

Office of Administrative Law Judges

WASHINGTON, D.C.

DEPARTMENT OF JUSTICE U.S. IMMIGRATION AND
NATURALIZATION SERVICE, U.S. BORDER PATROL EL PASO, TEXAS
Respondent and AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1929 Charging Party

Case Nos.
DA-CA-01-0144
DA-CA-01-0160

Philip T. Roberts For the General Counsel Before: GARVIN LEE OLIVER Administrative Law
Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On March 29, 2001, the Regional Director of the Dallas Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing which was duly served by certified mail on a designated representative of the Respondent. The Complaint alleged that the Respondent violated section 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1) and (8), by failing to furnish to the American Federation of Government Employees, Local 1929, with information requested under section 7114(b)(4) of the Statute. A hearing was scheduled for July 31, 2001.

The Complaint specifically advised the Respondent that an answer must be filed with this Office by April 23, 2001 and that "a failure to file an answer or respond to any allegation in this complaint shall constitute an admission. See 5 C.F.R. § 2423.60(b)." The Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter. Accordingly, the Respondent has admitted all allegations of the complaint. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996).

On June 27, 2001 Counsel for the General Counsel filed a Motion for Summary Judgment and requested an appropriate remedy requiring the Respondent to promptly furnish the requested information and post a Notice to All Employees. Respondent failed to file a response to the motion for summary judgement within the time period provided for in the Regulations, 5 C.F.R. § 2423.27(b) and 2429.22, or at any time to date.

Based on the allegations of the Complaint, the admissions by operation of section 2423.20(b) of the Authority's Rules and Regulations, and all the pleadings, it appears that there are no genuine issues of material fact and that the General Counsel is entitled to Summary Judgment as a matter of law. Accordingly, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

1. This unfair labor practice complaint and notice of hearing is issued under 5 U.S.C. §§ 7101-7135 and 5 C.F.R. Chapter XIV.

- These cases are consolidated under 5 C.F.R. § 2429.2

because it is necessary to effectuate the purposes of 5 U.S.C. §§ 7101-7135 and to avoid unnecessary costs or delay.

3. The Department of Justice, U.S. Immigration and

Naturalization Service, (INS), U.S. Border Patrol, El Paso, Texas, (Respondent), is an agency under 5 U.S.C. § 7103(a)(3).

4. The American Federation of Government Employees,

AFL-CIO, National Immigration and Naturalization Service Council (AFGE), is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at INS.

5. The American Federation of Government Employees,

Local 1929 (Local 1929 or Charging Party), is an agent of AFGE for the purpose of representing employees at the Respondent within the unit described in paragraph 4.

6. The charges in Case Nos. DA-CA-01-0144 and DA-CA-01-

0160 were filed by the Charging Party with the Dallas Regional Director on November 3, 2000, and November 8, 2000, respectively.

- Copies of the charges described in paragraph 6 were served on Respondent.

• During the time period covered by this complaint, the persons listed below occupied the positions opposite their names:

Michael Moon Assistant Chief Patrol Agent

Steve Niblet Assistant Chief Patrol Agent

- During the time period covered by this complaint,

the persons named in paragraph 8 were supervisors and/or management officials under 5 U.S.C. §§ 7103(a)(10) and (11) at Respondent.

10. During the time period covered by this complaint, the persons named in paragraph 8 were acting on behalf of Respondent.

11. Hugo Calvillo is an employee under 5 U.S.C. § 7103(a)(2) and is in the bargaining unit described in paragraph 4.

12. George Valdez is an employee under 5 U.S.C. § 7103(a)(2) and is in the bargaining unit described in paragraph 4.

13. On or about September 6, 2000, the Charging Party, through John Derrah, Second Vice President, requested Respondent to furnish the following information:

a. All pertinent sections and subsections of the Agency's Administrative Manual, the Border Patrol Handbook, the Officer's Handbook M-68, and/or any other policy, government-wide rule or regulation, schedule of disciplinary action or law governing the alleged misconduct of Calvillo;

b. Similar case information from within the Central Region from three years prior to the date of Calvillo's instant offenses; and

c. Calvillo's Employee Performance File, Official Personnel Folder, position description and classification standards, which were in effect at the time of the incident and the present date.

14. On or about August 30, 2000, the Charging Party, through Derrah, requested Respondent to furnish similar case information from within the Central Region from three years prior to the date of Valdez's instant offenses.

15. The information described in paragraphs 13 and 14 is normally maintained by Respondent in the normal course of business.

16. The information described in paragraphs 13 and 14 is reasonably available.

17. The information described in paragraphs 13 and 14 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining.

18. The information described in paragraphs 13 and 14 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

19. The information described in paragraphs 13 and 14 is not prohibited from disclosure by law.

20. On or about October 4, 2000, Respondent, through Moon, denied the Charging Party's request for information described in paragraphs 13, and 15 through 19.

21. Since October 4, 2000, Respondent refused to furnish the Charging Party with the information described in paragraphs 13 and 15 through 19.
22. On or about September 1, 2000, Respondent, through Niblet, denied the Charging Party's request for information described in paragraphs 14 through 19.
23. Since September 1, 2000, Respondent refused to furnish the Charging Party with the information described in paragraphs 14 through 19.
24. By the conduct described in paragraphs 20 and 21, Respondent refused to comply with 5 U.S.C. § 7114(b)(4).
25. By the conduct described in paragraphs 22 and 23, Respondent refused to comply with 5 U.S.C. § 7114(b)(4).
26. By the conduct described in paragraphs 20 and 21 and 24, Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1), (5).
27. By the conduct described in paragraphs 20, 21, and 24, Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (8).
28. By the conduct described in paragraphs 22 and 23 and 25, Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1), (5).
29. By the conduct described in paragraphs 22 and 23 and 25, Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (8).

Discussion and Conclusions

Based on the admitted material facts by operation of section 2423.20(b) of the Authority's Rules and Regulations, it is concluded that the Respondent violated section 7116(a)(1), (5), and (8) of the Statute, as alleged. The proposed remedy would effectuate the purposes and policies of the Statute.

Based on the above findings and conclusions, it is recommended 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 Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol, El Paso, Texas, shall:

1. Cease and desist from: (a) Failing to provide the American Federation of

Government Employees, Local 1929, with the information requested by the Union on August 30, 2000 and September 6, 2000.

- (b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the

exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the American Federation of

Government Employees, Local 1929, with the information requested on August 30, 2000 and September 6, 2000 consisting of: (1) all pertinent sections and subsections of the Agency's Administrative Manual, the Border Patrol Handbook, the Officer's Handbook M-68, and/or any other policy, government-wide rule or regulation, schedule of disciplinary action or law governing the alleged misconduct of the employees involved in this case; (2) similar case information from within the Central Region from three years prior to the date of the employees' alleged offenses; and (3) the employees' Performance File, Official Personnel Folder, position description and classification standards, which were in effect at the time of the alleged misconduct and at present.

(b) Post at the Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol, El Paso, Texas, where bargaining unit employees represented by the American Federation of Government Employees, Local 1929 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 Chief Patrol Agent, El Paso Sector, and they 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.

(c) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Chicago 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.

Issued, Washington, DC, July 17, 2001.

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 Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol, El Paso, Texas, 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 fail to provide the American Federation of Government Employees, Local 1929, with the information requested for representational purposes on August 30, 2000 and September 6, 2000.

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.

WE WILL, furnish the American Federation of Government Employees, Local 1929, with the information it requested on August 30, 2000 and September 6, 2000 consisting of: (1) all pertinent sections and subsections of the Agency's Administrative Manual, the Border Patrol Handbook, the Officer's Handbook M-68, and/or any other policy, government-wide rule or regulation, schedule of disciplinary action or law governing the alleged misconduct of the employees involved in this case; (2) similar case information from within the Central Region from three years prior to the date of the employees' alleged offenses; and (3) the employees' Performance File, Official Personnel Folder, position description and classification standards, which were in effect at the time of the alleged misconduct and at present.

(Respondent/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 any of its provisions, they may communicate directly with the Regional Director, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 55 West Monroe, Suite 1150, Chicago, IL 60603, and whose telephone number is: (312)353-6306.