

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

.
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-80482

R. Timothy Sheils, Esq.
For the General Counsel

Leo C. Sammon, Esq.
For the Charging Party

Gilbert Merrill and
Dean Franke, Esqs.
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, 92 Stat. 1191, 5 U.S.C. section 7101 et. seq. (herein called the Statute). It was instituted by the Regional Director of Region IX based upon an unfair labor practice charge filed on July 29, 1988, by the International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO (herein called the Union),

against Department of the Navy, Naval Aviation Depot, Alameda, California (herein called Respondent). The Complaint alleged that Respondent violated section 7116(a)(1) of the Statute by promulgating overly broad rules by telling employees that they could not have the union contract open in the control center and that they must leave the control center to discuss union matters and harassed two employe[es] who were also union stewards.*/

Respondent denied the commission of any unfair labor practices.

A hearing was held before the undersigned in San Francisco, California, at which the parties were represented by counsel and afforded the opportunity to adduce evidence, and to call, examine and cross-examine witnesses and to argue orally. Timely briefs were filed by the Respondent and the General Counsel 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 recommendation.

Findings of Fact

The material facts are as follows:

Mervin Williams is a union steward who has worked in the Production Control Center (herein called the control center) since approximately 1980. Williams works for supervisor Thelma Dangerfield. Deborah Plater, also an employee of Respondent's as well as a union steward and official, does not work in the control center, but during the time in question in this matter, was on special assignment working with a computer located in the control center.

On April 14, 1988, Williams was helping Plater use a computer in the control center. Once finished with the computer, Williams asked Plater a question concerning the collective bargaining agreement. During the course of their discussion the two walked back to Williams desk and opened the contract and began discussing whatever the issue was. Their discussion went on for about 15 minutes when they were interrupted by Dangerfield. Dangerfield told them that they could not hold a union meeting in her control center, that it should be done in the break room and that they

*/ The Complaint reads as amended at the hearing.

should put the collective bargaining agreement away. Williams states that he told Dangerfield that the two were not discussing union business, but that they were two government employees discussing a particular article in the contract. Dangerfield replied that they were both shop stewards and that they could not have the contract open in her control center. Dangerfield then left the control center area on other business.

After completing her other business Dangerfield returned to the control center where she noticed that Williams and Plater were still talking. Dangerfield again told Williams and Plater to close the collective bargaining agreement in her shop, that there was to be no union business in her shop and then accused Plater of using the center telephone to conduct union business. According to Williams, Dangerfield said that she had noticed Plater being in the control center that morning and she had been using her telephones an awful lot and she assumed it was about union business. Plater states that she told Dangerfield at that point she had used the telephone on several occasions, but that the calls were work related and made to the people in Hanger 12 who assigned her to the project, because she needed more information. Dangerfield told Plater that if she didn't leave the control center that Dangerfield would call someone who could force her to leave, Dangerfield then left herself. Plater and Williams then went into the hallway to discuss what had happened with Dangerfield. Dangerfield apparently called Plater's general foreman, Rock Hudson, but in any event, Plater's first-line supervisor, Jack Hughes approached William and Plater who were then discussing Dangerfield's action and told Plater that he wanted to speak with her. Plater and Williams ended their conversation and when Plater was alone with Hughes, he asked how much official time Plater was allowed to use and then he cautioned her to be careful in the future and to limit her use of the telephones for union calls.

There is no evidence that Williams and Plater's conversation in the control center bothered anyone who was working. No other employees complained and even Dangerfield did not dispute the assertion that their conversation had not been disruptive. Dangerfield claimed that it would have been acceptable for Plater and Williams to have had their discussion about the collective bargaining agreement had they moved to the break room. Dangerfield explained that her concern was that "Mervin should be doing his control center work," even though this contradicts her saying that Williams

could have continued the conversation if he had left the room. Also, when Dangerfield told William and Plater to move their conversation to the break room, she claims to have reminded them that as union stewards they should be aware of the "regulations," meaning the collective bargaining agreement. Yet Dangerfield admitted that the collective bargaining agreement contains no restrictions about the site of union-related employee conversations.

Finally, while Dangerfield, without corroboration, claimed that she would not tolerate employees reading or talking about non-work subjects in the control center, her only example of any previous "problems" also involved two union stewards allegedly doing union business. Williams, however, explained that it has been a common practice for the control center employees to read and discuss non-work subjects without fear of admonishment. Angela Bradford was even more explicit; she estimated that during her employment in the control center (November 1984 - July 1987) the employees typically spent an hour each day talking and reading about non-work subjects. Even though she has left the control center, Bradford still visits it almost daily and according to her, the practice remains unchanged. No employee has been cautioned or reprimanded for doing this.

Conclusions

Respondent contends that this case is controlled by Marine Corps Logistics Base, Barstow, and American Federation of Government Employees, Local 1485, 33 FLRA No. 80, 33 FLRA 626 (1988) where the Authority found ". . . the essence of the dispute in this case involves differing and arguable interpretation of the parties' negotiated agreement." The General Counsel anticipated that defense and argues that this is not a case where the contract is in dispute, but one where two employees who happened to be union stewards were discussing the collective bargaining agreement and were prevented from doing so while other employees are allowed to discuss a variety of non-work related matters in the control center without restriction. This case is distinguishable since it does not involve a use of official time, rather the question here is whether the 2 employees involved had a right to engage in a section 7102 conversation on non-work time much the same as other control center employees engaged in countless other conversations on other topics.

The General Counsel's position is that the Statute prohibits the imposition of rules which unduly restrict employees' exercise of their section 7102 rights. The evidence disclosed that control center employees not only talk about a variety of non-work related matters, but read a lot of non-work related materials during work hours. The record does not reveal any attempt to control any non-work related activities other than conversations about the collective bargaining agreement. Nor does it show the activities complained of by Dangerfield interfered in any way with the performance of duties in the control center.

In support of its position the General Counsel cites Department of Commerce, Bureau of Census, 26 FLRA 311, (1987) where the Authority found that the maintenance of a no solicitation rule in work areas during non-work times constituted a violation of section 7116(a)(1) of the Statute. The General Counsel claims that the key in that case, as well as this one, is whether there was any interference with employees in the performance of their duties. I agree. Applying that rule, it is undisputed that employees discuss any number of subjects in the control center which are unrelated to work, with impunity. Dangerfield's warnings to Williams and Plater carry a message that discussions of the collective bargaining agreement during non-work times is not permitted while it is permissible to discuss any matter which does not relate to that agreement. The foreseeable consequence of her action is to create the impression that employees are not allowed to engage in their right to "form join, or assist any labor organization . . . without fear of penalty or reprisal." Enforcing such a rule where there is no disruption of work notwithstanding the fact that other employees are permitted to discuss other subjects in the same fashion clearly interfered with, restrained and coerced these two employees who were merely discussing the collective bargaining agreement. Such a restriction violates section 7116(a)(1) of the Statute.

Dangerfield further supplied threats and coercion by returning to harass Williams and Plater, at a later time, accusing Plater of unauthorized use of the agency telephones and by threatening to have her removed from the control center when she was in fact assigned to work there and by complaining to Plater's supervisors causing them to speak to Plater about her union activities when she had done nothing disruptive or unusual. The record shows no justification for either of the threats by Dangerfield or for her complaining to Plater's supervisors, but contrariwise established that Plater had done nothing out of line.

Accordingly, it is found that Respondent's promulgation of overly broad rules by telling employees that they could not have the union contract open in the control center and that they must leave the control center to discuss union matters and harassing two employees who were union stewards violated section 7116(a)(1) of the Statute. It is therefore, 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) Interfering with, restraining or coercing its employees in the exercise of rights guaranteed in section 7102 of the Statute by promulgating rules which prohibit employees from discussing their collective bargaining agreement during non-work time in work areas where there is no disruption of work.

(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 affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Permit Mervin Williams and Deborah Plater and other employees to discuss their collective bargaining agreement during non-work time in work areas where there is no disruption of work.

(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, Washington, D.C., January 8, 1990

A handwritten signature in cursive script that reads "Eli Nash, Jr." is written above a horizontal line.

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 interfere with, restrain or coerce our employees in the exercise of rights guaranteed in section 7102 of the Statute by promulgating rules which prohibit employees from discussing their collective bargaining agreement during non-work time in work areas where there is no disruption of work.

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, permit Mervin Williams and Deborah Plater and other employees to discuss the collective bargaining agreement during non-work time in work areas where there is no disruption of work.

(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 94103, and whose telephone number is: (415) 744-4000.