

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

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NEW CUMBERLAND ARMY DEPOT
NEW CUMBERLAND, PENNSYLVANIA

Respondent

and

Case No. 2-CA-80373

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 2004

Charging Party

.....

Allen W. Stadtmauer, Esquire
For the General Counsel

James E. Toms, Esquire
Mr. William C. Meyers, III
For the Respondent

Mr. Patrick C. Fisher
For the Charging Party

Before: JESSE ETELSON
Administrative Law Judge

DECISION

Statement of the Case

A complaint issued by the Acting Regional Director for Region II of the Federal Labor Relations Authority alleges that the Respondent held a "formal discussion" with employees who were exclusively represented by American Federation of Government Employees, AFL-CIO, Local 2004 (the Union), without affording the Union the opportunity to be represented at that discussion. Such an opportunity is required by section 7114(a)(2)(a) of the Federal Service Labor-

Management Relations Statute, 5 U.S.C. § 7101, et seq. (the Statute). It is alleged that the Respondent's failure to comply interfered with, restrained, and coerced employees in violation of section 7116(a)(1) of the Statute, and otherwise failed or refused to comply with a provision of the Statute, namely, section 7114(a)(2)(A), in violation of section 7116(a)(8). The Respondent admits that it held a formal discussion, but contends that it fulfilled its obligation to give the Union the opportunity to participate. The case hangs on what actually occurred, that is, on a resolution of the credibility of conflicting accounts of the meeting or meetings at which formal discussions took place.

This case was heard in Harrisburg, Pennsylvania, on December 13, 1988. All parties were permitted to present their positions, to call, examine, and cross-examine witnesses and to introduce evidence bearing on the issues presented. The General Counsel and the Respondent submitted post-hearing briefs.

On the basis of the entire record, the briefs, my observation of the witnesses and their demeanor, and from my evaluation of the evidence, I make the following findings of fact, conclusions, and recommendations.

Findings of Fact

A. Evidence Presented

I suspect that, in this case, the way to focus most clearly on the factual disputes is to set forth first what the parties and the witnesses agree on. On April 21, 1988, Frank Turner, Chief of the Receiving Branch at the Respondent's New Cumberland, Pennsylvania, facility, conducted a meeting of employees in his branch at which he briefed them on a then recent agreement between the Respondent and the Union on the subject of compressed work schedules (CWS). Turner then entertained employee questions and invited Union Steward David Best to add his own comments. Best declined. This meeting was a "formal discussion" within the meaning of section 7114(a)(2)(A). In dispute is the manner in which Turner invited Best to speak, and, more importantly, whether there was an earlier meeting at which Turner formally discussed CWS and refused to permit Best to participate.

Best testified that on the morning of April 21, at the employees' normal safety meeting with their immediate supervisors, it was announced that Branch Chief Turner had

something to say to the employees and that they should remain until he arrived. Turner arrived shortly, according to Best, and proceeded to tell the employees about how the CWS were going to work. Best, who had been briefed independently by the Union, sought to add to or correct something that Turner said. Turner, however, shut him off, telling Best that if he had anything to say, he should tell Turner, and that Turner would decide what the employees would hear. Best's testimony regarding this meeting was corroborated in substance by employee Deena Clark. Her version was slightly different, however, in that she had Turner telling Best, "more or less," that Best "wasn't supposed to say anything because he hadn't heard anything about it."

At the end of that meeting, according to Best, Turner announced that there would be another employee meeting at 1:30 that afternoon concerning CWS. Best immediately requested and was granted time off for union business. (This much is undisputed.) He went to the Union hall and told Union President Baker what had occurred. Baker called James Isom, civilian personnel chief for the Respondent, and told him that "the compressed work schedule is off" because "management was not negotiating in good faith." Baker then told Best he should go back and attend the afternoon meeting, but, "Keep your mouth shut."

At the afternoon meeting, Turner finished briefing the employees, opened the meeting for questions, and then asked Best if he had anything he wanted to say "as a rank and file member." Best said he had nothing to say at that time, and the meeting concluded. Deena Clark corroborated Best's account of the meeting. She characterized Turner's reference to Best as a "rank and file member" as being "sarcastic," because she had never heard an employee referred to that way.

Turner testified that he conducted only one meeting on April 21. He was not present at the normal safety meeting that morning, nor did he speak to assembled employees about CWS at any time before the meeting which took place later on April 21.

According to Turner, he conducted the safety meeting on the previous day, April 20, but was not yet conversant with the CWS agreement and therefore did not address it. David Best, however, raised a question about CWS, and Turner told him to hold off on that because Turner had insufficient information. Later that day, in the afternoon, Turner

received some training regarding the CWS, and scheduled a meeting with employees for immediately after lunch on the following day. The time of the meeting was not 1:30 p.m., as Best testified, but 11:30 a.m. Turner spoke to the employees for about 15 to 20 minutes, advising them of everything he had learned the previous afternoon, and then accepted questions. Mr. Best asked several questions. After the question period, Turner told the employees that Best, "the union representative, would like to discuss the compressed work schedule" with them. Best (as he, himself, testified) responded that he had nothing to say at that time.

Turner was corroborated by supervisors Malcolm Wertz (Best's immediate supervisor) and Robert Hardie. Wertz testified, however, that in response to Best's raising the issue of CWS at the April 20 meeting, Turner told him that Union President Baker and Respondent's Labor Relations Specialist Meyers might be able to entertain his questions. Hardie was not asked specifically whether Best raised the issue at the April 20 meeting, but he testified that some employees asked questions about CWS and that Turner told them there would be a further meeting on that subject after supervisory personnel were briefed.

Wertz testified that directly after the April 20 meeting, seeing that Best was upset by not being given the opportunity to speak, he told Best that he would get a chance to speak, as a union representative, as soon as the supervisors had been briefed on how the CWS were going to work. The next day, he informed Best of the after-lunch meeting and that Best would then be given the chance to speak. Wertz described that meeting essentially as Turner did. Hardie testified similarly, including an account of his own private conversation with Best after the April 20, meeting in which he, also, informed Best that he could speak as the union steward at the employee meeting to be held after the supervisors' CWS briefing.

B. Resolutions of Credibility and Resulting
Ultimate Findings

Among the disputed facts, some are inconsequential because of the way the issues are framed. Thus, whether Turner invited Best to speak (at the meeting that everyone agrees occurred on April 21 and was a "formal discussion") as a union representative or as a "rank and file member," is irrelevant because no unfair labor practice is alleged to

have occurred at that meeting.^{1/} Other testimonial conflicts, while they might have some secondary significance in terms of credibility on other matters, are not of immediate concern. I put in this category the question of whether the meeting at which Turner denied Best the opportunity to speak was held on April 20 or April 21.

What is of primary concern regarding that meeting is whether it constituted a "formal discussion" on the subject of compressed work schedules (CWS).^{2/} For if it was, Turner's silencing of Best at least arguably ran afoul of section 7114(a)(2)(A). See U.S. Nuclear Regulatory Commission, 21 FLRA 765, 767-68 (1986). But no serious legal issue of this kind arises unless the credible evidence is persuasive that the meeting in question concerned CWS.

I find that the General Counsel has not sustained his burden in this respect. That is, I perceive no basis on which to find the testimony that Turner made CWS a substantial part of his first meeting any more credible than the testimony that he did not.

^{1/} Although Counsel for the General Counsel anticipated that the Respondent might contend that this invitation to speak "cured" any prior violation, no such contention has been made.

^{2/} The parties stipulated that the meeting referred to in paragraph 7(b) of the complaint was a "formal discussion." I believe, however, that there was not a meeting of the minds as to which meeting was referred to there, and that the Respondent's intention, in so stipulating, was only to admit that, as alleged, in paragraph 7(a) of the complaint, Turner held a meeting on April 21 which as alleged in paragraph 7(b), was a "formal discussion." The entire record is consistent only with this interpretation of the stipulation.

Also consistent with the record as a whole, the General Counsel's theory of the case limits the still existing question of "formal discussion" to discussion of CWS. Although it appears that other subjects were discussed at Turner's first meeting with employees (on April 20, or 21), I do not understand the question of whether such other discussions were "formal discussions" to have been litigated.

I believe that, as is often the case, the truth lies somewhere in between the accounts of the opposing witnesses. I make no findings based on an imagined, reconstructed scenario of the event. But it seems to me as likely as not that what occurred is consistent with Hardie's testimony that some employees asked Turner questions about CWS and that Turner put them off, adverting to a future meeting. That employees other than Best raised the subject of CWS is consistent with Clark's comment, in the course of her testimony, that all of the employees were very interested in this topic. I am not persuaded that Turner addressed this subject formally in his presentation. However, it is plausible that he was not adamant in his rebuffing of all questions concerning CWS, so that he may have attempted to answer one or more, to the extent that Turner made comments that were sufficient to move Best to seek to respond. Clark may honestly have shared Best's perception. Nor do I discount the possibility that Turner, at some point in the meeting, made some brief, general remarks about the subject, based on the limited knowledge he then possessed. As I credit his testimony that it was only after the first meeting that he learned of the details of the CWS agreement, I am inclined to believe that any remarks he may have made were preliminary, were limited in light of his intention to conduct a full meeting on the subject in the near future, and did not rise to the level of a "formal discussion" of this subject.^{3/}

Conclusion and Recommendation

Based on the above credibility resolutions and analysis, I conclude that the General Counsel has not proved by a preponderance of the credible evidence that the Respondent conducted a "formal discussion" of the subject of

^{3/} It is important to keep the focus on the formality of the discussion of CWS, not on whether the entire meeting was a "formal discussion." The reasons for this are discussed above. See n. 2, supra. Certainly, significant "formal" aspects attended the meeting. See U.S. Department of Labor, Office of the Assistant Secretary of Administration and Management, Chicago, Illinois, 32 FLRA 465, 470 (1988). But the proof falls short as to that aspect of the meeting that is at issue, the discussion of CWS. At least that is my view as I analyze "the totality of the facts and circumstances presented." Id. at 470. And see Id., items numbered (4), (6), and (8).

compressed work schedules at which it denied the Union the opportunity to be represented. Accordingly, I recommend that the authority adopt the following Order:

ORDER

The complaint in this proceeding is dismissed.

Issued, Washington, D.C., March 31, 1989



JESSE ETELSON
Administrative Law Judge