

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-90248

Susan F. Jelen, Esquire
For the General Counsel
Mr. Gilbert J. Merrill, Jr.
For the Respondent
Mr. Leo C. Sammon
For the Charging Party
Before: BURTON S. STERNBURG
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., and the Rules and Regulations issued thereunder.

Pursuant to an amended charge first filed on February 10, 1989, by the International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO, (hereinafter called the Union), a Complaint and Notice of Hearing was issued on April 24, 1989, by the Regional Director for Region IX,

Federal Labor Relations Authority, San Francisco, California. The Complaint alleges that the Department of the Navy, Naval Aviation Depot, Naval Air Station Alameda, Alameda, California, (hereinafter called the Respondent), violated sections 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by virtue of its actions in requiring bargaining unit employees, contrary to existing practice, to provide written documentation to support every emergency annual leave request.

A hearing was held in the captioned matter on August 9, 1989, in San Francisco, California. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The General Counsel and the Respondent submitted post-hearing briefs on September 28, 1989 which have been duly considered.

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact

The Union and the Respondent are parties to a collective bargaining agreement covering the "wage grade employees", among others, at Respondent's premises. Article 12 of the collective bargaining agreement which deals with annual leave provides in pertinent part as follows:

Section 1. Annual leave is provided and used for two general purposes:

(a) To allow every employee an annual vacation period for rest and recreation, and

(b) To provide periods of time off for personal and emergency purposes. These absences may involve such matters as a death in the employee's family, religious observances, attendance at conferences or conventions, securing a driver's permit, or other personal business which can be disposed of only during the time in which the employees would ordinarily be working and requests for annual leave for emergency reasons

when supported by an acceptable explanation for the absence. These situations are not all inclusive, but are examples only of the purposes or the kinds of absences for which annual leave may be approved.

The aforscited provision of the collective bargaining agreement tracks the FPM and various regulations of the Respondent. These latter regulations which are included in the record as Respondent's Exhibits 12 and 13 provide in pertinent part as follows:

OCPMINST 12630.1:

(5) Obtaining leave in unforeseen circumstances.

Employees should notify activity management of unscheduled absences as soon as practicable within activity specified time limits. Activity management may require administratively acceptable evidence of the reason for the unscheduled absence. The employee has the responsibility for both prompt notification and proof of the reason for the unscheduled absence. The grant of annual leave in these circumstances is never automatic and is within the discretion of management.

NASALAMEDAINST 12000.8, Chapter 2, LEAVE ADMINISTRATION

(2.4) Application for use of Annual Leave

b. In emergency situations, request for leave may be made by telephone to the immediate supervisor within two hours of the employee's normal reporting time on the first day of absence, and supported by a completed SF-71 (if requested) upon return to work. Approval of annual leave may be delayed until the employee returns to work.

According to the record, when employees find it necessary to take emergency annual leave as opposed to scheduled annual leave, they are required to call a specified telephone number within the first three hours of their shift, and give their name, pay number, foreman's name, shop and reason for calling in. They must also specify the type leave requested, sick or annual, and the time they expect to return to work. The specified telephone

number is answered by an answering machine or a designated individual. When the employee returns to work he fills out a leave request and submits it to his immediate supervisor for approval. The immediate supervisor is responsible for approving or disapproving leave.

On Friday, October 28, 1988, Ben Moss, a unit employee on the swing shift in Shop 95722, called in to report that he had automobile problems and that he would report to work as soon as he could get his automobile fixed. He further stated that in the event that he could not get his automobile fixed, he would be in the next day to work the eight hour overtime shift which he had volunteered for the day before. On Saturday, October 29, Mr. Moss, who had been unable to make it into work the day before, reported for the eight-hour overtime shift.

At the beginning of the shift on Saturday, Mr. Moss asked his supervisor, Paul Monk, if he had received the telephone message concerning the trouble with his, Mr. Moss', automobile. Mr. Monk replied yes, and then informed Mr. Moss that he was on A.W.O.L. (absent without leave) until such time as Mr. Moss presented evidence to show that his car was disabled the day before. Mr. Moss informed Mr. Monk that he had a receipt which he would bring in.

Subsequently, Mr. Moss informed Mr. Monk that he was unable to find the receipt for repairs to his automobile. Mr. Monk replied that he, Mr. Moss, would be on AWOL until he presented a receipt.

The record shows that timecards are submitted every other Thursday. On Thursday, November 3, 1988, Mr. Moss submitted his leave request for eight hours of annual leave for October 28. Mr. Moss gave "car trouble" as the reason for requesting the annual leave. Mr. Monk denied the request stating "A.W.O.L., due to critical workload on A-3 A/L line. No proof."

That same evening Mr. Moss requested to see the shop steward and also got a copy of his leave record from Mr. Monk. According to the leave record, Mr. Moss had taken one hour of emergency annual leave on August 30, 1988 and eight hours sick leave on August 24, 1988. He had also taken emergency annual leave in the Spring of 1988. There was no evidence indicating that Mr. Moss had been counselled during the last year with regard to his use of emergency annual leave. Mr. Moss' leave record shows that, assuming

pay day was the first Friday of each pay period on the leave record, Mr. Moss had only taken emergency annual leave on one pay day, October 28, 1988.

Mr. Moss had never been asked to provide documentation for a request for emergency annual leave prior to this. He was not on any kind of leave restriction and had not been counselled regarding his leave usage. He understood Respondent's policy to be that if an employee was on a letter of requirement or if he was out for more than three days, the employee had to bring in documentation to support the absence.

On Thursday, November 10, 1988, Mr. Monk held his regularly scheduled weekly shop meeting during which he informed the employees that from then on, when requesting emergency annual leave, proof of the reasons for requesting the emergency leave would be required of every employee. When an employee asked what kind of proof would be necessary, Mr. Monk stated that a tow receipt or repair bill would be acceptable. He further stated that any employee failing to bring in the requisite proof would be placed on AWOL. Mr. Moss then asked if this was Alameda's policy or Mr. Monk's policy. Mr. Monk responded that it was his policy. He went on to say that since he was required to show proof when taking emergency leave, then everyone was going to do the same.^{1/}

According to the testimony of a number of supervisors, while supervisors have the discretion to request documentation for emergency annual leave, they do not request such documentation in each and every case.

The policy stated by Mr. Monk has not been rescinded and there is no evidence that the Union was ever given notice of

^{1/} The foregoing summary of facts is based upon the credited testimony of Mr. Moss and fellow employee Mr. Jim Hallford.

Mr. Monk admitted holding shop meetings every Thursday and that he probably discussed the requirements for requesting emergency leave at the November 10, 1988 meeting. He denied, however, telling the employees that he was establishing a new policy. According to Mr. Monk, it has always been his policy to require documentation for emergency leave, although it is not necessarily required of every employee by every supervisor.

the policy announced on November 10, 1988, and afforded an opportunity to request bargaining thereon.

The record reveals that due to the fact that Mr. Monk put Mr. Moss on AWOL for October 28, 1988 he, Mr. Moss, was credited with only forty hours of work for the week, which resulted in no time and one-half overtime payment for the work performed on Saturday, October 29, 1988.

Discussion and Conclusions

The General Counsel takes the position that the Respondent violated sections 7116(a)(1) and (5) of the Statute by virtue of the actions of Mr. Monk in unilaterally implementing a policy that required unit employees who were requesting emergency annual leave to bring in documentation in support of all such requests.^{2/} According to the General Counsel Mr. Monk's action constituted a change in the past practice currently in effect at Respondent's facility, namely to omit documentation in support of the request unless shown to be on a letter of restriction for leave abuse. Inasmuch as the procedure for requesting emergency annual leave is clearly a condition of employment, Respondent violated the Statute by implementing the change without first giving the Union prior notice and an opportunity to bargain thereon. In support of this latter position the General Counsel relies on the Authority's decisions in Defense Logistics Agency, Defense Depot Tracy, Tracy, California, 14 FLRA 475, and U.S. Department of Interior, Bureau of Reclamation, 20 FLRA 587.

As a remedy, the General Counsel requests among other things, the usual cease and desist order, a rescission of the policy, and that Mr. Moss be made whole for the overtime he lost due to the fact that he had been put on AWOL for October 28, 1988 because he failed to present written documentation to support his absence.

Respondent, on the other hand, denies that Mr. Monk announced a new policy. In such circumstances Respondent urges dismissal of the complaint. With respect to the fact that Mr. Moss was given an AWOL for October 28, 1988, it is

^{2/} The General Counsel makes it clear that he is not contending that Respondent does not have the authority to request employees to justify a specific request for emergency leave.

Respondent's position that Mr. Monk's action was consistent with both the collective bargaining agreement and applicable regulations which empowered supervisors to request documentation for emergency leave any time they deem it necessary. According to Respondent, the instant controversy should be resolved through the contractual grievance procedure.

Contrary to Respondent, I find, based particularly upon the credited testimony of Mr. Moss and Mr. Hallford, that Mr. Monk did announce at the November 10, 1988 weekly shop meeting that all requests for emergency annual leave must be supported by documentary or other evidence or the employee requesting emergency annual leave would be given an AWOL for the time he was not at work. I further find, that such announcement violated sections 7116(a)(1) and (5) of the Statute since the announcement changed an existing condition of employment by making proof of the reasons for emergency leave mandatory in all cases. Lastly, I find, in agreement with the General Counsel that the procedure utilized for emergency annual leave constitutes a condition of employment. In reaching this latter conclusion I rely on the Authority's decision in Defense Logistics, et al, supra.

However, I cannot find, as urged by the General Counsel, that, in the circumstances present herein, Mr. Monk's action in requesting documentation from Mr. Moss for his October 28th absence was part and parcel of the change announced on November 10, 1988, which was found above to constitute a unilateral change in a condition of employment in violation of section 7116(a)(1) and (5) of the Statute. Since it is an admitted fact that supervisors always retained the right to require documentation for any suspicious request for emergency annual leave, and given the fact that Mr. Moss' request for same occurred on a Friday pay day, which was to be followed by previously scheduled Saturday overtime at a time and one-half rate, a supervisor might well be suspicious of the validity of Mr. Moss' request as he would be paid on the basis of 52 hours for only 40 hours of actual work. In such circumstances I cannot find that Mr. Monk's action was based on considerations other than the obligations imposed upon him as supervisor, namely to insure that the leave system was not abused and that sufficient employees would always be available to carry out the Agency's business.

Accordingly, based upon the above findings and conclusions it is hereby recommended that the Federal Labor Relations Authority issue the following Order designed to effectuate the purposes and policies of the Statute.

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 Department of the Navy, Naval Aviation Depot, Naval Air Station Alameda, Alameda, California, shall:

1. Cease and desist from:

(a) Unilaterally instituting changes in the conditions of employment of employees represented by the International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO, by requiring documentary evidence before approving all emergency annual leave requests, without first notifying the aforementioned labor organization and affording it the opportunity to bargain on the change.

(b) In any like or related manner interfering with, restraining or coercing its employees 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) Rescind the requirement announced on November 10, 1988 that all requests for emergency annual leave be accompanied by documentation in support thereof in order to avoid an AWOL for such time off the clock.

(b) Prior to effecting any changes in procedures utilized for approval of emergency annual leave notify the International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO, and, upon request, negotiate in good faith, to the extent consonant with law and regulation, as to such changes.

(c) Post at the Naval Aviation Depot, Naval Air Station Alameda, Alameda, California 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 officer in charge of the Naval Aviation Depot, or his 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 insure that such Notices are not altered, defaced, or covered by any other material.

(d) 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., December 15, 1989


BURTON S. STERNBURG
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 OUR EMPLOYEES THAT:

WE WILL NOT unilaterally implement changes in the conditions of employment of employees represented by the International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO, by requiring documentary evidence before approving all emergency annual leave requests, without first notifying the aforementioned labor organization and affording it the opportunity to bargain on the change.

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.

WE WILL rescind the requirement announced on November 10, 1988 that all requests for emergency annual leave will be approved only if supported by documentation and WE WILL notify International Association of Machinists and Aerospace Workers, Lodge 739, AFL-CIO, and afford it an opportunity to bargain prior to effectuating any future changes in how emergency annual leave is requested and approved.

(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, CA 94103, and whose telephone number is: (415) 995-5000.