

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

.....

ANTILLES CONSOLIDATED SCHOOL SYSTEM

Respondent

and

Case No. 2-CA-00271

ANTILLES CONSOLIDATED EDUCATION ASSOCIATION (NEA/OEA)

Charging Party

.....

Richard R. Giacolone  
For the Respondent

E. A. Jones, 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 June 29, 1990 by the Regional Director for Region II, Federal Labor Relations Authority, a hearing was held before the undersigned on September 11, 1990 at San Juan, Puerto Rico.

This case arises under the Federal Service Labor-Management Relations Statute, 5 U.S.C. section 7101, et seq., (herein called the Statute). It is based on an amended charge filed on June 29, 1990 by Antilles Consolidated Education Association (NEA/OEA), herein called the Union, against Antilles Consolidated School System, herein called the Respondent.

The Complaint alleged, in substance, that on April 16, 1990 Respondent, by its superintendent Robert Savage, conducted an examination of employee William Poynter; that

Respondent refused a request by Poynter for representation at the examination which the employee could reasonably believe might result in disciplinary action against him; that Respondent failed to comply with section 7114(a)(2)(B) of the Statute - all in violation of section 7116(a)(1) and (8) thereof.

Respondent's Answer, dated July 24, 1990 denied that Poynter requested union representation during the meeting. It alleged that Poynter was terminated from employment on June 1, 1990; that Poynter requested the presence of a specific person at the meeting which request was granted. The commission of any unfair labor practices was denied.

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 which have been duly considered.

Upon the entire record, 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, and still is, the collective bargaining representative of an appropriate unit of Respondent's employees.

2. The school system herein is designed as an English language school for people temporarily living in Puerto Rico who expect to return to the States. Two of the schools are located at Roosevelt Roads, three are in the San Juan area on an Army base, and one is at the western end of the island. The superintendent of the school system is Robert Savage.

3. The principal of the Roosevelt Roads Elementary School is Don Corbin, and the assistant principal thereof is Lane Gucci.

4. Between August 1988 and June 1, 1990 William Poynter was employed by Respondent as a probationary third grade teacher at the Roosevelt Roads Elementary School. On April 16, 1990<sup>1/</sup> Poynter returned to school after having

---

<sup>1/</sup> Unless otherwise indicated, all dates hereinafter mentioned occur in 1990.

been on leave to visit his sick mother in Florida. During the morning of that day Poynter was talking to Gucci in the latter's office. Corbin came in and told Poynter that superintendent Savage would be meeting with the employee at lunch time re some parental concerns.

5. The record indicates that in early April a group of parents told Savage that they were disturbed by Poynter's classroom behavior; that some of the parents, who had children in Poynter's class, had filed charges against him. Savage agreed to investigate the complaints and he arranged for an interview with Poynter to take place on April 16 to hear his version of the matter.

6. In the morning of April 16 Poynter came into the office of Ramona Kajigas who is the school counselor and a unit employee. He asked the counselor if she would attend the meeting along with his union representative since she knew things about all students in the school and could help him with explanations. Kajigas agreed to be present.

7. During the lunch period of April 16 Poynter spoke to Pamela Wilson, a third grade teacher who is on the executive board of the Union as chairman of student curricular activities. Wilson testified, and I find, that Poynter said he was in big trouble since he would be meeting with Savage and Corbin, and he imagined it was "not going to be good." Further, Wilson told Poynter he should have a witness and the person to so serve should be Joan Chrysler, the Union representative for the building. Whereupon Wilson asked whether Poynter wanted her to go down and ask Chrysler if she would be his representative.<sup>2/</sup> Poynter replied he would like her to do that. She also asked if he would want her to be a witness if Chrysler was not available. Poynter said "yes" to that question.<sup>3/</sup>

8. School counselor Ramona Kajigas also testified that prior to the meeting on April 16, and while she was in the lunch room, Poynter again asked if she was going to the

---

<sup>2/</sup> Wilson testified she reports to the executive board on items of interest but that she has no responsibility for representing unit members in meetings with management.

<sup>3/</sup> Further testimony by Wilson reflects she asked Chrysler if she could represent Poynter at the meeting but Chrysler said she had a class and could not attend.

meeting with him. She repeated that she would do so. Uncontradicted testimony by Kajigas shows that while they were in the lunch room Pamela Wilson told Poynter he should have someone from the union, a representative, to sit with him in the meeting. In reply thereto, Poynter said, "No, that is all right. I have Ramona, that is enough."

9. The meeting took place on April 16 in the office of assistant principal Gucci. It was attended by superintendent Savage, principal Corbin, and Gucci on behalf of the school. Poynter appeared with school counselor Ramona Kajigas. Corbin testified, and I find, that he was just leaving the room when Poynter came in; that the employee asked if he could have Ramona Kajigas in the meeting with him. Further, that Corbin replied it was unusual since the union building representative (Joan Chrysler) is normally present; that Poynter said he wanted Ramona.

10. Witnesses Savage, Corbin, Gucci, and Kajigas all testified that Poynter did not request union representation at the meeting. A credibility question is posed in that regard since Poynter testified he asked Savage for a representative; that the superintendent said it was not necessary since it was an informal investigation. This is denied by Savage. Both agreed that Poynter stated he wanted "Ramona" present and that Savage said he had no objection.

11. The evidence adduced herein convinces me that Poynter was satisfied to proceed with the meeting and have school counselor Ramona Kajigas as his representative. The record reflects that he told Pamela Wilson, who suggested he have a union representative at the meeting, "I have Ramona, that is enough." This was uncontradicted. Further, that Poynter told Corbin at the meeting, in response to the principal's comment that it was usual to have a union representative present, that he wanted Ramona. This was uncontroverted. Accordingly, I am not persuaded that Poynter did request union representation at the meeting on April 16, and I credit Savage's denial that such a request was made by the employee.

12. The meeting, which lasted about an hour and a half, was conducted by Savage who took notes. He told Poynter that a group of parents with children in his class had filed serious charges against him. Savage read some of the charges and then asked Poynter some questions. He asked if the teacher turned off lights, threw things in the room, and whether he screamed or yelled at the children. Poynter answered and explained his views of the allegations. Savage

stated that he would investigate the matters further and told Poynter to return to his classroom.<sup>4/</sup>

13. Under date of April 27, Principal Corbin wrote Poynter regarding the parental complaints concerning the teacher's behavior. (Respondent's Exhibit 1). Some of these complaints were recited in the letter. Corbin stated that after a thorough investigation, including the discussions with Poynter, the school system decided that: (a) effective April 30 Poynter would be reassigned from his present teaching position, (b) the school system would terminate Poynter's employment during his probationary period, effective June 1.

14. Under date of May 2 Marianne Kavanaugh, President of the Union, wrote Savage that the Union desired to discuss with the Board the nature of the investigation resulting in Poynter's termination as well as the merits of the action taken and the right to due process.

15. Shortly thereafter in May Savage met with Kavanaugh, Union representative Chrysler, and Poynter to discuss the matter. Poynter presented his views on all the issues and an appeal was made to reverse the decision to terminate the employee. Savage did not overturn that decision, and the Union appealed to the school board on May 24 with Poynter at a school board meeting. The original decision to terminate Poynter was sustained.

#### Conclusions

Under section 7114(a)(2)(B) of the Statute an employee is afforded representational rights in the course of an examination conducted by an agency when certain prerequisites are present. This right, known as a "Weingarten" right,<sup>5/</sup> will be found to exist when it is

---

<sup>4/</sup> Savage testified that there was a reasonable expectancy that disciplinary action might result from the investigation. Moreover, that he was aware that Poynter had the right to request a union representative. He referred to Respondent's Exhibit 2, which was a memo dated October 4, 1989 to all employees re their right to union representation under section 7114(a)(2)(A) and (B) of the Statute.

<sup>5/</sup> See NLRB v. Weingarten, 420 U.S. 251 (1975).

clear that (a) an examination of an employee by management occurs; (b) the employee requests representation thereat; (c) there is a reasonable belief by the employee that disciplinary action may result from the examination. Department of the Navy, Charleston Naval Shipyard, Charleston, South Carolina, 32 FLRA 222 and cases cited therein).

No question exists that Respondent conducted an examination of Poynter in connection with an investigation on April 16. Moreover, it is quite apparent that he had reasonable grounds for believing that disciplinary action might ensue as a result thereof. Notwithstanding the existence of these prerequisites the record does not reflect, based on my findings, that Poynter requested a union representative and was denied the opportunity to have one at the examination. As heretofore indicated, the employee repeatedly declared he was satisfied with Ramona Kajigas, the school counselor, as his representative. Moreover, such declaration was made in response to the principal's comment that usually an employee wanted a union representative on his behalf at such meetings.

The record also reflects that in May, as a result of the Union president's request, the Respondent's official met with Poynter and Union representatives, that they discussed the issues and the employee aired his views of the events which gave rise to the decision by management to terminate Poynter's probationary employment.

All of the foregoing is persuasive that Poynter did not seek a union representative to act on his behalf at the examination on April 16, nor did Respondent deny a request for such representation. Accordingly, and in view thereof, I conclude that Respondent has not violated section 7116(a)(1) and (8) of the Statute. It is recommended that the Authority adopt the following Order:

ORDER

The Complaint in Case No. 2-CA-00271 is dismissed.

Issued, Washington, D.C., November 26, 1990.



---

WILLIAM NAIMARK  
Administrative Law Judge