UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
SUITE 416 - 1111 20TH STREET NW.
WASHINGTON, D.C. 20036

In the Matter of TIDEWATER VIRGINIA FEDERAL EMPLOYEES METAL TRADES COUNCIL/INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL NO. 441 Respondent and Douglas Edward Burns Charging Party and Norfolk Naval Shipyard Agency	Case No. 3-CO-59

Lee Mingledorff, Esq.
For the General Counsel

John F. Meese
For the Respondent

BEFORE: Isabelle R. Cappello
Administrative Law Judge

DECISION

This is a proceeding under the Federal Service Labor-Management Relations Statute, 92 Stat. 1191, 5 U.S.C. §7101 et seq. (hereinafter referred to as the Statute) and the rules and regulations issued thereunder and published in 45 Fed. Reg. No. 12, pp. 3482-3524 (1/17/80), 5 C.F.R. 2421 et seq.

By a complaint dated October 31, 1980, the Regional Director of Region III of the Federal Labor Relations Authority (hereinafter referred to as the Authority) alleges that the Respondent, the exclusive bargaining agent for a certain unit of employees at the Norfolk Naval Shipyard, has been and is engaging in unfair labor practices, in violation of Section 7116(b)(1) and (8) of the Statute.

Section 7116(b)(1) makes it an unfair labor practice for a labor organization "to interfere with, restrain, or coerce any employee in the exercise of any right under this chapter." One such right is the "right to . . . join . . . any labor organization, or to refrain from any such activity freely and without fear of penalty or reprisal." See Section 7102. The General Counsel alleges that Willie Boothe a steward of Respondent, and Gregory Royster, a chief steward, coerced the charging party, Douglas Burns, into joining Respondent by telling him, on various dates between April and June, 1980, that "it would be better if he became a member of Respondent, if he wanted Booth[1]/ to investigate and help win his grievance;" "that Booth thought they had the Navy beat on a grievance but that it would be better if he joined the Respondent;" and that "it would be better if he joined the Respondent if the Respondent had to arbitrate his grievance." See GC 1(c), Count 6.[2]/

Section 7116(b)(8) makes it an unfair labor practice for a labor organization "to otherwise fail or refuse to comply with any provision of this chapter"; and one such provision is that a labor organization which has been accorded exclusive recognition as the bargaining agent for the employees in the unit it represents "is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership." See Section 7114(a)(1). The General Counsel alleges that Respondent failed to process a grievance on behalf of Mr. Burns, in violation of the representational duties set forth in Section 7114(a)(1).

Respondent, in its answer, denies the occurrence of the acts specified in the complaint, and any violation of the Statute.

A hearing on the matter was held on December 17, 1980. Evidence was adduced by the General Counsel and by the Respondent. Respondent filed its brief on January 13. The General Counsel filed its brief on January 16. Based on a consideration of the entire record, including the observed demeanor of the witnesses, the following findings and conclusions are made.

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[1]/ The complaint mispells Mr. Boothe's name, by omitting the "e".

[2]/ The General Counsel's exhibits will be referred to as "GC". The Respondent's one exhibit will be referred to as "R1". The one Joint Exhibit will be referred to as "Jt 1". The transcript will be referred to as "Tr." All dates refer to 1980, unless otherwise indicated.

FINDINGS OF FACT

The Tidewater Virginia Federal Employees Metal Trades Council (hereinafter referred to as the "Council") is the signatory to a collective bargaining agreement with the Norfolk Naval Shipyard (hereinafter referred to as the "Shipyard"). The Council is recognized as the exclusive representative of all employees in the unit, which generally includes the blue-collar workforce at the Shipyard, such as welders. The Council is composed of affiliated local unions of national or international organizations, including the International Association of Machinists, Local 441 (hereinafter referred to as the "Local"). Chief stewards and stewards work for the Council, which holds weekly steward meetings. The Council and Local both hold regular meetings.

Since April 4, 1977, the collective bargaining agreement between the Council and the Shipyard has provided that, at the request of an employee in the bargaining unit, the Council shall represent the employee in disciplinary and adverse actions. It also provides a sole and exclusive grievance procedure and arbitration process for unit employees. Employees using the grievance procedure are represented by the Council. If an employee elects to process his or her own grievance, without Council representation, the employee may do so, but is not entitled to take the case to arbitration.

Jurisdictional facts have been admitted -- the Shipyard is an "Executive agency," within the meaning of Section 7103(a)(3) of the Statute, and Respondent is a "labor organization," within the meaning of Section 7103(a)(4).

The charging party, Douglas Burns, was a welder at the Shipyard from October 4, 1976, to November 26, on which date he was discharged pursuant to an adverse action. He never became a member of the Local.

This case arose out of an incident which took place on April 1. On that date Mr. Burns was assigned to perform a welding job away from his regular work area and was charged with being AWOL (absent without leave), for a period of three hours, in connection with the assignment. Mr. Burns denies that he was AWOL. He claims that he spent the three hours moving some equipment, looking for equipment necessary to perform the job, waiting for a fire watch, and having his scheduled lunch break. The Shipyard first proposed to suspend Mr. Burns for five days as a result of the alleged AWOL act. After a hearing, at which he was represented by Willie Boothe, the suspension was changed to one day, "due to mitigating circumstances." See GC 3.

What was regarded by the Shipyard as "mitigating circumstances" is not clear. At the hearing, Mr. Burns pointed out his commendable work record; and Mr. Boothe spoke of the shortage of equipment

necessary for Mr. Burns to perform his assigned job and the trouble getting a fire watch.

To Mr. Burns' surprise, Mr. Boothe did not call any witnesses to testify at the Shipyard hearing. Had he done so, it is possible that the Shipyard might have dismissed the charge altogether. There were witnesses who could have established that Mr. Burns was working, and not AWOL on the day in question, and that a supervisor involved in the AWOL charge had a motive for getting Mr. Burns into trouble. The General Counsel located the witnesses; and they also testified at the hearing.3/ It would not have been difficult for Mr. Burns to locate witnesses who could have testified in support of Mr. Burns' defense that he was not AWOL, as charged. Shipyard records are kept which show the employees assigned to particular jobs; and stewards are allowed to research such records. See Section 4(b), page 16, of Jt 1. Mr. Burns was an experienced and "outstanding" steward (Tr. 175), who would have known that such records were available. The fact that Mr. Boothe was also representing a number of other employees (a total of seven, mostly non-union) could account for his failure to pursue, more vigorously, Mr. Burns' defense. However, there is no suggestion made in the regard that he was overloaded. And the collective bargaining agreement allows a steward "reasonable time off" to represent employees. See Section 4(b), page 16 of Jt 1.

The suspension was served on June 11. The last day to initiate a grievance as to the suspension was June 26. Mr. Burns wanted the union to initiate it for him; and applied to join the union, on

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3/ There is a conflict as to whether Mr. Burns gave names of witnesses to Mr. Boothe. The General Counsel argues that it was in Mr. Burns' interest to do so, and that it must be assumed that he acted in his own interest. Mr. Burns' memory of all that transpired is not altogether clear. For example, he specifically recalled a meeting with Mr. Boothe, on April 17, that could not have occurred, as it was established that Mr. Boothe was not in the Shipyard on that day. Also, the few Burns-Boothe meetings that did occur were disconnected ones, with Mr. Boothe running back and forth in an attempt to get Privacy Act papers filled out properly. It does not appear that Mr. Burns or Mr. Boothe ever had an in-depth discussion of the case. Mr. Boothe's preparation for the Shipyard hearing consisted of reading the six-page statement prepared by Mr. Burns and contained in his personnel file. The statement was not adduced at the hearing in this complaint, and apparently did not list the names of any witnesses. Mr. Burns did not even appear sure that he mentioned the names of any witnesses to Shipyard officials. All these facts considered, the evidence is not convincing that Mr. Burns gave names of witnesses to Mr. Boothe.

June 24, to assure that the union would act for him.[4]/ He did not realize that he could have intitiated the grievance himself. No grievance was ever filed.

The June 11 suspension was the second AWOL offense charged against Mr. Burns by the Shipyard. The first occurred in 1978; and Mr. Burns felt that it was justified, and asked for no hearing on it. On June 20, a third AWOL charge was brought by the Shipyard against Mr. Burns. The third charge apparently led to his discharge, under Shipyard rules which provide a range of penalties for AWOL offenses -- the first one can result in a reprimand up to a five-day suspension; the second, a five to ten-day suspension; and the third, a ten-day suspension to removal.

Facts relative to the allegation of union coercion

Mr. Burns, Mr. Boothe and Mr. Royster all testified. All had trouble recalling details of the events here relevant; but all agreed that Mr. Burns was solicited to join the union by both Mr. Boothe and Mr. Royster, just as soon as he indicated that he wished union representation on the April 1 AWOL charge. Mr. Royster admits then explaining to Mr. Burns, as follows:

> My next action was I told Mr. Burns that it would look better in the eyes of the members if we had to take his case to arbitration if he were a member. I also explained to Mr. Burns that if we did have to take his case to arbitration, that he would first have to go before the arbitration committee, the Metal Trades Council arbitration committee to present his case, and that if the committee voted not to accept Mr. Burns case, that we could still take his case and present it to the body of the local 441; and that if the body voted to accept Mr. Burns' case, that, you know, the local would have to pay the full amount of the cost, and by Mr. Burns not being a member, when it did come time to go before the body of the local, that he would not be allowed to attend the meeting, because the local meetings are closed meetings to members only. (Tr. 173)

Mr. Royster states that he gave this explanation because he "had Mr. Burns' best interest at heart." (Tr. 173) Mr. Burns recalls that Mr. Boothe also stressed the costs of arbitration as a reason for its being "better," if Mr. Burns joined Respondent. (Tr. 39-40)

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[4]/ The employees who testified generally referred to the "union", without any apparent distinction being made as to whether the reference was to the Council or the Local.

Mr. Boothe did not deny making this statement; and it accords with the chief steward's concern over arbitration costs. Therefore, Mr. Burns' recollection of the statement is credited.

The recruitment efforts of Mr. Boothe and Mr. Royster, in the instant case, are consistent with the policy of the union's leadership to give "the sorriest God-Damn representation you ever had" to bargaining-unit members who do not pay union dues. See the testimony of Richard Stephenson at page 132 of the transcript. He has been a union member for four years and recalled this statement being given to a welding-school class at the Shipyard, by a union representative, Jerry Bass, right after he began his employment. To his knowledge, this statement has not been contradicted at any union meetings, which he attends.

Another testifying union member, who faithfully attends union meetings, is Thomas Nelson. He formerly held the office of steward for two years, chief steward for one year, and vice president of Local No. 441 for ten months. Mr. Nelson testified under subpoena, and reluctantly. Mr. Nelson affirmed that: "A few years ago it was very emphatic non-union members were not supposed to be represented or to a lesser degree, but I would say at the present time it isn't as nearly emphatic as it used to be." (Tr. 137-138) Questioned further, as to an employee with an individual, rather than a group problem, Mr. Nelson testified that: "Well, I imagine he probably wouldn't get the same degree as a union member, unless his problem would cover a large group of people, then I would say he would get probably full representation." (Tr. 138)

Mr. Nelson agreed that Mr. Bass was the particular person subscribing to this theory and selling it and that Mr. Bass had not been a member of Local 441 since March 1979. However, in response to a question by Respondent's counsel, as to whether this was a council-wide policy not to represent non-union employees, he testified: "I would say maybe it wasn't a Council policy, but the leadership of the council advocated it." Tr. 141.

Another employee of the Shipyard, Lester Wilkins, testified that whenever a case was lost, the union "would throw the paper away if you weren't a union member," rather than "get it appealed," and that this happended "only a couple of weeks ago." (Tr. 112)5/

Of Respondent's 75 stewards, some have ignored the policy of the union's leadership to give better representation to its members. Mr. Nelson did so, and believes that is why he was removed as a steward.

5/ Several witnesses testified to "appealing" cases. They apparently refer to the initiating of a grievance over a disciplinary or adverse action taken by the Shipyard. The "paper" apparently refers to the written notice of the decision on the action, as in GC 2.

Although Mr. Boothe, Mr. Royster, and the President of the Council, Ronald Ault, all deny the existence of such a policy, I find the witnesses testifying that such a policy did and does exist, to be more credible. Mr. Wilkins, Mr. Nelson, and Mr. Stephenson were not officials of the Council or the Local and were, therefore, more likely to be candid about the matter. All appeared to be telling the truth. The only example given by Mr. Ault of equal representation -- when a case of a non-member was taken to arbitration -- turned out to be one case out of a total of about 60 or 70, and that one involved a group grievance.

When Mr. Burns applied for union membership, on June 24, it was only two days before the time was to expire on initiating a grievance over his June 11 suspension. He had made numerous vain attempts to consult with Mr. Boothe.6/ The last such attempt was made on June 20. Mr. Burns was consulting, on that day, with J.D. Harmon, another steward representing him in his third AWOL charge. Mr. Burns saw Mr. Boothe coming out of a meeting and personally told him that he wanted to see him. Mr. Boothe told him to come to "C slab," where Mr. Boothe was working, when he finished his business with Mr. Harmon. Mr. Burns was not assigned to "C slab;" and he was fearful of seeking out Mr. Boothe there, as it was contrary to Shipyard procedure for employees to walk around the Shipyard in search of union stewards. Mr. Burns was already in trouble over charges of being AWOL from his assigned work areas. Accordingly, he did not seek out Mr. Boothe. And Mr. Boothe made no attempt to find out why Mr. Burns wanted to see him.

By June 24, two days before his appeal time expired, Mr. Burns applied for union membership, in desperation to get the grievance process initiated. Under these circumstances, the application was not made freely, but in fear that, otherwise, the union would not process the grievance for him.

Facts relative to the failure to file a grievance

Whether Mr. Burns ever asked a union representative to file a grievance over his June 11 suspension is in dispute. Mr. Burns claims that he asked Mr. Harmon to do so for him, around June 24. Mr. Harmon denies this, although he recalls an earlier conversation with Mr. Burns about the matter of the suspension and the time running out on the appeal. Mr. Harmon was not representing

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6/ I reject the claim of Mr. Boothe that he always responded to those attempts about which his supervisor told him. In accordance with established Shipyard procedure, union representation is arranged through supervisors. Mr. Burns' supervisor testified to numerous times when Mr. Burns sought representation from Mr. Boothe. While Mr. Boothe's job takes him to various work sites and makes him somewhat difficult to locate, it is unlikely that established Shipyard procedures failed on numerous occasions.

Mr. Burns on the June 11 suspension, and thought Mr. Boothe was handling it for Mr. Burns. Mr. Harmon told Mr. Burns that Mr. Boothe was the person to represent him. The chief steward, Mr. Royster, also testified that Mr. Boothe was the steward assigned to represent Mr. Burns on the June 11 suspension, and that it was customary for the steward who started the case to continue it, as he had all the facts. Mr. Burns admitted it was "hard to recollect" exactly what had transpired almost seven months ago (Tr. 63); and the General Counsel now concedes the inaccuracy of Mr. Burns' recollection as to at least one occurrence, an April 17 meeting with Mr. Boothe. I cannot find that the General Counsel proved, by a preponderance of the evidence, that Mr. Burns did ask Mr. Harmon to file the grievance, or that Mr. Harmon had any responsibility to do so.

It is undisputed that Mr. Burns did not ask Mr. Boothe to file the grievance, although he made vain attempts to reach him, with this in mind. Mr. Boothe admits that on June 20 he learned of the decision suspending Mr. Burns for one day. Mr. Boothe claims that he thought the reduction of the suspension, to one day, was a satisfactory resolution of the matter. I do not credit this claim on the part of Mr. Boothe. He knew that the one-day suspension amounted to a second AWOL offense, and that Mr. Burns was facing a third AWOL defense. As an experienced steward, regarded as "outstanding" by Shipyard officials (Tr. 175), Mr. Boothe is charged with knowledge that the Shipyard could discharge Mr. Burns for a third AWOL offense. Mr. Boothe admits that, on June 20, Mr. Burns personally told him that he wanted to see him. Mr. Boothe is also charged with knowledge that his response to the June 20 request for help, to come see him at " C slab," was contrary to Shipyard procedure, and that doing so was particularly perilous for one in Mr. Burns' position, as he was already under fire for AWOL conduct. I find that Mr. Boothe must have realized that Mr. Burns wanted to see him about filing a grievance over the second AWOL decision, and deliberately played hard to get because it was union policy not to file grievances for non-union members.

Other credibility issues

There is dispute as to whether Mr. Boothe and Mr. Burns had a discussion at a snack bar, on the waterfront, around May 14, and whether Mr. Boothe told Mr. Burns, again, that "it would be better for him to join the union." (Tr. 99) Mr. Boothe denies that the meeting took place. Since Mr. Burns' testimony of the meeting is corroborated by that of another witness, who was present, I find that the meeting and conversation did take place.

Mr. Burns recalls telling Mr. Boothe, on June 20, that his appeal time was about to run out. Mr. Boothe denies this and is corroborated by the testimony of Mr. Harmon, who was present. I therefore do not find that Mr. Burns mentioned appeal time running out to Mr. Boothe.

At page 2 of its brief, Respondent urges a finding, that Mr. Burns lied to an attorney he was attempting to retain, to support its allegation that "Burns and the truth have only a passing acquaintanceship." Neither the finding nor the allegation is supported by the record. The attorney testified that Mr. Burns sought representation on an action he had against the union and also on his proposed removal from the Shipyard for various disciplinary allegations. The attorney explained to Mr. Burns that he could not work for Mr. Burns as he did work for the union and that "would be a conflict." (Tr. 193) Mr. Burns told the attorney that "he was in good standing with the union, that the matter had been settled, no difficulty." (Tr. 194) Mr. Burns filed his application for union membership on June 24, and at some point was represented by this attorney, apparently at the Shipyard hearing on the third charge filed against him. See page 77 of the transcript. On August 4 Mr. Burns filed this charge. On November 21 Mr. Burns thought he had become a member of Respondent. Mr. Burns was, in fact, voted into membership; but before his initiation period ended, he was removed from Shipyard employment, and thus lost eligibility to become a member. Just when Mr. Burns made his statement to the attorney about being in the union's good standing was not established. However, his statement most likely reflected his belief that this was so and would settle the matter, and was not meant to mislead the attorney. Also, a layman, such as Mr. Burns, probably did not understand the legal niceties of an attorney's conflicts of interest.

DISCUSSION AND CONCLUSIONS

It is undisputed that the Authority has jurisdiction of this matter, pursuant to Section 7118 of the Statute, which proscribes unfair labor practices by labor organizations and agencies of the Federal Government.

The preponderance of the evidence also establishes that Respondent has been engaging in unfair labor practices, in violation of Sections 7116(b)(1) and (8) of the Statute.

The Section 7116(b)(1) violation

Section 7116(b)(1) makes it an unfair labor practice to interfere with, restrain, or coerce Federal employees in the exercise of various rights including the right, set forth in Section 7102, "to refrain" from joining a labor organization, "freely and without fear of penalty or reprisal."

In this case, Douglas Burns finally applied for union membership out of justifiable fear that Respondent would not initiate a grievance for him, until he became a dues-paying member. The coercion applied by Respondent was indirect, but clear, when viewed in the light of the publicly-proclaimed and never-renounced policy of Respondent's leadership to give "the sorriest God-Damn

representation you ever had "to non-union members (Tr. 132). By telling Mr. Burns that he would be "better off," if he joined the union, the union stewards signaled to Mr. Burns that this is what he could expect. By Mr. Boothe's playing hard to get and providing a bare minimum of representation at the Shipyard hearing, the signal was amplified.

The Section 7116(b)(8) violation

Section 7116(b)(8) is violated when a labor organization fails to represent the interests of all employees in a bargaining unit without discrimination and without regard to labor organization membership, a duty imposed upon Respondent, as a labor organization granted exclusive representation rights, by Section 7114(a)(1) of the Statute.

This duty of fair representation did not originate with this Statute. In Vaca v. Sipes, 386 U.S. 171, 177 (1967), the Supreme Court summarizes this duty, as follows:

> The statutory duty of fair representation was developed over 20 years ago in a series of cases involving alleged racial discrimination by unions certified as exclusive bargaining representatives under the Railway Labor Act, see Steele v. Louisville & N. R. Co., 323 U.S. 192; Tunstall v. Brotherhood of Locomotive Firemen, 323 U.S. 210, and was soon extended to unions certified under the N.L.R.A., see Ford Motor Co. v. Huffman, supra. Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. Humphrey v. Moore, 375 U.S., at 342.

These standards have been applied to labor-management relations in the Federal sector, under Executive Order 11491, the precursor of the Statute, which imposed a duty upon a labor organization "for representing the interests of all employees in the unit without . . . regard to labor organization membership." See Section 10(c) of Executive Order 11491. Thus, in National Treasury Employees Union (NTEU), Chapter 202, et al, 1 FLRA No. 104 (1979), the Authority found a violation of the duty of fair representation committed by NTEU because of its policy of supplying national office attorneys to represent members, while supplying local stewards to represent non-members. The disparate treatment based solely upon union membership created the violation. The decision in NTEU has been

reaffirmed by the Authority in Federal Aviation Science and Technological Association Division, National Association of Government Employees, 2 FLRA No. 103 (1980).

The General Counsel argues that proof of arbitrary and perfunctory handling of a grievance, alone, is sufficient to establish a case of unfair representation and cites such cases as Ruzicka v. General Motors Corporation, 523 F.2d 306 (6th Cir. 1975) in support of its argument. In Ruzicka, the union neglected to take timely steps towards arbitrating a grievance and the Court held that it was not necessary, under Vaca, to show that this was done in bad faith. Id. at 309-310. This standard of representation is like that required in an attorney-client relationship and seems severe when applied to union stewards in their representational duties towards bargaining-unit employees.

In any event, it is not necessary to apply such a high standard here, for Mr. Boothe's representation was not only negligent and perfunctory, but was also performed in bad faith, because Mr. Burns was not a union member. Section 7114(a)(1) of the Statute makes this a bad-faith basis for representation. Mr. Boothe gave Mr. Burns a bare minimum of help and failed to use readily-available sources to prepare a defense for him. His failure to respond adequately to Mr. Burns' last call for help, on June 20, was particularly insensitive, as he must have known the importance of initiating a grievance to a second AWOL offense when a third such charge was pending that could lead to Mr. Burns losing his job. Requiring an employee in that peril to search him out, contrary to Shipyard policy and procedure, and thereby exposing him to yet another AWOL charge amounted to callous disregard of Mr. Burns' best interest. It was done in accord with the well-entrenched policy of the union leadership not to initiate grievances for non-union members.

Respondent argues that Mr. Burns could have filed the grievance himself, which is true, but irrelevant. The collective bargaining agreement accords an employee the right to union help in initiating a grievance. It is an important right, as it is only with union representation that arbitration becomes available. See Section 3 of Jt 1, at pages 89-90. Mr. Burns wanted the union's help and, indeed, did not even know that he could have initiated the grievance himself.

The remedy

The remedy in this case should be imposed upon the "Respondent," as named in the complaint. The Council leadership has advocated the policy of unequal representation, which coerces bargaining-unit employees into joining the union. The policy was sold by a representative of the Local. Neither the Council nor the Local have publicly denounced the policy. The stewards work for the Council; and some still practice the policy.

Notification that this policy has ceased must go out to all the employees covered by the collective bargaining agreement, even though the evidence in this case showed only that the policy was announced to and practiced on welders, who are in the jurisdiction of Local 441. Since the Council leadership advocated the policy, it would be taking a chance to assume that it was practiced only on employees in Local 441, and not on those in other affiliated locals.

Until a change in Respondent's policy and practice becomes well known, a further step needed is for Respondent to cease its solicitation-of-membership efforts directed expressly to employees seeking representation at disciplinary and adverse actions and the initiation of a grievance. Such solicitations must be made, if at all, only after the conclusion of these actions and grievance procedures. A one-year duration for such a cease and desist order should be sufficient to change Respondent's reputation for unfair representation, and to render solicitation, at the onset of representation, no longer threatening or coercive.

It should be clearly understood that nothing in the order to be here recommended will, in any manner, interfere with the conduct of general membership drives. It is recognized that Respondent should not be unduly restrained in seeking membership, in recognition of its problem in having to represent all members of the bargaining unit when only some contribute to its treasury. For a union with a reputation for dealing fairly with all bargaining-unit members, it is not unreasonable, or unfair, for it to solicit membership, directly, from those employees seeking to avail themselves of its services, and to point out to them such facts as the burdensome costs of grievance procedures and arbitration. The problem here is in first securing that kind of fair reputation for Respondent.

Any remedy for the charging party, Mr. Burns, personally, is difficult to devise, since he is no longer an employee of the Shipyard or in Respondent's bargaining unit. The General Counsel has not suggested any particular remedy, as to him, or established any facts to indicate what appropriate remedy might be available. While not required by the collective bargaining agreement to do so, the Shipyard might take into consideration the circumstances here and be willing to allow a late filing of a grievance for Mr. Burns and a correction of Mr. Burns' personnel file, if shown to be appropriate. A good-faith attempt, by Respondent, to secure permission for a late filing and correction of Mr. Burns' personnel file will be ordered.

ORDER

Pursuant to Section 7118(a)(7) of the Statute, it is ordered that the Tidewater Virginia Federal Employees Metal Trades Council and the International Association of Machinists, Local No. 441:

1. Cease and desist from:

(a) Denying full and fair representation to all employees on the basis of union membership.

(b) Interfering with, restraining or coercing any employee in the exercise of that employee's right to refrain from joining their membership, freely and without fear of penalty or reprisal.

(c) For a period of one year from the entry of a final order in this proceeding, soliciting membership from any employee being represented, until the representation is concluded.

2. To take the following affirmative actions:

(a) Post at offices of the Metal Trade Council and on all bulletin boards and places available for posting, copies of the Notice attached to this Decision as an appendix, and on forms to be supplied by the Authority. Upon receipt of such forms, an official of the Council and the Local shall sign them. They shall be posted for a period of one year from the date of the final order entered in this proceeding. Reasonable steps shall be taken to insure that the notices are not altered, defaced, or covered by any other material.

(b) In the next two general membership drives, include a prominant notice that fair and full representation is given to all members of the bargaining unit without regard to union membership.

(c) Request the Shipyard for permission to file a grievance on the June 11, 1980, suspension of Douglas Burns and for any correction of Mr. Burns' personnel file that becomes appropriate.

(d) Within 30 days of the final order entered in this matter, give written notification to the Authority of the steps taken to comply. Such notification should be addressed to the Regional Director, Federal Labor Relations Authority, Region III, 1133 15th Street, N.W., Suite 300, Washington, DC 20005.

Isabelle R. Cappello

ISABELLE R. CAPPELLO
Administrative Law Judge

Dated: February 3, 1981
Washington, D.C.

APPENDIX

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

WE HEREBY NOTIFY ALL EMPLOYEES THAT:

WE WILL give full and fair representation to all employees represented by us, without regard to union membership.

WE WILL NOT interfere with, restrain, or coerce any employee in the exercise of the right to refrain from joining our membership.

WE WILL NOT, for a period of one year, directly solicit membership from employees seeking representation, until our representation duties have reached their conclusion.

WE WILL request the Norfolk Naval Shipyard for permission to initiate a grievance on behalf of Douglas Burns over his June 11, 1980 suspension and for correction of his personnel file, if proved to be appropriate.

Tidewater Virginia Federal Employee
Metal Trades Council

International Association of Machinists,
Local No. 441

By: _____

_____

Dated: _____

This Notice must remain posted for 365 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director for the Federal Labor Relations Authority, whose address and telephone number are: 1133 15th Street, N.W., Suite 300, Washington, D.C. 20005, (202) 653-8452.