

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO,
LOCAL 76 . Respondent . . and . Case No. SF-CO-20475 .LYDIA C.

LUBNIEWSKI .AN INDIVIDUAL . . Charging Party .

Yolanda Shepherd Eckford, Esquire

For the General Counsel George Oberhart

For Respondent

Before: BURTON S. STERNBURG

Administrative Law Judge

DECISION

Statement of Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. Section 7101, et seq., and the Rules and Regulations issued thereunder.

Pursuant to an amended charge first filed on April 21, 1992, by Lydia C. Lubniewski, an individual, a Complaint and Notice of Hearing was issued by the Regional Director for the San Francisco Region, Federal Labor Relations Authority, San Francisco, California, on July 2, 1992. The Complaint alleges that the International Federation Of Professional and Technical Engineers, AFL- CIO, Local 76, (hereinafter called the Respondent or Union), violated Section 7116(b)(1) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute) by virtue of the actions of its president in telling a unit employee that if she did not withdraw a pending unfair labor practice charge against the Union "she should not ask him to help her with anything" in the future.

A hearing was held in the captioned matter on August 24, 1992, in San Francisco, California. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The General Counsel and the Respondent filed post-hearing briefs on September 28 and 23, 1992, respectively, which have been duly considered.

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact

The Union is the exclusive representative of a unit of employees appropriate for collective bargaining at the Naval Air Station Alameda, Alameda, California. At all times material Mr. George Oberhart was the President of the Union.

Ms. Lydia Lubniewski, the charging party, is an employee of the Naval Air Station Alameda and a member of the bargaining unit represented by the Union.

On March 4, 1992, Ms. Lubniewski filed an unfair labor practice charge against the Respondent alleging that Respondent had failed to represent her in connection with a grievance in violation of Respondent's duty of fair representation. The charge specifically named Mr. Oberhart as the party being responsible for the lack of representation.

Subsequent to the filing of the unfair labor practice charge against Respondent, Ms. Lubniewski and Mr. Oberhart held a telephone conversation wherein the unfair labor practice charge was discussed. Mr. Oberhart informed Ms. Lubniewski that he was required to fill out some paperwork in connection with the charge she had filed and inquired if she would be amenable to "take that charge off me". According to the credited testimony of Ms. Lubniewski, after she replied that she had lost two other cases with him, Mr. Oberhart became a little huffy and said, "All right. Then don't ever ask me to do anything for you again. The conversation then ended.

Mr. Oberhart admits having a telephone conversation with Ms. Lubniewski following the filing of the unfair labor practice charge wherein she allegedly asked him to help her fill out some papers in connection with the unfair labor practice charge. He told her to forget it and that she could "back off from this thing . . . and then you won't have to fill out the form." He also admits telling her in a conversation not to ask him to do her any favors. According to Mr. Oberhart when he made this last statement he was referring to favors that he "had done personally, not anything to do with the union, sitting in for this EEO meeting and other things that she had asked" him to do in the past.

Discussion and Conclusions

Having credited Ms. Lubniewski that, in response to her filing an unfair labor practice charge, Mr. Oberhart told her not to ever ask him to do anything for her again, the sole issue remaining to be resolved is whether Mr. Oberhart's statement infringed on Ms. Lubniewski's rights in violation of Section 7116(b)(1) of the Statute.

It is well established that an employee has a right to file an unfair labor practice charge and that interference with such right by a union violates Section 7116(b)(1) of the Statute, American Federation of Government Employees, AFL-CIO, 29 FLRA 1359, 1363.

Here we have the Local Union President, Mr. Oberhart, informing a unit employee that if she did not withdraw a pending unfair labor practice charge against the Union that she should never ask him to do anything for her again. This latter statement interferes with Ms. Lubniewski's rights since it is tantamount to informing her that unless she withdraws the unfair labor practice charge she will not be able to utilize the Union's services in the future.

Accordingly, I find that Mr. Oberhart's statement would tend to discourage Ms. Lubniewski as well as other

unit employees from utilizing their rights to file unfair labor practice charges against the Union. In such circumstances, I further find that the Respondent's statement was violative of Section 7116(b)(1) of the Statute.

Having found that the Respondent violated Section 7116(b)(1) of the Statute, it is hereby recommended that the Federal Labor Relations Authority issue the following Order.

ORDER

Pursuant to Section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and Section 7118 of the Federal Service Labor-Management Relations Statute, the Authority hereby orders that the International Federation of Professional and Technical Engineers, AFL-CIO, Local 76, shall:

1. Cease and desist from:

(a) Threatening Lydia Lubniewski, or any other employee, with the loss of representation for filing an unfair labor practice charge under the Federal Service Labor-Management Relations Statute.

(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 purpose and policies of the Federal Service Labor-Management Relations Statute.

(a) Post at its business office and normal meeting places, including all places where notices to member and non-members are customarily posted, 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 President of Local 76, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members and other 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 of the San Francisco Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, December 21, 1992

BURTON S. STERNBURG

Administrative Law Judge

NOTICE TO ALL MEMBERS AND OTHER EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR MEMBERS AND OTHER EMPLOYEES THAT:

WE WILL NOT threaten Lydia Lubniewski, or any other employee, with loss on representation for filing an unfair labor practice charge under the Federal Service Labor-Management Relations Statute

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

International Federation of
Professional and Technical

Engineers, AFL-CIO, Local 76

Dated: _____ By: _____

George Oberhart, President

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 San Francisco Region, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 220, San Francisco, California 94103, and whose telephone is: (415) 744-4000.

Dated: December 21, 1992

Washington, DC