



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

OALJ 14-12

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL PRISON CAMP
ALDERSON, WEST VIRGINIA

RESPONDENT

AND

COUNCIL OF PRISONS LOCALS 33, AMERICAN
FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO

CHARGING PARTY

Case No. WA-CA-11-0226

June M. Marshall
For the General Counsel

Robert Dodson
For the Respondent

Tre Sheppard
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

Tre Sheppard, a bargaining unit employee and Union president, was working in the prison's control center on the night of December 22, 2010,¹ when he was approached by Facilities Manager Joel Lewis. Sheppard had recently applied for a vacant position as a pipefitter in Lewis's department; Sheppard had also recently been told by the Warden that his name was not on the Best Qualified (BQ) list for the position; and Lewis had just interviewed the only candidate on the BQ list. Sheppard expressed some frustration to Lewis about his inability to obtain a position in the Facilities Department. A discussion then ensued between

¹ Unless otherwise noted, all dates refer to 2010.

the two men. According to Sheppard, Lewis confirmed to him that as long as Sheppard was president of the Union, he would never have a job in Lewis's department. According to Lewis, he never said anything of the sort to Sheppard, but rather he encouraged Sheppard to keep trying.

If Sheppard's account of the conversation of December 22 is accurate, then the Agency, through Lewis, unlawfully threatened Sheppard for exercising his right to engage in Union activity. But if Lewis's account of the conversation is accurate, no unfair labor practice was committed. Because I find Lewis's account more credible, I will recommend that the Complaint in this case be dismissed.

STATEMENT OF THE CASE

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ 7101 *et seq.* (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (the Authority), 5 C.F.R. part 2423.

The case was initiated on March 7, 2011, when the Council of Prisons Locals 33, American Federation of Government Employees, AFL-CIO (the Union or Charging Party) filed an unfair labor practice charge against the U.S. Department of Justice, Federal Bureau of Prisons, Federal Prison Camp, Alderson, West Virginia (the Agency or Respondent). After investigating the charge, the Regional Director of the Washington Region of the Authority, on behalf of the Authority's General Counsel (GC), issued a Complaint and Notice of Hearing on August 1, 2011, alleging that the Respondent had interfered with, restrained and coerced employees in the exercise of their section 7102 rights by telling employee Tre Sheppard that because of his union activities, Sheppard would never be considered for a position in the Facilities Department. The Respondent filed its Answer to the Complaint on August 29, 2011, denying that it had made a coercive statement or otherwise committed an unfair labor practice.

A hearing was held in this matter on October 11, 2011, in Alderson, West Virginia. All parties were represented and afforded the opportunity to be heard, to introduce evidence, and to examine witnesses. The General Counsel and Respondent filed timely post-hearing briefs, which I have fully considered.

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

FINDINGS OF FACT

The Respondent is an agency within the meaning of section 7103(a)(3) of the Statute. GC Ex. 1(b), 1(c). The Charging Party is a labor organization within the meaning of section 7103(a)(4) of the Statute and is the exclusive representative of a unit of the Respondent's employees at the Federal Prison Camp, Alderson. GC Ex. 1(b), 1(c).

Tre Sheppard has worked at the Alderson prison camp, first as a Correctional Officer and then as a Senior Officer Specialist, since February 2004. Tr. 12-15. He primarily works in the prison's control center, which is generally described as "the heartbeat of the institution." Tr. 14. It is where the keys and radios are kept and where all radio traffic and the movement of inmates and staff in and out of the compound are monitored. *Id.* He has also served as President of Local 1494 of the Union for several years. Tr. 15. He has prior work experience as a welder, but little or no experience as a pipefitter. Tr. 33, 41.

Joel Lewis has been the manager of the Facilities Department at Alderson since 2002. Tr. 65. The department has a staff of eighteen, including two supervisors, and it is responsible for the maintenance and repair of the entire prison facility. Tr. 40, 74. Another employee in the Facilities Department, Kent Gilkerson, had been President of Local 1494 in approximately 2004, when Lewis hired him for a position in the department. Tr. 35, 75. Sheppard's father had also worked for many years in the Facilities Department with Lewis and had only recently retired. Tr. 46-47, 49. Over the past twenty years or so, the department had lost about ten positions through attrition, and nobody with pipefitter qualifications had worked in the department for many years. Tr. 84. When a vacancy arose and Lewis was allowed to fill it in late 2010, he wanted it posted as a pipefitter position, rather than as a welding or general maintenance position. Tr. 74, 84-85. Even though the pipefitter position, as filled, was at a higher grade than the welder or maintenance position, some employees (including Sheppard) opposed posting the position as a pipefitter. Tr. 20, 43-44, 57, 74, 87.

According to Sheppard, he was working on the 4:00 p.m. to midnight shift in the control center on December 22, when Lewis walked up to the window. Upon seeing Sheppard, Lewis "started smiling and began kind of chuckling, laughing, you know[.]" Tr. 16. "I asked him what was wrong, 'Well, we just interviewed the candidate for the pipefitter position today.'" *Id.* Sheppard took Lewis's keys and radio, to let him pass through the control center, and Sheppard testified that when he turned back to Lewis:

I guess he [Lewis] could tell I didn't like what he said, and he said, "What's wrong?" And I said, "I don't appreciate you coming up here in the window in front of me acting like you are." And I told him, I said, "I know how you all work, or I know how this works, and I feel as long as I'm the union president I'll never have a job in your department." And I handed him his chips and he said, "Well, you finally figured it out; you got one right," and he turned around and walked off.

Tr. 17. Afterward, Sheppard discussed the incident with some other Union officials, and he decided to send an email about it to the Warden. Tr. 20-21. That email, sent on December 28, in part stated:

I am curious as to why Mr. Lewis feels the need to stop by control laughing with a big smile on his face telling me that he and the AW [associate warden] interviewed the Best Qualified Pipe Fitter and they were going to hire him. I told Mr. Lewis that I didn't appreciate this nor did I want to hear it. I told him

that I applied for the job and evidently was not among the best qualified, and this is exactly what he wanted. He has made several comments to staff that he didn't want me (the union president or another Calvin Sheppard my father) in his department.² I told him that several of his facilities employees as well as myself didn't agree with his decision to hire a pipefitter. I also told him I had been told why he had done this which was to keep me out of his department (welding shop) due to me being a certified welder. I also told him that I had figured out that as long as he was the facilities manager that I would not be working in his department AND HE SAID YES YOUR [sic] PROBABLY RIGHT What does this sound like to you Warden. I'll tell you exactly what it is it's reprisal and retaliation towards me and for what I do not know. . . .

GC Ex. 3 (emphasis in original).

According to Sheppard, he had applied, unsuccessfully, for several previous positions in Facilities. Tr. 28. On most occasions, he had been placed on the BQ list but not selected, whereas on this occasion, he did not even make the BQ list. Tr. 28-34. Sheppard understood that applications for such vacancies are processed at the Agency's personnel headquarters in Grand Prairie, Texas, which determines the composition of the BQ list and sends that list to Alderson, where the actual interviewing and selection take place. Tr. 29; *see also* Tr. 55-56, 72-73. Warden Batts had advised him, about a week before his December 22 conversation with Lewis, that he had not made the BQ list for the current pipefitter vacancy. Tr. 28-30. Since he recognized that he had little or no pipefitting experience, Sheppard said he was not surprised or frustrated that he was not on the BQ list for the current vacancy, but he had been more frustrated in the past, when he had been on the BQ list but not selected. Tr. 33-34.

When the warden received Sheppard's December 28 email, he contacted Lewis and asked him about the incident. Lewis sounded surprised at Sheppard's allegations, and the warden told him to submit a detailed memorandum about the incident. Tr. 53. Lewis prepared that memorandum on January 3, 2011, and described Sheppard's allegations as "completely fabricated." Agency Ex. 1 at 1. According to Lewis, his conversation with Sheppard on December 22 was "not confrontational by any means." *Id.* He said that Sheppard asked him about the pipefitter interview, and he told Sheppard that the interview had gone well, and that they had to do further reference checks on the person. "He [Sheppard] said that he would never make it over the hill. This referred to obtaining a job in Facilities. I replied that he needs to keep trying as jobs open up and eventually you will succeed." *Id.* Lewis denied laughing at Sheppard or telling him that he would not get a position in Facilities as long as Lewis was the manager, and he reminded the Warden that he had previously complained about Sheppard making false statements about his character. *Id.* at 2.

² At the hearing, Sheppard testified that Lewis had never previously made such comments to him directly, but that two employees working in the powerhouse had told him that Lewis said, "Well, that's all I need is another Calvin Sheppard working down here[.]" Tr. 46-47.

At the hearing, Lewis testified that on the evening of December 22, he had been serving as the institution's duty officer, which requires making rounds and walking through every building at the prison, serving as "the eyes and ears for the warden or executive staff after hours and on weekends." Tr. 69. Accordingly, he went to the control center to speak to the person on duty there and see how things were going. Tr. 70. He entered the control center and began a conversation with Sheppard that lasted ten to fifteen minutes. Tr. 81-82. They began by discussing what was happening on the tour of duty, and after a few minutes Sheppard said he'd heard that Lewis had interviewed someone for the pipefitter job. Tr. 70, 82. Lewis told him they still needed to do reference checks on the candidate, and Sheppard said the warden had told him that he had not made the BQ list. Tr. 70-71, 82. According to Lewis, this was the first time he realized that Sheppard had applied for the job. Tr. 72, 82. Sheppard commented that he didn't think he would ever get a position in Facilities, but Lewis told him, "No, that's not true. You have to have hope. Keep trying." Tr. 71, 82-83. But Sheppard never attributed his lack of advancement to his Union activities, nor did Lewis make such a comment at any point in the conversation. Tr. 82-83. They continued talking for a while about some lubrication products that Lewis sells as a side business, and which some of Sheppard's relatives buy from him. Tr. 71, 78-79. Lewis described the entire interchange as a "very good, cordial conversation," and said that "it wasn't confrontational at all." Tr. 72. Lewis also emphasized in his testimony that he has no input as to whose names are included on the BQ list for any vacancy, and he had no idea Sheppard had applied for the pipefitter job until Sheppard told him on December 22. Tr. 72-73, 76-77.

DISCUSSION AND CONCLUSIONS

Positions of the Parties

General Counsel

The General Counsel argues first that Sheppard's testimony and account of his conversation with Lewis are more credible than Lewis's, and therefore I should find that Lewis did say that Sheppard had "finally figured it out" that he would not get a job in the Facilities Department "as long as [he was] the union president". Tr. 17. Next, the GC argues that Lewis's statement violated section 7116(a)(1), because it conveyed the clear message that participation in Union activities would prevent Sheppard from being considered for job openings in Lewis's department.

Looking at the legal argument first, the GC cites the right of employees, under section 7102 of the Statute, to form, join, or assist a labor organization, and the longstanding precedent that supervisors commit an unfair labor practice when they tell employees that their career opportunities, promotions, or job assignments will be limited if they assist or work on behalf of a union. *U.S. Dep't of Justice, Fed. Bureau of Prisons, Fed. Corr. Inst., Safford, Ariz.*, 59 FLRA 318, 322 (2003) (*FCI Safford*); *Dep't of the Treasury, U.S. Customs Serv., Region IV, Miami, Fla.*, 19 FLRA 956, 968-69 (1985). The Authority uses an objective standard for evaluating the coerciveness of a statement, not a subjective one. Thus, the question is not whether Sheppard himself was intimidated by Lewis's words, but whether

an employee could reasonably have drawn a coercive inference from those words. *U.S. Dep't of Transp., FAA*, 64 FLRA 365, 370 (2009) (*FAA*). The GC argues that by telling Sheppard he would not get a job in Facilities as long as he was the Union president, Lewis was explicitly telling Sheppard that activity on behalf of the Union would harm Sheppard's career.

As for the factual question of who said what on the evening of December 22, the GC urges that Sheppard's testimony be credited and Lewis's be rejected. In the GC's words, Lewis offered a "self-serving stream of thought[,]" while Sheppard testified "clearly, concisely, and consistently with the report he submitted to Warden Batts" on December 28. GC's Brief at 6-7. The GC asserts that it is implausible for Lewis to insist that he was unaware that Sheppard had failed to make the BQ list for the pipefitter position, and that this makes Lewis's testimony even less credible. According to the GC, it is clear that Lewis threatened Sheppard on December 22 and that his statement violated section 7116(a)(1) of the Statute. To remedy the violation, the GC urges that the Respondent be required to cease and desist from making coercive statements to employees and to post a notice to this effect to employees.

Respondent

The Respondent contends that Lewis, not Sheppard, offered the more credible and consistent account of the December 22 conversation, and that Sheppard made false allegations against Lewis out of frustration and disappointment at his unsuccessful attempts to obtain a job in the Facilities Department. Moreover, Sheppard's allegation is inherently implausible, as it requires me to find that Sheppard's own words intimidated him. According to Sheppard's testimony, he himself uttered the words "I know how you all work . . . and I feel as long as I'm the union president I'll never have a job in your department." Tr. 17. All Lewis allegedly did was to agree with Sheppard. The Respondent argues that no reasonable person would consider his own statement to be coercive, and that Lewis's alleged response was too indeterminate and vague to infer an unlawful meaning. The Respondent also insists that the record shows that Sheppard was not intimidated in the least by the alleged comment, since he proceeded to file this unfair labor practice charge against Lewis and the Agency.

The Respondent emphasizes the inconsistencies in Sheppard's testimony, primarily on the question of whether Sheppard knew, prior to his December 22 conversation with Lewis, that he had not made the BQ list. While testifying at the hearing that he already knew he had not made the list when he spoke with Lewis, Sheppard stated in the affidavit he gave during the ULP investigation that he did not know this fact when he spoke with Lewis. Tr. 37-39.

Finally, Respondent notes the implausibility of Sheppard's suspicions that Lewis was discriminating against him. Neither Lewis nor anyone else at Alderson had any input in determining which applicants made the BQ list, because the applications were received and processed at the Agency's central HR office in Grand Prairie, Texas. Lewis himself grew up in a union household and was a strong supporter of unions, having previously been a member

of the Charging Party. Tr. 65-66. All of these factors make it highly unlikely, in the Agency's view, that Lewis would have made the coercive statements attributed to him. Therefore, the GC has not met its burden of proof, and the Complaint should be dismissed.³

Analysis

As I noted at the outset, this case ultimately is a question of which version of the events of December 22 is more credible. Frankly, I do not believe that either Sheppard or Lewis was being entirely forthcoming in their testimony, particularly as to their pre-existing mutual animosity, but Sheppard's account is fraught with far more difficulties than Lewis's. Ultimately, the weaknesses of Sheppard's story (and thus the GC's case) fall more on their own weight than on the strength of the Respondent's case.

First, we must confront the reality that this is a case in which one man's memory of a fleeting conversation is pitted against another's, and neither one has a witness to corroborate his version.⁴ Since the General Counsel has the burden of proving that an unfair labor practice was committed, this makes the GC's task more difficult than the Respondent's. Sheppard compounds this problem by the nature of his allegations and the details that he provides for them. Although there is nothing inherently implausible about a supervisor threatening a union supporter – the Authority's case law is replete with such threats being made – Sheppard presented his story in such a way that I find it hard to believe.

Before going further in comparing the accounts and testimony of Sheppard and Lewis, I want to repeat my initial observation that if the December 22 conversation occurred precisely as Sheppard testified at the hearing, then Lewis and the Agency would be guilty of an unfair labor practice. Specifically, if Sheppard told Lewis that he had become convinced that he would never get a job in Lewis's department as long as Sheppard was president of the Union, and if Lewis had then replied, "Well, you've finally figured it out; you got one right" I would find Lewis's statement to be unlawful. While the words "you've finally figured it out; you got one right," may be vague and inconclusive when examined in isolation, they are quite clear when viewed in the context of Sheppard's testimony. Even though Sheppard may have been the one who drew the initial inference that he was being discriminated against because of his Union position, Lewis would have been admitting his anti-union intentions simply by

³ Both the GC and Respondent debate the appropriateness of distributing a ULP notice to employees electronically, but in light of my recommendation to dismiss the Complaint, and further in light of the Authority's recent resolution of the question of electronic notice posting, I will not discuss the issue further.

⁴ Although nobody else witnessed the December 22 conversation, Sheppard and the GC could have bolstered their case if they had called one of the employees (including Sheppard's father) who allegedly heard Lewis say that he didn't want Sheppard working in his department. Under the circumstances, I do not draw any negative inference from the failure to call those witnesses. But since Sheppard's references to these comments are entirely hearsay, and quite unreliable without corroboration, I also cannot give them any evidentiary weight. Instead, I am left simply with the testimony of Sheppard against Lewis.

agreeing with Sheppard. The clear meaning of Lewis's words would be, "Yes, I'll never let you work in my department as long as you're president of the Union," and the Authority has long found such statements to be unlawful. See *FAA*, 64 FLRA at 370; *FCI Safford*, 59 FLRA at 322; *U.S. Dep't of Agric., U.S. Forest Serv., Frenchburg Job Corps, Mariba, Ky.*, 49 FLRA 1020, 1034-35 (1994). It makes no difference whether Sheppard was personally intimidated by Lewis – Lewis's alleged comment violates section 7116(a)(1) by linking Sheppard's protected activity with his being denied promotions, regardless of whether it actually deterred Sheppard from continuing to exercise his statutory rights. See *FAA*, 64 FLRA at 370.

But I do not accept Sheppard's account of the events of December 22. First, I am perplexed by Sheppard's unprovoked suspiciousness toward Lewis, before Lewis even said a word to him on December 22. As Lewis approached the mostly-dark control center, Sheppard saw Lewis "smiling and began kind of chuckling, laughing, you know, . . ." Tr. 16. Sheppard asked Lewis "what was wrong," and Lewis immediately replied that he had just interviewed the pipefitter candidate. *Id.* Sheppard seems to be projecting his own personal insecurities and priorities onto Lewis's actions and statements, as he draws a negative inference from, and takes personal offense at, the seemingly innocuous fact that Lewis was smiling as he approached the control center. First, under the lighting and other conditions described by the witnesses, I doubt that Lewis even realized that Sheppard was in the control center until he was directly in front of the glass; thus it is unlikely that Lewis's smiling demeanor had anything to do with Sheppard or the pipefitter position. It was Sheppard who was preoccupied by that job, not Lewis, and Sheppard's testimony suggests that his entire view of the events of that evening was colored by his own pre-existing suspicions. Sheppard further evinced this skewed perspective by asking Lewis what was "wrong," based solely on Lewis smiling or laughing. *Id.* Laughter is not normally considered a sign of something wrong, yet Sheppard apparently viewed it that way. Sheppard dug the hole deeper by telling Lewis, "I don't appreciate you coming up here in the window in front of me acting like you are[.]" when Lewis had simply told him that they had interviewed the pipefitter candidate. *Id.* at 1. Even accepting the sequence of events as described by Sheppard, Lewis's attitude and behavior do not justify the negative conclusions that Sheppard reaches, and this leads me to doubt the accuracy of Sheppard's recollection of their encounter.

The most telling factor in evaluating Sheppard's testimony, however, is the comparison between his testimony at the hearing and his December 28 email to Warden Batts. He began the email: "I am curious as to why Mr. Lewis feels the need to stop by control laughing with a big smile on his face telling me that he and the AW interviewed the Best Qualified Pipe Fitter and they were going to hire him." GC Ex. 3. In his hearing testimony, Sheppard said that Lewis simply told him that they had interviewed the pipefitter candidate; he didn't mention that Lewis had said they were going to hire the candidate. Tr. 16. Then, in the email to the Warden, Sheppard goes off on a tangent about Lewis having told other people that he didn't want "the union president or another Calvin Sheppard" in his department, then changes direction and attributes Lewis's desire to keep him out of the department to Sheppard's qualifications as a welder, and changes direction again by

concluding: "I also told him that I had figured out that as long as he was the facilities manager that I would not be working in his department AND HE SAID YES YOUR [sic] PROBABLY RIGHT . . ." GC Ex. 3. But the most significant discrepancy between the December 28 email and Sheppard's hearing testimony is that at the hearing, Sheppard said he told Lewis that he felt he would never have a job in Facilities "as long as I'm the union president" (Tr. 17), but in his email to the Warden, he said that he told Lewis he'd figured out that he would never get a job there "as long as he [Lewis] was the facilities manager . . ." GC Ex. 3.

In other words, when Sheppard complained about Lewis to the Warden, he described Lewis's refusal to hire him as based on personal or family antagonism, or even as based on Sheppard's welder certification, but when Sheppard testified at the unfair labor practice hearing, he described it as based on his position as Union president. In the unfair labor practice charge Sheppard filed in March 2011 (GC Ex. 1(a)), he offered a description of the December 22 conversation that differs yet again from his other accounts. Sheppard's description of the most important detail in the December 22 conversation seems to change, depending on who is listening to his complaint. The key factual dispute in this case is what Sheppard and Lewis said regarding Sheppard's ability to get a position in the Facilities Department, and whether Lewis's alleged refusal to hire Sheppard was based on Sheppard's Union activity. Yet this is precisely the detail that keeps changing in Sheppard's various accounts of the incident. Sheppard's inconsistency on this key detail gives me little confidence in the accuracy of his accusation.⁵

My skepticism of Sheppard's account is heightened by the fact that the alleged conversation of December 22 seems almost staged on Sheppard's part. Even though Lewis had, as far as I can tell, said or done nothing to justify accusations of union-related discrimination, Sheppard seems to have been baiting Lewis to admit that he'd never let Sheppard work in the Facilities Department. Sheppard himself formulated the language on which he intended to hang Lewis, and he invited Lewis to stick his neck into the verbal rope. Yet Sheppard's multiple accounts of the crucial phrase attribute varying reasons for not hiring him: because he's a welder, because he's the Union president, and because he's Calvin Sheppard's son. Sheppard put the allegedly incriminating words into Lewis's mouth on December 22, yet he cannot repeat those words consistently in his subsequent accounts of the conversation. In trying to set a trap for Lewis, Sheppard leads me ultimately to suspect his own motives and recollection, rather than Lewis's.

⁵ On the other hand, counsel for the GC and the Respondent spent a good deal of energy trying to impeach the opposing witness with "inconsistencies" that I consider to be insignificant. The GC argues that it was not credible for Lewis to insist at the hearing that he didn't know, prior to talking to Sheppard on December 22, that Sheppard was not on the BQ list for the pipefitter vacancy. *See* Tr. 72, 76-77. In a similar vein, the Respondent attacks Sheppard's credibility for changing his story as to when he learned that he had not made the BQ list. *See* Tr. 38-39. But in both instances, the question of when Sheppard and Lewis learned that Sheppard was not on the BQ list for the pipefitter job does not shed any light on what Lewis told Sheppard about his long-term chances of getting a job in Facilities. Any inconsistency by either witness on this point is not material to his overall credibility.

It appears from the record that both Sheppard and Lewis downplayed some of their mutual animosity in their hearing testimony. Although both men indicated that they got along well with each other (*compare* Tr. 16, 19, and 68), Sheppard told the Warden in his December 28 email that other employees had reported to him that Lewis had said he didn't want Sheppard in his department (GC Ex. 3), and Lewis reminded the Warden in his own email, "I have had several conversations with you of Mr. Sheppard's making false statements about my character." Agency Ex. 1 at 2. Sheppard's father had previously worked for several years with Lewis; at least according to Sheppard, Lewis and his father had "never seen eye to eye on anything[.]" and Lewis had told other employees, "that's all I need is another Calvin Sheppard working down here[.]" Tr. 47. Despite these mutual suspicions on each person's part, neither Lewis's alleged prior statements against Sheppard nor Sheppard's alleged prior false statements against Lewis were corroborated by any admissible evidence in the record. Thus, while I cannot put any credence on either man's belief that the other was "targeting" him (*see* Agency Ex. 1 at 2), I do believe that such mutual suspicion and antagonism existed prior to the conversation of December 22. Given such suspicion, I find it less plausible that Lewis would tell Sheppard directly that he would never have a job in the Facilities Department as long as he was Union president, because he would have realized that such a remark would cause Sheppard to make more accusations against him. Instead, I find it more plausible that Sheppard's description of their December 22 conversation was distorted by his own frustration at his repeated unsuccessful efforts to get a job in Facilities and his belief that Lewis would never hire him for such a job. But Sheppard was never able to identify, even in his own mind, a particular basis for Lewis's animosity, and so he has cited different reasons at different times. As a result, I do not believe that Sheppard told Lewis, or that Lewis agreed, on December 22 that Lewis was keeping him out of the Facilities Department because of his Union activity.

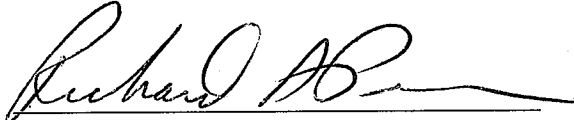
Other evidence regarding the filling of the pipefitter vacancy in late 2010 contributes to my conclusion that Lewis did not tell Sheppard that he would not get a job in Facilities as long as he was Union president. Everyone agrees that neither Lewis nor any other official at Alderson had any role in determining which applicants would make the Best Qualified list. When Lewis saw Sheppard in the control center on December 22, he had already interviewed the sole applicant on the BQ list. Lewis's personal views toward Sheppard (favorable or unfavorable) were not going to affect Sheppard's chances of getting that position, and I doubt that Lewis would have allowed himself to be baited into telling Sheppard that he would never get a job in Facilities. It is impossible for me to know for certain what precise words were exchanged between Sheppard and Lewis that evening, but I cannot accept that Lewis expressed agreement with any intent to deny Sheppard a job based on Sheppard's Union position. The General Counsel simply has not met its burden of proving that Lewis or the Respondent made a coercive or threatening statement to Sheppard.

For all of the reasons stated herein, I conclude that the Respondent did not commit the unfair labor practice alleged, and I recommend that the Authority issue the following Order:

ORDER

It is ordered that the Complaint be, and hereby is, dismissed.

Issued, Washington, D.C., June 26, 2014.

A handwritten signature in cursive script, appearing to read "Richard A. Pearson", written over a horizontal line.

RICHARD A. PEARSON
Administrative Law Judge