

Office of Administrative Law Judges

OALJ 00-35

WASHINGTON, D.C.

U.S. NAVAL SPACE COMMAND

Case No. WA-CA-00071

DAHLGREN, VIRGINIA

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT

EMPLOYEES, LOCAL 2096

Charging Party

Lisa Belasco, Esquire

For the General Counsel

Before: JESSE ETELSON

Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On February 28, 2000, the General Counsel of the Federal Labor Relations Authority (the Authority), by the Regional Director of the Washington Regional Office, issued and served on a representative of the Respondent a Complaint and Notice of Hearing. This document also advised the Respondent that it must file an Answer to the complaint by March 27, 2000. It further stated that, "[i]f the Respondent does not file an answer, the Authority will find that the Respondent has admitted each allegation. 5 C.F.R. § 2423.20(b)."

Respondent has not filed an Answer. On April 10, 2000, during a settlement conference call held under the auspices of this office, and again on April 11 during a telephone call between Counsel for the General Counsel and the individual who participated in these calls on behalf of the Respondent, its failure to answer was called to that individual's attention. On April 20, 2000, Counsel for the General Counsel filed and served on Respondent, by certified mail, a Motion for Summary Judgment based on Respondent's failure to file an answer.

On April 27, 2000, I commenced a previously scheduled prehearing conference call, in which Counsel for the General Counsel and a representative of the Charging Party participated. No representative of the Respondent joined the call.

The Respondent has neither responded to the motion for summary judgment nor requested an extension of time to make such a response, which was due, pursuant to section 2423.27(b) of the Authority Rules and Regulations (5 C.F.R. § 2423.27(b)), within 5 days of service of the motion.

Respondent's failure to answer the complaint or to respond to the motion for summary judgment require that the allegations of the complaint be deemed to be admitted. *U.S. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhode Island*, 49 FLRA 33, 36, 40-41 (1994). Therefore, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The Charging Party (the Union) is a labor organization as defined in section 7103(a)(4) of the Federal Service Labor-Management Relations Statute (the Statute) and is the exclusive representative of a bargaining unit of employees appropriate for collective bargaining with the U.S. Naval Space Surveillance System. The U.S. Naval Space Command, the Respondent in this case, is an activity and/or component of the U.S. Naval Space Surveillance System, which in turn is an activity and/or component of the U.S. Department of Defense, an agency as defined in section 7103(a)(3) of the Statute. The bargaining unit described above includes employees of the Respondent.

Patrick Kearns is an employee as defined in section 7103(a)(2) of the Statute and is employed in the bargaining unit. On or about October 25, 1999, Wendolyn S. Brown, a supervisor and/or management official under sections 7103(a)(10) and (11) of the Statute, met, as a representative and acting on behalf of the Respondent, with employee Kearns. At this meeting, Brown questioned Kearns about an incident that had occurred on or about October 6, 1999, where Kearns had met in the parking lot with the employee coming on shift to replace him.

It was reasonable for Kearns to believe that disciplinary action could result from Brown's questioning. During the meeting, Kearns requested a union representative. Brown denied Kearns' request. After refusing Kearns' request for union representation, Brown questioned Kearns concerning the October 6 incident.

Conclusions of Law

Brown's questioning of Kearns constituted an "examination of an employee in the unit by a representative of the agency in connection with an investigation" within the meaning of section 7114(a)(2)(B) of the Statute. The employee having reasonably believed that the examination might result in disciplinary action against him, and having requested union representation, the Union was required to have been given the opportunity to be

represented at the examination.⁽¹⁾

Th facts set forth above, therefore, establish that the Respondent failed to comply with section 7114(a)(2)(B) and thereby violated sections 7116(a)(1) and (8) of the Statute. Accordingly, I recommend that the Authority issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the U.S. Naval Space Command, Dahlgren, Virginia, shall:

1. Cease and desist from:

(a) Requiring any bargaining unit employee to take part in any examination by its representative in connection with an investigation, without union representation, when the employee has requested such representation and reasonably believes that the examination may result in disciplinary action against him or her.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Post at its facilities where bargaining unit employees represented by the American Federation of Government Employees, Local 2096 are located, 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 Commanding Officer, U.S. Naval Space Command, 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(b) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Washington Regional Office, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, May 22, 2000.

JESSE ETELSON

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 U.S. Naval Space Command, Dahlgren, Virginia, 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 require any bargaining unit employee to take part in any examination by its representative in connection with an investigation, without union representation, when the employee has requested such representation and reasonably believes that the examination may result in disciplinary action against him/her.

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.

(Respondent/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 its provisions, they may communicate directly with the Regional Director, Washington Regional Office, Federal Labor Relations Authority, whose address is: 800 "K" Street, NW., Suite 910, Washington, DC 20001, and whose telephone number is: (202)482-6700.

1. In this context, I conclude that the admitted factual allegation that "[i]t was reasonable for Kearns to believe that disciplinary action could result from the questioning" is sufficient basis from which to infer that, as stated in section 7114(a)(1)(B)(i), "the employee reasonably believe[d] that the examination [might] result in disciplinary action against the employee[.]"