

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

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AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 987
WARNER ROBINS, GEORGIA
Respondent
and
WARNER ROBINS AIR LOGISTICS
CENTER, ROBINS AIR FORCE
BASE, GEORGIA
Charging Party
.....

Case No. 4-CO-80003

Stuart A. Kirsch, Esq.
For the Respondent
Linda J. Norwood, Esq.
For the General Counsel
C. R. Swint, Jr., Esq.
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. §§ 7101-7135 (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.

The charge in this matter was filed by Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, hereinafter called WRALC against American Federation of Government Employees, National Office; American Federation of Government Employees, Council No. 214; American Federation of Government

Employees, Local 987, Warner Robins, Georgia.^{1/} Pursuant to this charge, the General Counsel of the FLRA, by the Regional Director of Region IV of the FLRA, issued a Complaint and Notice of Hearing alleging that AFGE Local 987 violated Section 7116(b)(1) of the Statute by publishing an article in its newspaper. AFGE Local 987 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

The facts of this case are virtually not in dispute. AFGE Local 987 is a constituent of AFGE, which is the exclusive collective bargaining representative for a nationwide consolidated unit of employees of the Air Force Logistics Command, including employees located at WRALC. AFGE Local 987 is the local of AFGE responsible for representing the unit employees at WRALC.

AFGE Local 987 publishes an official newspaper, The Robins Review, as a means of communication with the large number of bargaining unit employees at WRALC.^{2/} About 10,000 copies of each edition of this newspaper are distributed on WRALC by dropping the copies off at designated "drops". The September 27, 1987 edition included a front page article entitled "FLRA Defines Union Duty to Non-Members" written by AFGE Local 987 President Nedra Bradley.

^{1/} At the hearing the parties stipulated that American Federation of Government Employees, Local 987, hereinafter called AFGE Local 987, is the only Respondent herein and that it is a labor organization, a constituent of American Federation of Government Employees (AFGE) and represents employees of WRALC.

^{2/} There are about 16,000 employees at WRALC in the collective bargaining unit.

This article, which is attached hereto and marked "Appendix", except for the last sentence, quoted an article from a different news publication which dealt with a recent FLRA decision. The article dealt with an FLRA decision involving a lawsuit filed by the Overseas Education Association against the Department of Defense and that union's obligation to represent both members and non-members in the lawsuit. The last two paragraphs of the article state:

"FLRA ruled, however, that the Union must treat all employees equally only if it is acting in its role as their sole representative. The labor authority [sic] that non-members could have hired their own lawyers and pursued their interests themselves.

Non-dues paying persons wishing to file grievances on the recently publicized overtime pay issue should join the union to assure prompt representation."

The August 27, 1987, issue of The Robins Review devoted a large portion of its front page to an explanation of how to participate in Fair Labor Standards Act (FLSA) litigation involving overtime. There was a consent form entitled "CONSENT TO FLSA LITIGATION" requesting that it be sent to the Union President. There was an accompanying article which described the nature of the lawsuits. This article states, in part:

"It is important to note that AFGE's court action cannot recover an employee's lost overtime wages unless that employee consents to participate in AFGE's lawsuit.

At right is a consent form which must be completed by each employee wishing to be included as a plaintiff in this court action."

Discussion and Conclusions

Section 7116(b)(1) of the Statute provides that it is an unfair labor practice for a labor organization to "interfere with, restrain or coerce any employee in the exercise by the employee of any right under this chapter." Further, Section 7102 of the Statute provides that employees have the right to join or assist any labor organization or to refrain from any such activity.

The FLRA has held that a union may not attempt to coerce employees into joining the union by creating an impression that an employee must be a member to get an effective level of representation or that members will receive better representation than non-members. Cf. American Federation of Government Employees, Local 1778, AFL-CIO, 10 FLRA 346 (1982), hereinafter called AFGE Local 1778; and American Federation of Government Employees, Local 916, AFL-CIO, 28 FLRA 988 (1987), hereinafter called AFGE Local 916.

The FLRA has also held in Fort Bragg Association of Educators, National Education Association, Fort Bragg, North Carolina, 28 FLRA 908 (1987)^{3/} at 918:

"Where the union is acting as the exclusive representative of its unit members, we will continue to require that its activities be undertaken without discrimination and without regard to union membership under section 7114(a)(1). We will not, however, extend those statutory obligations to situations where the union is not acting as the exclusive representative."

Thus the FLRA held in Fort Bragg, supra, that the union had not violated Section 7116(b)(1) of the Statute when it communicated to unit members that representation in the lawsuit would differ depending on union membership. See also American Federation of Government Employees, AFL-CIO, 30 FLRA 35 (1987).

In light of the foregoing it is clear that a union is permitted to advise employees that it will afford better representation to members than to non-members in those situations where the union is not acting as the exclusive representative of the employees, i.e., lawsuits in courts and before the Merit Systems Protection Board. In fact in such situations the union can refuse to represent non-members entirely. However, in those situations wherein the union is representing employees as their exclusive collective bargaining representative, it may not afford better and more effective representation to members than to non-members; see Fort Bragg, supra, and may not communicate in such situations, which include processing grievances under a collective bargaining agreement, that members will

^{3/} Hereinafter referred to as Fort Bragg.

receive better representation than non-members. Cf. AFGE Local 916, supra, and AFGE Local 1778, supra.

The General Counsel of the FLRA contends that AFGE Local 987 violated Section 7116(b)(1) of the Statute because it created the impression, in the last sentence of the article in question in the September 24, 1987 issue of The Robins Review, that employees would receive more prompt representation in grievances if they joined the Union.

The article entitled "FLRA Defines Duty to Non-Members", which appeared in the September 24, 1987, issue of The Robins Review,^{4/} until its last sentence accurately reports the state of the FLRA law.^{5/} However, the article does not clearly distinguish between lawsuits or MSPB proceedings and grievances processed under the collective bargaining agreement; rather the article speaks in terms of a union's obligation when it is acting as the "exclusive representative" of employees and when it is acting "in its role as their sole representative". The article then concludes with the sentence that is the subject of this case, "Non-dues paying persons wishing to file grievances on the recently publicized overtime pay issue should join the Union to assure prompt representation."

This notice is looked at in context in determining what it communicates to employees. It then must be decided what meaning the article would foreseeably communicate to a reasonable person.^{6/} This test is fundamentally an objective one.

The article was read by employees of WRALC and I must assume that when they read the article they attributed to the words their normal and usual meanings, unless there was

^{4/} It is undisputed that The Robins Review is an official publication of AFGE Local 987.

^{5/} The article, up to the last sentence, was taken from a newsletter and the last sentence was written and added by AFGE Local 987 President Bradley.

^{6/} In making such a determination the intent of the speaker or writer is irrelevant, as is evidence as to what meaning employees actually attributed to the article. To hold otherwise would be too subjective a test and would frustrate the Statute's prohibition against interference and coercion.

some specific instruction that particular words are to be given special or unusual meanings. In looking at the article, in its entirety, it reported a very specific and sophisticated distinction drawn by the FLRA between when a union is acting as the exclusive collective bargaining representative of the employees in a unit and when it is acting on behalf of employees, but not in its capacity as exclusive representative. This is a subtle distinction that, although stated in the article, was not clearly explained and although a "lawsuit" was mentioned, grievances and other types of procedures were not and the difference between lawsuits and grievances under the collective bargaining agreement was never explained. Rather the article ended with the instruction to employees to join the Union if they wished to file grievances concerning overtime "to assure prompt representation". In light of all of the foregoing, I conclude that it was foreseeable that an employee reading the article would have concluded that if he wanted to file a grievance under the contract about overtime pay he would have to join the Union to get prompt representation. The message was clear that Union members would receive prompt representation than non-members in the processing of a grievance. These are the usual and normal meanings of the words used. Communication of such a message by AFGE Local 987, in The Robins Review, constituted a violation of Section 7116(b)(1) of the Statute. Cf. AFGE Local 1778, supra, and AFGE Local 916, supra.

AFGE Local 987 contends that the foregoing meaning would not be conveyed to a reasonable person. Rather it contends that because the sentence in question referred to "the recently publicized overtime pay issue . . ." that, in context, an employee would have known that the article was referring to the August 27, 1987, The Robins Review, which contained an article about a lawsuit for overtime pay. The problem with this approach is the sentence in the September 24, 1987, article did not specifically refer to the August 27, 1987, article nor did it make it clear that it was referring only to a lawsuit. Quite to the contrary after speaking about a union's right not to represent non-members in a lawsuit, it stated that non-members who want grievances about overtime pay handled promptly should join the Union. AFGE Local 987 seemed to be equating its rights not to represent non-members in lawsuits with its right not to represent non-members in grievances. AFGE Local 987 recognized the confusion this reasonably created when, on page 4 of its brief it stated, "While the use of the term grievance . . . was inadvertent and possibly not the best choice of words"

Similarly, AFGE Local 987 argues that "grievance" should be read in its broad sense and include all "grievances", including lawsuits. Even granting such a general or generic interpretation, "grievance" would normally and usually be perceived as including a grievance arising under the collective bargaining agreement, unless there was some specific reservation to the contrary, and there was no such reservation. To the extent the Union contends that the overtime pay issue was being litigated in a lawsuit, there has been no showing that an overtime pay issue could not also be raised by means of a grievance under the contract.

Finally AFGE Local 987 argues that the sentence in question speaks in terms that non-members "should" join the Union, it doesn't require it or demand it. This interpretation ignores the rest of the sentence which stated that non-members should join the Union "to assure prompt representation," which is a statement that only members are "assured prompt representation," a disparity of treatment between members and non-members. Similarly, I reject AFGE Local 987's contention that the Union did not violate the Statute because it did not intend to interfere with employees' rights. The intention of the Union is irrelevant. The case must be decided on an analysis of what was said or written and how this could foreseeably be perceived by a reasonable person.

In light of all the foregoing therefore, I conclude that the sentence in question reasonably and foreseeably communicated to employees that Union members would receive prompt representation by AFGE Local 987 than non-members in the processing of grievances, including grievances under the collective bargaining agreement, concerning overtime pay and that such communication violated Section 7116(b)(1) of the Statute. AFGE Local 1778, supra and AFGE Local 916, supra.

Remedy

In addition to the normal "Cease and Desist" and posting remedies, I conclude, because this matter was communicated in The Robins Review and because of the similar violation I found in Case No. 8-CO-80001 that a copy of the "Notice" herein should be published and printed in one regular edition of The Robins Review.

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

ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the American Federation of Government Employees, Local 987 shall:

1. Cease and desist from:

(a) Publishing in The Robins Review or otherwise creating the impression that nonmember unit employees seeking representation by the American Federation of Government Employees, Local 987, the employees' exclusive representative, in the processing of grievances would be required to join the union as a precondition to receiving prompt representation.

(b) Interfering with, restraining, or coercing unit employees in the exercise of their right to join or to refrain from joining, the American Federation of Government Employees, Local 987, or any other labor organization, freely and without fear of penalty or reprisal.

(c) In any like or related manner, interfering with, restraining, or coercing unit employees in the exercise of their rights assured by the 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 local business office, at its normal meeting places, and at all other places where notices to members and to 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 shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members and other employees are customarily posted. Reasonable steps shall be taken by the American Federation of Government Employees, Local 987, to ensure that such Notices are not altered, defaced, or covered by any other material. A copy of this Notice shall be published and printed in The Robins Review.

(b) Submit appropriate signed copies of such Notice to the Commanding Officer of the Warner Robins Air Logistics Center, Robins Air Force Base, Georgia for posting in conspicuous places where unit employees represented by the American Federation of Government Employees, Local 987, are located. Copies of the Notice should 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, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., March 21, 1989



SAMUEL A. CHAITOVITZ
Administrative Law Judge

NOTICE TO ALL MEMBERS AND OTHER 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 MEMBERS AND OTHER EMPLOYEES THAT:

WE WILL NOT publish in The Robins Review or otherwise create the impression that nonmember unit employees seeking our representation in the processing of grievances are required to join the Union as a precondition to receiving prompt representation.

WE WILL NOT interfere with, restrain, or coerce unit employees in the exercise of their right to join or to refrain from joining, the American Federation of Government Employees, Local 987, or any other labor organization freely and without fear of penalty or reprisal.

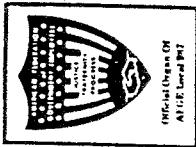
WE WILL NOT in any like or related manner, interfere with, restrain, or coerce unit employees in the exercise of their rights assured by the Statute.

(Union)

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 its provisions, they may communicate directly with the Regional Director, Region IV, Federal Labor Relations Authority, whose address is: 1371 Peachtree Street, N.E., Suite 736, Atlanta, GA 30367, and whose telephone number is: (404) 347-2324.



The Robins Review

The Civilian Viewpoint
WARNER ROBINS, GA 31099

THURSDAY, SEPTEMBER 24, 1987

15TH YEAR, NUMBER 39

How Much
Light Gets
to the
Warner Robins
Our People
No. 13

Georgia State Council Holds Training Session



Training - Delegates Red Burnam and John Kinser and Ralph McInvate of Local 987 take Regulo of AFGE Local 2317, Albany and Elbin notes.

By Ruby Gibson
On Friday, September 18, 1987, the AFGE Georgia State Council held training at the Downtowner Motor Inn in Warner Robins. The training was on MSPB (Merit Systems Protection Board) procedures. AFGE can be proud of the Regional Office conducted the training.

The speakers were R. J. Payne, Regional Director/Chief Administrative Judge, Margaret Cunningham, Administrative Judge, Kevin Dugan, Administrative Judge, and Kathleen McGraw, Administrative Judge. The

speakers shed some good light into the MSPB procedures. The Judges provided information to the stewards on how to file, process, prehearing activities, hearing procedures, evidence, and current case law.

AFGE can be proud of the training its representatives are receiving this year from such caliber of people from the MSPB Regional Office. The Judges have ruled on cases at Robins AFB. They have not always given favorable decisions to the Union but they were impartial when it came to the training session.

AFGE receives training in the

Local, State, District, National, and Command Levels. AFGE strives to educate its stewards in fields that will be helpful in every way to better represent and serve the people.

I have enjoyed every training session I have attended as a representative of AFGE. You as a member can be proud of what AFGE is doing in this area. The Union needs more participation and support. Support Local 987 today by signing up as a new member. Call or come by to visit Local 987 and someone will be glad to take the time to talk to you about AFGE.

FLRA Defines Union Duty To Non-Members

In a recent ruling the Federal Labor Relations Authority ruled that federal unions must treat members and non-members alike only if the union is acting as the "exclusive representative" of all bargaining unit members. This ruling clarifies the duties of a union toward non-members of the bargaining unit ... called free riders by unions.

This dispute concerned a lawsuit filed against the Defense Department by the Overseas Education Association. The Union pointed out that it would give greater attention in the suit to the needs of dues paying members. This prompted a complaint that the Union was discriminating.

FLRA ruled, however, that the Union must treat all employees

equally only if it is acting in its role as their sole representative. The labor authority that non-members could have hired their own lawyers and pursued their interests themselves.

Non-dues paying persons wishing to file grievances on the recently published overtime pay issue should join the union to assure prompt representation.

Embattled Congress Returns From Recess To Face a Backlog of Difficult Issues

Congress returned from its month long recess last week. They now face a chaotic fall session, filled with so many unresolved issues that it now seems possible that they may be back in Washington well into 1988. Before the August recess began, Senate Majority Leader Robert Byrd (D-WV) warned that he might delay consideration of the Bork nomination until Republicans "come to their senses" and allow the Senate

massive trade deficit, preferably the Gephardt amendment, support the House version of workers rights provisions in Section 301 strengthen Section 201, the injury statute support shilling authority from the Pres.