

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

.
DEPARTMENT OF THE AIR FORCE .
NELLIS AIR FORCE BASE, NEVADA .
Respondent .
and .
AMERICAN FEDERATION OF .
GOVERNMENT EMPLOYEES, .
LOCAL 1199, AFL-CIO .
Charging Party .
.

Case No. 9-CA-80020

Major Stephen J. Duggan
For the Respondent

James Sable, Esq.
For the General Counsel

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to a Complaint and Notice of Hearing issued on February 9, 1988 by the Regional Director, Region IX, Federal Labor Relations Authority, a hearing was held before the undersigned on June 17, 1988 at Las Vegas, Nevada.

This case arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq. (herein called the Statute). It is based on a first amended charge filed on February 1, 1988 by the American Federation of Government Employees, Local 1199, AFL-CIO, (herein called the Union) against Department of the Air Force, Nellis Air Force Base, Nevada (herein called the Respondent).

The Complaint alleged, in substance, that on or about September 16, 1987 Respondent via Captain Daniel Dickinson made various statements to a unit employee which interfered with, restrained or coerced employees in the exercise

of rights under the Statute - all in violation of section 7116(a)(1) thereof.

Respondent's Answer, dated February 24, 1988, denied that such statements were made, as well as the commission of any unfair labor practices.

All parties were represented at the hearing. Each was afforded full opportunity to be heard, to adduce evidence, and to examine as well as cross-examine witnesses. Thereafter, briefs were filed with the undersigned which have been duly considered.^{1/}

Upon the entire record herein, from my observation of the witnesses and their demeanor, and from all of the testimony and evidence adduced at the hearing, I make the following findings and conclusions:

Findings of Fact

1. At all times material herein the Union has been the exclusive representative of an appropriate unit of Respondent's employees.

2. At all times material herein the Union and Respondent were parties to a collective bargaining agreement which, under Article 26 thereof, contained a grievance and arbitration procedure re disputes between Respondent and the Union or employees.

3. From 1984 until September 17, 1987 Deborah Floyd worked at the Nellis Air Force Base Hospital as a ward secretary and medical clerk. Prior to August 1987,^{2/} and during June and July of that year, Floyd's immediate supervisor was Sgt. Irene Martin. On August 1, Sgt. Ann M. Dye became her immediate supervisor and continued in that capacity during Floyd's employment at the Base. In June of said year Captain Daniel Dickinson became Floyd's second level supervisor and continued to be so while she was employed thereat.

^{1/} General Counsel filed a Motion To Correct Transcript. No objections having been interposed, and it appearing that the proposed corrections are proper, the Motion is granted as requested.

^{2/} Unless otherwise indicated, all dates hereinafter mentioned occur in 1987.

4. In June, Floyd received a Civilian Performance and Promotion Appraisal covering the period from July 1, 1986 to June 30, 1987. The employee's overall performance rating was stated as "Fully Successful". Her previous annual rating had been "Superior".

5. Since Floyd was dissatisfied with her rating, she filed a grievance on June 29. It was alleged therein that her evaluation was in violation of Nellis AFB Supplement 1 to AFR 40-452 since the supervisor did not tell Floyd her evaluation would be lowered.^{3/}

6. Floyd and Union Steward Walter Campbell, along with Union President Ellie Mickelson, met with Supervisor Martin to discuss the lowered rating. In a memorandum dated July 13 Martin advised Campbell that she decided to change the rating to "Superior" as in the past.

7. A second grievance was filed by Floyd re an addendum to Air Force 971 Form. This was denied at the second step of the negotiated grievance procedure on or about September 14.

8. On September 16, Floyd went to the Base Hospital with her son who had an asthmatic attack. She was on annual leave from her job. At about 8:35 that morning at the Primary Care Unit she spoke with Captain Dickinson. The latter asked her to come to work at 12 o'clock since there were many patients in the ward and things were hectic thereat. Floyd agreed to do so. Upon reporting to work at 12 noon she was called to the office by Sgt. Dye. The latter asked the employee to sign a timecard charging Floyd with four hours annual leave and four hours sick leave. Floyd disagreed with the way Dye computed the time and the amount of leave charged against her.

9. At about 3:00 p.m. on September 16, Floyd met with Dickinson, at her request, to discuss the disagreement with Dye as to the leave charged her and other problems with her supervisor. In respect to the charged leave, Dickinson told Floyd that the matter must be taken up with Dye. They then

^{3/} AFR 40-452, which was supplemented on July 1, 1984, provides in 2-16 that "No employee shall receive an overall annual performance appraisal rating lower than the previous annual appraisal, unless the immediate supervisor has notified the employee during an earlier conference that the annual rating may be lowered."

discussed other matters involving her supervisor. Floyd mentioned the difficulty she had with Dye in the past, alluding to a meeting with her supervisor on August 7. The employee said that at that meeting Dye stated she heard Floyd had a reputation, but the supervisor would be guided by her own impression rather than the impression of others.

During this discussion Dickinson stated that Floyd did have a reputation. The latter asked the Captain what he meant by that, and whether she had done something bad or was a bad person. With respect to the ensuing colloquy between herself and Dickinson, Floyd testified as follows:4/

He said, "No, it's not that you've done something really bad that caused the reputation, it's the route you took that alerted him to indicators and had marked me as a person that had gone to civilian personnel and the Union to file grievances and he was going to be alerted to handle me differently."

Further testimony by Floyd reflects Dickinson stated the job performance evaluation which was lowered was a real eye-opener; that he and Sgt. Dye would have to watch her closely, and keep notes on her which was being done. Further, Dickinson reminded Floyd she went to the OSI and filed a complaint against Dye for entering the medical office while she was being examined and for giving out Floyd's records to unauthorized personnel. He also stated it had caused him much inconvenience; that he had to keep going to the Commander's office and he would watch her more closely for indicators that she was going to cause trouble.

10. The conversation between Dickinson and Floyd on September 16 in his office was interrupted by Sgt. Martin

4/ The recitation of facts re this conversation on September 16 in Dickinson's office involves a resolution of credibility. The testimonies of both participants is at wide variance as to the statements made by Dickinson to Floyd in the afternoon of that date in her office. Moreover, Dickinson denies making the pertinent remarks as set forth herein. Nevertheless, the undersigned credits Floyd in regard thereto, and the facts recited represent the pertinent and credited version of what was stated by the participants concerning Floyd's conduct.

who said that Major Henderson^{5/} was looking for Floyd. When the employee remarked that Henderson has probably been "on my case" because of her bad reputation, Dickinson referred to the fact that Henderson did not trust her; that her credibility was not good. Dickinson then stated he was not going to get involved with Dye and her disputes any more.

11. The record also reflects that Dickinson was not involved in her performance appraisal grievance - he was not consulted by the Union or civilian personnel. On the grievance dealing with Dye and the addendum he was somewhat "laterally involved." To the extent that Dickinson was involved in the grievances it did take time away from his other duties. Moreover, Dickinson considered the grievance by Floyd re her appraisal as "an interference."

12. On September 17, Floyd resigned from her employment with Respondent. A final conversation occurred between Floyd and Dickinson in the latter's office at 4:00 p.m. on that date. Floyd explained that she was leaving since she couldn't get along with Dye and Henderson; that she had a new job downtown and would be receiving several benefits. The employee told Dickinson she was sorry the Union got involved in it, and the supervisor replied she should not worry about it. Dickinson also stated that because of her leaving Floyd would not be able to get another federal service job; that it would cause financial difficulties with her husband retiring. Floyd commented she would go out and get another job.

Conclusions

It is contended by General Counsel that the statements made by Captain Dickinson to Deborah Floyd on September 16, 1987 re her filing grievances was violative of section 7116 (a)(1) of the Statute. General Counsel maintains that such statements were coercive in nature and an infringement of the rights of employees guaranteed thereunder.

In determining whether statements by management tend to interfere with protected activity, the test to be applied is whether, under the circumstances, an employee may reasonably infer intimidation or coercion. The essential question is whether remarks by supervisors or managerial personnel tended to interfere, restrain or coerce employees. U.S. Department

^{5/} Major Henderson is the charge nurse on Ward 3 where Floyd worked.

of Justice, U.S. Marshals Service, 17 FLRA 304; Federal Mediation and Conciliation Service, 7 FLRA 199.

Based on the findings herein, I conclude that certain remarks made by Captain Dickinson to Floyd on September 16 were threatening in nature and interfered with rights assured employees under the Statute. Reference was made by Dickinson to Floyd's reputation being affected by the "routes" she took which alerted him: that she was marked as a person who had gone to civilian personnel and the Union to file grievances; that he would be handling her differently. Any employee, including Floyd, could reasonably have drawn a coercive or intimidating inference from such utterance. Included within the protected activity under the Statute is the filing of grievances. See United States Department of Interior, Office of the Secretary, U.S. Controller for the Virgin Islands, 11 FLRA 52. Thus, I conclude that the foregoing statements by Dickinson concerning Floyd's filing a grievance and the promised action by management in the future were coercive and tended to interfere with protected activity under the Statute.

Likewise, I am of the opinion that Dickinson's continued statements, which informed Floyd that he and Sgt. Dye would have to keep a watch on her closely and keep notes on the employee, were coercive in nature. The supervisor's comment that Floyd would be handled differently, spoken in context with his remark that she had gone to the Union and filed a grievance, clearly interfered with rights assured by the Statute. Those statements, as well as those referred to hereinabove, could reasonably be construed as having interfered with, restrained or coerced employees in violation of section 7116(a)(1) of the Statute.

Based on the foregoing, it is recommended that the Authority issue the following:

ORDER^{6/}

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of

^{6/} In respect to notation by management re Floyd's activities, the record does not reflect that any notes were actually kept by Dickinson or Dye. Thus, the recommended order in that respect is limited to expunging from its records any notation, if made, re Floyd's protected activities.

the Statute, it is hereby ordered that Department of the Air Force, Nellis Air Force Base, Nevada, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees by telling them they are marked as persons who have gone to civilian personnel and the Union to file grievances, and by threatening to watch employees and keep notes on them because of the exercise by them of protected activities.

(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) Expunge from its records any notations, if made by management or any supervisors, regarding the exercise by Deborah Floyd of her protected activities.

(b) Post at its facility at Nellis Air Force Base, Nevada, 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 Base 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 insure 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., April 5, 1989



WILLIAM NAIMARK
Administrative Law Judge

NOTICE TO ALL 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 STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT interfere with, restrain, or coerce our employees by telling them they are marked as persons who have gone to civilian personnel and the Union to file grievances, and by threatening to watch employees and keep notes on them because of the exercise by them of their protected activities.

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 expunge from its records any notations, if made by management or any supervisors, regarding the exercise by Deborah Floyd of her protected activities.

(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.