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

AIR FORCE LOGISTICS COMMAND, OGDEN AIR LOGISTICS CENTER, HILL AIR FORCE BASE, UTAH Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO LOCAL 1592 Charging Party	Case No. 7-CA-00667

Clare Jones, Esq.
For the Respondent

Louis E. Marazo
For the Charging Party

Matthew Jarvinen, Esq.
For the General Counsel of the FLRA

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101 et seq. (hereinafter called the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (FLRA), 5 C.F.R. Chapter XIV, Part 2423.

Pursuant to a charge filed by American Federation of Government Employees, AFL-CIO, Local 1592 (AFGE Local 1592 and the Union), against Air Force Logistics Command, Ogden Air Logistics Center, Hill Air Force Base, Utah (Hill AFB and Respondent), the General Counsel of the FLRA, by the Regional Director of the FLRA's Denver Region, issued a

Complaint and Notice of Hearing alleging that Hill AFB violated section 7116 (a)(1) and (5) and section 7116(a)(1) of the Statute by meeting with a unit employee and offering him a "Last Chance Agreement", all over the objection of the Union. Respondent filed an answer denying it had violated the Statute.

A hearing was conducted before the undersigned in Ogden, Utah. Hill AFB, AFGE Local 1592, and General Counsel of the FLRA were represented and afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Briefs were filed and have been fully considered.

Based upon the entire record in this matter*/, my observation of the witnesses and their demeanor, and my evaluation of the evidence, I make the following:

Findings of Fact

At all material times American Federation of Government Employees, AFL-CIO (AFGE), has been the exclusive representative for a nationwide collective bargaining unit of employees of Air Force Logistics Command (AFLC). AFGE Council 214 is an affiliate and agent of AFGE. AFGE Local 1592 is an affiliate and agent of AFGE and AFGE Council 214 for representing those unit employees who are employed at Hill AFB.

At all times material AFGE Council 214 and AFLC have been parties to a collective bargaining agreement covering the nationwide unit, including those employees employed at Hill AFB.

Craig Tillet was employed by Hill AFB as an Aircraft Mechanic for about seven years prior to his discharge on August 3, 1990. During Tillet's employment at Hill AFB he was a member of the bargaining unit.

On May 14, 1990, Bob Peterson, Tillet's immediate supervisor, gave Tillet a notice of proposed removal which was dated April 30, 1990. Tillet went to the AFGE Local 1592 office that same day and spoke to Union representative Scott Blanch. Blanch is a full-time

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*/ General Counsel filed a Motion to correct the transcript. No opposition having been filed, this Motion is hereby GRANTED.

representative of AFGE Local 1592, but remains an employee of Hill AFB. Tillet and Blanch briefly discussed the proposed removal letter and Blanch was designated by the Union to represent Tillet. Blanch advised Tillet that Blanch would review the matter and contact Tillet again. Tillet then returned to work.

Blanch then contacted Gary Higgs, at that time employed by Hill AFB as an Employee Relations Specialist, to obtain a copy of the materials relied upon by management in proposing Tillet's removal, the so-called "evidence package".

Three or four days later, after Blanch had obtained the evidence package, Tillet returned to the Union office to talk with Blanch. After reviewing the evidence package and getting Tillet's version of events, Blanch advised Tillet that Tillet's options were to quit, to challenge the proposed removal, or to enter an alcohol rehabilitation program. Tillet indicated he needed some time to consider these options and that he would inform Blanch as to how Tillet wished to proceed.

On Sunday, June 3, 1990, Tillet entered the Day Spring treatment center for treatment of his alcohol problem, without informing Blanch or anyone at work. Tillet asked his parents to notify his employer that Tillet was admitted for the treatment. Day Spring is the alcohol and drug treatment program at Dee McKay Hospital.

On Monday, June 4, 1990, Blanch, unsuccessfully tried to reach Tillet at work because the response to the notice of proposed removal was due. When Blanch spoke to Joe Bailey, Tillet's second line supervisor and the deciding official concerning the notice of proposed removal, Blanch learned that Tillet had entered the in-patient rehabilitation program at Day Spring. Because the response concerning Tillet's notice of proposed removal was due, Blanch requested a 2-day extension to submit the response. Bailey granted this request and Blanch, on AFGE 1592 stationery, sent a letter confirming this extension. Blanch signed this letter as AFGE Local 1592 Executive Vice President.

Although Blanch had no further contact with Tillet, by letter dated June 6, 1990, on AFGE Local 1592 stationery, Blanch filed the response to the proposed removal of Tillet in which, among other items, it was stated that Blanch had been designated Tillet's Union representative. Blanch signed the response as AFGE Local 1592 Executive Vice

President. One of the matters asserted in the response was that, after noting that Tillet was in the rehabilitation program, once an agency allows an employee to enter a rehabilitation program, it implicitly agrees to allow the employee the opportunity to complete the program and demonstrate successful rehabilitation.

The remainder of the facts and incidents in this case involve communications and meetings involving Blanch, Higgs, and Cal Erickson, at all material times Human Resources Director at Hill AFB and involve a meeting among Tillet; Higgs; Constance Hanney, civilian drug and alcohol coordinator at Hill AFB; and Peggy Benson, at material times the in-patient counselor at Day Spring. In finding the facts I credit and rely upon the testimony and versions of the incidents of Higgs, Erickson, Benson, and Hanney, all witnesses called by Hill AFB. I base these credibility determinations upon the demeanor of these witnesses as well as upon the fact that their versions are generally consistent on material matters and are consistent with the surrounding circumstances. I recognize that there are some inconsistencies in their versions of events, but they are basically inconsequential differences and, rather than undermining credibility, such inconsistencies are consistent with different individuals' truthful recollections of the same events. Additionally, I have taken into consideration that Benson is not employed by Hill AFB and has no reason to distort her testimony and there is no indication that either Erickson or Hanney would benefit by any outcome of the case or were extensively involved in Tillet's case, other than being present when certain conversations were held. I also note that counsel for Hill AFB violated the spirit of the sequestration order in this case by discussing the testimony of the witnesses called by the General Counsel of the FLRA with his own witnesses prior to their testifying. This has been taken into account and the testimony of the witnesses called by Respondent has been examined carefully. Nevertheless, I credit their testimony and find them, on the whole, to have been truthful and accurate witnesses.

Higgs decided to offer Tillet a Last Chance Agreement (LCA) before the time ran out to dispose of the proposed removal. In fact this time would expire during the middle of July 1990. In the LCA Tillet was to be offered his job back under the conditions, inter alia, that Tillet would continue his therapy for his alcohol problem, that he would perform his work, and, in case of discharge, he waived his rights to resort to the grievance procedure, to MSPB, EEOC, etc.

Higgs had a number of contacts with Blanch, both over the telephone and face-to-face, concerning offering Tillet an LCA. Higgs spoke to Blanch about a week or two before June 25, 1990, and Higgs stated that Hill AFB wanted to issue an LCA to Tillet at Day Spring. Blanch stated that he did not think that the hospital was a good place to hold such a meeting. Higgs replied that it was not up to either of them to decide; that it was up to the officials at the hospital to decide. Higgs stated that if the officials at the hospital felt it was a good idea, then such a meeting would be held, but if they felt it was not, then such a meeting would not be held. Higgs stated that it should be left to the hospital officials because it was their business. Blanch agreed.

Higgs then telephoned Hanney and raised the Tillet LCA meeting with her. Hanney called Benson at Day Spring and asked her to arrange an LCA meeting with Tillet. Benson indicated the LCA meeting should be held before Tillet left Day Spring and she suggested Monday, June 25, 1990, at 8:30 a.m., for the meeting. Higgs had another telephone call with Hanney who told him the day, date and time for the meeting.

During the week before June 25, 1990, Benson informed Tillet of the day, date and time of the LCA meeting.

Subsequent to the foregoing telephone conversations, Higgs had further communications with Blanch, both over the telephone and face-to-face, during which Higgs told Blanch that the LCA meeting with Tillet would be on Monday, June 25, 1990, at 8:30 a.m. At one of the face-to-face meetings Erickson was present. This meeting took place during the week that immediately preceded the June 25, 1990 LCA meeting. Higgs asked Blanch if he would be at the LCA meeting. Blanch repeated that he did not think it was appropriate to have the meeting at the hospital. Higgs said that it ought to be left to the professionals and that neither of them were professionals. Higgs stated that the counselors are professionals and they would make the determination. Blanch agreed. Higgs said that he would confirm the appointment. He placed a phone call, and then reconfirmed the date and time with Blanch. Blanch indicated that he was not sure it would be appropriate for Tillet to have a representative at the LCA meeting. Higgs asked, apparently rhetorically, if Blanch was Tillet's representative. Blanch replied that he was and that he would be at the LCA meeting. Higgs offered Blanch a ride to the meeting and, although Blanch rejected the offer, Higgs

either did not hear the reply or, through misconstruing it, got the impression that Blanch might take Higgs up on the offer.

I find, again crediting the testimony of Higgs and Erickson, that Blanch at no time told Higgs that Blanch would not attend the LCA meeting or that he was too busy on June 25, 1990, because of pending arbitrations, to attend the meeting. Additionally, I find Blanch did not insist that the LCA meeting be held after Tillet's discharge from Spring Day, other than when Blanch questioned whether it was appropriate to hold the LCA meeting while Tillet was still in Spring Day, which question was resolved by leaving it to the professional counselors to decide if such a meeting was appropriate.

On June 25, 1990, early in the morning, Higgs and Hanney met in Higgs' office in order to travel together to Spring Day for the LCA meeting. Higgs and Hanney waited for Blanch for about one-half hour, based upon Higgs' mistaken belief that Blanch might accept Higgs' offer of a ride to the LCA meeting. When Blanch did not show up at Higgs' office, Higgs and Hanney left the office and drove the six to eight miles to Day Spring at Dee McKay Hospital.

Higgs and Hanney arrived at Day Spring sometime after 8:30 a.m., and were shown into Benson's office. Benson went out and brought Tillet to the office. They waited for about 20 minutes for Blanch to arrive. Tillet asked if the Union representative had been notified of the meeting. Tillet was assured that the Union representative had been notified. When Blanch did not arrive the meeting proceeded. Tillet indicated he wanted a Union representative. When it was explained that the Union representative had been notified of the meeting and that Tillet could have a Union representative, the meeting proceeded with no objection from Tillet. Higgs asked Tillet if he wished to telephone Blanch and Tillet declined. I find that Tillet did not leave the meeting at any time and did not attempt to telephone Blanch or any other Union representative.

The LCA was explained to Tillet, who read it and indicated he understood it and had no questions. After the LCA was explained to Tillet he indicated that it was not asking anything special of him and that all he had to do was his job, just like everyone else. In response to Tillet's question concerning what would happen if he did not sign the LCA, he was advised that Hill AFB would proceed with the

notice of proposed removal, indicating that Tillet's job was in danger and that the LCA was in lieu of removal. I find Tillet did not ask for more time to consider the LCA with his Union representative. Tillet then signed the LCA. This meeting lasted about 30 minutes.

After being released from Day Spring, Tillet returned to work at Hill AFB and, on August 3, 1990, he was removed from his position for failing to comply with the terms of the LCA.

Discussion and Conclusions of Law

The General Counsel of the FLRA contends that Hill AFB violated section 7116(a)(1) and (5) of the Statute by bypassing AFGE Local 1592 when Higgs and Hanney presented Tillet with the LCA, which was related to the pending removal action, without the presence of Blanch, Tillet's designated Union representative.

The FLRA has held that an agency bypasses a union in violation of section 7116(a)(1) and (5) of the Statute when it deals with the employee directly, and not with the union, in a disciplinary proceeding, after the employee had designated the union as his representative. Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California, 35 FLRA 345 (1990) (McClellan AFB); and 438th Air Base Group, McGuire Air Force Base, New Jersey, 28 FLRA 1112 (1987) (McGuire AFB). Both of these cases involved an agency giving an employee a final action in a disciplinary proceeding, without the presence of a Union representative, when the employee had designated the union his representative. In both cases the FLRA found such conduct violated section 7116(a)(1) and (5) because the agency bypassed the union when it was acting as the collective bargaining representative of a unit employee. Such conduct by an agency prevents a labor organization from performing one of its most fundamental representational functions under the Statute. In such situations the union is entitled to represent the employee, and management must give it an opportunity to be present at meetings with the employee.

Neither McClellan AFB, supra, nor McGuire AFB, supra, involved any finding that a formal discussion had been held or that there had been non-compliance with section 7114(a)(2)(A). Accordingly, Respondent's reliance on American Federation of Government Employees, Council 214 and Department of the Air Force, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 38 FLRA 309 (1990),

is misplaced because the violation alleged herein does not involve any finding that the LCA meeting was a formal discussion or that there was not compliance with section 7114(a)(2)(A).

In light of the foregoing and also noting that AFGE Local 1592 specifically advised Hill AFB that the Union was representing Tillet in the proposed removal proceeding and that Higgs admitted the LCA meeting was to resolve the proposed removal action, I conclude that AFGE Local 1592 was entitled to notice of the LCA meeting and a reasonable opportunity to be present at that meeting.

Higgs notified Blanch about the LCA meeting to be held on June 25, 1990, and Blanch was invited to attend and represent Tillet. Although Blanch first questioned the propriety of holding the LCA meeting while Tillet was still in the treatment facility, he did not protest Higgs' statement that should be decided by the professionals, the counselors, and when Higgs indicated the counselors agreed that such a meeting was appropriate Blanch dropped any objection. Blanch did not renew the request that the LCA meeting be postponed. Blanch agreed to attend the LCA meeting on June 25, 1990.

Hill AFB had, to this point, done all the Statute required.

On June 25, 1990, at the LCA meeting Tillet was advised that Blanch had been notified about the meeting, was invited, and had stated that he would attend. Those present then waited for Blanch. When Blanch did not arrive, Tillet was asked whether he wanted to call the Union and Tillet responded that was not necessary. Higgs explained that Tillet could have a Union representative, but Tillet stated they should proceed with the meeting. The LCA meeting then proceeded.

General Counsel of the FLRA contends that, rather then continue with the meeting, Hill AFB should have tried to call Blanch or it should have adjourned the meeting to some other time. I find that this approach places the responsibility on the wrong party. Blanch stated he would attend the meeting. When he found that he would or could not attend the meeting, he should have contacted Higgs and asked to reschedule the meeting. It is inappropriate to place the responsibility upon Hill AFB of finding out why Blanch was not there and what he wanted to do about the meeting. Especially when Tillet indicated he did not want to call Blanch or wait for a Union representative.

General Counsel of the FLRA says that Higgs should have called because Blanch could have been in an accident or have been unable to call. There was no evidence submitted of any such accident or incapacity. Such situations may have to be dealt with as they arise. The record does not support any such findings in this case.

Accordingly, I conclude that Hill AFB notified the Union of the LCA meeting and gave the Union an opportunity to be present and represent Tillet. The Union chose not to attend that meeting and chose not to represent Tillet. Hill AFB did all the Statute required of it. Tillet voluntarily chose to proceed with the meeting without a union representative.

In light of all the foregoing I conclude that Hill AFB did not bypass AFGE Local 1592 when it held the LCA meeting on June 25, 1990, and that Hill AFB did not violate section 7116(a)(1) and (5) of the Statute. Similarly I conclude Hill AFB did not violate section 7116(a)(1) by proceeding with the LCA meeting without a union representative.

Having concluded that Respondent did not violate section 7116(a)(1) and (5) of the Statute, I recommend that the Authority issue the following:

ORDER

It is hereby ordered that the Complaint in Case No. 7-CA-00667 be, and hereby is, DISMISSED.

Issued, Washington, DC, October 21,1991.

Samuel A. Chaitovitz

SAMUEL A. CHAITOVITZ
Administrative Law Judge