

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

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UNITED STATES DEPARTMENT OF
JUSTICE, LITIGATING DIVISIONS
AND OFFICE OF THE SOLICITOR
GENERAL, WASHINGTON, D.C.

Respondent

and

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 26, AFL-CIO

Charging Party

.

Case No. 3-CA-10376

Stephanie Block
Scott Cooper, Esquire
For the Respondent

Laura Flegel, Esquire
For the Charging Party

Laurence Evans, Esquire
For the General Counsel

Before: BURTON S. STERNBURG
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. Section 7101, et seq., and the rules and Regulations issued thereunder.

Pursuant to a charge filed on March 28, 1991, by American Federation of State, County and Municipal Employees, Council 26, AFL-CIO, (hereinafter called the Union or Charging Party), a Complaint and Notice of Hearing was issued on June 28, 1991, by the Regional Director for Region III, Federal Labor Relations Authority, Washington,

D.C. The Complaint alleges that the United States Department of Justice, Litigating Divisions and Office of the Solicitor General, Washington, D.C., (hereinafter called the Respondent), violated Section 7116(a)(1) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by virtue of the action of a supervisor in "interrogating an employee/union steward in connection with her exercise of rights protected by the Statute."

A hearing was held in the captioned matter on September 25, 1991, in Washington, D.C. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The Respondent and the General Counsel submitted post hearing briefs on October 25, 1991, which have been duly considered.

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions, and recommendations.

Findings of Fact

The Union was certified on December 28, 1990 as the exclusive representative of Respondent's employees working in the "Litigating Divisions and Office of the Solicitor General". At the time of the events involved herein the parties had not begun negotiations for a collective bargaining contract covering the unit employees. According to the uncontested testimony of Ms. Huel Meadows, Chief of Employee Relations, whose office is responsible for labor and employee relations services to the various divisions, etc., within the Department of Justice, Respondent was only granting official time in accordance with the provisions of Section 7131(a) of the Statute. In the absence of any agreement with Mr. Carl Goldman, the Union's Director of Organizing, it was Respondent's position that there was no entitlement to any other official time.

On February 6, 1991, Mr. Carl Goldman, Director of Organizing for the Union, hand delivered a letter to Ms. Meadows wherein she listed a number of shop stewards who had been selected to represent the employees in the new Department of Justice bargaining unit for which the Union had recently become the certified.^{1/} In addition to naming

^{1/} Ms. Joanne Ingram was listed as a steward for the Housing and Civil Enforcement Section of the Civil Rights Division.

the stewards, the letter further stated in pertinent part as follows:

. . . I expect that all AFSCME stewards will be given official/administrative time to perform labor relations functions under applicable law and regulations.

For the immediate future, I would prefer that you not contact these shop stewards directly. Rather, please contact Council 26 President Stu Smith, or if he is unavailable and the matter cannot wait, you may call me. We will find an appropriate steward to handle the issue. If neither Stu or I are available, and it is an emergency, you may contact a steward directly.

By letter dated February 11, 1991, Ms. Meadows responded to Mr. Goldman's February 6, 1991, letter, stating in pertinent part as follows:

As you know, steward systems are negotiable. Of course, the Department will not attempt to dictate internal structure of the union, or who your officers and representatives will be. However, number of stewards we will officially recognize, the level of union officer to be notified with respect to different representation functions, and whether and how official time will be used, as well as other matters, are negotiable. Right now, and until an agreement is reached on such matters, we must grant official time only as required under 5 U.S.C. Section 7131(a).

By memorandum dated March 7, 1991, Mr. Robert Bratt, Executive Officer of the Civil Rights Division, notified Mr. Paul Hancock, Chief Housing and Civil Enforcement Section, Civil Rights Division, that Ms. Joanne Ingram has been designated union steward. The memorandum^{2/} reads as follows:

The union has designated Joanne Ingram, of your staff, as a shop steward. While we have not negotiated the use of official time, we have agreed to permit fifteen members of the bargaining unit to

^{2/} A copy of the memorandum was sent to Ms. Ingram.

attend a one-day training session without charge of leave. The union has requested that Ms. Ingram be among those who receive this training on official time. It will be held on March 12, 1991.

Ms. Ingram is to request the use of official time from you or her supervisor, and you may take into account your workload when considering whether to grant it. Absent any major workload interference, however, we encourage you to authorize the use of official time for this one-day training session.

Since we have not negotiated with the union, please do not allow any further use of official time until you have checked with us. In this regard, feel free to contact either Shirley Lloyd or Sandie Bright.

On March 21, 1991, Union Steward Ingram telephoned Ms. Meadows and asked about official time to attend a meeting she had scheduled for 3 p.m. that afternoon with Mr. Stu Smith, a Council 26 President. The meeting with Mr. Smith was for purposes of discussing the procedures to be utilized in filing grievances. Ms. Ingram had called Ms. Meadows at the suggestion of Mr. Smith.

Ms. Meadows informed Ms. Ingram that since no agreement had been reached between Respondent and the Union concerning the use of official time there was no official time available for her to meet with Mr. Smith. She was further told that if she wished to attend the scheduled meeting she would have to request annual leave.

Following the conversation with Ms. Ingram, Ms. Meadows telephoned the administrative office of the Civil Rights Division and spoke to a personnel administrator named Alice Kale. Ms. Meadows repeated the substance of her earlier conversation with Ms. Ingram, namely, that there was to be no official time available for Ms. Ingram to meet with Mr. Smith. Ms. Meadows instructed Ms. Kale to inform Ms. Ingram's supervisors that if Ms. Ingram did request time to perform union duties, she should be allowed to use annual leave for such purposes and not official time. Following her conversation with Ms. Meadows, Ms. Kale then passed the information on to Mr. Hancock^{3/} and also informed him that he

^{3/} Mr. Hancock is Ms. Ingram's second level supervisor.

could expect a request for leave to perform union duties from Ms. Ingram that afternoon.

At approximately 3 P.M. the same day Mr. Hancock stopped by Ms. Ingram's office for purposes of discussing the matter of official leave for union business. After unsuccessfully looking for her in her office, other offices and the xerox room on her floor, Mr. Hancock left a message on the electronic mail system of Ms. Ingram's computer at 3:49 p.m. which stated, "JoAnn please stop by". Ms. Ingram read the message at 4:51 and stopped by Mr. Hancock's office at approximately 4:55 p.m.

According to the testimony of Mr. Hancock^{4/}, after Ms. Ingram entered his office, he told her that he had been looking for her and asked where she had been. When she replied that she had been xeroxing, he informed her that he had looked into the xeroxing room and that she wasn't there. Ms. Ingram then informed Mr. Hancock that she had utilized the xerox room on another floor to do some jury instructions for staff attorney Bobby Kammerman. Mr. Hancock then informed her that he had received a telephone call from Ms. Alice Kale about her request for time off, that he was aware that she, Ms. Ingram, was a shop steward and that he had no objection to her participating in Union work, but that if she needed to be away from the office he had to know when she was going to be away. After repeating that he had no objection to her doing union work and that he needed to be advised when she was going to be out of the office on such work, he then asked her . . . "if she needed to make any requests for leave that day". Ms. Ingram replied in the negative, and stated that "she had performed some work for the Union in the morning and at lunch time, but there wasn't anything else planned for that day, and she didn't need to make a leave request." Further, according to Mr. Hancock, he did not pursue the matter of when and where she had been earlier in the day since he was only concerned that she understood the procedure to be followed when she had to be away on union business. Mr. Hancock further testified that he was concerned about her absence because she was responsible for taking care of the incoming mail, docketing it, and distributing it to the lawyers involved. Failure to

^{4/} Based upon my observation of the witnesses and their demeanor while on the witness stand and a thorough review of their respective testimony, I credit Mr. Hancock's version of the October 21, 1991 conversation.

properly handle the mail could result in missed Court or filing dates. Finally, Mr. Hancock denied asking Ms. Ingram any other questions regarding any internal union functions, grievances or meetings.

According to Ms. Ingram, following the discussion concerning where she had been earlier in the day when he, Mr. Hancock, had been looking for her, Mr. Hancock then proceeded to ask her if she had been receiving any grievances, the number and what her expectations were with respect to receiving future grievances. She also testified that Mr. Hancock inquired as to whether she had attended any union meetings that week, whether she would be attending any union meetings in the near future and how often the union met. According to Ms. Ingram, she was so intimidated by the inquiries made by Mr. Hancock, that immediately following the meeting she called Mr. Goldman, Director of Organizing for the Union, and reported the substance of the earlier conversation. Mr. Goldman acknowledges receiving a telephone call from Ms. Ingram around five in the evening wherein when Ms. Ingram told him about the alleged inquiries from Mr. Hancock.

Discussion and Conclusions

Having credited the testimony of Mr. Hancock with respect to the substance of his conversation with Ms. Ingram on the afternoon of March 21, 1991, I find insufficient evidence to support a conclusion that Mr. Hancock interrogated Ms. Ingram in violation of Section 7116(a)(1) of the Statute. Accordingly, it is hereby recommended that the Authority adopt the following order dismissing the Complaint in its entirety.

ORDER

It is hereby Ordered that the Complaint should be, and hereby is, dismissed in its entirety.

Issued, November 6, 1991, Washington, DC.



BURTON S. STERNBURG
Administrative Law Judge