

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

Case No. 4-CO-70023

WARNER ROBINS AIR LOGISTICS
CENTER ROBINS AIR FORCE
BASE, GEORGIA

Charging Party

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Stuart Kirsch, Esquire
For the Respondent

Linda J. Norwood, Esquire
For the General Counsel of FLRA

C. R. Swint, Jr., Esquire
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, hereafter called the Statute, and the Rules and Regulations of the Federal Labor Relations Authority (FLRA), 5 C.F.R. Chapter XIV, § 2410 et seq.

Pursuant to a charge filed by Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, hereinafter called Charging Party or WRALC, against American Federation of

Government Employees, Local 987 (hereinafter called Union or AFGE Local 987); American Federation of Government Employees Council 214 (hereinafter called AFGE Council 214); and American Federation of Government Employees National Office (hereinafter called AFGE National Office)^{1/} the General Counsel of the FLRA, by the Regional Director of Region IV of the FLRA, issued a Complaint and Notice of Hearing, and an Amended Complaint, alleging that Respondent violated Section 7116(b)(1) and (8) of the Statute when its agent solicited participation of unit employees in an internal union election while the unit employees were in a duty status. Respondent filed an Answer denying it had violated the Statute.

A hearing was held before the undersigned in Warner Robins, Georgia. AFGE Local 987, Charging Party, 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.^{2/} 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:

Finding of Fact

AFGE Local 987 is a constituent local of AFGE and represents bargaining unit employees at WRALC. The bargaining unit is a command wide consolidated unit of employees of the Air Force Logistics Command located in various Air Force installations. At all times material there was in effect a Master Labor Agreement (MLA) between the Air Force Logistics Command and AFGE Council 214 which covered the Command-wide unit described above. WRALC and AFGE Local 987 operate under the MLA and the employees at WRALC are in the subject bargaining unit.

^{1/} The parties stipulated that AFGE Local 987 is the Respondent herein, that it is a local constituent of American Federation of Government Employees (AFGE) for the purpose of representing employees at WRALC, and that AFGE Local 987 is a labor organization.

^{2/} At the hearing the Union moved to dismiss the complaint. To the extent the motion was based on the propriety of the investigation the motion was denied. To the extent the motion raised other issues, ruling was reserved and will be disposed of herein.

During October through November 1986, the Union conducted an election for the selection of officers which was followed by a run-off election. Union members selected an Election Committee to oversee the election and the Election Committee had sole authority to give absentee ballot applications to employee-members and to receive and count the absentee ballots.

At all times material, Monteen Purser was an employee of WRALC, a Union Steward and a member of the Election Committee. As part of her duties as a member of the Election Committee Purser carried with her, in her brief case, applications for absentee ballots and provided them to Union members who were employees of WRALC.

In October 1986, Purser worked on a shift that began at 7:50 a.m. On or about October 28 1986, Purser went to a WRALC work area known as DCFSB for the purpose of meeting with a bargaining unit employee to discuss his grievance. She arrived in DCFSB at about 7:00 a.m., before her duty hours and apparently remained there until just after her shift began at 8:00 a.m.

While in DCFSB Purser approached about eight employees who were on duty time^{3/} and asked if they were members of the Union and when each employee answered that he was a Union member she provide him one of the Union's application for an absentee ballot.^{4/} When one employee advised Purser that he was not a Union member she called him a "free loader and SOB".^{5/}

WRALC reprimanded Purser for interfering with the employees' production. She filed a grievance concerning the proposed reprimand which is currently pending arbitration.

^{3/} These employees were on a 12 midnight to 8:00 a.m. shift. During this shift there were two set ten minute breaks, at 2:00 a.m. and 6:00 a.m. and a twenty minute lunch break at 4:00 a.m. There were no breaks between 7:00 a.m. to 8:00 a.m.

^{4/} Purser knew these employees were on the clock and were not on a break or at lunch. She was observed engaging in the subject conduct by an employee who was working at his terminal and Purser was speaking to employees only 5 or 6 feet away from the observer.

^{5/} This employee reported Purser's activities to the DSFSCB Foreman. This is how WRALC learned of Purser's activities.

WRALC filed no grievance against the Union for its alleged violation of the Statute or for Purser's conduct.

AFGE Local 987 contends in its brief that the record establishes that WRALC filed the unfair labor practice herein to punish Purser for her past conduct in representing employees. I find the record does not establish this, at all, and that such a contention is irrelevant herein.

Discussion and Conclusions

Section 7131(b) of the Statute provides:

§ 7131 Official Time

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(b) Any activities performed by any employee relating to the internal business of a labor organization (including . . . elections of labor organization officials . .) shall be performed during the time the employee is in a nonduty status.

Section 7131(b) of the Statute mandates that employees may engage in internal union business, including internal union election of officers, only when in nonduty status.

In the subject case the undisputed evidence is that Purser, Union Steward and member of the Union's Election Committee, while she was in nonduty status,^{6/} solicited employees who were on duty status to fill out request forms for absentee ballots in the election of Union officers. Purser, a Union agent acting within the scope of her duties as a member of the Elections Committee, was soliciting employees in duty status^{7/} to engage and participate in internal Union business.

AFGE Local 987 contends that these incidents on October 28, 1986 did not violate Section 7131(b) of the Statute because Purser was not on duty status. The FLRA, however, found that when a union official, who was not an employee within the meaning of the Statute,^{8/} solicited union

^{6/} All of the incidents involved herein occurred before the beginning of Purser's work day.

^{7/} Employees whom she knew to be in duty status.

^{8/} Thus not on duty status.

membership of employees who were on duty status, the Union violated Section 7131(b) of the Statute. Service Employees International Union, Local 556, AFL-CIO, 17 FLRA 862 (1985), hereinafter called the SEIU Case. In so holding the FLRA, found, with respect to the Section 7131(b) requirement that internal union business be conducted during nonduty time, "This requirement applies to an employee's use of duty time and, as here, whenever a Union representative meets with employees on their duty time for such purposes. Since the Union knowingly violated the spirit and letter of Section 7131(b), the Authority concludes, in agreement with the Judge, that the Union thereby violated Section 7116(b)(1) and (8) of the Statute." SEIU Case, supra, at 863. Accordingly, I reject AFGE Local 987's contention that it had not violated Section 7131(b) of the Statute because Purser was in nonduty status while the employees she spoke to were in duty status.

AFGE Local 987, contends that because Purser was reprimanded by WRALC for her conduct on October 28, 1986 and because she filed a grievance concerning this discipline, the matter should be dismissed "based on the deferral policy of the FLRA." There is no dispute that Purser is raising in the grievance procedure the same fundamental issues that are raised in the subject case.

Section 7116(d) of the Statute provides, in pertinent part:

"Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices under this section. . . . issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as a unfair labor practice under this section, but not under both procedures."

In the unfair labor practice case the aggrieved party, in the sense that there is one, is WRALC because its employees are being encouraged by the Union, thru Union agent Purser, to engage in internal union business while on duty status. WRALC is losing the productive work time of its employees because of the conduct of a Union representative. The unfair labor practice was committed by AFGE Local 987.

The grievance was not filed by WRALC; it was filed by Purser because of her reprimand. She is the allegedly aggrieved party in the grievance. Thus, the aggrieved party in the grievance and the aggrieved party in unfair labor practice case are not the same. Thus, I conclude Section 7116(d) of the Statute does not preclude WRALC from filing the charge in the subject unfair labor practice case. To hold otherwise would be to permit the person who allegedly violated the Statute to also select the forum, something not provided for in the Statute.^{9/}

AFGE Local 987 also contends that because Section 4.08 of the MLA entitled "Restrictions on Official Time" prohibits the use of official time by any employee to perform any activity relating to the internal business of the union, WRALC should be required to redress the wrong through the contract and utilize the grievance procedure. The cases cited by AFGE Local 987 to support this contention are inapposite because they deal with alleged unfair labor practices based upon a breach of the collective bargaining agreement. In the subject case the unfair labor practice is based solely on the Statute and not upon any alleged breach of contract. The subject situation is exactly the one dealt with in Section 7116(d) of the Statute which it gives WRALC, the aggrieved party, the option of choosing to pursue either its statutory remedy or its contractual remedy and WRALC chose, as was its right, to pursue the statutory remedy.

AFGE Local 987 further contends that the subject case violates same concept of double jeopardy. This fundamentally criminal concept is not applicable to the subject case because Purser was disciplined as an individual and the Union is the object of the unfair labor practice complaint. Thus, this contention is rejected.

Finally AFGE Local 987 contends that the violation involved herein is de minimis and too insignificant to rise to the status of an unfair labor practice. This contention is rejected. I conclude that talking to eight different employees during their working hours about internal union business is not an insignificant or de minimis violation of the limitations set forth in Section 7131(b) of the Statute.

^{9/} The cases cited by the Union to support its contention are inapposite.

In light of all the foregoing I conclude Purser's conduct failed to comply with the provisions of Section 7131(b) of the Statute and, therefore AFGE Local 987 violated Section 7116(b)(8) and (1) of the Statute. SEIU Case, supra.

I also conclude that Purser compelled the eight employees to make a choice of either foregoing their rights to vote in the internal union election, or exercising that right while on duty status, and thus risking discipline and violating the Statute. Clearly voting in an internal union election, by members of the union, is a right protected by Section 7102 of the Statute. Purser's conduct by placing the employees in the situation of either exercising their protected rights while on duty status or possibly not being able to exercise these rights constituted an interference with the employees' protected rights and thus constituted an independent violation of Section 7116(b)(1) of the Statute.

Having concluded that AFGE Local 987 violated Section 7116(b)(1) and (8) of the Statute, I recommend that the Authority issue the following Order:

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 the American Federation of Government Employees, Local 987 shall:

1. Cease and desist from:

(a) Conducting internal union elections or other internal union business during employees' duty time.

(b) In any like or related manner interfering with, restraining, or coercing any employees in the exercise of the rights assured them by the Federal Service Labor-Management Relations Statute.

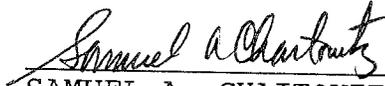
2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Post at its business offices and its normal meeting places, including all places where notices to members, and to employees of Warner Robins 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.

(b) Upon receipt of such forms, they shall be signed by the President of the American Federation of Government Employees, Local 987, and they shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including bulletin boards and all other places where Union notices to members and unit 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 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 herein.

Issued, Washington, D.C., February 14, 1989



SAMUEL A. CHAITOVITZ
Administrative Law Judge

NOTICE TO ALL MEMBERS AND OTHER EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

WE HEREBY NOTIFY OUR MEMBERS AND OTHER EMPLOYEES THAT:

WE WILL NOT conduct internal union elections or other internal union business during employees' duty time.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce any employees in the exercise of the rights assured them by the Federal Service Labor-Management Relations Statute.

(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 IV, whose address is: 1371 Peachtree Street, N.E., Suite 736, Atlanta, GA 30367, and whose telephone number is: (404) 347-2324.