

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

.....
DEPARTMENT OF THE ARMY
WATERVLIET ARSENAL
WATERVLIET, NEW YORK

Respondent

and

Case No. 1-CA-90277

.....
NATIONAL FEDERATION OF
FEDERAL EMPLOYEES,
LOCAL 2109, INDEPENDENT

Charging Party

.....
DEPARTMENT OF THE ARMY
WATERVLIET ARSENAL
WATERVLIET, NEW YORK

Respondent

and

Case No. 1-CA-90279

ARTHUR W. BROOKS

Charging Party

.....
NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES,
LOCAL R2-98, SEIU/AFL-CIO

Respondent

and

Case No. 1-CO-90029

GEORGE W. LaWARE, JR.

Charging Party

J. Ellen Purcell Marchese
Counsel for the Respondent Agency

Paul J. Hayes
Representative of the Respondent NAGE

James N. Davis
Representative of the Charging Party NFFE

Carol Waller Pope
Counsel for the General Counsel, FLRA

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

The consolidated unfair labor practice complaint alleges that the Department of the Army, Watervliet Arsenal, Watervliet, New York (Respondent Watervliet, Watervliet, or Arsenal) violated section 7116(a)(1), (2) and (3) of the Federal Service Labor-Management Relations Statute (the Statute) by agreeing with the National Association of Government Employees Local R2-98, SEIU/AFL-CIO (Respondent NAGE or NAGE) to procedures for an asbestos testing program which provided for dues paying NAGE members to participate in the testing on excused absence while non-dues paying members of the bargaining unit could participate in the program on off-duty hours only. The consolidated complaint further alleges that Respondent NAGE, by its actions in agreeing to these provisions, caused the Agency to discriminate against unit employees in violation of section 7116(b)(2) and interfered with employee rights in violation of section 7116(b)(1) of the Statute. Respondent Watervliet and Respondent NAGE each filed an answer denying any violations of the Statute.

For the reasons set forth below, I find that a preponderance of the evidence establishes that Respondents committed the unfair labor practices as alleged.

A hearing was held in Watervliet, New York.^{1/} The parties were afforded full opportunity to be heard, adduce

^{1/} Counsel for the General Counsel's unopposed motion to correct the transcript is granted; the transcript is corrected as set forth therein.

relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. Respondent Watervliet, Respondent NAGE, and the General Counsel, FLRA filed helpful briefs. The proposed findings have been adopted where found supported by the record as a whole. Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

1. Respondent Watervliet is an agency within the meaning of section 7103(a)(3) of the Statute (G.C. Exh. 1 K, para. 4). Thomas Kotas, Chief, Management-Employee Relations Division and James G. Murphy, Director, Personnel and Community Activities, are supervisors or management officials of Respondent Watervliet (G.C. Exh. 1 K, para. 6; G.C. Exh. 1 N, para. 6).

2. Respondent NAGE is the recognized exclusive representative of an appropriate unit of employees at the Arsenal (G.C. Exh. 1 K, para. 8; Jt. Exh. 2). There are approximately 1200-1300 bargaining unit employees, 400-500 of whom are dues paying members of Respondent NAGE (Tr. 9).

3. Respondents NAGE and Watervliet are parties to a collective bargaining agreement dated 5 June 1988 (Jt. Exh. 2).

4. On January 6, 1989, the National Federation of Federal Employees, Local 2109, Independent (NFFE) filed an election petition in Case No. 1-RO-90003 seeking an election among the bargaining unit employees represented by Respondent NAGE (Jt. Exh. 1).^{2/}

5. On September 23, 1988, Paul J. Hayes, NAGE consultant, wrote to Colonel Joseph Mayton, Jr., Commanding Officer of Respondent Watervliet, offering to provide NAGE health tests relating to asbestos to all Arsenal employees.

^{2/} On June 30, 1989, the Regional Director issued a Decision and Order and Direction of Election. NAGE filed a timely application for review with the Authority. On December 29, 1989, the Authority denied the application for review in U.S. Department of the Army, Watervliet Arsenal, Watervliet, New York and National Federation of Federal Employees, Local 2109 and National Association of Government Employees, Local R-2-98, 34 FLRA No. 24 (1989).

Hayes requested Mayton to authorize duty time and a designated area on the Arsenal grounds for such testing. The Commander responded with a request for additional information, which NAGE then forwarded to the responsible program individuals in Philadelphia for reply. (NAGE Exh. 3).

6. The asbestos testing program was discussed further among NAGE officials at a NAGE Executive Board meeting on December 7, 1988. It was determined that all Arsenal employees, both Union and non-Union, could be tested. The tests were planned for a Thursday or Friday if the Commander agreed to administrative leave. An on-premise location was preferred, but the Day's Inn would be used if necessary. (NAGE Exh. 1; Tr. 86; 147).

7. Respondent Watervliet would not agree to excused time for all employees for the tests because of the loss of too much productivity time (Tr. 156). NAGE subsequently decided not to pursue the matter of having the testing on Arsenal grounds. (Tr. 149).

8. In late April 1989, NAGE mailed to the home addresses of all dues paying members^{3/} notice of an asbestos screening program to be conducted on Friday, April 28 and Saturday, April 29, 1989 at the Day's Inn, Menands, New York. The screening program was to include a free chest x-ray. (G.C. Exh. 2; Tr. 15).

9. Approximately one week before the testing program was scheduled to take place management representative Kotas learned of the program (Tr. 15). Kotas was concerned that excessive amounts of sick leave would be used by employees participating in the testing if it were conducted off the work site and that such use would impact on critical production quotas at the end of the month. After discussing the matter with the Commanding Officer, Kotas contacted NAGE and requested a meeting to discuss the asbestos testing program (Tr. 17-19).

10. Sometime thereafter, NAGE representatives Hayes, and Joseph Ventresca, NAGE president, met with Kotas and Murphy as requested (Tr. 19, 20). During this meeting Respondent Watervliet was told that the scheduling and

^{3/} The Union has not been able to obtain the home addresses of all bargaining unit members due to recent court decisions. (Tr. 30-31).

site location for the asbestos program were coordinated by NAGE officials in Washington and that only dues paying members of NAGE had been given notification of the testing program (Tr. 19, 20). Respondent Watervliet believed that this restricted notification would reduce the number of employees possibly taking the test to about 400 instead of the total bargaining unit of approximately 1200. Watervliet proposed to NAGE that the location be changed to the Arsenal and the dates be changed to coincide with a scheduled mobile blood drive^{4/} (Tr. 20-21). Respondent Watervliet advised NAGE during the meeting that it would provide dues paying members of NAGE excused absence without any charge to leave^{5/} to participate in the testing if the changes in scheduling and location were agreed to (Tr. 20-21, 152). Watervliet reasoned that this would reduce the time lost on the job from about an hour to 15-20 minutes per employee and that some employees would probably coordinate the time used with the time allowed for a blood donation. (Tr. 21). NAGE maintained that employees who were not dues paying members were entitled to sick leave for the tests, and stated that the Union would represent any employee who was denied sick leave and wanted to grieve such denial. (Tr. 34, 151).

11. A few days later, NAGE informed Watervliet that it agreed to the site change and the date change. The matter of dues paying members being given an excused absence for the test was not discussed further, as it was understood to be part of the agreement as a result of the first meeting. (Tr. 23).

12. On April 28, 1989, a "Memorandum For All Supervisors," subject, "NAGE Asbestos Testing Program," was issued by Respondent Watervliet to approximately 300 supervisors (G.C. Exh. 3, Tr. 29). The memorandum was drafted by an inexperienced labor relations specialist, but was signed by R.J. Oppedisano, Chief of Recruitment and Placement, for James G. Murphy, Director, Personnel and Community Activities. The memorandum, in pertinent part, provided as follows:

^{4/} The negotiated agreement provides up to four hours of administrative leave for blood donations. (Jt. Exh. 2 at Article 16, section 9; see also Federal Personnel Manual (FPM) 630 at Subchapter 11-5(a)).

^{5/} An agency, for adequate reason, may excuse an employee without charge to leave who is unavoidably or necessarily absent, or tardy, for less than one hour. (5 C.F.R. § 630. 206(a) (1989); FPM 630, Subchapter 11-5(b); Tr. 22).

MEMORANDUM FOR ALL SUPERVISORS

SUBJECT: NAGE Asbestos Testing Program

1. The asbestos testing program sponsored by NAGE R2-98 has been scheduled for 2 May and 3 May 1989. The location of the testing vehicle will be on Flagpole Road (as indicated below). A registration table will be set up outside the vehicle.
2. In the event of inclement weather, the registration table will be in the Civilian Personnel Office.
3. The program will only be available to NAGE bargaining unit members, and will take place from 0730 to 1800.
4. Dues-paying Union members will be allowed an excused absence to take part in the testing program, provided the absence is less than one (1) hour. Information provided us indicates most absences should be no longer than thirty (30) minutes.
5. Bargaining Unit employees who are not dues-paying Union members may take advantage of this program on off-duty hours only.
6. Attached is a listing of dues-paying Union members entitled to excused absences of less than (1) hour for the asbestos testing program.
7. Supervisors should determine in advance which of their employees intend to take part in the testing so as to be able to efficiently plan their absence from the worksite (G.C. Exh. 3).
13. A list of dues paying members was attached to the Memorandum To All Supervisors (G.C. Exh. 3; Tr. 24).
14. Respondent NAGE was not provided a copy of the Memorandum To All Supervisors before its issuance, but did see a copy of the memorandum before the scheduled testing took place (Tr. 146, 152-153). After seeing the memorandum,

NAGE National Consultant Paul Hayes had a telephone conversation with Kotas during which he advised Kotas that ". . . based upon the fact that NFFE was challenging as to the bargaining representative rights, that undoubtedly there would be an unfair labor practice charge filed" Hayes did not request that bargaining unit members who were not members of NAGE be allowed to take the test on excused absence. He felt he had previously asked for that when the program was first proposed and it had been denied. He believed that the language that nonmembers would be required to take the test on off-duty hours would not be enforced. He also maintained that sick leave could be used for the tests whether or not employees were Union members. (Tr. 153-156).

15. The supervisors handled the memorandum in different ways. The record reflects that three supervisors advised their employees of the asbestos training program during weekly safety meetings. At these meetings, these supervisors either read the memorandum to employees or advised employees in accordance with the memorandum that dues paying members of NAGE could receive excused absence to participate in the scheduled asbestos testing while nonmembers of NAGE would have to be tested on their own time (Tr. 38-39, 49, 70, 78). Three employees testified that, as a result, they, as nonmembers of NAGE, did not take the test nor did they inquire further of anyone else from management or the NAGE office regarding the availability of administrative or sick leave for the purpose of taking the tests.^{6/} (Tr. 43, 47, 51-52, 67, 71).

16. Four employees, Tim Allard, Charles Cleary, Alan Dupys, and Jonathan Curly, who were not members of NAGE, testified that they went to be tested on duty time and were not charged with leave. Charles Cleary and Jonathan Curly

^{6/} Counsel for Respondent Watervliet and Respondent NAGE pointed out that two of the employees were Charging Parties and former NAGE stewards who lost internal union elections to current officers. Respondents submitted that the testimony of these employees is entitled to little weight because of their bias. While taking these matters into consideration, I have credited their testimony. The employees identified the supervisors and the nature of the meetings. These details were not rebutted in any way by the Respondents.

heard about it by word of mouth and just went without advising their supervisors beforehand. (Tr. 121, 129). Tim Allard heard about the test, contacted a supervisor, and the supervisor said taking duty time for the test would be no problem. Alan Dupys learned of both the test by word of mouth and of a controversy over the fact that paid members were being allowed to go on duty time. He and several others contacted their supervisors and were told that the supervisors had no objection to the employees taking the test on duty time "as long as there were no repercussions from anybody." (Tr. 127).

17. The asbestos testing program sponsored by NAGE was conducted as scheduled. Approximately 200 employees participated in the x-ray testing provided through the program. (Tr. 27).

18. Respondent Watervliet has its own program for medical surveillance of employees having potential exposure to asbestos. The procedures involve employee screening, evaluation, and treatment. X-rays are not given to employees on demand, but only to those considered to be at risk. All x-rays which fall within the parameters of the program are administered on duty time at a local hospital. (Tr. 93, 106, 110; Res. Watervliet Exh. 1).

Positions of the Parties

The General Counsel contends that Respondent Watervliet and Respondent NAGE discriminated against employees in violation of section 7116(a)(1) and (2) and section 7116(b)(1) and (2) of the Statute, respectively, by entering into an agreement whereby dues-paying members of NAGE were granted excused absences to take part in the NAGE-sponsored asbestos training program while other bargaining unit employees were required to take advantage of the program on off-duty hours. Respondent Watervliet is also alleged to have committed such violations by its implementation of such an agreement. The General Counsel also claims that Respondent Watervliet's agreement to only provide an excused absence to NAGE members constituted unlawful assistance to NAGE in violation of section 7116(a)(1) and (3) of the Statute.^{7/}

^{7/} The General Counsel does not contend that it was a violation of the Statute for Watervliet to merely allow NAGE's testing to be conducted on Agency premises.

Watervliet defends on the basis that the memorandum for all supervisors was never promulgated to the workforce or enforced. Watervliet claims that all bargaining unit employees, who so requested, were released on duty time to take the test, regardless of whether they paid Union dues or not. Watervliet points out that no employee testified to actually having to use off-duty hours or sick leave to take the test.

Respondent NAGE defends on the basis that it did not agree with the memorandum issued by Watervliet and consistently urged that all employees were entitled to use sick leave for purposes of the test. NAGE contends it has never discriminated against nonmembers, and that the instant case was filed for the sole purpose of gaining votes for NFFE.

Discussion and Conclusions

NAGE

Where a union is acting as the exclusive representative of its unit members, its activities must be undertaken without discrimination and without regard to union membership under section 7114(a)(1).^{8/} Fort Bragg Association of Educators, National Education Association, Fort Bragg, North Carolina, 28 FLRA 908, 918 (1987) (Fort Bragg).

It is clear that Respondent NAGE was acting in its capacity as exclusive representative of unit employees when it negotiated an agreement with Respondent Watervliet to

^{8/} Section 7114(a)(1) provides:

"§ 7114. Representation rights and duties

"(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

bring NAGE-sponsored asbestos testing of employees on to Respondent's premises. Thus, in accord with Fort Bragg, Respondent NAGE had an obligation during these negotiations to represent the interests of all unit employees without discrimination and without regard to union membership.

Respondent NAGE failed to meet its statutory obligation. NAGE accepted Watervliet's offer to change the date and location of the testing knowing full well that Watervliet, in exchange, intended to provide NAGE members preferential treatment concerning a condition of employment. Under the agreement, dues-paying members of NAGE were to be provided excused absence without charge to leave to take the tests while other unit employees would be required to either use their off-duty time (Watervliet's view) or take sick leave (NAGE's view) in order to take advantage of the tests. Under either Watervliet's view or NAGE's view of the agreement, employees who exercised their protected right to refrain from membership in a labor organization under section 7102 of the Statute were to be discriminated against with respect to a condition of employment, that is, they were to be denied excused absence without charge to leave for the asbestos testing. See American Federation of Government Employees, Local 1932, AFL-CIO, 34 FLRA 480, 488 (1990).

NAGE's defense that it was confident nonmembers would ultimately not be denied administrative leave is without merit. It is a violation of 7116(b)(2) "to cause or attempt to cause an agency to discriminate." NAGE's position that sick leave could be requested for the tests by Union members and nonmembers alike is no defense at all. As the General Counsel points out, this argument seemingly acknowledges and condones the fact that nonmembers would have to specifically request and be charged sick leave for the tests instead of being provided excused absence without charge to sick leave as was automatically to be the case for NAGE members.

Respondent NAGE's action caused or attempted to cause an agency to discriminate against employees in connection with a condition of employment in violation of the employees' right to refrain from joining a labor organization. This constitutes an unfair labor practice under 7116(b)(2) of the Statute and interfered with the exercise of employee rights, an unfair labor practice under section 7116(b)(1) of the Statute. Overseas Education Association, 11 FLRA 377, 378 (1983).

Respondent Watervliet

It is well established that an agency violates section 7116(a)(1) and (2) of the Statute when it predicates its actions to grant or withhold favorable conditions of employment on an employee's exercise of the protected right to form, join, or assist a labor organization or the protected right to refrain from such activity. Letterkenny Army Depot, 35 FLRA 113 (1990); Department of the Army; Fort Riley, Kansas, 26 FLRA 222 (1987); Veterans Administration, Veterans Administration Medical Center, Shreveport, Louisiana, 5 FLRA 216 (1981).

Here, it is clear that Respondent Watervliet was not only a party to the unlawful agreement but a driving force in its implementation. Respondent Watervliet implemented this discriminatory agreement by issuing a memorandum to 300 supervisors throughout the Arsenal. The memorandum leaves no doubt that membership in NAGE was the determining factor to be used by supervisors in granting excused absence to employees requesting permission to participate in the testing. The attachment of a list of the names of all employees on dues allotment is further evidence that the sole intent of the memorandum and the Respondents' agreement was to insure preferential treatment of dues paying members of NAGE. While Watervliet's actions were motivated by a legitimate business interest to minimize the use of sick leave, such a goal can not be accomplished by following procedures that discriminate on the basis of union membership.

Although Respondent claims that the memorandum was drafted by an inexperienced person, responsible officials of Respondent signed the memorandum and never rescinded the memorandum or took any other action to prevent or correct its discriminatory application. The record demonstrates that some supervisors used the memorandum to inform employees of the procedures for the NAGE-sponsored program and, as a result, some nonmembers did not participate in the program. Watervliet's claim that nonmembers would have been granted excused absence upon request is specious. The memorandum had general application to all employees and Respondent Watervliet cannot transfer the blame for its unlawful conduct to the nonmembers who relied on what they were told. The fact that some supervisors disregarded the memorandum and allowed nonmembers to take the asbestos test on excused absence does not cure the record evidence of a discriminatory agreement, announcement, and application of the program as to other employees.

It is concluded that Respondent Watervliet violated section 7116(a)(1) and (2) of the Statute, as alleged. Respondent Watervliet also committed an independent violation of section 7116(a)(1), as alleged, when its supervisors informed bargaining unit employees of the discriminatory procedures for being tested. Such statements would have a reasonable tendency to interfere with, restrain, or coerce employees in exercising their right under the Statute to refrain from labor organization membership. See Department of the Air Force, Scott Air Force Base, Illinois, 34 FLRA 956 (1990).

Unlawful Assistance

It is undisputed that NFFE filed an election petition seeking to displace Respondent NAGE. That petition was pending at the time the asbestos testing program took place. Respondent Watervliet therefore had a responsibility to maintain neutrality among the competing unions during the pendency of the petition. Department of the Army Headquarters Washington, D.C. and U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Oklahoma, 29 FLRA 1110, 1125 (1987) (Fort Sill); Department of the Air Force, Air Force Plant Representative Office, (AFPRO), Detachment 27, Fort Worth, Texas, 5 FLRA 492 (1981).

By informing bargaining unit members that it would provide an excused absence only to NAGE members, Respondent Watervliet violated section 7116(a)(1) of the Statute. Bargaining unit employees could reasonably view such conduct as agency assistance or support of NAGE. Such conduct constitutes interference with the employee's right to freely choose who should be their representative. Fort Sill, 24 FLRA at 1125-26.

Such conduct also violated section 7116(a)(3) of the Statute.^{9/} Watervliet unlawfully "assisted" NAGE, the incumbent union, by providing more favorable conditions of employment to NAGE's dues paying members during the pendency of an election petition. Such blatant discrimination is by

^{9/} Section 7116(a)(3) provides:

"§ 7116. Unfair labor practices

"(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency --

(footnote continued)

no stretch of the imagination "customary and routine services." Such preferential treatment would tend to enhance NAGE's position in the eyes of bargaining unit members by encouraging membership or support of NAGE to the detriment of the petitioning NFFE. Cf. Department of Justice, United States Immigration and Naturalization Service, 23 FLRA 90 (1986); United States Department of Justice, United States Immigration and Naturalization Service, 9 FLRA 253, 299-300, (1982), enf. denied on other grounds, sub nom, U.S. Department of Justice, Immigration and Naturalization Service, 727 F.2d 481 (5th Cir. 1984);

Based on the foregoing findings and conclusions, it is recommended that the Authority issue the following Order:

ORDER

Pursuant to section 2423.29 of the Rules and Regulations of the Federal Labor Relations Authority and section 7118 of the Statute, it is hereby ordered:

A. The Department of the Army, Watervliet Arsenal, Watervliet, New York shall:

1. Cease and desist from:

(a) Encouraging or discouraging membership in a labor organization by discrimination in connection with a condition of employment by providing for dues paying members of the National Association of Government Employees, Local R2-98, SEIU/AFL-CIO (NAGE) to participate in a NAGE-sponsored asbestos testing program on excused absences (administrative leave) while requiring bargaining unit employees who are not dues paying members of NAGE to participate in the program on off-duty hours only.

9/ (footnote continued)

"(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(b) Assisting any labor organization, other than to furnish, upon request, customary and routine services and facilities, if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and their right to freely choose from labor organizations on the ballot, that labor organization which the employees wish to have represent them, or their right to freely choose not to be represented by a labor organization.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Afford bargaining unit employees who are not dues paying members of NAGE and who did not participate in the NAGE sponsored asbestos training program on May 2 and 3, 1989 the opportunity to participate in a make-up program for such employees to be sponsored by NAGE. Nonmembers of NAGE shall be allowed to participate on excused absence (administrative leave). Any bargaining unit employee who previously participated in the program by using annual or sick leave shall have such leave restored.

(b) Post at its facilities copies of the attached Notice (Appendix I) on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commanding Officer 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 I, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

B. The National Association of Government Employees, Local R2-98, SEIU/AFL-CIO shall:

1. Cease and desist from:

(a) Causing or attempting to cause the Department of the Army, Watervliet Arsenal, Watervliet, New York to discriminate against any employee in connection with a condition of employment on the basis of membership or nonmembership in NAGE.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

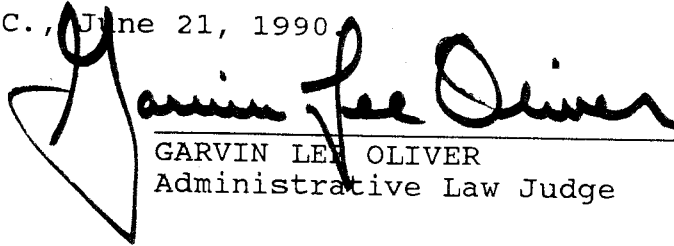
(a) Afford bargaining unit employees who are not dues paying members of NAGE the opportunity to participate in a make-up NAGE-sponsored asbestos testing program for such employee which shall be identical to the testing previously offered to dues paying members of NAGE on an excused absence (administrative leave) basis.

(b) Post at its business offices and in all places where notices to employees in its bargaining unit are customarily posted copies of the attached Notice (Appendix 2) on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the President and shall be posted and maintained for 60 consecutive days thereafter. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(c) Submit appropriate signed copies of the Notice to the Commanding Officer, Department of the Army, Watervliet Arsenal, Watervliet, New York, for posting in conspicuous places where unit employees represented by NAGE are located. Copies of the Notice should be maintained for a period of 60 consecutive days from the date of posting.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region 1, Federal Labor Relations Authority, 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., June 21, 1990



GARVIN LEE OLIVER
Administrative Law Judge

APPENDIX I

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 encourage or discourage membership in a labor organization by discrimination in connection with a condition of employment by providing for dues paying members of National Association of Government Employees, Local R2-98, SEIU/AFL-CIO (NAGE) to participate in a NAGE-sponsored asbestos testing program on excused absences (administrative leave) while requiring bargaining unit employees who are not dues paying members of NAGE to participate in the program on off-duty hours only.

WE WILL NOT assist any labor organization, other than to furnish, upon request, customary and routine services and facilities, if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and their right to freely choose from labor organizations on the ballot, that labor organization which the employees wish to have represent them, or their right to freely choose not to be represented by a labor organization.

WE WILL afford bargaining unit employees who are not dues paying members of NAGE and who did not participate in the NAGE-sponsored asbestos training program on May 2 and 3, 1989 the opportunity to participate in a make-up program for such employees to be sponsored by NAGE. Nonmembers of NAGE shall be allowed to participate on excused absence

(administrative leave). Any bargaining unit employee who previously participated in the program by using annual or sick leave shall have such leave restored.

_____ (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 I, whose address is: 10 Causeway Street, Room 1017, Boston, MA 02222-1046, and whose telephone number is: (617) 565-7280.

APPENDIX II

NOTICE TO OUR MEMBERS AND OTHER 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 MEMBERS AND OTHER EMPLOYEES THAT:

WE WILL NOT cause or attempt to cause the Department of the Army, Watervliet Arsenal, Watervliet, New York to discriminate against employees in connection with a condition of employment on the basis of membership or nonmembership in NAGE.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal.

WE WILL represent the interests of all employees in the unit we represent without discrimination and without regard to labor organization membership.

WE WILL afford bargaining unit employees who are not dues paying members of NAGE the opportunity to participate in a make-up NAGE-sponsored asbestos testing program for such employees which shall be identical to the testing previously offered to dues paying members of NAGE on an excused absence (administrative leave) basis.

(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 I, whose address is: 10 Causeway Street, Room 1017, Boston, MA 02222-1046, and whose telephone number is: (617) 565-7280.