

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424

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DEFENSE DISTRIBUTION REGION .

WEST, LATHROP, CALIFORNIA .

.

Respondent .

.

and . Case No. SF-CA-20174

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LABORERS' INTERNATIONAL UNION, .

LOCAL 1276, AFL-CIO .

.

Charging Party .

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Nancy C. Rusch, Esq.	For the Respondent	
Gary J. Lieberman, Esq.	For the General Counsel	Before: ELI NASH, JR. Administrative Law
Judge		

DECISION

Statement of Case

This case arose 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., (herein the Statute). On an unfair labor practice charge filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority (herein the Authority), by the Regional Director for the San Francisco Regional Office, issued a Complaint and Notice of Hearing alleging Respondent violated section 7116(a)(1) and (8) of the Statute by holding several formal discussions with bargaining unit employees without affording

the Union the notice and opportunity to be represented.

A hearing on the Complaint was conducted in Stockton, California at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Upon the entire record in this matter, my observation of the witnesses and their demeanor and from my evaluation of the evidence I make the following:

Findings of Fact

1. Respondent was established on June 24, 1990 by the consolidation of several supply functions in the San Francisco Bay Area. The Union is the certified exclusive representative of employees appropriate for collective bargaining at Defense Depot Tracy (Tracy) who were transferred to Respondent's employment as a result of the June 1990 reorganization.
2. Ron Beatty is the first line supervisor in Warehouse 13 at Tracy. Customarily, Beatty holds daily meetings for the employees in Warehouse 13 to discuss such matters as workload for the day, job assignments, and safety matters. These meetings, which all employees are required to attend, take place in the lunchroom, outside the immediate work area of the bargaining unit employees.
3. Upon arriving at work on December 3, 1991, employees in Warehouse 13 were gathered in the lunchroom for their daily meeting. The lunch/break room is situated in a module located outside Warehouse 13, approximately 20 to 30 feet away from the warehouse. During this particular meeting, Beatty distributed the work assignments for the day, and also, raised the subject of when, and where, employees could attend holiday parties. Beatty informed employees that they were permitted to use the last two hours of their shifts to attend holiday parties on December 20, and proceeded to discuss the procedures employees would be required to follow if they wished to attend a holiday party outside the work area.
4. Beatty, testified that there was never any discussion about the holiday party policy on December 3, 1991. Employee Jimmy Stephens, who attended the meeting, gave a detailed account of the meeting, which is credited. It thus appears from the record that several employees inquired whether they would be permitted to return home during the two hours designated for the holiday party, asking whether employees would be permitted to leave the worksite. Beatty responded that if employees left the worksite, they were required to leave a telephone number where they could be reached.
5. The Union received no prior notification of the December 3, 1991, meeting in Warehouse 13.
6. Sometime thereafter, around December 9, 1991, Colonel James W. LaBounty, Commander of Respondent, issued a memorandum to all employees entitled "Holiday Season Policies for 1991." LaBounty described in detail the bargaining unit employees leave options available during the last two hours of the work

day on December 20, 1991. He wrote as follows:

Two hours of excused absence (not chargeable to leave) for the purpose of attending Holiday parties with coworkers will be permitted on 20 Dec. The parties may be held on or off the installation during the last two hours of the work day. To permit workload planning, the on-site location(s) for parties must be approved by the appropriate Director and/or supervisor Employees, who elect not to participate will not be granted this absence for personal use. Employees who wish to celebrate with friends or relatives in other DDRW organizations may do so by invitation of the hosting activity. Parties which foster directorate-wide mixing, fellowship, and celebration are encouraged. The grant of two hours excused absence must be used in a single block and may not be used more than one time for each employee.

The above memorandum was distributed to employees at meetings called by various supervisors on December 12, 13 and 16, 1991.

7. On December 12 another of the above-mentioned meetings to discuss and clarify the holiday party policy of LaBounty was held on the Less-than-truckloads floor (herein called the LTL Division). On that occasion, employees working on the LTL Division were instructed by a leaderman to report to the breakroom for a meeting. They were given 10 to 15 minutes advance notice of the meeting and attendance was mandatory.

8. Three supervisors in the LTL Division, Samuel Estante, Earnest Green and Don Worley conducted the meeting. Estante led the discussion. He discussed the holiday leave policy, and also informed employees that they would be permitted to have a holiday party in the work area or attend a party at another location on the Depot. Estante also instructed employees that if they wanted to leave Tracy during the two hours allotted for the holiday party, they would be required to take annual leave. Employees then asked questions concerning why they were required to take annual leave while other employees were allowed to have parties off base without taking annual leave. The only subject addressed at this meeting was the holiday party.

9. The following day, December 13, Estante held a second meeting in the breakroom with employees in the LTL Division. Here again, employees were notified by their leaderman shortly before the meeting and required to leave their immediate work area. At this meeting, Estante read from sections of LaBounty's policy letter addressing the holiday party policy, and discussed how the two hours for the holiday party would affect an employee's annual leave. Estante also distributed copies of LaBounty's policy to employees at the meeting. Once again, it does not appear that any subject other than the holiday policy was discussed at the meeting.

10. The Union received no prior notification of the meetings held in the LTL Division on December 12 and 13, 1991, respectively.

11. On December 13, 1991, some of the employees in the Maintenance Division received a copy of Labounty's policy memorandum. On the day the memorandum was issued, it triggered some informal discussions between the employees and a supervisor, in the lunchroom.

12. On December 16, 1991, three days after the memorandum was distributed in the Maintenance

Division, near the end of the shift, employees in the Maintenance Division were paged over their two-way radios and were instructed by their leaderman to report to the shop immediately. Employees had to leave their worksite, in warehouses across the Depot, to attend the mandatory meeting, held in the smoking room of the Maintenance Division.

13. Employee Teresa Turner, who was present at the meeting gave uncontroverted testimony, that the meeting was led by Dieter Brandauer, Maintenance Branch Chief. Brandauer discussed the holiday party memorandum issued by LaBounty, which was still available for distribution to employees in the smoking room. Brandauer further discussed procedures employees had to follow if they wanted to attend a party in the area of another supervisor. Brandauer's discussion resulted in numerous questions concerning the discrepancies in the policy announced by him and the policy memorandum issued by LaBounty. As in the earlier meetings already discussed, the holiday party was the only topic discussed at the meeting.

14. The Union had no prior notification of the meeting held in the Maintenance Division on December 16, 1991.

Conclusions

Respondent merely argues that these meetings were informal and that the General Counsel failed to prove every element necessary to show the formality required by section 7114 of the Statute. It is undisputed, as the General Counsel asserts, that the first and third criteria were established. Thus, there is no question that the meetings involved one or more management representatives holding meetings with several employees nor is it questioned that these meetings constituted discussions of a policy. Therefore, the undersigned is in agreement with the General Counsel's assessment concerning the issues. Hence, the only issues in the case are whether the meetings were "formal" under the Statute and whether they concerned "any grievance or personnel policy or practice or other general condition of employment."

The purpose of assuring an exclusive representative a right to receive prior notification and the prerogative to attend formal discussions is to afford it the opportunity to safeguard not only its interests, but also the interests of employees it represents. Veterans Administration, Washington, D.C. and VA Medical Center, Brockton Division, Brockton, Massachusetts, 37 FLRA 747 (1990). While a discussion about a holiday party might, at first, seem negligible, the facts in the case at hand suggest otherwise. They tend to establish that the December 1991 meetings were discussions by Respondent's supervisors concerning a holiday party policy which raised some concerns among employees, who upon hearing the policy were confused as to what the exact policy really was, and how it would affect their leave status. In these circumstances, where a condition of employment is involved, it is essential that the exclusive representative is given the opportunity to screen the interests of the employee it represents. Furthermore, an agency is obligated to provide the exclusive representative with notice so that it at least has the opportunity to attend any such formal discussions. Accordingly, this case must be viewed in the context of a union's full range of responsibilities under the Statute. Veterans Administration, supra.

A. Whether a condition of employment was discussed in the meetings.

In discussing the meaning of "any personnel policy or practice", it has been held that such policies and practices must involve general rules applicable to agency personnel, and not discrete actions taken with respect to individual employees. By the same token, formal discussions are limited to those discussions which concern conditions of employment affecting employees in the unit generally. Bureau of Field Operations, Social Security Administration, San Francisco, California, 20 FLRA 80, 83 (1985).

The subject matter of the meetings herein involved a personnel policy or practice which had an affect on the working conditions of all the employees in the unit, rather than a few, discrete, individual employees. The two hours on December 20 designated for the holiday party by Colonel LaBounty's memorandum and discussed at the meetings in question, were available to all the employees and not just a few individuals on December 20 during the last two hours of the work day.

In this case, the discussions involved a recently inaugurated holiday party policy, scheduled to be held on duty time. Here, supervisors outlined the procedures and practice employees were required to follow to attend holiday parties and the affect on their leave. The holdings are uniform that matters affecting an employees' annual or administrative leave are conditions of employment. See, e.g., U.S. Department of the Navy, Naval Aviation Depot, Naval Air Station Alameda, Alameda, California, 37 FLRA 3 (1990); Marine Corps Logistics Base, Barstow, California, 33 FLRA 196 (1988).

In several of the meetings in this case, specifically those of December 12, 13 and 16, supervisors discussed, and answered questions raised by employees concerning how the holiday party would affect their leave. Since leave is a condition of employment, notification to the Union allowing it an opportunity to be present was required. Whether or not an agency has a compelling obligation to enforce leave regulations in some manner during the Christmas holiday period is not at issue here. The actual concern is whether when conditions of employment are being discussed, the exclusive representative has the opportunity to be present and to protect employee, as well as, its own interests. A comparable situation regarding extracurricular work activities on duty time becoming a condition of employment can be found in, American Federation of Government Employees, Local 2761 v. FLRA, 866 F.2d 1443 (D.C. Cir. 1989), where the court agreed with the petitioner that an annual employees' picnic was a condition of employment which is a subject of bargaining under the Statute. (Citing, Antilles Consolidated Education Association and Antilles Consolidated School System, 22 FLRA 235 (1986)). In reaching its conclusion, the D.C. Circuit remarked as follows:

The picnic was to occur on employer premises, involved an adjustment in the hours that the employees were to spend working at their jobs, was paid for by the employer, and was used by management as an opportunity to present employee awards and foster a productive work relationship between employees and management.

On remand the Authority acquiesced in the holding that the annual picnic was a condition of employment under the Statute, and therefore, accepted the Court's decision as the law of the case. United States Army Adjutant General, Publication Center, St. Louis, Missouri, 35 FLRA 631, 634 (1990) (Publication Center).

While the instant matter does not involve a bargaining obligation, the Authority's decision in Publication Center that an annual picnic, on work time, involving an adjustment in the hours employees were to spend working at their job, and used to foster a productive work relationship between employees and management,

was a condition of employment, is germane to the issue found herein. The holiday party discussions at each of the instant meetings took place on duty time, provided for administrative leave for employees attending parties, and for annual leave if employees elected not to participate in the event. Further, LaBounty's policy memorandum hailed the benefits of the holiday party on the work environment saying, "Parties which foster directorate-wide mixing, fellowship, and celebration, are encouraged." The significant factors established in Publication Center are present in this case. In these circumstances, it appears that the extracurricular activities did become a general condition of employment. Accordingly, it is found that the meetings at issue involved holiday party discussions and its affect on employee leave and, therefore, concerned a general condition of employment.

B. Were the meetings "formal" within the meaning of Section 7114(a)(2)(A) of the Statute?

In each of the meetings the holiday party policy was discussed with employees and the procedures employees were required to follow if they decided to attend a holiday party outside the work area on December 20. In addition, on December 12 and 13 and 16, supervisors discussed, read, or distributed, the LaBounty policy memorandum. The policy provided, employees attending holiday parties on December 20, would be granted two hours of excused absence during the last two hours of the work day not chargeable to leave, and employees who elected not to participate would not be granted the absence for personal use.

Although the December 3 meeting, in Warehouse 13, did not concern a personnel policy or practice when it began, it nevertheless developed into a discussion involving a general condition of employment under section 7114(a)(2)(A) when the issue of the holiday party policy was raised by the supervisor, Beatty. Meetings which satisfy the formality criteria, but are called for purposes other than discussing personnel policies, practices and general working conditions may convert to a formal discussion where personnel policies arise and are discussed at the meeting. See, for example, U.S. Department of Defense, Defense Logistics Agency, Defense Depot Tracy, Tracy, California, 37 FLRA 952, 959 (1990).

In the December 12 meeting in the LTL Division, supervisors, in addition to clarifying and discussing LaBounty's policy memorandum, instructed employees who chose to leave the Depot during the designated two hours, to take annual leave. At the meeting in the LTL division the following day, supervisors actually read from LaBounty's policy memorandum, distributed copies to employees, and again discussed annual leave. Similarly, at the December 16 meeting supervisors discussed LaBounty's policy memorandum, and also the procedures to follow if employees desired to attend a party in another supervisor's area.

Eight factors are considered when determining whether a specific meeting is "formal" within the meaning of section 7114(a)(2)(A), as follows:

whether the individual who held the discussions is merely a first-level supervisor or is higher in the management hierarchy; whether any other management representatives attended; where the individual meetings took place (i.e., in the supervisor's office, at each employee's desk, or elsewhere); how long the meetings lasted; how the meetings were called (i.e., with formal advance written notice or more spontaneously and informally); whether a formal agenda was established for the meetings; whether each employee's attendance was mandatory; and the manner in which the meeting was conducted.

U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Chicago, Illinois, 32 FLRA 465, 470 (1988). These factors are not exhaustive, however and the totality of the circumstances will be examined in determining formality.

The criteria of finding a discussion "formal" will be found only if all the elements of section 7114(a)(2)(A) are present: there must be (1) a discussion; (2) which is formal; (3) between one or more representatives of the agency and one or more employees in the unit of their representatives; (4) concerning any grievance or personnel policy or practices or other general condition of employment. Defense Depot Tracy, supra; Department of the Treasury U.S. Customs Service, Miami, Florida, 29 FLRA 610 (1987), 19 FLRA 1123 (1985). In applying these factors it should be noted again that the intent and purpose of section 7114(a)(2)(A) is -- to provide the union with the opportunity to safeguard its interests and the interests of employees in the bargaining unit. Veterans Administration, supra.

Looking at all the circumstances, the discussion in Warehouse 13 occurred at the end of the morning briefing, with attendance required. The topic of the holiday party was raised by Beatty, demonstrating that he had an agenda, planned in advance to discuss the matter, and also undermines suggestions that the meeting was spontaneous. Also the meeting occurred outside the immediate work area of the employees, in the lunchroom. While employees had no advance notice about the meeting, employees already had knowledge of the meeting, as part of their daily routine. Thus, this meeting was sufficiently formal to constitute a formal discussion under the Statute.

Likewise, the meeting held in the LTL Division on December 12, reveals evidence of formality. There, employees received advance notice of the meeting, which took place outside the immediate work area. The fact that employees were not informed in advance of the meeting's subject does not negate a finding of formality, since it is only one of many factors considered in the analysis. See, e.g., United States Customs Service, Region VIII, San Francisco, California, 18 FLRA 195, 198 (1985). Three supervisors were present and discussed the holiday party policy and fielded questions from employees raised after some confusion arose about how the holiday party would affect their annual leave. The evidence also confirms the meeting was not spontaneous since employees received advance notice that it was being held, it occurred outside the immediate work area, employees had to leave their worksite to attend, and the holiday party was the only topic discussed, helping to demonstrate that the supervisors had an agenda prior to the meeting.

Correspondingly, the meeting of December 13 had the necessary degree of formality to constitute a formal discussion. On December 13, employees in the LTL Division received advanced notice by their leaderman about the mandatory meeting, and had to leave their immediate work area to attend. Again, Estante not only discussed the holiday party policy, but read from portions of LaBounty's policy memorandum, and distributed copies to employees. The fact that Estante read LaBounty's memorandum in conducting the meeting, and had copies of the memorandum available to distribute to employees, provides evidence of an agenda planned prior to the meeting.

In the same manner, the meeting of December 16 in the Maintenance Division also met the criteria of formality. Employees throughout the facility were paged and instructed by their leaderman to report to the Maintenance Division smoking room. Thus, employees received advance notice of the mandatory meeting which was led by the Branch Chief, Brandauer. Once at the meeting, Brandauer discussed and answered numerous employees questions pertaining to the holiday party memorandum issued by LaBounty, which was also distributed at the meeting. Finally, the holiday party was the only topic discussed at the December 16

meeting illustrating that the sole purpose of the gathering was to discuss the holiday party policy with the employees.

Considering all the circumstances surrounding the meetings herein, it is my view that the criteria for establishing that the meetings were formal discussions has been met. Furthermore, since a general working condition was discussed at these meetings, Respondent had a responsibility to notify the Union that the discussions were about to take place, thus allowing it the opportunity to be present.

In light of the foregoing, it is found that Respondent violated section 7116(a)(1) and (8) of the Statute by holding several formal discussions with bargaining unit employees without affording the Union the notice and opportunity to be represented.

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, the Defense Distribution Region West, Lathrop, California, shall:

1. Cease and desist from:

(a) Conducting formal discussions with our employees in the bargaining unit exclusively represented by the Laborers' International Union, Local 1276, AFL-CIO concerning grievances and any personnel policy or practices or other general conditions of employment, including discussions of the December 1991 holiday party policy without affording the Laborers' International Union, Local 1276, AFL-CIO prior notice of and the opportunity to be represented at the formal discussions.

(b) In any like or related manner interfere with, restrain or coerce our employees in the exercise of rights assured them 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 Defense Distribution Region West, Lathrop, California 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 of the Directorate of Distribution 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 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, June 30, 1993.

ELI NASH, JR.

Administrative Law Judge

NOTICE TO ALL EMPLOYEES
AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY
AND TO EFFECTUATE THE POLICIES OF THE
FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT conduct formal discussions with our employees in the bargaining unit exclusively represented by the Laborers' International Union, Local 1276, AFL-CIO concerning grievances and any personnel policy or practices or other general conditions of employment, including discussions of the December 1991 holiday party policy without affording the Laborers' International Union, Local 1276, AFL-CIO prior notice of and the opportunity to be represented at the formal discussions.

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

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