

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

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LETTERKENNY ARMY DEPOT .  
Respondent .  
and . Case No. 2-CA-70172  
INTERNATIONAL BROTHERHOOD .  
OF POLICE OFFICERS, .  
LOCAL 358 .  
Charging Party .  
.....

Barbara S. Liggett, Esq.  
For the General Counsel

James Abbott, Esq.  
For the Respondent

Before: JOHN H. FENTON  
Chief Administrative Law Judge

DECISION

Statement of the Case

This proceeding arises under the Federal Service Labor-Management Relations Statute (5 U.S.C. § 7101 et seq.) and the Final Rules and Regulations issued thereunder (5 C.F.R. § 2423.14 et seq.) It arose upon the issuance of a Complaint filed on April 29, 1987 by the Federal Labor Relations Authority, alleging that the Respondent violated Section 7116(a)(1) and (2) of the Statute when it refused to promote George Webber to the position of Lead Guard because Webber was engaged in protected activity on behalf of the Charging Party.

A hearing was held in Chambersburg, Pennsylvania. Upon the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations:

Findings of Fact

On August 19, 1986 George C. Webber, a guard at Letterkenny Army Depot and at that time President of the

International Brotherhood of Police Officers, Local 358, applied for the position of lead guard or sergeant. On October 2, 1986 Webber and four other candidates were interviewed by Chief of Police Willie M. Calloway, the second line supervisor, who signed a selection register nominating Webber for the position on October 8, 1986. However, Webber heard from an unidentified guard that his nomination had been cancelled by Director of Administration Glen Kauffman.<sup>1/</sup> Webber contacted Sergeant Carroll Lee Wright, the Local's Vice President, and requested that they meet with Calloway. After the meeting, the three proceeded to Captain Paul Coleman's office to discuss the issue with him. Coleman explained that the wrong procedure had been used in making the selection and that the first line supervisor (a lieutenant) rather than the second line supervisor (the Chief), should have made the selection. Webber stated that this change in procedure should have been disclosed to the Local under Article II of the Labor Management Agreement.<sup>2/</sup>

Lt. Bowersox was given the opportunity to select the lead guard, allegedly because the vacancy existed on his shift and the sergeant selected would serve directly under him. Of the same five candidates the position was given to the only non-union candidate, Kenneth S. Johnson.

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<sup>1/</sup> According to Webber's testimony the unnamed individual explained that he had received this information from Lieutenant William Bowersox.

<sup>2/</sup> Article II § 2 states:

"Matters appropriate for negotiation shall be personnel policies, practices, and matters affecting working conditions so far as may be appropriate under applicable laws and regulations. These matters include, but are not limited to, safety and health practices, training plans, labor-management relations, employee services, grievance procedures, leave practices, promotion policies, demotion practices, reduction-in-force practices, equal employment opportunity practices, and hours of work.

Prior to the above-described meeting between Coleman, Webber, Wright and Calloway, Coleman had discussed Webber's selection register with Kauffman. Kauffman testified that he had not known that a second rather than a first line supervisor had made the selection until Webber's register had crossed his desk. He attributed his lack of knowledge to the large size of the organization and the "number of specialties he manages." Kauffman then called the Chief of Recruitment and Placement and asked what could be done to remedy the nomination in order to follow the policy described above. Kauffman was told that he had the option "to cancel a register or request a reissue." The register was then voided.<sup>3/</sup>

As noted above, the list of candidates, Webber among them, was sent to Bowersox to make the selection. Bowersox testified that he had not known that there had been another register before the list of candidates was sent to him. He also stated that he was not influenced by anyone in making the decision.

Ellene Piper, a personnel staffing specialist at Letterkenny Army Depot, testified that before the issue of Webber's nomination arose, Kauffman had stated that he would review all registers for "about six or seven months to a year . . ." due to a reorganization of the selecting process.<sup>4/</sup> Piper explained that this policy continued after Webber's nomination by Calloway. Furthermore, a nomination does not become official until it is reviewed by the chain of supervisors, forwarded to personnel and then sent to the Equal Employment Opportunity Officer for final review.

Webber was a fairly active Local President from January 1984 to October 1986. He negotiated the collective bargaining agreement, filed four grievances and represented

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<sup>3/</sup> There appears to be conflicting testimony as to who actually voided the register. However, even though the register was voided, Webber's name was still on the list of candidates that Bowersox had to consider. Thus, it was still possible that Webber could have been nominated by Bowersox.

<sup>4/</sup> This policy change is evident in a letter from Kauffman to the Recruitment Office dated February 28, 1986 in which Kauffman stated that he was going to review all positions of GS-05 and above.

employees at the grievance hearings. Specifically, on or about May 7, 1986, Webber represented an employee who had been accused of abusing sick leave. He was successful, and a memorandum admitting that Captain Coleman had committed a violation of the Act by excluding Webber from grievance discussions with the employee was posted on the boards for a thirty day period. Webber also successfully represented three employees who had been suspended, securing their lost wages and getting the charge removed from their records.

Webber was also involved in several other incidents which may not have pleased management. It is not clear what happened. One involved Kauffman's announcement at a staff meeting that, because of the number of vehicle accidents occurring on Depot property, he wanted to see any employee involved in an accident together with that person's supervisor. He turned to Webber and told him he was not invited. For reasons not clear to me. Webber believed such a meeting with Kauffman, who was the fourth step official for grievance purposes, violated the contract. He secured a letter from the national union's attorney to the Commander of the Depot requesting a meeting to discuss the Local's "serious concerns regarding the proper application of the negotiated grievance procedure." As a result, Webber met with the Civilian Personnel Officer and a labor relations specialist. They promised to look into the matter, but apparently nothing was done.

The other incident involved Kauffman's offer of a physical fitness test for the guards on a voluntary basis during off-duty time. He is a physical fitness buff, and quite clearly was strongly motivated to improve the fitness of the guards for a number of reasons, including their high incidence of heart attacks. The test basically involved an E.K.G., blood analysis and information from a dietician and physiologist. Webber, thinking the test involved physical exertion, explained to the members that they would be ineligible for workers' compensation if they were injured during off-duty time. He simultaneously sought, without success, to have participants placed on overtime. As a result, nobody signed up after Kauffman had arranged to import the dietician and the physiologist to help administer the program. Kauffman then asked Coleman why there were no volunteers and Coleman explained that Webber had advised them not to come. Kauffman, incensed and embarrassed, cancelled his arrangements and had a meeting with Webber and Coleman in his office. Webber testified that Kauffman stated that he was going to send a letter to the Union to tell Webber's people how stupid they were. Kauffman testified that he said something to the effect that it was "dumb as hell" for employees not to participate in the

program for their own benefit. Webber tried to explain that he and the others had misunderstood, thinking the test involved the risks of running and offered to explain his mistake to the bargaining unit members in attempt to correct the situation. Kauffman responded, "the hell with you . . . I'll just cancel the damned thing . . . . I don't need you to be my damned runner." Webber walked out, and the program was cancelled.

When questioned about why Webber's register was voided, Kauffman stated that the first line supervisor and not the second line should have made the selection.<sup>5/</sup> Furthermore, Kauffman thought Webber was a poor selection due to an incident at a bar and several occasions when bartenders allegedly had to stop selling alcohol to him. Webber is also alleged to have stayed at the front gate after his shift was over to talk with the guards. However, it is undisputed that Webber's work record is very good.

Kauffman professed to get along well with unions, and, except for his anger over the fitness program, which discloses no necessary union animus, there is no evidence that he desired to punish Webber for his representational

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<sup>5/</sup> Kauffman asserted that good management practices should require that the promotion decision should be made by the lieutenant for whom the sergeant would work. "He should decide who he wants to work for him," and he should feel responsible for any poor performance. This argument loses some of its ordinary force because these guards do not rotate. Thus, while a lieutenant may be motivated to make the best decision when that person will function as his right hand man, the lieutenant might in fact be less familiar with men on other shifts than is the Chief. In addition, a senior lead guard may bump across shifts. It is noted that Bowersox selected a man on his shift, with whose work he was familiar, as an acting sergeant. The other candidates, including Webber, were on other shifts. However, Bowersox said he knew Webber had a drinking problem, whereas Johnson was a nondrinker. In elaborating on Webber's "problem," Bowersox said he was called by the barmaid at the NCO Club and had to go there and escort Webber out. Webber said he asked the barmaid to call Security because of suspected marijuana use. Whatever, Webber admitted he was drinking and that it may have lowered his boiling point, although he did not "think he was intoxicated to the point of not knowing what he was doing."

activities. There is, however, un rebutted evidence that Coleman told Dennis Smith, who succeeded Webber as Union President in October, 1986, that he was glad that Smith had replaced Webber, with whom he could not get along, and that he did not like unions - that he had a bad taste in his mouth for unions because of his father's membership.<sup>6/</sup> It is clear, also, that Coleman did not think Webber should have been selected and told Kauffman so, before the register was voided. Thus, his alleged shortcomings as a potential sergeant were discussed, as well as the notion that the first line supervisor should have made the selection. Coleman asserted that Webber lacked the judgement, ability and inter-personal skills for the job, pointing both to Webber's barroom conduct and to some of his activities as Union President as indicating lack of such qualities.

Kauffman also regarded Webber as a poor choice for a leadership post, and as a man with a drinking problem.<sup>7/</sup> He also insisted, rather convincingly, that he would not have disturbed a first-level supervisor's selection of Webber, provided that person was aware of the shortcomings of Webber that Kauffman saw, and nevertheless believed him to be the best man for the job. He appears to believe very strongly that such choices should be made by those who must live closely with their consequences, and he insisted that such belief was his primary motive for taking the selecting authority away from Chief Calloway.

One cannot escape the suspicion that some of Webber's representational activities contributed, although not necessarily unlawfully, to the adverse judgement of his potential to be a sergeant and acting lieutenant. He successfully represented people, and it seems clear that Captain Coleman did not care for him or for unions. However, none of his success provoked any statements indicating a disposition to punish him. And it seems clear that Coleman thought some of his activity, concerning overtime for police officers, cast doubts on his judgement. More importantly, Kauffman was clearly angered by his role

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<sup>6/</sup> I regard Coleman's statement that he "does not dislike the union per se" as a quibble, essentially unresponsive to Smith's testimony.

<sup>7/</sup> Much of his evidence of off-duty drinking post-dated the nonselection, but not all of it, thought it arguably tends to confirm Kauffman's judgement.

in scuttling the fitness test, and made a puzzling statement to the effect that Webber was not invited to meetings that Kauffman wished to have with any employee involved in a Base vehicle accident (together with the supervisor). Kauffman did not explain, but said he did not recall, such a remark. As already noted, this remark led to a letter from union counsel to the Depot Commander, action which conceivably could have angered or embarrassed Kauffman.

### Conclusions

I regard the course of events here as highly suspicious. Webber was a good employee with an unblemished work record. While he got into some trouble at the NCO Club while apparently under the influence during off-duty hours, and may have otherwise been known to drink too much, he did make the list of most highly qualified applicants.

It is also true that he did some effective representational work as Union president, some of which directly impinged upon his third and fourth line supervisors. Thus, he caused the above-described letter to be written to Kauffman's boss, and he caused the Depot to post a Notice admitting that it committed an unfair labor practice when Coleman excluded Webber from a meeting at which a grievance was adjusted. He also got some suspensions reversed and the victims made whole. But, as noted, there is no evidence that any of this activity invoked any threats or statements indicating that his supervisors/managers were disposed to seek revenge for such conduct. The only hostility found in this record is to be found in Coleman's conversation with new Union President Smith. There he indicated that he was happy not to have to do business with Webber any longer and did not particularly care for unions. It is rather mild evidence of animus.

There is, on the other hand, fairly firm evidence that Kauffman was making a real effort to check all promotion papers, and that he strongly believed first line supervisors should be required to choose their own right-hand men. There is a further indication that Kauffman thought the selection of Webber by Calloway was a poor choice, although he down plays that as a secondary consideration. There is, finally, every reason to suspect that the fitness test debacle left a lasting and negative impression of Webber on Kauffman. However, while such attitude developed in the context of Webber's protected activity as a Union official, there is no persuasive indication that he was angry because Webber had the temerity to recommend that the unit employees

not take the risk of the "test" on off-duty time, when it was feared that workers compensation would not cover them. Rather, Kauffman simply could not believe that the beneficiaries of free screening and advice could be so stupid or dumb as to reject an offer into which he had put considerable effort out of concern for them. And, of course, the risk perceived by Webber was based on a seriously mistaken view of what was to occur, an error easily correctable before one torpedoes a program. There is a difference between deciding an employee has no future simply because he is a union activist, and deciding that his discharge of representational responsibilities demonstrates a lack of judgement, ability or other factors required for a given promotion. The line may be thin, and difficult to draw, but it must be recognized if the application of the law is to be realistic.

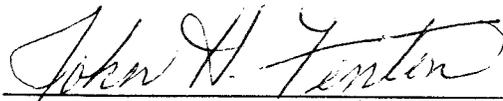
Nor does Kauffman's statement that he was not inviting Webber to attend meetings he wished to have with employees involved in vehicle accidents (together with the supervisor) indicate hostility. The statement purpose is unexplained, as Kauffman did not recall it. It is too ambiguous to be helpful to General Counsel's case.

The General Counsel has the burden of proving by a preponderance of the evidence that Respondent's nonselection of Webber was motivated by his Union activities. I conclude that burden has not been met. I accordingly recommend that the Authority issue the following Order:

ORDER

The Complaint in Case No. 2-CA-70172 is dismissed.

Issued, Washington, D.C., September 22, 1988



JOHN H. FENTON  
Chief Administrative Law Judge