

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

DEPARTMENT OF VETERANS AFFAIRS,
VETERANS AFFAIRS MEDICAL CENTER,
GAINESVILLE, FLORIDA

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2779

Charging Party

Case No. AT-CA-20137

Ann Barnett, Esq.
For the Respondent

Godfrey E. Goff, Esq.
For the General Counsel

Before: ELI NASH, JR.
Administrative Law Judge

DECISION

Statement of the Case

The American Federation of Government Employees, Local 2779 (herein called the Union) filed an unfair labor practice charge in this matter on November 12, 1991, against the Department of Veterans Affairs, Veterans Affairs Medical Center, Gainesville, Florida (herein called the Respondent or VAMC). Thereafter, on May 28, 1992, the Atlanta Regional Director, Federal Labor Relations Authority, issued a Complaint and Notice of Hearing alleging that the Respondent violated section 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute, as amended, (the Statute) by holding a formal discussion with employees without complying with section 7114(a)(2)(A) of the Statute.

A hearing was held in Orlando, Florida at which all parties were represented. Each was afforded full opportunity to be heard, to adduce evidence, and to examine as well as

cross-examine witnesses. Timely briefs were filed with the undersigned which have been duly considered.^{1/}

Upon the entire record, from my observation of the witnesses and their demeanor, and from all the testimony and evidence adduced at the hearing, I make the following findings and conclusions.

Findings of Fact

1. The Food Service and Production Section of Dietetic Service (herein called Dietetic Service) is responsible for patient food service, including tray preparation, delivery and general kitchen maintenance. Dietetic Service first-line supervisors are assigned on a shift basis, with each supervisor managing approximately 18 to 20 employees a shift. The employees involved are food service workers who are involved in making up patient food trays, delivering those trays to patients, general cleaning up and maintenance work.

2. Dietetic Service is divided into a Clinical Section, which involves primarily clinical dietitians and health technicians, and an Administrative Section composed of food service and production workers. The Chief of Dietetic Service is Ada Smith, and the Assistant Chief of Dietetic Service is Victoria Haynes-Johnson. Eldora Mayes is one of several first-line supervisors working within the Food Service and Production Section.

3. Dietetic Service meetings for employees are regularly scheduled every month on the first Thursday and Friday of the month. The meeting at issue in this case occurred in Dietetic Service at about 10:00 a.m. on November 8,^{2/} a Friday. The meeting took place in the patient's dining room section of the Dietetic Service which is where most or all such employee meetings take place. The meeting was conducted by Mayes, a first line supervisor.

4. Rosemary Sears, a food service worker who attended the meeting, testified that approximately 10 to 15 bargaining

^{1/} Section 2423.25 of the Rules and Regulations provides the following: "No reply brief may be filed except by special permission of the Administrative Law Judge." Respondent sought no such permission before filing a reply brief on January 21, 1993. Accordingly, nothing contained in that brief has been considered in making the decision herein.

^{2/} All dates are 1991 unless otherwise noted.

unit employees were present. Sears also stated that several management representatives, in addition to Mayes were at the meeting. Those representatives included Haynes-Johnson, and Josephine Hill, a dietician and Chief of the Dieticians. According to Sears, Mayes, the first-line supervisor and the Dietetic Service secretary were present at the beginning of the meeting, and they were subsequently joined by Haynes-Johnson. Finally, Sears stated that the meeting lasted from 15 to 30 minutes.

5. Prior to the meeting Sears, a bargaining unit member, requested that Nancy Whitehead, the Union President, attend the meeting on November 8 because of Sears' concerns regarding the use of a tray passer slip. According to Sears, the tray passer slips had been used for "two or three months, but they had been telling us that if we don't fill slips out they would give us disciplinary actions. . . ." Sears wanted Whitehead to find out if they could do that and if it was right. Haynes-Johnson testified that the tray passer slips had been a "policy, a procedure. . . ." in Dietetic Service for at least the two and one half years she had been there. She added, there had been a problem with the employees filling out the slips which had been discussed in previous meetings and that any discussion at this meeting was merely a reiteration of policies and procedures as they related to employees filling out these slips properly. Mayes affirmed that the tray passer slips were a policy and procedure of the department and added, anytime employees fail to follow policy and procedure, disciplinary action may be taken against them. Clearly, no disciplinary action had been taken in the past regarding laxity in filling out the tray passer slips. In any event, Whitehead agreed to attend the meeting and arrived shortly before it began.

6. During the meeting, Haynes-Johnson noticed Whitehead's presence. After consulting with Respondent's personnel service concerning the necessity for allowing Whitehead's presence, Haynes-Johnson, concluded that the planned meeting was "just a regular monthly employees' meeting" which did not constitute a formal discussion concerning any personnel practice or procedure or general condition of employment. Subsequently, she asked Whitehead to leave the area. According to Respondent, the request was consistent with Dietetic Service policy of excluding the public from food preparation and food service areas.

7. The patient's dining room, where the bargaining unit members gathered that morning, is an access area adjacent to the kitchen. The area ordinarily is used by persons picking up food or drink for patients, and is also used as a dining

area by patients. Those activities continued, uninterrupted while the meeting was in progress. Additionally, food service workers who were responsible for assisting patients or volunteers were excused from the meeting, if anyone needed assistance while the meeting was going on.

8. This meeting was similar in most respects to the regularly scheduled Dietetic Service meeting held on the first Thursday and Friday of each month. During this specific 15 to 30 minute meeting, Mayes, the supervisor discussed approximately 33 separate topics with the assembled employees. Among the topics discussed were the following: specific food handling issues, including the use of soup bowls with frozen strawberries, the number of margarine to be served with hot cereal, and the type of crackers to be used; five of the topics concerned safety and cleanliness; 15 topics concerned food handling, menu items, and service procedure. Nine ministerial subjects were covered, including notice of a planned computer shutdown and a Christmas party. Additionally, Mayes passed out annual leave request forms, and briefly reiterated instructions for calculating annual leave pursuant to the local Negotiated Agreement. Notwithstanding, Mayes conducted the meeting using a written agenda, the same document also serves as minutes of the meeting. After the meeting is held, the Dietetic Service secretary amends the agenda to reflect any new items which may have been discussed at the meeting. Names of the supervisors conducting each session are also added. In all other respects, the agenda and the minutes of the meeting are identical.

9. In addition to the above, employees were reminded by Mayes that their supervisor should be informed whenever they are leaving the work area, since some employees had received emergency phone calls and their supervisors had been unable to locate them. Employees were also reminded of established procedures with regard to menu conferences, the use of tray passer slips, and smoking areas. Furthermore, specific instructions were repeated for the use of tray passer slips. Finally, there was a brief reminder of the department's ongoing policy, that any time employees fail to follow established policies and procedures, disciplinary action may be taken against them. However, Mayes testified that she merely read verbatim the text appearing on the agenda, and illustrated how forms discussed were to be filled out. No general discussion took place and no comments were entertained.

10. Mayes further testified that the meeting did not concern any changes in the way employees were expected to perform their jobs. She also testified that she had not in

fact been forced to take disciplinary action against any employee. When asked whether there was some reason to emphasize the need for discipline at the meeting on November 8, Mayes replied in the negative. Mayes simply pointed out that information contained in tray passer slips allowed the Dietetic Service to assist Nursing Service in responding to patients' needs. The topic was reviewed only to insure that Dietetic Service had the information it needed to fulfill this function.

Conclusions

Among the fundamental rights contained in the Statute is that of the exclusive representative's entitlement to notice and the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment. In order for an exclusive representative's rights under section 7114(a)(2)(A) to attach, all of the elements set forth in that section must be present. (1) a discussion, meeting or gathering; (2) which is formal; (3) between or among one or more representatives of the agency and one or more unit employees or their representatives; (4) concerning any personnel policy or practice or other general conditions of employment. Department of Veterans Affairs Medical Center, Denver, Colorado, 44 FLRA 408 (1992); Veterans Administration Medical Center, Long Beach, California, 41 FLRA 1370 (1991).

Elements one and three in this case are clearly satisfied by undisputed evidence, leaving for consideration only the issues of whether the meeting was a formal discussion concerning personnel practices or conditions of employment. It is found, in this instance that undisputed facts establish that an employee meeting was held on November 8 with both employees in the bargaining unit and management representatives present.

The controversy in this matter swirls around the exclusion of Union President Whitehead from a meeting which the General Counsel characterizes as a formal discussion under section 7114(a)(2)(A) of the Statute. Respondent disagrees, depicting the November 8 meeting as a regular employee meeting, in other words, a staff meeting. Respondent argues, in essence, that this staff meeting did not involve any new personnel policies or practices and therefore, its excluding a union representative did not constitute a violation of the Statute. Keeping in mind that such a staff meeting can

convert to a formal discussion^{3/}, the undersigned still agrees with Respondent that the General Counsel has not proven that it violated the Statute by failing to comply with section 7114(a)(2)(A).

In rejecting the General Counsel's position in this case, the undersigned has reviewed case law containing the specific indicia of formality, and finds that while there are guidelines for establishing whether a discussion is formal occurred, they provide a widespread course. Department of Justice, Bureau of Prisons, Federal Correctional Institution (Ray Brook, New York), 29 FLRA 584 (1987); U.S. Government Printing Office, Public Documents Distribution Center, Pueblo, Colorado, 17 FLRA 927 (1985); Defense Depot Tracy, supra; United States Department of Labor, Office of the Assistant Secretary for Administration and Management, Chicago, Illinois, 32 FLRA 465 (1988); Dept. of Health and Human Services, SSA, Bureau of Field Operations, San Francisco, California, 10 FLRA 115 (1982). Despite setting elements, the cardinal principle in these decisions is that the Authority will always look at the totality of the facts and circumstances of the case before making its determination. Marine Corps Logistics Base Barstow, California, 45 FLRA 1332 (1992). As already discussed, Respondent urges that the meeting was merely a regular monthly information meeting for employees. Even Sears' testimony supports this position. Since there is no question that meetings such as the one held on November 8 were a regularly scheduled occurrence at Respondent's facility, an examination of the total circumstances surrounding this particular meeting ordinarily is essential.

The eight factors applied in determining whether formality is present are as follows: (1) whether the individual who held the discussions is merely a first-level supervisor or is higher in the management hierarchy; (2) whether any other management representatives attended; (3) where the individual meetings took place; (4) how long the meetings lasted; (5) how the meetings were called; (6) whether a formal agenda was established for the meetings; (7) whether each employee's attendance was mandatory; and (8) the manner in which the meetings were conducted (*i.e.*, whether the employee's identity and comments were noted or transcribed).

3/ See for example, Department of Defense, National Guard Bureau, Texas Adjutant General's Department, 149th TAC Fighter Group (ANG)(TAC), Kelly Air Force Base, 15 FLRA 529 (1984); Department of Defense, Defense Logistics Agency, Defense Depot Tracy, Tracy, California, 37 FLRA 952 (1990).

When applying those eight factors to this case, there is no real question that some of the factors representing formality are present. It is evident from the record that a written agenda was prepared; that the first-line supervisor as well as, the Assistant Chief of the Service and, a supervisory dietician were in attendance, and on-duty employees were expected to attend the November 8 meeting are among the elements supporting a finding of formality.

Other factors, however, suggest finding against formality. Among those factors, it was shown that although employees were expected to come to the meeting, they were free to leave prior to the conclusion of the meeting if something came up which needed to be attended to. Consequently, it is difficult to persuade one that the meeting was totally a mandatory requirement. Next, the meeting was conducted by the first-level supervisor, and not by more senior officials although they were present. The record suggests that this was the same manner all regular monthly meetings were conducted. In support of this, the evidence shows that Haynes-Johnson was not at the meeting when it began. Nor did she conduct or participate in the meeting because of her preoccupation with Whitehead's presence and what to do about it. The evidence that the meeting was indeed conducted by only the first-line supervisor is therefore, persuasive. Also, the meeting took place in the patient dining room, which is a part of the usual work area, and the work of serving patients and filling food orders went on throughout the meeting. Finally, the meeting was not transcribed. While, the name of the individual conducting the meeting was added to the "agenda", any new topics brought up for discussion were noted, and the "agenda" then became the "minutes".

Although Sears testified that the meeting lasted from 15 to 30 minutes, it appeared to have been devoted to issues such as when paper plates versus styrofoam should be used, how many margarine should accompany hot cereal, and how the food service staff could improve the cleanliness and safety of their work area. Such discussions, in my view do not constitute a change in job practice. It does not appear that any change in job requirements or disciplinary practice was discussed. What was discussed, however, were job requirements already known to employees and nothing new was added to those existing requirements. According to Sears, "It wasn't that much. Just like, the usual thing. About the nursing home and what's going on the second floor, and about project 5000, and tray delivery things. Stuff like that." The General Counsel's argument that discussion of topics such as these constitute a discussion of conditions of employment, in my opinion, misses the mark.

During the meeting there were approximately 33 different topics discussed in what might be considered a very short period of time. While the pace at which the meeting proceeded is surely not dispositive, it is my view that the time taken with this meeting to discuss that many topics certainly supports Respondent's position that the meeting was merely to disseminate information. Finally, the meeting was held in the same time frame of the regular monthly informational meetings held over at least the last two years which were generally conducted in Dietetic Service to keep employees informed. In fact, it appears that, no new matters were discussed during the meeting, but as the facts disclose, the "agenda" for this meeting was a reiteration of matters discussed at previous regular monthly meetings.

Since the meeting was conducted only by the first-line supervisor, in a primary work area, and lasted less than thirty minutes although more than 30 topics were mentioned it appears to have been informal, in accord with Marine Corps Logistics Base Barstow, California, 45 FLRA 1332 (1992). Thus, it is my opinion, that both the content of the meeting and the manner of presentation of the approximate 33 topics discussed requires a conclusion that the meeting was not formal, but rather, was a regular monthly informational meeting, and as such not formal and furthermore, the discussions did not convert it into a formal meeting as envisioned by the Statute.

Although the Authority might well view this meeting as a formal discussion, there is certainly a danger in doing so. To find a staff meeting, such as this, requires notification to the exclusive representative and its presence definitely widens the field. Almost all staff meetings, it is presumed, are called to discuss some aspect of employment and how and where employees are to fulfill their job requirements. Furthermore, many of those meetings, almost certainly follow the same format or a similar one, to that present in this case, with a first-level supervisor reminding and reiterating job requirements to employees. To say that the exclusive representative must be present and play a role in each such meeting, on the chance that a personnel practice or condition of employment might be discussed, would frustrate the entire process to a point where it would not be either efficient or effective for the Union or the government.

Where the meeting is a formal discussion from the outset, there is no question that the union is entitled to an opportunity to be there. Department of the Army, New Cumberland Army Depot, 38 FLRA 671 (1990). The question here, however, is whether this regularly scheduled staff meeting was

transformed into a formal discussion by a discussion of general working conditions or personnel practices. In U.S. Government Printing Office, supra, the Authority concluded that formal discussions are limited to those discussions (except grievance meetings) which concern conditions of employment affecting employees in the unit generally. Here, it can hardly be argued that the discussion would impact outside Dietetic Service, and for that matter only on the food services employees whose duties include making up patient food trays, delivering those trays to patients, general cleaning up and maintenance work. Furthermore, there were no grievances pending involving any of these individuals which certainly would have triggered the obligation to notify and allow the Union an opportunity to be present at this meeting. Moreover, there were no new requirements explained to these employees requiring its presence to safeguard their interests or the interests of the Union. Defense Depot Tracy, supra. Since it is the view of the undersigned that no grievance, personnel policy or practice or other general conditions of employment was intended to be or actually was discussed, it is found that the November 8 meeting did not reach the level of formality that the Statute visualizes.

In Government Printing Office, supra, it was held that a discussion involving nothing more than a routine monitoring function by management was not a formal discussion within the meaning of section 7114(a)(2)(A). The instant meeting, when all the circumstances are considered, involves nothing more than routine monitoring of employee work which Respondent had been doing for at least two years. The General Counsel proposes that the aim of the meeting was to advise employees that they could be disciplined if they failed to do their jobs. There are several reasons for rejecting this argument. The most obvious being, any employee who fails to do his or her job, in any position, surely is aware that discipline may result, therefore, such an announcement would be nothing usual. Additionally, the evidence is contrary since Sears stated that she requested Whitehead's presence at the meeting because of her concerns regarding possible disciplinary action arising from events which took place prior to this meeting. From Sears' testimony, it is clear that the tray passer slip issue had been around for some time, and the possibility of discipline for not filling them out had also been around for that length of time. Therefore, any announcement at the meeting would be nothing new. In fact, what did happen here was that Respondent reemphasized that discipline was possible. The mere fact that the exclusive representative anticipates a discussion of a condition of employment, does not give rise to any agency obligation to give it notice. Moreover, the fact that there had been no discipline in the past over tray passer

slips is immaterial since the possibility for such discipline was always present. In the circumstances, it seems that the statement in the meeting only repeated the existing policy. A policy which already was, and had been in effect for some time and constituted nothing new.

The evidence disclosed that Mayes simply read verbatim the comment that "Disciplinary action will be taken if proper procedures are not followed", and that no further discussion of the subject took place. The most such a statement could contain is a warning. This hardly constitutes a substantive discussion of possible disciplinary action or other general conditions of employment triggering any obligation to give notice prior to this discussion. Nor would this comment, in my opinion, represent any change from established practice, or amount to a substantial clarification of existing practice so as to involve any general condition of employment. Again, reminding employees of their work obligations and telling them that discipline could result where there is a failure to meet those obligations, without more, does not in my view rise to the level of discussing a condition of employment. Such is the case here. Accordingly, it is found that in the context of the meeting there was no discussion of a disciplinary action but there was simply a routine reminder that discipline for failure to perform existing assignments was a possibility.

As to new matters addressed at the meeting, such as the discontinuation of variety crackers and Fig Newtons, Respondent asserts that those issues did not affect general conditions of employment in the statutory sense, but rather, they covered work processes. I agree. Telling employees that a change in what the patients meals would now contain does not necessarily constitute a change in the manner in which the employee would perform his or her work and, therefore have little or no impact on the employees' working conditions. Thus, no change in job requirements were announced nor was it shown that any were contemplated which would constitute a discussion of conditions of employment during this meeting. Basically, I also agree with Respondent that none of the discussions involved other than work processes. I do so because the General Counsel's shot gun approach, in enumerating most of the topics discussed as changes in conditions of employment, but ignoring the real reason for Whitehead's presence, because Sears had requested her to be there because of the tray passer slip issue and nothing more, leaves considerable doubt that Respondent discussed any new

conditions of employment.^{4/} Merely listing the subjects discussed at the meeting such as smoking policy, leaving the assigned work area, etc. does not establish that these matters were being discussed for the first time with these employees, but instead coupled with Sears' statement that the topics discussed were "Just like, the usual thing." strengthens Respondent's argument that what was being discussed were the work processes for these employees, in a routine manner.

In a similar mode, the comments concerning annual leave simply restated the requirements contained in the local supplemental agreement. Distribution of annual leave forms without discussion will not convert an otherwise routine staff meeting into a formal discussion. While not dispositive, the Authority, in assessing formality has considered it relevant that management actions taken to comply with the negotiated agreement might well be privileged. Marine Corps Logistics Base, Barstow, California, supra. Regarding the fact that annual leave forms were passed out, the only comments made simply implemented long-standing practice under the negotiated agreement and there was no discussion. Here it appears that Mayes only followed the procedures dictated by the local supplemental agreement.^{5/} Consequently, it is found that the mention of leave or distribution of leave forms during this meeting was purely an attempt to comply with the negotiated agreement and did not constitute a formal discussion of a condition of employment.

4/ As an example of this approach, the General Counsel asserted that menu conferencing concerned a condition of employment when the record clearly shows that bargaining unit employees do not attend menu conferences. Non-bargaining unit employees such as cooks and dieticians decide what the meals will be, and employees on the tray line just place the items on the tray. Clearly, there is no condition of employment in a discussion emphasizing the need for care in filling the trays, but what is involved is purely a work process.

5/ Negotiated Agreement Between the VA Medical Center Gainesville, Florida and Local 2779, American Federation of Government Employees, Article XVII, Section 2 states the following: ". . . Between November 15 and January 15th, each leave scheduling and approving unit will give the employees within it the opportunity to express their preference for leave grants during the ensuing calendar year. . . ."


Distributing leave slips one week prior to the start of this agreed to period seems compatible with the negotiated agreement and not a discussion of leave.

Based on the foregoing and considering the totality of the facts and circumstances in this case, it is found that the November 8 meeting did not constitute a formal discussion, within the meaning of section 7114(a)(2)(A) of the Statute. Therefore, Respondent's failure to notify the Union of the meeting and afford it the opportunity to be represented at the meeting did not violate section 7116(a)(1) and (8) of the Statute. As a result, it is recommended that the Authority adopt the following Order.

Order

The complaint in Case No. AT-CA-20137 should be, and it hereby is, dismissed.

Issued, Washington, DC, October 7, 1993



ELI NASH, JR.
Administrative Law Judge