

UNITED STATES OF AMERICA  
FEDERAL LABOR RELATIONS AUTHORITY  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
WASHINGTON, D.C. 20424

.....

DEPARTMENT OF THE AIR FORCE, .  
SACRAMENTO AIR LOGISTICS .  
CENTER, MCCLELLAN AIR FORCE .  
BASE, CALIFORNIA .

Respondent .

and .

Case No. 9-CA-80498

AMERICAN FEDERATION OF .  
GOVERNMENT EMPLOYEES, .  
LOCAL 1857, AFL-CIO .

Charging Party .

.....

Mark F. Commerford, Esq.  
For Respondent

Susan E. Jelen, Esq.  
For General Counsel of FLRA

Tony Roberts  
For the Charging Party

Before: SAMUEL A. CHAITOVITZ  
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-  
Management Relations Statute, as amended, 5 U.S.C. § 7101 et  
seq., (hereinafter called the Statute), and the Rules and  
Regulations of the Federal Labor Relations Authority (FLRA),  
5 C.F.R. Chapter XIV, § 2410 et seq.

Pursuant to a charge filed by American Federation of  
Government Employees, Local 1857, AFL-CIO, herein called  
AFGE Local 1857, against Department of the Air Force,  
Sacramento Air Logistics Center, McClellan Air Force Base,  
California, hereinafter called McClellan AFB and Respondent,

the General Counsel of the FLRA, by the Regional Director of Region IX issued a Complaint and Notice of Hearing alleging that Respondent violated sections 7116(a)(1) and (8) of the Statute by conducting a formal discussion with a bargaining unit member without providing AFGE Local 1857 prior notice and/or an opportunity to be present at the meeting. McClellan AFB filed a timely Answer denying it had violated the Statute.

A hearing in this matter was conducted before the undersigned in Sacramento, California. McClellan AFB, AFGE Local 1857, and General Counsel of the FLRA were represented and afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Briefs were filed and have been fully considered.

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

#### Findings of Fact

At all times material herein, American Federation of Government Employees, AFL-CIO, herein called AFGE, has been certified as the collective bargaining representative of a nationwide consolidated unit of employees of the Air Force Logistics Command, hereinafter called AFLC, including certain employees at McClellan AFB. At all times material AFGE Local 1857 has been an affiliate of AFGE and an agent of AFGE for representing employees in the unit at McClellan AFB. AFGE Local 1857 and McClellan AFB are parties to a collective bargaining agreement which contains a negotiated grievance procedure which includes arbitration of employee grievances.

George Welch has worked as a hydraulics mechanic at McClellan AFB since 1982 and from approximately August 1987 until March 1988 he was also an alternate supervisor. Since April 1988 the alternate supervisor duties have been rotated every six months among employees in the shop.

From about June 1987 until March 1988 Frank Zamudo was Welch's first level supervisor and Ben Greco was Welch's second level supervisor. Also in Welch's shop was John Hallstrom, an employee in the unit.

During the eight months he was alternate supervisor, Welch received no extra pay and, in addition to his duties as hydraulics mechanic, he also was involved with the daily "sale", in which repair work completed by the shop is "sold"

to Air Force entities. Welch was not authorized to assign work, as such, but he did pass out work involving the "sale" to the shop staff. Also, as alternate supervisor, he serves as back up to the supervisor whenever the supervisor is absent from the shop. Welch spent approximately 30% of his time acting for the supervisor, in the supervisor's absence. During the times the supervisor was absent, and Welch was alternate supervisor, Welch would grant sick and annual leave requests after checking with Greco. During such times, however, Welch did not have the authority to discipline employees, to sign time cards or to evaluate employees. His primary responsibility during such times, was to ensure the work was getting out.

On April 14, 1988, while at the shop, Zamudo told Welch that Dennis Sommese wanted to see Welch in about 20 minutes in Sommese's office in a different building. Welch did not know who Sommese was and asked Zamudo. Zamudo told Welch that Sommese was the attorney on the Hallstrom case. Sommese was not part of Welch's regular supervisory chain.

Welch stopped work, cleaned his work area and drove over to Building Two, where Sommese's office was located. Welch identified himself to the receptionist in Sommese's office. Sommese came to the reception area and ushered Welch into Sommese's office, where Sommese sat at his desk. No one else was present at the beginning of the meeting, but during the course of the meeting Zamudo and Greco came in and joined the meeting. No representative of AFGE Local 1857 was present during the meeting.

Sommese advised Welch that Sommese was the attorney on the Hallstrom case, that the meeting was voluntary and that Welch did not have to speak with Sommese if Welch did not want to. Sommese told Welch that Hallstrom had filed grievances against Zamudo and that Sommese wanted to know what Welch had heard in the shop. One of the issues involved in the grievance was the relationship between Hallstrom and Zamudo. Sommese asked some questions, including whether Welch had ever heard Hallstrom curse at Zamudo or raise his hand as to strike Zamudo. Sommese asked Welch general questions about what Welch had seen in the shop between Hallstrom and Zamudo. Sommese continued to ask Welch questions after Zamudo joined the meeting and, in Welch's presence, Sommese asked Zamudo and Greco a few questions after they had joined the meeting. Sommese and Welch also discussed complaints Hallstrom had against Welch when Welch had been alternate supervisor and Hallstrom's statement to Welch that Welch "could not outrun a bullet. . . ." These latter items were not the subject of the Hallstrom arbitration.

Sommese advised Welch that Welch might be a witness in the case, without mentioning any specific date. After about an hour and a half Welch returned to work. Welch did not recall if Sommese had or took notes during the meeting. No representative of AFGE Local 1857 was present at this meeting nor was the union notified of the meeting.

Welch did testify for management at an arbitration over Hallstrom's grievances.<sup>1/</sup> Welch felt his discussion with Sommese was protected by the attorney-client privilege and that, because the union was representing Hallstrom, he would have felt uncomfortable had an AFGE Local 1857 representative been present at the meeting.

#### Discussion and Conclusions of Law

The General Counsel of the FLRA urges that McClellan AFB violated section 7116(a)(1) and (8) of the Statute by failing to provide AFGE Local 1857 with the opportunity to be represented at a formal discussion with a bargaining unit employee held on or about April 14, 1988. This alleged violation is based upon a contention that McClellan AFB did not comply with its obligations under section 7114(a)(2)(A) of Statute which provides:

"(2) An exclusive representative of an appropriate unit in an agency shall be given an opportunity to be represented at -

"(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; . . ."

There is no dispute that AFGE Local 1857 was not given notice of the April 14 meeting, that it was not represented at that meeting and was not given an opportunity to be represented at the meeting. Rather McClellan AFB contends that no violation of section 7114(a)(2)(A) of the Statute occurred because the meeting wasn't formal, the employee involved was not the type referred to in section 7114(a)(2)(A), and it involved an attorney work product privilege.

---

<sup>1/</sup> Welch had subsequent meetings with Sommese to prepare Welch's testimony for the arbitration and an AFGE Local 1857 steward was present at these meetings.

The meeting in question was sufficiently formal to be encompassed within the requirements of section 7114(a)(2)(A) of the Statute. In this regard Welch was told about the meeting by his supervisor, Zamudo, and the meeting took place in the attorney's office, which was located in a separate building, away from Welch's work place. During the course of the meeting Welch's first and second level supervisors arrived and participated in the discussion. It was clear this was not to be just a random conversation but rather the purpose of the meeting was to question Welch about the complaints of Hallstrom against Zamudo in order to prepare for the grievance. The meeting in question was not merely a random and informal discussion between Welch and a supervisor, but rather it was a meeting called by an attorney for Respondent in the attorney's office to question Welch in preparation for the grievance filed by Hallstrom, involving Hallstrom's complaint against supervisor Zamudo. I conclude that this discussion is a "formal discussion" within the meaning of section 7114(a)(2) of the Statute. The FLRA held that the interview of an employee in preparation for an arbitration did constitute a formal discussion concerning a grievance within the meaning of section 7114(a)(2) of the Statute. See Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California, 29 FLRA 594 (1987), hereinafter referred to as the McClellan Case.

McClellan AFB further contends that to permit a representative of AFGE Local 1857 to be present at the subject meeting would somehow violate the attorney work product privilege. However although the union may not be entitled to look at any of Sommesse's written work, it is entitled to exercise its statutory right under section 7114(a)(2) of the Statute to be present at a formal discussion concerning a grievance and such an exercise of the union's right does not violate the attorney work product privilege. See McClellan Case, supra, which involved an interview of a unit employee, in preparation for an arbitration, by one of McClellan's labor counsel. The case cited by Respondent, U.S. Air Force, Air Logistics Command, 4 FLRA No. 70, 4 FLRA 512 (1980) is not in point.

Finally McClellan AFB contends that Welch is not an employee in the unit as required by section 7114(a)(2) of the Statute because the interview in question involved a time when Welch was alternate supervisor and McClellan AFB contends that at that time Welch was a supervisor, within the meaning of section 7103(a)(2)(iii) of the Statute and therefore was not an "employee."

McClellan AFB's contention is rejected and I conclude that Welch, a hydraulics mechanic, was an employee within the unit. At the time of the interview Welch was no longer an alternate supervisor and that position was being rotated among all the mechanics. Thus at the time of the discussion, April 14, 1988, Welch was no longer alternate supervisor.

However, even with respect to the time Welch was alternate supervisor, he was still an employee in the unit, for the purpose of the April 14 discussion. At all times Welch performed the duties of a hydraulics mechanic. He only functioned as "supervisor" in Zamudo's absence, during which times he would approve or disapprove annual and sick leave requests, after checking with Greco, his second level supervisor. Further Welch had no authority to discipline or appraise employees. When Zamudo was present the only duty Welch had, other than the usual duties of a hydraulics mechanic, a position within the unit, was the "sale" of completed work to other Air Force shops. Welch received no pay greater than that of a hydraulics mechanic. There is no showing and the record does not establish that this "sale" involved any discretion, managerial judgment or supervisory functions or that it was other than routine in nature. Similarly, Welch could not assign work although he did routinely distribute it after a routine "sale". Thus the record fails to establish that the "sale" duties involved any function that would have removed Welch, a hydraulics mechanic, from the unit. Accordingly, while Zamudo was present Welch, even when an alternate supervisor, was an employee in the unit.

Sommese's questioning of Welch primarily involved Welch's observation of the relationship between Zamudo, the supervisor, and Hallstrom, the grievant, and therefore involved Welch's observations at a time when Zamudo was present and Welch therefore was an employee in the unit.

The fact that Sommese peripherally asked Welch about an alleged threatening comment Hallstrom made to Welch, when Zamudo was not present and Welch was acting in Zamudo's absence, does not make the subject of the interview Welch's relationship with Hallstrom in Zamudo's absence. Nor does it alter the fact that the primary purpose of the interview was to question Welch about his observations of the relationship between Hallstrom and Zamudo, times when Zamudo was present.

Further, even in Zamudo's absence Welch had no authority to discipline or evaluate employees or to assign work. The only authority Welch had which might have appeared supervisory, was his power to grant sick and annual leave in

Zamudo's absence. However, even here he first checked with Greco, his second level supervisor, making Welch's action seem to be merely routine and ministerial in nature. Thus, I conclude the record does not establish that in Zamudo's absence Welch exercised the type of supervisory functions and authority to remove Welch from the unit.

Accordingly, I conclude that the April 14, 1988 meeting was a formal discussion between one or more representatives of McClellan AFB with a unit employee concerning a grievance, all within the meaning of section 7114(a)(2) of the Statute. Therefore AFGE Local 1857 had a right to be notified of the discussion and to be present. See McClellan Case, supra. McClellan AFB's failure to notify AFGE Local 1857 and to afford it an opportunity to be present at the April 14, 1988 meeting therefore constitutes a violation of sections 7116(a)(1) and (8) of the Statute.<sup>2/</sup>

Having concluded that McClellan AFB violated sections 7116(a)(1) and (8) of the Statute I recommend the Authority issue the following order:

#### 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 Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California, shall:

1. Cease and desist from:

(a) Conducting formal discussions with its employees in the bargaining unit exclusively represented by the American Federation of Government Employees, Local 1857, AFL-CIO, concerning grievances or any personnel policy or practices or other general conditions of employment, including interviews conducted in preparation for third-party hearings, without affording American Federation of Government

---

<sup>2/</sup> Because this is a right that runs to the union under the Statute I need not decide whether Welch was required to attend the meeting or whether Welch wanted the union to be present. Section 7114(a)(2) of the Statute grants AFGE Local 1857 the right to be present at any formal discussion involving a grievance. It is not to be confused with Welch's right to be represented at a meeting he is compelled to attend.

Employees, Local 1857, AFL-CIO, prior notice of and the opportunity to be represented at the formal discussions.


(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of 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 McClellan Air Force Base facilities where employees in the bargaining unit 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 a responsible official 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, Region 9, Federal Labor Relations Authority, 901 Market Street, Suite 220, San Francisco, CA 94103, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, D.C., October 26, 1989

  
SAMUEL A. CHAITOVITZ  
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 HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT conduct formal discussions with our employees in the bargaining unit exclusively represented by the American Federation of Government Employees, Local 1857, AFL-CIO, concerning grievances or any personnel policy or practices or other general conditions of employment, including interviews conducted in preparation for third-party hearings, without affording American Federation of Government Employees, Local 1857, 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 employees in the exercise of their rights assured 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, Region 9, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: (415) 995-5000.