

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

VETERANS ADMINISTRATION
MEDICAL CENTER
MEMPHIS, TENNESSEE

Respondent

and

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES,
LOCAL R5-66

Charging Party

Case No. 4-CA-00035

Linda J. Norwood, Esquire
For the General Counsel

Austin G. Moody, Esquire
For the Respondent

Before: JESSE ETELSON
Administrative Law Judge

DECISION

James Richard (Dick) Griffith, a Veterans Administration supervisor, took employee Michael McAtee aside one day in October 1989 to talk about an unfair labor practice charge the Charging Party (the Union) had filed. That charge concerned a previous meeting Griffith had with some employees, including McAtee. The substance of their October 1989 talk, according to McAtee, was that Griffith told him that he felt McAtee had "lied" in making the unfair labor practice allegations and that Griffith could not trust him any more.

A new unfair labor practice charge resulted, and a complaint was issued alleging that by virtue of Griffith's October 1989 statements the Respondent violated section 7116(a)(1) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. §7101, et seq. (the Statute). The parties

presented this case at a hearing before me on March 7, 1990, in Memphis, Tennessee. Counsel for the General Counsel presented a closing oral argument in lieu of a brief. The Respondent filed a brief. Based on the record, the brief, my observation of the witnesses, and my evaluation of the evidence, I find and conclude that the Respondent committed the alleged unfair labor practice.

Findings of Fact

McAtee was the assistant chief steward of the Union. He had reported to the Union's president his account of the earlier meeting that resulted in the first unfair labor practice charge. I credit McAtee's account of Griffith's later remarks about that charge. Bearing in mind that an employee might be inclined to make up or embellish a story so as to embarrass a supervisor, I do not believe that occurred here. McAtee's account was brief and straightforward. Griffith's version of the conversation was that he told McAtee "he was well within his right to file an unfair labor practice, but I didn't appreciate it." I am inclined to believe that he made those comments, or similar comments, in addition to what McAtee attributed to him (which he denied). If he made the comment about McAtee's right to file a charge, however, he acknowledged this right only in the abstract.

Discussion and Conclusions

The right to assist a labor organization, "freely and without fear of penalty or reprisal", as guaranteed by section 7102 of the Statute, plainly includes the right to report perceived unfair labor practices. An agency's interference with this right violates section 7116(a)(1) of the Statute. The Authority has stated that:

The standard for determining whether a management statement violates section 7116(a)(1) is an objective one. The question is whether, under the circumstances, the statement could reasonably tend to coerce or intimidate the employee or whether the employee could reasonably have drawn a coercive inference from the statement. . . . Although the circumstances surrounding the making of the statement are taken into consideration, the standard is not based on the subject-

ive perceptions of the employee or on the employer's intent.

Ogden Air Logistics Center, Hill Air Force Base, Utah,
34 FLRA 834, 837-838 (1990).

Griffith's statement to McAtee that he could no longer trust him reasonably tended to coerce or intimidate McAtee in the exercise of his right to assist the Union. At the least, McAtee could reasonably have drawn a coercive inference from it. Had Griffith stopped at accusing McAtee of lying, there might be room to argue that he was merely stating an opinion. However, he went on to convey the implied message that any exercise of the right which offended Griffith by stating facts contrary to Griffith's recollection would result in the employee's general loss of credibility in Griffith's eyes. This could reasonably be understood as impacting on the employee's standing in his employment and his opportunity for advancement. Even if Griffith, as he testified, expressly acknowledged McAtee's right to file a charge, this would not have removed the coercive tendency of his message--that exercise of the right was at the risk of the supervisor's disagreeing with the factual basis for the charge. Such a limitation guts the right.

I conclude, therefore, that Griffith's statement violated section 7116(a)(1). Counsel for the General Counsel suggested that the usual remedial notice be signed by both the Respondent's Director and by Griffith. The Authority typically requires remedial notices to be signed by the highest official at the facility where the unfair labor practice occurred, irrespective of the identity of the individual who caused the unfair labor practices. This policy has been articulated specifically with respect to military installations. Department of the Air Force, Air Force Logistics Command, Sacramento Air Logistics Center, McClellan Air Force Base, California, 35 FLRA 217, 220-21 (1990). It has also been the Authority's practice, however, with respect to other agencies and activities, including Veterans Administration medical centers. See, e.g., Veterans Administration, Washington, D.C., and Veterans Administration Medical Center, Leavenworth, Kansas, 33 FLRA 325, 327 (1988). While there is a certain appeal to having the notices, or some of them, also signed by Griffith, I see no compelling reason in this particular case to recommend a departure from the Authority's normal practice. It is a

matter of policy better addressed to the Authority. 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 Veterans Administrative Medical Center, Memphis, Tennessee shall:

1. Cease and desist from:

(a) Telling any employee that because he or she participated in the filing of an unfair labor practice charge against it he or she would no longer be trusted.

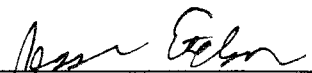
(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of rights assured by the Federal Service Labor-Management Relations Statute.

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

(a) Post at its facilities in Memphis, Tennessee, 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 Director of Medical Center 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.

(b) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IV, Federal Labor Relations Authority, Atlanta, Georgia, 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., September 12, 1990.



JESSE ETELSON
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 tell employees that because they participated in the filing of unfair labor practice charges against us they would no longer be trusted.

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.

(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.