

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

.
AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 987
Respondent
and Case No. 4-CO-80001
WARNER ROBINS AIR LOGISTICS
CENTER, ROBINS AIR FORCE
BASE, GEORGIA
Charging Party
.
Stuart Kirsch, Esquire
For Respondent
C. R. Swint, Jr., Esquire
For Charging Party
Linda J. Norwood, Esquire
For the General Counsel of FLRA
Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under Federal Service Labor-Management Relations Statute, as amended, 5 U.S.C. §§ 7101-7135 (1982 and Supp. IV 1986), 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 the Department of the Air Force, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, hereinafter called WRALC, alleging that the American Federation of Government Employees, National Office; American Federation of Government Employees, Council No. 214; American Federation of Government Employees,

Local 987 violated the Statute, the General Counsel of the FLRA, by the Regional Director of Region IV of the FLRA, issued a Complaint and Notice of Hearing. The parties stipulated that the Respondent herein is solely American Federation of Government Employees, Local 987, herein called AFGE Local 987 or the Union, which is a constituent local of the American Federation of Government Employees (AFGE). The Complaint alleges that the Union violated Section 7116(b)(1) of the Statute by creating the impression that an employee would be better represented in a grievance if she were a member of AFGE Local 987. The Union filed an Answer denying it had violated the Statute.

A hearing in this matter was conducted before the undersigned in Warner Robins, Georgia. AFGE Local 987, WRALC, and the General Counsel of the FLRA were represented and afforded 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

AFGE Local 987 represents bargaining unit employees, including Jeanette Leary, at WRALC. Leary received her performance appraisal in early August 1987, when she was not a member of AFGE Local 987. Leary was dissatisfied with her appraisal and asked Denise Hutchinson, Leary's supervisor, to arrange a meeting with a Union steward because Leary wanted to file a grievance concerning the appraisal. This was the procedure that was normally followed and was provided for in the collective bargaining agreement that was in effect.

Hutchinson telephoned the supervisor of Union Steward Albert Solomon, in order to arrange a meeting between Solomon and Leary. The supervisor advised Hutchinson that Hutchinson could personally arrange such a meeting directly with Solomon.

Leary saw another Union Steward, Monteen Purser, and told Purser about the conversation Leary had had with Hutchinson and told Purser that she, Leary, needed a Union Steward. Purser gave Leary an application for membership in AFGE Local 987, apparently without comment.

A couple of days later Leary saw Solomon in the work area. Leary asked Solomon if she, Leary, had to be a Union member to be represented in a grievance. She told Solomon she needed this assistance with respect to her performance appraisal. Solomon told her she did not have to be a member. Solomon stated that if Leary's case went as far as to need a lawyer, it would be best if she were a member because the Union doesn't like to have to put out money for lawyers for non-members.^{1/} Solomon testified that what he meant, when he spoke to Leary was to get the best representation she could be afforded by the Union that "... she would need, its best to be a member. . ." This conversation then ended.

Hutchinson then encountered Solomon and told him that he should see Leary. Solomon advised Hutchinson that he had already spoken with Leary and that he could not represent her due to the fact that she was not a member of the Union. Hutchinson said to Solomon that she had heard rumors about some changes and they (the Union) would not have to represent non-members, but that she (Hutchinson) was unaware that the changes had taken place. Solomon stated that there had been a change and that they did not have to represent non-members.^{2/}

Later in August 1987 Leary joined the Union and the Union represented Leary in the grievance. In prior years

^{1/} This conversation is based upon the testimony of Leary. Solomon's version is not too dissimilar. He remembered saying that she (Leary) might not know, but it is best to be a member if a grievance had to go beyond the third level, the Union might take a dim view about representing her, but the Union still would go ahead and represent her. I find Leary to be a more credible witness than Solomon. Her testimony seemed forthcoming and her memory seemed reliable. Solomon seemed less forthcoming and he also had a conflict in testimony with Hutchinson, who I also find to be more reliable and credible than Solomon.

^{2/} I credit Hutchinson's version of this conversation. Her memory seemed reliable and she seemed truthful and appeared to have no interest in the outcome of the case. Solomon again seemed less reliable. He did not recall the conversation at all. This conversation seems consistent with the conversation between Leary and Solomon and consistent with the other surrounding circumstances.

Leary had had grievances processed by the Union, although none reached the level of utilizing an attorney. Few attorneys have been used by the Union in the processing of grievances.

Union stewards were appointed by the Union president. The stewards duties included representing employees in grievances over work-related matters and soliciting membership.

Discussion and Conclusions

Section 7102 of the Statute protects employees' rights to join and assist or to refrain from joining and assisting a labor organization. Section 7116(b)(1) of the Statute makes it an unfair labor practice for a labor organization to interfere with, restrain and coerce employees in the exercise of their rights, as guaranteed by the Statute, including those rights provided in Section 7102.

The FLRA has consistently held that a labor organization violates Section 7116(b)(1) of the Statute when it attempts to coerce or intimidate an employee into becoming a member of the Union. American Federation of Government Employees, Local 916, AFL-CIO, 28 FLRA 988 (1987), hereinafter called AFGE Local 916, and American Federation of Government Employees, Local 1778, AFL-CIO, 10 FLRA 346 (1982), hereinafter called AFGE Local 1778.

In AFGE Local 916, supra, the Administrative Law Judge states, affirmed by the FLRA, that a union violates Section 7116(b)(1) of the Statute when it creates the impression, through its agents, that an employee would receive better representation if the employee joined the union. Further the union must clarify statements which create such an alleged impression and may not allow its silence to continue to work this coercive effect. See also AFGE Local 1778, supra.

General Counsel of the FLRA contends that, based upon the foregoing, AFGE Local 987 violated Section 7116(b)(1) of the Statute because the conduct of Union Steward Purser and the statement of Union Steward Solomon created the impression that Leary would receive better representation in a grievance if she joined the Union.

Words and conduct do not exist in a vacuum, rather they receive their meaning through the surrounding circumstances and our general common experience.

Union Steward Purser's response to Leary's statement describing her conversation with Hutchinson and stating that she (Leary) needed Union assistance was to give Leary an application for membership in AFGE Local 987. I conclude that Purser's conduct would reasonably communicate to Leary that if she wanted the Union assistance she had requested she had to join the Union.

Similarly, later although Solomon stated that Leary did not have to be a member of AFGE Local 987 for the Union to represent Leary in a grievance, Solomon went on to say that if Leary's case went as far as to need a lawyer, it would be best if she were a member because the Union doesn't like to have to put out money for lawyers for non-members. Solomon's statements clearly conveyed to Leary the message that if her grievance needed a lawyer at any stage the Union would not utilize a lawyer for Leary unless she was a member of AFGE Local 987. This is the clear message Solomon was sending. This is especially so after Purser's response to Leary's request for Union help was to give Leary a membership application. The two Union Stewards were sending a message that any reasonable person would have understood to be that if Leary's grievance ever reached the stage that necessitated representation by a lawyer, she would have to be an AFGE Local 987 member in order for the Union to utilize a lawyer.

I conclude that the two Union Stewards were clearly communicating to Leary that members of the Union will receive better representation in a grievance than would a non-member. Such a communication by two representatives of AFGE Local 987 constitutes a violation of Section 7116(b)(1) of the Statute.

In reaching the conclusion as to the meaning of Purser's conduct and Solomon's statement, I relied solely on the actual words and conduct in the circumstances in which they occurred. The conclusion was based upon the meaning a reasonable person would have gotten from the action and statement. I did not rely upon either the intent of Purser or Solomon or upon the actual interpretation by Leary.^{3/}

^{3/} It is interesting to note, although they took no part in my reaching the conclusion, that my conclusion is consistent with Solomon's statement to Hutchinson, Solomon's testimony as to his meaning, and Leary's interpretation at the time.

AFGE Local 987 contends the Purser's conduct and Solomon's statement did not violate the Statute because it was not clear they were referring to a grievance under the contract because no absolute decision had been made as to what avenue to pursue to redress Leary's complaint. Thus the Union contends since Purser and Solomon might have been referring to pursuing remedies about which the Union had no obligation to represent a non-member, it could state that it would afford better representation to members than to non-members. It relied upon NTEU v. FLRA, 800 F.2d 1165 (D.C. Cir. 1986) and Ft. Bragg Department of Defense Dependent Schools, Ft. Bragg, 28 FLRA 118 (1987). I find these cases are inapposite. In the subject case Leary did mention "grievance" to Solomon, so this was the context in which the conversation took place. Further neither Purser nor Solomon indicated the Union's reservation as to representing non-members applied only to the limited circumstances in which such a limitation is permitted. Rather, their messages were very broad and would reasonably be perceived as applying to representation in all circumstances. Accordingly, I reject the Union's contention that Purser's conduct and Solomon's statement were permissible. See AFGE Local 916, supra.

At the hearing the Union contended that there could be no violation of Section 7116(b)(1) of the Statute, by a statement of Union officials, unless there was an actual finding of an actual violation of the Union's duty of fair representation. I reject this argument. Clearly a threat, as in the instant case, that members would receive better treatment in the processing of grievances than would non-members, constitutes a violation of Section 7116(b)(1) of the Statute, whether or not the Union actually carries out its threat. See the AFGE Local 916, supra. This is especially so where the Union need not carry out its threat because it was successful and the employee joined the Union.^{4/}

Finally AFGE Local 987 urges that the statement and conduct present herein would not interfere, restrain or coerce any reasonable person from exercising his or her protected rights, in this case to refrain from joining the Union. I reject this argument and in fact conclude that the statement and conduct herein are the very kind that would be the most coercive and interfering. Very few communications

^{4/} In the subject case, Leary joined the Union and it then processed her grievance.

would coerce and interfere more than advising an employee that she would not receive full representation in the processing of her grievance unless she joined the Union. Such a communication by the Union, the communication present herein, constitutes a violation of Section 7116(b)(1) of the Statute. See the AFGE Local 916, supra and AFGE Local 1778, supra.

Having found that AFGE Local 987 violated Section 7116(b)(1) of the Statute, I recommend that the Authority issue the following:

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 the American Federation of Government Employees, Local 987, shall:

1. Cease and desist from:

(a) Stating or implying that American Federation of Government Employees, Local 987 will afford better representation in the processing of grievances to members than to non-members.

(b) In any like or related manner, interfering with, restraining or coercing any member in the exercise of rights assured by the Federal Service Labor-Management Relations Statute.

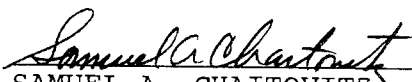
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Post at its business offices and its normal places including all places where notices to members and employees of Warner Robins Air Logistics Center, Robins Air Force Base, Georgia are customarily posted, 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 President of the American Federation of Government Employees, Local 987 and they shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(b) Submit appropriate signed copies of such Notices to the Commanding Officer of the Warner Robins Air Logistics Center, Robins Air Force Base, Georgia for posting in conspicuous places where the unit employees are located, where they shall be maintained for a period of 60 consecutive days from the date of posting.

(c) Pursuant to Section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IV, Federal Labor Relations Authority, 1371 Peachtree Street, N.E., Suite 736, Atlanta, GA 30367, 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., February 17, 1989



SAMUEL A. CHAITOVITZ
Administrative Law Judge

NOTICE TO ALL MEMBERS AND EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT state or imply that American Federation of Government Employees, Local 987 will afford better representation in the processing of grievances to members than to non-members.

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 IV, whose address is: 1371 Peachtree Street, N.E., Suite 736, Atlanta, GA 30367, and whose telephone number is: (404) 347-2324.