

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

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DEPARTMENT OF THE NAVY .  
NAVAL AVIATION DEPOT .  
NAVAL AIR STATION ALAMEDA .  
ALAMEDA, CALIFORNIA .  
Respondent .  
and .  
INTERNATIONAL ASSOCIATION OF .  
MACHINISTS AND AEROSPACE .  
WORKERS, LODGE 739, AFL-CIO .  
Charging Party .  
.....

Case No. 9-CA-80529

Susan E. Jelen, Esquire  
For the General Counsel, FLRA

Leo Sammon, Esquire  
For the Charging Party

Gilbert Merrill  
and  
Dean Franke  
For the Respondent

Before: ELI NASH, JR.  
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. section 7101 et seq., 92 Stat. 1191 (hereinafter referred to as the Statute) and the Rules and Regulations of the Federal Labor Relations Authority (herein referred to as the Authority) 5 C.F.R. Chapter XIV section 2410 et seq.

On August 4, 1988, the proceeding was initiated by an unfair labor practice charged filed against the Department of the Navy, Naval Aviation Depot, Naval Air Station Alameda, Alameda, California (herein called Respondent), by the International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO (herein called the Union). The Complaint issued on December 28, 1988, alleges that Respondent violated section 7116(a)(1) and (5) of the Statute by imposing a ten hour limitation per week on the Union's chief steward without giving the Union notice and an opportunity to bargain over the change.

Respondent's Answer denied the commission of any unfair labor practices.

A hearing was held before the undersigned in San Francisco, California. All parties were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Post hearing briefs were filed and have been duly considered.

Upon consideration of the entire record in this case, including my observation of the witnesses and their demeanor, I make the following findings of fact conclusions of law and recommendations.

#### Findings of Fact

1. At the time of the hearing, Willie Stanley was chief steward of the 4000 Division for the International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO and had held that position since February 1987. Approximately 540 bargaining unit employees work in the Division. Stanley also works as an electronics mechanic in Shop 94111, Radio UHF Section, Avionics, 4000 division. Since July 1988, Cheryl Terbeck has been Stanley's immediate supervisor. Herb Yim is the general foreman; Chris Guzman is the Deputy Director. Charles Mayfield has been the Division Director of the 4000 Division since approximately May 1988. Prior to Terbeck, Robert Brown was the supervisor in Stanley's shop for about four or five months in 1988. Finally, Larry Smith had been the supervisor from about 1984 or 1985 to 1987.

2. As chief steward Stanley is involved in investigating grievances at the first step and coincidentally represents employees at the first step of the grievance procedure when other stewards in the employee's area are unavailable. Under

the parties' collective bargaining agreement, as chief steward Stanley is also responsible for writing second step grievances, delivering them to the Division Director, and attending second step grievance meetings with the employee and the Division Director. Stanley also has duties involving various safety committees. Stanley is not authorized to negotiate on behalf of the Union or to receive notice of proposed changes. Such responsibility lies with the Union President George Cleveland or Leo Sammon, Grand Lodge Representative. There are between ten and eleven stewards who work under Stanley in the Division.

3. Article 6, Section 8 of the parties' collective bargaining agreement states, in pertinent, part that:

Reasonable time during working hours without loss of pay or benefits shall be allowed Chief Stewards to carry out their responsibilities to unit employees in their assigned Divisions in accordance with the items of this Agreement. . . .

Prior to August 1988 Stanley had never been told how much official time he could use per week. No limits had ever been placed on the amount of official time allowed. From 1987 until July 1988, Stanley used about 15 to 20 hours official time per week, without comment from Respondent.

4. Before August 1988, Stanley and any other stewards had used a log book placed in the shop to record their official time usage. Stanley followed the procedure in which he informed his supervisor that he was going on union business. He was never denied such time and when he returned would record his time in the log that was kept in the supervisor's office. The log would show the date, location, the person contacted, the time used and the steward's name. Around July 29, 1988, the log book was removed by foreman Yim and Stanley began using a shop/office pass to request official time.

5. Sometime around August 17, 1988, Stanley met with Division Director, Charles Mayfield. Their meeting took place in Mayfield's office and only the two of them were present. According to Stanley, Mayfield had the official time log book with him and began the meeting by stating that Stanley was using too much official time and that he must cut down. Mayfield told Stanley that he wanted Stanley to start using ten hours of official time per week. Mayfield repeated that Stanley was using extremely too much time on union business and 20 hours a week was too much time to use.

6. Stanley responded that he could not agree to use only ten hours. Stanley asserted that he was only using what he could to do his union business.

7. Mayfield responded that he had to cut the time down; that Stanley had to cut down to ten hours a week. Mayfield also stated that was all he was going to allow Stanley, ten hours a week on union business. Stanley again stated he was not going to agree and the meeting ended.

8. Mayfield's testimony is that a meeting had been held with Stanley in which he explained the need to Stanley for the Division to cut back on its indirect budget and suggested a ten hour limitation on Stanley's use of official time. Mayfield asserts that he informed Stanley if he had a problem, he could come back and they would work something out. Stanley denied however, that he had ever agreed to such a limitation.

9. Following the meeting Mayfield informed Yim, Terbeck and Guzman of his meeting with Stanley; that there would be a ten hour a week limitation on Stanley's use of official time.

10. The following day, August 18, 1988, Stanley submitted a shop pass requesting official time to go to the union office. His request was granted by Terbeck who noted on the form "must be within 10 hrs as dir. 940." 940 is the code for Mayfield's office. Stanley immediately denied he had agreed to any ten hour limit, but Terbeck did not change the shop pass form.

11. Stanley was granted official time that day and left the shop for the union office. Later that day he went to Building 530 in response to an employee who had called and wanted to see him about a grievance. Stanley went to the shop supervisor Fred Moxley, who asked to see a shop pass. Stanley explained that he only had a shop pass for the union office, but he would call his supervisor and verify the pass. It appears that Stanley was following that part Article 6, Section 8 which provides as follows:

It is understood that at times the Chief Steward will have more than one place to visit and, if this is known when he leaves the shop he should so advise the supervisor. If however, after leaving his shop the occasion arises making it necessary to visit other areas or shops, the Chief Steward will notify his supervisor by phone.

Stanley apparently followed the provisions of the parties agreement.

12. Stanley contacted Terbeck and informed her where he was. She ordered him to return to the shop immediately, saying that he had exceeded the ten hour limit. Stanley returned to work as ordered.

### Conclusions

The General Counsel submits that Respondent violated the Statute by unilaterally implementing a ten hour a week limitation on the amount of official time that could be utilized by chief steward Stanley. Its theory is based on Respondent's having unilaterally changed an established past practice regarding Stanley's use of official time without giving the Union notice and the opportunity to bargain. Social Security Administration, 13 FLRA 112 (1983); Veterans Administration, Veterans Administration Medical Center, Muskogee, Oklahoma, 19 FLRA 1054 (1985).

Respondent merely argues that the case is controlled by Marine Corps Logistics Base, Barstow, California, 33 FLRA No. 80 (1988) where the Authority decided in an official time dispute that ". . . the essence of the dispute in this case involves differing and arguable interpretation of the parties' negotiated agreement."

In Marine Corp, supra, the Authority found no violation when the manager mentioned the collective bargaining agreement in denying a steward time to process a grievance. There is no such suggestion here where Respondent's manager called the steward into his office and informed him that his official time was being reduced for work reasons and never mentioned the collective bargaining agreement. Furthermore, there was no allegation in the Marine Corp case that a past practice of allowing certain amounts of official time existed. In this case there are elements of an established past practice. Thus, it appears that the instant matter is distinguishable from the only case law relied on by Respondent.

Moving to the General Counsel's case it appears the chief steward had openly used more than ten hours of official time per week for well over a year, with Respondent's knowledge and apparent approval, thereby establishing a past practice. Clearly Respondent was aware of the amount of time used by Stanley because the time was kept in log books and it never complained. Furthermore, Respondent through Mayfield recognized its obligation to negotiate over

the matter and apparently attempted to bargain over the ten hour per week limitation of use of official time by the chief steward. Respondent however, did not give notice to the correct Union official and, in any event, the union official Mayfield attempted to bargain with did not agree with the new limitation.

The General Counsel maintains that the use of official time under section 7131(d) concerning the amount, allocation and scheduling is negotiable absent an emergency or other special circumstance. Military Entrance Processing Station Los Angeles, California, 25 FLRA 685 (1987). According to the General Counsel no circumstance is presented in this case which would allow a unilateral change in the official time hours without giving notice and an opportunity to bargain to the exclusive representative. I agree that Respondent's managers bare assertion that "Stanley was using too much official time and that he must cut down" does not establish the required emergency or special circumstance which would allow a change in the past practice of use of official time in excess of ten hours to the chief steward in this matter without the required notice and bargaining.

Based on all of the foregoing it is found that Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally imposing a ten hour limitation per week on chief steward Stanley's use of official time without giving the Union notice and the opportunity to bargain concerning said change.

Accordingly it is recommended that the Authority adopt the following:

#### ORDER

Pursuant to section 2423.29 of the Rules and Regulations of the Federal Labor Relations Authority and section 7118 of the Statute, the Authority hereby orders that the Department of the Navy, Naval Aviation Depot, Naval Air Station Alameda, Alameda, California shall:

1. Cease and desist from:

(a) Unilaterally instituting changes in an established past practice with respect to the use of official time by the chief steward engaged in representational duties on behalf of the exclusive representative without providing notice to, and upon request bargaining with, International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO, the exclusive representative of its employees, or any other exclusive representative.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights assured by the Statute.

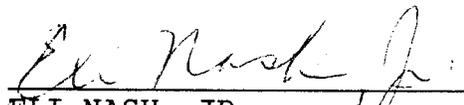
2. Take the following affirmation action in order to effectuate the purposes and policies of the Statute:

(a) Upon request, meet and negotiate with the International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO, the exclusive representative of its employees, with regard to any changes in established past practices concerning the use of official time by the chief steward to engage in representational duties on behalf of the exclusive representative.

(b) Post at its Department of the Navy, Naval Aviation Depot, Naval Air Station Alameda, Alameda, California facility, 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, or a designee, 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IX, 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, December 12, 1989, Washington, D.C.

  
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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 HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT unilaterally institute changes in an established past practice with respect to the use of official time by the chief steward engaged in representational duties on behalf of the exclusive representative without providing notice to, and upon request bargaining with, International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO, the exclusive representative of our employees, or any other exclusive representative.

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

WE WILL, upon request, meet and negotiate with the International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO, the exclusive representative of our employees, with regard to any changes in established past practices concerning the use of official time by the chief steward to engage in representational duties on behalf of the exclusive representative, and the implementation of any such changes.

\_\_\_\_\_  
(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 IX, whose address is: 901 Market Street, Suite 220, San Francisco, California, and whose telephone number is: (415) 744-4000