

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

.
DEPARTMENT OF THE NAVY .
NAVAL AVIONICS CENTER .
INDIANAPOLIS, INDIANA .
Respondent .
and . Case No. 5-CA-80431
AMERICAN FEDERATION OF .
GOVERNMENT EMPLOYEES, .
LOCAL 1744, AFL-CIO .
Charging Party .
.

Muriel D. Williams, Esquire
For the Respondent

Susanne S. Matlin, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq.^{1/}, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent, in violation of

^{1/} For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, e.g., Section 7116(a)(5) will be referred to, simply, as "§ 16(a)(5)".

§§ 16(a)(5) and (1) of the Statute, unilaterally changed the manner of scheduling Union representational meetings. For reasons fully set forth hereinafter, I find that it did not.

This case was initiated by a charge filed on July 27, 1988 (G.C. Exh. 1(a)); the Complaint and Notice of Hearing issued on October 21, 1988; and the hearing was set for November 15, 1988, pursuant to which a hearing was duly held on November 15, 1988, in Indianapolis, Indiana, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, December 15, 1988, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on the timely motion of Respondent, to which the other parties did not object, for good cause shown, to January 20, 1989. Respondent and General Counsel each timely mailed a brief, received on January 24, 1989, which have been carefully considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

Findings

1. The American Federation of Government Employees, Local 1744, AFL-CIO (herein also referred to as the "Union") is the exclusive representative of all graded and ungraded employees of the Naval Avionics Center with certain exclusions as more fully set forth in Article 2, Section A of the 1987 Agreement of the Parties (Jt. Exh. 1, Art. 2A).

2. Article 30 of the 1987 Agreement of the Parties is entitled "OFFICIAL TIME" and, as pertinent, provides as follows:

"ARTICLE 30. OFFICE TIME

"SECTION A. Employees will be granted an amount of official time which is reasonable and necessary to discuss work-related subjects such as grievances, potential grievances, personnel policies or practices or other general conditions of employment with an appropriate supervisor/management official and/or Union representative. An employee desiring such a discussion shall so advise his/her supervisor, and the

supervisor, will through appropriate management channels, arrange for a meeting to be held normally by the end of the next regularly scheduled shift. Determination of the appropriate Union representative shall be in accordance with Article 31.

"SECTION B. Appropriate Union representatives whose assistance has been solicited will be granted official time which is reasonable to discuss work-related subjects with employees and appropriate supervisory or management officials. The Official time will be granted as soon as the work situation permits. Arrangements for such discussions shall be the responsibility of management.^{2/}

"SECTION E. Union representatives will guard against the abuse of Official Time and shall restrict such business to authorized periods. Prior to the use of such time, the Union official and his/her supervisor should have an understanding of the anticipated time to be used.
. . . "(Jt. Exh. 1, Art. 30, Sections A, B, and E) (Emphasis supplied).

3. Mr. William O. Wagoner, President of the Union, since about November 1987,^{3/} testified that Article 30, Sections A and B, was discussed during negotiations of the 1987 Agreement. He stated,

^{2/} The language in Article 30, Sections A and B has not changed from the May 4, 1984 Agreement (Jt. Exh. 2) and the April 3, 1981 Agreement (Jt. Exh. 3). The language of Section E was unchanged in the May 4, 1984 Agreement, except that the particular Section was Section D. (Jt. Exh. 2) As the portion of Article 30 of the 1981 Agreement introduced as Joint Exhibit 3 does not contain the equivalent provision, no comparison of the language of Section E to the 1981 Agreement can be, or has been, made.

^{3/} Executive Vice President for one year prior thereto and Chief Steward for three years before that. (Tr. 15).

"A We didn't see the need for change, because like I had said, management is management. The Agency had a real thing about managers being managers. We discussed in great lengths the latitude that the upper levels of the Union needed to do their business, and management agreed with us at the table of the way we had been doing it in the past that I had talked about earlier. "(Tr. 39).

"Q Section B of Article 30, which I believe refers to scheduling representational meetings --

"Q -- does it outline in there how that is to be arranged . . .

"A No, it does not.

"Q To your knowledge, what exactly does it say about arranging meetings?

"A To the best of my knowledge, it says that supervision has the responsibility to arrange the meetings for official time.

"Q Supervision?

"A Management.

"Q Does it specify who management is?

"A No, it does not.

"Q Does it say that the first line supervisor of the president or whoever --

"A No, ma'am, it surely does not."
(Tr. 47-48).

4. Mr. Wagoner testified that prior to the May - June 1988, period he scheduled 98 percent of his meetings (Tr. 16-17), i.e., specifically, that if an employee's supervisor called him, he and that supervisor would schedule a time to meet and he, Wagoner, would then go to his immediate first-line supervisor, Mr. Michael D. Pyles (Tr. 17, 106, 107), and tell him that he, Wagoner, had scheduled a meeting (Tr. 17). If there was a problem with the time he had scheduled the meeting, he would work it out with his supervisor and we would come to an agreement and I would then call the employee's supervisor and reschedule the meeting (Tr. 17).^{4/}

Mr. Wagoner stated that in May or June 1988, he was called to the office of his first level supervisor, Michael D. Pyles, who told him that,

" . . . I was no longer going to be allowed the latitude of arranging my own meetings . . . He had been told by upper level management that meetings had to be arranged through him"
(Tr. 26).

Mr. Wagoner stated that whereas he had scheduled 98 percent of his meetings as President before the May or June 1988, change (Tr. 16-17, 31), that after the May or June 1988, change it was reversed and since then Mr. Pyles has set 98 percent of his meetings and he, Wagoner, has scheduled only about 2 percent (Tr. 48). Mr. Wagoner further stated that he had scheduled at least 50 percent of his meetings while serving as Executive President and as Chief Steward, a period of about 4 years (Tr. 15, 23). Although I am aware that Mr. Wagoner stated that after the change, ". . . when an employee or supervisor would call me, I would have to

^{4/} Not referred to by General Counsel, largely avoided by Mr. Wagoner, probably because apparently contrary to the final sentence of Article 30 B (Jt. Exh. 1, Art. 30 B), and unsupported by either Mr. Stanley M. Perry, Chief Steward since December, 1987 (Tr. 53, 57, 67-68), or by Mr. Leroy Stinson, Deputy Chief Steward since November 1987 (Tr. 71), and Chief Steward for a year and a half prior thereto (Tr. 71, 74), nevertheless, Mr. Wagoner stated that stewards called the Chief Steward directly and they arranged meetings which the Chief Steward then informed his supervisor were to be held (Tr. 47), a practice which Mr. Wagoner asserted was changed after the May - June time frame (Tr. 47).

inform them that they would have to get in touch with my first-line supervisor and arrange a meeting" (Tr. 28), I am not persuaded. First, as to employees, Mr. Wagoner had made it clear that: (a) "Employees are supposed to go up to their supervisor and inform them that they have a potential grievance." (Tr. 17; see also, 102-103); and (b) ". . . when they [employees] talked to me on the phone, obviously I would tell them the procedure that they should go through." (Tr. 17). Second, as to supervisors, Mr. Wagoner conceded that he still schedules meetings (Tr. 28); stated that he had never been denied time for meetings; and from the testimony of other witnesses including Messrs. Leroy Stinson, Deputy Chief Steward (Tr. 79, 80); Kenneth Hudson, Manager of Packaging and Material Handling (Tr. 93); Claude L. Strunk, Electronic Systems Supervisor (Tr. 101); Michael D. Pyles, Foreman, Packaging Department (108, 109, 115-116); and Jack Talbott, Electroplater Foreman (Tr. 128), I conclude that when supervisors call Mr. Wagoner he can and does set the time for meetings.

Mr. Hudson, Mr. Wagoner's second level supervisor, schedules meetings for Mr. Wagoner in the absence of Wagoner's first level supervisor, Mr. Pyles. (Tr. 88). Normally, Mr. Pyles schedules the meetings (Tr. 93, 94); on occasion he, Hudson, has asked Mr. Wagoner to set meetings; and when Hudson sets a meeting he checks with Mr. Wagoner to see if the time is compatible and if it is not compatible with other meetings Mr. Wagoner has, would get a time from Mr. Wagoner and reschedule the meeting (Tr. 90-91).

Mr. Pyles, Mr. Wagoner's first level supervisor, stated that in January 1988, he told Mr. Wagoner that, ". . . we needed to follow the negotiated Agreement, that he was varying from it a little too much, and we needed to go back to it." (Tr. 109), specifically, that people are supposed to call him, Pyles, and arrange for meetings with Wagoner (Tr. 111). Mr. Pyles further testified that he arranged a larger percentage of Mr. Wagoner's meetings while he was Chief Steward (Tr. 118); that since Mr. Wagoner became President he has arranged about 50 percent and Mr. Wagoner has arranged 50 percent; that managers call Mr. Wagoner directly and set up meetings (Tr. 115).

5. Mr. Stanley M. Perry, Chief Steward of the Union since December 1987 (Tr. 52-53), testified that in late December 1987, or early January 1988, he met with Mr. Steve Haney, his second level supervisor, Mr. Jack Talbott, a/k/a Albert Talbott, his first level supervisor, and Mr. Wagoner, President of the Union, to discuss arrangements for

arranging his meetings (Tr. 54); and that it was agreed that he, Perry, would arrange his own meetings (Tr. 55). Thereafter, Mr. Perry stated that he arranged his meetings (Tr. 55, 57); that he would notify his supervisor, Mr. Talbott, by making a notation on his desk calendar (Tr. 57) and/or telling Mr. Talbott of the meeting (Tr. 57). This continued until May or June 1988, when Perry stated, "Mr. Talbott notified me that he would be scheduling all my meetings, that I would no longer be allowed to schedule meetings." (Tr. 59, 60). Since May or June supervisors or employees desiring to meet with Mr. Perry would call Mr. Talbott who would arrange the meeting, note it on his calendar and then notify Mr. Perry (Tr. 61). Mr. Perry insisted that since May or June 1988, if anyone contacts him directly he refers then to Mt. Talbott (Tr. 61).

Mr. Talbott testified that from June 1987, when he became Electroplater Foreman (Tr. 119), until December 1987, he set all meetings for Mr. Perry; that it took up too much of his time (Tr. 121, 122) and in December 1987, his supervisor, Mr. Steve Haney, Mr. Perry, Mr. Wagoner and he met and decided to let Perry set up his own meetings,

". . . as long as it didn't interfere with the work or didn't cause any problems." (Tr. 121).

Mr. Talbott stated that having Mr. Perry arrange his own meetings worked pretty well until June 1988, when a grievance meeting, which Talbott thought Perry was going to set and which Perry thought Talbott was going to set, was not set and Mr. Perry filed a grievance. As a result, Mr. Talbott told Mr. Perry two or three days after he filed the grievance that since this problem had arisen we would go back to the, ". . . way it used to be, and I would set up all of his meetings so something like this would not happen again." (Tr. 122). When Talbott is not present and Mr. Perry gets a call, Perry sets the meeting, writes it on Talbott's calendar and will also tell Mr. Talbott later (Tr. 128).

Having considered the testimony of Mr. Perry and Mr. Talbott carefully, I find the testimony of Mr. Talbott more convincing and more consistent with all other testimony and, therefore, I credit Mr. Talbott's version as set forth above.

6. Mr. Leroy Stinson, Deputy Chief Steward since November 1987 (Tr. 71) and Chief Steward for about 18 months prior thereto (Tr. 71), at the time of the hearing had been under the immediate supervision of Mr. Claude L. Strunk for about six to eight months and prior thereto had been under

the immediate supervision of Mr. Larry Shackelford (Tr. 73). Mr. Stinson credibly testified that when he got a call from employees requesting representation, he would tell the employee to inform his, the employee's, supervisor that he or she wants a representative and the supervisor would contact him, Stinson, or his immediate supervisor to arrange a meeting (Tr. 74). Mr. Stinson further stated that if it were other than a first step grievance meeting involving upper management, the manager would generally call him directly to arrange for a second or third step advancement (Tr. 74). After he had set a meeting he would advise his supervisor and, also, write it on the supervisor's calendar (Tr. 74). Mr. Stinson said the procedure was the same when he was Chief Steward (Tr. 74-75). If he, Stinson, were not present, the supervisor, or acting supervisor, would arrange meetings (Tr. 75). Before the May-June 1988, period, Mr. Stinson estimated that he arranged 50-75 percent of his meetings (Tr. 77). In May or June Mr. Strunk came to Mr. Stinson and told him that he, Strunk, was going to arrange all of Stinson's meetings (Tr. 78) because, he told Stinson, the contract required it. Mr. Stinson replied that the contract, ". . . specifically spelled out that management was involved in arranging meetings, and that when I was making contact with either upper level management or first line supervisors in making those meetings, we had fulfilled that contract obligation because those meetings were being arranged by management." (Tr. 78).

Notwithstanding Mr. Strunk's statement, Mr. Stinson stated that he has continued to arrange meetings when upper level management calls him. Mr. Stinson testified that,

"Still there has been very little change, other than he [Strunk] arranges all of my first line supervisor's meetings . . . upper level management still calls me to arrange my meetings and I still do.

"Basically, the change that has occurred is all lower level management, and I assume that they have been instructed by someone to arrange those lower level meetings through the first line supervisor, and that does take place."
(Tr. 79-80).

Mr. Stinson stated that he continues to inform Mr. Strunk of meetings he has arranged and still lists such meetings on Strunk's calendar (Tr. 81). Mr. Strunk concurred (Tr. 101, 105).

Conclusions

Article 30 of the parties' Agreement (Jt. Exh. 1, Art. 30) has provided since 1981, in relevant part, as follows:

"SECTION A. . . . An employee desiring such a discussion shall so advise his/her supervisor, and the supervisor, will through appropriate management channels, arrange for a meeting to be held . . .

SECTION B. Appropriate Union representatives whose assistance has been solicited will be granted official time . . . Arrangements for and discussions shall be the responsibilities of management.

SECTION E. . . . Prior to the use of such time, the Union official and his/her supervisor should have an understanding of the anticipated time to be used." (Jt. Exh. 1, Art. 30, Section A, B and E) (Emphasis supplied).

The record shows that: (a) pursuant to Article 30, Section A, employees act through their supervisors who arrange for meetings; (b) pursuant to Article 30, Section B, management arranges meetings for Union officers. Although, as noted in n. 4, supra, Mr. Wagoner stated that stewards called the Chief Steward directly and they arranged meetings, to the extent it occurred, and neither Mr. Perry, current Chief Steward, nor Mr. Stinson, current Deputy Chief Steward and previously Chief Steward, supported Mr. Wagoner's assertion, it obviously, was not shown to have been either a consistent practice, or a practice known to management (Tr. 57, 67-68, 71, 74, 89, 90, 102-103); and (c) pursuant to Article 30, Section E, before using official time, Union officials apprise their supervisors.

Specifically, meetings with Union officials have always been, and are now, as Article 30 mandates, arranged by management. The supervisors of the employees or stewards desiring a meeting, or the supervisor himself desiring a meeting (S_A, S_B, S_C, etc.) might call the Union official (UO) or might call the supervisor of the Union official (SU) to arrange a meeting with UO. I quite agree with Mr. Stinson's statement to Mr. Strunk (Tr. 78) that if S_A calls UO and arranges a meeting, there is full compliance with Article 30, Section B, because management has, indeed,

arranged the meeting. By the same token, if SA, SB, SC, etc. or any one of them, call SU to arrange meetings with UO, Article 30, Section B, has likewise been fully complied with, because management has indeed, also arranged the meeting.

Supervisors of some Union officials did not relish arranging meetings for the Union official, because, as Mr. Shackelford commented, he was not the Union official's "personal secretary" (Tr. 81) or, as Mr. Talbott stated, it took up too much time (Tr. 121). Before the May-June 1988, period supervisors desiring meetings (SA, etc.), as noted above, sometimes called the Union official directly and sometimes called the supervisor of the Union official. After the May-June 1988, period the same continues to be true, except that the frequency of calls to Union officials by supervisors desiring meetings has declined markedly, although I view with skepticism the change from 98 percent to 2 percent as asserted by Mr. Wagoner.

General Counsel asserts that Respondent has thereby unilaterally changed established conditions of employment by changing the manner of scheduling Union representational meetings. I do not agree.

The Agreement of the parties, Article 30, Section B, provides that meetings of Union representatives shall be arranged by management. The manner of scheduling Union representational meetings, as mandated by the Agreement and forged by practice, has always been that a supervisor arranges the meeting with the Union official. Nothing in the Agreement requires any particular supervisor to do so. With full recognition that some supervisors (SA, etc.) who previously had called Union officials (UO) now call the supervisor of the Union official (SU) who arranges the meeting with the Union official, and assuming that such action was by direction of Respondent, nevertheless, Respondent did not change the manner of scheduling Union representational meetings. Union representational meetings are now arranged, as they always have been, by a supervisor and the Union official. Supervisors desiring meetings (SA, etc.) still call the Union official and arrange meetings; but whether such supervisors call the Union official or whether they call the supervisor of the Union official (SU) who arranges the meeting with the Union official, the manner of scheduling Union representational meetings has not changed.

Having found that Respondent did not change the manner of scheduling Union representational meetings, it is recommended that the Authority adopt the following:

ORDER

The Complaint in Case No. 5-CA-80431 be, and the same is hereby, dismissed.

William B. Devaney
WILLIAM B. DEVANEY
Administrative Law Judge

Dated: January 16, 1990
Washington, D.C.