 after the implementation of the quantitative performance standards on January 1, 1988. They met to negotiate the impact and implementation of the new standards, and the Union offered proposals re the impact of leave on productivity. This resulted in a Memorandum of Understanding dated February 4, 1988 which provides, inter alia, that certain specified absences from work by employees would be excluded when measuring work performances.

Conclusions

The ultimate issue for determination herein is whether Respondent's failure to afford the Union an opportunity to be present at the meeting on January 4, 1988 of Warehouse 10, Sections 3 and 4 employees was an infringement of section 7114(a)(2)(A)^{6/} of the Statute, and hence violative of section 7116(a)(1) and (8).

^{5/} The record does not reflect any details concerning such discussions.

^{6/} This section of the Statute provides:

(a)(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at--

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment. . . .

General Counsel, in urging a violation of the Statute by Respondent, contends that the said meeting was a formal discussion and concerned general conditions of employment. Since the Union was not notified of the meeting nor given an opportunity to be present, Respondent has allegedly run afoul of section 7114(a)(2)(A).

In respect to the meeting on January 4, 1988 it is recognized that management called it to discuss how employees should fill out the form (DIMES control) to account for their productivity. However, General Counsel maintains that once the subject of leave was raised - which was done by Cline since the form required a recording of leave time - management should have adjourned the meeting until a Union representative could attend. Further, that the matters of productivity and performance appraisals impact upon continuing employment and the Union has the right to protect those interests.

Numerous cases in the public sector have dealt with the right of a union to be represented at formal discussions between management and employees. As declared by the Authority, it has consistently held that whether such right attaches depends upon the presence of the elements set forth in section 7114(a)(2)(A). Those factors are: (1) there must be a discussion; (2) which is formal; (3) between one or more representatives of the agency and one or more unit employees or their representatives; (4) concerning any grievance or personnel policy or practices or other general conditions of employment. See Department of Health and Human Services, Social Security Administration and Social Security Administration Field Operations, Region II, 29 FLRA 1205. Further, in applying these elements, the Authority has declared it will be guided by the intent and purpose of section 7114(a)(2)(A) -- to provide the union with an opportunity to safeguard its interests and the interests of bargaining unit employees as viewed in the context of the union's full range of responsibilities under the Statute. U.S. Department of Justice, Bureau of Prisons, Federal Correctional Institution (Ray Brook, New York), 29 FLRA 584.

In a case significantly similar to the one at hand, the Authority concluded in United States Government Printing Office, Public Document Distribution Center, Pueblo, California, 17 FLRA 927, that a discussion concerning the manner in which certain employees reported their productivity was a routine monitoring function by management. The cited case involved a meeting between four employees who were a Verification segment of the unit, and management. It was

called by management to discuss the manner in which productivity time was reported. New methods were explored re calculating non-productive time and the recording of time properly. During the meeting there arose employee speculations as to the possible transfer out of employees and loss of a position in the unit. The management representative stated that a smaller unit was not being planned, a position would not be affected, but that high productivity could lead to a reduction in the size of the unit or a transfer of personnel.

The Authority held in the above case that the subject matter of the meeting did not involve "any personnel policy or practice or other general conditions of employment" under the Statute. It declared that the discussion concerned the manner in which the affected employees in a small component of the agency's operation were reporting their productivity. Further discussion at that meeting, which dealt with details and staffing levels of productivity remained high, was deemed speculative in nature. The obligation was therefore imposed upon management to afford the union an opportunity to be present.

While a tenable argument may be made that the discussion herein at the January 4 meeting delved into an area concerning employment conditions, a contrary conclusion is indicated in light of the decision in the U.S. Government Printing Office, case, supra. In both instances the meeting was designed to discuss or consider the manner in which productivity should be reported by the employees. Note is taken that Cline did reply to a query as to the effect that taking leave would have on productivity, and he distinguished annual leave from other types of leave. Similarly, in the cited case management answered queries as to possible changes in the unit if productivity remained high. His other responses and discussion re the possible effect upon employees who fail to meet performance standards was, as in the U.S. Government Printing Office, case, supra, speculative in nature. While the record herein reflects that there was additional discussion at the close of the meeting, no details appear as to the nature of these discussions.

Based on the foregoing, I am constrained to conclude that the January 4 meeting, which was held to advise the employees re reporting productivity on the DIMES form, was likewise a monitoring action. As such, the subject matter did not involve a grievance or any personnel policy or practice or other general condition of employment. Accordingly, the

said meeting was not a formal discussion within the meaning of section 7114(a)(2)(A) of the Statute since it did not concern a subject matter within its purview.^{7/} Therefore, the failure by Respondent to provide the Union with an opportunity to be represented at the January 4 meeting was not a violation of section 7116(a)(1) and (8).

In view of the foregoing, it is recommended that the Authority adopt the following Order:

ORDER

It is hereby Ordered that the Complaint in Case No. 9-CA-80143 be, and it is hereby, DISMISSED.

Issued, Washington, D.C., April 5, 1989



WILLIAM NAIMARK
Administrative Law Judge

^{7/} By reason of this conclusion, the undersigned does not decide whether the meeting was a formal one. See United States Government Printing Office, et al, supra.