

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

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GENERAL SERVICES ADMINISTRATION .  
and GENERAL SERVICES .  
ADMINISTRATION, REGION III .  
Respondent .  
and .  
AMERICAN FEDERATION OF .  
GOVERNMENT EMPLOYEES, COUNCIL .  
OF GSA LOCALS NO. 236, AFL-CIO .  
Charging Party .  
. . . . .

Case No. 2-CA-90425

Judith A. Bonner, Esq.  
For the Respondent  
  
Barbara S. Liggett, 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 December 6, 1989, by the Regional Director for Region II, Federal Labor Relations Authority, a hearing was held before the undersigned on February 8, 1990 at Philadelphia, Pennsylvania.

This case arises under the Federal Service Labor-Management Relations Statute, 5 U.S.C. section 7101, et seq., (herein called the Statute). It is based on a charge filed on July 28, 1989 by American Federation of Government Employees, Council of GSA Locals No. 236, AFL-CIO (herein called the Union) against General Services Administration and General Services Administration, Region III, (herein called the Respondent).

The Complaint alleged, in substance, that on or about July 17, 1989, Respondent, by its agent Grace Mobley, stated to an employee, who is a Union representative, that she was proposing disciplinary action against the employee because he filed an unfair labor practice charge - all in violation of section 7116(a)(1) of the Statute.

Respondent's Answer, dated January 5, 1990, denied the aforesaid allegation and the commission of any unfair labor practices.

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 which have been duly considered.<sup>1/</sup>

Upon the entire record, from my observation of the witnesses and their demeanor, and from all 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 American Federation of Government Employees, AFL-CIO (AFGE), has been, and still is, the exclusive bargaining representative of a nationwide unit of employees of General Services Administration, including Wage-Grade employees at the East Philadelphia Field Office with specified exclusions from said appropriate unit. Further, AFGE has delegated to the Union authority to act as its representative for the purpose of collective bargaining on behalf of the employees at the East Philadelphia Field Office.

2. In May 1989, AFGE Council 236<sup>2/</sup> filed an unfair labor practice charge against Respondent alleging that by

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<sup>1/</sup> Along with its brief the General Counsel filed a Motion To Correct Transcript. No objections having been interposed, and the proposed corrections appearing to be proper, the Motion is granted and the Transcript is corrected accordingly.

<sup>2/</sup> The record reflects that Council of GSA Locals No. 236 and Council No. 236 are one and the same entity.

its agents<sup>3/</sup> Respondent refused to grant, or limited the grant of, official time to the Union's representatives. Jasper Jenkins, a custodial employee of Respondent and Regional Vice-President of the Union, was involved in the preparation and filing of the charge. He consulted with Terence Short, Executive Vice President of the Union who resided in Florida, concerning the charge which was signed by Short in his official capacity.

3. On June 27, 1989<sup>4/</sup> Jenkins was summoned to a meeting with Harry Rolls, Assistant Buildings Manager and Ronald Watson, custodial employee. The meeting took place at 4:00 p.m. and lasted until 4:25 p.m. Jenkins did not report to his work area until 4:50 p.m.

4. On July 7, Grace Mobley, who was Custodial General Foreperson and Jenkins' supervisor, met with Jenkins and Ronald Adams, a custodial worker and a Union representative. The meeting was called to ascertain why Jenkins did not return to his assigned area at 4:25 p.m. as required on June 27. Jenkins explained that employee Ronald Watson became upset after the meeting, and Jenkins spent time trying to calm Watson. Mobley stated that Jenkins had no right to leave his floor without permission, and that she would ask for disciplinary action to be taken against him.

5. In a memorandum dated July 12 Thomas E. McGarry, Field Office Manager, wrote to Madeline Muldowney, Chief, Employee Relations and Labor-Management Branch and requested a 10-day suspension be issued to Jenkins (Respondent's Exhibit 1). This memo recited the incident on June 27; that Mobley told Jenkins on July 7 she would ask McGarry to process a request for disciplinary action against the employee based on his 25 minute absence on June 27.

6. A memorandum of July 17 was written by McGarry for Jenkins and entitled "Suspension - Advance Notice." It recited that McGarry proposed to suspend the employee from duty and pay for 10 days effective August 14 for failure to follow proper procedures for request and use of leave and Absence Without Office Leave for 25 minutes on June 27.

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<sup>3/</sup> Named in the charge as such agents are Grace Mobley, Chester Walker and Randolph Reliford.

<sup>4/</sup> Unless otherwise indicated, all dates hereinafter mentioned occur in 1989.

7(a). Both Jenkins and Adams testified to a meeting with Mobley in her office on July 17.<sup>5/</sup> Record facts show that on this date Mobley approached Adams and asked him to represent Jenkins, whom she planned to suspend, and she had a letter to that effect. Adams stated he was not able to do so since Terence Short is Jenkins' representative.

(b). On this date Jenkins was on duty removing trash from the building when Chester Walker, supervisor, came to the elevator and told Jenkins that Mobley wanted to see him in the office. When the employee arrived at the office he met Adams. The latter said that Mobley wanted him to represent Jenkins who replied that Adams could not do so.

(c). Both employees went into the office and Mobley handed Jenkins the proposed Suspension Notice (G.C. Exhibit 3). It bears date of July 17 and is addressed to Jenkins from Thomas McGarry, Field Office Manager. Jenkins stated any legal documents had to come through Terence Short, who was his representative. The record also reflects that Mobley told Adams she wanted him to be a witness.

Mobley asked Adams to read the Suspension Notice which she handed him. Adams read the Notice and returned it to the supervisor while stating he could not represent Jenkins since Short is his representative. At this point Mobley told Jenkins she was very unhappy with the way he did things; that he tried to burn her by issuing ULP's (unfair labor practices) against her, and that now she was going to burn him back. Whereupon Adams left the office. Mobley asked Jenkins to remain since she wanted to talk to him. However, Jenkins stated he wouldn't stay as Short is his representative and he departed.

8. Assistant Buildings Manager Harry Rolls testified that on July 17 he told Mobley to have Jenkins come to the Building Manager's office. When Jenkins came in the office,

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<sup>5/</sup> The facts as set forth herein represent the credited version of what occurred at this meeting on the date set forth. These facts are denied by Mobley and in sharp contradiction to the testimonies of the two employees, However, Mobley's recollection of the events was hazy and she did not remember essential details. Contrariwise, Jenkins and Adams recalled specific events, were precise, and I was impressed by their demeanor during the testimony of each individual.

Rolls gave the Suspension Notice to the employee in the presence of Mobley. Further testimony of Rolls reveals that Jenkins said he was instructed not to have anybody there; that he was the Union and would take it (the Suspension Notice).<sup>6/</sup>

### Conclusions

Employees are protected under section 7102 of the Statute in their right to form, join or assist a labor organization without fear of reprisal. This includes protection from statements by management or supervisors which tend to coerce or intimidate employees. Whether a statement violates section 7116 of the Statute, and thus constitutes interference with this right, is determined by an objective standard. If the statement, under the circumstances, could reasonably tend to coerce or intimidate an employee, or the employee could reasonably infer coercion, it will be deemed violative of the Statute. Ogden Air Logistics Center, Hill Air Force Base, Utah, 34 FLRA 834; Marine Corps Logistics Base, Barstow, California, 33 FLRA 626, 637.

Turning to the present case, it seems clear that the facts as found herein would tend to be coercive. Mobley's statement, that since Jenkins burned her with a ULP charge she would burn him back, would certainly tend to discourage either that employee or others from filing such charges. It interferes with the right of employees to engage in protected rights under the Statute, and to engage in union activities or assert the Union in seeking protection for represented employees. The Authority has previously held that a statement by a supervisor to an employee that there would be repercussions for filing charges was a threat, coercive in nature and violative of section 7116(a)(1). U.S. Naval Supply Center, San Diego, California, 21 FLRA 792. I conclude similarly herein that Mobley's statement to Jenkins on July 17 was likewise violative of the Statute.

Having concluded that Respondent violated section 7116(a)(1) of the Statute, it is recommended that the Authority issued the following:

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<sup>6/</sup> Neither Mobley nor Jenkins testified regarding this meeting with Rolls on July 17. While it is not clear whether Jenkins was given more than one copy of this Notice on July 17, in either case this un rebutted testimony does not militate against my earlier credibility resolution.

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 the General Services Administration and General Services Administration, Region III, shall:

1. Cease and desist from:

(a) Stating to employees that because they filed unfair labor practice charges against it certain adverse action will be taken against them.

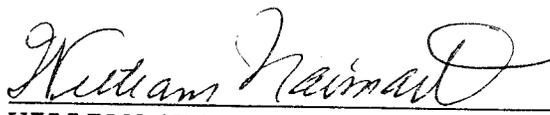
(b) In any like or related manner interfere with, restrain or coerce our employees in the exercise of rights assured them by the Federal Service Labor-Management Relations Statute.

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 in the East Philadelphia, Pennsylvania office, 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 Field Office Manager and shall be posted and maintained by him 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, Region II, Federal Labor Relations Authority, New York, New York, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, D.C., August 13, 1990

  
WILLIAM NAIMARK  
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 NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT make statements to employees that because they filed unfair labor practice charges against us certain adverse action will be taken against them.

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

\_\_\_\_\_  
(Agency or 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 its provisions, they may communicate directly with the Regional Director for the Federal Labor Relations Authority whose address is: 26 Federal Plaza, Room 3700, New York, NY 10278, and whose telephone number is: 212-264-4934.