

UNITED STATES OF AMERICA  
FEDERAL LABOR RELATIONS AUTHORITY  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF VETERANS AFFAIRS  
DEPARTMENT OF VETERANS AFFAIRS  
MEDICAL CENTER, NEW YORK,  
NEW YORK

Respondent

and

Case No. BY-CA-20638

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, AFL-CIO, LOCAL 2094

Charging Party

Verne R. Smith, Esquire  
For the General Counsel

Aaron J. Fields, Esquire  
For the Respondent

Jacky Simmons  
For the Charging Party

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 3, 1992, by American Federation of Government Employees, Local 2094, AFL-CIO, (hereinafter called the Union), a Complaint and Notice of Hearing was issued by the Acting Regional Director for the Boston Regional Office, Federal Labor Relations Authority, Boston, Massachusetts, on July 31, 1992. The Complaint alleges that the Department of Veterans Affairs, Department of Veterans Affairs Medical Center, New York, New York, (hereinafter called the Respondent), violated Sections 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by

conducting a formal discussion within the meaning of Section 7114(a)(2)(A) without affording the Union the opportunity to be present.

A hearing was held in the captioned matter on November 4, 1992, in New York, New York. 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 General Counsel and the Respondent filed post-hearing briefs on December 2 and 4, 1992, respectively, 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 is the certified exclusive representative of a nationwide consolidated unit of Respondent's employees appropriate for collective bargaining. Local 2094 is the agent of the Union for purposes of representing, among others, the warehouse employees working at Respondent's Medical Center located in New York. Mr. Jacky Simmons, a Senior Autopsy Assistant, has served as President of the Local for the past six years. Mr. Harry Bridgeforth, a Warehouseman, at the time of the events herein served as an officer of Local 2094. Mr. Bridgeforth, who is assigned to Respondent's warehouse, is supervised by Mr. John Booker, Assistant Chief, Storage and Distribution Division. Mr. Richard Marshall, Chief, Storage and Distribution Division supervises Mr. Booker and in turn is supervised by Ms. Linda Carter, Chief, Supply Service.

On February 27, 1992, Mr. Bridgeforth was on his way to lunch when he was approached by Mr. Marshall and informed that he and the other warehousemen were required to attend a meeting in the warehouse at 1:00 p.m. Further, according to the credited testimony of Mr. Bridgeforth, he was told that the meeting involved "some sort of change in what we were going to be doing". Mr. Bridgeforth immediately telephoned the Union's office and spoke to Ms. Annie Williams, the Union's Chief Steward and related his conversation with Mr. Marshall. Ms. Williams then informed the Union's president, Mr. Simmons, about the matter and was instructed by him to telephone Mr. Marshall to verify the nature of the scheduled meeting. During the subsequent telephone call, Mr. Marshall confirmed that a meeting was scheduled for 1:00 p.m. and informed Ms. Williams that the Union was not invited. Upon being informed of the substance of the Williams - Marshall telephone conversation, Mr. Simmons telephoned

Mr. Marshall and was again informed that the Union was not invited to the scheduled meeting.

Shortly before the meeting was scheduled to begin, Mr. Bridgeforth returned from having lunch with Mr. David Blank, the Union's Secretary/Treasurer. Upon entering the warehouse with Mr. Blank he approached Mr. Marshall and asked if Mr. Blank could sit in on the scheduled meeting as the Union's representative. Mr. Marshall denied the request and proceeded to hold the meeting without the presence of a Union representative.\*/ The meeting was attended by approximately 9 of the 12 employees working in the warehouse.

The meeting began as scheduled with Mr. Marshall and Mr. Booker standing or sitting in front of the assembled warehouse employees. The employees were informed of a new procedure which was going to be utilized in the warehouse with respect to incoming packages. Thus, according to the credited testimony of Mr. Bridgeforth, Mr. Marshall had an enlarged copy of a new form mounted on an easel and proceeded to explain to the employees the manner in which it should be filled out when packages were received at the warehouse. While there is a dispute as to whether Mr. Marshall called the new procedure an "experiment" or a "30 day survey", the new procedure required, among other things, the recordation of the weight of the incoming package. To the extent that the incoming package did not contain a notation of the weight of the package, it was incumbent on the employee receiving the package to ascertain its weight and record same, along with certain other statistics on the new form. These new functions were to be performed by the employees in addition to their regular scheduled duties. There is a dispute as to how many employees were affected by the change in procedure which continued for approximately thirty days before it was terminated. In this latter connection, it is Respondent's position that change only impacted on two employees. The credited testimony of Mr. Bridgeforth indicates that on occasion he filled in for employees Mike Yanich and Hector Serrano who normally performed the receiving duties. He further testified that all employees from time to time performed each other's job. The meeting which was confined to the new form and the manner in which it was to be filled out

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\*/ According to Mr. Simmons, Mr. Bridgeforth, despite being a Union officer, could not serve as a representative at the meeting because it was the Union's policy not to designate as union representatives employees working in the area involved in the discussion in order to avoid conflicts of interest. Thus, while Mr. Bridgeforth did attend the meeting he did so solely in his capacity as a warehouseman.

lasted a little over an hour. During the meeting management entertained questions from the employees with respect to how to fill out the new form.

### Discussion and Conclusions

Counsel for the General Counsel takes the position that the meeting held on February 27, 1992 was a formal discussion within the meaning of Section 7114(a)(2)(A) of the Statute and that Respondent violated Sections 7116(a)(1) and (8) of the Statute by denying the Union an opportunity to attend. Respondent, on the other hand, takes the position that the meeting held "on February 27, 1992, . . . was not a formal meeting within the meaning of Title 5 U.S.C. Section 7114(a)(2)(A) because the item discussed did not have significant impact on the workforce or resulted in a change of the working environment and dealt only with a management right authorized by Title 5 U.S.C. Section 7106." In support of this latter position, Respondent relies on a number of cases unrelated to the issue involved herein. Thus, the cited cases involve an agency's failure and/or refusal to bargain with a union over (1) a change in a condition of employment which had a de minimis impact on the working conditions of the unit employees, or (2) a subject falling within the management rights provision of the Statute.

Whether a change in a condition of employment falls within the management rights provision of the Statute or has a de minimis impact on the working conditions of the unit employees does not affect the resolution of the instant complaint which is predicated solely on Respondent's failure to allow the Union to attend a formal discussion between management and the unit employees working in the warehouse. However, the afore-mentioned defenses might well be available to the Respondent should it be faced with a subsequent bargaining demand from the Union concerning the subject matter of the alleged formal discussion.

Thus, as I understand the law the only issue to be resolved herein is whether the meeting held on February 27, 1992, was a "formal meeting" within the meaning of the Statute. If so, then a violation of Sections 7116(a)(1) and (8) is established since Respondent does not deny that it refused to allow a union representative to attend the meeting.

In determining whether the rights accorded a union by Section 7114(a)(2)(A) are applicable to any meeting, four elements must exist, namely, (1) a discussion must occur, (2) the discussion must be formal in nature, (3) the discussion must be between one or more unit employees or their representatives and one or more representatives of the agency,

and (4) the discussion must concern a grievance, personnel practice or other general conditions of employment. Department of Health and Human Services, Social Security Administration and Social Security Administration Field Operations, Region II, 29 FLRA 1205, 1907. In determining whether a meeting or a discussion is formal in nature one must consider all the circumstances surrounding the meeting and/or discussion. Cf. U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Chicago, Illinois, 32 FLRA 465, 470.

Applying the above criteria to the facts of the instant case, I find that the record evidence supports the conclusion that the February 27, 1992 meeting was indeed a formal discussion within the meaning of Section 7114(a)(2)(A) of the Statute and that the Union was entitled to attend. Thus there can be no dispute that there was indeed a discussion between one or more representatives of the Respondent and one or more unit employees. Contrary to the contention of Respondent, I find, based particularly on the credited testimony of Mr. Bridgeforth, that the thirty day experiment or survey impacted on all the warehousemen since from time to time they filled in for each other and were therefore subject to performing the newly assigned receiving duties which in the main were normally performed by employees Yanich and Serrano. Finally, I find that the February 27, 1992 meeting was a formal discussion within the meaning of the Statute. In reaching this latter conclusion I rely on the undisputed record testimony that the meeting was scheduled in advance, all employees were obligated to attend the meeting which lasted approximately one hour, was in an area away from their individual work stations, and was chaired by first and second line supervisors who explained the changes by use of an easel upon which was mounted an enlarged copy of the form which the unit employees were required to fill out when receiving parcels and/or packages at the warehouse.

Based upon the foregoing analysis of the record evidence, I find that the meeting of February 27, 1992 was a formal discussion under Section 7114(a)(2)(A) of the Statute and that the Union was entitled to attend. Having refused to allow such attendance by the Union, I further find that by such act Respondent failed to comply with the requirements of Section 7114(a)(2)(A) and thereby violated Sections 7116(a)(1) and (8) of the Statute.

Accordingly, it is hereby recommended that the Federal Labor Relations Authority issue the following Order designed to effectuate the purposes of the Statute.

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 Department of Veterans Affairs, Department of Veterans Affairs Medical Center, New York, New York, shall:

1. Cease and desist from:

(a) Conducting formal discussions with its employees in the bargaining unit exclusively represented by the American Federation of Government Employees, Local 2094, AFL-CIO (AFGE), concerning grievances or any personnel policy or practices or other general conditions of employment without affording AFGE prior notice of and the opportunity to be represented at the formal discussions.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their 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 Department of Veterans Affairs Medical Center, New York, New York, where employees in the bargaining unit are located, 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, 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 of the Boston Regional Office, Federal Labor Relations Authority, 99 Summer Street, Suite 1500, Boston, MA 02110, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, April 12, 1993

  
BURTON S. STERNBURG  
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 conduct formal discussions with our employees in the bargaining unit exclusively represented by the American Federation of Government Employees, Local 2094, AFL-CIO (AFGE), concerning grievances or any personnel policy or practices or other general conditions of employment without affording AFGE notice of and the opportunity to be represented at the formal discussions.

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 Statute.

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(Activity)

Date: \_\_\_\_\_ By: \_\_\_\_\_

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 of 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, Boston Regional Office, 99 Summer Street, Suite 1500, Boston, MA 02110, and whose telephone number is: (617) 424-5730.