

AT-50742

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Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF THE ARMY HQS, XVIII AIRBORNE CORPS AND  
FORT BRAGG FORT BRAGG, NORTH CAROLINA

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1770  
Charging Party/Union

Case Nos.

AT-CA-50742

AT-CA-50868

Michael T. Rudisill

Counsel for the Respondent

Ronald R. Katt

Representative of the Charging Party

Hazel E. Hanley

Counsel for the General Counsel, FLRA

Before: GARVIN LEE OLIVER

Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that Respondent, by Supervisor Harry V. Batton and Management-Employee Relations Specialist Pamela Foster, made statements, on or about May 23, May 31, or June 14, 1995, to a bargaining unit employee, the Union President, which violated section 7116(a)(1) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1). Respondent's answer denied the alleged statements and any violation of the Statute.

A hearing was held in Fayetteville, North Carolina. The parties were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. The Respondent and the General Counsel filed helpful briefs.

For the reasons set forth below, it is concluded that a preponderance of the evidence establishes that Respondent violated section 7116(a)(1) of the Statute, as alleged.

The General Counsel presented the testimony of Truman E. Bullard, President of the Union, and Ronald Katt, Executive Vice President of the Union, who testified as to the alleged statements of Supervisor Harry V. Batton on or about May 23, 1995 and May 31, 1995 and alleged statements of Pamela Foster, Management-Employee Relations Specialist on or about June 14, 1995. According to Bullard and Katt, the statements were made

during telephone conversations by Batton and Foster with Bullard and were heard by both Bullard and Katt on a speaker phone while Katt took contemporaneous notes.

With regard to Supervisor Batton's alleged statements, the Respondent did not call Mr. Batton as a witness, but presented the testimony of Roderick A. Chisholm, Batton's second level supervisor, and Cleatus J. Cox, Batton's first line supervisor, who testified that they knew nothing of the alleged threats made by Batton to Bullard and, if such threats were in fact made, Batton was not acting on behalf of the Respondent.

With regard to Ms. Foster's alleged statements, the Respondent presented the testimony of Ms. Foster who denied

making the violative statements during telephone conversations she had during the relevant time with Mr. Bullard and Mr. Katt to settle an unfair labor practice charge. Ms. Foster, a former Union steward, testified that she ran against Mr. Bullard for the presidency of the Union in 1993, and since then has, at times, been treated in a hostile fashion by Mr. Katt. She testified that she has been accused of being a turncoat in some Union literature since she took the job with Civilian Personnel.

Based on the entire record<sup>(1)</sup>, including my observation of the witnesses and their demeanor and the extensive arguments of counsel concerning the credibility of the witnesses, I have credited the testimony of Mr. Bullard and Mr. Katt in making the following findings as to the material facts. I found the testimony of Mr. Bullard, who was shown to be somewhat of a reluctant participant in pursuing the unfair labor charges, to be particularly sincere and straightforward.

#### FINDINGS OF FACT

##### The May 23, 1995 Telephone Call

On May 23, 1995, Harry V. Batton, Supervisor of the U-DO-IT Center in Respondent's Directorate of Public Works and Environment, telephoned Truman E. Bullard, the President of the Union and a bargaining unit employee under Batton's supervision. Batton had been the President of the Union prior to becoming a supervisor in 1993 and Bullard had been the Union Executive Vice President at the time. They were friends.

Bullard received Batton's call on a speaker phone in the Union office. Ronald Katt, Executive Vice President of the Union, listened in and made contemporaneous notes of highlights of the conversation.

Batton expressed his concern that the Directorate of Contracting had held a formal meeting announcing that the alternate work schedule (AWS) for certain employees would be discontinued. This action affected Batton's wife, Ann, and the couple's continued ability to commute to work together. Batton directed Bullard to file unfair labor practices (ULPs) over the Agency's holding of what he alleged was a formal discussion and failure to notify the Union. Batton said, "You better make sure Ann doesn't lose her AWS. I will be forced to take action. You better take care of it. I'm warning you. I'm your supervisor and things could get tough all around."

The May 31, 1995 Telephone Call

Mr. Batton telephoned Mr. Bullard at the Union office again on May 31, 1995. Once more Mr. Katt listened to their conversation on the speaker phone and took notes.

Batton discussed his own efforts to look into his wife's AWS situation and told Bullard that he wanted "ULPs filed by the end of the week if the Agency doesn't back off. The Union better be plastering the Agency's attempt to stop AWS all over the newspapers." Batton said that Bullard was always a wimp, scared of management, and if he didn't do what he had been told, all hell would break loose and Bullard knew what that meant.

Bullard interpreted Batton's comments about "things getting tough" and "all hell breaking loose" to refer to what would happen to him if he did not see that Batton's wife's AWS was not discontinued, rather than to the transportation problems Batton and his wife might have if her AWS were stopped. Supervisor Batton had made it clear when Bullard took over as Union President "what he could do to me in respect to official time . . . and all those little things that you can do to heat up and take away from the person's ability to accomplish work."

The June 14, 1995 Telephone Call

On June 14, 1995, Pamela Foster, Management-Employee Relations Specialist, telephoned Truman Bullard at the Union office. Mr. Katt listened in and took some notes of their conversation which he heard over

Mr. Bullard's speaker phone.

Ms. Foster, in an attempt to have Mr. Bullard withdraw the pending unfair labor practice charge involving Supervisor Batton, told Bullard that she would tell Supervisor Batton that Bullard, in discussing a reduction of supervisors in the organization with the Deputy Director, had recommended that Batton not be demoted until after the Union elections so that Batton could not run for Union office. When Bullard replied that this was not true, Ms. Foster stated that she would tell Batton that anyway, and he would believe it, because he already believed management was out to get him as the former Union president who won his supervisory position through an equal employment opportunity complaint. Foster also told Bullard that she would tell Batton that the Union was not negotiating well for his wife in the alternate work schedule situation and, since the negotiations were dragging out, Batton would believe it and come after him.

#### Discussion and Conclusions

The issue to be determined is whether Respondent, by the statements of Supervisor Batton and Management-Employee Relations Specialist Foster to Union President Bullard, violated section 7116(a)(1) of the Statute by interfering with the exercise of rights protected by the Statute.

Section 7102 of the Statute protects each employee in the exercise of the right to form, join, or assist a labor organization, including the right to act as a labor organization representative, or to refrain from any such activity, without fear of penalty or reprisal. Section 7116(a)(1) provides that it is an unfair labor practice for an agency to interfere with, restrain, or coerce any employee in the exercise by the employee of such right.

The Authority has held that the standard for determining whether management's statement or conduct violates section 7116(a)(1) of the Statute is an objective one. The question is whether, under the circumstances, the statement or conduct would tend to coerce or intimidate the employee, or whether the employee could reasonably have drawn a coercive inference from the statement. Although the circumstances surrounding the making of the statement are taken into consideration, the standard is not based on the subjective perceptions of the employee or the intent of the employer. U.S. Department of Agriculture, U.S. Forest Service, Frenchburg Job Corps, Mariba, Kentucky, 49 FLRA 1020, 1034 (1994).

As set forth in detail above, the record reflects that Supervisor Batton contacted Union President and unit employee Bullard on May 23 and 31, 1995 to have him file ULPs and issue press releases against the Agency in an effort to stop the Agency from changing the alternate work schedule affecting Batton's wife. Supervisor Batton told Bullard on these occasions that he had better take care of it -- " I'm warning you. I'm your supervisor and things could get tough all around," -- and, if he didn't do what he had been told, "all hell would break loose" and Bullard knew what that meant.

These statements, coming from a supervisor who referred to his supervisory status in making such threats, would tend to coerce or intimidate the employee from exercising the right afforded him by the Statute to act for a labor organization in the capacity of a representative free of agency control or assistance. See 5 U.S.C. §§ 7102(1), 7103(a)(4)(C), 7114(a)(1), 7116(a)(1), and 7116(a)(3). The employee could reasonably conclude that Batton would use his power as a supervisor to adversely affect his official time or other conditions of employment if Bullard did not present the views of the Union as he was told.

The Respondent contends that Batton was wearing the hat of an angry spouse rather than that of a supervisor, and Bullard could not reasonably have drawn a coercive inference from Batton's statements. I agree that, under the circumstances, Union President Bullard could not have reasonably concluded that Batton was acting for the Respondent when he directed Bullard to file ULPs and issue press releases in an effort to stop Respondent from terminating the alternate work schedule that affected his wife. However, when Batton threatened to use his authority as a supervisor if Bullard did not carry out those directions, Bullard could reasonably have drawn a coercive inference from the statements. Bullard knew that Batton possessed the power to adversely affect both Bullard's effectiveness as a Union representative and as an employee if he did not carry out his supervisor's commands. In this respect, Respondent is bound by the acts of its agent. U.S. Department of Health and Human Services, Social Security Administration and Social Security Administration, Field Operations, Region II, 38 FLRA 193, 197 (1990) (holding agency bound by the acts of its agent and citing Cf. Great Lakes Program Service Center Social Security Administration, Department of Health and Human Services, Chicago, Illinois, 9 FLRA 499, 508 (1980) (under appropriate circumstances, an agent may, through the exercise of apparent authority, assume the responsibility and liability of the principle). Accordingly, Respondent, by Supervisor Batton, violated section 7116(a)(1) of the Statute, as alleged.

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With regard to Management-Employee Relations Specialist Pamela Foster's statements to Union President Bullard on June 14, 1995, I also agree with the General Counsel that these violated section 7116(a)(1) of the Statute as alleged. Foster threatened to tell Supervisor Batton that Bullard, in discussing the reduction of supervisors with management, had recommended that Batton not be demoted until after the Union elections, so he could not run again for Union office, and to also tell Batton that Bullard was not negotiating well for Batton's wife in the alternate work schedule situation. These threats were designed to have Bullard withdraw an unfair labor practice charge by causing him to fear Supervisor Batton's wrath with probable consequences to his [Bullard's] working conditions.

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order to effectuate the purposes of the Statute, consistent with Authority orders to date in similar situations<sup>(2)</sup>

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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 Department of the Army, Headquarters, XVIII Airborne Corps and Fort Bragg, North Carolina shall:

1. Cease and desist from:

(a) Threatening unit employee representatives of the American Federation of Government Employees, Local 1770 (the Union), the exclusive representative of certain of its employees, with adverse consequences should they not take certain bargaining positions with the Agency.

(b) Telling unit employee representatives of the Union that if they do not withdraw pending unfair labor practice charges against the Agency then the employee/representatives' supervisors will be told of matters which would tend to prejudice the supervisors against the representatives.

(c) In any like or related manner making statements to employees which interfere with, coerce, or discourage any employee from exercising the rights accorded by the Statute to act for a labor organization in the capacity of a representative, freely and without fear of penalty or reprisal, and to file and pursue unfair labor practice charges.

(d) In any like or related manner interfering with, restraining or coercing its 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) Post at its facilities at Fort Bragg, North Carolina, 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.

(b) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Denver Region, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, August 8, 1996

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GARVIN LEE OLIVER

Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of the Army, Headquarters, XVIII Airborne Corps and Fort Bragg, Fort Bragg, North Carolina violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

We hereby notify our employees that:

WE WILL NOT threaten unit employee representatives of the American Federation of Government Employees, Local 1770 (the Union), the exclusive representative of certain of our employees, with adverse consequences should they not take certain bargaining positions with the Agency.

WE WILL NOT tell unit employee representatives of the Union that if they do not withdraw pending unfair labor practice charges against the Agency then the employee/representatives' supervisors will be told of matters which would tend to prejudice the supervisors against the representatives.

WE WILL NOT in any like or related manner make statements to employees which interfere with, coerce, or discourage any employee from exercising the rights accorded by the Statute to act for a labor organization in the capacity of a representative, freely and without fear of penalty or reprisal, and to file and pursue unfair labor practice charges.

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

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(Activity)

Date: \_\_\_\_\_ 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, Denver Region whose address is: 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204, and whose telephone number is: (303) 844-5224.



1. Counsel for the General Counsel's unopposed motion to correct the transcript is granted; the transcript is corrected as set forth therein with the addition, at page 127, line 19, that the words "placed on the record" are corrected to read "placed in the mail." Counsel for the General Counsel's motion to strike Respondent's brief as untimely filed is denied. As also reflected in the transcript of the other case involving the same parties heard that day (AT-CA-50913), briefs were to "be placed in the mail on or before June 3rd, 1996." The certificate of service on Respondent's brief reflects that this was done. G.C. Ex. 6, which was offered and referred to during the hearing, is received, as requested by Counsel for the General Counsel.
  
2. Counsel for the General Counsel recommends that Batton and Foster be ordered to receive training in the Statute through an entity other than the Department of the Army and its agencies, that the Official Personnel Folders of Batton and Foster be annotated to reflect the fact that their training was completed to remedy their violations of the Statute, that two notices to employees be posted setting forth separately the names of Batton and Foster and their corresponding violations of the Statute, and that the Post Commander of Fort Bragg sign both such postings with his original signature. There is no evidence of a pattern of the violative conduct at the Respondent, and Counsel has not directed my attention to any decision where the Authority has concluded that the purposes of the Statute would be enhanced by such an order and notice in similar situations. However, the law in this area is not static and in United States Department of Justice, Immigration and Naturalization Service, 51 FLRA 914, 916 (1996), the Authority recently found that the purposes of a notice to bargaining unit employees would be enhanced by changing the customary notice and explicitly stating that the Authority found the Respondent to have violated the Statute.